

**Current Issues on Fingerprinting and
Criminal History Background Checks**

**25th Annual U.T. School Law Conference
Austin, Texas**

February 18, 2010

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I. Introduction

During the 2007 legislative session, Senate Bill 9 (“SB 9”) was passed to authorize and require background checks for those who have access to students and to ensure that individuals who have certain kinds of serious criminal history be removed from a public school setting. SB 9 requires that virtually anyone who has access to students must undergo a criminal history background check, including all school district employees, volunteers, substitutes, contractors and student teachers. The legislation specifically mandates that certified educators must submit fingerprints to the State Board for Educator Certification (“SBEC”) for a comprehensive, national criminal background check. The fingerprints are then stored in a criminal history clearinghouse maintained by the Department of Public Safety (“DPS”) so that any future criminal proceedings against an educator can be reported and acted upon.

The new requirements represent the latest step in a trend towards increasingly stringent background checks of individuals who have close contact with children. Prior to the passage of SB 9, only new applicants for certification were required to undergo a criminal history background check. Employer school districts had the authority to conduct a criminal history check, but the choice of whether or not to conduct the check and the thoroughness of the check was left to the discretion of the district. Many uncertified school district employees were never subject to a criminal history review. The requirements of SB 9 mandate uniform criminal history background checks for all school districts across the state and are meant to ensure that those with certain types of criminal history do not “slip through the cracks” and have continued access to public schools.

Since the implementation of the mandates of SB 9 on January 1, 2008, 517 school districts have submitted fingerprints of certified personnel, and all school districts have begun performing criminal background checks on non-certified personnel, contractors, volunteers and others. This paper will discuss some of the issues that have come up as a result of the fingerprinting effort, including what types of criminal history information is public information, background checks of contractors and volunteers, and how school districts and SBEC are dealing with educators who are revealed to have a criminal history.

II. The Fingerprinting Process for Certified Educators

Any educator who is employed by or is an applicant for employment by a public school district, open-enrollment charter school, or shared services arrangement and is required to hold a certificate issued by SBEC must be fingerprinted before September 1, 2011. Educators who submitted their fingerprints to SBEC in support of an application for certification since 2003 have already undergone a comprehensive criminal history check and are not required to re-submit their fingerprints. SBEC has adopted rules that set out a process to identify educators who are subject to the requirements of SB 9 and collect their fingerprints in an efficient manner. The rules provide as follows:

- Fingerprinting is conducted on a district-by-district basis.
- SBEC selects a district for fingerprinting and notifies the district of the requirement to submit fingerprints.
- Within 15 days of receiving notification, the district must forward names, email addresses, mailing address, and any other required information for all certified educators employed by the district at that time to SBEC.
- SBEC uses the information provided by the district to notify the educators in the district via email of the requirement to submit fingerprints. Educators in the selected district have 80 days from the date of the email notification to comply. If the fingerprints are not submitted within 25 days of the initial notice, SBEC sends a reminder notice to the affected educators.
- Educators who fail to submit their fingerprints within 80 days from the date of the email notification have their certificates placed on inactive status.¹

III. Public Information Act Issues

One of the first issues to arise with the implementation of fingerprinting was the question of what types of information obtained through the fingerprinting process would be subject to release under the Texas Public Information Act. Laws in existence at the time that SB 9 was put into place mandated that the criminal history record information itself was confidential and not subject to release. Tex. Gov't Code § 411.083(a). However, the law was not clear as to whether documents created by a school district in response to a criminal history background check were confidential. The issue was addressed by the legislature in 2009, when it enacted HB 2730. HB 2730 was the Department of Transportation Sunset Bill, but it included multiple provisions

¹ 19 Texas Administrative Code § 232.905