

BILL ANALYSIS

S.B. 728
By: Huffman
Community Safety, Select
Committee Report (Unamended)

BACKGROUND AND PURPOSE

On June 25, 2022, President Biden signed the Bipartisan Safer Communities Act into law. One of the most prominent changes to federal law under that 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. Specifically, changes were made to state reporting requirements to the FBI's 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 who are 16 years of age 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 better align with federal law, S.B. 728 proposes to require clerks of court to report certain information concerning actions taken with respect to a child aged 16 or older under juvenile justice code provisions governing proceedings concerning children with mental illness or intellectual disability to the Department of Public Safety, which maintains the responsibility of reporting to NICS.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 728 amends the Government Code to revise the requirement for the clerk of the court to prepare and forward to the Department of Public Safety (DPS) for use in federal firearms background checks specified identifying information about a person not later than the 30th day after the date the court takes actions related to the person based on the person's mental condition. Specifically, the bill does the following, applicable to a finding, order, or commitment that occurs on or after the bill's effective date:

- specifies that, except with respect to the action of appointing a guardian of an incapacitated adult person based on the determination that the person lacks the mental capacity to manage the person's affairs, the rest of the listed actions apply with respect to an individual who is at least 16 years of age; and
- includes the following among the actions that, if performed with respect to a child who is at least 16 years of age under the authority of provisions of the juvenile justice code governing proceedings concerning children with mental illness or intellectual disability, triggers the requirement to forward the information to DPS:

- finding the child unfit to proceed as a result of mental illness or an intellectual disability;
- finding the child not responsible for the child's conduct as a result of mental illness or an intellectual disability;
- ordering the child to receive inpatient mental health services as a result of mental illness; or
- committing the child to a residential care facility as a result of an intellectual disability.

The bill updates the information that constitutes "federal prohibited person information" with respect to firearm reporting to reflect these changes. The bill 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 FBI for use with the National Instant Criminal Background Check System (NICS). If DPS determines that a forwarded record is incomplete or invalid, DPS is required to notify the clerk and the clerk is required to forward to DPS any additional information or record.

S.B. 728 amends the Family Code to exclude the following from the juvenile records considered confidential under the juvenile justice code:

- a record relating to a child that is required to be provided to the FBI for use with NICS; or
- a record relating to a child required to be forwarded to DPS as provided under the bill.

These provisions apply to records created before, on, or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.