

BILL ANALYSIS

C.S.H.B. 2230
By: Wu
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, Class C misdemeanors, including traffic violations and violations for bounced checks, petty theft, and public intoxication, are the lowest level misdemeanors and are punishable by a \$500 maximum fine. Interested parties note that, while these misdemeanors are often considered insignificant in comparison to felonies and other offenses punishable by incarceration, these low-level misdemeanors still have the potential to derail a person's future plans for college or a career because colleges and employers are more frequently checking the criminal history of prospective students and job applicants. Often, the parties note, defendants charged with a Class C misdemeanor, especially young adults who fail to hire legal counsel and do not understand the consequences of a guilty plea, plead guilty instead of accepting deferred adjudication, the acceptance of which could potentially lead to an order of nondisclosure regarding the arrest. C.S.H.B. 2230 seeks to remedy this situation by authorizing certain persons who are convicted of or have received a dismissal after deferral of disposition for certain Class C misdemeanors to petition the court for an order of nondisclosure.

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

C.S.H.B. 2230 amends the Government Code to authorize a person who is convicted of and has satisfied the judgment for or has received a dismissal after deferral of disposition for a fine-only misdemeanor, other than a traffic offense or an offense under a municipal ordinance or county order, to petition the court that convicted or granted a dismissal to the person for an order of nondisclosure. The bill makes this authorization apply regardless of whether the person has been previously convicted of or granted a dismissal for a fine-only misdemeanor offense. The bill requires the court, after notice to the state and a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice, to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the fine-only misdemeanor offense that is the subject of the petition.

C.S.H.B. 2230 authorizes a court, as a condition of granting the petition for a person convicted of the offense, to require the person to perform community service, pay a fee, or both perform the service and pay a fee as if the defendant had been put on probation pending deferred disposition. The bill authorizes a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure under the bill's provisions only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, certain noncriminal justice agencies or entities, or the person who is the subject of the order. The bill authorizes a person to petition the court for an order of nondisclosure on payment of a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition and authorizes the payment to be made only on or after the first anniversary of the conviction or dismissal, as applicable.

C.S.H.B. 2230 establishes that a person is not entitled to petition the court for an order of nondisclosure under the bill's provisions if the person has been previously convicted of or placed on deferred adjudication for an offense requiring sex offender registration; aggravated kidnapping, regardless of whether the offense is a reportable conviction or adjudication for purposes of the sex offender registration program; murder or capital murder; injury to a child, elderly individual, or disabled individual; abandoning or endangering a child; violating certain court orders or bond conditions in a family violence case; stalking; or any other offense involving family violence. The bill requires the clerk of a court that collects a fee for a nondisclosure order petition under the bill's provisions to deposit the fee to the credit of the general fund of the municipality or county, as applicable.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2230 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 103.0211, Government Code, is amended to read as follows: Sec. 103.0211. ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: GOVERNMENT CODE. An accused or defendant, or a party to a civil suit, as applicable, shall pay the following fees and costs under the Government Code if ordered by the court or otherwise required: (1) a court reporter fee when testimony is taken: (A) in a criminal court in Dallas County (Sec. 25.0593, Government Code) . . . \$3; (B) in a county criminal court of appeals in Dallas County (Sec. 25.0594, Government Code) . . . \$3; (C) in a county court at law in McLennan County (Sec. 25.1572, Government Code) . . . \$3; and (D) in a county criminal court in Tarrant County (Sec. 25.2223, Government Code) . . . \$3; (2) a court reporter service fee if the courts have official court reporters (Sec. 51.601, Government Code) . . . \$15 or, in specified counties, \$30; (3) a speedy trial filing fee in El Paso County (Sec. 54.745, Government Code) . . . \$100; (4) costs for use of magistrate in Brazos	SECTION 1. Section 103.0211, Government Code, is amended to read as follows: Sec. 103.0211. ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: GOVERNMENT CODE. An accused or defendant, or a party to a civil suit, as applicable, shall pay the following fees and costs under the Government Code if ordered by the court or otherwise required: (1) a court reporter fee when testimony is taken: (A) in a criminal court in Dallas County (Sec. 25.0593, Government Code) . . . \$3; (B) in a county criminal court of appeals in Dallas County (Sec. 25.0594, Government Code) . . . \$3; (C) in a county court at law in McLennan County (Sec. 25.1572, Government Code) . . . \$3; and (D) in a county criminal court in Tarrant County (Sec. 25.2223, Government Code) . . . \$3; (2) a court reporter service fee if the courts have official court reporters (Sec. 51.601, Government Code) . . . \$15 or, in specified counties, \$30; (3) a speedy trial filing fee in El Paso County (Sec. 54.745, Government Code) . . . \$100; (4) costs for use of magistrate in Brazos

County (Sec. 54.1116, Government Code) . . . not to exceed \$50;

(5) the costs of a criminal magistrate if the court determines that the nonprevailing party is able to defray the costs:

(A) in Bexar County (Sec. 54.913, Government Code) . . . magistrate's fees;

(B) in Dallas County (Sec. 54.313, Government Code) . . . magistrate's fees;

(C) in Lubbock County (Sec. 54.883, Government Code) . . . magistrate's fees;

(D) in Tarrant County (Sec. 54.663, Government Code) . . . magistrate's fees;

(E) in Travis County (Sec. 54.983, Government Code) . . . magistrate's fees; and

(F) in Williamson County (Sec. 54.958, Government Code) . . . expense of the magistrate;

(6) an administrative fee for participation in certain community supervision programs (Sec. 76.015, Government Code) . . . not less than \$25 and not more than \$60 per month; ~~and~~

(7) fee paid on filing a petition for an order of nondisclosure of criminal history record information in certain deferred adjudication cases (Sec. 411.081(d) ~~[411.081]~~, Government Code) . . . \$28; and

(8) fee paid on filing a petition for an order of nondisclosure of criminal history record information in certain fine-only misdemeanor cases (Sec. 411.081(d-1), Government Code) . . . \$50.

SECTION 2. Section 411.081, Government Code, is amended by adding Subsection (d-1) and amending Subsections (e), (h), and (i) to read as follows:

(d-1) Notwithstanding any other provision of this chapter, a person who is convicted of and has satisfied the judgment for or who has received a dismissal after deferral of disposition for a fine-only misdemeanor, other than a traffic offense or an offense under a municipal ordinance or county order, and who satisfies the requirements of Subsection (e), may petition the court that convicted or granted a dismissal to the person for an order of nondisclosure under this subsection.

Subject to Subsection (e), a person may petition the court under this subsection regardless of whether the person has been previously convicted of or granted a

County (Sec. 54.1116, Government Code) . . . not to exceed \$50;

(5) the costs of a criminal magistrate if the court determines that the nonprevailing party is able to defray the costs:

(A) in Bexar County (Sec. 54.913, Government Code) . . . magistrate's fees;

(B) in Dallas County (Sec. 54.313, Government Code) . . . magistrate's fees;

(C) in Lubbock County (Sec. 54.883, Government Code) . . . magistrate's fees;

(D) in Tarrant County (Sec. 54.663, Government Code) . . . magistrate's fees;

(E) in Travis County (Sec. 54.983, Government Code) . . . magistrate's fees; and

(F) in Williamson County (Sec. 54.958, Government Code) . . . expense of the magistrate;

(6) an administrative fee for participation in certain community supervision programs (Sec. 76.015, Government Code) . . . not less than \$25 and not more than \$60 per month; ~~and~~

(7) fee paid on filing a petition for an order of nondisclosure of criminal history record information in certain deferred adjudication cases (Sec. 411.081(d) ~~[411.081]~~, Government Code) . . . \$28; and

(8) fee paid on filing a petition for an order of nondisclosure of criminal history record information in certain fine-only misdemeanor cases (Sec. 411.081(d-1), Government Code) . . . \$28.

SECTION 2. Section 411.081, Government Code, is amended by adding Subsections (d-1), (e-1), and (h-1) and amending Subsection (i) to read as follows:

(d-1) Notwithstanding any other provision of this chapter, a person who is convicted of and has satisfied the judgment for or who has received a dismissal after deferral of disposition for a fine-only misdemeanor, other than a traffic offense or an offense under a municipal ordinance or county order, may petition the court that convicted or granted a dismissal to the person for an order of nondisclosure under this subsection.

Subject to Subsection (e-1), a person may petition the court under this subsection regardless of whether the person has been previously convicted of or granted a

dismissal for a fine-only misdemeanor offense. After notice to the state and a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the fine-only misdemeanor offense that is the subject of the petition. As a condition of granting the petition under this subsection for a person convicted of the offense, a court may require the defendant to perform community service, pay a fee, or both perform the community service and pay the fee as if the defendant had been put on probation pending deferred disposition under Article 45.051, Code of Criminal Procedure. A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure under this subsection only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order. A person may petition the court for an order of nondisclosure under this subsection on payment of a \$50 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. The payment may be made only on or after the first anniversary of the conviction or dismissal, as applicable.

(e) A person is entitled to petition the court under Subsection (d) or (d-1) only if during any [the] period of the deferred adjudication community supervision for which the order of nondisclosure is requested and during the applicable period preceding the defendant's eligibility to file a petition described by Subsection (d)(1), (2), or (3) or (d-1), as appropriate, the person is not convicted of or placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for any offense other than an offense under the Transportation Code punishable by fine only. A person is not entitled to petition the court under Subsection (d) or (d-1) if the person was placed on the deferred adjudication community supervision for or has been previously convicted or placed on any other deferred adjudication for:

dismissal for a fine-only misdemeanor offense. After notice to the state and a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the fine-only misdemeanor offense that is the subject of the petition. As a condition of granting the petition under this subsection for a person convicted of the offense, a court may require the defendant to perform community service, pay a fee, or both perform the community service and pay the fee as if the defendant had been put on probation pending deferred disposition under Article 45.051, Code of Criminal Procedure. A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure under this subsection only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order. A person may petition the court for an order of nondisclosure under this subsection on payment of a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. The payment may be made only on or after the first anniversary of the conviction or dismissal, as applicable.

No equivalent provision.

- (1) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
- (2) an offense under Section 20.04, Penal Code, regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure;
- (3) an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, or 42.072, Penal Code; or
- (4) any other offense involving family violence, as defined by Section 71.004, Family Code.

No equivalent provision.

(e-1) A person is not entitled to petition the court under Subsection (d-1) if the person has been previously convicted of or placed on deferred adjudication for:

- (1) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
- (2) an offense under Section 20.04, Penal Code, regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure;
- (3) an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, or 42.072, Penal Code; or
- (4) any other offense involving family violence, as defined by Section 71.004, Family Code.

No equivalent provision.

(h) The clerk of a court that collects a fee under Subsection (d) or (d-1) shall remit the fee to the comptroller not later than the last day of the month following the end of the calendar quarter in which the fee is collected, and the comptroller shall deposit the fee in the general revenue fund. The Department of Public Safety shall submit a report to the legislature not later than December 1 of each even-numbered year that includes information on:

- (1) the number of petitions for nondisclosure and orders of nondisclosure received by the department in each of the previous two years;
- (2) the actions taken by the department with respect to the petitions and orders received;
- (3) the costs incurred by the department in taking those actions; and
- (4) 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.

No equivalent provision.

(i) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure under this section [~~Subsection (d)~~] to the following noncriminal justice agencies or entities only:

- (1) the State Board for Educator Certification;
- (2) a school district, charter school, private school, regional education service center, commercial transportation company, or education shared service arrangement;
- (3) the Texas Medical Board;
- (4) the Texas School for the Blind and Visually Impaired;
- (5) the Board of Law Examiners;
- (6) the State Bar of Texas;
- (7) a district court regarding a petition for name change under Subchapter B, Chapter 45, Family Code;
- (8) the Texas School for the Deaf;
- (9) the Department of Family and Protective Services;
- (10) the Texas Juvenile Justice Department [~~Youth Commission~~];
- (11) the Department of Assistive and Rehabilitative Services;
- (12) the Department of State Health Services, a local mental health service, a local mental retardation authority, or a community center providing services to persons with mental illness or retardation;
- (13) the Texas Private Security Board;
- (14) a municipal or volunteer fire department;
- (15) the Texas Board of Nursing;
- (16) a safe house providing shelter to children in harmful situations;
- (17) a public or nonprofit hospital or hospital district;
- (18) [~~the Texas Juvenile Probation Commission~~];
- [(19)] the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner;

(h-1) The clerk of a court that collects a fee under Subsection (d-1) shall deposit the fee to the credit of the general fund of the municipality or county, as applicable.

(i) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure under this section [~~Subsection (d)~~] to the following noncriminal justice agencies or entities only:

- (1) the State Board for Educator Certification;
- (2) a school district, charter school, private school, regional education service center, commercial transportation company, or education shared service arrangement;
- (3) the Texas Medical Board;
- (4) the Texas School for the Blind and Visually Impaired;
- (5) the Board of Law Examiners;
- (6) the State Bar of Texas;
- (7) a district court regarding a petition for name change under Subchapter B, Chapter 45, Family Code;
- (8) the Texas School for the Deaf;
- (9) the Department of Family and Protective Services;
- (10) the Texas Juvenile Justice Department [~~Youth Commission~~];
- (11) the Department of Assistive and Rehabilitative Services;
- (12) the Department of State Health Services, a local mental health service, a local mental retardation authority, or a community center providing services to persons with mental illness or retardation;
- (13) the Texas Private Security Board;
- (14) a municipal or volunteer fire department;
- (15) the Texas Board of Nursing;
- (16) a safe house providing shelter to children in harmful situations;
- (17) a public or nonprofit hospital or hospital district;
- (18) [~~the Texas Juvenile Probation Commission~~];
- [(19)] the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner;

(19) ~~[(20)]~~ the Texas State Board of Public Accountancy;
 (20) ~~[(21)]~~ the Texas Department of Licensing and Regulation;
 (21) ~~[(22)]~~ the Health and Human Services Commission;
 (22) ~~[(23)]~~ the Department of Aging and Disability Services;
 (23) ~~[(24)]~~ the Texas Education Agency;
 (24) ~~[(25)]~~ the Guardianship Certification Board;
 (25) ~~[(26)]~~ a county clerk's office in relation to a proceeding for the appointment of a guardian under Chapter XIII, Texas Probate Code;
 (26) ~~[(27)]~~ the Department of Information Resources but only regarding an employee, applicant for employment, contractor, subcontractor, intern, or volunteer who provides network security services under Chapter 2059 to:
 (A) the Department of Information Resources; or
 (B) a contractor or subcontractor of the Department of Information Resources;
 (27) ~~[(28)]~~ the Court Reporters Certification Board;
 (28) ~~[(29)]~~ the Texas Department of Insurance; and
 (29) ~~[(30)]~~ the Teacher Retirement System of Texas.

SECTION 3. Section 411.0851(a), Government Code, is amended.

SECTION 4. The heading to Section 552.142, Government Code, is amended.

SECTION 5. Section 552.142(a), Government Code, is amended.

SECTION 6. Section 552.1425(a), Government Code, is amended.

SECTION 7. The change in law made by this Act applies to a petition for an order of nondisclosure that is filed on or after the effective date of this Act, regardless of whether the misdemeanor that is the subject of the petition occurred before, on, or after the effective date of this Act.

SECTION 8. This Act takes effect September 1, 2013.

(19) ~~[(20)]~~ the Texas State Board of Public Accountancy;
 (20) ~~[(21)]~~ the Texas Department of Licensing and Regulation;
 (21) ~~[(22)]~~ the Health and Human Services Commission;
 (22) ~~[(23)]~~ the Department of Aging and Disability Services;
 (23) ~~[(24)]~~ the Texas Education Agency;
 (24) ~~[(25)]~~ the Guardianship Certification Board;
 (25) ~~[(26)]~~ a county clerk's office in relation to a proceeding for the appointment of a guardian under Chapter XIII, Texas Probate Code;
 (26) ~~[(27)]~~ the Department of Information Resources but only regarding an employee, applicant for employment, contractor, subcontractor, intern, or volunteer who provides network security services under Chapter 2059 to:
 (A) the Department of Information Resources; or
 (B) a contractor or subcontractor of the Department of Information Resources;
 (27) ~~[(28)]~~ the Court Reporters Certification Board;
 (28) ~~[(29)]~~ the Texas Department of Insurance; and
 (29) ~~[(30)]~~ the Teacher Retirement System of Texas.

SECTION 3. Same as introduced version.

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