

AN ACT

relating to the eligibility of a criminal defendant for an order of nondisclosure of criminal history record information.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E-1, Chapter 411, Government Code, is amended by adding Section 411.0716 to read as follows:

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

(b) Section 411.072 applies only to a person described by Subsection (a) of that section who receives a discharge and dismissal under Article 42A.111, Code of Criminal Procedure, on or after September 1, 2017.

SECTION 2. Section 411.072, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

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

(1) was placed on deferred adjudication community supervision under Subchapter C [Section 5], Chapter 42A [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 Article 42A.105(f), Code of Criminal Procedure, or former Section 5(k), Article 42.12, Code of Criminal Procedure, was filed in the papers of the case; and

(2) has never been previously convicted of or placed on deferred adjudication community supervision for another offense other than a traffic [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 42A.111 [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 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.

(d) A person who is not eligible to receive an order of nondisclosure of criminal history record information under this section solely because an affirmative finding under Article

42A.105(f), Code of Criminal Procedure, or former Section 5(k), Article 42.12, Code of Criminal Procedure, was filed in the papers of the case may file a petition for an order of nondisclosure of criminal history record information under Section 411.0725 if the person otherwise satisfies the requirements of that section.

SECTION 3. Sections 411.073(a) and (b), Government Code, are amended to read as follows:

(a) This section applies only to a person placed on community supervision under Chapter 42A [~~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, Section 49.04, 49.05, 49.06, or 49.065, Penal Code, or Chapter 71, Penal Code; and

(2) under a provision of Chapter 42A [~~Article 42.12~~], Code of Criminal Procedure, other than Subchapter C [~~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, including any term of confinement imposed and payment of all fines, costs, and restitution imposed, 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 a traffic [~~an~~] offense [~~under the Transportation Code~~] that is punishable by fine only.

SECTION 4. Subchapter E-1, Chapter 411, Government Code, is amended by adding Section 411.0731 to read as follows:

Sec. 411.0731. PROCEDURE FOR COMMUNITY SUPERVISION FOLLOWING CONVICTION; CERTAIN DRIVING WHILE INTOXICATED CONVICTIONS. (a) This section applies only to a person placed on community supervision under Chapter 42A, Code of Criminal Procedure:

(1) following a conviction of an offense under Section 49.04, Penal Code, other than an offense punishable under Subsection (d) of that section; and

(2) under a provision of Chapter 42A, Code of Criminal Procedure, other than Subchapter C, 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, including any term of confinement imposed and payment of all fines, costs, and restitution imposed, 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 a traffic offense that is punishable by fine only.

(c) A petition for an order of nondisclosure of criminal history record information filed under this section must include evidence that the person is entitled to file the petition.

(d) Except as provided by Subsection (e), after notice to the state, an opportunity for a hearing, and a determination that the person is entitled to file the petition and issuance of an order of nondisclosure of criminal history record information 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 court may not issue an order of nondisclosure of criminal history record information under this section if the attorney representing the state presents evidence sufficient to the court demonstrating that the commission of the offense for which the order is sought resulted in a motor vehicle accident involving another person, including a passenger in a motor vehicle operated by the person seeking the order of nondisclosure.

(f) 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 second anniversary of the date of completion of the community supervision, if the person successfully complied with a condition of community supervision that, for a period of not less than six months, restricted the person's operation of a motor vehicle to a motor vehicle equipped with an ignition interlock device; or

(2) the fifth anniversary of the date of completion of the community supervision, if the court that placed the person on community supervision did not order the person to comply with a condition of community supervision described by Subdivision (1) for the period described by that subdivision.

SECTION 5. Section 411.0735, Government Code, is amended to read as follows:

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, Section 49.04, 49.05, 49.06, or 49.065, Penal Code, or Chapter 71, Penal Code; and

(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 the person's sentence, including any term of confinement imposed and payment of all fines, costs, and restitution imposed, ~~[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 a traffic ~~[an]~~ offense that is ~~[under the Transportation Code]~~ punishable by fine only.

(c) Except as provided by Subsection (c-1), after ~~[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 for which the person was convicted [~~giving rise to the confinement~~].

(c-1) A court may not issue an order of nondisclosure of criminal history record information under this section if the court determines that the offense for which the order is sought, other than an offense under Section 22.01, Penal Code, was violent or sexual in nature.

(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:

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

(2) the second anniversary of the date of completion of the person's sentence, if the offense of which the person was convicted was a misdemeanor other than a misdemeanor described by Subdivision (1) [~~period of confinement~~].

SECTION 6. Subchapter E-1, Chapter 411, Government Code, is amended by adding Section 411.0736 to read as follows:

Sec. 411.0736. PROCEDURE FOR CONVICTION; CERTAIN DRIVING WHILE INTOXICATED CONVICTIONS. (a) This section applies only to a person who:

(1) is convicted of an offense under Section 49.04, Penal Code, other than an offense punishable under Subsection (d) of that section; and

(2) is not eligible for an order of nondisclosure of criminal history record information under Section 411.0731.

(b) Notwithstanding any other provision of this subchapter or Subchapter F, a person described by Subsection (a) who completes the person's sentence, including any term of confinement imposed and payment of all fines, costs, and restitution imposed, 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 a traffic offense that is punishable by fine only.

(c) A petition for an order of nondisclosure of criminal history record information filed under this section must include evidence that the person is entitled to file the petition.

(d) Except as provided by Subsection (e), after notice to the state, an opportunity for a hearing, and a determination that the person is entitled to file the petition and issuance of an order of nondisclosure of criminal history record information 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 for which the person was convicted.

(e) A court may not issue an order of nondisclosure of criminal history record information under this section if the attorney representing the state presents evidence sufficient to the court demonstrating that the commission of the offense for which the order is sought resulted in a motor vehicle accident involving another person, including a passenger in a motor vehicle operated by the person seeking the order of nondisclosure.

(f) A person may petition the court that imposed the sentence for an order of nondisclosure of criminal history record information under this section on or after:

(1) the third anniversary of the date of completion of the person's sentence, if the person successfully complied with a condition of the sentence that, for a period of not less than six months, restricted the person's operation of a motor vehicle to a

motor vehicle equipped with an ignition interlock device; or
(2) the fifth anniversary of the date of completion of
the person's sentence, if the court that imposed the sentence did
not order the person to comply with a condition described by
Subdivision (1) for the period described by that subdivision.

SECTION 7. Section 411.074, Government Code, is amended to read as follows:

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

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

(A) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;

(B) 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) 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) 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 information] is requested involved family violence, as defined by Section 71.004, Family Code.

SECTION 8. Section 411.0765(a), Government Code, is amended to read as follows:

(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:

(1) to other criminal justice agencies;

(2) [] for criminal justice or regulatory licensing purposes;

(3) to [] an agency or entity listed in Subsection (b);

(4) to [] the person who is the subject of the order; or

(5) for the purpose of complying with a requirement under federal law or if federal law requires the disclosure as a condition of receiving federal highway funds.

SECTION 9. Subchapter A, Chapter 42A, Code of Criminal Procedure, is amended by adding Article 42A.002 to read as follows:

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

SECTION 10. Article 42A.105, Code of Criminal Procedure, is amended to conform to Chapter 1279 (S.B. 1902), Acts of the 84th Legislature, Regular Session, 2015, by adding Subsection (f) to read as follows:

(f) 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 11. (a) Section 16, Chapter 1279 (S.B. 1902), Acts of the 84th Legislature, Regular Session, 2015, which amended Section 5, Article 42.12, Code of Criminal Procedure, is repealed.

(b) Section 32, Chapter 1279 (S.B. 1902), Acts of the 84th Legislature, Regular Session, 2015, is repealed.

SECTION 12. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 13. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I certify that H.B. No. 3016 was passed by the House on May 2, 2017, by the following vote: Yeas 140, Nays 4, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3016 on May 24, 2017, by the following vote: Yeas 143, Nays 3, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3016 was passed by the Senate, with amendments, on May 22, 2017, by the following vote: Yeas 28, Nays 3.

Secretary of the Senate

APPROVED: _____
Date

Governor