

BILL ANALYSIS

Senate Research Center
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S.B. 416
By: West
Criminal Justice
4/24/2015
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2014, a call was placed by a practicing attorney to the district office of Senator West to report a practice by some Texas prosecutors. It involved prosecutors in several jurisdictions requiring defendants to waive their right to an order of nondisclosure as a requirement necessary to be offered deferred adjudication. This practice is particularly disturbing given the fact that there is no legitimate law enforcement purpose promoted in requiring a defendant to waive their right to have the records of an offense sealed through an order of nondisclosure for which they may be eligible.

This is because Section 411.081 (g-1)(1) of the Government Code lists prosecuting attorneys as one of several criminal justice agencies or law enforcement agencies that have access to records that have been sealed through an order of nondisclosure.

This practice was documented in at least one county. Upshur County was sent a letter requesting copies of all waivers of nondisclosure rights and other relevant information for the three previous years. In addition, a copy of an actual "Waiver of Right" form used by Upshur County 115th District Court was obtained. A letter was also sent to the Texas District and County Attorneys Association (TDCAA) inquiring as to whether this was a practice consistent with the position of TDCAA on this issue.

S.B. 416 as filed, prohibits a defendant from being required to waive their right to an order of nondisclosure for which they may be eligible. It also prohibits the waiving of the rights of a person who is, by statute, eligible to have the records of an offense for which they have been charged expunged as part of an agreement in the disposition of a criminal case. S.B. 416 declares the waiving of the defendant's rights to be void in both instances.

S.B. 416 was drafted from a recommendation made in response to an interim charge following the 83rd Session of the Texas Legislature assigned to the Senate Committee on Jurisprudence.

As proposed, S.B. 416 amends current law relating to prohibiting a person's waiver of a right to an expunction or to an order of nondisclosure with respect to a criminal offense.

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 Article 55.01, Code of Criminal Procedure, by adding Subsection (e), as follows:

(e) Prohibits a person from waiving, as part of an agreement regarding the disposition of criminal charges based on the person's commission of an alleged offense, any right of the person to an expunction under this chapter that may exist in relation to that offense on or after the date the waiver is signed, notwithstanding Article 1.14(a) (authorizing the defendant in a criminal prosecution for any offense to waive any rights secured him by law except that a defendant in a capital felony case may waive the right of trial by jury

only in the manner permitted by Article 1.13(b) of this code). Provides that a purported waiver of that right is void.

SECTION 2. Amends Section 411.081, Government Code, by adding Subsection (j), as follows:

(j) Prohibits a person from waiving, as part of an agreement regarding the disposition of criminal charges based on the person's commission of an alleged offense, any right of the person to an order of nondisclosure under this section that may exist in relation to that offense on or after the date the waiver is signed, notwithstanding Article 1.14(a), Code of Criminal Procedure. Provides that a purported waiver of that right is void.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: upon passage or September 1, 2015.