

BILL ANALYSIS

Senate Research Center
85R11069 JRR-D

S.B. 1340
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Criminal Justice
4/3/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

When a person breaks the law, they must pay for their misconduct. For those individuals convicted of first-time, non/low-violent, low-level offenses and who have finished their sentence and demonstrated they are able to be productive members of society through law-abiding behavior there should be procedures in place that permit them to apply to a court to seal their records, thereby helping to remove the stigma associated with the conviction.

A variety of studies show that a criminal record can have a debilitating effect on a person's future job and housing prospects, two major factors in determining whether someone will be able to reintegrate into society successfully. It is paramount to our public safety and economic viability that individuals returning to society do not commit additional offenses.

There is a solution to helping individuals redeem their lives and return to society in a way that promotes public safety. Orders of nondisclosure (ONDs) seal a criminal record from the eyes of the general public, while still being visible to law enforcement and employers in sensitive fields such as finance, healthcare, education, etc. To be eligible for an OND (in nearly all cases), an individual must not have re-offended, must be current on fines, fees, and restitution, and must petition a court. A prosecutor must have an opportunity to object, and a judge must issue a ruling that the OND is in the best interest of justice.

Prior to the 84th Legislative Session, ONDs were only available to individuals who committed certain misdemeanors or felonies and completed deferred adjudication. In 2015, S.B. 1902 was signed by the governor, expanding eligibility to individuals convicted of certain low-level, non-sexual, non-family violent Class A & B misdemeanors but had otherwise committed no other offense (excluding fine-only traffic citations) and completed the term of their sentence or community supervision to apply for an OND. Waiting periods vary depending on the offense.

S.B. 1902 also streamlined the procedure to grant an OND to offenders who received a discharge and dismissal for a misdemeanor offense "not against the person" after completion of deferred adjudication, although a judge could deny this streamlined procedure at the time of sentencing.

S.B. 1340 maintains prosecutorial notice and judicial discretion, expands the eligibility to more one-time offenders, and expands certain waiting requirements, including:

- Allows for an OND for first-time convictions of all Class C misdemeanors. This would be an offender's first conviction or deferred adjudication/prosecution for any crime, except traffic offenses. They must be current on all fines connected to an offense. There would be no waiting period.
- Allows for an OND for state jail felony possession of drugs for Penalty Group 1, Penalty Group 1A, Penalty Group 2, Penalty Group 2A, and marijuana. This would only be for offenders with no previous criminal convictions or deferred adjudications/prosecutions, except for a traffic offense, with a waiting period of five years after release from imprisonment or term of community supervision with no convictions during that time.
- Allows for an OND for first-time, low-level DWIs (no DWIs with a BAC of .15 or above). This would only be for offenders with no other criminal convictions or deferred adjudications/prosecutions, except for a traffic offense. Currently, the bill prescribes no

waiting period after a term of community supervision and a two-year waiting period after completion of a sentence, but this is being modified in a committee substitute.

- Makes the orders of nondisclosure reforms of 84th and 85th Legislatures retroactive.

As proposed, S.B. 1340 amends current law relating to the eligibility of a criminal defendant for an order of nondisclosure of criminal history record information.

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 Subchapter E-1, Chapter 411, Government Code, by adding Section 411.0716, as follows:

Sec. 411.0716. **APPLICABILITY OF SUBCHAPTER.** (a) Provides that, except as provided by Subsection (b), this subchapter applies to the issuance of an order of nondisclosure (OND) of criminal history record information for an offense committed before, on, or after September 1, 2017.

(b) Provides that Section 411.072 (Procedure for Deferred Adjudication Community Supervision; Certain Nonviolent Misdemeanors), applies only to a person described by Subsection (a) of that section who receives a discharge and dismissal under Article 42A.111 (Dismissal and Discharge), Code of Criminal Procedure, on or after September 1, 2017.

SECTION 2. Amends Sections 411.072 (a) and (b), Government Code, as follows:

(a) Provides that this section applies only to a person who:

(1) was placed on deferred adjudication community supervision under Subchapter C (Deferred Adjudication Community Supervision), Chapter 42A (Community Supervision), Code of Criminal Procedure, rather than Section 5, Article 42.12, Code of Criminal Procedure, for a misdemeanor other than a misdemeanor with respect to which an affirmative finding under Article 42A.105(f), rather than under Section 5(k) Article 42.12, Code of Criminal Procedure, was filed in the papers of the case; and

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

(b) Requires a certain court to issue an OND, notwithstanding any other provision of this Subchapter (Order of Nondisclosure of Criminal History Record Information), or Chapter F (Criminal History Record Information), if a person described by Subsection (a) receives a discharge and dismissal under Article 42A.111, Code of Criminal Procedure, rather than Section 5(c), Article 42.12, Code of Criminal Procedure.

SECTION 3. Amends the heading to Section 411.073, Government Code, to read as follows:

Sec. 411.073. **PROCEDURE FOR COMMUNITY SUPERVISION FOLLOWING CONVICTION; CERTAIN MISDEMEANORS AND STATE JAIL FELONIES.**

SECTION 4. Amends Sections 411.073(a), (b), and (d), Government Code, as follows:

(a) Provides that this section (Procedure for Community Supervision Following Conviction; Certain Misdemeanors) applies only to a person placed on community

supervision under Chapter 42A, Code of Criminal Procedure, rather than Article 42.12, Code of Criminal Procedure:

(1) following a conviction of:

(A) a misdemeanor other than a misdemeanor:

(i) deletes existing text referencing Section 49.04 (Driving While Intoxicated), Penal Code, from the list of Sections defining the misdemeanor;

(ii) punishable under Section 49.04(d) (relating to defining an offense by a person whose alcohol concentration level is 0.15 or more, as a Class A misdemeanor), Penal Code; or

(B) a state jail felony under Section 481.115 (Offense: Possession of Substance in Penalty Group 1), 481.1151 (Offense: Possession of Substance in Penalty Group 1-A), 481.116 (Offense: Possession of Substance in Penalty Group 2), 481.1161 (Offense: Possession of Substance in Penalty Group 2-A), or 481.121 (Offense: Possession of Marihuana), Health and Safety Code; and

(2) under a provision of Chapter 42A, rather than Article 42.12, Code of Criminal Procedure, other than Subchapter C, rather than Section 5, including certain provisions.

(b) Authorizes a certain person to petition the court that placed the person on community supervision for an OND of criminal history record information if the person among certain requirements, has never been previously convicted of or placed on deferred adjudication community supervision for another offense other than a traffic offense that is punishable by fine only. Makes a conforming change.

(d) Authorizes a person to petition the court that placed the person on community supervision for an OND of criminal history record information only on or after the fifth anniversary of the date of completion of the community supervision, if the offense for which the person was placed on community supervision was a state jail felony, among certain other provisions.

SECTION 5. Amends Section 411.0735, Government Code, as follows:

Sec. 411.0735. New heading: PROCEDURE FOR CONVICTION; CERTAIN MISDEMEANORS AND STATE JAIL FELONIES. (a) Provides that this section applies only to a person who is convicted of a misdemeanor other than a misdemeanor under certain statutes or punishable under Section 49.04(d), Penal Code; or a state jail felony under Section 481.115, 481.1151, 481.116, 481.1161, or 481.121, Health and Safety Code, and is not eligible for an OND of criminal history record information under Section 411.073. Deletes existing text providing this section applies only to a person convicted of a misdemeanor other than a misdemeanor under Section 49.04, Penal Code, or who is sentenced to and served a period of confinement. Makes nonsubstantive changes.

(b) Authorizes a person described by Subsection (a) who completes the person's sentence, rather than period of confinement and is released, to petition the court that imposed the sentence for an OND of criminal history record information if the person meets certain criteria. Makes conforming changes.

(c) Requires the court after certain procedures have been followed to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense for which the person was convicted, rather than the offense giving rise to the confinement.

(d) Authorizes a person to petition the court that imposed the sentence for an OND of criminal history record information only on or after:

(1) the date of completion of the person's sentence, if the offense of which the person was convicted was a misdemeanor punishable by fine only;

(2) the second anniversary of the date of completion of the person's sentence, if the offense of which the person was convicted was a misdemeanor other than a misdemeanor described by Subdivision (1), rather than the second anniversary of the date of completion of the period of confinement. Creates this subsection from existing text; or

(3) the fifth anniversary of the date of completion of the person's sentence, if the offense of which the person was convicted was a state jail felony.

SECTION 6. Amends Section 411.074, Government Code, as follows:

Sec. 411.074. REQUIRED CONDITIONS FOR RECEIVING AN ORDER OF NONDISCLOSURE. (a) Provides that a person may be granted an OND of criminal history record information and, when applicable, is entitled to petition the court to receive an OND only if, during the period after the court pronounced the sentence or placed the person on community supervision, including deferred adjudication community supervision, for the offense for which the order of nondisclosure is requested, and during any applicable waiting period for the person under this subchapter following completion of the person's sentence or community supervision, including deferred adjudication community supervision, the person is not convicted of or placed on deferred adjudication community supervision under Subchapter C, Chapter 42A, Code of Criminal Procedure, for any offense other than a traffic offense that is punishable by fine only. Makes conforming and nonsubstantive changes.

(b) Prohibits a person from being granted an OND of criminal history record information and provides a person is not entitled to petition the court for an OND if:

(1) the person requests the OND, or the person has been previously convicted of or placed on deferred adjudication community supervision under Subchapter C, Chapter 42A, Code of Criminal Procedure, for certain offenses, rather than if the person was convicted or placed on deferred adjudication community supervision. Makes nonsubstantive changes; or

(2) the court makes an affirmative finding that the offense for which the OND, rather than the OND of criminal history record information, is requested involved family violence, as defined by Section 71.004 (Family Violence), Family Code.

SECTION 7. Amends Article 42A.105, Code of Criminal Procedure, to conform to Chapter 1279 (S.B. 1902), Acts of the 84th Legislature, Regular Session, 2015, by adding Subsection (f), as follows:

(f) Requires the judge, if a judge places on deferred adjudication community supervision a defendant charged with a misdemeanor other than a misdemeanor under Chapter 20 (Kidnapping, Unlawful Restraint, and Smuggling of Persons), 21 (Sexual Offenses), 22 (Assaultive Offenses), 25 (Offenses Against the Family), 42 (Disorderly Conduct and Related Offenses), 43 (Public Indecency), 46 (Weapons), or 71 (Organized Crime), Penal Code, 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 it is not in the best interest of justice that the defendant receive an automatic OND under Section 411.072, Government Code.

SECTION 8. Repealer: Section 32, Chapter 1279 (S.B. 1902) (relating to making the OND of criminal history record information prospective), Acts of the 84th Legislature, Regular Session, 2015.

SECTION 9. Provides that, to the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 10. Effective date: September 1, 2017.