

By: Herrero, Thompson of Harris, Murphy,
Villalba

H.B. No. 3936

Substitute the following for H.B. No. 3936:

By: Herrero

C.S.H.B. No. 3936

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the eligibility of criminal defendants for an order of
3 nondisclosure of criminal history record information; authorizing
4 a fee.

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

6 SECTION 1. Chapter 411, Government Code, is amended by
7 adding Subchapter E-1 to read as follows:

8 SUBCHAPTER E-1. ORDER OF NONDISCLOSURE OF CRIMINAL HISTORY RECORD
9 INFORMATION

10 Sec. 411.071. DEFINITIONS. In this subchapter, "criminal
11 history record information," "criminal justice agency," and
12 "criminal justice purpose" have the meanings assigned by Section
13 411.082.

14 SECTION 2. Section 411.081(f), Government Code, is
15 transferred to Subchapter E-1, Chapter 411, Government Code, as
16 added by this Act, redesignated as Section 411.0715, Government
17 Code, and amended to read as follows:

18 Sec. 411.0715. DEFINITION OF DEFERRED ADJUDICATION
19 COMMUNITY SUPERVISION FOR PURPOSE OF RECEIVING ORDER OF
20 NONDISCLOSURE. [~~(f)~~] For purposes of an order of nondisclosure of
21 criminal history record information under this subchapter
22 [~~subsection (d)~~], a person is considered to have been placed on
23 deferred adjudication community supervision if, regardless of the
24 statutory authorization:

1 (1) the person entered a plea of guilty or nolo
2 contendere;

3 (2) the judge deferred further proceedings without
4 entering an adjudication of guilt and placed the person under the
5 supervision of the court or an officer under the supervision of the
6 court; and

7 (3) at the end of the period of supervision the judge
8 dismissed the proceedings and discharged the person.

9 SECTION 3. Subchapter E-1, Chapter 411, Government Code, as
10 added by this Act, is amended by adding Section 411.072 to read as
11 follows:

12 Sec. 411.072. PROCEDURE FOR DEFERRED ADJUDICATION
13 COMMUNITY SUPERVISION; CERTAIN NONVIOLENT MISDEMEANORS. (a) This
14 section applies only to a person who:

15 (1) was placed on deferred adjudication community
16 supervision under Section 5, Article 42.12, Code of Criminal
17 Procedure, for a misdemeanor other than a misdemeanor:

18 (A) under Chapter 20, 21, 22, 25, 42, 43, 46, or
19 71, Penal Code; or

20 (B) with respect to which an affirmative finding
21 under Section 5(k), Article 42.12, Code of Criminal Procedure, was
22 filed in the papers of the case; and

23 (2) has never been previously convicted of or placed
24 on deferred adjudication community supervision for another offense
25 other than an offense under the Transportation Code that is
26 punishable by fine only.

27 (b) Notwithstanding any other provision of this subchapter

1 or Subchapter F, if a person described by Subsection (a) receives a
2 discharge and dismissal under Section 5(c), Article 42.12, Code of
3 Criminal Procedure, and satisfies the requirements of Section
4 411.074, the court that placed the person on deferred adjudication
5 community supervision shall issue an order of nondisclosure of
6 criminal history record information under this subchapter
7 prohibiting criminal justice agencies from disclosing to the public
8 criminal history record information related to the offense giving
9 rise to the deferred adjudication community supervision. The court
10 shall determine whether the person satisfies the requirements of
11 Section 411.074, and if the court makes a finding that the
12 requirements of that section are satisfied, the court shall issue
13 the order of nondisclosure of criminal history record information:

14 (1) at the time the court discharges and dismisses the
15 proceedings against the person, if the discharge and dismissal
16 occurs on or after the 180th day after the date the court placed the
17 person on deferred adjudication community supervision; or

18 (2) as soon as practicable on or after the 180th day
19 after the date the court placed the person on deferred adjudication
20 community supervision, if the discharge and dismissal occurred
21 before that date.

22 (c) The person shall present to the court any evidence
23 necessary to establish that the person is eligible to receive an
24 order of nondisclosure of criminal history record information under
25 this section. The person must pay a \$28 fee to the clerk of the
26 court before the court issues the order.

27 SECTION 4. Section 411.081(d), Government Code, is

1 transferred to Subchapter E-1, Chapter 411, Government Code, as
2 added by this Act, redesignated as Section 411.0725, Government
3 Code, and amended to read as follows:

4 Sec. 411.0725. PROCEDURE FOR DEFERRED ADJUDICATION
5 COMMUNITY SUPERVISION; FELONIES AND CERTAIN MISDEMEANORS. (a)
6 This section applies only to a person placed on deferred
7 adjudication community supervision under Section 5, Article 42.12,
8 Code of Criminal Procedure, who is not eligible to receive an order
9 of nondisclosure of criminal history record information under
10 Section 411.072.

11 (b) [~~(d)~~] Notwithstanding any other provision of this
12 subchapter or Subchapter F, if a person described by Subsection (a)
13 [is placed on deferred adjudication community supervision under
14 Section 5, Article 42.12, Code of Criminal Procedure, subsequently]
15 receives a discharge and dismissal under Section 5(c), Article
16 42.12, Code of Criminal Procedure, and satisfies the requirements
17 of Section 411.074 [Subsection (e)], the person may petition the
18 court that placed the person [defendant] on deferred adjudication
19 community supervision for an order of nondisclosure of criminal
20 history record information under this section [subsection].

21 (c) Except as provided by Section 411.074 [Subsection (e)],
22 a person may petition the court for an order of nondisclosure under
23 this section regardless of whether the person has been previously
24 convicted of or placed on deferred adjudication community
25 supervision for another offense.

26 (d) After notice to the state, an opportunity for a hearing,
27 and a determination that the person is entitled to file the petition

1 and issuance of the order is in the best interest of justice, the
2 court shall issue an order prohibiting criminal justice agencies
3 from disclosing to the public criminal history record information
4 related to the offense giving rise to the deferred adjudication
5 community supervision.

6 ~~(e) [A criminal justice agency may disclose criminal~~
7 ~~history record information that is the subject of the order only to~~
8 ~~other criminal justice agencies, for criminal justice or regulatory~~
9 ~~licensing purposes, an agency or entity listed in Subsection (i),~~
10 ~~or the person who is the subject of the order.]~~ A person may
11 petition the court that placed the person on deferred adjudication
12 community supervision for an order of nondisclosure of criminal
13 history record information under this section only on or after:

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

17 (2) the second anniversary of the discharge and
18 dismissal, if the offense for which the person was placed on
19 deferred adjudication was a misdemeanor under Chapter 20, 21, 22,
20 25, 42, 43, or 46, Penal Code; or

21 (3) the fifth anniversary of the discharge and
22 dismissal, if the offense for which the person was placed on
23 deferred adjudication was a felony.

24 SECTION 5. Subchapter E-1, Chapter 411, Government Code, as
25 added by this Act, is amended by adding Sections 411.073 and
26 411.0735 to read as follows:

27 Sec. 411.073. PROCEDURE FOR COMMUNITY SUPERVISION

1 FOLLOWING CONVICTION; CERTAIN MISDEMEANORS. (a) This section
2 applies only to a person placed on community supervision under
3 Article 42.12, Code of Criminal Procedure:

4 (1) following a conviction of a misdemeanor other than
5 a misdemeanor under Section 106.041, Alcoholic Beverage Code, or
6 Section 49.04, 49.05, 49.06, 49.065, or 71.021, Penal Code; and

7 (2) under a provision of Article 42.12, Code of
8 Criminal Procedure, other than Section 5, including:

9 (A) a provision that requires the person to serve
10 a term of confinement as a condition of community supervision; or

11 (B) another provision that authorizes placing a
12 person on community supervision after the person has served part of
13 a term of confinement imposed for the offense.

14 (b) Notwithstanding any other provision of this subchapter
15 or Subchapter F, a person described by Subsection (a) whose
16 community supervision is not revoked and who completes the period
17 of community supervision may petition the court that placed the
18 person on community supervision for an order of nondisclosure of
19 criminal history record information under this section if the
20 person:

21 (1) satisfies the requirements of this section and
22 Section 411.074; and

23 (2) has never been previously convicted of or placed
24 on deferred adjudication community supervision for another offense
25 other than an offense under the Transportation Code that is
26 punishable by fine only.

27 (c) After notice to the state, an opportunity for a hearing,

1 and a determination that the person is entitled to file the petition
2 and issuance of the order is in the best interest of justice, the
3 court shall issue an order prohibiting criminal justice agencies
4 from disclosing to the public criminal history record information
5 related to the offense giving rise to the community supervision.

6 (d) A person may petition the court that placed the person
7 on community supervision for an order of nondisclosure of criminal
8 history record information under this section only on or after:

9 (1) the completion of the community supervision, if
10 the offense for which the person was placed on community
11 supervision was a misdemeanor other than a misdemeanor described by
12 Subdivision (2); or

13 (2) the second anniversary of the date of completion
14 of the community supervision, if the offense for which the person
15 was placed on community supervision was a misdemeanor under Chapter
16 20, 21, 22, 25, 42, 43, or 46, Penal Code.

17 Sec. 411.0735. PROCEDURE FOR CONVICTION AND CONFINEMENT;
18 CERTAIN MISDEMEANORS. (a) This section applies only to a person
19 who:

20 (1) is convicted of a misdemeanor other than a
21 misdemeanor under Section 106.041, Alcoholic Beverage Code, or
22 Section 49.04, 49.05, 49.06, 49.065, or 71.021, Penal Code;

23 (2) is sentenced to and serves a period of
24 confinement; and

25 (3) is not eligible for an order of nondisclosure of
26 criminal history record information under Section 411.073.

27 (b) Notwithstanding any other provision of this subchapter

1 or Subchapter F, a person described by Subsection (a) who completes
2 the period of confinement and is released may petition the court
3 that imposed the sentence for an order of nondisclosure of criminal
4 history record information under this section if the person:

5 (1) satisfies the requirements of this section and
6 Section 411.074; and

7 (2) has never been previously convicted of or placed
8 on deferred adjudication community supervision for another offense
9 other than an offense under the Transportation Code punishable by
10 fine only.

11 (c) After notice to the state, an opportunity for a hearing,
12 and a determination that the person is entitled to file the petition
13 and issuance of the order is in the best interest of justice, the
14 court shall issue an order prohibiting criminal justice agencies
15 from disclosing to the public criminal history record information
16 related to the offense giving rise to the confinement.

17 (d) A person may petition the court that imposed the
18 sentence for an order of nondisclosure of criminal history record
19 information under this section only on or after the second
20 anniversary of the date of completion of the period of confinement.

21 SECTION 6. Section 411.081(e), Government Code, is
22 transferred to Subchapter E-1, Chapter 411, Government Code, as
23 added by this Act, redesignated as Section 411.074, Government
24 Code, and amended to read as follows:

25 Sec. 411.074. REQUIRED CONDITIONS FOR RECEIVING AN ORDER OF
26 NONDISCLOSURE. (a) [~~e~~] A person may be granted an order of
27 nondisclosure of criminal history record information under this

1 subchapter and, when applicable, is entitled to petition the court
2 to receive an order under this subchapter [~~Subsection (d)~~] only if,
3 during the period after the court pronounced the sentence or placed
4 the person on [~~of the~~] deferred adjudication community supervision
5 for the offense for which the order of nondisclosure is requested,
6 and during any [~~the~~] applicable waiting period after completion of
7 the sentence or deferred adjudication community supervision
8 required [~~described~~] by this subchapter [~~Subsection (d)(1), (2), or~~
9 ~~(3), as appropriate~~], the person is not convicted of or placed on
10 deferred adjudication community supervision under Section 5,
11 Article 42.12, Code of Criminal Procedure, for any offense other
12 than an offense under the Transportation Code punishable by fine
13 only.

14 (b) A person may not be granted an order of nondisclosure of
15 criminal history record information under this subchapter and is
16 not entitled to petition the court for an order under this
17 subchapter [~~Subsection (d)~~] if:

18 (1) the person was convicted or placed on [~~the~~]
19 deferred adjudication community supervision for or has been
20 previously convicted or placed on any other deferred adjudication
21 community supervision for:

22 (A) [~~(1)~~] an offense requiring registration as a
23 sex offender under Chapter 62, Code of Criminal Procedure;

24 (B) [~~(2)~~] an offense under Section 20.04, Penal
25 Code, regardless of whether the offense is a reportable conviction
26 or adjudication for purposes of Chapter 62, Code of Criminal
27 Procedure;

1 (C) [~~(3)~~] an offense under Section 19.02, 19.03,
2 20A.02, 20A.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal
3 Code; or

4 (D) [~~(4)~~] any other offense involving family
5 violence, as defined by Section 71.004, Family Code; or

6 (2) the court makes an affirmative finding that the
7 offense for which the order of nondisclosure of criminal history
8 record information is requested involved family violence, as
9 defined by Section 71.004, Family Code.

10 SECTION 7. Section 411.081(f-1), Government Code, is
11 transferred to Subchapter E-1, Chapter 411, Government Code, as
12 added by this Act, redesignated as Section 411.0745, Government
13 Code, and amended to read as follows:

14 Sec. 411.0745. PETITION AND ORDER. (a) [~~(f-1)~~] A person who
15 petitions the court for an order of nondisclosure of criminal
16 history record information under this subchapter, when a petition
17 is required, [~~Subsection (d)~~] may file the petition in person,
18 electronically, or by mail.

19 (b) The petition must be accompanied by payment of a \$28 fee
20 to the clerk of the court in addition to any other fee that
21 generally applies to the filing of a civil petition.

22 (c) The Office of Court Administration of the Texas Judicial
23 System shall prescribe a form for the filing of a petition
24 electronically or by mail. The form must provide for the petition
25 to be accompanied by the required fees and any other supporting
26 material determined necessary by the office of court
27 administration, including evidence that the person is entitled to

1 file the petition.

2 (d) The office of court administration shall make available
3 on its Internet website the electronic application and printable
4 application form. Each county or district clerk's office that
5 maintains an Internet website shall include on that website a link
6 to the electronic application and printable application form
7 available on the office of court administration's Internet website.

8 (e) On receipt of a petition under this section
9 [~~subsection~~], the court shall provide notice to the state and an
10 opportunity for a hearing on whether the person is entitled to file
11 the petition and issuance of the order is in the best interest of
12 justice. The court shall hold a hearing before determining whether
13 to issue an order of nondisclosure of criminal history record
14 information, except that a hearing is not required if:

15 (1) the state does not request a hearing on the issue
16 before the 45th day after the date on which the state receives
17 notice under this subsection; and

18 (2) the court determines that:

19 (A) the person [~~defendant~~] is entitled to file
20 the petition; and

21 (B) the order is in the best interest of justice.

22 SECTION 8. Sections 411.081(g), (g-1), (g-1a), (g-1b), and
23 (g-1c), Government Code, are transferred to Subchapter E-1, Chapter
24 411, Government Code, as added by this Act, redesignated as Section
25 411.075, Government Code, and amended to read as follows:

26 Sec. 411.075. PROCEDURE AFTER ORDER. (a) [~~(g)~~] Not later
27 than the 15th business day after the date an order of nondisclosure

1 of criminal history record information is issued under this
2 subchapter [~~section~~], the clerk of the court shall send all
3 relevant criminal history record information contained in the order
4 or a copy of the order by certified mail, return receipt requested,
5 or secure electronic mail, electronic transmission, or facsimile
6 transmission to the Crime Records Service of the department
7 [~~Department of Public Safety~~].

8 (b) [~~(g-1)~~] Not later than 10 business days after receipt of
9 relevant criminal history record information contained in an order
10 or a copy of an order under Subsection (a) [~~(g)~~], the department
11 [~~Department of Public Safety~~] shall seal any criminal history
12 record information maintained by the department that is the subject
13 of the order. The department shall also send all relevant criminal
14 history record information contained in the order or a copy of the
15 order by certified mail, return receipt requested, or secure
16 electronic mail, electronic transmission, or facsimile
17 transmission to all:

18 (1) law enforcement agencies, jails or other detention
19 facilities, magistrates, courts, prosecuting attorneys,
20 correctional facilities, central state depositories of criminal
21 records, and other officials or agencies or other entities of this
22 state or of any political subdivision of this state;

23 (2) central federal depositories of criminal records
24 that there is reason to believe have criminal history record
25 information that is the subject of the order; and

26 (3) private entities that purchase criminal history
27 record information from the department or that otherwise are likely

1 to have criminal history record information that is subject to the
2 order.

3 (c) [~~(g-1a)~~] The director shall adopt rules regarding
4 minimum standards for the security of secure electronic mail,
5 electronic transmissions, and facsimile transmissions under
6 Subsections (a) [~~(g)~~] and (b) [~~(g-1)~~]. In adopting rules under this
7 subsection, the director shall consult with the Office of Court
8 Administration of the Texas Judicial System.

9 (d) [~~(g-1b)~~] Not later than 30 business days after receipt
10 of relevant criminal history record information contained in an
11 order or a copy of an order from the department [~~Department of~~
12 ~~Public Safety~~] under Subsection (b) [~~(g-1)~~], an individual or
13 entity described by Subsection (b)(1) [~~(g-1)(1)~~] shall seal any
14 criminal history record information maintained by the individual or
15 entity that is the subject of the order.

16 (e) [~~(g-1c)~~] The department may charge to a private entity
17 that purchases criminal history record information from the
18 department a fee in an amount sufficient to recover costs incurred
19 by the department in providing relevant criminal history record
20 information contained in an order or a copy of an order under
21 Subsection (b)(3) [~~(g-1)(3)~~] to the entity.

22 SECTION 9. Section 411.081(g-2), Government Code, is
23 transferred to Subchapter E-1, Chapter 411, Government Code, as
24 added by this Act, redesignated as Section 411.0755, Government
25 Code, and amended to read as follows:

26 Sec. 411.0755. STATEMENT IN APPLICATION FOR EMPLOYMENT,
27 INFORMATION, OR LICENSING. [~~(g-2)~~] A person whose criminal

1 history record information is the subject of an order of
2 nondisclosure of criminal history record information issued [~~has~~
3 ~~been sealed~~] under this subchapter [~~section~~] is not required in any
4 application for employment, information, or licensing to state that
5 the person has been the subject of any criminal proceeding related
6 to the information that is the subject of the [~~an~~] order [~~issued~~
7 ~~under this section~~].

8 SECTION 10. Section 411.081(g-3), Government Code, is
9 transferred to Subchapter E-1, Chapter 411, Government Code, as
10 added by this Act, redesignated as Section 411.076, Government
11 Code, and amended to read as follows:

12 Sec. 411.076. DISCLOSURE BY COURT. (a) [~~(g-3)~~] A court
13 may not disclose to the public any information contained in the
14 court records that is the subject of an order of nondisclosure of
15 criminal history record information issued under this subchapter
16 [~~section~~]. The court may disclose information contained in the
17 court records that is the subject of an order of nondisclosure of
18 criminal history record information only to:

19 (1) criminal justice agencies for criminal justice or
20 regulatory licensing purposes;

21 (2) [~~to~~] an agency or entity listed in Section
22 411.0765; [Subsection (i),] or

23 (3) [~~to~~] the person who is the subject of the order.

24 (b) The clerk of the court issuing an order of nondisclosure
25 of criminal history record information under this subchapter
26 [~~section~~] shall seal any court records containing information that
27 is the subject of the order as soon as practicable after the date

1 the clerk of the court sends all relevant criminal history record
2 information contained in the order or a copy of the order to the
3 department [~~Department of Public Safety~~] under Section 411.075(a)
4 [~~Subsection (g)~~].

5 SECTION 11. Section 411.081(i), Government Code, as amended
6 by Chapters 42 (S.B. 966), 266 (H.B. 729), and 583 (S.B. 869), Acts
7 of the 83rd Legislature, Regular Session, 2013, is reenacted,
8 transferred to Subchapter E-1, Chapter 411, Government Code, as
9 added by this Act, redesignated as Section 411.0765, Government
10 Code, and amended to read as follows:

11 Sec. 411.0765. DISCLOSURE BY CRIMINAL JUSTICE AGENCY. (a)
12 A criminal justice agency may disclose criminal history record
13 information that is the subject of an order of nondisclosure of
14 criminal history record information under this subchapter only to
15 other criminal justice agencies, for criminal justice or regulatory
16 licensing purposes, an agency or entity listed in Subsection (b),
17 or the person who is the subject of the order.

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

- 23 (1) the State Board for Educator Certification;
- 24 (2) a school district, charter school, private school,
25 regional education service center, commercial transportation
26 company, or education shared service arrangement;
- 27 (3) the Texas Medical Board;

- 1 (4) the Texas School for the Blind and Visually
2 Impaired;
- 3 (5) the Board of Law Examiners;
- 4 (6) the State Bar of Texas;
- 5 (7) a district court regarding a petition for name
6 change under Subchapter B, Chapter 45, Family Code;
- 7 (8) the Texas School for the Deaf;
- 8 (9) the Department of Family and Protective Services;
- 9 (10) the Texas Juvenile Justice Department;
- 10 (11) the Department of Assistive and Rehabilitative
11 Services;
- 12 (12) the Department of State Health Services, a local
13 mental health service, a local intellectual and developmental
14 disability [~~mental retardation~~] authority, or a community center
15 providing services to persons with mental illness or intellectual
16 or developmental disabilities [~~retardation~~];
- 17 (13) the Texas Private Security Board;
- 18 (14) a municipal or volunteer fire department;
- 19 (15) the Texas Board of Nursing;
- 20 (16) a safe house providing shelter to children in
21 harmful situations;
- 22 (17) a public or nonprofit hospital or hospital
23 district, or a facility as defined by Section 250.001, Health and
24 Safety Code;
- 25 (18) the securities commissioner, the banking
26 commissioner, the savings and mortgage lending commissioner, the
27 consumer credit commissioner, or the credit union commissioner;

- 1 (19) the Texas State Board of Public Accountancy;
- 2 (20) the Texas Department of Licensing and Regulation;
- 3 (21) the Health and Human Services Commission;
- 4 (22) the Department of Aging and Disability Services;
- 5 (23) the Texas Education Agency;
- 6 (24) the Judicial Branch Certification Commission;
- 7 (25) a county clerk's office in relation to a
- 8 proceeding for the appointment of a guardian under Title 3, Estates
- 9 ~~[Chapter XIII, Texas Probate]~~ Code;
- 10 (26) the Department of Information Resources but only
- 11 regarding an employee, applicant for employment, contractor,
- 12 subcontractor, intern, or volunteer who provides network security
- 13 services under Chapter 2059 to:
- 14 (A) the Department of Information Resources; or
- 15 (B) a contractor or subcontractor of the
- 16 Department of Information Resources;
- 17 (27) the Texas Department of Insurance;
- 18 (28) the Teacher Retirement System of Texas; ~~and~~
- 19 (29) ~~(30)~~ the Texas State Board of Pharmacy; and
- 20 (30) a bank, savings bank, savings and loan
- 21 association, credit union, or mortgage banker, a subsidiary or
- 22 affiliate of those entities, or another financial institution
- 23 regulated by a state regulatory entity listed in Subdivision (18)
- 24 or by a corresponding federal regulatory entity, but only regarding
- 25 an employee, contractor, subcontractor, intern, or volunteer of or
- 26 an applicant for employment by that bank, savings bank, savings and
- 27 loan association, credit union, mortgage banker, subsidiary or

1 affiliate, or financial institution.

2 SECTION 12. Section 411.081(h), Government Code, is
3 transferred to Subchapter E-1, Chapter 411, Government Code, as
4 added by this Act, redesignated as Section 411.077, Government
5 Code, and amended to read as follows:

6 Sec. 411.077. DISPOSITION OF FEE; DEPARTMENT OF PUBLIC
7 SAFETY REPORT. (a) ~~[(h)]~~ The clerk of a court that collects a fee
8 in connection with a petition or order for nondisclosure of
9 criminal history record information under this subchapter
10 ~~[Subsection (d)]~~ shall remit the fee to the comptroller not later
11 than the last day of the month following the end of the calendar
12 quarter in which the fee is collected, and the comptroller shall
13 deposit the fee in the general revenue fund.

14 (b) The department ~~[Department of Public Safety]~~ shall
15 submit a report to the legislature not later than December 1 of each
16 even-numbered year that includes information on:

17 (1) the number of petitions for nondisclosure of
18 criminal history record information and orders of nondisclosure of
19 criminal history record information received by the department in
20 each of the previous two years;

21 (2) the actions taken by the department with respect
22 to the petitions and orders received;

23 (3) the costs incurred by the department in taking
24 those actions; and

25 (4) the number of persons who are the subject of an
26 order of nondisclosure of criminal history record information and
27 who became the subject of criminal charges for an offense committed

1 after the order was issued.

2 SECTION 13. Subchapter E-1, Chapter 411, Government Code,
3 as added by this Act, is amended by adding Section 411.0775 to read
4 as follows:

5 Sec. 411.0775. ADMISSIBILITY AND USE OF CERTAIN CRIMINAL
6 HISTORY RECORD INFORMATION IN SUBSEQUENT CRIMINAL PROCEEDING.
7 Notwithstanding any other law, criminal history record information
8 that is related to a conviction and is the subject of an order of
9 nondisclosure of criminal history record information under this
10 subchapter may be:

11 (1) admitted into evidence during the trial of any
12 subsequent offense if the information is admissible under the Texas
13 Rules of Evidence or another law; or

14 (2) disclosed to a prosecuting attorney for a criminal
15 justice purpose.

16 SECTION 14. Section 109.005(a), Business & Commerce Code,
17 is amended to read as follows:

18 (a) A business entity may not publish any criminal record
19 information in the business entity's possession with respect to
20 which the business entity has knowledge or has received notice
21 that:

22 (1) an order of expunction has been issued under
23 Article 55.02, Code of Criminal Procedure; or

24 (2) an order of nondisclosure of criminal history
25 record information has been issued under Subchapter E-1, Chapter
26 411 [~~Section 411.081(d)~~], Government Code.

27 SECTION 15. Article 42.03, Code of Criminal Procedure, is

1 amended by adding Section 5 to read as follows:

2 Sec. 5. Except as otherwise provided by Section 5(a-1),
3 Article 42.12, the court after pronouncing the sentence shall
4 inform the defendant of the defendant's right to petition the court
5 for an order of nondisclosure of criminal history record
6 information under Subchapter E-1, Chapter 411, Government Code,
7 unless the defendant is ineligible to pursue that right because of
8 the requirements that apply to obtaining the order in the
9 defendant's circumstances, such as:

10 (1) the nature of the offense for which the defendant
11 is convicted; or

12 (2) the defendant's criminal history.

13 SECTION 16. Section 5, Article 42.12, Code of Criminal
14 Procedure, is amended by amending Subsections (a-1) and (c-1) and
15 adding Subsection (k) to read as follows:

16 (a-1) Before placing a defendant on deferred adjudication
17 community supervision under this section, the court shall inform
18 the defendant of the defendant's right to receive or petition the
19 court for an order of nondisclosure of criminal history record
20 information under Subchapter E-1, Chapter 411 [~~Section 411.081~~],
21 Government Code, as applicable, unless the defendant is ineligible
22 for an order [~~to pursue that right~~] because of:

23 (1) the nature of the offense for which the defendant
24 is placed on deferred adjudication community supervision; or

25 (2) the defendant's criminal history.

26 (c-1) A judge who dismisses the proceedings against a
27 defendant and discharges the defendant under Subsection (c):

1 (1) shall~~+~~
2 ~~[(1)]~~ provide the defendant with a copy of the order of
3 dismissal and discharge; and

4 (2) if the judge determines that the defendant is or
5 may become eligible for an order of nondisclosure of criminal
6 history record information under Subchapter E-1, Chapter 411,
7 Government Code, shall, as applicable:

8 (A) grant an order of nondisclosure of criminal
9 history record information to the defendant;

10 (B) inform the defendant of the defendant's
11 eligibility to receive an order of nondisclosure of criminal
12 history record information without a petition and the earliest date
13 on which the defendant is eligible to receive the order; or

14 (C) ~~7~~ inform the defendant of the defendant's
15 eligibility to petition the court for an order of nondisclosure of
16 criminal history record information ~~[under Section 411.081,~~
17 ~~Government Code,~~ and the earliest date the defendant is eligible
18 to file the petition for the order ~~[of nondisclosure]~~.

19 (k) If a judge places on deferred adjudication community
20 supervision a defendant charged with a misdemeanor other than a
21 misdemeanor under Chapter 20, 21, 22, 25, 42, 43, 46, or 71, Penal
22 Code, the judge shall make an affirmative finding of fact and file a
23 statement of that affirmative finding with the papers in the case if
24 the judge determines that it is not in the best interest of justice
25 that the defendant receive an automatic order of nondisclosure
26 under Section 411.072, Government Code.

27 SECTION 17. Section 54.656(a), Government Code, is amended

1 to read as follows:

2 (a) A judge may refer to a magistrate any criminal case for
3 proceedings involving:

4 (1) a negotiated plea of guilty before the court;

5 (2) a bond forfeiture;

6 (3) a pretrial motion;

7 (4) a postconviction writ of habeas corpus;

8 (5) an examining trial;

9 (6) an occupational driver's license;

10 (7) an agreed order of expunction under Chapter 55,
11 Code of Criminal Procedure;

12 (8) an asset forfeiture hearing as provided by Chapter
13 59, Code of Criminal Procedure;

14 (9) an agreed order of nondisclosure of criminal
15 history record information or an order of nondisclosure of criminal
16 history record information that does not require a petition
17 provided by Subchapter E-1, Chapter 411 [Section 411.081];

18 (10) a hearing on a motion to revoke probation; and

19 (11) any other matter the judge considers necessary
20 and proper.

21 SECTION 18. Section 103.0211, Government Code, is amended
22 to read as follows:

23 Sec. 103.0211. ADDITIONAL FEES AND COSTS IN CRIMINAL OR
24 CIVIL CASES: GOVERNMENT CODE. An accused or defendant, or a party
25 to a civil suit, as applicable, shall pay the following fees and
26 costs under the Government Code if ordered by the court or otherwise
27 required:

- 1 (1) a court reporter fee when testimony is taken:
- 2 (A) in a criminal court in Dallas County (Sec.
- 3 [25.0593](#), Government Code) . . . \$3;
- 4 (B) in a county criminal court of appeals in
- 5 Dallas County (Sec. [25.0594](#), Government Code) . . . \$3;
- 6 (C) in a county court at law in McLennan County
- 7 (Sec. [25.1572](#), Government Code) . . . \$3; and
- 8 (D) in a county criminal court in Tarrant County
- 9 (Sec. [25.2223](#), Government Code) . . . \$3;
- 10 (2) a court reporter service fee if the courts have
- 11 official court reporters (Sec. [51.601](#), Government Code) . . . \$15
- 12 or, in specified counties, \$30;
- 13 (3) a speedy trial rights waiver motion filing fee in
- 14 El Paso County (Sec. [54.745](#), Government Code) . . . \$100;
- 15 (4) the costs of a criminal magistrate if the court
- 16 determines that the nonprevailing party is able to defray the
- 17 costs:
- 18 (A) in Bexar County (Sec. [54.913](#), Government
- 19 Code) . . . magistrate's fees;
- 20 (B) in Dallas County (Sec. [54.313](#), Government
- 21 Code) . . . magistrate's fees;
- 22 (C) in Lubbock County (Sec. [54.883](#), Government
- 23 Code) . . . magistrate's fees;
- 24 (D) in Tarrant County (Sec. [54.663](#), Government
- 25 Code) . . . magistrate's fees; and
- 26 (E) in Travis County (Sec. [54.983](#), Government
- 27 Code) . . . magistrate's fees;

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

4 (6) fee paid on filing a petition for an order of
5 nondisclosure of criminal history record information in certain
6 cases (Subchapter E-1, Chapter 411 [~~Sec. 411.081~~], Government Code)
7 . . . \$28.

8 SECTION 19. Section 123.001(b), Government Code, is amended
9 to read as follows:

10 (b) If a defendant successfully completes a drug court
11 program, regardless of whether the defendant was convicted of the
12 offense for which the defendant entered the program or whether the
13 court deferred further proceedings without entering an
14 adjudication of guilt, after notice to the state and a hearing on
15 whether the defendant is otherwise entitled to the petition and
16 whether issuance of the order is in the best interest of justice,
17 the court shall enter an order of nondisclosure of criminal history
18 record information under Subchapter E-1, Chapter 411, [~~Section~~
19 ~~411.081~~] as if the defendant had received a discharge and dismissal
20 under Section 5(c), Article 42.12, Code of Criminal Procedure, with
21 respect to all records and files related to the defendant's arrest
22 for the offense for which the defendant entered the program if the
23 defendant:

24 (1) has not been previously convicted of an offense
25 listed in Section 3g, Article 42.12, Code of Criminal Procedure, or
26 a sexually violent offense, as defined by Article 62.001, Code of
27 Criminal Procedure; and

1 (2) is not convicted for any felony offense between
2 the date on which the defendant successfully completed the program
3 and the second anniversary of that date.

4 SECTION 20. Section 411.081(a), Government Code, is amended
5 to read as follows:

6 (a) This subchapter does not apply to criminal history
7 record information that is contained in:

8 (1) posters, announcements, or lists for identifying
9 or apprehending fugitives or wanted persons;

10 (2) original records of entry, including police
11 blotters maintained by a criminal justice agency that are compiled
12 chronologically and required by law or long-standing practice to be
13 available to the public;

14 (3) public judicial, administrative, or legislative
15 proceedings;

16 (4) court records of public judicial proceedings[
17 ~~except as provided by Subsection (g-3)~~];

18 (5) published judicial or administrative opinions; or

19 (6) announcements of executive clemency.

20 SECTION 21. Section 411.083(a), Government Code, is amended
21 to read as follows:

22 (a) Criminal history record information maintained by the
23 department is confidential information for the use of the
24 department and, except as provided by this subchapter or Subchapter
25 E-1, may not be disseminated by the department.

26 SECTION 22. Section 411.0835, Government Code, is amended
27 to read as follows:

1 Sec. 411.0835. PROHIBITION AGAINST DISSEMINATION TO
2 CERTAIN PRIVATE ENTITIES. If the department receives information
3 indicating that a private entity that purchases criminal history
4 record information from the department has been found by a court to
5 have committed three or more violations of Section 552.1425 by
6 compiling or disseminating information with respect to which an
7 order of expunction has been issued under Article 55.02, Code of
8 Criminal Procedure, or an order of nondisclosure of criminal
9 history record information has been issued under Subchapter E-1,
10 the department may not release any criminal history record
11 information to that entity until the first anniversary of the date
12 of the most recent violation.

13 SECTION 23. Section 411.0851(a), Government Code, is
14 amended to read as follows:

15 (a) A private entity that compiles and disseminates for
16 compensation criminal history record information shall destroy and
17 may not disseminate any information in the possession of the entity
18 with respect to which the entity has received notice that:

19 (1) an order of expunction has been issued under
20 Article 55.02, Code of Criminal Procedure; or

21 (2) an order of nondisclosure of criminal history
22 record information has been issued under Subchapter E-1 [~~Section~~
23 ~~411.081(d)~~].

24 SECTION 24. Sections 411.087(a) and (b), Government Code,
25 are amended to read as follows:

26 (a) Unless otherwise authorized by Subsection (e), a
27 person, agency, department, political subdivision, or other entity

1 that is authorized by this subchapter or Subchapter E-1 to obtain
2 from the department criminal history record information maintained
3 by the department that relates to another person is authorized to:

4 (1) obtain through the Federal Bureau of Investigation
5 criminal history record information maintained or indexed by that
6 bureau that pertains to that person; or

7 (2) obtain from any other criminal justice agency in
8 this state criminal history record information maintained by that
9 criminal justice agency that relates to that person.

10 (b) Any restriction or limitation in this subchapter or
11 Subchapter E-1 on criminal history record information that a
12 person, agency, department, political subdivision, or other entity
13 is entitled to obtain from the department applies equally to the
14 criminal history record information that the person, agency,
15 department, political subdivision, or other entity is entitled to
16 obtain from the identification division of the Federal Bureau of
17 Investigation or other criminal justice agency.

18 SECTION 25. Section [411.122\(c\)](#), Government Code, is amended
19 to read as follows:

20 (c) This section does not apply to an agency that is:

21 (1) specifically authorized by this subchapter or
22 Subchapter E-1 to obtain criminal history record information from
23 the department; or

24 (2) covered by Section [53.002](#), Occupations Code, to
25 the extent provided by that section.

26 SECTION 26. The heading to Section [552.142](#), Government
27 Code, is amended to read as follows:

1 Sec. 552.142. EXCEPTION: CONFIDENTIALITY OF RECORDS
2 SUBJECT TO ORDER OF NONDISCLOSURE [~~OF CERTAIN DEFERRED~~
3 ~~ADJUDICATIONS~~].

4 SECTION 27. Section 552.142(a), Government Code, is amended
5 to read as follows:

6 (a) Information is excepted from the requirements of
7 Section 552.021 if an order of nondisclosure of criminal history
8 record information with respect to the information has been issued
9 under Subchapter E-1, Chapter 411 [~~Section 411.081(d)~~].

10 SECTION 28. Section 552.1425(a), Government Code, is
11 amended to read as follows:

12 (a) A private entity that compiles and disseminates for
13 compensation criminal history record information may not compile or
14 disseminate information with respect to which the entity has
15 received notice that:

16 (1) an order of expunction has been issued under
17 Article 55.02, Code of Criminal Procedure; or

18 (2) an order of nondisclosure of criminal history
19 record information has been issued under Subchapter E-1, Chapter
20 411 [~~Section 411.081(d)~~].

21 SECTION 29. Section 169.001(b), Health and Safety Code, is
22 amended to read as follows:

23 (b) If a defendant successfully completes a first offender
24 prostitution prevention program, regardless of whether the
25 defendant was convicted of the offense for which the defendant
26 entered the program or whether the court deferred further
27 proceedings without entering an adjudication of guilt, after notice

1 to the state and a hearing on whether the defendant is otherwise
2 entitled to the petition, including whether the required time
3 period has elapsed, and whether issuance of the order is in the best
4 interest of justice, the court shall enter an order of
5 nondisclosure of criminal history record information under
6 Subchapter E-1, Chapter 411 [~~Section 411.081~~], Government Code, as
7 if the defendant had received a discharge and dismissal under
8 Section 5(c), Article 42.12, Code of Criminal Procedure, with
9 respect to all records and files related to the defendant's arrest
10 for the offense for which the defendant entered the program if the
11 defendant:

12 (1) has not been previously convicted of a felony
13 offense; and

14 (2) is not convicted of any other felony offense
15 before the second anniversary of the defendant's successful
16 completion of the program.

17 SECTION 30. Section 169A.001(b), Health and Safety Code, is
18 amended to read as follows:

19 (b) If a defendant successfully completes a prostitution
20 prevention program, regardless of whether the defendant was
21 convicted of the offense for which the defendant entered the
22 program or whether the court deferred further proceedings without
23 entering an adjudication of guilt, after notice to the state and a
24 hearing on whether the defendant is otherwise entitled to the
25 petition, including whether the required time has elapsed, and
26 whether issuance of the order is in the best interest of justice,
27 the court shall enter an order of nondisclosure of criminal history

1 record information under Subchapter E-1, Chapter 411 [~~Section~~
2 ~~411.081~~], Government Code, as if the defendant had received a
3 discharge and dismissal under Section 5(c), Article 42.12, Code of
4 Criminal Procedure, with respect to all records and files related
5 to the defendant's arrest for the offense for which the defendant
6 entered the program.

7 SECTION 31. Section 53.021(e), Occupations Code, is amended
8 to read as follows:

9 (e) Subsection (c) does not apply if the person is an
10 applicant for or the holder of a license that authorizes the person
11 to provide:

12 (1) law enforcement or public health, education, or
13 safety services; or

14 (2) financial services in an industry regulated by a
15 person listed in Section 411.0765(b)(18) [~~411.081(i)(19)~~],
16 Government Code.

17 SECTION 32. The changes in law made by this Act apply only
18 to the issuance of an order of nondisclosure of criminal history
19 record information for an offense committed on or after the
20 effective date of this Act. The issuance of an order of
21 nondisclosure of criminal history record information for an offense
22 committed before the effective date of this Act is governed by the
23 law in effect on the date the offense was committed, and the former
24 law is continued in effect for that purpose. For purposes of this
25 section, an offense is committed before the effective date of this
26 Act if any element of the offense occurs before the effective date.

27 SECTION 33. To the extent of any conflict, this Act prevails

C.S.H.B. No. 3936

1 over another Act of the 84th Legislature, Regular Session, 2015,
2 relating to nonsubstantive additions to and corrections in enacted
3 codes.

4 SECTION 34. This Act takes effect September 1, 2015.