86R10436 LHC-D

By:  Huffman S.B. No. 1801

A BILL TO BE ENTITLED

AN ACT

relating to orders of nondisclosure for certain victims of trafficking of persons or compelling prostitution.

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

SECTION 1.  Section 411.0728, Government Code, is amended to read as follows:

Sec. 411.0728.  PROCEDURE FOR CERTAIN VICTIMS OF TRAFFICKING OF PERSONS OR COMPELLING PROSTITUTION. (a) This section applies only to a person:

(1)  who is convicted of or placed on deferred adjudication community supervision [~~under Chapter 42A, Code of Criminal Procedure, after conviction~~] for an offense under:

(A)  Section 481.120, Health and Safety Code, if the offense is punishable under Subsection (b)(1);

(B)  Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(1);

(C)  Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(1) or (2); or

(D)  Section 43.02, Penal Code; [~~or~~

[~~(E)  Section 43.03(a)(2), Penal Code, if the offense is punishable as a Class A misdemeanor;~~] and

(2)  who, if requested by the applicable law enforcement agency or prosecuting attorney to provide assistance in the investigation or prosecution of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, or a federal offense containing elements that are substantially similar to the elements of an offense under any of those sections:

(A)  provided assistance in the investigation or prosecution of the offense; or

(B)  did not provide assistance in the investigation or prosecution of the offense due to the person's age or a physical or mental disability resulting from being a victim of an offense described by this subdivision [~~with respect to whom the conviction is subsequently set aside by the court under Article 42A.701, Code of Criminal Procedure~~].

(b)  Notwithstanding any other provision of this subchapter or Subchapter F, a person described by Subsection (a) who satisfies the requirements of Section 411.074(b) [~~411.074~~] may petition the court that convicted the person or placed the person on deferred adjudication community supervision for an order of nondisclosure of criminal history record information under this section on the grounds that the person committed the offense solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code [~~trafficking of persons~~].

(b-1)  A petition under Subsection (b) must:

(1)  be in writing;

(2)  allege specific facts that, if proved, would establish that the petitioner committed the offense described by Subsection (a)(1) solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code; and

(3)  assert that if the person has previously submitted a petition for [~~seeking~~] an order of nondisclosure under this section, the person has not committed an offense described by Subsection (a)(1) on or after the date on which the person's first petition [~~previously received an order of nondisclosure~~] under this section was submitted.

(b-2)  On the filing of the petition under Subsection (b), the clerk of the court shall promptly serve a copy of the petition and any supporting document on the appropriate office of the attorney representing the state. Any response to the petition by the attorney representing the state must be filed not later than the 20th business day after the date of service under this subsection.

(b-3)  A person convicted of or placed on deferred adjudication community supervision for more than one offense described by Subsection (a)(1) that the person committed solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, may request consolidation of the person's petitions for an order of nondisclosure of criminal history record information in a district court in the county where the person was most recently convicted or placed on deferred adjudication community supervision. On receipt of a request for consolidation, the court shall consolidate the petitions and exercise jurisdiction over the petitions, regardless of the county in which the offenses described by Subsection (a)(1) occurred.

(b-4)  A district court that consolidates petitions under Subsection (b-3) shall allow an attorney representing the state who receives a petition involving an offense that was committed outside the county in which the court is located to appear at any hearing regarding the consolidated petition by telephone or video conference call.

(c)  After notice to the state and [~~,~~] an opportunity for a hearing, [~~a determination by the court that the person has not previously received an order of nondisclosure under this section, and a determination by the court that the person committed the offense solely as a victim of trafficking of persons and that issuance of the order is in the best interest of justice,~~] the court having jurisdiction over the petition shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense if the court determines that:

(1)  the person committed the offense described by Subsection (a)(1) solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code;

(2)  if applicable, the person did not commit another offense described by Subsection (a)(1) on or after the date on which the person's first petition for an order of nondisclosure under this section was submitted; and

(3)  issuance of the order is in the best interest of justice [~~for which the defendant was placed on community supervision as described by Subsection (a)~~].

(c-1)  In determining whether a person committed an offense described by Subsection (a)(1) solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, the court may consider any order of nondisclosure previously granted to the person under this section.

(d)  A person may petition the applicable court [~~that placed the person on community supervision~~] for an order of nondisclosure of criminal history record information under this section only on or after the first anniversary of the date the person:

(1)  completed the sentence, including any term of confinement imposed and payment of all fines, costs, and restitution imposed; or

(2)  received a dismissal and discharge under Article 42A.111, Code of Criminal Procedure, if the person was placed on deferred adjudication community supervision [~~person's conviction is set aside as described by Subsection (a)~~].

SECTION 2.  Article 56.021, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e)  A victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, is entitled to be informed that the victim may petition for an order of nondisclosure of criminal history record information under Section 411.0728, Government Code, if the victim:

(1)  has been convicted of or placed on deferred adjudication community supervision for an offense described by Subsection (a)(1) of that section; and

(2)  committed that offense solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code.

SECTION 3.  Section 126.004, Government Code, is amended by adding Subsection (d) to read as follows:

(d)  A program established under this chapter shall provide each program participant with information related to the right to petition for an order of nondisclosure of criminal history record information under Section 411.0728.

SECTION 4.  This Act takes effect September 1, 2019.