

BILL ANALYSIS

Senate Research Center
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S.J.R. 9
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Criminal Justice
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.J.R. 9 is a constitutional amendment needed for the enactment of S.B. 144, a bill that would authorize the governor to grant a pardon to a person who has successfully completed a deferred adjudication sentence.

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

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 Texas governor to pardon a deferred adjudication sentence. Records of a conviction are capable of being expunged should a person receive a pardon, but a person who has completed deferred adjudication is not eligible for a pardon. The subject is then left with a criminal history record that is in the public domain for an offense that has officially been dismissed by the criminal justice system.

Separate opinions issued by the Texas attorney general have held that the release and dismissal of charges on completion of deferred adjudication releases the defendant from all penalties and disabilities resulting from the offense. However, Attorney General Opinion DM-349 (1995) stated that since the charges are subsequently dismissed upon completion of a deferred adjudication sentence, there is no conviction to be pardoned.

As proposed, S.J.R. 9 proposes a constitutional amendment authorizing the governor to grant a pardon to a person who successfully completes a term of deferred adjudication 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 Section 11(b), Article IV, Texas Constitution, as follows:

(b) Provides that in all criminal cases, except treason and impeachment, the governor 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, or a majority thereof, to grant reprieves and commutations of punishment and pardons; and under such rules as the legislature may prescribe, and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures. Provides that the governor shall have the power to grant one reprieve in any capital case for a period

not to exceed thirty (30) days; and he shall have power to revoke conditional pardons. Authorizes the governor, with the advice and consent of the legislature, to grant reprieves, commutations of punishment, and pardons in cases of treason.

SECTION 2. Requires that this proposed constitutional amendment be submitted to the voters at an election to be held November 8, 2011. Sets forth the required language on the ballot.