

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 416
By: West
Criminal Justice
5/7/2015
Committee Report (Substituted)

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.

C.S.S.B. 416 amends current law relating to criminal history record information that is subject to an order of nondisclosure and prohibits a person's waiver of a right to an expunction or to an order of nondisclosure with respect to a criminal offense. (Original Author's / Sponsor's Statement of Intent)

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 the charged offense on or after the date the waiver is signed, unless the waiver is requested as a

condition of the person's participation in a pretrial diversion program that could result in a dismissal of the charged offense, 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 waiver of a right to an expunction made in violation of this subsection is void.

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

(d) Requires the court to issue an order prohibiting criminal justice agencies from disclosing to the public all criminal history record information related to the offense giving rise to the deferred adjudication, including information related to any other offense arising out of the same transaction as the offense for which the person was placed on deferred adjudication community supervision, if the other offense has not resulted in a final conviction and is no longer pending and if there was no court-ordered community supervision under Article 42.12 (Community Supervision), Code of Criminal Procedure, for the other offense after notice to the state, an opportunity for a hearing, and a determination that the person is entitled to file the petition and issuance of the order is in the best interest of justice.

(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. (a) Provides that the changes in law made by this Act in adding Article 55.01(e), Code of Criminal Procedure, and Section 411.081(j), Government Code, apply only to a waiver of a person's right to an expunction or an order of nondisclosure made on or after the effective date of this Act. Makes application of this Act prospective.

(b) Provides that the change in law made by this Act in amending Section 411.081(d), Government Code, applies to a person who petitions the court for an order of nondisclosure on or after September 1, 2015, regardless of whether the person is placed on deferred adjudication community supervision before, on, or after that date.

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