

By: Thompson of Harris

H.B. No. 1216

Substitute the following for H.B. No. 1216:

By: Collier

C.S.H.B. No. 1216

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

1 20A.02, 20A.03, or 43.05, Penal Code, or a federal offense  
2 containing elements that are substantially similar to the elements  
3 of an offense under any of those sections:

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

6 (B) did not provide assistance in the  
7 investigation or prosecution of the offense due to the person's age  
8 or a physical or mental disability resulting from being a victim of  
9 an offense described by this subdivision [~~with respect to whom the~~  
10 ~~conviction is subsequently set aside by the court under Article~~  
11 ~~42A.701, Code of Criminal Procedure~~].

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

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

22 (1) be in writing;

23 (2) allege specific facts that, if proved, would  
24 establish that the petitioner committed the offense described by  
25 Subsection (a)(1) solely as a victim of an offense under Section  
26 20A.02, 20A.03, or 43.05, Penal Code; and

27 (3) assert that if the person has previously submitted

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

6 (b-2) On the filing of the petition under Subsection (b),  
7 the clerk of the court shall promptly serve a copy of the petition  
8 and any supporting document on the appropriate office of the  
9 attorney representing the state. Any response to the petition by  
10 the attorney representing the state must be filed not later than the  
11 20th business day after the date of service under this subsection.

12 (b-3) A person convicted of or placed on deferred  
13 adjudication community supervision for more than one offense  
14 described by Subsection (a)(1) that the person committed solely as  
15 a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal  
16 Code, may file a petition for an order of nondisclosure of criminal  
17 history record information under this section with respect to each  
18 offense, and may request consolidation of those petitions, in a  
19 district court in the county where the person was most recently  
20 convicted or placed on deferred adjudication community supervision  
21 as described by this subsection. On receipt of a request for  
22 consolidation, the court shall consolidate the petitions and  
23 exercise jurisdiction over the petitions, regardless of the county  
24 in which the offenses described by Subsection (a)(1) occurred. For  
25 each offense that is the subject of a consolidated petition and that  
26 occurred in a county other than the county in which the court  
27 consolidating the petitions is located, the clerk of the court, in

1 addition to the clerk's duties under Subsection (b-2), shall  
2 promptly serve a copy of the consolidated petition and any  
3 supporting document related to the applicable offense on the  
4 appropriate office of the attorney representing the state on behalf  
5 of the other county. Each attorney representing the state who  
6 receives a copy of a consolidated petition under this subsection  
7 may file a response to the petition in accordance with Subsection  
8 (b-2).

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

15 (c) After notice to the state and ~~[7]~~ an opportunity for a  
16 hearing, ~~[a determination by the court that the person has not~~  
17 ~~previously received an order of nondisclosure under this section,~~  
18 ~~and a determination by the court that the person committed the~~  
19 ~~offense solely as a victim of trafficking of persons and that~~  
20 ~~issuance of the order is in the best interest of justice,~~] the court  
21 having jurisdiction over the petition shall issue an order  
22 prohibiting criminal justice agencies from disclosing to the public  
23 criminal history record information related to the offense if the  
24 court determines that:

25 (1) the person committed the offense described by  
26 Subsection (a)(1) solely as a victim of an offense under Section  
27 20A.02, 20A.03, or 43.05, Penal Code;

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

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

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

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

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

20           (2) received a dismissal and discharge under Article  
21 42A.111, Code of Criminal Procedure, if the person was placed on  
22 deferred adjudication community supervision [~~person's conviction~~  
23 ~~is set aside as described by Subsection (a)].~~

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

26           (e) A victim of an offense under Section 20A.02, 20A.03, or  
27 43.05, Penal Code, is entitled to be informed that the victim may

1 petition for an order of nondisclosure of criminal history record  
2 information under Section 411.0728, Government Code, if the victim:

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

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

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

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

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