

BILL ANALYSIS

C.S.H.B. 1344
By: Canales
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to the Texas Department of Public Safety, nearly two million Texans have accepted deferred adjudication community supervision in lieu of a misdemeanor or felony conviction. Interested parties contend that there is a common misconception by persons accepting deferred adjudication community supervision that their criminal record will be erased, which is not the case. To have a criminal record sealed, a person must file a petition for an order of nondisclosure, which limits the entities, including criminal justice agencies, school districts, public hospitals, and state licensing boards, that may access the individual's record but does not erase the existence of the record. C.S.H.B. 1344 seeks to remove the daunting consequences associated with certain arrests by entitling a person who has been placed on deferred adjudication to expunction of all records and files related to the person's arrest if certain requirements are met.

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. 1344 amends the Code of Criminal Procedure to entitle a person who has been placed under a custodial or noncustodial arrest for an offense other than an offense against the person to have all records and files related to the arrest expunged if the person was placed on deferred adjudication community supervision for the offense and subsequently received a discharge and dismissal in the case, if the person has not been arrested for the commission of any Class B or Class A misdemeanor or felony committed after the date of the offense for which the person was placed on deferred adjudication, and if, since the date on which the person received the discharge and dismissal, a minimum period of five years has passed, if the offense for which the person received the discharge and dismissal was a misdemeanor, or a minimum period of 10 years has passed, if the offense for which the person received the discharge and dismissal was a felony.

C.S.H.B. 1344 requires such an entitled person to submit an ex parte petition for expunction to the court that granted the deferred adjudication and requires the petition to be verified and to contain certain information about the person and the offense committed and a statement that the person has not been arrested for the commission of any Class B or Class A misdemeanor or felony committed after the date of the offense for which the person was placed on deferred adjudication. The bill requires the court, if the court finds that the petitioner is entitled to expunction of any arrest records and files that are the subject of the petition, to enter an order directing the expunction in a manner consistent with statutory expunction procedures.

C.S.H.B. 1344 amends the Government Code to make conforming changes.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1344 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 55, Code of Criminal Procedure, is amended by adding Article 55.012 to read as follows:

Art. 55.012. EXPUNCTION OF CERTAIN NONVIOLENT OFFENSES. (a) A person who has been placed under a custodial or noncustodial arrest for an offense other than an offense under Title 5, Penal Code, is entitled to have all records and files related to the arrest expunged if:

(1) the person was placed on deferred adjudication community supervision under Section 5, Article 42.12, for the offense and subsequently received a discharge and dismissal in the case under Section 5(c), Article 42.12;

(2) the person has not been arrested for the commission of any Class B misdemeanor, Class A misdemeanor, or felony committed after the date of the offense for which the person was placed on deferred adjudication community supervision; and

(3) a period of not less than five years has passed since the date on which the person received a discharge and dismissal under Subdivision (1).

(b) The person must submit an ex parte petition for expunction to the court that granted the deferred adjudication community supervision. The petition must be verified and must contain:

(1) the information described by Section 2(b), Article 55.02; and

(2) a statement that the person has not been arrested for the commission of any Class B misdemeanor, Class A misdemeanor, or

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 55, Code of Criminal Procedure, is amended by adding Article 55.012 to read as follows:

Art. 55.012. EXPUNCTION OF CERTAIN NONVIOLENT OFFENSES. (a) A person who has been placed under a custodial or noncustodial arrest for an offense other than an offense under Title 5, Penal Code, is entitled to have all records and files related to the arrest expunged if:

(1) the person was placed on deferred adjudication community supervision under Section 5, Article 42.12, for the offense and subsequently received a discharge and dismissal in the case under Section 5(c), Article 42.12;

(2) the person has not been arrested for the commission of any Class B misdemeanor, Class A misdemeanor, or felony committed after the date of the offense for which the person was placed on deferred adjudication community supervision; and

(3) since the date on which the person received a discharge and dismissal under Subdivision (1):

(A) a period of not less than five years has passed, if the offense for which the person received the discharge and dismissal was a misdemeanor; or

(B) a period of not less than 10 years has passed, if the offense for which the person received the discharge and dismissal was a felony.

(b) The person must submit an ex parte petition for expunction to the court that granted the deferred adjudication community supervision. The petition must be verified and must contain:

(1) the information described by Section 2(b), Article 55.02; and

(2) a statement that the person has not been arrested for the commission of any Class B misdemeanor, Class A misdemeanor, or

felony committed after the date of the offense for which the person was placed on deferred adjudication community supervision.

(c) If the court finds that the petitioner is entitled to expunction of any arrest records and files that are the subject of the petition, the court shall enter an order directing expunction in a manner consistent with the procedures described by Section 1a, Article 55.02.

SECTION 2. Section 411.0851(a), Government Code, is amended.

SECTION 3. Section 552.1425(a), Government Code, is amended.

SECTION 4. This Act takes effect September 1, 2013.

felony committed after the date of the offense for which the person was placed on deferred adjudication community supervision.

(c) If the court finds that the petitioner is entitled to expunction of any arrest records and files that are the subject of the petition, the court shall enter an order directing expunction in a manner consistent with the procedures described by Section 1a, Article 55.02.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.