

BILL ANALYSIS

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S.B. 1158
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In today's tight and highly competitive job market, the task of finding gainful employment faced by a person who has a criminal history record is all the more difficult. In Texas and across the nation, criminal history records are easily accessed by the public and employers.

With heightened concerns over terrorism and national security following September 11, 2001, came a new industry with numerous companies now specializing in providing background checks that were previously of interest only for those involved in the criminal justice system. Background checks are now a staple of the pre-employment screening process. When a criminal history record surfaces, the process often goes no further for a person seeking employment.

Texas law offers few to no avenues of relief. The record of a criminal conviction can be expunged only under limited circumstances. There is no distinction made between a person who served a term of imprisonment and another whose sentence was satisfied by community supervision or probation. A recent article on the Internet website *www.Yahoo.com* said that 65 million Americans—one in four—have a criminal history record and that many are faced with disenfranchisement from the workforce for that reason.

Rehabilitation is a goal of the criminal justice system. That goal includes the former offender returning, or gaining the tools needed, to pursue a productive lifestyle. Success is less likely without the means to legally earn a living. Former offenders who cannot find employment are more likely to reoffend.

S.B. 1158 would provide those eligible the ability to seal the criminal history records of an offense where the subject successfully completed community supervision. It is modeled after the order of nondisclosure that was created by the 78th Legislature in 2003.

S.B. 1158 also provides a disposition for the records of an offense where the subject received a set-aside. Set-asides are unique in that they can neither be sealed or expunged. This bill also allows those records to be sealed.

Offenses that require sex offender registration, those involving family violence, and others involving violent crimes against persons are not eligible to be sealed. Law enforcement, the courts, and licensing agencies would have access to sealed records.

As proposed, S.B. 1158 amends current law relating to restrictions on the disclosure of certain criminal history records and to the duty of law enforcement agencies regarding records associated with certain defendants.

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 Sections 411.081(d) and (e), Government Code, as follows:

(d) Authorizes a person, if the person is placed on community supervision, including deferred adjudication community supervision, under Article 42.12 (Community Supervision), Code of Criminal Procedure, successfully completes the period of community supervision or receives a discharge and dismissal under Section 5(c) (relating to dismissal of proceedings on expiration of a community supervision period) or Section 20 (Reduction or Termination of Community Supervision), Article 42.12, Code of Criminal Procedure, as applicable, and satisfies the requirements of Subsection (e), to petition the court that placed the person on community supervision for an order of nondisclosure under this subsection, notwithstanding any other provision of this subchapter. Authorizes a person, except as provided by Subsection (e), to petition the court under this subsection regardless of whether the person has been previously placed on community supervision, rather than deferred adjudication community supervision, for another offense. Requires the court, after notice to the state and a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice, to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the community supervision, rather than to the deferred adjudication. Authorizes a criminal justice agency to disclose criminal history record information that is the subject of the order only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (i) (relating to disclosure of criminal history record information by a criminal justice agency), or the person who is the subject of the order. Authorizes a person to petition the court, rather than the court that placed the person on deferred adjudication, for an order of nondisclosure on payment of a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. Authorizes the payment to be made only on or after:

(1) the discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure, if the person was placed on deferred adjudication for a misdemeanor other than a misdemeanor described by Subdivision (2);

(2) the second anniversary of the discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure, if the person was placed on deferred adjudication for a misdemeanor under Chapter 20 (Kidnapping and Unlawful Restraint), 21 (Sexual Offenses), 22 (Assaultive Offenses), 25 (Offenses Against the Family), 42 (Disorderly Conduct and Related Offenses), or 46 (Weapons), Penal Code;

(3) the fifth anniversary of the discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure, if the person was placed on deferred adjudication for a felony;

(4) the fifth anniversary of the successful completion of the period of community supervision or the discharge and dismissal under Section 20, Article 42.12, Code of Criminal Procedure, if the person was placed on community supervision following conviction of a misdemeanor; or

(5) the 10th anniversary of the successful completion of the period of community supervision or the discharge and dismissal under Section 20, Article 42.12, Code of Criminal Procedure, if the person was placed on community supervision following conviction of a felony.

Deletes existing text authorizing a person, if the person is placed on deferred adjudication community supervision under Section 5 (Deferred Adjudication; Community Supervision), Article 42.12, Code of Criminal Procedure, subsequently receives a discharge and dismissal under Section 5(c), Article 42.12, and satisfies the requirements of Subsection (e), to petition the court that placed the defendant on deferred adjudication for an order of nondisclosure under this subsection, notwithstanding any other provision of this subchapter. Makes nonsubstantive changes.

(e) Entitles a person to petition the court under Subsection (d) only if during the period of the community supervision, rather than the period of deferred adjudication community supervision, for which the order of nondisclosure is requested and during the applicable period described by Subsection (d)(1), (2), (3), (4), or (5), as appropriate, the person is not convicted of or placed on community supervision under Article 42.12, Code of Criminal Procedure, rather than not convicted of or placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for any offense other than an offense under the Transportation Code punishable by fine only. Provides that a person is not entitled to petition the court under Subsection (d) if the person was placed on the community supervision, rather than deferred adjudication community supervision, for or has been previously convicted of or placed on any other community supervision, including deferred adjudication community supervision, for certain offenses, including an offense under Section 19.04 (Manslaughter) or 29.03 (Aggravated Robbery), Penal Code. Makes a nonsubstantive change.

SECTION 2. Amends the heading to Section 552.142, Government Code, to read as follows:

Sec. 552.142. EXCEPTION: CERTAIN CRIMINAL HISTORY RECORDS

SECTION 3. Makes application of the changes in law made by this Act to Sections 411.081(d) and (e), Government Code, prospective.

SECTION 4. Effective date: September 1, 2011.