

## **BILL ANALYSIS**

Senate Research Center

H.B. 961  
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Criminal Justice  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

A person's juvenile case is subject to automatic restriction when the individual turns 21 years of age and the case did not include violent or habitual felony conduct or result in the minor being certified for trial in criminal court.

H.B. 961 lowers the age requirement to 17 years of age and removes the provision that excludes individuals who were granted deferred adjudication for or convicted of a felony or a misdemeanor punishable by confinement in jail for an offense committed after the person became 17 years of age.

Texas law allows a court to order the sealing of records for someone who is at least 21 years of age and has not been convicted of a felony after reaching age 17, among other requirements.

H.B. 961 would allow youth 19 years of age or older to have his or her records sealed, provided the other requirements are met.

H.B. 961 amends current law relating to the sealing of and restricting access to juvenile records of adjudications of delinquent conduct or conduct indicating a need for supervision and to the confidentiality of records of certain misdemeanor convictions of a child.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 44, Code of Criminal Procedure, by adding Article 44.2811, as follows:

Art. 44.2811. RECORDS RELATING TO CHILDREN CONVICTED OF FINE-ONLY MISDEMEANORS. Provides that all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense are confidential and prohibits them from being disclosed to the public except as provided under Article 45.0217(b). Provides that all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child whose conviction for a fine-only misdemeanor other than a traffic offense is affirmed are confidential upon satisfaction of the judgment and are prohibited from being disclosed to the public except as provided under Article 45.0217(b).

SECTION 2. Amends Subchapter B, Chapter 45, Code of Criminal Procedure, by adding Article 45.0217, as follows:

Art. 45.0217. CONFIDENTIAL RECORDS RELATED TO THE CONVICTION OF A CHILD. (a) Provides that except as provided by Article 15.27 (Notification to Schools Required) and Subsection (b), all records and files, including those held by law

enforcement, and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense are confidential and are prohibited from being disclosed to the public.

(b) Authorizes information subject to Subsection (a) to be open to inspection only by:

- (1) judges or court staff;
- (2) a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082 (Definitions), Government Code;
- (3) the Department of Public Safety of the State of Texas (DPS);
- (4) an attorney for a party to the proceeding;
- (5) the child defendant; or
- (6) the defendant's parent, guardian, or managing conservator.

SECTION 3. Amends Section 58.003(c), Family Code, as follows:

(c) Authorizes a court, subject to Subsection (b) (relating to prohibiting a court from ordering the sealing of the records of a person who has received a determinate sentence for engaging in certain delinquent conduct or certain habitual felony conduct), to order the sealing of records concerning a person adjudicated as having engaged in delinquent conduct that violated a penal law of the grade of felony only if:

- (1) the person is 19 years of age or older, rather than 21 years of age or older; and
- (2)-(4) Makes no changes to these subdivisions.

SECTION 4. Amends Subchapter A, Chapter 58, Family Code, by adding Section 58.00711, as follows:

Sec. 58.00711. RECORDS RELATING TO CHILDREN CONVICTED OF FINE-ONLY MISDEMEANORS. Provides that except as provided by Article 45.0217(b), Code of Criminal Procedure, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for a fine-only misdemeanor offense other than a traffic offense are confidential and are prohibited from be disclosed to the public.

SECTION 5. Amends Section 58.203(a), Family Code, as follows:

(a) Requires DPS to certify to the juvenile probation department to which a referral was made that resulted in information being submitted to the juvenile justice information system that the records relating to a person's juvenile case are subject to automatic restriction of access if:

- (1) the person is at least 17 years of age, rather than at least 21 years of age; and
- (2)-(3) Makes no changes to these subdivisions.

Deletes existing Subdivision (4) requiring DPS to certify to the juvenile probation department to which a referral was made that resulted in information being submitted to the juvenile justice information system that the records relating to a person's juvenile case are subject to automatic restriction of access if DPS has not received a report in its criminal history system that the person was granted

deferred adjudication for or convicted of a felony or a misdemeanor punishable by confinement in jail for an offense committed after the person became 17 years of age.

SECTION 6. Amends Section 58.208, Family Code, as follows:

Sec. 58.208. INFORMATION TO CHILD ON DISCHARGE. Requires the appropriate juvenile justice official, on the final discharge of a child from the juvenile system or on the last official action in the case, if there is no adjudication, to provide to the child certain items, including a statement that if the child wishes to receive notification of an action restricting access to the child's records under Section 58.207(a) (relating to juvenile court orders on certification), the child must before the child's 17th birthday, rather than before the child's 21st birthday, provide the juvenile probation department with a current address where the child can receive notification.

SECTION 7. Amends Section 58.209(a), Family Code, as follows:

(a) Requires a probation officer or an official at the Texas Youth Commission (TYC) reception center, when a child is placed on probation for an offense that may be eligible for automatic restricted access at age 17, rather than at age 21, or when a child is received by TYC on an indeterminate commitment, as soon as practicable, to explain the substance of the following information to the child:

(1)-(4) Makes no changes to these subdivisions;

(5) if the child's juvenile record is placed on restricted access when the child becomes 17 years of age, rather than when the child becomes 21 years of age, that access will be denied to employers, educational institutions, and others except for criminal justice agencies; and

(6) that restricted access does not require any action by the child or the child's family, including the filing of a petition or hiring of a lawyer, but occurs automatically at age 17.

Deletes existing text requiring a probation officer or an official at the TYC reception center, when a child is placed on probation for an offense that may be eligible for automatic restricted access at age 21, or when a child is received by TYC on an indeterminate commitment, as soon as practicable, that to have the child's juvenile record placed on restricted access at age 21, the child must not commit a felony or jailable misdemeanor, and receive deferred adjudication for or be convicted in adult court of a felony or jailable misdemeanor.

SECTION 8. Amends Section 411.0851(a), Government Code, as follows:

(a) Requires a private entity that compiles and disseminates for compensation criminal history record information to destroy and prohibits the entity from disseminating any information in the possession of the entity with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Article 55.02 (Procedure for Expunction), Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081(d) (relating to authorizing a person to petition the court that placed the defendant on deferred adjudication for an order of nondisclosure if certain conditions are present), rather than under Section 411.081(d) or (f-1) (relating to requiring the convicting court to immediately issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to a conviction of a child for a misdemeanor offense punishable by fine only that does not constitute conduct indicating a need for supervision).

SECTION 9. Amends the heading to Section 552.142, Government Code, to read as follows:

Sec. 552.142. EXCEPTION: RECORDS OF CERTAIN DEFERRED ADJUDICATIONS.

SECTION 10. Amends Section 552.142(a), Government Code, as follows:

(a) Provides that information is excepted from the requirements of Section 552.021 (Availability of Public Information) if an order of nondisclosure with respect to the information has been issued under Section 411.081(d), rather than under Section 411.081(d) or (f-1).

SECTION 11. Amends Section 552.1425(a), Government Code, as follows:

(a) Prohibits a private entity that compiles and disseminates for compensation criminal history record information from compiling or disseminating information with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081(d), rather than under Section 411.081(d) or (f-1).

SECTION 12. Repealers: Sections 411.081(f-1) and (j) (relating to authorizing a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure under Subsection (f-1) only to certain agencies or entities), Government Code.

SECTION 13. Provides that Sections 58.003(c), 58.203(a), 58.208, and 58.209(a), Family Code, as amended by this Act, apply to the sealing of and restricting access to records in the adjudication of a juvenile case on or after the effective date of this Act, regardless of whether the adjudication occurred before, on, or after the effective date of this Act.

SECTION 14. Provides that Articles 44.2811 and 45.0217, Code of Criminal Procedure, and Section 58.00711, Family Code, as added by this Act, and Sections 411.0851(a), 552.142, and 552.1425(a), Government Code, as amended by this Act, apply to convictions before, on, or after the effective date of this Act.

SECTION 15. Effective date: upon passage or September 1, 2011.