

BILL ANALYSIS

Senate Research Center
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H.B. 4094
By: Klick (Uresti)
Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In the 84th Legislative Session, S.B. 206 made changes to Section 411.114, Government Code, which governs the release by the Department of Public Safety (DPS) of criminal history record information, including results from Federal Bureau of Investigations (FBI) fingerprint checks, to the Department of Family and Protective Services (DFPS). The changes removed a laundry list of the subjects on whom DFPS may obtain criminal history record information. Moreover, in the 84th Legislative Session, certain private entities were added to the list of organizations and individuals to whom DFPS is authorized to release criminal history record information.

The FBI disapproved of these changes and indicated that the subjects should be listed in statute, and that private entities should be removed from those to whom DFPS may disseminate FBI criminal history record information. H.B. 4094 thus adds the list of subjects back into statute and removes the authorization for dissemination of FBI criminal history record information to a private entity.

Moreover, H.B. 4094 makes changes to be in compliance with the Childcare Development Block Grant Act (CCDBG), which restricts new background checks every five years for certain populations.

H.B. 4094 also removes two-year background checks, as they are duplicative with information that will be available to DFPS from the FBI starting in February 2018—when the childcare licensing will be provided with any continual live criminal history information for any individual who has been fingerprinted for childcare licensing purposes.

Overall, H.B. 4094 would ensure compliance with FBI policies to allow DFPS to continue to access the FBI database. It would also update background check frequency to comply with the CCDBG to account for new technology. These measures would increase efficiency and reduce costs within DFPS.

H.B. 4094 amends current law relating to the access of criminal history record information by the Department of Family and Protective Services.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 4 (Section 42.056, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 411.114(a)(1), Government Code, by amending Paragraph (A) and adding Paragraph (A-1), to define "facility" and "Department of Family and Protective Services."

SECTION 2. Amends Sections 411.114(a)(2), (3), and (7), Government Code, as follows:

(2) Requires the Department of Family and Protective Services (DFPS) to obtain from the Texas Department of Public Safety (DPS) criminal history record

information maintained by DPS that relates to a person who is a person 14 years of age or older who will be regularly or frequently working or staying in a facility or family home, rather than in a child care facility or family home while children are being provided care, other than a child in the care of the home or facility or, except as provided by Subsection (d), an applicant selected for a position with DFPS, the duties of which include direct delivery of protective services to children, elderly persons, or persons with a disability.

(3) Provides that, in addition to the criminal history record information DFPS is required to obtain under Subdivision (2), DFPS is entitled to obtain from DPS criminal history record information maintained by DPS that relates to certain persons. Deletes existing text providing that DFPS is entitled to obtain from DPS criminal history record information maintained by DPS that relates to a person with respect to whom DFPS determines obtaining a criminal history record is necessary to ensure the safety or welfare of a child, elderly person, or person with a disability.

(7) Provides that DFPS is not prohibited from releasing criminal history record information obtained under this section to a child-placing agency, rather than a child-care facility, child-placing agency, or family home, listed in Subdivision (2) that is seeking to verify or approve a foster or adoptive home under procedures authorized by Section 471(a)(20)(A), Social Security Act (42 U.S.C. Section 671(a)(20)(A)), rather than employs or is considering employing the person who is the subject of the criminal history record information. Deletes existing text providing that DFPS is not prohibited from releasing criminal history record information obtained under this section to a person or business entity described by Subdivision (2)(E) who uses or intends to use the services of the volunteer or employs or is considering employing the person who is the subject of the criminal history record information or a person or business entity who uses or intends to use the volunteer services of or who employs or is considering employing the person who is the subject of the criminal history record if the release of the record is related to the purpose for which the record was obtained under Subdivision (3). Redesignates existing Paragraphs (E) and (F) as Paragraphs (C) and (D), respectively.

SECTION 3. Amends Section 411.114, Government Code, by adding Subsection (d), to authorize the Public Safety Commission, with respect to an applicant who is selected for employment for a function or in a division of DFPS that is transferred to the Health and Human Services Commission HHSC under Subchapter A-1 (Consolidation of Health and Human Services System), Chapter 531 (Health and Human Services Commission), to obtain from DPS criminal history record information maintained by DPS that relates to the applicant.

SECTION 4. Amends Section 42.056, Human Resources Code, effective January 1, 2018, by amending Subsections (a), (a-2), (a-5), (b), (b-1), and (g) and adding Subsections (a-3) and (b-2), as follows:

(a) Requires the director, owner, or operator of a facility or family home to submit to DFPS the names of certain individuals, including each person who provides care or supervision to children in the care of the facility, agency, or home under a contract with the facility, agency, or home, who must have background checks as described by this section and in accordance with rules adopted by the executive commissioner of HHSC (executive commissioner). Deletes existing text requiring the director, owner, or operator of a child-care facility, child-placing agency, or family home, in accordance with rules adopted by the executive commissioner, when applying to operate a child-care facility or child-placing agency or when listing or registering a family home and at least once during each 24 months after receiving a license, listing, registration, or certification of approval, to submit to DFPS for use in conducting background and criminal history checks, the name of certain individuals.

(a-2) Requires a person, in accordance with rules adopted by the executive commissioner, to submit a complete set of fingerprints, if the person is required to have a background check under Subsections (a)(1)-(7) (relating to individuals subject to a background check), the person resided in another state during the five years preceding the date the person's name was required to be submitted under Subsection (a), or the director, owner, or operator has reason to suspect that the person has a criminal history in another state. Deletes existing text requiring the director, owner, or operator of a residential child-care facility, listed or registered family home, group day-care home, day-care center, before-school or after-school program, or school-age program, in accordance with rules adopted by the executive commissioner, to submit a complete set of fingerprints of each person whose name is required to be submitted by the director, owner, or operator under Subsection (a), unless the person is only required to have the person's name submitted based on criteria specified by Subsection (a)(7) (relating to background checks of individuals 14 years of age or older who will regularly or frequently be staying or working at a facility, family home, or prospective adoptive home, while children are being provided care).

(a-3) Provides that Subsection (a-2)(1) (relating to a person submitting fingerprints if the person is required to have a background check under Subsections (a)(1)-(7)), rather than this subsection, does not apply to a family home that is subject to regulation by the department under Section 42.0523 (Listing of Relative Child-Care Providers).

(a-5) Authorizes the rules adopted by the executive commissioner under Subsection (a-2), rather than Subsections (a-2) and (a-4), to allow DFPS to waive the submission of fingerprints required by this section if DFPS has an active subscription to the Federal Bureau of Investigation's national rap back service for the person for whom is required, rather than if the date on which the current submission of fingerprints is required occurs before the second anniversary of a previous name-based criminal history check of the person.

(b) Requires DFPS to conduct background checks, rather than background and criminal history checks, using certain information, including any other registry, repository, or database required by federal law.

(b-1) Requires DFPS, for each person whose fingerprints are submitted under Subsection (a-2), rather than in addition to any other background or criminal history check conducted under Subsection (b), for each person whose fingerprints are submitted under Subsections (a-2) or (a-4), to conduct a state and Federal Bureau of Investigation (FBI) criminal check using certain methods.

(b-2) Provides that, for each person required to have a background check under Subsection (a), but who is not required to submit fingerprints for a Federal Bureau of Investigation's criminal history check under Subsection (a-2) the person is required to have a name-based check instead of a fingerprint check and the director, owner, or operator of the child-care facility, child-placing agency, or family home is required to submit the name of the person each 24 months after last submitting the person's name to DFPS for use in conducting a background check.

(g) Prohibits a person whose name is submitted under Subsection (a), except as otherwise provided by this subsection, from providing direct care or having direct access to a child in a facility or family home before the person's background check is completed, rather than background and criminal history checks under Subsections (b) and (b-1) are completed. Authorizes a person to be employed at a facility or family home and to provide direct care or have direct access to a child in the facility or family home before the person's criminal history check under Subsection (b-1) is completed if:

(1) makes no changes to this subdivision;

(2) the FBI fingerprint check, rather than state criminal history check, and the background check using DFPS's records of reported abuse and neglect have been

completed under Subsection (b), and the resulting information does not preclude the person from being present at the facility or family home; and

(3) the person does not have unsupervised access to any child in care, rather than the person's fingerprints are submitted as soon as possible, but not later than the 30th day after the earliest of the date on which the person first provides direct care to a child, has direct access to a child, or is hired.

SECTION 5. (a) Repealer: Section 411.114(a)(1)(E) (relating to the definition of "ward"), Government Code.

(b) Repealer, effective January 1, 2018: Section 42.056(a-4) (relating to certain individuals submitting a complete set of fingerprints of certain people whose names are required to be submitted), Human Resources Code.

SECTION 6. Effective date, except as otherwise provided by this Act: September 1, 2017.