

BILL ANALYSIS

Senate Research Center
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H.B. 1507
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Criminal Justice
5/18/2017
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A little-used provision found in Article 42A.701 of the Code of Criminal Procedure allows a judge, after successful completion of a portion of a sentence where community supervision has been ordered, to terminate the remaining term of the probation. Under Subsection (f), a judge may "set-aside" the verdict, or allow the defendant to withdraw their plea and dismiss the case. The provisions—under what is also known as judicial clemency—go on to read that the defendant is to be released from all penalties and disabilities resulting from the offense.

H.B. 1507 would require the court to provide notice to the defendant in writing on a form to be created by the Office of Court Administration (OCA), of the court's ability to set aside the plea or conviction and release the defendant from the consequences associated with the adjudicated offense. The notice to be issued by the court is to be provided before the court accepts a plea from the defendant. OCA is also to create and adopt a standardized form to be used when a defendant is discharged from supervision under this section. H.B. 1507 provides specific instructions on language that is to be included in the prescribed form.

However, H.B. 1507 does not expunge the records related to the offense for which the defendant received a set-aside. And under current Texas law, the records of an offense for which the defendant received a set-aside cannot be sealed through an order of nondisclosure, with an exception provided for a single, one-time, and eligible offense. Although the charges are dismissed through judicial clemency, they remain available for review of the court in a case should there be a conviction for a later offense.

OCA is charged with adopting the required forms by December 1, 2017. H.B. 1507 is not retroactive.

- A person who has been convicted of an offense which requires registration as a sex offender under Chapter 62, Code of Criminal Procedure, is not eligible for judicial clemency.
- A person convicted and placed under supervision for certain DWI offenses is not eligible for judicial clemency.
- A person who has been convicted of certain violent crimes, also known as 3g offenses, is not eligible for judicial clemency.

H.B. 1507 amends current law relating to the rights of certain defendants who successfully complete a term of community supervision.

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 26.13(a), Code of Criminal Procedure, as follows:

(a) Requires the court, prior to accepting a plea of guilty or a plea of nolo contendere, to admonish the defendant of:

(1) through (3) makes no changes to these subdivisions;

(4) and (5) makes nonsubstantive changes to these subdivisions; and

(6) the fact that if the defendant is placed on community supervision, after satisfactorily fulfilling the conditions of community supervision and on expiration of the period of community supervision, the court is authorized to release the defendant from the penalties and disabilities resulting from the offense as provided by Article 42A.701(f) (relating to the authority of the judge to set aside the verdict or permit the defendant to withdraw the defendant's plea in certain situations).

SECTION 2. Amends Subchapter B, Chapter 42A, Code of Criminal Procedure, by adding Article 42A.058, as follows:

Art. 42A.058. INFORMATION PROVIDED TO DEFENDANT PLACED ON COMMUNITY SUPERVISION. Requires a judge placing a defendant on community supervision to inform the defendant in writing and on a form prescribed by the Office of Court Administration of the Texas Judicial System (OCA) that, after satisfactorily fulfilling the conditions of community supervision and on expiration of the period of community supervision, the judge is authorized to release the defendant from the penalties and disabilities resulting from the offense as provided by Article 42A.701(f).

SECTION 3. Amends Article 42A.701, Code of Criminal Procedure, by adding Subsections (f-1) and (f-2), as follows:

(f-1) Requires OCA to adopt a standardized form for use in discharging a defendant under this article. Requires a judge discharging a defendant under this article to use the form adopted under this subsection. Requires that the form provide for the judge to:

(1) discharge the defendant; or

(2) discharge the defendant, set aside the verdict or permit the defendant to withdraw the defendant's plea, and dismiss the accusation, complaint, information, or indictment against the defendant.

(f-2) Requires that the form adopted under Subsection (f-1) state that a defendant who receives a discharge described by Subsection (f-1)(2) is released from the penalties and disabilities resulting from the offense as provided by Subsection (f).

SECTION 4. (a) Requires OCA, not later than December 1, 2017, to adopt the forms required by Articles 42A.058 and 42A.701(f-1), Code of Criminal Procedure, as added by this Act.

(b) Provides that Article 26.13(a), Code of Criminal Procedure, as amended by this Act, applies only to a plea of guilty or a plea of nolo contendere accepted by a court on or after January 1, 2018, regardless of whether the offense for which the plea was submitted was committed before, on, or after that date.

(c) Provides that Article 42A.058, Code of Criminal Procedure, as added by this Act, applies only to a defendant placed on community supervision on or after January 1, 2018, regardless of whether the offense for which the defendant was placed on community supervision was committed before, on, or after that date.

(d) Makes application of Articles 42A.701(f-1) and (f-2), Code of Criminal Procedure, as added by this Act, prospective to January 1, 2018.

SECTION 5. Effective date: September 1, 2017.