

Assembly Bill No. 1957

Passed the Assembly August 28, 2002

Chief Clerk of the Assembly

Passed the Senate August 27, 2002

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2002, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to add and repeal Section 2920.5 of the Probate Code, relating to public guardians.

LEGISLATIVE COUNSEL'S DIGEST

AB 1957, Robert Pacheco. Public guardians: criminal history information.

Existing law provides that a public guardian is a county officer and permits a public guardian to be appointed as a conservator for a person when no one else is available who is qualified and willing to act and when the appointment of a guardian or conservator would be in the best interest of the person, as specified.

This bill would permit, until January 1, 2007, a public guardian, as specified, or a county conservatorship investigator, as defined, upon a referral from a court or an adult protective services agency, to submit fingerprints and related information to the Department of Justice on a person being considered as a potential conservator, except as specified. The bill would also permit a potential conservatee to request that the information described above be submitted to the Department of Justice under specified circumstances. The bill would require the Department of Justice to provide a record of specified convictions and arrests. The bill would prohibit the Department of Justice from retaining fingerprints and related information to provide subsequent arrest information. The bill would require the Department of Justice to charge a fee to cover the cost of processing these requests, to be paid by the requesting agency. The bill would also require that information received by a public guardian and disclosed to the attorney of a proposed conservatee be kept confidential, except as specified. The bill would require that the information be disclosed to the subject of the background check. The bill would also require the Legislative Analyst's office to make a specified sampling of counties of criminal history information requested regarding potential conservators and recommendations regarding the utility of this information, as part of its 2006–07 fiscal year budget analysis.



The people of the State of California do enact as follows:

SECTION 1. Section 2920.5 is added to the Probate Code, to read:

2920.5. (a) (1) When a court or an agency designated to perform adult protective services refers a conservatee or potential conservatee to a person or entity listed in paragraph (2), that person or entity may submit to the Department of Justice the fingerprints of, and information regarding, a person who is being investigated as a potential conservator. A potential conservatee also may request that fingerprints and information regarding a person being investigated as a potential conservator be submitted to the Department of Justice, if the person being investigated has offered to provide assistance that may make a conservatorship unnecessary. The person or entity listed in paragraph (2) shall inform the potential conservatee of this right. If the potential conservatee requests this background check, the person or entity shall submit the necessary fingerprints and information to the Department of Justice. The Department of Justice shall provide the information described in subdivision (b). Fingerprints taken by the use of live-scan technology may be submitted.

(2) The following persons and entities are authorized to make submissions pursuant to subdivision (a):

(A) A public guardian providing conservatorship services pursuant to this part or Chapter 3 (commencing with Section 5350) of Part 2 of Division 5 of the Welfare and Institutions Code.

(B) An agency designated as a county conservatorship investigator pursuant to Section 5351 of the Welfare and Institutions Code.

(b) Upon a proper request pursuant to the provisions of subdivision (a), the Department of Justice shall provide information to the requesting person or agency regarding the existence and nature of the following:

(1) Every conviction rendered against the subject of the request for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, excepting those offenses for which registration is required pursuant to Section 290 of the Penal Code, the Department of Justice may only provide information on a conviction that occurred within 10 years of the date of the request,



or on a conviction that occurred over 10 years after the date of the request, if the subject of the request was incarcerated within 10 years of the date of the request.

(2) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code that the Department of Justice has established is still pending and for which the subject of the request is presently awaiting trial, whether the subject of the request is incarcerated, or has been released on bail or on his or her own recognizance pending trial.

(c) The Department of Justice may not retain fingerprints or related information submitted pursuant to this subdivision to provide subsequent arrest notification pursuant to Section 11105.2 of the Penal Code.

(d) The Department of Justice shall charge a fee sufficient to cover the cost of processing a request for information pursuant to this section. This fee shall be paid by the requesting agency.

(e) Notwithstanding subdivision (a), a private professional conservator who is in compliance with the requirements of Section 2342 in the county conducting the investigation may not be the subject of a background check pursuant to this section.

(f) The criminal records information received by a public guardian shall be kept confidential, except that it may be disclosed under seal to the court and to the attorney for the person for whom a conservatorship is being considered, when the appointment of a conservator as an alternative to the public guardian is being considered by the court. The person or entity described in paragraph (2) of subdivision (a) shall disclose the information provided by the Department of Justice to the subject of the background check. The attorney for the proposed conservatee shall keep any disclosed criminal records information confidential.

(g) The Legislative Analyst's office shall, as part of its analysis of the Budget Bill for the 2006–07 fiscal year, include a sampling of counties, to the extent that data is made available from the persons or entities listed in paragraph (2) of subdivision (a), on the annual number of requests for information that were brought pursuant to this section, and a recommendation as to whether this information helped the public guardian or other person or entity in



assessing the competency and trustworthiness of a potential conservator.

(h) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.



Approved _____, 2002

Governor

