

By: Hughes

S.B. No. 1340

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. Sections 411.072(a) and (b), Government Code, are amended 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

(B) with respect to which an affirmative finding

1 under [~~Section 5(k),~~] Article 42A.105(f) [~~42.12~~], Code of Criminal
2 Procedure, was filed in the papers of the case; and

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

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

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

26 (2) as soon as practicable on or after the 180th day
27 after the date the court placed the person on deferred adjudication

1 community supervision, if the discharge and dismissal occurred
2 before that date.

3 SECTION 3. The heading to Section [411.073](#), Government Code,
4 is amended to read as follows:

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

8 SECTION 4. Sections [411.073](#)(a), (b), and (d), Government
9 Code, are amended to read as follows:

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

13 (1) following a conviction of:

14 (A) a misdemeanor other than a misdemeanor:

15 (i) under Section [106.041](#), Alcoholic
16 Beverage Code, Section [~~49.04~~] [49.05](#), [49.06](#), or [49.065](#), Penal
17 Code, or Chapter [71](#), Penal Code; or

18 (ii) punishable under Section [49.04](#)(d),
19 Penal Code; or

20 (B) a state jail felony under Section [481.115](#),
21 [481.1151](#), [481.116](#), [481.1161](#), or [481.121](#), Health and Safety Code;

22 and

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

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

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

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

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

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

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

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

24 (2) the second anniversary of the date of completion
25 of the community supervision, if the offense for which the person
26 was placed on community supervision was a misdemeanor under Chapter
27 20, 21, 22, 25, 42, 43, or 46, Penal Code; or

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

4 SECTION 5. Section 411.0735, Government Code, is amended to
5 read as follows:

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

9 (1) is convicted of:

10 (A) a misdemeanor other than a misdemeanor:

11 (i) under Section 106.041, Alcoholic
12 Beverage Code, Section [~~49.04,~~] 49.05, 49.06, or 49.065, Penal
13 Code, or Chapter 71, Penal Code; or

14 (ii) punishable under Section 49.04(d),
15 Penal Code; or

16 (B) a state jail felony under Section 481.115,
17 481.1151, 481.116, 481.1161, or 481.121, Health and Safety Code;
18 and

19 (2) [~~is sentenced to and serves a period of~~
20 ~~confinement, and~~

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

23 (b) Notwithstanding any other provision of this subchapter
24 or Subchapter F, a person described by Subsection (a) who completes
25 the person's sentence [~~period of confinement and is released~~] may
26 petition the court that imposed the sentence for an order of
27 nondisclosure of criminal history record information under this

1 section if the person:

2 (1) satisfies the requirements of this section and
3 Section 411.074; and

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

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

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

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

21 (2) the second anniversary of the date of completion
22 of the person's sentence, if the offense of which the person was
23 convicted was a misdemeanor other than a misdemeanor described by
24 Subdivision (1); or

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

1 SECTION 6. Section 411.074, Government Code, is amended to
2 read as follows:

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

20 (b) A person may not be granted an order of nondisclosure of
21 criminal history record information under this subchapter and is
22 not entitled to petition the court for an order of nondisclosure
23 under this subchapter if:

24 (1) the person requests the order of nondisclosure
25 ~~[was convicted or placed on deferred adjudication community~~
26 ~~supervision]~~ for, or the person has been previously convicted of or
27 placed on ~~[any other]~~ deferred adjudication community supervision

1 under Subchapter C, Chapter 42A, Code of Criminal Procedure, for:

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

4 (B) an offense under Section 20.04, Penal Code,
5 regardless of whether the offense is a reportable conviction or
6 adjudication for purposes of Chapter 62, Code of Criminal
7 Procedure;

8 (C) an offense under Section 19.02, 19.03,
9 20A.02, 20A.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal
10 Code; or

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

13 (2) the court makes an affirmative finding that the
14 offense for which the order of nondisclosure [~~of criminal history~~
15 ~~record information~~] is requested involved family violence, as
16 defined by Section 71.004, Family Code.

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

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

1 under Section [411.072](#), Government Code.

2 SECTION 8. Section 32, Chapter 1279 (S.B. 1902), Acts of the
3 84th Legislature, Regular Session, 2015, is repealed.

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

8 SECTION 10. This Act takes effect September 1, 2017.