

[2015 Session] Expand Eligibility Criteria for Orders of Nondisclosure, and Clean Up Certain Provisions Related to the Relief Granted Through an Order of Nondisclosure

Policy Background:

When granted and executed, an order of nondisclosure will seal a defendant's record, preventing criminal justice agencies (like courts and police departments) from disclosing to private entities or individuals any criminal history record information related to the offense.

In order to be eligible to petition for an order of nondisclosure, an individual must have successfully completed deferred adjudication and waited a designated period of time, during which he or she may not commit any additional crimes. However, individuals who receive convictions, rather than deferred adjudication, may not petition for nondisclosure, thus reducing their incentive to remain law-abiding after they complete a term of probation.

Texas policy-makers should expand eligibility criteria to petition for orders of nondisclosure to include first-time convictions for certain offenses.

Separately, as it pertains to all eligible offenses, policy-makers should reduce the waiting times required prior to petitioning for an order of nondisclosure in order to provide real relief for people attempting to make a new start.

Finally, policy-makers should prohibit the forfeiture of the right to nondisclosure in plea agreements, as well as prohibit third parties (e.g., potential employers or landlords) from asking individuals to request and make available their own records if subject to an order of nondisclosure.

Key Facts:

The eligibility criteria to petition for an order of nondisclosure are strict and not available to everyone.

- In order to be eligible for an order of nondisclosure, an individual must have been placed on and successfully complete deferred adjudication community supervision, resulting in the dismissal and discharge of the case.[1]
- An individual must also wait a designated amount of time after the charge is dismissed—five years for felonies and two years for certain misdemeanors.[2]
- Only some types of offenses are eligible for nondisclosure; certain violent and sex-related offenses are ineligible.[3]
- Even if the offense for which the petition is filed is eligible for nondisclosure, an individual can still be disqualified by their criminal history—any record of certain violent or sex-related offenses makes the present offense ineligible—or a conviction or placement on deferred adjudication during the waiting time (does not include traffic tickets).[4]
- Finally, if an individual meets all these criteria and files a petition with a fee of approximately \$280, the judge must issue an order of nondisclosure only upon a finding that issuance of the order is in the best interest of justice.[5]

Few orders of nondisclosure are issued compared to the number of eligible offenses.

- According to the Office of Court Administration's Court Activity Reporting and Directory System, a total of 170,587 cases were dismissed in district criminal courts over a four-year period (September 2010 through August 2014). Over 18 percent, or 30,924 of these, were for drug possession alone.[6] Another 3,366 dismissals were for misdemeanors.[7] Most of these drug possession and misdemeanor cases, after the proper waiting periods, likely are or will be eligible for petitions of nondisclosure.
- The Texas Department of Public Safety reported in May 2014 that it had only received a total of 8,842 orders of nondisclosure over a two-year period (2012 and 2013).[8]

Even when issued, orders of nondisclosure and expunction are not always effective in limiting access to criminal records, potentially resulting in the ongoing dissemination of restricted or inaccurate information.

- While the Texas Department of Public Safety (DPS) is statutorily mandated to certify to the court that issued the order of nondisclosure or expunction that the relevant records in its possession have been destroyed, sealed, or returned to

the court, the statute does not require DPS to certify to the court that it has notified all the private commercial businesses it sold the records to of the order of nondisclosure or expunction. This means that, although DPS is accountable to the courts to comply with orders of nondisclosure and expunction, DPS is not held accountable to notify all the private entities it sells records to that an order of nondisclosure or expunction has been issued.

- Similarly, private entities are not held accountable by any compliance mechanism to remove information subject to an order of nondisclosure or expunction. However, DPS does indicate on its website that it “provides a file that contains the Nondisclosure records that are no longer public” and that “customers have 30 business days from the posting of the file to remove any records.”^[9]

Relevant Bills:

- **Bill Number:** [HB 268](#) (Miles, Collier)
Bill Caption: Relating to the prompt issuance of an order of nondisclosure for certain defendants; authorizing a fee.
TCJE Materials: [Fact Sheet](#) | [Testimony](#)
Hearing Notice: House Corrections Committee, [Notice of Public Hearing on April 9, 2015](#)
- **Bill Number:** [HB 329](#) (Wu)
Bill Caption: Relating to orders of nondisclosure issued for records of certain fine-only misdemeanors; authorizing a fee.
TCJE Materials: [Fact Sheet](#)
Hearing Notice: House Criminal Jurisprudence Committee, [Notice of Public Hearing on April 20, 2015](#)
Archived Hearing Video: House Criminal Jurisprudence Committee, [04/20/15 Video](#) [TCJE testimony begins at 04:07:57]
- **Bill Number:** [HB 3578](#) (Alonzo)
Bill Caption: Relating to the date on which certain criminal defendants are eligible to file a petition for an order of nondisclosure.
Hearing Notice: House Criminal Jurisprudence Committee, [Notice of Public Hearing on April 20, 2015](#)
- **Bill Number:** [HB 3936](#) (Herrero, Senfronia Thompson, Murphy, Villalba, Leach)
Bill Caption: Relating to the eligibility of criminal defendants for an order of nondisclosure of criminal history record information; authorizing a fee.

TCJE Materials: [Fact Sheet](#)

Hearing Notice: House Criminal Jurisprudence Committee, [Notice of Public Hearing on April 20, 2015](#)

Archived Hearing Video: House Criminal Jurisprudence Committee, [04/20/15 Video](#) [TCJE testimony begins at 08:19:41]

- **Bill Number:** [SB 130](#) (author: West | sponsors: Canales, Alonzo)

Bill Caption: Relating to the eligibility of criminal defendants for an order of nondisclosure; authorizing a fee.

TCJE Materials: [Fact Sheet](#) | [Testimony](#) | [Fact Sheet for House Committee](#)

Senate Hearing Notice: Senate Criminal Justice Committee, [Notice of Public Hearing on March 31, 2015](#)

Archived Senate Hearing Video: Senate Criminal Justice Committee, [03/31/15 Video](#) [TCJE testimony begins at 04:16:40]

House Hearing Notice: House Criminal Jurisprudence Committee, [Notice of Public Hearing on May 6, 2015](#)

Archived House Hearing Video: House Criminal Jurisprudence Committee, [05/06/15 Video](#) [TCJE testimony begins at 01:12:19]

Outcome: **Vetoed**; [click here for veto proclamation](#)

- **Bill Number:** [SB 416](#) (West)

Bill Caption: Relating to criminal history record information that is subject to an order of nondisclosure and prohibiting a person's waiver of a right to an expunction or to an order of nondisclosure with respect to a criminal offense.

Hearing Notices: Senate Criminal Justice Committee, [Notice of Public Hearing on April 28, 2015](#) | [Notice of Public Hearing on May 5, 2015](#)

TCJE Action: [Card in support](#)

- **Bill Number:** [SB 563](#) (Hinojosa)

Bill Caption: Relating to orders of nondisclosure issued for records of certain fine-only misdemeanors; authorizing a fee.

- **Bill Number:** [SB 1902](#) (author: Perry | sponsors: Herrero, Senfronia Thompson, Murphy, Villalba, Leach)

Bill Caption: Relating to the eligibility of criminal defendants for an order of nondisclosure of criminal history record information; authorizing a fee.

TCJE Materials: [Fact Sheet](#)

Hearing Notice: Senate Criminal Justice Committee, [Notice of Public Hearing on April 21, 2015](#)

Archived Hearing Video: Senate Criminal Justice Committee, [04/21/15 Video](#)

[TCJE testimony begins at 02:44:17]

Outcome: **Effective 9/1/15**

Outside Publications:

- House Committee on Criminal Jurisprudence, *Interim Report to the 84th Legislature* [January 2015]

See *Charge 2*: Study the effectiveness of deferred adjudication and orders for non-disclosure in spite of the many exceptions to the statute. Study extending the use of expunction of criminal records history and non-disclosures to certain qualified individuals with low-level, non-violent convictions. Examine the statutorily allowed but underused non-disclosure and expunction of criminal records, and the use of deferred adjudication. (pages 15-19)

[1] Tex. Gov't Code, § 411.081(d)

[2] Ibid, at § 411.081(d)(2), (3). The two-year waiting period applies to misdemeanors under Chapter 20, 21, 22, 25, 42, or 46 of the Penal Code (offenses related to kidnapping and unlawful restraint, sexual offenses, assaultive offenses, offenses against the family, disorderly conduct and related offenses, and weapons). All other misdemeanors are not subject to a waiting time (see § 411.081(d)(1)).

[3] Ibid, at § 411.081(e). Ineligible offenses include an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure; an offense under Section 20.04, Penal Code (aggravated kidnapping); an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code (murder; capital murder; injury to a child, elderly individual, or disabled individual; abandoning or endangering a child; violation of certain court orders or conditions of bond in a family violence case; repeated violation of certain court orders or conditions of bond in a family violence case; stalking); and any other offense involving family violence, as defined by Section 71.004, Family Code.

[4] Ibid.

[5] Ibid, at § 411.081(d)

[6] Office of Court Administration; see *Court Activity Reporting and Directory System*, using the Ad-Hoc Search feature;

<http://card.txcourts.gov/Secure/login.aspx?ReturnURL=default.aspx>

[7] Ibid.

[8] Texas Department of Public Safety (DPS), Letter to the Lieutenant Governor and Speaker of the House dated May 30, 2014, reporting the number of petitions and orders for nondisclosure received by DPS in 2012 and 2013. DPS received 4,414 orders of nondisclosure in 2012 and received 4,428 orders in 2013.

[9] Texas Department of Public Safety, *Conviction Database Customers*, accessed on October 3, 2014;

<https://records.txdps.state.tx.us/DpsWebsite/CriminalHistory/Purchases.aspx>