

## **BILL ANALYSIS**

S.B. 1304  
By: Perry  
Juvenile Justice & Family Issues  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties express concern that despite the confidentiality protections afforded under state law for juvenile records, technological advancements and the expanded number of persons and entities with access to juvenile records have diminished the assurance of confidentiality of those records and increased the long-term consequences of a juvenile offender's delinquency history. S.B. 1304 seeks to make certain statutory changes recommended by a committee of juvenile justice system practitioners in order to protect the confidential records of our juveniles.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Juvenile Justice Department in SECTION 18 of this bill.

### **ANALYSIS**

S.B. 1304 amends the Family Code to specify that the authorization to photograph or fingerprint, without the consent of a juvenile court, a child referred to the juvenile court for conduct that constitutes a felony or a misdemeanor punishable by confinement in jail applies regardless of whether the child has been taken into custody, that consent of a child's parent or guardian is not required to photograph or fingerprint a child so referred or a child taken into custody, and that a law enforcement officer is not prohibited from photographing or fingerprinting a child who has not been referred to the juvenile court for conduct that constitutes a felony or such a misdemeanor if the child's parent or guardian consents in writing. The bill replaces the requirement that a juvenile board conduct or cause to be conducted an audit of the records of a law enforcement agency to verify the required destruction of photographs and fingerprints belonging to juveniles with the authorization for a juvenile board to conduct such an audit. The bill gives a law enforcement officer the option, if requisite conditions are met, to obtain a photograph of a child from a juvenile probation department in possession of a photograph of the child as an alternative to taking temporary custody of the child to take the child's photograph. The bill exempts information that is shared with an attorney representing a child in a juvenile justice proceeding or that is shared with an attorney representing any other person in a juvenile or criminal court proceeding arising from the same act or conduct for which a child was referred to juvenile court from the requirement for the custodian of a juvenile court record to redact certain personally identifiable information of a victim before disclosing the juvenile court record of the child.

S.B. 1304 expands the applicability of restrictions, with certain exceptions, on the disclosure of juvenile records to include the inspection, copying, and maintenance of a record concerning a

child and the storage of information from which a record could be generated and to other records or information created by or in the possession of the Texas Juvenile Justice Department (TJJD), an entity having custody of the child under a contract with TJJD, or another public or private agency or institution having custody of the child under order of the juvenile court, including a facility operated by or under contract with a juvenile board or juvenile probation department. The bill includes dental records, diagnostic test results, and other records or information related to a youth's personal health information or history of governmental services among the information concerning a multi-system youth that a juvenile service provider is required under certain conditions to disclose to another juvenile service provider. The bill includes among the persons who are authorized to inspect or copy the records of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a juvenile justice proceeding a person or entity to whom the child is referred for treatment or services, if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information. The bill removes the specification that those records are physical records and entitles a person who is the subject of the records to access the records for the purpose of preparing and presenting a motion or application to seal the records. The bill prohibits a juvenile court from providing a copy of a record of a defendant's adjudication to a prosecuting attorney for use as evidence in the punishment phase of a criminal proceeding if the record has been sealed under statutory provisions relating to juvenile records and the juvenile justice information system. The bill establishes provisions relating to the confidentiality of law enforcement records relating to a child.

S.B. 1304 removes from among the entities to which TJJD is authorized to grant access to juvenile justice information a governmental entity that has an agreement with TJJD containing certain information and instead includes among such entities a person working on a research or statistical project that meets the requirements of and is approved by TJJD and has an agreement with TJJD containing certain information. The bill extends the requirement that the juvenile justice information system consist of information relating to delinquent conduct committed by a juvenile offender that, if the conduct had been committed by an adult, would constitute a criminal offense other than an offense punishable by a fine only to information relating to such delinquent conduct that is alleged to have been committed by a juvenile offender. The bill includes information concerning the termination of probation supervision or discharge from commitment of a juvenile offender among the information required to be contained in the system. The bill includes among the information the Department of Public Safety (DPS) is required to include in the system for each juvenile offender taken into custody, detained, or referred under the juvenile justice code for delinquent conduct the date any probation supervision, including deferred prosecution supervision, was terminated. The bill excepts a document maintained by a law enforcement agency that is the source of information collected by DPS for the system from the authorization for DPS to disseminate information contained in the system and repeals a provision authorizing DPS to disseminate under certain conditions information contained in the system to a noncriminal justice agency or entity not otherwise authorized to receive such information.

S.B. 1304 expands and revises a person's right to have the person's juvenile records sealed and revises the process for sealing the records by repealing provisions relating to the sealing of, limited destruction of, and restricted access to records and setting out new provisions relating to the sealing and destruction of juvenile records. The bill entitles a person who was referred to a juvenile probation department for delinquent conduct to have all records related to the person's juvenile matters sealed without applying to a juvenile court if the person is at least 19 years of age, has not been adjudicated as having engaged in delinquent conduct or, if adjudicated for delinquent conduct, was not adjudicated for delinquent conduct violating a penal law of the grade of felony, does not have any pending delinquent conduct matters, has not been transferred by a juvenile court to a criminal court for prosecution, has not as an adult been convicted of a felony or a misdemeanor punishable by confinement in jail, and does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement in jail. The bill

entitles a person who was referred to a juvenile probation department for delinquent conduct to have all records related to the person's juvenile matters sealed without applying to a juvenile court if the person is at least 25 years of age, was adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony, did not receive a determinate sentence for engaging in delinquent conduct that violated a penal law for which a person is eligible for a determinate sentence or in habitual felony conduct, has not been required to register as a sex offender, does not have any pending delinquent conduct matters, has not been transferred by a juvenile court to a criminal court for prosecution, has not as an adult been convicted of a felony or a misdemeanor punishable by confinement in jail, and does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement in jail.

S.B. 1304 requires DPS to certify to a juvenile probation department that has submitted records to the juvenile justice information system that the records relating to a person referred to the juvenile probation department appear to be eligible for sealing without an application to a juvenile court. The bill authorizes DPS to issue the certification by electronic means. The bill requires a juvenile probation department, not later than the 60th day after the date the juvenile probation department receives such certification, to give notice of the receipt of the certification to the applicable juvenile court and provide the court with a list of all referrals received by the department relating to that person and the outcome of each referral. The bill requires a juvenile probation department that has reason to believe the records of the person for whom the department received a certification are not eligible to be sealed to notify DPS not later than the 15th day after the date the juvenile probation department received the certification. The bill requires a juvenile probation department that later determines that the person's records are eligible to be sealed to notify the applicable juvenile court and provide the court the required information not later than the 30th day after the date of the determination. The bill requires a juvenile probation department and DPS, if after receiving a certification the juvenile probation department determines that the person's records are not eligible to be sealed, to update the juvenile justice information system to reflect that determination and specifies that no further action related to the records is required. The bill requires a juvenile court to issue an order sealing all records relating to the person named in a certification not later than the 60th day after the date the juvenile court initially receives notice from a juvenile probation department.

S.B. 1304 entitles a person who was referred to a juvenile probation department for conduct indicating a need for supervision to have all records related to all conduct indicating a need for supervision matters sealed without applying to a juvenile court if the person is at least 18 years of age, has not been referred to the juvenile probation department for delinquent conduct, has not as an adult been convicted of a felony, and does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement in jail. The bill requires a juvenile probation department to give the applicable juvenile court notice that such a person's records are eligible for sealing and provide the juvenile court with a list of all referrals relating to that person received by the department and the outcome of each referral. The bill requires a juvenile court to issue an order sealing all records relating to the person named in the notice not later than the 60th day after the date the juvenile court receives such notice.

S.B. 1304 authorizes a person to file an application for the sealing of records related to the person in the juvenile court served by the juvenile probation department to which the person was referred and prohibits the court from charging a fee for filing the application, regardless of the form of the application. The bill sets out the required contents of an application and authorizes the juvenile court to order the sealing of records related to all matters for which the person was referred to the juvenile probation department if the person is at least 18 years of age, or is younger than 18 years of age and at least two years have elapsed after the date of final discharge in each matter for which the person was referred to the juvenile probation department, does not have any delinquent conduct matters pending with any juvenile probation department or juvenile court, was not transferred by a juvenile court to a criminal court for prosecution, has not as an adult been convicted of a felony, and does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement in jail. The bill prohibits a court from ordering the

sealing of the records of a person if the person who received a determinate sentence for engaging in delinquent conduct that violated a penal law for which a person is eligible for a determinate sentence or in habitual felony conduct, is currently required to register as a sex offender, or was committed to TJJD or to a post-adjudication secure correctional facility, unless the person has been discharged from the agency to which the person was committed. The bill authorizes a court, on receipt of an application for the sealing of records, to order the sealing of the person's records immediately, without a hearing, or hold a hearing at the court's discretion to determine whether to order the sealing of the person's records.

S.B. 1304 requires a hearing regarding the sealing of a person's records to be held not later than the 60th day after the date the court receives the person's application, sets out notice requirements and the required contents of an order sealing records, and specifies the required recipients of a copy of the order. The bill establishes that on entry of the order all adjudications relating to the person are vacated and the proceedings are dismissed and treated for all purposes as though the proceedings had never occurred. The bill requires the clerk of court to seal all court records relating to the proceeding and to send copies of the order to all entities listed in the order.

S.B. 1304 sets out the actions DPS, TJJD, and certain other entities receiving an order to seal the records of a person must take not later than the 61st day after the date of receiving the order. The bill establishes that physical or electronic records are considered sealed if the records are not destroyed but are stored in a manner that allows access to the records only by the custodian of records for the entity possessing the records. The bill requires an entity that received an order to seal records relating to a person and later receives an inquiry about a person or the matter contained in the records to respond that no records relating to the person or the matter exist. The bill requires an entity receiving an order to seal records that is unable to comply with the order because the information in the order is incorrect or insufficient or that has no records related to the person who is the subject of the order to take specified actions.

S.B. 1304 provides for the inspection of records sealed under the bill's provisions or under statutory provisions relating to the sealing of juvenile records as those provisions existed before September 1, 2017, only by a person named in the order, a prosecutor, a court, TDCJ, or TJJD under specified conditions and establishes that a person whose records have been sealed is not required to state in any proceeding or in any application for employment, licensing, admission, housing, or other public or private benefit that the person has been the subject of a juvenile matter. The bill prohibits, if a person's records have been sealed, the information in the records, the fact that the records once existed, and a person's denial of the existence of the records or of the person's involvement in a juvenile matter from being used against the person in any manner. The bill prohibits a person who is the subject of the sealed records from waiving the protected status of the records or the consequences of the protected status. The bill requires an employee of the juvenile probation department, a probation officer, or TJJD official, as appropriate, to give a child and the child's parent, guardian, or custodian a written explanation regarding sealing of records and containing certain specified information and requires TJJD to adopt rules to implement and facilitate the effective explanation of the required information. The bill sets out the persons who may authorize the destruction of records in a closed juvenile matter and the conditions under which records are required to be or may be destroyed, as applicable. The bill establishes that records contained in the juvenile justice information system are not subject to an order of expunction issued by any court.

S.B. 1304 amends the Government Code to make a conforming change.

S.B. 1304 applies to records created before, on, or after the bill's effective date.

S.B. 1304 repeals the following provisions of the Family Code:

- Section 58.001(b)
- Section 58.003

- Section 58.006
- Sections 58.007(c), (d), (e), and (f)
- Section 58.0071
- Section 58.00711
- Section 58.106(a-1)
- Subchapter C, Chapter 58

**EFFECTIVE DATE**

September 1, 2017.