

1-1 By: West S.B. No. 1071
1-2 (In the Senate - Filed March 7, 2005; March 21, 2005, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 25, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 25, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1071 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to a person's eligibility for an order of nondisclosure
1-11 with respect to certain criminal history records and to certain law
1-12 enforcement duties that result from the issuance of an order.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 411.081, Government Code, is amended by
1-15 amending Subsections (d), (g), and (h) and by adding Subsections
1-16 (g-1), (g-2), (i), and (j) to read as follows:

1-17 (d) Notwithstanding any other provision of this subchapter,
1-18 if a person is placed on deferred adjudication community
1-19 supervision under Section 5, Article 42.12, Code of Criminal
1-20 Procedure, subsequently receives a discharge and dismissal under
1-21 Section 5(c), Article 42.12, and satisfies the requirements of
1-22 Subsection (e), the person may petition the court that placed the
1-23 defendant on deferred adjudication for an order of nondisclosure
1-24 under this subsection. Except as provided by Subsection (e), a
1-25 person may petition the court under this subsection regardless of
1-26 whether the person has been previously placed on deferred
1-27 adjudication community supervision for another offense. After
1-28 notice to the state and a hearing on whether the person is entitled
1-29 to file the petition and issuance of the order is in the best
1-30 interest of justice, the court shall issue an order prohibiting
1-31 criminal justice agencies from disclosing to the public criminal
1-32 history record information related to the offense giving rise to
1-33 the deferred adjudication. A criminal justice agency may disclose
1-34 criminal history record information that is the subject of the
1-35 order only to other criminal justice agencies, an agency listed in
1-36 Subsection (i), or the person who is the subject of the order [an
1-37 individual or agency described by Section 411.083(b)(1), (2), or
1-38 (3)]. A person may petition the court that placed the person on
1-39 deferred adjudication for an order of nondisclosure on payment of a
1-40 \$28 fee to the clerk of the court in addition to any other fee that
1-41 generally applies to the filing of a civil petition. The payment
1-42 may be made only on or after:

1-43 (1) the discharge and dismissal, if the offense for
1-44 which the person was placed on deferred adjudication was a
1-45 misdemeanor other than a misdemeanor described by Subdivision (2);

1-46 (2) the second [~~first~~] anniversary of the discharge
1-47 and dismissal, if the offense for which the person was placed on
1-48 deferred adjudication was a misdemeanor under Chapter 20, 21, 22,
1-49 25, 42, or 46, Penal Code; or

1-50 (3) the fifth [~~10th~~] anniversary of the discharge and
1-51 dismissal, if the offense for which the person was placed on
1-52 deferred adjudication was a felony.

1-53 (g) When an order of nondisclosure is issued under this
1-54 section [~~subsection~~], the clerk of the court shall send a copy of
1-55 the order by certified mail, return receipt requested, to the Crime
1-56 Records Service of the Department of Public Safety. Not later than
1-57 10 business days after receipt of the order, the [The] Department of
1-58 Public Safety shall seal any criminal history record information
1-59 maintained by the department that is the subject of the order. The
1-60 department shall also send a copy of the order by mail or electronic
1-61 means to all:

1-62 (1) law enforcement agencies, jails or other detention
1-63 facilities, magistrates, courts, prosecuting attorneys,

2-1 correctional facilities, central state depositories of criminal
 2-2 records, and other officials or agencies or other entities of this
 2-3 state or of any political subdivision of this state;
 2-4 (2) [~~and to all~~] central federal depositories of
 2-5 criminal records that there is reason to believe have criminal
 2-6 history record information that is the subject of the order; and
 2-7 (3) private entities that purchase criminal history
 2-8 record information from the department.
 2-9 (g-1) Not later than 30 business days after receipt of an
 2-10 order from the Department of Public Safety under Subsection (g), an
 2-11 individual or entity described by Subsection (g)(1) shall seal any
 2-12 criminal history record information maintained by the individual or
 2-13 entity that is the subject of the order.
 2-14 (g-2) A person whose criminal history record information
 2-15 has been sealed under this section is not required in any
 2-16 application for employment, information, or licensing to state that
 2-17 the person has been the subject of any criminal proceeding related
 2-18 to the information that is the subject of an order issued under this
 2-19 section.
 2-20 (h) The clerk of a court that collects a fee under
 2-21 Subsection (d) shall remit the fee to the comptroller not later than
 2-22 the last day of the month following the end of the calendar quarter
 2-23 in which the fee is collected, and the comptroller shall deposit the
 2-24 fee in the general revenue fund. The Department of Public Safety
 2-25 shall submit a report to the legislature not later than December 1
 2-26 of each even-numbered year that includes information on:
 2-27 (1) the number of petitions for nondisclosure and
 2-28 orders of nondisclosure received by the department in each of the
 2-29 previous two years;
 2-30 (2) the actions taken by the department with respect
 2-31 to the petitions and orders received; [~~and~~]
 2-32 (3) the costs incurred by the department in taking
 2-33 those actions; and
 2-34 (4) the number of persons who are the subject of an
 2-35 order of nondisclosure and who became the subject of criminal
 2-36 charges for an offense committed after the order was issued.
 2-37 (i) A criminal justice agency may disclose criminal history
 2-38 record information that is the subject of an order of nondisclosure
 2-39 to the following noncriminal justice agencies or entities only:
 2-40 (1) the State Board for Educator Certification;
 2-41 (2) a school district, charter school, private school,
 2-42 regional education service center, commercial transportation
 2-43 company, or education shared service arrangement;
 2-44 (3) the Texas State Board of Medical Examiners;
 2-45 (4) the Texas School for the Blind and Visually
 2-46 Impaired;
 2-47 (5) the Board of Law Examiners;
 2-48 (6) the State Bar of Texas;
 2-49 (7) a district court regarding a petition for name
 2-50 change under Subchapter B, Chapter 45, Family Code;
 2-51 (8) the Texas School for the Deaf;
 2-52 (9) the Department of Family and Protective Services;
 2-53 (10) the Texas Youth Commission;
 2-54 (11) the Department of Assistive and Rehabilitative
 2-55 Services;
 2-56 (12) the Department of State Health Services, a local
 2-57 mental health service, a local mental retardation authority, or a
 2-58 community center providing services to persons with mental illness
 2-59 or retardation;
 2-60 (13) the Texas Private Security Board;
 2-61 (14) a municipal or volunteer fire department;
 2-62 (15) the Board of Nurse Examiners;
 2-63 (16) a safe house providing shelter to children in
 2-64 harmful situations;
 2-65 (17) a public or nonprofit hospital or hospital
 2-66 district;
 2-67 (18) the Texas Juvenile Probation Commission;
 2-68 (19) the securities commissioner, the banking
 2-69 commissioner, the savings and loan commissioner, or the credit

3-1 union commissioner;
 3-2 (20) the Texas State Board of Public Accountancy; and
 3-3 (21) the Texas Department of Licensing and Regulation.
 3-4 (j) If the Department of Public Safety receives information
 3-5 indicating that a private entity that purchases criminal history
 3-6 record information from the department has been found by a court to
 3-7 have committed five or more violations of Section 552.1425 by
 3-8 compiling or disseminating information with respect to which an
 3-9 order of nondisclosure has been issued, the department may not
 3-10 release any criminal history record information to that entity
 3-11 until the first anniversary of the date of the most recent
 3-12 violation.

3-13 SECTION 2. Article 35.12, Code of Criminal Procedure, is
 3-14 amended to read as follows:

3-15 Art. 35.12. MODE OF TESTING. (a) In testing the
 3-16 qualification of a prospective juror after the juror [~~he~~] has been
 3-17 sworn, the juror [~~he~~] shall be asked by the court, or under its
 3-18 direction:

3-19 1. Except for failure to register, are you a qualified
 3-20 voter in this county and state under the Constitution and laws of
 3-21 this state?

3-22 2. Have you ever been convicted of theft or any felony?

3-23 3. Are you under indictment or legal accusation for
 3-24 theft or any felony?

3-25 (b) In testing the qualifications of a prospective juror,
 3-26 with respect to whether the juror has been the subject of an order
 3-27 of nondisclosure or has a criminal history that includes
 3-28 information subject to that order, the juror may state only that the
 3-29 matter in question has been sealed.

3-30 SECTION 3. The changes in law made by this Act relating to a
 3-31 person's eligibility for an order of nondisclosure apply to
 3-32 criminal history record information related to a deferred
 3-33 adjudication or similar procedure described by Subsection (f),
 3-34 Section 411.081, Government Code, regardless of whether the
 3-35 deferred adjudication or procedure is entered before, on, or after
 3-36 the effective date of this Act.

3-37 SECTION 4. This Act takes effect September 1, 2005.

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