

By: Huffman, et al.

S.B. No. 728

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~~

1 ~~3, Estates Code, based on the determination that the person lacks~~
2 ~~the mental capacity to manage the person's affairs; or~~

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

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

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

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

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

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

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

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

26 (a) The clerk of the court shall prepare and forward to the
27 department the information described by Subsection (b) not later

1 than the 30th day after the date the court:

2 (1) performs any of the following actions:

3 (A) with respect to an individual who is at least
4 16 years of age:

5 (i) [~~(1)~~] orders a person to receive
6 inpatient mental health services under Chapter 574, Health and
7 Safety Code;

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

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

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

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

23 (v) [~~(6)~~] finds a person is entitled to
24 relief from disabilities under Section 574.088, Health and Safety
25 Code; or

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

1 (i) finds a child unfit to proceed under
2 Subchapter C, Chapter 55, Family Code, as a result of mental illness
3 or an intellectual disability;

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

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

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

13 (2) appoints a guardian of the incapacitated adult
14 person under Title 3, Estates Code, based on the determination that
15 the person lacks the mental capacity to manage the person's
16 affairs.

17 (c-1) On request of the department, the clerk of the court
18 shall forward a signed court order containing federal prohibited
19 person information to the department for an audit of records
20 provided to the Federal Bureau of Investigation under Section
21 411.052 for use with the National Instant Criminal Background Check
22 System. If the department determines that a record forwarded under
23 this subsection is incomplete or invalid:

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

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

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

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

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

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

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

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

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

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

27 SECTION 5. Section 58.007, Family Code, as amended by this

S.B. No. 728

1 Act, applies to records created before, on, or after the effective
2 date of this Act.

3 SECTION 6. This Act takes effect September 1, 2023.