

## **BILL ANALYSIS**

Senate Research Center

H.B. 1737  
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State Affairs  
5/17/2023  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 1737 amends current law relating to automatic orders of nondisclosure of criminal history record information for certain misdemeanor defendants following successful completion of a period of deferred adjudication community supervision.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Article 42A.106, Code of Criminal Procedure, to read as follows:

Art. 42A.106. RECORD NOT CONFIDENTIAL; RIGHT TO PETITION FOR ORDER OF NONDISCLOSURE; PROPOSED ORDER OF NONDISCLOSURE IN CERTAIN CASES.

SECTION 2. Amends Article 42A.106, Code of Criminal Procedure, by adding Subsection (c), as follows:

(c) Requires the defendant's supervision officer, on completion of the period of deferred adjudication community supervision, if the defendant is entitled to receive an order of nondisclosure of criminal history record information under Section 411.072, Government Code, to prepare and present to the court that placed the defendant on deferred adjudication community supervision, or, if jurisdiction was transferred under Article 42A.151 (Transfer of Jurisdiction), the court that accepted jurisdiction of the case, a proposed order of nondisclosure related to the offense giving rise to the deferred adjudication community supervision.

SECTION 3. Amends Section 411.0716(b), Government Code, as follows:

(b) Provides that 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 (Dismissal and Discharge), Code of Criminal Procedure, on or after January 1, 1993, rather than on or after September 1, 2017.

SECTION 4. Amends Section 411.072, Government Code, as follows:

Sec. 411.072. New heading: AUTOMATIC ORDER OF NONDISCLOSURE FOLLOWING COMPLETION OF DEFERRED ADJUDICATION COMMUNITY SUPERVISION; CERTAIN NONVIOLENT MISDEMEANORS. (a) Entitles a person to an order of nondisclosure of criminal history record information under this section if, rather than provides that this section applies only to a person who:

(1) makes nonsubstantive changes to this subdivision;

(2) the person received a dismissal and discharge under Article 42A.111, Code of Criminal Procedure, for the offense described by Subdivision (1);

(3) at least 180 days have elapsed from the date the person was placed on deferred adjudication community supervision for the offense described by Subdivision (1);

(4) the person satisfies the requirements of Section 411.074 (Required Conditions for Receiving an Order of Nondisclosure);

(5) makes nonsubstantive changes to this subdivision; and

(6) the person has not received an order of nondisclosure of criminal history record information under this section.

(b) Requires the Department of Public Safety of the State of Texas (DPS), not later than the 15th day of each month, to:

(1) electronically review the records in DPS's computerized criminal history system and, based on the relevant information present in the system, identify each person who meets the criteria provided by Subsection (a); and

(2) provide notice and a list to the clerk of the applicable court that placed each person identified under Subdivision (1) on deferred adjudication community supervision indicating that each person is authorized to be entitled to an order of nondisclosure of criminal history record information under this section.

(c) Provides that a person, for purposes of electronically identifying persons under Subsection (b)(1), if the computerized criminal history system records do not indicate whether the person received a dismissal and discharge, is considered to satisfy the requirements of Subsection (a)(2) if:

(1) the applicable records do not contain an order revoking the person's deferred adjudication community supervision; and

(2) the date on which the period of deferred adjudication community supervision imposed in the person's case expires has elapsed.

(d) Requires a court, notwithstanding any other provision of Subchapter E-1 (Order of Nondisclosure of Criminal History Record Information) or Subchapter F (Criminal History Record Information), if the court that placed a person on deferred adjudication community supervision receives notice from DPS under Subsection (b) applicable to the person, or if a court receives a proposed order under Article 42A.106(c), Code of Criminal Procedure, applicable to the person to 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 deferred adjudication community supervision.

Deletes existing text requiring the court that placed the person on deferred adjudication community supervision, notwithstanding any other provision of this subchapter or Subchapter F, if a person described by Subsection (a) receives a discharge and dismissal under Article 42A.111, Code of Criminal Procedure, and satisfies the requirements of Section 411.074, to 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 deferred adjudication community supervision. Deletes existing text requiring the court to 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, to issue the order of nondisclosure of criminal history record information within a certain time.

(d-1) Provides that this subsection applies only to the issuance of an order of nondisclosure of criminal history record information under this section pursuant to notice received by the court under Subsection (b) for an offense for which the person received a discharge and dismissal under Article 42A.111, Code of Criminal Procedure, before July 1, 2024. Requires the court, notwithstanding Subsection (d), to issue an order of nondisclosure of criminal history record information under that subsection not later than the later of the 180th day after the date on which the court first received the notice under Subsection (b) or:

(1) July 1, 2025, if the person received a discharge and dismissal under Article 42A.111, Code of Criminal Procedure, for the offense on or after September 1, 2017;

(2) December 31, 2025, if the person received a discharge and dismissal under Article 42A.111, Code of Criminal Procedure, for the offense on or after January 1, 2010, but before September 1, 2017;

(3) December 31, 2026, if the person received a discharge and dismissal under Article 42A.111, Code of Criminal Procedure, for the offense on or after January 1, 2000, but before January 1, 2010; or

(4) December 31, 2027, if the person received a discharge and dismissal under Article 42A.111, Code of Criminal Procedure, for the offense before January 1, 2000.

(d-2) Provides that a person to whose records Subsection (c) applies, for purposes of Subsection (d-1) and Section 411.0716(b), is considered to have received a discharge and dismissal under Article 42A.111, Code of Criminal Procedure, on the date described by Subsection (c)(2).

(e) Authorizes a person who is entitled to an order of nondisclosure of criminal history record information under this section but who is not identified by DPS under Subsection (b) to present, rather than requires the person to present, to the court that placed the person on deferred adjudication community supervision any evidence necessary to establish that the person is entitled, rather than eligible, to receive an order of nondisclosure of criminal history record information under this section. Requires the court to prescribe the manner in which the person is authorized to present the evidence to the court under this subsection. Requires the court to determine whether the person satisfies the requirements of this section, and, if the court makes a finding that the requirements of this section are satisfied, to issue an order of nondisclosure of criminal history record information under Subsection (d) as soon as practicable after making the finding.

(f) Prohibits a person who is entitled to an order of nondisclosure of criminal history record information under this section, notwithstanding any other law, from being required to pay any fee relating to the issuance of the order. Deletes existing text requiring the person to pay a \$28 fee to the clerk of the court before the court issues the order.

(g) Redesignates existing Subsection (d) as Subsection (g). Makes a conforming change.

SECTION 5. Amends Section 411.0725(a), Government Code, to make a conforming change.

SECTION 6. (a) Makes application of Article 42A.106(c), Code of Criminal Procedure, as added by this Act, prospective.

(b) Provides that DPS, notwithstanding Section 411.072(b), Government Code, as amended by this Act, is not required to comply with the requirements of that subsection until July 1, 2024.

SECTION 7. Effective date: January 1, 2024.