

BILL ANALYSIS

Senate Research Center

S.B. 728
By: Huffman
State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

On June 25, 2022, President Biden signed the Bipartisan Safer Communities Act into law. One of the most prominent changes to federal law under the Act was enhancing the review process on juvenile mental health record checks when a prospective buyer of firearms initiates a purchase from a Federal Firearms Licensee (FFL). Amendments were made to state reporting requirements to the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS) for disqualifying mental health records. The federal law modified disqualifying events to include mental health adjudications of juveniles aged 16 years or older. Currently, Texas does not have a centralized repository for statewide mental health adjudication information in juvenile cases, as the records are maintained by the respective Clerks of Court.

To align with federal law, S.B. 728 proposes modifications that would require clerks to report the following information to the Department of Public Safety (DPS), which maintains the responsibility of reporting to NICS: juveniles aged 16 or older found unfit to proceed, found not responsible, receiving court-ordered mental health services, or admitted to a residential care facility due to intellectual disability or mental illness in a delinquency proceeding.

COMMITTEE SUBSTITUTE:

- Because "child" is defined differently under other provisions of code, the committee substitute clearly indicates that clerks must report for children 16 years of age and older.
- This statute specifically states that an adjudication or disposition in a proceeding under this title is not a conviction of crime. While the FBI NICS Examiners can see the juvenile criminal history data submitted by the state, current statute prevents examiners from considering the adjudication as a possible prohibitor. The committee substitute would enable NICS Examiners to consider the adjudication as a possible prohibitor.
- Finally, the committee substitute would enable DPS to audit the records contained in NICS and request the reporting court to complete a request for additional information, if a record is determined to be incomplete or invalid.

S.B. 728 amends current law relating to the reporting of mental health and intellectual disability information with respect to certain children for purposes of a federal firearm background check.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 411.052(a), Government Code, to redefine "federal prohibited person information."

SECTION 2. Amends Section 411.0521, Government Code, by amending Subsection (a) and adding Subsection (c-1), as follows:

(a) Requires the clerk of the court to prepare and forward to the Department of Public Safety of the State of Texas (DPS) the information described by Subsection (b) (relating to requiring the clerk of the court to prepare and forward certain information under Subsection (a)) not later than the 30th day after the date the court:

(1) performs any of the following actions:

(A) with respect to an individual who is at least 16 years of age:

(i)-(ii) creates these paragraphs from existing text;

(iii) commits a person determined to have an intellectual disability, rather than mental retardation, for long-term placement in a residential care facility under Chapter 593 (Admission and Commitment to Intellectual Disability Services), Health and Safety Code;

(iv)-(v) creates these paragraphs from existing text; or

(B) with respect to a child who is at least 16 years of age:

(i) finds a child unfit to proceed under Subchapter C (Child Unfit to Proceed as a Result of Mental Illness or Intellectual Disability), Chapter 55, Family Code, as a result of mental illness or an intellectual disability;

(ii) finds a child not responsible for the child's conduct under Subchapter D (Lack of Responsibility for Conduct as a Result of Mental Illness or Intellectual Disability), Chapter 55, Family Code, as a result of mental illness or an intellectual disability;

(iii) orders a child to receive inpatient mental health services under Subchapter B (Child with Mental Illness), C, or D, Chapter 55, Family Code, as a result of mental illness; or

(iv) commits a child to a residential care facility under Subchapter C or D, Chapter 55, Family Code, as a result of an intellectual disability; or

(2) appoints a guardian of the incapacitated adult person under Title 3 (Guardianship and Related Procedures), Estates Code, based on the determination that the person lacks the mental capacity to manage the person's affairs.

(c-1) Requires the clerk of the court, on request of DPS, to forward a signed court order containing federal prohibited person information to DPS for an audit of records provided to the Federal Bureau of Investigation (FBI) under Section 411.052 (Federal Firearm Reporting), for use with the National Instant Criminal Background Check System. Provides that, if DPS determines that a record forwarded under this subsection is incomplete or invalid:

(1) DPS is required to notify the clerk of the court; and

(2) the clerk of the court is required to forward to DPS any additional information or record.

SECTION 3. Amends Section 58.007(a), Family Code, as follows:

(a) Provides that Section 58.007 (Confidentiality of Probation Department, Prosecutor, and Court Records) does not apply to a record relating to a child that is:

(1) makes no changes to this subdivision;

(2)-(3) makes nonsubstantive changes to these subdivisions;

(4) required to be provided to the FBI for use with the National Instant Criminal Background Check System under Section 411.052, Government Code; or

(5) required to be forwarded to DPS under Section 411.0521 (Report to Department Concerning Certain Persons' Access to Firearms), Government Code.

SECTION 4. Makes application of Sections 411.052 and 411.0521, Government Code, as amended by this Act, prospective.

SECTION 5. Provides that Section 58.007, Family Code, as amended by this Act, applies to records created before, on, or after the effective date of this Act.

SECTION 6. Effective date: September 1, 2023.