

SUBJECT: Criminal background checks for certain school employees

COMMITTEE: Public Education — committee substitute recommended

VOTE: 5 ayes — Eissler, Zedler, Branch, Hochberg, Patrick
0 nays
4 absent — Delisi, Dutton, Mowery, Olivo

SENATE VOTE: On final passage, March 26 — 29-0

WITNESSES: For — June Baker, International Biometric Industry Association; Chad Wadsworth, Integrated Biometric Technologies; Elizabeth Rosales (*Registered, but did not testify*: Karen Amacker, Texas Association Against Sexual Assault; Michael J. Chatron, AGC Texas Building Branch; Brad Shields, Raptor Ware, Inc.)

Against — Dan Adams, Matt Moreland, Trish Mullins, Robert Sandifer, Texas Association for Justice and Legal Reform; Mike Mullins, Charles E. Subke (*Registered, but did not testify*: Ashley Adams, Helen Adams, Ray Adams, Beverly Roberts, Ken Stringer, Susan Stringer, Texas Association for Justice and Legal Reform)

On — Amy Beneski, Texas Association of School Administrators; Portia Bosse, Texas State Teachers Association; David Duty, Texas Association of School Boards; Rebecca Flores, Houston Independent School District; Myra Klinksiek, Texas Association of School Personnel Administrators; Mike Lesko, Texas Department of Public Safety; Elena Lincoln, Association of Texas Professional Educators; Doug Phillips, Texas Education Agency; Ted Melina Raab, Texas Federation of Teachers (*Registered, but did not testify*: Amanda Brownson, Texas School Alliance)

DIGEST: CSSB 9 would require national criminal background checks for public school employees and would require school boards to suspend or revoke employment if a person has been convicted of certain crimes. The bill

would establish an electronic criminal history clearinghouse within the Department of Public Safety to collect and disseminate criminal history information to appropriate parties.

Background checks. National criminal background checks (meaning criminal history records obtained from Department of Public Safety and the Federal Bureau of Investigation) would have to be conducted for:

- applicants for or current holders of teaching certificates who have not previously been subject to criminal background checks;
- charter school employees;
- non-certified and contract employees hired after January 1, 2008, if the contract employee has or will have continuing duties related to the contract service as well as direct contact with students; and
- substitute teachers. (By September 1, 2011, TEA would have to collect all criminal background checks for all substitute teachers.)

Name-based criminal background checks would have to be conducted for student teachers and volunteers who were not a student's parents or guardians, but would not have to be conducted if a volunteer was accompanied by a district personnel or were serving as a volunteer for only one occasion.

School districts, charter schools, or other potential employers could require a person to pay any fees related to obtaining these criminal history records. If an educator failed to comply with a deadline for submitting information, the State Board for Educator Certification (SBEC) could put his or her certificate on inactive status.

SBEC could suspend or revoke a person's certificate, impose other sanctions, or refuse to issue a certificate or permit to a person who had been convicted of a felony or misdemeanor offense relating to the duties and responsibilities of the education profession, including:

- an offense including moral turpitude;
- an offense involving a form of sexual or physical abuse of a minor or student or other illegal conduct in which the victim was a minor or student;
- a felony offense involving the possession, transfer, sale or distribution of or conspiracy to possess, transfer, sell, or distribute a

controlled substance;

- an offense involving the illegal transfer, appropriation, or use of school district funds or other school district property; or
- using fraudulent or unauthorized means to obtain or alter a teaching certificate or license.

SBEC would have to adopt a procedure for placing a notice of alleged misconduct on an educator's public certification records. The notice would have to be placed immediately if the alleged misconduct presented a risk to the health, safety, or welfare of a student or minor, as determined by the board. SBEC would have to notify the educator in writing when placing such a notice on the educator's certification records. SBEC would have to provide an opportunity for the educator to appeal this decision and, if it was determined that the educator had not engaged in this conduct, immediately remove the notice from the educator's certification records. This provision would take effect September 1, 2007, and would apply regardless of whether the conduct occurred or was committed before, on, or after that date.

Employee discharge. School districts, charter schools, or other potential employers would have to discharge or refuse to hire an employee or applicant for employment, or a contract employee, if the criminal background check showed that the employee or applicant had been convicted of one of the following offenses and the victim was under 18 years old or was enrolled in a public school:

- a felony offense under Title 5, Penal Code, which include offenses against the person, including homicide, kidnapping, and sexual assault;
- an offense on conviction of which the person is required to register as a sex offender; or
- an equivalent offense under the laws of another state or federal law.

These provisions would not apply to an offense committed more than 30 years before the effective date of the bill or the date the person's employment would begin and the employee or applicant had satisfied all terms of the court order entered on conviction.

SBEC could impose a sanction against an educator who did not discharge an employee or refuse to hire an applicant if the educator knew or should

have known, through a criminal background review, that the employee had been convicted of an offense cited in the bill.

Campus visitors. The bill would allow school districts to require a person who entered a district campus to display the person's driver's license or another form of identification containing the person's photograph issued by a governmental entity. School districts could create electronic databases to store information about visitors to campuses. This information could be used only for school security and could not be sold or otherwise disseminated to a third party.

Criminal justice clearinghouse. DPS would have to establish an electronic clearinghouse and subscription service to provide criminal history record information to a particular person entitled to receive criminal history record information and updates to a particular record to which the person had subscribed.

The clearinghouse would provide an individual's state and national criminal history information or a statement that the individual did not have a criminal history and the date any information was received from the FBI. This information would be confidential and could be provided only to persons authorized to receive it.

DPS would have to maintain a website for the administration of the clearinghouse and an electronic subscription service to provide notice of updates to a particular criminal history record to those who were entitled to receive it. This information would have to be provided within 48 hours after DPS became aware that a person's criminal history had changed. Subscribers who were no longer entitled to receive this information would have to notify DPS and cancel their subscription. A person who was the subject of the criminal history record information would have to consent to the release of the information.

DPS would have to notify SBEC of the arrest of any educator who had fingerprints on file with the department.

The bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2007. Criminal history record information would have to be collected and the criminal history clearinghouse established as soon as practicable after this date.

**SUPPORTERS
SAY:**

SB 9 would help protect the security of our children by expanding criminal background checks to include a broader range of individuals who come into contact with children at school, including non-certified staff, substitute and student teachers, and contract employees, as well as certified staff who were hired before 2003, when criminal background checks were required of all new certified employees.

The bill would help improve the level of communication between school districts, SBEC, DPS, and local law enforcement, so that these organizations could share information that could prevent acts by educators against children that appear all too often in communities throughout the state.

Since Texas began requiring national criminal background checks for candidates for educator certification in October, 2003, almost 200 candidates for certification have been found to have serious offenses on their records, including sexual misconduct and crimes against children. As recently as 2004-05, SBEC found that 35 certified educators were registered sex offenders.

The state can afford no more “cracks in the system.” SB 9 would provide the most up-to-date information to school districts about employee convictions that involve sex crimes, crimes against children, and drug crimes on an employee's record.

The cost of these background checks would be covered by modest fees of about \$50 per employee. This is about the same fee that new applicants for teacher certification pay to cover the cost of criminal background checks. While name-based background checks may be less expensive than fingerprinting, they are less reliable and more subject to identity theft and other fraud.

**OPPONENTS
SAY:**

SB 9 would cast too wide a net in an effort to ensure the safety of our children. Educators who have served in the profession for ten or twenty years should not be subjected to criminal background checks by the FBI.

The cost of conducting national criminal background checks would be passed on to those who could least afford it, particularly substitute and student teachers. The state should cover the cost of adopting a policy of conducting criminal background checks for all educators, rather than passing it on to educators.

OTHER
OPPONENTS
SAY:

The state could save money and get more complete information by contracting with private vendors to conduct criminal background checks instead of hiring state employees at DPS and TEA. Name-based criminal background checks would be less expensive than fingerprinting and national criminal background checks. DPS criminal background checks are likely to miss a significant number of criminal convictions because counties are not required to forward criminal records to the state.

NOTES:

The House committee substitute made numerous changes to the Senate-passed version of the bill, including deleting all references to deferred adjudication, creating an exception for offenses that occurred 30 years before the bill's effective date or the hiring date; authorizing the release of information to a consumer reporting agency governed by the Fair Credit Reporting Act; and adding exceptions for volunteers who were accompanied by school district personnel or volunteering for only one event.