

## **BILL ANALYSIS**

C.S.H.B. 667  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

There have been reports of prosecutors requiring defendants to waive their right to an order of nondisclosure or expunction as a requirement of being offered deferred adjudication community supervision, thereby abrogating a protection afforded by law. C.S.H.B. 667 seeks to address this issue by prohibiting the waiving of those rights and declaring a previous waiver of those rights void.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 667 amends the Code of Criminal Procedure to prohibit 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 that may exist in relation to that offense on or after the date the waiver is signed, unless the waiver relates solely to records and files in the possession of the attorney representing the state in the person's case. The bill establishes that a purported waiver of that right that is executed in violation of such a prohibition is void. The bill requires a court to provide in its expunction order that the attorney representing the state may retain the arrest records and files of a person who is the subject of the expunction order if the person has signed such a waiver.

C.S.H.B. 667 amends the Government Code to prohibit 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 of criminal history record information that may exist in relation to that offense on or after the date the waiver is signed. The bill establishes that a purported waiver of that right is void.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 667 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences

between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Article 55.01, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding Article 1.14(a), a person may not waive, 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.

A purported waiver of that right is void.

No equivalent provision.

SECTION 2. Subchapter E-1, Chapter 411, Government Code, is amended.

SECTION 3. The changes in law made by this Act apply only to a waiver of a person's right to an expunction or an order of nondisclosure of criminal history record information made on or after the effective date of this Act. A waiver made before the effective date of this Act is governed by the law in effect on the date the waiver was made, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Article 55.01, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding Article 1.14(a), a person may not waive, 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, unless the waiver relates solely to records and files in the possession of the attorney representing the state in the person's case. A purported waiver of that right that is executed in violation of this subsection is void.

SECTION 2. Section 4, Article 55.02, Code of Criminal Procedure, is amended by adding Subsection (a-3) to read as follows:

(a-3) The court shall provide in its expunction order that the attorney representing the state may retain the arrest records and files of a person who is the subject of the expunction order if the person has signed a waiver authorized under Article 55.01(e).

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.