

## **BILL ANALYSIS**

S.B. 1858  
By: West  
Public Safety  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

In 1995, Texas required that all educators applying for licensure submit to criminal background checks. In 2007, the Legislature enacted S.B. 9, which 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 non-certified 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, based on that information, take appropriate action to safeguard Texas schoolchildren.

Under the new 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 Texas Education Agency.

The Texas Legislature intended that this criminal history information, including the existence of a criminal history, was to be used by the local school districts and the state to ensure that individuals whose past actions rendered them unfit to work with children were removed from the classroom. House Journal entries related to S.B. 9 evidence the 80th Legislature's intent to make the results of the criminal background confidential and not subject to release under the Texas Public Information Act (TPIA).

Many individual school districts, in order to utilize the data provided by DPS, created local documents that included the criminal history information, such as lists compiling the data organized by individual campuses. The Office of the Attorney General has ruled that, despite the legislature's determination that the information be confidential, the information, if contained in a locally created document, might be subject to public disclosure.

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

S.B. 1858 amends current law relating to the disclosure of criminal history record information regarding public school employees.

### **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

SECTION 1. Amends Section 411.084, Government Code, by amending Subsection (a) and adding Subsections (a-1) and (c), as follows:

(a) Provides that criminal history record information obtained from the Department of Public Safety (DPS) under this subchapter, including 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 is for the exclusive use of the authorized recipient of the information, and may be disclosed or used by the recipient only if, and only to the extent that, disclosure or use is authorized or directed by this subchapter, another subchapter, a rule adopted under a statute, or an order of a court of competent jurisdiction.

(a-1) Provides that the term "criminal history record" information under Subsection (a) does not refer to any specific document produced to comply with this subchapter but to the information contained, wholly or partly, in a document's original form or any subsequent form or use.

(c) 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.

SECTION 2. Amends Sections 411.090(b) and (c), Government Code, as follows:

(b) Provides that criminal history record information obtained by the State Board for Educator Certification (SBEC) in the original form or any subsequent form may be used only for a purpose related to the issuance, denial, suspension, or cancellation of a certificate issued by SBEC; may not be released to any person except the person who is the subject of the information, the Texas Education Agency (TEA), a local or regional educational entity as provided by Section 411.097 (Access to Criminal History Record Information: Local and Regional Educational Entities), or by court order; is not subject to disclosure as provided by Chapter 552 (Public Information); and is required to be destroyed by SBEC after the information is used for the authorized purposes. Deletes existing text providing that criminal history record information obtained by SBEC under Subsection (a) (relating to the obtaining of certain criminal history record information) is authorized to be used for any purpose related to issuance, denial, suspension, or cancellation of a certificate issued by SBEC; and is prohibited from being released to any person except certain persons including on court order or with the consent of the applicant for a certificate.

(c) Requires DPS to notify SBEC of the arrest of any educator, as defined by Section 5.001 (Definitions), Education Code, who has fingerprints on file with DPS. Provides that any record of the notification and any information contained in the notification is not subject to disclosure as provided by Chapter 552.

SECTION 3. Amends Section 411.0901, Government Code, as follows:

Sec. 411.0901. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS EDUCATION AGENCY. (a) Creates this subsection from existing text.

(b) Provides that criminal history record information obtained by TEA in the original form or any subsequent form may be used only for a purpose authorized by the Education Code; may not be released to any person except the person who is the subject of the information, SBEC, a local or regional educational entity as provided by Section 411.097, or by court order; is not subject to disclosure as provided by Chapter 522; and is required to be destroyed by TEA after the information is used for the authorized purposes.

SECTION 4. Amends Section 411.097, Government Code, by amending Subsection (d) and adding Subsection (f), as follows:

(d) Provides that criminal history record information obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement in the original form or any subsequent form, may not be released to any person except certain individuals or entities, including by court order; is not subject to disclosure as provided by Chapter 551; and is required to be destroyed by the school district, charter school, private school, service center, commercial transportation company, or shared services arrangement on the earlier of the first anniversary of the date the information was originally obtained, or the date the information is used for the authorized purpose. Deletes existing text prohibiting criminal history record information obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement under Subsection (a) (relating to certain entities entitled to obtain criminal history record information from DPS for certain individuals), (b) (relating to certain entities entitled to obtain criminal history record information from DPS under Subchapter (c)), or (c) (relating to certain entities entitled to obtain criminal history record information from DPS for certain individuals), from being released to any person except certain individuals or entities. Makes nonsubstantive changes.

(f) 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 Subchapter C (Criminal History Records), Chapter 22 (Educators and School District Employees and Volunteers), Education Code. 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 criminal history record information.

SECTION 5. Amends Subchapter C, Chapter 22, Education Code, by adding Section 22.08391, as follows:

Sec. 22.08391. CONFIDENTIALITY OF INFORMATION. (a) Provides that information collected about a person to comply with this subchapter, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records, may not be released except to comply with this subchapter, by court order, or with the consent of the person who is the subject of the information; is not subject to disclosure as provided by Chapter 522, Government Code; and is required to be destroyed by the requestor of any subsequent holder of the information not later than the first anniversary of the date the information is received.

(b) Provides that any criminal history record information received by SBEC as provided by this subchapter is subject to Section 411.090(b), Government Code.

(c) Provides that any criminal history record information received by TEA as provided by this subchapter is subject to Section 411.0901(b), Government Code.

(d) Provides that any criminal history record information received 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 as provided by this subchapter is subject to Section 411.097(d), Government Code.

SECTION 6. Provides that the change in law made by this Act applies to information collected, assembled, or maintained before, on, or after the effective date of this Act.

SECTION 7. Effective date.

**EFFECTIVE DATE**

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