By:  Turner of Dallas H.B. No. 3699

A BILL TO BE ENTITLED

AN ACT

relating to the ability of health and human services agencies to continue to be able to obtain criminal history record information.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 411.110, Government Code, is amended to read as follows:

Sec. 411.110.  ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES AND HEALTH AND HUMAN SERVICES COMMISSION. (a) The Department of State Health Services or the Health and Human Services Commission, as applicable, is entitled to obtain from the department criminal history record information maintained by the department that relates to:

(1)  a person who is:

(A)  an applicant for a license or certificate under the Emergency Health Care Act (Chapter 773, Health and Safety Code);

(B)  an owner or manager of an applicant for an emergency medical services provider license under that Act; or

(C)  the holder of a license or certificate under that Act;

(2)  an applicant for a license or a license holder under Subchapter N, Chapter 431, Health and Safety Code;

(3)  an applicant for a license, the owner or manager of an applicant for a massage establishment license, or a license holder under Chapter 455, Occupations Code;

(4)  an applicant for employment at or current employee of:

(A)  a public health hospital as defined by Section 13.033, Health and Safety Code; or

(B)  the South Texas Health Care System;

(5)  an applicant for employment at, current employee of, or person who contracts or may contract to provide goods or services with the Council on Sex Offender Treatment or other division or component of the Department of State Health Services that monitors sexually violent predators as described by Section 841.003(a), Health and Safety Code; or

(6)  a person authorized to access vital records or the vital records electronic registration system under Chapter 191, Health and Safety Code, including an employee of or contractor for the Department of State Health Services, a local registrar, a medical professional, or a funeral director.

(b)  Criminal history record information obtained by the Department of State Health Services or the Health and Human Services Commission, as applicable, under Subsection (a) may not be released or disclosed to any person except on court order, with the written consent of the person or entity that is the subject of the criminal history record information, or as provided by Subsection (e).

(c)  After an entity is licensed or certified, the Department of State Health Services or the Health and Human Services Commission, as applicable, shall destroy the criminal history record information that relates to that entity. The Department of State Health Services or the Health and Human Services Commission, as applicable, shall destroy the criminal history record information that relates to:

(1)  an applicant for employment after that applicant is employed or, for an applicant who is not employed, after the check of the criminal history record information on that applicant is completed; or

(2)  an employee or contractor after the check of the criminal history record information on that employee or contractor is completed.

(d)  The Department of State Health Services or the Health and Human Services Commission, as applicable, shall destroy criminal history record information that relates to an applicant who is not certified or employed, as applicable.

(e)  The Department of State Health Services or the Health and Human Services Commission, as applicable, is not prohibited from disclosing criminal history record information obtained under Subsection (a) in a criminal proceeding or in a hearing conducted by the Department of State Health Services or the Health and Human Services Commission, as applicable.

(f)  The Department of State Health Services or the Health and Human Services Commission, as applicable, may not consider offenses for which points are assessed under Section 708.052, Transportation Code, to determine whether to hire or retain an employee or to contract with a person on whom criminal history record information is obtained under this section.

SECTION 2.  Section 411.1103, Government Code, is amended to read as follows:

Sec. 411.1103.  ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES AND HEALTH AND HUMAN SERVICES COMMISSION. (a) The Department of State Health Services or the Health and Human Services Commission, as applicable, is entitled to obtain from the department criminal history record information maintained by the department that relates to a person:

(1)  who is:

(A)  an applicant for employment at a state hospital;

(B)  an employee of a state hospital;

(C)  a person who contracts or may contract to provide goods or services to the Department of State Health Services or the Health and Human Services Commission, as applicable, at a state hospital or an employee of or applicant for employment with that person;

(D)  a volunteer with a state hospital; or

(E)  an applicant for a volunteer position with a state hospital; and

(2)  who would be placed in direct contact with a patient at a state hospital.

(b)  Criminal history record information obtained by the Department of State Health Services or the Health and Human Services Commission, as applicable, under this section may not be released or disclosed to any person except:

(1)  on court order;

(2)  with the consent of the person who is the subject of the criminal history record information;

(3)  for purposes of an administrative hearing held by the Department of State Health Services or the Health and Human Services Commission, as applicable, concerning the person who is the subject of the criminal history record information; or

(4)  as provided by Subsection (c).

(c)  The Department of State Health Services or the Health and Human Services Commission, as applicable, is not prohibited from releasing criminal history record information obtained under this section to the person who is the subject of the criminal history record information.

(d)  Subject to Section 411.087, the Department of State Health Services or the Health and Human Services Commission, as applicable, is entitled to:

(1)  obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subsection (a); and

(2)  obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to a person described by Subsection (a).

(e)  This section does not prohibit the Department of State Health Services or the Health and Human Services Commission, as applicable, from obtaining and using criminal history record information as provided by other law.

SECTION 3.  Section 411.1105, Government Code, is amended to read as follows:

Sec. 411.1105.  ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES AND HEALTH AND HUMAN SERVICES COMMISSION. (a) The Department of State Health Services or the Health and Human Services Commission, as applicable, is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1)  an applicant for a chemical dependency counselor's license, a counselor intern's registration, or a clinical supervisor certification under Chapter 504, Occupations Code; or

(2)  the holder of a license, registration, or certification under that chapter.

(b)  In addition to information obtained from the Federal Bureau of Investigation under Section 411.087, the Department of State Health Services or the Health and Human Services Commission, as applicable, is entitled to obtain information relating to the wanted persons status of an individual listed in Subsection (a).

(c)  Criminal history record information obtained by the Department of State Health Services or the Health and Human Services Commission, as applicable, under Subsection (a) may not be released or disclosed to any person except on court order, with the consent of the person who is the subject of the criminal history record information, or as provided by Subsection (d).

(d)  The Department of State Health Services or the Health and Human Services Commission, as applicable, may provide the applicant or licensee with a copy of the person's criminal history record information obtained from the Department of Public Safety, Federal Bureau of Investigation identification division, or another law enforcement agency.

SECTION 4.  Section 411.1106, Government Code, is amended to read as follows:

Sec. 411.1106.  ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: HEALTH AND HUMAN SERVICES COMMISSION. (a) In this section, "commission" means the Health and Human Services Commission.

(b)  The executive commissioner of the commission, or the executive commissioner's designee, is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1)  an applicant for employment for a position in which the person, as an employee, would have access to sensitive personal or financial information, as determined by the executive commissioner, in:

(A)  the eligibility services division of the commission; or

(B)  the commission's office of inspector general; or

(2)  an employee of the commission who has access to sensitive personal or financial information, as determined by the executive commissioner.

(b-1)  The executive commissioner of the commission, or the executive commissioner's designee, is entitled to obtain from the department criminal history record information maintained by the department with respect to a function transferred to the commission under Subchapter A-1, Chapter 531.

(c)  Criminal history record information obtained by the executive commissioner of the commission, or by the executive commissioner's designee, under Subsection (b) may not be released or disclosed, except:

(1)  if the information is in a public record at the time the information is obtained;

(2)  on court order;

(3)  to a criminal justice agency, upon request;

(4)  with the consent of the person who is the subject of the criminal history record information; or

(5)  as provided by Subsection (d).

(d)  The commission is not prohibited from disclosing criminal history record information obtained under Subsection (b) in a criminal proceeding or in a hearing conducted by the commission.

(e)  The executive commissioner shall destroy all criminal history record information obtained under Subsection (b) as soon as practicable after the information is used for its authorized purpose.

SECTION 5.  Section 411.1131, Government Code, is amended to read as follows:

Sec. 411.1131.  ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES AND HEALTH AND HUMAN SERVICES COMMISSION. (a) The Department of Assistive and Rehabilitative Services or the Health and Human Services Commission, as applicable, is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is an applicant for a staff position at an outdoor training program for children who are deaf or hard of hearing conducted by a private entity through a contract with the Department of Assistive and Rehabilitative Services or the Health and Human Services Commission, as applicable, in accordance with Section 81.013, Human Resources Code.

(b)  Criminal history record information obtained by the Department of Assistive and Rehabilitative Services or the Health and Human Services Commission, as applicable, under Subsection (a) may be used only to evaluate an applicant for a staff position at an outdoor training program for children who are deaf or hard of hearing. The Department of Assistive and Rehabilitative Services or the Health and Human Services Commission, as applicable, may release or disclose the information to a private entity described by Subsection (a) for that purpose.

(c)  The Department of Assistive and Rehabilitative Services or the Health and Human Services Commission, as applicable, may not release or disclose information obtained under Subsection (a), except on court order or with the consent of the person who is the subject of the criminal history record information, and shall destroy all criminal history record information obtained under Subsection (a) after the information is used for its authorized purpose.

SECTION 6.  Section 411.114, Government Code, is amended to read as follows:

Sec. 411.114.  ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES AND HEALTH AND HUMAN SERVICES COMMISSION. (a)(1) In this subsection:

(A)  "Child," "child-care facility," "child- placing agency," "facility," and "family home" have the meanings assigned by Section 42.002, Human Resources Code.

(A-1)  "Department of Family and Protective Services" includes:

(i)  the Department of Family and Protective Services as authorized by Section 40.002, Human Resources Code;

(ii)  the Health and Human Services Commission with respect to a function transferred to the commission under Subchapter A-1, Chapter 531; and

(iii)  any person or entity acting as an authorized agent of the Department of Family and Protective Services.

(B)  "Elderly person" has the meaning assigned by Section 48.002, Human Resources Code.

(C)  Deleted by Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 13, eff. September 1, 2012.

(D)  "Person with a disability" means a disabled person as defined by Section 48.002, Human Resources Code.

(E)  Repealed by Acts 2017, 85th Leg., R.S., Ch. 1108 (H.B. 4094), Sec. 5, eff. September 1, 2017.

(2)  The Department of Family and Protective Services or the Health and Human Services Commission, as applicable, shall obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A)  an applicant for a license, registration, certification, or listing under Chapter 42, Human Resources Code;

(B)  an owner, operator, or employee of or an applicant for employment by a child-care facility, child-placing agency, or family home licensed, registered, certified, or listed under Chapter 42, Human Resources Code;

(C)  a person 14 years of age or older who will be regularly or frequently working or staying in a facility or family home, other than a child in the care of the home or facility;

(D)  except as provided by Subsection (d), an applicant selected for a position with the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, the duties of which include direct delivery of protective services to children, elderly persons, or persons with a disability;

(E)  an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a business entity or person that contracts with the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, to provide direct delivery of protective services to children, elderly persons, or persons with a disability, if the person's duties or responsibilities include direct contact with children, elderly persons, or persons with a disability;

(F)  a registered volunteer with the Department of Family and Protective Services or the Health and Human Services Commission, as applicable;

(G)  a person providing or applying to provide in-home, adoptive, or foster care for children in the care of the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, and other persons living in the residence in which the child will reside;

(H)  a Department of Family and Protective Services or the Health and Human Services Commission, as applicable, employee who is engaged in the direct delivery of protective services to children, elderly persons, or persons with a disability;

(I)  an alleged perpetrator in a report the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i)  the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii)  the person is not also the victim of the alleged conduct;

(J)  a person providing child care for a child who is in the care of the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, and who is or will be receiving adoptive, foster, or in-home care;

(K)  through a contract with a nonprofit management center, an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a nonprofit, tax-exempt organization that provides any service that involves the care of or access to a child, an elderly person, or a person with a disability; or

(L)  an applicant for a child-care administrator or child-placing agency administrator license under Chapter 43, Human Resources Code.

(3)  In addition to the criminal history record information the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, is required to obtain under Subdivision (2), the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A)  an applicant for a position with the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, regardless of the duties of the position, including a position described by Subdivision (2)(D);

(B)  a Department of Family and Protective Services or the Health and Human Services Commission, as applicable, employee regardless of the duties of the employee's position, including an employee described by Subdivision (2)(H);

(C)  a volunteer or applicant volunteer with the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, regardless of the duties to be performed, including a registered volunteer;

(D)  an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with an entity or person that contracts with the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, and has access to confidential information in the department's or the Health and Human Services Commission's records, if the employee, applicant, volunteer, or applicant volunteer has or will have access to that confidential information;

(E)  a person living in the residence in which the alleged victim of the report resides, including an alleged perpetrator in a report described by Subdivision (2)(I);

(F)  a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected;

(G)  a person providing, at the request of the child's parent, in-home care for a child only if the person gives written consent to the release and disclosure of the information;

(H)  a child who is related to the caretaker, as determined under Section 42.002, Human Resources Code, or any other person who resides in, is present in, or has unsupervised access to a child in the care of a facility or family home;

(I)  a relative of a child in the care of the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, to the extent necessary to comply with Section 162.007, Family Code;

(J)  a person providing or applying to provide in-home, adoptive, or foster care for children to the extent necessary to comply with Subchapter B, Chapter 162, Family Code;

(K)  a person who volunteers to supervise visitation under Subchapter B, Chapter 263, Family Code;

(L)  an employee of or volunteer at, or an applicant for employment with or to be a volunteer at, an entity that provides supervised independent living services to a young adult receiving extended foster care services from the Department of Family and Protective Services or the Health and Human Services Commission, as applicable;

(M)  a person 14 years of age or older who will be regularly or frequently working or staying in a host home that is providing supervised independent living services to a young adult receiving extended foster care services from the Department of Family and Protective Services or the Health and Human Services Commission, as applicable;

(N)  a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers Big Sisters of America;

(O)  a volunteer or applicant volunteer with an organization that provides court-appointed volunteer advocates for abused or neglected children; or

(P)  an employee, volunteer, or applicant volunteer of a children's advocacy center under Subchapter E, Chapter 264, Family Code, including a member of the governing board of a center.

(4)  Subject to Section 411.087, the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, is entitled to:

(A)  obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subdivision (2) or (3); and

(B)  obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3). Law enforcement entities shall expedite the furnishing of such information to Department of Family and Protective Services or the Health and Human Services Commission, as applicable, workers to ensure prompt criminal background checks for the safety of alleged victims and Department of Family and Protective Services or the Health and Human Services Commission, as applicable, workers.

(5)  The Department of Family and Protective Services or the Health and Human Services Commission, as applicable, may not use the authority granted under this section to harass an employee or volunteer. The commissioner of the Department of Family and Protective Services or the executive commissioner of the Health and Human Services Commission, as applicable, shall adopt rules to prevent the harassment of an employee or volunteer through the request and use of criminal records.

(6)  Criminal history record information obtained by the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, under this subsection may not be released to any person except:

(A)  on court order;

(B)  with the consent of the person who is the subject of the criminal history record information;

(C)  for purposes of an administrative hearing held by the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, concerning the person who is the subject of the criminal history record information; or

(D)  as provided by Subdivision (7).

(7)  The Department of Family and Protective Services or the Health and Human Services Commission, as applicable, is not prohibited from releasing criminal history record information obtained under this subsection to:

(A)  the person who is the subject of the criminal history record information;

(B)  a child-placing agency listed in Subdivision (2) that is seeking to verify or approve a foster or adoptive home under procedures authorized by Section 471(a)(20)(A), Social Security Act (42 U.S.C. Section 671(a)(20)(A));

(C)  an adult who resides with an alleged victim of abuse, neglect, or exploitation of a child, elderly person, or person with a disability and who also resides with the alleged perpetrator of that abuse, neglect, or exploitation if:

(i)  the alleged perpetrator is the subject of the criminal history record information; and

(ii)  the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, determines that the release of information to the adult is necessary to ensure the safety or welfare of the alleged victim or the adult; or

(D)  an elderly or disabled person who is an alleged victim of abuse, neglect, or exploitation and who resides with the alleged perpetrator of that abuse, neglect, or exploitation if:

(i)  the alleged perpetrator is the subject of the criminal history record information; and

(ii)  the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, determines that the release of information to the elderly or disabled person or adult is necessary to ensure the safety or welfare of the elderly or disabled person.

(b)  The failure or refusal to provide a complete set of fingerprints or a complete name on request constitutes good cause for dismissal or refusal to hire, as applicable, with regard to a volunteer of or an employee or applicant for permanent or temporary employment with the Department of Family and Protective Services or the Health and Human Services Commission, as applicable, or a facility, home, business, or other entity, if the volunteer position, employment, or potential employment involves direct interaction with or the opportunity to interact and associate with children.

(c)  The Department of Family and Protective Services or the Health and Human Services Commission, as applicable, may charge an organization or person that requests criminal history record information under Subsection (a)(3) a fee in an amount necessary to cover the costs of obtaining the information on the organization's or person's behalf.

(d)  With respect to an applicant who is selected for employment for a function or in a division of the Department of Family and Protective Services that is transferred to the Health and Human Services Commission under Subchapter A-1, Chapter 531, the commission may obtain from the department criminal history record information maintained by the department that relates to the applicant.

SECTION 7.  Sec. 411.1142. ACCESS TO CRIMINAL HISTORY RECORD: INTERAGENCY COUNCIL ON EARLY CHILDHOOD INTERVENTION AND HUMAN SERVICES COMMISSION. (a) The Interagency Council on Early Childhood Intervention or the Health and Human Services Commission, as applicable, is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation identification division, or another law enforcement agency that relates to an employee or an applicant for permanent, temporary, or consultative employment or for volunteer positions whose employment or potential employment or volunteer position with the council or a local provider involves the delivery of early childhood intervention services or involves direct interactions with or the opportunity to interact and associate with children.

(b)  Criminal history record information obtained by the council or the Health and Human Services Commission, as applicable, under Subsection (a) may not be released or disclosed to any person except on court order, with the consent of the person who is the subject of the criminal history record information, or as provided by Subsection (d).

(c)  The council or the Health and Human Services Commission, as applicable, shall destroy criminal history record information that relates to a person after the information is used for its authorized purpose.

(d)  The council or the Health and Human Services Commission, as applicable, may provide the applicant, employee, professional consultant, or volunteer with a copy of the person's criminal history record information obtained from the Department of Public Safety, Federal Bureau of Investigation identification division, or another law enforcement agency.

(e)  The failure or refusal to provide a complete set of fingerprints or a complete name on request constitutes good cause for dismissal or refusal to hire, as applicable, with regard to council employees, professional consultants, and applicants for permanent, temporary, or consultative employment or for volunteer positions whose employment or potential employment or volunteer position with the council or a local provider involves the delivery of early childhood intervention services or involves direct interactions with or the opportunity to interact and associate with children.

SECTION 8.  Section 411.1144, Government Code, is amended to read as follows:

Sec. 411.1144.  ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: AGENCIES WITH EMPLOYEES, CONTRACTORS, OR VOLUNTEERS AT STATE SUPPORTED LIVING CENTERS. (a) The Department of State Health Services[~~, the Department of Aging and Disability Services,~~] and the Health and Human Services Commission are entitled to obtain from the department criminal history record information maintained by the department that relates to a person:

(1)  who is:

(A)  an applicant for employment with the agency;

(B)  an employee of the agency;

(C)  a volunteer with the agency;

(D)  an applicant for a volunteer position with the agency;

(E)  an applicant for a contract with the agency; or

(F)  a contractor of the agency; and

(2)  who would be placed in direct contact with a resident or client, as defined by Section 555.001, Health and Safety Code.

(b)  Criminal history record information obtained by an agency under Subsection (a) may not be released or disclosed to any person except:

(1)  on court order;

(2)  with the consent of the person who is the subject of the criminal history record information;

(3)  for purposes of an administrative hearing held by the agency concerning the person who is the subject of the criminal history record information; or

(4)  as provided by Subsection (c).

(c)  An agency is not prohibited from releasing criminal history record information obtained under Subsection (a) or (d) to the person who is the subject of the criminal history record information.

(d)  Subject to Section 411.087, the Department of State Health Services[~~, the Department of Aging and Disability Services,~~] and the Health and Human Services Commission are entitled to:

(1)  obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subsection (a); and

(2)  obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to a person described by Subsection (a).

(e)  This section does not prohibit an agency from obtaining and using criminal history record information as provided by other law.

SECTION 9.  Section 411.115, Government Code, is amended to read as follows:

Sec. 411.115.  ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS DEPARTMENT OF STATE HEALTH SERVICES AND HEALTH AND HUMAN SERVICES COMMISSION [~~MENTAL HEALTH AND MENTAL RETARDATION~~]; LOCAL AUTHORITIES; COMMUNITY CENTERS. (a) In this section, "local mental health authority," "local mental retardation authority," and "community center" have the meanings assigned by Section 531.002, Health and Safety Code.

(b)  The Texas Department of State Health Services or the Health and Human Services Commission, as applicable [~~Mental Health and Mental Retardation~~], a local mental health or mental retardation authority, or a community center is entitled to obtain from the department criminal history record information maintained by the department that relates to a person:

(1)  who is:

(A)  an applicant for employment with the Texas Department of State Health Services or the Health and Human Services Commission, as applicable [~~Mental Health and Mental Retardation~~], a local mental health or mental retardation authority, or a community center;

(B)  an employee of the Texas Department of State Health Services or the Health and Human Services Commission, as applicable [~~Mental Health and Mental Retardation~~], a local mental health or mental retardation authority, or a community center;

(C)  an applicant for employment with or an employee of a business or person that contracts with the Texas Department of State Health Services or the Health and Human Services Commission, as applicable [~~Mental Health and Mental Retardation~~], a local mental health or mental retardation authority, or a community center to provide residential services to patients with mental illness or clients with mental retardation who were furloughed or discharged from a Texas Department of State Health Services or the Health and Human Services Commission, as applicable, [~~Mental Health and Mental Retardation~~] facility or community center;

(D)  a volunteer with the Texas Department of State Health Services or the Health and Human Services Commission, as applicable [~~Mental Health and Mental Retardation~~], a local mental health or mental retardation authority, or a community center; or

(E)  a volunteer applicant; and

(2)  who would be placed in direct contact with patients with mental illness or clients with mental retardation.

(c)  Repealed by Acts 2003, 78th Leg., ch. 296, Sec. 13(2).

(d)  Criminal history record information obtained by the Texas Department of State Health Services or the Health and Human Services Commission, as applicable [~~Mental Health and Mental Retardation~~] [~~mental health department~~], a local mental health or mental retardation authority, or a community center under Subsection (b) may not be released or disclosed to a person, other than the contractor that employs the person who is the subject of the criminal history record information, except on court order or with the consent of the person who is the subject of the criminal history record information.

(e)  The Texas Department of State Health Services or the Health and Human Services Commission, as applicable [~~Mental Health and Mental Retardation~~], a local mental health or mental retardation authority, or a community center shall collect and destroy criminal history record information that relates to a person immediately after making an employment decision or taking a personnel action relating to the person who is the subject of the criminal history record information.

SECTION 10.  Section 411.117, Government Code, is amended to read as follows:

Sec. 411.117.  ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: HEALTH AND HUMAN SERVICES COMMISSION AND TEXAS WORKFORCE COMMISSION [~~DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES~~]. The Health and Human Services Commission or the Texas Workforce Commission, as applicable, [~~Department of Assistive and Rehabilitative Services~~] is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1)  an applicant for services of the Health and Human Services Commission or the Texas Workforce Commission, as applicable, [~~Department of Assistive and Rehabilitative Services~~];

(2)  a client of the Health and Human Services Commission or the Texas Workforce Commission, as applicable, [~~Department of Assistive and Rehabilitative Services~~]; or

(3)  an applicant for employment whose potential duties include direct contact with clients of the Health and Human Services Commission or the Texas Workforce Commission, as applicable, [~~Department of Assistive and Rehabilitative Services~~].

SECTION 11.  Section 411.122, Government Code, is amended to read as follows:

Sec. 411.122.  ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: LICENSING OR REGULATORY AGENCY. (a) Except as provided by Subsection (c)(2), an agency of this state listed in Subsection (d) or a political subdivision of this state covered by Chapter 53, Occupations Code, that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who:

(1)  is an applicant for a license from the agency;

(2)  is the holder of a license from the agency; or

(3)  requests a determination of eligibility for a license from the agency.

(b)  A municipality or county that requires a sexually oriented business to obtain a license or other permit under Section 243.007, Local Government Code, is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who:

(1)  is an applicant for a license or other permit for a sexually oriented business issued by the municipality or county;

(2)  is the holder of a license or other permit for a sexually oriented business issued by the municipality or county; or

(3)  requests a determination of eligibility for a license or other permit for a sexually oriented business issued by the municipality or county.

(c)  This section does not apply to an agency that is:

(1)  specifically authorized by this subchapter or Subchapter E-1 to obtain criminal history record information from the department; or

(2)  covered by Section 53.002, Occupations Code, to the extent provided by that section.

(d)  The following state agencies are subject to this section:

(1)  Texas Appraiser Licensing and Certification Board;

(2)  Texas Board of Architectural Examiners;

(3)  Texas Board of Chiropractic Examiners;

(4)  State Board of Dental Examiners;

(5)  Texas Board of Professional Engineers;

(6)  Texas Funeral Service Commission;

(7)  Texas Board of Professional Geoscientists;

(8)  Department of State Health Services or the Health and Human Services Commission, as applicable, except as provided by Section 411.110, and agencies attached to the department, including:

(A)  Texas State Board of Examiners of Marriage and Family Therapists;

(B)  Texas State Board of Examiners of Professional Counselors; and

(C)  Texas State Board of Social Worker Examiners;

(9)  Texas Board of Professional Land Surveying;

(10)  Texas Department of Licensing and Regulation, except as provided by Section 411.093;

(11)  Texas Commission on Environmental Quality;

(12)  Texas Board of Occupational Therapy Examiners;

(13)  Texas Optometry Board;

(14)  Texas State Board of Pharmacy;

(15)  Texas Board of Physical Therapy Examiners;

(16)  Texas State Board of Plumbing Examiners;

(17)  Texas State Board of Podiatric Medical Examiners;

(18)  Texas State Board of Examiners of Psychologists;

(19)  Texas Real Estate Commission;

(20)  Texas Department of Transportation;

(21)  State Board of Veterinary Medical Examiners;

(22)  Texas Department of Housing and Community Affairs;

(23)  secretary of state;

(24)  state fire marshal;

(25)  Texas Education Agency;

(26)  Department of Agriculture; and

(27)  Texas Department of Motor Vehicles.

SECTION 12.  Section 411.1386, Government Code, is amended to read as follows:

Sec. 411.1386.  ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: COURT CLERK; HEALTH AND HUMAN SERVICES COMMISSION [~~DEPARTMENT OF AGING AND DISABILITY SERVICES~~]; GUARDIANSHIPS.

(a)  Except as provided by Subsections (a-1), (a-5), and (a-6), the clerk of the county having venue over a proceeding for the appointment of a guardian under Title 3, Estates Code, shall 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;

(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;

(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; or

(5)  any other person proposed to serve as a guardian under Title 3, Estates Code, including a proposed temporary guardian and a proposed successor guardian, other than an attorney.

(a-1)  The Health and Human Services Commission [~~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 or referred by the Health and Human Services Commission [~~Department of Aging and Disability Services~~], including:

(1)  an employee of or an applicant selected for an employment position with the Health and Human Services Commission [~~Department of Aging and Disability Services~~];

(2)  a volunteer or an applicant selected to volunteer with the Health and Human Services Commission [~~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 Health and Human Services Commission [~~Department of Aging and Disability Services~~] to provide guardianship services to a ward referred by the department;

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

(5)  a contractor or an employee of a contractor who provides services to a ward of the Health and Human Services Commission [~~Department of Aging and Disability Services~~] under a contract with the estate of the ward.

(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 or referred by the Health and Human Services Commission [~~Department of Aging and Disability Services~~].

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

(a-4)  The Health and Human Services Commission [~~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; and

(2)  the guardianship certification program of the Judicial Branch Certification Commission at the request of the commission.

(a-5)  Not later than the 10th day before the date of the hearing to appoint a guardian, a person may submit to the clerk a copy of the person's criminal history record information required under Subsection (a)(5) that the person obtains from the department not earlier than the 30th day before the date of the hearing.

(a-6)  The clerk described by Subsection (a) is not required to obtain criminal history record information for a person if the Judicial Branch Certification Commission conducted a criminal history check on the person under Chapter 155. The commission shall provide to the clerk at the court's request the criminal history record information that was obtained from the department or the Federal Bureau of Investigation.

(b)  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)  Criminal history record information obtained by or provided to a clerk under Subsection (a), (a-5), or (a-6) 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 program of the Judicial Branch Certification Commission, 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, with the consent of the person being investigated, or as authorized by Subsection (a-6) or Section 1104.404, Estates Code. The county clerk or guardianship certification program of the Judicial Branch Certification Commission may destroy the criminal history record information after the information is used for the purposes authorized by this section.

(e)  The court, as that term is defined by Section 1002.008, Estates Code, shall 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 Health and Human Services Commission [~~Department of Aging and Disability Services~~]; or

(2)  appoint any other person proposed to serve as a guardian under Title 3, Estates Code, including a proposed temporary guardian and a proposed successor guardian, other than an attorney.

(f)  Criminal history record information obtained by the guardianship certification program of the Judicial Branch Certification Commission under Subsection (a-4)(2) may be used for any purpose related to the issuance, denial, renewal, suspension, or revocation of a certificate issued by the commission.

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

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

(i)  This section does not prohibit the Health and Human Services Commission [~~Department of Aging and Disability Services~~] from obtaining and using criminal history record information as provided by other law.

SECTION 13.  Section 411.13861, Government Code, is amended to read as follows:

Sec. 411.13861.  ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: HEALTH AND HUMAN SERVICES COMMISSION [~~DEPARTMENT OF AGING AND DISABILITY SERVICES~~]. (a) The Health and Human Services Commission [~~Department of Aging and Disability Services~~] is entitled to obtain from the Department of Public Safety criminal history record information maintained by the Department of Public Safety that relates to a person:

(1)  required to undergo a background and criminal history check under Chapter 248A, Health and Safety Code;

(2)  who seeks unsupervised visits with a ward of the The Health and Human Services Commission [~~department~~], including a relative of the ward;

(3)  who is an applicant for employment with the Health and Human Services Commission [~~Department of Aging and Disability Services~~] for a position in which the person, as an employee, would have direct access to residents or clients of a facility regulated by the Health and Human Services Commission [~~department~~], as determined by the executive commissioner of the Health and Human Services Commission [~~aging and disability services~~]; or

(4)  who is an employee of the Health and Human Services Commission [~~Department of Aging and Disability Services~~] and who has direct access to residents or clients of a facility regulated by the Health and Human Services Commission [~~department~~], as determined by the executive commissioner of the Health and Human Services Commission [~~aging and disability services~~].

(b)  Criminal history record information obtained under Subsection (a) is for the exclusive use of the Health and Human Services Commission [~~Department of Aging and Disability Services~~] and is privileged and confidential.

(c)  Criminal history record information obtained 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 Health and Human Services Commission [~~Department of Aging and Disability Services~~] may destroy the criminal history record information after the information is used for the purposes authorized by this section.

(d)  This section does not prohibit the Health and Human Services Commission [~~Department of Aging and Disability Services~~] from obtaining and using criminal history record information as provided by other law.

(e)  In this section, "ward" has the meaning assigned by Section 1002.030, Estates Code.

(f)  Notwithstanding Subsection (c), the Health and Human Services Commission [~~Department of Aging and Disability Services~~] shall destroy information obtained under Subsection (a)(3) or (4) after the information is used for the purposes authorized by this section.

SECTION 14.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.