

BILL ANALYSIS

C.S.H.B. 2213
By: Farrar
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many defendants accept deferred adjudication community supervision with the assurance that, upon completion, the offense will not affect their permanent record. Under current law however, an order of deferred adjudication community supervision remains a permanent part of a person's criminal history record. Additionally, despite the unambiguous language of existing law providing that a discharge and dismissal may not be deemed a conviction except in three specific circumstances, several other statutes define a successfully completed term of deferred adjudication community supervision as a conviction.

Current law also authorizes a person to petition the court for an order of nondisclosure for certain criminal history record information. An order of nondisclosure, however, has been an inadequate remedy for many. Numerous state entities are permitted to access a record of deferred adjudication that is subject to an order of nondisclosure, and in most cases, a record of deferred adjudication community supervision that has resulted in a discharge and dismissal can be used by those state entities to deny a person privileges, such as employment, certification, or licensure.

C.S.H.B. 2213 extends the right to petition for expunction to a person who has received a discharge and dismissal after successfully completing a period of deferred adjudication community supervision, following a waiting period based on the nature of the offense for which the person was placed on community supervision. The bill repeals the authority of a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure to certain noncriminal justice agencies or entities.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2213 may be cited as the Community Supervision and Expunction Reform Act of 2009.

C.S.H.B. 2213 amends the Code of Criminal Procedure to authorize a person who has been granted an order of deferred adjudication community supervision under state law to petition the court for an order of expunction of criminal records if the offense for which the person was placed on deferred adjudication community supervision was a Class A or B misdemeanor or a state jail felony, and is not an offense specified under the bill's provisions as rendering a defendant ineligible to petition for expunction. The bill authorizes such a person to petition the court on or after the second anniversary of the discharge and dismissal, if the offense for which the person was placed on community supervision was a Class B misdemeanor; on or after the fifth anniversary of the discharge and dismissal, if the offense was a Class A misdemeanor; or on or after the seventh anniversary of the discharge and dismissal, if the offense was a state jail

felony.

C.S.H.B. 2213 establishes that a defendant is not eligible to petition the court for expunction: if the offense committed was a sexual offense, assaultive offense, bribery and corrupt influence offense, abuse of office offense, or an intoxication and alcoholic beverage offenses; for any crime that has been enhanced by a previous offense; or if the person has had an offense previously expunged, other than an offense under the Transportation Code punishable by fine only.

C.S.H.B. 2213 entitles a person to petition a court for an expunction of criminal records only if, during those applicable periods between the discharge and dismissal and the earliest date a person is entitled to petition the court, the person is not convicted of or placed on deferred adjudication community supervision, or charged with any offense other than an offense under the Transportation Code punishable by fine only. The bill specifies that a judge has the discretion, but is not required, to grant an order of expunction filed on or after the seventh anniversary of the discharge and dismissal by a person placed on community supervision for a state jail felony.

C.S.H.B. 2213 entitles a person not otherwise entitled to petition for expunction of criminal records under the bill's provisions relating to a person placed on community supervision for a Class B misdemeanor to have all records and files relating to the custodial or non-custodial arrest of the person for the commission of an offense under the Transportation Code punishable by fine only expunged if the person committed the offense not less than five years before filing a petition for expunction with respect to the offense, and has not been convicted of or placed on deferred adjudication community supervision, or charged with any other offense in the five years preceding the time of filing the petition. The bill authorizes such a person to file an ex parte petition for expunction in a district court for the county in which the petitioner was arrested or in which the offense was alleged to have occurred.

C.S.H.B. 2213 repeals a provision of the Government Code authorizing a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure to certain noncriminal justice agencies or entities and makes conforming changes to reflect the repeal. The bill removes the possibility of a warning being issued to a private entity for a first violation of the unlawful dissemination of certain criminal history record information barred under an order of expunction or nondisclosure before the entity incurs a civil penalty for each subsequent violation.

C.S.H.B. 2213 amends the Health and Safety Code to require a court, if a defendant successfully completes a drug court program, regardless of whether the defendant was convicted of the offense for which the defendant entered the program or whether the court deferred adjudication of guilt, after notice to the state and a hearing on the matter, to enter an order of nondisclosure as if the defendant had received a discharge or dismissal for successfully completing a term of deferred adjudication community supervision, or an expunction, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program, if the defendant has not been previously convicted of a felony offense and is not convicted for any other felony offense before the second anniversary of the defendant's successful completion of the program.

C.S.H.B. 2213 repeals Section 441.081(i), Government Code.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2213 removes provisions in the original prohibiting an order of deferred adjudication community supervision that has resulted in a discharge and dismissal or an order of community supervision that has resulted in a discharge and dismissal by a judge at any time after the defendant has satisfactorily completed a specified portion of community supervision from being deemed a conviction for any purpose and from being considered by an agency, board, commission, entity, institution, or program of Texas or of a political subdivision of Texas for the purposes of determining whether to issue, suspend, restrict, or revoke a certification, commission, license, or permit, except in certain circumstances, and specifying that the prohibitions regarding an order of deferred adjudication community supervision or community supervision apply to a discharge and dismissal regardless of whether it occurred before, on, or after the effective date of the bill.

C.S.H.B. 2213 differs from the original by setting the conditions under which a person who has been placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, may petition the court for an order of expunction based on the level of offense and the time period that has passed since the discharge or dismissal of the offense, whereas the original sets the conditions for a person with an order of community supervision that has resulted in a discharge and dismissal under Section 5 or Section 20, Article 42.12, Code of Criminal Procedure. The substitute differs from the original by imposing longer time periods for certain offense levels before which a person may not petition for expunction. The substitute differs from the original by making a person ineligible to petition for expunction who committed an offense under Chapter 21, 22, 36, 39, or 49, Penal Code, whereas the original allowed expunction on or after the second anniversary of the discharge and dismissal if the offense was a misdemeanor under these Penal Code chapters and allowed expunction on or after the seventh anniversary of the discharge and dismissal of several felony offenses in Chapter 22 of the Penal Code, among others. The substitute adds provisions not included in the original making a person ineligible to petition for expunction who committed a crime that has been enhanced by a previous offense or who has had an offense previously expunged, other than an offense under the Transportation code punishable by fine only. The substitute differs from the original by revising the courts requirement or discretion to grant the expunction based on offense level.

C.S.H.B. 2213 differs from the original by entitling a person not otherwise entitled to petition for expunction of criminal records to have all records and files relating to the custodial or non-custodial arrest of the person for the commission of an offense under the Transportation Code punishable by fine only expunged if the person committed the offense not less than five years before filing a petition for expunction with respect to the offense, and has not been convicted of or placed on deferred adjudication community supervision, or charged with any other offense in the five years preceding the time of filing the petition, whereas the original entitles such a person to have all records and files relating to such an arrest expunged only if the person committed the offense not less than five years before filing a petition for expunction with respect to the offense, has not been convicted of any other offense in the five years preceding the time of filing the petition, and is not subject to pending charges for any other offense at the time of filing the petition.

C.S.H.B. 2213 differs from the original by repealing a provision of the Government Code authorizing a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure to certain noncriminal justice agencies or entities and making conforming changes to reflect the repeal, whereas the original repeals provisions of the Government Code relating to the petitioning of a court for an order of nondisclosure by a person placed on deferred adjudication community supervision and the fee for filing that petition, and makes conforming changes to reflect the repeal. The substitute adds a provision not included in the original removing the possibility of a warning being issued to a private entity for a first violation of the unlawful dissemination of certain criminal history record information before the

entity incurs a civil penalty for a subsequent violation.

C.S.H.B. 2213, in the Health and Safety Code provision relating to an order of nondisclosure for a defendant who successfully completes a drug court program, differs from the original by requiring a court, if a defendant successfully completes a drug court program and meets certain other requirements, to enter an order of nondisclosure as if the defendant had received a discharge or dismissal for successfully completing a term of deferred adjudication community supervision, or an expunction, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program, whereas the original repeals that provision and related provisions altogether. The substitute removes a provision included in the original repealing a provision prohibiting such a defendant's entitlement to an order of nondisclosure if the defendant's entry into the program arose from a conviction for an offense involving the operation of a motor vehicle while intoxicated. The substitute removes a provision included in the original specifying that the bill's provisions relating to expunction take effect on passage of the bill, or, without the necessary vote, September 1, 2009.