

By: Ellis

S.B. No. 1866

A BILL TO BE ENTITLED

AN ACT

relating to the collection, dissemination, and correction of certain judicial determinations for a federal firearm background check.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 411, Government Code, is amended by adding Sections 411.052 and 411.0521 to read as follows:

Sec. 411.052. FEDERAL FIREARM REPORTING. (a) In this section, "federal prohibited person information" means information that identifies an individual as:

(1) a person ordered by a court to receive inpatient mental health services under Chapter 574, Health and Safety Code;

(2) 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 under Chapter 46C, Code of Criminal Procedure;

(3) a person determined to have mental retardation and committed by a court for long-term placement in a residential care facility or state developmental center under Chapter 593, Health and Safety Code;

(4) an incapacitated adult individual for whom a court has appointed a guardian of the individual under Chapter XIII, Probate Code, based on the determination that the person lacks the mental capacity to manage the person's affairs; or

1 (5) a person determined to be incompetent to stand
2 trial under Chapter 46B, Code of Criminal Procedure.

3 (b) The department by rule shall establish a procedure to
4 provide federal prohibited person information to the Federal Bureau
5 of Investigation for use with the National Instant Criminal
6 Background Check System. Except as otherwise provided by state
7 law, the department may disseminate federal prohibited person
8 information under this subsection only to the extent necessary to
9 allow the Federal Bureau of Investigation to collect and maintain a
10 list of persons who are prohibited under federal law from engaging
11 in certain activities with respect to a firearm.

12 (c) The department shall grant access to federal prohibited
13 person information to the person who is the subject of the
14 information.

15 (d) Federal prohibited person information maintained by the
16 department is confidential information for the use of the
17 department and, except as otherwise provided by this section and
18 other state law, may not be disseminated by the department.

19 (e) The department by rule shall establish a procedure to
20 correct department records and transmit those corrected records to
21 the Federal Bureau of Investigation when a person provides:

22 (1) a copy of a judicial order or finding that a person
23 is no longer an incapacitated adult or is entitled to relief from
24 disabilities under Section 574.088, Health and Safety Code; or

25 (2) proof that the person has obtained notice of
26 relief from disabilities under 18 U.S.C. Section 925.

27 Sec. 411.0521. REPORT TO DEPARTMENT CONCERNING CERTAIN

1 PERSONS' ACCESS TO FIREARMS. (a) The clerk of the court shall
2 prepare and forward to the department the information described by
3 Subsection (b) not later than the 30th day after the date the court:

4 (1) orders a person to receive inpatient mental health
5 services under Chapter 574, Health and Safety Code;

6 (2) acquits a person in a criminal case by reason of
7 insanity or lack of mental responsibility, regardless of whether
8 the person is ordered to receive inpatient treatment or residential
9 care under Chapter 46C, Code of Criminal Procedure;

10 (3) commits a person determined to have mental
11 retardation for long-term placement in a residential care facility
12 or state developmental center under Chapter 593, Health and Safety
13 Code;

14 (4) appoints a guardian of the incapacitated adult
15 individual under Chapter XIII, Probate Code, based on the
16 determination that the person lacks the mental capacity to manage
17 the person's affairs;

18 (5) determines a person is incompetent to stand trial
19 under Chapter 46B, Code of Criminal Procedure; or

20 (6) finds a person is entitled to relief from
21 disabilities under Section 574.088, Health and Safety Code.

22 (b) The clerk of the court shall prepare and forward the
23 following information under Subsection (a):

24 (1) the complete name, race, and sex of the person;

25 (2) any known identifying number of the person,
26 including social security number, driver's license number, or state
27 identification number;

1 (3) the person's date of birth; and

2 (4) a copy of or an electronic transmission of
3 information continued in:

4 (A) the order for inpatient mental health
5 services;

6 (B) the order for inpatient treatment or
7 residential care;

8 (C) the order committing the person to a
9 residential care facility;

10 (D) the order appointing a guardian;

11 (E) the judgment specifying that the person was
12 found not guilty of a criminal offense by reason of insanity or lack
13 of mental responsibility;

14 (F) the order determining that the person is
15 incompetent to stand trial; or

16 (G) the order stating that the person is no
17 longer an incapacitated adult or is entitled to relief under
18 Section 574.088, Health and Safety Code.

19 (c) If practicable, the clerk of the court shall forward to
20 the department the information described by Subsection (b) in an
21 electronic format prescribed by the department.

22 (d) If an order previously reported to the department under
23 Subsection (a) is reversed by order of any court, the clerk shall
24 notify the department of the reversal not later than 30 days after
25 the clerk receives the mandate from the appellate court.

26 (e) The duty of a clerk to prepare and forward information
27 under this section is not affected by:

- (1) any subsequent appeal of the court order;
- (2) any subsequent modification of the court order; or
- (3) the expiration of the court order.

SECTION 2. Subchapter F, Chapter 574, Health and Safety Code, is amended by adding Section 574.088 to read as follows:

Sec. 574.088. RELIEF FROM DISABILITIES IN MENTAL HEALTH CASES. (a) A person who is furloughed or discharged from court-ordered mental health services may petition the court that entered the commitment order for an order stating that the person qualifies for relief from a firearms disability.

(b) In determining whether to grant relief, the court must hear and consider evidence about:

- (1) the circumstances that led to imposition of the firearms disability under 18 U.S.C. Section 922(g)(4);
- (2) the person's mental history;
- (3) the person's criminal history; and
- (4) the person's reputation.

(c) A court may not grant relief unless it makes and enters in the record the following affirmative findings:

- (1) the person is no longer likely to act in a manner dangerous to public safety; and
- (2) removing the person's disability to purchase a firearm is in the public interest.

SECTION 3. Each clerk of the court shall prepare and forward information for each order issued on or after September 1, 1999, to the Department of Public Safety as required by Section 411.0521, Government Code, as added by this Act. Not later than September 1,

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1 2010, each clerk of the court shall prepare and forward information
2 for any court orders issued on or after September 1, 1999, and
3 before September 1, 2009.

4 SECTION 4. This Act takes effect September 1, 2009.