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TESTIMONY 2015

SB 130

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of SB 130, which will expand eligibility for orders of nondisclosure to certain individuals with convictions that have been set aside.

ACCESS TO ORDERS OF NONDISCLOSURE

There are indisputable barriers to success for people with criminal records. Depending on the crime, a person convicted of an offense in Texas will have difficulty, or be absolutely barred from, obtaining employment or a place to live, receiving a license for a particular occupation, obtaining certain types of educational assistance, or receiving federal or state benefits for basic human needs. Recognizing this, Texas has created a system by which criminal records can be sealed from the public through an order of nondisclosure.¹

The opportunity to petition for an order of nondisclosure provides an incentive for individuals to remain law-abiding by requiring that no additional crimes be committed after the offense at hand. Despite the fact that current policies regulating orders of nondisclosure take many steps in the right direction, these forms of relief do not extend far enough to offer a genuine second chance to those trying to live as responsible and safe residents of Texas.

KEY FINDINGS

- **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.²
 - » 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.³
 - » Only some types of offenses are eligible for nondisclosure; certain violent and sex-related offenses are ineligible.⁴
 - » 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).⁵
 - » 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.⁶
- **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.⁷ Another 3,366 dismissals were for misdemeanors.⁸ Most of these drug possession and misdemeanor cases, after the proper waiting periods, likely are or will be eligible for petitions of nondisclosure.

Continued on reverse.

- » 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).⁹
- **Even when issued, orders of nondisclosure 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 that the relevant records in its possession have been sealed, 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, DPS is not held accountable to notify all the private entities it sells records to that an order of nondisclosure has been issued.
 - » Similarly, private entities are not held accountable by any compliance mechanism to remove information subject to an order of nondisclosure. Please note, however, that DPS indicates 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.”¹⁰

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 130 BY SENATOR WEST

SB 130 will close a current gap in Texas law, allowing defendants whose convictions have been “set aside” to be eligible for an order of nondisclosure, and thus be fully released from penalties and disabilities resulting from their conviction being publicly available. Individuals with a misdemeanor conviction are eligible for an order of nondisclosure immediately after the conviction is set aside, while individuals with a felony offense must wait five years after the set-aside. This bill will give a fair chance to thousands of Texans who have overcome their past mistakes, enabling them to access safe housing, become gainfully employed, and contribute to Texas communities in positive ways.

Citations

¹ [Tex. Gov’t Code, § 411.081.](#)

² [Tex. Gov’t Code, § 411.081\(d\).](#)

³ *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)).

⁴ *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.

⁵ *Ibid.*

⁶ *Ibid.*, at § [411.081\(d\)](#).

⁷ Data was obtained from the Office of Court Administration Court Activity Reporting and Directory System using the Ad-Hoc Search feature on October 1, 2014. Public court activity data may be found at <http://card.txcourts.gov/Secure/login.aspx?ReturnURL=default.aspx>.

⁸ *Ibid.*

⁹ 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 the Department in 2012 and 2013. DPS received 4,414 orders of nondisclosure in 2012 and 4,428 orders in 2013.

¹⁰ Texas Department of Public Safety, “Conviction Database Customers,” accessed on October 3, 2014, available at <https://records.txdps.state.tx.us/DpsWebsite/CriminalHistory/Purchases.aspx>.