

BILL ANALYSIS

Senate Research Center

S.B. 1057
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Jurisprudence
10/8/2009
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under Section 698 (Access to Criminal History Records), Probate Code, county clerks are required to obtain criminal history records for persons serving as guardians, for proposed guardians, and for local guardianship program employees and volunteers who provide guardianship services to the program's wards. This requirement does not apply to family members, to attorneys, or to individuals who are or will be providing guardianship services to wards of the Department of Aging and Disability Services.

County clerks are authorized to obtain the criminal history record information by Section 411.1386 (Access to Criminal History Record Information: Court Clerk; Department of Aging and Disability Services; Guardianships), Government Code. The Guardianship Certification Board (GCB) also obtains criminal history record information on applicants for certification as authorized by Section 411.1386, Government Code. Eliminating the duplicative requirement will reduce costs for local guardianship programs and local governments.

S.B. 1057 amends current law relating to criminal history record information relating to persons who are certified to provide guardianship services.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 411.1386, Government Code, by amending Subsections (a)-(e) and adding Subsection(a-6), as follows:

(a) Requires the clerk of the county having venue over a proceeding for the appointment of a guardian under Chapter XIII (Guardianship), Texas Probate Code, except as provided by Subsections (a-1) (relating to the acquisition of criminal history record information by the Department of Aging and Disability Services), (a-5) (relating to the authorization of a copy of a person's criminal history record information before the hearing to appoint a guardian), and (a-6), to obtain from the Department of Public Safety of the State of Texas (DPS) criminal history record information maintained by DPS that relates to certain individuals.

(a-6) Provides that the clerk described by Subsection (a) is not required to obtain criminal history record information for a person who holds a certificate issued under Section 111.042 (Certification Required for Certain Guardians) or a provisional certificate issued under Section 111.0421 (Provisional Certificate) if the Guardianship Certification Board (GCB) conducted a criminal history check on the person before issuing or renewing the certificate. Requires GCB to provide to the clerk at the court's request the criminal history record information that was obtained from DPS or the Federal Bureau of Investigation (FBI).

(b) Provides that criminal history record information obtained by or provided to a clerk under Subsection (a), (a-5), or (a-6) is for the exclusive use of the court and is privileged and confidential.

(c) Makes conforming changes.

(d) Prohibits the criminal history record information from being released or otherwise disclosed to any person or agency except on court order, with the consent, rather than or the consent, of the person being investigated, or as authorized by Subsection (a-6) or Section 698(a-6), Texas Probate Code.

(e) Requires the court, as that term is defined by Section 601, Texas Probate Code, to use the information obtained or provided under Subsection (a), (a-4) (1), (a-5), or (a-6) only in determining whether to:

(1) appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the Department of Aging and Disability Services; or

(2) appoint any other person proposed to serve as a guardian under Chapter XIII, Texas Probate Code, including a proposed temporary guardian and a proposed successor guardian, other than the ward's or proposed ward's family member or an attorney.

SECTION 2. Amends Section 411.1406(c), Government Code, as added by Chapter 15 (S.B. 505), Acts of the 80th Legislature, Regular Session, 2007, as follows:

(c) Provides that criminal history record information obtained by GCB under Subsection (b) (relating to the obtaining of criminal record information by GCB) is prohibited from being released or disclosed to any person except as authorized by Section 411.1386(a-6) of this code or Section 698(a-6), Texas Probate Code. Makes nonsubstantive changes.

SECTION 3. Amends Section 698, Texas Probate Code, by amending Subsections (a), (b), and (b-1), and adding Subsection (a-6), as follows:

(a) Requires the clerk of the county having venue over the proceeding for the appointment of a guardian, except as provided by subsections (a-1), (a-5), and (a-6) of this section, to obtain criminal history record information that is maintained by DPS or the FBI identification division relating to certain persons.

(a-6) Provides that the clerk described by Subsection (a) of this section is not required to obtain criminal history record information for a person who holds a certificate issued under Section 111.042, Government Code, or a provisional certificate issued under Section 111.0421, Government Code, if GCB conducted a criminal history check on the person before issuing or renewing the certificate. Requires GCB to provide to the clerk at the court's request the criminal history record information that was obtained from DPS or the FBI.

(b) Makes conforming changes.

(b-1) Prohibits the information from being released or otherwise disclosed to any person or agency except on court order, with the consent of the person being investigated, or as authorized by Subsection (a-6) of this section or Section 411.1386(a-6), Government Code.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Provides that, notwithstanding Section 4 of this Act, the requirement that the GCB provide criminal history record information to a county clerk on request that is imposed by Section 411.1386(a-6), Government Code, as added by this Act, and Section 698(a-6), Texas Probate Code, as added by this Act, applies only with respect to criminal history record information obtained by GCB on or after January 1, 2009.

SECTION 6. Effective date: upon passage or September 1, 2009.