

BILL ANALYSIS

C.S.H.B. 1741
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2022, a draft of the U.S. Supreme Court's opinion in *Dobbs v. Jackson Women's Health Organization* was leaked. This leaked opinion was unprecedented for the nation's highest court and raised serious concerns regarding the security of judicial work products. Currently, Rule 12.5(a) of the Texas Rules of Judicial Administration exempts from public disclosure "any record that relates to a judicial officer's adjudicative decision-making process prepared by that judicial officer, by another judicial officer, or by court staff, an intern, or any other person acting on behalf of or at the direction of the judicial officer." However, there is no state law criminalizing the unauthorized release of a draft decision or other judicial work product. C.S.H.B. 1741 seeks to prevent the unauthorized disclosure of non-public judicial work products, including draft judicial opinions, in Texas by creating a Class A misdemeanor offense for a person who knowingly discloses, wholly or partly, the contents of any non-public judicial work product.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 1741 amends the Government Code to create a Class A misdemeanor offense for a person, other than a justice or judge, who has access to non-public judicial work product and knowingly discloses, wholly or partly, the contents of any such work product to a person who is not a justice, judge, court staff attorney, court clerk, law clerk, employee of the Texas Judicial Council or the Office of Court Administration of the Texas Judicial System, or other court staff routinely involved in crafting an opinion or decision for an adjudicatory proceeding. The bill establishes as a defense to prosecution for the offense that the disclosure is authorized either in writing by the justice or judge for whom the work product is prepared or under the Texas Supreme Court's rules. This offense and the rest of the bill's provisions apply with respect to a court established under the Texas Constitution, other than a county commissioners court, and a court subject to state law governing courts in the judicial branch of state government.

C.S.H.B. 1741 requires a justice or judge of an applicable court to comply with supreme court rules governing the confidentiality of non-public judicial work product and requires a person, other than a justice or judge, who is involved in crafting an opinion or decision for an adjudicatory proceeding, including a court staff attorney, court clerk, or law clerk, to maintain

the confidentiality of all such work product in accordance with those rules. The bill requires the supreme court to adopt any rules necessary to implement the bill's provisions.

C.S.H.B. 1741 defines the following terms:

- "judicial work product" as written, electronic, or oral material prepared or communications made in the course of an adjudicatory proceeding before a court determining legal rights, powers, duties, or privileges, including all drafts of opinions or orders and memoranda of law; and
- "non-public judicial work product" as any written or electronic judicial work product not filed with a court clerk for public release or any oral statement relating to judicial work product made in a closed session of a court or in judicial chambers.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1741 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the introduced classified any document or recording filed under seal by or with a court containing or relating to judicial work product as a "non-public judicial work product," the substitute does not.