

SUBJECT: Permitting background checks for state information technologies personnel

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 7 ayes — Marchant, Madden, J. Davis, B. Cook, Elkins, Gattis, Goodman

0 nays

2 absent — Lewis, Villarreal

WITNESSES: For — None

Against — None

On — (*On original bill:*) Renee Mauzy, Department of Information Resources; (*Registered, but did not testify:*) Mel Mireles, Department of Information Resources (On committee substitute:) Carl Reynolds, Texas Department of Criminal Justice; (*Registered, but did not testify:*) Renee Mauzy, Department of Information Resources

BACKGROUND: State agencies hold sensitive security information such as criminal background records, child support records that include confidential financial data, personal credit card information from Texas Online, and security information at the West Texas Disaster and Recovery Operations Center at Angelo State University. Some state agencies have specific statutory authority to conduct criminal background checks, while others do not. The Department of Information Resources (DIR) recommended in a 2002 report that the Legislature consider authorizing state agencies to obtain criminal background checks for personnel with access to sensitive information resources technologies.

NCIC is the National Crime Information Center and the Texas Crime Information Center (TCIC) is its state counterpart. These databases index criminal records and are the primary sources for criminal background checks. DPS can access NCIC records, under certain conditions, by submitting the background check to the Federal Bureau of Investigation (FBI) under an interagency agreement.

**DIGEST:** CSHB 1075 would add sec. 411.1405 to the Government Code, authorizing state agencies to obtain criminal background checks from the Department of Public Safety (DPS) on personnel with access to information resources technologies other than desktop computers and telephones (e.g., computer servers, networks). Employees, applicants for employment, contractors, subcontractors, interns, and volunteers would be affected. The DPS background check could include records from the FBI.

An agency would be prohibited from disclosing criminal background information, or documents derived from it, except by court order, with the consent of the subject, or to the affected contractor or subcontractor, subject to FBI disclosure requirements. The agency also would be responsible for destroying the information obtained under this section after making its personnel decision.

Before accessing criminal background information, agencies would have to adopt policies and procedures to ensure fairness in the hiring process. An agency could not disqualify automatically an individual from employment based on findings from a background check, and an agency also would have to take the following into account when evaluating such candidates:

- specific job duties;
- the number and nature of offenses committed;
- time elapsed between the offense and the employment decision;
- rehabilitation efforts; and
- accuracy of the information contained in the application.

The attorney general would be required to review the agencies' policies and procedures could charge the agency a fee to cover the cost of doing so.

More specific statutes would prevail over this section in the case of conflict, including section 411.089, which grants broad access to criminal justice agencies regarding criminal history record information.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

With the increased vulnerability of information systems to misuse and cyberterrorism, state agencies need the authority to safeguard their information resources technologies by considering the criminal background of employees who access them. Basic information about an arrest already is a matter of public record. Authorizing agencies to seek DPS assistance in conducting background checks through TCIC and NCIC would make the process more convenient since these databases consolidate the information.

CSHB 1075 would include substantial due process protections so that criminal background information would not be used in discriminatory fashion or as the sole factor in an agency's hiring decision. The bill would balance effectively privacy concerns with individual privacy rights.

The authority that some state agencies already have to conduct criminal background checks is, in some cases, more strict than this bill would permit. CSHB 1075 would preserve the current authority of these agencies. It also would help address interagency differences in criminal background requirements for state employees, particularly those working on projects under multi-agency jurisdiction.

The language of the bill would meet FBI requirements for federal background checks using the NCIC.

**OPPONENTS  
SAY:**

After offenders have paid their debt to society, their criminal record still can prevent their future employment, particularly in a field as broad as information resources technologies for an employer as large as the state government. This bill would target all information resources personnel with access to equipment other than desktop computers and telephones, which is too broad. It more narrowly should address only personnel with access to sensitive information resources technologies.

Criminal background checks can be used to discriminate, even when personnel decisions are based on factors other than criminal record. Additionally, there is a clear need for employers to maintain confidentiality of sensitive information to protect employees' privacy rights.

Public records contain criminal records that should have been expunged, both on the federal and state level. Human error, processing backlogs, and

incomplete information can hinder the expunction process. When these records erroneously turn up in background checks, they could have a negative, unwarranted impact on an individual's attractiveness to state employers.

**NOTES:**

The committee substitute differs from the bill as introduced in that it would delete a provision allowing agencies to obtain a background check from other governmental entities, aside from DPS. It would designate that the agency could not disclose documents derived from criminal background information and would revise the disclosure exceptions to meet FBI requirements. It would specify that agencies had a responsibility to destroy criminal history records only if obtained under this section and that Government Code, sec. 411.089, would prevail over these provisions in case of a conflict.