

BILL ANALYSIS

Senate Research Center
81R3300 KEL-D

S.B. 2221
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Before 2003, to be eligible for probation for the offenses of injury to a child and indecency with a child, some offenders entered into a plea agreement that included a condition that the offender register as a sex offender during the probation period.

In 2003, the U.S. Supreme Court held that sexual offender registration is not punishment; therefore, sexual offender registration is not considered subject to the prohibition against *ex post facto* laws. *Ex post facto* laws are laws that may not be applied retroactively and they include laws that criminalize or enhance offenses. This holding means that offenders who believed they would be required to be on the sex offender registry only during the probation period must remain on the sex offender registry for the remainder of their lives.

As proposed, S.B. 2221 expands current law authorizing persons who have successfully completed deferred adjudication community supervision to file a petition for nondisclosure of the criminal record by permitting an offender who received deferred adjudication for indecency with a child or sexual assault to petition for an order of nondisclosure after the 10th anniversary of the discharge and dismissal if certain requirements are satisfied, including that the offense involved no physical coercion of the victim, the victim was 15 years old or older at the time of the offense, the victim, if available, has filed an affidavit with the court stating that the victim does not object to the petition, and a licensed polygraph examiner administered to the person and the person passed a polygraph examination indicating that the person has not committed any other offense requiring registration under Chapter 62, Code of Criminal Procedure, after completing the applicable period of supervision.

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 Section 411.081, Government Code, by amending Subsections (d) and (e) and adding Subsection (e-1), as follows:

(d) Authorizes a person, notwithstanding any other provision of this subchapter, if a person is placed on deferred adjudication community supervision under Section 5 (Deferred Adjudication; Community Supervision), Article 42.12, Code of Criminal Procedure, subsequently receives a discharge and dismissal under Section 5(c) (Relating to the expiration of a community supervision period), Article 42.12, and satisfies the requirements of Subsection (e) and, if applicable, Subsection (e-1), to petition the court that placed the defendant on deferred adjudication for an order of nondisclosure under this subsection. Authorizes the payment to be made only on or after the fifth anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a felony, except as provided by Subdivision (4); or the 10th anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was an offense under Section 21.11 (Indecency With a Child) or 22.011 (Sexual Assault), Penal Code, and the person satisfies the requirements of Subsection (e-1).

(e) Provides that a person is entitled to petition the court under Subsection (d) only if during the period of the deferred adjudication community supervision for which the order of nondisclosure is requested and during the applicable period described by Subsection (d)(1), (2), (3), or (4) (Relating to when payments must be made), 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. Creates an exception under Subsection (e-1). Makes nonsubstantive changes.

(e-1) Provides that a person is entitled to petition the court under Subsection (d) if the person, after having been placed on deferred adjudication community supervision for an offense under Section 21.11 or 22.011, Penal Code, satisfies the requirements of Subsection (e), provided that:

(1) the person has not been previously convicted or placed on any other deferred adjudication for an offense described by Subsection (e)(1), (2), (3), or (4) (Relating to when a person is entitled to petition the court), including an offense under Section 21.11 or 22.011, Penal Code;

(2) at the time the plea was entered, state law provided that the registration requirements under Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure, would not apply to the person after the applicable period of supervision was terminated;

(3) the offense involved no physical coercion of the victim;

(4) the victim was 15 years of age or older at the time of the offense;

(5) the victim is unavailable at the time of the petition or, if available, filed with the court an affidavit stating that the victim has no objection to the court granting the petition; and

(6) a polygraph examiner licensed under Chapter 1703 (Polygraph Examiners), Occupations Code, administered to the person and the person passed a polygraph examination indicating that the person has not committed any other offense requiring registration under Chapter 62, Code of Criminal Procedure, after completing the applicable period of supervision.

SECTION 2. Provides that the change in law made by this Act in amending Section 411.081, Government Code, applies to a person who petitions the court for an order of nondisclosure on or after the effective date of this Act, regardless of whether the person is placed on deferred adjudication community supervision before, on, or after that date.

SECTION 3. Effective date: September 1, 2009.