

## **BILL ANALYSIS**

Senate Research Center

S.B. 1096  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current law requires background checks of persons interested in serving as guardians. The Texas Office of Court Administration (OCA) Guardianship Compliance Project has revealed that there has been limited compliance with this requirement. What's more, lay persons serving as guardians receive no training regarding their responsibilities as guardians. It is not surprising then that OCA's report revealed that family members and friends are far more likely to be out of compliance with reporting requirements than other guardians. The report also reflects that courts are over-reporting the number of guardianship cases and that there is a dearth of data regarding the demographics of guardians and of persons under guardianship, and the size and nature of the estates under guardianship.

Relatedly, H.B. 3424, 84th Legislature, Regular Session, 2015, directed OCA to examine the feasibility of a guardianship database. Sometimes persons with a guardian, who often are persons with a mental or intellectual disability, come into contact with law enforcement, and law enforcement is unaware, and has no way to determine, that the person has a legal guardian and the specific conditions that the person suffers. Even if the law enforcement officer becomes aware that the person is under guardianship, it can be difficult to determine the person's identity and the identity or contact information of the person's guardian. Prompt intervention by a guardian could not only help the person with a guardian and the law enforcement officer, but also potentially jail personnel and judges, navigate a difficult legal situation.

To address these issues, S.B. 1096 implements two recommendations from the Texas Judicial Council (TJC): (1) it requires that all guardians not currently required to be certified register with the Judicial Branch Certification Commission (JBCC), and (2) it makes this database available for query by law enforcement. In addition to registering guardians, S.B. 1096 directs JBCC to ensure that these guardians obtain proper training and that their criminal history is reviewed. S.B. 1096 contains protections to ensure that private information is not publicly available.

These changes increase compliance with background checks, ensure guardians are trained properly, enhance guardianship data collection, and improve interactions between law enforcement and persons under guardianship, many of whom have mental illnesses or intellectual disabilities. (Original Author's / Sponsor's Statement of Intent)

S.B. 1096 amends current law relating to guardianships and authorizes a fee.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 11 (Sections 155.151, 155.203, and 155.209, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 14, Code of Criminal Procedure, by adding Article 14.055, as follows:

Sec. 14.055. DUTY OF OFFICER TO NOTIFY PROBATE COURT. (a) Defines "ward."

(b) Requires the peace officer or the person having custody of the ward, as soon as practicable, but not later than the first working day after the date a peace officer detains or arrests a person who is a ward, to notify the court having jurisdiction over the ward's guardianship of the ward's detention or arrest.

SECTION 2. Amends Chapter 15, Code of Criminal Procedure, by adding Article 15.171, as follows:

Sec. 15.171. DUTY OF OFFICER TO NOTIFY PROBATE COURT. (a) Defines "ward."

(b) Requires the peace officer or the person having custody of the ward, as soon as practicable, but not later than the first working day after the date a peace officer arrests a person who is a ward, to notify the court having jurisdiction over the ward's guardianship of the ward's arrest.

SECTION 3. Amends Subchapter A, Chapter 1104, Estates Code, by adding Section 1104.003, as follows:

Sec. 1104.003. TRAINING REQUIRED. Prohibits a court from appointing an individual to serve as guardian under this title (Guardianship and Related Procedures) if the individual has not received the training required under Section 155.204, Government Code, unless waived by the court in accordance with the rules adopted by the Texas Supreme Court (supreme court) under Section 155.203, Government Code.

SECTION 4. Amends the heading to Section 1104.404, Estates Code, to read as follows:

Sec. 1104.404. EXCEPTION FOR INFORMATION CONCERNING CERTAIN PERSONS.

SECTION 5. Amends Section 1104.404(a), Estates Code, as follows:

(a) Provides that a clerk described by Section 1104.402 (Court Clerk's Duty to Obtain Criminal History Record Information; Authority to Charge Fee) is not required to obtain criminal history record information for a person if the Judicial Branch Certification Commission (JBCC) conducted a criminal history check on the person under Chapter 155 (Guardianship Certification), Government Code. Deletes existing text relating to obtaining criminal history record information for a person who holds a certificate issued under Section 155.102 (Certification Required for Certain Guardians), Government Code, or a provisional certificate issued under Section 155.103 (Provisional Certificate), Government Code, if the JBCC guardianship certification program conducted a criminal history check before issuing or renewing the certificate.

SECTION 6. Amends Subchapter B, Chapter 1253, Estates Code, by adding Section 1253.0515, as follows:

Sec. 1253.0515. CERTIFICATION OR TRAINING OF GUARDIAN. (a). Requires a guardian filing an application under this subchapter to comply with Subchapter C or D, Chapter 155, Government Code, as applicable.

(b) Prohibits a court from granting an application filed under this subchapter unless the guardian complies with Subsection (a).

SECTION 7. Amends Chapter 52, Family Code, by adding Section 52.011, as follows:

Sec. 52.011. DUTY OF LAW ENFORCEMENT OFFICER TO NOTIFY PROBATE COURT. (a) Defines "ward."

(b) Requires the law enforcement officer or other person having custody of the child, as soon as practicable, but not later than the first working day after the date

a law enforcement officer takes a child who is a ward into custody under Section 52.01(a)(2) (relating to authorizing a child being taken into custody pursuant to the laws of arrest) or (3) (relating to authorizing a child being taken into custody by a law-enforcement officer), to notify the court with jurisdiction over the child's guardianship of the child's detention or arrest.

SECTION 8. Amends the heading to Chapter 155, Government Code, to read as follows:

#### CHAPTER 155. DUTIES RESPECTING GUARDIANSHIP

SECTION 9. Amends Section 155.001, Government Code, by adding Subdivision (6-a), to define "registration."

SECTION 10. Amends the heading to Subchapter C, Chapter 155, Government Code, to read as follows:

#### SUBCHAPTER C. STANDARDS FOR AND CERTIFICATION OF CERTAIN GUARDIANS

SECTION 11. Amends Chapter 155, Government Code, by adding Subchapters D and E, as follows:

#### SUBCHAPTER D. GUARDIANSHIP REGISTRATION AND DATABASE

Sec. 155.151. REGISTRATION OF GUARDIANSHIPS. (a) Requires the supreme court, after consulting with the Texas Office of Court Administration (OCA) and JBCC, by rule, to establish a mandatory registration program for guardianships under which all guardianships in this state are required to register with JBCC.

(b) Requires the supreme court, in establishing rules under this section, to ensure courts with jurisdiction over a guardianship immediately notify JBCC of the removal of a guardian.

Sec. 155.152. GUARDIANSHIP DATABASE. Requires OCA, in cooperation with JBCC and courts with jurisdiction over guardianship proceedings and by using the information obtained by JBCC under this subchapter, to establish and maintain a central database of all guardianships subject to the jurisdiction of this state.

Sec. 155.153. ACCESS TO DATABASE. (a) Requires OCA to ensure the database is accessible to the Texas Department of Public Safety (DPS) for law enforcement purposes.

(b) Requires DPS, subject to Subsection (c), 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.

(c) Authorizes only certain information to be disclosed from the database to a law enforcement official inquiring into a guardianship.

(d) Requires OCA to limit access to the database to properly trained staff.

Sec. 155.154. DATABASE DISCLAIMER. Sets forth the text of a disclaimer required to be displayed when the database is accessed.

Sec. 155.155. CONFIDENTIALITY OF INFORMATION IN DATABASE. (a) Provides that information that is contained in the database, including personally identifying information of a guardian or a ward, is confidential and not subject to disclosure under Chapter 552 (Public Information) or any other law.

(b) Provides that a law enforcement agency or officer that receives the information is required to maintain the confidentiality of the information, is prohibited from disclosing the information under Chapter 552 or any other law, and is prohibited from using the information for a purpose that does not directly relate to the purpose for which it was obtained.

#### SUBCHAPTER E. DUTY TO ASSIST IN QUALIFYING CERTAIN GUARDIANS

Sec. 155.201. DEFINITION. Defines "probate court."

Sec. 155.202. APPLICABILITY. Provides that this subchapter does not apply with respect to an attorney or corporate fiduciary or an individual subject to certification under Subchapter C who are or will be providing guardianship services to a proposed ward.

Sec. 155.203. DUTY TO PROVIDE ASSISTANCE IN QUALIFYING GUARDIANS; SUPREME COURT RULEMAKING. (a) Requires the supreme court, after consulting with JBCC, by rule, to establish a process by which JBCC performs training and criminal history background checks for individuals seeking appointment as guardian.

(b) Requires the supreme court, in adopting rules under this section, to ensure that JBCC 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.

Sec. 155.204. TRAINING REQUIRED. (a) Requires the supreme court, in adopting rules under Section 155.203, to ensure that, before a person is appointed guardian, the person completes a certain training course and requires the supreme court to identify the circumstances under which a court is authorized to waive the required training.

(b) Provides that, notwithstanding Section 155.203(b) or Section 1251.052 (Qualification and Duration of Certain Temporary Guardianships), Estates Code, the training required under Subsection (a) does not apply to the initial appointment of a temporary guardian under Chapter 1251 (Temporary Guardianships), Estates Code, and applies only if there is a motion to extend the term of a temporary guardian.

(c) Authorizes JBCC to make the training required under this section available to court investigators and guardians ad litem. Exempts a court investigator or guardian ad litem from being required to receive training unless required to do so by a court.

Sec. 155.205. DUTY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION. (a) Requires JBCC, in accordance with the rules adopted by the supreme court, 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.

(b) Requires JBCC 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 obtain name-based criminal history record information of an applicant if the liquid assets of the estate of a ward are \$50,000 or less.

Sec. 155.206. INFORMATION FOR EXCLUSIVE USE OF COMMISSION AND COURT. (a) Provides that criminal history record information obtained under this subchapter is privileged and confidential and is for the exclusive use of JBCC and the court with jurisdiction over the guardianship. Prohibits the criminal history record information from being released or otherwise disclosed to any person or agency except on court order or consent of the individual being investigated.

(b) Authorizes JBCC to destroy the criminal history record information after the information is used for the purposes authorized by this subchapter.

Sec. 155.207. USE OF CRIMINAL HISTORY RECORD INFORMATION. (a) Requires JBCC to use the criminal history record information obtained under this subchapter only for a purpose authorized by this subchapter or to maintain the registration of a guardianship under Subchapter D.

(b) Authorizes a court to use the criminal history record information obtained under this subchapter only in the same manner and only to the same extent a court is authorized to use the information under Section 1104.409 (Use of Information by Court), Estates Code.

Sec. 155.208. CLARIFICATION OF AUTHORITY GRANTED. (a) Provides that this subchapter does not grant to JBCC the authority to establish additional qualifications or a code of ethics for individuals subject to training or a background check, require those individuals to pass examinations or take continuing education courses, or otherwise regulate those individuals or interfere with a court's authority to ensure a guardian is performing all of the duties required of the guardian respecting a ward.

(b) Provides that individuals subject to training or a background check under this subchapter are not subject to enforcement action under Chapter 153 (Commission Enforcement).

Sec. 155.209. FEE FOR OBTAINING CRIMINAL HISTORY RECORD INFORMATION. (a) Authorizes JBCC, except as provided by Subsection (b), to charge a fee to obtain criminal history record information, in an amount approved by the supreme court.

(b) Authorizes the supreme court to adopt rules excluding individuals who are indigent from having to pay the fee authorized by this section.

(c) Provides that a guardian is entitled to reimbursement from the guardianship estate as provided by Subchapter C (Expenses), Chapter 1155 (Compensation, Expenses, and Court Costs), Estates Code, for the fee authorized by this section.

SECTION 12. Amends Section 411.1386(a-6), Government Code, as follows:

(a-6) Exempts the clerk described by Subsection (a) (relating to requiring a county clerk to obtain certain information in a proceeding for appointment of a guardian), from being required to obtain criminal history record information for a person if JBCC conducted a criminal history check on the person under Chapter 155. Deletes existing text relating to obtaining criminal history record information for a person who holds a certificate issued under Section 155.102 or a provisional certificate issued under Section 155.103 if the JBCC guardianship certification program conducted a criminal history check before issuing or renewing the certificate.

SECTION 13. Amends Subchapter A, Chapter 573, Health and Safety Code, by adding Section 573.0021, as follows:

Sec. 573.0021. DUTY OF PEACE OFFICER TO NOTIFY PROBATE COURTS. Requires a peace officer, as soon as practicable, but not later than the first working day after the date a peace officer takes a person who is a ward into custody, to notify the court having jurisdiction over the ward's guardianship of the ward's detention or transportation to a facility in accordance with Section 573.001 (Apprehension by Peace Officer Without Warrant).

SECTION 14. (a) Requires OCA, not later than June 1, 2018, to establish the guardianship database required under Section 155.152, Government Code, as added by this Act, and provide

access to the database to DPS, in accordance with Section 155.153, Government Code, as added by this Act.

(b) Exempts a law enforcement officer or other person with custody of a ward from complying with Articles 14.055 and 15.171, Code of Criminal Procedure, Section 52.011, Family Code, or Section 573.0021, Health and Safety Code, as added by this Act, as applicable, until July 1, 2018.

SECTION 15. (a) Requires the supreme court, as soon as practicable after the effective date of this Act and after consulting with JBCC, to adopt rules necessary to implement Subchapter E, Chapter 155, Government Code, as added by this Act.

(b) Provides that a proposed guardian is not required to comply with Section 155.204, Government Code, as added by this Act, until June 1, 2018.

SECTION 16. Effective date: September 1, 2017.