

SUBJECT: Restricting misdemeanor criminal records subject to nondisclosure orders

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Madden, Allen, Cain, Parker, Perry, White, Workman

0 nays

2 absent — Hunter, Marquez

WITNESSES: For — Everett Jobe, Texas Department of Banking; Benette Zivley, Texas State Securities Board; (*Registered, but did not testify*: Kara Kennedy, State Securities Board; Betsy Loar, State of Texas Credit Union Department)

Against — None

BACKGROUND: Deferred adjudication is a form of probation under which a judge postpones the determination of guilt while the defendant serves probation. It can result in the defendant being discharged and dismissed upon successful completion of that probation.

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. 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. Criminal justice agencies may disclose criminal history records subject to an order of nondisclosure only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, to agencies listed in Government Code, sec. 411.081(i), or to the person who is subject to an order.

Under Government Code, sec. 411.081(i), criminal justice agencies can disclose information subject to nondisclosure to 25 specified agencies and

entities. Within that list, sec. 411.081(i)(19) names the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, and the credit union commissioner. The list includes state agencies, licensing boards, court-related entities, and more.

Government Code, sec. 411.081(f-1) defines to whom criminal justice agencies can disclose criminal records of children who have been convicted of misdemeanor offenses punishable by a fine that does not constitute conduct indicating a need for supervision.

In these cases, courts are required to immediately issue an order prohibiting criminal justice agencies from disclosing these records to the public. Criminal justice agencies can disclose these records only to other criminal justice agencies for criminal justice purposes, to agencies listed in Government Code, sec. 411.081(j), or to persons subject to the order.

Government Code, sec. 411.081(j) lists the agencies to which criminal justice agencies can disclose the records of certain children, described by Government Code, sec. 411.081(f-1), above. The list has 11 entities, including six entities also listed in Government Code, sec. 411.081(i).

DIGEST:

CSHB 599 would eliminate authorization for the release of misdemeanor records that currently can be released to the state agencies and other entities listed in Government Code, sec. 411.081(i). Under the bill, these entities could receive only records related to felony offenses that had been placed under an order of nondisclosure. However, information on both misdemeanors and felonies could be disclosed to the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, and the credit union commissioner. Authority would remain for disclosure of felony and misdemeanor records on qualifying deferred adjudications to other criminal justice agencies, for criminal justice or regulatory licensing purposes, and to the person subject to the order.

The bill would allow the criminal records subject to nondisclosure of children who had been convicted of a misdemeanor offense punishable by a fine that did not constitute conduct indicating a need for supervision to be disclosed only to criminal justice agencies for criminal justice purposes or to the person subject to the order. It would eliminate authority to release this information to the list of entities listed in Government Code,

sec. 411.081(j). The bill would repeal sec. 411.081(j) so the list of entities would no longer be in the statute.

The bill would take effect September 1, 2011, and would apply to disclosures made on or after that date regardless of when the order for the disclosure was issued.

**SUPPORTERS
SAY:**

CSHB 599 is needed to limit Texas' law on the disclosure of certain criminal records to appropriate offenses. Currently, Texas law allows the disclosure of both felonies and misdemeanors to almost 30 noncriminal justice agencies after persons have successfully completed deferred adjudication and had a court grant them an order of nondisclosure. While this may be appropriate in the case of felonies, it is not for misdemeanors.

Disclosure of these misdemeanors currently is not available to the general public, and there is no reason it should be available to the almost 30 entities listed in Government Code, sec. 411.081(i). These are low-level, misdemeanor offenses for which a judge deemed deferred adjudication appropriate. The person then successfully completed deferred adjudication, no conviction took place, and a court decided that it was appropriate to place the record under an order of nondisclosure. Under these circumstances, limiting access to the records is the right thing to do.

The disclosures allowed under current law have made it difficult for some persons to get jobs or other positions. For example, one college student was denied an internship because of a ticket issued for a high school scuffle. The provisions in the bill dealing with children would help them put youthful indiscretion behind them as they transitioned to adulthood. CSHB 599 would allow someone to move on after a minor brush with the law and after doing everything a court asked of them.

CSHB 599 is narrowly tailored to deal only with low-level minor incidents. Felony offenses still would be released to the entities in Government Code, sec. 411.081(i) so they could continue to use this information for hiring or other purposes. Both misdemeanors and felonies would continue to be disclosed to other criminal justice agencies for criminal justice or regulatory licensing purposes and to the person subject to the order. These provisions would allow many entities on the list to continue to get the information truly needed.

CSHB 599 would continue to allow disclosures for misdemeanors to certain state entities dealing with financial securities. Allowing the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, and the credit union commissioner to continue to receive information about misdemeanors described by the bill would ensure that the state did not run afoul of federal law and would allow them to have any evidence of dishonesty since persons they hire would have a fiduciary responsibility to others.

CSHB 599 would not change current law making certain violent and serious crimes ineligible for nondisclosure. The bill deals only with those crimes currently eligible for disclosure.

**OPPONENTS
SAY:**

The public interest might be best served by continuing the disclosures that currently law provides. CSHB 599 could result in some entities not getting information that they now can receive. Reducing the availability of current records to certain entities could restrict their ability to evaluate persons. Allowing these entities to receive the information does not mean that they automatically will reject job candidates, but ensures that the entities have full information on which to base their decisions.

NOTES:

The original version of the bill would have eliminated the authorization for the 23 noncriminal justice agencies listed in Government Code, sec. 411.081(i), and the 11 entities listed in Government Code, sec. 411.081(j) to receive criminal record information subject to disclosure.