

BILL ANALYSIS

S.B. 1902
By: Perry
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

An order of nondisclosure can help prevent a person's past mistake from following the person throughout life. Current law limits the availability of an order of nondisclosure, and interested parties have expressed concern that this limitation is preventing individuals who have been convicted of certain low-level, nonviolent crimes from receiving an order. S.B. 1902 seeks to expand the availability of orders of nondisclosure and to streamline the process for obtaining an order.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

S.B. 1902 amends the Government Code to establish an alternative framework for granting an order of nondisclosure of criminal history record information to a person who receives a discharge and dismissal after being placed on deferred adjudication community supervision for a misdemeanor offense other than a kidnapping, unlawful restraint, or smuggling of persons offense, a sexual offense, an assaultive offense, an offense against the family, a disorderly conduct or related offense, a public indecency offense, an organized crime offense, a weapons offense, or a misdemeanor with respect to which an affirmative finding was filed in the papers of the case that it is not in the best interest of justice that the person receive such an order, and who has never been previously convicted of or placed on deferred adjudication community supervision for another offense other than a fine-only Transportation Code offense. The bill requires the court that placed such a person on deferred adjudication community supervision, if the person satisfies the required conditions for receiving an order of nondisclosure, to issue an order of nondisclosure of criminal history record information prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication community supervision. The bill requires the court to determine whether the person satisfies the required conditions for an order of nondisclosure and, if the court makes a finding that the conditions are satisfied, requires the court to issue the order of nondisclosure of criminal history record information at the time the court discharges and dismisses the proceedings against the person, if the discharge and dismissal occurs on or after the 180th day after the date the court placed the person on deferred adjudication community supervision, or as soon as practicable on or after the 180th day after the date the court placed the person on deferred adjudication community supervision, if the discharge and dismissal occurred before that date. The bill requires the person to present to the court any evidence necessary to

establish that the person is eligible to receive an order of nondisclosure of criminal history record information and to pay a \$28 fee to the clerk of the court before the court issues the order.

S.B. 1902 expands eligibility for an order of nondisclosure of criminal history record information to include the following persons:

- a person placed on community supervision following a conviction of a misdemeanor, other than certain alcohol-related or intoxication-related offenses or the offense of violating a court order enjoining organized criminal activity, whose community supervision has not been revoked and who completes the period of community supervision;
- a person placed on any type of community supervision, not only deferred adjudication community supervision, including a person required to serve a term of confinement as a condition of community supervision or a person who is placed on community supervision after having served part of a term of confinement imposed for the offense, whose community supervision has not been revoked and who completes the period of community supervision; and
- a person who has not been placed on community supervision and who is convicted of a misdemeanor, other than certain alcohol-related or intoxication-related offenses or the offense of violating a court order enjoining organized criminal activity, who is sentenced to and serves a period of confinement, and who is released.

The bill authorizes such a person to petition the court that placed the person on community supervision or the court that imposed the sentence, as applicable, for an order of nondisclosure of criminal history record information if the person satisfies the required conditions for receiving an order of nondisclosure and has never been previously convicted of or placed on deferred adjudication community supervision for another offense other than a fine-only Transportation Code offense. The bill requires the court, after notice to the state, an opportunity for a hearing, and a determination that 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 offense giving rise to the community supervision or confinement. The bill establishes the earliest date on which the person may petition the court that placed the person on community supervision or imposed the sentence, as applicable, for the order of nondisclosure.

S.B. 1902 prohibits the granting of an order of nondisclosure of criminal history record information to a person and establishes that a person is not entitled to petition a court to receive such an order if the court makes an affirmative finding that the offense for which the order is requested involved family violence. The bill includes trafficking of persons and continuous trafficking of persons among the offenses for which a conviction or placement on deferred adjudication community supervision or a previous conviction or placement on deferred adjudication community supervision triggers that prohibition and disqualification. The bill makes statutory provisions governing an order of nondisclosure of criminal history record information applicable to an order of nondisclosure sought or granted under the bill's provisions. The bill specifies that a person whose criminal history record information is the subject of an order of nondisclosure is not required in any application for employment, information, or licensing to state that the person has been the subject of any criminal proceeding related to the information that is the subject of the order and removes the restriction of that right to a person whose criminal history record information has been sealed under such an order.

S.B. 1902 authorizes a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, to certain noncriminal justice agencies or entities, or to the person who is the subject of the order. The bill includes among such noncriminal justice entities a bank, savings bank, savings and loan association, credit union, or mortgage banker, a subsidiary or affiliate of those entities, or another financial institution

regulated by certain state or federal regulatory agencies, but only regarding an employee, contractor, subcontractor, intern, or volunteer of or an applicant for employment by that entity. The bill authorizes criminal history record information that is related to a conviction and is the subject of an order of nondisclosure of criminal history record information to be admitted into evidence during the trial of any subsequent offense if the information is admissible under the Texas Rules of Evidence or another law or to be disclosed to a prosecuting attorney for a criminal justice purpose.

S.B. 1902 amends the Code of Criminal Procedure to require a court, after pronouncing the sentence of a defendant, to inform the defendant of the defendant's right to petition the court for an order of nondisclosure of criminal history record information, unless the defendant is ineligible to pursue that right because of the requirements that apply to obtaining such an order in the defendant's circumstances. The bill requires a judge who dismisses the proceedings against and discharges a defendant on deferred adjudication community supervision, if the judge determines that the defendant is or may become eligible for an order of nondisclosure of criminal history record information to, as applicable, grant such an order, inform the defendant of the defendant's eligibility to receive such an order without a petition and the earliest date on which the defendant is eligible to receive the order, or inform the defendant of the defendant's eligibility to petition the court for such an order and the earliest date the defendant is eligible to file that petition. The bill requires a judge that places on deferred adjudication community supervision a defendant charged with a misdemeanor, other than a kidnapping, unlawful restraint, or smuggling of persons offense, a sexual offense, an assaultive offense, an offense against the family, a disorderly conduct or related offense, a public indecency offense, an organized crime offense, or a weapons offense, to make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that is it not in the best interest of justice that the defendant receive an automatic order of nondisclosure under the bill's provisions.

S.B. 1902 amends the Business & Commerce Code, Health and Safety Code, and Occupations Code to make conforming changes.

EFFECTIVE DATE

September 1, 2015.