

House Research Act Summary

CHAPTER: 163

SESSION: 2001 Regular Session

TOPIC: Regulating Guardians and Conservators; Human Services Background Checks

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Overview

This act (1) allows the department of human services (DHS) to establish systems and records for human services licensing background checks; (2) requires a criminal history and substantiated vulnerable adult maltreatment background check for professional guardians and conservators; and (3) requires a background check for substantiated vulnerable adult maltreatment incidents by on professional guardian/conservators with an optional criminal history background check for this group.

1 **Systems and records.**

Subd. 1. Establishment; use. Lets the commissioner of human services establish systems and records for human services background checks. Lets the systems and records be used to obtain criminal history data from the Bureau of Criminal Apprehension (BCA) and data about substantiated child or vulnerable adult maltreatment if (1) the background study is authorized in statute or (2) the request is made with the informed consent of the background check subject. A person requesting a statutorily authorized background check must agree in writing not to disclose the results to any other person without the consent of the study subject. Lets DHS recover the cost of background studies by charging the requester not more than \$12 per study.

Subd. 2. National records search. Lets DHS obtain criminal history data from the national criminal history records repository if specifically required by statute. Requires DHS to get classifiable fingerprints from the study subject and submit them through the BCA. Lets DHS recover this cost by charging the study requester not more than \$30 per study.

2 **Professional guardian or conservator.** Adds to the guardianship/conservatorship law a definition of professional guardian or conservator. Applies to someone who acts as guardian or conservator for two or more persons at the same time, who are not related to the guardian/conservator by blood or marriage.

3 **Background study.**

Subd. 1. When required; exception. Requires a court to require a background study (1) before appointment of a guardian/conservator unless a background study has been done on the person within the past five years, and (2) every five years after the appointment while the person continues to serve. The criminal history check must cover the national criminal records repository if the subject has not resided in Minnesota for the previous five years or if information indicates he or she might be a multi state offender. Also requires a determination whether the proposed guardian/conservator has been the perpetrator of substantiated maltreatment of a vulnerable adult. If the guardian/conservator is not an individual, the checks must be done on the individual(s) employed by the guardian/conservator who will exercise the powers and duties of a guardian/conservator. Lets the court appoint someone to serve while a background check is pending.

Imposes a fee for the check to be paid by professional guardians/conservators. For non-professionals, if the ward/conservatee is indigent, the fee becomes an expense paid by the court. Otherwise, if the ward/conservatee has assets, the fee must be paid from the assets. If the matter is a guardianship/conservatorship of the person, the court can pay the fee or require the guardian/conservator to pay.

A background study is not required when the guardian/conservator is (1) the state; (2) the parent or guardian of a retarded person who has raised the retarded person and now seeks a guardianship because the retarded person has become an adult; or (3) a financial institution organized under state or federal law.

Subd. 2. Procedure; criminal history background check. Requires DHS to complete a background study covering both criminal history and substantiated vulnerable adult maltreatment. Requires the court to request this and include with the request the fee and the signed consent of the study subject. Requires including fingerprints if there will be a national records check.

Sets a deadline for completing the check. Allows DHS to provide the court with information it receives on criminal history or substantiated vulnerable adult maltreatment by an individual after the individual's background study has been completed.

Subd. 3. Form. Requires DHS to develop a form for a guardian/conservator background check. Specifies it must include the subject's signed consent to performing the check and must notify the subject of the rights in subdivision 4.

Subd. 4. Rights. Requires the court to notify the proposed guardian/conservator of the right to: (1) be informed that a background check will be done; (2) be informed of the check results and get a copy of the report; and (3) challenge the accuracy and completeness of information in the record under the government data practices act, except as precluded by aspects of the human services appeals law.