

- SUBJECT:** Fee-exempt access to criminal history records by certain entities
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth
0 nays
1 absent — Hughes
- SENATE VOTE:** On final passage, April 23 — 31-0
- WITNESSES:** (*On House companion bill, HB 2613*)
For — Leonard Clemens, and Ruben Villegas, Dallas County Public Defenders Office; (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Rebecca Bernhardt, Texas Defender Service; Kristin Etter, Texas Criminal Defense Lawyers Association; Seth Mitchell, Bexar County)
Against — None
On — Alexander Bunin, Harris County Public Defenders Office
- BACKGROUND:** Government Code, sec. 411.082 states that the Texas Department of Public Safety (DPS) may charge a person a fee for processing inquiries for criminal history record information. It may not charge a fee to an entity that is not primarily a criminal justice agency.

Transportation Code, ch. 431, subch. D provides for creation of local government corporations to aid and act on behalf of one or more local governments to accomplish any governmental purpose.
- DIGEST:** **Access by criminal defense entities.** SB 1044 would amend Government Code, sec. 411.082 to prevent DPS from charging a fee for processing criminal history record inquiries from a criminal justice agency, the office of capital writs, or a public defender's office.

The bill would allow the office of capital writs and a public defender's office to obtain criminal history record information from DPS that related to a criminal case in which an attorney compensated by the office of capital writs or by the public defender's office had been appointed.

Access by local government corporations. The bill would allow local government corporations created under Transportation Code, ch. 431, subch. D for governmental purposes relating to criminal identification activities, including forensic analysis, to obtain criminal history record information from DPS. This information would need to relate to:

- an employee or an applicant for employment with the local government corporation;
- a consultant, intern, or volunteer, or applicant for these positions for the local government corporation;
- a person who proposed to enter into a contract with or had a contract with the local government corporation to perform services for or supply goods to the local government corporation; or
- an employee or subcontractor, or applicant for these positions, for a contractor that provided services to the local government corporation.

Information obtained by a local government corporation under the bill could not be released or disclosed to any person except on a court order or with consent of the person who was the subject of the information. The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

Access by criminal defense entities. SB 1044 would allow public defense entities to have the same access to criminal history record information that prosecutors currently have. The Supreme Court has held that a defense attorney cannot effectively represent a client unless the attorney has done a full background check on the client. Often it is necessary to perform a criminal background check on witnesses in a case. This bill would assist in effective representation by defense attorneys by providing public defense entities the same opportunities and the same information that prosecutors have access to in a case without requiring them to pay a fee for that access.

Concerns about the effectiveness of the bill are misplaced. Only 20 entities would be affected by this bill and the fiscal note indicates no significant impact would be created by these audits. The bill would put defense attorneys and prosecutors on equal ground. Suggested workarounds that

involve obtaining discovery from prosecutors would be more inefficient than just allowing these entities direct access. Prosecutors should not be forced to act as a middle-man in allowing defenders to effectively represent their clients, and could create delays and problems in providing the records. Defense attorneys should access this information directly.

Appointed attorneys occupy a more complicated place in the criminal justice system than public defenders and attorneys in the office of capital writs. Allowing appointed attorneys the same access could create problems in terms of DPS audits of entities with access to records. The bill is intended only to address employees of public defense entities and would be a good first step toward access to these records.

Access by local government corporations. The bill would allow local government corporations who do work for police departments to perform background checks more efficiently. The City of Houston Police Department, for example, uses a local government corporation for their forensic science work. Because of the sensitive nature of its work, this corporation needs the same ability as a government agency to use DPS information for criminal background checks, and this bill would provide them that access, ensuring the safety and security of similar corporations.

OPPONENTS
SAY:

Access by criminal defense entities. SB 1044 would cause more problems than it would solve and would not be the most efficient way to provide access to the information public defenders hope to access. In order to obtain secure access to criminal history records maintained by DPS, public defenders would need to agree to allow DPS audits of all their records. They would also be unable to disclose any secure information obtained from DPS, which would mitigate any potential benefit derived from accessing the information. Defense attorneys would not, for example, be able to use secure information in open court to impeach witnesses. Rather than providing fee-exempt access to DPS information, defense entities should seek a solution in which these records become a mandatory part of discovery that they could obtain from prosecutors.

The bill should provide the same access to appointed attorneys in rural counties with no public defender's office. The same concerns for public defenders who are part of a public defender's office apply to attorneys who are appointed by a court to represent indigent clients outside of a public defender's office. These attorneys also should receive fee-exempt access to these records to more effectively represent their clients.