

BILL ANALYSIS

Senate Research Center
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S.B. 1172
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

While there is general public knowledge of community supervision, more commonly called probation, and to a lesser extent deferred adjudication, few outside the courts know of the judicial option of a set-aside. Section 20 (Reduction or Termination of Community Supervision), Article 42.12 (Community Supervision), Code of Criminal Procedure, reads, "At any time the defendant has satisfactorily completed one-third of the original period of community supervision or two years of community supervision, whichever is less, the period of community supervision may be reduced or terminated by the judge."

The article continues, "If the judge discharges the defendant under this section, the judge may set aside the verdict or permit the defendant to withdraw the defendant's plea and shall dismiss the accusation, complaint, information or indictment against the defendant who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which the defendant has been convicted or to which the defendant has pleaded guilty."

A set-aside differs from deferred adjudication. Under a set-aside, a guilty plea is entered by the defendant. Under deferred adjudication, there is no admission of guilt and judgment is withheld in exchange for the promise that all charges will be dismissed following successful completion of the term of community supervision.

An admission of guilt carries a conviction, but the statutory remedy of a pardon is available for a conviction, enabling the records of the offense to be expunged. The records of an offense where deferred adjudication has been successfully completed can be sealed, and now expunged, if a pardon has been granted. But a conviction that has been set-aside has no available legal remedy, remains available for public disclosure, and is included in a criminal history search. By statute, it is not eligible to be sealed because this is only possible for deferred adjudication. Neither can the records be expunged, because the conviction technically, no longer exists. The statutory intent of a set-aside was to provide future relief, but the records of the offense and conviction were intended to always be available to the courts in the instance of a future criminal offense. This closely parallels the intent of an order of nondisclosure.

S.B. 1172 creates eligibility for the records of an offense and conviction that have been set-aside by a judge (also called judicial clemency) to be sealed through an order of nondisclosure. An order of nondisclosure would provide greater opportunities for a person to separate herself or himself from past mistakes and to pursue a more productive future.

As proposed, S.B. 1172 amends current law relating to the eligibility of certain criminal defendants for an order of nondisclosure, and authorizes a fee.

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 411.081, Government Code, by adding Subsection (d-1) and amending Subsections (e), (f), (h), and (i), as follows:

(d-1)(1) Provides that this subsection applies only to a person who on conviction is placed on community supervision under Article 42.12 (Community Supervision), Code of Criminal Procedure, and with respect to whom the conviction is subsequently set aside by the court under Section 20(a) (relating to authorizing the judge to terminate or reduce the period of community supervision under certain conditions) of that article and is not convicted of an offense for which the person would be ineligible for deferred adjudication community supervision under Section 5(d) (relating to authorizing the judge to grant deferred adjudication in all other cases unless the defendant is charged with certain offenses or has been placed previously on community supervision), Article 42.12, Code of Criminal Procedure.

(2) Authorizes a person to whom this subsection applies, if the person satisfies the requirements of Subsection (e), notwithstanding any other provision of this subchapter, to petition the court that placed the person on community supervision 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 community supervision. Authorizes a criminal justice agency to disclose criminal history record information that is the subject of the order only to other criminal justice agencies, for criminal justice purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order. Authorizes a person to petition the court that placed the person on community supervision for an order of nondisclosure on payment of a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. Authorizes that the payment be made only after:

(A) the conviction is set aside, if the offense for which the person was placed on community supervision was a misdemeanor; or

(B) the fifth anniversary of the date the conviction is set aside, if the offense for which the person was placed on community supervision was a felony.

(e) Entitles a person to petition the court under Subsection (d) (relating to conditions under which a person may petition the court that placed the defendant on deferred adjudication for an order of nondisclosure) or (d-1) only if during the period of the community supervision, including deferred adjudication community supervision, for which the order of nondisclosure is requested and during the applicable period described by Subsection (d)(1) (relating to authorizing fee payment to the clerk of the court only on or after the discharge and dismissal, if the offense was a certain misdemeanor), (2) (relating to authorizing fee payment to the clerk of the court only on or after the second anniversary of the discharge and dismissal, if the offense was a certain misdemeanor), or (3) (relating to authorizing fee payment to the clerk of the court only on or after the fifth anniversary of the discharge and dismissal, if the offense was a felony) or by Subsection (d-1)(2)(A) or (B), as appropriate, the person is not convicted of or placed on deferred adjudication community supervision under Section 5 (Deferred Adjudication; Community Supervision), 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) or (d-1) if the person was placed in community supervision, including deferred adjudication community supervision, for, or has been previously convicted of or placed on any other deferred adjudication for certain offenses. Makes nonsubstantive changes.

(f) Provides that, for purposes of Subsections (d) and (e), rather than Subsection (d), a person is considered to have been placed in 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.

(h) Requires a clerk of a court that collects a fee under Subsection (d) or (d-1) to remit the fee to the comptroller of public accounts of the State of Texas (comptroller) not later than the last day of the month following the end of the calendar quarter in which the fee is collected, and requires the comptroller to deposit the fee in the general revenue fund.

(i) Authorizes a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure under Subsection (d) or (d-1) to certain noncriminal justice agencies or entities, including the Texas Juvenile Justice Department, rather than the Texas Youth Commission. Deletes existing text authorizing a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure under Subsection (d) to the Texas Juvenile Probation Commission.

SECTION 2. Amends Section 411.0851(a), Government Code, to require a private entity that compiles and disseminates for compensation criminal history record information to destroy and not disseminate any information in the possession of the entity with respect to which the entity has received notice that an order of expunction has been issued under Article 55.02 (Procedure for Expunction), Code of Criminal Procedure, or an order of nondisclosure has been issued under Section 411.081(d) or (d-1).

SECTION 3. Amends Section 552.142, Government Code, as follows:

Sec. 552.142. New heading: EXCEPTION: CONFIDENTIALITY OF RECORDS OF CERTAIN CRIMINAL HISTORY INFORMATION. (a) Provides that information is excepted from the requirements of Section 552.021 (Availability of Public Information) if an order of nondisclosure with respect to the information has been issued under Section 411.081(d) or (d-1).

(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 criminal proceeding, rather than 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.

SECTION 4. Amends Section 552.1425(a), Government Code, to prohibit a private entity that compiles and disseminates for compensation criminal history record information from compiling or disseminating information with respect to which the entity has received notice that an order of expunction has been issued under Article 55.02, Code of Criminal Procedure, or an order of nondisclosure has been issued under Section 411.081(d) or (d-1).

SECTION 5. Amends Section 53.021(e), Occupations Code, to provide that Subsection (c) (relating to prohibiting a licensing authority from considering a person to have been convicted of an offense for purposes of this section under certain conditions) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide law enforcement or public health, education, or safety services or financial services in an industry regulated by a person listed in Section 411.081(i)(18), rather than Section 411.081(i)(19).

SECTION 6. Provides that the change in law made by Section 411.081(d-1), Government Code, as added by this Act, applies to a person whose conviction is set aside under Section 20(a), Article 42.12, Code of Criminal Procedure, on or after the effective date of this Act, regardless of when the person committed the offense for which the person was convicted.

SECTION 7. Effective date: September 1, 2013.