

AN ACT

relating to the eligibility of a criminal defendant for an order of nondisclosure of criminal history record information.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E-1, Chapter 411, Government Code, is amended by adding Section 411.0716 to read as follows:

Sec. 411.0716. APPLICABILITY OF SUBCHAPTER. (a) Except as provided by Subsection (b), this subchapter applies to the issuance of an order of nondisclosure of criminal history record information for an offense committed before, on, or after September 1, 2017.

(b) Section 411.072 applies only to a person described by Subsection (a) of that section who receives a discharge and dismissal under Article 42A.111, Code of Criminal Procedure, on or after September 1, 2017.

SECTION 2. Section 411.072, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) This section applies only to a person who:

(1) was placed on deferred adjudication community supervision under Subchapter C [Section 5], Chapter 42A [Article 42.12], Code of Criminal Procedure, for a misdemeanor other than a misdemeanor:

(A) under Chapter 20, 21, 22, 25, 42, 43, 46, or 71, Penal Code; or

1 (B) with respect to which an affirmative finding  
2 under Article 42A.105(f), Code of Criminal Procedure, or former  
3 Section 5(k), Article 42.12, Code of Criminal Procedure, was filed  
4 in the papers of the case; and

5 (2) has never been previously convicted of or placed  
6 on deferred adjudication community supervision for another offense  
7 other than a traffic [an] offense [under the Transportation Code]  
8 that is punishable by fine only.

9 (b) Notwithstanding any other provision of this subchapter  
10 or Subchapter F, if a person described by Subsection (a) receives a  
11 discharge and dismissal under [~~Section 5(c),~~] Article 42A.111  
12 [~~42.12~~], Code of Criminal Procedure, and satisfies the requirements  
13 of Section 411.074, the court that placed the person on deferred  
14 adjudication community supervision shall issue an order of  
15 nondisclosure of criminal history record information under this  
16 subchapter prohibiting criminal justice agencies from disclosing  
17 to the public criminal history record information related to the  
18 offense giving rise to the deferred adjudication community  
19 supervision. The court shall determine whether the person  
20 satisfies the requirements of Section 411.074, and if the court  
21 makes a finding that the requirements of that section are  
22 satisfied, the court shall issue the order of nondisclosure of  
23 criminal history record information:

24 (1) at the time the court discharges and dismisses the  
25 proceedings against the person, if the discharge and dismissal  
26 occurs on or after the 180th day after the date the court placed the  
27 person on deferred adjudication community supervision; or

1           (2) as soon as practicable on or after the 180th day  
2 after the date the court placed the person on deferred adjudication  
3 community supervision, if the discharge and dismissal occurred  
4 before that date.

5           (d) A person who is not eligible to receive an order of  
6 nondisclosure of criminal history record information under this  
7 section solely because an affirmative finding under Article  
8 42A.105(f), Code of Criminal Procedure, or former Section 5(k),  
9 Article 42.12, Code of Criminal Procedure, was filed in the papers  
10 of the case may file a petition for an order of nondisclosure of  
11 criminal history record information under Section 411.0725 if the  
12 person otherwise satisfies the requirements of that section.

13           SECTION 3. Sections 411.073(a) and (b), Government Code,  
14 are amended to read as follows:

15           (a) This section applies only to a person placed on  
16 community supervision under Chapter 42A [~~Article 42.12~~], Code of  
17 Criminal Procedure:

18           (1) following a conviction of a misdemeanor other than  
19 a misdemeanor under Section 106.041, Alcoholic Beverage Code,  
20 Section 49.04, 49.05, 49.06, or 49.065, Penal Code, or Chapter 71,  
21 Penal Code; and

22           (2) under a provision of Chapter 42A [~~Article 42.12~~],  
23 Code of Criminal Procedure, other than Subchapter C [~~Section 5~~],  
24 including:

25           (A) a provision that requires the person to serve  
26 a term of confinement as a condition of community supervision; or

27           (B) another provision that authorizes placing a

1 person on community supervision after the person has served part of  
2 a term of confinement imposed for the offense.

3 (b) Notwithstanding any other provision of this subchapter  
4 or Subchapter F, a person described by Subsection (a) whose  
5 community supervision is not revoked and who completes the period  
6 of community supervision, including any term of confinement imposed  
7 and payment of all fines, costs, and restitution imposed, may  
8 petition the court that placed the person on community supervision  
9 for an order of nondisclosure of criminal history record  
10 information under this section if the person:

11 (1) satisfies the requirements of this section and  
12 Section 411.074; and

13 (2) has never been previously convicted of or placed  
14 on deferred adjudication community supervision for another offense  
15 other than a traffic [an] offense [under the Transportation Code]  
16 that is punishable by fine only.

17 SECTION 4. Subchapter E-1, Chapter 411, Government Code, is  
18 amended by adding Section 411.0731 to read as follows:

19 Sec. 411.0731. PROCEDURE FOR COMMUNITY SUPERVISION  
20 FOLLOWING CONVICTION; CERTAIN DRIVING WHILE INTOXICATED  
21 CONVICTIONS. (a) This section applies only to a person placed on  
22 community supervision under Chapter 42A, Code of Criminal  
23 Procedure:

24 (1) following a conviction of an offense under Section  
25 49.04, Penal Code, other than an offense punishable under  
26 Subsection (d) of that section; and

27 (2) under a provision of Chapter 42A, Code of Criminal

1 Procedure, other than Subchapter C, including:

2 (A) a provision that requires the person to serve  
3 a term of confinement as a condition of community supervision; or

4 (B) another provision that authorizes placing a  
5 person on community supervision after the person has served part of  
6 a term of confinement imposed for the offense.

7 (b) Notwithstanding any other provision of this subchapter  
8 or Subchapter F, a person described by Subsection (a) whose  
9 community supervision is not revoked and who completes the period  
10 of community supervision, including any term of confinement imposed  
11 and payment of all fines, costs, and restitution imposed, may  
12 petition the court that placed the person on community supervision  
13 for an order of nondisclosure of criminal history record  
14 information under this section if the person:

15 (1) satisfies the requirements of this section and  
16 Section 411.074; and

17 (2) has never been previously convicted of or placed  
18 on deferred adjudication community supervision for another offense  
19 other than a traffic offense that is punishable by fine only.

20 (c) A petition for an order of nondisclosure of criminal  
21 history record information filed under this section must include  
22 evidence that the person is entitled to file the petition.

23 (d) Except as provided by Subsection (e), after notice to  
24 the state, an opportunity for a hearing, and a determination that  
25 the person is entitled to file the petition and issuance of an order  
26 of nondisclosure of criminal history record information is in the  
27 best interest of justice, the court shall issue an order

1 prohibiting criminal justice agencies from disclosing to the public  
2 criminal history record information related to the offense giving  
3 rise to the community supervision.

4 (e) A court may not issue an order of nondisclosure of  
5 criminal history record information under this section if the  
6 attorney representing the state presents evidence sufficient to the  
7 court demonstrating that the commission of the offense for which  
8 the order is sought resulted in a motor vehicle accident involving  
9 another person, including a passenger in a motor vehicle operated  
10 by the person seeking the order of nondisclosure.

11 (f) A person may petition the court that placed the person  
12 on community supervision for an order of nondisclosure of criminal  
13 history record information under this section only on or after:

14 (1) the second anniversary of the date of completion  
15 of the community supervision, if the person successfully complied  
16 with a condition of community supervision that, for a period of not  
17 less than six months, restricted the person's operation of a motor  
18 vehicle to a motor vehicle equipped with an ignition interlock  
19 device; or

20 (2) the fifth anniversary of the date of completion of  
21 the community supervision, if the court that placed the person on  
22 community supervision did not order the person to comply with a  
23 condition of community supervision described by Subdivision (1) for  
24 the period described by that subdivision.

25 SECTION 5. Section 411.0735, Government Code, is amended to  
26 read as follows:

27 Sec. 411.0735. PROCEDURE FOR CONVICTION [~~AND CONFINEMENT~~];

1 CERTAIN MISDEMEANORS. (a) This section applies only to a person  
2 who:

3 (1) is convicted of a misdemeanor other than a  
4 misdemeanor under Section 106.041, Alcoholic Beverage Code,  
5 Section 49.04, 49.05, 49.06, or 49.065, Penal Code, or Chapter 71,  
6 Penal Code; and

7 (2) ~~[is sentenced to and serves a period of~~  
8 ~~confinement; and~~

9 ~~[(3)]~~ is not eligible for an order of nondisclosure of  
10 criminal history record information under Section 411.073.

11 (b) Notwithstanding any other provision of this subchapter  
12 or Subchapter F, a person described by Subsection (a) who completes  
13 the person's sentence, including any term of confinement imposed  
14 and payment of all fines, costs, and restitution imposed, ~~[period~~  
15 ~~of confinement and is released]~~ may petition the court that imposed  
16 the sentence for an order of nondisclosure of criminal history  
17 record information under this section if the person:

18 (1) satisfies the requirements of this section and  
19 Section 411.074; and

20 (2) has never been previously convicted of or placed  
21 on deferred adjudication community supervision for another offense  
22 other than a traffic [an] offense that is ~~[under the Transportation~~  
23 ~~Code]~~ punishable by fine only.

24 (c) Except as provided by Subsection (c-1), after ~~[After]~~  
25 notice to the state, an opportunity for a hearing, and a  
26 determination that the person is entitled to file the petition and  
27 issuance of the order is in the best interest of justice, the court

1 shall issue an order prohibiting criminal justice agencies from  
2 disclosing to the public criminal history record information  
3 related to the offense for which the person was convicted [~~giving~~  
4 ~~rise to the confinement~~].

5 (c-1) A court may not issue an order of nondisclosure of  
6 criminal history record information under this section if the court  
7 determines that the offense for which the order is sought, other  
8 than an offense under Section 22.01, Penal Code, was violent or  
9 sexual in nature.

10 (d) A person may petition the court that imposed the  
11 sentence for an order of nondisclosure of criminal history record  
12 information under this section only on or after:

13 (1) the date of completion of the person's sentence, if  
14 the offense of which the person was convicted was a misdemeanor  
15 punishable by fine only; or

16 (2) the second anniversary of the date of completion  
17 of the person's sentence, if the offense of which the person was  
18 convicted was a misdemeanor other than a misdemeanor described by  
19 Subdivision (1) [~~period of confinement~~].

20 SECTION 6. Subchapter E-1, Chapter 411, Government Code, is  
21 amended by adding Section 411.0736 to read as follows:

22 Sec. 411.0736. PROCEDURE FOR CONVICTION; CERTAIN DRIVING  
23 WHILE INTOXICATED CONVICTIONS. (a) This section applies only to a  
24 person who:

25 (1) is convicted of an offense under Section 49.04,  
26 Penal Code, other than an offense punishable under Subsection (d)  
27 of that section; and



1           (2) is not eligible for an order of nondisclosure of  
2 criminal history record information under Section 411.0731.

3           (b) Notwithstanding any other provision of this subchapter  
4 or Subchapter F, a person described by Subsection (a) who completes  
5 the person's sentence, including any term of confinement imposed  
6 and payment of all fines, costs, and restitution imposed, may  
7 petition the court that imposed the sentence for an order of  
8 nondisclosure of criminal history record information under this  
9 section if the person:

10           (1) satisfies the requirements of this section and  
11 Section 411.074; and

12           (2) has never been previously convicted of or placed  
13 on deferred adjudication community supervision for another offense  
14 other than a traffic offense that is punishable by fine only.

15           (c) A petition for an order of nondisclosure of criminal  
16 history record information filed under this section must include  
17 evidence that the person is entitled to file the petition.

18           (d) Except as provided by Subsection (e), after notice to  
19 the state, an opportunity for a hearing, and a determination that  
20 the person is entitled to file the petition and issuance of an order  
21 of nondisclosure of criminal history record information is in the  
22 best interest of justice, the court shall issue an order  
23 prohibiting criminal justice agencies from disclosing to the public  
24 criminal history record information related to the offense for  
25 which the person was convicted.

26           (e) A court may not issue an order of nondisclosure of  
27 criminal history record information under this section if the

1 attorney representing the state presents evidence sufficient to the  
2 court demonstrating that the commission of the offense for which  
3 the order is sought resulted in a motor vehicle accident involving  
4 another person, including a passenger in a motor vehicle operated  
5 by the person seeking the order of nondisclosure.

6 (f) A person may petition the court that imposed the  
7 sentence for an order of nondisclosure of criminal history record  
8 information under this section on or after:

9 (1) the third anniversary of the date of completion of  
10 the person's sentence, if the person successfully complied with a  
11 condition of the sentence that, for a period of not less than six  
12 months, restricted the person's operation of a motor vehicle to a  
13 motor vehicle equipped with an ignition interlock device; or

14 (2) the fifth anniversary of the date of completion of  
15 the person's sentence, if the court that imposed the sentence did  
16 not order the person to comply with a condition described by  
17 Subdivision (1) for the period described by that subdivision.

18 SECTION 7. Section 411.074, Government Code, is amended to  
19 read as follows:

20 Sec. 411.074. REQUIRED CONDITIONS FOR RECEIVING AN ORDER OF  
21 NONDISCLOSURE. (a) A person may be granted an order of  
22 nondisclosure of criminal history record information under this  
23 subchapter and, when applicable, is entitled to petition the court  
24 to receive an order under this subchapter only if, during the period  
25 after the court pronounced the sentence or placed the person on  
26 community supervision, including deferred adjudication community  
27 supervision, for the offense for which the order of nondisclosure

1 is requested, and during any applicable waiting period for the  
2 person under this subchapter following ~~[after]~~ completion of the  
3 person's sentence or community supervision, including deferred  
4 adjudication community supervision ~~[required by this subchapter]~~,  
5 the person is not convicted of or placed on deferred adjudication  
6 community supervision ~~[under Subchapter C, Chapter 42A, Code of~~  
7 ~~Criminal Procedure,~~] for any offense other than a traffic ~~[an]~~  
8 offense that is ~~[under the Transportation Code]~~ punishable by fine  
9 only.

10 (b) A person may not be granted an order of nondisclosure of  
11 criminal history record information under this subchapter and is  
12 not entitled to petition the court for an order of nondisclosure  
13 under this subchapter if:

14 (1) the person requests the order of nondisclosure  
15 ~~[was convicted or placed on deferred adjudication community~~  
16 ~~supervision]~~ for, or the person has been previously convicted of or  
17 placed on ~~[any other]~~ deferred adjudication community supervision  
18 for:

19 (A) an offense requiring registration as a sex  
20 offender under Chapter 62, Code of Criminal Procedure;

21 (B) an offense under Section 20.04, Penal Code,  
22 regardless of whether the offense is a reportable conviction or  
23 adjudication for purposes of Chapter 62, Code of Criminal  
24 Procedure;

25 (C) an offense under Section 19.02, 19.03,  
26 20A.02, 20A.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal  
27 Code; or

1 (D) any other offense involving family violence,  
2 as defined by Section 71.004, Family Code; or

3 (2) the court makes an affirmative finding that the  
4 offense for which the order of nondisclosure [~~of criminal history~~  
5 ~~record information~~] is requested involved family violence, as  
6 defined by Section 71.004, Family Code.

7 SECTION 8. Section 411.0765(a), Government Code, is amended  
8 to read as follows:

9 (a) A criminal justice agency may disclose criminal history  
10 record information that is the subject of an order of nondisclosure  
11 of criminal history record information under this subchapter only:

12 (1) to other criminal justice agencies;

13 (2) [T] for criminal justice or regulatory licensing  
14 purposes;

15 (3) to [T] an agency or entity listed in Subsection  
16 (b);

17 (4) to [T] the person who is the subject of the  
18 order; or

19 (5) for the purpose of complying with a requirement  
20 under federal law or if federal law requires the disclosure as a  
21 condition of receiving federal highway funds.

22 SECTION 9. Subchapter A, Chapter 42A, Code of Criminal  
23 Procedure, is amended by adding Article 42A.002 to read as follows:

24 Art. 42A.002. REFERENCE IN LAW. A reference in a law to a  
25 statute or a part of a statute revised in this chapter by Chapter  
26 770 (H.B. 2299), Acts of the 84th Legislature, Regular Session,  
27 2015, is considered to be a reference to the part of this chapter

1 that revises that statute or part of that statute.

2 SECTION 10. Article [42A.105](#), Code of Criminal Procedure, is  
3 amended to conform to Chapter 1279 (S.B. 1902), Acts of the 84th  
4 Legislature, Regular Session, 2015, by adding Subsection (f) to  
5 read as follows:

6 (f) If a judge places on deferred adjudication community  
7 supervision a defendant charged with a misdemeanor other than a  
8 misdemeanor under Chapter [20](#), [21](#), [22](#), [25](#), [42](#), [43](#), [46](#), or [71](#), Penal  
9 Code, the judge shall make an affirmative finding of fact and file a  
10 statement of that affirmative finding with the papers in the case if  
11 the judge determines that it is not in the best interest of justice  
12 that the defendant receive an automatic order of nondisclosure  
13 under Section [411.072](#), Government Code.

14 SECTION 11. (a) Section 16, Chapter 1279 (S.B. 1902), Acts  
15 of the 84th Legislature, Regular Session, 2015, which amended  
16 Section 5, Article 42.12, Code of Criminal Procedure, is repealed.

17 (b) Section 32, Chapter 1279 (S.B. 1902), Acts of the 84th  
18 Legislature, Regular Session, 2015, is repealed.

19 SECTION 12. To the extent of any conflict, this Act prevails  
20 over another Act of the 85th Legislature, Regular Session, 2017,  
21 relating to nonsubstantive additions to and corrections in enacted  
22 codes.

23 SECTION 13. This Act takes effect September 1, 2017.

---

President of the Senate

---

Speaker of the House

I certify that H.B. No. 3016 was passed by the House on May 2, 2017, by the following vote: Yeas 140, Nays 4, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3016 on May 24, 2017, by the following vote: Yeas 143, Nays 3, 2 present, not voting.

---

Chief Clerk of the House

I certify that H.B. No. 3016 was passed by the Senate, with amendments, on May 22, 2017, by the following vote: Yeas 28, Nays 3.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor