

1-1 By: Huffman, et al. S.B. No. 728
 1-2 (In the Senate - Filed February 7, 2023; February 22, 2023,
 1-3 read first time and referred to Committee on State Affairs;
 1-4 March 3, 2023, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 9, Nays 0; March 3, 2023,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14			X	
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 728 By: Zaffirini

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to the reporting of mental health and intellectual
 1-24 disability information with respect to certain children for
 1-25 purposes of a federal firearm background check.

1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-27 SECTION 1. Section 411.052(a), Government Code, is amended
 1-28 to read as follows:

1-29 (a) In this section, "federal prohibited person
 1-30 information" means information that identifies:

1-31 (1) an individual who is at least 16 years of age as:

1-32 (A) ~~[(1)]~~ a person ordered by a court to receive
 1-33 inpatient mental health services under Chapter 574, Health and
 1-34 Safety Code;

1-35 (B) ~~[(2)]~~ a person acquitted in a criminal case
 1-36 by reason of insanity or lack of mental responsibility, regardless
 1-37 of whether the person is ordered by a court to receive inpatient
 1-38 treatment or residential care under Chapter 46C, Code of Criminal
 1-39 Procedure;

1-40 (C) ~~[(3)]~~ a person determined to have an
 1-41 intellectual disability ~~[mental retardation]~~ and committed by a
 1-42 court for long-term placement in a residential care facility under
 1-43 Chapter 593, Health and Safety Code; or

1-44 (D) ~~[(4)]~~ an incapacitated adult individual for
 1-45 whom a court has appointed a guardian of the individual under Title
 1-46 3, Estates Code, based on the determination that the person lacks
 1-47 the mental capacity to manage the person's affairs; or

1-48 ~~[(5)]~~ a person determined to be incompetent to stand
 1-49 trial under Chapter 46B, Code of Criminal Procedure;

1-50 (2) a child who is at least 16 years of age and has
 1-51 been:

1-52 (A) found unfit to proceed under Subchapter C,
 1-53 Chapter 55, Family Code, as a result of mental illness or an
 1-54 intellectual disability;

1-55 (B) found not responsible for the child's conduct
 1-56 under Subchapter D, Chapter 55, Family Code, as a result of mental
 1-57 illness or an intellectual disability;

1-58 (C) ordered by a court to receive inpatient
 1-59 mental health services under Subchapter B, C, or D, Chapter 55,
 1-60 Family Code, as a result of mental illness; or

2-1 (D) committed by a court to a residential care
 2-2 facility under Subchapter C or D, Chapter 55, Family Code, as a
 2-3 result of an intellectual disability; or

2-4 (3) an incapacitated adult person for whom a court has
 2-5 appointed a guardian of the person under Title 3, Estates Code,
 2-6 based on the determination that the person lacks the mental
 2-7 capacity to manage the person's affairs.

2-8 SECTION 2. Section 411.0521, Government Code, is amended by
 2-9 amending Subsection (a) and adding Subsection (c-1) to read as
 2-10 follows:

2-11 (a) The clerk of the court shall prepare and forward to the
 2-12 department the information described by Subsection (b) not later
 2-13 than the 30th day after the date the court:

2-14 (1) performs any of the following actions:

2-15 (A) with respect to an individual who is at least
 2-16 16 years of age:

2-17 (i) [~~1~~] orders a person to receive
 2-18 inpatient mental health services under Chapter 574, Health and
 2-19 Safety Code;

2-20 (ii) [~~2~~] acquits a person in a criminal
 2-21 case by reason of insanity or lack of mental responsibility,
 2-22 regardless of whether the person is ordered to receive inpatient
 2-23 treatment or residential care under Chapter 46C, Code of Criminal
 2-24 Procedure;

2-25 (iii) [~~3~~] commits a person determined to
 2-26 have an intellectual disability [~~mental retardation~~] for long-term
 2-27 placement in a residential care facility under Chapter 593, Health
 2-28 and Safety Code;

2-29 (iv) [~~4~~] appoints a guardian of the
 2-30 incapacitated adult individual under Title 3, Estates Code, based
 2-31 on the determination that the person lacks the mental capacity to
 2-32 manage the person's affairs;

2-33 [~~5~~] determines a person is incompetent to stand trial
 2-34 under Chapter 46B, Code of Criminal Procedure; or

2-35 (v) [~~6~~] finds a person is entitled to
 2-36 relief from disabilities under Section 574.088, Health and Safety
 2-37 Code; or

2-38 (B) with respect to a child who is at least 16
 2-39 years of age:

2-40 (i) finds a child unfit to proceed under
 2-41 Subchapter C, Chapter 55, Family Code, as a result of mental illness
 2-42 or an intellectual disability;

2-43 (ii) finds a child not responsible for the
 2-44 child's conduct under Subchapter D, Chapter 55, Family Code, as a
 2-45 result of mental illness or an intellectual disability;

2-46 (iii) orders a child to receive inpatient
 2-47 mental health services under Subchapter B, C, or D, Chapter 55,
 2-48 Family Code, as a result of mental illness; or

2-49 (iv) commits a child to a residential care
 2-50 facility under Subchapter C or D, Chapter 55, Family Code, as a
 2-51 result of an intellectual disability; or

2-52 (2) appoints a guardian of the incapacitated adult
 2-53 person under Title 3, Estates Code, based on the determination that
 2-54 the person lacks the mental capacity to manage the person's
 2-55 affairs.

2-56 (c-1) On request of the department, the clerk of the court
 2-57 shall forward a signed court order containing federal prohibited
 2-58 person information to the department for an audit of records
 2-59 provided to the Federal Bureau of Investigation under Section
 2-60 411.052 for use with the National Instant Criminal Background Check
 2-61 System. If the department determines that a record forwarded under
 2-62 this subsection is incomplete or invalid:

2-63 (1) the department shall notify the clerk of the
 2-64 court; and

2-65 (2) the clerk of the court shall forward to the
 2-66 department any additional information or record.

2-67 SECTION 3. Section 58.007(a), Family Code, is amended to
 2-68 read as follows:

2-69 (a) This section applies only to the inspection, copying,

3-1 and maintenance of a record concerning a child and the storage of
3-2 information, by electronic means or otherwise, concerning the child
3-3 from which a record could be generated and does not affect the
3-4 collection, dissemination, or maintenance of information as
3-5 provided by Subchapter B or D-1. This section does not apply to a
3-6 record relating to a child that is:

3-7 (1) required or authorized to be maintained under the
3-8 laws regulating the operation of motor vehicles in this state;

3-9 (2) maintained by a municipal or justice court; [~~or~~]

3-10 (3) subject to disclosure under Chapter 62, Code of
3-11 Criminal Procedure;

3-12 (4) required to be provided to the Federal Bureau of
3-13 Investigation under Section 411.052, Government Code, for use with
3-14 the National Instant Criminal Background Check System; or

3-15 (5) required to be forwarded to the Department of
3-16 Public Safety under Section 411.0521, Government Code.

3-17 SECTION 4. Sections 411.052 and 411.0521, Government Code,
3-18 as amended by this Act, apply only to a finding, order, or
3-19 commitment that occurs on or after the effective date of this Act.
3-20 A finding, order, or commitment that occurred before the effective
3-21 date of this Act is governed by the law in effect on the date the
3-22 finding, order, or commitment occurred, and the former law is
3-23 continued in effect for that purpose.

3-24 SECTION 5. Section 58.007, Family Code, as amended by this
3-25 Act, applies to records created before, on, or after the effective
3-26 date of this Act.

3-27 SECTION 6. This Act takes effect September 1, 2023.

3-28 * * * * *