

BILL ANALYSIS

H.B. 4362
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Corrections
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Texans who have some type of criminal record often face a net of legal prohibitions and diminished opportunity that have little to do with public safety. Barriers that make it difficult to find gainful employment, secure stable housing, or support a family make it harder to escape the cycle of crime and can be a lifetime burden. Moreover, under state law, eligibility to have one's record sealed is limited. Record sealing or "order of nondisclosure" prevents a record from being viewed by private employers and landlords, while still allowing courts, law enforcement, and other specified government agencies to retain access to it. With limited exceptions, only individuals who have successfully completed deferred adjudication or who were convicted of a first-time misdemeanor are eligible for record sealing. These restrictions limit opportunities for persons from reentering society, which can often result in persons reentering the prison criminal justice system. H.B. 4362 would expand access to orders of nondisclosure for people with nonviolent criminal convictions and reduce the amount of time a person must wait prior to petitioning the court to seal certain records. Specifically, H.B. 4362 extends eligibility to persons with nonviolent state jail felony convictions and allows for persons with more than one nonviolent misdemeanor or state jail felony conviction to petition for nondisclosure relief after a specified number of years have passed since completion of their last sentence, subject to a court's approval.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 4362 amends the Government Code to change the earliest date on which a person may petition the court that placed the person on deferred adjudication community supervision for an order of nondisclosure of criminal history record information as follows:

- from the fifth anniversary of the discharge and dismissal to the first anniversary of the discharge and dismissal for a state jail felony offense other than a state jail felony for the following:
 - kidnapping, unlawful restraint, and smuggling of persons offenses;
 - sexual offenses;
 - assaultive offenses;
 - offenses against the family;
 - disorderly conduct and related offenses;
 - public indecency offenses;

- weapons offenses;
- intoxication and alcoholic beverage offenses; and
- organized crime offenses; and
- from the fifth anniversary of the discharge and dismissal to the third anniversary of the discharge and dismissal for any other felony offense.

H.B. 4362 authorizes a person placed on community supervision for a state jail felony offense and who otherwise meets the requisite conditions of eligibility to petition the court for an order of nondisclosure of criminal history record information on or after the first anniversary of the date of completion of the community supervision, provided the offense is not a state jail felony for the following:

- kidnapping, unlawful restraint, and smuggling of persons offenses;
- sexual offenses;
- assaultive offenses;
- offenses against the family;
- disorderly conduct and related offenses;
- public indecency offenses;
- weapons offenses;
- intoxication and alcoholic beverage offenses; or
- organized crime offenses.

The bill authorizes a court that issues an order of nondisclosure of criminal history record information to include in the order any offense arising out of the same transaction as the offense for which the order is sought if the other offense satisfies the requirements for issuance of an order of nondisclosure of criminal history record information or has not resulted in a final conviction and is no longer pending.

H.B. 4362 changes the earliest date on which a person who is convicted of a misdemeanor offense and meets the requisite conditions of eligibility may petition the court for an order of nondisclosure of criminal history record information from the second anniversary of the date of the completion of the sentence to the first anniversary of the date of the completion of the sentence, provided the offense is not a misdemeanor for the following:

- kidnapping, unlawful restraint, and smuggling of persons offenses;
- sexual offenses;
- assaultive offenses;
- offenses against the family;
- disorderly conduct and related offenses;
- public indecency offenses;
- weapons offenses; or
- intoxication and alcoholic beverage offenses.

The bill authorizes a person who is convicted of a state jail felony offense and otherwise meets the requisite conditions of eligibility to petition the court for an order of nondisclosure of criminal history record information on or after the second anniversary of the date of completion of the person's sentence, provided the offense is not a state jail felony for the following:

- kidnapping, unlawful restraint, and smuggling of persons offenses;
- sexual offenses;
- assaultive offenses;
- offenses against the family;
- disorderly conduct and related offenses;
- public indecency offenses;
- weapons offenses;
- intoxication and alcoholic beverage offenses; or
- organized crime offenses.

H.B. 4362 authorizes a court that issues an order of nondisclosure of criminal history record information to include in the order any offense arising out of the same transaction as the offense for which the order is sought if the other offense satisfies the requirements for issuance of an order of nondisclosure of criminal history record information or has not resulted in a final conviction and is no longer pending.

H.B. 4362 authorizes a person who has more than one conviction for an applicable misdemeanor or state jail felony offense, has completed each sentence imposed, including any term of confinement or period of community supervision imposed and payment of all fines, costs, and restitution imposed, and is not eligible for an order of nondisclosure of criminal history record information to petition any court that imposed at least one of the sentences for such an order if the person satisfies the required conditions for receiving an order of nondisclosure and the bill's requirements. The bill specifies that such an applicable offense is:

- any misdemeanor offense other than for driving or operating watercraft under the influence of alcohol by minor, driving while intoxicated, flying while intoxicated, boating while intoxicated, assembling or operating an amusement ride while intoxicated, or organized crime; or
- any state jail felony offense other than for kidnapping, unlawful restraint, and smuggling of persons offenses, sexual or assaultive offenses, offenses against the family, disorderly conduct and related offenses, public indecency offenses, weapons offenses, intoxication and alcoholic beverage offenses, and organized crime offenses.

However, the bill limits the authority of a court to issue an order of nondisclosure of criminal history record information for a misdemeanor offense for kidnapping, unlawful restraint, and smuggling of persons offenses, sexual or assaultive offenses, offenses against the family, disorderly conduct and related offenses, public indecency offenses, or weapons offenses to a person who was placed on community supervision for the offense and completed the period of community supervision imposed for the offense.

H.B. 4362 requires a court to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offenses for which the person was convicted 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.

H.B. 4362 establishes that a person may petition a court for an order of nondisclosure of criminal history record information under the bill's provisions only on or after the following dates, as applicable:

- the third anniversary of the date of the completion of all sentences imposed if the most serious offense for which the order is sought is a misdemeanor;
- the fourth anniversary of the date of the completion of all sentences imposed if:
 - the most serious offense for which the order is sought is a state jail felony; and
 - the person's last sentence included a period of community supervision that the person completed; or
- if neither date applies, the fifth anniversary of the date of the completion of all sentences imposed.

EFFECTIVE DATE

September 1, 2023.