

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 2200
By: Kolkhorst
Health & Human Services
4/2/2019
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Health and Human Services Commission (HHSC) uses an individual's background or criminal history record information (CHRI) based on a person's fingerprints to help with decisions related to hiring, volunteers, licensees, direct-care contracting, and other areas.

The Federal Bureau of Investigation (FBI) recently communicated to the Department of Public Safety of the State of Texas that state law must include explicit statutory authority to a specific state agency to allow that agency access to the CHRI. Without statutory changes to explicitly name HHSC as an agency authorized to obtain CHRI information for purposes of conducting background checks, HHSC will lose the authority to access this information. This would mean the agency might not be aware of criminal instances in someone's past that could jeopardize the health and safety of Texans served in our state-operated facilities, the facilities we regulate, and other vulnerable Texans who interact with the agency.

Solution:

S.B. 2200 would amend Chapter 411, Government Code, to include HHSC by name to ensure that HHSC will continue to be able to obtain accurate and comprehensive criminal history record information and be in compliance with the FBI. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 2200 amends current law relating to the authority of the Health and Human Services Commission to obtain criminal history record information.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of the Department of Family and Protective Services in SECTION 6 (Section 411.114, Government Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 6 (Section 411.114, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 411.110, Government Code, as follows:

Sec. 411.110. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES AND HEALTH AND HUMAN SERVICES COMMISSION. (a) Entitles the Department of State Health Services (DSHS) and the Health and Human Services Commission (HHSC), rather than DSHS, to obtain from the Department of Public Safety of the State of Texas (DPS) criminal history record information maintained by DPS that relates to certain persons. Redesignates existing text of Subdivision (4) as Subdivision (3). Makes nonsubstantive changes, redesignates existing text of Subdivision (5) as Subdivision (4), and replaces a reference to DSHS with a reference to HHSC. Deletes text of existing Subdivision (3) entitling DSHS and HHSC to obtain from DPS criminal history record information maintained by DPS that relates to a person who is an applicant for a license, the owner or

manager of an applicant for a massage establishment license, or a license holder under Chapter 455 (Massage Therapy), Occupations Code.

(b)-(f) Makes conforming changes to these subsections.

SECTION 2. Amends Section 411.1103, Government Code, as follows:

Sec. 411.1103. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES AND HEALTH AND HUMAN SERVICES COMMISSION. (a) Entitles DSHS and HHSC, rather than DSHS, to obtain from DPS criminal history record information maintained by DPS that relates to a certain person, including a person who contracts or may contract to provide goods or services to DSHS or HHSC, as applicable, rather than to DSHS, at a state hospital or an employee of or applicant for employment with that person.

(b)-(e) Makes conforming changes to these subsections.

SECTION 3. Amends Section 411.1105, Government Code, as follows:

Sec. 411.1105. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES AND HEALTH AND HUMAN SERVICES COMMISSION. Makes conforming changes to this section.

SECTION 4. Amends Section 411.1131, Government Code, as follows:

Sec. 411.1131. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: HEALTH AND HUMAN SERVICES COMMISSION. (a) Entitles HHSC, rather than the Department of Assistive and Rehabilitative Services (DARS), to obtain from DPS criminal history record information maintained by DPS that relates to a person who is an applicant for a staff position at an outdoor training program for children who are deaf or hard of hearing conducted by a private entity through a contract with HHSC, rather than DARS, in accordance with Section 81.013 (Private Outdoor Training Programs For Children Who are Deaf or Hard of Hearing), Human Resources Code.

(b)-(c) Makes conforming changes to these subsections.

SECTION 5. Amends the heading to Section 411.114, Government Code, to read as follows:

Sec. 411.114. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES AND HEALTH AND HUMAN SERVICES COMMISSION.

SECTION 6. Amends Sections 411.114(a), (b), and (c), Government Code, as follows:

(a)(1) Deletes existing text providing that the definition of Department of Family and Protective Services (DFPS) for purposes of this subsection includes HHSC with respect to a function transferred to HHSC under Subchapter A-1 (Consolidation of Health and Human Services System), Chapter 531, and renumbers the following subparagraph accordingly. Provides that "person with a disability" has the meaning assigned by, rather than means a disabled person as defined by, Section 48.002 (Definitions), Human Resources Code.

(2) Requires DFPS or HHSC, as applicable, rather than DFPS, to obtain from DPS criminal history record information maintained by DPS that relates to a person who is:

(A)-(C) makes no changes to these paragraphs;

(D) deletes existing text creating an exception under Subsection (d) (relating to criminal history record information that relates to an applicant for a position subject) and makes a conforming change;

(E)-(J) makes conforming changes to these paragraphs; or

(K)-(L) makes no changes to these paragraphs.

(3)-(6) Makes conforming and nonsubstantive changes to these subdivisions.

(7) Subject to Subdivision (8), DFPS or HHSC, as applicable, is not prohibited from releasing criminal history record information obtained under this subsection to:

(A) makes no changes to this paragraph;

(B) a child-placing agency listed in Subdivision (2) that is seeking to verify or approve a foster or adoptive home under procedures authorized by federal law, rather than by Section 471(a)(20)(A), Social Security Act (42 U.S.C. Section 671(a)(20)(A));

(C) makes a conforming change to this paragraph; or

(D) an elderly person or a person with a disability, rather than an elderly or disabled person, who is an alleged victim of abuse, neglect, or exploitation and who resides with the alleged perpetrator of that abuse, neglect, or exploitation if DFPS or HHSC, as applicable, rather than DFPS, determines that the release of information to the person is necessary to ensure the safety or welfare of the person, rather than determines that the release of information to the elderly or disabled person or adult is necessary to ensure the safety or welfare of the elderly or disabled person.

(8) Authorizes DFPS and HHSC to only release to a person described by Subdivision (7)(C) or (D) criminal history record information that DFPS or HHSC obtains from DPS's computerized criminal history system.

(b)-(c) Makes conforming changes to these subsections.

SECTION 7. Amends Section 411.1142, Government Code, as follows:

Sec. 411.1142. New heading: ACCESS TO CRIMINAL HISTORY RECORD: EARLY CHILDHOOD INTERVENTION PROGRAM WITHIN HEALTH AND HUMAN SERVICES COMMISSION. (a) Entitles the Early Childhood Intervention program within HHSC, rather than entitling the Interagency Council on Early Childhood Intervention (council), to obtain criminal history record information maintained by DPS, the Federal Bureau of Investigation identification division, or another law enforcement agency that relates to an employee or an applicant for permanent, temporary, or consultative employment or for volunteer positions whose employment or potential employment or volunteer position with the program, rather than the council, or a local provider involves the delivery of early childhood intervention services or involves direct interactions with or the opportunity to interact and associate with children.

(b) Prohibits criminal history record information obtained by HHSC, rather than by the council, under Subsection (a) from being released or disclosed to any person except on court order, with the consent of the person who is the subject of the criminal history record information, or as provided by Subsection (d).

(c)-(e) Makes conforming changes to these subsections.

SECTION 8. Amends Sections 411.1144(a) and (d), Government Code, as follows:

(a) Deletes existing text including the Department of Aging and Disability Services (DADS) among the agencies that are entitled to obtain from DPS criminal history record information maintained by DPS that relates to certain specified persons.

(d) Deletes existing text including DADS among the agencies that are entitled to obtain certain other criminal history record information.

SECTION 9. Amends Section 411.115, Government Code, as follows:

Sec. 411.115. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES AND HEALTH AND HUMAN SERVICES COMMISSION; LOCAL AUTHORITIES; COMMUNITY CENTERS. (a) Provides that "local mental health authority," "local intellectual and developmental disability authority," rather than "local mental retardation authority," and "community center" have the meanings assigned by Section 531.002 (Definitions), Health and Safety Code.

(b) Entitles DSHS, HHSC, a local mental health or intellectual and developmental disability authority, or a community center, as applicable, rather than entitling the Texas Department of Mental Health and Mental Retardation, a local mental health or mental retardation authority, or a community center, to obtain from DPS criminal history record information maintained by DPS that relates to certain persons. Makes conforming and nonsubstantive changes.

(d)-(e) Makes conforming changes to these subsections.

SECTION 10. Amends Section 411.117, Government Code, as follows:

Sec. 411.117. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: HEALTH AND HUMAN SERVICES COMMISSION AND TEXAS WORKFORCE COMMISSION. Entitles HHSC and the Texas Workforce Commission, rather than DARS, to obtain from DPS criminal history record information maintained by DPS that relates to certain persons. Makes conforming changes.

SECTION 11. Amends Section 411.122(d), Government Code, as follows:

(d) Provides that certain agencies are subject to this section (Access to Criminal History Record Information: Licensing or Regulatory Agency), including HHSC and DSHS, except as provided by Section 411.110, and agencies attached to HHSC, rather than attached to DSHS. Removes the Texas State Board of Podiatric Medical Examiners from the list of state agencies subject to this section and renumbers the subdivisions accordingly.

SECTION 12. Amends the heading to Section 411.1386, Government Code, to read as follows:

Sec. 411.1386. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: COURT CLERK; HEALTH AND HUMAN SERVICES COMMISSION; GUARDIANSHIPS.

SECTION 13. Amends Sections 411.1386(a-1), (a-2), (a-4), (e), and (i), Government Code, as follows:

(a-1) Requires HHSC to obtain from DPS criminal history record information maintained by DPS that relates to each individual who is or will be providing guardianship services to a ward of or referred by HHSC, including certain persons, rather than requires DADS to obtain from DPS criminal history record information maintained by DPS that relates to each individual who is or will be providing guardianship services to a ward of or referred by DADS, including certain persons. Makes conforming and nonsubstantive changes.

(a-2) Makes a conforming change to this subsection.

(a-4) Requires HHSC to provide the information obtained under Subsection (a-1) to certain persons, including the guardianship certification program of the Judicial Branch Certification Commission (JBCC) at the request of JBCC, rather than requires DADS to provide the information obtained under Subsection (a-1) to certain persons, including the guardianship certification program of the Judicial Branch Certification Commission (JBCC) at the request of the Public Safety Commission.

(e) Makes a conforming change to this subsection.

(i) Makes a conforming change to this subsection.

SECTION 14. Amends the heading to Section 411.13861, Government Code, to read as follows:

Sec. 411.13861. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION:
HEALTH AND HUMAN SERVICES COMMISSION.

SECTION 15. Amends Sections 411.13861(a), (b), (c), (d), and (f), Government Code, as follows:

(a) Entitles HHSC, rather than DADS, to obtain from DPS criminal history record information maintained by DPS that relates to certain persons. Makes conforming changes.

(b)-(d) Makes conforming changes to these subsections.

(f) Makes a conforming change to this subsection.

SECTION 16. Repealer: Section 411.114(d) (relating to authorizing HHSC to obtain from DPS criminal history record information related to an applicant for a position within DFPS that is transferred to HHSC), Government Code.

SECTION 17. Provides that, to the extent of any conflict, this Act prevails over another Act of the 86th Legislature, Regular Session, 2019, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 18. Effective date: upon passage or September 1, 2019.