

## **BILL ANALYSIS**

C.S.H.B. 3419  
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Public Safety  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In 1995, Texas required all educators applying for licensure to submit to criminal background checks. The 80th Legislature, Regular Session, 2007, expanded this requirement to include fingerprinting and state and federal background checks for all presently certified educators employed by public schools in Texas, as well as some noncertified personnel. The purpose was to provide a uniform process whereby individual school districts and the State of Texas, through the appropriate agencies, could determine whether an educator had a criminal history and take appropriate action to safeguard Texas schoolchildren based on that information. Under the fingerprinting law, educators submit identifying information and fingerprints to the Department of Public Safety (DPS), which has established an information clearinghouse containing records of all criminal arrests. DPS forwards the results of the background checks to the individual districts employing the educators and to the State Board for Educator Certification and the Texas Education Agency.

The legislature intended that this criminal history information be used by local school districts and the state to ensure that individuals whose past actions rendered them unfit to teach were removed from public education. House journal entries demonstrate the legislature's clear intent to make the results of the criminal background checks confidential and not subject to release under public information law. Many individual school districts, in order to use the data provided by DPS, created local documents that included the criminal history information, such as lists compiling the data organized by individual campus. The Office of the Attorney General has ruled that, despite the legislature's determination that the information be confidential, the information might be subject to public disclosure if contained within a locally created document.

The DPS clearinghouse information is based only on arrest records, meaning there are some school district employees who have records in the database who were never prosecuted because the charges were dropped or they were acquitted of all charges. Detailed information pertaining to the outcome of each arrest is unlikely to be included in the DPS information that might be shared with the public under the attorney general's interpretation. Thus, a school district employee with an arrest record, regardless of guilt or innocence, may be included on lists provided to the public, which is likely to lead the public to incorrectly presume that each employee on such a list has engaged in past criminal activity.

C.S.H.B. 3419 clarifies that criminal history information obtained for the use of the state and school districts in ensuring student safety is not subject to disclosure under state public information law, regardless of the form or document containing the information. The bill also authorizes a school district employee to request a copy of the employee's criminal history information from the district, and authorizes the district to impose a reasonable copying charge for the provision of such records.

### **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. 3419 amends Government Code provisions on the use of criminal history record information obtained from the Department of Public Safety (DPS) to establish that such criminal history record information includes any identification information that could reveal the identity of a person about whom criminal history record information is requested and information that directly or indirectly implicates or implies involvement of a person in the criminal justice system. The bill specifies that the term "criminal history record information" does not refer to any specific document produced to comply with provisions relating to criminal history record information but to the information contained, wholly or partly, in a document's original form or any subsequent form or use. The bill prohibits an agency or individual from confirming the existence or nonexistence of criminal history record information to any person that is not eligible to receive the information.

C.S.H.B. 3419 specifies that criminal history record information obtained by the State Board for Educator Certification in the original form or any subsequent form is to be used only for a purpose related to the issuance, denial, suspension, or cancellation of a board-issued educator certificate, rather than for any purpose related to those actions. The bill authorizes the release of criminal history record information obtained by the board to the person who is the subject of the information, the Texas Education Agency (TEA), or a local or regional educational entity as provided by law, in addition to by court order. The bill removes language providing for release on the consent of the applicant for an educator certificate. The bill provides that criminal history record information obtained by the board, any record of the notification, and any information contained in that notification provided by DPS to the board concerning the arrest of an educator who has fingerprints on file with DPS is not subject to disclosure under general state law on the disclosure of public information.

C.S.H.B. 3419 authorizes criminal history record information regarding certain employees of or applicants for employment in a school district obtained by TEA in the original form or any subsequent form to be used only for a purpose authorized by the Education Code and prohibits the information from being released to any person except the person who is the subject of the information, the board, or a local or regional educational entity, or by court order. The bill provides that this criminal history record information obtained by TEA is not subject to disclosure under general state law on the disclosure of public information and requires the information to be destroyed by TEA after the information is used for the authorized purposes.

C.S.H.B. 3419 clarifies that criminal history record information about certain school district employees, applicants, and volunteers obtained by a school district, charter school, private school, regional education service center, commercial transportation company, or education shared services arrangement in the original form or any subsequent form may be released to only the persons and entities authorized under current law to receive the information as well as by court order. The bill provides that criminal history record information obtained by such a local or regional entity is not subject to disclosure under general state law on the disclosure of public information and requires the information to be destroyed by the applicable entity on the first anniversary of the date the information was originally obtained or the date the information is used for the authorized purpose, whichever is earlier.

C.S.H.B. 3419 authorizes an employee of 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 to request from the employer a copy of any criminal history record information relating to that employee that the employer has obtained as provided by state law. The bill authorizes the employer to charge a fee to an employee requesting a copy of the information in an amount not to exceed the actual cost of copying the requested information.

C.S.H.B. 3419 amends the Education Code to prohibit information collected about a person to comply with provisions concerning the criminal history records of public school district employees and volunteers, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records, from being released except to comply with those provisions, by court order, or with the consent of the person who is the subject of the information. The bill provides that this information is not subject to disclosure under general state law on the disclosure of public information and requires it to be destroyed by the requestor or any subsequent holder of the information not later than the first anniversary of the date the information is received. The bill subjects any criminal history record information received by the board, by TEA, or by 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 to use, release, disclosure, and destruction requirements as described by the bill.

#### **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3419 differs from the original by establishing that criminal history record information obtained from the Department of Public Safety (DPS) includes any identification information that could reveal the identity of a person about whom criminal history record information is requested and information that directly or indirectly indicates or implies involvement of a person in the criminal justice system, whereas the original redefines "criminal history record information" for purposes of state law relating to criminal history record information to include any identification information that could reveal the identity of a person about whom criminal history record information is requested and to make clarifying changes in the definition relating to information that directly or indirectly indicates or implies a person's involvement in the criminal justice system. The substitute adds a provision not in the original prohibiting an agency or individual from confirming the existence or nonexistence of criminal history record information to any person that is not eligible to receive the information.

C.S.H.B. 3419 differs from the original by providing that any record of the notification and any information contained in that notification provided by DPS to the State Board for Educator Certification concerning the arrest of an educator who has fingerprints on file with DPS is not subject to disclosure under general state law on the disclosure of public information, whereas the original establishes that any such record of the notification and any information contained in that notification is criminal history record information subject to use, release, disclosure, and destruction as described by the bill's provisions.