

BILL ANALYSIS

C.S.H.B. 329
By: Wu
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that while Class C misdemeanors are considered minor in comparison to felonies and other offenses punishable by incarceration, the record of such an offense may derail plans for college or a career. These parties note that some defendants who have been charged with a Class C misdemeanor offense make the unfortunate decision to plead guilty instead of taking a deferred disposition, as they fail to fully understand the available legal recourse for the nondisclosure of the incident. C.S.H.B. 329 seeks to address this issue by providing for certain defendants to request a court to grant an order of nondisclosure.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 329 amends the Government Code to authorize a person who is convicted of and has satisfied the judgment for or who has received a dismissal after deferral of disposition for a fine-only misdemeanor, other than a traffic offense or an offense under a municipal ordinance or county order, to petition the court that convicted or granted a dismissal to the person for an order of nondisclosure. The bill makes this authorization apply regardless of whether the person has been previously convicted of or granted a dismissal for a fine-only misdemeanor offense. The bill requires the court, after notice to the state, to hold a hearing on whether the person is entitled to file the petition and whether issuance of the order is in the best interest of justice. The bill authorizes the court, in determining whether granting the order is in the best interest of justice, to consider, among any other factors the court considers relevant, the person's criminal history record information, including whether the person has been convicted of or granted a deferred disposition for an offense with elements that are the same as or similar to the elements of the offense for which the person is seeking an order of nondisclosure. The bill requires the court, if the court determines that granting 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 fine-only misdemeanor offense that is the subject of the petition. The bill authorizes the court, as a condition of granting the petition for a person convicted of the offense, to require the defendant to perform community service, pay a fee, or both perform the community service and pay the fee as if the defendant had been placed on probation pending deferred disposition. The bill authorizes a criminal justice agency to disclose criminal history record information that is the subject of such an order of nondisclosure under the bill's provisions only to other criminal justice agencies for criminal justice or regulatory licensing purposes, to

certain noncriminal justice agencies or entities, or to the person who is the subject of the order. The bill authorizes a person to petition the court for an order of nondisclosure only on or after the first anniversary of the conviction or dismissal, as applicable.

C.S.H.B. 329 specifies that a person is not entitled to file such a petition if the person has been previously convicted of or placed on deferred adjudication for an offense requiring sex offender registration; aggravated kidnapping, regardless of whether the offense is a reportable conviction or adjudication for purposes of the sex offender registration program; murder; capital murder; injury to a child, elderly individual, or disabled individual; abandoning or endangering a child; violation of certain court orders or bond conditions in a family violence, sexual assault or abuse, or stalking case; repeated violation of certain court orders or bond conditions in a family violence case; stalking; or any other offense involving family violence. The bill applies certain procedures and requirements for filing a petition for an order of nondisclosure in deferred adjudication cases to a petition filed under the bill's provisions, including a requirement that the petition be accompanied by a \$28 fee. The bill requires the clerk of a court who collects the fee for a petition filed under the bill's provisions to deposit it to the credit of the general fund of the municipality or county, as applicable.

C.S.H.B. 329 amends the Business & Commerce Code to make a conforming change and amends the Occupations Code to make a technical correction.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 329 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

SECTION 1. Section 103.0211, Government Code, is amended to read as follows:

Sec. 103.0211. ADDITIONAL FEES AND

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 109.005(a), Business & Commerce Code, as added by Chapter 1200 (S.B. No. 1289), Acts of the 83rd Legislature, Regular Session, 2013, is amended to read as follows:

(a) A business entity may not publish any criminal record information in the business entity's possession with respect to which the business entity has knowledge or has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081 [~~411.081(d)~~], Government Code.

SECTION 2. Section 103.0211, Government Code, is amended to read as follows:

Sec. 103.0211. ADDITIONAL FEES

COSTS IN CRIMINAL OR CIVIL CASES: GOVERNMENT CODE. An accused or defendant, or a party to a civil suit, as applicable, shall pay the following fees and costs under the Government Code if ordered by the court or otherwise required:

(1) a court reporter fee when testimony is taken:

(A) in a criminal court in Dallas County (Sec. 25.0593, Government Code) . . . \$3;

(B) in a county criminal court of appeals in Dallas County (Sec. 25.0594, Government Code) . . . \$3;

(C) in a county court at law in McLennan County (Sec. 25.1572, Government Code) . . . \$3; and

(D) in a county criminal court in Tarrant County (Sec. 25.2223, Government Code) . . . \$3;

(2) a court reporter service fee if the courts have official court reporters (Sec. 51.601, Government Code) . . . \$15 or, in specified counties, \$30;

(3) a speedy trial rights waiver motion filing fee in El Paso County (Sec. 54.745, Government Code) . . . \$100;

(4) the costs of a criminal magistrate if the court determines that the nonprevailing party is able to defray the costs:

(A) in Bexar County (Sec. 54.913, Government Code) . . . magistrate's fees;

(B) in Dallas County (Sec. 54.313, Government Code) . . . magistrate's fees;

(C) in Lubbock County (Sec. 54.883, Government Code) . . . magistrate's fees;

(D) in Tarrant County (Sec. 54.663, Government Code) . . . magistrate's fees; and

(E) in Travis County (Sec. 54.983, Government Code) . . . magistrate's fees;

(5) an administrative fee for participation in certain community supervision programs (Sec. 76.015, Government Code) . . . not less than \$25 and not more than \$60 per month; ~~and~~

(6) fee paid on filing a petition for an order of nondisclosure of criminal history record information in certain deferred adjudication cases (Sec. 411.081(d) ~~[411.081]~~, Government Code) . . . \$28; and

(7) fee paid on filing a petition for an order of nondisclosure of criminal history record information in certain fine-only misdemeanor

AND COSTS IN CRIMINAL OR CIVIL CASES: GOVERNMENT CODE. An accused or defendant, or a party to a civil suit, as applicable, shall pay the following fees and costs under the Government Code if ordered by the court or otherwise required:

(1) a court reporter fee when testimony is taken:

(A) in a criminal court in Dallas County (Sec. 25.0593, Government Code) . . . \$3;

(B) in a county criminal court of appeals in Dallas County (Sec. 25.0594, Government Code) . . . \$3;

(C) in a county court at law in McLennan County (Sec. 25.1572, Government Code) . . . \$3; and

(D) in a county criminal court in Tarrant County (Sec. 25.2223, Government Code) . . . \$3;

(2) a court reporter service fee if the courts have official court reporters (Sec. 51.601, Government Code) . . . \$15 or, in specified counties, \$30;

(3) a speedy trial rights waiver motion filing fee in El Paso County (Sec. 54.745, Government Code) . . . \$100;

(4) the costs of a criminal magistrate if the court determines that the nonprevailing party is able to defray the costs:

(A) in Bexar County (Sec. 54.913, Government Code) . . . magistrate's fees;

(B) in Dallas County (Sec. 54.313, Government Code) . . . magistrate's fees;

(C) in Lubbock County (Sec. 54.883, Government Code) . . . magistrate's fees;

(D) in Tarrant County (Sec. 54.663, Government Code) . . . magistrate's fees; and

(E) in Travis County (Sec. 54.983, Government Code) . . . magistrate's fees;

(5) an administrative fee for participation in certain community supervision programs (Sec. 76.015, Government Code) . . . not less than \$25 and not more than \$60 per month; ~~and~~

(6) fee paid on filing a petition for an order of nondisclosure of criminal history record information in certain deferred adjudication cases (Sec. 411.081(f-1) ~~[411.081]~~, Government Code) . . . \$28; and

(7) fee paid on filing a petition for an order of nondisclosure of criminal history record information in certain fine-only

cases (Sec. 411.081(d-1), Government Code) . . . \$28.

SECTION 2. Section 411.081, Government Code, is amended by adding Subsections (d-1), (e-1), and (h-1) to read as follows:

(d-1) Notwithstanding any other provision of this chapter, a person who is convicted of and has satisfied the judgment for or who has received a dismissal after deferral of disposition for a fine-only misdemeanor, other than a traffic offense or an offense under a municipal ordinance or county order, may petition the court that convicted or granted a dismissal to the person for an order of nondisclosure under this subsection. Subject to Subsection (e-1), a person may petition the court under this subsection regardless of whether the person has been previously convicted of or granted a dismissal for a fine-only misdemeanor offense.

After notice to the state and a hearing on whether 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 fine-only misdemeanor offense that is the subject of the petition. As a condition of granting the petition under this subsection for a person convicted of the offense, a court may require the defendant to perform community service, pay a fee, or both perform the community service and pay the fee as if the defendant had been put on probation pending deferred

misdemeanor cases (Sec. 411.081(f-1), Government Code) . . . \$28.

SECTION 3. Section 411.081, Government Code, is amended by adding Subsections (d-1), (e-1), (h-1), and (h-2) and amending Subsections (f), (f-1), and (h) to read as follows:

(d-1) Notwithstanding any other provision of this chapter, a person who is convicted of and has satisfied the judgment for or who has received a dismissal after deferral of disposition for a fine-only misdemeanor, other than a traffic offense or an offense under a municipal ordinance or county order, may petition the court that convicted or granted a dismissal to the person for an order of nondisclosure under this subsection. Subject to Subsection (e-1), a person may petition the court under this subsection regardless of whether the person has been previously convicted of or granted a dismissal for a fine-only misdemeanor offense. After notice to the state, the court shall hold a hearing on whether the person is entitled to file the petition and whether issuance of the order is in the best interest of justice. In determining whether granting the order is in the best interest of justice, the court may consider, among any other factors the court considers relevant, the person's criminal history record information, including whether the person has been convicted of or granted a deferred disposition for an offense with elements that are the same as or similar to the elements of the offense for which the person is seeking an order of nondisclosure. If the court determines that granting 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 fine-only misdemeanor offense that is the subject of the petition. As a condition of granting the petition under this subsection for a person convicted of the offense, a court may require the defendant to perform community service, pay a fee, or both perform the community service and pay the fee as if the defendant had been placed on probation pending deferred disposition

disposition under Article 45.051, Code of Criminal Procedure. A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure under this subsection only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order. A person may petition the court for an order of nondisclosure under this subsection on payment of a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. The payment may be made only on or after the first anniversary of the conviction or dismissal, as applicable.

(e-1) A person is not entitled to petition the court under Subsection (d-1) if the person has been previously convicted of or placed on deferred adjudication for:

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

(2) 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;

(3) an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code; or

(4) any other offense involving family violence, as defined by Section 71.004, Family Code.

under Article 45.051, Code of Criminal Procedure. A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure under this subsection only to other criminal justice agencies for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order. A person may petition the court for an order of nondisclosure under this subsection only on or after the first anniversary of the conviction or dismissal, as applicable.

(e-1) A person is not entitled to petition the court under Subsection (d-1) if the person has been previously convicted of or placed on deferred adjudication for:

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

(2) 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;

(3) an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code; or

(4) any other offense involving family violence, as defined by Section 71.004, Family Code.

(f) For purposes of Subsections [Subsection] (d), (e), and (e-1), 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.

(f-1) A person who petitions the court for an order of nondisclosure under Subsection (d) or (d-1) may file the petition in person, electronically, or by

mail. The petition must be accompanied by payment of a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. The Office of Court Administration of the Texas Judicial System shall prescribe a form for the filing of a petition electronically or by mail. The form must provide for the petition to be accompanied by the required fees and any other supporting material determined necessary by the office of court administration, including evidence that the person is entitled to file the petition. The office of court administration shall make available on its Internet website the electronic application and printable application form. Each county or district clerk's office that maintains an Internet website shall include on that website a link to the electronic application and printable application form available on the office of court administration's Internet website. On receipt of a petition under this subsection, the court shall provide notice to the state and an opportunity for a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice. The court shall hold a hearing before determining whether to issue an order of nondisclosure, except that a hearing is not required if:

(1) the state does not request a hearing on the issue before the 45th day after the date on which the state receives notice under this subsection; and

(2) the court determines that:

(A) the defendant is entitled to file the petition; and

(B) the order is in the best interest of justice.

(h) The clerk of a court that collects a fee paid under Subsection (f-1) for a petition filed under Subsection (d) [~~(d)~~] shall remit the fee to the comptroller not later than the last day of the month following the end of the calendar quarter in which the fee is collected, and the comptroller shall deposit the fee in the general revenue fund.

(h-1) The clerk of a court that collects a fee under Subsection (d-1) shall deposit the fee to the credit of the general fund of the municipality or county, as applicable.

(h-1) The clerk of a court that collects a fee paid under Subsection (f-1) for a petition filed under Subsection (d-1) shall deposit the fee to the credit of the general fund of the municipality or county, as

applicable.

(h-2) The Department of Public Safety shall submit a report to the legislature not later than December 1 of each even-numbered year that includes information on:

- (1) the number of petitions for nondisclosure and orders of nondisclosure received by the department in each of the previous two years;
- (2) the actions taken by the department with respect to the petitions and orders received;
- (3) the costs incurred by the department in taking those actions; and
- (4) the number of persons who are the subject of an order of nondisclosure and who became the subject of criminal charges for an offense committed after the order was issued.

SECTION 3. Section 411.081(i), Government Code, as amended by Chapters 42 (S.B. 966), 266 (H.B. 729), and 583 (S.B. 869), Acts of the 83rd Legislature, Regular Session, 2013, is reenacted and amended.

SECTION 4. Same as introduced version.

SECTION 4. Section 411.0851(a), Government Code, is amended.

SECTION 5. Same as introduced version.

SECTION 5. The heading to Section 552.142, Government Code, is amended.

SECTION 6. Same as introduced version.

SECTION 6. Section 552.142(a), Government Code, is amended.

SECTION 7. Same as introduced version.

SECTION 7. Section 552.1425(a), Government Code, is amended.

SECTION 8. Same as introduced version.

No equivalent provision.

SECTION 9. Section 53.021(e), Occupations Code, is amended to read as follows:

(e) Subsection (c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide:

- (1) law enforcement or public health, education, or safety services; or
- (2) financial services in an industry regulated by a person listed in Section

411.081(i)(18) [~~411.081(i)(19)~~],
Government Code.

SECTION 8. The change in law made by this Act applies to a petition for an order of nondisclosure that is filed on or after the effective date of this Act, regardless of whether the misdemeanor that is the subject of the petition occurred before, on, or after the effective date of this Act.

SECTION 10. Same as introduced version.

SECTION 9. This Act takes effect September 1, 2015.

SECTION 11. Same as introduced version.