By:  Leach, et al. H.B. No. 1737

A BILL TO BE ENTITLED

AN ACT

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.

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

SECTION 1.  The heading to Article 42A.106, Code of Criminal Procedure, is amended 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.  Article 42A.106, Code of Criminal Procedure, is amended by adding Subsection (c) to read as follows:

(c)  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, the defendant's supervision officer shall prepare and present to the court that placed the defendant on deferred adjudication community supervision, or, if jurisdiction was transferred under Article 42A.151, 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.  Section 411.0716(b), Government Code, is amended to read as follows:

(b)  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, Code of Criminal Procedure, on or after January [~~September~~] 1, 1993 [~~2017~~].

SECTION 4.  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. (a) A person is entitled to an order of nondisclosure of criminal history record information under this [~~This~~] section if [~~applies only to a person who~~]:

(1)  the person 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)  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;

(5)  the person 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; and

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

(b)  Not later than the 15th day of each month, the department shall:

(1)  electronically review the records in the department'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 may be entitled to an order of nondisclosure of criminal history record information under this section.

(c)  For purposes of electronically identifying persons under Subsection (b)(1), if the computerized criminal history system records do not indicate whether a person received a dismissal and discharge, the person 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)  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, the~~] court that placed a [~~the~~] person on deferred adjudication community supervision receives notice from the department 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, the court shall, as soon as practicable after the receipt of the notice or proposed order, 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. [~~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)  at the time the court discharges and dismisses the proceedings against the person, if the discharge and dismissal occurs on or after the 180th day after the date the court placed the person on deferred adjudication community supervision; or~~

[~~(2)  as soon as practicable on or after the 180th day after the date the court placed the person on deferred adjudication community supervision, if the discharge and dismissal occurred before that date.~~]

(d-1)  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. Notwithstanding Subsection (d), a court shall 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)  For purposes of Subsection (d-1) and Section 411.0716(b), a person to whose records Subsection (c) applies 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)  A [~~(c)  The~~] person who is entitled to an order of nondisclosure of criminal history record information under this section but who is not identified by the department under Subsection (b) may [~~shall~~] present to the court that placed the person on deferred adjudication community supervision any evidence necessary to establish that the person is entitled [~~eligible~~] to receive an order of nondisclosure of criminal history record information under this section. The court shall prescribe the manner in which the person may present the evidence to the court under this subsection. The court shall 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, the court shall issue an order of nondisclosure of criminal history record information under Subsection (d) as soon as practicable after making the finding.

(f)  Notwithstanding any other law, a [~~The~~] person who is entitled to an order of nondisclosure of criminal history record information under this section may not be required to [~~must~~] pay any [~~a $28~~] fee relating to the issuance of [~~to the clerk of the court before the court issues~~] the order.

(g) [~~(d)~~]  A person who is not entitled [~~eligible~~] to receive an order of nondisclosure of criminal history record information under this section solely because 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 may file a petition for an order of nondisclosure of criminal history record information under Section 411.0725 if the person otherwise satisfies the requirements of that section.

SECTION 5.  Section 411.0725(a), Government Code, is amended to read as follows:

(a)  This section applies only to a person placed on deferred adjudication community supervision under Subchapter C, Chapter 42A, Code of Criminal Procedure, who:

(1)  is not entitled [~~eligible~~] to receive an order of nondisclosure of criminal history record information under Section 411.072; and

(2)  was placed on deferred adjudication community supervision for an offense other than an offense under Section 49.04 or 49.06, Penal Code.

SECTION 6.  (a) Article 42A.106(c), Code of Criminal Procedure, as added by this Act, applies to a person who completes the period of deferred adjudication community supervision on or after the effective date of this Act, regardless of whether the person was placed on deferred adjudication community supervision before, on, or after the effective date of this Act.

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

SECTION 7.  This Act takes effect January 1, 2024.