

BILL ANALYSIS

Senate Research Center

S.B. 223
By: West
Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In today's society, more and more employers routinely use criminal background checks as a part of the employment screening process and many people are denied employment and state licensure on the basis of a criminal conviction. Currently, people who have successfully completed deferred adjudication are also affected even though they do not technically have a criminal conviction. In Texas, a person who has committed a violent crime or an offense that has significant financial implications to the victim may be pardoned for that crime by the governor. However, for a lesser offense for which the courts have placed a defendant on deferred adjudication, the governor has no power, constitutionally or statutorily, to issue a pardon.

In separate rulings by the Texas Attorney General, the release and dismissal of charges upon completion of deferred adjudication releases the defendant from "all penalties and disabilities resulting from the offense." Opinion DM-349 (1995) goes on to say that since the charges are subsequently dismissed upon completion of a deferred adjudication sentence, there is no conviction to be pardoned. Although people who accepted deferred adjudication did so under the impression that they would not have a permanent criminal record, the majority of criminal history records from deferred adjudication dispositions are readily available to public and private entities. The appearance of a criminal history record negatively impacts people during the job search process and some employers have released employees post-hire upon discovery of the record of an offense dismissed after completion of a deferred adjudication sentence.

S.B. 223 amends current law relating to allowing a person who successfully completes a term of deferred adjudication community supervision to be eligible for a pardon.

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. Amends Article 48.01, Code of Criminal Procedure, as follows:

Art. 48.01. GOVERNOR MAY PARDON. Requires the governor to have the power, in all criminal cases, except treason and impeachment, after conviction or successful completion of a term of deferred adjudication community supervision, on the written signed recommendation and advice of the Texas Board of Pardons and Paroles (BPP), or a majority thereof, to grant reprieves and commutations of punishments and pardons; and upon the written recommendation and advice of the majority of BPP, he shall have the power to remit fines and forfeitures.

SECTION 2. (a) Amends Article 55.01(a), Code of Criminal Procedure, as follows:

(a) Provides 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:

(1) the person is tried for the offense for which the person was arrested and is:

(A) acquitted by the trial court, except as provided by Subsection (c) of this section; or

(B) convicted and subsequently pardoned;

(2) each of the following conditions exist:

(A) an indictment or information charging the person with commission of a felony has not been presented against the person for an offense arising out of the transaction for which the person was arrested or, if an indictment or information charging the person with commission of a felony was presented, the indictment or information has been dismissed or quashed, and:

(i) the limitations period expired before the date on which a petition for expunction was filed under Article 55.02 (Procedure for Expunction); or

(ii) the court finds that the indictment or information was dismissed or quashed because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense or because it was void;

(B) the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court ordered community supervision under Article 42.12 (Community Supervision) for any offense other than a Class C misdemeanor; and

(C) the person has not been convicted of a felony in the five years preceding the date of the arrest; or

(3) the person is placed on deferred adjudication community supervision under Section 5, Article 42.12, for the offense for which the person was arrested, if the judge subsequently discharges the person and dismisses the proceedings and the person is subsequently pardoned for the offense.

(b) Provides that the change in law made by this section in amending Subsection (a), Article 55.01, Code of Criminal Procedure, applies to a defendant seeking expunction of records and files relating to an arrest regardless of whether the arrest occurred before, on, or after the effective date of this Act.

SECTION 3. Effective date: September 1, 2009, contingent upon approval by the voters of the constitutional amendment relating to authorizing the governor to grant a pardon to a person who successfully completes a term of deferred adjudication community supervision.