By:  Huffman, et al. S.B. No. 728

(In the Senate - Filed February 7, 2023; February 22, 2023, read first time and referred to Committee on State Affairs; March 3, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; March 3, 2023, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Hughes          X

Paxton          X

Bettencourt     X

Birdwell                  X

LaMantia        X

Menéndez                  X

Middleton       X

Parker          X

Perry           X

Schwertner      X

Zaffirini       X

COMMITTEE SUBSTITUTE FOR S.B. No. 728 By:  Zaffirini

A BILL TO BE ENTITLED

AN ACT

relating to the reporting of mental health and intellectual disability information with respect to certain children for purposes of a federal firearm background check.

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

SECTION 1.  Section 411.052(a), Government Code, is amended to read as follows:

(a)  In this section, "federal prohibited person information" means information that identifies:

(1)  an individual who is at least 16 years of age as:

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

(B) [~~(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;

(C) [~~(3)~~]  a person determined to have an intellectual disability [~~mental retardation~~] and committed by a court for long-term placement in a residential care facility under Chapter 593, Health and Safety Code; or

(D)  [~~(4) an incapacitated adult individual for whom a court has appointed a guardian of the individual under Title 3, Estates Code, based on the determination that the person lacks the mental capacity to manage the person's affairs; or~~

[~~(5)~~] a person determined to be incompetent to stand trial under Chapter 46B, Code of Criminal Procedure;

(2)  a child who is at least 16 years of age and has been:

(A)  found unfit to proceed under Subchapter C, Chapter 55, Family Code, as a result of mental illness or an intellectual disability;

(B)  found not responsible for the child's conduct under Subchapter D, Chapter 55, Family Code, as a result of mental illness or an intellectual disability;

(C)  ordered by a court to receive inpatient mental health services under Subchapter B, C, or D, Chapter 55, Family Code, as a result of mental illness; or

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

(3)  an incapacitated adult person for whom a court has appointed a guardian of the person under Title 3, Estates Code, based on the determination that the person lacks the mental capacity to manage the person's affairs.

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

(a)  The clerk of the court shall prepare and forward to the department the information described by Subsection (b) 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) [~~(1)~~]  orders a person to receive inpatient mental health services under Chapter 574, Health and Safety Code;

(ii) [~~(2)~~]  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 under Chapter 46C, Code of Criminal Procedure;

(iii) [~~(3)~~]  commits a person determined to have an intellectual disability [~~mental retardation~~] for long-term placement in a residential care facility under Chapter 593, Health and Safety Code;

(iv)  [~~(4) appoints a guardian of the incapacitated adult individual under Title 3, Estates Code, based on the determination that the person lacks the mental capacity to manage the person's affairs;~~

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

(v) [~~(6)~~]  finds a person is entitled to relief from disabilities under Section 574.088, Health and Safety Code; 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, 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, 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, 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, Estates Code, based on the determination that the person lacks the mental capacity to manage the person's affairs.

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

(1)  the department shall notify the clerk of the court; and

(2)  the clerk of the court shall forward to the department any additional information or record.

SECTION 3.  Section 58.007(a), Family Code, is amended to read as follows:

(a)  This section applies only to the inspection, copying, and maintenance of a record concerning a child and the storage of information, by electronic means or otherwise, concerning the child from which a record could be generated and does not affect the collection, dissemination, or maintenance of information as provided by Subchapter B or D-1. This section does not apply to a record relating to a child that is:

(1)  required or authorized to be maintained under the laws regulating the operation of motor vehicles in this state;

(2)  maintained by a municipal or justice court; [~~or~~]

(3)  subject to disclosure under Chapter 62, Code of Criminal Procedure;

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

(5)  required to be forwarded to the Department of Public Safety under Section 411.0521, Government Code.

SECTION 4.  Sections 411.052 and 411.0521, Government Code, as amended by this Act, apply only to a finding, order, or commitment that occurs on or after the effective date of this Act. A finding, order, or commitment that occurred before the effective date of this Act is governed by the law in effect on the date the finding, order, or commitment occurred, and the former law is continued in effect for that purpose.

SECTION 5.  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.  This Act takes effect September 1, 2023.

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