

1-1 By: Carona S.B. No. 2221  
1-2 (In the Senate - Filed March 13, 2009; March 31, 2009, read  
1-3 first time and referred to Committee on Jurisprudence;  
1-4 April 24, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 4, Nays 0; April 24, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2221 By: Hinojosa

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

1-10 relating to the eligibility of certain criminal defendants for an  
1-11 order of nondisclosure.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 411.081, Government Code, is amended by  
1-14 amending Subsections (d) and (e) and adding Subsection (e-1) to  
1-15 read as follows:

1-16 (d) Notwithstanding any other provision of this subchapter,  
1-17 if a person is placed on deferred adjudication community  
1-18 supervision under Section 5, Article 42.12, Code of Criminal  
1-19 Procedure, subsequently receives a discharge and dismissal under  
1-20 Section 5(c), Article 42.12, and satisfies the requirements of  
1-21 Subsection (e) and, if applicable, Subsection (e-1), the person may  
1-22 petition the court that placed the defendant on deferred  
1-23 adjudication for an order of nondisclosure under this subsection.  
1-24 Except as provided by Subsection (e), a person may petition the  
1-25 court under this subsection regardless of whether the person has  
1-26 been previously placed on deferred adjudication community  
1-27 supervision for another offense. After notice to the state and a  
1-28 hearing on whether the person is entitled to file the petition and  
1-29 issuance of the order is in the best interest of justice, the court  
1-30 shall issue an order prohibiting criminal justice agencies from  
1-31 disclosing to the public criminal history record information  
1-32 related to the offense giving rise to the deferred adjudication. A  
1-33 criminal justice agency may disclose criminal history record  
1-34 information that is the subject of the order only to other criminal  
1-35 justice agencies, for criminal justice or regulatory licensing  
1-36 purposes, an agency or entity listed in Subsection (i), or the  
1-37 person who is the subject of the order. A person may petition the  
1-38 court that placed the person on deferred adjudication for an order  
1-39 of nondisclosure on payment of a \$28 fee to the clerk of the court in  
1-40 addition to any other fee that generally applies to the filing of a  
1-41 civil petition. The payment may be made only on or after:

1-42 (1) the discharge and dismissal, if the offense for  
1-43 which the person was placed on deferred adjudication was a  
1-44 misdemeanor other than a misdemeanor described by Subdivision (2);

1-45 (2) the second anniversary of the discharge and  
1-46 dismissal, if the offense for which the person was placed on  
1-47 deferred adjudication was a misdemeanor under Chapter 20, 21, 22,  
1-48 25, 42, or 46, Penal Code; ~~or~~

1-49 (3) the fifth anniversary of the discharge and  
1-50 dismissal, if the offense for which the person was placed on  
1-51 deferred adjudication was a felony, except as provided by  
1-52 Subdivision (4); or

1-53 (4) the 10th anniversary of the discharge and  
1-54 dismissal, if the offense for which the person was placed on  
1-55 deferred adjudication was an offense under Section 21.11 or 22.011,  
1-56 Penal Code, and the person satisfies the requirements of Subsection  
1-57 (e-1).

1-58 (e) A person is entitled to petition the court under  
1-59 Subsection (d) only if during the period of the deferred  
1-60 adjudication community supervision for which the order of  
1-61 nondisclosure is requested and during the applicable period  
1-62 described by Subsection (d)(1), (2), ~~or~~ (3), or (4), as  
1-63 appropriate, the person is not convicted of or placed on deferred

2-1 adjudication community supervision under Section 5, Article 42.12,  
2-2 Code of Criminal Procedure, for any offense other than an offense  
2-3 under the Transportation Code punishable by fine only. A person is  
2-4 not entitled to petition the court under Subsection (d) if the  
2-5 person was placed on the deferred adjudication community  
2-6 supervision for or has been previously convicted or placed on any  
2-7 other deferred adjudication for:

2-8 (1) an offense requiring registration as a sex  
2-9 offender under Chapter 62, Code of Criminal Procedure, except as  
2-10 otherwise provided by Subsection (e-1);

2-11 (2) an offense under Section 20.04, Penal Code,  
2-12 regardless of whether the offense is a reportable conviction or  
2-13 adjudication for purposes of Chapter 62, Code of Criminal  
2-14 Procedure;

2-15 (3) an offense under Section 19.02, 19.03, 22.04,  
2-16 22.041, 25.07, or 42.072, Penal Code; or

2-17 (4) any other offense involving family violence, as  
2-18 defined by Section 71.004, Family Code.

2-19 (e-1) A person is entitled to petition the court under  
2-20 Subsection (d) if the person, after having been placed on deferred  
2-21 adjudication community supervision for an offense under Section  
2-22 21.11 or 22.011, Penal Code, satisfies the requirements of  
2-23 Subsection (e), provided that:

2-24 (1) the person has not been previously convicted or  
2-25 placed on any other deferred adjudication for an offense described  
2-26 by Subsection (e)(1), (2), (3), or (4), including an offense under  
2-27 Section 21.11 or 22.011, Penal Code;

2-28 (2) at the time the plea was entered, state law  
2-29 provided that the registration requirements under Chapter 62, Code  
2-30 of Criminal Procedure, would not apply to the person after the  
2-31 applicable period of supervision was terminated;

2-32 (3) the offense was based solely on the ages of the  
2-33 person and the victim at the time of the offense;

2-34 (4) at the time of the offense, the person was not more  
2-35 than four years older than the victim and the victim was at least 13  
2-36 years of age; and

2-37 (5) the victim cannot be located after reasonable  
2-38 diligence or is otherwise unavailable at the time of the petition  
2-39 or, if available, filed with the court an affidavit stating that the  
2-40 victim has no objection to the court granting the petition or is  
2-41 neutral as to whether the court grants the petition.

2-42 SECTION 2. The change in law made by this Act in amending  
2-43 Section 411.081, Government Code, applies to a person who petitions  
2-44 the court for an order of nondisclosure on or after the effective  
2-45 date of this Act, regardless of whether the person is placed on  
2-46 deferred adjudication community supervision before, on, or after  
2-47 that date.

2-48 SECTION 3. This Act takes effect September 1, 2009.

2-49 \* \* \* \* \*