

SUBJECT: Reducing wait times to request order of nondisclosure of criminal records

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Carter, Hughes, Leach, Moody, Schaefer, Toth
2 nays — Burnam, Canales

WITNESSES: For — Kristin Etter, Texas Criminal Defense Lawyers Association;
Marc Levin, Texas Public Policy Foundation; (*Registered, but did not testify*: Mark Mendez, Tarrant County Commissioners Court; Craig Pardue, Dallas County; Kandice Sanaie, Texas Association of Business)

Against — (*Registered, but did not testify*: Steven Tays, Bexar County Criminal District Attorney's Office)

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. This makes criminal history records unavailable to the public but allows criminal justice agencies access, in specified limited circumstances, to others.

Government Code, sec. 411.081(d) requires persons seeking orders of nondisclosure to wait certain time periods after dismissal to ask a court for an order of nondisclosure. For felonies, requests for orders of nondisclosure cannot be made until the fifth year after discharge and dismissal. For certain misdemeanor offenses, requests for orders of

nondisclosure cannot be made until two years after the discharge of the person and dismissal by the court. This applies to certain offenses under the Penal Code chapters 20, 21, 22, 25, 42, and 46. Government Code 411.081(e) excludes numerous offenses from these chapters from being eligible for the nondisclosure requests, including an offense that requires someone to register as a sex offender, any offense involving family violence, murder, capital murder, injury to a child, elderly individual or disabled individual abandoning or endangering a child, the offense of violations of courts orders or bond conditions, and stalking.

DIGEST: HB 1359 would reduce the time that persons receiving a discharge and dismissal from deferred adjudication for certain offenses had to wait before asking a court for an order of nondisclosure. For certain misdemeanors listed in Government Code 411.081(d), the time would be reduced from two years to one year, and for felonies it would be reduced from five years to three years.

The bill would take effect September 1, 2013, and would apply to persons who petition the court for orders of nondisclosure on or after that date.

SUPPORTERS SAY: HB 1359 would make a reasonable adjustment to the time that persons who had successfully met all court requirements had to wait before asking a court to have their records restricted from the public.

When criminal records are publicly available, individuals can have difficulties with access to housing, jobs, school, and more. HB 1359 would allow worthy candidates to ask to have this burden eased sooner than under current law. Criminal justice agencies would continue to access these records and could use them if the person again ran afoul of the law.

HB 1259 would apply only to a limited pool of offenders who had demonstrated that they deserved the chance to ask for nondisclosure — they were placed on deferred adjudication, often for years, met all requirements of that probation, and then, under the bill had kept a clean record for another year for misdemeanors and three years for felonies. Under these circumstances people have paid their debt to society, demonstrated that they are not a threat to public safety, and deserve a chance to ask for nondisclosure. Having a waiting period longer than one or three years unnecessarily prolongs punishment in these cases.

The bill would change only *when* people could ask a court for an order of

nondisclosure. Courts would retain their discretion to deny a request, if appropriate. As part of the process of considering requests for nondisclosure, prosecutors are notified and could lodge objections during the required hearing.

The bill would not expand the pool of those who could ask for nondisclosure. Current law excludes numerous offenses from eligibility for an order, and HB 1359 would not change that. Persons convicted of or placed on deferred adjudication for certain violent crimes and those required to register as sex offenders are not eligible to ask for nondisclosure and would remain ineligible.

**OPPONENTS
SAY:**

The current requirements to wait before asking for an order of nondisclosure are sensible and should not be reduced. These time frames are designed to ensure that people remain law-abiding for a reasonable amount of time after committing an offense. This helps hold offenders accountable and helps protect the public.