

- SUBJECT:** Confidentiality of public school employee criminal background checks
- COMMITTEE:** Public Safety — favorable, without amendment
- VOTE:** 9 ayes — Merritt, Frost, Burnam, Driver, P. King, Lewis, Mallory Caraway, Rodriguez, Vo  
0 nays
- SENATE VOTE:** On final passage, May 6 — 31-0
- WITNESSES:** (*On House companion bill, HB 3419:*)  
For — Jennifer Canaday, Association of Texas Professional Educators; (*Registered, but did not testify:* Portia Bosse, Texas State Teachers Association; Ann Fickel, Texas Classroom Teachers Association; Dwight Harris, Texas AFT; Casey McCreary, Texas Association of School Administrators)  
  
Against — (*Registered, but did not testify:* Keith Elkins, Freedom of Information Foundation of Texas; Michael Schneider, Texas Association of Broadcasters)  
  
On — (*Registered, but did not testify:* Louis Beaty, Texas Department of Public Safety)
- BACKGROUND:** In 2007, the 80th Legislature enacted SB 7 by Shapiro, which requires national criminal background checks for public school employees and requires school boards to suspend or revoke employment if a person has been convicted of certain crimes. The bill also established an electronic criminal history clearinghouse within the Department of Public Safety to collect and disseminate criminal history information to appropriate parties.
- DIGEST:** SB 1858 would provide for confidentiality of personal information and fingerprint records collected as part of criminal background checks for public school employees. Information would be confidential regardless of whether the information had been stored in a format other than that of the original records.  
The bill would expand the definition of criminal history information to

include any identification information that could reveal the identity of a person undergoing a background check and information that would directly or indirectly indicate or imply that the person had a criminal record. The bill also would provide that the criminal history information would not refer to any specific document but to the information itself. The information would be used only to determine whether to issue, deny, suspend or cancel a teaching certificate and could be released only:

- to the person undergoing the background check;
- to the Texas Education Agency (TEA);
- to a local or regional education entity; or
- by a court order.

Criminal history information would not be subject to release through an open records request, and any agency or person with access to the information could not confirm for a person not eligible to receive the existence or nonexistence of criminal history record.

SB 1858 would require any school district, charter school, private school, service center, commercial transportation company, or shared services arrangement to destroy any criminal history record information by the earlier of:

- the first anniversary of the date when the information was originally obtained; or
- the date the information was used for its authorized purpose.

These entities would be allowed to charge employees requesting their own criminal history information a reasonable fee for copying the information.

The restrictions would apply to information collected, assembled, or maintained before, on, or after SB 1858 took effect. 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, 2009.

**SUPPORTERS  
SAY:**

SB 1858 would address what is believed to be a loophole in provisions to keep school background check records confidential and not subject to the Public Information (Open Records) Act. The situation arose when Austin Independent School District (AISD) tried to withhold employees' criminal history information, and the attorney general ruled that an exception no

longer applied because AISD had transferred the criminal history information out of its original format and into a new document. SB 1858 would provide protection to any school district that may have converted its records to another format.

SB 1858 would keep TEA and local school districts in compliance with federal regulations on confidentiality of personal records, which would prevent a loss of access to FBI information. School districts still would be able to receive information from the Department of Public Safety (DPS), but losing access to the FBI data could keep schools from being able to find out about possible out-of-state criminal records.

The public and the news media can obtain records of criminal convictions from a separate, public database maintained by DPS, so there already is a mechanism that would allow people to find out if a teacher had a criminal record without forcing school districts to release their own criminal history information. Also, the clearinghouse information that school districts receive is based on arrest records, not convictions, and seldom contains details on the outcome of each arrest. Allowing the public to discover which school employees may have been arrested without more detail would result in some innocent people being branded unfairly as criminals.

**OPPONENTS  
SAY:**

SB 1858 would continue legislative efforts to weaken the right of the public and the media to receive information collected at taxpayer expense and would reduce the transparency and accountability of school districts. Parents and others should be able to obtain information obtained through criminal background checks on teachers and other school employees and should receive a campus-by-campus report summary of convictions. The attorney general has ruled that some of these records still remain public, and access should be allowed.

Allowing access to school personnel records would provide a way for the media, parents, and the public to double-check the accuracy of the information and to determine whether school districts are following state policy on the background checks. If clearinghouse records are incomplete, districts should find other sources of information on criminal history and allow public access so others can identify mistakes.

NOTES: The House companion bill, HB 3419 by Patrick, passed the House by 107-32 on the Local, Consent, and Resolutions Calendar on May 15 and was referred to the Senate State Affairs Committee on May 19.