

By: Shapiro

S.B. No. 9

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the dissemination of criminal history record
3 information for certain purposes, including the certification and
4 employment of educators and other public school employees who
5 engage in certain misconduct.

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

7 SECTION 1. Section 21.006, Education Code, is amended by
8 adding Subsection (c-1) to read as follows:

9 (c-1) On receipt of a report of an alleged incident of
10 misconduct under Subsection (c), the State Board for Educator
11 Certification shall place a notice regarding the alleged incident
12 on the educator's public certification records. If it is
13 determined that the educator has not engaged in the alleged
14 incident of misconduct, the board shall immediately remove the
15 notice from the educator's public certification records.

16 SECTION 2. Sections 21.058(a) and (b), Education Code, are
17 amended to read as follows:

18 (a) This section applies only:

19 (1) to conviction or deferred adjudication of a felony
20 offense under Title 5, Penal Code, or an offense on conviction of
21 which a defendant is required to register as a sex offender under
22 Chapter 62, Code of Criminal Procedure; and

23 (2) if the victim of the offense is under 18 years of
24 age.

1 (b) Notwithstanding Section 21.041(b)(7), not later than
2 the fifth day after the date the board receives notice under Article
3 42.018, Code of Criminal Procedure, of the conviction or deferred
4 adjudication of a person who holds a certificate under this
5 subchapter, the board shall:

6 (1) revoke the certificate held by the person; and

7 (2) provide to the person and to any school district or
8 open-enrollment charter school employing the person at the time of
9 revocation written notice of:

10 (A) the revocation; and

11 (B) the basis for the revocation.

12 SECTION 3. Subchapter B, Chapter 21, Education Code, is
13 amended by adding Section 21.060 to read as follows:

14 Sec. 21.060. ELIGIBILITY OF PERSONS RECEIVING DEFERRED
15 ADJUDICATION FOR OR CONVICTED OF CERTAIN OFFENSES. The board may
16 suspend or revoke the certificate or permit held by a person under
17 this subchapter, impose other sanctions against the person, or
18 refuse to issue a certificate or permit to a person under this
19 subchapter if the person has received deferred adjudication for or
20 has been convicted of a felony or misdemeanor offense relating to
21 the duties and responsibilities of the education profession,
22 including:

23 (1) an offense involving moral turpitude;

24 (2) an offense involving a form of sexual or physical
25 abuse of a minor or student or other illegal conduct with a minor or
26 student;

27 (3) a felony offense involving the possession,

1 transfer, sale, distribution, or conspiracy to possess, transfer,
2 sell, or distribute a controlled substance, as defined by Chapter
3 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

4 (4) an offense involving the illegal transfer,
5 appropriation, or use of school district funds or other district
6 property;

7 (5) an offense involving an attempt by fraudulent or
8 unauthorized means to obtain or alter a professional certificate or
9 license issued under this subchapter;

10 (6) an offense in which any part of the offense occurs
11 on school district property or at a school-sponsored event; or

12 (7) two or more offenses committed during a 12-month
13 period that involve public intoxication, operating a motor vehicle
14 while under the influence of alcohol, or disorderly conduct.

15 SECTION 4. Section 22.082, Education Code, is amended to
16 read as follows:

17 Sec. 22.082. ACCESS TO CRIMINAL HISTORY RECORDS BY STATE
18 BOARD FOR EDUCATOR CERTIFICATION. The State Board for Educator
19 Certification shall obtain from any law enforcement or criminal
20 justice agency all criminal history record information and all
21 records contained in any criminal investigation file that relate
22 [relates] to an applicant for or holder of a certificate issued
23 under Subchapter B, Chapter 21.

24 SECTION 5. Subchapter C, Chapter 22, Education Code, is
25 amended by adding Section 22.0831 to read as follows:

26 Sec. 22.0831. NATIONAL CRIMINAL HISTORY RECORD INFORMATION
27 REVIEW. (a) In this section, "national criminal history record

1 information" means criminal history record information obtained
2 from the Department of Public Safety under Subchapter F, Chapter
3 411, Government Code, and from the Federal Bureau of Investigation
4 under Section 411.087, Government Code.

5 (b) This section applies to a person who is an employee of or
6 applicant for employment by:

7 (1) a school district or open-enrollment charter
8 school;

9 (2) a shared services arrangement, if the employee's
10 or applicant's duties are or will be performed on school property or
11 at another location where students are regularly present; or

12 (3) an entity that contracts with the district,
13 school, or shared services arrangement to provide services, if:

14 (A) the employee or applicant has or will have
15 continuing duties related to the contracted services; and

16 (B) the duties are or will be performed on school
17 property or at another location where students are regularly
18 present.

19 (c) A person to whom this section applies must submit to a
20 national criminal history record information review and
21 investigation under this section before being employed or serving
22 in a capacity described by Subsection (b).

23 (d) Before or immediately after employing or securing the
24 services of a person to whom this section applies, a school
25 district, open-enrollment charter school, or shared services
26 arrangement shall send to the agency the person's fingerprints and
27 any other information requested by the agency that is required for

1 obtaining national criminal history record information.

2 (e) The agency shall review and investigate the person's
3 national criminal history record information and report the results
4 of the review and investigation to the school district,
5 open-enrollment charter school, or shared services arrangement
6 requesting the review.

7 (f) The agency may obtain from any law enforcement agency or
8 criminal justice agency all criminal history record information
9 that relates to a person to whom this section applies.

10 (g) The agency, school district, or shared services
11 arrangement may require a person to pay any costs related to
12 obtaining criminal history record information under this section.

13 (h) The agency may coordinate with the State Board for
14 Educator Certification, school districts, and shared services
15 arrangements as necessary to ensure that criminal history
16 investigations authorized or required under this subchapter are not
17 unnecessarily duplicated.

18 (i) The commissioner may adopt rules necessary to implement
19 this section.

20 SECTION 6. Section 22.085, Education Code, is amended to
21 read as follows:

22 Sec. 22.085. [~~DISCHARGE OF~~] EMPLOYEES AND APPLICANTS
23 CONVICTED OF CERTAIN OFFENSES. (a) A school district,
24 open-enrollment charter school, or shared services arrangement
25 shall discharge or refuse to hire an employee or applicant for
26 employment who is subject to a national criminal history record
27 information review under Section 22.0831 if the district, school,

1 or shared services arrangement obtains information that:

2 (1) the employee or applicant has been convicted of or
3 received deferred adjudication for a felony offense under Title 5,
4 Penal Code, or an offense on conviction of which a defendant is
5 required to register as a sex offender under Chapter 62, Code of
6 Criminal Procedure; and

7 (2) the victim of the offense described by Subdivision
8 (1) is under 18 years of age.

9 (b) A school district, open-enrollment charter school, or
10 shared services arrangement may not allow a person who is an
11 employee of or applicant for employment by an entity that contracts
12 with the district, school, or shared services arrangement and who
13 is subject to a national criminal history record information review
14 under Section 22.0831 to serve at the district or school or for the
15 shared services arrangement if the district, school, or shared
16 services arrangement obtains information described by Subsection
17 (a) concerning the employee or applicant.

18 (c) A school district, open-enrollment charter school,
19 private school, regional education service center, or shared
20 services arrangement may discharge an employee if the district or
21 school obtains information of the employee's conviction of a felony
22 or of a misdemeanor involving moral turpitude that the employee did
23 not disclose to the State Board for Educator Certification or the
24 district, school, service center, or shared services arrangement.
25 An employee discharged under this section is considered to have
26 been discharged for misconduct for purposes of Section 207.044,
27 Labor Code.

1 SECTION 7. Section 261.103, Family Code, is amended by
2 adding Subsection (d) to read as follows:

3 (d) In addition to the reports required under Subsection
4 (a), a report shall be made to the State Board for Educator
5 Certification if the alleged or suspected abuse or neglect involves
6 a person responsible for the care, custody, or welfare of the child
7 and that person holds or has applied for a certificate or permit
8 under Subchapter B, Chapter 21, Education Code. The information
9 provided under this subsection is confidential and not subject to
10 discovery or public release under Chapter 552, Government Code.

11 SECTION 8. Section 411.042, Government Code, is amended by
12 amending Subsections (b) and (g) and adding Subsection (h) to read
13 as follows:

14 (b) The bureau of identification and records shall:

15 (1) procure and file for record photographs, pictures,
16 descriptions, fingerprints, measurements, and other pertinent
17 information of all persons arrested for or charged with a criminal
18 offense or convicted of a criminal offense, regardless of whether
19 the conviction is probated;

20 (2) collect information concerning the number and
21 nature of offenses reported or known to have been committed in the
22 state and the legal steps taken in connection with the offenses, and
23 other information useful in the study of crime and the
24 administration of justice, including a statistical breakdown of
25 those offenses in which family violence was involved;

26 (3) make ballistic tests of bullets and firearms and
27 chemical analyses of bloodstains, cloth, materials, and other

1 substances for law enforcement officers of the state;

2 (4) cooperate with identification and crime records
3 bureaus in other states and the United States Department of
4 Justice;

5 (5) maintain a list of all previous background checks
6 for applicants for any position regulated under Chapter 1702,
7 Occupations Code, who have undergone a criminal history background
8 check under Section 411.119, if the check indicates a Class B
9 misdemeanor or equivalent offense or a greater offense; ~~and~~

10 (6) collect information concerning the number and
11 nature of protective orders and all other pertinent information
12 about all persons on active protective orders. Information in the
13 law enforcement information system relating to an active protective
14 order shall include:

15 (A) the name, sex, race, date of birth, personal
16 descriptors, address, and county of residence of the person to whom
17 the order is directed;

18 (B) any known identifying number of the person to
19 whom the order is directed, including the person's social security
20 number or driver's license number;

21 (C) the name and county of residence of the
22 person protected by the order;

23 (D) the residence address and place of employment
24 or business of the person protected by the order, unless that
25 information is excluded from the order under Section 85.007, Family
26 Code;

27 (E) the child-care facility or school where a

1 child protected by the order normally resides or which the child
2 normally attends, unless that information is excluded from the
3 order under Section 85.007, Family Code;

4 (F) the relationship or former relationship
5 between the person who is protected by the order and the person to
6 whom the order is directed; and

7 (G) the date the order expires; and

8 (7) grant access to criminal history record
9 information in the manner authorized under Subchapter F.

10 (g) The department may adopt reasonable rules under this
11 section relating to:

12 (1) law enforcement information systems maintained by
13 the department;

14 (2) the collection, maintenance, and correction of
15 records;

16 (3) reports of criminal history information submitted
17 to the department; ~~and~~

18 (4) active protective orders issued under Chapter 71,
19 Family Code, and reporting procedures that ensure that information
20 relating to the issuance of an active protective order and to the
21 dismissal of an active protective order is reported to the local law
22 enforcement agency at the time of the order's issuance or dismissal
23 and entered by the local law enforcement agency in the state's law
24 enforcement information system; and

25 (5) a system for providing criminal history record
26 information through the criminal history clearinghouse under
27 Section 411.0845.

1 (h) The department may contract with private vendors as
2 necessary in implementing this section.

3 SECTION 9. Sections 411.083(b) and (c), Government Code,
4 are amended to read as follows:

5 (b) The department shall grant access to criminal history
6 record information to:

7 (1) criminal justice agencies;

8 (2) noncriminal justice agencies authorized by
9 federal statute or executive order or by state statute to receive
10 criminal history record information;

11 (3) the person who is the subject of the criminal
12 history record information;

13 (4) a person working on a research or statistical
14 project that:

15 (A) is funded in whole or in part by state funds;

16 or

17 (B) meets the requirements of Part 22, Title 28,
18 Code of Federal Regulations, and is approved by the department;

19 (5) an individual or an agency that has a specific
20 agreement with a criminal justice agency to provide services
21 required for the administration of criminal justice under that
22 agreement, if the agreement:

23 (A) specifically authorizes access to
24 information;

25 (B) limits the use of information to the purposes
26 for which it is given;

27 (C) ensures the security and confidentiality of

1 the information; and

2 (D) provides for sanctions if a requirement
3 imposed under Paragraph (A), (B), or (C) is violated;

4 (6) an individual or an agency that has a specific
5 agreement with a noncriminal justice agency to provide services
6 related to the use of criminal history record information
7 disseminated under this subchapter, if the agreement:

8 (A) specifically authorizes access to
9 information;

10 (B) limits the use of information to the purposes
11 for which it is given;

12 (C) ensures the security and confidentiality of
13 the information; and

14 (D) provides for sanctions if a requirement
15 imposed under Paragraph (A), (B), or (C) is violated;

16 (7) a county or district clerk's office; and

17 (8) [~~(7)~~] the Office of Court Administration of the
18 Texas Judicial System.

19 (c) The department may disseminate criminal history record
20 information under Subsection (b)(1) only for a criminal justice
21 purpose. The department may disseminate criminal history record
22 information under Subsection (b)(2) only for a purpose specified in
23 the statute or order. The department may disseminate criminal
24 history record information under Subsection (b)(4), (5), or (6) [~~or~~
25 ~~(b)(5)~~] only for a purpose approved by the department and only under
26 rules adopted by the department. The department may disseminate
27 criminal history record information under Subsection (b)(7)

1 ~~[(b)(6)]~~ only to the extent necessary for a county or district clerk
2 to perform a duty imposed by law to collect and report criminal
3 court disposition information. Criminal history record
4 information disseminated to a clerk under Subsection (b)(7)
5 ~~[(b)(6)]~~ may be used by the clerk only to ensure that information
6 reported by the clerk to the department is accurate and complete.
7 The dissemination of information to a clerk under Subsection (b)(7)
8 ~~[(b)(6)]~~ does not affect the authority of the clerk to disclose or
9 use information submitted by the clerk to the department. The
10 department may disseminate criminal history record information
11 under Subsection (b)(8) ~~[(b)(7)]~~ only to the extent necessary for
12 the office of court administration to perform a duty imposed by law
13 to compile court statistics or prepare reports. The office of court
14 administration may disclose criminal history record information
15 obtained from the department under Subsection (b)(8) ~~[(b)(7)]~~ in a
16 statistic compiled by the office or a report prepared by the office,
17 but only in a manner that does not identify the person who is the
18 subject of the information.

19 SECTION 10. Subchapter F, Chapter 411, Government Code, is
20 amended by adding Section 411.0845 to read as follows:

21 Sec. 411.0845. CRIMINAL HISTORY CLEARINGHOUSE. (a) The
22 department shall establish an electronic clearinghouse and
23 subscription service to provide criminal history record
24 information to a person entitled to receive criminal history record
25 information under this subchapter.

26 (b) On receiving a request for criminal history record
27 information from a person entitled to such information under this

1 subchapter, the department shall provide through the electronic
2 clearinghouse:

3 (1) the criminal history record information reported
4 to the department or the Federal Bureau of Investigation relating
5 to the individual who is the subject of the request; or

6 (2) a statement that the individual who is the subject
7 of the request does not have any criminal history record
8 information reported to the department or the Federal Bureau of
9 Investigation.

10 (c) The department shall ensure that the information
11 described by Subsection (b) is provided only to a person otherwise
12 entitled to obtain criminal history record information under this
13 subchapter. Information collected under this section is
14 confidential and is not subject to disclosure under Chapter 552.

15 (d) A person entitled to receive criminal history record
16 information under this subchapter must provide the department with
17 the following information regarding the person who is the subject
18 of the criminal history record information requested:

19 (1) the person's full name, date of birth, sex, Texas
20 driver's license number or personal identification certificate
21 number, and social security number;

22 (2) a recent electronic digital image photograph of
23 the person and a complete set of the person's fingerprints; and

24 (3) any other information required by the department.

25 (e) The department shall maintain an Internet website for
26 the administration of the clearinghouse and an electronic
27 subscription service to provide notice of updates to a person

1 entitled to receive criminal history record information under this
2 subchapter. The department shall update clearinghouse records as a
3 result of any change in information discovered by the department.
4 Within 48 hours after the department becomes aware that a person's
5 criminal history record information in a clearinghouse record has
6 changed, the department shall provide the updated information to
7 each subscriber to that specific record.

8 (f) A person who is the subject of the criminal history
9 record information requested under this section must consent to the
10 release of the information.

11 (g) The release under this section of any criminal history
12 record information maintained by the Federal Bureau of
13 Investigation is subject to federal law and regulations, federal
14 executive orders, and federal policy.

15 (h) The department may charge a fee for subscription
16 services to cover the costs of administering this section.

17 SECTION 11. Section 411.090, Government Code, is amended by
18 adding Subsection (c) to read as follows:

19 (c) The department shall notify the board of the arrest of
20 any educator, as defined by Section 5.001, Education Code, who has
21 fingerprints on file with the department.

22 SECTION 12. Subchapter F, Chapter 411, Government Code, is
23 amended by adding Section 411.0901 to read as follows:

24 Sec. 411.0901. ACCESS TO CRIMINAL HISTORY RECORD
25 INFORMATION: TEXAS EDUCATION AGENCY. The Texas Education Agency
26 is entitled to obtain criminal history record information
27 maintained by the department about a person who:

1 (1) is employed or is an applicant for employment by a
2 school district or open-enrollment charter school;

3 (2) is employed or is an applicant for employment by a
4 shared services arrangement, if the employee's or applicant's
5 duties are or will be performed on school property or at another
6 location where students are regularly present; or

7 (3) is employed or is an applicant for employment by an
8 entity that contracts with a school district, open-enrollment
9 charter school, or shared services arrangement if:

10 (A) the employee or applicant has or will have
11 continuing duties relating to the contracted services; and

12 (B) the duties are or will be performed on school
13 property or at another location where students are regularly
14 present.

15 SECTION 13. Section 411.097(b), Government Code, is amended
16 to read as follows:

17 (b) A school district, charter school, private school,
18 regional education service center, or education shared services
19 arrangement is entitled to obtain from the department[~~, no more~~
20 ~~than twice each year,~~] criminal history record information
21 maintained by the department that the district, school, service
22 center, or shared services arrangement is required or authorized to
23 obtain under Subchapter C, Chapter 22, Education Code, that relates
24 to a person who is a volunteer or employee of the district, school,
25 service center, or shared services arrangement.

26 SECTION 14. Section 730.007, Transportation Code, is
27 amended by adding Subsection (f) to read as follows:

1 (f) Personal information obtained by an agency under
2 Section 411.0845, Government Code, in connection with a motor
3 vehicle record may be disclosed as provided by that section.

4 SECTION 15. Section 21.006(c-1), Education Code, as added
5 by this Act, applies only to a report for misconduct filed with the
6 State Board for Educator Certification on or after September 1,
7 2007, regardless of whether the conduct or act that is the subject
8 of the report occurred or was committed before, on, or after that
9 date.

10 SECTION 16. Section 21.058, Education Code, as amended by
11 this Act, applies only to an offense for which a person receives
12 deferred adjudication on or after the effective date of this Act. An
13 offense for which a person receives deferred adjudication before
14 the effective date of this Act is governed by the law in effect at
15 the time the person received deferred adjudication, and the former
16 law is continued in effect for that purpose.

17 SECTION 17. As soon as practicable after the effective date
18 of this Act, the Texas Education Agency shall, in the manner
19 prescribed by Section 22.0831, Education Code, as added by this
20 Act, begin obtaining national criminal history record information
21 for employees and applicants for employment who are subject to a
22 national criminal history record information review under that
23 section. Not later than September 1, 2009, the agency shall, in the
24 manner prescribed by Section 22.0831, Education Code, as added by
25 this Act, obtain national criminal history record information for
26 each employee and applicant for employment who is subject to a
27 national criminal history record information review under that

1 section.

2 SECTION 18. As soon as practicable after the effective date
3 of this Act, the Department of Public Safety shall establish a
4 criminal history clearinghouse as required by Section 411.0845,
5 Government Code, as added by this Act.

6 SECTION 19. This Act takes effect immediately if it
7 receives a vote of two-thirds of all the members elected to each
8 house, as provided by Section 39, Article III, Texas Constitution.
9 If this Act does not receive the vote necessary for immediate
10 effect, this Act takes effect September 1, 2007.