

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 6, 2015

TO: Honorable Abel Herrero, Chair, House Committee on Criminal Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB3936** by Herrero (relating to the eligibility of criminal defendants for an order of nondisclosure of criminal history record information; authorizing a fee.), **Committee Report 1st House, Substituted**

The bill would have a positive, but indeterminate, fiscal implication to the state because increased civil filing fee revenue from persons previously convicted of certain misdemeanors that would file a petition for an order of nondisclosure is anticipated to exceed revenue losses realized from persons seeking an order of nondisclosure following dismissal and discharge from a term of deferred adjudication community supervision for certain misdemeanor offenses that would only pay the \$28 fee.

The bill would amend the Government Code to allow the issuance of an order of nondisclosure at the time of defendant dismissal and discharge from a term of deferred adjudication community supervision for certain misdemeanor offenses if the person proves to the court they are eligible for an order of nondisclosure and pays a \$28 fine. This would not apply to kidnapping, sexual offenses, assaultive offense, offenses against the family, disorderly conduct, public decency offenses, organized crime, and weapon offenses, cases in which the defendant has been previously convicted or placed on deferred adjudication for any other offense other than a fine-only offense under the Transportation Code, or in situations where a judge makes an affirmative finding in a judgment that an order of nondisclosure under this section would not be in the best interest of justice.

Persons seeking an order of nondisclosure following dismissal and discharge from a term of deferred adjudication community supervision for certain misdemeanor offenses would not be required to file a petition with the court and, therefore, would not have to pay associated civil filing fees. They would, however, still need to pay the \$28 fee. The number of persons among this population that would pay the \$28 fee from among these eligible cases is unknown and, therefore, revenue loss to the state cannot be determined at this time.

Additionally, the bill would expand the types of cases in which a defendant is eligible to obtain an order of nondisclosure to include persons who have been convicted of certain misdemeanors and confined if the person seeking the order of nondisclosure had never previously been convicted or placed on deferred adjudication community supervision for another offense other than an offense under the Transportation Code punishable by fine only.

Persons seeking an order of nondisclosure that have been convicted of certain misdemeanors would be considered a new group of persons seeking orders of nondisclosure. These persons would be required to file a petition for an order of nondisclosure for which all associated civil

filing fees would apply and the \$28 fee. The revenue increase that would occur due to the increase in filing fee revenue from this new group of persons seeking orders of nondisclosure cannot be determined because the number of persons that would actively seek an order of nondisclosure from among this population is unknown.

The agency anticipates that the revenue increase from civil filing fees associated with persons previously convicted of certain misdemeanors filing a petition for an order of nondisclosure would be greater than the revenue decrease from persons seeking an order of nondisclosure following dismissal and discharge from a term of deferred adjudication community supervision for certain misdemeanor offenses that would only need to pay the \$28 fee. Therefore, OCA estimates that this bill would have a positive, but indeterminate impact to the state.

Case data provided by OCA was considered for the purposes of this analysis. OCA reports that in fiscal year 2014 there were 31,442 cases that would have been eligible for an order of nondisclosure without filing a petition or paying a fee under the bill's provisions. The total revenue loss to the state from among these eligible cases would have been \$3,662,993. In that same fiscal year, up to 38,422 persons would have been eligible for an order of nondisclosure under the bill's expansion of eligibility for orders of nondisclosure. If all of these persons sought an order of nondisclosure and filed civil cases, then this would increase state revenue through civil filing fees by \$5,551,979.

The bill would take effect on September 1, 2015.

Local Government Impact

This estimate assumes that the bill would have a positive, but indeterminate, fiscal implication to local governments because the revenue increase from civil filing fees associated with persons previously convicted of certain misdemeanors that file a petition for an order of nondisclosure is anticipated to exceed the revenue loss from persons seeking an order of nondisclosure following dismissal and discharge from a term of deferred adjudication community supervision for certain misdemeanor offenses that would only pay the \$28 fee.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 405 Department of Public Safety

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