

SUBJECT: Expunging records upon completion of a mental health court program

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Collier, Zedler, K. Bell, J. González, Hunter, P. King, Moody, Murr, Pacheco

0 nays

WITNESSES: For — Kaycie Alexander, Texas Public Policy Foundation; (*Registered, but did not testify*: Nick Hudson, American Civil Liberties Union of Texas; Caitlin McClune and Chas Moore, Austin Justice Coalition; Chris Masey, Coalition of Texans with Disabilities; M. Paige Williams, Dallas County District Attorney John Creuzot; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Will Francis, National Association of Social Workers-Texas Chapter; Alycia Speasmaker, Texas Criminal Justice Coalition; Kevin Garrett, Texas Jail Project; Michelle Romero, Texas Medical Association; Ash Hall; Audrey Spanko)

Against — (*Registered, but did not testify*: Deborah Nelms)

BACKGROUND: Government Code sec. 125.002 allows the commissioners court of a county to establish a mental health court program for individuals who have been arrested for or charged with a misdemeanor or felony and who are suspected by a law enforcement agency or court of having a mental illness or mental retardation.

Some suggest that there is a lack of an incentive for defendants to participate in mental health specialty courts.

DIGEST: HB 1320 would require the expunction of records for certain individuals who completed a mental health court program, waive fees for certain petitioners seeking records expunction, and require the establishment of mental health court programs in certain counties.

Eligibility for expunction of records. A person who was placed under a

custodial or noncustodial arrest for the commission of a felony or a misdemeanor would be entitled to the expunction of all records and files relating to the arrest if the person had been released, the charge was no longer pending and had not resulted in a final conviction, and there was no court-ordered community supervision for the offense, unless the offense was a class C misdemeanor. Such a person would be eligible for expunction provided that:

- an indictment or information presented at any time following the arrest that charged the person with a misdemeanor offense based on the person's arrest or charged the person with the commission of any felony offense arising out of the same transaction was dismissed or quashed; and
- the court found that the indictment or information was dismissed or quashed because the person completed a mental health court program.

A person would be eligible for the expunction of arrest records and files only if the person had not previously received such an expunction and submitted an affidavit to the court attesting to that fact.

Orders of expunction. A trial court dismissing a case following a person's successful completion of a mental health court program, if the trial court was a district court, or a district court in the county in which the trial court was located could enter an order of expunction following a person's successful completion of a mental health court program. The court would be required to have the consent of the attorney representing the state to enter the order of expunction, and the order would have to be entered by the 30th day after the date the case was dismissed or the court received the information regarding that dismissal. A court that entered an order for expunction could not charge any fee or assess any cost for the expunction.

If a defendant successfully completed a mental health court program, the mental health court, after providing notice to the prosecutor and determining at a hearing that a dismissal of the case would be in the best

interest of justice, would have to provide information about the defendant required for a petition for expunction to the court in which the criminal case was pending. The court in which the case was pending then would have to dismiss the case against the defendant.

If the trial court was a district court, it could enter an order of expunction on behalf of the defendant with the consent of the state's attorney. If the trial court was not a district court and received the consent of the state's attorney, it could forward the appropriate dismissal and expunction information to a district court with jurisdiction to enter an order of expunction.

Waiving of fees. The fees normally required of petitioners seeking expunction of criminal records would be waived for petitioners entitled to expunction after the successful completion of a veterans treatment court program or a mental health court program.

Program mandatory for certain counties. Under HB 1320, the commissioners court of a county with a population of more than 200,000 would be required to establish a mental health court program. Such a commissioners court would have to direct the judge, magistrate, or coordinator to notify the Office of the Governor's Criminal Justice Division of the program and to provide any resolution or declaration establishing the program and a copy of the program's strategic plan.

Counties required to create mental health court programs also would have to apply for federal and state funds available to pay for the programs' costs. The criminal justice division of the governor's office could assist a county in applying for federal funds.

A county would have to establish a mental health court program only if the county received federal or state funds specifically for that purpose and if the judge, magistrate, or coordinator had received verification from the criminal justice division of the governor's office. A county that was required to establish and maintain a mental health court program and did not do so would be ineligible to receive state funds for a community

supervisions and corrections department.

The commissioners courts of two or more counties could establish a regional mental health court program for participating counties.

Applicability. The bill would apply to the expunction of arrest records and files for a person who successfully completed a mental health court program before, on, or after the effective date of the bill.

The provisions relating to the waiving of fees for petitioners entitled to expunction would apply to the fees charged or costs assessed for an expunction order entered on or after the effective date of the bill.

A court with consent from the state's attorney could enter an order of expunction for an entitled individual as soon as practicable after the court received written notice from any party to the case about the person's entitlement to the expunction.

The bill would take effect September 1, 2019.