

- SUBJECT:** Expunction of certain nonviolent offenses
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 6 ayes — Herrero, Canales, Hughes, Leach, Schaefer, Toth  
1 nay — Carter  
1 absent — Burnam  
1 present not voting — Moody
- WITNESSES:** For — Caitlin Dunklee, Texas Criminal Justice Coalition; David Gonzalez, Texas Criminal Defense Lawyers Association; Marc Levin, Texas Public Policy Foundation; Arnold Patrick, Hidalgo County Adult Probation; (*Registered, but did not testify:* Kristen Etter, Texas Criminal Defense Lawyers Association; Sandra Martinez, Centex Family Solutions and Counseling; Derek Muller; Tiffany Muller; Joe Ptak, Texans Smart on Crime; Gabriela Rosas; Kandice Sanaie, Texas Association of Business; Ana Yanez Correa, Texas Criminal Justice Coalition)
- Against — John Fleming, Texas Mortgage Bankers Association; Clifford Herberg, Bexar County Criminal District Attorney’s Office; (*Registered, but did not testify:* Brian Eppes, Tarrant County District Attorney’s Office; Kelly Riddle, Freedom of Information Foundation of Texas, Texas Association of Licensed Investigators; Justin Wood, Harris County District Attorney’s Office)
- On — John Heasley, Texas Bankers Association; (*Registered, but did not testify:* Skylor Hearn and Angie Kendall, Texas Department of Public Safety)
- DIGEST:** CSHB 1344 would entitle a person who had been placed under arrest for a nonviolent offense to an expunction of the records and files related to the arrest if:
- the person had been placed on deferred adjudication community supervision for the offense and received a discharge and dismissal in the case;

- the person had not been arrested for a Class A or Class B misdemeanor or a felony committed after the date of the offense for which they were placed on community supervision; and
- at least five years (for a misdemeanor) or 10 years (for a felony) had passed since the person received a discharge or dismissal.

The person would be required to submit an ex parte petition for expunction to the court that granted the deferred adjudication. The petition would have to be verified and to contain the information required for other petitions for expunction in addition to a statement that the person had not been arrested for a Class A or Class B misdemeanor or a felony committed after the date of the offense for which the person was placed on community supervision.

If the court found that the person was entitled to expunction, they would be required to enter an order directing expunction consistent with other orders directing expunction.

The bill would correct references to expunctions in the Government Code to include the provisions under the bill.

The bill would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

HB 1344 would solve problems with the way deferred adjudication is handled. Defendants often choose to take deferred adjudication because it seems like an attractive alternative but realize too late the unintended negative consequences and effects of that option. After completed deferred adjudication, many defendants encounter the same problems they were seeking to avoid, such as barriers to obtaining employment and housing because the deferred adjudication remains on their criminal record. By allowing expunction after a certain period of time, HB 1344 would help return to the original intent of deferred adjudication.

The bill would provide the most appropriate measure to those who were affected by the problems with deferred adjudication. Expunction allows the slate to be wiped clean and would be the best way to free the person from the albatross of a criminal record. Concerns about people with expunged records would be addressed by the mandatory time period. The risk of recidivism drops drastically after three years and a person who committed the person's last offense seven or more years ago is no more likely to commit a crime than the average member of society. By

establishing a five-year waiting period for misdemeanors and 10-year waiting period for felonies, the bill would ensure that those having their records expunged would not be at risk of reoffending.

Concerns about criminal background checks by financial institutions were addressed by the committee substitute, which would add the 10-year waiting period for felony offenses. At that point the likelihood of the person committing a crime would be no greater than any other person, so a criminal background check would not be dispositive and would only serve to create unnecessary barriers to employment.

**OPPONENTS  
SAY:**

The bill would take the wrong measures to correct problems with deferred adjudication and orders of non-disclosure. Orders of non-disclosure are available to people who have undergone deferred adjudication. If deferred adjudication is becoming a less attractive option through the fault of non-disclosure orders, then that problem should be addressed. Introducing a new, extreme measure to solve problems with the current state of deferred adjudication would be the wrong way to deal with the problem.

HB 1344 would inappropriately allow people who have pled guilty to have their crimes expunged. Expunction has never been available for a person who pled guilty to a crime higher than a class C misdemeanor and the situation created by this bill would be exceptional in the criminal justice system. Expunction is an extreme measure that destroys all records related to a crime and removes references to that crime from all records. A defendant who has their crime expunged is even able to swear under oath that the crime never occurred. This would be particularly problematic when that person re-offended and had to be treated by the court as a first-time offender. This should be allowed only in the most important circumstances and the bar for allowing expunction should remain high.

HB 1344 would create a dilemma for those in the financial industries who are required by federal law to perform background checks and may not hire or license a person who has been convicted of certain crimes within the last seven years. By completely erasing the criminal record of people who may have committed felonies, the bill would create a conflict with federal law and create a problem for industries that need the information this bill would allow to be destroyed.

The bill would not specify a successful completion of deferred adjudication and could be applied to a person whose deferred adjudication

was terminated unsuccessfully. People who did not complete the terms of their deferred adjudication to the full satisfaction of the court should not have the option to expunge their criminal records.