

SUBJECT: Requesting criminal record order of nondisclosure if conviction set aside

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Herrero, Canales, Leach, Shaheen, Simpson

0 nays

2 absent — Moody, Hunter

SENATE VOTE: On final passage, April 15 — 31-0

WITNESSES: For — Sarah Pahl, Texas Criminal Justice Coalition; Greg Glod, Texas Public Policy Foundation; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Justin Keener, representing Doug Deason; Traci Berry, Goodwill Central Texas; Mike Wolfe, Office of Harris County District Clerk Chris Daniel; Lori Henning, Texas Association of Goodwills; Josh Gravens, Texas Citizens United for Rehabilitation of Errants (CURE); Patricia Cummings, Texas Criminal Defense Lawyers Association)

Against — None

BACKGROUND: Deferred adjudication is a form of probation under which a judge postpones the determination of guilt while the defendant serves probation. It can result in the defendant being discharged and dismissed upon successful completion of that probation.

Under Government Code, sec. 411.081(d), persons receiving a discharge and dismissal from deferred adjudication who also meet certain conditions may ask the court for an order of nondisclosure of their criminal records. Under sec. 411.081(e), these conditions include not being convicted of or placed on deferred adjudication for any offense other than a fine-only traffic offense while on deferred adjudication or during the waiting period for asking for non-disclosure. Individuals are not entitled to ask for nondisclosure if they were placed on deferred adjudication for or have previous convictions or deferred adjudications for certain sex, violent, or

family violence offenses listed in sec. 411.081(e).

Under Government Code, sec. 411.081(g-3), courts cannot disclose to the public information in records that are subject to orders of nondisclosure. Courts can disclose the information only to criminal justice agencies, for criminal justice or regulatory licensing purposes, to entities listed in Government Code, sec.411.081(i), or to the person who is the subject of the order. Sec. 411.081(i) allows criminal justice agencies to disclose criminal history record information that is subject to a nondisclosure order only to the non-criminal justice agencies specified in the section.

Under Code of Criminal Procedure, art. 42.12, sec. 20(a), certain persons placed on community supervision who complete at least one-third of their probation terms, or two years, whichever is less, can have their probation term reduced or terminated. If the probationer is discharged, the judge can set aside the verdict or allow the probationer to withdraw a plea and must dismiss the case. The person is then released from the penalties from the offense except that the conviction or guilty plea will be made known to a judge if the person is convicted of another offense or the Health and Human Services Commission may consider that the person has received community supervision in the course of issuing, renewing, denying, or revoking certain licenses.

DIGEST: SB 130 would expand the category of people that could ask a court for an order of nondisclosure to include those placed on community supervision who had their probation terms reduced or terminated by a judge after serving at least one-third of their terms or two years, whichever was less, and had their convictions set aside.

This would not apply to those convicted of certain offenses listed in Code of Criminal Procedure, art. 42.12, sec. 5(d) for which deferred adjudication is unavailable. It also would not apply to those who would be barred from asking for an order of nondisclosure because they had been placed on deferred adjudication for certain offenses listed in Government Code, sec. 411.081(e).

After notice to the prosecutor, an opportunity for a hearing, and a determination that the nondisclosure was in the best interest of justice and that the person met the criteria to ask for nondisclosure, the court would be required to issue an order. The order would prohibit criminal justice agencies from disclosing to the public the criminal history record related to the offense. Criminal justice agencies could disclose information subject to the order only to criminal justice agencies for criminal justice purposes, to entities that currently can receive information when such records are sealed under a nondisclosure order, and to the person subject to the order.

A person could petition the court for an order of nondisclosure after the conviction was set aside if the offense was a misdemeanor. If the conviction was a felony, the petition could be made five years after a conviction was set aside.

The bill would take effect September 1, 2015, and would apply to convictions set aside on or after that date.

**SUPPORTERS
SAY:**

SB 130 would give probationers who had their verdicts set aside the same options for handling their criminal records that currently are available to similar offenders. Currently, the records of probationers whose terms are reduced or terminated and then set aside are not eligible to be sealed through an order of nondisclosure because this option is available only to those given deferred adjudication. These records also are not eligible for pardons followed by an expunction because when a conviction is set aside, there is no conviction to pardon. This leaves these offenders no option for asking to have their records closed to the public. When criminal records are publicly available, people can have difficulties with access to housing, jobs, school, and more.

SB 130 would remedy this by allowing a narrow group of deserving probationers to ask courts to have their records sealed under the same process and guidelines used for those given deferred adjudication. Under the bill, courts would have deemed the person worthy of probation, which was then terminated and the conviction set aside. This is analogous to

offenders who receive deferred adjudication and then have their cases dismissed. Offenders convicted of or with previous convictions for certain offenses would not be eligible. For felony offenses, individuals would need a clean record for five years to be eligible to make a request. Asking for nondisclosure would not guarantee it would be granted, but a court would make the final decision and prosecutors could raise objections.

The state has deemed that restricting public access to criminal records is appropriate in some circumstances, and SB 130 is a limited bill that would be consistent with those circumstances. Criminal justice agencies would continue to access these records and could use them if the person again ran afoul of the law.

**OPPONENTS
SAY:**

Nondisclosure of records was designed for a limited group of offenders who receive deferred adjudication under which they were not convicted. SB 130 would expand this to a group of offenders who had been convicted, which could open the door to further expansion.

The state should carefully evaluate whether to allow more people to have their public records sealed through orders of nondisclosure. Access to public records can be important for employers, landlords, the press, and others. As eligibility for nondisclosure is expanded, this access decreases.

NOTES:

According to the Legislative Budget Board's fiscal note, SB 130 would result in a gain to general revenue of \$1.2 million during fiscal 2016-17 due to increased court filing fees related to petitions for orders of nondisclosure. The overall revenue gain to the state is estimated at \$3 million per fiscal year.