

By: Kolkhorst

S.B. No. 2200

A BILL TO BE ENTITLED

1 AN ACT
2 relating to conforming amendments to ensure that health and human
3 services agencies may continue to obtain criminal history record
4 information.

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

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

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

15 (1) a person who is:

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

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

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

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

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

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

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

8 (B) the South Texas Health Care System;

9 (5) an applicant for employment at, current employee
10 of, or person who contracts or may contract to provide goods or
11 services with the Council on Sex Offender Treatment or other
12 division or component of the Department of State Health Services
13 that monitors sexually violent predators as described by Section
14 841.003(a), Health and Safety Code; or

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

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

27 (c) After an entity is licensed or certified, the Department

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

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

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

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

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

24 (f) The Department of State Health Services or the Health
25 and Human Services Commission, as applicable, may not consider
26 offenses for which points are assessed under Section [708.052](#),
27 Transportation Code, to determine whether to hire or retain an

1 employee or to contract with a person on whom criminal history
2 record information is obtained under this section.

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

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

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

26 (b) Criminal history record information obtained by the
27 Department of State Health Services or the Health and Human

1 Services Commission, as applicable, under this section may not be
2 released or disclosed to any person except:

- 3 (1) on court order;
- 4 (2) with the consent of the person who is the subject
5 of the criminal history record information;
- 6 (3) for purposes of an administrative hearing held by
7 the Department of State Health Services or the Health and Human
8 Services Commission, as applicable, concerning the person who is
9 the subject of the criminal history record information; or
- 10 (4) as provided by Subsection (c).

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

16 (d) Subject to Section [411.087](#), the Department of State
17 Health Services or the Health and Human Services Commission, as
18 applicable, is entitled to:

- 19 (1) obtain through the Federal Bureau of Investigation
20 criminal history record information maintained or indexed by that
21 bureau that pertains to a person described by Subsection (a); and
- 22 (2) obtain from any other criminal justice agency in
23 this state criminal history record information maintained by that
24 criminal justice agency that relates to a person described by
25 Subsection (a).

26 (e) This section does not prohibit the Department of State
27 Health Services or the Health and Human Services Commission, as

1 applicable, from obtaining and using criminal history record
2 information as provided by other law.

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

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

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

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

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

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

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

7 SECTION 4. Section 411.1106, Government Code, is amended by
8 adding Subsection (b-1) to read as follows:

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

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

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

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

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

18 SECTION 6. Section [411.114](#), Government Code, is amended to
19 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

26 (D) except as provided by Subsection (d), an
27 applicant selected for a position with the Department of Family and

1 Protective Services or the Health and Human Services Commission, as
2 applicable, the duties of which include direct delivery of
3 protective services to children, elderly persons, or persons with a
4 disability;

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

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

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

21 (H) an employee of the [a] Department of Family
22 and Protective Services or the Health and Human Services
23 Commission, as applicable, [~~employee~~] who is engaged in the direct
24 delivery of protective services to children, elderly persons, or
25 persons with a disability;

26 (I) an alleged perpetrator in a report the
27 Department of Family and Protective Services or the Health and

1 Human Services Commission, as applicable, receives alleging that
2 the person has abused, neglected, or exploited a child, an elderly
3 person, or a person with a disability, provided that:

4 (i) the report alleges the person has
5 engaged in conduct that meets the applicable definition of abuse,
6 neglect, or exploitation under Chapter 261, Family Code, or Chapter
7 48, Human Resources Code; and

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

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

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

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

23 (3) In addition to the criminal history record
24 information the Department of Family and Protective Services or the
25 Health and Human Services Commission, as applicable, is required to
26 obtain under Subdivision (2), the Department of Family and
27 Protective Services or the Health and Human Services Commission, as

1 applicable, is entitled to obtain from the department criminal
2 history record information maintained by the department that
3 relates to a person who is:

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

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

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

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

26 (E) a person living in the residence in which the
27 alleged victim of the report resides, including an alleged

1 perpetrator in a report described by Subdivision (2)(I);

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

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

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

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

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

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

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

27 (M) a person 14 years of age or older who will be

1 regularly or frequently working or staying in a host home that is
2 providing supervised independent living services to a young adult
3 receiving extended foster care services from the Department of
4 Family and Protective Services or the Health and Human Services
5 Commission, as applicable;

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

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

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

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

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

23 (B) obtain from any other criminal justice agency
24 in this state criminal history record information maintained by
25 that criminal justice agency that relates to a person described by
26 Subdivision (2) or (3). Law enforcement entities shall expedite
27 the furnishing of such information to workers of the Department of

1 Family and Protective Services or the Health and Human Services
2 Commission, as applicable, [~~workers~~] to ensure prompt criminal
3 background checks for the safety of alleged victims and workers of
4 the Department of Family and Protective Services or the Health and
5 Human Services Commission, as applicable [~~workers~~].

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

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

18 (A) on court order;

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

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

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

27 (7) The Department of Family and Protective Services

1 or the Health and Human Services Commission, as applicable, is not
2 prohibited from releasing criminal history record information
3 obtained under this subsection to:

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

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

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

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

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

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

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

27 (ii) the Department of Family and

1 Protective Services or the Health and Human Services Commission, as
2 applicable, determines that the release of information to the
3 elderly or disabled person or adult is necessary to ensure the
4 safety or welfare of the elderly or disabled person.

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

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

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

1 SECTION 7. Section 411.1142, Government Code, is amended to
2 read as follows:

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

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

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

27 (d) The council or the Health and Human Services Commission,

1 as applicable, may provide the applicant, employee, professional
2 consultant, or volunteer with a copy of the person's criminal
3 history record information obtained from the Department of Public
4 Safety, Federal Bureau of Investigation identification division,
5 or another law enforcement agency.

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

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

18 (a) The Department of State Health Services [~~the~~
19 ~~Department of Aging and Disability Services,~~] and the Health and
20 Human Services Commission are 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 agency;
 - 25 (B) an employee of the agency;
 - 26 (C) a volunteer with the agency;
 - 27 (D) an applicant for a volunteer position with

1 the agency;

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

3 or

4 (F) a contractor of the agency; and

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

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

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

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

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

20 Sec. 411.115. ACCESS TO CRIMINAL HISTORY RECORD
21 INFORMATION: [~~TEXAS~~] DEPARTMENT OF STATE HEALTH SERVICES AND
22 HEALTH AND HUMAN SERVICES COMMISSION [~~MENTAL HEALTH AND MENTAL~~
23 ~~RETARDATION~~]; LOCAL AUTHORITIES; COMMUNITY CENTERS. (a) In this
24 section, "local mental health authority," "local mental
25 retardation authority," and "community center" have the meanings
26 assigned by Sections [~~Section~~] 531.002 and 531.0021, Health and
27 Safety Code, as applicable.

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

7 (1) who is:

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

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

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

1 ~~Retardation facility or community center];~~

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

7 (E) a volunteer applicant; and

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

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

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

27 SECTION 10. Section 411.117, Government Code, is amended to

1 read as follows:

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

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

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

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

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

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

24 (1) Texas Appraiser Licensing and Certification
25 Board;

26 (2) Texas Board of Architectural Examiners;

27 (3) Texas Board of Chiropractic Examiners;

- 1 (4) State Board of Dental Examiners;
- 2 (5) Texas Board of Professional Engineers;
- 3 (6) Texas Funeral Service Commission;
- 4 (7) Texas Board of Professional Geoscientists;
- 5 (8) Health and Human Services Commission and
6 Department of State Health Services, except as provided by Section
7 [411.110](#), and agencies attached to the department, including:
- 8 (A) Texas State Board of Examiners of Marriage
9 and Family Therapists;
- 10 (B) Texas State Board of Examiners of
11 Professional Counselors; and
- 12 (C) Texas State Board of Social Worker Examiners;
- 13 (9) Texas Board of Professional Land Surveying;
- 14 (10) Texas Department of Licensing and Regulation,
15 except as provided by Section [411.093](#);
- 16 (11) Texas Commission on Environmental Quality;
- 17 (12) Texas Board of Occupational Therapy Examiners;
- 18 (13) Texas Optometry Board;
- 19 (14) Texas State Board of Pharmacy;
- 20 (15) Texas Board of Physical Therapy Examiners;
- 21 (16) Texas State Board of Plumbing Examiners;
- 22 (17) Texas State Board of Podiatric Medical Examiners;
- 23 (18) Texas State Board of Examiners of Psychologists;
- 24 (19) Texas Real Estate Commission;
- 25 (20) Texas Department of Transportation;
- 26 (21) State Board of Veterinary Medical Examiners;
- 27 (22) Texas Department of Housing and Community

1 Affairs;

2 (23) secretary of state;

3 (24) state fire marshal;

4 (25) Texas Education Agency;

5 (26) Department of Agriculture; and

6 (27) Texas Department of Motor Vehicles.

7 SECTION 12. The heading to Section [411.1386](#), Government
8 Code, is amended to read as follows:

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

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

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

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

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

27 (3) an employee of or an applicant selected for an

1 employment position with a business entity or other person that
2 contracts with the Health and Human Services Commission [~~Department~~
3 ~~of Aging and Disability Services~~] to provide guardianship services
4 to a ward referred by the department;

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

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

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

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

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

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

25 (e) The court, as that term is defined by Section [1002.008](#),
26 Estates Code, shall use the information obtained or provided under
27 Subsection (a), (a-4)(1), (a-5), or (a-6) only in determining

1 whether to:

2 (1) appoint, remove, or continue the appointment of a
3 private professional guardian, a guardianship program, or the
4 Health and Human Services Commission [~~Department of Aging and~~
5 ~~Disability Services~~]; or

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

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

14 SECTION 14. Section [411.13861](#), Government Code, is amended
15 to read as follows:

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

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

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

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

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

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

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

25 (d) This section does not prohibit the Health and Human
26 Services Commission [~~Department of Aging and Disability Services~~]
27 from obtaining and using criminal history record information as

1 provided by other law.

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

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

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