

SUBJECT: Allowing governor to issue pardon after successful deferred adjudication

COMMITTEE: Corrections — favorable, without amendment

VOTE: 11 ayes — McReynolds, Madden, Dutton, England, Hodge, Kolkhorst, Marquez, Martinez, S. Miller, Ortiz, Sheffield

0 nays — None

SENATE VOTE: On final passage, April 2 — 31-0

WITNESSES: (*On House companion bill, HB 2596:*)  
For — (*Registered, but did not testify:* Matt Simpson, ACLU of Texas; Ana Yanez-Correa, Texas Criminal Justice Coalition)

Against — None

On — Troy Fox, Texas Board of Pardons and Paroles

BACKGROUND: Texas Constitution, Art. 4, sec. 11(b) and Code of Criminal Procedure, art. 48.01 authorize the governor to grant reprieves, commutations of punishments, and pardons after a criminal conviction. The governor can exercise this authority only upon the recommendation of the Board of Pardons and Paroles and in all criminal cases except treason and impeachment.

Under Code of Criminal Procedure, art. 42.12, sec. 5, a judge may, after receiving a plea of guilty or no contest, defer further proceedings without entering an adjudication of guilt and place the defendant on community supervision (probation). If the defendant successfully completes probation, the judge must dismiss the charges and discharge the defendant. This process is known as deferred adjudication and is unavailable for certain specified offenses.

DIGEST: SB 223 would expand the governor's authority to grant pardons, reprieves, and commutations, upon recommendation of the Board of Pardons and

Paroles, in cases in which a person had successfully completed a term of deferred adjudication.

The bill would take effect September 1, 2009, but only if the constitutional amendment granting the governor the same authority was approved by the voters.

**SUPPORTERS  
SAY:**

SB 223 and its accompanying joint resolution amending the Texas Constitution, SJR 11 by West, would correct an inequity in Texas law so that persons who complete successfully a term of deferred adjudication could be pardoned. Currently, the governor can grant pardons to persons who have been convicted, but does not have the same authority for persons who complete deferred adjudication because the cases carry no conviction. Even though there is no record of a conviction in these cases, there is a record of the arrest and of the fact that person was given a term of deferred adjudication, a form of probation. Having any type of criminal record can present barriers in finding employment and housing and obtaining state employment licenses.

SB 223 and SJR 11 would address this problem by providing a possible avenue of relief for persons who complete successfully a sentence of deferred adjudication. Under the bill, these persons could apply for a pardon and, if granted, they could have their records expunged.

This proposal would not result in an automatic pardon of anyone or the automatic expunction of anyone's record. Those receiving pardons under the authority in SB 223 and SJR 11 would have to follow the standard vetting procedure that ensures a pardon is deserved. Persons would have to apply to the Board of Pardons and Paroles, which would consider the case and then would have to recommend the pardon to the governor. The governor would have full discretion to grant a pardon. However, once a pardon was awarded, a person could meet the requirements for expunction and could have their criminal history removed from the public domain.

SB 223 and SJR 11 would be a common-sense application of the governor's power and would result in a more consistent policy on pardons. Others who actually are convicted of an offense have the option of applying for a pardon, and those completing deferred adjudication should have the same option.

Current law does not preserve indefinitely all criminal records, but makes reasoned, limited exceptions to the public's access to these records. This proposal would be another such exception.

OPPONENTS  
SAY:

The state should be cautious about any new restrictions on the public's access to criminal history record information. The record of someone who had successfully completed deferred adjudication would state that the person completed their term and that the charges were dismissed, and this should remain public information.

OTHER  
OPPONENTS  
SAY:

SB 223 and SJR 11 would not go far enough to aid those who complete a term of deferred adjudication. They should be able to have their records expunged without having to go to the Board of Pardons and Paroles and the governor for a pardon. Historically, this system has resulted in few pardons, and it would be better to develop another way to have their records expunged.

NOTES:

Rep. Thompson plans to offer a floor amendment that would amend Code of Criminal Procedure's article 55.01 to specifically include those who have received a pardon after a successful term of deferred adjudication in the list of those whose records can be expunged.

The accompanying constitutional amendment, SJR 11 by West, was approved by the Senate by 31-0 on April 2 and was reported favorably, as substituted, by the House Corrections Committee on May 6.

The companion bill, HB 2596 by Thompson, was reported favorably, as substituted, by the Corrections Committee on May 6.