

BILL ANALYSIS

Senate Research Center

S.B. 1477
By: West
Criminal Justice
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Enrolled

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. S.B. 1477 restricts the disclosure of certain criminal records and sets forth the duty of law enforcement agencies regarding records associated with certain defendants receiving deferred adjudication. This bill also provides for a civil penalty for private entities that violate the nondisclosure provision regarding a deferred adjudication defendant.

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), (2) or (3), (Dissemination of Criminal History Record), Government Code, is prohibited.

SECTION 4. Amends Section 411.081, Government Code, by adding Subsections (d) through (h) as follows:

(d) Authorizes a person, 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), to petition the court that placed the defendant on

deferred adjudication for an order of nondisclosure under this subsection. Requires the court, after notice to the state and a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice, to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication. Authorizes a criminal justice agency to disclose criminal history record information that is the subject of the order to an individual or agency described by Section 411.083(b)(1), (2), or (3). Authorizes a person petition the court for an order of nondisclosure on payment of a \$28 fee to the clerk of the court. Authorizes the payment to be made 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.

(e) Provides that a person is entitled to petition the court 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 petition the court under Subsection (d) if the person has been previously convicted or placed on deferred adjudication for certain offenses.

(f) Provides that for the purposes of Subsection (d), a person 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 judge deferred further proceedings without entering an adjudication of guilt and placed the person 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.

(g) Requires the clerk of the court, when an order of nondisclosure is issued under this subsection, to send a copy of the order by certified mail, return receipt requested, to the Crime Records Services of the Department of Public Safety (DPS). Requires DPS to send a copy of the order by mail or electronic means to all law enforcement agencies, jails, or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or any political subdivision of this state, and to all central federal depositories of criminal records that there is reason to believe have criminal history record information that is the subject of the order.

(h) Requires the clerk of a court that collects a fee under Subsection (d) to remit the fee to the comptroller of public account (comptroller) for deposit in the general revenue fund. Requires DPS to submit a report to the legislature by December 1 of each even-numbered year that includes certain information.

SECTION 5. Amends Subchapter C, Chapter 552, Government Code, by adding Sections 552.142 and 552.1425, as follows:

Sec. 552.142. EXCEPTION: RECORDS OF CERTAIN DEFERRED ADJUDICATIONS. (a) Provides that information is excepted from the requirements of Section 552.021 if an order of nondisclosure with respect to the information has been issued under Section 411.081(d).

(b) Authorizes a person who is the subject of information that is excepted from the requirements of Section 552.021 under this section to 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.

Sec. 552.1425. CIVIL PENALTY: RECORDS OF CERTAIN DEFERRED ADJUDICATIONS. (a) Prohibits a private entity that compiles and disseminates for compensation criminal history record information from compiling or from disseminating information with respect to which an order of nondisclosure has been issued under Section 411.081(d).

(b) Authorizes a district court to issue a warning to a private entity for first violating Subsection (a). Provides that the private entity, after receiving a warning for the first violation, is liable to the state for a civil penalty not to exceed \$500 for each subsequent violation.

(c) Authorizes the attorney general or an appropriate prosecuting attorney to sue to collect a civil penalty under this section.

(d) Requires a civil penalty collected under this section to be deposited in the state treasury to the credit of the general revenue fund.

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 Sections 552.142 and 552.1425, 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.

(d) Requires DPS, by December 1, 2004, to submit its first report to the legislature as required by Subsection (h), Section 411.081, as added by this Act.