

BILL ANALYSIS

Senate Research Center
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H.B. 3352
By: Naishtat, Rodriguez (Ellis)
Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

State law mandates that Texas counties report the names of all convicted felons and convicted domestic violence perpetrators to the Department of Public Safety (DPS). DPS then forwards the information to the Federal Bureau of Investigation (FBI) for input into the FBI-run National Instant Criminal Background Check System (commonly known as NICS). The individuals who are in this database will not pass a background check to purchase a gun. However, Texas does not require sending information about individuals who have been determined to be mentally ill, mentally incompetent, or mentally incapacitated to NICS. Currently, these individuals can pass a background check to purchase a gun.

The National Instant Criminal Background Check System Improvement Act was enacted in response to the Virginia Tech massacre in the spring of 2007 in which 31 students and faculty were killed by a mentally ill student who had purchased a gun in a state that—like Texas—lacked a requirement to report information about individuals who have been determined to be mentally ill. The Virginia Tech shooter was able to purchase firearms because information about his mental health history was not available to the NICS, and the system was therefore unable to deny the transfer of the firearms used in the shootings.

This bill would place Texas closer to compliance with the NICS Improvement Act. The federal act requires states to report information necessary to prohibit the purchase of firearms by felons, domestic violence perpetrators, the criminally insane, persons who have been found to be mentally defective or incompetent to manage their personal affairs, and persons who are mentally ill and involuntarily committed to mental hospitals.

H.B. 3352 relates to the collection, dissemination, and correction of certain judicial determinations for a federal firearm background check.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Public Safety of the State of Texas in SECTION 1 (Section 411.052, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 411, Government Code, by adding Sections 411.052 and 411.0521, as follows:

Sec. 411.052. FEDERAL FIREARM REPORTING. (a) Defines "federal prohibited person information."

(b) Requires the Department of Public Safety of the State of Texas (DPS) by rule to establish a procedure to provide federal prohibited person information to the Federal Bureau of Investigation (FBI) for use with the National Instant Criminal Background Check System. Authorizes DPS, except as otherwise provided by state law, to disseminate federal prohibited person information under this subsection only to the extent necessary to allow the FBI to collect and maintain a list of persons who are prohibited under federal law from engaging in certain activities with respect to a firearm.

(c) Requires DPS to grant access to federal prohibited person information to the person who is the subject of the information.

(d) Provides that federal prohibited person information maintained by DPS is confidential information for the use of DPS and except as otherwise provided by this subsection and other state law, is prohibited from being disseminated by DPS.

(e) Requires DPS by rule to establish a procedure to correct DPS records and transmit those corrected records to the FBI when a person provides a copy of a judicial order or finding that a person is no longer an incapacitated adult or is entitled to relief from disabilities under Section 574.088, Health and Safety Code or proof that the person has obtained notice of relief from disabilities under 18 U.S.C. Section 925.

Sec. 411.0521. REPORT TO DEPARTMENT CONCERNING CERTAIN PERSONS' ACCESS TO FIREARMS. (a) Requires the clerk of the court to prepare and forward to DPS the information described by Subsection (b) not later than the 30th day after the date of the court issues certain orders, actions, determinations, or findings.

(b) Requires the clerk of a court to prepare and forward under Subsection (a) the complete name, race, and sex of the person; any known identifying number of the person, including social security number, driver's license number, or state identification number; and the person's date of birth.

(c) Requires the clerk of the court, if practicable, to forward to DPS the information described by Subsection (b) in an electronic format prescribed by DPS.

(d) Requires the clerk, if an order previously reported to DPS under Subsection (a) is reversed by order of any court, to notify DPS of the reversal not later than 30 days after the clerk receives the mandate from the appellate court.

(e) Provides that the duty of a clerk to prepare and forward information under this section is not affected by any subsequent appeal of the court order, any subsequent modification of the court order, or the expiration of the court order.

SECTION 2. Amends Subchapter F, Chapter 574, Health and Safety Code, by adding Section 574.088, as follows:

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

(b) Requires the court, in determining whether to grant relief, to hear and consider evidence about the circumstances that led to imposition of the firearms disability under 18 U.S.C. Section 922 (g)(4), the person's mental history, the person's criminal history, and the person's reputation.

(c) Prohibits the court from granting relief unless it makes and enters in the record affirmative findings that the person is no longer likely to act in a manner dangerous to public safety and that removing the person's disability to purchase a firearm is in the public interest.

SECTION 3. Requires each clerk of the court to prepare and forward information for each order issued on or after September 1, 2009, to DPS as required by Section 411.0521, Government Code, as added by this Act. Requires each clerk of the court, not later than September 1, 2010, to prepare and forward information for any court orders issued on or after September 1, 1999, and before September 1, 2009.

SECTION 4. Effective date: September 1, 2009.