

By: Kolkhorst

S.B. No. 2200

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the authority of the Health and Human Services
3 Commission to obtain criminal history record information.

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

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

7 Sec. 411.110. ACCESS TO CRIMINAL HISTORY RECORD
8 INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES AND HEALTH AND
9 HUMAN SERVICES COMMISSION. (a) The Department of State Health
10 Services and the Health and Human Services Commission are [~~is~~]
11 entitled to obtain from the department criminal history record
12 information maintained by the department that relates to:

13 (1) a person who is:

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

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

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

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

23 (3) [~~an applicant for a license, the owner or manager~~
24 ~~of an applicant for a massage establishment license, or a license~~

1 ~~holder under Chapter 455, Occupations Code,~~

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

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

6 (B) the South Texas Health Care System;

7 (4) ~~(5)~~ an applicant for employment at, current
8 employee of, or person who contracts or may contract to provide
9 goods or services with the Council on Sex Offender Treatment or
10 other division or component of the Health and Human Services
11 Commission [~~Department of State Health Services~~] that monitors
12 sexually violent predators as described by Section 841.003(a),
13 Health and Safety Code; or

14 (5) ~~(6)~~ a person authorized to access vital records
15 or the vital records electronic registration system under Chapter
16 191, Health and Safety Code, including an employee of or contractor
17 for the Department of State Health Services, a local registrar, a
18 medical professional, or a funeral director.

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

25 (c) After an entity is licensed or certified, the Department
26 of State Health Services or the Health and Human Services
27 Commission, as applicable, shall destroy the criminal history

1 record information that relates to that entity. The Department of
2 State Health Services or the Health and Human Services Commission,
3 as applicable, shall destroy the criminal history record
4 information that relates to:

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

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

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

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

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

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

3 Sec. 411.1103. ACCESS TO CRIMINAL HISTORY RECORD
4 INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES AND HEALTH AND
5 HUMAN SERVICES COMMISSION. (a) The Department of State Health
6 Services and the Health and Human Services Commission are [~~is~~]
7 entitled to obtain from the department criminal history record
8 information maintained by the department that relates to a person:

- 9 (1) who is:
 - 10 (A) an applicant for employment at a state
 - 11 hospital;
 - 12 (B) an employee of a state hospital;
 - 13 (C) a person who contracts or may contract to
 - 14 provide goods or services to the Department of State Health
 - 15 Services or the Health and Human Services Commission, as
 - 16 applicable, at a state hospital or an employee of or applicant for
 - 17 employment with that person;
 - 18 (D) a volunteer with a state hospital; or
 - 19 (E) an applicant for a volunteer position with a
 - 20 state hospital; and
- 21 (2) who would be placed in direct contact with a
- 22 patient at a state hospital.

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

- 27 (1) on court order;

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

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

7 (4) as provided by Subsection (c).

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

13 (d) Subject to Section [411.087](#), the Department of State
14 Health Services and the Health and Human Services Commission are
15 ~~[is]~~ entitled to:

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

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

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

27 SECTION 3. Section [411.1105](#), Government Code, is amended to

1 read as follows:

2 Sec. 411.1105. ACCESS TO CRIMINAL HISTORY RECORD
3 INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES AND HEALTH AND
4 HUMAN SERVICES COMMISSION. (a) The Department of State Health
5 Services and the Health and Human Services Commission are [~~is~~]
6 entitled to obtain from the department criminal history record
7 information maintained by the department that relates to a person
8 who is:

- 9 (1) an applicant for a chemical dependency counselor's
10 license, a counselor intern's registration, or a clinical
11 supervisor certification under Chapter 504, Occupations Code; or
12 (2) the holder of a license, registration, or
13 certification under that chapter.

14 (b) In addition to information obtained from the Federal
15 Bureau of Investigation under Section 411.087, the Department of
16 State Health Services and the Health and Human Services Commission
17 are [~~is~~] entitled to obtain information relating to the wanted
18 persons status of an individual listed in Subsection (a).

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

25 (d) The Department of State Health Services or the Health
26 and Human Services Commission, as applicable, may provide the
27 applicant or licensee with a copy of the person's criminal history

1 record information obtained from the Department of Public Safety,
2 Federal Bureau of Investigation identification division, or
3 another law enforcement agency.

4 SECTION 4. Section [411.1131](#), Government Code, is amended to
5 read as follows:

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

18 (b) Criminal history record information obtained by the
19 Health and Human Services Commission [~~Department of Assistive and~~
20 ~~Rehabilitative Services~~] under Subsection (a) may be used only to
21 evaluate an applicant for a staff position at an outdoor training
22 program for children who are deaf or hard of hearing. The Health
23 and Human Services Commission [~~Department of Assistive and~~
24 ~~Rehabilitative Services~~] may release or disclose the information to
25 a private entity described by Subsection (a) for that purpose.

26 (c) The Health and Human Services Commission [~~Department of~~
27 ~~Assistive and Rehabilitative Services~~] may not release or disclose

1 information obtained under Subsection (a), except on court order or
2 with the consent of the person who is the subject of the criminal
3 history record information, and shall destroy all criminal history
4 record information obtained under Subsection (a) after the
5 information is used for its authorized purpose.

6 SECTION 5. The heading to Section 411.114, Government Code,
7 is amended to read as follows:

8 Sec. 411.114. ACCESS TO CRIMINAL HISTORY RECORD
9 INFORMATION: DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES AND
10 HEALTH AND HUMAN SERVICES COMMISSION.

11 SECTION 6. Sections 411.114(a), (b), and (c), Government
12 Code, are amended to read as follows:

13 (a)(1) In this subsection:

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

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

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

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

24 ~~[(iii)]~~ any person or entity acting as an
25 authorized agent of the Department of Family and Protective
26 Services.

27 (B) "Elderly person" has the meaning assigned by

1 Section 48.002, Human Resources Code.

2 (D) "Person with a disability" has the meaning
3 assigned [~~means a disabled person as defined~~] by Section 48.002,
4 Human Resources Code.

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

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

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

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

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

23 (E) an employee of, an applicant for employment
24 with, or a volunteer or an applicant volunteer with a business
25 entity or person that contracts with the Department of Family and
26 Protective Services or the Health and Human Services Commission to
27 provide direct delivery of protective services to children, elderly

1 persons, or persons with a disability, if the person's duties or
2 responsibilities include direct contact with children, elderly
3 persons, or persons with a disability;

4 (F) a registered volunteer with the Department of
5 Family and Protective Services or the Health and Human Services
6 Commission;

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

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

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

22 (i) the report alleges the person has
23 engaged in conduct that meets the applicable definition of abuse,
24 neglect, or exploitation under Chapter 261, Family Code, or Chapter
25 48, Human Resources Code; and

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

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

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

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

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

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

26 (B) a Department of Family and Protective
27 Services employee or a Health and Human Services Commission

1 employee regardless of the duties of the employee's position,
2 including an employee described by Subdivision (2)(H);

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

7 (D) an employee of, an applicant for employment
8 with, or a volunteer or an applicant volunteer with an entity or
9 person that contracts with the Department of Family and Protective
10 Services or the Health and Human Services Commission, as
11 applicable, and has access to confidential information in that
12 [~~the~~] department's or commission's records, if the employee,
13 applicant, volunteer, or applicant volunteer has or will have
14 access to that confidential information;

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

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

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

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

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

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

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

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

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

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

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

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

5 (4) Subject to Section 411.087, the Department of
6 Family and Protective Services and the Health and Human Services
7 Commission are [~~is~~] entitled to:

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

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

22 (5) The Department of Family and Protective Services
23 or the Health and Human Services Commission may not use the
24 authority granted under this section to harass an employee or
25 volunteer. The commissioner of the Department of Family and
26 Protective Services or the executive commissioner of the Health and
27 Human Services Commission, as applicable, shall adopt rules to

1 prevent the harassment of an employee or volunteer through the
2 request and use of criminal records.

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

7 (A) on court order;

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

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

15 (D) as provided by Subdivision (7).

16 (7) Subject to Subdivision (8), the [The] Department
17 of Family and Protective Services or the Health and Human Services
18 Commission, as applicable, is not prohibited from releasing
19 criminal history record information obtained under this subsection
20 to:

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

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

27 (C) an adult who resides with an alleged victim

1 of abuse, neglect, or exploitation of a child, elderly person, or
2 person with a disability and who also resides with the alleged
3 perpetrator of that abuse, neglect, or exploitation if:

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

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

11 (D) an elderly person or a ~~[disabled]~~ person with
12 a disability who is an alleged victim of abuse, neglect, or
13 exploitation and who resides with the alleged perpetrator of that
14 abuse, neglect, or exploitation if:

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

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

22 (8) The Department of Family and Protective Services
23 or the Health and Human Services Commission may only release to a
24 person described by Subdivision (7)(C) or (D) criminal history
25 record information that that department or commission obtains from
26 the Department of Public Safety's computerized criminal history
27 system.

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

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

17 SECTION 7. Section [411.1142](#), Government Code, is amended to
18 read as follows:

19 Sec. 411.1142. ACCESS TO CRIMINAL HISTORY RECORD:
20 [~~INTERAGENCY COUNCIL ON~~] EARLY CHILDHOOD INTERVENTION PROGRAM
21 WITHIN HEALTH AND HUMAN SERVICES COMMISSION. (a) The [~~Interagency~~
22 ~~Council on~~] Early Childhood Intervention program within the Health
23 and Human Services Commission is entitled to obtain criminal
24 history record information maintained by the Department of Public
25 Safety, the Federal Bureau of Investigation identification
26 division, or another law enforcement agency that relates to an
27 employee or an applicant for permanent, temporary, or consultative

1 employment or for volunteer positions whose employment or potential
2 employment or volunteer position with the program [~~council~~] or a
3 local provider involves the delivery of early childhood
4 intervention services or involves direct interactions with or the
5 opportunity to interact and associate with children.

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

12 (c) The Health and Human Services Commission [~~council~~]
13 shall destroy criminal history record information that relates to a
14 person after the information is used for its authorized purpose.

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

21 (e) The failure or refusal to provide a complete set of
22 fingerprints or a complete name on request constitutes good cause
23 for dismissal or refusal to hire, as applicable, with regard to
24 program [~~council~~] employees, professional consultants, and
25 applicants for permanent, temporary, or consultative employment or
26 for volunteer positions whose employment or potential employment or
27 volunteer position with the Health and Human Services Commission

1 [~~council~~] or a local provider involves the delivery of early
2 childhood intervention services or involves direct interactions
3 with or the opportunity to interact and associate with children.

4 SECTION 8. Sections 411.1144(a) and (d), Government Code,
5 are amended to read as follows:

6 (a) The Department of State Health Services[~~, the~~
7 ~~Department of Aging and Disability Services,~~] and the Health and
8 Human Services Commission are entitled to obtain from the
9 department criminal history record information maintained by the
10 department that relates to a person:

- 11 (1) who is:
- 12 (A) an applicant for employment with the agency;
 - 13 (B) an employee of the agency;
 - 14 (C) a volunteer with the agency;
 - 15 (D) an applicant for a volunteer position with
16 the agency;
 - 17 (E) an applicant for a contract with the agency;
 - 18 or
 - 19 (F) a contractor of the agency; and

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

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

- 26 (1) obtain through the Federal Bureau of Investigation
27 criminal history record information maintained or indexed by that

1 bureau that pertains to a person described by Subsection (a); and
2 (2) obtain from any other criminal justice agency in
3 this state criminal history record information maintained by that
4 criminal justice agency that relates to a person described by
5 Subsection (a).

6 SECTION 9. Section [411.115](#), Government Code, is amended to
7 read as follows:

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

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

23 (1) who is:

24 (A) an applicant for employment with the [~~Texas~~]
25 Department of State Health Services, the Health and Human Services
26 Commission [~~Mental Health and Mental Retardation~~], a local mental
27 health or intellectual and developmental disability [~~mental~~

1 ~~retardation~~] authority, or a community center;

2 (B) an employee of the [~~Texas~~] Department of
3 State Health Services, the Health and Human Services Commission
4 [~~Mental Health and Mental Retardation~~], a local mental health or
5 intellectual and developmental disability [~~mental retardation~~]
6 authority, or a community center;

7 (C) an applicant for employment with or an
8 employee of a business or person that contracts with the [~~Texas~~]
9 Department of State Health Services, the Health and Human Services
10 Commission [~~Mental Health and Mental Retardation~~], a local mental
11 health or intellectual and developmental disability [~~mental~~
12 ~~retardation~~] authority, or a community center to provide
13 residential services to patients with mental illness or clients
14 with an intellectual or developmental disability [~~mental~~
15 ~~retardation~~] who were furloughed or discharged from a [~~Texas~~]
16 Department of State Health Services facility, a Health and Human
17 Services Commission facility, [~~Mental Health and Mental~~
18 Retardation facility] or a community center, as applicable;

19 (D) a volunteer with the [~~Texas~~] Department of
20 State Health Services, the Health and Human Services Commission
21 [~~Mental Health and Mental Retardation~~], a local mental health or
22 intellectual and developmental disability [~~mental retardation~~]
23 authority, or a community center; or

24 (E) a volunteer applicant; and

25 (2) who would be placed in direct contact with
26 patients with mental illness or clients with an intellectual or
27 developmental disability [~~mental retardation~~].

1 (d) Criminal history record information obtained by the
2 Department of State Health Services, the Health and Human Services
3 Commission [~~mental health department~~], a local mental health or
4 intellectual and developmental disability [~~mental retardation~~]
5 authority, or a community center under Subsection (b) may not be
6 released or disclosed to a person, other than the contractor that
7 employs the person who is the subject of the criminal history record
8 information, except on court order or with the consent of the person
9 who is the subject of the criminal history record information.

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

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

21 Sec. 411.117. ACCESS TO CRIMINAL HISTORY RECORD
22 INFORMATION: HEALTH AND HUMAN SERVICES COMMISSION AND TEXAS
23 WORKFORCE COMMISSION [~~DEPARTMENT OF ASSISTIVE AND REHABILITATIVE~~
24 ~~SERVICES~~]. The Health and Human Services Commission and the Texas
25 Workforce Commission are [~~Department of Assistive and~~
26 ~~Rehabilitative Services is~~] entitled to obtain from the department
27 criminal history record information maintained by the department

1 that relates to a person who is:

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

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

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

12 SECTION 11. Section [411.122](#)(d), Government Code, is amended
13 to read as follows:

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

16 (1) Texas Appraiser Licensing and Certification
17 Board;

18 (2) Texas Board of Architectural Examiners;

19 (3) Texas Board of Chiropractic Examiners;

20 (4) State Board of Dental Examiners;

21 (5) Texas Board of Professional Engineers;

22 (6) Texas Funeral Service Commission;

23 (7) Texas Board of Professional Geoscientists;

24 (8) Health and Human Services Commission and the

25 Department of State Health Services, except as provided by Section
26 [411.110](#), and agencies attached to that commission [~~the department~~],

27 including:

- 1 (A) Texas State Board of Examiners of Marriage
2 and Family Therapists;
- 3 (B) Texas State Board of Examiners of
4 Professional Counselors; and
- 5 (C) Texas State Board of Social Worker Examiners;
- 6 (9) Texas Board of Professional Land Surveying;
- 7 (10) Texas Department of Licensing and Regulation,
8 except as provided by Section [411.093](#);
- 9 (11) Texas Commission on Environmental Quality;
- 10 (12) Texas Board of Occupational Therapy Examiners;
- 11 (13) Texas Optometry Board;
- 12 (14) Texas State Board of Pharmacy;
- 13 (15) Texas Board of Physical Therapy Examiners;
- 14 (16) Texas State Board of Plumbing Examiners;
- 15 (17) [~~Texas State Board of Podiatric Medical~~
16 ~~Examiners~~;
- 17 [~~(18)~~] Texas State Board of Examiners of
18 Psychologists;
- 19 (18) [~~(19)~~] Texas Real Estate Commission;
- 20 (19) [~~(20)~~] Texas Department of Transportation;
- 21 (20) [~~(21)~~] State Board of Veterinary Medical
22 Examiners;
- 23 (21) [~~(22)~~] Texas Department of Housing and Community
24 Affairs;
- 25 (22) [~~(23)~~] secretary of state;
- 26 (23) [~~(24)~~] state fire marshal;
- 27 (24) [~~(25)~~] Texas Education Agency;

1 (25) [~~(26)~~] Department of Agriculture; and

2 (26) [~~(27)~~] Texas Department of Motor Vehicles.

3 SECTION 12. The heading to Section 411.1386, Government
4 Code, is amended to read as follows:

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

8 SECTION 13. Sections 411.1386(a-1), (a-2), (a-4), (e), and
9 (i), Government Code, are amended to read as follows:

10 (a-1) The Health and Human Services Commission [~~Department~~
11 ~~of Aging and Disability Services~~] shall obtain from the Department
12 of Public Safety criminal history record information maintained by
13 the Department of Public Safety that relates to each individual who
14 is or will be providing guardianship services to a ward of or
15 referred by the Health and Human Services Commission [~~Department of~~
16 ~~Aging and Disability Services~~], including:

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

20 (2) a volunteer or an applicant selected to volunteer
21 with the Health and Human Services Commission [~~Department of Aging~~
22 ~~and Disability Services~~];

23 (3) an employee of or an applicant selected for an
24 employment position with a business entity or other person that
25 contracts with the Health and Human Services Commission [~~Department~~
26 ~~of Aging and Disability Services~~] to provide guardianship services
27 to a ward referred by that commission [~~the department~~];

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

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

7 (a-2) The information in Subsection (a-1) regarding
8 applicants for employment positions must be obtained before an
9 offer of employment, and the information regarding applicant
10 volunteers must be obtained before the person's contact with a ward
11 of or referred by the Health and Human Services Commission
12 [~~Department of Aging and Disability Services~~].

13 (a-4) The Health and Human Services Commission [~~Department~~
14 ~~of Aging and Disability Services~~] shall provide the information
15 obtained under Subsection (a-1) to:

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

18 (2) the guardianship certification program of the
19 Judicial Branch Certification Commission at the request of the
20 Judicial Branch Certification Commission [~~commission~~].

21 (e) The court, as that term is defined by Section [1002.008](#),
22 Estates Code, shall use the information obtained or provided under
23 Subsection (a), (a-4)(1), (a-5), or (a-6) only in determining
24 whether to:

25 (1) appoint, remove, or continue the appointment of a
26 private professional guardian, a guardianship program, or the
27 Health and Human Services Commission [~~Department of Aging and~~

1 ~~Disability Services~~]; or

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

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

10 SECTION 14. The heading to Section 411.13861, Government
11 Code, is amended to read as follows:

12 Sec. 411.13861. ACCESS TO CRIMINAL HISTORY RECORD
13 INFORMATION: HEALTH AND HUMAN SERVICES COMMISSION [~~DEPARTMENT OF~~
14 ~~AGING AND DISABILITY SERVICES~~].

15 SECTION 15. Sections 411.13861(a), (b), (c), (d), and (f),
16 Government Code, are amended to read as follows:

17 (a) The Health and Human Services Commission [~~Department of~~
18 ~~Aging and Disability Services~~] is entitled to obtain from the
19 Department of Public Safety criminal history record information
20 maintained by the Department of Public Safety that relates to a
21 person:

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

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

27 (3) who is an applicant for employment with the Health

1 and Human Services Commission [~~Department of Aging and Disability~~
2 ~~Services~~] for a position in which the person, as an employee, would
3 have direct access to residents or clients of a facility regulated
4 by the Health and Human Services Commission [~~department~~], as
5 determined by the executive commissioner of that commission [~~aging~~
6 ~~and disability services~~]; or

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

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

16 (c) Criminal history record information obtained under
17 Subsection (a) may not be released or disclosed to any person or
18 agency except on court order or with the consent of the person who
19 is the subject of the information. The Health and Human Services
20 Commission [~~Department of Aging and Disability Services~~] may
21 destroy the criminal history record information after the
22 information is used for the purposes authorized by this section.

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

27 (f) Notwithstanding Subsection (c), the Health and Human

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

5 SECTION 16. Section 411.114(d), Government Code, is
6 repealed.

7 SECTION 17. To the extent of any conflict, this Act prevails
8 over another Act of the 86th Legislature, Regular Session, 2019,
9 relating to nonsubstantive additions to and corrections in enacted
10 codes.

11 SECTION 18. This Act takes effect immediately if it
12 receives a vote of two-thirds of all the members elected to each
13 house, as provided by Section 39, Article III, Texas Constitution.
14 If this Act does not receive the vote necessary for immediate
15 effect, this Act takes effect September 1, 2019.