

## **BILL ANALYSIS**

C.S.H.B. 3936  
By: Herrero  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

An order of nondisclosure can help prevent a person's past mistake from following the person throughout life. Current law limits the availability of an order of nondisclosure, and interested parties have expressed concern that this limitation is preventing individuals who have been convicted of certain low-level, nonviolent crimes from receiving an order. C.S.H.B. 3936 seeks to expand the availability of orders of nondisclosure and to streamline the process for obtaining an order.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3936 amends the Government Code to establish an alternative framework for granting an order of nondisclosure of criminal history record information to a person who receives a discharge and dismissal after being placed on deferred adjudication community supervision for a misdemeanor offense other than a kidnapping, unlawful restraint, or smuggling of persons offense, a sexual offense, an assaultive offense, an offense against the family, a disorderly conduct or related offense, a public indecency offense, an organized crime offense, a weapons offense, or a misdemeanor with respect to which an affirmative finding was filed in the papers of the case that it is not in the best interest of justice that the person receive such an order, and who has never been previously convicted of or placed on deferred adjudication community supervision for another offense other than a fine-only Transportation Code offense. The bill requires the court that placed such a person on deferred adjudication community supervision, if the person satisfies the required conditions for receiving an order of nondisclosure, to issue an order of nondisclosure of criminal history record information 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 bill requires the court to determine whether the person satisfies the required conditions for an order of nondisclosure and, if the court makes a finding that the conditions are satisfied, requires the court to issue the order of nondisclosure of criminal history record information 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 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. The bill 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 and to pay a \$28 fee to the clerk of the court before the court issues the order.

C.S.H.B. 3936 expands eligibility for an order of nondisclosure of criminal history record information to include the following persons:

- a person placed on community supervision following a conviction of a misdemeanor, other than certain alcohol-related or intoxication-related offenses or the offense of violating a court order enjoining organized criminal activity, whose community supervision has not been revoked and who completes the period of community supervision;
- a person placed on any type of community supervision, not only deferred adjudication community supervision, including a person required to serve a term of confinement as a condition of community supervision or a person who is placed on community supervision after having served part of a term of confinement imposed for the offense, whose community supervision has not been revoked and who completes the period of community supervision; and
- a person who has not been placed on community supervision and who is convicted of a misdemeanor, other than certain alcohol-related or intoxication-related offenses or the offense of violating a court order enjoining organized criminal activity, who is sentenced to and serves a period of confinement, and who is released.

The bill authorizes such a person to petition the court that placed the person on community supervision or the court that imposed the sentence, as applicable, for an order of nondisclosure of criminal history record information if the person satisfies the required conditions for receiving an order of nondisclosure and has never been previously convicted of or placed on deferred adjudication community supervision for another offense other than a fine-only Transportation Code offense. The bill 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 or confinement. The bill establishes the earliest date on which the person may petition the court that placed the person on community supervision or imposed the sentence, as applicable, for the order of nondisclosure.

C.S.H.B. 3936 prohibits the granting of an order of nondisclosure of criminal history record information to a person and establishes that a person is not entitled to petition a court to receive such an order if the court makes an affirmative finding that the offense for which the order is requested involved family violence. The bill includes trafficking of persons and continuous trafficking of persons among the offenses for which a conviction or placement on deferred adjudication community supervision or a previous conviction or placement on deferred adjudication community supervision triggers that prohibition and disqualification. The bill makes statutory provisions governing an order of nondisclosure of criminal history record information applicable to an order of nondisclosure sought or granted under the bill's provisions. The bill specifies that a person whose criminal history record information is the subject of an order of nondisclosure 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 and removes the restriction of that right to a person whose criminal history record information has been sealed under such an order.

C.S.H.B. 3936 authorizes a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, to certain noncriminal justice agencies or entities, or to the person who is the subject of the order. The bill includes among such noncriminal justice entities a bank, savings bank, savings and loan association, credit union, or mortgage banker, a subsidiary or affiliate of those entities, or another financial institution

regulated by certain state or federal regulatory agencies, but only regarding an employee, contractor, subcontractor, intern, or volunteer of or an applicant for employment by that entity. The bill 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 to be admitted into evidence during the trial of any subsequent offense if the information is admissible under the Texas Rules of Evidence or another law or to be disclosed to a prosecuting attorney for a criminal justice purpose.

C.S.H.B. 3936 amends the Code of Criminal Procedure to require a court, after pronouncing the sentence of a defendant, to inform the defendant of the defendant's right to petition the court for an order of nondisclosure of criminal history record information, unless the defendant is ineligible to pursue that right because of the requirements that apply to obtaining such an order in the defendant's circumstances. The bill requires a judge who dismisses the proceedings against and discharges a defendant on deferred adjudication community supervision, if the judge determines that the defendant is or may become eligible for an order of nondisclosure of criminal history record information to, as applicable, grant such an order, inform the defendant of the defendant's eligibility to receive such an order without a petition and the earliest date on which the defendant is eligible to receive the order, or inform the defendant of the defendant's eligibility to petition the court for such an order and the earliest date the defendant is eligible to file that petition. The bill requires a judge that places on deferred adjudication community supervision a defendant charged with a misdemeanor, other than a kidnapping, unlawful restraint, or smuggling of persons offense, a sexual offense, an assaultive offense, an offense against the family, a disorderly conduct or related offense, a public indecency offense, an organized crime offense, or a weapons offense, 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 order of nondisclosure under the bill's provisions.

C.S.H.B. 3936 amends the Business & Commerce Code, Health and Safety Code, and Occupations Code to make conforming changes.

#### **EFFECTIVE DATE**

September 1, 2015.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3936 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

No equivalent provision.

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 411, Government Code, is amended by adding Subchapter E-1 to read as follows:

SUBCHAPTER E-1. ORDER OF NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION  
Sec. 411.071. DEFINITIONS. In this subchapter, "criminal history record information," "criminal justice agency," and "criminal justice purpose" have the meanings assigned by Section 411.082.

SECTION 1. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.08111 to read as follows:

Sec. 411.08111. ORDER OF NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION: DEFERRED ADJUDICATION COMMUNITY SUPERVISION; CERTAIN NONVIOLENT MISDEMEANORS. (a)

This section only applies to a person placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, in a misdemeanor case that was not under Chapter 20, 21, 22, 25, 42, 43, or 46, Penal Code.

(b) Notwithstanding any other provision of this subchapter, if a person to whom this section applies subsequently receives a discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure, and satisfies the requirements of Section 411.0812, the court that placed the defendant on deferred adjudication shall issue an order of nondisclosure 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. The court shall determine whether the person satisfies the requirements of Section 411.0812. The court shall make that determination, and, if the requirements of Section 411.0812 are satisfied, issue the order of nondisclosure:

(1) at the time the court dismisses the proceedings against and discharges the defendant, unless that time is before the 180th day after the date the court placed the defendant on deferred adjudication; or

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

Sec. 411.072. PROCEDURE FOR DEFERRED ADJUDICATION COMMUNITY SUPERVISION; CERTAIN NONVIOLENT MISDEMEANORS.

(a) This section applies only to a person who:

(1) was placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for a misdemeanor other than a misdemeanor:

(A) under Chapter 20, 21, 22, 25, 42, 43, 46, or 71, Penal Code; or

(B) with respect to which an affirmative finding 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 an offense under the Transportation Code that is punishable by fine only.

(b) 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, the court that placed the person on deferred adjudication community supervision shall 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

(2) as soon as practicable on or after the 180th day after the date the court placed on deferred adjudication a defendant who has already received the defendant's discharge and dismissal.

(c) Except as provided by Section 411.0812, the person is entitled to an order of nondisclosure under Subsection (b) regardless of whether the person has been previously convicted or placed on deferred adjudication community supervision for another offense.

(d) The defendant shall present to the court evidence necessary to establish that the person is eligible to receive an order of nondisclosure under this section. The defendant must pay a \$28 fee to the clerk of the court before the court issues the order.

(e) A criminal justice agency may 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, to an agency or entity listed in Section 411.0818, or to the person who is the subject of the order.

SECTION 2. Section 411.081(d), Government Code, is redesignated as Section 411.08112 of Subchapter F, Chapter 411, Government Code, and amended to read as follows:

Sec. 411.08112. ORDER OF NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION: DEFERRED ADJUDICATION COMMUNITY SUPERVISION; CERTAIN OTHER MISDEMEANORS AND FELONIES.

(a) This section only applies to a person placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, in a misdemeanor case that is not covered by Section 411.08111 or in a felony case.

(b) ~~[(d)]~~ Notwithstanding any other provision of this subchapter, if a person to whom this section applies ~~[is placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure,]~~ subsequently

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) The person shall 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. The person must pay a \$28 fee to the clerk of the court before the court issues the order.

No equivalent provision. (But see SECTION 11 below.)

SECTION 4. Section 411.081(d), Government Code, is transferred to Subchapter E-1, Chapter 411, Government Code, as added by this Act, redesignated as Section 411.0725, Government Code, and amended to read as follows:

Sec. 411.0725. PROCEDURE FOR DEFERRED ADJUDICATION COMMUNITY SUPERVISION; FELONIES AND CERTAIN MISDEMEANORS.

(a) This section applies only to a person placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, who is not eligible to receive an order of nondisclosure of criminal history record information under Section 411.072.

(b) ~~[(d)]~~ Notwithstanding any other provision of this subchapter or Subchapter F, if a person described by Subsection (a) ~~[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 Section 411.0812 [~~Subsection (e)~~], the person may petition the court that placed the defendant on deferred adjudication for an order of nondisclosure under this section [~~subsection~~].

(c) Except as provided by Section 411.0812 [~~Subsection (e)~~], a person may petition the court for an order of nondisclosure regardless of whether the person has been previously placed on deferred adjudication community supervision for another offense.

(d) 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, the court shall 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.

(e) A criminal justice agency may 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 Section 411.0818 [~~Subsection (i)~~], or the person who is the subject of the order.

(f) A person may petition the court that placed the person on deferred adjudication for an order of nondisclosure under this section only on or after:

(1) [~~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);~~

[~~(2)~~] the second anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor not covered by Section 411.08111 [~~under Chapter 20, 21, 22, 25, 42, or 46, Penal Code~~]; or

(2) [~~(3)~~] the fifth anniversary of the discharge and dismissal, if the offense for

receives a discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure, and satisfies the requirements of Section 411.074 [~~Subsection (e)~~], the person may petition the court that placed the person [~~defendant~~] on deferred adjudication community supervision for an order of nondisclosure of criminal history record information under this section [~~subsection~~].

(c) Except as provided by Section 411.074 [~~Subsection (e)~~], a person may 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) 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, the court shall 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) [~~A criminal justice agency may 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.~~]

(But see SECTION 11 below.)

A person may 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 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);

(2) 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

(3) the fifth anniversary of the discharge and dismissal, if the offense for which the

which the person was placed on deferred adjudication was a felony.

SECTION 3. Subchapter F, Chapter 411, Government Code, is amended by adding Sections 411.08113 and 411.08114 to read as follows:

Sec. 411.08113. ORDER OF NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION; COMMUNITY SUPERVISION; CERTAIN MISDEMEANORS.

(a) This section only applies to a person placed on community supervision under Article 42.12, Code of Criminal Procedure, in a misdemeanor case under a provision of Article 42.12 other than Section 5, including a person who otherwise satisfies the requirements of this section and Section 411.0812 who is placed on community supervision:

(1) under a provision of Article 42.12

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

(2) after serving part of a term of confinement imposed for the offense.

(b) Notwithstanding any other provision of this subchapter, a person to whom this section applies whose community supervision is not revoked and who completes the period of community supervision may petition the court that placed the defendant on community supervision for an order of nondisclosure under this section if the person:

(1) has not previously been granted an order of nondisclosure of criminal history record information under this subchapter for another offense; and

(2) satisfies the requirements of this section and Section 411.0812.

(c) A person may petition the court for an order of nondisclosure under this section only if the person has never been previously convicted or placed on deferred adjudication community supervision for another offense other than an offense under the Transportation Code punishable by fine only.

person was placed on deferred adjudication was a felony.

SECTION 5. Subchapter E-1, Chapter 411, Government Code, as added by this Act, is amended by adding Sections 411.073 and 411.0735 to read as follows:

Sec. 411.073. PROCEDURE FOR COMMUNITY SUPERVISION FOLLOWING CONVICTION; CERTAIN MISDEMEANORS.

(a) 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, Alcoholic Beverage Code, or Section 49.04, 49.05, 49.06, 49.065, or 71.021, 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) 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 may 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.

(d) 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, the court shall 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) A criminal justice agency may 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 Section 411.0818, or the person who is the subject of the order.

(f) A person may petition the court that placed the person on community supervision for an order of nondisclosure 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. 411.08114. ORDER OF NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION; CONVICTION AND CONFINEMENT; CERTAIN MISDEMEANORS.

(a) This section applies only to a person who:

(1) is convicted of a misdemeanor, sentenced to a period of confinement, and confined, and

(2) is not covered under Section 411.08113.

(b) Notwithstanding any other provision of this subchapter, a person to whom this section applies who completes the period of

(c) 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, the court shall 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.

No equivalent provision. (But see SECTION 11 below.)

(d) A person may 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) 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, 49.065, or 71.021, 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) Notwithstanding any other provision of this subchapter or Subchapter F, a person described by Subsection (a) who completes

confinement and is released may petition the court that imposed the sentence for an order of nondisclosure under this section if the person:

(1) has not previously been granted an order of nondisclosure of criminal history record information under this subchapter for another offense; and

(2) satisfies the requirements of this section and Section 411.0812.

(c) A person may petition the court for an order of nondisclosure under this section only if the person has never been previously convicted or placed on deferred adjudication community supervision for another offense other than an offense under the Transportation Code punishable by fine only.

(d) 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, the court shall 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.

(e) A criminal justice agency may 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 Section 411.0818, or the person who is the subject of the order.

(f) A person may petition the court that imposed the sentence for an order of nondisclosure under this section only on or after the second anniversary of the date of completion of the period of confinement.

SECTION 4. Section 411.081(e), Government Code, is redesignated as Section 411.0812 of Subchapter F, Chapter 411, Government Code, and amended to read as follows:

Sec. 411.0812. REQUIRED CONDITIONS FOR RECEIVING AN ORDER OF NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION. (a) [(e)] A person may be granted an order of nondisclosure of criminal history record

the period of confinement and is released may petition the court that imposed the sentence 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 punishable by fine only.

(c) 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, the court shall 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.

No equivalent provision. (*But see SECTION 11 below.*)

(d) A person may 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. Section 411.081(e), Government Code, is transferred to Subchapter E-1, Chapter 411, Government Code, as added by this Act, redesignated as Section 411.074, Government Code, and amended to read as follows:

Sec. 411.074. REQUIRED CONDITIONS FOR RECEIVING AN ORDER OF NONDISCLOSURE. (a) [(e)] A person may be granted an order of nondisclosure of criminal history record information under

information under this subchapter and, when applicable, is entitled to petition the court to receive such an order under this subchapter [Subsection (d)] only if, during the period after the court either pronounced the sentence regarding the offense for which the order of nondisclosure is requested or placed the person on [of] the deferred adjudication community supervision regarding [for] which the order of nondisclosure is requested, and during any [the] applicable waiting period after completion of the sentence or deferred adjudication community supervision required [described] by this subchapter [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) A person may not be granted an order of nondisclosure of criminal history record information under this subchapter and, when applicable, is not entitled to petition the court to receive such an order under this subchapter [Subsection (d)] if

the person was convicted or placed on [the] deferred adjudication community supervision for or has been previously convicted or placed on any other deferred adjudication for:

- (1) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
- (2) an offense under Section 20.04, Penal Code, regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure;
- (3) an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code; or
- (4) any other offense involving family violence, as defined by Section 71.004, Family Code.

(c) A person may not be granted an order of nondisclosure of criminal history record information under this subchapter and, when applicable, is not entitled to petition the court to receive such an order under this subchapter if the court made an affirmative finding that the offense regarding which the order of nondisclosure is requested involved

this subchapter and, when applicable, is entitled to petition the court to receive an order under this subchapter [Subsection (d)] only if, during the period after the court pronounced the sentence or placed the person on [of the] deferred adjudication community supervision for the offense for which the order of nondisclosure is requested, and during any [the] applicable waiting period after completion of the sentence or deferred adjudication community supervision required [described] by this subchapter [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) A person may not be granted an order of nondisclosure of criminal history record information under this subchapter and is not entitled to petition the court for an order under this subchapter [Subsection (d)] if:

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

- (A) [(1)] an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
- (B) [(2)] an offense under Section 20.04, Penal Code, regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure;
- (C) [(3)] an offense under Section 19.02, 19.03, 20A.02, 20A.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code; or
- (D) [(4)] any other offense involving family violence, as defined by Section 71.004, Family Code; or

(2) the court makes an affirmative finding that the offense for which the order of nondisclosure of criminal history record

family violence, as defined by Section 71.004, Family Code.

SECTION 5. Section 411.081(f), Government Code, is redesignated as Section 411.08121 of Subchapter F, Chapter 411, Government Code, and amended.

SECTION 6. Section 411.081(f-1), Government Code, is redesignated as Section 411.0813 of Subchapter F, Chapter 411, Government Code, and amended.

SECTION 7. Sections 411.081(g), (g-1), (g-1a), (g-1b), and (g-1c), Government Code, are redesignated as Section 411.0814 of Subchapter F, Chapter 411, Government Code, and amended.

SECTION 8. Section 411.081(g-2), Government Code, is redesignated as Section 411.0815 of Subchapter F, Chapter 411, Government Code, and amended to read as follows:

Sec. 411.0815. NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION: STATEMENT IN APPLICATION FOR EMPLOYMENT, INFORMATION, OR LICENSING.

~~[(g-2)]~~ A person whose criminal history record information has been sealed under this subchapter [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 an order of nondisclosure of criminal history record information issued under this subchapter [section].

SECTION 9. Section 411.081(g-3), Government Code, is redesignated as Section 411.0816 of Subchapter F, Chapter 411, Government Code, and amended.

SECTION 10. Section 411.081(h), Government Code, is redesignated as Section 411.0817 of Subchapter F, Chapter 411, Government Code, and amended.

SECTION 11. Section 411.081(i), Government Code, as amended by Section

information is requested involved family violence, as defined by Section 71.004, Family Code.

SECTION 2. Substantially the same as the introduced version.

SECTION 7. Substantially the same as the introduced version.

SECTION 8. Substantially the same as the introduced version.

SECTION 9. Section 411.081(g-2), Government Code, is transferred to Subchapter E-1, Chapter 411, Government Code, as added by this Act, redesignated as Section 411.0755, Government Code, and amended to read as follows:

Sec. 411.0755. STATEMENT IN APPLICATION FOR EMPLOYMENT, INFORMATION, OR LICENSING.

~~[(g-2)]~~ A person whose criminal history record information is the subject of an order of nondisclosure of criminal history record information issued ~~[has been sealed]~~ under this subchapter [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 [an] order ~~[issued under this section]~~.

SECTION 10. Substantially the same as the introduced version.

SECTION 12. Substantially the same as the introduced version.

SECTION 11. Section 411.081(i), Government Code, as amended by Chapters

4, Chapter 266, Section 32, Chapter 583, and Section 2.23, Chapter 42, Acts of the 83rd Legislature, Regular Session, 2013, is redesignated as Section 411.0818 of Subchapter F, Chapter 411, Government Code, and amended to read as follows:

Sec. 411.0818. ALLOWED DISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION TO CERTAIN AGENCIES.

No equivalent provision. (But see Sections 411.08111(e), 411.08112(e), 411.08113(e), and 411.08114(e) above.)

[~~(f)~~] A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure of criminal history record information under this subchapter [~~Subsection (d)~~] to the following noncriminal justice agencies or entities only:

- (1) the State Board for Educator Certification;
- (2) a school district, charter school, private school, regional education service center, commercial transportation company, or education shared service arrangement;
- (3) the Texas Medical Board;
- (4) the Texas School for the Blind and Visually Impaired;
- (5) the Board of Law Examiners;
- (6) the State Bar of Texas;
- (7) a district court regarding a petition for name change under Subchapter B, Chapter 45, Family Code;
- (8) the Texas School for the Deaf;
- (9) the Department of Family and Protective Services;
- (10) the Texas Juvenile Justice Department;
- (11) the Department of Assistive and Rehabilitative Services;
- (12) the Department of State Health Services, a local mental health service, a local mental retardation authority, or a community center providing services to persons with mental illness or retardation;

42 (S.B. 966), 266 (H.B. 729), and 583 (S.B. 869), Acts of the 83rd Legislature, Regular Session, 2013, is reenacted, transferred to Subchapter E-1, Chapter 411, Government Code, as added by this Act, redesignated as Section 411.0765, Government Code, and amended to read as follows:

Sec. 411.0765. DISCLOSURE BY CRIMINAL JUSTICE AGENCY.

(a) A criminal justice agency may 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) [~~(f)~~] A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure of criminal history record information under this subchapter [~~Subsection (d)~~] to the following noncriminal justice agencies or entities only:

- (1) the State Board for Educator Certification;
- (2) a school district, charter school, private school, regional education service center, commercial transportation company, or education shared service arrangement;
- (3) the Texas Medical Board;
- (4) the Texas School for the Blind and Visually Impaired;
- (5) the Board of Law Examiners;
- (6) the State Bar of Texas;
- (7) a district court regarding a petition for name change under Subchapter B, Chapter 45, Family Code;
- (8) the Texas School for the Deaf;
- (9) the Department of Family and Protective Services;
- (10) the Texas Juvenile Justice Department;
- (11) the Department of Assistive and Rehabilitative Services;
- (12) the Department of State Health Services, a local mental health service, a local intellectual and developmental disability [~~mental retardation~~] authority, or a community center providing services to persons with mental illness or intellectual or developmental disabilities [~~retardation~~];

- (13) the Texas Private Security Board;
- (14) a municipal or volunteer fire department;
- (15) the Texas Board of Nursing;
- (16) a safe house providing shelter to children in harmful situations;
- (17) a public or nonprofit hospital or hospital district, or a facility as defined by Section 250.001, Health and Safety Code;
- (18) the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner;
- (19) the Texas State Board of Public Accountancy;
- (20) the Texas Department of Licensing and Regulation;
- (21) the Health and Human Services Commission;
- (22) the Department of Aging and Disability Services;
- (23) the Texas Education Agency;
- (24) the Judicial Branch Certification Commission;
- (25) a county clerk's office in relation to a proceeding for the appointment of a guardian under Chapter XIII, Texas Probate Code;
- (26) the Department of Information Resources but only regarding an employee, applicant for employment, contractor, subcontractor, intern, or volunteer who provides network security services under Chapter 2059 to:
  - (A) the Department of Information Resources; or
  - (B) a contractor or subcontractor of the Department of Information Resources;
- (27) the Texas Department of Insurance; ~~[and]~~
- (28) the Teacher Retirement System of Texas; and
- (29) the Texas State Board of Pharmacy.

- (13) the Texas Private Security Board;
- (14) a municipal or volunteer fire department;
- (15) the Texas Board of Nursing;
- (16) a safe house providing shelter to children in harmful situations;
- (17) a public or nonprofit hospital or hospital district, or a facility as defined by Section 250.001, Health and Safety Code;
- (18) the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner;
- (19) the Texas State Board of Public Accountancy;
- (20) the Texas Department of Licensing and Regulation;
- (21) the Health and Human Services Commission;
- (22) the Department of Aging and Disability Services;
- (23) the Texas Education Agency;
- (24) the Judicial Branch Certification Commission;
- (25) a county clerk's office in relation to a proceeding for the appointment of a guardian under Title 3, Estates [Chapter XIII, Texas Probate] Code;
- (26) the Department of Information Resources but only regarding an employee, applicant for employment, contractor, subcontractor, intern, or volunteer who provides network security services under Chapter 2059 to:
  - (A) the Department of Information Resources; or
  - (B) a contractor or subcontractor of the Department of Information Resources;
- (27) the Texas Department of Insurance;
- (28) the Teacher Retirement System of Texas; ~~[and]~~
- (29) [(30)] the Texas State Board of Pharmacy; and
- (30) a bank, savings bank, savings and loan association, credit union, or mortgage banker, a subsidiary or affiliate of those entities, or another financial institution regulated by a state regulatory entity listed in Subdivision (18) or by a corresponding federal regulatory entity, but only regarding an employee, contractor, subcontractor, intern, or volunteer of or an applicant for employment by that bank, savings bank,

savings and loan association, credit union, mortgage banker, subsidiary or affiliate, or financial institution.

SECTION 12. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.0819 to read as follows:

Sec. 411.0819. ADMISSIBILITY OF CRIMINAL HISTORY RECORD INFORMATION IN SUBSEQUENT CRIMINAL PROCEEDING.

Notwithstanding any other law, criminal history record information that is the subject of an order of nondisclosure under this subchapter:

(1) shall be admissible before the court or jury at the trial of any subsequent offense for any relevant purpose; and

(2) may be disclosed to a prosecuting attorney and included in an indictment or information.

SECTION 13. Section 109.005(a), Business and Commerce Code, is amended.

SECTION 14. Article 12.03, Code of Criminal Procedure, is amended by adding Section 5 to read as follows:

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

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

(2) the defendant's criminal history; or

(3) under circumstances when this prohibition on receiving an order is applicable, because the defendant has previously received an order of nondisclosure of criminal history record information under Subchapter F, Chapter 411, Government Code, for another offense.

SECTION 13. Subchapter E-1, Chapter 411, Government Code, as added by this Act, is amended by adding Section 411.0775 to read as follows:

Sec. 411.0775. ADMISSIBILITY AND USE OF CERTAIN CRIMINAL HISTORY RECORD INFORMATION IN SUBSEQUENT CRIMINAL PROCEEDING.

Notwithstanding any other law, 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 may 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; or

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

SECTION 14. Substantially the same as the introduced version.

SECTION 15. Article 42.03, Code of Criminal Procedure, is amended by adding Section 5 to read as follows:

Sec. 5. Except as otherwise provided by Section 5(a-1), Article 42.12, the court after pronouncing the sentence shall 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 15. Section 5(a-1), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(a-1) Before placing a defendant on deferred adjudication community supervision under this section, the court shall 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 F, Chapter 411 [Section 411.081], Government Code, as applicable, unless the defendant is 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.

SECTION 16. Section 5(c-1), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(c-1) A judge who dismisses the proceedings against a defendant and discharges the defendant under Subsection (c) shall:

- (1) provide the defendant with a copy of the order of dismissal and discharge; and
- (2) if and as applicable, grant, or

inform the defendant of the defendant's eligibility to petition the court for, an order of nondisclosure of criminal history record information under Subchapter F, Chapter 411 [Section 411.081], Government Code, and if and as applicable the earliest date the defendant is eligible to receive the order of nondisclosure or to file the petition for the order of nondisclosure.

SECTION 16. Section 5, Article 42.12, Code of Criminal Procedure, is amended by amending Subsections (a-1) and (c-1) and adding Subsection (k) to read as follows:

(a-1) Before placing a defendant on deferred adjudication community supervision under this section, the court shall inform the defendant of the defendant's right to receive or petition the court for an order of nondisclosure of criminal history record information under Subchapter E-1, Chapter 411 [Section 411.081], Government Code, as applicable, unless the defendant is ineligible for an order ~~[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) A judge who dismisses the proceedings against a defendant and discharges the defendant under Subsection (c):

(1) shall~~;~~:

~~[(1)]~~ 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, shall, 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 [under Section 411.081, Government Code,] and the earliest date the defendant is eligible to file the petition for the order [of nondisclosure].

No equivalent provision.

SECTION 17. Section 54.656(a), Government Code, is amended to read as follows:

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

- (1) a negotiated plea of guilty before the court;
- (2) a bond forfeiture;
- (3) a pretrial motion;
- (4) a postconviction writ of habeas corpus;
- (5) an examining trial;
- (6) an occupational driver's license;
- (7) an agreed order of expunction under Chapter 55, Code of Criminal Procedure;
- (8) an asset forfeiture hearing as provided by Chapter 59, Code of Criminal Procedure;
- (9) an agreed order of nondisclosure provided by Subchapter F, Chapter 411 [Section 411.081];

(10) a hearing on a motion to revoke probation; and

(11) any other matter the judge considers necessary and proper.

SECTION 18. Section 103.0211, Government Code, is amended.

SECTION 19. Section 123.001(b), Government Code, is amended.

No equivalent provision.

(k) If a judge places on deferred adjudication community supervision a defendant charged with a misdemeanor other than a misdemeanor under Chapter 20, 21, 22, 25, 42, 43, 46, or 71, Penal Code, the judge shall 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 order of nondisclosure under Section 411.072, Government Code.

SECTION 17. Section 54.656(a), Government Code, is amended to read as follows:

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

- (1) a negotiated plea of guilty before the court;
- (2) a bond forfeiture;
- (3) a pretrial motion;
- (4) a postconviction writ of habeas corpus;
- (5) an examining trial;
- (6) an occupational driver's license;
- (7) an agreed order of expunction under Chapter 55, Code of Criminal Procedure;
- (8) an asset forfeiture hearing as provided by Chapter 59, Code of Criminal Procedure;
- (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 [Section 411.081];

(10) a hearing on a motion to revoke probation; and

(11) any other matter the judge considers necessary and proper.

SECTION 18. Substantially the same as the introduced version.

SECTION 19. Substantially the same as the introduced version.

SECTION 20. Section 411.081(a), Government Code, is amended to read as follows:

(a) This subchapter does not apply to criminal history record information that is contained in:

- (1) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

- (2) original records of entry, including police blotters maintained by a criminal justice agency that are compiled chronologically and required by law or long-standing practice to be available to the public;
- (3) public judicial, administrative, or legislative proceedings;
- (4) court records of public judicial proceedings[, ~~except as provided by Subsection (g-3)~~];
- (5) published judicial or administrative opinions; or
- (6) announcements of executive clemency.

No equivalent provision.

SECTION 21. Section 411.083(a), Government Code, is amended to read as follows:

(a) Criminal history record information maintained by the department is confidential information for the use of the department and, except as provided by this subchapter or Subchapter E-1, may not be disseminated by the department.

No equivalent provision.

SECTION 22. Section 411.0835, Government Code, is amended to read as follows:

Sec. 411.0835. PROHIBITION AGAINST DISSEMINATION TO CERTAIN PRIVATE ENTITIES. If the department receives information indicating that a private entity that purchases criminal history record information from the department has been found by a court to have committed three or more violations of Section 552.1425 by compiling or disseminating information with respect to which 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, the department may not release any criminal history record information to that entity until the first anniversary of the date of the most recent violation.

SECTION 20. Section 411.0851(a), Government Code, is amended.

SECTION 23. Substantially the same as the introduced version.

No equivalent provision.

SECTION 24. Sections 411.087(a) and (b), Government Code, are amended to read as follows:

(a) Unless otherwise authorized by

Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the department criminal history record information maintained by the department that relates to another person is authorized to:

(1) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to that person; or

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

(b) Any restriction or limitation in this subchapter or Subchapter E-1 on criminal history record information that a person, agency, department, political subdivision, or other entity is entitled to obtain from the department applies equally to the criminal history record information that the person, agency, department, political subdivision, or other entity is entitled to obtain from the identification division of the Federal Bureau of Investigation or other criminal justice agency.

No equivalent provision.

SECTION 25. Section 411.122(c), Government Code, is amended to read as follows:

(c) This section does not apply to an agency that is:

(1) specifically authorized by this subchapter or Subchapter E-1 to obtain criminal history record information from the department; or

(2) covered by Section 53.002, Occupations Code, to the extent provided by that section.

No equivalent provision.

SECTION 26. The heading to Section 552.142, Government Code, is amended to read as follows:

Sec. 552.142. EXCEPTION: CONFIDENTIALITY OF RECORDS SUBJECT TO ORDER OF NONDISCLOSURE [~~OF CERTAIN DEFERRED ADJUDICATIONS~~].

SECTION 21. Section 552.142(a), Government Code, is amended.

SECTION 27. Substantially the same as the introduced version.

SECTION 22. Section 552.1425(a), Government Code, is amended.

SECTION 28. Substantially the same as the introduced version.

SECTION 23. Section 169.001(b), Health and Safety Code, is amended.

SECTION 24. Section 169A.001(b), Health and Safety Code, is amended.

SECTION 25. Section 53.021(e), Occupations Code, is amended.

SECTION 26. The changes in law made by this Act apply only in relation to an offense committed on or after the effective date of this Act. Matters relating to an order of nondisclosure of criminal history record information in relation to an offense committed before the effective date of this Act are governed by the law on such orders in effect immediately before the effective date of this Act, and the prior law is continued in effect for this purpose.

No equivalent provision.

SECTION 27. This Act takes effect September 1, 2015.

SECTION 29. Substantially the same as the introduced version.

SECTION 30. Substantially the same as the introduced version.

SECTION 31. Substantially the same as the introduced version.

SECTION 32. The changes in law made by this Act apply only to the issuance of an order of nondisclosure of criminal history record information for an offense committed on or after the effective date of this Act. The issuance of an order of nondisclosure of criminal history record information for an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

SECTION 33. 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 34. Same as introduced version.