

## **BILL ANALYSIS**

Senate Research Center

H.B. 3016  
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Criminal Justice  
5/12/2017  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

HB 3016 is an expansion of last session's "Second Chances" law (S.B.1902 by Senator Perry), whereby individuals convicted of one low-level offense (driving while intoxicated (DWI) under 0.15 blood alcohol level (BAC) and certain non-sexual, non-violent Class C misdemeanors), can apply for an order of nondisclosure (OND). An OND is akin to "sealing" records, with several exceptions, following a waiting period, whereby a prosecutor has a chance to object and a judge has discretion to rule on the application. In all cases, law enforcement can see through the "sealing," as can sensitive industries such as finance and education. It can also be looked through by individuals if required by federal law. The legislation is supported by a variety of stakeholders, from criminal justice reform advocates and Mothers Against Drunk Driving (MADD), to political leaders on the left and right.

H.B. 3016 maintains prosecutorial notice and judicial discretion, expands the eligibility to more one-time offenders, and expands certain waiting requirements, including:

- Allow for an OND for first-time convictions of Class C misdemeanors. This would be an offender's first conviction or deferred adjudication/prosecution for any crime, except traffic offenses. The offender must be current on all fines connected to the offense. There would be no waiting period.
- Allow for an OND for first-time, low-level DWIs (no DWIs with a BAC of .15 or above). This would only be for offenders with no other criminal convictions or deferred adjudications/prosecutions, except for a traffic offense. With one exception (see below), offenders would have to wait two years after successful completion of community supervision or three years after completion of their sentence prior to petitioning for an OND. The following other restrictions are in place:
  - Must have paid all fines, fees, and restitution.
  - Disallow individuals to petition for an OND convicted of a DWI—who either struck another vehicle with a victim inside, struck a pedestrian, or got into an auto accident with a passenger in their car during the event that led to their conviction.
  - The petitioner must either provide evidence of at least six months of a successful interlock ignition program as a condition of community supervision or of the sentence or wait five years after successful completion of community supervision or sentence.
- Clarifies existing law that those convicted of certain Class A and B misdemeanors do not physically have to spend time in jail to be eligible for an OND, bringing back original intent of S.B. 1902 from 2015.
- Make the OND reforms of 84th and 85th Legislature retroactive.

H.B. 3016 amends current law relating to the eligibility of a criminal defendant for an order of nondisclosure of criminal history record information.

### **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 Subchapter E-1, Chapter 411, Government Code, by adding Section 411.0716, as follows:

Sec. 411.0716. APPLICABILITY OF SUBCHAPTER. (a) Provides that, except as provided by Subsection (b), this subchapter applies to the issuance of an order of nondisclosure (OND) of criminal history record information for an offense committed before, on, or after September 1, 2017.

(b) Provides that Section 411.072 (Procedure for Deferred Adjudication Community Supervision; Certain Nonviolent Misdemeanors), applies only to a person described by Subsection (a) of that section who receives a discharge and dismissal under Article 42A.111 (Dismissal and Discharge), Code of Criminal Procedure, on or after September 1, 2017.

SECTION 2. Amends Sections 411.072, Government Code, by amending Sections (a) and (b) and adding Subsection (d), as follows:

(a) Provides that this section applies only to a person who:

(1) was placed on deferred adjudication community supervision under Subchapter C (Deferred Adjudication Community Supervision), Chapter 42A (Community Supervision), Code of Criminal Procedure, rather than Section 5, Article 42.12, Code of Criminal Procedure, for a misdemeanor other than a misdemeanor with respect to which an affirmative finding under Article 42A.105(f) or former Section 5(f), Article 42.12, Code of Criminal Procedure, rather than under Section 5(k) Article 42.12, Code of Criminal Procedure, was filed in the papers of the case; and

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

(b) Requires a certain court to issue an OND, notwithstanding any other provision of this subchapter (Order of Nondisclosure of Criminal History Record Information), or Subchapter F (Criminal History Record Information), if a person described by Subsection (a) receives a discharge and dismissal under Article 42A.111, Code of Criminal Procedure, rather than Section 5(c), Article 42.12, Code of Criminal Procedure.

(d) Authorizes a person who is not eligible to receive an OND 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 to file a petition for an OND of criminal history record information under Section 411.0725 (Procedure for Deferred Adjudication Community Supervision; Felonies and Certain Misdemeanors) if the person otherwise satisfies the requirements of that section.

SECTION 3. Amends the heading to Section 411.073, Government Code, to read as follows:

Sec. 411.073. PROCEDURE FOR COMMUNITY SUPERVISION FOLLOWING CONVICTION; CERTAIN MISDEMEANORS AND STATE JAIL FELONIES.

SECTION 4. Amends Sections 411.073(a), (b), and (d), Government Code, as follows:

(a) Provides that this section (Procedure for Community Supervision Following Conviction; Certain Misdemeanors) applies only to a person placed on community

supervision under Chapter 42A, Code of Criminal Procedure, rather than Article 42.12, Code of Criminal Procedure:

(1) following a conviction of:

(A) a misdemeanor other than a certain misdemeanor; or

(B) a state jail felony under Section 481.115 (Offense: Possession of Substance in Penalty Group 1), 481.1151 (Offense: Possession of Substance in Penalty Group 1-A), 481.116 (Offense: Possession of Substance in Penalty Group 2), 481.1161 (Offense: Possession of Substance in Penalty Group 2-A), or 481.121 (Offense: Possession of Marihuana), Health and Safety Code; and

(2) under a provision of Chapter 42A, rather than Article 42.12, Code of Criminal Procedure, other than Subchapter C, rather than Section 5, including certain provisions.

(b) Authorizes a person described by Subsection (a) whose community supervision is not revoked and who completes the period of community supervision, including any term of confinement imposed and payment of all fines, costs, and restitution imposed, notwithstanding any other provisions of this subchapter or Subchapter F, to petition the court that placed the person on community supervision for an OND of criminal history record information if the person, among certain other requirements, 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. Makes a conforming change.

(d) Authorizes a person to petition the court that placed the person on community supervision for an OND of criminal history record information only on or after the fifth anniversary of the date of completion of the community supervision, if the offense for which the person was placed on community supervision was a state jail felony, among certain other provisions. Makes nonsubstantive changes.

SECTION 5. Amends Subchapter E-1, Chapter 411, Government Code, by adding Section 411.0731, as follows:

Sec. 411.0731. PROCEDURE FOR COMMUNITY SUPERVISION FOLLOWING CONVICTION; CERTAIN DRIVING WHILE INTOXICATED CONVICTIONS. (a) Provides that this section applies only to a person placed on community supervision under Chapter 42A, Code of Criminal Procedure, following a conviction of an offense under Section 49.04, Penal Code, other than an offense punishable under Subsection (d) of that section and under a provision of Chapter 42A, Code of Criminal Procedure, other than Subchapter C, including certain provisions.

(b) Provides that, notwithstanding any other provision of this subchapter or Subchapter F, a person described by Subsection (a) whose community supervision is not revoked and who completes the period of community supervision, including any term of confinement imposed and payment of all fines, costs, and restitution imposed, is authorized to petition the court that placed the person on community supervision for an OND of criminal history record information under this section if the person satisfies the requirements of this section and Section 411.074 and 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.

(c) Requires that a petition for an OND of criminal history record information filed under this section include evidence that the person is entitled to file the petition.

(d) Requires the court, except as provided by Subsection (e), 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 an OND of criminal history record information 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.

(e) Prohibits a court from issuing an OND of criminal history record information under this section if the attorney representing the state presents evidence sufficient to the court demonstrating that the commission of the offense for which the order is sought resulted in a motor vehicle accident involving another person, including a passenger in a motor vehicle operated by the person seeking the OND.

(f) Authorizes a person to petition the court that placed the person on community supervision for an OND of criminal history record information under this section only on or after the second anniversary of the date of completion of the community supervision, if certain conditions are met, or the fifth anniversary of the date of completion of the community supervision, if certain conditions are met.

SECTION 6. Amends Section 411.0735, Government Code, as follows:

Sec. 411.0735. New heading: PROCEDURE FOR CONVICTION; CERTAIN MISDEMEANORS AND STATE JAIL FELONIES. (a) Provides that this section applies only to a person who meets certain conditions, including who is convicted of a state jail felony under Section 481.115, 481.1151, 481.116, 481.1161, or 481.121, Health and Safety Code. Deletes existing text providing that this section applies only to a person who is sentenced to and serves a period of confinement. Makes nonsubstantive changes

(b) Authorizes a person described by Subsection (a) who completes the person's sentence, including any term of confinement imposed and payment of all fines, costs, and restitution imposed, rather than 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 OND of criminal history record information under this section if the person meets certain conditions, including if 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, rather than 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 for which the person was convicted, rather than to the offense giving rise to the confinement.

(d) Authorizes a person to petition the court that imposed the sentence for an OND of criminal history record information under this section only on or after:

(1) the date of completion of the person's sentence, if the offense of which the person was convicted was a misdemeanor punishable by fine only;

(2) the second anniversary of the date of completion of the person's sentence, if the offense of which the person was convicted was a misdemeanor other than a misdemeanor described by Subdivision (1); or

(3) the fifth anniversary of the date of completion of the person's sentence, if the offense of which the person was convicted was a state jail felony, rather than period of confinement.

SECTION 7. Amends Subchapter E-1, Chapter 411, Government Code, by adding Section 411.0736, as follows:

Sec. 411.0736. PROCEDURE FOR CONVICTION; CERTAIN DRIVING WHILE INTOXICATED CONVICTIONS. (a) Provides that this section applies only to a person who is convicted of an offense under Section 49.04, Penal Code, other than an offense punishable under Subsection (d) of that section and is not eligible for an OND of criminal history record information under Section 411.0731.

(b) Authorizes a person described by Subsection (a) who completes the person's sentence, including any term of confinement imposed and payment of all fines, costs, and restitution imposed, notwithstanding any other provision of this subchapter or Subchapter F, to petition the court that imposed the sentence for an OND of criminal history record information under this section if the person satisfies the requirements of this section and Section 411.074 and 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.

(c) Requires that a petition for an OND of criminal history record information filed under this section include evidence that the person is entitled to file the petition.

(d) Requires the court, except as provided by Subsection (e), 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 an OND of criminal history record information 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 for which the person was convicted.

(e) Prohibits a court from issuing an OND of criminal history record information under this section if the attorney representing the state presents evidence sufficient to the court demonstrating that the commission of the offense for which the order is sought resulted in a motor vehicle accident involving another person, including a passenger in a motor vehicle operated by the person seeking the OND.

(f) Authorized a person to petition the court that imposed the sentence for an OND of criminal history record information under this section on or after the third anniversary of the date of completion of the person's sentence, if certain conditions are met, or the fifth anniversary of the date of completion of the person's sentence, if certain conditions are met.

SECTION 8. Amends Section 411.074, Government Code, as follows:

Sec. 411.074. REQUIRED CONDITIONS FOR RECEIVING AN ORDER OF NONDISCLOSURE. (a) Provides that a person may be granted an OND of criminal history record information and, when applicable, is entitled to petition the court to receive an OND only if, during the period after the court pronounced the sentence or placed the person on community supervision, including deferred adjudication community supervision, for the offense for which the OND is requested, and during any applicable waiting period for the person under this subchapter following completion of the person's sentence or community supervision, including deferred adjudication community supervision, the person is not convicted of or placed on deferred adjudication community supervision, rather than community supervision, under Subchapter C, Chapter 42A, Code of Criminal Procedure, for any offense other than a traffic offense that is punishable by fine only. Makes conforming and nonsubstantive changes.

(b) Prohibits a person from being granted an OND of criminal history record information and provides that a person is not entitled to petition the court for an OND if:

(1) the person requests the OND for, or the person has been previously convicted of or placed on deferred adjudication community supervision for certain offenses, rather than if the person was convicted or placed on deferred adjudication community supervision. Makes nonsubstantive changes; or

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

SECTION 9. Amends Section 411.0765(a), Government Code, as follows:

(a) Authorizes a criminal justice agency to disclose criminal history record information that is the subject of an OND of criminal history record information under this subchapter only for the purpose of complying with a requirement under federal law or if federal law requires the disclosure as a condition of receiving federal highway funds. Makes nonsubstantive changes.

SECTION 10. Amends Subchapter A, Chapter 42A, Code of Criminal Procedure, by adding Article 42A.002, as follows:

Art. 42A.002. REFERENCE IN LAW. Provides that a reference in a law to a statute or a part of a statute revised in this chapter by Chapter 770 (H.B. 2299), Acts of the 84th Legislature, Regular Session, 2015, is considered to be a reference to the part of this chapter that revises that statute or part of that statute.

SECTION 11. Amends Article 42A.105, Code of Criminal Procedure, to conform to Chapter 1279 (S.B. 1902), Acts of the 84th Legislature, Regular Session, 2015, by adding Subsection (f), as follows:

(f) Requires the judge, if a judge places on deferred adjudication community supervision a defendant charged with 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), 46 (Weapons), or 71 (Organized Crime), Penal Code, to make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that it is not in the best interest of justice that the defendant receive an automatic OND under Section 411.072, Government Code.

SECTION 12. (a) Repealer: Section 16, Chapter 1279 (S.B. 1902), Acts of the 84th Legislature, Regular Session, 2015, which amended Section 5, Article 42.12, Code of Criminal Procedure

(b) Repealer: Section 32, Chapter 1279 (S.B. 1902) (relating to making the OND of criminal history record information prospective), Acts of the 84th Legislature, Regular Session, 2015.

SECTION 13. Provides that, to the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 14. Effective date: September 1, 2017.