

Dear Legislator,

Allow me to introduce myself. I am one of your constituents (76131), founder of [www.wipetheslateclean.com](http://www.wipetheslateclean.com) and Political Liaison for Texans for Reform of Deferred Adjudication [www.deferredadjudication.org](http://www.deferredadjudication.org). I also testified in committee on HB181 (78R) and SB1477 (78R). The passage of SB1477 (78)R has brought incredible interest and growth to Deferred Adjudication and to our organizations. There are many issues to be resolved with Deferred Adjudication, but I want to quickly bring your attention to a serious problem with SB1477 (78)R.

When a person accepts Deferred Adjudication (DA), they do so expecting to be dismissed and that they will be able to resume a normal life after successful completion because they are not to be convicted or considered convicted.

**Code of Criminal Procedure Article 42.12 sec. 5(c)**

Except as provided by Section 12.42(g), Penal Code, a dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense.

A person who successfully completes DA is "like a Pardoned Felon" (Attorney General Opinion JC0396) and is to be "released from all penalties and disabilities resulting from the offense" (article 42.12 sec.20). A Pardon restores the "Rights and Privileges forfeited on account of the offense"(Blacks Law Dictionary 1113(6th ed. 1990). A Pardon absolves and relieves a convicted felon of the conviction's legal consequences, "direct or collateral" (Attorney General Opinion JC0396). How clear can this be to a defendant trying to decide weather to accept DA?

In 1970, Attorney General Crawford Martin authored Opinion M-640, stating "Article 42.12 defines 'probation' under the Adult Probation Law as the 'release of a **convicted** defendant.' " and further states "We find no language in Article 42.12 indicating Legislative intent that the probationer not be considered as **convicted**". This opinion was in response to the question, " Can a person truthfully state that he has never been convicted of a felony on an application for employment?". It is important to note that this was in 1970, before DA existed. Lawmakers recognized this problem for people trying to seek employment when they created DA and specifically added the language mentioned above in Article 42.12 sec. 5(c). As Senator West has stated, there is a difference in "Adult Probation" and "Deferred Adjudication." A defendant on Adult Probation has been convicted and had that conviction set aside, however, a defendant on Deferred Adjudication has never been convicted. A person cannot even seek a Pardon since there has never been a conviction (Attorney General Opinion DM-349) and cannot have access to the appellate courts. Attorney General Crawford Martin even made a point in his opinion M-640 to express the statutory distinction between Adult Probation Law and Misdemeanor Probation Law and stated:

"Article 42.13(3) defined misdemeanor 'probation' as the release of a defendant who has been **found guilty**." (Emphasis supplied) Such a probated sentence does not become a **final conviction** unless probation is revoked. CF. Secs. 4(a) and 6(b), Art. 42.13. Article 42.13 further provides that when a defendant is discharged from probation, the finding of guilty may not thereafter **'be considered for any purpose'**. (Emphasis supplied by statute). "

Deferred Adjudication is consistent with what used to be called "Misdemeanor Probation Law" in that there is no conviction, but differs still in the fact that the defendant has not even been found guilty. **It is clear that DA, like SB1477 (78)R, was designed to be an improvement on those old laws and that the original intent of the whole system from the beginning was that after successful completion of DA, the case may not be considered for any purpose thereafter** except as provided by the original improvements on the law in Article 42.12 sec. 5(c)(2), which has provisions for Section 12.42(g), Penal Code, and Chapter 42 of the Human Resources Code. In spite of these facts, the general public, private businesses and even state officials confuse

them to be the same, or they choose to manipulate the definition of "conviction" and the status of DA through legal opinions and convoluted jargon to suit their own interest. Everyone knows in the back of his or her heads that in the long and short of it all, a successfully completed DA is supposed to be a fresh start. In return, the state relieves the judicial system and saves an enormous amount of time and money in court cost that can be used for more serious crimes, if the judge determines it is in the "best interest of society" for this person to be given a second chance.

The passage of SB1477 (78)R is evidence in itself that technology and confusion in the incorrect application of the word "conviction", with the status of a person who has successfully completed DA, has made it impossible for a person to resume a normal life after successful completion of DA. The State is not responsible for how the general public or private businesses consider DA for hiring purposes or housing purposes, nevertheless the 78th Legislature has made an effort in providing some relief from this discrimination with the passage of SB1477 (78)R. The State is, however, responsible for interpreting DA as a conviction for purposes of disqualification imposed by law after it promised individuals that it would not.

**SB1577 (78)R Sec. 1(d)** (Mortgage broker and Loan officer license denial)

(d) For the purposes of Subsections (a)(6) and (c)(5), a person is considered convicted if a sentence is imposed on the person, the person receives community supervision, including deferred adjudication community supervision, or the court defers final disposition of the person's case.

This seems to be more than just a philosophical breach of contract. People who accept DA, do so expecting, at least, the state will not confuse them with being a convict and that they will someday be able to receive an occupational license. After they successfully complete DA, they receive a dismissal letter from the state of Texas which specifically declares "you have not been convicted in this state or any other". SB1577 (78)R and other similar laws apply **Extenuating Penalties** to a person who successfully completes DA. Through these laws, **the legislature is convicting a group of people by "Definition", without DUE PROCESS.** These are **EX POST FACTO convictions as well, because the person has already been dismissed and declared not to have been convicted.** I believe that SB1477 (78)R is an attempt by the State to honor the agreement in the Code of Criminal Procedure Article 42.12 Sec. 5(c) mentioned above. However, just like Article 42.12 Sec. 5(c) is a false promise by the State, it seems that SB1477 (78)R is as well.

**SB1477 (78)R Sec 4(d)**

A criminal justice agency may disclose criminal history record information that is the subject of the order to an individual or agency described by Section 411.083(b)(1), (2), or (3).

After a person applies for this order, it seems that they can still be turned down for occupational licensing. SB1477 (78)R allows Licensing Agencies to still view the record and SB1577 (78)R allows them to continue to deny people the rights and privileges that were originally intended to be restored after successful completion of DA and are intended to be restored in SB1477 (78)R. A person may still be considered convicted for purposes of disqualification of an occupational license imposed by law through SB1577 (78)R. I believe that precedence has been set and this verbiage will continue to show up in every other license statute. This is particularly alarming considering that we are in a day and age that almost every professional occupation requires a license of some sort.

SB1477 (78)R may be setting people and businesses up for serious consequences when it half-heartedly allows a person to deny their DA.

**SB1477 (78)R Sec. 5**

(b) A person who is the subject of information that is excepted from the requirements of Section 552.021 under this section may deny the occurrence of the arrest and prosecution to which the information relates and the exception of the information under this section, unless the information is being used against the person in a subsequent criminal proceeding.

**SB1577 (78)R Sec. 3(a)** (Mortgage broker or loan officer license denial)

Section 156.303, Finance Code is amended to read as follows:

(a) The commissioner may order disciplinary action against a licensed mortgage broker or a licensed loan officer when the commissioner, after a hearing, has determined that the person:

(1) obtained a license under this chapter through a false or fraudulent representation or made a material misrepresentation in an application for a license under this chapter;

I am asking you to either consider a bill that will repeal SB1577 (78)R and prohibit any other bills like it or add to the verbiage of SB1477 to be consistent with other Texas law. Please consider the verbiage of both the Family Code "Sealing of the Records" and the verbiage of the substitute for HB 181 78(R). Representative Farrar still has the substitute on file.

**Family Code Chapter Article 58.003 Sec.(g)(5)(j)**

(j) A person whose records have been sealed under this section is not required in any proceeding or in any application for employment, information, or licensing to state that the person has been the subject of a proceeding under this title and any statement that the person has never **been found to be a delinquent child** shall never be held against the person in any criminal or civil proceeding.

The word "proceeding" can be deleted and the phrase "been found to be a delinquent child" can be replaced with "been placed on community supervision or plead guilty or no-contest to a felony".

Please consider the following as well:

**Substitute for HB 181 (78R) Sec. 1(d)**

(d) Notwithstanding any other provision of this chapter, if a person is placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, subsequently receives a discharge and dismissal under Section 5(c), Article 42.12, and satisfies the requirements of Subsection (e), a criminal justice agency may not disclose to the public **or a licensing authority** criminal history record information related to the offense giving rise to the deferred adjudication on or after:

**HB 181(78R) cont'd Section (h)**

In this section, "licensing authority" means a department, commission, board, office or other agency of the state or a political subdivision of the state that issues a license, certificate, registration, permit, or other authorization that a person must obtain to practice or engage in particular business, occupation, or profession.

Senator West is on record and is very well documented as to the intent of SB1477 (78)R, only allowing criminal justice agencies and school districts to view the record. SB1477 (78)R fails to exclude "**licensing authority**" from the list of groups who will be able to view the record. Certainly this was not the intent of the bill. If the bill is general and not specific in this area, and another law like SB1577 (78)R is specific, then the specific prevails as an exception to the general provision ( Section 311.026 Government Code). If the Intent of the SB1477 (78)R is only to allow school districts and law enforcement to view the record, then the bill should be

specific in these areas as opposed to general. Please consider adding the following verbiage to the order of nondisclosure:

**Notwithstanding any other law except as provided by 12.42 (g) of the Penal Code, Article 42.12 (5)(c)(2) of the Code of Criminal Procedure and non criminal justice agencies that govern facilities or programs licensed to provide supervision for children, the case may not be considered for any purpose thereafter.**

It seems alarming that a potential employer or apartment agency could make an applicant sign a Power of Attorney before hiring or renting to the applicant. The power of attorney could then be used to access the record under SB1477 (78)R Sec 4(d), which allows the person who is the subject of the order of non-disclosure to access the record. Since it seems logical that if this doesn't become a common practice, some other loophole will arise compromising the order of non-disclosure. Please be specific as to the rights and privileges that SB1477(78)R intended to restore and in what manner the information may be considered thereafter. It is obvious that the order of non-disclosure should be "Like a Pardon", restoring all rights and privileges.

Going back to the original "contract", Article 42.12 (5)(c) of the Code of Criminal Procedure, it seems fair and logical, that when a defendant accepts DA, they understand the exceptions mentioned above are part of the "contract", so they must accept them as part of the order of non-disclosure SB1477 (78)R. It also seems fair and logical that since the State agrees that it is in the "best interest of society" to offer and then enter into this contract, that it must accept the consequences of entering into that agreement and honor the terms of the agreement. Notwithstanding any other law, it seems that the exceptions mentioned above are the only ones mentioned in the original agreement and should be the only ones considered thereafter.

In addition to these adjustments to the Order of Non Disclosure, which are imperative to be addressed immediately, I would like to ask for a state wide definition of conviction that specifically excludes DA, since the definition of DA used to trick people to waive their right to a trial by jury specifically excludes a conviction of any nature at any time.

Texas, please, once and for all, if you are going to dismiss the charges, then stand behind your dismissal and *Wipe The Slate Clean*.

Thank You,

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