

BILL ANALYSIS

H.B. 4302
By: Farrar
Public Education
Committee Report (Unamended)

BACKGROUND AND PURPOSE

S.B. 9, passed by the 80th Legislature, Regular Session, 2007, established a requirement for criminal history background checks of all current and prospective public school employees. The Texas Department of Public Safety (DPS) is responsible for creating and maintaining a database of criminal history record information, which is composed, in part, of information that DPS receives from the FBI, which school districts access in order to comply with S.B. 9.

These criminal history background checks often yield results that are inaccurate or incomplete. The records may include investigations or arrests based on false or erroneous information and even charges that were dismissed for lack of merit. Some records reflect activities from decades ago that are entirely irrelevant to an employee's fitness for the employee's current work.

S.B. 9 and the underlying federal and state statutes that govern handling of this raw criminal history record information clearly provide that this criminal history record information is confidential by law and is not subject to release to the public through requests made under Chapter 552, Government Code. Instead, access to criminal history record information is limited to law enforcement agencies, employers, and professional licensing agencies. Federal regulations prohibit a state entity that obtains criminal history record information from the FBI from confirming the existence or nonexistence of criminal history record information to any person who would not be eligible to receive the information.

School districts performing the required criminal history background checks must assemble, audit, and review this confidential criminal history record information. The attorney general has ruled, however, that if a school district creates a document that combines this confidential criminal history information with other, nonconfidential employee information, such as hire date and campus position, the school district must release the nonconfidential employee information in the document in response to a request under state public information law, even if the release has the effect of revealing the identities of individuals who have a criminal history record. This unnecessarily encumbers the efforts by school districts to comply with the mandates of S.B. 9, unnecessarily intrudes upon the privacy of individual educators, and exposes the state and local entities to penalties for the violation of federal regulations.

H.B. 4302 preserves the confidentiality of criminal history record information. The bill prevents disclosure to the public at large of documents or information in documents that contain criminal history record information or that would confirm the existence or nonexistence of criminal history record information. The bill does not hinder in any way use of the background-check information by districts and the State Board for Educator Certification to enforce local policies and state laws imposing sanctions on employees for criminal conduct but rather would facilitate compliance.

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

H.B. 4302 amends the Education Code to establish that criminal history record information obtained by a school district under certain provisions authorizing certain entities access to criminal history records that relates to an employee of the district is confidential and not subject to disclosure under state public information law. The bill specifically establishes that the following materials are confidential and not subject to disclosure under state public information law, regardless of whether the medium contains other information, including information that otherwise would be subject to disclosure: a book, paper, letter, or document or any other form of media, including data held in computer memory, that is collected, assembled, or maintained by a school district and that either contains or was created from criminal history record information that relates to an employee of the district or that tends to confirm the existence or nonexistence of criminal history record information that relates to an employee. The bill prohibits a school district from confirming the existence or nonexistence of criminal history record information that relates to an employee of the district to any person that is not entitled to obtain the information.

EFFECTIVE DATE

September 1, 2009.