

By: Leach, et al.

H.B. No. 1737

A BILL TO BE ENTITLED

AN ACT

1
2 relating to automatic orders of nondisclosure of criminal history
3 record information for certain misdemeanor defendants following
4 successful completion of a period of deferred adjudication
5 community supervision.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. The heading to Article [42A.106](#), Code of Criminal
8 Procedure, is amended to read as follows:

9 Art. 42A.106. RECORD NOT CONFIDENTIAL; RIGHT TO PETITION
10 FOR ORDER OF NONDISCLOSURE; PROPOSED ORDER OF NONDISCLOSURE IN
11 CERTAIN CASES.

12 SECTION 2. Article [42A.106](#), Code of Criminal Procedure, is
13 amended by adding Subsection (c) to read as follows:

14 (c) On completion of the period of deferred adjudication
15 community supervision, if the defendant is entitled to receive an
16 order of nondisclosure of criminal history record information under
17 Section [411.072](#), Government Code, the defendant's supervision
18 officer shall prepare and present to the court that placed the
19 defendant on deferred adjudication community supervision, or, if
20 jurisdiction was transferred under Article [42A.151](#), the court that
21 accepted jurisdiction of the case, a proposed order of
22 nondisclosure related to the offense giving rise to the deferred
23 adjudication community supervision.

24 SECTION 3. Section [411.0716\(b\)](#), Government Code, is amended

1 to read as follows:

2 (b) Section 411.072 applies only to a person described by
3 Subsection (a) of that section who receives a discharge and
4 dismissal under Article 42A.111, Code of Criminal Procedure, on or
5 after January [~~September~~] 1, 1993 [~~2017~~].

6 SECTION 4. Section 411.072, Government Code, is amended to
7 read as follows:

8 Sec. 411.072. AUTOMATIC ORDER OF NONDISCLOSURE FOLLOWING
9 COMPLETION OF [~~PROCEDURE FOR~~] DEFERRED ADJUDICATION COMMUNITY
10 SUPERVISION; CERTAIN NONVIOLENT MISDEMEANORS. (a) A person is
11 entitled to an order of nondisclosure of criminal history record
12 information under this [~~This~~] section if [~~applies only to a person~~
13 ~~who~~]:

14 (1) the person was placed on deferred adjudication
15 community supervision under Subchapter C, Chapter 42A, Code of
16 Criminal Procedure, for a misdemeanor other than a misdemeanor:

17 (A) under:

18 (i) Section 49.04 or 49.06, Penal Code; or

19 (ii) Chapter 20, 21, 22, 25, 42, 43, 46, or
20 71, Penal Code; or

21 (B) with respect to which an affirmative finding
22 under Article 42A.105(f), Code of Criminal Procedure, or former
23 Section 5(k), Article 42.12, Code of Criminal Procedure, was filed
24 in the papers of the case; [~~and~~]

25 (2) the person received a dismissal and discharge
26 under Article 42A.111, Code of Criminal Procedure, for the offense
27 described by Subdivision (1);

1 (3) at least 180 days have elapsed from the date the
2 person was placed on deferred adjudication community supervision
3 for the offense described by Subdivision (1);

4 (4) the person satisfies the requirements of Section
5 411.074;

6 (5) the person has never been previously convicted of
7 or placed on deferred adjudication community supervision for
8 another offense other than a traffic offense that is punishable by
9 fine only; and

10 (6) the person has not received an order of
11 nondisclosure of criminal history record information under this
12 section.

13 (b) Not later than the 15th day of each month, the
14 department shall:

15 (1) electronically review the records in the
16 department's computerized criminal history system and, based on the
17 relevant information present in the system, identify each person
18 who meets the criteria provided by Subsection (a); and

19 (2) provide notice and a list to the clerk of the
20 applicable court that placed each person identified under
21 Subdivision (1) on deferred adjudication community supervision
22 indicating that each person may be entitled to an order of
23 nondisclosure of criminal history record information under this
24 section.

25 (c) For purposes of electronically identifying persons
26 under Subsection (b)(1), if the computerized criminal history
27 system records do not indicate whether a person received a

1 dismissal and discharge, the person is considered to satisfy the
2 requirements of Subsection (a)(2) if:

3 (1) the applicable records do not contain an order
4 revoking the person's deferred adjudication community supervision;
5 and

6 (2) the date on which the period of deferred
7 adjudication community supervision imposed in the person's case
8 expires has elapsed.

9 (d) Notwithstanding any other provision of this subchapter
10 or Subchapter F, if a [person described by Subsection (a) receives a
11 discharge and dismissal under Article 42A.111, Code of Criminal
12 Procedure, and satisfies the requirements of Section 411.074, the]
13 court that placed a [the] person on deferred adjudication community
14 supervision receives notice from the department under Subsection
15 (b) applicable to the person, or if a court receives a proposed
16 order under Article 42A.106(c), Code of Criminal Procedure,
17 applicable to the person, the court shall, as soon as practicable
18 after the receipt of the notice or proposed order, issue an order of
19 nondisclosure of criminal history record information under this
20 subchapter prohibiting criminal justice agencies from disclosing
21 to the public criminal history record information related to the
22 offense giving rise to the deferred adjudication community
23 supervision. [The court shall determine whether the person
24 satisfies the requirements of Section 411.074, and if the court
25 makes a finding that the requirements of that section are
26 satisfied, the court shall issue the order of nondisclosure of
27 criminal history record information:

1 ~~[(1) at the time the court discharges and dismisses~~
2 ~~the proceedings against the person, if the discharge and dismissal~~
3 ~~occurs on or after the 180th day after the date the court placed the~~
4 ~~person on deferred adjudication community supervision; or~~

5 ~~[(2) as soon as practicable on or after the 180th day~~
6 ~~after the date the court placed the person on deferred adjudication~~
7 ~~community supervision, if the discharge and dismissal occurred~~
8 ~~before that date.]~~

9 (d-1) This subsection applies only to the issuance of an
10 order of nondisclosure of criminal history record information under
11 this section pursuant to notice received by the court under
12 Subsection (b) for an offense for which the person received a
13 discharge and dismissal under Article 42A.111, Code of Criminal
14 Procedure, before July 1, 2024. Notwithstanding Subsection (d), a
15 court shall issue an order of nondisclosure of criminal history
16 record information under that subsection not later than the later
17 of the 180th day after the date on which the court first received
18 the notice under Subsection (b) or:

19 (1) July 1, 2025, if the person received a discharge
20 and dismissal under Article 42A.111, Code of Criminal Procedure,
21 for the offense on or after September 1, 2017;

22 (2) December 31, 2025, if the person received a
23 discharge and dismissal under Article 42A.111, Code of Criminal
24 Procedure, for the offense on or after January 1, 2010, but before
25 September 1, 2017;

26 (3) December 31, 2026, if the person received a
27 discharge and dismissal under Article 42A.111, Code of Criminal

1 Procedure, for the offense on or after January 1, 2000, but before
2 January 1, 2010; or

3 (4) December 31, 2027, if the person received a
4 discharge and dismissal under Article 42A.111, Code of Criminal
5 Procedure, for the offense before January 1, 2000.

6 (d-2) For purposes of Subsection (d-1) and Section
7 411.0716(b), a person to whose records Subsection (c) applies is
8 considered to have received a discharge and dismissal under Article
9 42A.111, Code of Criminal Procedure, on the date described by
10 Subsection (c)(2).

11 (e) A [~~(c)~~—The] person who is entitled to an order of
12 nondisclosure of criminal history record information under this
13 section but who is not identified by the department under
14 Subsection (b) may [~~shall~~] present to the court that placed the
15 person on deferred adjudication community supervision any evidence
16 necessary to establish that the person is entitled [~~eligible~~] to
17 receive an order of nondisclosure of criminal history record
18 information under this section. The court shall prescribe the
19 manner in which the person may present the evidence to the court
20 under this subsection. The court shall determine whether the
21 person satisfies the requirements of this section, and if the court
22 makes a finding that the requirements of this section are
23 satisfied, the court shall issue an order of nondisclosure of
24 criminal history record information under Subsection (d) as soon as
25 practicable after making the finding.

26 (f) Notwithstanding any other law, a [~~The~~] person who is
27 entitled to an order of nondisclosure of criminal history record

1 information under this section may not be required to ~~[must]~~ pay any
2 ~~[a \$28]~~ fee relating to the issuance of ~~[to the clerk of the court~~
3 ~~before the court issues]~~ the order.

4 (g) ~~[(d)]~~ A person who is not entitled ~~[eligible]~~ to receive
5 an order of nondisclosure of criminal history record information
6 under this section solely because an affirmative finding under
7 Article 42A.105(f), Code of Criminal Procedure, or former Section
8 5(k), Article 42.12, Code of Criminal Procedure, was filed in the
9 papers of the case may file a petition for an order of nondisclosure
10 of criminal history record information under Section 411.0725 if
11 the person otherwise satisfies the requirements of that section.

12 SECTION 5. Section 411.0725(a), Government Code, is amended
13 to read as follows:

14 (a) This section applies only to a person placed on deferred
15 adjudication community supervision under Subchapter C, Chapter
16 42A, Code of Criminal Procedure, who:

17 (1) is not entitled ~~[eligible]~~ to receive an order of
18 nondisclosure of criminal history record information under Section
19 411.072; and

20 (2) was placed on deferred adjudication community
21 supervision for an offense other than an offense under Section
22 49.04 or 49.06, Penal Code.

23 SECTION 6. (a) Article 42A.106(c), Code of Criminal
24 Procedure, as added by this Act, applies to a person who completes
25 the period of deferred adjudication community supervision on or
26 after the effective date of this Act, regardless of whether the
27 person was placed on deferred adjudication community supervision

1 before, on, or after the effective date of this Act.

2 (b) Notwithstanding Section [411.072\(b\)](#), Government Code, as
3 amended by this Act, the Department of Public Safety is not required
4 to comply with the requirements of that subsection until July 1,
5 2024.

6 SECTION 7. This Act takes effect January 1, 2024.