

§ In the Probate Court
§
§ of
§
§ Galveston County, Texas

**BLANKET ORDER AUTHORIZING
RELEASE OF MENTAL HEALTH COURT RECORDS
PURSUANT TO SEC. 571.015 OF TEXAS HEALTH AND SAFETY CODE**

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 81st Texas Legislature, Regular Session, in 2009, to comply with and implement the requirements of the federal NICS Improvement Amendments Act of 2007, Pub. L. 110-180 ("NIAA").

The NIAA was signed into law on January 8, 2008, and it amends the Brady Handgun Violence Prevention Act of 1993 ("the Brady Act"), Pub. L. 103-159, under which the United States Attorney General established the National Instant Criminal Background Check System (NICS). The Brady Act requires Federal Firearms Licensees to contact the NICS before transferring a firearm to an unlicensed person to obtain information on whether the proposed transferee is prohibited from receiving or possessing a firearm under state or federal law.

Many prohibited persons are not prevented from purchasing firearms because their records are not in NICS. The NIAA was enacted after the April 2007 shooting tragedy at Virginia Tech to enhance the reporting to NICS of disqualifying mental health information and other prohibiting factors such as felony convictions, active arrest warrants, and misdemeanor convictions for domestic violence.

The Federal Bureau of Investigation ("FBI") is conducting an audit to verify that the mental health information reported to NICS is valid and correct, and the Department of Public Safety ("DPS") is required to collect the information for the FBI's audit.

The Court finds that the use, inspection, or copying of each paper in a docket for mental health proceedings in the county clerk's office, including the docket book, indexes, and judgment books, by DPS, which is assisting the FBI in its audit to verify that the mental health information reported to NICS is valid and correct, is justified and in the public interest.

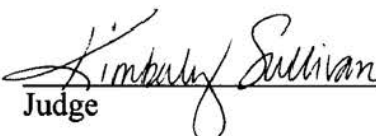
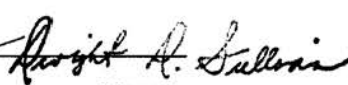
It is ORDERED that the county clerk is authorized to release to DPS, for its use, inspection or copying, each paper in a docket for mental health proceedings in the county clerk's office that is requested by the FBI for its audit to verify that the mental health information reported to NICS is valid and correct.

Effective February 15, 2013 and until further order of this Court,

BY THE COURT:

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Judge

COUNTY CLERK
GALVESTON COUNTY, TEXAS
2/18/2013
Date of Order

STATUTORY PROBATE COURTS



STATE OF TEXAS

Guy Herman, Presiding Statutory Probate Judge

P.O. Box 1748, Austin, TX 78767
1000 Guadalupe Street, Room 217
Phone: (512) 854-9258
Fax: (512) 854-4418

February 6, 2013

TO: County Judges

RE: FBI Audit of NICS Records and Sample Blanket Order to Release
Mental Health Court Records

The Federal Bureau of Investigation (FBI) is conducting an audit of the mental health records reported to the National Instant Criminal Background Check System (NICS) to verify that they are valid and correct. As you are likely aware, the FBI uses NICS to perform background checks on prospective gun buyers.

The Texas Department of Public Safety, which is required to collect the information for the FBI's audit, has asked the state Office of Court Administration (OCA) for assistance in contacting the county and district clerks regarding the audit.

The clerks will be asked to provide DPS a copy of the court order for specified cases that prompted the entry of the case into NICS. Some of the cases that are being audited are mental health cases. The copies of the requested court orders must be submitted to DPS by February 22, 2013.

I believe that section 571.015 of the Texas Health and Safety Code would allow the county clerk to provide DPS a copy of an order in a mental health case, or any other paper in a mental health case requested by the FBI, for purposes of the FBI's audit, as it is justified and in the public interest. Below for your information is section 571.015 in its entirety:

Sec. 571.015. INSPECTION OF COURT RECORDS. (a) Each paper in a docket for mental health proceedings in the county clerk's office, including the docket book, indexes, and judgment books, is a public record of a private nature that may be used, inspected, or copied only under a written order issued by the county judge, a judge of a court that has probate jurisdiction, or a judge of a district court having jurisdiction in the county in which the docket is located.

(b) A judge may not issue an order under Subsection (a) unless the judge enters a finding that:

(1) the use, inspection, or copying is justified and in the public interest; or
(2) the paper is to be released to the person to whom it relates or to a person designated in a written release signed by the person to whom the paper relates.

(c) In addition to the finding required by Subsection (b), if a law relating to confidentiality of mental health information or physician-patient privilege applies, the

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 Dwight A. Sullivan
COUNTY CLERK
GALVESTON COUNTY, TEXAS

February 6, 2013

judge must find that the reasons for the use, inspection, or copying fall within the applicable statutory exemptions.

(d) The papers shall be released to an attorney representing the proposed patient in a proceeding held under this subtitle.

(e) This section does not affect access of law enforcement personnel to necessary information in execution of a writ or warrant.

The statute is not entirely clear, but it appears that it allows one judge to issue a countywide order. Attached for the use of a judge in your county who handles probate matters is a sample blanket order, which allows your county clerk to release mental health court records to DPS for purposes of the FBI's audit.

After the name of the county and the court are filled in, the order to release mental health court records must be signed and dated. The order should be filed locally. There is no need to forward a copy of it to DPS or OCA.

If you have any questions, please contact me at 512-854-9258.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy Herman", with a long horizontal flourish extending to the right.

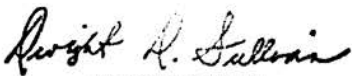
Guy Herman
Presiding Statutory Probate Judge

Attachment

cc: County Clerks and District Clerks

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COUNTY CLERK
GALVESTON COUNTY, TEXAS