

SUBJECT: Volunteer services access to criminal history record information

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 5 ayes — Oakley, Bailey, Allen, Edwards, Madden
0 nays
4 absent — Carter, Driver, Luna, McCoulskey

SENATE VOTE: On final passage, March 22 — voice vote

WITNESSES: For — Mary Jo Dean, Texas Association of Volunteer Centers; Judge Marshall Gandy
Against — None

BACKGROUND: The 73rd Legislature created a pilot program allowing the Volunteer Center of Dallas to access criminal conviction histories on potential volunteers and employees who would perform services in a residence, handle money or care for a child, an elderly person or a person who is mentally incompetent, physically disabled, ill or incapacitated.

A volunteer center is defined in the section on the Dallas Volunteer Center as a nonprofit, tax-exempt organization certified as a bona fide volunteer center by the Texas Department of Public Safety (DPS) whose primary purpose is to recruit and refer individual volunteers to other nonprofit groups in the area. The DPS has established rules governing the access and dissemination of the criminal history record information.

DIGEST: CSSB 42 would make the criminal history authorization applicable to all volunteer centers meeting the statutory definition and expand the information that could be obtained. The bill would delete language that allows volunteer center access only to conviction information and not other criminal history record information and also delete a section of the Government Code that prevented access by a volunteer center to FBI criminal history record information.

The DPS could charge a fee to a volunteer center to cover the direct costs of administering this program. Subject to DPS approval, two or more volunteer centers could share technical and staff resources in the development of services for the dissemination of criminal history record information.

A volunteer center would not be liable for damages, except in the case of gross negligence or intentional misconduct, arising from the release or use of information or failure to release or use information or obtain information.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

CSSB 42 would extend criminal history access to all volunteer centers in the state, allow access to criminal record history information beyond only conviction information, allow access to federal criminal history information, and provide the centers with limited immunity.

The Volunteer Center of Dallas has exhibited great success in preventing potentially dangerous applicants from volunteering for its client agencies, and as a result, a number of volunteer centers around the state have expressed interest in performing criminal history checks for their client agencies. The Volunteer Center of Dallas serves 85 nonprofit agencies with vulnerable clients, such as child advocacy centers, Girl Scouts and Boy Scouts, YMCA and emergency shelters. Approximately two-thirds of the clients that use this service are youth-serving, while one-third serve the retarded and mentally ill.

The center has run checks on approximately 15,000 potential applicants and in 2 percent of the cases detected DWI, drug and child molestation convictions. By performing these criminal conviction checks, the Volunteer Center prevented five convicted child molesters from volunteering in youth-oriented organizations. The 19 other volunteer centers in Texas should be allowed to protect their vulnerable populations as well.

The bill would also allow access to criminal record history information beyond just the conviction information that can be accessed now. This change is necessary to allow the volunteer center to completely protect its

client agencies from dangerous volunteers and employees. Unfortunately, many courts defer adjudication for first-time child molesters. This information would not turn up in a check for convictions, but would be critical information for a Girl Scout or Boy Scout group looking for potential volunteers or employees.

Along the same lines, the volunteer centers need access to national criminal history record information obtained through the FBI to fully protect their client agencies. This access is critical due to the mobility and often transient lifestyle of child molesters and other abusive individuals. Allowing this access to volunteer centers would afford the volunteer centers the same access afforded to private schools and the Child Watch Programs which are also non-governmental entities serving vulnerable populations.

Granting limited immunity to volunteer centers would encourage volunteer centers to perform the critical duty of obtaining and transmitting criminal history information to nonprofit client agencies. In addition, limited immunity is appropriate because the volunteer center serves only as a conduit of information and does not make decisions based on the criminal information. Moreover, the DPS approves the process by which volunteer centers and agencies can access the information.

The process requires the potential volunteer to give written consent to the criminal history check. In addition, the agencies are trained on appropriate screening procedures and must shred the criminal history information documents after a decision has been made. The volunteer center performs an audit to make sure the agencies comply with all of the rules. As long as all rules are being followed, the volunteer center should be granted immunity.

The bill would also allow volunteer centers to share technical and staff resources with the approval of DPS. Sharing these resources would minimize capital and operation expenses for the non-profit community, and would minimize the number of volunteer center interfaces with DPS, saving administrative costs for the state.

OPPONENTS
SAY:

The number of public and private entities authorized to access criminal history information is constantly expanding, along with the technology that links information sources. The state should be wary of continuing to authorize expanded access to information that can be misused and misinterpreted.

NOTES:

The committee substitute clarified the actions for which the volunteer centers would be granted immunity.