National Instant Criminal Background Check System (NICS)

2023 SEARCH Winter Membership Group Meeting
January 25, 2023
Customers of NICS

Federal firearms licensees (FFLs)

- Gun shop owners
- Pawn shop dealers that sell and redeem firearms
- Retail corporations

*As of January 1, 2023, there were 50,203 active FFLs in NICS.
Users of NICS

• Point-of-contact (POC) states

• Federal, state, local, and tribal law enforcement

• Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); FBI; Nuclear Regulatory Commission
FFLs contact FBI for all firearm background checks

37 Non-POC States

FFLs contact state for handguns, and contact FBI for long gun background checks

4 Partial POC States

State-issued handgun permit is used for handguns, and FFLs contact FBI for long gun background checks

2 Partial POC States

13 Full POC States

*25 ATF-Qualified Alternate Permits issued by state or local agencies

Please refer to the latest Permanent Brady Permit Chart for specific permit details.

www.atf.gov/rules-and-regulations/permanent-brady-permit-chart
Databases Searched by NICS

- Interstate Identification Index (III)
- National Crime Information Center (NCIC)
- NICS Indices

Department of Homeland Security’s U.S. Immigration and Customs Enforcement
The federal firearm prohibitions apply to any person who:

(g)(1) Has been convicted of a crime punishable by imprisonment for a term exceeding one year (or a misdemeanor crime punishable by imprisonment over two years)

(g)(2) Is a fugitive from justice

(g)(3) Is an unlawful user of or addicted to any controlled substance

(g)(4) Has been adjudicated as a mental defective or committed to a mental institution

(g)(5) Is an alien who is illegally or unlawfully in the United States or who has been admitted to the United States under a nonimmigrant visa

(g)(6) Has been discharged from the Armed Forces under dishonorable conditions

(g)(7) Has renounced U.S. citizenship

(g)(8) Is subject to a qualifying protection/restraining order

(g)(9) Has been convicted in any court of a misdemeanor crime of domestic violence (MCDV)

(n) Is under indictment/information for a crime punishable by imprisonment for a term exceeding one year
Research

• The NICS Section must often contact outside entities to obtain missing information.
  ▪ Federal, state, local, and tribal law enforcement
  ▪ Courts nationwide

• Examples of information
  ▪ Final criminal dispositions
  ▪ Felony indictments
  ▪ Relationship to victim
  ▪ Terms and conditions of probation or parole
  ▪ Validation of warrants and protection orders
Three Business Days

- An FFL is not prohibited from transferring a firearm after the third business day, even if the NICS Section has been unable to provide a proceed response.

- If information is received after the transfer of a firearm indicating the transferee is a prohibited person, a firearm retrieval referral is sent to the ATF.

Retrieval referrals are cause for concern due to public/officer safety risks and resource demands placed upon law enforcement in retrieving the firearm.
State and Federal NICS Checks
November 30, 1998–December 31, 2022

Total 443,172,700

- State Transactions 108,052,388
- State Permit Checks 121,461,548
- State Permit Rechecks* 42,694,291
- Federal 170,964,473
**Total Federal NICS Checks**

**November 30, 1998–December 31, 2022**

**Program-to-date 170,964,473**
NICS Firearm Background Checks
Top 10 Highest Days

November 30, 1998–December 31, 2022

<table>
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<tr>
<th>Date</th>
<th>Num Checks</th>
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<td>Nov 24 2017</td>
<td>203,086</td>
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<td>Nov 29 2019</td>
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<td>Mar 20 2020</td>
<td>210,308</td>
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<td>Mar 17 2021</td>
<td>236,295</td>
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<td>Mar 18 2021</td>
<td>209,332</td>
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<td>Mar 19 2021</td>
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<td>Mar 25 2021</td>
<td>212,008</td>
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<td>Mar 29 2021</td>
<td>208,002</td>
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<td>Mar 30 2021</td>
<td>220,655</td>
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<tr>
<td>Nov 25 2022</td>
<td>192,749</td>
</tr>
</tbody>
</table>
FFJ Processing Overview
Federal Prohibition 922(g)(2)

Criteria 1
- Criminal Warrant
  - Warrant issued subject to current or pending/potential criminal prosecution or testimonial obligation

And

Criteria 2
- Left the State
  - The person has left the issuing state

And

Criteria 3
- Intent—Inferred by Knowledge
  - The person’s purpose for leaving the state is to avoid prosecution or giving testimony
18 U.S.C. § 922(n)  
Presumption

It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.
NICS Section Processing

• Is the warrant active and criminal?

• If yes, what is the level of the warrant?
  o Felony punishable by more than one year imprisonment
  o Misdemeanor punishable by more than two years imprisonment
Exception:

Any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices would not meet the 18 U.S.C. § 922(n) presumption.
The NICS Section uses three methods to determine level:

- The level of the warrant is located with the submitting agency
- If offense is known, research conducted for level of the offense
- NCIC “EXL” field contains a numeric indicator 1-6 and all “felony” offenses from that state are punishable by more than one year
Overview of the Bipartisan Safer Communities Act
Bipartisan Safer Communities Act of 2022 (BSCA)

• Signed into law on 6/25/2022

• Weekly BSCA meetings with:
  o Department of Justice (DOJ)
  o ATF
BSCA Sections

• Section 12005. Misdemeanor Crimes of Domestic Violence

• Section 12004. Stop Illegal Trafficking in Firearms Act

• Section 12001. Juvenile Records—The Under 21 Background Check (U21)
Section 12005. Misdemeanor Crimes of Domestic Violence

• Expands dating relationship prohibition to include *a person who has a current or recent former dating relationship with the victim*

• Applies to persons convicted on or after 06/25/2022

• NICS Section began applying the “dating relationship” prohibition on 08/08/2022
Section 12004. Stop Illegal Trafficking in Firearms Act

• Firearms Handlers Background Check (FHC)
  o Voluntary
  o Current or prospective employees
  o Proposed limited to one check a year

• NCIC Stolen Firearms File:
  o FFLs will “receive access” to voluntarily verify whether firearms offered for sale to the FFLs have been stolen
Section 12001. Juvenile Records–U21

Expanded background checks for U21 to include juvenile criminal and mental health records. This requires three additional record checks of the following entities where the prospective U21 firearm transferee resides:

a) State criminal history or juvenile justice system information
b) State custodian of mental health adjudications and
c) Contact with the local law enforcement agency
U21 Background Check Process

- Delay all subjects less than 21 years of age for enhanced processing
- Conduct additional three outreaches
- 3-10 Day Extension Message
- No response: If no response is received by the 10th day from all agencies, NICS will consider a “no response” as lack of cause and will proceed U21 background checks
The first state, Maine, was deployed on 10/14/22

Phase two was implemented on 11/14/22, with implementation nationwide of part (c) of the required outreach. Part (c) requires outreach to a local law enforcement agency of the jurisdiction in which the person resides.

Phase three implemented 1/3/22, with all states for contact to the three state-level entities to determine if the person has a disqualifying juvenile record.
Overview of the NICS Denial Notification Act
NICS Denial Notification Act (NDNA)

• Signed into law March 15, 2022
• Requirement:
  FBI to send notice of denial to relevant state, local, or tribal law enforcement within 24 hours
• Effective date 10/1/22
• Implemented 9/26/22
NICS Denial Notification Act

Report to local law enforcement of a state or tribe within 24 hours of an individual being denied the transfer of a firearm

Include the date and time of the denial, the reason for the denial, the location of the FFL, and the identity of the person

Required on all denials under 18, U.S.C., § 922 (g) or (n) or state, local, or tribal law

If the FBI determines that the transfer was not prohibited, the FBI shall contact any agency previously notified and provide them with an updated determination
NDNA Process

- Ingestion of residential address information for certain transactions
- The address of the attempted purchaser is requested from FFLs by NICS only in cases where a transaction is denied or delayed to avoid having to contact the FFL a second time
- If proceeded or if the transaction remains unresolved, the address and all other relevant information about the purchaser is purged according to federal regulations
- Mapped law enforcement agencies based upon a city, state, county, and zip code combination of the FFL location and the city, state, county, and zip code combination of the attempted purchaser’s home address, when different
- The denial information is delivered via an unsolicited message through NCIC
- Deconfliction process
NICS Indices
What is the NICS Indices?

The NICS Indices contains information on prohibited persons as defined in 18 U.S.C. § 922(g) or (n) or state law.
Why Enter into the NICS Indices?

**WHY**

Readily identifies an individual as prohibited from receiving firearms based on a federal or state firearm prohibition (or a firearm-permit prohibition).

NICS users may make an immediate denial decision based on a descriptive match to a NICS Indices entry, without the need for outreach.

The NICS Indices contains information that may not qualify for entry in III or NCIC.

**WHAT**

- Mental health adjudications/commitments
- Non-fingerprinted felony convictions
- MCDV
- Controlled substance abuse information
- Court-ordered firearm restrictions
- Extreme risk protection orders
- Warrants/protection orders not in NCIC
- Indictment determinations
- State prohibitors
NICS Indices Contributor Ensures Accuracy and Validity

• Information contained within the NICS Indices meets a federal or state prohibition

• Source documentation must contain all descriptive data used in the NICS Indices entry

• Source documentation is retained and available for audit and appeal purposes

• The contributor must cancel the entry if the prohibition no longer exists

• The contributor must cancel the entry when the NICS Indices’ subject is known to be deceased

The contributor is responsible for the accuracy and validity of information being entered into the NICS Indices, per Title 28, Code of Federal Regulations, Part 25.5.
NICS Section Contact Information

NICS Business Relations Team
NICS Liaison@fbi.gov

Questions?