

BILL ANALYSIS

S.B. 1096
By: Zaffirini
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties, in raising a range of concerns regarding guardianships, assert that persons interested in serving as guardians should comply with certain background check requirements and training requirements and that there should be a way to quickly identify a ward's guardian. S.B. 1096 seeks to address these concerns by providing for background checks of guardians, guardian training requirements before court appointment, mandatory guardianship registration, and a guardianship database.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 11 of this bill.

ANALYSIS

S.B. 1096 amends the Code of Criminal Procedure to require a peace officer or the person having custody of a person who is a ward, as soon as practicable but not later than the first working day after the date a peace officer detains or arrests the ward, to notify the court having jurisdiction over the ward's guardianship of the ward's detention or arrest.

S.B. 1096 amends the Family Code to require a law enforcement officer or other person having custody of a child who is a ward, as soon as practicable but not later than the first working day after the date a law enforcement officer takes such a child into custody under specified Family Code provisions, to notify the court with jurisdiction over the child's guardianship of the child's detention or arrest.

S.B. 1096 amends the Health and Safety Code to require a peace officer, as soon as practicable but not later than the first working day after the date the peace officer takes a person who is a ward into custody for emergency detention, to notify the court having jurisdiction over the ward's guardianship of the ward's detention or transportation to a mental health facility.

S.B. 1096 amends the Government Code to require the Supreme Court of Texas, after consulting with the Office of Court Administration of the Texas Judicial System (OCA) and the Judicial Branch Certification Commission, to establish by rule a mandatory registration program for guardianships under which all guardianships in Texas are required to register with the commission. The bill requires the supreme court, in establishing those rules, to ensure courts with jurisdiction over a guardianship immediately notify the commission of the removal of a guardian. The bill requires OCA to establish and maintain, in cooperation with the commission

and courts with jurisdiction over guardianship proceedings and by using the information obtained by the commission under the bill's provisions, to establish and maintain a central database of all guardians subject to the jurisdiction of the state. The bill requires OCA to ensure the database is accessible to the Department of Public Safety (DPS) for law enforcement purposes and to establish the database and provide access to DPS not later than June 1, 2018. The bill requires DPS to make information from the database available to law enforcement personnel through the Texas Law Enforcement Telecommunications System or a successor system of telecommunication used by law enforcement agencies and operated by DPS. The bill restricts the information that may be disclosed from the database to a law enforcement official inquiring into a guardianship to the name, sex, and date of birth of a ward; the name, telephone number, and address of the guardian of a ward; and the name of the court with jurisdiction over the guardianship. The bill requires OCA to limit access to the database to properly trained staff and requires the display of a disclaimer, as specified by the bill, when the database is accessed. The bill makes information contained in the database confidential and exempt from disclosure under any law. The bill requires a law enforcement agency or officer that receives the information to maintain the confidentiality of the information and prohibits the agency or officer from disclosing the information under any law and from using the information for a purpose that does not directly relate to the purpose for which it was obtained.

S.B. 1096 requires the supreme court, after consulting with the commission, to establish by rule a process by which the commission performs training and criminal history background checks for individuals seeking appointment as guardian. The bill requires the supreme court, in adopting such rules, to ensure that the commission is required to provide confirmation of a person's completion of training and a copy of the person's criminal history background check to the probate court not later than the 10th day before the date of the hearing to appoint a guardian; to ensure that before a person is appointed guardian the person completes a training course that is designed by the commission to educate proposed guardians about their responsibilities as guardians, alternatives to guardianships, supports and services available to the proposed ward, and a ward's bill of rights and that is made available for free to proposed guardians by the commission online via the commission's website and, on request, in a written format; and to identify the circumstances under which a court may waive such training. The required training does not apply to the initial appointment of a temporary guardian and applies only if there is a motion to extend the term of a temporary guardian. The bill authorizes the commission to make the required training available to court investigators and guardians ad litem but expressly does not require a court investigator or guardian ad litem to receive training unless required to do so by a court.

S.B. 1096 requires the commission, in accordance with the rules adopted by the supreme court under the bill's provisions, to obtain criminal history record information that is maintained by DPS or the Federal Bureau of Investigation identification division relating to an individual seeking appointment as a guardian or temporary guardian. The bill requires the commission to obtain fingerprint-based criminal history record information of an applicant if the liquid assets of the estate of a ward exceed \$50,000 or name-based criminal history record information of an applicant if the liquid assets of the estate of a ward are \$50,000 or less. The bill establishes that such criminal history record information is privileged and confidential and is for the exclusive use of the commission and the court with jurisdiction over the guardianship and prohibits the release or other disclosure of the information to any person or agency except on court order or consent of the individual being investigated. The bill authorizes the commission to destroy the criminal history record information after the information is used for the authorized purposes and establishes the authorized uses of the information by the commission and a court.

S.B. 1096 clarifies the extent of the authority granted to the commission by the bill's provisions relating to the duty to assist in qualifying certain guardians and exempts from such provisions an attorney or corporate fiduciary or an individual otherwise subject to certification for appointment as a guardian if the person is or will be providing guardianship services to a proposed ward. The bill establishes that individuals subject to training or a background check under such provisions

are not subject to enforcement action by the commission. The bill authorizes the commission to charge a fee to obtain the criminal history record information in an amount approved by the supreme court and authorizes the supreme court to adopt rules excluding individuals who are indigent from having to pay the fee. The bill entitles a guardian to reimbursement for the fee from the guardianship estate as provided by Estates Code provisions regarding reimbursement of guardian expenses.

S.B. 1096 amends the Estates Code to prohibit a court from appointing an individual to serve as a guardian if the individual has not received the required guardian training under the bill's provisions, unless waived by the court in accordance with applicable rules adopted by the supreme court under the bill's provisions. The bill requires a guardian filing an application to transfer guardianship to a foreign jurisdiction to comply with the bill's guardian registration provisions or statutory provisions relating to guardian certification, as applicable, and prohibits a court from granting such an application unless the guardian complies with the applicable provisions.

S.B. 1096 expressly does not require a law enforcement officer or other person with custody of a ward to comply with the requirement to notify the court having jurisdiction over a ward's guardianship until July 1, 2018. The bill requires the supreme court, after consulting with the commission, to adopt rules necessary to implement the bill's provisions relating to the duty to assist in qualifying certain guardians and expressly does not require a proposed guardian to comply with the bill's provisions relating to the required guardian training until June 1, 2018.

EFFECTIVE DATE

September 1, 2017.