

GUARDIANSHIP & ADVOCACY COMMISSION

Dr. Mary L. Milano, Director

HUMAN RIGHTS AUTHORITY
LEGAL ADVOCACY SERVICE
OFFICE OF STATE GUARDIAN



January 24, 2012

Jeffrey A. Shuck
Deputy General Counsel (Personnel)
Central Management Services
c/o Criminal Justice Information Authority
300 W. Adams Street, Suite 200
Chicago, Illinois 60606

Jack Cutrone
Executive Director
Criminal Justice Information Authority
300 W. Adams Street
Suite 200
Chicago, Illinois 60606

Re: Report to Task Force on Inventorying Employment Restrictions Act [20 ILCS 5000]

Dear Mr. Shuck and Mr. Cutrone:

Pursuant to the above legislation, the Illinois Guardianship and Advocacy Commission reports the following concerning employment restrictions that are based on criminal records for each occupation under the agency's jurisdiction, including, but not limited to, employment situations as defined in statute.

The Commission maintains no employment contracts that contain terms relevant to the statute, nor does the Commission license or certify entities as described in the statute. With respect to employees of the Commission, job titles used by the Commission are subject to Commission policy that authorizes background checks. A copy of Commission policy 3.103, adopted in January 2006, titled "IGAC Background Check" is included and incorporated by reference. The statutory basis for this policy is found in provisions of the Probate Act of 1975 that outline who may serve as a guardian for an incapacitated adult and are found at 755 ILCS 5/11a-5(a)(5), also included and incorporated by reference. The majority of the Commission's front-line staff works for the Commission's Office of State Guardian. Under the terms of Section 30 of the Commission's enabling legislation, the Guardianship and Advocacy Act, the State Guardian is subject to provisions of the Probate Act of 1975, including the section referenced herein. Although the statute in question does not enumerate all specific disqualifying offenses and time limits for each offense, it does categorically prohibit persons "*convicted of a felony involving harm or threat to an elderly or disabled person, including a felony sexual offense*" from serving as guardian. 755 ILCS 5/11a-5(a)(5).

The Commission's procedure for determining whether an individual's criminal history



The Commission's procedure for determining whether an individual's criminal history disqualifies that individual for Commission employment is outlined in Commission policy 3.103, IGAC Background Check, referenced above. In practice, few Commission staff are hired as "new hires", not currently employed with the State. Since most Commission job postings are filled laterally by existing State employees already working at other agencies, the background check protocol is often waived. The Commission is aware of no Department of Central Management Services protocols that assist agencies in this area.

Finally, the Commission has no data showing the number of actual applicants who underwent criminal background checks, or the number of applicants who were found disqualified, sought waiver, and were denied waiver.

Sincerely,



John H. Wank
General Counsel and Director of Programs
Illinois Guardianship and Advocacy Commission

Enclosures

c/c Dr. Mary L. Milano, Director, Guardianship and Advocacy Commission
Bobbie Fox, Director of Human Resources

3.103

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IGAC BACKGROUND CHECK

The Illinois Guardianship and Advocacy Commission may perform background checks on any individual seeking employment or a volunteer opportunity with the agency. This background check includes but may not be limited to a Criminal Background Check and fingerprinting, searches on the Illinois Sex Offender Registry, the Certified Nurses Assistant Registry, and any searches for evidence of adverse findings judgments or actions through State or Federal Courts. The background check(s) will be performed at no cost to the prospective employee or volunteer.

In each new employee packet a UCIA fingerprint form and a Release of Information will be enclosed. It is important that the employee signs the Release of Information and returns it to IGAC's Human Resource department. The employee will then find a fingerprinting location through the agency designated by the commission for this purpose, currently, Art's Investigations <http://www.artsinvestigations.com> The employee may also call Art's Investigations in order to obtain a list of fingerprinting locations and times (866) 361-9944.

Once completed the Illinois State Police will send the finger printing results to the Chicago office and the results will be reviewed and sent to the Springfield Office to be included in the Employee's permanent personnel file. All fingerprinting results will be handled in a discreet and confidential manner. Fingerprinting must be completed no later than 14 days after an employee begins employment with IGAC. Fingerprinting can be considered official work business and GAC will allow time for the employee to complete the fingerprinting screening. Refusal to comply with this policy will result in disciplinary action up to and including discharge.

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755 ILCS 5/11a-5

5/11a-5. Who may act as guardian

§ 11a-5. Who may act as guardian.

(a) A person is qualified to act as guardian of the person and as guardian of the estate of a disabled person if the court finds that the proposed guardian is capable of providing an active and suitable program of guardianship for the disabled person and that the proposed guardian:

(1) has attained the age of 18 years;

(2) is a resident of the United States;

(3) is not of unsound mind;

(4) is not an adjudged disabled person as defined in this Act; and

(5) has not been convicted of a felony, unless the court finds appointment of the person convicted of a felony to be in the disabled person's best interests, and as part of the best interest determination, the court has considered the nature of the offense, the date of offense, and the evidence of the proposed guardian's rehabilitation. No person shall be appointed who has been convicted of a felony involving harm or threat to an elderly or disabled person, including a felony sexual offense.

(b) Any public agency, or not-for-profit corporation found capable by the court of providing an active and suitable program of guardianship for the disabled person, taking into consideration the nature of such person's disability and the nature of such organization's services, may be appointed guardian of the person or of the estate, or both, of the disabled person. The court shall not appoint as guardian an agency which is directly providing residential services to the ward. One person or agency may be appointed guardian of the person and another person or agency appointed guardian of the estate.

(c) Any corporation qualified to accept and execute trusts in this State may be appointed guardian of the estate of a disabled person.

20 ILCS 3955/30

3955/30. State guardian; duties; petition for appointment

§ 30. When appointed by the court pursuant to the "Probate Act of 1975", approved August 7, 1975, as now or hereafter amended, the State Guardian shall serve as guardian, either plenary or limited; temporary guardian; testamentary guardian; or

successor guardian; of the person or the estate, or both, of a ward. If nomination is testamentary the State Guardian shall be notified in writing at the time of the death of the testator. The Office of State Guardian may file a petition for its own appointment, or for the appointment of any other person, if the State Guardian determines that the filing of the petition may avoid the need for State guardianship. In addition, the State Guardian may assist the court, as the court may request, in proceedings for the appointment of a guardian and in the supervision of persons and agencies which have been appointed as guardians.