

## **BILL ANALYSIS**

C.S.H.B. 3352  
By: Naishtat  
Public Safety  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

State law mandates that Texas counties report the names of all convicted felons and convicted domestic violence perpetrators to the Department of Public Safety (DPS). DPS then forwards the information to the Federal Bureau of Investigation (FBI) for input into the FBI-run National Instant Criminal Background Check System (commonly known as NICS). The individuals who are in this database will not pass a background check to purchase a gun. However, Texas does not require sending information about individuals who have been determined to be mentally ill, mentally incompetent, or mentally incapacitated to NICS. Currently, these individuals can pass a background check to purchase a gun.

The National Instant Criminal Background Check System Improvement Act was enacted in response to the Virginia Tech massacre in the spring of 2007 in which 31 students and faculty were killed by a mentally ill student who had purchased a gun in a state that—like Texas—lacked a requirement to report information about individuals who have been determined to be mentally ill. The Virginia Tech shooter was able to purchase firearms because information about his mental health history was not available to the NICS, and the system was therefore unable to deny the transfer of the firearms used in the shootings.

This bill would place Texas closer to compliance with the NICS Improvement Act. The federal act requires states to report information necessary to prohibit the purchase of firearms by felons, domestic violence perpetrators, the criminally insane, persons who have been found to be mentally defective or incompetent to manage their personal affairs, and persons who are mentally ill and involuntarily committed to mental hospitals.

C.S.H.B. 3352 requires that court clerks prepare and forward information about those who have been determined to be mentally ill, mentally incompetent, or mentally incapacitated to DPS. The bill requires DPS to report this information to the FBI for use with the NICS.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Public Safety in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 3352 amends the Government Code to require the Department of Public Safety (DPS) by rule to establish a procedure to provide federal prohibited person information to the Federal Bureau of Investigation (FBI) for use with the National Instant Criminal Background Check System. The bill defines "federal prohibited person information" to mean information that identifies an individual as:

- a person ordered by a court to receive inpatient mental health services;
- a person acquitted in a criminal case by reason of insanity or lack of mental responsibility, regardless of whether the person is ordered by a court to receive inpatient

- treatment or residential care in a case involving the insanity defense;
- a person determined to have mental retardation and committed by a court for long-term placement in a residential care facility;
- an incapacitated adult individual for whom a court has appointed a guardian, based on the determination that the person lacks the mental capacity to manage the person's affairs; or
- a person determined to be incompetent to stand trial.

The bill authorizes DPS, except as otherwise provided by state law, to disseminate this information only to the extent necessary to allow the FBI to collect and maintain a list of persons who are prohibited under federal law from engaging in certain activities with respect to a firearm. The bill requires DPS to grant access to this information to the person who is the subject of the information. The bill provides that federal prohibited person information maintained by DPS is confidential information for the use of DPS and, except as otherwise provided by state law, may not be disseminated by DPS. The bill requires the department, by rule, to establish a procedure to correct department records and to transmit those corrected records to the FBI when a person provides a copy of a judicial order or finding that the person is no longer an incapacitated adult or is entitled to relief from disabilities based on mental health or proof that the person has obtained notice of relief from disabilities under federal law.

C.S.H.B. 3352 requires the court clerk to prepare and forward to DPS the complete name, race, and sex of such a person; any known identifying number of the person, including social security number, driver's license number, or state identification number; and the person's date of birth.

C.S.H.B. 3352 requires the court clerk to prepare and forward to DPS this information not later than the 30th day after the date the court:

- orders a person to receive inpatient mental health services;
- acquits a person in a criminal case by reason of insanity or lack of mental responsibility, regardless of whether the person is ordered to receive inpatient treatment or residential care in a case involving the insanity defense;
- commits a person determined to have mental retardation for long-term placement in a residential care facility;
- appoints a guardian of the incapacitated adult individual, based on the determination that the person lacks the mental capacity to manage the person's affairs;
- determines a person is incompetent to stand trial; or
- finds a person is entitled to relief from the disability to purchase a firearm.

The bill requires the clerk, if practicable, to forward this information to DPS in an electronic format prescribed by DPS. The bill requires the clerk, if an order previously reported to DPS is reversed by court order, to notify DPS of the reversal not later than 30 days after the clerk receives the mandate from the appellate court. The bill provides that the clerk's duty to prepare and forward this information is not affected by any subsequent appeal, modification, or expiration of the court order.

C.S.H.B. 3352 amends the Health and Safety Code to authorize a person who is furloughed or discharged from court-ordered mental health services to petition the court that entered the commitment order for an order stating that the person qualifies for relief from a firearms disability. The bill requires the court, in determining whether to grant such relief, to hear and consider evidence about the circumstances that led to imposition of the firearms disability under federal law and the person's mental and criminal history and reputation. The bill prohibits the court from granting relief unless it makes and enters in the record the affirmative findings that the person is no longer likely to act in a manner dangerous to public safety and that removing the person's disability to purchase a firearm is in the public interest.

C.S.H.B. 3352 requires each court clerk to prepare and forward information for each order issued on or after September 1, 1999, to DPS as required by the bill's provisions. The bill requires each

court clerk, not later than September 1, 2010, to prepare and forward information for any court orders issued on or after September 1, 1999, and before September 1, 2009.

**EFFECTIVE DATE**

September 1, 2009.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3352 differs from the original by including in the definition of "federal prohibited person information" information that identifies an individual as a person determined to have mental retardation and committed by a court for long-term placement in a residential care facility, rather than in a residential care facility or a state developmental center as in the original, and making a conforming change.

C.S.H.B. 3352 removes a provision included in the original requiring the clerk of the court to prepare and forward to the Department of Public Safety a copy of or an electronic transmission of information contained in a certain court order or judgment relating to the lack of mental ability of a person who is the subject of federal prohibited person information.