

BILL ANALYSIS

C.S.S.B. 9
By: Shapiro
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In October 2003, Texas began requiring national criminal history background checks through fingerprinting for all new applicants for educator certification. Since that time, almost 300 applicants for certification have been found to have serious offenses on their records, including sexual misconduct and crimes against children.

This bill requires a national criminal history background check for all certified public school employees. Current non-certified employees are required to submit to a statewide criminal review, while non-certified employees hired on or after January 1, 2008 will be required to submit to a national criminal history background check. Individuals who have been convicted for a Title 5 felony offense or a sex offense when the victim of the crime was a child, a primary or secondary school student would be prohibited from employment with a public school district.

This bill also creates a clearinghouse at the Department of Public Safety for this information to be shared between school districts when an employee transfers to another employer to increase efficiency and reduce the costs associated with background checks.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the State Board for Educator Certification in SECTION 3 and SECTION 8 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of Education in SECTION 8 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Public Safety in SECTION 8 of this bill, and that rulemaking authority previously granted to the Department of Public Safety is modified in SECTION 14 and SECTION 16 of this bill.

Also note that rulemaking authority is granted to school districts in SECTION 8 of this bill, although in the opinion of the committee such entities are not encompassed within "state officer, department, agency, or institution" as specified in the House rules.

ANALYSIS

Note: Unless otherwise specified, statutory references in this BILL ANALYSIS are to the Education Code.

This bill relates to the dissemination of criminal history record information and child abuse investigation reports for certain purposes, including the certification and employment of educators and other public school employees who engage in certain misconduct.

The bill amends Subchapter B, Chapter 8, Education Code, by adding Section 8.057 to provide that the Texas Education Agency (agency) may require a regional education service center to assist in collecting information needed for a criminal history record information review under Subchapter C, Chapter 22.

The bill amends Subchapter D, Chapter 12, Education Code, by adding Section 12.1059 to provide that a person may not be employed by or serve as a teacher, librarian, educational aide,

administrator, or counselor for an open-enrollment charter school unless the person has been approved by the agency following a review of the person's national criminal history record information as provided by Section 22.0832.

The bill amends Subchapter A, Chapter 21, Education Code, by adding Section 21.007 to provide that in this section, "board" means the State Board for Educator Certification. The board shall adopt a procedure for placing a notice of alleged misconduct on an educator's public certification records. The procedure adopted by the board must provide for immediate placement of a notice of alleged misconduct on an educator's public certification records if the alleged misconduct presents a risk to the health, safety, or welfare of a student or minor as determined by the board. The board must notify an educator in writing when placing a notice of an alleged incident of misconduct on the public certification records of the educator. The board must provide an opportunity for an educator to show cause why the notice should not be placed on the educator's public certification records. The board shall propose rules establishing the length of time that a notice may remain on the educator's public certification records before the board must initiate a proceeding to impose a sanction on the educator on the basis of the alleged misconduct, or remove the notice from the educator's public certification records. If it is determined that the educator has not engaged in the alleged incident of misconduct, the board shall immediately remove the notice from the educator's public certification records. The board shall propose rules necessary to administer this section.

The bill amends Subchapter B, Chapter 21, Education Code, by adding Section 21.060 to provide that the State Board for Educator Certification may suspend or revoke the certificate or permit held by a person under this subchapter, impose other sanctions against the person, or refuse to issue a certificate or permit to a person under this subchapter if the person has been convicted of a felony or misdemeanor offense relating to the duties and responsibilities of the education profession, including: an offense involving moral turpitude; an offense involving a form of sexual or physical abuse of a minor or student or other illegal conduct in which the victim is a minor or student; a felony offense involving the possession, transfer, sale, or distribution of or conspiracy to possess, transfer, sell, or distribute a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; an offense involving the illegal transfer, appropriation, or use of school district funds or other district property; or an offense involving an attempt by fraudulent or unauthorized means to obtain or alter a professional certificate or license issued under this subchapter.

The bill amends Sections 22.081 and 22.082, Education Code, to provide that in this subchapter: (SUBCHAPTER C. CRIMINAL HISTORY RECORDS) "Department" means the Department of Public Safety, "National criminal history record information" means criminal history record information obtained from the department under Subchapter F, Chapter 411, Government Code, and from the Federal Bureau of Investigation under Section 411.087, Government Code, and "Private school" means a school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12, and is not operated by a governmental entity. The State Board for Educator Certification shall subscribe to the criminal history clearinghouse as provided by Section 411.0845, Government Code, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21.

The bill amends the heading to Section 22.083, Education Code, to read as follows: Sec. 22.083. ACCESS TO CRIMINAL HISTORY RECORDS OF EMPLOYEES BY LOCAL AND REGIONAL EDUCATION AUTHORITIES.

The bill amends Section 22.083, Education Code, by amending Subsections (a) and (b) and adding Subsections (a-1) and (a-2) to provide that (a) a school district, open-enrollment charter school, or shared services arrangement shall obtain criminal history record information that relates to a person who is not subject to a national criminal history record information review under this subchapter (SUBCHAPTER C. CRIMINAL HISTORY RECORDS) and who is an employee of: the district or school; or a shared services arrangement, if the employee's duties are performed on school property or at another location where students are regularly present. (a-1) A school district, open-enrollment charter school, or shared services arrangement may obtain the criminal history record information from: the department; a law enforcement or criminal justice

agency; or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.). (a-2) A shared services arrangement may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person who is not subject to Subsection (a) and whom the shared services arrangement intends to employ in any capacity. (b) A private school or regional education service center may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to: a person whom the school or service center intends to employ in any capacity; or an employee of or applicant for employment by a person that contracts with the school or service center to provide services, if: the employee or applicant has or will have continuing duties related to the contracted services; and the employee or applicant has or will have direct contact with students.

The bill amends Subchapter C, Chapter 22, Education Code, by adding Sections 22.0831 to provide that in this section, "board" means the State Board for Educator Certification. This section applies to a person who is an applicant for or holder of a certificate under Subchapter B, Chapter 21, and who is employed by or is an applicant for employment by a school district, open-enrollment charter school, or shared services arrangement. The board shall review the national criminal history record information of a person who has not previously submitted fingerprints to the department or been subject to a national criminal history record information review. The board shall place an educator's certificate on inactive status for failure to comply with a deadline for submitting information required under this section. The board may allow a person who is applying for a certificate under Subchapter B, Chapter 21, and who currently resides in another state to submit the person's fingerprints and other required information in a manner that does not impose an undue hardship on the person. The board may propose rules to implement this section, including rules establishing: deadlines for a person to submit fingerprints and photographs in compliance with this section; and sanctions for a person's failure to comply with the requirements of this section, including suspension or revocation of a certificate or refusal to issue a certificate. The board by rule shall establish a schedule for obtaining and reviewing the information a certified educator must provide the board under this section. Not later than September 1, 2011, the board must obtain all national criminal history record information on all certified educators.

The bill amends Subchapter C, Chapter 22, Education Code, by adding Sec. 22.0832 to provide that the agency shall review the national criminal history record information of an employee of an open-enrollment charter school to whom Section 12.1059 applies in the same manner as the State Board for Educator Certification reviews certified educators under Section 22.0831. If the agency determines that, based on information contained in an employee's criminal history record information, the employee would not be eligible for educator certification under Subchapter B, Chapter 21, the agency shall notify the open-enrollment charter school in writing that the person may not be employed by the school or serve in a capacity described by Section 12.1059. An open-enrollment charter school must provide the agency with any information requested by the agency to enable the agency to complete a review specified above. Failure of an open-enrollment charter school to provide the required information is a material violation of the school's charter.

The bill amends Subchapter C, Chapter 22, Education Code, by adding Sec. 22.0833 to provide that this section applies to a person who is not an applicant for or holder of a certificate under Subchapter B, Chapter 21, and who on or after January 1, 2008, is offered employment by: a school district or open-enrollment charter school, or a shared services arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present. A person to whom this section applies must submit to a national criminal history record information review under this section before being employed or serving in a capacity described above in this paragraph. Before or immediately after employing or securing the services of a person to whom this section applies, a school district, open-enrollment charter school, or shared services arrangement shall send or ensure that the person sends to the department information that is required by the department for obtaining national criminal history record information, which may include fingerprints and photographs. The department shall obtain the person's national criminal history record information and report the results through the criminal history clearinghouse as provided by Section 411.0845, Government Code. Each school district, open-enrollment charter school, and shared services arrangement shall obtain all criminal history record information that relates to a person to whom

this section applies through the criminal history clearinghouse as provided by Section 411.0845, Government Code, and shall subscribe to the criminal history record information of the person. The school district, open-enrollment charter school, or shared services arrangement may require a person to pay any fees related to obtaining criminal history record information under this section. A school district, open-enrollment charter school, or shared services arrangement shall provide the agency with the name of a person to whom this section applies. The agency shall obtain all criminal history record information of the person through the criminal history clearinghouse as provided by Section 411.0845, Government Code. The agency shall examine the criminal history record information of the person and notify the district, school, or shared services arrangement if the person may not be hired or must be discharged as provided by Section 22.085. The agency, the State Board for Educator Certification, school districts, open-enrollment charter schools, and shared services arrangements may coordinate as necessary to ensure that criminal history reviews authorized or required under this subchapter are not unnecessarily duplicated. The department in coordination with the commissioner may adopt rules necessary to implement this section.

The bill amends Subchapter C, Chapter 22, Education Code, by adding Sec. 22.0834 to provide:

(a) This subsection applies to a person who is not an applicant for or holder of a certificate under Subchapter B, Chapter 21, and who on or after January 1, 2008, is offered employment by an entity that contracts with a school district, open-enrollment charter school, or shared services arrangement to provide services, if the employee or applicant has or will have continuing duties related to the contracted services; and the employee or applicant has or will have direct contact with students. (b) A person to whom Subsection (a) applies must submit to a national criminal history record information review under this section before being employed or serving in a capacity described by that subsection. (c) Before or immediately after employing or securing the services of a person to whom Subsection (a) applies, the entity contracting with a school district, open-enrollment charter school, or shared services arrangement shall send or ensure that the person sends to the department information that is required by the department for obtaining national criminal history record information, which may include fingerprints and photographs. The department shall obtain the person's national criminal history record information and report the results through the criminal history clearinghouse as provided by Section 411.0845, Government Code. (d) An entity contracting with a school district, open-enrollment charter school, or shared services arrangement shall obtain all criminal history record information that relates to a person to whom Subsection (a) applies through the criminal history clearinghouse as provided by Section 411.0845, Government Code. The entity shall certify to the school district that the entity has received all criminal history record information relating to a person to whom Subsection (a) applies. (e) A school district, open-enrollment charter school, or shared services arrangement may obtain the criminal history record information of a person to whom this section applies through the criminal history clearinghouse as provided by Section 411.0845, Government Code. (f) In the event of an emergency, a school district may allow a person to whom Subsection (a) or (g) applies to enter school district property if the person is accompanied by a district employee. A school district may adopt rules regarding an emergency situation under this subsection. (g) An entity that contracts with a school district, open-enrollment charter school, or shared services arrangement to provide services shall obtain from any law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), all criminal history record information that relates to an employee of the entity who is employed before January 1, 2008, and who is not subject to a national criminal history record information review under Subsection (b) if: the employee has continuing duties related to the contracted services; and the employee has direct contact with students. (h) A school district, open-enrollment charter school, or shared services arrangement may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person to whom Subsection (g) applies. (i) An entity shall certify to a school district that it has received all criminal history record information required by Subsection (g). (j) The commissioner may adopt rules as necessary to implement this section.

The bill amends Subchapter C, Chapter 22, Education Code, by adding Sec. 22.0835 to provide:

(a) A school district, open-enrollment charter school, or shared services arrangement shall obtain from the department and may obtain from any other law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), all criminal history record information that

relates to: a person participating in an internship consisting of student teaching to receive a teaching certificate; or a volunteer or person who has indicated, in writing, an intention to serve as a volunteer with the district, school, or shared services arrangement. (b) A private school or regional education service center may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person who volunteers or has indicated, in writing, an intention to serve as a volunteer with the school or service center. (c) A person to whom Subsection (a) or (b) applies must provide to the school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement a driver's license or another form of identification containing the person's photograph issued by an entity of the United States government. (d) A person to whom Subsection (a) applies may not perform any student teaching or volunteer duties until all requirements under Subsections (a) and (c) have been satisfied. (e) Subsections (a) and (c) do not apply to a person who volunteers or is applying to volunteer with a school district, open-enrollment charter school, or shared services arrangement if the person: is the parent, guardian, or grandparent of a child who is enrolled in the district or school for which the person volunteers or is applying to volunteer; will be accompanied by a school district employee while on a school campus; or is volunteering for a single event on the school campus. (f) A school district, open-enrollment charter school, or shared services arrangement may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person to whom Subsection (e) applies. (g) A school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement may require a student teacher, volunteer, or volunteer applicant to pay any costs related to obtaining criminal history record information under this section.

The bill amends Subchapter C, Chapter 22, Education Code, by adding Sec. 22.0836 to provide that this section applies to a person who is a substitute teacher for a school district, open-enrollment charter school, or shared services arrangement. A person to whom this section applies must submit to a national criminal history record information review under this section. A school district, open-enrollment charter school, or shared services arrangement shall send or ensure that a person to whom this section applies sends to the department information that is required by the department for obtaining national criminal history record information, which may include fingerprints and photographs. The department shall obtain the person's national criminal history record information and report the results through the criminal history clearinghouse as provided by Section 411.0845, Government Code. Each school district, open-enrollment charter school, and shared services arrangement shall obtain all criminal history record information that relates to a person to whom this section applies through the criminal history clearinghouse as provided by Section 411.0845, Government Code. The school district, open-enrollment charter school, or shared services arrangement may require a person to pay any fees related to obtaining criminal history record information under this section. A school district, open-enrollment charter school, or shared services arrangement shall provide the agency with the name of a person to whom this section applies. The agency shall obtain all criminal history record information of the person through the criminal history clearinghouse as provided by Section 411.0845, Government Code. The agency shall examine the criminal history record information and certification records of the person and notify the district, school, or shared services arrangement if the person: may not be hired or must be discharged as provided by Section 22.085; or may not be employed as a substitute teacher because the person's educator certification has been revoked or is suspended. The commissioner may adopt rules to implement this section, including rules establishing deadlines for a school district, open-enrollment charter school, or shared services arrangement to require a person to whom this section applies to submit fingerprints and photographs in compliance with this section and the circumstances under which a person may not continue to be employed as a substitute teacher. The agency shall establish a schedule for obtaining and reviewing the information a school district, open-enrollment charter school, or shared services arrangement and a substitute teacher must provide under this section. Not later than September 1, 2011, the agency must obtain all national criminal history record information on all substitute teachers. The department in coordination with the commissioner may adopt rules necessary to implement this section.

The bill amends Section 22.085, Education Code, to provide (a) A school district, open-enrollment charter school, or shared services arrangement shall discharge or refuse to hire an employee or applicant for employment if the district, school, or shared services arrangement obtains information through a criminal history record information review that: (1) the employee

or applicant has been convicted of: (A) a felony offense under Title 5, Penal Code; (B) an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (C) an offense under the laws of another state or federal law that is equivalent to an offense under Paragraph (A) or (B); and (2) at the time the offense occurred, the victim of the offense described by Subdivision (1) was under 18 years of age or was enrolled in a public school. (b) Subsection (a) does not apply if the employee or applicant for employment committed an offense under Title 5, Penal Code and: (1) the date of the offense is more than 30 years before: (A) the effective date of S.B. No. 9, Acts of the 80th Legislature, Regular Session, 2007, in the case of a person employed by a school district, open-enrollment charter school, or shared services arrangement as of that date; or (B) the date the person's employment will begin, in the case of a person applying for employment with a school district, open-enrollment charter school, or shared services arrangement after the effective date of S.B. No. 9, Acts of the 80th Legislature, Regular Session, 2007; and (2) the employee or applicant for employment satisfied all terms of the court order entered on conviction. (c) A school district, open-enrollment charter school, or shared services arrangement may not allow a person who is an employee of or applicant for employment by an entity that contracts with the district, school, or shared services arrangement to serve at the district or school or for the shared services arrangement if the district, school, or shared services arrangement obtains information described by Subsection (a) through a criminal history record information review concerning the employee or applicant. A school district, open-enrollment charter school, or shared services arrangement must ensure that an entity that the district, school, or shared services arrangement contracts with for services has obtained all criminal history record information as required by Section 22.0834. (d) A school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement may discharge an employee if the district or school obtains information of the employee's conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose to the State Board for Educator Certification or the district, school, service center, or shared services arrangement. An employee discharged under this section is considered to have been discharged for misconduct for purposes of Section 207.044, Labor Code. (e) The State Board for Educator Certification may impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant if the educator knows or should have known, through a criminal history record information review, that the employee or applicant has been convicted of an offense described by Subsection (a). (f) Each school year, the superintendent of a school district or chief operating officer of an open-enrollment charter school shall certify to the commissioner that the district or school has complied with this section.

The bill amends Subchapter C, Chapter 22, Education Code, by adding Section 22.087 to provide that the superintendent of a school district or the director of an open-enrollment charter school, private school, regional education service center, or shared services arrangement shall promptly notify the State Board for Educator Certification in writing if the person obtains or has knowledge of information showing that an applicant for or holder of a certificate issued under Subchapter B, Chapter 21, has a reported criminal history.

The bill amends Subchapter A, Chapter 38, Education Code, by adding Section 38.022 to provide that a school district may require a person who enters a district campus to display the person's driver's license or another form of identification containing the person's photograph issued by a governmental entity. A school district may establish an electronic database for the purpose of storing information concerning visitors to district campuses. Information stored in the electronic database may be used only for the purpose of school district security and may not be sold or otherwise disseminated to a third party for any purpose. A school district may verify whether a visitor to a district campus is a sex offender registered with the computerized central database maintained by the Department of Public Safety as provided by Article 62.005, Code of Criminal Procedure, or any other database accessible by the district. The board of trustees of a school district shall adopt a policy regarding the action to be taken by the administration of a school campus when a visitor is identified as a sex offender.

The bill amends Section 261.308, Family Code, by adding Subsections (d) and (e) to provide that the Department of Family and Protective Services shall release information regarding a person alleged to have committed abuse or neglect to persons who have control over the person's access to children, including, as appropriate, the Texas Education Agency, the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the

school district, or the school principal or director if the department determines that: the person alleged to have committed abuse or neglect poses a substantial and immediate risk of harm to one or more children outside the family of a child who is the subject of the investigation; and the release of the information is necessary to assist in protecting one or more children from the person alleged to have committed abuse or neglect. On request, the department shall release information about a person alleged to have committed abuse or neglect to the State Board for Educator Certification if the board has a reasonable basis for believing that the information is necessary to assist the board in protecting children from the person alleged to have committed abuse or neglect.

The bill amends Subsection (b), Section 261.406, Family Code, to provide that the Department of Family and Protective Services shall send a copy of the completed report of the department's investigation to the Texas Education Agency, the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, and the school principal or director, unless the principal or director is alleged to have committed the abuse or neglect, for appropriate action. On request, the department shall provide a copy of the report of investigation to the parent, managing conservator, or legal guardian of a child who is the subject of the investigation and to the person alleged to have committed the abuse or neglect. The report of investigation shall be edited to protect the identity of the persons who made the report of abuse or neglect. Other than the persons authorized by the section to receive a copy of the report, Section 261.201(b) applies to the release of the report relating to the investigation of abuse or neglect under this section and to the identity of the person who made the report of abuse or neglect.

The bill amends Section 411.042, Government Code, by amending Subsection (b) to provide, in pertinent part, that the bureau of identification and records shall grant access to criminal history record information in the manner authorized under Subchapter F (CRIMINAL HISTORY RECORD INFORMATION) of Chapter 411, Government Code.

The bill amends Section 411.042, Government Code, by amending Subsection (g) to provide, in pertinent part, that the Department of Public Safety may adopt reasonable rules under this section relating to a system for providing criminal history record information through the criminal history clearinghouse under Section 411.0845, Government Code.

The bill amends Section 411.042, Government Code, by adding Subsection (h) to provide that the Department of Public Safety may contract with private vendors as necessary in implementing this section.

The bill amends Subsection (i), Section 411.081, Government Code, to make a conforming change and to provide, in pertinent part, that a criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure to the Texas Education Agency.

The bill amends Subsection (b), Section 411.083, Government Code, to provide, in pertinent part, that the Department of Public Safety shall grant access to criminal history record information to an individual or an agency that has a specific agreement with a noncriminal justice agency to provide services related to the use of criminal history record information disseminated under Subchapter F (CRIMINAL HISTORY RECORD INFORMATION) of Chapter 411, if the agreement: (A) specifically authorizes access to information; (B) limits the use of information to the purposes for which it is given; (C) ensures the security and confidentiality of the information; and (D) provides for sanctions if a requirement imposed under Paragraph (A), (B), or (C) is violated. The bill amends Subsection (c), Section 411.083, Government Code, to provide, in pertinent part, that the Department of Public Safety may disseminate criminal history record information under the provisions set forth in this paragraph only for a purpose approved by the department and only under rules adopted by the department. The bill also makes conforming changes to Subsection (c), Section 411.083, Government Code.

The bill amends Subchapter F, Chapter 411, Government Code, by adding Section 411.0845 to provide: (a) The Department of Public Safety shall establish an electronic clearinghouse and subscription service to provide criminal history record information to a particular person entitled to receive criminal history record information and updates to a particular record to which the

person has subscribed under this subchapter. (b) On receiving a request for criminal history record information from a person entitled to such information under this subchapter, the department shall provide through the electronic clearinghouse: the criminal history record information reported to the department or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or a statement that the individual who is the subject of the request does not have any criminal history record information reported to the department or the Federal Bureau of Investigation. (c) If the department provides information received from the Federal Bureau of Investigation, the department must include with the information the date the department received information from the Federal Bureau of Investigation. (d) The department shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain criminal history record information under this subchapter. Information collected under this section is confidential and is not subject to disclosure under Chapter 552. (e) A person entitled to receive criminal history record information under this section must provide the department with the following information regarding the person who is the subject of the criminal history record information requested: the person's full name, date of birth, sex, Texas driver's license number or personal identification certificate number, and social security number; a recent electronic digital image photograph of the person and a complete set of the person's fingerprints as required by the department; and any other information required by the department. (f) The department shall maintain an Internet website for the administration of the clearinghouse and an electronic subscription service to provide notice of updates to a particular criminal history record to each person entitled under this subchapter to receive criminal history record information updates to that particular record. The department shall update clearinghouse records as a result of any change in information discovered by the department. Within 48 hours after the department becomes aware that a person's criminal history record information in a clearinghouse record has changed, the department shall provide notice of the updated information only to each subscriber to that specific record. (g) As soon as practicable, a subscriber who is no longer entitled to receive criminal history record information relating to a particular person shall notify the department. The department shall cancel the person's subscription to that record and may not notify the former subscriber of any updated information to that record. (h) A person who is the subject of the criminal history record information requested under this section must consent to the release of the information. (i) The release under this section of any criminal history record information maintained by the Federal Bureau of Investigation is subject to federal law and regulations, federal executive orders, and federal policy. (j) The department may charge a fee for subscription services to cover the costs of administering this section. (k) A governmental agency may coordinate with the department regarding the collection of a fee for the criminal history record information through the fingerprinting fee collection process.

The bill amends Section 411.087, Government Code, by adding Subsection (e) to provide that the Department of Public Safety may provide access to state and national criminal history record information to nongovernmental entities entitled to that information under 42 U.S.C. Section 5119a. The department must follow federal law and regulation, federal executive orders, and federal policy in releasing information under this subsection.

The bill amends Section 411.090, Government Code, by adding Subsection (c) to provide that the Department of Public Safety shall notify the State Board for Educator Certification of the arrest of any educator, as defined by Section 5.001, Education Code, who has fingerprints on file with the department.

The bill amends Subchapter F, Chapter 411, Government Code, by adding Section 411.0901 to provide that the Texas Education Agency is entitled to obtain criminal history record information maintained by the Department of Public Safety about a person who: is employed or is an applicant for employment by a school district or open-enrollment charter school; is employed or is an applicant for employment by a shared services arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present; or is employed or is an applicant for employment by an entity that contracts with a school district, open-enrollment charter school, or shared services arrangement if: the employee or applicant has or will have continuing duties relating to the contracted services; and the employee or applicant has or will have direct contact with students.

The bill amends the heading to Section 411.097, Government Code, to read as follows:

C.S.S.B. 9 80(R)

Sec. 411.097. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: LOCAL AND REGIONAL EDUCATIONAL ENTITIES.

The bill amends Subsections (a), Section 411.097, Government Code, to provide that a school district, charter school, private school, regional education service center, commercial transportation company, or education shared services arrangement, or an entity that contracts to provide services to a school district, charter school, or shared services arrangement, is entitled to obtain from the department criminal history record information maintained by the department that the district, school, service center, shared services arrangement, or entity is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a person who is: an applicant for employment by the district, school, service center, or shared services arrangement; an employee of or an applicant for employment with a public or commercial transportation company that contracts with the district, school, service center, or shared services arrangement to provide transportation services if the employee drives or the applicant will drive a bus in which students are transported or is employed or is seeking employment as a bus monitor or bus aide on a bus in which students are transported; or an employee of or applicant for employment by an entity that contracts to provide services to a school district, charter school, or shared services arrangement as provided by Section 22.0834, Education Code.

The bill amends Subsection (b), Section 411.097, Government Code, to provide that a school district, charter school, private school, regional education service center, or education shared services arrangement is entitled to obtain from the Department of Public Safety criminal history record information maintained by the department that the district, school, service center, or shared services arrangement is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a person who is a volunteer, student teacher, or employee of the district, school, service center, or shared services arrangement.

The bill amends Section 730.007, Transportation Code, by adding Subsection (f) to provide that Personal information obtained by an agency under Section 411.0845, Government Code, in connection with a motor vehicle record may be disclosed as provided by that section.

The bill provides that Subsections (c) and (d), Section 22.083, Education Code, are repealed.

The bill provides that Section 21.007, Education Code, as added by this Act, applies only to a report for misconduct filed with the State Board for Educator Certification on or after September 1, 2007, regardless of whether the conduct or act that is the subject of the report occurred or was committed before, on, or after that date.

The bill provides that as soon as practicable after the effective date of this Act, the State Board for Educator Certification, the Texas Education Agency, a school district, an open-enrollment charter school, or a shared services arrangement shall, in the manner prescribed by Sections 22.0831, 22.0832, 22.0833, and 22.0836, Education Code, as added by this Act, begin obtaining national criminal history record information for employees and applicants for employment who are subject to a national criminal history record information review under those sections.

The bill provides that as soon as practicable after the effective date of this Act, an entity that contracts with a school district, open-enrollment charter school, or shared services arrangement shall, in the manner prescribed by Section 22.0834, Education Code, as added by this Act, begin obtaining national criminal history record information for employees and applicants for employment who are subject to a national criminal history record information review under that section.

The bill provides that, beginning September 1, 2007, a school district, open-enrollment charter school, or shared services arrangement shall obtain, in compliance with Section 22.0835, Education Code, as added by this Act, criminal history record information relating to each person who is a student teacher or volunteer or has indicated in writing an intention to serve as a volunteer with the district, school, or shared services arrangement in any capacity.

The bill provides that, as soon as practicable after the effective date of this Act, the Department of Public Safety of the State of Texas shall establish a criminal history clearinghouse as required by Section 411.0845, Government Code, as added by this Act.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute deletes all provisions relating to deferred adjudication that were in the original bill.

The substitute authorizes a school district, open-enrollment charter school, or shared services arrangement to obtain the criminal history record information from the Department of Public Safety (DPS), a law enforcement or criminal justice agency, or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act for certain persons not subject to a national criminal history record information review. The substitute removes the provision in the original bill that required a school district, open-enrollment charter school, or shared services arrangement to obtain such criminal history information from DPS specifically, and instead authorizes them to obtain the information from any of the entities listed above.

The substitute requires the State Board for Educator Certification to establish by rule a schedule for obtaining and reviewing criminal history information of certified educators. The original bill did not require the Board to establish this by rule. The substitute changes the date by which the Board must obtain all national criminal history record information on all certified educators. The substitute makes a conforming change to the expiration date of a new subsection of the Education Code.

The substitute requires an open-enrollment charter school to provide the agency with any information requested by the agency necessary to complete a national criminal history record information review. The substitute provides that failure by an open-enrollment charter school to provide such information is a material violation of the school's charter.

The substitute changes the date in a provision which specifies that certain persons who are not certified nor an applicant for certification and who are offered employment on or after such date by a school district, open-enrollment charter school, or a shared services arrangement must submit to a national criminal history record review.

The substitute changes the date in a provision which specifies that certain persons who are offered employment on or after such date by an entity that contracts with a school district, open-enrollment charter school, or a shared services arrangement must submit to a national criminal history record review.

The substitute adds a provision requiring an entity contracting with a school district, open-enrollment charter school, or shared services arrangement to certify to the school district that the entity has received all criminal history record information relating to certain employees or applicants for employment.

The substitute adds a provision authorizing a school district, in the event of an emergency, to allow certain persons as specified in the bill to enter school district property if the person is accompanied by a district employee. The substitute authorizes a school district to adopt rules regarding an emergency situation.

The substitute modified and expanded a provision in the original bill relating to the requirement that an entity that contracts with a school district, open-enrollment charter school, or shared services arrangement to provide services must obtain from any law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act, all criminal history record information that relates to an employee of the entity who is employed before January 1, 2008, and who is not subject to a national criminal history record information review if the employee has continuing duties related to the contracted services and direct contact with students.

The substitute authorizes a school district, open-enrollment charter school, or shared services arrangement to obtain from any law enforcement or criminal justice agency all necessary criminal history record information for certain persons employed before January 1, 2008 by an entity that contracts with a school district, open-enrollment charter school, or shared services arrangement for services. The substitute also requires an entity to certify to a school district that it has received all criminal history record information required. The substitute authorizes the Commissioner of Education to adopt rules as necessary for implementation of Section 22.0834. **CRIMINAL HISTORY RECORD INFORMATION REVIEW OF CERTAIN CONTRACT EMPLOYEES.**

The substitute authorizes a school district, open-enrollment charter school, or shared services arrangement to obtain from a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act, all criminal history record information that relates to a person participating in an internship consisting of student teaching to receive a teaching certificate or a volunteer or person who has indicated, in writing, an intention to serve as a volunteer with the district, school, or shared service arrangement. The original bill did not authorize a school district, open-enrollment charter school, or shared services arrangement to obtain such information from a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act.

The substitute adds an exception from certain provisions in the bill for a person who volunteers or is applying to volunteer with a school district, open-enrollment charter school, or shared services arrangement if the person will be accompanied by a school district employee while on a school campus; or is volunteering for a single event on the school campus.

The substitute changes the date by which the Texas Education Agency is required to obtain all criminal history record information on all substitute teachers. It also makes a conforming change to the subsection expiration date.

The substitute creates an exception to the requirement to discharge or refuse to hire an employee or applicant for employment under certain circumstances if the date of the offense is more than 30 years before the effective date of the bill in the case of a person employed by a school district, open-enrollment charter school, or shared services arrangement as of that date; or the date the person's employment will begin, in the case of a person applying for employment with a school district, open-enrollment charter school, or shared services arrangement after the effective date of the bill; and the employee or applicant for employment satisfied all terms of the court order entered on conviction.

The substitute provides that the board of trustees of a school district shall adopt a policy regarding the action to be taken by the administration of a school campus when a visitor is identified as a sex offender.

The substitute replaces certain language in the original bill with language that requires the Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or neglect to certain appropriate persons who have control over the person's access to children if the Department of Family and Protective Services determines that the person alleged to have committed abuse or neglect poses a substantial and immediate risk of harm to one or more children outside the family of a child who is the subject of the investigation; and the release of the information is necessary to assist in protecting one or more children from the person alleged to have committed abuse or neglect. The substitute further provides that on request, the Department of Family and Protective Services shall release information about a person alleged to have committed abuse or neglect to the State Board for Educator Certification if the board has a reasonable basis for believing that the information is necessary to assist the board in protecting children from the person alleged to have committed abuse or neglect.

The substitute deletes language in the original bill allowing an entity that contracts with a school district, open-enrollment charter school or a education shared services arrangement to receive from a criminal justice agency criminal history record information that is the subject of an order of nondisclosure.

The substitute modifies the provisions in the original bill requiring DPS to establish an electronic clearinghouse and subscription service to provide criminal history information. The substitute adds language relating to a particular person entitled to receive criminal history record information and updates to a particular record to which the person has subscribed, and relating to providing notice of updates to a particular criminal history record to each person entitled under a specific subchapter to receive criminal history record information updates to that particular record. The substitute modifies the provisions in the original bill requiring DPS to maintain an Internet website for the administration of the clearinghouse and an electronic subscription service to provide notice of updates to a particular criminal history record to each person entitled to updates to that particular record, and to update clearinghouse records, and within 48 hours of becoming aware that a person's information in a clearinghouse record has changed, to provide the updated information only to each subscriber to that specific record.

The substitute adds a provision requiring that, as soon as practicable, a subscriber who is no longer entitled to receive criminal history record information relating to a particular person must notify DPS. The substitute requires DPS to cancel the person's subscription to that record and provides that DPS may not notify the former subscriber of any updated information to that record.

The substitute adds a provision authorizing DPS to provide access to state and national criminal history record information to nongovernmental entities entitled to that information under a certain specified provision of the United States Code. The substitute requires DPS to follow federal law and regulation, federal executive orders, and federal policy in releasing information under Subsection (e) of Section 411.087, Government Code, as added by the bill.

The substitute makes various conforming changes and changes the heading of an Education Code Section that was added by the original bill.