



Behavioral Health and Firearms Safety Task Force to
Review, and Make Recommendations for, Statutes
Relating to Firearms and Behavioral Health Issues

Findings and Recommendations

Report Submitted

February, 2014

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Commission Members

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Federated Rhode Island Sportsmen's Club

Frank Saccoccio, Esq.
Federated Rhode Island Sportsmen's Club

Craig M. Syata
President/ CEO
Rhode Island Council of Community Mental Health Organizations



Dear Speaker Fox and President Paiva Weed;

We are pleased to present the findings and recommendations of the Joint Behavioral Health and Firearms Safety Task Force. This twenty member Task Force consisted of dedicated professionals representing behavioral health, public safety, firearm owners and public officials. We would like to express our gratitude to all members of the Task Force for their willingness to take part in these discussions, and we appreciate the investment of the time and talent that they graciously provided.

The Joint Task Force was convened to develop a comprehensive approach addressing the nexus between firearms safety and behavioral health. The Joint Commission conducted a review of current mental health and weapons laws, and focused on supporting Rhode Island's full participation in the National Criminal Instant Background Check System (NICS).

This final report is the culmination of the hearings and discussions that began in October 2013 and ended February 2014. It contains information presented by various stakeholders interested in improving public safety in the wake of recent and well-publicized tragic events. Each recommendation is supported by testimony and input from experts including law enforcement leaders, mental health officials and representatives from firearm associations.

The Joint Task Force offers these recommendations with full confidence that the quality of life in Rhode Island can be enhanced by striking an appropriate balance between public safety and the preservation of the individual freedoms and liberties of responsible firearm owners.

Sincerely,

Catherine Cool Rumsey
Senate Co-Chair

Deborah Ruggiero
House of Representatives Co-Chair

Introduction

Under the federal Brady Handgun Violence Prevention Act of 1998, before a federally licensed firearms dealer (FFL) may transfer a firearm to an unlicensed individual, the dealer must request a background check through the National Instant Criminal Background Check System (“NICS”) to determine whether the prospective firearm transfer would violate federal or state law. Federal regulations also require conducting NICS checks on individuals seeking to purchase firearms.

According to a July 2012 USGAO Gun Control performance audit, (US Government Accountability Office 12-684, “Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks”) during a NICS check, descriptive data provided by an individual, such as name, date of birth and other descriptive information, are used to search three national databases which are maintained by the FBI and contain criminal history and other relevant records, to determine whether or not the person is disqualified from receiving or possessing firearms. The three NICS databases are:

- Interstate Identification Index (III)— III is a system for the interstate exchange of criminal history records. III records include information on persons who are indicted for, or have been convicted of, a crime punishable by imprisonment for a term exceeding 1 year or have been convicted of a misdemeanor crime of domestic violence.
- National Crime Information Center (NCIC)—An automated, nationally accessible database of criminal justice and justice-related records, which contains, among other things, information on wanted persons (fugitives) and persons subject to restraining orders.
- NICS Index—this database contains information that may not be available in the NCIC or the III on persons predetermined to be prohibited from possessing a firearm.

Under federal law, persons are prohibited from possessing or receiving a firearm if they: (1) have been convicted of a felony; (2) are a fugitive from justice; (3) are an unlawful user of or addicted to any controlled substance; (4) have been involuntarily committed to a mental institution or judged to be mentally defective; (5) are aliens illegally or unlawfully in the United States, or certain other aliens admitted under a nonimmigrant visa; (6) have been dishonorably discharged from the military; (7) have renounced their U.S. citizenship; (8) are under a qualifying domestic violence restraining order; (9) have been convicted of a misdemeanor crime of domestic violence. In addition, federal law prohibits persons under felony indictment from receiving a firearm. These comprise the ten categories of disqualifying “records” in the NICS database.

According to the USGAO report, mental health records that would preclude an individual from possessing or receiving a firearm include (1) persons who have been adjudicated as “a mental defective,” including a finding of insanity by a court in a criminal case, incompetent to stand trial, or not guilty by reason of insanity, and (2) individuals

involuntarily committed to a mental institution by a lawful authority. The prohibitor—that is, the condition or factor that prohibits an individual from possessing or receiving firearms—does not cover persons in a mental institution for observation or a voluntary admission to a mental institution. (Mental health records are found within two databases checked during a NICS background check, the III, and the NICS Index.)

- When states submit mental health records to the NICS Index, they only provide descriptive information about the prohibited individual (such as the individual’s name, date of birth and other descriptive information); along with a code to identify which federal prohibitor applies.
- States do not share an individual’s actual treatment records or other healthcare records, nor do they provide specifics related to the individual’s prohibiting mental health condition. Use of the term “mental health records” in this context is to be understood to mean the identifying information on prohibited persons supplied by states to the NICS Index.
- State submission of these records to NICS is voluntary.

On July 11, 2013, A Joint Resolution H5992A / S862B was signed by the Governor creating the twenty-member* Behavioral Health and Firearms Safety Task Force. The purpose of said Task Force was:

- To conduct a review of current law and make recommendations on legislation to improve public safety by developing a more comprehensive approach addressing the nexus between behavioral health and firearms safety;
- Conduct a review of different states’ approaches for compliance with National Instant Criminal Background Check System (NICS) Index to ensure that the state conforms to best practices nationally;
- Propose legislation and recommendations to support the state’s full participation in the NICS Index; and
- Propose legislation and recommendations concerning the form and composition of the relief from disabilities board based on a review of federal and state laws, rules, and regulations.

The Task Force, co-chaired by Senator Catherine Cool Rumsey (District-34, Charlestown, Exeter, Hopkinton, Richmond, West Greenwich) and Representative Deborah Ruggiero (District-74, Jamestown, and Middletown), met nine times over five months: October 3, 2013; October 17, 2013; November 7, 2013; November 21, 2013; December 5, 2013; December 19, 2013; January 9, 2014; January 23, 2014 and February, 25, 2014 and was charged with presenting its findings and recommendations to the Speaker of the House and the President of the Senate on or before January 31, 2014.

This report summarizes some of the testimony received by the task force, along with the major topics of discussion and related findings and recommendations.

* The resolution contained a position for the State Court Administrator. (See Addendum #3).

Executive Summary

Beginning in October of 2013, the Behavioral Health and Firearms Safety Task Force met regularly to hear testimony and discuss the issues involved in reporting non-criminal behavioral health records to NICS. (Rhode Island already reports criminal records, such as those involving individuals found to be incompetent to stand trial, or not guilty by reason of insanity.) The Task Force recommendations are summarized as follows:

1. If mental health records are submitted to NICS, the state must have a federally-qualified relief from disabilities board to afford due process to those whose reports are submitted, and to qualify for federal grants to support the system.
2. If mental health information is submitted to NICS, the task force recommends that:
 - (a) The Attorney General's office should remain the keeper of the criminal records of the state and directly submit the relevant records to the NICS database; and
 - (b) The District Court is the keeper of the civil certification records and should directly submit the relevant disqualifying information, where appropriate, to the NICS database.
3. Due to federal patient confidentiality protections under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), statutory language will need to affirmatively require that the appropriate entities report the additional mental health records to NICS. Rhode Island Mental Health Law regarding privacy of records would also need to be amended, with an additional exception regarding NICS reporting.
4. Rhode Island district court civil commitments (involuntary placements) into mental health facilities currently weigh patients' potential of harm to themselves or others. However, submitting records to NICS of all persons who are ordered into hospital treatment by the court will inadvertently capture individuals whose potential to cause harm is low due to non-violent behaviors. A narrow definition is warranted to ensure that NICS reporting includes only those individuals who are so adjudicated, and for whom a likelihood of violent physical behavior and harm exists, including a determination of "the likelihood of serious harm."
5. The Task Force proposes that the legislature determine the appropriate amendment to the state Weapons law that strikes or otherwise amends: "...or who has been adjudicated or is under treatment or confinement as an habitual drunkard..." The task force further recommends that the antiquated term "mental defective" not be used in state law, at such time that the federal government changes the term in applicable federal laws.
6. Of the states that do report to NICS, none are reporting non-criminal substance abuse information. Criminal substance abuse records are currently being, and will continue to be sent to NICS. Due to legal issues and the potential chilling effect that reporting would have on people seeking or receiving treatment, the Task Force recommends that Rhode Island should not include noncriminal substance abuse in the NICS database.

Findings and Recommendations

Item #1:

If mental health records are submitted to NICS, the state must have a relief from disabilities board to afford due process to those whose reports are sent to NICS and to qualify for federal grant monies to support the system. (NICS Improvement Amendments Act of 2007)

Discussion:

Jeanne Miller, Deputy Associate Chief Counsel of the Firearms, Explosives and Arson Division of the Office of Chief Counsel in the Department of Justice, spoke to the Task Force on January 9, 2014. She stated that a federally certified relief from mental health disabilities program is eligible to receive federal grant money which can be used to establish state systems as well as support the program. She informed the task force that the language establishing the relief program must be precise. Her Division at the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is ready to assist and review proposed legislation to ensure the relief process is done per federal requirements and to ensure the program receives federal certification.

Attorney Miller stated that every person disqualified for mental health reasons must be able to apply for relief but that does not mean that they must be granted relief from their disqualification. She suggested that Rhode Island law should follow the requirements as outlined in her presentation and in particular the specific language in her powerpoint slide showing criteria number 5 which states:

- “5. In determining whether to grant relief, the lawful authority must receive evidence concerning and consider the following:
- Circumstances regarding the firearms disabilities imposed by 18 U.S.C. § 922(g)(4); and
 - Applicant’s record
 - Which must include, at a minimum, applicant’s mental health and criminal history records; and
 - Applicant’s reputation
 - Developed, at a minimum, through character witness statements, testimony, or other character evidence.”

She explained that the burden of proof standard to be applied to overcome the decision to disqualify can be by a preponderance of the evidence or by a clear and convincing standard which is the higher standard. The task force recommends that the General Assembly determine which standard will apply in Rhode Island. Some states’ relief boards hold private, closed hearings, while other states hold public hearings. It is a state’s choice, and the State of Rhode Island must decide whether they will be closed or open to the public, in light of the fact that mental health records of the petitioner will be the topic of discussion.

Rhode Island must determine who the lawful authority to hear the petitions for relief will be. Other states have used their courts, newly established boards, or commissions as the authority in their state. Task Force members discussed that a mental health clinician should be a member of the relief board or involved in the decision making if the courts become the lawful authority to hear the petitions for relief. In addition, there must be an appeal from the relief board decision and if the state court system is the relief board then the appellate court would hear any appeal with deference to the facts below. If a Board or Commission or other lawful authority is created, then a court would hear any appeal taken, and the court would have the ability to hear additional evidence if they deem it necessary.

State relief programs are required to use the disqualifiers included under Federal law. If Rhode Island chooses to add disqualifiers, the Federal Bureau of Investigation (FBI) has a state by state NICS disqualifier database so that Rhode Island's additional disqualifiers would kick in to send a denial when a Rhode Island Federal Firearm License Holder (FFL) performs the NICS background check. There is no additional action needed on the part of the Rhode Island FFL; the FFL still makes only one phone call to NICS. Other states do not have access to each state's additional disqualifiers and do not have to honor them when residents move from one state to another state.

Additionally, the federal government allows states to charge a fee for the relief board process but it cannot be so onerous that it constitutes a bar to relief. Rhode Island can also place a time limit on when relief will be granted, two years have been accepted, five years has also been accepted but would require a closer look by the federal government to ensure it is not working as a bar to relief. In other testimony the American Civil Liberties Union suggested that there should be time limits on the length of time for which a person is disqualified. Task force members also discussed that legislators will need to determine the appropriate vehicle to expunge disqualification records when their time limit has expired.

In response to a question, Attorney Miller, as have other presenters before her, stated that although she is with ATF and not the FBI which operates the NICS database, she has presented with the FBI and is aware that no medical records are reported into NICS. Only individual identifying information is reported. Also, FFL's receive only a "deny" message and no further information when an individual is disqualified.

Item #1 Recommendation:

The task force recommends that the General Assembly consider establishing a certified Relief from Disabilities Board as set forth in the NICS Improvement Amendments Act of 2007. The Task Force further recommends that the General Assembly consider the following steps through the legislative process:

- a. Create a mechanism to notify individuals that their names are sent to NICS;
- b. Determine the appropriate entity to act as the relief board, the composition of the board and its agency affiliation;
- c. Determine the time limits on specific mental health record disqualifications, considering a tiered time-limit approach tied to the three types of mental health records submitted (incompetent to stand trial, not guilty by reason of insanity, or civil commitment to an inpatient facility);
- d. Investigate the costs of operating a relief board;
- e. Determine the burden of proof on the applicant required before the relief board;
- f. Determine whether hearings before the relief board will be public or closed; and
- g. Determine if the relief board is the appropriate vehicle to initiate the removal of incorrect, wrong or expired NICS disqualifiers with NICS-submitted records when relief is granted;

[During Task Force discussion of the relief board, a concern was raised that a person disqualified as a result of a misidentification should have an expedited and clear process to correct the misidentification. Both Joe Lindbeck and Jeanne Miller responded to this concern by stating that the relief board is not the vehicle to handle misidentification issues, and that the FBI maintains the means to make corrections. NICS provides a Resolution Card that directs the customer to both the FBI NICS Appeal Website, and their customer service phone number. Some local police departments may be able to assist in this resolution process.]

Item #2:

If additional mental health records are submitted to NICS, one or more suitable entities will need to be identified to submit the records.

Discussion:

Special Assistant Attorney General Joe Lindbeck from the Attorney General's Office, testified that the Attorney General's Office is the holder of the criminal records of the state. As such, Rhode Island participates in NICS by providing all relevant criminal records and only mental health and substance abuse records where those records intersect with criminal charges, including persons found not guilty by reason of insanity after an adversarial process.

Rhode Island, however, does not participate in reporting persons addicted to controlled substances, due in part to Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy issues. Testimony provided in the hearing confirmed that there is no evidence that any states that are participating in NICS are submitting non-criminal substance abuse records into the NICS system.

Director Craig Stenning of the Rhode Island Department of Behavioral Health, Developmental Disabilities and Hospitals (BHDDH) stated that the RI mental health law does not currently authorize disclosure to NICS and would require an amendment to the Mental Health Law (RIGL §40.1.-5-1 et seq) to do so.

Chief Judge Jeanne LaFazia informed the Task Force that the District Court is the keeper of all records relating to the Civil Certification Calendar, also known as the mental health court. The District Court's mental health court is a court of law where due process and the rules of evidence apply. Further, the calendar for the mental health court is confidential. The Task Force discussed that the court, as keeper of those records, should be the vehicle to submit the relevant mental health records into the NICS database in order to maintain a higher degree of confidentiality for those records and for efficiency reasons.

Item #2 Recommendation:

The task force discussed various entities that could transmit the disqualifying mental health records into NICS and the consensus reached was that:

- (a) The AG's office should remain the keeper of the criminal records of the state and directly submit the relevant records to the NICS database;
- (b) The Task Force did not fully evaluate the Probate and Family Court processes and recognizes that the General Assembly may further evaluate the unique situations within those courts.
- (c) The District Court is the keeper of the civil certification records and should directly submit the relevant disqualifying records, where appropriate, to the NICS database. The consensus was that this method will best ensure confidentiality and efficiency.

Item #3:

Due to federal patient confidentiality protections under The Health Insurance Portability and Accountability Act of 1996 (HIPAA), statutory language will need to affirmatively require that the appropriate entities report the additional mental health records to NICS. Rhode Island Mental Health Law regarding privacy of records would also need to be amended.

Discussion:

1. The privacy rule of HIPAA is the federal minimum regarding use and disclosure of private health information and the scope of the privacy rule may be changed by state laws, including as it pertains to potential disqualifying information for firearm purchase or possession. When a state law requires entities subject to the HIPAA rule to disclose mental health records which disqualify persons from firearms possession or purchases to NICS, HIPAA's privacy rule does not prohibit that disclosure.

In order to include the reporting of additional mental health records to NICS a law must be written which mandates or requires the reporting of those additional mental health records. The law cannot merely allow or permit the reporting. In order to maintain compliance with the federal HIPAA privacy rule the state law must require entities otherwise covered by HIPAA to disclose any disqualifying mental health issues.

2. Although the courts are not subject to the HIPAA privacy rule, where the state health privacy rule restricts the courts from reporting disqualifying data, changes should be written to amend the law so that reporting additional mental health disqualifiers to NICS by the courts is not prohibited. Amending the law will allow the District Court's Civil Certification Calendar, the Mental Health Court, to comply with the recommendation that Rhode Island send a disqualifier based on mental health information to the NICS database.

Item #3 Recommendation:

An additional exception should be added to R.I.G.L. 40.1-5-26(b), Disclosure of confidential information and records, with language such as:

40.1-5-26(b)(13) To the NICS database for firearms disqualifying information provided that only individual identifying information required by NICS is submitted.

Item #4:

Rhode Island district court civil commitments (involuntary placements) into mental health facilities currently weigh patients' potential of harm to themselves or others. However, submitting records to NICS of all persons who are ordered into hospital treatment by the court will inadvertently capture individuals whose potential to cause harm is low due to non-violent behaviors. A very narrow definition is warranted to ensure that NICS reporting includes only those individuals for whom a likelihood of violent physical behavior and harm exists.

In addition, recently proposed NICS regulations make it clear that both hospital and community involuntary civil commitments may be reportable to the database.

Discussion:

Defining the person whose record would trigger NICS reporting:

The Task Force discussed limiting the mental health information submitted by the District Court to NICS to individuals who are a danger to themselves or others, and to further limit reporting to include an additional finding. In Massachusetts, for example, the mental health law regarding the commitment and retention of dangerous persons requires a finding that there is a likelihood of serious harm. The law (MGL Ch. 123 §1) further defines the "likelihood of serious harm" as

"(1) a substantial risk of physical harm to the person himself as manifested by evidence of, threats of, or attempts at, suicide or serious bodily harm; (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them;... "

{Please note that the Massachusetts definition continues into a broader category for commitment that the Task Force may not want to capture in the NICS reported population, as follows:

"or (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that such person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community."}

Item #4 Recommendation:

Amend the law to require reporting to NICS only adjudicated (consistent with the full protection of due process rights), involuntary mental health inpatient hospital commitments where there is a determination of "the likelihood of serious harm," consistent with the underlined definition, parts (1) and (2) above.

Item #5:

Propose language and definitions to ensure weapons and mental health laws are consistent.

Discussion:

The Task Force received a presentation reviewing the current Weapons Law and Mental Health Law. The presentation identified differences in definitions of terms based on where they appear in the Rhode Island General Laws and for which purposes they apply. The list of disqualifiers per R.I.G.L. 11-47-6 included terms such as “mental incompetent”, “drug addict” and “habitual drunkard”. Although these terms are used in R.I.G.L. 11-47-6, they are not defined by the statute and are different than those found within the application to purchase firearms under R.I.G.L. 11-47-35 and 11-47-35.2.

Further, “habitual drunkardness” is not defined by state law or by case law and would present issues with the Americans with Disabilities Act as well as negatively effect people seeking treatment and/or in treatment.

Item #5 Recommendation:

Propose that the legislature determine the appropriate amendment to R.I.G.L. 11-47-6 that strikes or otherwise amends: “...or who has been adjudicated or is under treatment or confinement as an habitual drunkard...”

The task force further recommends that the antiquated term “mental defective” not be used in state law, at such time that the federal government changes the term in applicable federal laws.

Item #6:

Propose that Non-Criminal Substance Abuse Records not be Reported to NICS.

Discussion:

Criminal substance abuse records are currently being, and will continue to be sent to NICS. However, the addition of non-criminal records poses a number of challenges.

The Task Force reviewed information from several witnesses that other states do not include substance abuse in their disqualifiers and the reasons why. The extent to which states share unlawful drug use records that are noncriminal is unknown although DOJ officials agree that most states generally are not making these records available. (US Government Accountability Office 12-684, “Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks”). In addition, those records, per regulation, are retained in the NICS Index for only one year after the date of the operative event (unlawful use of drugs, arrests for). The GAO report concludes that “states generally are not making noncriminal drug use records available to NICS”. (*Id.*, p.23)

States share concerns that making the kinds of judgments required outside of an official court decision regarding an individual’s potentially prohibited status could pose a legal risk to the state if individuals who have not been convicted of any crime are prohibited from receiving or possessing a firearm. Also, states that have investigated providing those noncriminal records have found that they have no centralized databases to collect those records, and since the data from those records can only be utilized for a short period of time before they must be removed from the NICS system, the DOJ admits that capturing those records has not been a priority. (p.24)

Item #6 Recommendation:

Due to legal issues and the potential chilling effect that reporting would have on people seeking or receiving treatment, Task Force members recommend, consistent with other opinions, that Rhode Island should not include noncriminal substance abuse in the NICS database.

Task Force Meetings and Agendas

October 3, 2013

Election of Co-Chairs

Review of Legislation

October 17, 2013

Testimony on NICS and Rhode Island Compliance

Joe Lindbeck, Special Assistant Attorney General

Rhode Island State Police

November 7, 2013

Testimony on NICS and Behavioral Health Policies

Craig Stenning, Director, Department of Behavioral Healthcare, Developmental Disabilities and Hospitals

November 21, 2013

Public Testimony on Rhode Island Compliance with NICS

Task Force discussion

December 5, 2013

Staff presentation on Rhode Island Weapons and Mental Health Laws

Task Force Discussion

December 19, 2013

Task Force discussion of past meetings and presentations on RI Weapons Law, Mental Health Law, and NICS

January 9, 2014

Jeanne E. Miller, Deputy Associate Chief Counsel for the United States
Department of Justice, ATF Division

Lieutenant Eric Cooke-Commanding Officer, Special Licensing and Firearms for
the Connecticut State Police

January 23, 2014

Discussion of draft findings and recommendations

February 25, 2014

Review and consideration of final report

**Addendum 1:
Resolutions Establishing the Task Force**

House:

<http://webserver.rilin.state.ri.us/BillText/BillText13/HouseText13/H5992A.pdf>

Senate:

<http://webserver.rilin.state.ri.us/BillText/BillText13/SenateText13/S0862B.pdf>

Addendum 2: Minutes and Written Testimony

JOINT BEHAVIORAL HEALTH AND FIREARMS SAFETY TASK FORCE
MEETING

A meeting of the Joint Behavioral Health and Firearms Safety Task Force was held on Thursday, October 3, 2013 at the State House in Room 313 at 3:00 pm.

Present: Rep. Deborah Ruggiero, Senator Catherine Cool Rumsey, Rep. Elaine Coderre, Rep. Michael Chippendale, Senator Christopher Ottiano, Senator Frank Lombardi, Assistant Attorney General Joe Lindbeck, Major James Manni, Steven Hall, Nick Grasso, Megan Clingham, Director Craig Stenning, Frank Saccoccio, Chief Desmarais, Craig Syata, David Spencer, Carolyn Kyle, Paul Christopher, J. Joseph Baxter

Not Present: Orlando Braxton

Senate Chief of Staff Thomas Coderre opened the first meeting of the Joint Behavioral Health and Firearms Task Force. Mr. Coderre provided an explanation of the Task Force legislation. Senator Ottiano and Rep. Chippendale moved and seconded to have two chairpersons of the Task Force. Rep. Chippendale moved the nomination of Representative Ruggiero for co-chairperson, Craig Stenning seconded. Senator Ottiano moved nomination of Senator Cool Rumsey for co-chairperson, seconded by Senator Lombardi. All members voted in favor. David Spencer nominated Craig Syata as secretary and was unanimously approved.

Co-Chair Ruggiero provided an introduction to the task force and the requirements of the legislation. Co-Chair Ruggiero explained that Rhode Island does not currently submit mental health records to NICS.

Co-Chair Cool Rumsey discussed the legislation of the commission.

Members of the task force introduced themselves.

Co-Chairs Ruggiero and Cool Rumsey provided closing comments. The meeting adjourned.

JOINT BEHAVIORAL HEALTH AND FIREARMS SAFETY TASK FORCE
MEETING

A meeting of the Joint Behavioral Health and Firearms Safety Task Force was held on Thursday, October 17th, 2013 at the State House in Room 313 at 3:00 pm.

Senator Cool Rumsey called the meeting to order at 3:00pm and all of the following members were in attendance.

Representative Deborah Ruggiero (co-chair)
Senator Catherine Cool Rumsey (co-chair)
Representative Coderre
Senator Lombardi
Senator Ottiano
Joe Lindbeck
J. Joseph Baxter
Captain James Manni
Steven Hall
Craig Stenning
Chief Elwood Johnson
Megan Clingham
David Spencer
Nick Grasso
Dr. Paul Christopher
Carolyn Kyle
Patrolman Orlando Braxton
Frank Saccoccio, Esquire
Craig Syata

The meeting was called to order by Co-Chair Senator Cool Rumsey.

The members of the Task Force introduced themselves and the organizations they represent.

The Co-Chairs restated the goals of the Task Force and introduced the witnesses: Joe Lindbeck, Assistant Attorney General, and Captain Manni of the RI State Police.

Ms. Lindbeck gave an overview of the NCIS System beginning with the provisions of the Brady Act. She discussed in detail the NICS rules and regulations. Her presentation included the aspects of both RI's compliance and non-compliance with NICS. There are three areas to input data into NICS and RI is fully compliant with two and minimally compliant with the third.

Various members of the committee discussed the policy changes, NICS System, NICS Index and the difficulties of obtaining mental health involuntary commitment information. It was learned that when a federal firearms licensee performs a pre-sale

background check and is informed that the buyer is “disqualified” from purchasing the firearm, no reason or further information about the buyer is given. There was also discussion on some ‘terms of art’ and the need to ensure that definitions throughout the two chapters of law the task force is studying are consistent.

Captain Manni testified on the number of background checks made in RI from 2009-September 2013, the number of denials, the number of appeals and the number of denials overturned. Overall during that time period there were: 91,900 background checks, 788 denials, 255 appeals of the denial and 30 denials overturned.

In closing, Co-Chair Ruggiero stated that the task force will take the recommendations put forth by this panel and propose legislation for the upcoming 2014 legislative session. She announced that the next meeting will be held on November 7 at 3PM in Room 313 of the State House.

JOINT BEHAVIORAL HEALTH AND FIREARMS SAFETY TASK FORCE
MEETING

A meeting of the Joint Behavioral Health and Firearms Safety Task Force was held on Thursday, November 7, 2013 at the State House in Room 313 at 3:15 pm.

Present: Rep. Deborah Ruggiero, Senator Catherine Cool Rumsey, Rep. Elaine Coderre, Rep. Michael Chippendale, Senator Christopher Ottiano, Senator Frank Lombardi, Orlando Braxton, Assistant Attorney General Joe Lindbeck, Major James Manni, Steven Hall, Nick Grasso, Megan Clingham, Director Craig Stenning, Frank Saccoccio, Craig Syata, David Spencer, Carolyn Kyle

Not Present: Chief Johnson, Paul Christopher

Co-Chair Ruggiero called the meeting to order and provided a synopsis of the task force and past meetings. Co-Chair Ruggiero stated that the task force has received written testimony from psychiatrists and the ACLU.

Director Craig Stenning provided a presentation on the current Rhode Island mental health law, how it is administered, and how it differs from federal law. He stated that the current law has withstood the test of time. He explained the law for different types of admission procedures. Voluntary admission allows an individual to agree to care and treatment at a facility for a period not to exceed 30 days. Emergency certification provides that an individual in need of immediate care and treatment, whose continued unsupervised presence could create an imminent likelihood of serious harm by reason of mental disability could be held for no longer than 10 days. An applicant can be a physician, qualified mental health professional or police officer. Director Stenning explained that Civil Court Certification occurs in the Mental Health Court where a District Court judge presides. In many cases, the petitioner is the facility and the respondent is represented by the Office of the Mental Health Advocate. Director Stenning stated that the certification is valid for six months or until the person is discharged. However, they can go back to court to renew a petition.

Director Stenning proceeded to explain federal mental health law. According to Director Stenning, it is unclear whether an individual who is admitted to a facility on an emergency certification could be considered “adjudicated as a mental defective” under the federal regulations because it involves findings made by healthcare providers without due process protections. Further, Director Stenning stated that RI law differs from federal law in that admission to a facility by itself is not enough for an individual to be considered adjudicated as a mental defective because of the presumption of competence.

Director Stenning stated that the RI mental health law does not currently authorize disclosure to NICS and would require an amendment to do so.

BDDH attorney Heather Daglieri provided an explanation of the difference between Massachusetts and Rhode Island mental health law. She stated that periods of hold are different. Further, Massachusetts has two types of admission: voluntary and conditional voluntary admission. Massachusetts also has a commitment process similar to Rhode Island but the standard of proof is stricter. Also, the recertification is longer in Massachusetts at 12 months.

According to Director Stenning, in Connecticut if you voluntarily sign yourself in you are prohibited from obtaining a firearm for six months. This information goes into the NICS database. Rep. Ruggiero asked whether RI mental health law is more restrictive than HIPAA to which Director Stenning responded it is.

Senator Lombardi asked if people that are emergency certified are compelled to submit themselves to physicians for examination. According to Heather Daglieri, those individuals do not have to cooperate but they can rely on staff observations and other information.

Senator Cool Rumsey asked why attempts to change the law failed. Director Stenning that the law has stood the test of time and that there has been some opposition from the ACLU.

Senator Ottiano asked if there is a process to remove a determination that prohibits a person from possessing guns. Heather Daglieri stated that there is a relief board in other states.

Chief Judge Jeanne LaFazia testified on the process involved in mental health law. Chief Judge LaFazia stated that they have seen an increase in the mental health court calendar over the years. The mental health court is a court of law where due process and the rules of evidence apply. Further, the calendar is confidential. If the present law is not amended, they will not be able to comply even if it matches the NICS model. Chief Judge LaFazia stated that terms such as adjudication, court hearing, and court order should be defined.

Chief Judge LaFazia explained that issues arise out of the daily criminal calendar regarding orders of treatment. Further, states define conviction in different ways. In Rhode Island, probation with a fine is a conviction whereas probation without a fine is not a conviction in certain cases.

Chief Judge LaFazia explained that many people in RI Drug Court may lead to being disqualified for one incident under the NICS model whereas that person would not currently be disqualified. Chief Judge LaFazia stated that the Sex Offender Registration and Notification Act (SORNA) model may be useful for this commission in looking at the laws.

Rep. Ruggiero asked if it is the court that would transmit data to NICS. Chief Judge LaFazia stated that it would be addressed in the legislation but that currently the court is the keeper of the records.

In response to a question, Assistant Attorney General Joe Lindbeck explained that there are some privacy protections in transmitting data through NICS. For example, there are codes for disqualifiers.

Craig Syata asked whether individuals should be informed if they are disqualified from possessing a firearm. Chief Judge LaFazia answered that they should be notified at the determination that a person is disqualified.

Rep. Chippendale explained that they want to make sure they don't discourage someone from seeking treatment.

Major Manni provided statistics as to NICS in Rhode Island and how many denials occurred. He stated that gun dealers are not told why a person has been disqualified.

Senator Cool Rumsey stated that the next meeting of the Task Force will occur on Thursday Nov. 21ST at 3P.M in room 313. It will consist of public testimony on RI compliance with NICS.

JOINT BEHAVIORAL HEALTH AND FIREARMS SAFETY TASK FORCE
MEETING

A meeting of the Joint Behavioral Health and Firearms Safety Task Force was held on Thursday, November 21, 2013 at the State House in Room 313 at 3:00pm.

Members in attendance: Senator Catherine Cool Rumsey, Rep. Deborah Ruggiero, Rep. Elaine Coderre, Rep. Michael Chippendale, Megan Clingham, Assistant Attorney General Joe Lindbeck, Carolyn Kyle, Director Craig Stenning, Senator Frank Lombardi, Orlando Braxton, Nick Grasso, Frank Saccoccio, David Spencer, Chief Elwood Johnson, Major James Manni

Public testimony was given:

Jake Mcguigan, NICS Fix

Craig Stockwell

Jim McNulty, Mental Health Consumer Advocate of Rhode Island

Hilary Davis, ACLU

Susan Jacobson, Executive Director of Mental Health Advocacy of Rhode Island

Written testimony provided, see attached (Addendum 2)

JOINT BEHAVIORAL HEALTH AND FIREARMS SAFETY TASK FORCE
MEETING

A meeting of the Joint Behavioral Health and Firearms Safety Task Force was held on Thursday, December 5, 2013 at the State House in Room 313 at 3:00 pm.

Present: Rep. Deborah Ruggiero, Senator Catherine Cool Rumsey, Rep. Elaine Coderre, Rep. Michael Chippendale, Senator Christopher Ottiano, Senator Frank Lombardi, Orlando Braxton, Assistant Attorney General Joe Lindbeck, Major James Manni, Kurt Blanchard, Nick Grasso, Megan Clingham, Director Craig Stenning, Frank Saccoccio, Craig Syata, David Spencer, Carolyn Kyle, Chief Johnson, Paul Christopher

Not Present:

Co-Chair Ruggiero called the meeting to order and introduced Patricia Breslin, legal counsel to the Senate and Joseph Solomon Jr., legal counsel to the House Policy Office.

Patricia Breslin and Joseph Solomon provided a review of the current Weapons Law and Mental Health Law to the task force. Attorney Solomon explained that there are many differences in terminology throughout the statutes with many inconsistencies in definitions and in some cases, lack of definitions. Attorney Breslin explained that the list of disqualifiers per RIGL 11-47-6 included terms such as “mental incompetent”, “drug addict” and “habitual drunkard. She stated that although these terms are used in RIGL 11-47-6, they are not defined by the statute and are different than those found within the application to purchase firearms statutes under RIGL 11-47-35 and 11-47-35.2.

Attorney Solomon explained that although many of the terms used throughout the Weapons Law and Mental Health Law are not defined, attorneys and judges look to other sections of the law to identify similar terms with definitions. However, those definitions do not necessarily apply to other chapters of the law. Attorney Solomon proceeded to identify how terms such as “drug addicted person”, “mental disability”, “incompetent”, and “mental illness” are defined throughout the rest of the RI General Laws.

Mr. Solomon identified the disqualifiers in the federal law and focused on terms such as “controlled substance”, “mental defective” and “adjudicated”. Attorney Breslin provided examples as to how those terms are defined in federal law.

Mr. Solomon explained that going forward the task force should consider reconciling existing terms within Rhode Island law and defining them. They may be reconciled by using existing RI definitions, using federal definitions and/or terms, or by creating new language. Further, the task force could specify that the definitions apply only to the chapter.

Ms. Breslin explained that Rhode Island state law is more protective of the privacy of mental health records than HIPAA. The task force should consider specific language

requiring the reporting of certain records to NICS. Ms. Breslin also provided a list of other states which collect mental health records and have laws addressing the collection.

Co-Chair Ruggiero stated that many of the terms used in the current law such as mentally defective and habitual drunkard are antiquated and not used much anymore.

Senator Lombardi stated that the use of the word guardianship troubles him because a final adjudication of guardianship can come from any of the probate courts in Rhode Island. He stated that these terms should be defined for this statute only.

Megan Clingham agreed with Senator Lombardi that the task force should be careful with the term guardianship. Ms. Clingham also stated that the information reported should be very narrow and that only the fact of adjudication should be reported.

Paul Christopher asked whether substance abuse records are reported by other states. Attorney Breslin stated that many states report only criminal drug records rather than substance abuse records.

Frank Saccoccio asked how other states are handling medical marijuana licenses and reporting to NICS.

Representative Chippendale stated that the task force should keep in mind the requirements for the courts in implementing the recommendations of the task force.

Co-Chair Ruggiero stated that the next meeting of the Task Force will occur on Thursday December 19th. The meeting adjourned.

JOINT BEHAVIORAL HEALTH AND FIREARMS SAFETY TASK FORCE
MEETING

A meeting of the Joint Behavioral Health and Firearms Safety Task Force was held on Thursday, December 19, 2013 at the State House in Room 135 at 3:00 pm.

ATTENDANCE: All members were present.

Meeting was held in Room 35 to review what has been presented to date and discuss the report to be written and possible recommendations and consensus for that report.

Discussion included:

- Defining the scope of NICS reporting.
- Reminders that personal medical information is not reported into NICS and that firearms dealers do not learn why a potential purchaser is denied the ability to purchase firearms.
- There was consensus that mental health information must remain confidential and any exceptions should be written into legislation. Many referred to the impact of Chief Judge LaFazia's testimony and there was consensus to follow suggestions she made to guard privacy.
- Discussion ensued over whether to include recommendations regarding substance abuse. The Task Force reviewed information from several witnesses that other states do not include substance abuse in their disqualifiers and the reasons why. Agreement followed to not include substance abuse since it may have a chilling effect on people seeking treatment, as well as people in treatment and legal issues exist around attempts to enforce such disqualifiers.
- Discussion centered around the fact that alcoholism (more specifically: habitual drunkardness) is a RI disqualifier although it is not defined and involves issues with the ADA and people seeking treatment.
- Discussion ensued on who would do the reporting to NICS on any reporting expansion recommended. The AG would continue to do all the criminal reporting into NICS since they are the holder's of the criminal justice system for the state. The consensus was that the courts, including Family and Probate Courts, will also report directly to NICS since the courts are the keepers of those records and that will ensure privacy of the information and be more efficient.
- Task Force members questioned, what are the issues in any lawsuits pending in other states on new NICS compliance legislation that has passed so we could avoid those issues with any new legislation?
- Discussion ensued on reporting involuntary commitments when due process was afforded prior to the commitment. Also, that dangerousness should be defined so it does not include someone who is a danger to themselves because they refuse to take their medication, or are bulimic, etc.
- Connecticut was discussed because they have been complying with NICS reporting since pre-Sandy Hook and after that they changed their laws. Their laws are different

from RI's and information was that there are lawsuits pending which the task force wants to avoid.

-Consensus was that any mental health disqualification additions should be narrowly defined, not interfere with people seeking treatment or in treatment and have a time limit as well as due process.

-Discussion also on best practices that are developing around the country and the need for early intervention in the mental health arena and studies that are taking place to help identify any commonalities of shooters in mass shootings as well as other topics that were deemed beyond the scope of this task force but worthy of further discussion and perhaps another task force.

NEXT MEETING:

The next meeting is scheduled for January 9th at 4:30 in Room 313. At that time Jeanne Miller, Esq., from the Department of Justice, Bureau of Alcohol, Firearms, Tobacco and Explosives will be in Rhode Island to inform the task force about the Relief from Disqualifications Board which would provide those disqualified with the opportunity to have their disqualification removed. She will also inform the Task Force of federal grant money that may be available.

Lt Eric Cooke, Commanding Officer, Special Licensing and Firearms for the Connecticut State Police will also present to the Task Force.

JOINT BEHAVIORAL HEALTH AND FIREARMS SAFETY TASK FORCE
MEETING

A meeting of the Joint Behavioral Health and Firearms Safety Task Force was held on Thursday, January 9, 2014 at the State House in Room 313 at 4:30 pm.

Present: Rep. Deborah Ruggiero, Senator Catherine Cool Rumsey, Rep. Elaine Coderre, Rep. Michael Chippendale, , Senator Frank Lombardi, Orlando Braxton, Assistant Attorney General Joe Lindbeck, Major James Manni, Steven Hall, Nick Grasso, Megan Clingham, Director Craig Stenning, Frank Saccoccio, David Spencer, Carolyn Kyle, Chief Johnson, Paul Christopher

Not Present: Senator Christopher Ottiano, Craig Syata

Co-Chair Cool Rumsey called the meeting to order. Members of the Task Force introduced themselves.

Attorney Jeanne Miller, Senior Attorney with the US DOJ's Firearms, Explosives and Arson Division presented the relief from disabilities program to the task force. She explained that state relief from disabilities program is required as a condition for participation in grant programs. The state must certify to the satisfaction of the Attorney General that it has a qualifying relief from disabilities program.

Attorney Miller explained that the relief from disabilities program must provide for a lawful authority to consider an applicants petition for relief. The lawful authority may be a court, board, commission or any other lawful authority as established by law. Attorney Miller stated that the authority may only consider applications for relief due to mental health adjudications that occurred in the same state. In considering an application, the lawful authority must review the applicant's record and reputation to determine that the applicant will not be likely to act in a manner dangerous to public safety and the granting of relief would not be contrary to the public interest.

Attorney Miller stated that once a finding is made, if relief is denied that state must provide for de novo judicial review. If relief is granted, adjudication or commitment is deemed not to have occurred for the purposes of 18 USC §922 (d)(4) and (g)(4) and the state must update, correct, modify or remove the record from any database that the federal or state government maintains and makes available to NICS.

Co-Chair Ruggiero asked whether the majority of states utilize courts or boards for the relief process to which Attorney Miller responded that the courts are used in most states.

Carolyn Kyle asked why guardianship is included. Attorney Miller stated that guardianship is included because these individuals are unable to manage their affairs.

Senator Lombardi explained that the parameters for guardianship are different under Rhode Island law than many other states. Megan Clingham asked whether there is any requirement to add guardianship in the prohibitions which are reported. Attorney Miller answered that the state can decide who to report in the prohibitions.

Dr. Paul Christopher asked what happens if an individual is prohibited and reported to NICS in one state and later moves to another state where the occurrence isn't deemed to be prohibited. One state's prohibitor does not travel to another state but if the person wants to have the prohibitor removed, the individual would need to apply for relief from the board in the state where the prohibition is located.

Lieutenant Eric Cooke and Captain Sam Izzarelli from the Connecticut State Police explained the recently enacted legislation in Connecticut regarding firearms. Lt. Cooke explained that the firearm permitting process was updated for the mental health. Lt. Cooke stated that after April of this year, a certificate is necessary to purchase a long gun and ammunition. Lt. Cooke stated that NICS does not support anything in regard to ammunition.

Lt. Cooke explained that the prohibition for psychological disorders has increased from 12 to 60 months. There is also a voluntary admission prohibition of 6 months. Lt. Cooke also explained that with a finding of not guilty by reason of mental disorder, Connecticut has a 20 year prohibition.

Lt. Cooke stated that there have been two lawsuits in regard to the recently enacted legislation, one of which has been dismissed and the other is still in court.

Senator Lombardi asked how the reporting occurs. Lt. Cooke stated that it is a closed loop network where the records are electronically coming from the courts to the state police.

Craig Stenning asked whether the information being sent to NICS is broader than the federal. Lt. Cooke stated that only the state information being sent is broader but they can distinguish between the two.

Frank Saccoccio asked what process is in place to verify a record. Lt. Cooke stated that it takes place with the NICS appeal process.

Major Manni asked how many people are in the Connecticut unit. Lt. Cooke responded that 24 personnel are in the unit with a mix of sworn and civilian staff.

Co-Chair Ruggiero stated that the next meeting of the Task Force will occur on Thursday January 23rd. The meeting adjourned.

JOINT BEHAVIORAL HEALTH AND FIREARMS SAFETY TASK FORCE
MEETING

A meeting of the Joint Behavioral Health and Firearms Safety Task Force was held on Thursday, January 23rd, 2014 at the State House in Room 205 at 5:00 PM.

In attendance were the following members:

Co-Chair Deborah Ruggiero, Co-Chair Catherine Cool Rumsey, Representative Chippendale, Joe Lindbeck, Major James Manni, Steven Hall, Meghan Clingham, David Spencer, Nick Grasso, Carolyn Kyle, Frank Saccoccio, Craig Syata, Dr. Paul Christopher, Chief Elwood Johnson, Patrolman Braxton
Absent: Senator Ottiano, Senator Lombardi, Craig Stenning

Co-Chair Ruggiero called the meeting to order and the members went through a review of the draft working document which was provided in advance of the meeting. Co-Chair Ruggiero and the Task Force went through the 6 Items and Recommendations in the draft document.

Item #1: The Task Force discussion centered around the recommendations. The consensus was: the time limit should be left generic to be worked through in legislative committee hearings; there should be a tiered approach to those who can get relief from their disqualifiers from a Relief Board. The Task Force discussed various tier levels but decided to leave the specifics for the legislature.

Item #2: The Task Force members reiterated their desire that those found incompetent in probate court will not be submitted to the NICS database but those who are adjudicated incompetent and reach the dangerousness level to be set forth in new law will be submitted to NICS. That law will not capture those found incompetent through a Probate Court hearing.

Item#3: All agreed to the Recommendation in Item #3. The specific language of the law to be introduced was discussed and a third option was suggested combining options 1 and 2.

Item #4: There was consensus and agreement on Item #4. Specifically as it relates to the addition of the finding of dangerousness; which will satisfy concerns that members had stated throughout their meetings regarding the fact that no member wants to capture mental health records of those involuntarily committed who are a harm to themselves for a reason like bulimia or some other diagnosis that does not rise to a level of dangerousness.

Item #5: The term “habitual drunkard” was discussed and a member stated that the term dates back decades when each city and town had a “drunk tank” where people would be locked up for the night. All members agreed that the term is antiquated and should be stricken. Members also discussed that the second part of the current R.I.G.L. 11-47-6

contains a process whereby someone who is cured from the listed disqualifications of that section can apply to have the disqualification removed.

Discussion then reverted to member's dissatisfaction with the term "mental defective". All were reminded that it is a federal term and the federal government has indicated it anticipates changes to that term and others this year. The members agreed that when the federal term is changed Rhode Island law should also be likewise changed.

Item #6: There was a consensus among members on Item #6. Discussion ensued about R.I.G.L. 11-47-32 which already prohibits people who are under the influence of drugs or alcohol from carrying a firearm.

Confusion regarding federal grant money was clarified and it was explained that the available federal grant money is exclusive to the Relief Board.

The makeup of the Relief Board was also discussed including the recommendation that a mental health clinician should be a member of the Relief Board or, if the court is the Relief Board, then a mental health clinician or forensic psychologist or forensic psychiatrist should be an integral part of the decision-making by the court. All members were complimentary of the draft working document and were advised that a new draft reflecting changes suggested at today's meeting will be emailed next week for final review and comment from the members.

Meeting adjourned at 5:45.

Addendum 3: Letter Regarding Task Force Membership



J. JOSEPH BAXTER
STATE COURT ADMINISTRATOR

Supreme Court of Rhode Island
250 Benefit Street
Providence, RI 02903

October 23, 2013

Representative Deborah Ruggiero
Chair, Behavioral Health and Firearms Safety Task Force
Rhode Island House of Representatives
State House
Providence, RI 02903

Senator Catherine Cool Rumsey
Chair, Behavioral Health and Firearms Safety Task Force
Rhode Island Senate
State House
Providence, RI 02903

RE: Service on the Behavioral Health and Firearms Safety Task Force

Dear Chairpersons Ruggiero and Cool Rumsey:

Per the provisions of Joint Resolution 2013 H 5992, the State Court Administrator among others, was included in the list of members appointed/named to the Behavioral Health and Firearms Safety Task Force. The purpose of the Task Force is: "to conduct a review of current law and make recommendation on legislation to improve public safety by developing a more comprehensive approach addressing the nexus between behavioral health and firearms safety...." Part of the Task Force's mission includes the following functions:

- (1)...a review of different states' approaches for compliance with the NICS Index. ...to ensure that the state conforms to best practices nationally;
- (2) Propose legislation and recommendations to support the state's full participation in the NICS index; and
- (3) Propose legislation and recommendations concerning the form and composition of the relief from disabilities board based on a review of federal and state laws, rules and regulations;....

The Task Force is further required to make recommendations to revise existing laws to ensure the privacy of information identifying persons with disqualifying behavioral health adjudications and the consistency among definitions in chapters relating to mental health and substance abuse.

Representative Deborah Ruggiero
Senator Catherine Cool Rumsey
Chairpersons, Behavioral Health and Firearms Safety Task Force
October 23, 2013
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While I am honored to be included in the list of stakeholders, my involvement as State Court Administrator and a representative of the Judiciary invokes some unique considerations. Of concern is the potential (mis)impression that any opinions or observations expressed would reflect or represent an official position of the Court and/or its justices who hear these types of matters. Further, I do not wish my service on the Task Force or any input that I should provide, to be construed as passing legal or constitutional muster, as my position as State Court Administrator does not affect in any way the adjudicative functions of the Court. Lastly, I wish to avoid any suggestion that the Task Force's ultimate recommendations to the General Assembly would have the imprimatur of the Supreme Court as a result of my service thereon.

For these reasons, and after much careful consideration, I regret that I will be unable to continue my service on the Task Force at this time. The Judiciary remains committed, however, to providing the Task Force whatever assistance it may need in terms of data production or testimony from the Administrative Office of State Courts or other court staff relative to the operations of the state judicial system if it may be helpful to carry out the important mission of the Task Force.

I appreciate the opportunity to be of assistance in the future and look forward to learning of the Task Force's recommendations in the months to come. I wish you and the entire Task Force much success in the months ahead as you embark on this critical public safety endeavor.

Sincerely,



J. Joseph Baxter
State Court Administrator