

SUBJECT: Concealed handgun licenses for people with deferred adjudication records

COMMITTEE: Law Enforcement — favorable, without amendment

VOTE: 6 ayes — Driver, Jackson, Hegar, Frost, Hupp, Veasey

0 nays

1 absent — Burnam

WITNESSES: For — Jerry Patterson

Against — None

BACKGROUND: Code of Criminal Procedure, art. 42.12 allows a judge to grant a sentence of deferred adjudication to a defendant who has pled guilty or no contest. The judge may grant deferred adjudication only after having heard the evidence and determining that it substantiates the defendant's guilt. The judge also must find that it would be in the best interests of society and the defendant in order to grant deferred adjudication. Under deferred adjudication, a defendant must serve a certain period of time on community supervision, and upon successful completion, the judge must dismiss the proceedings against the defendant. Deferred adjudication is not classified as a conviction.

Government Code, sec. 411.172 states that a person is not eligible to apply for a license to carry a concealed handgun if that person has been convicted of a felony or has within the five years preceding the application been convicted of a class A or class B misdemeanor. Sec. 411.171 defines "convicted" as an adjudication of guilt or an order of deferred adjudication, regardless of whether the person subsequently was discharged from community supervision. The definition does not include an adjudication of guilt or an order of deferred adjudication that subsequently was expunged or pardoned.

DIGEST: HB 1831 would establish certain exemptions from convictions. A person would not be classified as "convicted," and would thus not be disqualified from applying for a concealed handgun license, if an order of deferred adjudication had been entered against the person not less than 10 years

before the date of the person's application for a concealed handgun license. Deferred adjudication given for an offense under Title 5 or ch. 29 of the Penal Code still would be classified as a conviction, and a person who received deferred adjudication for such an offense would not be eligible to apply for a concealed handgun license. (Title 5 relates to offenses against the person, including murder, kidnapping, human trafficking, rape, and assault. Chapter 29 relates to robbery.)

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

Defendants who accept sentences of deferred adjudication are told in court that they will suffer no adverse consequences as a result of accepting the sentence. Current law, however, prevents a person who has received a sentence of deferred adjudication and who has completed the required community supervision from obtaining a concealed handgun license. These are often good people who now lead productive lives as law abiding citizens. Such people should not be prevented from obtaining a license for mistakes they made more than 10 years ago and for which they have successfully served community supervision.

**OPPONENTS
SAY:**

Prosecutors are offering deferred adjudication plea agreements increasingly often in an effort to move defendants more quickly through the criminal justice system. Deferred adjudication is not necessarily offered to a defendant because the offense was minor; in fact, deferred adjudication is available even for felonies. Concealed handgun licensees should not have criminal pasts. The right to carry a concealed handgun is a privilege that must be reserved only for highly qualified citizens and should not be extended to those who have committed crimes.