HB 2684 (CANALES): CLEAN SLATE ELIGIBILITY

SUMMARY

One in three Americans has a criminal record, including millions of Texans. Individuals with records face lifelong barriers to employment, housing, public assistance, educational opportunities, and more. HB 2684 (Canales) would implement commonsense reforms to expand eligibility for nondisclosures of criminal records and fix the definition of a criminal episode.

The Clean Slate Texas Eligibility Bill :

1. **Expands Nondisclosures for Minor Criminal Histories**
2. **Creates "Comprehensive Nondisclosures"**
3. **Defines "Same Criminal Episode" for Expunctions**

EXPANDING NONDISCLOSURES FOR MINOR CRIMINAL HISTORIES

An Order of Nondisclosure ("OND") allows for an individual's criminal record (or part of their criminal record) to be sealed from the general public while remaining available to sensitive fields, such as law enforcement agencies, healthcare institutions, and educational entities. An OND is distinct from an expunction, which is an order to *destroy* all records related to the criminal charge.

In 2015, SB 1902 passed with bipartisan support, seeking to "giv[e] reformed offenders a second chance" and to "increase[e] the workforce with individuals who are no longer limited by their ***minor criminal histories***."[1] This bill would further those goals by expanding eligibility for ONDs by eliminating: (1) the first-time barrier to eligibility under §§ 411.073 and 411.0735, and (2) the waiting period under § 411.073.

SB 1902 allowed people to receive an OND after being convicted of certain low-level, non-violent, non-sexual misdemeanors.[2] However, this relief is limited to only a **single, first-time** conviction.[3]

This bill would allow ***the same individuals*** the opportunity to receive an OND, but it would eliminate the first offense barrier to eligibility. This bill also eliminates waiting periods under § 411.073 so that a nondisclosure may be sought under that subsection upon completion of community supervision (current waiting period is up to two years after completion of community supervision). These ONDs would not be automatic: the judge would still maintain discretion to determine whether sealing the individual record is in the interest of justice, but there would be an option to seal these cases at the discretion of the judge.

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COMPREHENSIVE NONDISCLOSURES

Texas currently uses an arrest-based approach to determine eligibility for criminal record clearing. Instead of screening each individual charge for eligibility, eligibility is determined by looking at an entire arrest. Under current law, if a person is seeking an OND in Texas for an eligible offense, but was charged with other offenses in that same arrest that were dismissed, then the person can get the eligible offense sealed but the dismissed charges are ineligible for any type of record clearing. For example, if Frank* is arrested for possession of marijuana and an old warrant for robbery, the marijuana and robbery are part of the same arrest. If the robbery is dismissed because Frank is factually innocent, but Frank pleads guilty to go onto deferred adjudication for the marijuana, then Frank can later get the marijuana sealed, but the robbery charge remains on his record because of the unrelated marijuana case.

In 2015, the legislature tried to address this issue by allowing for expunctions of the dismissed charges with HB 3579. HB 3579 passed in the House and Senate with bipartisan support, but was ultimately vetoed by the governor, who said that HB 3579 went too far by allowing for expunction (total destruction) of the records. Governor Abbott's veto proclamation left open the door for sealing these dismissed records. This bill seeks to allow the related dismissed charges to be sealed along with offenses currently eligible for sealing.

DEFINING "SAME CRIMINAL EPISODE" FOR EXPUNCTIONS

Under a quirk of Texas law, the current definition of a "criminal episode" for expunction purposes can include two "similar" offenses even if they occur years apart. A recent line of Texas cases has interpreted this definition to mean that if a person is convicted of one offense, then later is acquitted of a "same or similar offense," the acquitted case is ineligible for expunction. This is leading to absurd results. For example, an appellate court recently held that, due to this problematic definition, a person is ineligible to expunge the records of a 2015 DWI that he was acquitted of at trial because he had pled guilty to an unrelated boating while intoxicated (BWI) charge three years earlier.[4] This problem can be solved by narrowing the definition of "same criminal episode" for expunctions to only include offenses that are part of the same transaction, scheme, or plan.

[1] "SB 1902 Author's / Sponsor's Statement of Intent," Senate Research Center, available online at: https://capitol.texas.gov/tlodocs/84R/analysis/pdf/SB01902I.pdf (emphasis added).
[2] Id.
[3] "Tex. Gov. Code § 411.073 and 411.0735
[4] *In re M.T.R.*, No. 01-18-00938- CV, 2020 WL 930842, at *1 (Tex. App.—Houston [1st Dist.] Feb. 27, 2020, no pet.).