

1-1 By: Nelson S.B. No. 291  
1-2 (In the Senate - Filed January 24, 2007; January 30, 2007,  
1-3 read first time and referred to Committee on Jurisprudence;  
1-4 March 12, 2007, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 5, Nays 0; March 12, 2007,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 291 By: Watson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to criminal history record information for certain  
1-11 guardianship services and to lists of certain public guardians.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. The heading to Section 697A, Texas Probate Code,  
1-14 is amended to read as follows:

1-15 Sec. 697A. LIST OF CERTAIN PUBLIC GUARDIANS MAINTAINED BY  
1-16 COUNTY CLERKS OR GUARDIANSHIP CERTIFICATION BOARD.

1-17 SECTION 2. Subsections (b) and (c), Section 697A, Texas  
1-18 Probate Code, are amended to read as follows:

1-19 (b) Not later than February 1 of each year, the [The]  
1-20 Department of Aging and Disability Services~~[, if the department~~  
1-21 ~~files an application for and is appointed to serve as guardian for~~  
1-22 ~~one or more incapacitated persons residing in the county as~~  
1-23 ~~provided by Subchapter E, Chapter 161, Human Resources Code,]~~ shall  
1-24 submit ~~[annually]~~ to the Guardianship Certification Board a  
1-25 statement containing:

1-26 (1) the name, address, and telephone number of each  
1-27 department employee who is or will be providing guardianship  
1-28 services to a ward or proposed ward on behalf of the department; and

1-29 (2) the name of the county or counties in which each  
1-30 employee named in Subdivision (1) of this subsection is providing  
1-31 or is authorized to provide those services ~~[county clerk the~~  
1-32 ~~information required under Subsection (a) of this section for each~~  
1-33 ~~department employee who is or will be providing guardianship~~  
1-34 ~~services in the county on the department's behalf].~~

1-35 (c) Not later than February 1 of each year, the county clerk  
1-36 shall submit to the Guardianship Certification Board the  
1-37 information received under Subsection (a) of this section during  
1-38 the preceding year.

1-39 SECTION 3. Section 698, Texas Probate Code, is amended by  
1-40 amending Subsections (a), (b), and (d) and adding Subsections  
1-41 (a-1), (a-2), (a-3), (a-4), (b-1), (c-1), and (f) to read as  
1-42 follows:

1-43 (a) The clerk of the county having venue over the proceeding  
1-44 for the appointment of a guardian shall obtain criminal history  
1-45 record information that is maintained by the Department of Public  
1-46 Safety or the Federal Bureau of Investigation identification  
1-47 division relating to:

1-48 (1) a private professional guardian;

1-49 (2) each person who represents or plans to represent  
1-50 the interests of a ward as a guardian on behalf of the private  
1-51 professional guardian;

1-52 (3) each person employed by a private professional  
1-53 guardian who will:

1-54 (A) have personal contact with a ward or proposed  
1-55 ward;

1-56 (B) exercise control over and manage a ward's  
1-57 estate; or

1-58 (C) perform any duties with respect to the  
1-59 management of a ward's estate; or

1-60 (4) each person employed by or volunteering or  
1-61 contracting with a guardianship program to provide guardianship  
1-62 services to a ward of the program on the program's behalf~~[, or~~

1-63 ~~[(5) an employee of the Department of Aging and~~

~~Disability Services who is or will be providing guardianship services to a ward of the department].~~

(a-1) The Department of Aging and Disability Services shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to each individual who is or will be providing guardianship services to a ward of the department, including:

(1) an employee of or an applicant selected for an employment position with the Department of Aging and Disability Services;

(2) a volunteer or an applicant selected to volunteer with the Department of Aging and Disability Services;

(3) an employee of or an applicant selected for an employment position with a business entity or other person that contracts with the Department of Aging and Disability Services to provide guardianship services to a ward of the department; and

(4) a volunteer or an applicant selected to volunteer with a business entity or other person described by Subdivision (3) of this subsection.

(a-2) The information in Subsection (a-1) of this section regarding applicants for employment positions must be obtained before an offer of employment, and the information regarding applicant volunteers must be obtained before the person's contact with a ward of the Department of Aging and Disability Services.

(a-3) The information in Subsection (a-1) of this section regarding employees or volunteers providing guardianship services must be obtained annually.

(a-4) The Department of Aging and Disability Services shall provide the information obtained under Subsection (a-1) of this section to:

(1) the clerk of the county having venue over the guardianship proceeding at the request of the court; or

(2) the Guardianship Certification Board at the request of the board.

(b) The criminal history record information obtained under Subsection (a) of this section is for the exclusive use of the court and is privileged and confidential. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or consent of the person being investigated. The county clerk may destroy the criminal history information records after the records are used for the purposes authorized by this section.

(b-1) The criminal history record information obtained under Subsection (a-4) of this section is for the exclusive use of the court or Guardianship Certification Board, as appropriate, and is privileged and confidential. The information may not be released or otherwise disclosed to any person or agency except on court order or consent of the person being investigated. The county clerk or Guardianship Certification Board may destroy the criminal history record information after the information is used for the purposes authorized by this section.

(c-1) Criminal history record information obtained by the Guardianship Certification Board under Subsection (a-4)(2) of this section may be used for any purpose related to the issuance, denial, renewal, suspension, or revocation of a certificate issued by the board.

(d) A person commits an offense if the person releases or discloses any information received under this section without the authorization prescribed by Subsection (b) or (b-1) of this section. An offense under this subsection is a Class A misdemeanor.

(f) This section does not prohibit the Department of Aging and Disability Services from obtaining and using criminal history record information as provided by other law.

SECTION 4. Section 411.1386, Government Code, is amended to read as follows:

Sec. 411.1386. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: COURT CLERK; DEPARTMENT OF AGING AND DISABILITY SERVICES; GUARDIANSHIPS. (a) The clerk of the county having venue

over a proceeding for the appointment of a guardian under Chapter XIII [13], Texas Probate Code, shall ~~[is entitled to]~~ obtain from the department criminal history record information maintained by the department that relates to:

(1) a private professional guardian;  
 (2) each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian; ~~[or]~~

(3) each person employed by a private professional guardian who will:

(A) have personal contact with a ward or proposed ward;

(B) exercise control over and manage a ward's estate; or

(C) perform any duties with respect to the management of a ward's estate; or

(4) each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward of the program on the program's behalf.

(a-1) The Department of Aging and Disability Services shall obtain from the Department of Public Safety criminal history record information maintained by the Department of Public Safety that relates to each individual who is or will be providing guardianship services to a ward of the Department of Aging and Disability Services, including:

(1) an employee of or an applicant selected for an employment position with the Department of Aging and Disability Services;

(2) a volunteer or an applicant selected to volunteer with the Department of Aging and Disability Services;

(3) an employee of or an applicant selected for an employment position with a business entity or other person that contracts with the Department of Aging and Disability Services to provide guardianship services to a ward of the department; and

(4) a volunteer or an applicant selected to volunteer with a business entity or person described by Subdivision (3).

(a-2) The information in Subsection (a-1) regarding applicants for employment positions must be obtained before an offer of employment, and the information regarding applicant volunteers must be obtained before the person's contact with a ward of the Department of Aging and Disability Services.

(a-3) The information in Subsection (a-1) regarding employees or volunteers providing guardianship services must be obtained annually.

(a-4) The Department of Aging and Disability Services shall provide the information obtained under Subsection (a-1) to:

(1) the clerk of the county having venue over the guardianship proceeding at the request of the court; or

(2) the Guardianship Certification Board at the request of the board.

(b) Criminal history record information obtained by a clerk under Subsection (a) is for the exclusive use of the court and is privileged and confidential [may be used only in determining whether to appoint, remove, or continue the appointment of a private professional guardian].

(c) Criminal history record information obtained by a clerk under Subsection (a) may not be released or disclosed to any person or agency except on court order or with the consent of the person who is the subject of the information. The clerk may destroy the criminal history record information after the information is used for the purposes authorized by this section.

(d) The criminal history record information obtained under Subsection (a-4) is for the exclusive use of the court or Guardianship Certification Board, as appropriate, and is privileged and confidential. The information may not be released or otherwise disclosed to any person or agency except on court order or consent of the person being investigated. The county clerk or Guardianship Certification Board may destroy the criminal history record information after the information is used for the purposes

4-1 authorized by this section.

4-2 (e) The court, as that term is defined by Section 601, Texas  
 4-3 Probate Code, shall use the information obtained under Subsection  
 4-4 (a) or (a-4)(1) only in determining whether to appoint, remove, or  
 4-5 continue the appointment of a private professional guardian, a  
 4-6 guardianship program, or the Department of Aging and Disability  
 4-7 Services.

4-8 (f) Criminal history record information obtained by the  
 4-9 Guardianship Certification Board under Subsection (a-4)(2) may be  
 4-10 used for any purpose related to the issuance, denial, renewal,  
 4-11 suspension, or revocation of a certificate issued by the board.

4-12 (g) A person commits an offense if the person releases or  
 4-13 discloses any information received under this section without the  
 4-14 authorization prescribed by Subsection (c) or (d). An offense  
 4-15 under this subsection is a Class A misdemeanor.

4-16 (h) The county clerk may charge a reasonable fee sufficient  
 4-17 to recover the costs of obtaining criminal history information  
 4-18 records authorized by Subsection (a).

4-19 (i) This section does not prohibit the Department of Aging  
 4-20 and Disability Services from obtaining and using criminal history  
 4-21 record information as provided by other law.

4-22 SECTION 5. The change in law made by this Act:

4-23 (1) by the amendment of Subsection (a), Section  
 4-24 411.1386, Government Code, is made to conform to Subsection (a),  
 4-25 Section 698, Texas Probate Code, as that subsection existed  
 4-26 immediately before the effective date of this Act;

4-27 (2) by the amendment of Subsection (b), Section  
 4-28 411.1386, Government Code, and the addition of Subsection (e),  
 4-29 Section 411.1386, Government Code, other than the addition of the  
 4-30 reference to Subdivision (1), Subsection (a-4), Section 411.1386,  
 4-31 Government Code, is made to conform to Subsections (b) and (c),  
 4-32 Section 698, Texas Probate Code, as those subsections existed  
 4-33 immediately before the effective date of this Act;

4-34 (3) by the addition of Subsection (g), Section  
 4-35 411.1386, Government Code, other than the addition of the reference  
 4-36 to Subsection (d), Section 411.1386, Government Code, is made to  
 4-37 conform to Subsection (d), Section 698, Texas Probate Code, as that  
 4-38 subsection existed immediately before the effective date of this  
 4-39 Act; and

4-40 (4) by the addition of Subsection (h), Section  
 4-41 411.1386, Government Code, is made to conform to Subsection (e),  
 4-42 Section 698, Texas Probate Code, as that subsection existed  
 4-43 immediately before the effective date of this Act.

4-44 SECTION 6. This Act takes effect September 1, 2007.

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