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OPINION COMMITTEE

901 LEOPARD, ROOM 206
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TELEPHONE:
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361-888-0286 MISDEMEANOR DIVISION
361-888-0348 HOT CHECK DIVISION

OFFICE OF THE



DISTRICT ATTORNEY

Mark A. Gonzalez
DISTRICT ATTORNEY
105TH JUDICIAL DISTRICT
NUECES COUNTY

FILE # ML-48126-17
I.D. # 48126

FACSIMILE
361-888-0399 FELONY DIVISION
361-888-0700 MISDEMEANOR DIVISION
361-888-0381 VICTIM ADVOCATE

RQ-0148-KP

February 14, 2017

Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Pursuant to Texas Government Code Section 402.042, I hereby request a Texas Attorney General's Opinion concerning the following question:

As a condition of the Defendant's participation in a Pre-trial Diversion Program, may the District Attorney secure a valid waiver of the Defendant's right to seek expunction of the record of arrest forming the basis for the offense for which the Defendant is placed on pre-trial diversion?

Respectfully submitted,

/s/ Mark A. Gonzalez

Mark A. Gonzalez

BRIEF IN SUPPORT OF REQUEST

The Nueces County District Attorney has an active Pre-Trial Diversion Program aimed at rehabilitating first-time offenders charged with minor, non-violent crimes. The goal is to allow the offender who successfully completes the program to avoid a criminal conviction.

However, even when the offender successfully completes the program, there is a possibility he may re-offend and again seek the same lenience originally extended to him. In those cases, this Office sees a need to retain a record of the prior offense as a tool in its evaluation as to whether a second chance at pre-trial diversion is appropriate.

The Texas Code of Criminal Procedure generally allows a Defendant to waive any right secured to him under the Code, Tex. Code Crim. Proc. art. 1.14, and the El Paso Court of Appeals has on several occasions specifically recognized that a Defendant may waive his right to seek expunction as a condition of his participation in a similar Pre-Trial Diversion Program. *See In the Matter of the Expunction of R.B.*, 361 S.W.3d 184, 187 (Tex. App.-El Paso 2012, pet. denied); *In the Matter of the Expunction of Jones*, 311 S.W.3d 502, 505 (Tex. App.-El Paso 2009, no pet.).

Our office seeks to use a similar waiver and believes that there is no reason it should not be valid and binding.