

1-1 By: Turner (Senate Sponsor - Hinojosa) H.B. No. 961
1-2 (In the Senate - Received from the House May 5, 2011;
1-3 May 9, 2011, read first time and referred to Committee on Criminal
1-4 Justice; May 19, 2011, reported favorably by the following vote:
1-5 Yeas 7, Nays 0; May 19, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the sealing of and restricting access to juvenile
1-9 records of adjudications of delinquent conduct or conduct
1-10 indicating a need for supervision and to the confidentiality of
1-11 records of certain misdemeanor convictions of a child.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 44, Code of Criminal Procedure, is
1-14 amended by adding Article 44.2811 to read as follows:

1-15 Art. 44.2811. RECORDS RELATING TO CHILDREN CONVICTED OF
1-16 FINE-ONLY MISDEMEANORS. All records and files and information
1-17 stored by electronic means or otherwise, from which a record or file
1-18 could be generated, relating to a child who is convicted of and has
1-19 satisfied the judgment for a fine-only misdemeanor offense other
1-20 than a traffic offense are confidential and may not be disclosed to
1-21 the public except as provided under Article 45.0217(b). All
1-22 records and files and information stored by electronic means or
1-23 otherwise, from which a record or file could be generated, relating
1-24 to a child whose conviction for a fine-only misdemeanor other than a
1-25 traffic offense is affirmed are confidential upon satisfaction of
1-26 the judgment and may not be disclosed to the public except as
1-27 provided under Article 45.0217(b).

1-28 SECTION 2. Subchapter B, Chapter 45, Code of Criminal
1-29 Procedure, is amended by adding Article 45.0217 to read as follows:

1-30 Art. 45.0217. CONFIDENTIAL RECORDS RELATED TO THE
1-31 CONVICTION OF A CHILD. (a) Except as provided by Article 15.27 and
1-32 Subsection (b), all records and files, including those held by law
1-33 enforcement, and information stored by electronic means or
1-34 otherwise, from which a record or file could be generated, relating
1-35 to a child who is convicted of and has satisfied the judgment for a
1-36 fine-only misdemeanor offense other than a traffic offense are
1-37 confidential and may not be disclosed to the public.

1-38 (b) Information subject to Subsection (a) may be open to
1-39 inspection only by:

1-40 (1) judges or court staff;
1-41 (2) a criminal justice agency for a criminal justice
1-42 purpose, as those terms are defined by Section 411.082, Government
1-43 Code;

1-44 (3) the Department of Public Safety;
1-45 (4) an attorney for a party to the proceeding;
1-46 (5) the child defendant; or
1-47 (6) the defendant's parent, guardian, or managing
1-48 conservator.

1-49 SECTION 3. Section 58.003(c), Family Code, is amended to
1-50 read as follows:

1-51 (c) Subject to Subsection (b), a court may order the sealing
1-52 of records concerning a person adjudicated as having engaged in
1-53 delinquent conduct that violated a penal law of the grade of felony
1-54 only if:

1-55 (1) the person is 19 [~~21~~] years of age or older;
1-56 (2) the person was not transferred by a juvenile court
1-57 under Section 54.02 to a criminal court for prosecution;

1-58 (3) the records have not been used as evidence in the
1-59 punishment phase of a criminal proceeding under Section 3(a),
1-60 Article 37.07, Code of Criminal Procedure; and

1-61 (4) the person has not been convicted of a penal law of
1-62 the grade of felony after becoming age 17.

1-63 SECTION 4. Subchapter A, Chapter 58, Family Code, is
1-64 amended by adding Section 58.00711 to read as follows:

2-1 Sec. 58.00711. RECORDS RELATING TO CHILDREN CONVICTED OF
 2-2 FINE-ONLY MISDEMEANORS. Except as provided by Article 45.0217(b),
 2-3 Code of Criminal Procedure, all records and files and information
 2-4 stored by electronic means or otherwise, from which a record or file
 2-5 could be generated, relating to a child who is convicted of and has
 2-6 satisfied the judgment for a fine-only misdemeanor offense other
 2-7 than a traffic offense are confidential and may not be disclosed to
 2-8 the public.

2-9 SECTION 5. Section 58.203(a), Family Code, is amended to
 2-10 read as follows:

2-11 (a) The department shall certify to the juvenile probation
 2-12 department to which a referral was made that resulted in
 2-13 information being submitted to the juvenile justice information
 2-14 system that the records relating to a person's juvenile case are
 2-15 subject to automatic restriction of access if:

2-16 (1) the person is at least 17 [~~21~~] years of age;

2-17 (2) the juvenile case did not include violent or
 2-18 habitual felony conduct resulting in proceedings in the juvenile
 2-19 court under Section 53.045; and

2-20 (3) the juvenile case was not certified for trial in
 2-21 criminal court under Section 54.02[~~7~~ and

2-22 [~~(4) the department has not received a report in its~~
 2-23 ~~criminal history system that the person was granted deferred~~
 2-24 ~~adjudication for or convicted of a felony or a misdemeanor~~
 2-25 ~~punishable by confinement in jail for an offense committed after~~
 2-26 ~~the person became 17 years of age].~~

2-27 SECTION 6. Section 58.208, Family Code, is amended to read
 2-28 as follows:

2-29 Sec. 58.208. INFORMATION TO CHILD ON DISCHARGE. On the
 2-30 final discharge of a child from the juvenile system or on the last
 2-31 official action in the case, if there is no adjudication, the
 2-32 appropriate juvenile justice official shall provide to the child:

2-33 (1) a written explanation of how automatic restricted
 2-34 access under this subchapter works;

2-35 (2) a copy of this subchapter; and

2-36 (3) a statement that if the child wishes to receive
 2-37 notification of an action restricting access to the child's records
 2-38 under Section 58.207(a), the child must before the child's 17th
 2-39 [~~21st~~] birthday provide the juvenile probation department with a
 2-40 current address where the child can receive notification.

2-41 SECTION 7. Section 58.209(a), Family Code, is amended to
 2-42 read as follows:

2-43 (a) When a child is placed on probation for an offense that
 2-44 may be eligible for automatic restricted access at age 17 [~~21~~] or
 2-45 when a child is received by the Texas Youth Commission on an
 2-46 indeterminate commitment, a probation officer or an official at the
 2-47 Texas Youth Commission reception center, as soon as practicable,
 2-48 shall explain the substance of the following information to the
 2-49 child:

2-50 (1) if the child was adjudicated as having committed
 2-51 delinquent conduct for a felony or jailable misdemeanor, that the
 2-52 child probably has a juvenile record with the department and the
 2-53 Federal Bureau of Investigation;

2-54 (2) that the child's juvenile record is a permanent
 2-55 record that is not destroyed or erased unless the record is eligible
 2-56 for sealing and the child or the child's family hires a lawyer and
 2-57 files a petition in court to have the record sealed;

2-58 (3) that the child's juvenile record, other than
 2-59 treatment records made confidential by law, can be accessed by
 2-60 police, sheriff's officers, prosecutors, probation officers,
 2-61 correctional officers, and other criminal and juvenile justice
 2-62 officials in this state and elsewhere;

2-63 (4) that the child's juvenile record, other than
 2-64 treatment records made confidential by law, can be accessed by
 2-65 employers, educational institutions, licensing agencies, and other
 2-66 organizations when the child applies for employment or educational
 2-67 programs;

2-68 (5) if the child's juvenile record is placed on
 2-69 restricted access when the child becomes 17 [~~21~~] years of age, that

3-1 access will be denied to employers, educational institutions, and
 3-2 others except for criminal justice agencies; and
 3-3 (6) ~~[that to have the child's juvenile record placed on~~
 3-4 ~~restricted access at age 21, the child must not:~~
 3-5 ~~[(A) commit a felony or jailable misdemeanor; and~~
 3-6 ~~[(B) receive deferred adjudication for or be~~
 3-7 ~~convicted in adult court of a felony or jailable misdemeanor; and~~
 3-8 ~~[(7)]~~ that restricted access does not require any
 3-9 action by the child or the child's family, including the filing of a
 3-10 petition or hiring of a lawyer, but occurs automatically at age 17
 3-11 ~~[21 if the child does not commit a criminal offense in the future].~~

3-12 SECTION 8. Section 411.0851(a), Government Code, is amended
 3-13 to read as follows:

3-14 (a) A private entity that compiles and disseminates for
 3-15 compensation criminal history record information shall destroy and
 3-16 may not disseminate any information in the possession of the entity
 3-17 with respect to which the entity has received notice that:

3-18 (1) an order of expunction has been issued under
 3-19 Article 55.02, Code of Criminal Procedure; or

3-20 (2) an order of nondisclosure has been issued under
 3-21 Section 411.081(d) ~~[or (f-1)]~~.

3-22 SECTION 9. The heading to Section 552.142, Government Code,
 3-23 is amended to read as follows:

3-24 Sec. 552.142. EXCEPTION: RECORDS OF CERTAIN DEFERRED
 3-25 ADJUDICATIONS ~~[AND CERTAIN MISDEMEANORS PUNISHABLE BY FINE ONLY]~~.

3-26 SECTION 10. Section 552.142(a), Government Code, is amended
 3-27 to read as follows:

3-28 (a) Information is excepted from the requirements of
 3-29 Section 552.021 if an order of nondisclosure with respect to the
 3-30 information has been issued under Section 411.081(d) ~~[or (f-1)]~~.

3-31 SECTION 11. Section 552.1425(a), Government Code, is
 3-32 amended to read as follows:

3-33 (a) A private entity that compiles and disseminates for
 3-34 compensation criminal history record information may not compile or
 3-35 disseminate information with respect to which the entity has
 3-36 received notice that:

3-37 (1) an order of expunction has been issued under
 3-38 Article 55.02, Code of Criminal Procedure; or

3-39 (2) an order of nondisclosure has been issued under
 3-40 Section 411.081(d) ~~[or (f-1)]~~.

3-41 SECTION 12. Sections 411.081(f-1) and (j), Government Code,
 3-42 are repealed.

3-43 SECTION 13. Sections 58.003(c), 58.203(a), 58.208, and
 3-44 58.209(a), Family Code, as amended by this Act, apply to the sealing
 3-45 of and restricting access to records in the adjudication of a
 3-46 juvenile case on or after the effective date of this Act, regardless
 3-47 of whether the adjudication occurred before, on, or after the
 3-48 effective date of this Act.

3-49 SECTION 14. Articles 44.2811 and 45.0217, Code of Criminal
 3-50 Procedure, and Section 58.00711, Family Code, as added by this Act,
 3-51 and Sections 411.0851(a), 552.142, and 552.1425(a), Government
 3-52 Code, as amended by this Act, apply to convictions before, on, or
 3-53 after the effective date of this Act.

3-54 SECTION 15. This Act takes effect immediately if it
 3-55 receives a vote of two-thirds of all the members elected to each
 3-56 house, as provided by Section 39, Article III, Texas Constitution.
 3-57 If this Act does not receive the vote necessary for immediate
 3-58 effect, this Act takes effect September 1, 2011.

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