

BILL ANALYSIS

Senate Research Center

S.B. 144
By: West
Criminal Justice
8/29/2011
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

More and more employers routinely use criminal background checks as a part of the employment screening process and many persons are denied employment and state licensure on the basis of a criminal conviction. Currently, persons who have successfully completed deferred adjudication have been placed into the same category even though technically they do not have a criminal conviction.

The appearance of a criminal history record negatively impacts persons during the job search process. Some employers have released employees post-hire upon discovery of even the record of an offense dismissed after completion of a deferred adjudication sentence.

Neither Texas statute nor constitutional law empowers the governor to pardon a deferred adjudication sentence. Records of a conviction are capable of being expunged should a person receive a pardon, but as stated, a person who has completed deferred adjudication is not eligible for a pardon. The subject is then left a criminal history record that is in the public domain for an offense that has officially been dismissed by the criminal justice system.

Under Texas law, a person who has committed a violent crime, or an offense that has a significant financial impact on the victim, theoretically, still has the ability for that crime to be pardoned. But for a lesser offense for which the courts have ruled that the public is best served by an offer of deferred adjudication, the governor has no power by statute or constitutionally to pardon that crime.

In separate rulings by the Texas Attorney General, the opinion is that the release and dismissal of charges upon completion of deferred adjudication releases the defendant from "all penalties and disabilities resulting from the offense." Opinion DM-349 (1995) states that since the charges are subsequently dismissed upon completion of a deferred adjudication sentence, there is no conviction to be pardoned.

S.B. 144 amends current law relating to allowing a person who successfully completes a term of deferred adjudication community supervision to be eligible for a pardon.

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 48.01, Code of Criminal Procedure, as follows:

Art. 48.01. GOVERNOR MAY PARDON. (a) Provides that the governor, in all criminal cases, except treason and impeachment, shall have power, after conviction or successful completion of a term of deferred adjudication community supervision, on the written signed recommendation and advice of the Board of Pardons and Paroles (BPP), or a majority thereof, to grant reprieves and commutations of punishments and pardons.

(b) Authorizes BPP to recommend that the governor grant a pardon to a person who:

(1) is placed on deferred adjudication community supervision under Section 5 (Deferred Adjudication; Community Supervision), Article 42.12 (Community Supervision), and subsequently receives a discharge and dismissal under Section 5(c) (relating to dismissing the proceedings against a defendant) of that article; and

(2) on or after the 10th anniversary of the date of discharge and dismissal, submits a written request to BPP for a recommendation under this subsection.

SECTION 2. Effective date: January 1, 2012, contingent upon approval by the voters of the constitutional amendment proposed by the 82nd Legislature, Regular Session, 2011, relating to authorizing the governor to grant a pardon to a person who successfully completes a term of deferred adjudication community supervision.