

CHAPTER 142

S.B. No. 496

AN ACT

relating to the authority of the Texas Department of Mental Health and Mental Retardation and community centers to obtain criminal conviction data relating to persons employed by a provider who contracts with the department or center.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Subsections (a) through (d), Section 2.28, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The department and the community centers established pursuant to this Act may receive conviction data from any law enforcement agency which is relevant to:

(1) a person to whom an offer of employment is made which would place him/her in direct contact with mentally ill patients or mentally retarded clients; or

(2) *an employee of a person who contracts with the department or a community center to provide residential services to mentally ill patients or mentally retarded clients who have been furloughed or discharged from a department facility if the employee's duties would place him/her in direct contact with the mentally ill patients or mentally retarded clients.*

(b) The department shall establish a uniform method of obtaining such conviction data which shall be applicable to all department facilities and community centers. Such uniform method shall require the submission to the Department of Public Safety or other law enforcement agency of either a complete set of fingerprints or the complete name of each person *for whom the department or a community center may obtain conviction data under Subsection (a) of this section* [~~to whom an offer of such employment is made~~]. If the department establishes a method of obtaining such data through the use of fingerprints and no relevant disqualifying record or other substantive information is discovered at the state or local law enforcement agency level, such fingerprints shall be directed to the Federal Bureau of Investigation for further information.

(c) Only conviction data which is relevant to the applicant's proposed employment *or to the person's current employment with a contractor* and collected pursuant to this section shall be provided to the department or community center. For purposes of this section, relevant information shall be defined exclusively as convictions related to any sexual offenses, drug related offenses, murder, theft, assault, battery, or any other crime involving personal injury or threat to another person. Information pertaining to any other crimes shall not be relevant to the inquiry of the department or community center, and the department or community center shall not be entitled to such nonrelevant information. The department and the community centers may deny employment to any person who makes application for such employment on or after September 1, 1983, in any case where it is determined that the previous criminal conviction or convictions of the applicant indicate that such applicant is not qualified or suitable. The department and the community centers may deny employment to an applicant who fails to provide a complete set of fingerprints, if that method of obtaining conviction data is established by the department.

(d) All conviction data received by the department and the community centers shall be for the exclusive use of the department and the community centers and shall be privileged and shall not be released or otherwise disclosed to any other person or agency *other than the contractor employing the person except on court order or the consent of the applicant or employee*. Immediately following the employment decision of the department with respect to the applicant *or the personnel action, if any, taken by the contractor with regard to the employee*, all such conviction data collected by the department relating to his or her application *or employment* shall be collected and destroyed by the department. Unauthorized release or disclosure of any conviction data received by the department or community centers shall be a second degree felony, as defined in Section 12.33, Penal Code.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 2, 1987, by the following vote: Yeas 25, Nays 0. Passed the House on May 14, 1987, by a non-record vote.

Approved May 21, 1987.

Effective 90 days after date of adjournment.