

BILL ANALYSIS

Senate Research Center

S.B. 1106
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Jurisprudence
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

State laws allow some information sharing relating to juveniles between the governmental entities that serve them. These state laws are more restrictive than federal laws such as the Health Information Privacy and Accountability Act and the Family Educational Rights Privacy Act. The overly restrictive laws hamper state and local governments' ability to provide effective services to Texas children.

The sharing of information prevents the duplication of services, improves the quality of services, provides a means to test the effectiveness of programs, and most importantly, leads to better outcomes for Texas children. S.B. 1106 will provide for increased sharing of a juvenile's information between governmental entities while preserving the individual's rights to privacy.

S.B. 1106 amends current law relating to the exchange of confidential information concerning certain juveniles.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 37.084(a), Education Code, to require, rather than authorize, a school district superintendent or the superintendent's designee to disclose information contained in a student's educational records to a juvenile service provider as required by Section 58.0051, Family Code, rather than to a justice agency, as that term is defined by Section 58.101 (Definitions), Family Code, if the disclosure is under an interagency agreement authorized by Section 58.0051, Family Code.

SECTION 2. Amends Subchapter A, Chapter 58, Family Code, by amending Section 58.0051 and adding Section 58.0052, as follows:

Sec. 58.0051. New heading: INTERAGENCY SHARING OF EDUCATIONAL RECORDS. (a) Defines "educational records," "juvenile service provider," and "student" in this section.

(b) Requires an independent school district or a charter school, at the request of a juvenile service provider, to disclose to the juvenile service provider confidential information contained in the student's educational records if the student has been:

(1) taken into custody under Section 52.01 (Taking Into Custody; Issuance of Warning Notice); or

(2) referred to a juvenile court for allegedly engaging in delinquent conduct or conduct indicating a need for supervision.

(c) Prohibits an independent school district or charter school that discloses confidential information to a juvenile service provider under Subsection (b) from

destroying a record of the disclosed information before the seventh anniversary of the date the information is disclosed.

(d) Requires an independent school district or charter school to comply with a request under Subsection (b) regardless of whether other state law makes that information confidential.

(e) Deletes existing Subsection (a) relating to an interagency agreement to share information about juvenile offenders between a district school superintendent and the juvenile probation department. Deletes existing Subsection (b) requiring that information disclosed under this section by a school district relate to the juvenile system's ability to serve, before adjudication, the student whose records are being released. Creates this subsection from existing Subsection (c). Requires a juvenile service provider that receives confidential information under this section to certify in writing that the juvenile service provider receiving the confidential information has agreed not to disclose it to a third party, other than another juvenile service provider; and use the confidential information only to verify the identity of a student involved in the juvenile justice system and provide delinquency prevention or treatment services to the student, rather than requires a justice agency official who receives educational information under this section to certify in writing that the institution or individual receiving the personally identifiable information has agreed not to disclose it to a third party, other than another juvenile justice agency.

(f) Authorizes a juvenile service provider to establish an internal protocol for sharing information with other juvenile service providers as necessary to efficiently and promptly disclose and accept the information. Authorizes that the protocol specify the types of information that are authorized to be shared under this section without violating federal law, including any federal funding requirements. Authorizes a juvenile service provider to enter into a memorandum of understanding with another juvenile service provider to share information according to the juvenile service provider's protocols. Requires a juvenile service provider to comply with this section regardless of whether the juvenile service provider establishes an internal protocol or enters into a memorandum of understanding under this subsection unless compliance with this section violates federal law.

(g) Provides that this section does not affect the confidential status of the information being shared. Authorizes the information to be released to a third party only as directed by a court order or as otherwise authorized by law. Provides that personally identifiable information disclosed to a juvenile service provider under this section is not subject to disclosure to a third party under Chapter 552 (Public Information), Government Code.

(h) Creates this subsection from existing Subsection (d). Requires a juvenile service provider that requests information under this section to pay a fee to the disclosing juvenile service provider in the same amounts charged for the provision of public information under Subchapter F (Charges for Providing Copies of Public Information), Chapter 552, Government Code, unless:

(1) a memorandum of understanding between the requesting provider and the disclosing provider:

(A) prohibits the payment of a fee;

(B) provides for the waiver of a fee; or

(C) provides an alternate method of assessing a fee;

(2) the disclosing provider waives the payment of the fee; or

(3) disclosure of the information is required by law other than this subchapter.

Deletes existing text of Subsection (d) requiring a juvenile justice agency that receives educational information under this section to destroy all information when the child is no longer under the jurisdiction of a juvenile court. Deletes existing Subsection (e) authorizing the Texas Juvenile Probation Commission, in conformity with Section 58.0072 (Dissemination of Juvenile Justice Information) of this code and Section 37.084 (Interagency Sharing of Records), Education Code, to enter into an interagency agreement to share educational information for research, audit, and analytical purposes with certain other entities.

Sec. 58.0052. INTERAGENCY SHARING OF NONEDUCATIONAL RECORDS. (a) Defines "juvenile service provider," "multi-system youth," and "personal health information" in this section.

(b) Requires a juvenile service provider, at the request of another juvenile service provider, to disclose to that provider a multi-system youth's personal health information or a history of governmental services provided to the multi-system youth, including identity, medical records, assessment results, special needs, program placements, and psychological diagnoses.

(c) Authorizes a juvenile service provider to disclose personally identifiable information under this section only for the purposes of identifying a multi-system youth, coordinating and monitoring care for a multi-system youth, and improving the quality of juvenile services provided to a multi-system youth.

(d) Provides that to the extent that this section conflicts with another law of this state with respect to confidential information held by a governmental agency, this section controls.

(e) Authorizes a juvenile service provider to establish an internal protocol for sharing information with other juvenile service providers as necessary to efficiently and promptly disclose and accept the information. Authorizes the protocol to specify the types of information that are authorized to be shared under this section without violating federal law, including any federal funding requirements. Authorizes a juvenile service provider to enter into a memorandum of understanding with another juvenile service provider to share information according to the juvenile service provider's protocols. Requires a juvenile service provider to comply with this section regardless of whether the juvenile service provider establishes an internal protocol or enters into a memorandum of understanding under this subsection unless compliance with this section violates federal law.

(f) Provides that this section does not affect the confidential status of the information being shared. Authorizes the information to be released to a third party only as directed by a court order or as otherwise authorized by law. Provides that personally identifiable information disclosed to a juvenile service provider under this section is not subject to disclosure to a third party under Chapter 552, Government Code.

(g) Provides that this section does not affect the authority of a governmental agency to disclose to a third party for research purposes information that is not personally identifiable as provided by the governmental agency's protocol.

(h) Requires a juvenile service provider that requests information under this section to pay a fee to the disclosing juvenile service provider in the same amounts charged for the provision of public information under Subchapter F, Chapter 552, Government Code, unless:

- (1) a memorandum of understanding between the requesting provider and the disclosing provider prohibits the payment of a fee, provides for the waiver of a fee, or provides an alternate method of assessing a fee;
- (2) the disclosing provider waives the payment of the fee; or
- (3) disclosure of the information is required by law other than this subchapter.

SECTION 3. Amends Section 58.106(a), Family Code, as follows:

(a) Provides that, except as otherwise provided by this section, information contained in the juvenile justice information system is confidential information for the use of the Department of Public Safety of the State of Texas (DPS) and is prohibited from being disseminated by DPS except:

- (1)-(5) Makes no changes to these subdivisions; and
- (6) to a county, justice, or municipal court exercising jurisdiction over a juvenile.

SECTION 4. Amends Section 264.408, Family Code, by amending Subsection (a) and adding Subsection (d-1), as follows:

(a) Authorizes disclosure of the files, reports, records, communications, and working papers used or developed in providing services under this chapter to:

- (1) the Department of Family and Protective Services (DFPS), DFPS employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state or local agencies that provide services to children and families; and
- (2) Makes no changes to this subdivision.

(d-1) Provides that a videotaped interview described by Subsection (d) (relating to determining ownership of a videotaped interview of a child) is subject to production under Article 39.14 (Discovery), Code of Criminal Procedure, and Rule 615 (Production of Statements of Witnesses in Criminal Cases), Texas Rules of Evidence. Requires a court to deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce a videotape of an interview described by Subsection (d), provided that the prosecuting attorney makes the videotape reasonably available to the defendant in the same manner as property or material may be made available to defendants, attorneys, and expert witnesses under Article 39.15(d) (relating to explaining when property or material is considered "reasonably available to the defendant"), Code of Criminal Procedure.

SECTION 5. Amends Section 181.002(b), Health and Safety Code, to provide that to the extent that this chapter conflicts with another law, other than Section 58.0052, Family Code, with respect to protected health information collected by a governmental body or unit, this chapter controls.

SECTION 6. Makes application of the changes in law made by Section 264.408, Family Code, as amended by this Act, prospective.

SECTION 7. Effective date: upon passage or September 1, 2011.