

## **BILL ANALYSIS**

Senate Research Center

S.B. 1902  
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Criminal Justice  
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### **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.

As proposed, S.B. 1902 amends current law relating to an order of nondisclosure of certain 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 F, Chapter 411, Government Code, by adding Section 411.08111, as follows:

Sec. 411.08111. ORDER OF NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION: DEFERRED ADJUDICATION COMMUNITY SUPERVISION; CERTAIN NONVIOLENT MISDEMEANORS. (a) Provides that this section only applies 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, in a misdemeanor case that was not 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 defendant on deferred adjudication, 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) (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 411.0812, to 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. Requires the court to determine whether the person satisfies the requirements of Section 411.0812. Requires the court to 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

(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) Entitles the person, except as provided by Section 411.0812, 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) Requires the defendant to present to the court evidence necessary to establish that the person is eligible to receive an order of nondisclosure under this section. Requires the defendant to pay a \$28 fee to the clerk of the court before the court issues the order.

(e) Authorizes a criminal justice agency to disclose criminal history record information that is the subject of the order only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, to an agency or entity listed in Section 411.0818, or to the person who is the subject of the order.

SECTION 2. Redesignates Section 411.081(d), Government Code, as Section 411.08112 of Subchapter F, Chapter 411, Government Code, and amends it, as follows:

Sec. 411.08112. ORDER OF NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION: DEFERRED ADJUDICATION COMMUNITY SUPERVISION; CERTAIN OTHER MISDEMEANORS AND FELONIES. Redesignates existing Section 411.081(d) as Section 411.08112(a). (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, in a misdemeanor case that is not covered by Section 411.08111 or in a felony case.

(b) Redesignates existing Subsection (d) as Subsection (b). Authorizes the person, 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, and satisfies the requirements of Section 411.0812 to petition the court that placed the defendant on deferred adjudication for an order of nondisclosure 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. Changes a reference to Subsection (e) to Section 411.0812.

(d) Creates this subsection from existing text.

(e) Creates this subsection from existing text. Changes a reference to Subsection (i) to Section 411.0818.

(f) Creates this subsection from existing text. Authorizes a person to petition the court that placed the person on deferred adjudication for an order of nondisclosure 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 not covered by Section 411.08111, rather than was a misdemeanor under Chapter 20, 21, 22, 25, 42, 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 person to petition the court that placed the person on deferred adjudication for an order of nondisclosure 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). Redesignates existing Subdivision (3) as Subdivision (2).

SECTION 3. Amends Subchapter F, Chapter 411, Government Code, by adding Sections 411.08113 and 411.08114, as follows:

Sec. 411.08113. ORDER OF NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION: COMMUNITY SUPERVISION; CERTAIN MISDEMEANORS. (a) Provides that 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) Authorizes a person to whom this section applies whose community supervision is not revoked and who completes the period of community supervision to, notwithstanding any other provision of this subchapter, 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) Authorizes a person to 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) 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.

(e) Authorizes a criminal justice agency to disclose criminal history record information that is the subject of the order only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Section 411.0818, or the person who is the subject of the order.

(f) Authorizes a person to 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) Provides that 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) Authorizes a person to whom this section applies who completes the period of confinement and is released to, notwithstanding any other provision of this subchapter, 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) Authorizes a person to 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) 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.

(e) Authorizes a criminal justice agency to disclose criminal history record information that is the subject of the order only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Section 411.0818, or the person who is the subject of the order.

(f) Authorizes a person to 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. Redesignates Section 411.081(e), Government Code, as Section 411.0812 of Subchapter F, Chapter 411, Government Code, and amends it, as follows:

Sec. 411.0812. REQUIRED CONDITIONS FOR RECEIVING AN ORDER OF NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION. Redesignates Section 411.081(e) as Section 411.0812(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 regarding the offense for which the order of nondisclosure is requested or placed the person on the deferred adjudication community supervision regarding 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, rather than entitles 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), and (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, when applicable, the person is not entitled to petition the court to receive such an order under this subchapter, rather than Subsection (d), if the person was convicted or placed on deferred adjudication

community supervision for or has been previously convicted or placed on any other deferred adjudication for certain offenses.

(c) Prohibits a person from being granted an order of nondisclosure of criminal history record information under this subchapter and provides that, when applicable, the person 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 family violence, as defined by Section 71.004 (Family Violence), Family Code.

SECTION 5. Redesignates Section 411.081(f), Government Code, as Section 411.08121 of Subchapter F, Chapter 411, Government Code, and amends it, as follows:

Sec. 411.08121. DEFINITION OF DEFERRED ADJUDICATION COMMUNITY SUPERVISION FOR PURPOSE OF RECEIVING ORDER OF NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION. Redesignates existing Section 411.081(f) as Section 411.08121. Provides that, for purposes related to an order of nondisclosure of criminal history record information under this subchapter, rather than for purposes of Subsection (d), 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 6. Redesignates Section 411.081(f-1), Government Code, as Section 411.0813 of Subchapter F, Chapter 411, Government Code, and amends it, as follows:

Sec. 411.0813. NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION: PETITION AND ORDER. Redesignates existing Section 411.081(f-1) as Section 411.0813(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.

(e) Creates this subsection from existing text. Changes a reference to subsection to section.

SECTION 7. Redesignates Sections 411.081(g), (g-1), (g-1a), (g-1b), and (g-1c), Government Code, as Section 411.0814 of Subchapter F, Chapter 411, Government Code, and amends it, as follows:

Sec. 411.0814. NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION: PROCEDURE AFTER ORDER. Redesignates existing Section 411.081(g) as Section 411.0814(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 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 411.0814(b). Changes a reference to Subsection (g) to Subsection (a).

(c) Redesignates existing Section 411.081(g-1a) as Section 411.0814(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 411.0814(d). Changes a reference to Subsection (g-1) to Subsection (b), and a reference to Subsection (g-1)(1) to Subsection (b)(1).

(e) Redesignates existing Section 411.081(g-1c) as Section 411.0814(e). Changes a reference to Subsection (g-1)(3) to Subsection (b)(3).

SECTION 8. Redesignates Section 411.081(g-2), Government Code, as Section 411.0815 of Subchapter F, Chapter 411, Government Code, and amends it, as follows:

Sec. 411.0815. NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION: STATEMENT IN APPLICATION FOR EMPLOYMENT, INFORMATION, OR LICENSING. Redesignates existing Section 411.081(g-2) as Section 411.0815. Provides that a person whose criminal history record information has been sealed under this subchapter, rather than 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. Makes a conforming change.

SECTION 9. Redesignates Section 411.081(g-3), Government Code, as Section 411.0816 of Subchapter F, Chapter 411, Government Code, and amends it, as follows:

Sec. 411.0816. NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION: DISCLOSURE BY COURT. Redesignates existing Section 411.081(g-3) as Section 411.0816(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 section. Changes a reference to Subsection (i) to Section 411.0818.

(b) Changes a reference to section to subchapter and a reference to Subsection (g) to Section 411.0814(a).

SECTION 10. Redesignates Section 411.081(h), Government Code, as Section 411.0817 of Subchapter F, Chapter 411, Government Code, and amends it, as follows:

Sec. 411.0817. NONDISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION: DISPOSITION OF FEE; DEPARTMENT OF PUBLIC SAFETY REPORT. Redesignates existing Section 411.081(h) as Section 411.0817(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 requires the clerk of a court that collects a fee 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 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.

SECTION 11. Redesignates Section 411.081(i), Government Code, as amended by Section 4, Chapter 266, Section 32, Chapter 583, and Section 2.23, Chapter 42, Acts of the 83rd Legislature, Regular Session, 2013, as Section 411.0818 of Subchapter F, Chapter 411, Government Code, and amends it, as follows:

Sec. 411.0818. ALLOWED DISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION TO CERTAIN AGENCIES. Redesignates existing Section 411.081(i) as Section 411.0818. 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 Subsection (d), to certain noncriminal justice agencies or entities only. Makes a nonsubstantive change. Creates Subdivision (29) from existing text.

SECTION 12. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.0819, as follows:

Sec. 411.0819. ADMISSIBILITY OF CRIMINAL HISTORY RECORD INFORMATION IN SUBSEQUENT CRIMINAL PROCEEDING. Provides that, notwithstanding any other law, criminal history record information that is the subject of an order of nondisclosure under this subchapter:

- (1) is required to 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. Amends Section 109.005(a), Business and Commerce Code, to change a reference to Section 411.081(d), Government Code, to Subchapter F (Criminal History Record Information), Chapter 411 (Department of Public Safety of the State of Texas), Government Code.

SECTION 14. Amends Article 12.03, 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 of this code, 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 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 15. Amends Section 5(a-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 F, Chapter 411, Government Code, rather than 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. Amends Section 5(c-1), Article 42.12, Code of Criminal Procedure, as follows:

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

(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, Government Code, rather than 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 17. Amends Section 54.656(a), Government Code, to change a reference to Section 411.081 to Subchapter F, Chapter 411.

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

SECTION 19. Amends Section 123.001(b), Government Code, to change a reference to Section 411.081 to Subchapter F, Chapter 411.

SECTION 20. Amends Section 411.0851(a), Government Code, to change a reference to Section 411.081(d) to this subchapter.

SECTION 21. Amends Section 552.142(a), Government Code, to change a reference to Section 411.081(d) to Subchapter F, Chapter 411.

SECTION 22. Amends Section 552.1425(a), Government Code, to change a reference to Section 411.081(d) to Subchapter F, Chapter 411.

SECTION 23. Amends Section 169.001(b), Health and Safety Code, to change a reference to Section 411.081, Government Code, to Subchapter F, Chapter 411, Government Code.

SECTION 24. Amends Section 169A.001(b), Health and Safety Code, to change a reference to Section 411.081, Government Code, to Subchapter F, Chapter 411, Government Code.

SECTION 25. Amends Section 53.021(e), Occupations Code, to change a reference to Section 411.081(i)(19), Government Code, to Section 411.0818(18), Government Code.

SECTION 26. Makes application of this Act prospective in regards to an order of nondisclosure of criminal history record information.

SECTION 27. Effective date: September 1, 2015.