

BILL ANALYSIS

C.S.H.B. 3202
By: Noble
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Education Agency has access to FBI and national crime databases through fingerprinting background checks. Public schools are required to use these background checks for all employees and contractors. Private schools, however, do not have the same access. C.S.H.B. 3202 seeks to ensure that certain private schools have access to important criminal background information concerning their employees and applicants for employment.

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 Department of Public Safety in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 3202 amends the Government Code to require the Department of Public Safety (DPS), on request by a private school, to determine whether the school is eligible under the federal National Child Protection Act of 1993 to obtain criminal history record information that relates to an employee or an applicant for employment. The bill authorizes a qualified private school to obtain state criminal history record information from DPS. The bill defines a "qualified private school" as a school that offers a course of instruction for students in Texas in one or more grades from prekindergarten through grade 12, is accredited by an organization recognized by the Texas Education Agency (TEA) or the Texas Private School Accreditation Commission (TEPSAC), and is determined to be eligible by DPS to obtain the information.

C.S.H.B. 3202 provides the following with respect to criminal history record information obtained by a qualified private school in the original form or any subsequent form:

- prohibits the information from being released to any person except the person who is the subject of the information;
- exempts the information from disclosure under state public information law; and
- requires the information to be destroyed by the school after the information is used for the authorized purpose.

The bill authorizes a qualified private school to obtain criminal history record information from the FBI identification division in accordance with applicable statutory provisions and prohibits such information obtained from the FBI from being released or disclosed except on court order.

C.S.H.B. 3202 amends the Education Code to authorize TEA to obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for

employment or current or former employee of a private school that is accredited by an accrediting agency that is a member of TEPSAC. The bill authorizes a qualified private school to take the following actions:

- require a person who is an employee of or an applicant for employment at the school to submit to a national criminal history record information review before being employed by the school;
- before or immediately after securing the services of such a person, submit or require the person to submit to DPS information that is required by DPS for obtaining national criminal history record information, which may include fingerprints and photographs;
- obtain all criminal history record information that relates to that person through the criminal history clearinghouse established by DPS;
- subscribe to the criminal history record information of the person; and
- require the person to pay any fees related to obtaining criminal history record information.

The bill requires DPS, on receipt of the information from the national criminal history record information review, to obtain the person's national criminal history record information and report the results through the criminal history clearinghouse. The bill requires a qualified private school, if the school requires a person to submit to such a review, to provide TEA with the name and information required by DPS for obtaining national criminal history record information, which may include fingerprints and photographs. The bill requires TEA to facilitate the submission of information to DPS to allow the school to obtain all criminal history record information that relates to the person through the criminal history clearinghouse.

C.S.H.B. 3202 authorizes DPS, in coordination with the commissioner of education, to adopt rules necessary to implement the bill's provisions regarding the national criminal history record information review of certain private school employees.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3202 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the introduced entitled TEA to obtain criminal history record information maintained by DPS about a person who is employed or is an applicant for employment by a private school that is accredited by an accrediting agency that is a member of TEPSAC, the substitute authorizes a qualified private school to obtain state criminal history record information from DPS. The substitute includes the following provisions, which did not appear in the introduced:

- a requirement for DPS, on request by a private school, to determine whether a school is eligible under federal law to obtain certain criminal history record information;
- a prohibition against criminal history record information obtained by a school being released to any person except the person who is the subject of the information;
- a provision establishing that such information is not subject to disclosure under state public information law;
- a requirement for the information to be destroyed by the school after its authorized use;
- an authorization for a school to obtain criminal history record information from the FBI;
- a prohibition against information obtained from the FBI being released or disclosed except on court order; and
- a provision defining "qualified private school."

The substitute does not include an authorization present in the introduced for an accredited private school to obtain the criminal history record information from TEA.

The substitute includes the following provisions absent from the introduced:

- a provision establishing that the bill's provisions regarding the national criminal history record review of certain private school employees applies to a person who is an employee of or an applicant for employment at a qualified private school;
- an authorization for a qualified private school to require an applicable person to submit to a national criminal history record information review before being employed by the school;
- an authorization for a qualified private school to submit or require an applicable person to submit to DPS certain information required by DPS for obtaining national criminal history record information;
- a requirement for DPS to obtain the person's information and report the results through a clearinghouse established by DPS;
- an authorization for the school to obtain information through the clearinghouse and to subscribe to the information of the applicable person;
- an authorization for the school to require the person to pay fees related to obtaining the information;
- a requirement for a school that requires the person to submit to review to provide TEA with the person's name and the information obtained by DPS;
- a requirement for TEA to facilitate the submission of information to DPS to allow the school to obtain information through the clearinghouse; and
- an authorization for DPS, in coordination with the commissioner of education, to adopt rules as necessary to implement the bill's provisions regarding the national criminal history record information review of certain private school employees.