

**BILL ANALYSIS**

Senate Research Center

S.B. 291  
By: Nelson  
Jurisprudence  
8/9/2007  
Enrolled

**AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current law requires the Department of Aging and Disability Services (DADS) to report to each county a list of those who are employed by DADS to provide guardianship services in that particular county. County clerks are currently required to obtain criminal history record information for guardians or potential guardians.

S.B. 291 requires DADS to perform all criminal background checks for those persons it employs as guardians and to submit said background checks to the Guardianship Certification Board (board) and the county clerk, upon request from the court retaining jurisdiction. This bill also requires DADS to submit to the board a list of names, along with identifiable information and the county of employment or prospective employment, of all persons employed or seeking employment, as a guardian by DADS.

**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 the heading to Section 697A, Texas Probate Code, to read as follows:

Sec. 697A. LIST OF CERTAIN PUBLIC GUARDIANS MAINTAINED BY COUNTY CLERKS OR GUARDIANSHIP CERTIFICATION BOARD.

SECTION 2. Amends Sections 697A(b) and (c), Texas Probate Code, as follows:

(b) Requires the Department of Aging and Disability Services (DADS) to submit to the Guardianship Certification Board (board) a statement containing information relating to guardianship services by February 1 of each year. Sets forth the content requirements of the statement. Deletes existing text requiring that DADS submit annually to the county clerk the information required under Subsection (a) for each DADS employee who is or will be providing guardianship services in the county on DADS' behalf, if DADS files an application for and is appointed to serve as guardian for one or more incapacitated persons residing in the county.

(c) Requires the county clerk to submit to the board the information received under Subsection (a) not later than February 1 of each year.

SECTION 3. Amends Section 698, Texas Probate Code, as follows:

Sec. 698. ACCESS TO CRIMINAL HISTORY RECORDS. (a) Requires the clerk of the county having venue over the proceeding for the appointment of a guardian to obtain criminal history record information (maintained by the Department of Public Safety (DPS) (information), except as provided by Subsections (a-1) and (a-5) of this section. Includes any other person proposed to serve as a guardian under this chapter, including a proposed temporary guardian and a proposed successor guardian, other than the ward's or proposed ward's family member or an attorney, as persons for which the clerk is required to obtain criminal history records. Makes a conforming change.

(a-1) Requires DADS to obtain certain information relating to each individual who provides or will be providing guardianship services to a ward of DADS or a ward referred by DADS, including certain persons.

(a-2) Requires that the information regarding applicants for employment positions to be obtained prior to an offer of employment, and the information regarding an applicant volunteer to be obtained before the person's contact with a ward of DADS or a ward referred by DADS.

(a-3) Requires the information in Subsection (a-1) of this section regarding employees or volunteers to be obtained annually.

(a-4) Sets forth to whom the aforementioned information is to be provided.

(a-5) Authorizes a person, not later than the 10th day before the date of the hearing to appoint a guardian, to submit to the clerk the person's information, obtained from DPS or the Federal Bureau of Investigation not earlier than the 30th day before the date of the hearing.

(b) Provides that the information obtained under Subsection (a) or (a-5) is for the exclusive use of the court and is privileged and confidential. Makes a nonsubstantive change.

(b-1) Provides that the information obtained under Subsection (a-4) is privileged and confidential and is for the exclusive use of the court or board. Prohibits the release or disclosure of said information to any person or agency except on court order or consent from the person being investigated. Authorizes the county clerk or board to destroy the information after it has been used for the purposes authorized by this section.

(c) Requires the court to use the information in determining whether to appoint any other person proposed to serve as a guardian under this chapter, including a proposed temporary guardian and a proposed successor guardian, other than the ward's or proposed ward's family member or an attorney.

(c-1) Authorizes the information obtained under Subsection (a-4)(2) to be used for any purpose relating to the issuance, denial, renewal, suspension, or revocation of a certificate issued by the board.

(d) Provides that a person commits an offense for releasing or disclosing the abovementioned information without authorization described under Subsections (b) or (b-1).

(e) Authorizes the clerk to charge a \$10 fee to recover the costs of obtaining information, rather than a reasonable fee sufficient for said recovery.

(f) Provides that DADS is not prohibited under this section from obtaining and using information as provided by other law.

SECTION 4. Amends Section 411.1386, Government Code, as follows:

Sec. 411.1386. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: COURT CLERK; DEPARTMENT OF AGING AND DISABILITY SERVICES; GUARDIANSHIPS. (a) Makes nonsubstantive changes. Requires, rather than entitles, the clerk of the county having venue over a proceeding for the appointment of a guardian to obtain from DADS certain information that relates to each person employed by, volunteering, or contracting with a guardianship program to provide certain guardianship services, or 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, except as provided by Subsections (a-1) and (a-5).

(a-1) Requires DADS to obtain certain information relating to each individual who provides or will be providing guardianship services to a ward of DADS or a ward referred by DADS, including certain persons.

(a-2) Requires that certain information regarding applicants for employment positions be obtained prior to an offer of employment, and that the information regarding an applicant volunteer be obtained before the person's contact with a ward of DADS or a ward referred by DADS.

(a-3) Requires that the information in Subsection (a-1) of this section regarding employees or volunteers be obtained annually.

(a-4) Sets forth to whom the aforementioned information is to be provided.

(a-5) Authorizes a person, not later than the 10th day before the date of the hearing to appoint a guardian, to submit the person's information to the clerk not earlier than the 30th day before the date of the hearing.

(b) Provides that information obtained by a clerk under Subsection (a) or (a-5) is for the exclusive use of the court and is privileged and confidential. Deletes existing text relating to using said information only in determining whether to appoint, remove, or continue the appointment of a private professional guardian.

(c) Makes a conforming change.

(d) Provides that the information obtained under Subsection (a-4) is privileged and confidential and is for the exclusive use of the court or board. Prohibits the release and disclosure of said information to any person or agency except on court order or consent from the person being investigated. Authorizes the county clerk or board to destroy the information after it has been used for the purposes authorized by this section.

(e) Requires the court, as defined by Section 601 (Definitions), Probate Code, to use the information obtained under Subsection (a), (a-4)(1), or (a-5) only in making certain determinations.

(f) Authorizes criminal history record information obtained by the board under Subsection (a-4)(2) to be used for any purpose related to the issuance, denial, renewal, suspension, or revocation of a certificate issued by the board.

(g) Provides that a person commits an offense for releasing or disclosing the abovementioned information without authorization prescribed under Subsections (c) or (d). Provides that an offense under this subsection is a Class A misdemeanor.

(h) Authorizes the county clerk to charge a \$10 fee to recover the costs of obtaining criminal history information records authorized by Subsection (a).

(i) Provides that this section does not prohibit DADS from obtaining and using criminal history record information as provided by other law.

SECTION 5. Provides that the changes in law made by this Act are made to conform to certain sections of the Texas Probate Code, as those sections existed immediately before the effective date of this Act.

SECTION 6. Effective date: September 1, 2007.