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Bipartisan Safer Communities Act (BSCA) and Firearms Background Checks: Implementation Issues for State Criminal History Repositories and Local Law Enforcement Agencies

About SEARCH

SEARCH, The National Consortium for Justice Information and Statistics, is a nonprofit organization governed by a Membership Group of governor appointees from the states and territories. SEARCH Members operate the state criminal history record repository programs and related state criminal justice information systems, which are used to provide criminal history record information for criminal and civil background check screening and to assist regulatory agencies in determining a person's suitability to possess firearms, etc. SEARCH developed a short [NICS Briefing](#), which provides an overview of the National Instant Criminal Background Check System (NICS) and addresses many of the processes associated with firearms background checks discussed below.

Background

The Bipartisan Safer Communities Act (BSCA) was passed by Congress in May 2022 and signed into law on June 25, 2022.¹ Several of the provisions of the Act are targeted at enhancing firearms background screening and making additional funds available to tribal, state, and local agencies to increase the efficiency and effectiveness of the National Instant Criminal Background Check System (NICS) to support the sale and transfer of firearms by Federal Firearms Licensees (FFL). Changes to firearms background check requirements resulting from the BSCA include:

1. Enhanced background checks for firearms purchasers under 21 years of age; and
2. Inspecting records to determine if prospective gun purchasers have a disqualifying conviction for a misdemeanor crime of domestic violence (MCDV), including the BSCA provision that expands the definition of domestic violence to include dating relationships.

Additionally, the BSCA allocates \$40 million annually from FY 2022 to FY 2026 through the National Criminal History Improvement Program (NCHIP) administered by the U.S. Bureau of Justice Statistics (BJS). NCHIP grants enable agencies to improve the quality of criminal history records and promote public safety by improving the accuracy, timeliness, and completeness of criminal history information.

BSCA Background Check Requirements for Persons Under 21

The expanded background check provisions under the BSCA for potential firearms transferees under the age of 21 (U21) requires FBI NICS program staff to conduct additional outreach/research for potential criminal and juvenile delinquency information and juvenile mental health adjudications, and/or commitments that may disqualify a person from receiving a firearm. The BSCA allows for a delay of up to 10 business days (if a possible disqualifier is located during the first three business days) to obtain and review relevant U21 records from state criminal and juvenile justice systems, state custodians of mental health adjudications, and local law enforcement agencies (LEA).

¹ <https://www.congress.gov/bill/117th-congress/senate-bill/2938/text>

What does this mean for local law enforcement agencies? LEAs may be contacted by FBI NICS program staff seeking the following types of information pertaining to subjects under the age of 21:

- Known felony or serious misdemeanor offenses and arrests;
- Active warrants;
- Admission to using unlawful controlled substances (including recreational or medical marijuana);
- Past interactions with law enforcement involving mental health concerns; and
- Active protection orders, including extreme risk protection orders.

In some cases, state law may prohibit sharing protected juvenile information, including data that would prohibit a person from possessing or receiving a firearm. Despite these state-level prohibitions, FBI NICS staff still reach out to any state where a U21 firearms applicant reports having previously resided, and LEAs are still expected to respond to these FBI NICS calls or administrative messages even if the response is “unable to share due to state law.” Since many local agencies will receive these inquiries for the first time, LEAs should work directly with state or local legal counsel to determine the extent to which juvenile arrest and disposition information may be shared.

What does this mean for state criminal history repositories? For NICS Point-of-Contact (POC) states,² firearms transactions involving a person under 21 will be automatically delayed for up to 3 business days to allow for additional research to see if the prospective transferee/purchaser has a disqualifying juvenile adjudication or mental health commitment. As with NICS checks conducted by the FBI, the delay may be extended up to 10 days (unless the state allows for a longer waiting period) if preliminary research reveals a potentially disqualifying record needing additional time for research. To comply with the BSCA, state NICS examiners must contact local law enforcement agencies and courts where the firearms applicant lives (or lived previously) to see if information about disqualifying juvenile court dispositions or mental health records exist outside of state and federal databases. Non-POC states may experience multiple inquiries from FBI NICS examiners seeking arrest, adjudication, and mental health information regarding firearms applicants under 21.

Expanded Definition of Domestic Violence

The BSCA closed what many have referred to as the “boyfriend loophole” in reference to MCDV convictions that would prevent someone from legally obtaining a firearm from an FFL. Until the definition was expanded under the BSCA, 18 USC § 921(a) did not define a boyfriend/girlfriend as a domestic partner unless they lived together. Under the previous definition, a MCDV was any state or federal misdemeanor that had “as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.”³ The BSCA expanded the definition of domestic violence to

² For a discussion of NICS Point-of-Contact and Non-Point-of-Contact states, see SEARCH, *An Overview of Key Issues in Conducting NICS Background Checks*, (SEARCH Group, Inc.: Sacramento, CA, 2023) and FBI, *About NICS* at <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/about-nics>.

³ 18 USC § 921 (a)(33)(A)(ii).

include offenses where there is an *established dating relationship*⁴ regardless of the partners' living arrangements. The new definition applies to convictions occurring on or after June 25, 2022. The dating relationship provision is not retroactive, meaning that older convictions that meet the dating relationship definition but are not otherwise exclusionary will not cause a person from being prohibited from purchasing a firearm.

What does this mean for local law enforcement agencies? While state and federal NICS examiners are experienced in reviewing records to look for disqualifying convictions, the dating relationship disqualifier is new and sometimes more difficult to discern from court and law enforcement records. While the element of the use or attempted use of force remains the same under the new law, additional review may be needed to ascertain if a dating relationship between the victim and offender existed at the time of the offense, aside from a shared current or previous address. As a result, law enforcement officials may receive calls and/or administrative messages through the FBI's National Crime Information Center (NCIC) from NICS program staff requesting copies of offense reports or other documentation to review event details (including officer statements and narratives) to look for information about dating relationships to see if the NICS prohibitor applies.

What does this mean for state criminal history repositories? For NICS Point-of-Contact (POC) states, state NICS examiners will need to determine if MCDV convictions would disqualify someone from receiving a firearm. Since the new definition is more inclusive than the previous federal definition (and may be more expansive than state definitions), examiners may need to review law enforcement incident reports and/or court documents to find out if a dating relationship can be established based on official government records. For non-POC states, criminal history repositories may receive an increased number of inquiries from FBI NICS examiners seeking additional information about offenses leading to MCDV convictions. States that have not already done so may also elect to include a "domestic violence flag" on criminal history records indicating a firearms prohibition once the disqualifying MCDV conviction has been established.

Some states have adopted an expanded definition of domestic violence that includes dating partners. In these cases, an MCDV conviction may be a permanent disqualifier for firearms transfers rather than a five-year prohibitor as prescribed by BSCA. Some states report that they enter MCDV convictions in both the "state disqualifier" category as well as the MCDV category in NICS to ensure that the firearms prohibition for in-state purchasers remains in effect after the expiration of the federal (i.e., nationwide) disqualifier established under BSCA, which sets an expiration date of 5 years after the date of the MCDV conviction.

NCHIP Funding Opportunities

The NCHIP grant program, administered by BJS since 1995, has awarded over \$1.2 billion in grants to tribal and state agencies to make improvements to criminal history recordkeeping systems, including funds for personnel and hardware/software solutions used by criminal justice agencies that contribute arrest, charging, and disposition records to state criminal history repositories.⁵ The BSCA supplements

⁴ A dating relationship is defined by 18 USC § 921(a)(37) as "individuals who have or have recently had a continuing serious relationship of a romantic nature." See Congressional Research Service, [Bipartisan Safer Communities Act \(P.L. 117-159\): Section-by-Section Summary](#) (November 17, 2022), pp. 19-20, for a discussion of this change.

⁵ See National Criminal History Improvement Program, <https://bjs.ojp.gov/programs/national-criminal-history-improvement-program>.

NCHIP by providing an additional \$200 million over five years (FY 2022 – FY 2026) to assist in implementing enhancements to criminal history-related systems to help implement the new provisions of the BSCA, along with firearms background checks in general. The “NCHIP Supplemental Funds,” as they are known, do not require tribal or state governments to provide matching funds to receive an award, and projects may be funded for a period of up to 24 months.

What does this mean for local law enforcement agencies? While local law enforcement may not apply directly for NCHIP Supplemental Funds, there may be opportunities to take advantage of this federal grant program. For instance, state criminal history repositories are encouraged to work with partner LEAs to purchase items such as live scan equipment that can be used to digitally transmit fingerprint images and arrestee information to the state criminal history repository to establish or augment biometrically supported arrest records that are searchable through NCIC, NICS and/or the Interstate Identification Index (III) for authorized purposes, including firearms background checks. Additionally, it is important to note that the BSCA includes new and/or enhanced funding opportunities for law enforcement aside from NCHIP, including through the State Crisis Intervention Program (Byrne SCIP), and interested LEAs should work with their associations to identify other opportunities for funding in addition to NCHIP.

What does this mean for state criminal history repositories? In 2023, an additional \$80 million in NCHIP Supplemental Funds were made available to state and tribal repositories and courts to make improvements to criminal history records, and an additional \$40 million will be made available over each of the next three fiscal years. While most of the NCHIP Supplemental funding requirements remain the same as those for “traditional” NCHIP awards, there were several new provisions:

1. Courts may apply directly for NCHIP Supplemental Funds rather than limiting eligible applicants to designated criminal history repositories;⁶
2. States can request funds to expand access to juvenile records as required by the BSCA;
3. States may request funds specifically directed toward criminal history sealing and expungement efforts;⁷ and
4. States are not required to provide matching funds in order to receive an NCHIP award

How are states using NCHIP awards? BJS has awarded \$74.6 million to 30 applicants under the NCHIP Supplemental program. Twenty-one states⁸ and Guam received awards directed to the state criminal history repository, and eight states (AZ, CT, IL, IN, MI, MO, TX, and WV) had funding awarded to the courts. The most common type of projects for which funds were received were:

1. Disposition research (11 states);
2. Live scan purchases to allow local law enforcement agencies to submit fingerprint images and arrest data electronically (10 states); and
3. Upgrades and replacements for records/case management systems (9 states).

Projects specifically related to implementing the BSCA provisions were also common:

1. Improving access to juvenile adjudication records (9 states);
2. Expanding access mental health records to include juveniles (8 states); and

⁶ BJS still encourages states to submit joint applications on behalf of the courts and repositories if both entities seek NCHIP funds to encourage cooperation and coordination when implementing NCHIP-funded activities.

⁷ Criminal history record sealing and expungement projects were also designated as a priority area in the regular NCHIP solicitation.

⁸ AL, AZ, CO, FL, IA, IL, KS, KY, MN, NE, NH, NJ, NY, OH, OK, PA, TX, VA, WA, WI, and WY.

3. Identifying MCDV convictions involving dating relationships (2 states).

Only one state requested funds specifically to seal criminal history records, but it should be noted that more generalized projects focused on improving overall records quality (e.g., disposition research and digitizing records) may also result in increasing the number of criminal records cleared by states.

What are the remaining challenges states face in applying for NCHIP and implementing activities funded by NCHIP awards? States report the need for greater discretion to address specific challenges they face in making more criminal history records available to national systems to improve criminal justice and civil decisionmaking, and decisions regarding firearms transactions.

States report that the time period during which grant funding must be expended is too short. Given state procurement laws and pre-approval requirements imposed by centralized state information technology departments, many states report that the maximum grant period of 36 months (24 months for an initial award plus one 12-month extension) is often insufficient to complete what can be complex and expensive technical projects. Compounding problems with time limits is a shortage of qualified staff among the relatively small number of vendors available to support specialized projects requiring detailed knowledge of criminal justice systems and FBI CJIS security requirements and federal systems.

States have also reported difficulty securing matching funds to enable them to apply for NCHIP grants. In 2023, both NCHIP and NCHIP Supplemental funding did not include matching fund requirements, which greatly facilitated expanded participation by eligible states.

Questions

Please contact SEARCH's Director of Law and Policy, Becki Goggins (becki@search.org), if you have questions or need more information.