

Senate Select Committee on Mass Violence Prevention & Community Safety

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Brady Handgun Violence Prevention Act of 1993

- Requires states to report all Brady Act disqualifiers (from purchasing or receiving a firearm) to the federal criminal databases.
- Per 18 U.S.C. § 922(g)(1-9), disqualifiers include:
 - Felony convictions
 - Misdemeanor convictions of domestic violence
 - Under indictment/information where punishment exceed 1 year
 - Mental health involuntary inpatient commitments
 - Final protective orders against intimate partner or his/her child
 - Fugitives from justice



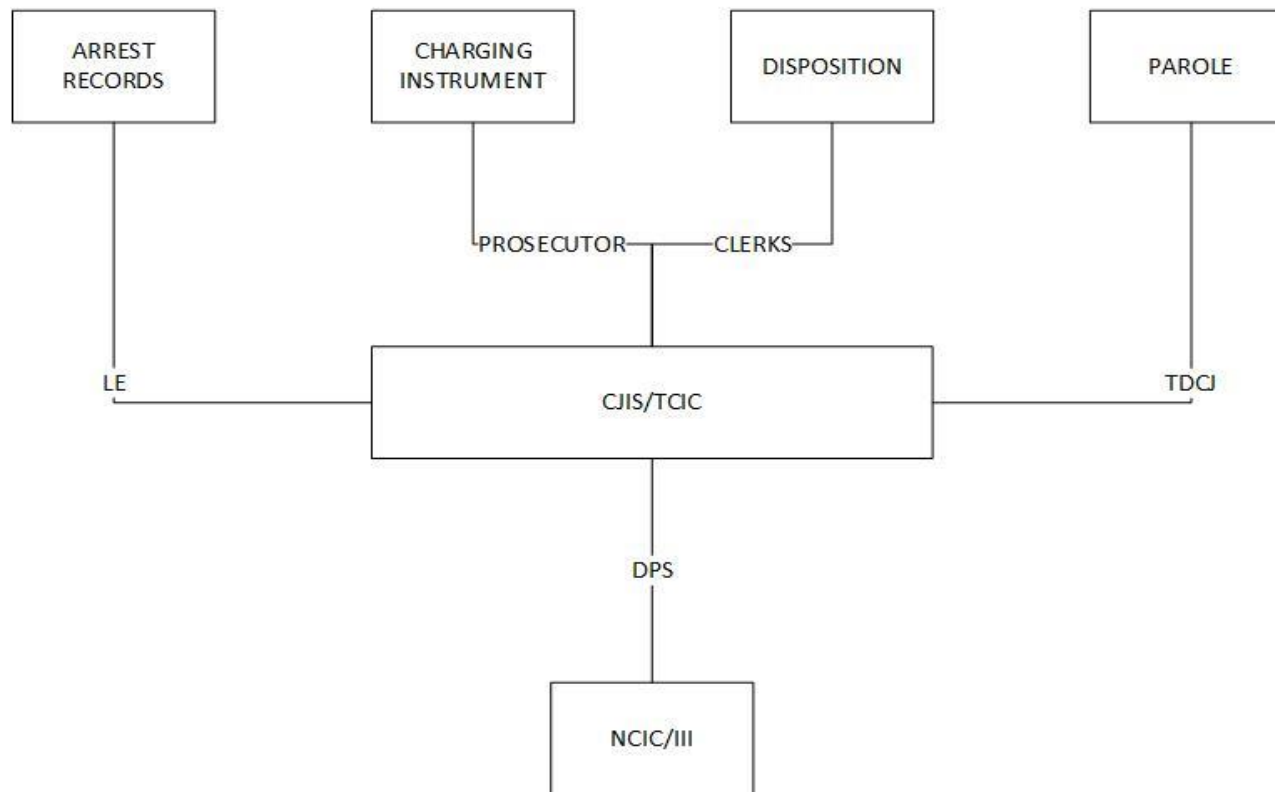
Databases

- **TCIC**—Texas Crime Information Center
 - Via Texas Law Enforcement Telecommunications System (TLETS)
 - Provides responses within 12 seconds
 - Links to NCIC so that Texas law enforcement officers know instantly about stolen property, wanted persons, and protective orders anywhere in the country
- **III**—Interstate Identification Index; federal criminal history database
- **NCIC**—National Crime Information Center
- **NICS**—National Instant Criminal Background Check System
 - Checks available records in NCIC, III, and the NICS Index to determine if prospective transferees are disqualified from receiving firearms



The Judiciary's Role in Reporting Criminal Disqualifiers

CRIMINAL RECORDS FLOWCHART



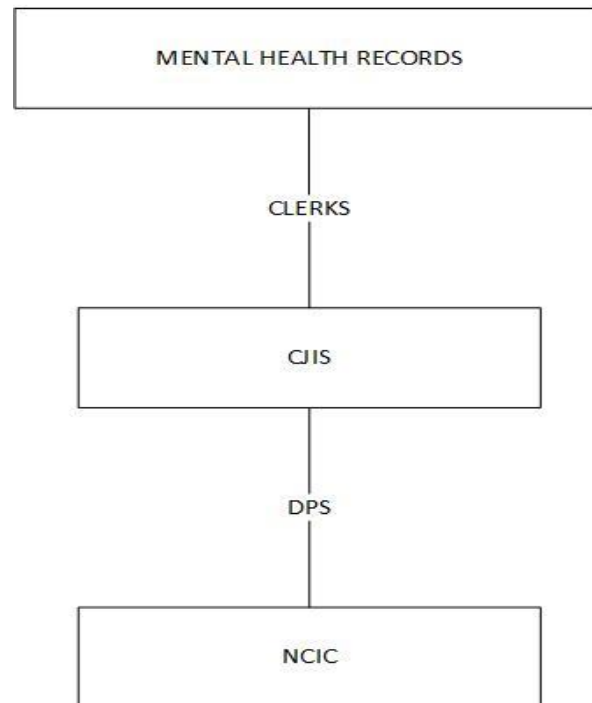
Reporting Criminal Record Disqualifiers

- Convicted Felons cannot possess firearm for 5 years after release from confinement following conviction or release from community supervision, parole, mandatory supervision, whichever is later. (3rd Degree Felony) (Penal Code Sec. 46.04)
- Law enforcement must report arrest to DPS within **7 days** of arrest (Code of Crim. Proc. Art. 66.252(e))
- Prosecutors/clerks must report filing decision/conviction to DPS within **30 days** of the date the prosecutor/clerk receives the information (Code of Crim. Proc. Art. 66.252(d))
- Governor Abbott Executive Order #8
 - Requires CJD grant awards to contain commitment from counties/clerks to report convictions within 7 business days by 1/1/20 and 5 business days by 1/1/21.



The Judiciary's Role in Reporting Mental Health Disqualifiers

MENTAL HEALTH RECORDS FLOWCHART



Reporting Mental Health Record Disqualifiers

- Clerk must submit information to DPS within **30 days** of the date the court finds/orders the action that is a mental health disqualifier (Gov't Code Sec. 411.0521(a))
- Clerk must also submit information to DPS within **30 days** of the date the clerk receives an appellate court mandate reversing the mental health disqualifier (Gov's Code Sec. 411.052(d))



Mental Health Commitments FY 2018

Cases on Docket	Temporary Mental Health Services	Extended Mental Health Services	Modification		Total Cases
			Inpatient to Outpatient	Outpatient to Inpatient	
Intake					
New Applications Filed	47,218	332	115	113	47,778
Orders for Protective Custody Signed	44,417	---	---	---	44,417
Hearings					
Probable Cause Hearings Held	36,124	---	---	---	36,124
Release/Dismissal Prior to Final Hearing	32,159	20	9	15	32,203
Final Commitment Hearings Held	11,674	173	9	9	11,865
Other Information					
Disposition at Final Hearing					
<i>Denied (Release)</i>	3,841	13	0	1	3,855
<i>Granted (Commit)</i>					
<i>Inpatient</i>	7,107	207	17	---	7,331
<i>Outpatient</i>	357	42	---	12	411

Order to Authorize Psychoactive Medications	Total
New Applications Filed	4,909
Dismissal Prior to Hearing	604
Hearings Held	3,824
Disposition at Hearing	
Denied	120
Granted	3,699



Improving Reporting of Mental Health Records

- FY 2012-13 OCA received NICS Act Record Improvement grants from U.S. Department of Justice, Bureau of Justice Statistics (DOJ), to improve NICS reporting of Mental Health Records.
- Texas Mental Health Records Submitted to NICS
 - 10/1/11 – 168,384
 - 12/1/17 – 285,067
 - 69% increase in the number of records submitted as clerks worked to ensure historical and new records are reported.
 - 12/31/18 – 297,036
 - 9/1/19 – 304,000



Types of Protective Orders

31-91 day
Magistrates
Order of
Emergency
Protection

- TX CCP 17.292

20 day
Temporary
Ex Parte
Protective
Order

- TX Family Code
Ch. 83

Protective
Orders

- FV, DV, SA,
 - SK, TK
- TX Family Code
Ch. 71, 81-82,
84-88, CCP 7A
and CCP 6.09



Reporting Protective Order Disqualifiers

- Clerks required to send family violence protective orders and magistrate's emergency protective orders to law enforcement to enter order into CJIS no later than **next business day** after ordered entered. (Family Code Sec. 85.042)
- Law enforcement must enter protective order into CJIS no later than **3 business days** after receipt of protective order. (Family Code Sec. 86.0011)



State Statutes regarding firearms & domestic violence

- A person subject to a protective order, including a magistrate's emergency order of protection, may not possess a firearm if he/she has received notice of the order (unless the person is an active, sworn, full-time, paid peace officer). (Penal Code Sec. 46.04(c)).
 - Also a violation of condition of bond and new offense under Penal Code Sec. 25.07(a).
- Court may prohibit person from possessing firearm in a protective order (Family Code Sec. 85.022(b)(6)).
 - Statute does not give court clear authority to prohibit person from possessing firearm in temporary ex parte protective order – *"court may direct a respondent to do or refrain from doing specific acts."* (Family Code Sec. 83.001)
- However, both protective order and temporary ex parte protective orders must contain language in the order that states that it is unlawful for a person subject to a protective order to possess a firearm or ammunition. (Family Code Sec. 85.026).
 - This same warning must be on protective orders for victims of sexual assault, human trafficking, and stalking. (Code Crim. Proc. 7A.06)
- Magistrate issuing emergency protective order shall suspend license to carry a handgun that is held by the defendant. (CCP 17.292(l))
- In a protective order issued for victims of sexual assault, or abuse, stalking, or trafficking under CCP 7A, the court may suspend license to carry a handgun held by the defendant. (CCP 7A.05(c))



State Statutes regarding Firearms & Domestic Violence

- Convicted of domestic violence, including for dating partner, cannot possess firearm for 5 years after release from confinement following conviction or release from community supervision, parole, mandatory supervision, whichever is later. (Class A misdemeanor) – Penal Code Sec. 46.04
- Court shall notify person convicted of domestic violence of the fact that it is unlawful to possess or transfer firearm or ammunition. (Code Crim. Proc. Art. 42.0131)
- Before accepting a plea in a misdemeanor involving family violence, court shall admonish defendant, orally or in writing, with specific language about unlawful possession of firearm. (Code Crim. Proc. Art. 27.14(e))
- Citations issued for Class C offenses involving domestic violence are required to have language warning of unlawful possession of firearm. (Code Crim. Proc. Art. 14.06(b))
- No law requires surrender of firearms or ammunition by domestic abusers who have become prohibited from possessing firearms or ammunition under federal or state law.



Legislation from 85th Session

- SB 325 – Protective Order Registry
 - Requires OCA, in consultation with DPS and the courts, to establish and maintain a centralized Internet based registry for protective order applications filed and protective orders issued in Texas, including a magistrate’s order for emergency protection. Limited access by the public if the victim opts in.
- HB 1528 – Family Violence Class C Appearances
 - Requires Class C misdemeanants charged with offenses that involve family violence to appear in person.
 - Prior to 9/1, defendants could plea online or by mail and therefore, they did not have to submit fingerprints that go to DPS.
 - Because individuals were not required to appear in person, they were also not receiving proper notice that they were ineligible to possess firearms.
- SB 1804 – Law Enforcement Access to DV Bond Conditions (Vetoed)
 - Would have provided law enforcement access to bond conditions for domestic violence suspects.



Areas for Improvement in Reporting

- Automation
 - Computer system compatibility
 - Case management system
 - OCA received funding for FY 2020-21 for uniform case management system focused on counties under 20K
- Lack of standardized forms and orders
- Inability to verify records in NICS
 - NICS queries records from 3 databases, making it difficult for courts and other agencies to verify the number of records available to the system.
- Continued need for training on data entry

