

- SUBJECT:** Requiring registration, training for guardians; creating a database
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Neave, Rinaldi, Schofield
- 0 nays
- 1 absent — Murr
- SENATE VOTE:** On final passage, April 3 — 30-1 (Huffines)
- WITNESSES:** *On House companion bill, HB 2892:*
For — Terry Hammond, Texas Guardianship Association; (*Registered, but did not testify:* Kyle Piccola, the Arc of Texas; Jeff Miller, Disability Rights Texas; Debby Salinas Valdez, Elderly People of Disabilities; Belinda Carlton, Guardianship Reform and Supported Decision-Making Workgroup; Gyl Switzer, Mental Health America of Texas; Greg Hansch, National Alliance on Mental Illness; Will Francis, National Association of Social Workers, Texas; Lee Johnson, Texas Council of Community Centers; Linda Litzinger)
- Against — None
- On — David Slayton, Texas Judicial Council, Office of Court Administration
- BACKGROUND:** HB 3424 by Smithee, enacted by the 84th Legislature in 2015, directed the Office of Court Administration to examine the feasibility of implementing a central database containing the names of wards and the name and contact information of their guardian.
- DIGEST:** SB 1096 would set registration, training, and other requirements for certain guardians and provide for the creation of a central database of guardianships in Texas.

Registration and database. SB 1096 would require the Texas Supreme Court to establish a registration program for guardians after consulting with the Office of Court Administration (OCA) and the Judicial Branch Certification Commission. The bill would require all guardians to register with the commission. The Supreme Court would have to establish rules ensuring that when a guardian was removed, the court with jurisdiction over the guardianship immediately notified the commission.

OCA would be required to establish and maintain a central database of all guardianships under Texas jurisdiction. OCA would ensure that the Department of Public Safety (DPS) had access to the database for law enforcement purposes, and DPS would make the information available to law enforcement officers inquiring into a guardianship. The only information allowed to be disclosed would be the:

- name, sex, and date of birth of a ward;
- name, telephone number, and address of a ward's guardian; and
- name of the court with jurisdiction over the guardianship.

All information in the database would be considered confidential and not subject to disclosure. Law enforcement that received the information could not use it for a purpose that did not relate directly to why it was obtained.

If a ward was arrested, detained, or held in custody, the bill would require the peace officer, law enforcement officer, or person with custody to notify the court with jurisdiction over the guardianship within the first working day after the detention, arrest, or transportation to a facility.

Training. SB 1096 would direct the Supreme Court to require guardians to receive free training designed by the commission on guardian responsibilities, alternatives to guardianships, supports and services available to a ward, and a ward's bill of rights. The training would be made available on the commission's website or in written format on request.

The Supreme Court would be required to establish the commission's process for performing training and also would identify the circumstances under which the training requirement could be waived. The commission would be required to show confirmation that a potential guardian completed the training to the probate court no later than the 10th day before the hearing to appoint a guardian. Training would not be required for an initial temporary guardian appointment, or for guardians who were attorneys or corporate fiduciaries or individuals subject to certain other certification requirements.

Criminal history record. The bill would require the commission to obtain a criminal history record of an individual seeking appointment as a guardian or temporary guardian and, upon request, to provide it to the clerk of the county having venue over the appointment of a guardian. A clerk would not be required to obtain a criminal history record for a person for whom the commission had conducted a background check.

If the estate's liquid assets were more than \$50,000, a fingerprint-based criminal history record check would be required. Otherwise, the commission would conduct a name-based criminal history record check. Any criminal history record information would be confidential and could be used only by the commission and the court with jurisdiction for the authorized purposes. Background checks under the bill would not be required for guardians who were attorneys or corporate fiduciaries or individuals subject to certain other certification requirements.

SB 1096 would require the Supreme Court to establish the commission's process for performing background checks. The commission could charge a fee to obtain the criminal history record in an amount approved by the Supreme Court. The Supreme Court also could adopt rules excluding indigent individuals from having to pay the fee. A guardian would be entitled to reimbursement from the guardianship estate for the fee.

The bill would require a guardian filing an application to be in compliance with all applicable certification requirements before a court could grant

the application.

SB 1096 would require OCA to establish the guardianship database by June 1, 2018, and give DPS access to it.

The Supreme Court, after consulting with the Judicial Branch Certification Commission, would be required to adopt rules necessary to implement applicable provisions of the bill as soon as practical after the effective date of the bill. A proposed guardian would not be required to comply with the training requirements in the bill until June 1, 2018. A law enforcement officer or other person with custody of a ward would not be required to notify the court having guardianship jurisdiction about a ward's detention, arrest, or transportation to a facility until July 1, 2018.

The bill would take effect September 1, 2017.

**SUPPORTERS
SAY:**

SB 1096 would implement the 2016 Texas Judicial Council's Elders Committee recommendations to require guardians to be registered with the Judicial Branch Certification Commission and to make a registry available for law enforcement inquiries. The bill would increase compliance with background checks, ensure guardians were trained properly, enhance guardianship data collection, and improve interactions between law enforcement and persons under guardianship, many of whom have a mental illness or intellectual disability.

SB 1096 would address the difficulties courts have in monitoring guardianships. Family guardians can move from place to place without informing the court, and the court can lose track of the ward. A central database would help courts monitor and protect those under guardianship. Currently, there is no mechanism in place to know when people under guardianship are arrested or come into contact with law enforcement and whom law enforcement should call. The bill would allow law enforcement to use the database to inquire about a guardianship and obtain a guardian's contact information.

Although current law requires background checks of persons applying to

serve as a guardian, the OCA's Guardianship Compliance Project revealed that compliance is limited. SB 1096 would increase compliance by creating a uniform system to ensure background checks were done before a guardianship was granted. The bill would require fingerprint background checks only in cases with larger estates to mitigate the cost to potential guardians and would entitle guardians to reimbursement from the guardianship estate for the background check fee.

OPPONENTS
SAY:

SB 1096 would place an unnecessary state-created burden on family members who take on responsibility for a ward. Familial guardians should not be required to take training and be certified as other guardians are under the bill. The extra requirements on family members who step up to take care of incapacitated or disabled family members could discourage familial placement, particularly with elderly family members.

The bill would authorize a fee for criminal history record checks that could be a deterrent to potential guardians and financially burdensome.

OTHER
OPPONENTS
SAY:

SB 1096 would require a database to track guardianships. While the intent is good, inclusion in the database should be optional, not mandatory.

NOTES:

The Legislative Budget Board estimates that SB 1096 would have a negative impact of \$837,834 to general revenue related funds through fiscal 2018-19.

A companion bill, HB 2892 by Smithee, was left pending following a public hearing of the House Committee on Judiciary and Civil Jurisprudence on May 2.