88R3274 JRR-D

By:  Collier H.B. No. 401

A BILL TO BE ENTITLED

AN ACT

relating to automatic orders of nondisclosure of criminal history record information for certain misdemeanor defendants who successfully complete a period of community supervision following conviction; 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 17 to read as follows:

Sec. 17.  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, Section 49.04, 49.05, 49.06, or 49.065, Penal Code, or 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 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.  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 the issuance of an order of nondisclosure of criminal history record information for an offense committed on or after September 1, 2023.

SECTION 4.  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 5.  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 CONVICTION AND COMPLETION OF COMMUNITY SUPERVISION; CERTAIN NONVIOLENT 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, Section 49.04, 49.05, 49.06, or 49.065, Penal Code, or Chapter 20, 21, 22, 25, 42, 43, 46, or 71, 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 6.  Section 411.073(a), Government Code, is amended to read as follows:

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

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

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

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

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

(ii) [~~(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; and

(2)  is not eligible to receive an order of nondisclosure of criminal history record information under Section 411.07299.

SECTION 7.  Section 411.0735(a), Government Code, is amended to read as follows:

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

(1)  is convicted of a misdemeanor other than a misdemeanor under Section 106.041, Alcoholic Beverage Code, Section 49.04, 49.05, 49.06, or 49.065, Penal Code, or Chapter 71, Penal Code; and

(2)  is not eligible for an order of nondisclosure of criminal history record information under Section 411.07299 or 411.073.

SECTION 8.  This Act takes effect September 1, 2023.