

1-1 By: Thompson of Harris, Alonzo, Workman H.B. No. 3016
 1-2 (Senate Sponsor - Hughes)
 1-3 (In the Senate - Received from the House May 3, 2017;
 1-4 May 9, 2017, read first time and referred to Committee on Criminal
 1-5 Justice; May 19, 2017, reported adversely, with favorable
 1-6 Committee Substitute by the following vote: Yeas 7, Nays 1;
 1-7 May 19, 2017, sent to printer.)

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9 Whitmire	X			
1-10 Huffman		X		
1-11 Birdwell	X			
1-12 Burton	X			
1-13 Creighton	X			
1-14 Garcia	X			
1-15 Hughes	X			
1-16 Menéndez			X	
1-17 Perry	X			

1-19 COMMITTEE SUBSTITUTE FOR H.B. No. 3016 By: Hughes

1-20 A BILL TO BE ENTITLED
 1-21 AN ACT

1-22 relating to the eligibility of a criminal defendant for an order of
 1-23 nondisclosure of criminal history record information.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Subchapter E-1, Chapter 411, Government Code, is
 1-26 amended by adding Section 411.0716 to read as follows:

1-27 Sec. 411.0716. APPLICABILITY OF SUBCHAPTER. (a) Except as
 1-28 provided by Subsection (b), this subchapter applies to the issuance
 1-29 of an order of nondisclosure of criminal history record information
 1-30 for an offense committed before, on, or after September 1, 2017.

1-31 (b) Section 411.072 applies only to a person described by
 1-32 Subsection (a) of that section who receives a discharge and
 1-33 dismissal under Article 42A.111, Code of Criminal Procedure, on or
 1-34 after September 1, 2017.

1-35 SECTION 2. Section 411.072, Government Code, is amended by
 1-36 amending Subsections (a) and (b) and adding Subsection (d) to read
 1-37 as follows:

1-38 (a) This section applies only to a person who:

1-39 (1) was placed on deferred adjudication community
 1-40 supervision under Subchapter C [Section 5], Chapter 42A [Article
 1-41 42.12], Code of Criminal Procedure, for a misdemeanor other than a
 1-42 misdemeanor:

1-43 (A) under Chapter 20, 21, 22, 25, 42, 43, 46, or
 1-44 71, Penal Code; or

1-45 (B) with respect to which an affirmative finding
 1-46 under Article 42A.105(f), Code of Criminal Procedure, or former
 1-47 Section 5(k), Article 42.12, Code of Criminal Procedure, was filed
 1-48 in the papers of the case; and

1-49 (2) has never been previously convicted of or placed
 1-50 on deferred adjudication community supervision for another offense
 1-51 other than a traffic [an] offense [under the Transportation Code]
 1-52 that is punishable by fine only.

1-53 (b) Notwithstanding any other provision of this subchapter
 1-54 or Subchapter F, if a person described by Subsection (a) receives a
 1-55 discharge and dismissal under [Section 5(c),] Article 42A.111
 1-56 [42.12], Code of Criminal Procedure, and satisfies the requirements
 1-57 of Section 411.074, the court that placed the person on deferred
 1-58 adjudication community supervision shall issue an order of
 1-59 nondisclosure of criminal history record information under this
 1-60 subchapter prohibiting criminal justice agencies from disclosing

2-1 to the public criminal history record information related to the
2-2 offense giving rise to the deferred adjudication community
2-3 supervision. The court shall determine whether the person
2-4 satisfies the requirements of Section 411.074, and if the court
2-5 makes a finding that the requirements of that section are
2-6 satisfied, the court shall issue the order of nondisclosure of
2-7 criminal history record information:

2-8 (1) at the time the court discharges and dismisses the
2-9 proceedings against the person, if the discharge and dismissal
2-10 occurs on or after the 180th day after the date the court placed the
2-11 person on deferred adjudication community supervision; or

2-12 (2) as soon as practicable on or after the 180th day
2-13 after the date the court placed the person on deferred adjudication
2-14 community supervision, if the discharge and dismissal occurred
2-15 before that date.

2-16 (d) A person who is not eligible to receive an order of
2-17 nondisclosure of criminal history record information under this
2-18 section solely because an affirmative finding under Article
2-19 42A.105(f), Code of Criminal Procedure, or former Section 5(k),
2-20 Article 42.12, Code of Criminal Procedure, was filed in the papers
2-21 of the case may file a petition for an order of nondisclosure of
2-22 criminal history record information under Section 411.0725 if the
2-23 person otherwise satisfies the requirements of that section.

2-24 SECTION 3. Sections 411.073(a) and (b), Government Code,
2-25 are amended to read as follows:

2-26 (a) This section applies only to a person placed on
2-27 community supervision under Chapter 42A [~~Article 42.12~~], Code of
2-28 Criminal Procedure:

2-29 (1) following a conviction of a misdemeanor other than
2-30 a misdemeanor under Section 106.041, Alcoholic Beverage Code,
2-31 Section 49.04, 49.05, 49.06, or 49.065, Penal Code, or Chapter 71,
2-32 Penal Code; and

2-33 (2) under a provision of Chapter 42A [~~Article 42.12~~],
2-34 Code of Criminal Procedure, other than Subchapter C [~~Section 5~~],
2-35 including:

2-36 (A) a provision that requires the person to serve
2-37 a term of confinement as a condition of community supervision; or

2-38 (B) another provision that authorizes placing a
2-39 person on community supervision after the person has served part of
2-40 a term of confinement imposed for the offense.

2-41 (b) Notwithstanding any other provision of this subchapter
2-42 or Subchapter F, a person described by Subsection (a) whose
2-43 community supervision is not revoked and who completes the period
2-44 of community supervision, including any term of confinement imposed
2-45 and payment of all fines, costs, and restitution imposed, may
2-46 petition the court that placed the person on community supervision
2-47 for an order of nondisclosure of criminal history record
2-48 information under this section if the person:

2-49 (1) satisfies the requirements of this section and
2-50 Section 411.074; and

2-51 (2) has never been previously convicted of or placed
2-52 on deferred adjudication community supervision for another offense
2-53 other than a traffic [~~an~~] offense [~~under the Transportation Code~~]
2-54 that is punishable by fine only.

2-55 SECTION 4. Subchapter E-1, Chapter 411, Government Code, is
2-56 amended by adding Section 411.0731 to read as follows:

2-57 Sec. 411.0731. PROCEDURE FOR COMMUNITY SUPERVISION
2-58 FOLLOWING CONVICTION; CERTAIN DRIVING WHILE INTOXICATED
2-59 CONVICTIONS. (a) This section applies only to a person placed on
2-60 community supervision under Chapter 42A, Code of Criminal
2-61 Procedure:

2-62 (1) following a conviction of an offense under Section
2-63 49.04, Penal Code, other than an offense punishable under
2-64 Subsection (d) of that section; and

2-65 (2) under a provision of Chapter 42A, Code of Criminal
2-66 Procedure, other than Subchapter C, including:

2-67 (A) a provision that requires the person to serve
2-68 a term of confinement as a condition of community supervision; or

2-69 (B) another provision that authorizes placing a

3-1 person on community supervision after the person has served part of
3-2 a term of confinement imposed for the offense.

3-3 (b) Notwithstanding any other provision of this subchapter
3-4 or Subchapter F, a person described by Subsection (a) whose
3-5 community supervision is not revoked and who completes the period
3-6 of community supervision, including any term of confinement imposed
3-7 and payment of all fines, costs, and restitution imposed, may
3-8 petition the court that placed the person on community supervision
3-9 for an order of nondisclosure of criminal history record
3-10 information under this section if the person:

3-11 (1) satisfies the requirements of this section and
3-12 Section 411.074; and

3-13 (2) has never been previously convicted of or placed
3-14 on deferred adjudication community supervision for another offense
3-15 other than a traffic offense that is punishable by fine only.

3-16 (c) A petition for an order of nondisclosure of criminal
3-17 history record information filed under this section must include
3-18 evidence that the person is entitled to file the petition.

3-19 (d) Except as provided by Subsection (e), after notice to
3-20 the state, an opportunity for a hearing, and a determination that
3-21 the person is entitled to file the petition and issuance of an order
3-22 of nondisclosure of criminal history record information is in the
3-23 best interest of justice, the court shall issue an order
3-24 prohibiting criminal justice agencies from disclosing to the public
3-25 criminal history record information related to the offense giving
3-26 rise to the community supervision.

3-27 (e) A court may not issue an order of nondisclosure of
3-28 criminal history record information under this section if the
3-29 attorney representing the state presents evidence sufficient to the
3-30 court demonstrating that the commission of the offense for which
3-31 the order is sought resulted in a motor vehicle accident involving
3-32 another person, including a passenger in a motor vehicle operated
3-33 by the person seeking the order of nondisclosure.

3-34 (f) A person may petition the court that placed the person
3-35 on community supervision for an order of nondisclosure of criminal
3-36 history record information under this section only on or after:

3-37 (1) the second anniversary of the date of completion
3-38 of the community supervision, if the person successfully complied
3-39 with a condition of community supervision that, for a period of not
3-40 less than six months, restricted the person's operation of a motor
3-41 vehicle to a motor vehicle equipped with an ignition interlock
3-42 device; or

3-43 (2) the fifth anniversary of the date of completion of
3-44 the community supervision, if the court that placed the person on
3-45 community supervision did not order the person to comply with a
3-46 condition of community supervision described by Subdivision (1) for
3-47 the period described by that subdivision.

3-48 SECTION 5. Section 411.0735, Government Code, is amended to
3-49 read as follows:

3-50 Sec. 411.0735. PROCEDURE FOR CONVICTION [~~AND CONFINEMENT~~];
3-51 CERTAIN MISDEMEANORS. (a) This section applies only to a person
3-52 who:

3-53 (1) is convicted of a misdemeanor other than a
3-54 misdemeanor under Section 106.041, Alcoholic Beverage Code,
3-55 Section 49.04, 49.05, 49.06, or 49.065, Penal Code, or Chapter 71,
3-56 Penal Code; and

3-57 (2) [~~is sentenced to and serves a period of~~
3-58 ~~confinement, and~~

3-59 ~~[(3)]~~ is not eligible for an order of nondisclosure of
3-60 criminal history record information under Section 411.073.

3-61 (b) Notwithstanding any other provision of this subchapter
3-62 or Subchapter F, a person described by Subsection (a) who completes
3-63 the person's sentence, including any term of confinement imposed
3-64 and payment of all fines, costs, and restitution imposed, [~~period~~
3-65 ~~of confinement and is released~~] may petition the court that imposed
3-66 the sentence for an order of nondisclosure of criminal history
3-67 record information under this section if the person:

3-68 (1) satisfies the requirements of this section and
3-69 Section 411.074; and

4-1 (2) has never been previously convicted of or placed
 4-2 on deferred adjudication community supervision for another offense
 4-3 other than a traffic ~~[an]~~ offense that is ~~[under the Transportation~~
 4-4 ~~Code]~~ punishable by fine only.

4-5 (c) Except as provided by Subsection (c-1), after [After]
 4-6 notice to the state, an opportunity for a hearing, and a
 4-7 determination that the person is entitled to file the petition and
 4-8 issuance of the order is in the best interest of justice, the court
 4-9 shall issue an order prohibiting criminal justice agencies from
 4-10 disclosing to the public criminal history record information
 4-11 related to the offense for which the person was convicted [giving
 4-12 rise to the confinement].

4-13 (c-1) A court may not issue an order of nondisclosure of
 4-14 criminal history record information under this section if the
 4-15 offense for which the order is sought is a misdemeanor punishable by
 4-16 fine only and the court determines that the offense was violent or
 4-17 sexual in nature.

4-18 (d) A person may petition the court that imposed the
 4-19 sentence for an order of nondisclosure of criminal history record
 4-20 information under this section only on or after:

4-21 (1) the date of completion of the person's sentence, if
 4-22 the offense of which the person was convicted was a misdemeanor
 4-23 punishable by fine only; or

4-24 (2) the second anniversary of the date of completion
 4-25 of the person's sentence, if the offense of which the person was
 4-26 convicted was a misdemeanor other than a misdemeanor described by
 4-27 Subdivision (1) [period of confinement].

4-28 SECTION 6. Subchapter E-1, Chapter 411, Government Code, is
 4-29 amended by adding Section 411.0736 to read as follows:

4-30 Sec. 411.0736. PROCEDURE FOR CONVICTION; CERTAIN DRIVING
 4-31 WHILE INTOXICATED CONVICTIONS. (a) This section applies only to a
 4-32 person who:

4-33 (1) is convicted of an offense under Section 49.04,
 4-34 Penal Code, other than an offense punishable under Subsection (d)
 4-35 of that section; and

4-36 (2) is not eligible for an order of nondisclosure of
 4-37 criminal history record information under Section 411.0731.

4-38 (b) Notwithstanding any other provision of this subchapter
 4-39 or Subchapter F, a person described by Subsection (a) who completes
 4-40 the person's sentence, including any term of confinement imposed
 4-41 and payment of all fines, costs, and restitution imposed, may
 4-42 petition the court that imposed the sentence for an order of
 4-43 nondisclosure of criminal history record information under this
 4-44 section if the person:

4-45 (1) satisfies the requirements of this section and
 4-46 Section 411.074; and

4-47 (2) has never been previously convicted of or placed
 4-48 on deferred adjudication community supervision for another offense
 4-49 other than a traffic offense that is punishable by fine only.

4-50 (c) A petition for an order of nondisclosure of criminal
 4-51 history record information filed under this section must include
 4-52 evidence that the person is entitled to file the petition.

4-53 (d) Except as provided by Subsection (e), after notice to
 4-54 the state, an opportunity for a hearing, and a determination that
 4-55 the person is entitled to file the petition and issuance of an order
 4-56 of nondisclosure of criminal history record information is in the
 4-57 best interest of justice, the court shall issue an order
 4-58 prohibiting criminal justice agencies from disclosing to the public
 4-59 criminal history record information related to the offense for
 4-60 which the person was convicted.

4-61 (e) A court may not issue an order of nondisclosure of
 4-62 criminal history record information under this section if the
 4-63 attorney representing the state presents evidence sufficient to the
 4-64 court demonstrating that the commission of the offense for which
 4-65 the order is sought resulted in a motor vehicle accident involving
 4-66 another person, including a passenger in a motor vehicle operated
 4-67 by the person seeking the order of nondisclosure.

4-68 (f) A person may petition the court that imposed the
 4-69 sentence for an order of nondisclosure of criminal history record

5-1 information under this section on or after:
 5-2 (1) the third anniversary of the date of completion of
 5-3 the person's sentence, if the person successfully complied with a
 5-4 condition of the sentence that, for a period of not less than six
 5-5 months, restricted the person's operation of a motor vehicle to a
 5-6 motor vehicle equipped with an ignition interlock device; or
 5-7 (2) the fifth anniversary of the date of completion of
 5-8 the person's sentence, if the court that imposed the sentence did
 5-9 not order the person to comply with a condition described by
 5-10 Subdivision (1) for the period described by that subdivision.

5-11 SECTION 7. Section 411.074, Government Code, is amended to
 5-12 read as follows:

5-13 Sec. 411.074. REQUIRED CONDITIONS FOR RECEIVING AN ORDER OF
 5-14 NONDISCLOSURE. (a) A person may be granted an order of
 5-15 nondisclosure of criminal history record information under this
 5-16 subchapter and, when applicable, is entitled to petition the court
 5-17 to receive an order under this subchapter only if, during the period
 5-18 after the court pronounced the sentence or placed the person on
 5-19 community supervision, including deferred adjudication community
 5-20 supervision, for the offense for which the order of nondisclosure
 5-21 is requested, and during any applicable waiting period for the
 5-22 person under this subchapter following ~~after~~ completion of the
 5-23 person's sentence or community supervision, including deferred
 5-24 adjudication community supervision ~~[required by this subchapter],~~
 5-25 the person is not convicted of or placed on deferred adjudication
 5-26 community supervision ~~[under Subchapter C, Chapter 42A, Code of~~
 5-27 ~~Criminal Procedure,~~ for any offense other than a traffic ~~[an]~~
 5-28 offense that is ~~[under the Transportation Code]~~ punishable by fine
 5-29 only.

5-30 (b) A person may not be granted an order of nondisclosure of
 5-31 criminal history record information under this subchapter and is
 5-32 not entitled to petition the court for an order of nondisclosure
 5-33 under this subchapter if:

5-34 (1) the person requests the order of nondisclosure
 5-35 ~~[was convicted or placed on deferred adjudication community~~
 5-36 ~~supervision]~~ for, or the person has been previously convicted of or
 5-37 placed on ~~[any other]~~ deferred adjudication community supervision
 5-38 for:

5-39 (A) an offense requiring registration as a sex
 5-40 offender under Chapter 62, Code of Criminal Procedure;

5-41 (B) an offense under Section 20.04, Penal Code,
 5-42 regardless of whether the offense is a reportable conviction or
 5-43 adjudication for purposes of Chapter 62, Code of Criminal
 5-44 Procedure;

5-45 (C) an offense under Section 19.02, 19.03,
 5-46 20A.02, 20A.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal
 5-47 Code; or

5-48 (D) any other offense involving family violence,
 5-49 as defined by Section 71.004, Family Code; or

5-50 (2) the court makes an affirmative finding that the
 5-51 offense for which the order of nondisclosure ~~[of criminal history~~
 5-52 ~~record information]~~ is requested involved family violence, as
 5-53 defined by Section 71.004, Family Code.

5-54 SECTION 8. Section 411.0765(a), Government Code, is amended
 5-55 to read as follows:

5-56 (a) A criminal justice agency may disclose criminal history
 5-57 record information that is the subject of an order of nondisclosure
 5-58 of criminal history record information under this subchapter only:

5-59 (1) to other criminal justice agencies;
 5-60 (2) [✓] for criminal justice or regulatory licensing
 5-61 purposes;

5-62 (3) to [✓] an agency or entity listed in Subsection
 5-63 (b);

5-64 (4) to [✓ or] the person who is the subject of the
 5-65 order; or

5-66 (5) for the purpose of complying with a requirement
 5-67 under federal law or if federal law requires the disclosure as a
 5-68 condition of receiving federal highway funds.

5-69 SECTION 9. Subchapter A, Chapter 42A, Code of Criminal

6-1 Procedure, is amended by adding Article 42A.002 to read as follows:
6-2 Art. 42A.002. REFERENCE IN LAW. A reference in a law to a
6-3 statute or a part of a statute revised in this chapter by Chapter
6-4 770 (H.B. 2299), Acts of the 84th Legislature, Regular Session,
6-5 2015, is considered to be a reference to the part of this chapter
6-6 that revises that statute or part of that statute.

6-7 SECTION 10. Article 42A.105, Code of Criminal Procedure, is
6-8 amended to conform to Chapter 1279 (S.B. 1902), Acts of the 84th
6-9 Legislature, Regular Session, 2015, by adding Subsection (f) to
6-10 read as follows:

6-11 (f) If a judge places on deferred adjudication community
6-12 supervision a defendant charged with a misdemeanor other than a
6-13 misdemeanor under Chapter 20, 21, 22, 25, 42, 43, 46, or 71, Penal
6-14 Code, the judge shall make an affirmative finding of fact and file a
6-15 statement of that affirmative finding with the papers in the case if
6-16 the judge determines that it is not in the best interest of justice
6-17 that the defendant receive an automatic order of nondisclosure
6-18 under Section 411.072, Government Code.

6-19 SECTION 11. (a) Section 16, Chapter 1279 (S.B. 1902), Acts
6-20 of the 84th Legislature, Regular Session, 2015, which amended
6-21 Section 5, Article 42.12, Code of Criminal Procedure, is repealed.

6-22 (b) Section 32, Chapter 1279 (S.B. 1902), Acts of the 84th
6-23 Legislature, Regular Session, 2015, is repealed.

6-24 SECTION 12. To the extent of any conflict, this Act prevails
6-25 over another Act of the 85th Legislature, Regular Session, 2017,
6-26 relating to nonsubstantive additions to and corrections in enacted
6-27 codes.

6-28 SECTION 13. This Act takes effect September 1, 2017.

6-29 * * * * *