

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1801
By: Huffman
State Affairs
4/5/2019
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1801 enhances opportunities for trafficking survivors to obtain orders of nondisclosure for certain crimes that they were forced to commit by their traffickers. The bill allows persons seeking multiple orders of nondisclosure to consolidate their petitions requesting the order in one district court, allowing a survivor-friendly process to seek this type of judicial relief. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1801 amends current law relating to orders of nondisclosure for certain victims of trafficking of persons or compelling prostitution.

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 411.0728, Government Code, as follows:

Sec. 411.0728. New heading: PROCEDURE FOR CERTAIN VICTIMS OF TRAFFICKING OF PERSONS OR COMPELLING PROSTITUTION. (a) Provides that this section applies only to a person:

(1) who is convicted of or placed on deferred adjudication community supervision for an offense, rather than who is placed on community supervision under Chapter 42A (Community Supervision), Code of Criminal Procedure, after conviction for an offense, under:

(A)-(B) makes no changes to these paragraphs;

(C)-(D) makes nonsubstantive changes to these paragraphs and deletes existing Paragraph (E) relating to an offense under Section 43.03(a)(2) (relating to the offense or promotion of prostitution), Penal Code, if the offense is punishable as a Class A misdemeanor; and

(2) who, if requested by the applicable law enforcement agency or prosecuting attorney to provide assistance in the investigation or prosecution of an offense under Section 20A.02 (Trafficking of Persons), 20A.03 (Continuous Trafficking of Persons), or 43.05 (Compelling Prostitution), Penal Code, or a federal offense containing elements that are substantially similar to the elements of an offense under any of those sections:

(A) provided assistance in the investigation or prosecution of the offense; or

(B) did not provide assistance in the investigation or prosecution of the offense due to the person's age or a physical or mental disability resulting from being a victim of an offense described by this subdivision, rather than, with respect to whom the conviction is subsequently set aside by the court under Article 42A.701 (Reduction or Termination of Community Supervision Period), Code of Criminal Procedure.

(b) Authorizes a person described by Subsection (a) who satisfies the requirements of Section 411.074(b) (relating to persons authorized to be granted an order of nondisclosure), rather than 411.074 (Required Conditions For Receiving an Order of Nondisclosure) to petition the court that convicted the person or placed the person on deferred adjudication community supervision for an order of nondisclosure of criminal history record information under this section, notwithstanding any other provision of this subchapter (Order of Nondisclosure Criminal History Record Information) or Subchapter F (Criminal History Record Information) on the grounds that the person committed the offense solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, rather than as a victim of trafficking of persons.

(b-1) Creates this subdivision from existing text and requires a petition under Subsection (b) to, rather than requiring a petition to assert that the person seeking an order of nondisclosure under this section has not previously received an order of nondisclosure under this section:

(1) be in writing;

(2) allege specific facts that, if proved, would establish that the petitioner committed the offense described by Subsection (a)(1) solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code; and

(3) assert that if the person has previously submitted a petition for an order of nondisclosure under this section, the person has not committed an offense described by Subsection (a)(1) on or after the date on which the person's first petition under this section was submitted.

(b-2) Requires the clerk of the court, on the filing of the petition under Subsection (b), to promptly serve a copy of the petition and any supporting document on the appropriate office of the attorney representing the state. Requires any response to the petition by the attorney representing the state to be filed not later than the 20th business day after the date of service under this subsection.

(b-3) Authorizes a person convicted of or placed on deferred adjudication community supervision for more than one offense described by Subsection (a)(1) that the person committed solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, to file a petition for an order of nondisclosure of criminal history record information under this section with respect to each offense and to request consolidation of the person's petitions for an order of nondisclosure of criminal history record information in a district court in the county where the person was most recently convicted or placed on deferred adjudication community supervision as described by this subsection. Requires the court, on receipt of a request for consolidation, to consolidate the petitions and exercise jurisdiction over the petitions, regardless of the county in which the offenses described by Subsection (a)(1) occurred. Requires the clerk of court, in addition to the clerk's duties under subsection (b-2), for each offense that is the subject of a consolidated petition and that occurred in a county other than the county in which the court consolidating the petitions is located, to promptly serve a copy of the consolidated petition and any supporting document related to the applicable offense on the appropriate office of the attorney representing the state on behalf of the other county. Authorizes each attorney representing the state who receives a

copy of a consolidated petition under this subsection to file a response to the petition in accordance with Subsection (b-2).

(b-4) Requires a district court that consolidates petitions under Subsection (b-3) to allow an attorney representing the state who receives a petition involving an offense that was committed outside the county in which the court is located to appear at any hearing regarding the consolidated petition by telephone or video conference call.

(c) Requires the court having jurisdiction over the petition, after notice to the state and an opportunity for a hearing, rather than requiring that the court after notice to the state, an opportunity for a hearing, a determination by the court that the person has not previously received an order of nondisclosure under this section, and a determination by the court that the person committed the offense solely as a victim of trafficking of persons and that 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 if the court determines that:

(1) the person committed the offense described by Subsection (a)(1) solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code;

(2) if applicable, the person did not commit another offense described by Subsection (a)(1) on or after the date on which the person's first petition for an order of nondisclosure under this section was submitted; and

(3) issuance of the order is in the best interest of justice. Deletes existing text relating to the offense for which the defendant was placed on community supervision as described by Subsection (a).

(c-1) Authorizes the court, in determining whether a person committed an offense described by Subsection (a)(1) solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, to consider any order of nondisclosure previously granted to the person under this section.

(d) Authorizes a person to petition the applicable court, rather than 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 the first anniversary of the date the person:

(1) completed the sentence, including any term of confinement imposed and payment of all fines, costs, and restitution imposed; or

(2) received a dismissal and discharge under Article 42A.111 (Dismissal and Discharge), Code of Criminal Procedure, if the person was placed on deferred adjudication community supervision. Deletes existing text relating to the date the person's conviction is set aside as described by Subsection (a).

SECTION 2. Amends Article 56.021, Code of Criminal Procedure, by adding Subsection (e), as follows:

(e) Entitles a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, to be informed that the victim is authorized to petition for an order of nondisclosure of criminal history record information under Section 411.0728, Government Code, if the victim:

(1) has been convicted of or placed on deferred adjudication community supervision for an offense described by Subsection (a)(1) of that section; and

(2) committed that offense solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code.

SECTION 3. Amends Section 126.004, Government Code, by adding Subsection (d) to require a program established under this chapter to provide each program participant with information related to the right to petition for an order of nondisclosure of criminal history record information under Section 411.0728.

SECTION 4. Effective date: September 1, 2019.