

SUBJECT: Expanding automatic orders of nondisclosure of criminal history records

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Collier, K. Bell, Cason, Crockett, Hinojosa, A. Johnson, Vasut

0 nays

2 absent — Cook, Murr

WITNESSES: For — Jonathan Copeland, Cannabis Reform of Houston; Linda Nuno, Dem party; Amelia Casas, Texas Fair Defense Project and Clean Slate; (*Registered, but did not testify:* Lauren Johnson, ACLU of Texas; Terra Tucker, Alliance for Safety and Justice; Greg Glod, Americans For Prosperity; Warren Burkley and Chas Moore, Austin Justice Coalition; Melissa Shannon, Bexar County Commissioners Court; Adam Haynes, Conference of Urban Counties; M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Dustin Cox, GRAV; Thamara Narvaez, Harris County Commissioners Court; Scott Henson and Kathy Mitchell, Just Liberty; Elizabeth Miller, Libertarian Party of Texas SD10; Maggie Luna, Statewide Leadership Council; Heather Fazio, Texans for Responsible Marijuana Policy; Amanda List, Texas Appleseed; Sarah Reyes, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Louis Wickers, Texas Gun Sense; Koretta Brown, The Alliance For A New Justice System; and eight individuals)

Against — (*Registered, but did not testify:* Deana Johnston)

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 establishes 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.

Sec. 411.072(a) requires courts to issue orders of nondisclosure if individuals placed on deferred adjudication community supervision for certain nonviolent misdemeanors also had not previously been convicted of or placed on deferred adjudication for another offense other than a fine-only traffic offense and if they met other requirements in the statutes.

To qualify for the order under this provision, the misdemeanor offense for which the defendant has received deferred adjudication may not be one of the misdemeanors listed in sec. 411.072(a), which include driving or boating while intoxicated and misdemeanors under Penal Code provisions governing kidnapping, sexual offenses, assaultive offenses, offenses against the family, disorderly conduct and related offenses, public indecency offenses, weapons, and organized crime. In addition, the misdemeanor cannot be one for which a judge entered a finding in the case that it would not be in the best interest of justice for the defendant to receive an automatic order of nondisclosure under sec. 411.072.

If an individual meets these criteria, receives a discharge and dismissal of deferred adjudication for the nonviolent misdemeanor, and meets the requirements in Government Code sec. 411.074, courts are required to issue an order of nondisclosure.

**DIGEST:** HB 4136 would expand eligibility for orders of nondisclosure issued for those placed on deferred adjudication community supervision for certain nonviolent misdemeanors by eliminating a prohibition on eligibility for those who have been previously convicted of or placed on deferred for another offense other than a fine-only traffic offense.

The bill would take effect September 1, 2021, and would apply to those receiving a discharge and dismissal on or after that date.

**SUPPORTERS SAY:** HB 4136 would allow an expanded but limited and appropriate group of individuals to move on after a minor offense by making more individuals eligible for an automatic order of nondisclosure after a term of deferred adjudication for certain low level, non-violent offenses. Current law

limiting automatic orders of nondisclosure under Government Code sec. 411.072 excludes many deserving individuals who do everything a court asks of them while fulfilling a term of deferred adjudication after such an offense. These individuals, even those with previous offenses, should be recognized with an automatic order of non-disclosure related to the minor offense, just like the statute does for those with a first offense.

While HB 4136 would expand who could receive an automatic order of nondisclosure, the circumstances would remain very limited. The original offense for which the person received deferred adjudication would have to be a non-violent misdemeanor and could not be one of the numerous misdemeanors listed in Government Code sec. 411.072 or a misdemeanor for which the court made a finding that it would not be in the best interest of justice for the defendant to receive an order of nondisclosure under sec. 411.072. A court would have to determine that deferred adjudication was appropriate instead of proceeding with a prosecution, and the person would have to meet all of the terms of the deferred adjudication and receive a discharge and dismissal by the court. In addition, the individual would have to meet the numerous criteria in current law under Government Code sec. 411.074 as well as any required waiting time.

One of the goals of deferred adjudication is to allow individuals who successfully complete every court requirement to move on from the offense without further involvement in the criminal justice system, and HB 4136 would further that goal. It would encourage individuals to take responsibility for their misdemeanor and work hard to meet the court's requirements. An order of nondisclosure would help individuals move on from the negative effects that even a minor offense can have on employment, housing, schooling, and more and help them integrate fully into the community.

Law enforcement agencies would continue to be able to access records because orders of nondisclosure only apply to releasing information to the public.

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SAY: automatic orders of nondisclosure only in narrow circumstance, and expanding those provisions could distort a message of personal accountability for actions that break the law.