

## **BILL ANALYSIS**

S.B. 1071  
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Law Enforcement  
Committee Report (Amended)

### **BACKGROUND AND PURPOSE**

S.B. 1477, 78th Legislature, Regular Session, 2003, allows some persons who have successfully completed deferred adjudication to apply to the sentencing court for an order of nondisclosure that seals records of the offense from public view. The legislation continues to attract statewide interest.

Many people who agreed to accept deferred adjudication did so under the premise, as told by defense and prosecutors, that the records would not appear as part of criminal history records. This has not been the case. In recent years, many companies have implemented background checks as part of pre-employment screening practices. The result is that applicants, even after having their cases dismissed by courts, are denied employment and other privileges, such as the ability to rent an apartment. There are also state licensing implications.

While criminal justice agencies have access to records sealed under S.B. 1477 for use in the case of a later offense, many other state non-criminal justice agencies currently have access to those records. The result is that persons who have had cases officially dismissed suffer many of the same disabilities associated with having a criminal conviction.

There is confusion at the court level over proper fees that should be paid by those petitioning the courts to have their records sealed under S.B. 1477. It is also unclear at the court level whether a person who has previously received deferred adjudication or has otherwise been under court supervision is eligible to petition to have the person's records sealed. In addition, questions have been raised that address the ability to provide effective enforcement for background check companies found in violation of S.B. 1477 in disclosing sealed records.

S.B. 1071 addresses those issues raised, its goal being to restore the integrity of deferred adjudication by helping those who have satisfied justice and gained court approval to pursue a more productive lifestyle. S.B. 1071 clarifies whether a person who is otherwise eligible can apply to the courts to have the person's deferred adjudication sealed if the person has a previous offense; clarifies the proper fees that can be charged by courts to persons who petition to have their records sealed; uses a vulnerable population standard in limiting the access of some non-criminal justice agencies to sealed records; shortens the eligibility time following dismissal wherein a person may pay the fee prerequisite for application for an order of nondisclosure; sets time limits for the Department of Public Safety to notify various entities that a record has been sealed; and provides additional enforcement abilities to address background check companies that disclose lawfully sealed records.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Amends Section 411.081, Government Code, by amending Subsections (d), (g), and (h) and by adding Subsections (g-1), (g-2), (i), and (j), as follows:

(d) Authorizes a person, except as provided by Subsection (e), who was placed on deferred adjudication community supervision and subsequently received a discharge and dismissal to petition the court for an order of nondisclosure regardless of whether the person has been

previously placed on deferred adjudication community supervision for another offense. Authorizes a criminal justice agency to disclose criminal history record information that is the subject of an order only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (i), or to the person who is the subject of the order, rather than to an individual or agency described by Section 411.083(b)(1), (2), or (3). Authorizes a person to petition the court that placed the person on deferred adjudication for an order of nondisclosure on payment of certain fees. Provides that the fee is in addition to any other fee that generally applies to the filing of a civil petition. Modifies the due date for the payment.

(g) Requires the Department of Public Safety (DPS), not later than 10 business days after the receipt of the nondisclosure order, to seal any criminal history record information maintained by DPS that is the subject of the order. Includes private entities that purchase criminal record information from DPS in the list of entities to which DPS is required to send a copy of the order. Makes nonsubstantive changes.

(g-1) Requires certain law enforcement-related officials, agencies, or entities of the state, not later than 30 days after the receipt of a nondisclosure order, to seal any criminal history record information maintained by the individual or entity that is the subject of the order.

(g-2) Provides that a person whose criminal history record information has been sealed under this section is not required in any application for employment, information, or licensing to state that the person has been the subject of any criminal proceeding related to the information that is the subject of an order issued under this section.

(h) Requires DPS to submit to the legislature, not later than December 1, of each even-numbered year, a specific report that includes the number of persons who are the subject of an order of nondisclosure and who became the subject of criminal charges for an offense committed after the order was issued.

(i) Sets forth the noncriminal justice agencies or entities to which a criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure.

(j) Prohibits DPS, if DPS receives information indicating that a private entity that purchases criminal history record information from DPS has been found by a court to have committed five or more violations of Section 552.1425, Government Code, by compiling or disseminating information with respect to which an order of nondisclosure has been issued, from releasing any criminal history record information to that entity until the first anniversary of the date of the most recent violation.

SECTION 2. Amends Article 35.12, Code of Criminal Procedure, as follows:

Art. 35.12. MODE OF TESTING. (a) Creates this subsection from existing text. Changes gender specific references to gender neutral.

(b) Authorizes the juror, during testing to qualify as a juror, to state only that the matter in question has been sealed, with respect to whether the juror has been the subject of an order of nondisclosure or has a criminal history that includes information subject to that order.

SECTION 3. Provides that the changes in law made by this Act relating to a person's eligibility for an order of nondisclosure apply to criminal history record information related to a deferred adjudication or certain similar procedure regardless of whether the deferred adjudication or procedure is entered into before, on, or after the effective date of this Act.

### **EFFECTIVE DATE**

September 1, 2005

## **EXPLANATION OF AMENDMENTS**

Amendment 1 of Senate Bill 1071 amends Section 411.081 of the Government Code, which under current law authorizes a person to petition the court that placed the defendant on deferred adjudication for an order of nondisclosure, to instead authorize a person to file an ex parte petition with the district court for an order of nondisclosure.