86R1054 JRR-D

By:  Canales H.B. No. 176

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting a person's waiver of a right to an expunction or to an order of nondisclosure of criminal history record information with respect to a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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) and amending Subsection (b) 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).

(b)  Unless the person who is the subject of the expunction order is again arrested for or charged with an offense arising out of the transaction for which the person was arrested or unless the court provides for the retention of records and files under Subsection (a-1), [~~or~~] (a-2), or (a-3), the provisions of Articles 55.03 and 55.04 apply to files and records retained under this section.

SECTION 3.  Subchapter E-1, Chapter 411, Government Code, is amended by adding Section 411.078 to read as follows:

Sec. 411.078.  WAIVER OF RIGHT TO ORDER OF NONDISCLOSURE PROHIBITED. Notwithstanding Article 1.14(a), Code of Criminal Procedure, 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 order of nondisclosure of criminal history record information under this subchapter 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.

SECTION 4.  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 5.  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, 2019.