

BILL ANALYSIS

S.B. 1752
By: Uresti
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

S.B. 1056, 81st Legislature, Regular Session, 2009, attempted to provide parity to hundreds of thousands of children who, rather than being charged with conduct indicating a need for supervision in juvenile courts, are convicted of Class C misdemeanor criminal offenses in municipal and justice courts. Specifically, S.B. 1056 enacted Section 411.081(f-1) (relating to requiring a convicting court to immediately issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to a misdemeanor offense punishable by fine only that does not constitute conduct indicating a need for supervision under Section 51.03 (Delinquent Conduct; Conduct Indicating A Need For Supervision), Family Code), Government Code, requiring an automatic order of nondisclosure upon conviction of a child for fine-only misdemeanor offenses.

Under the nondisclosure statute in Section 411.081(f-1), Government Code, municipal and justice courts upon conviction automatically enter the order and send a copy to the Department of Public Safety (DPS) containing a listing of all other entities believed to have information pertaining to the arrest and conviction. Upon receipt, DPS is supposed to notify those listed entities of the order that prohibits them from disclosing the information, except to a privileged few.

For many Class C misdemeanor offenses, the only parties with information pertaining to an offense and conviction are the local police department and the municipal or justice court, yet the court must send notice to DPS in Austin for DPS to send notice back to the police department, which is often in the same building as the court. To date, few, if any courts have received notice of their orders from DPS; thus these nondisclosure orders are not reaching the appropriate entities.

As proposed, S.B. 1752 amends current law relating to confidentiality of Class C misdemeanor records related to the conviction of a child.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Chapter 44, Code of Criminal Procedure, by adding Article 44.2811, as follows:

Art. 44.2811. RECORDS RELATING TO CHILDREN CONVICTED OF FINE-ONLY MISDEMEANORS. Provides that all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense are confidential and prohibits them from being disclosed to the public except as provided under Article 45.0217(b). Provides that all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child whose conviction for a fine-only misdemeanor other than a traffic offense is affirmed are confidential upon satisfaction of

the judgment and prohibits them from being disclosed to the public except as provided under Article 45.0217(b).

SECTION 2. Amends Chapter 45, Code of Criminal Procedure, by adding Article 45.0217, as follows:

Art. 45.0217. CONFIDENTIAL RECORDS RELATED TO THE CONVICTION OF A CHILD. (a) Provides that, except as provided by Article 15.27 (Notification to Schools Required), Code of Criminal Procedure, and Subsection (b) of this section, all records and files, including those held by law enforcement, and information stored by electronic means or otherwise, from which a record file could be generated, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense are confidential and prohibits them from being disclosed to the public.

(b) Authorizes information subject to Subsection (a) to be open to inspection only by:

- (1) judges or court staff;
- (2) a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082 (Definitions), Government Code;
- (3) the Department of Public Safety;
- (4) an attorney for a party to the proceeding;
- (5) the child defendant; or
- (6) the defendant's parent, guardian, or managing conservator.

SECTION 3. Repealers: Sections 411.081(f-1) (relating to requiring a convicting court to immediately issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to a misdemeanor offense punishable by fine only that does not constitute conduct indicating a need for supervision under Section 51.03 (Delinquent Conduct; Conduct Indicating A Need For Supervision), Family Code) and (j) (relating to which agencies a criminal justice may disclose criminal history record information that is the subject of an order of nondisclosure under Subsection (f-1)), Government Code.

SECTION 4. Amends Section 411.0851, Government Code, as follows:

411.0851. DUTY OF PRIVATE ENTITY TO UPDATE CRIMINAL HISTORY RECORD INFORMATION; CIVIL LIABILITY. (a) Requires a private entity that compiles and disseminates for compensation criminal history record information to destroy and prohibits it from disseminating any information in the possession of the entity with respect to which the entity has received notice that:

- (1) Makes no changes to this subdivision; or
- (2) an order of nondisclosure has been issued under Section 411.081(d) (relating to an order of nondisclosure obtained by petition), rather than Section 411.081(d) or (f-1).

SECTION 5. Amends Section 552.142, Government Code, as follows:

Sec. 552.142. New heading: EXCEPTION: RECORDS OF CERTAIN DEFERRED ADJUDICATIONS. (a) Excepts information from the requirements of Section 552.021 (Availability of Public Information) if an order of nondisclosure with respect to the information has been issued under Section 411.081(d), rather than under Section 411.081(d) or (f-1).

SECTION 6. Amends Section 552.1425, Government Code, as follows:

Sec. 552.1425. CIVIL PENALTY: DISSEMINATION OF CERTAIN CRIMINAL HISTORY INFORMATION. (a) Prohibits a private entity that compiles and disseminates for compensation criminal history record information from compiling or disseminating information with respect to which the entity has received notice that:

(1) Makes no changes to this subdivision; or

(2) an order of nondisclosure has been issued under Section 411.081(d), rather than under Section 411.081(d) or (f-1).

SECTION 7. Amends Chapter 58, Family Code, by adding Section 58.00711, as follows:

Sec. 58.00711. RECORDS RELATING TO CHILDREN CONVICTED OF FINE-ONLY MISDEMEANORS. Provides that, except as provided by Article 45.0217(b), Code of Criminal Procedure, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense, are confidential and may not be disclosed to the public.

SECTION 8. Provides that the changes in law made by this Act apply to convictions before, on, or after the effective date of this Act.

EFFECTIVE DATE

September 1, 2011.