

1-1 By: Uresti S.B. No. 1057
1-2 (In the Senate - Filed February 20, 2009; March 13, 2009,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 March 30, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; March 30, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1057 By: Wentworth
1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to criminal history record information relating to persons
1-11 who are certified to provide guardianship services.

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

1-13 SECTION 1. Section 411.1386, Government Code, is amended by
1-14 amending Subsections (a), (b), (c), (d), and (e) and adding
1-15 Subsection (a-6) to read as follows:

1-16 (a) Except as provided by Subsections (a-1), ~~[and]~~ (a-5),
1-17 and (a-6), the clerk of the county having venue over a proceeding
1-18 for the appointment of a guardian under Chapter XIII, Texas Probate
1-19 Code, shall obtain from the department criminal history record
1-20 information maintained by the department that relates to:

1-21 (1) a private professional guardian;

1-22 (2) each person who represents or plans to represent
1-23 the interests of a ward as a guardian on behalf of the private
1-24 professional guardian;

1-25 (3) each person employed by a private professional
1-26 guardian who will:

1-27 (A) have personal contact with a ward or proposed
1-28 ward;

1-29 (B) exercise control over and manage a ward's
1-30 estate; or

1-31 (C) perform any duties with respect to the
1-32 management of a ward's estate;

1-33 (4) each person employed by or volunteering or
1-34 contracting with a guardianship program to provide guardianship
1-35 services to a ward of the program on the program's behalf; or

1-36 (5) any other person proposed to serve as a guardian
1-37 under Chapter XIII, Texas Probate Code, including a proposed
1-38 temporary guardian and a proposed successor guardian, other than
1-39 the ward's or proposed ward's family member or an attorney.

1-40 (a-6) The clerk described by Subsection (a) is not required
1-41 to obtain criminal history record information for a person who
1-42 holds a certificate issued under Section 111.042 or a provisional
1-43 certificate issued under Section 111.0421 if the Guardianship
1-44 Certification Board conducted a criminal history check on the
1-45 person before issuing or renewing the certificate. The board shall
1-46 provide to the clerk at the court's request the criminal history
1-47 record information that was obtained from the department or the
1-48 Federal Bureau of Investigation.

1-49 (b) Criminal history record information obtained by or
1-50 provided to a clerk under Subsection (a), ~~[or]~~ (a-5), or (a-6) is
1-51 for the exclusive use of the court and is privileged and
1-52 confidential.

1-53 (c) Criminal history record information obtained by or
1-54 provided to a clerk under Subsection (a), ~~[or]~~ (a-5), or (a-6) may
1-55 not be released or disclosed to any person or agency except on court
1-56 order or with the consent of the person who is the subject of the
1-57 information. The clerk may destroy the criminal history record
1-58 information after the information is used for the purposes
1-59 authorized by this section.

1-60 (d) The criminal history record information obtained under
1-61 Subsection (a-4) is for the exclusive use of the court or
1-62 Guardianship Certification Board, as appropriate, and is
1-63 privileged and confidential. The information may not be released

2-1 or otherwise disclosed to any person or agency except on court
 2-2 order, with the ~~[or]~~ consent of the person being investigated, or as
 2-3 authorized by Subsection (a-6) or Section 698(a-6), Texas Probate
 2-4 Code. The county clerk or Guardianship Certification Board may
 2-5 destroy the criminal history record information after the
 2-6 information is used for the purposes authorized by this section.

2-7 (e) The court, as that term is defined by Section 601, Texas
 2-8 Probate Code, shall use the information obtained or provided under
 2-9 Subsection (a), (a-4)(1), ~~[or]~~ (a-5), or (a-6) only in determining
 2-10 whether to:

2-11 (1) appoint, remove, or continue the appointment of a
 2-12 private professional guardian, a guardianship program, or the
 2-13 Department of Aging and Disability Services; or

2-14 (2) appoint any other person proposed to serve as a
 2-15 guardian under Chapter XIII, Texas Probate Code, including a
 2-16 proposed temporary guardian and a proposed successor guardian,
 2-17 other than the ward's or proposed ward's family member or an
 2-18 attorney.

2-19 SECTION 2. Subsection (c), Section 411.1406, Government
 2-20 Code, as added by Chapter 15 (S.B. 505), Acts of the 80th
 2-21 Legislature, Regular Session, 2007, is amended to read as follows:

2-22 (c) Criminal history record information obtained by the
 2-23 board under Subsection (b):

2-24 (1) may be used by the board for any purpose related to
 2-25 the issuance, denial, suspension, revocation, or renewal of a
 2-26 certificate issued by the board;

2-27 (2) may not be released or disclosed to any person
 2-28 except:

2-29 (A) on court order;

2-30 (B) ~~[or]~~ with the consent of the person who is the
 2-31 subject of the information; or

2-32 (C) as authorized by Section 411.1386(a-6) of
 2-33 this code or Section 698(a-6), Texas Probate Code; and

2-34 (3) shall be destroyed by the board after the
 2-35 information is used for the authorized purposes.

2-36 SECTION 3. Section 698, Texas Probate Code, is amended by
 2-37 amending Subsections (a), (b), and (b-1) and adding Subsection
 2-38 (a-6) to read as follows:

2-39 (a) Except as provided by Subsections (a-1), ~~[and]~~ (a-5),
 2-40 and (a-6) of this section, the clerk of the county having venue over
 2-41 the proceeding for the appointment of a guardian shall obtain
 2-42 criminal history record information that is maintained by the
 2-43 Department of Public Safety or the Federal Bureau of Investigation
 2-44 identification division relating to:

2-45 (1) a private professional guardian;

2-46 (2) each person who represents or plans to represent
 2-47 the interests of a ward as a guardian on behalf of the private
 2-48 professional guardian;

2-49 (3) each person employed by a private professional
 2-50 guardian who will:

2-51 (A) have personal contact with a ward or proposed
 2-52 ward;

2-53 (B) exercise control over and manage a ward's
 2-54 estate; or

2-55 (C) perform any duties with respect to the
 2-56 management of a ward's estate;

2-57 (4) each person employed by or volunteering or
 2-58 contracting with a guardianship program to provide guardianship
 2-59 services to a ward of the program on the program's behalf; or

2-60 (5) any other person proposed to serve as a guardian
 2-61 under this chapter, including a proposed temporary guardian and a
 2-62 proposed successor guardian, other than the ward's or proposed
 2-63 ward's family member or an attorney.

2-64 (a-6) The clerk described by Subsection (a) of this section
 2-65 is not required to obtain criminal history record information for a
 2-66 person who holds a certificate issued under Section 111.042,
 2-67 Government Code, or a provisional certificate issued under Section
 2-68 111.0421, Government Code, if the Guardianship Certification Board
 2-69 conducted a criminal history check on the person before issuing or

3-1 renewing the certificate. The board shall provide to the clerk at
3-2 the court's request the criminal history record information that
3-3 was obtained from the Department of Public Safety or the Federal
3-4 Bureau of Investigation.

3-5 (b) The criminal history record information obtained or
3-6 provided under Subsection (a), ~~(a-5)~~, or (a-6) of this section
3-7 is for the exclusive use of the court and is privileged and
3-8 confidential. The criminal history record information may not be
3-9 released or otherwise disclosed to any person or agency except on
3-10 court order or consent of the person being investigated. The
3-11 county clerk may destroy the criminal history information records
3-12 after the records are used for the purposes authorized by this
3-13 section.

3-14 (b-1) The criminal history record information obtained
3-15 under Subsection (a-4) of this section is for the exclusive use of
3-16 the court or Guardianship Certification Board, as appropriate, and
3-17 is privileged and confidential. The information may not be
3-18 released or otherwise disclosed to any person or agency except on
3-19 court order, with the ~~(a-5)~~ consent of the person being
3-20 investigated, or as authorized by Subsection (a-6) of this section
3-21 or Section 411.1386(a-6), Government Code. The county clerk or
3-22 Guardianship Certification Board may destroy the criminal history
3-23 record information after the information is used for the purposes
3-24 authorized by this section.

3-25 SECTION 4. The changes in law made by this Act apply to a
3-26 proceeding for the appointment of a guardian that is pending or
3-27 filed on or after the effective date of this Act.

3-28 SECTION 5. Notwithstanding Section 4 of this Act, the
3-29 requirement that the Guardianship Certification Board provide
3-30 criminal history record information to a county clerk on request
3-31 that is imposed by Subsection (a-6), Section 411.1386, Government
3-32 Code, as added by this Act, and Subsection (a-6), Section 698, Texas
3-33 Probate Code, as added by this Act, applies only with respect to
3-34 criminal history record information obtained by the board on or
3-35 after January 1, 2009.

3-36 SECTION 6. This Act takes effect immediately if it receives
3-37 a vote of two-thirds of all the members elected to each house, as
3-38 provided by Section 39, Article III, Texas Constitution. If this
3-39 Act does not receive the vote necessary for immediate effect, this
3-40 Act takes effect September 1, 2009.

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