

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: HB 32

48th Legislature, 1st Session, 2007

Short Title: Delinquency Petition Notices to Schools

Sponsor(s): Representative Paul C. Bandy and Others

Analyst: David Harrell

Date: January 26, 2007

Bill Summary:

HB 32 enacts a new section in the *Delinquency Act* in the *Children's Code* to require the Children, Youth and Families Department (CYFD) immediately to notify the superintendent of the school district in which a child resides and the principal of any private school that a child attends when that child is the subject of a delinquency petition involving certain offenses. The offenses include such serious crimes as murder, assault to commit a violent felony, kidnapping, aggravated battery, shooting at a dwelling or vehicle, dangerous use of explosives, criminal sexual penetration or criminal sexual contact with a minor, aggravated stalking, robbery, aggravated burglary, aggravated arson, and child abuse that results in great bodily harm or death.

The bill further provides:

- that this required notification shall become part of the child's school record until the child obtains a diploma or GED, at which time the notice and any references to it must be purged; and
- that all reference to the delinquency petition is confidential and not subject to disclosure, except to authorized employees and agents of the school district or private school.

Finally, HB 32 requires CYFD and the Public Education Department (PED) to promulgate rules to implement these school notification procedures.

Fiscal Impact:

HB 32 makes no appropriation.

According to the analysis of HB 32 by the Administrative Office of the Courts, there will be minimal administrative costs; but the new statutory provisions "have the potential to increase caseloads in the courts, thus requiring additional resources"

Issues:

The provisions of HB 32 would seem to apply to a student who is considered a "youthful offender" under the *Delinquency Act* – that is, a child 14 to 18 years old at the time of the offense who is adjudicated for an offense such as those enumerated in the bill. As required elsewhere in this act, complaints alleging delinquency must be referred to Probation Services, which must conduct a preliminary inquiry to determine the best interests of the child and the public, perhaps referring the matter to another agency in an attempt to "obviate the necessity for filing a

petition.” The Children’s Court may file a petition alleging delinquency if the Children’s Court attorney, in consultation with Probation Services, determines that the filing of the petition is in the best interest of the public and the child. Except as otherwise provided in the *Children’s Code*, any child subject to the *Delinquency Act* has the same basic rights as an adult.

The CYFD analysis of HB 32 raises a number of legal issues with the bill, among them:

- that the bill conflicts with current statutes requiring CYFD to maintain the confidentiality of social records, with limited exceptions;
- that the notice sent to schools would contain only allegations, “when guilt (judgment and disposition) regarding those offenses has not been determined”;
- that the bill does not address the disposition of the notice if a child does not receive a diploma or GED; and
- that a child who is exonerated of charges may still have this notice in his or her education files even though statute requires that court proceedings are to be treated as if they never occurred once the records are sealed.

In a similar vein, the PED analysis of HB 32 identifies these issues with the bill, among others:

- that the bill does not provide consequences for non-reporting or a mechanism of expunging the notification of alleged delinquency when the child is determined to be non-delinquent, nor does it indicate the use that a school district or private school may make of the information;
- that the reporting requirement is likely to conflict with certain provisions of the state constitution and with the federal *Family Educational Rights and Privacy Act*; and
- that the bill “disregards the possibility of favorable adjudication or subsequent rehabilitation; instead the bill can be read to facilitate the discrimination against those children accused but not yet convicted of certain juvenile offenses.”

Related Bill:

SB 68 *School District Delinquency Petition Notices* (identical)