



Texas NICS Mental Health Reporting Manual

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Table of Contents

National Instant Criminal Background Check System (NICS).....	2
House Bill 3352	2
Why Reporting is Important	2
Cases to Report	3
Mental Health Commitments	4
Adult Guardianships	4
Criminal Cases	5
Data to Report.....	5
New Cases	6
Older Cases.....	6
Mental Health Information Sheet	7
How to Find Missing Identifiers	7
How to Report Cases in CJIS.....	7
Zero Reports.....	7
Responding to Inquiries from the FBI	8
Data Validation and Audits	8
Record Retention Requirements	8
Relief from Disability.....	9
Best Practices.....	10
Canceling a Record in the CJIS/NICS Database	10
Additional Questions.....	12
Appendix A—Sample Mental Health Information Sheet (used with permission of Texas College of Probate Judges)	13
Appendix B—Sample Guardianship Information Sheet (used with permission of Texas College of Probate Judges).....	15
Appendix C—NICS Reporting Chart.....	16

National Instant Criminal Background Check System (NICS)

The National Instant Criminal Background Check System (NICS) is a centralized computer system providing information to federal firearms licensees (FFLs) on whether a prospective purchaser is eligible to receive or possess firearms. Before transferring a firearm to a non-licensed individual, an FFL must contact NICS for a background check on the prospective transferee. NICS then checks automated databases and, in cases where additional information is needed, makes follow-up requests to law enforcement agencies, prosecutors, or courts that may have relevant information demonstrating whether the individual is prohibited from receiving a firearm under state or federal law. NICS has **three business days** to determine whether a proposed gun transfer is prohibited. If NICS has not been able to make a definitive determination within that time frame, the FFL may lawfully transfer the firearm.

House Bill 3352

House Bill 3352 (now codified at sections 411.052 and 411.0521 of the Government Code and section 574.088 of the Health and Safety Code) was passed by the 81st 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 federal prohibited person information as defined in Section 411.052 Government Code to the Texas Criminal Justice Information System (CJIS) maintained by the Texas Department of Public Safety (DPS). The bill also requires district and county clerks to report to CJIS all relevant cases in which an order was previously issued from September 1, 1989 through August 31, 2009.

Why Reporting is Important

After the April 2007 shooting tragedy at Virginia Tech, it became apparent that very few mental health records had been made available to the FBI for background checks. The NICS Improvement Amendments Act of 2007 was passed to address the gap in information available to NICS about prohibiting mental health adjudications and commitments and other prohibiting factors. In addition, it required the automation of records to reduce delays for law-abiding gun purchasers.

Cases to Report

The following types of cases must be reported:

- **Commitments** for temporary or extended **inpatient** mental health services—this includes individuals involuntarily committed to state hospitals, private hospitals, Veterans' Affairs hospitals, etc.;
- **Commitments** of persons determined to have **intellectual disabilities** requiring **long-term placement in a residential care facility** under Chapter 593, Health and Safety Code;
- Cases in which the court appoints a guardian of an incapacitated adult individual under Title 3, Estates Code, based on the determination that the person lacks the mental capacity to manage his/her affairs (**adult guardianships of the person, estate, or person and estate, including temporary guardianships**);
- **Acquittals in criminal cases for reasons of insanity or lack of mental responsibility**, whether or not the person was ordered to receive inpatient treatment or residential care under Chapter 46C, Code of Criminal Procedure; and
- Cases in which a person is found to be **incompetent to stand trial** under Chapter 46B, Code of Criminal Procedure.

***Note:** It is the signed COURT ORDER in each of the cases above that triggers the reporting requirement. **DO NOT REPORT** based on the filing of a medical or psychological examination report presented as evidence; there must be an order filed by the court.*

DO NOT REPORT:

- Guardianships of minors;
- Emergency mental health detentions, admissions or warrants;
- Orders of protective custody;
- Voluntary commitments;
- Commitments for temporary or extended **outpatient** mental health services;
- **Applications** for court-ordered inpatient mental health services that are forwarded to another county to re-file or to hear your original filing; and
- Court-ordered inpatient chemical dependency or alcohol services.

Information related to reporting mental health commitments, adult guardianships, and criminal cases is reviewed in greater detail in the following sections.

Mental Health Commitments

Court ordered involuntary commitments for **temporary or extended inpatient mental health services**, including individuals committed to state hospitals, private hospitals, Veterans' Affairs hospitals, etc. must be reported. This requirement also includes the following scenarios:

- If an individual has more than one commitment order, all should be reported.
- If a court initially issues a temporary commitment order and then later issues an extended commitment order (or another temporary commitment order), each commitment order is reported.
- The initial commitment order for extended mental health services and a renewal order for extended mental health services are each reported.

The clerk must file a new case for each application for court-ordered inpatient mental health services, whether temporary or extended, and assign a new cause number to each. However, some clerks are filing multiple applications for commitment orders for the same individual under the same cause number. In those counties where the same cause number (e.g., 12345) is used for multiple applications for commitment orders for the same individual, the clerk should report each order into CJIS/NICS by adding a numerical suffix, such as a dash and a "1" (i.e., "-1") after the cause number (e.g., 12345-1) to designate the initial commitment order, a "-2" for the second commitment order (e.g., 12345-2), etc.

Adult Guardianships

Cases in which the court appoints a guardian of an incapacitated adult individual under Title 3, Estates Code, based on the determination that the person lacks the mental capacity to manage his/her affairs (**adult guardianships of the person, estate, or person and estate, and temporary guardianships**) must be reported. This requirement also includes the following scenarios:

- Report guardianship cases in which Texas Health and Human Services is appointed as the guardian of an incapacitated adult.
- Report cases in which a guardian of the person or guardian of the person and estate is appointed for a person found to be partially incapacitated.
- Report cases in which a guardian of the person or guardian of the person and estate was appointed, even if the court later issued an order closing the guardianship after decreeing that the person was restored to full legal capacity. These cases must still be reported; however, effective January 1, 2014, a person whose guardianship was terminated because the person's capacity was completely restored may file an application with the court that created the guardianship for an order requesting the removal of the person's

disability to obtain or possess a firearm (see Section 1202.201 of the Estates Code). The person who is the subject of the order will need to submit the order to FBI/NICS to be removed from the database.

Do not report guardianships of minors.

Do not report the appointment of a successor guardian. (*Note: Sometimes a judge may refer to a successor guardian as an alternate guardian.*) Although a successor guardian is appointed, the order does not create a new guardianship, it modifies the existing guardianship.

Criminal Cases

Report cases in which a defendant was **acquitted for reasons of insanity or lack of mental responsibility**, whether or not the person was ordered to receive inpatient treatment or residential care under Chapter 46C, Code of Criminal Procedure. Also report cases in which a defendant is found to be **incompetent to stand trial** under Chapter 46B, Code of Criminal Procedure. A signed court order triggers the reporting requirement for these cases; do not report the cases based solely on a medical or psychological examination report, there must be an order based on the findings in the examination.

In a case in which a defendant is found by the court to remain incompetent and ordered to continue to be committed, the judicial finding that the defendant *remains* incompetent is **not** reported – only the original incompetency finding is reported. However, the order *continuing* the defendant’s commitment **is** reported. This type of order is commonly called a “criminal commitment.” If the clerk does not give a separate cause number to the “criminal commitment” order, then the clerk should report the criminal commitment order under the original criminal cause number into CJIS/NICS by adding a numerical suffix, such as a dash and a “1” (i.e., “-1”) after the cause number (e.g., 12345-1) to designate the criminal commitment order.

If a person found incompetent to stand trial is later found competent, the NICS entry for that person remains in the database. Section 411.0521 of the Government Code states that the duty of a clerk to prepare and forward information 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. To regain his/her rights to obtain or possess a firearm, the person must petition the court that entered the prohibiting order and present evidence during a hearing demonstrating that he/she is no longer a danger to public safety.

Data to Report

All records **must** contain the following information:

- Court ORI
- Case Number
- Case Type
- Court Date (*Date of order/judgment*)
- First Name
- Last Name
- Date of Birth (*Note: you may enter this with only 2 of the 3 numbers in the birth date*)
- Sex
- Race (*Note: you may select "Unknown"*)

The following fields are **optional**:

- State Identification Number
- Social Security Number
- Driver License Number

Report all fields possible. While the identifying number fields are optional, they are important in accurately identifying the individual who is the subject of the prohibiting order and should be reported when available.

New Cases

New cases are cases in which the court issued a reportable order on or after September 1, 2009. These cases must be entered into CJIS **not later than 30 days** after the date of the court order. If an appellate court reverses an order previously reported, the entry in CJIS must be cancelled by the clerk not later than 30 days after the clerk receives the mandate from the appellate court.

Clerks should capture and report all required data elements for new cases. Changes to processes, forms, and case management systems may be needed to capture the information required for case entry into CJIS within the 30-day timeframe.

Older Cases

When House Bill 3352 was enacted in 2009, it required clerks to submit by September 1, 2010 records for cases in which an order was issued on or after September 1, 1989 and before September 1, 2009. Although this deadline has passed, older cases **must still be entered** until all required reporting is completed.

The clerk can research which older cases are reportable by:

- Running reports from the case management system to identify cases that may need to be reported; and
- Reviewing docket books to find potentially reportable cases and preparing a list of those cases.

If a list is generated from the case management system or by reviewing docket books, the clerk must review the actual case files to confirm each reportable case. For example, in a mental health case, the signed commitment order for inpatient treatment must be reviewed. After a case is confirmed to be reportable, the clerk will obtain the data required for record entry from the case file (case number, court date, case type, first name, last name, date of birth, sex, race and any available identifiers).

For those clerk offices where lists cannot be generated from the case management system or the review of docket books, each case file must be reviewed to determine which cases meet the criteria to be reported.

Mental Health Information Sheet

A Mental Health Information sheet is recommended for collecting the necessary information to enter mental health cases into the NICS database. See **Appendix A** for a sample form. The court can require the form to be submitted with each mental health case that is filed.

Guardianship Information Sheet

A Guardianship Information sheet is recommended for collecting the necessary information to enter adult guardianship cases into the NICS database. See **Appendix B** for a sample form. The court can require the form to be submitted with each adult guardianship case that is filed.

How to Find Missing Identifiers

For cases that are missing required identifying information, additional research should be conducted to find the missing information. All available data sources, such as the case management system, jail records, and skip tracing databases should be used to obtain the missing identifying information. In addition, clerks in nearby counties may be contacted to determine if they have any additional information on the individuals. Keep a list of cases with insufficient identifiers for entry into CJIS/NICS, in the event that the information becomes available at a later time.

How to Report Cases in CJIS

The *NICS Indices Entry (NIE) User Guide* is produced by DPS and can be found at:

https://www.dps.texas.gov/administration/crime_records/docs/cjis/nieUserGuide.pdf

Zero Reports

For each month in which there are no reportable cases, the clerk must enter a “zero report” into CJIS to be considered in reporting compliance. A zero report must be entered for each ORI under which a clerk reports. Please see the *NICS User Guide* for reporting instructions.

Responding to Inquiries from the FBI

NICS has **three business days** to determine whether a proposed firearm transfer is prohibited. If NICS has not been able to make a definitive determination within that time frame, the federal firearm licensee may lawfully transfer the firearm.

The NICS Section of the FBI’s Criminal Justice Information Services Division may contact clerks for additional or clarifying information if additional research is needed on a potential match of the prospective firearm transferee’s descriptive information to that of record information located in NICS. ***It is critical for the clerk to respond to NICS inquiries as soon as possible to help NICS meet their three business day requirement.*** If NICS does not get a response to their request for additional or clarifying information, the sale of the firearm can proceed.

Data Validation and Audits

The FBI requires DPS to conduct validations on the data submitted to NICS. DPS pulls a sample of cases for a county, then asks the clerk to submit documentation (court orders) validating the NICS entry. It is important to respond to the NICS validation request in a timely manner. If counties do not comply with the validation request, the FBI will purge all NICS records for that county.

An FBI audit is more detailed than the validation process. For audits, the FBI requires a copy of the court order for each entry selected for audit, so that they can ensure the entry is valid and meets statutory authority. The FBI requires compliance with audits for anyone that submits records to their databases. If a clerk does not provide a copy of the requested order(s), the clerk will receive a letter from the FBI and DPS stating that he/she has failed the audit. The clerk must respond by stating the corrective actions that will be taken. Clerks who fail to correct and submit the requested order(s) can be cut off from participating in the NICS database.

Record Retention Requirements

Record Retention Schedules specifically for mental health-related cases reported to CJIS/NICS are addressed under several different record series (e.g., criminal, probate, commitment, and admission to state care) which have different retention periods. Although the current retention periods for these case records is generally long, caution would favor a permanent retention period so that essential records would be available if needed for establishing a person's identity, resolving some other issue relating to a person's ability to obtain or possess firearms, or situations in which a person seeks relief from a firearms disability.

As part of the original review, the issue of records related to entry of the required pieces of information was raised. Title 37 of the Texas Administrative Code, Sec. 27.141, mandates the clerk of the court to enter the required information electronically via the website provided by DPS. If the clerk creates a "report" with the information and uses it to enter the information, that report is transitory information (record number GR1000-50) with a retention period of AV, or as long as administratively valuable. The report is not essential to fulfill statutory obligations or document government functions; the info is collected from the case papers for the sole purpose of facilitating entry into CJIS. Clerks may destroy these reports after they enter the information.

In summary,

- Records series already exist for the case papers that resulted in a person being reportable;
- Petitions for orders for relief from firearms disability and hearing papers are civil case papers that fall under records retention series for civil case papers;
- A report collecting the 12 required data elements for entry in the NICS website is a transitory record, and does not have to be retained after entry.

There is no penalty for keeping the records longer than the legally required minimum – any record may be kept permanently if that policy is adopted internally at a county or district clerk's office.

Best Practices

A recommended best practice is to segregate the NICS mental health-related records from other case records and maintain them in a location that is easy to access. Ease of access is important if the FBI requests additional or clarifying information to determine whether a person is eligible to purchase a firearm.

Another record retention best practice, for cases in which the clerk has located personal identifying information from other databases or sources (such as case management system, jail and skip tracing records), is to make photocopies of the personal identifying information obtained from those databases or sources and keep those copies in the file for the case that is reported to CJIS/NICS. [**Note:** *It was a recommendation of the NICS Record Improvement Task Force that clerks search other databases and sources when personal identifying information is not in the case file.*]

Relief from Disability

Relief from disability refers to the process by which individuals who have lost the right to purchase a firearm (i.e., individuals entered into the CJIS/NICS database) can petition the court to restore their right to purchase a firearm. Individuals that were entered into the CJIS/NICS database must go through the relief from disability process to be removed from the database.

Mental Health

Section 574.088 of the Health and Safety Code provides for the relief from disabilities in mental health cases. A person who is discharged from court-ordered mental health services may petition the court that entered the commitment order for an order stating that the person qualifies for relief from a firearms disability. Section 574.088 provides detailed information about the proceeding that must be held, and the findings required to restore a person's right to purchase a firearm. If all requirements are met, the individual's NICS record may be cancelled through CJIS. To complete the record cancellation in a case in which a proceeding has been held and all appropriate findings and an order granting relief from disability are entered in the record, answer "Y" to the Relief from Disabilities question in CJIS/NICS.

Guardianship

Section 1202.201 of the Estates Code (effective January 1, 2014) permits a person whose guardianship was terminated because the person's capacity was completely restored to file an application with the court that created the guardianship for an order requesting the removal of the person's disability to purchase a firearm. Section 1202.201 provides detailed information about the proceeding that must be held, and the findings required to restore a person's right to purchase a firearm. If all requirements are met and an order granting relief from disability is entered by the court, the individual's NICS record may be cancelled through CJIS/NICS. To

complete the record cancellation in a case in which a proceeding has been held and all appropriate findings are entered in the record, answer “Y” to the Relief from Disabilities question.

Canceling a Record in the CJIS/NICS Database

If an individual in the CJIS/NICS database has had his/her right to obtain or possess a firearm restored through the required court hearing and order, that individual’s entry in the CJIS/NICS database can be cancelled. Follow the instructions in the *NICS Indices Entry (NIE) User Guide* to cancel NICS transactions. To complete the record cancellation, a response is required to the “Relief from Disabilities” question. Because the individual’s rights were restored through the hearing process, select “Y.”

If a record was entered into the database in error (for example, a guardianship of a minor was entered), the incorrectly entered record can be cancelled through the NICS Indices record cancellation process. In this instance, enter “N” to the Relief from Disabilities question because the record is being deleted because it was entered in error rather than being removed as the result of a relief from disability order.

Additional Questions

For questions about what type of cases to report, contact Research and Court Services, Office of Court Administration, at court.services@txcourts.gov or 512-463-2417.

For NICS Reporting questions and record validation, contact your CJIS Field Auditor directly or the CJIS Field Audit Unit: CJISJJIS@dps.texas.gov

For questions about CJIS access and ORIs, contact the Texas Department of Public Safety — Cassandra Richey, EDR Coordinator, at cassandra.richey@dps.texas.gov or 512-424-2479.

Appendix A—Sample Mental Health Information Sheet

CAUSE NO. <CAUSE #>

13. The proposed patient has the following pending criminal charges:

14. Current **temporary** expiration date: _____ or **extended** expiration date: _____

15. How entered hospital? Check one, and attach required back-up:

- Emergency without warrant (attach Mental Health Unit copies)
- Emergency with a warrant (attach copy)
- Voluntary

If originally voluntary and facility is now seeking a commitment, check appropriate reason, and attach required back-up:

- Written request for release (attach copy)
- Absent without authorization (attach letter from treating physician)
- Unable to consent to treatment (attach letter from treating physician)
- Refuses to consent to treatment (physician must complete item 10 on physician's certificate)

16. Date, time, and circumstances of emergency detention:

17. Acts leading to application:

18. Witnesses' names, addresses, and phone numbers:

Family contact: _____

19. What mental health facility or chemical dependency treatment facility is proposed patient going to? ***If private facility, consent must be obtained (attach letter of confirmation):***

20. Person or agency who is to transport patient:

SIGNED AND DATED THIS _____ day of _____, 20_____.

Applicant

**Appendix B—Sample Guardianship NICS
Information Sheet**

TEXAS COLLEGE OF PROBATE JUDGES March 2020

Guardianship Reporting Form (Sec. 411.052, Government Code)

Cause No. _____

Name of Ward: _____

Date of Birth: _____

Gender (circle): Male Female

Race: _____

Social Security #: _____

TX Driver's License/ID #: _____

Date Guardianship Granted: _____

Type of Guardianship (circle all that apply):

Temporary	Permanent	
Person Only	Estate Only	Person & Estate

Full guardianship (no rights retained by ward)?	Yes	No
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Limited guardianship (some rights retained by ward)?	Yes	No
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If yes, rights retained by ward:

Driving?	Yes	No
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Voting?	Yes	No
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Other (describe): _____

Basis for Guardianship (circle all that apply):

Mental retardation	Autism	Mental Illness	Stroke
Alzheimer's Dementia	Head Injury	Parkinson's Disease	

Other (explain) _____

The information requested above is necessary for compliance with Government Code, Sec. 411.052, Federal Firearm Reporting. This information is confidential and will not be made part of the Court’s file in the referenced guardianship matter.

Appendix C—NICS Reporting Chart

Texas NICS Mental Health Reporting Table

Note: It is the signed court order in the cases below that trigger the reporting requirement.

Cases to Report	Case Status	Patient Status	Facilities	Report Due
1. Commitments – MH/ID				
1.a. Mental Health Commitments (HSC Chapter 574)	Order for commitment signed & filed	Temporary or Extended Inpatient Mental Health Commitment	State hospitals, private hospitals, Veterans’ Affairs hospitals, etc.	Within 30 days of court order
1.b. Relief from Disabilities (HSC §574.088)	Order granting relief from a firearms disability	Furloughed or discharged from court ordered mental health services	N/A	Within 30 days of court order
1.c. Commitment to Long-Term Residential Care (HSC Subchapter C, Chapter 593)	Order for commitment signed & filed	Intellectually Disabled	State supported living center or ICF-IID component of the Rio Grande Ctr	Within 30 days of court order
	Order for relief from disabilities	Relieved of disabilities	N/A	Within 30 days of court order
2. Guardianships - Adult				
2. Court Appointed Guardian of Incapacitated Adult (EC, Title 3)	Order appointing permanent or temporary guardian signed & filed	Incapacitated Adult who lacks mental capacity to manage his/her affairs, requiring guardian of the person, estate, or person and estate	None specified	Within 30 days of court order
3. Acquittal - Criminal				
3. Acquittal for reasons of insanity or lack of mental responsibility (CCP 46C)	Final Acquittal Disposition	Insanity or lack of mental responsibility	Regardless of order for inpatient treatment or residential care	Within 30 days of court order
4. Incompetency - Criminal				
4. Incompetency to Stand Trial (CCP 46B)	Order of determination of incompetency to stand trial; order extending previously ordered commitment	Found incompetent to stand trial, including mental illness or intellectual disability – released on bail or committed to treatment facility or jail-based competency restoration program	Outpatient or jail-based competency restoration program, mental health facility, or residential care facility	Within 30 days of court order

Do Not to Report

1. Guardianship of minors;	4. Commitments orders for temporary or extended <u>outpatient</u> mental health services;
2. Orders for emergency mental health detentions, admissions, or warrants; order of protective custody (mental health)	5. Applications for court-ordered inpatient mental health services that are transferred to another county to re-file or to hear your original filing; and
3. Voluntary mental health commitments;	6. Court-ordered inpatient chemical dependency or alcohol services.