

BILL ANALYSIS

C.S.H.B. 3695
By: Gallego
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recently, the Texas Legislature attempted to provide sentencing equality to children who are convicted of Class C misdemeanor criminal offenses in municipal and justice courts, rather than charged with conduct indicating a need for supervision in juvenile courts. This policy requires a convicting court, on conviction of a child for a fine-only misdemeanor offense, to enter an order prohibiting criminal justice agencies from publicly disclosing criminal history record information related to the offense.

Some observers express concern that, despite best intentions and broad support among juvenile and criminal justice advocates, equality in the treatment of these juvenile offenders has not been achieved because the laws governing orders of nondisclosure and the system for processing such orders are not geared to accommodate the volume of juvenile cases handled by municipal and justice courts. Concerned parties contend that these nondisclosure orders are not reaching the appropriate entities, including the courts, at an acceptable rate, and that while courts should be aware of their own orders once entered, the courts are often the only parties with knowledge of the nondisclosure requirement and are probably the only parties affording children the protection that the nondisclosure legislation intended to provide.

C.S.H.B. 3695 seeks to realize equality in the treatment of certain child offenders convicted of fine-only misdemeanor offenses through a confidentiality approach, the same legal construct used in juvenile courts, by changing the nondisclosure construct.

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. 3695 amends the Code of Criminal Procedure to make confidential all records and files relating to a child who is appealing a conviction from a municipal court or a justice court for a misdemeanor offense punishable by a fine only, other than a traffic offense, during the pendency of the appeal and to prohibit those records and files from being disclosed except as provided by the bill's provisions. The bill makes all records and files relating to a child whose conviction from a municipal court or a justice court for a misdemeanor offense punishable by a fine only, other than a traffic offense, was appealed confidential following the disposition of the appeal and prohibits those records and files from being disclosed, except as provided by the bill's provisions, on satisfaction of the judgment, if the conviction is affirmed, or on reversal or remand of the conviction. The bill makes confidential, on satisfaction of the judgment, all records and files relating to a child who is convicted of a misdemeanor offense punishable by fine only, other than a traffic offense, including records and files held by a law enforcement agency, and prohibits those records and files from being disclosed. The bill authorizes such records and files to be disclosed to the following: a judge or magistrate, including the staff of a

judge or magistrate; the Department of Public Safety or another criminal justice agency, for a criminal justice purpose; the attorney for the child; the prosecuting attorney; the child and the child's parent, guardian, or managing conservator; and a person to whom information is required to be disclosed under statutory provisions governing required notification of schools on the arrest or referral of a student believed to be enrolled in the school. The bill provides for the meaning of "child" by reference to the Family Code.

C.S.H.B. 3695 amends the Family Code to make all records and files relating to a child who is convicted of a misdemeanor offense punishable by fine only, other than a traffic offense, or is found to have engaged in conduct indicating a need for supervision that violates a Texas penal law of the grade of misdemeanor punishable by fine only or a penal ordinance of any political subdivision of the state confidential and prohibits the records and files from disclosure in the following manner: on satisfaction of the judgment, if the records and files relate to a child convicted of that misdemeanor; or on completion of the terms of the disposition, if the records and files relate to a child found to have engaged in that conduct indicating a need for supervision.

C.S.H.B. 3695 repeals Sections 411.081(f-1) and (j), Government Code, requiring a court to prohibit criminal justice agencies from disclosing to the public criminal history record information related to a child convicted of a misdemeanor offense punishable by fine only that does not constitute conduct indicating a need for supervision and authorizing a criminal justice agency to disclose the information to certain persons, agencies, and entities. The bill makes conforming changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3695 contains provisions not included in the original providing for the meaning of "child."

C.S.H.B. 3695 differs from the original by making all records and files relating to a child who is appealing a conviction from a municipal court or a justice court for a misdemeanor offense punishable by fine only, other than a traffic offense, confidential during the pendency of appeal and by prohibiting disclosure of such records and files, whereas the original makes all records, files, and information relating to a child who is convicted of and has satisfied the judgment for such a misdemeanor offense confidential and prohibits disclosure. The substitute differs from the original by making all records and files relating to a child whose conviction from a municipal court or a justice court for a such a misdemeanor offense was appealed confidential following the disposition of the appeal on satisfaction of the judgment, if the conviction is affirmed or on reversal or remand of the conviction, and by prohibiting disclosure of such records and files, whereas the original makes all records, files, and information relating to a child whose conviction for such a misdemeanor offense is affirmed confidential upon satisfaction of the judgment and prohibits disclosure.

C.S.H.B. 3695 differs from the original by authorizing the disclosure of certain child records and files to limited persons and entities and by including among those persons a magistrate, the staff of a judge or magistrate, and a certain school employee to whom information is required to be disclosed when a student is arrested or referred, whereas the original authorizes such records and files to be open to inspection by those limited persons and entities, includes court staff instead of the staff of a judge, and does not include a magistrate, a magistrate's staff, or that school employee.

C.S.H.B. 3695 contains a provision not included in the original making all records and files of a

child found to have engaged in conduct indicating a need for supervision that violates a Texas penal law of the grade of misdemeanor punishable by fine only or a penal ordinance of any political subdivision of the state confidential and prohibiting disclosure on completion of the terms of the disposition.

C.S.H.B. 3695 differs from the original in nonsubstantive ways.