

BILL ANALYSIS

Senate Research Center
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S.B. 2075
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many people accept deferred adjudication community supervision with the assurance that, upon completion, the offense will not affect their permanent record. However, under current law, an order of deferred adjudication community supervision remains a permanent part of that person's criminal history record. Additionally, despite the unambiguous language of Article 42.12, Code of Criminal Procedure, stating that a discharge and dismissal may not be deemed a conviction except in three specific circumstances, numerous other statutes currently define an order of deferred adjudication community supervision as a conviction.

As the law currently stands, a person can petition the court for an order of nondisclosure of certain criminal records. However, an order of nondisclosure has not been an adequate remedy for most people. Numerous state entities are permitted to access a record of deferred adjudication that is subject to an order of nondisclosure. In most cases, a record of deferred adjudication community supervision that has resulted in a discharge and dismissal can be used by those entities to deny a person employment, certification, licensure or other statutory privileges.

As proposed, S.B. 2075 prohibits state agencies and entities from treating an order of deferred adjudication community supervision that has resulted in a discharge and dismissal as a conviction. Additionally, this bill extends exemption entitlement to a person who has received a discharge and dismissal after successfully completing a period of deferred adjudication community supervision. This bill entitles a person to an expunction after the successful completion of a waiting period during which that person may not be convicted of or placed on community supervision for any offense other than a minor traffic violation. Furthermore, the bill extends the applicable waiting periods for minors convicted of certain misdemeanors and felonies. Finally, the bill repeals laws allowing a person to seek an order of nondisclosure, while retaining all current statutory protections for those to whom such order have already been granted.

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. Authorizes this Act to be cited as the Community Supervision and Expunction Reform Act of 2009.

SECTION 2. Amends Section 5, Article 42.12, Code of Criminal Procedure, by adding Subsection (c-1), as follows:

(c-1) Provides that an order of deferred adjudication community supervision that has resulted in a discharge and dismissal under Subsection (c) may not be deemed a conviction for any purpose; and may not be considered by an agency, board, commission, entity, institution, or program of this state or of a political subdivision of this state for the purposes of determining whether to issue, suspend, restrict, or revoke a certification, commission, license, or permit, notwithstanding any other provision of law, except Subsections (c)(1)-(3) (relating to the authority of certain entities to consider whether a person has received community supervision with a deferred adjudication of guilt) of this article.

SECTION 3. Amends Section 20, Article 42.12, Code of Criminal Procedure, by adding Subsection (a-1), as follows:

(a-1) Provides that an order of community supervision that has resulted in a discharge and dismissal under Subsection (a) may not be deemed a conviction for any purpose; and may not be considered by an agency, board, commission, entity, institution, or program of this state or of a political subdivision of this state for the purposes of determining whether to issue, suspend, restrict, or revoke a certification, commission, license, or permit, notwithstanding any other provision of law, except Subsections (a)(1) and (a)(2) (relating to certain information required to be provided to a judge upon a subsequent conviction or to an agency if a person applies for a license or is a license under Chapter 42, Human Resources Code.)

SECTION 4. Amends Article 55.01, Code of Criminal Procedure, by adding Subsections (a-2), (a-3), and (a-4), as follows:

(a-2) Provides that, notwithstanding Subsections (a)(2)(B) (relating to providing that a person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if certain conditions exist) and (a-3), an order of community supervision that has resulted in a discharge and dismissal under Section 5 (Deferred Adjudication; Community Supervision) or Section 20 (Reduction of Termination of Community Supervision), Article 42.12, does not affect the person's entitlement to expunction:

(1) on or after the discharge and dismissal, if the offense for which the person was placed on community supervision was a misdemeanor other than a misdemeanor described by Subdivision (2);

(2) on or after the second anniversary of the discharge and dismissal, if the offense for which the person was placed on community supervision for being convicted of certain types of a misdemeanors under the Penal Code;

(3) on or after the fifth anniversary of the discharge and dismissal, if the offense for which the person was placed on community supervision was a felony other than a felony described by Subdivision (4); or

(4) on or after the seventh anniversary of the discharge and dismissal, if the offense for which the person was placed on community supervision for being convicted of certain types of felonies under the Penal Code, notwithstanding Subsections (a)(2)(B) and (a-3).

(a-3) Entitles a person to petition the court under Article 55.02 (Procedure of Expunction) only if during the applicable period described by Subsection (a-2)(1), (2), (3), or (4), as appropriate, the person is not convicted of or placed on community supervision for any offense other than an offense under the Transportation Code punishable by fine only.

(a-4) Entitles a person not otherwise entitled to expunction under Subsection (a) to have all records and files relating to the custodial or non-custodial arrest of the person for the commission of an offense under the Transportation Code punishable by fine only if the person committed the offense not less than five years before filing a petition for expunction with respect to the offense, has not been convicted of any other offense in the five years preceding the time of filing the petition, and is not subject to pending charges for any other offense at the time of filing the petition.

SECTION 5. Amends Section 2(a), Article 55.02, Code of Criminal Procedure, as follows:

(a) Authorizes a person who is entitled to expunction of records and files under Article 55.01(a) (relating to entitling a person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor to receive certain

records and files relating to the arrest) or (a-4) or a person who is eligible for expunction of records and files under Article 55.01(b) (relating to authorizing a district court to expunge all records and files relating to the arrest of a person who has been arrested for commission of a certain felony or misdemeanor) to file an ex parte petition for expunction in a district court for the county in which the petitioner was arrested, or the offense was alleged to have occurred.

SECTION 6. (a) Repealer: Section 103.021(37) (relating to requiring an accused or defendant, or a party to a civil suit, as applicable, to pay the certain fees and costs if ordered by the court or otherwise required, including a fee paid on filing a petition for an order of nondisclosure of criminal history record information in certain cases), and Sections 411.081(d)-(h) (relating to certain criminal history record information), Government Code.

(b) Provides that the change in law made by this section does not affect an order of nondisclosure issued before the effective date of this section. Provides that an order of nondisclosure continues in effect as if this section had not been enacted, and the former law is continued in effect for that purpose.

SECTION 7. Amends Section 552.142(a), Government Code, to provide that information is excepted from the requirements of Section 552.021 (Availability of Public Information) if an order of nondisclosure with respect to the information has been issued under Section 411.081(d) (relating to petitioning the court regarding the defendant on deferred adjudication for an order of nondisclosure) as that law existed immediately before September 1, 2009.

SECTION 8. Amends Section 552.1425, Government Code, by amending Subsection (2), to make a conforming change.

SECTION 9. (a) Repealer: Section 469.001(b) (relating to requiring the court to enter a certain order of nondisclosure), and Section 469.001(c) (relating to a defendant that is not entitled to petition the court for an order of nondisclosure following successful completion of a drug court program if the defendant's entry into the program arose as the result of a conviction for an offense involving the operation of a motor vehicle while intoxicated), Health and Safety Code.

(b) Provides that the change in law made by this section does not affect an order of nondisclosure issued before the effective date of this section. Provides that an order of nondisclosure continues in effect as if this section had not been enacted, and the former law is continued in effect for that purpose.

SECTION 10. Makes application of the changes made to Article 42.12, Code of Criminal Procedure, by this Act, prospective.

SECTION 11. Makes application of the changes made to Chapter 55, Code of Criminal Procedure, by this Act, prospective.

SECTION 12. Effective date: Sections 1-5 of this Act upon passage or September 1, 2009.

Effective date, all other sections of this Act: September 1, 2009.