

BILL ANALYSIS

Senate Research Center
84R25025 JRR-F

C.S.S.B. 1902
By: Perry
Criminal Justice
4/23/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1902 reforms current nondisclosure law to allow individuals convicted of certain misdemeanors to be eligible to receive an order of nondisclosure (OND) and to streamline the process to receive an OND for those with certain eligible misdemeanors dismissed after completing deferred adjudication. The bill maintains current law which exempts offenders who have committed serious violent offenses, sexual offenses, and family violent offenses from ever receiving an OND.

An OND allows for an individual's criminal record (or part of their criminal record) to be sealed from the general public. An OND also allows an offender to not disclose their criminal record to employers or landlords when asked. However, even after the grant of an OND, the record is still available to sensitive fields, such as law enforcement agencies, financial institutions, healthcare institutions, and educational entities.

Currently, only certain individuals who have had their felony or misdemeanor dismissed after completion of a term of deferred adjudication are eligible for an OND. This prevents a large group of amenable individuals who have been convicted and either incarcerated or completed community supervision for certain low/non-violent, non-sexual misdemeanors the opportunity to receive an OND.

A criminal record can be a crippling barrier to obtaining employment. Studies show that ex-offenders who are gainfully employed are much less likely to re-offend. Thus, a responsible, limited expansion of current nondisclosure law is important in giving reformed offenders a second chance, creating a safer Texas, and increasing the workforce with individuals who are no longer limited by their minor criminal histories.

S.B. 1902 expands current eligibility for an OND to one-time offenders of non/low violent, non-sexual, non-family violent misdemeanors, who have completed their term of community supervision or incarceration. Depending upon the offense and type of adjudication, certain waiting periods are put in place to ensure that these individuals can prove to the court and society that they are reformed prior to petitioning for an OND.

S.B. 1902 maintains current law which exempts serious violent offenders, sexual offenders, and family violent offenders from ever receiving an OND. Further, S.B. 1902 provides a pure second chance. Individuals petitioning for an OND who served community supervision or incarceration for an eligible misdemeanor who have been convicted, placed on deferred adjudication, or received an OND previously are not eligible. Further, S.B. 1902 maintains current law which indicates that individuals become ineligible if they are convicted or placed on deferred adjudication for any non-traffic offense during their prescribed waiting period.

S.B. 1902 also streamlines the procedure for a grant of an OND to offenders who received a dismissal of a misdemeanor (excluding crimes against the person) after a deferred adjudication. The court must grant the OND after dismissal (minimum 180 days after receiving deferred adjudication), assuming other eligibility requirements are met. The offender need not file a petition, as opposed to current procedure.

S.B. 1902 will effectively reduce recidivism rates, increase public safety, and provide a second chance to millions of Texans to provide for themselves, families, and society as a whole. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1902 amends current law relating to the eligibility of criminal defendants for an order of nondisclosure of criminal history record information and authorizes a fee.

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 Chapter 411, Government Code, by adding Subchapter E-1, as follows:

SUBCHAPTER E-1. ORDER OF NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION

Sec. 411.071. DEFINITIONS. Defines “criminal history record information,” “criminal justice agency,” and “criminal justice purpose.”

SECTION 2. Transfers Section 411.081(f), Government Code, to Subchapter E-1, Chapter 411, Government Code, as added by this Act, redesignates it as Section 411.0715, Government Code, and amends it, as follows:

Sec. 411.0715. DEFINITION OF DEFERRED ADJUDICATION COMMUNITY SUPERVISION FOR PURPOSE OF RECEIVING ORDER OF NONDISCLOSURE. Deletes designation of Subsection (f). Provides that, for purposes of an order of nondisclosure of criminal history record information under this subchapter, rather than under Subsection (d) (authorizing a person placed on deferred adjudication community supervision who received a discharge and dismissal and meets certain requirements to petition the court for an order of nondisclosure), a person is considered to have been placed on deferred adjudication community supervision if, regardless of the statutory authorization:

- (1) the person entered a plea of guilty or nolo contendere;
- (2) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and
- (3) at the end of the period of supervision the judge dismissed the proceedings and discharged the person.

SECTION 3. Amends Subchapter E-1, Chapter 411, Government Code, as added by this Act, by adding Section 411.072, as follows:

Sec. 411.072. PROCEDURE FOR DEFERRED ADJUDICATION COMMUNITY SUPERVISION; CERTAIN NONVIOLENT MISDEMEANORS. (a) Provides that this section applies only to a person placed on deferred adjudication community supervision under Section 5 (Deferred Adjudication; Community Supervision), Article 42.12 (Community Supervision), Code of Criminal Procedure, for a misdemeanor other than a misdemeanor under Chapter 20 (Kidnapping, Unlawful Restraint, and Smuggling of Persons), 21 (Sexual Offenses), 22 (Assaultive Offenses), 25 (Offenses Against the Family), 42 (Disorderly Conduct and Related Offenses), 43 (Public Indecency), or 46 (Weapons), Penal Code.

(b) Requires the court that placed the person on deferred adjudication community supervision, notwithstanding any other provision of this subchapter or Subchapter F (Criminal History Record Information), if a person described by Subsection (a) receives a discharge and dismissal under Section 5(c) (requiring the judge, on expiration of a community supervision period imposed under Subsection (a), if the judge has not proceeded to adjudication of guilt, to dismiss the proceedings against the defendant and discharge him), Article 42.12, Code of Criminal Procedure, and satisfies the requirements of Section 411.074, to 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. Requires the court to 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, to 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.

(c) Entitles a person, except as provided by Section 411.074, to an order of nondisclosure under Subsection (b) regardless of whether the person has been previously convicted of or placed on deferred adjudication community supervision for another offense.

(d) Requires the person to 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. Requires the person to pay a \$28 fee to the clerk of the court before the court issues the order.

SECTION 4. Transfers Section 411.081(d), Government Code, to Subchapter E-1, Chapter 411, Government Code, as added by this Act, redesignates it as Section 411.0725, Government Code, and amends it, as follows:

Sec. 411.0725. PROCEDURE FOR DEFERRED ADJUDICATION COMMUNITY SUPERVISION; FELONIES AND CERTAIN MISDEMEANORS. (a) Provides that this section only applies to a person placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for a felony or a misdemeanor other than a misdemeanor under Chapter 20, 21, 22, 25, 42, 43, or 46, Penal Code.

(b) Redesignates existing Subsection (d) as Subsection (b). Authorizes the person, notwithstanding any other provision of this subchapter or Subchapter F, if a person described by Subsection (a) receives a discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure, and satisfies the requirements of Section 411.074, to petition the court that placed the person on deferred adjudication community supervision for an order of nondisclosure of criminal history record information under this section. Deletes existing text authorizing a person, notwithstanding any other provision of this subchapter, if the person is placed on deferred adjudication community supervision under Section 5, 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.

(c) Creates this subsection from existing text. Authorizes a person, except as provided by Section 411.074, rather than by Subsection (e), to petition the court for an order of nondisclosure under this section regardless of whether the person has been previously convicted of or placed on deferred adjudication community supervision for another offense.

(d) Creates this subsection from existing text. Requires the court, 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, 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 deferred adjudication community supervision.

(e) Creates this subsection from existing text. Authorizes a person to petition the court that placed the person on deferred adjudication community supervision for an order of nondisclosure of criminal history record information under this section only on or after:

(1) the second anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor under Chapter 20, 21, 22, 25, 42, 43, or 46, Penal Code; or

(2) the fifth anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a felony.

Deletes existing text authorizing 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), or the person who is the subject of the order. Deletes existing text authorizing a person to petition the court that placed the person on deferred adjudication for an order of nondisclosure only on or after the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor other than a misdemeanor described by Subdivision (2).

Makes nonsubstantive changes.

SECTION 5. Amends Subchapter E-1, Chapter 411, Government Code, by adding Sections 411.073 and 411.0735, as follows:

Sec. 411.073. PROCEDURE FOR COMMUNITY SUPERVISION FOLLOWING CONVICTION; CERTAIN MISDEMEANORS. (a) Provides that this section applies only to a person placed on community supervision under Article 42.12, Code of Criminal Procedure:

(1) following a conviction of a misdemeanor other than a misdemeanor under Section 106.041 (Driving or Operating Watercraft Under the Influence of Alcohol by Minor), Alcoholic Beverage Code, or Section 49.04 (Driving While Intoxicated), 49.05 (Flying While Intoxicated), 49.06 (Boating While Intoxicated), or 49.065 (Assembling or Operating an Amusement Ride While Intoxicated), Penal Code; and

(2) under a provision of Article 42.12, Code of Criminal Procedure, other than Section 5, including:

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

(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.

(b) Authorizes a person described by Subsection (a) whose community supervision is not revoked and who completes the period of community supervision, notwithstanding any other provision of this subchapter or Subchapter F, to petition the court that placed the person on community supervision for an order of nondisclosure of criminal history record information under this section if the person:

(1) satisfies the requirements of this section and Section 411.074; and

(2) has never been previously convicted of or placed on deferred adjudication community supervision for another offense other than an offense under the Transportation Code that is punishable by fine only.

(c) Requires the court, 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, 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.

(d) Authorizes a person to petition the court that placed the person on community supervision for an order of nondisclosure of criminal history record information under this section only on or after:

(1) the completion of the community supervision, if the offense for which the person was placed on community supervision was a misdemeanor other than a misdemeanor described by Subdivision (2); or

(2) the second anniversary of the date of completion of the community supervision, if the offense for which the person was placed on community supervision was a misdemeanor under Chapter 20, 21, 22, 25, 42, 43, or 46, Penal Code.

Sec. 411.0735. PROCEDURE FOR CONVICTION AND CONFINEMENT; CERTAIN MISDEMEANORS. (a) Provides that 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, or Section 49.04, 49.05, 49.06, or 49.065, Penal Code;

(2) is sentenced to and serves a period of confinement; and

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

(b) Authorizes a person described by Subsection (a) who completes the period of confinement and is released, notwithstanding any other provision of this subchapter or Subchapter F, to petition the court that imposed the sentence for an order of nondisclosure of nondisclosure of criminal history record information under this section if the person:

(1) satisfies the requirements of this section and Section 411.074; and

(2) has never been previously convicted of or placed on deferred adjudication community supervision for another offense other than an offense under the Transportation Code punishable by fine only.

(c) Requires the court, 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, 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 confinement.

(d) Authorizes a person to petition the court that imposed the sentence for an order of nondisclosure of criminal history record information under this section only on or after the second anniversary of the date of completion of the period of confinement.

SECTION 6. Transfers Section 411.081(e), Government Code, to Subchapter E-1, Chapter 411, Government Code, as added by this Act, redesignates it as Section 411.074, and amends it, as follows:

Sec. 411.074. REQUIRED CONDITIONS FOR RECEIVING AN ORDER OF NONDISCLOSURE. Redesignates existing Section 411.081(e) as Section 411.074(a). (a) Authorizes a person to be granted an order of nondisclosure of criminal history record information under this subchapter and provides that, when applicable, the person is entitled to petition the court to receive such an order under this subchapter only if, during the period after the court either pronounced the sentence or placed the person on deferred adjudication community supervision for the offense for which the order of nondisclosure is requested, and during any applicable waiting period after completion of the sentence or deferred adjudication community supervision required by this subchapter, the person is 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.

Deletes existing text entitling a person to petition the court under Subsection (d) only if during 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), or (3), as appropriate, the person is 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.

(b) Creates this subsection from existing text. Prohibits a person from being granted an order of nondisclosure of criminal history record information under this subchapter and provides that the person is not entitled to petition the court for an order under this subchapter, rather than under Subsection (d), if:

(1) the person was convicted or placed on deferred adjudication community supervision for or has been previously convicted or placed on any other deferred adjudication community supervision for:

(A) an offense requiring registration as a sex offender un Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure;

(B) an offense under Section 20.04 (Aggravated Kidnapping), Penal Code, regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure;

(C) an offense under Section 19.02 (Murder), 19.03 (Capital Murder), 20A.02 (Trafficking of Persons), 20A.03 (Continuous Trafficking of Persons), 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual), 22.041 (Abandoning or

Endangering Child), 25.07 (Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Sexual Assault or Abuse, or Stalking Case), 25.072 (Repeated Violation of Certain Court Orders or Conditions of Bond in Family Violence Case), or 42.072 (Stalking), Penal Code; or

(D) any other offense involving family violence, as defined by Section 71.004 (Family Violence), Family Code.

(2) the court makes an affirmative finding that the offense for which the order of nondisclosure of criminal history record information is requested involved family violence, as defined by Section 71.004, Family Code.

Makes nonsubstantive changes.

SECTION 7. Transfers Section 411.081(f-1), Government Code, to Subchapter E-1, Chapter 411, Government Code, as added by this Act, redesignates it as Section 411.0745, Government Code, and amends it, as follows:

Sec. 411.0745. PETITION AND ORDER. Redesignates existing Section 411.081(f-1) as Section 411.0745(a). (a) Authorizes a person who petitions the court for an order of nondisclosure of criminal history record information under this subchapter, when a petition is required, rather than a person who petitions the court for an order of nondisclosure under Subsection (d), to file the petition in person, electronically, or by mail.

(b)-(d) Creates these subsections from existing text and makes no further change to these subsections.

(e) Creates this subsection from existing text. Requires the court, on receipt of a petition under this section, rather than under this subsection, to provide notice to the state and an opportunity for a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice. Requires the court to hold a hearing before determining whether to issue an order of nondisclosure of criminal history record information, except provides that a hearing is not required if:

(1) the state does not request a hearing on the issue before the 45th day after the date on which the state receives notice under this subsection; and

(2) the court determines that the person, rather than the defendant, is entitled to file the petition and that the order is in the best interest of justice.

SECTION 8. Transfers Sections 411.081(g), (g-1), (g-1a), (g-1b), and (g-1c), Government Code, to Subchapter E-1, Chapter 411, Government Code, as added by this Act, redesignates them as Section 411.075, Government Code, and amends them, as follows:

Sec. 411.075. PROCEDURE AFTER ORDER. (a) Redesignates existing Section 411.081(g) as Section 411.075(a). (a) Requires the clerk of the court, not later than the 15th business day after the date an order of nondisclosure of criminal history record information is issued under this subchapter, rather than under this section, to send all relevant criminal history record information contained in the order or a copy of the order by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or facsimile transmission to the Crime Records Service of the Department of Public Safety of the State of Texas (DPS).

(b) Redesignates existing Section 411.081(g-1) as Section 411.075(b). Changes a reference to Subsection (g) to Subsection (a).

(c) Redesignates existing Section 411.081(g-1a) as Section 411.075(c). Changes a reference to Subsections (g) and (g-1) to Subsections (a) and (b).

(d) Redesignates existing Section 411.081(g-1b) as Section 411.075(d). Changes a reference to Subsection (g-1) to Subsection (b), and a reference to Subsection (g-1)(1) to Subsection (b)(1) and makes a nonsubstantive change.

(e) Redesignates existing Section 411.081(g-1c) as Section 411.075(e). Changes a reference to Subsection (g-1)(3) to Subsection (b)(3).

SECTION 9. Transfers Section 411.081(g-2), Government Code, to Subchapter E-1, Chapter 411, Government Code, as added by this Act, redesignates it as Section 411.0755, Government Code, and amends it, as follows:

Sec. 411.0755. STATEMENT IN APPLICATION FOR EMPLOYMENT, INFORMATION, OR LICENSING. Deletes designation as Subsection (g-2). Provides that a person whose criminal history record information is the subject of an order of nondisclosure of criminal history record information issued under this subchapter, rather than provides that a person whose criminal history record information has been sealed under this section, is not required in any application for employment, information, or licensing to state that the person has been the subject of any criminal proceeding related to the information that is the subject of the order. Makes a conforming change.

SECTION 10. Transfers Section 411.081(g-3), Government Code, to Subchapter E-1, Chapter 411, Government Code, as added by this Act, redesignates it as Section 411.076, Government Code, and amends it, as follows:

Sec. 411.076. DISCLOSURE BY COURT. Redesignates existing Section 411.081(g-3) as Section 411.076(a). (a) Prohibits a court from disclosing to the public any information contained in the court records that is the subject of an order of nondisclosure of criminal history record information issued under this subchapter, rather than under this section. Authorizes the court to disclose information contained in the court records that is the subject of an order of nondisclosure of criminal history record information only to criminal justice agencies for criminal justice or regulatory licensing purposes, to an agency or entity listed in Section 411.0765, rather than in Subsection (i) (authorizing a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure only to noncriminal justice agencies or entities as set forth), or to the person who is the subject of the order. Makes nonsubstantive changes.

(b) Creates this subsection from existing text. Requires the clerk of the court issuing an order of nondisclosure of criminal history record information under this subchapter, rather than under this section, to seal any court records containing information that is the subject of the order as soon as practicable after the date the clerk of the court sends all relevant criminal history record information contained in the order to DPS under Section 411.075(a), rather than under Subsection (g).

SECTION 11. Reenacts Section 411.081(i), Government Code, as amended by Chapters 42 (S.B. 966), 266 (H.B. 729), and 583 (S.B. 869), Acts of the 83rd Legislature, Regular Session, 2013, transfers it to Subchapter E-1, Chapter 411, Government Code, as added by this Act, redesignates it as Section 411.0765, Government Code, and amends it, as follows:

Sec. 411.0765. DISCLOSURE BY CRIMINAL JUSTICE AGENCY. Authorizes a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure of criminal history record information under this subchapter only to other criminal justice agencies for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (b), or the person who is the subject of the order.

(b) Redesignates existing Section 411.081(i) as Section 411.0765(b). Authorizes a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure of criminal history record information under this subchapter, rather than under Subchapter (d), to the following noncriminal justice agencies or entities only:

(1)-(11) Makes no change to these subdivisions;

(12) the Department of State Health Services, a local mental health service, a local intellectual and developmental disability authority, rather than a local mental retardation authority, or a community center providing services to persons with mental illness or intellectual or developmental disabilities, rather than persons with mental illness or retardation;

(13)-(24) Makes no change to these subdivisions;

(25) Changes a reference to Chapter XIII, Texas Probate Code, to Title 3 (Guardianship and Related Procedures), Estates Code;

(26)-(28) Makes no change to these subdivisions;

(29) Makes a nonsubstantive change.

SECTION 12. Transfers Section 411.081(h), Government Code, to Subchapter E-1, Chapter 411, Government Code, as added by this Act, redesignates it as Section 411.077, Government Code, and amends it, as follows:

Sec. 411.077. DISPOSITION OF FEE; DEPARTMENT OF PUBLIC SAFETY REPORT. Redesignates existing Section 411.081(h) as Section 411.077(a). (a) Requires the clerk of a court that collects a fee in connection with a petition or order for nondisclosure of criminal history record information under this subchapter, rather than under Subsection (d), to remit the fee to the comptroller of public accounts of the State of Texas (comptroller) not later than the last day of the month following the end of the calendar quarter in which the fee is collected, and requires the comptroller to deposit the fee in the general revenue fund.

(b) Creates this subsection from existing text. Requires DPS to submit a report to the legislature not later than December 1 of each even-numbered year that includes information on:

(1) the number of petitions for nondisclosure of criminal history record information and orders of nondisclosure of criminal history record information received by DPS in each of the previous two years;

(2) and (3) Makes no change to these subdivisions; and

(4) Makes a conforming change.

SECTION 13. Amends Subchapter E-1, Chapter 411, Government Code, by adding Section 411.0775, as follows:

Sec. 411.0775. ADMISSIBILITY AND USE OF CERTAIN CRIMINAL HISTORY RECORD INFORMATION IN SUBSEQUENT CRIMINAL PROCEEDING. Authorizes criminal history record information that is related to a conviction and is the subject of an order of nondisclosure of criminal history record information under this subchapter, notwithstanding any other law, to be:

(1) admitted into evidence during the trial of any subsequent offense if the information is admissible under the Texas Rules of Evidence or another law; and

(2) disclosed to a prosecuting attorney for a criminal justice purpose.

SECTION 14. Amends Section 109.005(a), Business and Commerce Code, as follows:

(a) Prohibits a business entity from publishing any criminal record information in the business entity's possession with respect to which the business entity has knowledge or has received notice that:

(1) an order of expunction has been issued under Article 55.02 (Procedure for Expunction), Code of Criminal Procedure; or

(2) an order of nondisclosure of criminal history record information has been issued under Subchapter E-1, Chapter 411 (Department of Public Safety of the State of Texas), Government Code, rather than under Section 411.081(d), Government Code.

SECTION 15. Amends Article 42.03, Code of Criminal Procedure, by adding Section 5, as follows:

Sec. 5. Requires the court after pronouncing the sentence, except as otherwise provided by Section 5(a-1) of Article 42.12, to inform the defendant of the defendant's right to petition the court for an order of nondisclosure of criminal history record information under Subchapter E-1, Chapter 411, Government Code, unless the defendant is ineligible to pursue that right because of the requirements that apply to obtaining the order in the defendant's circumstances, such as:

(1) the nature of the offense for which the defendant is convicted; or

(2) the defendant's criminal history.

SECTION 16. Amends Sections 5(a-1) and (c-1), Article 42.12, Code of Criminal Procedure, as follows:

(a-1) Requires the court, before placing a defendant on deferred adjudication community supervision under this section, to inform the defendant of the defendant's right to receive or to petition the court for an order of nondisclosure of criminal history record information under Subchapter E-1, Chapter 411, Government Code, rather than Section 411.081, Government Code, as applicable, unless the defendant is ineligible for an order, rather than ineligible to pursue that right, because of:

(1) the nature of the offense for which the defendant is placed on deferred adjudication community supervision; or

(2) the defendant's criminal history.

(c-1) Requires a judge who dismisses the proceedings against a defendant and discharges the defendant under Subsection (c) (relating to dismissing the proceedings and discharging a defendant):

(1) to provide the defendant with a copy of the order of dismissal and discharge; and

(2) if the judge determines that the defendant is or may become eligible for an order of nondisclosure of criminal history record information under Subchapter E-1, Chapter 411, Government Code, to, as applicable:

(A) grant an order of nondisclosure of criminal history record information to the defendant;

(B) inform the defendant of the defendant's eligibility to receive an order of nondisclosure of criminal history record information without a petition and the earliest date on which the defendant is eligible to receive the order; or

(C) inform the defendant of the defendant's eligibility to petition the court for an order of nondisclosure of criminal history record information and the earliest date the defendant is eligible to file the petition for the order, rather than inform the defendant of the defendant's eligibility to petition the court for an order of nondisclosure under Section 411.081, Government Code, and the earliest date the defendant is eligible to file the petition for the order of nondisclosure.

Makes nonsubstantive changes.

SECTION 17. Amends Section 54.656(a), Government Code, as follows:

(a) Authorizes a judge to refer to a magistrate any criminal case for proceedings involving:

(1)-(8) Makes no change to these subdivisions;

(9) an agreed order of nondisclosure of criminal history record information or an order of nondisclosure of criminal history record information that does not require a petition provided by Subchapter E-1, Chapter 411, rather than by Section 411.081;

(10) and (11) Makes no change to these subdivisions.

SECTION 18. Amends Section 103.0211, Government Code, to change a reference to Section 411.081, Government Code, to Subchapter E-1, Chapter 411, Government Code.

SECTION 19. Amends Section 123.001(b), Government Code, as follows:

(b) Requires the court, if a defendant successfully completes a drug court program, regardless of whether the defendant was convicted of the offense for which the defendant entered the program or whether the court deferred further proceedings without entering an adjudication of guilt, after notice to the state and a hearing on whether the defendant is otherwise entitled to the petition and whether issuance of the order is in the best interest of justice, to enter an order of nondisclosure of criminal history record information under Subchapter E-1, Chapter 411, rather than under Section 411.081, as if the defendant had received a discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program if the defendant meets criteria as set forth.

SECTION 20. Amends Section 411.081(a), Government Code, to delete an exception under Subsection (g-3).

SECTION 21. Amends Section 411.083(a), Government Code, to add a reference to Subchapter E-1.

SECTION 22. Amends Section 411.0835, Government Code, as follows:

Sec. 411.0835. PROHIBITION AGAINST DISSEMINATION TO CERTAIN PRIVATE ENTITIES. Prohibits DPS, if DPS receives information indicating that a private entity that purchases criminal history record information from DPS has been found by a court to have committed three or more violations of Section 552.1425 (Civil Penalty:

Dissemination of Certain Criminal History Information) by compiling or disseminating information with respect to which an order of expunction has been issued under Subchapter E-1, from releasing any criminal history record information to that entity until the first anniversary of the date of the most recent violation.

SECTION 23. Amends Section 411.0851(a), Government Code, as follows:

(a) Requires a private entity that compiles and disseminates for compensation criminal history record information to destroy and prohibits such an entity from disseminating any information in the possession of the entity with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure of criminal history record information has been issued under Subchapter E-1, rather than under Section 411.081(d).

SECTION 24. Amends Sections 411.087(a) and (b), Government Code, as follows:

(a) Adds a reference to Subchapter E-1.

(b) Adds a reference to Subchapter E-1.

SECTION 25. Amends Section 411.122(c), Government Code, to add a reference to Subchapter E-1.

SECTION 26. Amends Section 552.142(a), Government Code, to provide that information is excepted from the requirements of Section 552.021 if an order of nondisclosure of criminal history records information with respect to the information has been issued under Subchapter E-1, Chapter 411, rather than under Section 411.081(d).

SECTION 27. Amends Section 552.1425(a), Government code, to prohibit a private entity that compiles and disseminates for compensation criminal history record information from compiling or disseminating information with respect to which the entity has received notice that an order of expunction has been issued under Article 55.02, Code of Criminal Procedure, or an order of nondisclosure of criminal history record information has been issued under Subchapter E-1, Chapter 411, rather than under Section 411.081(d).

SECTION 28. Amends Section 169.001(b), Health and Safety Code, as follows:

(b) Requires the court, if a defendant successfully completes a first offender prostitution prevention program, regardless of whether the defendant was convicted of the offense for which the defendant entered the program or whether the court deferred further proceedings without entering an adjudication of guilt, after notice to the state and a hearing on whether the defendant is otherwise entitled to the petition, including whether the required time period has elapsed, and whether the issuance of the order is in the best interest of justice, to enter an order of nondisclosure of criminal history record information under Subchapter E-1, Chapter 411, Government Code, rather than under Section 411.081, Government Code, as if the defendant had received a discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program if the defendant meets criteria as set forth.

SECTION 29. Amends Section 169A.001(b), Health and Safety Code, as follows:

(b) Requires the court, if a defendant successfully completes a prostitution prevention program, regardless of whether the defendant was convicted of the offense for which the defendant entered the program or whether the court deferred further proceedings without

entering an adjudication of guilt, after notice to the state and a hearing on whether the defendant is otherwise entitled to the petition, including whether the required time has elapsed, and whether issuance of the order is in the best interest of justice, to enter an order of nondisclosure of criminal history record information under Subchapter E-1, Chapter 411, Government Code, rather than under Section 411.081, Government Code, as if the defendant had received a discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program.

SECTION 30. Amends Section 53.021(e), Occupations Code, as follows:

(e) Provides that Subsection (c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide law enforcement or public health, education, or safety services, or financial services in an industry regulated by a person listed in Section 411.0765(b)(18) (authorizing a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure to the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner), rather than Section 411.081(i)(19) (authorizing a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure to the Texas State Board of Public Accountancy), Government Code.

SECTION 31. Makes application of this Act prospective in regards to an order of nondisclosure of criminal history record information.

SECTION 32. Provides that, to the extent of any conflict, this Act prevails over another Act of the 84th Legislature, Regular Session, 2015, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 33. Effective date: September 1, 2015.