Challenges to Reporting Arrest and Disposition Information

MR. DAVE ROBERTS, SEARCH

MR. DION BRIGHT, FBI CRIMINAL JUSTICE INFORMATION SERVICES DIVISION
CHRI Improvements
FOR STATES IN ATTENDANCE
How do we gauge improvements to national CHRI?

• Arrest-to-disposition completion rates in the Next Generation Identification (NGI) System.

• Percentage of records indexed in the NGI System with an active state pointer.
Disposition Improvements

Total % of Arrests with Dispositions in the NGI System
For states in attendance.

FY 2018: 30%
FY 2022: 37%
Disposition Improvements

Total % of State-Owned Arrests with Dispositions in the NGI System

For states in attendance.

FY 2018: 28%
FY 2022: 39%
Pseudo-Pointer Improvements

• From FY 2018 to FY 2022, states in attendance claimed ownership of more than 87,000 pseudo-pointer records.
National Fingerprint File (NFF) Participation

• Places sole maintenance and dissemination responsibility for state-owned records with the state.
• Reduces need to send subsequent record maintenance and updates to the NGI System.
2022
Success Stories
Bulk Disposition Submissions

• Using spreadsheets to ingest bulk dispositions in the NGI System electronically and with minimal manual work for submitting states.

• Project launched in July 2022 with two states.

• 275,000 dispositions and counting submitted through this initiative.
Claiming Pseudo-Pointer Records

• The III Correlation File can be used to automate comparison of NGI pseudo-pointer records with records in your state system.

• Allows for quick identification of records for which the state system has at least as much information as the NGI System.

• Data pulls to help identify quick-win targets for claiming pseudo-pointers are also available.

• Thirteen states have received Correlation Files or data pulls to support pseudo-pointer projects this year.
New III MKEs

Delete Record Cycle (DRC)
Allows users to remove a single arrest cycle and associated disposition information.

Seal Record Cycle* (SRC)
Allows users to seal a single arrest cycle and associated disposition information.

Modify Record Cycle (MRC)
Allows users to add, replace, or delete individual arrest charges.

* Participation in the FBI Sealing Program required prior to use.
NGI Gateway

• Will be housed on the FBI’s Law Enforcement Enterprise Portal.
• It is secure and web-based.
• At launch, the NGI Gateway will offer disposition submission service.
• User provides standard disposition submission fields; fields are transformed into an electronic disposition submission which attempts to automatically update the NGI System.
• Pilot agencies are expected to begin testing in 2023.
Contact Us
State CHRI Improvement Team

State_CHRI@fbi.gov

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Clean Slate Overview

David J. Roberts
Executive Director

Criminal History Records Improvement Workshop
November 9, 2022
Discussion Today

1. Discussion of Collateral Consequences of Convictions
2. Historical Perspective on Records Relief
3. Research on Recidivism and Redemption
4. An Overview of Clean Slate Initiatives
5. Challenges Confronting States in Planning and Implementation
2. Collateral Consequences

Collateral Consequences of Conviction

- 27,000 rules bar formerly justice-involved people from holding professional licenses
- Restricting the sale of firearms via the National Instant Background Check System (NICS)
- 80% of employers regularly conduct background screening on candidates for full-time positions
3. Terminology Surrounding Records Relief

General Forms of Records Relief

• Expunge
  Historically, to *expunge* meant “to destroy or obliterate; it implies not a legal act, but a physical annihilation.” *Black’s Law Dictionary.* Expungement, like *erasure*, effectively destroys, obliterates, or otherwise excises the adjudication and/or the criminal record. Erasure means “The obliteration of words or marks from a written instrument by rubbing, scraping, or scratching them out.” *Black’s Law Dictionary.*

• Seal
  *Sealing* a criminal record, by contrast, preserves the record, but effectively closes it for public inspection and excludes it from use for many of the collateral consequences referenced. State statutes frequently restrict access of the sealed record to the defendant, criminal justice agencies, and other select agencies for limited purposes.

• Order of Non-Disclosure
  A court order prohibiting public entities, such as courts and police departments, from disclosing certain criminal records. (Texas)

• Vacate or Set-Aside conviction
  Permitting the offender to withdraw their plea of guilty and to enter of plea of not guilty or, if the offender was convicted after a plea of not guilty, the court will set aside the verdict of guilt, or by the court dismissing the information or indictment against the offender. (Washington/Michigan)
Other Forms of Records Relief

Pardon
A pardon is ordinarily a sign of forgiveness and is granted in recognition of the applicant's acceptance of responsibility for the crime and established good conduct for a significant period of time after conviction or release from confinement. A pardon is not a sign of vindication and does not connote or establish innocence. For that reason, when considering the merits of a pardon petition, pardon officials take into account the petitioner's acceptance of responsibility, remorse, and atonement for the offense.

Certificate of Rehabilitation
A court order declaring that a person convicted of a felony is now rehabilitated (California)

Order for the Restoration of Rights
A Governor’s order restores the rights to all individuals who have completed the terms of incarceration and have completed any period of supervised release (probation or parole) for any and all felony convictions. (Virginia-2016)

Certificate of Restoration of Opportunity
A civil court order that reduces barriers and restores eligibility for occupational licenses. (Washington)
- Requires successful completion of sentence, payment of fines, fees, restitution.
- No new crimes
- Some offenses are excluded (e.g., no serious felonies, sex offenses, required to register as sex offender).
Eligibility for Records Relief

Non-convictions

• Acquittal
• Case dismissed
• *Nolle prosequi (not to wish to prosecute)*

Convictions

• Nature and seriousness of the offense of conviction
  • Non-violent, no sex offenses, not requiring registration as sex offender, no domestic violence
  • Misdemeanors
  • Gross/High Misdemeanors
  • Specified Felonies
Eligibility for Records Relief

Convictions (continued)

• Special circumstances
  • Decriminalized offenses (marijuana use/possession)
  • Victim of human/sex trafficking. Defendant typically has the burden of proof.
• Successful discharge of the sentence (including payment of fines, fees, and restitution),
• Successfully complete defined waiting period since sentence completion (term varies based on the seriousness of offense),
• No new or current criminal activity, no charges pending, convictions in originating state, other states, federally.
• May limit the number of cases for relief and some lifetime exclusions based on prior convictions
Procedures for Records Relief

Petition-based Records Relief

• Requires the defendant to file a petition with the sentencing court seeking to seal, expunge, vacate, or set-aside an adjudication and filing/notification of the prosecutor.

• Petition must include details of the offense, sentencing court, prosecutor, and a formal copy of the criminal history record, often at a cost. Very detailed.

• Filing fees are often required, though these may be waived for indigency.

• Filing often requires assistance of an attorney, at substantial expense.

• Filing may require/assume access to computer and online resources

• Payment of legal financial obligations, such as fines, fees, restitution is often required.

• May require *Certificate of Eligibility* issued by the State Criminal History Repository, at a cost

• Explanation of justification for records relief may be required.
Petition-based Records Relief (continued)

- Waiting periods of 1, 2, 3, 5, 7, 10-years depending on the nature and seriousness of the offense and defined by statute.
- Prosecutor (and potentially the victim) must be notified and may object to records relief.
- Sealing/expungement of individual adjudications vs. the entire criminal history record.
- Limits on the number of expungements/sealing petitions:
  - Often there are limits on the number of expungements/sealing orders that can be applied, e.g., two misdemeanors and one felony (Mo. Rev. Stat. § 610.140.12)

All of these factors feed the **Clean Slate Gap**—

- The gap that exists between people who qualify but are unable to file for relief because they don’t have the funds, online access, education, legal support, etc.
4. Research on Recidivism and Redemption


Leonardo Aranegui, Ph.D., and Matthew R. Downe, BJS Statistician

Among prisoners released from state prisons in 2008 across 24 states, 82% were arrested at least once during the 10 years following release.1 The annual arrest percentage declined over time, with 43% of prisoners arrested at least once in Year 1 of their release, 39% arrested in Year 2, and 37% arrested in Year 10 (Figure 1). The Bureau of Justice Statistics (BJS) used prisoner records from the National Corrections Reporting Program and criminal history data to analyze the post-release offending patterns of former prisoners both within and outside of the state where they were imprisoned. This report presents findings from BJS’s new study of prisoner recidivism over a 10-year period. The study randomly sampled about 75,000 released prisoners to represent the approximately 409,300 state prisoners released across 24 states in 2008. These state-provided prisoners’ records and the FBI or state identification numbers that are needed to obtain criminal history data on the released prisoners.

Figure 1: Annual arrest percentage of state prisoners released in 24 states in 2008

<table>
<thead>
<tr>
<th>Year after release</th>
<th>Percent</th>
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<tbody>
<tr>
<td>1</td>
<td>43.9%</td>
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<tr>
<td>2</td>
<td>39.2%</td>
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<tr>
<td>3</td>
<td>35.7%</td>
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<tr>
<td>4</td>
<td>32.9%</td>
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<td>5</td>
<td>30.9%</td>
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<td>6</td>
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<td>7</td>
<td>28.6%</td>
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<td>8</td>
<td>27.5%</td>
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<tr>
<td>9</td>
<td>26.2%</td>
</tr>
<tr>
<td>10</td>
<td>25.0%</td>
</tr>
</tbody>
</table>

Note: Percentages may not sum to 100 due to rounding.

Table 4: Cumulative percent of state prisoners released in 24 states in 2008 who were arrested following release, by sex, race or ethnicity, age at release, and year following release

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Number of released prisoners</th>
</tr>
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<tr>
<td></td>
<td>Year 1</td>
</tr>
<tr>
<td>Sex</td>
<td></td>
</tr>
<tr>
<td>Male*</td>
<td>364,200</td>
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<tr>
<td>Female</td>
<td>45,100</td>
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<tr>
<td>Race/ethnicity</td>
<td></td>
</tr>
<tr>
<td>White**</td>
<td>161,400</td>
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<tr>
<td>Black</td>
<td>151,700</td>
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<tr>
<td>Hispanic</td>
<td>86,100</td>
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<tr>
<td>American Indian/Alaska Native***</td>
<td>4,800</td>
</tr>
<tr>
<td>Asian/Native Hawaiian/Other Pacific Islander****</td>
<td>2,300</td>
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<tr>
<td>Other††††</td>
<td>2,600</td>
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<tr>
<td>Age at release</td>
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<tr>
<td>24 or younger*</td>
<td>62,700</td>
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<tr>
<td>25–39</td>
<td>266,000</td>
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<tr>
<td>40 or older</td>
<td>140,600</td>
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<tr>
<td>40–54</td>
<td>124,600</td>
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<tr>
<td>55–64</td>
<td>13,600</td>
</tr>
<tr>
<td>65 or older†</td>
<td>2,300</td>
</tr>
</tbody>
</table>

Note: Data on prisoners’ sex were reported for 100% of cases; age at release, for over 99%; and race or ethnicity, for over 99%. The number of released prisoners is rounded to the nearest 100. Details may not sum to totals due to rounding. See appendix table 2 for standard errors.

*Comparison group.
†Difference with comparison group is significant at the 95% confidence level. The significance tests were not conducted on age subcategories.
‡Excludes persons of Hispanic origin (e.g., “white” refers to non-Hispanic whites and “black” refers to non-Hispanic blacks).
§Includes persons of two or more races or other unspecified races.

An Overview of Redemption

We believe that our analysis provides the criminal justice community with the first scientific method for estimating how long is “long enough” for someone with a prior record to remain arrest-free before he or she should be considered “redeemed” by a prospective employer.
Contrary to popular belief...most people who enter the criminal justice systems ultimately desist from crime (Rhodes et. al., 2014; Sampson and Laub, 2003). The risk of recidivism declines the longer a person is in the community and does not commit a crime. Eventually, a past criminal record is no longer predictive of future convictions.
5. Clean Slate Initiatives

Bringing Automatic Record Clearance to Your State

May 26, 2021

Michael Cowden, Director of Solutions Engineering, Code for America
Shayna Cummings, Staff Solutions Engineer, Code for America
Noella Sudbury, Sudbury Consulting, LLC

Moderated by Sharon Dietrich, Community Legal Services of Philadelphia

In 2016, Proposition 64 legalized marijuana in California and allowed reduction, dismissal, and sealing of certain prior marijuana convictions. Assembly Bill 1793, signed into law in 2018, required convictions eligible under Prop 64 to be automatically cleared by July 2020. A second bill, AB 1076, was passed in late 2019 and will extend automatic record clearance beyond marijuana convictions to arrests and convictions eligible under several existing record clearance laws. These include arrests that did not result in conviction, convictions that received a probation sentence, and misdemeanors and infractions that were not sentenced to probation.
(21) Sealed Record Information. Article IV, paragraph (b), permits the FBI and state criminal history record repositories to delete sealed record information when responding to an interstate record request pursuant to the Compact. Thus, the definition of “sealed” becomes important, particularly since state sealing laws vary considerably, ranging from laws that are quite restrictive in their application to others that are very broad. The definition set out here is intended to be a narrow one in keeping with a basic tenet of the Compact—that state repositories shall release as much information as possible for interstate exchange purposes, with issues concerning the use of particular information for particular purposes to be decided under the laws of the receiving states. Consistent with the definition, an adult record, or a portion of it, may be considered sealed only if its release for noncriminal justice purposes has been prohibited by a court order or by action of a designated official or board, such as a State Attorney General or a Criminal Record Privacy Board, acting pursuant to a federal or state law. Further, to qualify under the definition, a court order, whether issued in response to a petition or on the court’s own motion, must apply only to a particular record subject or subjects referred to by name in the order. So-called “blanket” court orders applicable to multiple unnamed record subjects who fall into particular classifications or circumstances, such as first-time non-serious drug offenders, do not fit the definition. Similarly, sealing orders issued by designated officials or boards acting pursuant to statutory authority meet the definition only if such orders are issued in response to petitions filed by individual record subjects who are referred to by name in the orders. So-called “automatic” sealing laws, which restrict the noncriminal justice use of the records of certain defined classes of individuals, such as first-time offenders who successfully complete probation terms, do not satisfy the definition, because they do not require the filing of individual petitions and the issuance of individualized sealing orders.
Clarification of terminology:

- Shift from *petition-based* to *state-initiated process*
- Automatic *initiation*, not sealing/expungement
- Record subjects must meet strict eligibility standards:
  - Only certain offenses (misdemeanor, low-level felonies)
  - Conditions must be met:
    - Waiting periods
    - No pending charges or subsequent convictions
    - Payment of fines, fees, and restitution
    - Prosecutor, law enforcement, victims *may* be able to object
- Clearance at the Adjudication level & Record level
- Courts must Order or Authorize Individual Orders
Clean Slate Research Project

Detailed profiles assessing legal, operational, policy, and technical challenges and solutions in 11 states.

<table>
<thead>
<tr>
<th>State</th>
<th>Clean Slate Campaign Status</th>
<th>Unified Court/Case Management Systems</th>
<th>% Disposition Reporting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michigan*</td>
<td>Legislation Passed</td>
<td>√</td>
<td>81%</td>
</tr>
<tr>
<td>Pennsylvania*</td>
<td>Legislation Passed</td>
<td>√</td>
<td>77%</td>
</tr>
<tr>
<td>Utah*</td>
<td>Legislation Passed</td>
<td>√</td>
<td>70%</td>
</tr>
<tr>
<td>Connecticut*</td>
<td>Legislation Passed</td>
<td>√</td>
<td>77%</td>
</tr>
<tr>
<td>Delaware*</td>
<td>Legislation Passed</td>
<td>√</td>
<td>93%</td>
</tr>
<tr>
<td>Colorado</td>
<td>Active Campaign</td>
<td></td>
<td>26%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Active Campaign</td>
<td></td>
<td>27%</td>
</tr>
<tr>
<td>Washington</td>
<td>Active Campaign</td>
<td></td>
<td>87%</td>
</tr>
<tr>
<td>Missouri</td>
<td>Active Campaign</td>
<td>√</td>
<td>78%</td>
</tr>
<tr>
<td>New York</td>
<td>Active Campaign</td>
<td>√</td>
<td>94%</td>
</tr>
<tr>
<td>Texas</td>
<td>Active Campaign</td>
<td></td>
<td>82%</td>
</tr>
</tbody>
</table>

Profiles from research with representatives of Criminal History Repositories, Courts/AOCs, Law Enforcement, and Prosecutors.
Pennsylvania

- Amended the law in 2021 eliminating court fees & fines as a barrier.
  - Sealed an additional 9.2 million cases
  - Restitution must still be paid to become eligible.
- 40 million cases sealed, impacting over 1.2 million people.
  - Contract with CRAs to update their records.
  - Periodic auditing to ensure records are current.
Pennsylvania

Utah

- Law passed in March 2019. Launched pilot project in February 2022
- Under petition-based process, BCI issued a Certificate of Eligibility that the petitioner filed with the petition for expungement. Costs.
- 2022 Legislature passed a bill to waive certificate and petition fees.
- Under Clean Slate, the AOC identifies records and notifies BCI.
- Thus far the Administrative Office of the Courts (AOC) has sent 84,237 records to the Bureau of Criminal Identification (BCI) to seal.
- An estimated 200,000 individuals have a case that is eligible; 20,000 more will become eligible each subsequent year.
Clean Slate Laws Passed

- Pennsylvania
- Utah
- **Michigan**
  - Michigan State Police identify eligible records, which are sent to the Administrative Office of the Courts for action.
  - Active planning and testing stage.
Clean Slate Laws Passed

- Pennsylvania
- Utah
- Michigan

- **Connecticut**
  - Actively planning for implementation.
Clean Slate Laws Passed

- Pennsylvania
- Utah
- Michigan
- Connecticut

- Delaware
  - Law passed November 2021. Effective date is August 2024.
  - An estimated 590,000 convictions will be eligible.
  - Actively planning for implementation.
Clean Slate Laws Passed

- Pennsylvania
- Utah
- Michigan
- Connecticut
- Delaware

- **Colorado**
  - Law passed 2022
  - Actively planning for implementation
Clean Slate Laws Passed

- Pennsylvania
- Utah
- Michigan
- Connecticut
- Delaware
- Colorado
- **Oklahoma**
  - Law passed 2022.
  - Actively planning for implementation
Funding to support records relief qualifies for NCHIP funding in 2022

2. Additional Areas for Grant Funding
   b. Supporting efforts to seal and expunge criminal history information in accordance with state laws and policies.

Allowable costs may include activities such as—

- Implementing or upgrading systems to automate processes for sealing and expunging criminal history information.
- Paying reasonable costs to reduce or eliminate backlogs in processing expungements
6. Challenges in Planning & Implementation

Confusing Terminology

- Expunged
- Sealed
- Set-aside
- Vacated
- Erased
- Order of non-disclosure
- Cleared
- Closed
Identifying eligible cases/records

- Identifying eligible offenses
- Qualifying records
  - Lifetime limits
  - Prior disqualifying offenses
  - Pending charges in home state
  - Pending charges in other jurisdictions and federally
  - Satisfactory completion of sentence
  - Payment of fines, fees, restitution
  - Completion of mandated waiting periods

Challenges in Planning & Implementation
Information sharing capabilities between agencies to access data and notify once records relief is granted

– Courts
– Criminal History Repositories
– Departments of Correction, Probation, and Parole
– Prosecutors
– Local Law Enforcement
– Consumer Reporting Agencies (CRAs)
Challenges in Planning & Implementation

Community Awareness

- Making justice-involved people aware of expanded records relief efforts
- Making justice-involved people aware when their records are successfully sealed, expunged, or otherwise cleared.

Research/Reporting

- Assess uptake, operations, and identify friction points
- Evaluate impact on justice-involved people
SEARCH can assist states

- Exploring policy and legislative analysis of Clean Slate proposals
- Work with the Criminal History Repository in sizing your pools of eligible candidates
- Help with planning for Clean Slate implementation
- Exploring technical solutions to enhance and expand information sharing capabilities between repositories, courts, prosecutors, etc.
- Help you in preparing NCHIP applications generally and Clean Slate provisions specifically
- Become an active member of our CCH Metrics Working Group
State 1 / First-Time Arrestees by Year
(All Arrestees = 404,859; First-Timers = 114,076)
State 2 / First-Time Arrestees by Year
(All Arrestees = 1,473,442; First-Timers = 581,508)
State 1: Rearrest by Age at First Arrest
2005 - 2016

CCH Analytics – Chart 3
State 2: Rearrest by Age at First Arrest
2005 - 2016

CCH Analytics – Chart 4
State 1: First-time Arrestee Cohorts by Subsequent Arrest by Year

- **All First-time Arrestees (Percent)**
- **First-time Arrestees w/ no subsequent arrest (Percent)**
- **First-time Arrestees w/ 1-2 subsequent arrests (Percent)**
- **First-time Arrestees 3+ subsequent arrests (Percent)**

Year of First Arrest:
- 2005
- 2006
- 2007
- 2008
- 2009
- 2010
- 2011
- 2012
- 2013
- 2014
- 2015
- 2016

Percent:
- 0.0%
- 10.0%
- 20.0%
- 30.0%
- 40.0%
- 50.0%
- 60.0%
State 2: First-time Arrestee Cohorts by Subsequent Arrest by Year

- All First-time Arrestees (Percent)
- First-time Arrestees w/ no subsequent arrest (Percent)
- First-time Arrestees w/ 1-2 subsequent arrests (Percent)
- First-time Arrestees 3+ subsequent arrests (Percent)

Year of First Arrest:
- 2005
- 2006
- 2007
- 2008
- 2009
- 2010
- 2011
- 2012
- 2013
- 2014
- 2015
- 2016

Percent:
- 0.0%
- 5.7%
- 9.5%
- 11.0%
- 12.4%
- 13.1%
- 14.8%
- 15.6%
- 17.0%
- 17.6%
- 18.1%
- 20.3%
- 22.0%
- 22.9%
- 23.1%
- 23.2%
- 22.8%
- 23.0%
- 22.8%
- 23.6%
- 23.6%
- 24.4%
- 24.3%
- 25.0%
- 26.0%
- 27.0%
- 28.0%
- 29.0%
- 30.0%
- 31.0%
- 32.0%
- 33.0%
- 34.0%
- 35.0%
- 36.0%
- 37.0%
- 38.0%
- 39.0%
- 40.0%
- 41.2%
- 40.9%
- 40.7%
- 40.5%
- 40.2%
- 39.9%
- 39.7%
- 38.4%
- 37.6%
- 37.4%
- 38.0%
- 38.7%
- 39.7%
- 40.0%
- 40.2%
- 40.5%
- 40.7%
- 40.8%
- 41.2%
SEARCH Membership Group
Meetings
2023 SEARCH Annual Membership Group Meeting &
Symposium on Justice Information Technology, Policy and Research

July 24-26, 2023
The Westin Hotel, Long Beach, California
Thank You

David J. Roberts
Executive Director
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(202) 909-0298
FY 22/23 NCHIP and NARIP Update

Ron Planty
Justice Statistics Policy Analyst
Criminal Justice Data Improvement Program

SEARCH Criminal History Records Workshop
November 8-9, 2022
BJS Record Improvement Programs

• **National Criminal History Improvement Program (NCHIP)** – originally authorized under the Brady Handgun Violence Protection Act to improve the automation, quality, timeliness, and immediate accessibility of criminal history and related information. From 1995-2022, BJS has awarded about $952 million to all states and territories and 1 tribe.

• **National Instant Criminal Background Check System (NICS) Act Record Improvement Program (NARIP)** – created pursuant to the NICS Improvement Amendments Act of 2007, seeks to address the gap in information available to NICS about such prohibiting mental health adjudications and commitments as well as other prohibiting factors. From 2009-2022, BJS has awarded over $212 million to 31 states and 3 tribes.

• **NEW: National Criminal History Record Improvement Program – Supplemental Funding (NCHIPSF)** – appropriated under the Bipartisan Safer Communities Act (Public Law 117-159)
## NCHIP Award Information

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<th></th>
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<td><strong>Enacted Appropriation</strong></td>
<td>$48.0</td>
<td>$48.0</td>
<td>$48.0</td>
<td>$50.0</td>
<td>$50.0</td>
<td>$53.3</td>
<td>$60.0</td>
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<td>$43.3</td>
<td>$39.9</td>
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<td><strong># of applications</strong></td>
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<td>42</td>
<td>43</td>
<td>41</td>
<td>40</td>
<td>39</td>
<td>42</td>
<td>33</td>
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<td><strong>Amount Requested</strong></td>
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<td>$43.3</td>
<td>$53.7</td>
<td>$48.3</td>
<td>$60.1</td>
<td>$67.3</td>
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<td>41</td>
<td>39</td>
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<td>40</td>
<td>33</td>
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<tr>
<td><strong>Amount Awarded</strong></td>
<td>$34.2</td>
<td>$33.9</td>
<td>$31.9</td>
<td>$43.2</td>
<td>$49.4*</td>
<td>$48.5</td>
<td>$53.5</td>
<td>$58.8</td>
</tr>
<tr>
<td><strong>% Available Funds Obligated</strong></td>
<td>80%</td>
<td>78%</td>
<td>80%</td>
<td>95%</td>
<td>109%</td>
<td>99.8%</td>
<td>99.7%</td>
<td>93.2%</td>
</tr>
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</table>

*NCHIP awards were supplemented with NARIP funding to three NARIP-eligible states.*
## NARIP Award Information

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<td>$20.8</td>
<td>$22.8</td>
<td>$22.7*</td>
<td>$22.8</td>
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<td>22</td>
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<td>20</td>
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<td>$22.5</td>
<td>$13.9</td>
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<td><strong>Amount Awarded</strong></td>
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<td>$14.8</td>
<td>$11.2</td>
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<td>$13.5</td>
<td>$20.7</td>
<td>$17.9</td>
<td>$18.2</td>
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<tr>
<td><strong>% Available Funds Obligated</strong></td>
<td>100%</td>
<td>66%</td>
<td>54%</td>
<td>92%</td>
<td>59%*</td>
<td>91%</td>
<td>79%</td>
<td>67%</td>
</tr>
</tbody>
</table>

*~$2.4 million in unspent NARIP funds used to supplement NCHIP awards for NARIP projects from NARIP-eligible states.
FY 2022 NCHIP Priorities

FY 2022 Priority Areas - Improving Dispositions and Mental Health Submissions Accessible to NICS

Applicants must focus efforts on improving the 1) availability of dispositions (specifically for felony and misdemeanor crimes of domestic violence) through the national systems and 2) reporting records of persons prohibited from possessing firearms for mental health reasons to the NICS. Therefore, recipients of funds must agree to use a portion of awarded funds to make such records accessible to NICS unless the state certifies in the application that it—

• Already makes available all dispositions to the national systems and records demonstrating a person is prohibited from possessing firearms for mental health reasons to NICS; or
• Will focus funds on another area of criminal history improvement that state reasonably argues represents a greater information sharing gap.
• No match requirement.
FY 2022 NCHIP Additional Funding Areas

- Supporting participation in the III and the National Fingerprint File (NFF), including adoption and implementation of the National Crime Prevention and Privacy Compact

- Supporting efforts to seal and expunge criminal history information in accordance with state laws and policies.
Expungement Activities

Allowable costs include —

• Implementing or upgrading systems to automate processes for sealing and expunging criminal history information

• Paying reasonable costs to reduce or eliminate backlogs in processing expungements
Expungement Activities

Funded in FY 2022

- 8 States received funds
- $6.1 million awarded for these activities
FY 2022 NARIP Priorities

FY 2022 Priority Area—Improve Identification and Reporting of Convictions of Domestic Violence and Mental Health Submissions to the NICS

Applicants must focus efforts on (1) identifying, flagging, and making immediately accessible to NICS records of persons prohibited from purchasing or possessing firearms for domestic violence convictions and (2) reporting records of persons prohibited from possessing firearms for mental health reasons. Therefore, recipients must agree to use a portion of awarded funds to make such records accessible to NICS, unless the state certifies in the application that it—

- Already makes available to NICS information on all persons prohibited from possessing firearms due to a domestic violence conviction or prohibiting mental health reason; or
- Will focus funds on another category of qualifying NICS records that the state reasonably argues represents a greater information gap.
FY 2023 National Criminal History Improvement Program Supplemental Funding (NCHIPSF)

NEW Program

• Developed to implement Title III, Division B (3) outlined in the Bipartisan Safer Communities Act (P.L. 117–159)
• Amount available - $80 million (FY 2022–2023 combined)
• Eligible applicants
  – State criminal justice agencies designated by the governor
  – State court systems
  – federally recognized tribes
• No match requirement
FY 2023 NCHIPSF Priorities

• Improving Access and Reporting of Adult and Juvenile Dispositions and Mental Health Submissions to NICS
  – Updating and automating case outcomes from courts and prosecutors in state or tribal records and the FBI’s Criminal History File.
  – Improving access to information (including juvenile information, unless prohibited under state law) concerning persons prohibited from possessing or receiving a firearm for mental health reasons and transmitting relevant records to NICS.
  – Supporting efforts to seal and expunge criminal history information in accordance with state laws and policies.

• Supporting participation in the III and the National Fingerprint File (NFF), including adoption and implementation of the National Crime Prevention and Privacy Compact
Solicitation Schedule

FY 2023 NCHIPSF Solicitation

– Anticipate release of solicitation mid/late November

– Application deadline late February

– Awards made late spring/early summer 2023
Solicitation Schedule (cont.)

FY 2023 NCHIP and NARIP Solicitations

– Anticipate release of solicitation in early March

– Application deadline in mid May

– Awards made by September 30, 2023
FY 2023 NCHIP/NARIP Funding Levels

If Congress passes a budget...

- House Mark - $110 million (minimum of $25 for NARIP)
- Senate Mark - $125 million (minimum of $25 for NARIP)

If it’s a full year continuing resolution

- FY 2022 amount ~ $95 million (minimum of $25 for NARIP)

Note: Available amount is lower after OJP-wide assessments and other costs are deducted.
NCHIP/NARIP Project Categories

• Court Specific Projects
• Disposition Related Activities
• NICS Indices Records
• Technical Enhancements
• How will this project improve the quality, completeness, availability of criminal history (or related records) at the national level? In particular, felonies, MCDVs, and mental health information.

• Are the proposed projects part of a long-range record improvement plan to address gaps in reporting?

• What is the national impact of the project (particularly as it relates to records access for national background checks)?

• Are quantitative measures available to describe or assess the impact?
Questions?

E-mail: Ronald.Planty@usdoj.gov
Criminal History Improvements
Workshop Introduction

David J. Roberts
Executive Director
SEARCH

Portland, Maine
November 8, 2022
Purpose of Workshop

• Provide context for how criminal history records are created and maintained
• Explore strategies and techniques to improve information-sharing capabilities and criminal history records data quality
• Share state experiences
  – Identify challenges to effective and timely information sharing
  – Learn from others regarding promising practices and innovative approaches
Overview of the Criminal History Record

Name: Fred Brown
Alias: None
Residence: N.Y. where born
Nativity: German
Occupation: None
Age: 24
Height: 5'11"
Build: Stout
Hair: Black
Date of Arrest: Jul 29
Arrested by: Frank Wilson
Where Arrested: Chicago, Ill.
Crime Charged: Robbery
Marks, Scars, Etc.: None

Date of Birth: 1-17-95
State: Ill.
Nationality: American
Age: 35
Complexion: Fair
Height: 5'10 1/2"
Eyes: Grey
Weight: 255 lbs.
Hair: Dark Brown
Build: Stout

Sears and marks: Oblige scars of 4 across cheek 2 on left ear. Vertical scars of 2 on left arm. Oblige scars of 2 on inner left arm. Left nostril.

CRIMINAL HISTORY

<table>
<thead>
<tr>
<th>NAME</th>
<th>NUMBER</th>
<th>CITY OR INSTITUTION</th>
<th>DATE</th>
<th>CHARGE</th>
<th>DISPOSITION OR SENTENCE</th>
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<tbody>
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<td>Fred Brown</td>
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<td>Chicago, Ill.</td>
<td>12-2-1919</td>
<td>Dis Charged</td>
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<td></td>
<td></td>
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Date of Discharge: 5-8-1926

Additional remarks: No.

Disposition of Case: N.A.
Overview of the Criminal History Record

Name: H. Bertillon
Names: Alphonse
Surname and aliases:
Date of birth: April 22, 1853
Place of birth: Paris
Sex: M
Departure:
Father: Dr. Louis
Mother: Marie Zoé Guillon
Characteristics:
Height: 78 cm
Pied: 27.4 cm
Nose: 19.4 cm
Hair: 5 cm
Breast: 45.2 cm
Ear: 6.7 cm
Cheeks:
Cheek: 3.1 cm
Mouth: 3 cm
Neck: 1.9 cm
Hair:
Hair:
Hand:
Left hand:
Right hand:
Markings and scars:
I.
II.
III.
IV.
V.
VI.
Overview of the Criminal History Record
Automation of State Criminal History Records
Number of Subjects in State CCH Files

Number of Subjects in State Criminal History Files (Millions)

Year | Total | Automated | Manual
--- | --- | --- | ---
2006 | 80.7 | 73.6 | 7.1
2008 | 92.3 | 85.8 | 6.5
2010 | 97.9 | 90.4 | 6.0
2012 | 100.6 | 94.4 | 6.2
2014 | 105.6 | 100 | 5.5
2016 | 110.2 | 105.9 | 4.3
2018 | 112.5 | 109.4 | 3.1
2020 | 114.4 | 109.1 | 5.2
Noncriminal Justice Queries Continues to Expand

Volume of Fingerprints Processed for Criminal Justice and Noncriminal Justice Purposes (Millions)

- Total Fingerprints Processed
- Total - Criminal Justice Purposes
- Total - Non Criminal Justice Purposes

Year

- 2006
- 2008
- 2010
- 2012
- 2014
- 2016
- 2018
- 2020

Volume of Fingerprints Processed:
- 2006: 7.7
- 2008: 10.1
- 2010: 10
- 2012: 10.5
- 2014: 11.7
- 2016: 11.3
- 2018: 10.5
- 2020: 7.5

Total - Criminal Justice Purposes:
- 2006: 12.1
- 2008: 12.1
- 2010: 11.8
- 2012: 12.7
- 2014: 12.2
- 2016: 11.3
- 2018: 10.5
- 2020: 7.5

Total - Non Criminal Justice Purposes:
- 2006: 19.8
- 2008: 22.2
- 2010: 21.8
- 2012: 23
- 2014: 23.9
- 2016: 25.9
- 2018: 25.8
- 2020: 20.3
## Low Disposition Reporting

Percentage of All Arrests in State CCH Databases Having Final Dispositions

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<thead>
<tr>
<th>State</th>
<th>2012</th>
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<th>2016</th>
<th>2018</th>
<th>2020</th>
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## High Disposition Reporting

### Percentage of All Arrests in State CCH Databases Having Final Dispositions

<table>
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<tr>
<th>State</th>
<th>2012</th>
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<th>5 Survey Average %</th>
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<td>89.3</td>
<td>90.1</td>
<td>89.7</td>
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</table>
How are criminal history records established?

• Fingerprint capture
  – Time of arrest
  – Pursuant to court order

• Assignment of State Identification Number (SID) and FBI Universal Control Number (UCN)
Criminal History Records Maintained by the FBI

- Fingerprint images
- Federal arrest, prosecution and disposition records
- Interstate Identification Index (III) pointers
- “Pseudo-pointer” records not supported by states
- Limited state records replicated to the FBI
Criminal History Records Maintained by States

• State Identification Bureau
  – Fingerprint images

• Criminal history repository
  – Arrests
  – Prosecutions
  – Court dispositions
  – Supervision/custody status
  – State protection orders
  – State warrants
State Overviews

- Who is responsible for creating and maintaining criminal history records?
- What are your state-specific fingerprinting requirements?
- Who is responsible for contributing criminal history information?
  - Law enforcement
  - Prosecutors
  - Courts
  - Jails/prisons
  - Community supervision agencies
National Instant Criminal Background Check System
NICS
The Brady Act

The Brady Handgun Violence Prevention Act of 1993 (Brady Act) is the result of . . .

• The attempted assassination of former President Ronald Reagan.
• Permanent injuries sustained by Press Secretary James Brady.
• Mr. and Mrs. Brady’s lobby for stricter regulations in relation to the transfer of firearms.

The Brady Act was approved by Congress on November 30, 1993, as an amendment to the Gun Control Act of 1968.
Customers of NICS

Federal firearms licensees (FFLs)

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

*As of November 1, 2022, there were 50,292 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
NICS Participation Map

- **37 Non-POC States**: FFLs contact FBI for all firearm background checks
- **13 Full POC States**: FFLs contact state for all firearm background checks
- **4 Partial POC States**: FFLs contact state for handguns, and contact FBI for long gun background checks
- **2 Partial POC States**: State-issued handgun permit is used for handguns, and FFLs contact FBI for long gun background checks

*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]
Expectations of a NICS POC

• Access the NICS as part of its background check process

• Ensure all Federal Firearms Licensees (FFL) are provided access

• Disseminate NICS operational information to all users

• Ensure background checks are initiated only by authorized personnel

• Adhere to all applicable federal firearm laws

• Ensure a process and personnel are in place to review record data and make eligibility decisions and respond to FFLs
Expectations of a NICS POC

• Transmit final status determinations

• Adhere to federal regulations regarding the purging of transaction data

• Conduct Immigration Alien Query on all non-U.S. citizens

• Deny firearm transfers and/or Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)-qualified alternate permits on federal criteria

• Shall not deny on naked arrest unless a state law authorizes such practice
Expectations of a NICS POC

• Confirm hit confirmations in response to National Crime Information Center inquiries

• Ensure a state-generated Transaction Number can be cross referenced with the NICS Transaction Number

• Acknowledge entries made to the NICS Indices will be utilized for allowable NICS uses

• Participate, support, and/or coordinate audits of NICS usage, access, determinations, and state records submitted to the NICS Indices

• Establish an appeal process for denied individuals
NICS Background Check Initiation

- The applicant completes an ATF Form 4473 at an FFL’s place of business.
- In non-POC states, the FFL uses the NICS E-Check to initiate a background check or contacts the NICS Contracted Call Center via telephone.
- A biographic search is conducted.
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
Biographical data does not match any of the databases searched by NICS, the FFL receives an instant **PROCEED**.

Biographical data does match, and specific requirements are met, the FFL receives an instant **DENY**.

Valid matches in any of the databases not resulting in an instant **PROCEED** or **DENY** are forwarded for evaluation by a NICS legal instruments examiner (NICS examiner).
NICS Examiner Evaluation

If not a valid match by descriptors or is a valid match with no prohibiting information — **PROCEED**

If a valid match by descriptors and the information is prohibiting — **DENY**

Additional research is needed — **DELAY**

Delayed transactions are placed into a queue to be researched.
The Gun Control Act
Title 18, United States Code (U.S.C.), section 922(g) & (n)

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.
Interim Processing Overview
18 U.S.C. § 922(n)  
Interim 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
Interim 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.
NICS Section
Interim Processing

• The NICS Section uses three methods to determine level:
  o The level of the warrant is located with the submitting agency
  o If offense is known, research conducted for level of the offense
  o 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

• Misdemeanor Crime of Domestic Violence
• Stop Illegal Trafficking in Firearms Act
• Juvenile records
Overview of the NICS Denial Notification Act
NICS Denial Notification Act

• Signed into law March 15, 2022

• Requirement:
  FBI to send notice of denial by FBI to relevant state, local, or tribal law enforcement within 24 hours

• Effective date October 1, 2022
  (Implementation date September 26, 2022)
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 if the denial, the reason for the denial, the location of the federal firearms licensee (FFL), and the identity of the person.

- Required on all denials under Title 18, United States Code (U.S.C.), section 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.
NICS Denial Notification Act

Denial notification is delivered to the appropriate law enforcement agency based on the city, state, county, and zip code combination of the FFL location and the city, state, and zip code combination of the attempted purchaser’s home address, if different.

NICS mapped the law enforcement agency Originating Agency Identifiers to the combinations.

CJIS Systems Officers verified ORI lists for accuracy and can provide ongoing maintenance over mapping.

Denial notifications are delivered via an NCIC $.H.NDN unsolicited message.

Testing was conducted to confirm receipt and delivery to the local agencies.

All states and U.S. Territories are now receiving denial notifications successfully.
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
- Misdemeanor crimes of domestic violence (MCDV)
- Controlled substance abuse information
- Court-ordered firearm restrictions
- Extreme risk protection orders
- Warrants/protection orders not in NCIC
- Indictment determinations
- State prohibitors
The contributor is responsible for the accuracy and validity of information being entered into the NICS Indices, per Title 28, Code of Federal Regulations [C.F.R.], Part 25.5.
Questions?
NICS Section Contact Information

NICS Business Relations Team
NICSLiaison@fbi.gov
The Consolidated Appropriations Act of 2022 (hereinafter “Act”) was signed into law in March 15, 2022. Section 1011 of the Act, included the “NICS Denial Notification Act of 2022.” The Act requires the Attorney General to report background check denials to state authorities and will require the FBI CJIS Division’s NICS Section to make notification to state, local, or tribal law enforcement of all FBI NICS denied transactions within 24 hours beginning October 1, 2022. The notification will include the date and time of the denial, the reason for the denial, the location of the federal firearms licensee (FFL), and the identity of the individual. If at any time, the original denial is changed to a proceed, an updated notification to those agencies originally notified will be required.

### Notification Process

Denial notifications will be delivered to the appropriate law enforcement agency based on the city, state, county, and zip code combination of the FFL location and the city, state, county, and zip code combination of the attempted transferee’s home address when different. Denial notifications will be delivered via an NCIC $.H.NDN unsolicited message. The use of the International Justice and Public Safety Information Sharing System Network administration message is available for states who cannot deliver the $.H.NDN unsolicited message to law enforcement agencies at this time.

All available information relating to the denial is delivered in the notification. The NICS Section is unable to provide additional information relating to the individual or the record related to the reason for the denial.

### Deconfliction Information

The Bureau of Alcohol, Tobacco, Firearms and Explosives actively investigates certain denials made based on federal prohibitions. The NICS denial notifications are delivered containing a caveat to assist with potential deconfliction that could be needed for investigation prior to an agency taking any necessary action. State, local, or tribal agencies may also have deconfliction procedures in place that agencies should consider as well. There is no legislative requirement for any action placed on the receiving agency and the NICS Section is not requesting any action to be taken based on receipt of a denial notification. Each state and/or agency is responsible for establishing any necessary policy/procedure related to the denial notifications in accordance with their authorities. To determine if your state has a policy in place, contact your respective CJIS systems agency or local agency administration for proper guidance and handling of the denial notification received.

Visit [www.FBI.gov](http://www.FBI.gov) for more information
National Instant Criminal Background Check System (NICS) Section

Example Denial Notification

The following is the denial notification that will be received when an individual is denied the attempted transfer of a firearm:

**************************************************************************
FIREARM DENIAL NOTICE:
A PERSON PURCHASING/RESIDING IN YOUR JURISDICTION WAS RECENTLY DENIED THE TRANSFER OF HANDGUN
**************************************************************************

THE FBI ENCOURAGES YOU TO CONTACT YOUR LOCAL BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES OFFICE PRIOR TO TAKING ACTION. CHARLESTON ATF, 304-234-5678

THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS) SECTION CONDUCTED A NAME SEARCH USING DESCRIPTIVE DATA, NOT FINGERPRINTS, FOR A FIREARM BACKGROUND CHECK WHICH WAS DENIED ON 4/26/2022, 02:02:23PM FOR:

NAME: DOE, JOHN L. NTN: 102356748
HEIGHT: 6’1” WEIGHT: 185 SOCIAL SECURITY NUMBER: 123-45-6789
RESIDENCE ADDRESS: 456 AMERICAN WAY, APPLE PIE, APPLE PIE COUNTY, WV 22445

INFORMATION RECEIVED INDICATES THE ATTEMPTED PURCHASER IS PROHIBITED FROM RECEIVING OR POSSESSING FIREARMS IN THE STATE OF PURCHASE AND/OR STATE OR RESIDENCE, BASED ON:

SUBJECT OF QUALIFYING PROTECTION ORDER

THE ATTEMPTED PURCHASE OCCURRED AT:

FIREARM DEALER: USA ARMS
ADDRESS: 123 MAIN STREET, HOMETOWN, HOMETOWN COUNTY WV, 23456
PHONE: 304-625-1002

SHOULD YOU HAVE QUESTIONS REGARDING THIS NOTIFICATION, PLEASE VISIT: WWW.FBI.GOV/NICSDENIALS

THIS NOTIFICATION WAS ALSO PROVIDED TO THE FOLLOWING ORI(S):

WV0470150 SO APPLE PIE COUNTY 304-478-0000
WV0625630 PD HOMETOWN 304-457-0000

Created by: The NICS Business and Liaison Unit/July 2022
Overview of How Criminal History Records are Used

Dennis DeBacco
Justice Information Services Specialist
SEARCH

Portland, Maine
November 8-9, 2022
Primary use of criminal history record information

• Criminal justice, and criminal justice employment purposes
• Noncriminal justice licensing, employment, and regulatory purposes
• Research
Traditional consumers of criminal history record information

- Law Enforcement
- Local Jails
- Prosecutors
- Courts
- Corrections
- Parole and Probation
Today’s Consumers

- Health care providers
- Daycare providers
- Caregivers — residential facilities
- School teachers
- Non-teaching school personnel, including volunteers
- Volunteers working with children
- Prospective foster care parents
- Prospective adoptive parents
- Relative caregivers
• Insurance brokers
• Security guards
• Civilian process servers
• Charter schools
• Real estate agents
• Lottery and gaming regulators/key personnel
• Medical boards
• Bail bondsmen
• Taxicab drivers
• Mortgage brokers
• Medical professionals
• Realtors
• Hazardous materials licensees
Authority to conduct noncriminal justice background checks

- State statutes
- Public Law 92-544
- National Child Protection Act (NCPA)
- Volunteers for Children Act (VCA)
- Adam Walsh Child Protection and Safety Act
- Native American Housing and Self Determination Act
- Serve America Act

Prints Processed (in millions)


Criminal Justice

Non-Criminal Justice
• **Anomaly detection**
  – Early problem identification
  – Potential data quality issues

• **Trend analysis**
  – Change in volume of arrests and dispositions
  – Changes in time elapsed between arrest and dispositions

• **Reporting**
  – Stakeholder reports
  – Funding requests
• First-time arrestee cohorts
• Recidivism
• Risk assessments
• Criminal career development
• Redemption
Let’s talk a bit

• How are criminal history records used in your office?
• Has your state experienced a shift between criminal justice and noncriminal justice processing/requests?
Questions
Promising Practices for Disposition Reporting

MR. JIM HARRIS, NATIONAL CENTER FOR STATE COURTS

MS. RILEY COMBS, FBI CRIMINAL JUSTICE INFORMATION SERVICES DIVISION
• What’s working well in your state?
Goals for Disposition Reporting

ACCURATE

COMPLETE

TIMELY
Common Obstacles

- Lack of automation.
- Stakeholder communication barriers.
- Missing arrest fingerprints.
End-to-End Automation

• Use a unique tracking number to facilitate matching dispositions to arrests.

• Leverage data mapping to ensure all stakeholder systems capture and transmit key data fields.

• Collaborate with all stakeholders to ensure consistent use of key data fields.
Partial Automation

• Automate submission of arrest information to courts to facilitate better matching.

• Automate submission of dispositions from courts/prosecutors to the central repository.

• Automate matching of arrests to dispositions.
Stakeholder Communication

• Dedicated central repository staff who maintain regular contact with all contributing agencies – law enforcement agencies, prosecutors, courts, corrections, and community supervision.

• Provision of disposition dashboards to all contributing agencies.

• Ongoing training opportunities to educate contributing agencies on their roles in reporting dispositions.
Obtaining Missing Fingerprints

• Collect fingerprints at any stage in the criminal justice lifecycle – i.e., court, corrections, probation/parole – to establish the arrest.

• Use of mobile biometric capture devices to reduce burden of fingerprinting.

• Implement and/or enforce fingerprinting mandates through statute or policy.
Share your best practices!

Riley Combs
rjcombs@fbi.gov
State_CHRI@fbi.gov

Jim Harris
jharris@ncsc.org
Role of Courts in Disposition Reporting

Criminal History Records Improvement Workshop
Portland, Maine
November 8–9, 2022
Benefits of Complete, Accurate and Timely Disposition Reporting

- For criminal justice uses
  - Well-understood and already discussed in this workshop
- For non-criminal justice uses
  - Also discussed earlier today
  - More interest in recent years
  - Impacts are more publicized
Disposition Reporting Obstacles (DTF)

- Systemic infrastructure problems
- Lack of awareness
- Inadequate resources
- Lack of automation
  - Systems lack functionality
  - Systems do not communicate
  - Systems don’t share key elements
Disposition Business Processes / Capabilities

From Warrant and Disposition Toolkit (https://www.wdmtoolkit.org)
High-level process flow for an Arrest
Dispositions should be reported electronically.
If dispositions are reported electronically . . .

- Improved completeness
  - Assuming required info is captured
  - Including key elements passed from LE and/or Prosecutor

- Improved accuracy
  - Intuitive systems to capture dispositions
  - Nothing is re-keyed by repository staff, reducing chance for errors

- Improved timeliness
  - Court staff don’t have to manually prepare disposition reports
  - Minimal involvement of repository staff
  - Automation could achieve near real-time reporting
Figure out who the court needs to work with:

- State AOC (unified court states)
- Local court (non-unified states)
- Other justice or executive branch agency managing and/or hosting court CMS
- Vendor maintaining and/or hosting court CMS
Strategies for implementing electronic disposition reporting (cont.)

- Get filings electronically
  - Including record keys unique to each case and/or charge

- Resolve issues relating to charge identification and reconciliation
  - Consider capturing and retaining charge details and disposition of each phase:
    - Arrest
    - Prosecutor
    - Court

- Always share record keys when exchanging data with repository or other justice partners
  - This could simply be a pass-thru for courts
Mechanics for ways electronic disposition reporting can be implemented

- Format – XML, JSON, flat files, batch files, etc.
- Protocols/ – APIs, Web Services, SOAP, REST, etc.
- Existing standards use NIEM conformant service specifications using SOAP and XML
- Some organizations prefer REST and JSON
Common challenges implementing electronic reporting of dispositions

- **Missing data required by the repository**
  - How can courts capture these?

- **Mismatches between name or demographics between arrest**
  - Master name index?

- **Mismatches between charges filed and adjudicated**
  - Linking back to arrest charges?
  - Common charge tables?
Q&A / Discussion

- Are courts reporting dispositions electronically in your state?
- What record keys are used for matching?
- What works (and what doesn’t) in your state?
- What are you currently working on to improve disposition reporting in your state?
Applying the prohibition under Title 18, United States Code (U.S.C.), section (§) 922(n) denying firearms transfers to those charged with a crime punishable by more than one year incarceration

Pursuant to 18 U.S.C. § 922(t)(4) and (5), the holder of a federal firearms license (FFL) cannot transfer a firearm to any person if receipt of a firearm by a that person would violate 18 U.S.C § 922(g) or (n).

18 U.S.C. § 922(n) makes it 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 in interstate or foreign commerce.”

The FBI has determined that under this provision, and the case law interpreting it, that the NICS Section will deny a proposed transaction when:

1. Any arrest warrant is discovered by NICS in NCIC/III for the proposed transferee, and
2. The warrant matches the biographical information of the prospective transferee and is validated by NICS as being active, and
3. The arrest warrant is issued by a court for a “serious crime” meaning either a qualifying felony crime punishable by more than one-year of incarceration or for a qualifying misdemeanor crime meaning punishable by more than two-years of incarceration BUT is not for a crime focused upon the “regulation of business practices.” (e.g., anti-trust violations, restraint of trade, SEC violations, etc...) Based upon prior case rulings, the “regulation of business practices” does not exclude application of § 922(n) to crimes of larceny, mail and wire fraud, or tax fraud.

The FBI made this determination based upon the following legal conclusions:

1. The phrase “under indictment” in the 18 U.S.C. § 922(n) equally refers to an indictment, information, or state criminal complaint.

   Despite the verbiage of § 922(n), an “indictment” through a grand jury is not required for this prohibition to apply. 18 U.S.C. § 921(a)(14) provides that, “indictment’ includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.” Further, Title 27, Code of Federal Regulations (C.F.R.) § 478.11, which defines terms for application of ATF regulations, states “indictment”:
“…includes an indictment or information in any court, under which a crime punishable by imprisonment for a term exceeding 1 year (as defined in this section) may be prosecuted, or in military cases to any offense punishable by imprisonment for a term exceeding 1 year which has been referred to a general court-martial. An information is a formal accusation of a crime, differing from an indictment in that it is made by a prosecuting attorney and not a grand jury.”

Several Circuit Court decisions have held that the term “under indictment” regarding the statute implicated here includes an individual charged by information or by a state criminal complaint.

2. 18 U.S.C. § 922(n) is satisfied by the mere existence of a qualifying criminal charge without a review of the charging document itself or consideration of the elements of the crime charged.

In U.S. v. Chambers, the Fifth Circuit resolved the appeal of a person convicted of both making a false statement when acquiring a firearm pursuant to 18 U.S.C. §922(a)(6) and for receiving a firearm while under felony indictment pursuant to 18 U.S.C. §922(n). See U.S. v. Chambers, 922 F.2d 228 (5th Cir. 1991). Defendant Chambers had been charged with violating these federal statutes upon an outstanding criminal charge in state court which was dismissed prior to the federal criminal trial. See id. In upholding the conviction, the Fifth Circuit relied upon a similar ruling by the U.S. Supreme Court to hold that federal firearms laws focus not upon reliability of a conviction but upon the mere fact of conviction, or even of an indictment, to keep firearms away from potentially dangerous persons. See id. at 238 – 239. The Court concluded that, “Regardless of whether the asserted defects in Chambers’ indictment were such as Texas law would allow to be first raised in a post-conviction habeas corpus proceeding, the indictment had at least sufficient colorable status as an official felony charge to invoke section 922(n) and preclude Chambers from resorting to pure self-help in the acquisition of firearms without first setting the indictment aside.” See id at 240.

Therefore, the FBI determined that the existence of the indictment for a qualifying criminal charge alone was sufficient to trigger the prohibition of 18 U.S.C. § 922(n) without a review of the charging document itself or consideration of the legal sufficiency of the charging document.
3. Arrest warrant data within the National Criminal Information Center (NCIC) database which is checked by NICS for firearms transactions can be relied upon to believe it more likely than not judicial proceedings for the charge identified in the warrant have been initiated in satisfaction of the Fourth Amendment and application of 18 U.S.C. § 922.

Prior court decisions have held that the identification of an individual by NCIC as being the subject of an active arrest warrant is sufficient probable cause to satisfy the Fourth Amendment of the U.S. Constitution and seize the person through an arrest. The court rulings make it reasonable to infer that an arrest warrant previously obtained and recorded in the NCIC system by criminal justice agencies with the intent that it be relied upon by law enforcement officers all over the country for the purpose of arresting persons in compliance with the Fourth Amendment is also sufficient to demonstrate the existence of an indictment, information, or criminal complaint against the subject of that arrest warrant. Given that a court issued the warrant, if the warrant is still active and for the serious offenses at issue for the application of 18 U.S.C. § 922(n), it is more likely than not and therefore reasonable to infer that the individual has been formally charged in some manner. Therefore, it is a reasonable and proper presumption that arrest warrants entered in the NCIC system are a sufficient basis to conclude the charges described have been initiated and exist for purposes of executing lawful arrests and applying the prohibition in 18 U.S.C. § 922(n). This presumption is also consistent with the congressional intent for 18 U.S.C. § 922(n) as referenced by the prior court decisions which is to prevent those persons charged with felony crimes from obtaining firearms.

4. Charges to which 18 U.S.C. § 922 apply include any felony crime punishable by a term of imprisonment of greater than one year, or to any serious disqualifying misdemeanor punishable by a term of imprisonment of greater than two years, excluding crimes pertaining to antitrust violations, unfair trade practices, restraint of trade, or other similar offenses related to the regulation of business practices.

The 1968 Gun Control Act (GCA) did not speak in terms of “felons” being prohibited from possessing firearms. Instead, as noted above for § 922(n) - and as is the case for 18 U.S.C. § 922(g)(1) - the GCA spoke in terms of persons subject to “crimes punishable by imprisonment for a term that exceeds one year.” That phrase is further defined by 18 U.S.C. § 921(a)(20), in referencing “crimes punishable by imprisonment for a term exceeding one year.” The law excludes crimes which are broadly known as “business practices exceptions” (‘. . . antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices” (see, 18 U.S.C. § 921(a)(20)(A)); and “any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment
of two years of less.” (18 U.S.C. § 921(a)(20)(B)). This prohibition has been applied to persons awaiting felony charges for larceny, mail and wire fraud, and tax fraud.

5. **It is more likely than not that the firearms involved in the transactions being reviewed by NICS satisfy the jurisdictional requisite of a “minimum” nexus with interstate commerce as interpreted by courts for application of prohibitions in 18 U.S.C. § 922.**

Federal courts have ruled that the nexus with interstate commerce to uphold convictions for firearms violations including 18 U.S.C. § 922(n) only required the government to prove some “minimal” nexus to interstate commerce. Courts have held that § 922(n) is quite extensive and its broad purpose is to proscribe commerce in guns by those facing serious criminal punishment and its reach is correspondingly broad to protect the public. As such, Courts have interpreted the interstate commerce requirement for and only requiring that the firearm or its components have previously traveled in interstate commerce to uphold a conviction. The presumption by the FBI is that for the checks performed by NICS that it is more likely than not that the firearms involved in transactions will satisfy this “minimal nexus” requirement.

The NICS background check is typically initiated by a Federal Firearms License (FFL) holder contacting NICS to determine if the prospective buyer or transferee is a prohibited person to avoid violating 18 U.S.C. §922(d)(1). The FBI asserts that to apply this provision to prospective transferees who are sought by active arrest warrants, the FFL is relying upon NICS to prevent the FFL from violating this statute. Therefore, preventing an FFL from violating 18 U.S.C. §922(d)(1) is also relevant to the creation of a presumption of an interstate nexus for purpose of applying the prohibition for firearms transferees from being under an indictment, or information, or state criminal charge for a felony crime. Courts have held that for application of 18 U.S.C. §922(d)(1) that guns were a fungible commodity for which there was an established interstate market, and the legislative history supported the logical connection between the intrastate sale and disposition of firearms and the interstate market in firearms. See *United States v. Rose*, 522 F.3d 710 at 718-719 (6th Cir. 2008), *citing United States v. Peters*, 403 F.3d 1263, 1274-75 (11th Cir. 2005). Finally, at least one federal court upheld the NICS denial of a transfer to a prohibited plaintiff by determining that the denial of a wholly intrastate transfer pursuant to § 922(n) was defensible based upon the nexus of firearms transactions to interstate commerce as described in *Rose* but also because the transfer by the FFL would also have violated 18 U.S.C. § 922(d)(1). See *Wilson v. U.S.*, Case No. 4:14-CV-158-A, 2014 WL 5035278 slip op, at 2-3 (N.D. Texas October 7, 2014). Therefore, for its purposes, NICS should presume that the firearm involved in the transaction being checked will satisfy the minimal nexus with interstate commerce under either 18 U.S.C. §922(n) and (d)(1).
Conclusion

Federal Courts have held the FBI owes a duty to the public and assumed the associated risk when it was delegated the oversight and responsibility of establishing and operating the NICS. Therefore, the FBI must follow the law when determining whether it is more likely than not that a prospective firearm transferee is prohibited. Given the intent of the Brady Act and, more specifically, § 922(n), it is reasonable for NICS to presume that a firearm transfer is prohibited if NCIC identifies, and NICS confirms, the existence of an arrest warrant for the transferee which includes a serious felony or serious disqualifying misdemeanor.