

By: Allen

H.B. No. 3547

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the eligibility of certain criminal defendants for an
3 order of nondisclosure of criminal history record information;
4 authorizing a fee.

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

6 SECTION 1. Article [42.01](#), Code of Criminal Procedure, is
7 amended by adding Section 16 to read as follows:

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

11 SECTION 2. Subchapter [B](#), Chapter [42A](#), Code of Criminal
12 Procedure, is amended by adding Article 42A.059 to read as follows:

13 Art. 42A.059. AFFIRMATIVE FINDING REGARDING AUTOMATIC
14 ORDER OF NONDISCLOSURE. If a judge places on community supervision
15 a defendant charged with a misdemeanor other than a misdemeanor
16 under Section [106.041](#), Alcoholic Beverage Code, or Section [49.04](#),
17 [49.05](#), [49.06](#), or [49.065](#), Penal Code, the judge shall make an
18 affirmative finding of fact and file a statement of that
19 affirmative finding in the judgment in the case if the judge
20 determines that it is not in the best interest of justice that the
21 defendant receive an automatic order of nondisclosure under Section
22 [411.07299](#), Government Code.

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

1 (f) If a judge places on deferred adjudication community
2 supervision a defendant charged with a misdemeanor other than a
3 misdemeanor under Section 49.04 or 49.06 [~~Chapter 20, 21, 22, 25,~~
4 ~~42, 43, 46, or 71~~], Penal Code, the judge shall make an affirmative
5 finding of fact and file a statement of that affirmative finding
6 with the papers in the case if the judge determines that it is not in
7 the best interest of justice that the defendant receive an
8 automatic order of nondisclosure under Section 411.072, Government
9 Code.

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

13 (a) Except as otherwise provided by this section
14 [~~Subsection (b)~~], this subchapter applies to the issuance of an
15 order of nondisclosure of criminal history record information for
16 an offense committed before, on, or after September 1, 2017.

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

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

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

26 SECTION 6. Section 411.072(a), Government Code, is amended
27 to read as follows:

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

2 (1) was placed on deferred adjudication community
3 supervision under Subchapter C, Chapter 42A, Code of Criminal
4 Procedure, for a misdemeanor other than a misdemeanor:

5 (A) under ~~+~~

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

7 or

8 ~~(ii) Chapter 20, 21, 22, 25, 42, 43, 46, or~~

9 ~~71, Penal Code; or]~~

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

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

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

19 Sec. 411.07299. AUTOMATIC ORDER OF NONDISCLOSURE FOLLOWING
20 COMPLETION OF COMMUNITY SUPERVISION; CERTAIN MISDEMEANORS. (a)

21 This section applies only to a person who:

22 (1) was placed on community supervision under Chapter
23 42A, Code of Criminal Procedure:

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

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

1 Code; or

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

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

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

10 (ii) another provision that authorizes
11 placing a person on community supervision after the person has
12 served part of a term of confinement imposed for the offense; 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 offense that is punishable by fine only.

16 (b) Notwithstanding any other provision of this subchapter
17 or Subchapter F, if a person described by Subsection (a) completes
18 the period of community supervision, including any term of
19 confinement imposed and payment of all fines, costs, and
20 restitution imposed, and satisfies the requirements of Section
21 411.074 and if the person's community supervision is not revoked,
22 the court that placed the person on community supervision shall
23 issue an order of nondisclosure of criminal history record
24 information under this subchapter prohibiting criminal justice
25 agencies from disclosing to the public criminal history record
26 information related to the offense giving rise to the community
27 supervision. The court shall determine whether the person

1 satisfies the requirements of Section 411.074, and if the court
2 makes a finding that the requirements of that section are
3 satisfied, the court shall issue the order of nondisclosure of
4 criminal history record information:

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

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

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

18 (d) A person who is not eligible to receive an order of
19 nondisclosure of criminal history record information under this
20 section solely because an affirmative finding under Article
21 42A.059, Code of Criminal Procedure, was filed in the judgment in
22 the case may file a petition for an order of nondisclosure of
23 criminal history record information under Section 411.073 if the
24 person otherwise satisfies the requirements of that section.

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

27 Sec. 411.073. PROCEDURE FOR COMMUNITY SUPERVISION

1 FOLLOWING CONVICTION; CERTAIN MISDEMEANORS AND FELONIES.

2 (a) This section applies only to a person placed on community
3 supervision under Chapter 42A, Code of Criminal Procedure:

4 (1) following a conviction of an offense [~~a~~
5 ~~misdemeanor~~] other than an offense [~~a misdemeanor~~] under Section
6 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045, 49.05,
7 49.06, [~~or~~] 49.065, 49.07, or 49.08, Penal Code [~~, or Chapter 71,~~
8 ~~Penal Code~~]; and

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

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

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

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

24 [~~(1)~~] satisfies the requirements of this section and
25 Section 411.074 [~~, and~~

26 [~~(2) has never been previously convicted of or placed~~
27 ~~on deferred adjudication community supervision for another offense~~

1 ~~other than a traffic offense that is punishable by fine only].~~

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

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

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

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

27 (1) the completion of the community supervision, if

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

4 (2) the second anniversary of the date of completion
5 of the community supervision, if the offense for which the person
6 was placed on community supervision was a misdemeanor under Chapter
7 20, 21, 22, 25, 42, 43, or 46, Penal Code;

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

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

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

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

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

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

27 (1) is convicted of an offense [~~a misdemeanor~~] other

1 than an offense [~~a misdemeanor~~] under Section 106.041, Alcoholic
2 Beverage Code, or Section 49.04, 49.045, 49.05, 49.06, [~~or~~] 49.065,
3 49.07, or 49.08, Penal Code [~~, or Chapter 71, Penal Code~~]; and

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

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

13 [~~(1)~~] satisfies the requirements of this section and
14 Section 411.074 [~~, and~~

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

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

26 (c-1) A court may not issue an order of nondisclosure of
27 criminal history record information under this section without the

1 consent of the attorney representing the state if the [~~court~~
2 ~~determines that the~~] offense for which the order is sought is a
3 felony of the third degree or any higher category of offense [~~, other~~
4 ~~than an offense under Section 22.01, Penal Code, was violent or~~
5 ~~sexual in nature~~].

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

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; [~~or~~]

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);

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

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

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

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

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

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

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

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

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

25 (3) [(C)] an offense under Section 19.02, 19.03,
26 20A.02, 20A.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal
27 Code~~[, or~~

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

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

6 SECTION 11. Notwithstanding Section 411.0716(b),
7 Government Code, the change in law made by this Act to Section
8 411.072, Government Code, applies only to a person described by
9 Subsection (a) of that section who was placed on deferred
10 adjudication community supervision under Subchapter C, Chapter
11 42A, Code of Criminal Procedure, on or after the effective date of
12 this Act. A person who was placed on deferred adjudication
13 community supervision before the effective date of this Act is
14 governed by the law in effect on the date the person was placed on
15 deferred adjudication community supervision, and the former law is
16 continued in effect for that purpose.

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