



# **Texas NICS Mental Health Record Improvement Plan Progress, Challenges, and Recommendations**

**OCTOBER 2012**

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## Table of Contents

NICS Mental Health Record Improvement Plan Overview .....	2
NICS Record Improvement Task Force .....	2
Texas Legislature .....	3
Texas Office of Court Administration .....	3
Texas NICS Mental Health Record Improvement Project.....	4
Texas Department of Public Safety.....	4
Progress.....	4
Challenges.....	5
Recommendations .....	6
Conclusions .....	8
Appendix A: Improvement in Criminal Disposition Reporting .....	9
Appendix B: NICS Record Improvement Project Statistics as of 8/31/12 .....	10

## NICS Mental Health Record Improvement Plan Overview

In the fall of 2011, the Texas NICS Record Improvement Task Force was established to develop strategic planning for the improvement of the quality and availability of prohibiting mental health adjudication and commitment records<sup>1</sup> in Texas used by the National Instant Criminal Background Check System (NICS).<sup>2</sup> This document is the result of their work.

This document first provides a review of the actions taken by the NICS Record Improvement Task Force, Texas Legislature, Texas Office of Court Administration, and Texas Department of Public Safety to improve the reporting of mental health records to NICS. It then provides a review of the progress made to date, the challenges encountered, and the recommendations identified to continue the improvement of mental health records reporting.

## NICS Record Improvement Task Force

The NICS Record Improvement Task Force was established to develop strategic planning for the improvement of the quality and availability of prohibiting mental health records in Texas used by the NICS. The Task Force was charged with: 1) reviewing the results of the assessment of the completeness and availability of mental health records; 2) seeking to identify the challenges for incomplete and/or unavailable mental health records; 3) developing recommendations for the achievement of improvements in the quality, completeness, and availability of these records; and 4) developing a NICS Improvement Plan for mental health records.

The members of, and the resources to, the Task Force are:

Honorable Guy Herman, Chair  
Judge, Probate Court No. 1  
Travis County

Angie Kendall  
Deputy Administrator, Crime Records Service  
Texas Department of Public Safety

Honorable Larry G. Bevill  
County Clerk  
Taylor County

Thomas D. McClure<sup>3</sup>  
Assistant General Counsel  
Texas Department of State Health Services

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<sup>1</sup> For purposes of this document, “prohibiting mental adjudication or commitment records” or “mental health records” are defined to also include intellectual disability/development disability (also known as mental retardation) and guardianship records.

<sup>2</sup> The information in NICS is used in background checks performed by the Federal Bureau of Investigation to determine whether a person is disqualified from possessing or receiving a firearm.

<sup>3</sup> Mr. McClure served only as a resource to the Task Force related to the access to historical commitment records within the State Hospital and former State School (now State-Supported Living Center) system.

Jo Ann Easley<sup>4</sup>  
Manager, State Supported Living Centers  
Texas Dept. of Aging and Disability Services

Honorable Nancy E. Rister  
County Clerk  
Williamson County

Angela Garcia  
Judicial Information Manager  
Texas Office of Court Administration

Honorable Mike Sutherland  
County Judge  
Burleson County

Honorable Laura Hinojosa  
District Clerk  
Hidalgo County

## **Texas Legislature**

House Bill 3352 (now codified at sections 411.052 and 411.0521 of the Texas Government Code and section 574.088 of the Texas Health and Safety Code) was passed by the 81<sup>st</sup> Texas Legislature, in 2009, to comply with and implement the requirements of the federal NICS Improvement Amendments Act of 2007. It requires district and county clerks to report information on prohibiting mental health adjudications and commitments to the Texas Criminal Justice Information System (CJIS) maintained by the Texas Department of Public Safety. The bill also requires district and county clerks to report to the Texas CJIS all relevant cases in which an order was issued from September 1, 1989 through August 31, 2009.

## **Texas Office of Court Administration**

The Texas Office of Court Administration (OCA), as the subject-matter expert, has taken a leading role in providing assistance to the district and county clerks and other parties in the implementation of House Bill 3352 by: 1) making presentations at conferences and regional meetings of the Texas District and County Clerks' Association; 2) making presentations at meetings of the Texas College of Probate Judges; 3) developing a frequently asked questions document to assist clerks in reporting these cases and implementing the provisions of House Bill 3352; 4) working with the Texas District and County Clerks' Association and Texas Department of State Health Services to aid clerks in getting the information they need to report relevant records to the Texas CJIS; 5) providing frequent assistance to clerks by answering questions over the phone and by email; 6) applying for FY 2011 and FY 2012 NICS Act Record Improvement Program grants; and 7) implementing the Texas NICS Mental Health Record

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<sup>4</sup> Ms. Easley was unable to attend the Task Force's meetings, but the Task Force acknowledges the support provided by DADS related to historical commitment information.

Improvement Project to provide records research assistance and training to district and county clerks.

## **Texas NICS Mental Health Record Improvement Project**

OCA received a FY 2011 NICS Act Record Improvement Program grant to implement the Texas NICS Mental Health Record Improvement Project, which proposed to increase the number of prohibiting mental health adjudication or commitment, mental retardation and guardianship records, particularly historical records, made available to NICS by employing staff to provide direct assistance to the district and county clerks responsible for this reporting requirement through records research assistance and training. In May 2012, OCA applied for, and was subsequently awarded, a FY 2012 NICS Act Record Improvement Program grant to continue the project.

## **Texas Department of Public Safety**

The Texas Department of Public Safety (DPS) is responsible for all data collection for NICS. DPS is working to improve NICS through its FY 2010 NICS Improvement Amendments Act grant award (\$751,537) to continue its fingerprint conversion project. In this project, DPS will update and automate hardcopy arrest records and Automated Fingerprint Identification System (AFIS) registration information. The vendor will be responsible for converting an additional 825,865 hardcopy arrest records and AFIS registration information in a National Institute of Standards and Technology (NIST) format and directly add them to the state AFIS. Once the records and registration information have been updated to the state AFIS, they will be transmitted to the FBI for inclusion in the national system. As of August 28, 2012, 1,559,276 fingerprint cards have been converted. The anticipated project completion date is September 30, 2012.

While DPS has continued to improve the collection of criminal history information (see **Appendix A** regarding improvements in Texas criminal disposition reporting), DPS lacks the resources to assist the district and county clerks with reporting mental health information. Thus, in cooperation and coordination with DPS, OCA has taken a leading role in improving the reporting of mental health information.

## **Progress**

Texas has made great strides in improving the reporting of mental health records to NICS. NICS mental health records have increased 22.5 percent from 168,384 at the beginning of the

project to 206,342 records as of August 31, 2012. Onsite research has been provided to 28 clerks. See **Appendix B** for detailed statistics on the project.

## Challenges

Texas is the second-largest state in the U.S., by both area and population. Texas has 254 counties with 443 clerks reporting for 456 district courts and 508 county-level courts. While both the physical size and population of the State make ensuring the complete reporting of qualifying mental health records a substantial task, the state's decentralized court system is the largest challenge to complete reporting. Funding for the staff and operating expenses of the district clerk and county clerk offices comes from the counties, not the State. As a result, file storage, record organization, digitalization of records, and computer systems vary from clerk office to clerk office and county to county.

The Task Force examined in detail the issues surrounding the accuracy, completeness, and availability of mental health records. Assessment activities included surveying the clerks, identifying counties that requested applicable records from the Texas Department of State Health Services, and analyzing DPS statistics on NICS reporting by county.

The following challenges have been identified regarding reporting completeness:

- lack of understanding by the clerks that the reporting is a federal requirement and the belief that the State is imposing another “unfunded mandate,” which results in a reluctance to comply with the requirement;
- concern about criminal disposition reporting is currently the main focus of the clerks because of action taken by the Criminal Justice Division (CJD) of the Office of the Governor requiring criminal disposition reporting compliance for grant eligibility (see Appendix A);
- confusion about what cases are to be reported; and
- loss of knowledge due to turnover in elected district and county clerks and clerk staff, resulting in lack of awareness about the reporting requirements or about what has previously been reported.

The following challenges to assessing reporting completeness have been identified:

- conflicting information from clerks who indicated that they had reported fully or had nothing to report; however, NICS reporting statistics indicate that they have submitted no records nor indicated that they had zero records to report;

- statistics from DPS regarding NICS reporting are available by county level only, which makes it difficult to identify reporting completeness for each clerk office because the data cannot be broken out to that level; and
- incomplete or inaccurate data from the clerks on active guardianships (reported through the Texas Judicial Council’s Monthly Court Activity Report) increase the difficulty in estimating the number of NICS cases to be reported and, therefore, the completeness of NICS reporting.

The following reasons for incomplete and/or unavailable NICS records have been identified:

- incomplete docket books;
- unavailable or incomplete case files because of poor record management;
- limited access to case files because of difficulty in retrieving them from remote storage;
- older cases not entered into the case management system;
- older cases (filed prior to September 2010) cannot be reported because of missing identifiers (e.g., date of birth);
- new cases (filed since September 2010) are being filed without information necessary for NICS reporting being collected;
- individual has multiple cases with the same case number;
- difficulty in obtaining private hospital commitment information because:
  - Texas DSHS records do not include private hospital commitments (they only include state hospital, state center, state school, and state supported living center commitments ); and
  - Private hospitals are often bought and sold multiple times.
- difficulty in obtaining personal information about individuals committed to private hospitals, due to the hospitals’ HIPPA privacy law concerns.

## Recommendations

The following recommendations are made to district and county clerks:

- change their processes, forms, and case management system to capture information required for case entry into CJIS;
- require the completion of a Mental Health Information Sheet for each mental health case, to capture all the data elements required to enter a case into CJIS/NICS;
- access all available databases to research and obtain identifying personal information (i.e., case management system, jail and jury records, and skip tracing) and share identifying personal information with clerks in other counties;

- assign a unique cause number for each new application for court-ordered inpatient mental health services (whether the application is for temporary or extended mental health services) that is filed;
- improve record management and storage so that case files are accessible and in good condition; and
- keep a list of cases without sufficient personal information to enter them into CJIS/NICS, in the event the information becomes available at a later time.

The following recommendations are made to OCA:

- complete and distribute the NICS Mental Health Reporting Manual, which combines the latest Texas CJIS data entry manual with a review of the reporting requirements, frequently asked questions and mental health record reporting tips, to the county and district clerks;
- provide ongoing education regarding NICS reporting requirements, including targeted training to new clerks and clerks who have reported conflicting data regarding their NICS reporting;
- review the quality of Active Guardianship data reported in the Judicial Council Monthly Activity Reports to improve NICS records estimates, as some counties appear to have reported an excessive number of active guardianship cases and some counties have reported zero active guardianships; and
- provide guidance to the district and county clerks on how to store Mental Health Information Sheets.

The following recommendations are made to DPS:

- improve NICS reporting statistics, including providing statistics by clerk office;
- improve CJIS data entry by adding an edit feature so that records with errors can be corrected rather than deleted and reentered; and
- eliminate duplicate reporting for guardianship cases. Clerks currently report driver's licenses that are revoked through guardianship proceedings to the Driver Improvement and Control section of DPS. They also have to report the same individuals to CJIS/NICS.

The Chair of the Task Force makes the following legislative recommendations:

- provide for relief from a firearms disability (i.e., person can petition the court to have his/her gun rights restored) for persons in which the court has issued an order closing the guardianship after ruling the person has been restored to full legal capacity. (Currently, state relief is only available to those who have been through the mental health system.); and

- require the submission of a personal information sheet in mental health cases.

The following three year strategic plan is recommended to ensure an ongoing and comprehensive effort to continue to improve NICS reporting:

**Year 1**

Implement the Texas NICS Record Improvement Project. (The end date for the first-year grant project period has been extended from September 30, 2012 until March 31, 2013.)

**Year 2**

Complete the Texas NICS Record Improvement Project (second-year grant funding to continue the project was awarded in September 2012). Complete and distribute the NICS Reporting Manual to the district and county clerks.

**Year 3**

Survey the district and county clerks regarding the NICS reporting process and reporting completeness, continue the analysis of NICS statistics, and continue clerk education.

## **Conclusions**

While Texas has improved the reporting of NICS mental health records, additional work is needed. The NICS Record Improvement Task Force will work to implement the recommendations in the Texas NICS Mental Health Record Improvement Plan and will continue to assess the completeness of NICS mental health reporting within the State. As additional challenges are identified, the Task Force will make recommendations to resolve those issues and will continue to work to improve the reporting of mental health records.

## Appendix A: Improvement in Criminal Disposition Reporting

Texas has done much to improve criminal court disposition reporting through the:

1. Creation of Local Data Advisory Boards. In 2009, the Texas Legislature passed Senate Bill 1061, which requires the commissioners court in any county with a disposition reporting completeness rate below 90% to create a Local Data Advisory Board. Each Data Advisory Board is comprised of key criminal justice stakeholders (e.g., sheriff, prosecutor, district clerk) and a representative of the county department or vendor responsible for the county's automated data processing. The Data Advisory Boards must develop plans to improve the counties' disposition completeness rate to greater than 90%; and
2. Investment of significant state and federal funds in the improvement of criminal court disposition reporting to the DPS Computerized Criminal History (CCH) file and the FBI Interstate Identification Index (III). Those funds have brought Automated Fingerprint Identification (AFIS) technology for fingerprint comparison, live scan fingerprinting devices that have automated capture of the arrests reported to DPS, and electronic disposition reporting that has resulted in court dispositions being reported automatically from the county data processing systems directly to DPS.

While most counties have made great strides in reporting criminal history dispositions as required by Code of Criminal Procedure, Chapter 60, to the Texas Department of Public Safety (DPS), the State Auditor's September 2011 audit of the reporting requirement system showed that more needs to be done. To assist this effort, the Criminal Justice Division (CJD) of the Office of the Governor has taken the following steps:

1. Effective September 1, 2012, each county must comply with Chapter 60 reporting requirements in order for the county or any political subdivision within that county to be eligible for grants under CJD's Justice Assistance Grant (JAG) program. This means that by August 1, 2012, each county and any political subdivision within that county that has applied to CJD for JAG grants must provide CJD with a criminal history disposition completeness report documenting that it has reached a 90% disposition completeness rate for adult arrests for calendar years 2006-2010, as measured by DPS. All jurisdictions, such as cities, in a non-compliant county will be ineligible for JAG funds regardless of whether the county itself applied to CJD for JAG funds.
2. Effective September 1, 2013, any entity, public or private, in a county that does not report at 90% or above will be ineligible to receive grants from any state or federal funding sources managed by CJD.

## Appendix B: NICS Record Improvement Project Statistics as of 8/31/12

County	Case Files Reviewed	Number of NICS Cases Identified	Number of NICS Cases with Sufficient Data to Enter Case into CJIS
Atascosa	2,553	21	21
Bee	183	94	89
Bell	1,527	502	474
Brazos	11,894	58	33
Brown	423	99	99
Caldwell	2,708	83	83
Cherokee	4,782	16	11
Duval	1,341	172	97
Fort Bend	2,209	803	727
Frio	4,974	52	50
Guadalupe	8,824	63	62
Hale	49,834	609	176
Hamilton	96	5	5
Hardin	8,087	35	35
Hidalgo	4,040	76	76
Hockley	28,610	61	61
Lubbock	11,052	3,217	2,473
Matagorda	382	231	189
Milam	226	62	62
Nueces	8,799	5,296	4,952
Randall	958	12	12
Smith	5,596	3,049	2,837
Tom Green	9,118	91	76
Travis	3,091	987	885
Tyler	115	45	45
Val Verde	26,962	4	4
Webb	3,029	1,086	1,031
Wilson	181	6	6
<b>Totals</b>	<b>201,594</b>	<b>16,835</b>	<b>14,671</b>