

By: Thompson of Harris, Alonzo, Workman

H.B. No. 3016

A BILL TO BE ENTITLED

AN ACT

relating to the eligibility of a criminal defendant for an order of nondisclosure of criminal history record information.

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

SECTION 1. Subchapter E-1, Chapter 411, Government Code, is amended by adding Section 411.0716 to read as follows:

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

(b) Section 411.072 applies only to a person described by Subsection (a) of that section who receives a discharge and dismissal under Article 42A.111, Code of Criminal Procedure, on or after September 1, 2017.

SECTION 2. Section 411.072, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) This section applies only to a person who:

(1) was placed on deferred adjudication community supervision under Subchapter C [Section 5], Chapter 42A [Article 42.12], Code of Criminal Procedure, for a misdemeanor other than a misdemeanor:

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

1 (B) with respect to which an affirmative finding
2 under Article 42A.105(f), Code of Criminal Procedure, or former
3 Section 5(k), Article 42.12, Code of Criminal Procedure, was filed
4 in the papers of the case; and

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

9 (b) Notwithstanding any other provision of this subchapter
10 or Subchapter F, if a person described by Subsection (a) receives a
11 discharge and dismissal under [~~Section 5(c),~~] Article 42A.111
12 [~~42.12~~], Code of Criminal Procedure, and satisfies the requirements
13 of Section 411.074, the court that placed the person on deferred
14 adjudication community supervision shall issue an order of
15 nondisclosure of criminal history record information under this
16 subchapter prohibiting criminal justice agencies from disclosing
17 to the public criminal history record information related to the
18 offense giving rise to the deferred adjudication community
19 supervision. The court shall determine whether the person
20 satisfies the requirements of Section 411.074, and if the court
21 makes a finding that the requirements of that section are
22 satisfied, the court shall issue the order of nondisclosure of
23 criminal history record information:

24 (1) at the time the court discharges and dismisses the
25 proceedings against the person, if the discharge and dismissal
26 occurs on or after the 180th day after the date the court placed the
27 person on deferred adjudication community supervision; or

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

5 (d) A person who is not eligible to receive an order of
6 nondisclosure of criminal history record information under this
7 section solely because an affirmative finding under Article
8 42A.105(f), Code of Criminal Procedure, or former Section 5(k),
9 Article 42.12, Code of Criminal Procedure, was filed in the papers
10 of the case may file a petition for an order of nondisclosure of
11 criminal history record information under Section 411.0725 if the
12 person otherwise satisfies the requirements of that section.

13 SECTION 3. The heading to Section 411.073, Government Code,
14 is amended to read as follows:

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

18 SECTION 4. Sections 411.073(a), (b), and (d), Government
19 Code, are amended to read as follows:

20 (a) This section applies only to a person placed on
21 community supervision under Chapter 42A [~~Article 42.12~~], Code of
22 Criminal Procedure:

23 (1) following a conviction of:

24 (A) a misdemeanor other than a misdemeanor under
25 Section 106.041, Alcoholic Beverage Code, Section 49.04, 49.05,
26 49.06, or 49.065, Penal Code, or Chapter 71, Penal Code; or

27 (B) a state jail felony under Section 481.115,

1 481.1151, 481.116, 481.1161, or 481.121, Health and Safety Code;

2 and

3 (2) under a provision of Chapter 42A [~~Article 42.12~~],
4 Code of Criminal Procedure, other than Subchapter C [~~Section 5~~],
5 including:

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

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

11 (b) Notwithstanding any other provision of this subchapter
12 or Subchapter F, a person described by Subsection (a) whose
13 community supervision is not revoked and who completes the period
14 of community supervision, including any term of confinement imposed
15 and payment of all fines, costs, and restitution imposed, may
16 petition the court that placed the person on community supervision
17 for an order of nondisclosure of criminal history record
18 information under this section if the person:

19 (1) satisfies the requirements of this section and
20 Section 411.074; and

21 (2) has never been previously convicted of or placed
22 on deferred adjudication community supervision for another offense
23 other than a traffic [~~an~~] offense [~~under the Transportation Code~~]
24 that is punishable by fine only.

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

1 (1) the completion of the community supervision, if
2 the offense for which the person was placed on community
3 supervision was a misdemeanor other than a misdemeanor described by
4 Subdivision (2); ~~[or]~~

5 (2) the second anniversary of the date of completion
6 of the community supervision, if the offense for which the person
7 was placed on community supervision was a misdemeanor under Chapter
8 20, 21, 22, 25, 42, 43, or 46, Penal Code; or

9 (3) the fifth anniversary of the date of completion of
10 the community supervision, if the offense for which the person was
11 placed on community supervision was a state jail felony.

12 SECTION 5. Subchapter E-1, Chapter 411, Government Code, is
13 amended by adding Section 411.0731 to read as follows:

14 Sec. 411.0731. PROCEDURE FOR COMMUNITY SUPERVISION
15 FOLLOWING CONVICTION; CERTAIN DRIVING WHILE INTOXICATED
16 CONVICTIONS. (a) This section applies only to a person placed on
17 community supervision under Chapter 42A, Code of Criminal
18 Procedure:

19 (1) following a conviction of an offense under Section
20 49.04, Penal Code, other than an offense punishable under
21 Subsection (d) of that section; and

22 (2) under a provision of Chapter 42A, Code of Criminal
23 Procedure, other than Subchapter C, including:

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

26 (B) another provision that authorizes placing a
27 person on community supervision after the person has served part of

1 a term of confinement imposed for the offense.

2 (b) Notwithstanding any other provision of this subchapter
3 or Subchapter F, a person described by Subsection (a) whose
4 community supervision is not revoked and who completes the period
5 of community supervision, including any term of confinement imposed
6 and payment of all fines, costs, and restitution imposed, may
7 petition the court that placed the person on community supervision
8 for an order of nondisclosure of criminal history record
9 information under this section if the person:

10 (1) satisfies the requirements of this section and
11 Section 411.074; and

12 (2) has never been previously convicted of or placed
13 on deferred adjudication community supervision for another offense
14 other than a traffic offense that is punishable by fine only.

15 (c) A petition for an order of nondisclosure of criminal
16 history record information filed under this section must include
17 evidence that the person is entitled to file the petition.

18 (d) Except as provided by Subsection (e), after notice to
19 the state, an opportunity for a hearing, and a determination that
20 the person is entitled to file the petition and issuance of an order
21 of nondisclosure of criminal history record information is in the
22 best interest of justice, the court shall issue an order
23 prohibiting criminal justice agencies from disclosing to the public
24 criminal history record information related to the offense giving
25 rise to the community supervision.

26 (e) A court may not issue an order of nondisclosure of
27 criminal history record information under this section if the

1 attorney representing the state presents evidence sufficient to the
2 court demonstrating that the commission of the offense for which
3 the order is sought resulted in a motor vehicle accident involving
4 another person, including a passenger in a motor vehicle operated
5 by the person seeking the order of nondisclosure.

6 (f) 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 second anniversary of the date of completion
10 of the community supervision, if the person successfully complied
11 with a condition of community supervision that, for a period of not
12 less than six months, restricted the person's operation of a motor
13 vehicle to a motor vehicle equipped with an ignition interlock
14 device; or

15 (2) the fifth anniversary of the date of completion of
16 the community supervision, if the court that placed the person on
17 community supervision did not order the person to comply with a
18 condition of community supervision described by Subdivision (1) for
19 the period described by that subdivision.

20 SECTION 6. Section 411.0735, Government Code, is amended to
21 read as follows:

22 Sec. 411.0735. PROCEDURE FOR CONVICTION [~~AND CONFINEMENT~~];
23 CERTAIN MISDEMEANORS AND STATE JAIL FELONIES. (a) This section
24 applies only to a person who:

25 (1) is convicted of:

26 (A) a misdemeanor other than a misdemeanor under
27 Section 106.041, Alcoholic Beverage Code, Section 49.04, 49.05,

1 49.06, or 49.065, Penal Code, or Chapter 71, Penal Code; or
2 (B) a state jail felony under Section 481.115,
3 481.1151, 481.116, 481.1161, or 481.121, Health and Safety Code;
4 and

5 (2) ~~[is sentenced to and serves a period of~~
6 ~~confinement, and~~

7 ~~(3)]~~ is not eligible for an order of nondisclosure of
8 criminal history record information under Section 411.073.

9 (b) Notwithstanding any other provision of this subchapter
10 or Subchapter F, a person described by Subsection (a) who completes
11 the person's sentence, including any term of confinement imposed
12 and payment of all fines, costs, and restitution imposed, [period
13 ~~of confinement and is released]~~ may petition the court that imposed
14 the sentence for an order of nondisclosure of criminal history
15 record information under this section if the person:

16 (1) satisfies the requirements of this section and
17 Section 411.074; and

18 (2) has never been previously convicted of or placed
19 on deferred adjudication community supervision for another offense
20 other than a traffic [an] offense that is [under the Transportation
21 ~~Code]~~ punishable by fine only.

22 (c) After notice to the state, an opportunity for a hearing,
23 and a determination that the person is entitled to file the petition
24 and issuance of the order is in the best interest of justice, the
25 court shall issue an order prohibiting criminal justice agencies
26 from disclosing to the public criminal history record information
27 related to the offense for which the person was convicted ~~[giving~~

1 ~~rise to the confinement]~~.

2 (d) A person may petition the court that imposed the
3 sentence for an order of nondisclosure of criminal history record
4 information under this section only on or after:

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

8 (2) the second anniversary of the date of completion
9 of the person's sentence, if the offense of which the person was
10 convicted was a misdemeanor other than a misdemeanor described by
11 Subdivision (1); or

12 (3) the fifth anniversary of the date of completion of
13 the person's sentence, if the offense of which the person was
14 convicted was a state jail felony [~~period of confinement]~~.

15 SECTION 7. Subchapter E-1, Chapter 411, Government Code, is
16 amended by adding Section 411.0736 to read as follows:

17 Sec. 411.0736. PROCEDURE FOR CONVICTION; CERTAIN DRIVING
18 WHILE INTOXICATED CONVICTIONS. (a) This section applies only to a
19 person who:

20 (1) is convicted of an offense under Section 49.04,
21 Penal Code, other than an offense punishable under Subsection (d)
22 of that section; and

23 (2) is not eligible for an order of nondisclosure of
24 criminal history record information under Section 411.0731.

25 (b) Notwithstanding any other provision of this subchapter
26 or Subchapter F, a person described by Subsection (a) who completes
27 the person's sentence, including any term of confinement imposed

1 and payment of all fines, costs, and restitution imposed, may
2 petition the court that imposed the sentence for an order of
3 nondisclosure of criminal history record information under this
4 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 a traffic offense that is punishable by fine only.

10 (c) A petition for an order of nondisclosure of criminal
11 history record information filed under this section must include
12 evidence that the person is entitled to file the petition.

13 (d) Except as provided by Subsection (e), after notice to
14 the state, an opportunity for a hearing, and a determination that
15 the person is entitled to file the petition and issuance of an order
16 of nondisclosure of criminal history record information is in the
17 best interest of justice, the court shall issue an order
18 prohibiting criminal justice agencies from disclosing to the public
19 criminal history record information related to the offense for
20 which the person was convicted.

21 (e) A court may not issue an order of nondisclosure of
22 criminal history record information under this section if the
23 attorney representing the state presents evidence sufficient to the
24 court demonstrating that the commission of the offense for which
25 the order is sought resulted in a motor vehicle accident involving
26 another person, including a passenger in a motor vehicle operated
27 by the person seeking the order of nondisclosure.

1 (f) A person may petition the court that imposed the
2 sentence for an order of nondisclosure of criminal history record
3 information under this section on or after:

4 (1) the third anniversary of the date of completion of
5 the person's sentence, if the person successfully complied with a
6 condition of the sentence that, for a period of not less than six
7 months, restricted the person's operation of a motor vehicle to a
8 motor vehicle equipped with an ignition interlock device; or

9 (2) the fifth anniversary of the date of completion of
10 the person's sentence, if the court that imposed the sentence did
11 not order the person to comply with a condition described by
12 Subdivision (1) for the period described by that subdivision.

13 SECTION 8. Section 411.074, Government Code, is amended to
14 read as follows:

15 Sec. 411.074. REQUIRED CONDITIONS FOR RECEIVING AN ORDER OF
16 NONDISCLOSURE. (a) A person may be granted an order of
17 nondisclosure of criminal history record information under this
18 subchapter and, when applicable, is entitled to petition the court
19 to receive an order under this subchapter only if, during the period
20 after the court pronounced the sentence or placed the person on
21 community supervision, including deferred adjudication community
22 supervision, for the offense for which the order of nondisclosure
23 is requested, and during any applicable waiting period for the
24 person under this subchapter following ~~after~~ completion of the
25 person's sentence or community supervision, including deferred
26 adjudication community supervision ~~[required by this subchapter]~~,
27 the person is not convicted of or placed on deferred adjudication

1 community supervision [~~under Subchapter C, Chapter 42A, Code of~~
2 ~~Criminal Procedure,~~] for any offense other than a traffic [~~an~~
3 offense that is [~~under the Transportation Code~~] punishable by fine
4 only.

5 (b) A person may not be granted an order of nondisclosure of
6 criminal history record information under this subchapter and is
7 not entitled to petition the court for an order of nondisclosure
8 under this subchapter if:

9 (1) the person requests the order of nondisclosure
10 [~~was convicted or placed on deferred adjudication community~~
11 ~~supervision~~] for, or the person has been previously convicted of or
12 placed on [~~any other~~] deferred adjudication community supervision
13 for:

14 (A) an offense requiring registration as a sex
15 offender under Chapter 62, Code of Criminal Procedure;

16 (B) an offense under Section 20.04, Penal Code,
17 regardless of whether the offense is a reportable conviction or
18 adjudication for purposes of Chapter 62, Code of Criminal
19 Procedure;

20 (C) an offense under Section 19.02, 19.03,
21 20A.02, 20A.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal
22 Code; or

23 (D) any other offense involving family violence,
24 as defined by Section 71.004, Family Code; or

25 (2) the court makes an affirmative finding that the
26 offense for which the order of nondisclosure [~~of criminal history~~
27 ~~record information~~] is requested involved family violence, as

1 defined by Section 71.004, Family Code.

2 SECTION 9. Section 411.0765(a), Government Code, is amended
3 to read as follows:

4 (a) A criminal justice agency may disclose criminal history
5 record information that is the subject of an order of nondisclosure
6 of criminal history record information under this subchapter only:

7 (1) to other criminal justice agencies;

8 (2) [r] for criminal justice or regulatory licensing
9 purposes;

10 (3) to [r] an agency or entity listed in Subsection
11 (b);

12 (4) to [~~r~~] the person who is the subject of the
13 order; or

14 (5) for the purpose of complying with a requirement
15 under federal law or if federal law requires the disclosure as a
16 condition of receiving federal highway funds.

17 SECTION 10. Subchapter A, Chapter 42A, Code of Criminal
18 Procedure, is amended by adding Article 42A.002 to read as follows:

19 Art. 42A.002. REFERENCE IN LAW. A reference in a law to a
20 statute or a part of a statute revised in this chapter by Chapter
21 770 (H.B. 2299), Acts of the 84th Legislature, Regular Session,
22 2015, is considered to be a reference to the part of this chapter
23 that revises that statute or part of that statute.

24 SECTION 11. Article 42A.105, Code of Criminal Procedure, is
25 amended to conform to Chapter 1279 (S.B. 1902), Acts of the 84th
26 Legislature, Regular Session, 2015, by adding Subsection (f) to
27 read as follows:

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

9 SECTION 12. (a) Section 16, Chapter 1279 (S.B. 1902), Acts
10 of the 84th Legislature, Regular Session, 2015, which amended
11 Section 5, Article 42.12, Code of Criminal Procedure, is repealed.

12 (b) Section 32, Chapter 1279 (S.B. 1902), Acts of the 84th
13 Legislature, Regular Session, 2015, is repealed.

14 SECTION 13. To the extent of any conflict, this Act prevails
15 over another Act of the 85th Legislature, Regular Session, 2017,
16 relating to nonsubstantive additions to and corrections in enacted
17 codes.

18 SECTION 14. This Act takes effect September 1, 2017.