

## **BILL ANALYSIS**

Senate Research Center

S.B. 550  
By: West  
Criminal Justice  
6/6/2019  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 550 would create 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.

Under a set-aside, a guilty plea is initially entered by the defendant. A set-aside differs from deferred adjudication. 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 community supervision.

The records of an offense where deferred adjudication has been successfully completed can be sealed, and now expunged, if a pardon has been granted. In 2015, the legislature provided the ability for some non-deferred adjudication, first-time convictions to be sealed.

A finding or admission of guilt carries with it a conviction, but a conviction has the remedy of a pardon and a pardon creates eligibility for the records of an offense where there was a conviction to be expunged. But a conviction that has been set-aside is different. It has no available legal remedies. It is not eligible to be sealed. Neither can the records be expunged, because technically, the conviction no longer exists. The records of the offense, although dismissed, can still be disclosed in a criminal history record search.

The statutory intent of a set-aside was to provide subsequent relief for its subjects, but the records of the offense and conviction were always intended to be available to the courts in the instance of a future criminal offense. This is consistent with the intent of an order of nondisclosure.

S.B. 550 prohibits eligibility for certain alcohol-related offenses, sexual assault-related offenses and crimes of family violence, injury to a child, the elderly or disabled, kidnapping, murder and other offenses that would deny eligibility for sealing records where the subject received deferred adjudication.

By being granted a set-aside, issues related to risk or the future dangerousness of an individual have already been decided by the courts through the judge's decision to dismiss the case and its associated charges, following a term of community supervision.

S.B. 550 would provide relief for individuals who had their cases dismissed via judicial clemency, also known as a set-aside. (Original Author's/Sponsor's Statement of Intent)

S.B. 550 amends current law relating to the eligibility of certain criminal defendants for an order of nondisclosure of criminal history record information.

### **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 Subchapter E-1, Chapter 411, by Government Code, by adding Section 411.0732, as follows:

Sec. 411.0732. PROCEDURE FOR COMMUNITY SUPERVISION FOLLOWING CONVICTION; SET-ASIDE CONVICTIONS. (a) Provides that this section applies only to a person who on conviction is placed on community supervision under Chapter 42A (Community Supervision), Code of Criminal Procedure, and with respect to whom the conviction is subsequently set aside by the court under Article 42A.701(f) (relating to a judge discharging a defendant) of that chapter, and who is not convicted of an offense for which the person would be ineligible for deferred adjudication community supervision under Article 42A.102(b) (relating to a judge granting deferred adjudication), Code of Criminal Procedure.

(b) Authorizes a person described by Subsection (a) who satisfies the requirements of Section 411.074 (Required Conditions For Receiving an Order of Nondisclosure) to petition the court that placed the person on community supervision for an order of nondisclosure of criminal history record information under this section, notwithstanding any other provision of this subchapter or Subchapter F (Criminal History Record Information).

(c) Requires the court, after notice to the state, an opportunity for a hearing, and a determination that the person is entitled to file the petition and that 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.

(d) Authorizes a person to petition the court that placed the person on community supervision for an order of nondisclosure of criminal history record information under this section only after the second anniversary of the date the conviction is set aside, if the offense for which the person was placed on community supervision was a misdemeanor, or 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.

SECTION 2. Effective date: September 1, 2019.