

Dear Legislator,

Allow me to introduce myself. My name is _____ I am one of your constituents. The reason for this letter concerns the passage of **SB1477 (78)R** with regard to **Deferred Adjudication**. I want to quickly bring your attention to a serious problem with **SB1477 (78)R** and to urge for your help in correcting this problem by supporting legislation to make it possible to expunge deferred adjudications. Since by Texas law deferred adjudication is not a conviction there is no need to continue state sponsored persecution of individuals who in the best interest of society were granted deferred adjudication. Most of these individuals made mistakes for which they have paid the price for and now many of them are eager to return to society but are prevented from doing so because the record of arrest is not expugnable. Even when the arrest was 20 years ago and they have not gotten in trouble since. This is unacceptable and needs to change.

When a person accepts **Deferred Adjudication (DA)**, they do so expecting the case to be dismissed, and as a result they will be able to resume a normal life after successful completion because they are not considered convicted. The following is evidence of what the original intent of deferred adjudication is.

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). Senator West stated, that there is a difference in "**Adult Probation**" vs. "**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.

We need to reinforce the law of deferred adjudication to allow people the opportunity to make something useful of themselves and to help contribute to society. Former Attorney General Dan Morales stated in Opinion DM-349 "A person cannot even seek a Pardon since there has never been a conviction as stated in the Attorney, and because of that a person on deferred adjudication cannot have access to the appellate courts." If we cannot seek redress of grievances with the appellate courts because we are not convicted then why can these people not have their records expunged since they are not convicted and have successfully had their cases dismissed.

These people are trying to contribute to society but yet they are prevented from doing so, what message does that send to these people? Why is the states position to stand in the way of people trying to succeed in life by continuing to persecute them for something witch they were not convicted of, for something that was supposed to allow for a second chance? I as a citizen urge that the law be changed to prevent the disenfranchisement that is established by branding someone with a criminal record of due to a deferred adjudication. Since the arrest is not expugnable the only the public looks at the individual as still being a risk, even after years have passed since. For people trying to succeed they find that deferred adjudication was not the second chance they thought it would be, instead it is the reason by which their fellow citizens back away from helping them find a meaningful role in our society, even if they are the brightest most talented, and the most reformed amongst us. Many of those on deferred adjudication sought out to change their lives, instead they found their lives ruined by being tossed into the criminal justice system.

Attorney General Crawford Martin even stressed in his opinion M-640 to state the 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 can be taken for what used to be called the "Misdemeanor Probation Law" in that there is no conviction, it differs in the fact that defendants still have not even been found guilty. It is clear Deferred Adjudication, like SB1477 (78)R, was designed to be an improvement on the old "**Misdemeanor Probation Law**" and that the original intent of the whole system from the beginning, was to offer reintegration according to the best interest's of society to offenders who successful completed their Deferred Adjudication. In this way their cases would not be considered or be used a for any purpose thereafter except for what was 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. **However, the general public, private businesses and even state officials incorrectly confuse deferred adjudication and conviction to be the same, or they manipulate the definition of "conviction" and the status of Deferred Adjudication through legal opinions and convoluted jargon to suit their own interests.** Again, the original intent of a successfully completed Deferred Adjudication is to provide a fresh start, not to attach a social stigma for life such is currently the case. Deferred adjudication was meant for allowing defendants to be more successfully rehabilitated; also with a person on deferred adjudication, the state relieves the judicial system and saves an enormous amount of time and money in court costs that were used for prosecutions of far more serious crimes. **With deferred adjudication the judge has discretion to determine if in the "best interest of society" a person should be given a second chance by offering deferred adjudication.**

The necessary passage of SB1477 (78)R is evidence that technology coupled with confusion in this area have cause the incorrect application of the word "conviction." **Too many times the incorrect interpretation of the status of a person, who has successfully completed deferred adjudication, makes it impossible for a person to resume a normal life after successful completion of deferred adjudication.** The State is not assuming the responsibility for how the general public or private businesses are considering deferred adjudication for hiring purposes or housing purposes, nevertheless the 78th Legislature made an effort in providing some relief from the miscarriage of justice by the passing of SB1477 (78)R. **However, there is a contradiction to SB1477 that was passed it is a bill that we must urge**

be repealed in the next session. Along with **SB 1477** the legislature also passed a bill that condemns yet another opportunity to people who have had a deferred adjudication. **The bill lists deferred adjudication as conviction for purposes of disqualification imposed by law after all the other laws relating to deferred adjudication promised individuals that it would not be used in such a way.**

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

We need to take this line out of Texas state law in order to preserve the meaning of deferred adjudication.

People who accept DA, do so expecting, that the state will not confuse them with being a convict, and that they will still be able to receive an occupational license. However, that dream of being a contributing member of society is becoming a memory instead of a future goal. After a defendant successfully completes his or her deferred adjudication, 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 incorrectly apply **Extenuating Penalties** to a person that successfully completes DA. **Through these laws, the legislature is convicting a group of people by "Definition", without DUE PROCESS.** These amounts to an **EX POST FACTO conviction because the person has already been dismissed and declared not to have been convicted, yet he is still declared to be convicted by the definition of certain occupational licenses.** 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).

Even after a person successfully receives an order of nondisclosure, occupational licensing boards can still turn them down. Applicants with deferred adjudication can have their orders revoked by the legislature at any time. **SB1477 (78)R still allows Licensing Agencies to still view their records 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.**

Unless we do something to correct this problem now, I believe that these unjust practices will continue to show up in every occupational license. This is particularly alarming considering that today in Texas almost every professional occupation requires a state license. **If we are going to be prevented from participating legally as a licensed professional in the state of Texas, what are we then to do?**

SB1477 (78)R is setting people and businesses up for serious consequences when it only partially allows people to deny their history. .

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 consider or sponsor a bill that will repeal SB1577 (78)R and prohibit any other bills like it. I am also asking that the verbiage of SB1477 be changed to be consistent with other Texas laws.

Please consider using 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. The following is what the Family code says to make it possible for juveniles to seal up their records when they turn 18.

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.

If we take this portion of the family code and use it for a new bill relating to deferred adjudication we can change the word "**proceeding**", and the phrase "**been found to be a delinquent child**" can be replaced with "**been placed on community supervision in relation to a deferred adjudication or plead guilty or no-contest to a misdemeanor or felony deferred adjudication**".

Also, please consider using the following in any new legislation:

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 as to the intent of SB1477 (78)R, only allowing criminal justice agencies and school districts to view the record. However, **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 is alarming that a potential employer or apartment agency is allowed to make an applicant sign a Power of Attorney before hiring or renting to the applicant. The problem is that the power of attorney can be used to access records 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. We urge a clarification as to the rights and privileges that SB1477(78)R intends 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 (stating that deferred adjudication is not a conviction), it seems fair and logical, that when a defendant accepts Deferred Adjudication, 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 of Texas agrees that it is in the "best interest of society" to offer and then enter into this contract, that it must accept the and honor the act of entering into that 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, It is the position of www.deferredadjudication.org, www.deferredadjudication.com, www.deferredadjudication.net, www.wipetheslateclean.com and myself as a signatory to this request, that we would like to ask for a state wide definition of conviction that **specifically excludes DA**, since the current definition of Deferred Adjudication used to trick people to waive their right to a trial by jury specifically excludes a conviction of any nature at any time.

My Texas Representative, please, once and for all, help me make Texas stand behind its dismissal and *Wipe The Slate Clean*.

Thank You,
Please offer legislation for further deferred adjudication reform legislation.

Thanks, (Please Print Name below, address optional)

(Sign name)

X _____

Thank you for your support!

Mail this letter to your State Representative.
Find out who that is at the Texas rep. website at:
<http://www.house.state.tx.us/members/welcome.htm>
Or if not sure who that is mail to:
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DeferredAdjudication.org
Texans for the Reform of Deferred Adjudication

