

BILL ANALYSIS

Senate Research Center
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S.B. 1477
By: West
Criminal Justice
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DIGEST AND PURPOSE

It may be difficult to have a deferred adjudication expunged from a criminal record. While many people have accepted a conviction on deferred adjudication, they generally do so with the expectation that the offense will not affect their permanent record. However, as the law currently stands, a deferred adjudication remains on a permanent criminal record. This deferred adjudication may impede a person's ability to obtain a desired job or position for many years after the offense. As proposed S.B. 1477 prohibits a criminal justice agency from disclosing to the public a person's criminal record information regarding a deferred adjudication after a specified period of time depending on the offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 55.01(a), Code of Criminal Procedure, to provide that a person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to arrest expunged under certain conditions.

SECTION 2. Amends Section 2(a), Article 55.02, Code of Criminal Procedure to authorize a person who is entitled to expunction of records and files under Article 55.01(a) or (d), rather than 55.01(a)(1)(B), 55.01(a)(2), or 55.01(d), or a person who is eligible for expunction of records and files under Article 55.01(b) to file an ex parte petition for expunction in a district court for the county in which the petitioner was arrested; the person who falsely identified himself or herself as the petitioner was arrested, if the petitioner relies on an entitlement under Article 55.01(d); or the offense was alleged to have occurred.

SECTION 3. Amends Article 55.03, Code of Criminal Procedure, as follow:

Art. 55.03. EFFECT OF EXPUNCTION. Provides that when the order of expunction is final the release, dissemination, or use of the expunged records and files for any purpose other than a purpose described by Section 411.083(a) or (b)(1) (Dissemination of Criminal History Record), Government Code, is prohibited.

SECTION 4. Amends Section 411.081, Government Code, by adding Subsections (d), (e), and (f), as follows:

(d) Prohibits a criminal justice, notwithstanding any other provision of this subchapter, if a person is placed on deferred adjudication community supervision under Section 5, Article 42.12, (Community Supervision), Code of Criminal Procedure, subsequently receives a discharge and dismissal under Section 5(c), Article 42.12, and satisfies the requirements of Subsection (e), from disclosing to the to the public criminal history record information related to the offense giving rise to the deferred adjudication on or after the discharge and dismissal, if the

offense for which the person was placed on deferred adjudication was a misdemeanor other than a misdemeanor described by Subdivision (2); the fifth anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor under Chapter 20, 21, 22, 25, 42, or 46 Penal Code; or the 10th anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a felony.

(e) Provides that a person is entitled to the benefit provided under Subsection (d) only if during the applicable period described by Subsection (d)(1), (2), or (3), as appropriate, the person is not convicted of or placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for any offense other than an offense under the Transportation Code punishable by fine only. Provides that a person is not entitled to the benefit provided under Subsection (d) during any period in which the person is required to register as a sex offender under Chapter 62, (Sex Offender Registration Program) Code of Criminal Procedure.

(f) Provides that a person, for the purposes of Subsection (d), is considered to have been placed on deferred adjudication community supervision if regardless of the statutory authorization the person entered a plea of guilty or nolo contendere; the person was placed under the supervision of the court or an officer under the supervision of the court and at the end of the period of supervision the judge dismissed the proceedings and discharged the person.

SECTION 5. Amends Subchapter C, Chapter 552, Government Code, by adding Section 552.142, as follows:

Sec. 552.142. EXCEPTION: RECORDS OF CERTAIN DEFERRED ADJUDICATIONS. (a) Establishes that subject to the dates provided by Subsection (b) and the requirements of Subsection (c), information is excepted from the requirements of Section 552.021 if the information relates to an arrest and the prosecution of an offense for which a person is placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, and subsequently receives a discharge and dismissal under Section 5(c), Article 42.12.

(b) Specifies that the exception provided by Subsection (a) for information related to an arrest and the prosecution of an offense for which a person is placed on deferred adjudication is available only on or after the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor other than a misdemeanor described by Subdivision (2); the fifth anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor under Chapter 20, 21, 22, 25, 42, or 46 Penal Code; or the 10th anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a felony.

(c) Provides that a person is entitled to the benefit provided under Subsection (a) only if during the applicable period described by Subsection (b)(1), (2), or (3), as appropriate, the person is not convicted of or placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for any offense other than an offense under the Transportation Code punishable by fine only. Provides that person is not entitled to the benefit provided under Subsection (a) during any period in which the person is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

(d) Makes conforming changes.

(e) Provides that a person who is the subject of information that is excepted from

the requirements of Section 552.021 under this section may deny the occurrence of the arrest and prosecution to which the information relates and the exception of the information under this section, unless the information is being used against the person in a subsequent criminal proceeding.

SECTION 6. (a) Effective date: September 1, 2003.

(b) Provides that changes in law made by this Act to Chapter 55, Code of Criminal Procedure, apply to a person seeking expunction of records and files relating to an arrest regardless of whether the arrest occurred before, on, or after the effective date of this Act.

(c) Provides that the changes in law made by this Act to Section 411.081, Government Code, as amended by this Act, and Section 552.142, Government Code, as added by this Act, apply to information related to a deferred adjudication or similar procedure described by Section 411.081(f), Government Code, as added by this Act, regardless of whether the deferred adjudication or procedure is entered before, on, or after the effective date of this Act.