

Improving the National Instant Background Screening System for Firearms Purchases

Recommendations by SEARCH

Version 2 / February 2013



SEARCH

The National Consortium for Justice Information and Statistics

www.search.org

CHAIRMAN FRANCIS X. AUMAND III

EXECUTIVE DIRECTOR SCOTT M. CAME

Contents

Background and Executive Summary	3
A Few Facts	5
The National Instant Criminal Background Check System (NICS) for Firearms Purchases.....	5
Who Conducts the Checks – States or the FBI?.....	5
Which Federal Programs Fund Improvements to the NICS?	5
What Disqualifies an Individual from Purchasing a Firearm?.....	5
Which Databases Are Examined During a Background Check for a Firearm Purchase?.....	6
What Percentage of the Criminal Records Do States Provide to NICS?	6
How Many Checks Have Been Conducted, and How Many Have Been Denied?	6
Summary of Recommendations	7
Invest in Background Screening Improvements for Firearms Purchases.....	7
Improve the Availability of NICS Disqualifying Records.....	7
Remove Roadblocks to Effective State Participation and Qualification	8
Prepare for Changes that May Expand Background Checks.....	8
Invest in Background Screening Improvements for Firearms Purchases	9
Provide National Support for the Federal-State Partnership that is NICS	9
Channel Funding Efficiently and Effectively	10
Facilitate – Rather than Discourage – State Participation.....	11
Improve the Availability of NICS Disqualifying Records	12
Enhance the NICS Index.....	12
Enhance the Interstate Identification Index (III)	13
Improve Criminal Justice Information Sharing.....	13
Remove Roadblocks to Effective State Participation and Qualification	15
Facilitate the Sharing of Mental Health Records from Agencies Outside Criminal Justice	15
Address Privacy Issues.....	15
Maintain Incentives to Establish and Operate the Relief from Disabilities Process.....	16
Revise or Remove the Requirement to Provide State Estimates	16
Prepare for Changes that May Expand Background Checks	18
Appendix A: Improving the Availability of Records in the NICS Index	19
Appendix B: Suggested Resources and Reading	20



BACKGROUND AND EXECUTIVE SUMMARY

SEARCH, The National Consortium for Justice Information and Statistics (SEARCH), is a nonprofit membership organization created by and for the states.¹ For over 40 years, SEARCH has promoted the effective and appropriate use of justice information and identification technology.

SEARCH's Governor-appointed, dues-paying Members from each of the 50 states and territories have the responsibility, among other things, to oversee both the National Criminal History Improvement (NCHIP) and National Instant Criminal Background Check System (NICS) programs within their states.

Over the years, states have made great strides in meeting their criminal history record improvement goals under both programs. However, there is still much to be done to realize a truly complete and accurate national criminal history background check system. That system informs a variety of critical public safety decisions, as well as noncriminal justice decisions, such as those regarding applicants for employment and licensing, to volunteers who work with children and other vulnerable populations, to individuals purchasing firearms.

As Congress debates the issue of whether or not to expand background checks for firearms purchases, SEARCH can provide decision-makers a range of detailed and insightful information on the operational impacts, implications, and challenges of expanding and enhancing the national criminal history record background check system for firearms purchases.

This document responds to some of the most pressing issues that SEARCH has been asked about since the recent gun-related tragedies that have renewed the focus on the background check system for firearms purchases.

In short, SEARCH urges Congress to ensure all states receive or are eligible for grant funding to support improvements to the National Instant Criminal Background Check System — based on incentives, not penalties — and that new funding is authorized and appropriated for this work.

¹ For more information, visit www.search.org

As Congress considers additional funding to improve the national background check system for firearms purchases, SEARCH recommends that funding should be channeled in a way that meets the following core principles:

- *All states must qualify for the funding.* It is likely that many states will not meet the relief from disabilities requirement. To disqualify states from funding to improve their criminal history record system only weakens the potential for a national system that provides the most complete, accurate, and timely records to inform critical decision-making.
- *Grants should give states the discretion to address the specific challenges they face in making more records available to the national system.*
- *Funding should encourage adherence to performance metrics and accountability measures.* States should define specific and measurable goals for which they will use the funding to demonstrate progress and impact.
- *Consideration should be given to eliminate a funding match from the states.*
- *States should receive incentives, rather than penalties, to facilitate their compliance with grant requirements.* As currently structured, instituting penalties would only impact unrelated – yet critical – justice programs (such as the Byrne Justice Assistance Grant Program).
- *Congress should fund technical assistance and technology investments for states to improve automated information sharing systems in support of NICS.*
- *Expand the states' capacity to conduct background screening for firearms purchases.* SEARCH recognizes the potential role of other Federal funding programs and supports additional funding for these programs that provide significant technical assistance to the states with their information sharing initiatives (such as the Byrne Competitive Grant Program).

For more information, contact

Kelly J. Harbitter
Director of Government Affairs, SEARCH
kelly@search.org

A FEW FACTS...

The National Instant Criminal Background Check System (NICS) for Firearms Purchases

- NICS was established in 1993 by the Brady Handgun Violence Prevention Act of 1993.
- The FBI maintains the NICS to conduct background checks on individuals seeking to purchase firearms from Federally Licensed Firearms Dealers (FFLs) or to obtain permits to possess, carry, or obtain firearms.
- The system relies on a comparison of an applicant's name with names in prohibitive category files. The system is not capable of positive identification through comparison of biometric information.
- The system does not include background checks for private firearm sales.

Who Conducts the Checks – States or the FBI?

- There are 13 full Point of Contact (POC) States that handle all NICS and state prohibitor checks: California, Colorado, Connecticut, Florida, Hawaii, Illinois, Nevada, New Jersey, Oregon, Pennsylvania, Tennessee, Utah, and Virginia.
- There are seven partial-POC States that handle their own handgun checks/handgun permit checks while the FBI handles the long gun checks: Iowa, Maryland, Nebraska, New Hampshire, North Carolina, Washington, and Wisconsin.
- Eighteen (18) are known as Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) "qualified alternate permit" States — meaning they have a process in place that serves as an alternative to the Brady law background check requirements.
- The FBI provides the NICS background checks for firearm transactions in the remainder of the states.

Which Federal Programs Fund Improvements to the NICS?

There are two Federal grant programs that have funded state improvements to their criminal history record repositories, generally, and the NICS specifically: the National Criminal History Improvement Program (NCHIP) and the NICS Act Record Improvement Program (NARIP). Both are administered by the Bureau of Justice Statistics (BJS), U.S. Department of Justice.

What Disqualifies an Individual from Purchasing a Firearm?

There are 10 categories established in Federal law that disqualify an individual from purchasing firearms. (Note: Some states have established their own, additional disqualifying categories.)

- Illegal/unlawful alien
- Dishonorable discharge
- Renounced U.S. citizenship
- Felony conviction
- Under indictment/information
- Fugitive from justice
- Unlawful use of/addiction to a controlled substance
- Involuntary commitment to mental health institution/mental adjudications
- Domestic violence protection/restraining order
- Misdemeanor conviction for crimes of domestic violence

Which Databases Are Examined During a Background Check for a Firearm Purchase?

During a NICS check, descriptive data such as name and date of birth are used to search three national databases that contain criminal history and other relevant records to determine whether a person is disqualified from purchasing a firearm. (Note: POC States may also search state databases.)

- **Interstate Identification Index (III).** This FBI-maintained pointer system is the national system for exchanging criminal record information. It links state- and FBI-held information. The index contains information on persons arrested for fingerprintable felonies and misdemeanors under State or Federal law and can point to the states for additional information.
- **National Crime Information Center (NCIC).** An automated, nationally accessible database of crime data, criminal justice and justice-related records, including information on wanted persons (fugitives) and persons subject to restraining orders.
- **NICS Index.** This database was created for presale background checks of firearms purchasers and contains information on persons prohibited from possessing or receiving a firearm. The NICS Index also contains information that may not be available in the NCIC or the III.

What Percentage of the Criminal Records Do States Provide to NICS?

Nearly all firearms purchase disqualification decisions are based on the information states provide. **Indeed, nearly 90% of the criminal records available to the NICS come from the states** (FBI Criminal Justice Information Services III Statistics, February 1, 2013). Similarly, relevant records in the NCIC and the NICS Index are overwhelmingly comprised of information entered by the states.

How Many Checks Have Been Conducted, and How Many Have Been Denied?

According to a BJS report released February 12, 2013, *Background Checks for Firearm Transfers, 2010 - Statistical Tables*:

- Since the inception of the Brady Act, over 118 million applications for firearm transfers or permits were subject to background checks. About 2.1 million applications, or 1.8%, were denied.
- In 2010, 1.5% of the 10.4 million applications for firearm transfers or permits were denied by the FBI or by state and local agencies.
- Among the 21 state agencies that reported reasons for denial, a felony conviction or indictment was the most common reason to deny an application in 2010 (31%). A state law prohibition was the second most common reason (16%).

SUMMARY OF RECOMMENDATIONS

Since the recent tragedies in Aurora, Colorado, and Newtown, Connecticut — compounded by the nearly daily reports of gun-related violence — significant focus has been placed on the nation’s background screening system for firearms purchases: the National Instant Criminal Background Check System (NICS). Some of that focus has been mistakenly critical of the States and their contributions — or lack thereof — to the databases used for such screening. Indeed, the vast majority of records in seven of the 10 categories used to make firearms transfer determinations are records maintained and made available by the States. Thus, the overwhelming majority of firearms transfer denials are based on state records. States have made their records available despite facing many extraordinary, and well-documented, obstacles to effectively sharing information at the national level and in support of this national system.

Those obstacles include lack of sufficient investment to help build the infrastructure for electronic information sharing, continuing challenges with making disqualifying records available to NICS, and significant policy challenges (particularly with sharing mental health records).

Despite these challenges, NICS has clearly demonstrated that it is an effective and robust tool for daily decision-making regarding firearms purchases. As Congress and other decision-makers consider introducing new programs, reauthorizing existing ones, expanding background checks for firearms purchases, and enhancing the states’ role in the background screening system, SEARCH urges decision-makers to make a meaningful investment in enhancing the national system. For that investment to be successful, it should also remove the roadblocks to greater state participation and develop strategies to improve the availability of disqualifying records to the NICS Index. Following is a summary of the recommendations in the body of this report.

INVEST IN BACKGROUND SCREENING IMPROVEMENTS FOR FIREARMS PURCHASES

- Provide National Support for the Federal-State Partnership that is NICS
- Channel Funding Efficiently and Effectively
- Facilitate – Rather than Discourage – State Participation

IMPROVE THE AVAILABILITY OF NICS DISQUALIFYING RECORDS

- Enhance the NICS Index
- Enhance the Interstate Identification Index (III)
- Improve Criminal Justice Information Sharing

REMOVE ROADBLOCKS TO EFFECTIVE STATE PARTICIPATION AND QUALIFICATION

- Facilitate the Sharing of Mental Health Records from Agencies Outside Criminal Justice
- Address Privacy Issues
- Maintain Incentives to Establish and Operate the State Relief from Disabilities Process
- Revise or Remove the Requirement for State Estimates

PREPARE FOR CHANGES THAT MAY EXPAND BACKGROUND CHECKS

PROVIDE NATIONAL SUPPORT FOR THE FEDERAL-STATE PARTNERSHIP THAT IS NICS

A lack of sufficient funding to the states, exacerbated by impractical grant requirements, has been one of the most significant challenges to creating a more robust background check system for firearms purchases.

As a result of the Virginia Tech tragedy in 2007, Congress passed the NICS Improvement Amendments Act (NIAA) to help improve and enhance the NICS. NIAA established a grant program for states: the NICS Act Record Improvement Program (NARIP). For FY 2009–2013, Congress authorized \$1.25 billion to the states and courts for NIAA. However, congressional appropriations have never reached anywhere near such authorization levels. In FY 2010, Congress appropriated \$20 million. In FY 2011, the appropriation fell to \$17 million, while the 2012 budget contained a \$5 million appropriation.

During that same period, however, the U.S. Department of Justice’s Bureau of Justice Statistics (BJS) — which administers the grant program under NIAA — received grant applications requesting funding far above the amounts appropriated. Ironically, however, due to the grant program’s requirements,² most states could not qualify to receive funding. As a result, only three states received funding in FY 2009 for a total of \$2.5 million — despite the fact that 22 states applied for \$13.5 million in funding. In FY 2010, eight states received \$16.9 million, although 15 states submitted applications totaling \$28 million. In FY 2011, 15 states applied for more than \$33 million in funding; however, 12 states received just over \$20 million. FY 2012 grantees received just over \$11 million in funding.

SEARCH urges Congress to make a substantial investment in the Federal-State criminal background screening partnership as a necessary tool in the fight against gun violence, with a national scope that is inclusive of all the states.

² NARIP has two main requirements: States must 1) establish a process where those adjudicated as “mentally defective” can seek to reinstate their right to purchase a firearm, and 2) comply with a process to estimate the number of NICS disqualifying records they maintain. The challenges of implementing both of these requirements are discussed later in this document.

CHANNEL FUNDING EFFICIENTLY AND EFFECTIVELY

Since 1995, the National Criminal History Improvement Program (NCHIP) has provided states the resources to improve their criminal history record systems to support a range of criminal justice and noncriminal justice decision-making activities. The program has demonstrated significant success across the country. NCHIP's strength, said one SEARCH state official, is its broad nature and flexibility that allows states to target their priorities and fund improvements to their criminal history records. All states and the District of Columbia have received NCHIP funding over the years.

The NICS grant funding stream — embodied in the NICS Act Record Improvement Program (NARIP) of 2007 — is targeted at further enhancing the NICS Index, as well as the number of disqualifying records in the system's other databases. To date, however, only 20 states have qualified for NARIP funding — and even fewer states have actually received NARIP funding since its inception. This is primarily due to the difficulty in establishing — both politically and logistically — a relief from disabilities process for those “adjudicated as a mental defective,” as required under NARIP.

Due to NCHIP's broader focus, flexibility, and success over the years, it would be the most effective and appropriate channel for targeting additional funding toward improving NICS. Most importantly, all states qualify for this funding stream. NARIP requirements create a barrier that disqualifies more than half of the states from participating in the program and receiving funding to improve their records systems.

SEARCH urges Congress to channel targeted funding to all states via the NCHIP grant program, with safeguards to ensure that NCHIP's basic program structure is not compromised.

FACILITATE – RATHER THAN DISCOURAGE – STATE PARTICIPATION

SEARCH urges Congress to ensure all states receive or are eligible for grant funding to support improvements to the National Instant Criminal Background Check System — based on incentives, not penalties — and that new funding is authorized and appropriated for this work.

As Congress considers additional funding to improve the national background check system for firearms purchases, SEARCH recommends funding should be channeled in a way that meets the following core principles:

- *All states must qualify for the funding.* It is likely that many states will not meet the relief from disabilities requirement. To disqualify states from funding to improve their criminal history record system only weakens the potential for a national system that provides the most complete, accurate, and timely records to inform critical decision-making.
- *Grants should give states the discretion to address the specific challenges they face in making more records available to the national system.*
- *Funding should encourage adherence to performance metrics and accountability measures.* States should define specific and measurable goals for which they will use the funding to demonstrate progress and impact.
- *Consideration should be given to eliminate a funding match from the states.*
- *States should receive incentives, rather than penalties, to facilitate their compliance with grant requirements.* As currently structured, instituting penalties would only impact unrelated – yet critical – justice programs (such as the Byrne Justice Assistance Grant Program).
- *Congress should fund technical assistance and technology investments for states to improve automated information sharing systems in support of NICS.*
- *Expand the states' capacity to conduct background screening for firearms purchases.* SEARCH recognizes the potential role of other Federal funding programs and supports additional funding for these programs that provide significant technical assistance to the states with their information sharing initiatives (such as the Byrne Competitive Grant Program).

IMPROVE THE AVAILABILITY OF NICS DISQUALIFYING RECORDS

As noted, since its inception, NICS has been very successful in denying the sale and transfer of guns to those prohibited from having them. The States and FBI rely on NICS for robust decision-making on daily firearms transactions. There are, however, opportunities for improving the timeliness and availability of information to NICS that could be addressed through targeted funding.

ENHANCE THE NICS INDEX

The NICS Index contains information not found in the Interstate Identification Index (III) or National Crime Information Center (NCIC), the other databases that are searched during a background check for firearms purchases. For example, a criminal case on a rap sheet (available in III) might show a disposition of “mental incompetency,” while a NICS Index entry would record an involuntary commitment to a mental health facility unrelated to a criminal proceeding. Both are disqualifying events, but are recorded and available from different databases.

Meanwhile, of the 10 Federal prohibitive categories for firearms purchases, seven are predominantly derived from State information. Several million records in four of these categories (felony conviction, under indictment/information, fugitive from justice, and drug abuser) are not always available to the system. Information made available through the III is based on fingerprints, typically captured at the time of booking. However, not every person entering the criminal justice system is formally booked, creating a situation where a court may reach a decision, but there is no corresponding arrest information at the state record repository. Additionally, dispositions may be missing from the system, largely resulting from data-matching problems between the court and state record repository. In these cases, the felony arrest appears in the system and NICS and the POCs have three days to research the information needed for a firearm decision. Additional research is required in 8% of NICS transactions. An acquittal or dismissal is just as important as a conviction for making an informed decision on a firearm transfer. Rather than simply leaving this disposition information unavailable to the system because it is not available in III, an alternative would be to enable the States to address the workload and cost issues associated with placing it in the NICS Index.

Likewise – largely for policy and economic reasons associated with extradition and record validation – managing warrant transactions in NCIC is extremely labor-intensive. In some cases, there are also technical challenges associated with the NCIC system, primarily due to the system’s age and original design. As a result, there are persons who are considered fugitives from justice (predominantly misdemeanor warrants) that are not available to NICS.

Meanwhile, many states have added their own prohibitive categories, and that information would greatly enhance the NICS Index and the decision-making process if made available to the system. See Appendix A, page 19, for more detail on the challenges to obtaining NICS disqualifying records.

Fulfill the original intent of the NICS Index by making disqualifying records, across prohibitive categories, more readily available.

ENHANCE THE INTERSTATE IDENTIFICATION INDEX (III)

Felony convictions are the largest category of firearm transfer denials. Yet, as of December 31, 2010, a survey of the States conducted by SEARCH found that only seven states and Guam reported that 90% or more felony charges have a final disposition recorded in their criminal history databases. An additional five states had between 80% and 90% dispositions for felony charges.

The quantity and quality of criminal history information available via III – and therefore for background screening purposes – must be improved. Investments should be made to vastly improve collection and reporting efficiencies by encouraging the adoption of the standardized criminal history record (rap sheet), increasing state participation in the FBI-administered National Fingerprint File (NFF) program, and for automation improvements at courts and repositories.

IMPROVE CRIMINAL JUSTICE INFORMATION SHARING

The ready availability of status information on the rap sheet would benefit and expedite NICS-related decision-making. For example, by capturing a prosecutor's charge reduction decision from a felony to a misdemeanor, NICS and POC States would not need to delay the transfer decision while attempting to find a disposition, as is now necessary when the rap sheet only shows an open felony case. Similarly, Indictments and the filing of Informations represent status information that is rarely available to those charged with making firearms transfer decisions.

The general lack of status information on criminal history records diminishes the ability to make instant decisions when responding to gun dealers. Funding should be targeted to improving enterprise-wide information sharing within the criminal justice system and across the states.

The integrity of the system is in part dependent upon FBI-administered decision and appeals processes that render conclusions without undue delay. In many instances this entails requesting overburdened and uncompensated courts to research information. Developing software and communications infrastructure that provides the FBI and the States with automated access to information maintained by other state and local agencies will generally

expedite the transaction decision process and appeals process for firearms sales denials. It would also greatly enhance the use of these records for all criminal justice and approved noncriminal justice purposes. Such investments should respect the historical and proper role of the States as interface points for the FBI to access local justice information.

Similarly, better interfaces between the FBI and the States, and between local courts and law enforcement agencies and the States, could enable NICS checks to include state and local warrant information currently unavailable to NICS.

Expedite the resolution of the firearms purchase denial appeals process by providing automated means to inquire into local justice information systems.

FACILITATE THE SHARING OF MENTAL HEALTH RECORDS FROM AGENCIES OUTSIDE CRIMINAL JUSTICE

Except for mental health-related criminal case dispositions, this Federal prohibition category relies on health information rather than traditional criminal justice information. Justice agencies often do not have access to this information due to patient privacy protections at both the state and Federal levels. While NICS does not collect diagnosis information, it does, however, need names and other descriptive information.

Mental health records not related to criminal case dispositions are maintained by agencies and organizations outside of criminal justice, such as private hospitals, state mental institutions, state health agencies, and civil courts. Since many of the records were not developed for criminal justice use, there are privacy and other challenges to sharing those records, including some records with missing required personal identifying data.

There are also significant technological challenges to electronically exchanging mental health data. Older paper-based records need to be automated before information can be available. Some mental health databases are not designed to allow sorting and retrieval of the key information necessary for firearms transfer decisions or appeals.

State criminal justice agencies receiving funding to enhance their participation in NICS should not be penalized for their inability to obtain mental health records. Rather, mental health institutions, and other mental health records holders and states should be incentivized to share such information. Targeted funding could help overcome the technical and legal challenges to doing so.

ADDRESS PRIVACY ISSUES

If mental health records are truly to be regularly and routinely considered in firearms transfer decisions, then legislative policy must address the balance of protecting individual privacy and sharing information regarding involuntary commitment records.

Similarly, with drug abuse records, some jurisdictions experience challenges between drug court-related positive drug test information and the reporting of that information. While the drug court defendant information may not be confidential, the fact that someone appears on a drug court docket may be considered “client” information—and therefore confidential under Federal or state statutes that protect health information.

In many instances, the lack of access to disqualifying mental health information or drug abuser information is attributed to privacy laws that govern who can obtain health records on individuals. Yet, NICS does not require diagnosis information on those who have been or are currently in treatment—only names and basic identifiers. Some states have found effective workarounds, for example, by querying noncriminal justice databases for name matches. Fundamental to the development of privacy policies for information sharing within the justice community is an examination of local, state, and Federal privacy laws.

Address citizens' legitimate concerns about protecting the privacy of mental health records by investing in the development of effective privacy policies to govern use of this information.

MAINTAIN INCENTIVES TO ESTABLISH AND OPERATE THE RELIEF FROM DISABILITIES PROCESS

The majority of states are ineligible for the very funding that would improve the number and quality of records available to NICS because those states have not implemented a relief from disabilities program. To qualify for NARIP funding, states must enact a program that allows individuals who have been prohibited from purchasing firearms due to a mental health adjudication or commitment to seek relief from the prohibition. There are many reasons states have not implemented a relief from disabilities program. These include public policy concerns, the expense of enacting such a program, and the time it takes to change state law (the program has to be established by state statute or administrative regulation), among others. To date, only 20 states have instituted a relief from disabilities process, meaning more than half of the states do not qualify for NARIP funding.

Further exacerbating this issue is the reality that the amount of funding available to the states via NARIP is insufficient to incentivize them to enact a relief from disabilities program.

When NARIP provides a meaningful level of funding to states in support of their participation in and enhancement of NICS, states will be incented to implement a relief from disabilities process.

REVISE OR REMOVE THE REQUIREMENT TO PROVIDE STATE ESTIMATES

The U.S. Department of Justice, the Government Accounting Office, and the States have all determined that estimating the number of prohibitor records that exist in the states is problematic across all categories. For example, in many states, there are literally hundreds of courts and law enforcement agencies that maintain original source

records. There is no practical way to obtain estimates about these records from so many agencies, or to even ask them to take on the burden of counting records. Yet providing these estimates is a key requirement states must meet to qualify for NARIP grant funding.

Meanwhile, systems do not necessarily record data in a manner that supports the requirements of the estimates process. For example, most courts count the number of dockets, while the state repositories often count arrests or charges. From these inconsistencies, coming up with a meaningful calculation of the percentage of records available to the system is almost impossible. There are also relatively few state statutes that fully comport with the misdemeanor crime of domestic violence prohibitor, as defined in Federal law. States may impose much more stringent criteria on this prohibitor. Consequently, this category tends to be over-reported with the inclusion of assault charges, harassment charges, battery charges, and disorderly conduct charges that do not meet either the violence or the relationship tests of the Federal prohibitor.

Further, inaccurate conclusions can be drawn from the record estimates survey. For example, the apparent absence of conviction records available to the NICS (as reported in the survey data) may give a false impression about the direct relationship between missing records and missed gun transfer denials. Approximately two-thirds of criminal offenders are rearrested. As such, even if an offender has a conviction missing from the III, it is likely the offender would have one or more additional convictions available in III, thereby disqualifying a gun transfer. In addition, some persons have met the criteria for entry in other disqualifying categories searched in the NICS check. Consequently, despite the fact that the survey data suggest that there are a significant number of records not currently available to the NICS, this should not lead to a simple conclusion that the situation correlates to missed denials.

Finally, NARIP requires states to conduct a 20-year “look back” to come up with the estimates in select categories. In most cases, such information from that far back in time either does not exist due to record retention periods, or the survey workload exceeds any practical value.

Nearly five years of experience with the NARIP requirement to collect estimates of the states’ NICS disqualifying records has proven to be a difficult — if not impossible — task that yields less-than-meaningful results. New metrics for NARIP funding should be established that draw upon reliable data and other measures that demonstrate ongoing and effective efforts to improve both the quality and availability of information to NICS.

PREPARE FOR CHANGES THAT MAY EXPAND BACKGROUND CHECKS

If Congress expands the application of NICS checks to all firearms transactions, including private sales (often referred to as “gun show transactions”), state repository directors are concerned about the impact and funding for what promises to be a significant workload increase. Thirteen (13) states or territories are “full point of contact” (POC) States in that they perform background checks for all firearm transactions in connection with the issuance of permits. Seven are considered “partial POC” States in that they perform background checks in connection with handgun purchases and handgun permits, while the FBI handles checks for long gun sales. Eighteen (18) are known as Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) “qualified alternate permit” States — meaning they have a process in place that serves as an alternative to the Brady law background check requirements. In total, full and partial POC States and ATF-qualified Permit States conduct an average of 5,859,795 transactions per year.³

Given the deficiencies in the reporting of prohibitive information and that many of the prohibitors are name-based, the NICS Unit must frequently attempt to use the 72-hour window in the law to track down missing dispositions or other information. This involves contacting and seeking the assistance of state repositories and courts — this is disruptive to the operations of the repositories and courts that often must go through a laborious and time-consuming process of trying to locate information that may not be automated. An increase in NICS checks will inevitably place greater burdens on state repositories and courts. The existing infrastructure was not designed to respond to the urgent inquiries required for NICS decision-making, nor is there funding to do so. Proposals that include extending background screening for ammunition purchases will further exacerbate the workload issue.

In addition, the number of appeals of denial decisions is proportionate to the number of transactions processed by the NICS and the state POCs. As the number of transactions rise, so does the number of appeals. Researching the basis for a denial is an unfunded and increasingly unmanageable burden for courts and state and local agencies.

Imposition of a universal background check could fall especially hard on the 20 full or partial POC States if their state laws do not now cover every firearms transaction within the state. Alternatively, these states — as others have already chosen to do — could opt out of conducting the background checks by transferring the responsibility to the FBI, reducing their staffing and ability to handle appeals and research.

The States’ background check services are already operating at capacity (and in some cases, above capacity). Expansion of the demand for background checks for firearms purchases will require an investment in the states’ capacity, in order to avoid degradation of service for other types of background checks, including law enforcement, public safety, and employment.

Funding could also be targeted to develop automated efficiencies linking the FBI and Point of Contact States with information sources.

³ Federal Register, Volume 77, Number 215, November 6, 2012, page 66637.

Appendix A:

Improving the Availability of Records in the NICS Index

Felony Convictions. III is a fingerprint-based system and the primary source for obtaining prohibition information for this category. The NICS Index is name-based. There are millions of conviction records that cannot be linked with arrests and consequently are not part of the computerized criminal history at the states and FBI. The most recent survey of the States for estimates of available records under the NIAA indicates that at least 25% of felony convictions, representing more than 7 million concluded judicial proceedings, are not available to NICS. Funding could enable the submission of these dispositions to the NICS Index.

Person Under Indictment/Information. A grand jury indictment or prosecuting attorney information is status information. It is generally available via the criminal history in only those states that collect this status information—a rarity. More than half the states have or are in the process of implementing a standardized rap sheet that makes provision for collecting this information. But it is an optional field. Funding would be needed to routinely collect this information from courts for either entry on the criminal history record (where it would be available through III) or directly reported to the NICS Index.

Fugitive from Justice. This refers to the misdemeanor and felony warrants entered on NCIC. There is a massive, but not well-documented, warrant under-reporting problem. The most recent survey of the States for estimates of available records under the NIAA indicates that at least 47% of active warrants/wants, representing more than 6 million active warrants, are not available to NICS. Funding could greatly enhance the issuance of electronic warrants at the courthouse and automation of the process between the courthouse and law enforcement, and between local law enforcement and the state/NCIC.

Persons who are Unlawful Users of or Addicted to Any Controlled Substance. This prohibition is generally based on criminal history record information that shows a conviction for use or possession of a controlled substance within the past year, or multiple arrests for use or possession within the past 5 years if the most recent arrest occurred within the past year. Alternatively, the prohibition applies when a person is found through a drug test to use a controlled substance unlawfully, provided the test was administered within the past year. There are now hundreds of drug court programs across the country helping drug abusers to overcome their dependencies. At the core of these programs are drug testing for admission and throughout the life of participation in the program. Yet this positive drug test data, associated with Drug Court programs, is rarely, if at all, provided to the NICS Index. Given that a defendant can be admitted to a drug court program for any offense and not merely one related to drug abuse, it is evident that these prohibiting drug abuser records are not reaching the NICS Index. Funding is needed to develop systems for the transmission of this information to state repositories/NICS.

State Disqualifiers. In addition to the Federal prohibitions, some states have enacted additional prohibitions. Recently, the NICS Index was opened up to accommodate recording of state firearm denials based on state prohibitions. Generally, states are not reporting this information. Funding is needed to put into place the programming to collect and transmit these data to NICS.

Appendix B:

Suggested Resources and Reading

External Resources

- FBI NICS page: <http://www.fbi.gov/about-us/cjis/nics>
- U.S. Government Accountability Office: *Gun Control: Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks*, GAO-12-684, July 16, 2012: <http://www.gao.gov/products/GAO-12-684>
- “Promising practices by states for improved record reporting,” a Bureau of Justice Statistics web page with information responding to the NIAA and GAO-12-684 report: <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=491#promising>
- U.S. Department of Justice, Bureau of Justice Statistics: *Background Checks for Firearm Transfers, 2010 – Statistical Tables*, NCJ 238226, February 12, 2013: <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=4596>
- Bureau of Justice Statistics website: <http://bjs.ojp.usdoj.gov/>

SEARCH Resources

- “NICS and Background Checks” resource page: <http://www.search.org/products/criminal/nics/>
- Law and Policy Information pages–
 - NICS: <http://www.search.org/programs/policy/nics/>
 - Criminal History Records: <http://www.search.org/programs/policy/records/>
 - Noncriminal Justice Background Checks: <http://www.search.org/programs/policy/checks/>
 - Interstate Identification Index: <http://www.search.org/programs/policy/iii/>
- Surveys on criminal history record checks, state repositories, and related issues: <http://www.search.org/programs/policy/surveys/>
 - *Survey of State Criminal History Information Systems, 2010*: <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=259283>
 - State Repository Services Survey: http://www.search.org/files/pdf/Survey_of_State_Repository_Services.pdf
- Selected SEARCH Membership Group Resolutions on the NICS: http://www.search.org/files/pdf/SEARCH_RESOLUTIONS.pdf
 - 04-39: NICS Improvement Legislation (January 25, 2004)
 - 07-42: Enhancements to the Brady, National Instant Criminal Background Check System (February 14, 2007)
 - 07-46: Improvements to the Brady, National Instant Criminal Background Check System (July 20, 2007)
 - 10-57: NICS Improvement Amendments Act (NIAA) Funding (July 29, 2010)
- NICS NIAA Conference presentations: <http://www.search.org/about/news/2009/niaa.asp>