

BILL ANALYSIS

Senate Research Center
83R570 JSC-D

S.B. 107
By: West
Criminal Justice
1/29/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, Section 411.081 (Application of Subchapter), Government Code, could be interpreted to provide that a court's instructions to seal records through an order of nondisclosure does not require court clerks to keep certain court records confidential. Section 411.081(d) (relating to an order of nondisclosure) of the Government Code allows a person placed on deferred adjudication who satisfies certain conditions to petition the courts to prohibit criminal justice agencies from disclosing criminal history information related to his or her offense to the public.

However, while Section 481.082 (Definitions), Government Code, defines "criminal history information" as information collected by a "criminal justice agency," another related part of the same code, Section 411.081(i) (relating to noncriminal justice agencies and entities to whom criminal history record information under an order of nondisclosure may be disclosed), includes county clerks' offices in a list of "noncriminal justice agencies." Therefore, because information held by the courts could be construed not to be "criminal history information," records could be disclosed despite the existence of the order of nondisclosure.

In practical application, the Department of Public Safety of the State of Texas (DPS) is the state's official repository for criminal history records. In addition, DPS is responsible for notifying all authorized agencies and entities who purchase criminal history information from DPS when an order of nondisclosure has been issued. This notification is not sent out to purchasers who access criminal history information at the court level.

S.B. 107 closes the potential loopholes by specifically providing that, with certain exceptions, a court may not disclose information in court records subject to an order of nondisclosure to the public. The bill also directs the clerk of the court issuing an order of nondisclosure to seal all related court records after the required information is sent to DPS.

As proposed, S.B. 107 amends current law relating to the disclosure by a court of criminal history record information that is the subject of an order of nondisclosure.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 411.081, Government Code, by amending Subsection (a) and adding Subsection (g-3), as follows:

(a) Provides that this subchapter does not apply to certain criminal history record information, including record information that is contained in court records of public judicial proceedings, except as provided by Subsection (g-3).

(g-3) Prohibits a court from disclosing to the public any information contained in the court records that is the subject of an order of nondisclosure issued under this section. Authorizes the court to disclose information contained in the court records that is the subject of an order of nondisclosure only to criminal justice agencies for criminal justice

or regulatory licensing purposes, to an agency or entity listed in Subsection (i) (relating to the noncriminal justice agencies and entities to whom criminal history record information under an order of nondisclosure may be disclosed), or to the person who is the subject of the order. Requires the clerk of the court issuing an order of nondisclosure under this section to seal any court records containing information that is the subject of the order as soon as practicable after the date the clerk of the court sends all relevant criminal history record information contained in the order or a copy of the order to the Department of Public Safety of the State of Texas under Subsection (g) (relating to the transmission of criminal history information after an order of nondisclosure is issued).

SECTION 2. Provides that the change in law made by this Act applies to the disclosure on or after the effective date of this Act of information that is the subject of an order of nondisclosure issued under Section 411.081, Government Code, regardless of whether the order is issued before, on, or after the effective date of this Act.

SECTION 3. Effective date: September 1, 2013.