

- SUBJECT:** Expanding qualifications for petitioning for orders of nondisclosure
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Lang, Wilson
0 nays
- WITNESSES:** For — Greg Glod, Texas Public Policy Foundation; Doug Deason; *(Registered, but did not testify:* Jerome Greener, Americans for Prosperity TX; Hetty Borinstein and Chas Moore, Austin Justice Coalition; Kathryn Freeman, Christian Life Commission; Reginald Smith, Communities for Recovery; Latosha Taylor, Grassroots Leadership; Glenn Scott, Left Up To Us; Darwin Hamilton and Lauren Johnson, Reentry Advocacy Project; Michael Barba, Texas Catholic Conference of Bishops; Shea Place, Texas Criminal Defense Lawyers Association; Douglas Smith, Texas Criminal Justice Coalition; Joshua Houston, Texas Impact; Yannis Banks, Texas NAACP; Marc Levin, Texas Public Policy Foundation, Right on Crime; Teresa Dozier; Karen Gentry; Lauren Oertel; Thomas Parkinson)

Against — None
- BACKGROUND:** Government Code, sec. 411.072 requires a court to issue an order of nondisclosure of criminal records for a person receiving discharge and dismissal of certain nonviolent misdemeanors for which the person was placed on deferred adjudication community supervision. This applies only to a person who has not been convicted of or placed on deferred adjudication for another offense, other than a fine-only traffic offense, at any time prior to the order being granted.

Government Code, subch. E-1 provides procedures for allowing a person placed on deferred adjudication community supervision for or convicted of certain offenses to petition the court that placed the person on deferred adjudication for an order of nondisclosure. Some of these procedures can be used by persons who previously have been placed on deferred

adjudication for or convicted of another offense. Before a petition can be granted, notice must have been given to the state, there must have been an opportunity for a hearing, and a determination must have been made that the person is eligible to file the petition and that the order is in the best interest of justice.

Some have pointed to the effects of a criminal record on a person's future employment and housing prospects and called for expanding the circumstances under which a person can petition for an order of nondisclosure, which seals a criminal record from the eyes of the general public while allowing it to remain visible to law enforcement and employers in sensitive fields.

DIGEST:

CSHB 3016 would allow persons convicted of various offenses to petition for orders of nondisclosure under certain circumstances and would alter some waiting periods for persons already eligible to petition.

Modification to current petition requirements. The bill would allow a person to petition for an order of nondisclosure of criminal history if that person was ineligible to receive an automatic order solely due to a judge's affirmative finding that issuing such an order was not in the best interest of justice. A person convicted of a misdemeanor punishable by a fine only could petition for an order of nondisclosure immediately upon the date of completion of the person's sentence. If the misdemeanor was not punishable by a fine only, the person could petition on the second anniversary of the date of completing the sentence.

State jail felonies. The bill would allow a person convicted of a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) for possession of marijuana and drugs in penalty groups 1, 1-A, 2, and 2-A to petition for an order of nondisclosure of criminal history related to the offense. This person could only petition for the order if the person:

- had never been convicted of or placed on deferred adjudication for another crime, other than a fine-only traffic offense;

- had successfully completed any imposed community supervision and any term of confinement; and
- had paid all fines, costs, and restitution imposed.

The person would have to wait to petition until the fifth anniversary of completion of community supervision if he or she was placed on community supervision or the fifth anniversary of the date of completing the sentence.

Driving while intoxicated offenses. The bill would allow a person convicted of driving under the influence with a blood-alcohol concentration less than 0.15 to petition for an order of nondisclosure of criminal history related to the offense. This person could petition for the order only if the person:

- had never been convicted of or placed on deferred adjudication community supervision for another offense, other than a fine-only traffic offense;
- had successfully completed any imposed community supervision and any term of confinement;
- had paid all fines, costs, and restitution imposed; and
- had successfully completed a period of at least six months of driving restricted to a motor vehicle equipped with an ignition interlock device as a part of the sentence.

A person would have to wait to petition until the second anniversary of completion of community supervision if he or she was placed on community supervision, or the third anniversary of the date of completion of the sentence.

If the period of restricted driving was not completed as part of the person's sentence, the court could, as a condition of entering a future order, require the person to complete a period of at least six months of restricted driving. After receiving evidence sufficient to the court to establish that a person ordered to complete a period of restricted driving had done so and had successfully completed all other terms of the order, the court would have

to issue an order of nondisclosure.

The court would not be able to issue an order of nondisclosure if an attorney representing the state presented evidence sufficient to the court that demonstrated the commission of the offense for which the order was sought resulted in a motor vehicle accident involving another person, including a passenger in the vehicle of the person seeking the order.

Disclosure of records. A criminal justice agency would be allowed to disclose criminal records that were subject to a nondisclosure order for the purpose of compliance with any federal law requirements, including conditions for receiving federal highway funds.

This bill would take effect on September 1, 2017, and would allow people to petition for orders of nondisclosure for offenses committed before, on, or after that date.

NOTES:

According to the Legislative Budget Board, the bill would have a positive but indeterminate fiscal impact to the state due to anticipated increases in civil filing fee revenue associated with an increase in the number of persons filing a petition for an order of nondisclosure.

A companion bill, SB 1340 by Hughes, was referred to the Senate Criminal Justice Committee on March 14.