

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1448
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Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, Texas allows for non-disclosure of a criminal offense, in the court's discretion, in cases where the defendant has been granted and successfully completed a deferred adjudication.

Deferred adjudication is a form of plea deal where a defendant pleads "guilty" or "no contest" to criminal charges in exchange for meeting certain requirements laid out by the court such as probation treatment, community service, or some other diversion program. Thus, the defendant may avoid a formal conviction on his or her record or have his or her case dismissed. Deferred adjudication makes non-disclosure available to the defendant. There are certain offenses for which non-disclosure is not available—for example, murder or rape.

Class C misdemeanors are Texas's lowest category of criminal offense. However, non-disclosure is not available to these lowest class of offenders. Class C misdemeanors largely cover traffic offenses, theft under \$50, theft of under \$20 if by bad check, threatening to assault which the actor should know is offensive, or possession of drug paraphernalia. As a result, most defendants for these offenses most often are not represented by an attorney and do not know to apply for deferred adjudication.

Currently the law does not allow the Class C misdemeanor offender to petition the court after-the-fact for non-disclosure and the offender must explain the conviction for the rest of his or her life. This leads to a negative effect on the person's community standing and ability to earn a living.

In today's under-performing economy, it is easy to understand the limitations of employment for those with a criminal record. A routine criminal records check would result in a prospective employer, unfamiliar with the criminal justice system, seeing only a conviction. The unschooled employer often does not take the initiative in discovering the true nature of the offense for which the prospective employee was convicted. Many of the convictions for this type of offense are the result of youthful indiscretion or exuberance.

It is inequitable for an individual who has successfully completed a deferred adjudication to have his or her record subject to a petition for non-disclosure, while one convicted of the lowest level of crime in Texas should bear the scars of the conviction for life.

C.S.S.B. 1448 amends current law relating to orders of nondisclosure issued for records of certain fine-only misdemeanors and authorizes a fee.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 103.0211, Government Code, as follows:

Sec. 103.0211. ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES:
GOVERNMENT CODE. Requires an accused or defendant, or a party to a civil suit, as

applicable, to pay the following fees and costs under the Government Code if ordered by the court or otherwise required:

(1)-(6) Makes no change to these subdivisions;

(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), rather than Sec. 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. Amends Section 411.081, Government Code, by adding Subsections (d-1), (e-1), and (h-1) and amending Subsection (i), as follows:

(d-1) Authorizes 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, to petition the court that convicted or granted a dismissal to the person for an order of nondisclosure under this subsection. Authorizes a person, subject to Subsection (e-1), to 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. 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. Authorizes a court, as a condition of granting the petition under this subsection for a person convicted of the offense, to 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. Authorizes a criminal justice agency to 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. Authorizes a person to 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. Authorizes the payment to be made only on or after the first anniversary of the conviction or dismissal, as applicable.

(e-1) Provides that 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 (Sex Offender Registration Program), Code of Criminal Procedure;

(2) an offense under Section 20.04 (Aggravated Kidnapping), 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 (Murder), 19.03 (Capital Murder), 22.04 (Injury to Child, Elderly Individual, or Disabled Individual), 22.041 (Abandoning or Endangering Child), 25.07 (Violation of Certain Court Orders or Conditions of Bond in a Family Violence Case), or 42.072 (Stalking), Penal Code; or

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

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

(i) Authorizes a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure under this section, rather than under Subsection (d), to the following noncriminal justice agencies or entities only:

(1)-(9) Makes no change to these subdivisions;

(10) the Texas Juvenile Justice Department, rather than the Texas Youth Commission;

(11)-(17) Makes no change to these subdivisions;

(18) the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner; and

(19)-(29) Redesignates existing Subdivisions (20)-(30) as Subdivisions (19)-(29) and makes no further change.

Deletes existing text of Subdivision (18) referencing the Texas Juvenile Probation Commission.

SECTION 3. Amends Section 411.0851(a), Government Code, to require a private entity that compiles and disseminates for compensation criminal history record information to destroy and is prohibited from disseminating any information in the possession of the entity with respect to which the entity has received notice that an order of expunction has been issued under Article 55.02 (Procedure for Expunction), Code of Criminal Procedure or an order of nondisclosure has been issued under Section 411.081, rather than under Section 411.081(d).

SECTION 4. Amends the heading to Section 552.142, Government Code, to read as follows:

Sec. 552.142. EXCEPTION: CONFIDENTIALITY OF RECORDS OF CERTAIN CRIMINAL HISTORY INFORMATION.

SECTION 5. Amends Section 552.142(a), Government Code, to provide that information is excepted from the requirements of Section 552.021 if an order of nondisclosure with respect to the information has been issued under Section 411.081, rather than under Section 411.081(d).

SECTION 6. Amends Section 552.1425(a), Government Code, to make a conforming change.

SECTION 7. Provides that 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. Effective date: September 1, 2013.