
CITY OF SAN ANTONIO

OFFICE OF THE CITY AUDITOR



Audit of Municipal Court
Family Violence Class C Misdemeanor Reporting

Project No. AU18-024

February 15, 2018

Kevin W. Barthold, CPA, CIA, CISA
City Auditor

Executive Summary

At the request of Councilman John Courage, we conducted an audit of the San Antonio Municipal Court, specifically family violence crime reporting. The audit objectives, conclusions, and recommendations follow:

Determine if convictions involving family violence within our municipal courts are being appropriately reported to relevant government agencies.

The Municipal Court is not mandated to report any Class C misdemeanor family violence information to the Texas Department of Public Safety (DPS). Class C misdemeanor convictions do not require external reporting under any legislation. While Municipal Court's current reporting process is in compliance with regulations and laws, we identified an area where processes can be improved to ensure relevant adjudicated family violence related case information is shared with the DPS authorities.

Accordingly, we recommended that the Municipal Court Clerk continue implementing policies and procedures to voluntarily report family violence related Class C misdemeanor convictions to the DPS. Additionally, we recommended that the Court Clerk work with the City's Government and Public Affairs Department to lobby for changes to state laws which would allow prosecutors to upgrade to Class B (or higher) misdemeanor charges for persons with multiple Class C family violence offenses.

Municipal Court management agreed with our recommendation and has developed positive actions plans. Management's verbatim response is in Appendix C on page 8.

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Background

Municipal Court serves the express function of preserving public safety, protecting quality of life, and deterring future criminal behavior. Municipal Court has jurisdiction over violations of City ordinances (e.g. failure to maintain property, failure to obtain building permits, animal care violations), and concurrent jurisdiction with justice of the peace courts over fine-only Class C misdemeanors (the least serious misdemeanor) such as speeding, public intoxication, and family violence.¹

State laws require all municipal courts in Texas to file reports with certain state agencies. These reports help courts to enforce appearance and payment of fines in courts, and build the defendant's criminal record to be used by other courts if the defendant is later charged with another offense. One state agency that requires reporting from all municipal courts is the Texas Department of Public Safety (DPS). Currently, DPS requires municipal courts to report the following: traffic convictions, bond forfeitures, alcoholic beverage code offenses, convictions related to gasoline theft, and failure to complete tobacco awareness programs.

More serious convictions including felonies, Class A misdemeanors, and Class B misdemeanors are reported to DPS by Bexar County. Reports made to DPS are incorporated into the Criminal Justice Information System (CJIS) which is shared with the National Instant Criminal History Background Check System (NICS) - see Appendix A – NICS Background Check Process. A history of certain offenses prevents a person from passing a NICS firearms background check and purchasing a firearm. Thus, the reporting of criminal history records directly impacts the effectiveness of NICS background check process.

The recent mass shooting in Sutherland Springs Texas emphasizes the importance of reporting criminal conviction information. Councilman John Courage requested this audit “to ensure convictions involving family violence within our municipal courts are being reported to prevent those with a proven propensity of violence from acquiring and possessing firearms.”

Class C misdemeanor family violence cases are processed and adjudicated at Municipal Court for assault involving physical contact and/or threat. The following table summarizes adjudicated Class C misdemeanor family violence Municipal Court cases for the last four fiscal years:

¹ Section 71.004 of the Texas Family Code defines Family Violence as “an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.”

San Antonio Municipal Court Adjudicated Family Violence Cases				
Citation by Violation Type	Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016	Fiscal Year 2017
Assault (Physical Contact)	680	563	529	561
Assault (Threat)	28	24	12	23
Total	708	587	541	584

Audit Scope and Methodology

The audit scope was from November 2017 through December 2017. This audit focused on the City's Municipal Court crime reporting to relevant external government agencies, specifically adjudicated family violence related cases.

To establish test criteria, we conducted interviews and walkthroughs with Municipal Court personnel to obtain an understanding of how external reporting is performed at Municipal Court. We used City Code, Texas Municipal Courts Education Center Training Manual (Level I, 2015), and State Code of Criminal Procedure as criteria for our testwork.

We identified State statutes and applicable state laws mandating external reporting requirements.

We utilized the following State Code of Criminal Procedure statutes and laws as the basis for our testing:

- Chapter 22 Assaultive Offenses
- Chapter 27 The Pleading in Criminal Actions
- Chapter 42 Judgment and Sentence
- Chapter 45 Justice and Municipal Courts
- Chapter 60 Criminal History Record System

We interviewed Municipal Court personnel to gain an understanding of family violence case management and external reporting requirements. We reviewed State statutes, Texas Municipal Court Education center resources, and Texas DPS training materials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Results and Recommendations

A. Class C Misdemeanor Family Violence Reporting to DPS

Although not mandated, Municipal Court was not reporting Class C (fine-only) misdemeanor convictions involving family violence to the DPS.

State statutes and laws do not mandate reporting Class C misdemeanor convictions. Although Class C misdemeanors do not require external reporting under any legislation, the DPS has recently developed an optional process for Class C family violence related misdemeanors to be reported. This optional process provides a channel to report this information on a voluntary basis. In addition, DPS recently began offering on-site training for this optional reporting.

Currently, the reporting of fine-only Class C misdemeanors to the DPS can, in cases of disorderly conduct or public intoxication offenses, result in Class A or B misdemeanor or felony level upgraded charges being filed after three prior convictions in any combination within a 24-month period. A conviction at the Class A or B misdemeanor or felony level would then result in a record that is ultimately incorporated into the CJIS and NICS systems thus prohibiting a convicted person from passing a firearms background check and purchasing a firearm. However, this does not apply to Class C family violence offenses. A change in Texas State criminal laws would be required for family violence related misdemeanor offenses to be eligible for upgrading to a higher charge – the conviction of which would result in a record to the CJIS/NICS systems.

The DPS encourages reporting as it will enable criminal courts, including San Antonio Municipal Court, to determine if a person being charged has prior Class C convictions. Reports of certain multiple Class C convictions can result in a new misdemeanor charge being escalated to a Class B or higher charge for persons matching the same fingerprint identification. By Texas state law, a third Class C conviction can be upgraded to a Class B or higher charge by the prosecutor for the arresting entity, but only for persons convicted of disorderly conduct or public intoxication offenses. Procedurally, the prosecutor accesses the state CJIS system to determine if prior charges exist against the arrested person using his/her fingerprints (to positively identify the arrested person if previously arrested). For disorderly conduct and public intoxication, if the arrested person has two or more prior Class C convictions, the prosecutor can upgrade the charge to a Class B or higher charge. As mentioned above, Class B or higher convictions would then result in a “prohibiting” record entered into the NICS system used by firearm dealers when performing a background check on a potential firearm buyer.

Additionally, state law allows a prosecutor to enhance a Class A family violence bodily injury assault to a third degree felony upon the showing of a prior Class C family violence assault conviction. To enhance, prosecutors must know of the defendant's Class C conviction which is only known if the conviction was reported to DPS.

Notwithstanding the processes described above, the Texas Code of Criminal Procedure requires a person charged with a Class C misdemeanor involving family violence to be admonished with the following statement regarding possessing or purchasing a firearm:

"If you are convicted of a misdemeanor offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S. C. Section 922(g) (9) or Section 46.04(b), Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney."

Municipal Court ensures that persons charged with Class C misdemeanors involving family violence are properly admonished (verbally and in writing) using the statement above.

Representatives from the Municipal Court, the Office of the City Attorney, and the Office of the City Auditor recently attended training provided by the DPS. The objective of the training was to lay out steps the City can take to begin reporting Class C family violence misdemeanor related information to the DPS even though under current state laws such reporting will not result in a prohibiting record in the CJIS/NICS systems. Methods of reporting and all required data (including fingerprints) were discussed.

Recommendation

The Municipal Court Clerk should continue implementing policies and procedures to voluntarily report family violence related Class C misdemeanor convictions to the DPS. Additionally, the Court Clerk should work with the City's Government and Public Affairs Department to lobby for changes to state laws which would allow prosecutors to upgrade to Class B (or higher) misdemeanor charges for persons with multiple Class C family violence offenses.

Appendix A – NICS Background Check Process

Felonies, Class A misdemeanors, and Class B misdemeanors are reported to the DPS by Bexar County. The DPS then populates the crime data into the CJIS system which populates the NICS system.

A prospective firearm buyer completes a firearms transaction form.

The Federal Firearm Licensed (FFL) Dealer contacts NICS by telephone or internet.

A background check initiates a query in three databases: the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS Index.

If a match or prohibiting record is found in any of the three databases, the sale is denied. If no match in any database is found, the FFL dealer is cleared to proceed with the sale of the firearm.

Appendix B – Staff Acknowledgement

Mark Bigler, CPA-Utah, CISA, CFE, Audit Manager
Terri Hernandez, CISA, Auditor in Charge

Appendix C – Management Response



CITY OF SAN ANTONIO

P.O. Box 839966
SAN ANTONIO TEXAS 78283-3966

January 18, 2018

Kevin W. Barthold, CPA, CIA, CISA
City Auditor
San Antonio, Texas

RE: Management's Corrective Action Plan for Audit of Municipal Court Family Violence
Class C Misdemeanor Reporting

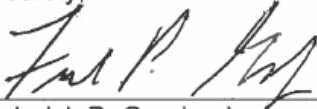
Municipal Court has reviewed the audit report and has developed the Corrective Action
Plans below corresponding to report recommendations.

Recommendation					
#	Description	Audit Report Page	Accept, Decline	Responsible Person's Name/Title	Completion Date
1	Class C Misdemeanor Family Violence Reporting to DPS The Municipal Court Clerk should continue implementing policies and procedures to voluntarily report family violence related Class C misdemeanor convictions to the DPS. Additionally, the Court Clerk should work with the City's Government and Public Affairs Department to lobby for changes to state laws which would allow prosecutors to upgrade to Class B (or higher) misdemeanor charges for persons with multiple Class C family violence offenses.	5	Accept	Frederick P Garcia, Jr., Municipal Court Clerk	<ul style="list-style-type: none">Reporting to DPS will commence by 3/31/18.Lobbying with stakeholders interested in changes to state law – spring 2019

Recommendation					
#	Description	Audit Report Page	Accept, Decline	Responsible Person's Name/Title	Completion Date
	<p>Action plan: On December 18, 2017, Municipal Court and City Attorney personnel working with family violence assault cases received three hours of training from DPS on optional family violence reporting of class C family violence convictions. The Municipal Court is committed to assume this optional duty of state reporting to ensure defendants with family violence criminal records are being properly recorded. Training of court staff has been completed and the court is now beginning to implement the program in the family violence court.</p>				

We are committed to addressing the recommendations in the audit report and the plan of actions presented above.

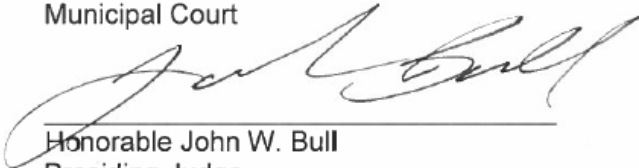
Sincerely,



Frederick P. Garcia, Jr.
Municipal Court Clerk
Municipal Court

2-1-18

Date



Honorable John W. Bull
Presiding Judge
Municipal Court

2-1-2018

Date