

BILL ANALYSIS

C.S.H.B. 1717
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under the state's criminal discovery procedures, the prosecution is required to disclose specific evidence to the defendant before, during, and after trial for offenses committed on or after January 1, 2014. Given how important this exchange of information is for a fair and just criminal justice system, there have been calls to extend this requirement to all offenses. This is especially relevant to a post-conviction case in which the crime occurred before the aforementioned date. In addition, a recent case in which an assistant prosecutor claimed that he was fired from his job because he refused a supervisor's order to withhold evidence that supported a defendant's innocence has demonstrated a need to provide protections to prosecutors who are retaliated against by their employers after refusing to violate criminal discovery procedures. C.S.H.B. 1717 seeks to address these issues by extending the applicability of the disclosure requirement and by prohibiting certain retaliation against a prosecutor that refuses to violate criminal discovery procedures.

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. 1717 amends the Code of Criminal Procedure to specify that the duty of the state to promptly disclose any exculpatory, impeachment, or mitigating evidence applies regardless of the date the applicable offense was committed.

C.S.H.B. 1717 amends the Government Code to prohibit a prosecuting attorney from suspending or terminating the employment of or taking other adverse personnel action against an assistant prosecutor based on the following acts:

- the assistant prosecutor discloses evidence in accordance with the duty to promptly disclose any exculpatory, impeachment, or mitigating evidence or other law requiring disclosure of evidence favorable to a defendant; or
- after the prosecuting attorney or another supervising assistant prosecutor directs the assistant prosecutor to withhold evidence in violation of such duty or law, the assistant prosecutor:
 - refuses to withhold the evidence; or
 - presents the evidence to the applicable trial court under the bill's provisions.

C.S.H.B. 1717 authorizes an assistant prosecutor who is directed by a prosecuting attorney or another supervising assistant prosecutor to withhold evidence in violation of such duty or law

to present the evidence to the trial court for the underlying criminal case, without notice to the defendant or the defendant's counsel, to obtain a decision on whether the disclosure is required. The bill requires the trial court to promptly issue a written decision on the matter.

C.S.H.B. 1717 provides for a civil action to be brought by an assistant prosecutor against the prosecuting attorney who retaliates against the assistant prosecutor in violation of the bill's prohibition but sets out the following prerequisite: the assistant prosecutor must first present the evidence to the trial court and provide the court's decision to the prosecuting attorney, unless the assistant prosecutor did not have a reasonable opportunity to present the evidence or provide the decision before the adverse personnel action was taken or had good cause for failure to present the evidence or provide the decision.

C.S.H.B. 1717 authorizes an assistant prosecutor whose employment is suspended or terminated or who is subjected to an adverse personnel action in violation of the bill's prohibition to bring an action against the prosecuting attorney for the following relief:

- injunctive relief, including reinstatement to the assistant prosecutor's former position or an equivalent position and reinstatement of fringe benefits and seniority rights lost due to suspension or termination;
- compensatory damages, including compensation for wages lost during the period of suspension or termination;
- court costs; and
- reasonable attorney fees.

The bill caps the amount of compensatory damages that may be recovered for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses at specified amounts based on the combined number of employees in the county or counties where the prosecuting attorney has jurisdiction during a certain period. If more than one of the damage award categorizations applies to the county or counties where the prosecuting attorney has jurisdiction, the amount of monetary damages that may be recovered is the greatest damage award that applies. The assistant prosecutor must bring the action not later than the 90th day after the date the adverse personnel action that allegedly violated the bill's prohibition was taken.

C.S.H.B. 1717 places the burden of proof on the assistant prosecutor for such an action and provides for the following:

- a waiver of sovereign and governmental immunity to suit and liability;
- an affirmative defense to the action;
- the venue for the action; and
- an exemption of the action from statutory provisions relating to local government tort claims.

C.S.H.B. 1717 applies only to retaliation by a prosecuting attorney that occurs on or after the bill's effective date, except that an assistant prosecutor may bring an action for retaliation that occurred before that date if it is brought not later than the 90th day after the bill's effective date. This exception applies regardless of whether the assistant prosecutor has met the bill's prerequisite for bringing the action or has brought an action claiming prohibited retaliation before the bill's effective date that has been dismissed.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1717 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the conditions under which an assistant prosecutor may bring an action under the bill's provisions regarding retaliation that occurred before the bill's effective date as follows:

- does not limit that authorization to assistant prosecutors who have previously brought an action claiming prohibited retaliation in which a final judgment has not been entered before the bill's effective date; and

specifies instead that the authorization applies regardless of whether the assistant prosecutor has previously brought an action claiming prohibited retaliation that has been dismissed.