

- SUBJECT:** Procedure for requesting, issuing nondisclosure orders of criminal records
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer
1 nay — Toth
1 absent — Hughes
- SENATE VOTE:** On final passage, May 2 — 31-0
- WITNESSES:** For — Marc Levin, Texas Public Policy Foundation Center for Effective Justice; Jorge Renaud, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Yannis Banks, Texas NAACP; Kandice Sanaie, Texas Association of Business)

Against — (*Registered, but did not testify*: Michael Schneider, Texas Association of Broadcasters)
- BACKGROUND:** Under Government Code, sec. 411.081(d), persons receiving a discharge and dismissal from deferred adjudication who also meet certain conditions may ask the court for an order of nondisclosure of their criminal records. These conditions include not being convicted of or placed on deferred adjudication for certain offenses while on deferred adjudication and not having previous convictions for certain violent, sex, or family violence offenses.

If a court issues an order of nondisclosure, criminal justice agencies are prohibited from disclosing to the public criminal history records subject to the order. This makes criminal history records unavailable to the public but allows criminal justice agencies access to them and allows access by certain other listed entities listed in sec. 411.081(i).

When a request for an order of nondisclosure is made, subject to certain deadlines and criteria, courts must hold a hearing on the request, after notifying the prosecutor. After a hearing on whether the person is entitled to file the petition and whether the issuance of the order is in the best

interest of justice, courts must issue the nondisclosure order.

DIGEST:

SB 977 would allow petitions for nondisclosure of criminal records to be filed with a court in person, electronically, or by mail. The Office of Court Administration (OCA) would be required to develop a form for filing an electronic or mail request. The form would have to allow the petition to be accompanied by the required fee and supporting material that OCA determined was necessary.

The electronic and printable application would have to be available on OCA's website. County and district clerks offices that maintain websites would have to include on their website a link to the forms.

Upon receipt of a petition of nondisclosure, courts would have to give notice to the prosecutor and an opportunity for a hearing on whether the person was entitled to file the request and whether the issuance of the order would be in the best interest of justice.

Courts would not have to hold hearings if the prosecutor did not request one within 45 days after receiving notice and the court determined that the defendant was entitled to nondisclosure and that the change was in the best interest of justice.

The bill would take effect September 1, 2013, and would apply to petitions made on or after that date, regardless of when the person was placed on deferred adjudication.

**SUPPORTERS
SAY:**

SB 977 is needed to increase access to orders of nondisclosure by those who currently are authorized to ask for them. SB 977 would not change who is eligible for an order of nondisclosure, only the process involved in requesting and granting.

Current law does not explicitly authorize electronic submission of these requests. Allowing electronic submission along with traditional methods of filing in person and the mail would improve efficiency and make this tool more easily accessible. This should allow more people who meet the criteria to reap the benefits of nondisclosure. When criminal records are publically available persons can have difficulties with access to housing, jobs, school, and more.

The bill would eliminate the need to hold a hearing in all these cases so

that they could proceed more quickly and efficiently when the prosecutor was not challenging the request or wanting to weigh in on the court decision. Courts would continue to have to consider whether the order was in the best interest of justice, providing a check in the process to ensure that the orders were issued only in appropriate cases.

**OPPONENTS
SAY:**

Allowing some orders of non-disclosure to be granted without a hearing would remove a check and balance in the current process that helps ensure the orders are issued in appropriate cases and that a public record of the consideration of the request is made.