87R5727 JRR-F

By:  Allen H.B. No. 3547

A BILL TO BE ENTITLED

AN ACT

relating to the eligibility of certain criminal defendants for an order of nondisclosure of criminal history record information; authorizing a fee.

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

SECTION 1.  Article 42.01, Code of Criminal Procedure, is amended by adding Section 16 to read as follows:

Sec. 16.  In addition to the information described by Section 1, the judgment must reflect affirmative findings entered pursuant to Article 42A.059.

SECTION 2.  Subchapter B, Chapter 42A, Code of Criminal Procedure, is amended by adding Article 42A.059 to read as follows:

Art. 42A.059.  AFFIRMATIVE FINDING REGARDING AUTOMATIC ORDER OF NONDISCLOSURE.  If a judge places on community supervision a defendant charged with a misdemeanor other than a misdemeanor under Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.05, 49.06, or 49.065, Penal Code, the judge shall make an affirmative finding of fact and file a statement of that affirmative finding in the judgment in the case if the judge determines that it is not in the best interest of justice that the defendant receive an automatic order of nondisclosure under Section 411.07299, Government Code.

SECTION 3.  Article 42A.105(f), Code of Criminal Procedure, is amended to read as follows:

(f)  If a judge places on deferred adjudication community supervision a defendant charged with a misdemeanor other than a misdemeanor under Section 49.04 or 49.06 [~~Chapter 20, 21, 22, 25, 42, 43, 46, or 71~~], Penal Code, the judge shall make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that it is not in the best interest of justice that the defendant receive an automatic order of nondisclosure under Section 411.072, Government Code.

SECTION 4.  Section 411.0716, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a)  Except as otherwise provided by this section [~~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.

(c)  Section 411.07299 applies only to a person described by Subsection (a) of that section who was placed on community supervision under Chapter 42A, Code of Criminal Procedure, on or after September 1, 2021.

SECTION 5.  The heading to Section 411.072, Government Code, is amended to read as follows:

Sec. 411.072.  AUTOMATIC ORDER OF NONDISCLOSURE FOLLOWING COMPLETION OF [~~PROCEDURE FOR~~] DEFERRED ADJUDICATION COMMUNITY SUPERVISION; CERTAIN [~~NONVIOLENT~~] MISDEMEANORS.

SECTION 6.  Section 411.072(a), Government Code, is 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, Chapter 42A, Code of Criminal Procedure, for a misdemeanor other than a misdemeanor:

(A)  under[~~:~~

[~~(i)~~]  Section 49.04 or 49.06, Penal Code; or

[~~(ii)  Chapter 20, 21, 22, 25, 42, 43, 46, or 71, Penal Code; or~~]

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

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

SECTION 7.  Subchapter E-1, Chapter 411, Government Code, is amended by adding Section 411.07299 to read as follows:

Sec. 411.07299.  AUTOMATIC ORDER OF NONDISCLOSURE FOLLOWING COMPLETION OF COMMUNITY SUPERVISION; CERTAIN MISDEMEANORS. (a) This section applies only to a person who:

(1)  was placed on community supervision under Chapter 42A, Code of Criminal Procedure:

(A)  following a conviction of a misdemeanor other than a misdemeanor:

(i)  under Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.05, 49.06, or 49.065, Penal Code; or

(ii)  with respect to which an affirmative finding under Article 42A.059, Code of Criminal Procedure, was filed in the judgment in the case; and

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

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

(ii)  another provision that authorizes placing a person on community supervision after the person has served part of a term of confinement imposed for the offense; and

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

(b)  Notwithstanding any other provision of this subchapter or Subchapter F, if a person described by Subsection (a) completes the period of community supervision, including any term of confinement imposed and payment of all fines, costs, and restitution imposed, and satisfies the requirements of Section 411.074 and if the person's community supervision is not revoked, the court that placed the person on community supervision shall issue an order of nondisclosure of criminal history record information under this subchapter prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the community supervision.  The court shall determine whether the person satisfies the requirements of Section 411.074, and if the court makes a finding that the requirements of that section are satisfied, the court shall issue the order of nondisclosure of criminal history record information:

(1)  on the successful completion of the community supervision, if the person completes the period of community supervision on or after the 180th day after the date the court placed the person on community supervision; or

(2)  as soon as practicable on or after the 180th day after the date the court placed the person on community supervision, if the person completed the period of community supervision before that date.

(c)  The person shall present to the court any evidence necessary to establish that the person is eligible to receive an order of nondisclosure of criminal history record information under this section.  The person must pay a $28 fee to the clerk of the court before the court issues the order.

(d)  A person who is not eligible to receive an order of nondisclosure of criminal history record information under this section solely because an affirmative finding under Article 42A.059, Code of Criminal Procedure, was filed in the judgment in the case may file a petition for an order of nondisclosure of criminal history record information under Section 411.073 if the person otherwise satisfies the requirements of that section.

SECTION 8.  Section 411.073, Government Code, is amended to read as follows:

Sec. 411.073.  PROCEDURE FOR COMMUNITY SUPERVISION FOLLOWING CONVICTION; CERTAIN MISDEMEANORS AND FELONIES. (a)  This section applies only to a person placed on community supervision under Chapter 42A, Code of Criminal Procedure:

(1)  following a conviction of an offense [~~a misdemeanor~~] other than an offense [~~a misdemeanor~~] under Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045, 49.05, 49.06, [~~or~~] 49.065, 49.07, or 49.08, Penal Code[~~, or Chapter 71, Penal Code~~]; and

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

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

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

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

[~~(1)~~]  satisfies the requirements of this section and Section 411.074[~~; and~~

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

(c)  Except as provided by Subsection (c-1) and subject to Subsection (c-2), after [~~After~~] notice to the state, an opportunity for a hearing, and a determination that the person is entitled to file the petition and issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the community supervision.

(c-1)  A court may not issue an order of nondisclosure of criminal history record information under this section without the consent of the attorney representing the state if the offense for which the order is sought is a felony of the third degree or any higher category of offense.

(c-2)  A person is not eligible to receive an order of nondisclosure of criminal history record information under this section with respect to a misdemeanor if the person has previously received six orders of nondisclosure for a misdemeanor under this section or Section 411.0735. A person is not eligible to receive an order of nondisclosure of criminal history record information under this section with respect to a felony if the person has previously received two orders of nondisclosure for a felony under this section or Section 411.0735.

(d)  A person may petition the 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:

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

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

(3)  the sixth anniversary of the date of completion of the community supervision, if the offense for which the person was placed on community supervision was a state jail felony;

(4)  the eighth anniversary of the date of completion of the community supervision, if the offense for which the person was placed on community supervision was a felony of the third degree;

(5)  the ninth anniversary of the date of completion of the community supervision, if the offense for which the person was placed on community supervision was a felony of the second degree; or

(6)  the 10th anniversary of the date of completion of the community supervision, if the offense for which the person was placed on community supervision was a felony of the first degree.

SECTION 9.  Section 411.0735, Government Code, is amended to read as follows:

Sec. 411.0735.  PROCEDURE FOR CONVICTION; CERTAIN MISDEMEANORS AND FELONIES. (a) This section applies only to a person who:

(1)  is convicted of an offense [~~a misdemeanor~~] other than an offense [~~a misdemeanor~~] under Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045, 49.05, 49.06, [~~or~~] 49.065, 49.07, or 49.08, Penal Code[~~, or Chapter 71, Penal Code~~]; and

(2)  is not eligible for an order of nondisclosure of criminal history record information under Section 411.073.

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

[~~(1)~~]  satisfies the requirements of this section and Section 411.074[~~; and~~

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

(c)  Except as provided by Subsection (c-1) and subject to Subsection (c-2), after notice to the state, an opportunity for a hearing, and a determination that the person is entitled to file the petition and issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense for which the person was convicted.

(c-1)  A court may not issue an order of nondisclosure of criminal history record information under this section without the consent of the attorney representing the state if the [~~court determines that the~~] offense for which the order is sought is a felony of the third degree or any higher category of offense[~~, other than an offense under Section 22.01, Penal Code, was violent or sexual in nature~~].

(c-2)  A person is not eligible to receive an order of nondisclosure of criminal history record information under this section with respect to a misdemeanor if the person has previously received six orders of nondisclosure for a misdemeanor under this section or Section 411.073. A person is not eligible to receive an order of nondisclosure of criminal history record information under this section with respect to a felony if the person has previously received two orders of nondisclosure for a felony under this section or Section 411.073.

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

(1)  the date of completion of the person's sentence, if the offense of which the person was convicted was a misdemeanor punishable by fine only; [~~or~~]

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

(3)  the eighth anniversary of the date of completion of the person's sentence, if the offense of which the person was convicted was a state jail felony;

(4)  the 10th anniversary of the date of completion of the person's sentence, if the offense of which the person was convicted was a felony of the third degree;

(5)  the 11th anniversary of the date of completion of the person's sentence, if the offense of which the person was convicted was a felony of the second degree; or

(6)  the 12th anniversary of the date of completion of the person's sentence, if the offense of which the person was convicted was a felony of the first degree.

SECTION 10.  Section 411.074(b), Government Code, is amended to read as follows:

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

[~~(1)~~]  the person requests the order of nondisclosure for, or the person has been previously convicted of or placed on deferred adjudication community supervision for:

(1) [~~(A)~~]  an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;

(2) [~~(B)~~]  an offense under Section 20.04, Penal Code, regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure; or

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

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

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

SECTION 11.  Notwithstanding Section 411.0716(b), Government Code, the change in law made by this Act to Section 411.072, Government Code, applies only to a person described by Subsection (a) of that section who was placed on deferred adjudication community supervision under Subchapter C, Chapter 42A, Code of Criminal Procedure, on or after the effective date of this Act. A person who was placed on deferred adjudication community supervision before the effective date of this Act is governed by the law in effect on the date the person was placed on deferred adjudication community supervision, and the former law is continued in effect for that purpose.

SECTION 12.  This Act takes effect September 1, 2021.