

SUBJECT: Record confidentiality for juveniles involved in fine-only misdemeanors

COMMITTEE: Corrections — favorable, without amendment

VOTE: ***(On original bill:)***
5 ayes — Parker, White, Allen, J.D. Sheffield, Toth

0 nays

2 absent — Riddle, Rose

WITNESSES: ***(On original bill:)***
For — Benet Magnuson, Texas Criminal Justice Coalition; Jeanette Moll, Texas Public Policy Foundation; *(Registered, but did not testify:)* Yannis Banks, Texas NAACP; Leah Gonzalez, The National Association of Social Workers Texas Chapter; Lauren Rose, Texans Care For Children; Matt Simpson, ACLU of Texas; Michael Vitris, Texas Appleseed; Jennifer Erschabek; Susan Fenner; LaVelle Franklin)

Against — None

On — David Fraga and Randy Zamora, City of Houston; *(Registered, but did not testify:)* Jennifer Cafferty, Texas Judicial Council; Skylor Hearn, Texas Department of Public Safety)

BACKGROUND: Under Code of Criminal Procedure (CCP), art. 45.0217(a), justice and municipal court records, files, and information relating to children who are convicted of and have satisfied the judgment for fine-only misdemeanor offenses, other than traffic offenses, are confidential. Such records, including those held by law enforcement, may not be disclosed to the public. CCP, art. 45.0217(b) makes this otherwise confidential information available only to judges and court staff, criminal justice agencies, the Department of Public Safety, attorneys involved in the case, the child, and the child's parent or guardian.

Under CCP, art. 44.2811, which governs appeals, these records also are confidential, as well as records in cases in which a child is convicted and then the case is affirmed. Family Code, sec. 58.00711 makes confidential these same records in the state juvenile justice information system.

DIGEST:

(This analysis reflects the author's intended floor substitute.)

The proposed floor substitute for HB 528 would make confidential all records, files, and information in justice and municipal courts relating to a child who was charged with, found not guilty of, had a charge dismissed for, or was granted deferred disposition for a fine-only misdemeanor, other than a traffic offense. The bill would eliminate the current requirement that before confidentiality is granted in a case in which a child has been convicted, the judgment must be satisfied.

HB 528 would apply the same confidentiality requirements to juvenile justice information system records of these cases and to records of these cases for fine-only misdemeanors committed by children and appealed.

HB 528 would take effect January 1, 2014, and would apply offenses committed before, on, or after that date.

SUPPORTERS
SAY:

HB 528, as proposed in the floor substitute, is necessary to close a loophole in current law that makes the criminal court records of some, but not all, juveniles involved in fine-only misdemeanors confidential. Allowing some juvenile records to be public while others remain confidential is unfair, can put juveniles at risk, and works against the rehabilitation goals of the juvenile justice system.

In 2011, the 82nd Legislature revised the law dealing with access to the criminal records of juveniles to give them greater protection and more confidentiality. The revisions included making confidential the records of juveniles who were convicted by justice and municipal courts of fine-only misdemeanors, such as truancy and disorderly conduct, and who completed the terms of their sentence. However, due to an oversight, the revisions did not make confidential the records of juveniles who were charged only, not convicted, found not guilty, had charges dismissed, or were granted deferred disposition.

Some jurisdictions have interpreted current law to mean that personal information about these juveniles who are charged but never convicted must be accessible to the public. For example, in Harris County, personal identifying information in these cases is publicly available. However, other jurisdictions have opted to keep this information confidential. HB 528 would clear up this confusion and ensure that the state operate under a clear, uniform policy concerning these juvenile records.

HB 528 would close the loophole in current law by extending to all youths with cases involving fine-only misdemeanors the same confidentiality protections given to juvenile offenders involved in juvenile court and those who were convicted of fine-only misdemeanors and satisfied their judgments. This would treat juveniles equitably, ensuring that all were protected and had the opportunity to move forward without a public record after involvement with the courts. Keeping these records confidential, even though they are in a criminal court, would be consistent with the state's broad policy on juvenile records.

It would be unfair and burdensome to steer some juveniles to the state's expunction law to keep their information confidential. Confidentiality for juveniles is designed to give them blanket protections while they are involved with the court. Expunction is a time-consuming and expensive process that usually involves an attorney. Other juveniles do not have to seek expunction to keep their records out of the public arena, and such action should not be required of juveniles who are charged but never convicted of fine-only misdemeanors.

The overriding concern should be the proper handling of personal information of juveniles, not the collection of fines or possible incentives for juveniles to satisfy court requirements. Juvenile courts and probation departments are able to gain compliance with their requirements while juvenile records are confidential, and justice and municipal courts should be able to do the same.

HB 528 would not change current provisions that allow for appropriate access to juvenile records by courts and law enforcement officials.

**OPPONENTS
SAY:**

While well intended, HB 528, as proposed in the floor substitute, inappropriately would make confidential records of criminal cases, which generally are kept public. While juvenile case records are routinely confidential, those cases are in the civil, not criminal, system. It might be best to continue to maintain the access to criminal court records that current law provides.

Current law allowing records to be expunged could be used by youths involved in criminal courts and who were found not guilty, had their cases dismissed, or were granted deferred adjudication. If the expunction process is too onerous or has other problems, changes should be made to

those laws.

Removing the stipulation that judgments be satisfied before confidentiality is granted in cases with convictions could reduce incentives for youths to meet the terms of their sentences. Current law can work to hold out confidentiality as a carrot to juveniles to complete their sentences, which can include community service and fines. Without this incentive, some youths may be less inclined to meet court requirements. In addition, making records confidential after a conviction but before judgments were satisfied could make the collection of these fines difficult for cities and counties that use third-party collection agents.

NOTES:

The proposed floor substitute differs from the original bill, which was reported without amendment by the committee, as follows. The floor substitute would:

- keep confidential the records of children who were charged, found not guilty, had charges dismissed, or were granted deferred adjudication; and
- apply provisions dealing with confidentiality during appeals to those who were juveniles when a fine-only offense was committed, not just those who were juveniles when they were convicted.

The original bill would have extended current confidentiality provisions only to the records of children charged with offenses. It also would have taken immediate effect or been effective September 1, 2013, while the floor substitute would take effect January 1, 2014.

A duplicate bill, HB 497 by Hernandez Luna, is pending in the Corrections Committee.