

2019 -- S 0845

LC002427

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO PROBATE PRACTICE AND PROCEDURE -- LIMITED GUARDIANSHIP
AND GUARDIANSHIP OF ADULTS

Introduced By: Senators Coyne, McCaffrey, Lombardi, Conley, and Lynch Prata

Date Introduced: April 30, 2019

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 33-15 of the General Laws entitled "Limited Guardianship and
2 Guardianship of Adults" is hereby amended by adding thereto the following section:

3 **33-15-16.1. National criminal background checks for persons appointed limited**
4 **guardian or guardian.**

5 (a) In order to assist and protect Rhode Island's at-risk elderly and others over whom a
6 limited guardian or guardian would be required, all persons applying for appointment as a limited
7 guardian or guardian shall apply to the Rhode Island attorney general, the Rhode Island state
8 police, or to the appropriate local police department for a nationwide criminal records check,
9 utilizing a standard form to be provided by the probate court. The applicant whose criminal
10 records check is being conducted shall be responsible for the payment of the costs of said
11 criminal records check. The check will conform to the applicable federal standards, including the
12 taking of fingerprints of the applicant.

13 (b) An individual may be appointed as a temporary limited guardian or temporary
14 guardian for a period not to exceed sixty (60) days, pending completion of the national criminal
15 background check required by this section.

16 (c) For the purposes of this section, information produced by a national criminal records
17 check pertaining to conviction for the following crimes may be considered as "disqualifying
18 information": murder, voluntary manslaughter, involuntary manslaughter, first-degree sexual

1 assault, second-degree sexual assault, third-degree sexual assault, assault on persons sixty (60)
2 years of age or older, assault with intent to commit specified felonies (murder, robbery, rape,
3 burglary, or the abominable and detestable crime against nature), felony assault, patient abuse,
4 neglect or mistreatment of patients, burglary, first-degree arson, robbery, felony drug offenses,
5 felony larceny, or felony banking law violations, felony obtaining money under false pretenses,
6 felony embezzlement, abuse, neglect and/or exploitation of adults with severe impairments,
7 exploitation of elders, or a crime under section 1128(a) of the Social Security Act (42 U.S.C. §
8 1320a-7(a)).

9 (d) For the purposes of this section, "conviction" means, in addition to judgments of
10 conviction entered by a court subsequent to a finding of guilty or a plea of guilty, those instances
11 where the defendant has entered a plea of nolo contendere and has received a sentence of
12 probation and those instances where a defendant has entered into a deferred sentence agreement.

13 (e) If any disqualifying information is discovered with respect to the applicant, the bureau
14 of criminal identification of the attorney general, state police or the local police department will
15 inform the probate court, in writing, without disclosing the nature of the disqualifying
16 information, that an item of disqualifying nature has been discovered. In addition, the bureau of
17 criminal identification of the attorney general, state police or the local police department will
18 inform the applicant, in writing, of the nature of the disqualifying information. An applicant
19 against whom disqualifying information has been found may request that a copy of the criminal
20 background report be sent to the probate court which shall make a judgment regarding the
21 suitability of the applicant.

22 (f) At the conclusion of any background check required by this chapter, the bureau of
23 criminal identification of the attorney general, state police or the local police department will
24 promptly destroy the fingerprint card of the applicant.

25 (g) In those situations in which no disqualifying information has been found, the bureau
26 of criminal identification of the attorney general, state police or the local police department shall
27 inform both the applicant and the probate court of this fact.

28 (h) The probate court shall maintain a record subject to review by the department of
29 attorney general of the evidence that criminal background checks have been initiated and
30 completed and the results thereof, in compliance with the provisions of this section for all persons
31 seeking appointment as a guardian or limited guardian after January 1, 2020.

32 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO PROBATE PRACTICE AND PROCEDURE -- LIMITED GUARDIANSHIP
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1 This act would require that all persons seeking appointment as a limited guardian or
2 guardian pursuant to chapter 15 of title 33 ("Limited Guardianships and Guardianship of Adults")
3 be required to undergo a criminal background check.

4 This act would take effect upon passage.

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