

SUBJECT: Requiring criminal background checks for university faculty and staff

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 7 ayes — Branch, Alonzo, Berman, Howard, McCall, Patrick, Rose

0 nays

1 present, not voting — Castro

1 absent — Cohen

SENATE VOTE: On final passage, April 28 — 29-2 (Fraser, Zaffirini)

WITNESSES: No public hearing

BACKGROUND: Government Code, sec. 411.081(i) provides exceptions to the general prohibition against the Department of Public Safety (DPS) sharing criminal history record information with non-criminal justice agencies or entities and allows for the release of this information to groups that regulate or license professions, such as doctors, lawyers, nurses, or accountants or oversee those in health care, youth services, firefighting, or banking.

In 2007, the 80th Legislature enacted SB 9 by Shapiro, which requires national criminal background checks for public school employees and would require school boards to suspend or revoke employment if a person has been convicted of certain crimes.

SB 9 also amended Government Code, sec. 411.081(i) to allow DPS to release information to the Texas Education Agency and added Government Code, sec. 411.0845 to establish a DPS electronic criminal history clearinghouse to collect and disseminate criminal history information to appropriate parties.

DIGEST: CSSB 2046 would require institutions of higher education to conduct

national criminal background checks for all new employees and for current employees who were promoted or transferred.

The bill would not apply to applicants or employers who were or would be enrolled as students, but the college or university would be allowed to conduct criminal background checks for students applying for a security-sensitive position.

CSSB 2046 would require that a college or university subscribe to either:

- the DPS criminal history clearinghouse; or
- a private vendor that offered criminal background history comparable to the DPS clearinghouse.

Pre-employment screening. The college or university would be required to condition any offer of employment upon receiving acceptable criminal background history on an applicant and would be required to reject any applicant who:

- failed to consent to a criminal history background check or provide fingerprints;
- had been convicted of a first- or second-degree or capital felony; or
- had been convicted of an offense that required registration as a sex offender.

CSSB 2046 would permit further analysis of the criminal history record for other convictions and arrests and would permit the employment of someone with a conviction of a state jail or third-degree felony if the applicant was:

- recommended by the person in charge of the department or division hiring the applicant; and
- approved by the chief executive officer of the college or university or the officer's designate.

A college or university would be required to reject an applicant who knowingly failed to provide or falsified criminal history record information on the application. An applicant would be required to report

an arrest after the submission of the application and before a decision was made whether to hire the applicant.

Any decision to reject an application based on a failure to report or falsify criminal background information would not require further analysis of the criminal offense.

Current employees. The college or university would be required to conduct a criminal background record check on a current employee who was being considered for a promotion or transfer. The bill would allow the college or university to conduct additional criminal history background checks they deemed necessary to maintain the integrity of the faculty and staff.

Other provisions would allow the college or university to take disciplinary action, including termination, against an employee who falsified criminal background information on an application for employment, promotion, or transfer. This action could be taken without a further criminal offense analysis.

CSSB 2046 also would require an employee to report to a supervisor within 24 hours, or the earliest practical opportunity after that 24-hour period, any arrest, charge, or conviction, other than for a misdemeanor traffic offense punishable by a fine only. The supervisor would be required to report the information to a department or division head and to the human resources department.

Failure to report arrests, charges or convictions could be subject to disciplinary action, including termination.

The human resources department or the provost or provost's designee, in cases involving faculty, would be required to conduct a criminal offense analysis and to make a recommendation of appropriate disciplinary action, which could include termination of employment. The college or university would be allowed to suspend the employee with pay pending the administrative review of any arrest, charge, or conviction.

Criminal offense analysis. CSSB 2046 would require a college or university to conduct a criminal offense analysis before rejecting an application for employment or taking disciplinary action against an employee on the basis of a criminal conviction or arrest. An analysis would not be required in the case of certain felonies and offenses requiring automatic rejection of an application.

The criminal offense analysis would be required to consider such factors as the:

- nature and gravity of the offense;
- amount of time that has passed since the arrest, conviction or the completion of the sentence;
- nature of the job sought or held;
- number of convictions or arrests; and
- institution's interest in protecting the safety and welfare of its employees, the general public, state property, and the integrity of the institution.

In cases of arrests, the criminal offense analysis would also have to consider:

- the employee's or applicant's explanation for the arrest;
- whether the arrest violates another rule, policy, or procedure, regardless of whether the arrest results in a conviction; or
- whether the applicant or employee is likely to have engaged in the misconduct that caused the arrest.

The analysis would also have to determine that the arrest or conviction was job-related and whether rejecting the application or taking disciplinary action for the arrest or conviction would be necessary for the proper administration of the college or university.

Other provisions. The bill would not permit an appeal by an applicant rejected because of a criminal background check unless the college or university discriminated against the applicant for an unlawful reason, including the applicant's race, color, national origin, religion, sex, disability, or age. The bill would require that any criminal history information collected for an applicant be destroyed once the position had been filled or when the applicant reported for the first day of work. For an employee, the information would have to be destroyed once the criminal offense analysis and any resulting administrative action had been taken. The bill also would repeal Education Code, sec. 51.215, which allows the college or university to access police records for applicants for security-sensitive positions.

CSSB 2046 would require each college and university governing board to

adopt rules to implement the policies as soon as practical after the bill took effect on September 1, 2009.

**SUPPORTERS
SAY:**

CSSB 2046 would provide for a uniform policy to ensure the safety of students, parents, faculty, staff, and the general public on college and university campuses in Texas. A March 2008 State Auditor's Office report found that not all higher education institutions authorized to conduct criminal background checks actually perform the investigations and that there is a widespread inconsistency on how the rules are applied. The bill would provide the necessary authority and incentives to conduct these necessary background checks.

CSSB 2046 would provide an equitable and comprehensive procedure to evaluate whether an arrest or conviction would disqualify an applicant, except for very serious offenses that should be grounds for automatic rejection. The college and university would have an opportunity to decide on a case-by-case basis whether those with criminal convictions could be hired for positions where they would not be a safety risk. Also, the bill would provide for accountability for current employees who ran afoul of the law. They would be required to report any arrest or conviction and would be given an opportunity for a review before any disciplinary action was taken.

Measures such as CSSB 2046 would help remind colleges and universities of their responsibility both to report crimes and conduct comprehensive background checks on all employees, including members of the faculty. There have been too many cases in the past when faculty accused of criminal misconduct were allowed to resign because of fears about litigation over privacy rights and libel. They were in turn hired by other institutions and the cover-up ended only when they are finally led away in handcuffs from their departmental offices.

**OPPONENTS
SAY:**

CSSB 2046 would not necessarily provide additional protection for public safety. Statistically, college campuses are safer than the surrounding city neighborhoods. It remains uncertain how many of crimes occurring on campus are committed by faculty or staff members.

The bill could provide an additional barrier to re-entry into the workplace by those who have successfully completed their sentences and paid their debt to society. This is not an insignificant consideration in Texas where almost one in 11 has a criminal record.

NOTES:

According to the Legislative Budget Board fiscal note, the bill could result in a \$1.9 million gain in the general revenue fund in fiscal 2010 and in each of the subsequent fiscal years from fees paid to DPS for the background checks.