



# **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
Canceling a Record in the CJIS/NICS Database .....	10
Additional Questions .....	11
Appendix A—Sample Mental Health Information Sheet.....	12
Appendix B—Proposed NICS Mental Health Record Series and Retention Schedule.....	13

## 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 agencies such as the police, prosecutors, or the 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 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 (DPS). The bill also requires district and county clerks to report to CJIS all relevant cases in which an order was 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 committed to state hospitals, private hospitals, Veterans’ Affairs hospitals, etc.;
- Commitments of a person determined to have **mental retardation** for long-term placement in a residential care facility under Chapter 593, Health and Safety Code;
- Cases in which the court appoints a guardian of the 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 the cases above that triggers the reporting requirement.*

### **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

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 the application is for temporary or extended mental health services and assign a new cause number. 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 the 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**) 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 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, but later the court 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 purchase a firearm (see Section 1202.201 of the Estates Code).

If a successor guardian is appointed, do not report it. (**Note:** *sometimes a judge may refer to a successor guardian as an alternate guardian.*) Although a successor guardian is appointed, there is only one guardianship.

**Do not report guardianships of minors.**

## **Criminal Cases**

Report cases in which the 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; and cases in which the defendant is found to be **incompetent to stand trial** under Chapter 46B, Code of Criminal Procedure.

In a case in which a defendant is found by the court to remain incompetent and ordered to continue to be committed, the order 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 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 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 some fields are optional, they help identify the correct individual and should be reported if 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

House Bill 3352 requires clerks to submit records for cases in which an order was issued on or after September 1, 1989 and before September 1, 2009 by September 1, 2010. Although the deadline has passed, older cases still **must 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 file for each potentially reportable case to confirm that it is a 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 and race).

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 CJIS. See **Appendix A** for an example of the form used in Travis County. The court can require the form to be submitted with each mental health 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 and jury 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 *CJIS NICS User Guide* is produced by DPS and can be found at:

[http://www.txdps.state.tx.us/administration/crime\\_records/docs/cjis/cjisNICSUserGuide.pdf](http://www.txdps.state.tx.us/administration/crime_records/docs/cjis/cjisNICSUserGuide.pdf).

### **Zero Reports**

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

## Responding to Inquiries from the FBI

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 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 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

Currently, there is no record retention schedule specifically for mental health-related cases reported to CJIS/NICS. The mental health-related cases that are currently reported to CJIS/NICS fall under a number of different record series (e.g., criminal probate, commitment and admission to state care) and 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 purchase or possess a gun, or situations in which a person seeks relief from a firearms disability.

Staff at the Texas State Library and Archives Commission are currently considering a proposed NICS Mental Health Record Series and Retention Schedule that would make the retention of these records permanent. (See **Appendix B** for the current proposal.) Any proposal developed by staff would then be submitted to the Commission for its consideration and approval. Until that schedule is adopted, it is recommended that all records related to cases entered into CJIS for NICS reporting be retained permanently.

In addition to retaining these records permanently, 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 in the event that the FBI requests additional or clarifying information to determine whether a person is eligible to purchase a gun.

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, jury, 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 are entered in the record, answer "Y" to the Relief from Disabilities question in CJIS.

## **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, 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 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 purchase 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 *CJIS NICS 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 minor guardianship was entered), the incorrectly entered record can be cancelled through the CJIS 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](mailto:court.services@txcourts.gov) or 512-463-2417.

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

**Appendix A—Sample Mental Health Information Sheet**

## **Appendix B—Proposed NICS Mental Health Record Series and Retention Schedule**