

By: Carona

S.B. No. 2221

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the eligibility of certain criminal defendants for an  
3 order of nondisclosure.

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

5 SECTION 1. Section 411.081, Government Code, is amended by  
6 amending Subsections (d) and (e) and adding Subsection (e-1) to  
7 read as follows:

8 (d) Notwithstanding any other provision of this subchapter,  
9 if a person is placed on deferred adjudication community  
10 supervision under Section 5, Article 42.12, Code of Criminal  
11 Procedure, subsequently receives a discharge and dismissal under  
12 Section 5(c), Article 42.12, and satisfies the requirements of  
13 Subsection (e) and, if applicable, Subsection (e-1), the person may  
14 petition the court that placed the defendant on deferred  
15 adjudication for an order of nondisclosure under this subsection.  
16 Except as provided by Subsection (e), a person may petition the  
17 court under this subsection regardless of whether the person has  
18 been previously placed on deferred adjudication community  
19 supervision for another offense. After notice to the state and a  
20 hearing on whether the person is entitled to file the petition and  
21 issuance of the order is in the best interest of justice, the court  
22 shall issue an order prohibiting criminal justice agencies from  
23 disclosing to the public criminal history record information  
24 related to the offense giving rise to the deferred adjudication. A

1 criminal justice agency may disclose criminal history record  
2 information that is the subject of the order only to other criminal  
3 justice agencies, for criminal justice or regulatory licensing  
4 purposes, an agency or entity listed in Subsection (i), or the  
5 person who is the subject of the order. A person may petition the  
6 court that placed the person on deferred adjudication for an order  
7 of nondisclosure on payment of a \$28 fee to the clerk of the court in  
8 addition to any other fee that generally applies to the filing of a  
9 civil petition. The payment may be made only on or after:

10 (1) the discharge and dismissal, if the offense for  
11 which the person was placed on deferred adjudication was a  
12 misdemeanor other than a misdemeanor described by Subdivision (2);

13 (2) the second anniversary of the discharge and  
14 dismissal, if the offense for which the person was placed on  
15 deferred adjudication was a misdemeanor under Chapter 20, 21, 22,  
16 25, 42, or 46, Penal Code; ~~or~~

17 (3) the fifth anniversary of the discharge and  
18 dismissal, if the offense for which the person was placed on  
19 deferred adjudication was a felony, except as provided by  
20 Subdivision (4); or

21 (4) the 10th anniversary of the discharge and  
22 dismissal, if the offense for which the person was placed on  
23 deferred adjudication was an offense under Section 21.11 or 22.011,  
24 Penal Code, and the person satisfies the requirements of Subsection  
25 (e-1).

26 (e) A person is entitled to petition the court under  
27 Subsection (d) only if during the period of the deferred

1 adjudication community supervision for which the order of  
2 nondisclosure is requested and during the applicable period  
3 described by Subsection (d)(1), (2), [~~or~~] (3), or (4), as  
4 appropriate, the person is not convicted of or placed on deferred  
5 adjudication community supervision under Section 5, Article 42.12,  
6 Code of Criminal Procedure, for any offense other than an offense  
7 under the Transportation Code punishable by fine only. A person is  
8 not entitled to petition the court under Subsection (d) if the  
9 person was placed on the deferred adjudication community  
10 supervision for or has been previously convicted or placed on any  
11 other deferred adjudication for:

12 (1) an offense requiring registration as a sex  
13 offender under Chapter 62, Code of Criminal Procedure, except as  
14 otherwise provided by Subsection (e-1);

15 (2) an offense under Section 20.04, Penal Code,  
16 regardless of whether the offense is a reportable conviction or  
17 adjudication for purposes of Chapter 62, Code of Criminal  
18 Procedure;

19 (3) an offense under Section 19.02, 19.03, 22.04,  
20 22.041, 25.07, or 42.072, Penal Code; or

21 (4) any other offense involving family violence, as  
22 defined by Section 71.004, Family Code.

23 (e-1) A person is entitled to petition the court under  
24 Subsection (d) if the person, after having been placed on deferred  
25 adjudication community supervision for an offense under Section  
26 21.11 or 22.011, Penal Code, satisfies the requirements of  
27 Subsection (e), provided that:

1           (1) the person has not been previously convicted or  
2 placed on any other deferred adjudication for an offense described  
3 by Subsection (e)(1), (2), (3), or (4), including an offense under  
4 Section 21.11 or 22.011, Penal Code;

5           (2) at the time the plea was entered, state law  
6 provided that the registration requirements under Chapter 62, Code  
7 of Criminal Procedure, would not apply to the person after the  
8 applicable period of supervision was terminated;

9           (3) the offense involved no physical coercion of the  
10 victim;

11           (4) the victim was 15 years of age or older at the time  
12 of the offense;

13           (5) the victim is unavailable at the time of the  
14 petition or, if available, filed with the court an affidavit  
15 stating that the victim has no objection to the court granting the  
16 petition; and

17           (6) a polygraph examiner licensed under Chapter 1703,  
18 Occupations Code, administered to the person and the person passed  
19 a polygraph examination indicating that the person has not  
20 committed any other offense requiring registration under Chapter  
21 62, Code of Criminal Procedure, after completing the applicable  
22 period of supervision.

23           SECTION 2. The change in law made by this Act in amending  
24 Section 411.081, Government Code, applies to a person who petitions  
25 the court for an order of nondisclosure on or after the effective  
26 date of this Act, regardless of whether the person is placed on  
27 deferred adjudication community supervision before, on, or after

1 that date.

2 SECTION 3. This Act takes effect September 1, 2009.