SUBJECT: Expunging records of deferred adjudication offenses

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Keel, Ellis, Denny, Hodge, Pena, Talton

0 nays

3 absent — Riddle, Dunnam, P. Moreno

SENATE VOTE: On final passage, May 20 — voice vote (Nelson, Wentworth recorded nay)

WITNESSES: No public hearing

BACKGROUND: Code of Criminal Procedure (CCP), art. 55.01 allows expunction — sealing or destroying — of arrest records for felony or misdemeanor offenses if a person is tried for an offense and acquitted or is pardoned after being convicted. The statute also provides for expunction under other conditions, such as if an indictment is dismissed or quashed.

Art. 42.12 allows a judge or a jury to recommend to a judge that a sentence be suspended and the defendant placed under community supervision or pay a fine, if that would be in the best interest of justice, the community, and the defendant. A judge may dismiss all proceedings against a defendant who has completed successfully the terms of community supervision, except for anyone registered as a sex offender under CCP, ch. 62.

Government Code, ch. 552, the Public Information Act, requires that information collected by government be available for inspection by the public.

DIGEST: SB 1477 would allow a person who had discharged deferred adjudication successfully under CCP, art. 42.12, to petition the court that placed the defendant on deferred adjudication for expunction of the records related to that offense. If the court determined that this would be in the best interests of justice, the court would have to issue an order prohibiting criminal justice agencies from disclosing criminal history record information on the offense.

A person would be considered to have been placed on deferred adjudication community supervision if:

- the person entered a plea of guilty or nolo contendere;
- the judge deferred further procedures without entering an adjudication of guilt and placed the person under further supervision of the court; and
- the judge dismissed the proceedings and discharged the person at the end of the period of supervision.

A person would be eligible to request expunction and pay a $28 fee for an order of nondisclosure only after:

- a misdemeanor — other than one involving kidnapping or false imprisonment, sexual offenses, assaults, disorderly conduct, or weapons charges — had been discharged and dismissed;
- the fifth anniversary of discharge and dismissal of a misdemeanor involving kidnapping or false imprisonment, sexual offenses, assaults, family violence, disorderly conduct, or weapons charges; or
- the 10th anniversary of discharge and dismissal of felony charges.

A person could not petition for expunction of records for offenses that involved:

- registration as a sex offender;
- kidnapping or false imprisonment charges against a sex offender;
- murder or capital murder;
- injury to a child or an elderly or disabled person;
- abandoning or endangering a child;
- violation of a protective order;
- stalking; or
- family violence.

The clerk collecting the fee would have to notify the Department of Public Safety (DPS) Crime Records Service by certified mail, return receipt requested. DPS, in turn, would have to notify law enforcement agencies, jails and detention centers, magistrates, courts, prosecutors, prisons, central state criminal records depositories, and other local, state, and federal agencies.

DPS would have to report to the Legislature on December 1 of each even-numbered year regarding:

- the number of petitions for nondisclosure and the number of nondisclosure orders granted in the previous two years;
- DPS action on the requests; and
- costs of administering the program.

SB 1477 also would amend Government Code, ch. 552 to allow a person who had received a nondisclosure order to deny the arrest or prosecution without penalty, except when the information was used in a subsequent criminal proceeding. It would prohibit companies that collect and disseminate criminal history record information from releasing information about a person who had obtained a nondisclosure order. A district court could issue a warning to the company on the first violation, and the attorney general could sue to collect a civil penalty of up to $500 per violation for subsequent disclosures.

The bill would take effect September 1, 2003, and would apply to a person seeking expunction regardless of whether the arrest occurred before, on, or after that date. DPS would have to make its first report to the Legislature by December 1, 2004.

SUPPORTERS SAY:

Hundreds of thousands of Texans have been placed on deferred adjudication since 1989, and most accepted that bargain with prosecutors with the understanding that their records would not reflect a criminal conviction once they met the terms of the deferred adjudication. However, many have found it difficult to find work or even to rent housing because employers and landlords conduct criminal background checks. Employers and landlords consider deferred adjudication to be a conviction, even though Texas law explicitly states that deferred adjudication should not be deemed a conviction. SB 1477 would prevent further discrimination against people who successfully have completed terms of their deferred adjudication.

SB 1477 would not represent a “get out of jail free” card nor a free ride for offenders. An offender would have to stay out of trouble for five years after a misdemeanor offenses and 10 years after a felony. The bill would be tailored narrowly to exclude people who had committed violent offenses, who had a history of family violence or stalking, or who had to register as sex offenders.

It would expand the categories of people excluded from eligibility for expunction, in comparison with the bill that the governor vetoed in 2001.

Rather than serving justice, current policies serve only to alienate an important segment of society: otherwise good citizens who must continue to pay for small mistakes they made many years ago. Judges decide to offer deferred adjudication because they feel that a defendant does not require more intense rehabilitation. SB 1477 would restore a broken promise to those who accepted deferred adjudication in the belief that the conviction would not stay on their record and ruin their future prospects.

The balance between the public's right to know and the privacy of an individual should favor the individual because of the greater harm that comes from disclosure of this information. These records rightly should be sealed if the person meets all conditions of the bill.

Civil penalties are necessary to keep these records confidential. Private firms should not be able to disseminate information, especially for a profit, that government entities cannot release.

OPPONENTS SAY:

Closure of criminal records could jeopardize public safety. Full criminal background information should be available on people who apply to work in positions of public trust, such as in day-care centers, hospitals, and police departments.

The Public Information Act is an important tool in the checks and balances on government, and citizens' access to government should not be restricted lightly. The public and media should know about the criminal histories of public figures. It would be particularly chilling to impose civil penalties for disclosing this information.

NOTES:

In 2001, Gov. Perry vetoed a similar bill, HB 1415 by Farrar, et al., which would have exempted from public disclosure records of criminal defendants who had received a discharge and dismissal after successfully completing the terms of deferred-adjudication community supervision.