



Department of Justice

STATEMENT OF
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BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

FOR A HEARING ON
“FIREARM ACCESSORY REGULATION AND ENFORCING
FEDERAL AND STATE REPORTING TO THE NATIONAL
INSTANT CRIMINAL BACKGROUND CHECK SYSTEM
(NICS)”

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Before the
Committee on the Judiciary
United States Senate

For a Hearing Entitled
“Firearm Accessory Regulation and Enforcing Federal and State Reporting to the National
Instant Criminal Background Check System (NICS)”

December 6, 2017

Good afternoon Chairman Grassley, Ranking Member Feinstein, and members of the committee. Thank you for the opportunity to appear before you today to discuss the Federal Bureau of Investigation’s (FBI) National Instant Criminal Background Check System (NICS).

What is the NICS and How Does it Work

The Brady Handgun Violence Prevention Act of 1993 (Brady Act) requires Federal Firearms Licensees (FFL) to use the NICS to determine whether a prospective firearm transfer would violate state or federal laws. The NICS is a computerized system designed to supply information to determine if a person is disqualified from possessing or receiving firearms by conducting a search of available records. In addition to state law and state firearm prohibitions that vary greatly across the nation, there are ten federal firearm prohibitions as listed in the Gun Control Act of 1968, as amended.¹

When an FFL initiates a NICS transaction, a name check is conducted to search three national databases for possible matches. These databases are the National Crime Information Center (NCIC), which contains information on wanted persons, protection orders, and other persons identified as relevant to the NICS searches; the Interstate Identification Index (III), which accesses criminal history records; and the NICS Indices, formerly known as the NICS Index, which contains information on prohibited persons as defined in the Gun Control Act of 1968, as amended. The NICS Indices includes individuals who have been determined to be federally or state prohibited from possessing or receiving a firearm when disqualifying information may not

¹ <https://www.gpo.gov/fdsys/pkg/STATUTE-82/pdf/STATUTE-82-Pg1213-2.pdf>
<https://www.justice.gov/usam/criminal-resource-manual-1117-restrictions-possession-firearms-individuals-convicted>

be available through the NCIC or III databases.

Over 70 percent of NICS transactions handled by the FBI result in no descriptive matches or hits to the potential transferee against information contained in the three national databases. In these instances, the FFL is advised to proceed with the transfer. If, however, there are any potentially prohibiting records returned, the FBI must undertake a manual review to determine if the record demonstrates a prohibition to firearms possession. There are three possible outcomes from this review: proceed (i.e., the record does not establish a prohibition and the transaction can proceed), deny (i.e., the record demonstrates a firearms prohibition), or delay. A delay response indicates the information supplied by the prospective firearm transferee has matched a record searched by the NICS and requires additional research before a final determination can be made. Following a delay decision, if the transaction is not resolved within the allowed three-business-day time frame, it is at the discretion of the FFL whether to transfer the firearm. However, the FBI Criminal Justice Information Services (CJIS) Division NICS Program continues to work on the case in an effort to resolve it. When additional information is required on a matching record but cannot be found, the transaction remains open until either the information is provided or 88 days have passed. If prohibiting information is provided following the passage of the three-business-day timeframe, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is notified for potential retrieval of the firearm. If 88 days pass, then the transaction is purged from the NICS, as required by federal regulation 28 CFR 25.9(b)(ii).

Since 2010, the NICS has experienced a steady increase in the volume of background checks. The last three years have been record-setting and this past “Black Friday” was the highest volume day in the NICS history. In that one day, NICS processed over 203,000 transactions, an increase of 17,000 over the most recent single-day record. In calendar year 2016, the NICS processed over 27.5 million transactions, its highest volume ever.

As of November 30, 2017, despite the increased demands, NICS staff provides exceptional customer service around-the-clock to firearms dealers across the country, while maintaining an “immediate determination” rate of over 90 percent to the firearms dealer.

Making Records Available to the NICS

The majority of records needed by the NICS are available within the III or NCIC databases. By placing records in the III or NCIC, law enforcement agencies make the information available for criminal justice purposes, not just firearm background checks. However, there are certain types of data that may not be eligible for entry into the III or NCIC (such as information on illegal/unlawful aliens or citizen renunciants) and is, therefore, best suited for inclusion within the NICS Indices.

To encourage and increase the submission of records to the NICS Indices, the NICS Program has implemented an array of outreach and education initiatives with agencies nationwide. The NICS Program has a dedicated team providing continuous support to local, state, tribal, and federal partners to help them assess what records qualify for NICS purposes and provide technical support in entering and maintaining information within the NICS Indices. It is important to note that although federal agencies are required by law to share information with the NICS, state, local, and tribal information-sharing is wholly voluntary.

On the federal side, the Department launched a large-scale effort in 2013 to improve federal agency compliance with the record sharing requirements. Pursuant to a Presidential Memorandum, federal agencies were required to review their records and identify relevant categories of records within their possession, and also to develop a plan to ensure that those records were made available to the NICS (through III, NCIC, or the NICS Indices). Federal agencies are required to annually certify that they are making all relevant records available to the NICS. The FBI continues to work with federal agencies to help identify and report relevant records, and these efforts have led to significant increases in the amount of information available to the NICS. At the end of 2007, federal agencies had submitted just over 4 million records to the NICS; by the end of 2016, that number had risen to nearly 8.5 million. While recent events have demonstrated that reporting is not perfect, the FBI is committed to working with all federal agencies to help them implement their existing record sharing plans – as it has since NICS’s inception.

To encourage states to make information available, Congress has provided grant incentives and the NICS Program works closely with other federal partners to support grant opportunities for state and tribal entities. States are also making incredible strides in providing information to the NICS Indices: in the last 10 years, the number of records contributed by states increased from just over 1 million records to 7.3 million – or over 600 percent.

Another area of focus for the NICS is improving the completeness of state, territorial, tribal, and federal criminal history records contained in the III. The CJIS Division regularly provides Disposition Dashboards² to state, territory, tribal, and federal partners to identify records with missing dispositions. The CJIS Division conducts teleconferences, provides presentations, and holds meetings with state, territory, tribal, or federal agencies to address the methods available to provide dispositions, challenges the partners may be having, and developing ways overcome those challenges. Every opportunity is taken to emphasize the national need for updated, timely dispositions and to provide awareness on how to submit them. The FBI has also partnered with the U.S. Courts to receive dispositions electronically for adjudicated individuals under federal supervision. The FBI works proactively with other criminal justice partners to make resources and information available to agencies working to improve their disposition reporting.³

Additionally, the CJIS Advisory Policy Board (APB) maintains the Disposition Task Force (DTF) to develop a national strategy for improving the quality of disposition reporting and criminal history records. Over the years, the DTF has implemented multiple approaches to improve disposition reporting. For instance, in 2015, the CJIS APB DTF requested the CJIS Division analyze disposition reporting statistics and collaborate with those states reporting higher disposition rates to identify commonalities, study their business practices, and report their findings. These findings were used to distill best practices and avoidances, which became the foundation for the development of the disposition best practices guide located on FBI.gov.

² A Disposition Dashboard is a visual display of the total number of arrests submitted by a state, territory, tribal, or federal agency and the percentage of arrests without dispositions.

³ <https://www.fbi.gov/file-repository/disporev04082016tagged.pdf>

Additional Efforts to Improve Record Availability

As noted above, for state agencies, submission to the III and NCIC is voluntary, as are NICS Indices submissions. Every agency has a unique operational environment; however, there are lessons learned and best practices that can be shared and improved upon from a national perspective. The NICS Program continues to support local, state, tribal, and federal partners by providing technical, policy, processes, and information sharing support to ensure that records are made available.

For example, one NICS Program initiative is with the Misdemeanor Crimes of Domestic Violence (MCDV) prohibition. The Brady Act prohibits persons who have been convicted of an MCDV from receiving or possessing firearms. An MCDV is defined as an offense that:

- Is a misdemeanor under local, state, tribal, or federal law;
- Has as an element of use or attempted use of physical force, or the threatened use of a deadly weapon; and
- Was 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.

The NICS Program encourages agencies to make efforts to post information regarding MCDV charges to the III record (e.g., relationship, state statute/subsection, and disposition). If they are unable to post this information to the III record, agencies are encouraged to enter and maintain this information in the NICS Indices. Either option allows the NICS user conducting a background check to make a timely determination on whether an individual is eligible for a firearm.

Additionally, to facilitate the submission of final dispositions, the FBI has implemented a technical initiative to develop new methods for the electronic submission of dispositions. These initiatives reduced the cost and programming efforts for agencies and streamlined the submission process. The FBI continues to accept dispositions submitted via DVD, e-mail, fax, and paper submissions, while assessing innovative ways to use new technology to aid in the submission process.

Closing

Recently, the Attorney General directed FBI to work with the Department of Defense to increase reporting to the NICS, identify other federal agencies that are not fully reporting and develop a plan to ensure full and accurate reporting to the extent required by law, and to work with our counterparts at ATF to identify additional measures that should be taken to prevent firearms from being obtained by prohibited persons. We look forward to accomplishing this important work and to help ensure the NICS has access to accurate and complete information so it can do its job and protect public safety.

The NICS Program serves as an example of effective collaboration across all facets of local, state, territorial, tribal, and federal criminal justice authorities. I want to thank all of my colleagues for their support, and our FBI employees for their dedicated service. I am pleased to answer any questions you might have.