

SUBJECT: Automatic nondisclosure orders for certain misdemeanor criminal records

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson, Murr, Vasut

0 nays

WITNESSES: For — Emily Gerrick, Texas Fair Defense Project; (*Registered, but did not testify*: Lauren Johnson and Matt Simpson, ACLU of Texas; Genevieve Collins, Americans for Prosperity and the LIBRE Initiative; Justin Keener, for Doug Deason; Kathy Mitchell, Just Liberty; Brian Hawthorne, Sheriffs' Association of Texas; Amanda List, Texas Appleseed; Lori Henning, Texas Association of Goodwills; Donald Garner, Texas Faith and Freedom Coalition; Derek Cohen, Texas Public Policy Foundation; Molly Weiner, United Ways of Texas; Theresa Laumann; Paul Quinzi)

Against — None

BACKGROUND: Government Code subch. E-1 governs the issuing of orders of nondisclosure, which prohibit criminal justice agencies from disclosing to the public criminal history record information related to an offense. The statute governs who is eligible to petition a court for such an order and the process for doing so. Government Code sec. 411.074 establishes the general required conditions for petitioning a court for an order, including ones requiring no additional offense and prohibiting orders for certain previous offenses and offenses involving family violence.

DIGEST: HB 1394 would require courts to issue orders of nondisclosure for criminal history record information for persons convicted or placed on deferred adjudication community supervision for certain misdemeanor offenses.

The bill would apply to an individual who was convicted of or placed on deferred adjudication community supervision for a misdemeanor other than:

- a fine-only traffic offense, or
- a misdemeanor offense for driving or operating a watercraft under the influence of alcohol by a minor; driving, boating, or flying while intoxicated, or assembling or operating an amusement ride while intoxicated.

An individual must have completed the sentence for the offense, including terms of confinement or community supervision, and paid all fines, costs, and restitution, or have received a discharge and dismissal of the offense under deferred adjudication. Individuals could not have previously received an order of nondisclosure for the offense.

If such individuals satisfied the requirements for expunction under current law in Government Code sec. 411.074, courts would be required to issue an order of nondisclosure prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense.

Courts would be required to determine if a person met the requirements and, if so, issue the order as soon as practicable after the seventh anniversary of either the date the person completed the sentence or the date of the discharge and dismissal after deferred adjudication.

The bill would take effect September 1, 2021. For individuals who completed their sentence or received a discharge and dismissal before September 1, 2014, courts would be required to issue an order of nondisclosure as soon as practicable after the bill's effective date and no later than August 31, 2023.

**SUPPORTERS
SAY:**

HB 1394 would help individuals who have committed certain low-level, minor crimes, paid their debt to society, and remained law abiding for

seven years put the past behind them and move on with their lives by establishing a system for automatic orders of nondisclosure for their criminal history records.

Having a criminal record can have negative effects on employment, housing, schooling and more, but many individuals who are eligible to ask courts for orders of nondisclosure do not undertake the process of obtaining an order because it can be difficult to navigate, time-consuming, and expensive. HB 1394 would address these issues by streamlining the process so courts would automatically issue these orders for qualifying individuals after an appropriate amount of time. Individuals would be able to move on from a minor mistake or lapse in judgment without a criminal record hanging over their head.

The bill is narrowly drawn and would not expand who is eligible for orders of nondisclosure; it merely would automate the process. The bill would apply only to misdemeanors and would exclude several intoxication offenses. The numerous criteria in current law to obtain an order would have to be met, and there would be a waiting period of seven years. Law enforcement agencies would continue to be able to access records because orders of nondisclosure only apply to releasing information to the public. Courts are required to track such cases and should be able to implement the bill within their resources.

**CRITICS
SAY:**

HB 1394 could be challenging for courts and counties to implement, as they may have to obtain new software or hardware to set up automated systems to identify those who would qualify for automatic orders of nondisclosure and to issue the orders.