

**NAAG Task Force on School Safety**  
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**Mental Health Issues, Part II**  
**Supplemental Background Materials I**

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# I

## Summary of HIPAA Privacy Rule



**OCR PRIVACY BRIEF**

# **SUMMARY OF THE HIPAA PRIVACY RULE**



**HIPAA Compliance Assistance**

# **SUMMARY OF THE HIPAA PRIVACY RULE**

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# SUMMARY OF THE HIPAA PRIVACY RULE

<p><b>Introduction</b></p>	<p>The <i>Standards for Privacy of Individually Identifiable Health Information</i> (“Privacy Rule”) establishes, for the first time, a set of national standards for the protection of certain health information. The U.S. Department of Health and Human Services (“HHS”) issued the Privacy Rule to implement the requirement of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).<sup>1</sup> The Privacy Rule standards address the use and disclosure of individuals’ health information—called “protected health information” by organizations subject to the Privacy Rule — called “covered entities,” as well as standards for individuals’ privacy rights to understand and control how their health information is used. Within HHS, the Office for Civil Rights (“OCR”) has responsibility for implementing and enforcing the Privacy Rule with respect to voluntary compliance activities and civil money penalties.</p> <p>A major goal of the Privacy Rule is to assure that individuals’ health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public’s health and well being. The Rule strikes a balance that permits important uses of information, while protecting the privacy of people who seek care and healing. Given that the health care marketplace is diverse, the Rule is designed to be flexible and comprehensive to cover the variety of uses and disclosures that need to be addressed.</p> <p>This is a summary of key elements of the Privacy Rule and not a complete or comprehensive guide to compliance. Entities regulated by the Rule are obligated to comply with all of its applicable requirements and should not rely on this summary as a source of legal information or advice. To make it easier for entities to review the complete requirements of the Rule, provisions of the Rule referenced in this summary are cited in notes at the end of this document. To view the entire Rule, and for other additional helpful information about how it applies, see the OCR website: <a href="http://www.hhs.gov/ocr/hipaa">http://www.hhs.gov/ocr/hipaa</a>. In the event of a conflict between this summary and the Rule, the Rule governs.</p> <p>Links to the OCR Guidance Document are provided throughout this paper. Provisions of the Rule referenced in this summary are cited in endnotes at the end of this document. To review the entire Rule itself, and for other additional helpful information about how it applies, see the OCR website: <a href="http://www.hhs.gov/ocr/hipaa">http://www.hhs.gov/ocr/hipaa</a>.</p>
<p><b>Statutory &amp; Regulatory Background</b></p>	<p>The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, was enacted on August 21, 1996. Sections 261 through 264 of HIPAA require the Secretary of HHS to publicize standards for the electronic exchange, privacy and security of health information. Collectively these are known as the <i>Administrative Simplification</i> provisions.</p> <p>HIPAA required the Secretary to issue privacy regulations governing individually identifiable health information, if Congress did not enact privacy legislation within</p>

	<p>three years of the passage of HIPAA. Because Congress did not enact privacy legislation, HHS developed a proposed rule and released it for public comment on November 3, 1999. The Department received over 52,000 public comments. The final regulation, the Privacy Rule, was published December 28, 2000.<sup>2</sup></p> <p>In March 2002, the Department proposed and released for public comment modifications to the Privacy Rule. The Department received over 11,000 comments. The final modifications were published in final form on August 14, 2002.<sup>3</sup> A text combining the final regulation and the modifications can be found at 45 CFR Part 160 and Part 164, Subparts A and E on the OCR website: <a href="http://www.hhs.gov/ocr/hipaa">http://www.hhs.gov/ocr/hipaa</a>.</p>
<p><b>Who is Covered by the Privacy Rule</b></p>	<p>The Privacy Rule, as well as all the Administrative Simplification rules, apply to health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of HHS has adopted standards under HIPAA (the “covered entities”). For help in determining whether you are covered, use the decision tool at: <a href="http://www.cms.hhs.gov/hipaa/hipaa2/support/tools/decisionsupport/default.asp">http://www.cms.hhs.gov/hipaa/hipaa2/support/tools/decisionsupport/default.asp</a>.</p> <p><b>Health Plans.</b> Individual and group plans that provide or pay the cost of medical care are covered entities.<sup>4</sup> Health plans include health, dental, vision, and prescription drug insurers, health maintenance organizations (“HMOs”), Medicare, Medicaid, Medicare+Choice and Medicare supplement insurers, and long-term care insurers (excluding nursing home fixed-indemnity policies). Health plans also include employer-sponsored group health plans, government and church-sponsored health plans, and multi-employer health plans. There are exceptions—a group health plan with less than 50 participants that is administered solely by the employer that established and maintains the plan is not a covered entity. Two types of government-funded programs are not health plans: (1) those whose principal purpose is not providing or paying the cost of health care, such as the food stamps program; and (2) those programs whose principal activity is directly providing health care, such as a community health center,<sup>5</sup> or the making of grants to fund the direct provision of health care. Certain types of insurance entities are also not health plans, including entities providing only workers’ compensation, automobile insurance, and property and casualty insurance.</p> <p><b>Health Care Providers.</b> Every health care provider, regardless of size, who electronically transmits health information in connection with certain transactions, is a covered entity. These transactions include claims, benefit eligibility inquiries, referral authorization requests, or other transactions for which HHS has established standards under the HIPAA Transactions Rule.<sup>6</sup> Using electronic technology, such as email, does not mean a health care provider is a covered entity; the transmission must be in connection with a standard transaction. The Privacy Rule covers a health care provider whether it electronically transmits these transactions directly or uses a billing service or other third party to do so on its behalf. Health care providers include all “providers of services” (e.g., institutional providers such as hospitals) and “providers of medical or health services” (e.g., non-institutional providers such as physicians, dentists and other practitioners) as defined by Medicare, and any other person or organization that furnishes, bills, or is paid for health care.</p>

	<p><b>Health Care Clearinghouses.</b> <i>Health care clearinghouses</i> are entities that process nonstandard information they receive from another entity into a standard (i.e., standard format or data content), or vice versa.<sup>7</sup> In most instances, health care clearinghouses will receive individually identifiable health information only when they are providing these processing services to a health plan or health care provider as a business associate. In such instances, only certain provisions of the Privacy Rule are applicable to the health care clearinghouse's uses and disclosures of protected health information.<sup>8</sup> Health care clearinghouses include billing services, repricing companies, community health management information systems, and value-added networks and switches if these entities perform clearinghouse functions.</p>
<p><b>Business Associates</b></p>	<p><b>Business Associate Defined.</b> In general, a business associate is a person or organization, other than a member of a covered entity's workforce, that performs certain functions or activities on behalf of, or provides certain services to, a covered entity that involve the use or disclosure of individually identifiable health information. Business associate functions or activities on behalf of a covered entity include claims processing, data analysis, utilization review, and billing.<sup>9</sup> Business associate services to a covered entity are limited to legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services. However, persons or organizations are not considered business associates if their functions or services do not involve the use or disclosure of protected health information, and where any access to protected health information by such persons would be incidental, if at all. A covered entity can be the business associate of another covered entity.</p> <p><b>Business Associate Contract.</b> When a covered entity uses a contractor or other non-workforce member to perform "<i>business associate</i>" services or activities, the Rule requires that the covered entity include certain protections for the information in a business associate agreement (in certain circumstances governmental entities may use alternative means to achieve the same protections). In the business associate contract, a covered entity must impose specified written safeguards on the individually identifiable health information used or disclosed by its business associates.<sup>10</sup> Moreover, a covered entity may not contractually authorize its business associate to make any use or disclosure of protected health information that would violate the Rule. Covered entities that have an existing written contract or agreement with business associates prior to October 15, 2002, which is not renewed or modified prior to April 14, 2003, are permitted to continue to operate under that contract until they renew the contract or April 14, 2004, whichever is first.<sup>11</sup> Sample business associate contract language is available on the OCR website at: <a href="http://www.hhs.gov/ocr/hipaa/contractprov.html">http://www.hhs.gov/ocr/hipaa/contractprov.html</a>. Also see <a href="#">OCR "Business Associate" Guidance</a>.</p>
<p><b>What Information is Protected</b></p>	<p><b>Protected Health Information.</b> The Privacy Rule protects all "<i>individually identifiable health information</i>" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information "<i>protected health information (PHI)</i>."<sup>12</sup></p>

	<p>“<i>Individually identifiable health information</i>” is information, including demographic data, that relates to:</p> <ul style="list-style-type: none"> <li>• the individual’s past, present or future physical or mental health or condition,</li> <li>• the provision of health care to the individual, or</li> <li>• the past, present, or future payment for the provision of health care to the individual,</li> </ul> <p>and that identifies the individual or for which there is a reasonable basis to believe can be used to identify the individual.<sup>13</sup> Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number).</p> <p>The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.</p> <p><b>De-Identified Health Information.</b> There are no restrictions on the use or disclosure of de-identified health information.<sup>14</sup> De-identified health information neither identifies nor provides a reasonable basis to identify an individual. There are two ways to de-identify information; either: 1) a formal determination by a qualified statistician; or 2) the removal of specified identifiers of the individual and of the individual’s relatives, household members, and employers is required, and is adequate only if the covered entity has no actual knowledge that the remaining information could be used to identify the individual.<sup>15</sup></p>
<p><b>General Principle for Uses and Disclosures</b></p>	<p><b>Basic Principle.</b> A major purpose of the Privacy Rule is to define and limit the circumstances in which an individual’s protected health information may be used or disclosed by covered entities. A covered entity may not use or disclose protected health information, except either: (1) as the Privacy Rule permits or requires; or (2) as the individual who is the subject of the information (or the individual’s personal representative) authorizes in writing.<sup>16</sup></p> <p><b>Required Disclosures.</b> A covered entity must disclose protected health information in only two situations: (a) to individuals (or their personal representatives) specifically when they request access to, or an accounting of disclosures of, their protected health information; and (b) to HHS when it is undertaking a compliance investigation or review or enforcement action.<sup>17</sup> See <a href="#">OCR “Government Access” Guidance</a>.</p>
<p><b>Permitted Uses and Disclosures</b></p>	<p><b>Permitted Uses and Disclosures.</b> A covered entity is permitted, but not required, to use and disclose protected health information, without an individual’s authorization, for the following purposes or situations: (1) To the Individual (unless required for access or accounting of disclosures); (2) Treatment, Payment, and Health Care Operations; (3) Opportunity to Agree or Object; (4) Incident to an otherwise permitted use and disclosure; (5) Public Interest and Benefit Activities; and</p>

(6) Limited Data Set for the purposes of research, public health or health care operations.<sup>18</sup> Covered entities may rely on professional ethics and best judgments in deciding which of these permissive uses and disclosures to make.

**(1) To the Individual.** A covered entity may disclose protected health information to the individual who is the subject of the information.

**(2) Treatment, Payment, Health Care Operations.** A covered entity may use and disclose protected health information for its own treatment, payment, and health care operations activities.<sup>19</sup> A covered entity also may disclose protected health information for the treatment activities of any health care provider, the payment activities of another covered entity and of any health care provider, or the health care operations of another covered entity involving either quality or competency assurance activities or fraud and abuse detection and compliance activities, if both covered entities have or had a relationship with the individual and the protected health information pertains to the relationship. See [OCR “Treatment, Payment, Health Care Operations” Guidance](#).

*Treatment* is the provision, coordination, or management of health care and related services for an individual by one or more health care providers, including consultation between providers regarding a patient and referral of a patient by one provider to another.<sup>20</sup>

*Payment* encompasses activities of a health plan to obtain premiums, determine or fulfill responsibilities for coverage and provision of benefits, and furnish or obtain reimbursement for health care delivered to an individual<sup>21</sup> and activities of a health care provider to obtain payment or be reimbursed for the provision of health care to an individual.

*Health care operations* are any of the following activities: (a) quality assessment and improvement activities, including case management and care coordination; (b) competency assurance activities, including provider or health plan performance evaluation, credentialing, and accreditation; (c) conducting or arranging for medical reviews, audits, or legal services, including fraud and abuse detection and compliance programs; (d) specified insurance functions, such as underwriting, risk rating, and reinsuring risk; (e) business planning, development, management, and administration; and (f) business management and general administrative activities of the entity, including but not limited to: de-identifying protected health information, creating a limited data set, and certain fundraising for the benefit of the covered entity.<sup>22</sup>

Most uses and disclosures of psychotherapy notes for treatment, payment, and health care operations purposes require an authorization as described below.<sup>23</sup>

Obtaining “consent” (written permission from individuals to use and disclose their protected health information for treatment, payment, and health care operations) is optional under the Privacy Rule for all covered entities.<sup>24</sup> The content of a consent form, and the process for obtaining consent, are at the discretion of the covered entity electing to seek consent.

**(3) Uses and Disclosures with Opportunity to Agree or Object.** Informal permission may be obtained by asking the individual outright, or by circumstances that clearly give the individual the opportunity to agree, acquiesce, or object. Where the individual is incapacitated, in an emergency situation, or not available, covered entities generally may make such uses and disclosures, if in the exercise of their professional judgment, the use or disclosure is determined to be in the best interests of the individual.

***Facility Directories.*** It is a common practice in many health care facilities, such as hospitals, to maintain a directory of patient contact information. A covered health care provider may rely on an individual's informal permission to list in its facility directory the individual's name, general condition, religious affiliation, and location in the provider's facility.<sup>25</sup> The provider may then disclose the individual's condition and location in the facility to anyone asking for the individual by name, and also may disclose religious affiliation to clergy. Members of the clergy are not required to ask for the individual by name when inquiring about patient religious affiliation.

***For Notification and Other Purposes.*** A covered entity also may rely on an individual's informal permission to disclose to the individual's family, relatives, or friends, or to other persons whom the individual identifies, protected health information directly relevant to that person's involvement in the individual's care or payment for care.<sup>26</sup> This provision, for example, allows a pharmacist to dispense filled prescriptions to a person acting on behalf of the patient. Similarly, a covered entity may rely on an individual's informal permission to use or disclose protected health information for the purpose of notifying (including identifying or locating) family members, personal representatives, or others responsible for the individual's care of the individual's location, general condition, or death. In addition, protected health information may be disclosed for notification purposes to public or private entities authorized by law or charter to assist in disaster relief efforts.

**(4) Incidental Use and Disclosure.** The Privacy Rule does not require that every risk of an incidental use or disclosure of protected health information be eliminated. A use or disclosure of this information that occurs as a result of, or as "incident to," an otherwise permitted use or disclosure is permitted as long as the covered entity has adopted reasonable safeguards as required by the Privacy Rule, and the information being shared was limited to the "minimum necessary," as required by the Privacy Rule.<sup>27</sup> See [OCR "Incidental Uses and Disclosures" Guidance](#).

**(5) Public Interest and Benefit Activities.** The Privacy Rule permits use and disclosure of protected health information, without an individual's authorization or permission, for 12 national priority purposes.<sup>28</sup> These disclosures are permitted, although not required, by the Rule in recognition of the important uses made of health information outside of the health care context. Specific conditions or limitations apply to each public interest purpose, striking the balance between the individual privacy interest and the public interest need for this information.

***Required by Law.*** Covered entities may use and disclose protected health information without individual authorization as *required by law* (including by

statute, regulation, or court orders).<sup>29</sup>

**Public Health Activities.** Covered entities may disclose protected health information to: (1) public health authorities authorized by law to collect or receive such information for preventing or controlling disease, injury, or disability and to public health or other government authorities authorized to receive reports of child abuse and neglect; (2) entities subject to FDA regulation regarding FDA regulated products or activities for purposes such as adverse event reporting, tracking of products, product recalls, and post-marketing surveillance; (3) individuals who may have contracted or been exposed to a communicable disease when notification is authorized by law; and (4) employers, regarding employees, when requested by employers, for information concerning a work-related illness or injury or workplace related medical surveillance, because such information is needed by the employer to comply with the Occupational Safety and Health Administration (OHSA), the Mine Safety and Health Administration (MHSA), or similar state law.<sup>30</sup> See [OCR “Public Health” Guidance](#); [CDC Public Health and HIPAA Guidance](#).

**Victims of Abuse, Neglect or Domestic Violence.** In certain circumstances, covered entities may disclose protected health information to appropriate government authorities regarding victims of abuse, neglect, or domestic violence.<sup>31</sup>

**Health Oversight Activities.** Covered entities may disclose protected health information to health oversight agencies (as defined in the Rule) for purposes of legally authorized health oversight activities, such as audits and investigations necessary for oversight of the health care system and government benefit programs.<sup>32</sup>

**Judicial and Administrative Proceedings.** Covered entities may disclose protected health information in a judicial or administrative proceeding if the request for the information is through an order from a court or administrative tribunal. Such information may also be disclosed in response to a subpoena or other lawful process if certain assurances regarding notice to the individual or a protective order are provided.<sup>33</sup>

**Law Enforcement Purposes.** Covered entities may disclose protected health information to law enforcement officials for law enforcement purposes under the following six circumstances, and subject to specified conditions: (1) as required by law (including court orders, court-ordered warrants, subpoenas) and administrative requests; (2) to identify or locate a suspect, fugitive, material witness, or missing person; (3) in response to a law enforcement official’s request for information about a victim or suspected victim of a crime; (4) to alert law enforcement of a person’s death, if the covered entity suspects that criminal activity caused the death; (5) when a covered entity believes that protected health information is evidence of a crime that occurred on its premises; and (6) by a covered health care provider in a medical emergency not occurring on its premises, when necessary to inform law enforcement about the commission and nature of a crime, the location of the crime or crime victims, and the perpetrator of the crime.<sup>34</sup>

**Decedents.** Covered entities may disclose protected health information to funeral directors as needed, and to coroners or medical examiners to identify a deceased person, determine the cause of death, and perform other functions authorized by law.<sup>35</sup>

**Cadaveric Organ, Eye, or Tissue Donation.** Covered entities may use or disclose protected health information to facilitate the donation and transplantation of cadaveric organs, eyes, and tissue.<sup>36</sup>

**Research.** “Research” is any systematic investigation designed to develop or contribute to generalizable knowledge.<sup>37</sup> The Privacy Rule permits a covered entity to use and disclose protected health information for research purposes, without an individual’s authorization, provided the covered entity obtains either: (1) documentation that an alteration or waiver of individuals’ authorization for the use or disclosure of protected health information about them for research purposes has been approved by an Institutional Review Board or Privacy Board; (2) representations from the researcher that the use or disclosure of the protected health information is solely to prepare a research protocol or for similar purpose preparatory to research, that the researcher will not remove any protected health information from the covered entity, and that protected health information for which access is sought is necessary for the research; or (3) representations from the researcher that the use or disclosure sought is solely for research on the protected health information of decedents, that the protected health information sought is necessary for the research, and, at the request of the covered entity, documentation of the death of the individuals about whom information is sought.<sup>38</sup> A covered entity also may use or disclose, without an individuals’ authorization, a limited data set of protected health information for research purposes (see discussion below).<sup>39</sup> See [OCR “Research” Guidance; NIH Protecting PHI in Research](#).

**Serious Threat to Health or Safety.** Covered entities may disclose protected health information that they believe is necessary to prevent or lessen a serious and imminent threat to a person or the public, when such disclosure is made to someone they believe can prevent or lessen the threat (including the target of the threat). Covered entities may also disclose to law enforcement if the information is needed to identify or apprehend an escapee or violent criminal.<sup>40</sup>

**Essential Government Functions.** An authorization is not required to use or disclose protected health information for certain essential government functions. Such functions include: assuring proper execution of a military mission, conducting intelligence and national security activities that are authorized by law, providing protective services to the President, making medical suitability determinations for U.S. State Department employees, protecting the health and safety of inmates or employees in a correctional institution, and determining eligibility for or conducting enrollment in certain government benefit programs.<sup>41</sup>

	<p><b>Workers' Compensation.</b> Covered entities may disclose protected health information as authorized by, and to comply with, workers' compensation laws and other similar programs providing benefits for work-related injuries or illnesses.<sup>42</sup> See <a href="#">OCR "Workers' Compensation" Guidance</a>.</p> <p><b>(6) Limited Data Set.</b> A limited data set is protected health information from which certain specified direct identifiers of individuals and their relatives, household members, and employers have been removed.<sup>43</sup> A limited data set may be used and disclosed for research, health care operations, and public health purposes, provided the recipient enters into a data use agreement promising specified safeguards for the protected health information within the limited data set.</p>
<p><b>Authorized Uses and Disclosures</b></p>	<p><b>Authorization.</b> A covered entity must obtain the individual's written authorization for any use or disclosure of protected health information that is not for treatment, payment or health care operations or otherwise permitted or required by the Privacy Rule.<sup>44</sup> A covered entity may not condition treatment, payment, enrollment, or benefits eligibility on an individual granting an authorization, except in limited circumstances.<sup>45</sup></p> <p>An authorization must be written in specific terms. It may allow use and disclosure of protected health information by the covered entity seeking the authorization, or by a third party. Examples of disclosures that would require an individual's authorization include disclosures to a life insurer for coverage purposes, disclosures to an employer of the results of a pre-employment physical or lab test, or disclosures to a pharmaceutical firm for their own marketing purposes.</p> <p>All authorizations must be in plain language, and contain specific information regarding the information to be disclosed or used, the person(s) disclosing and receiving the information, expiration, right to revoke in writing, and other data. The Privacy Rule contains transition provisions applicable to authorizations and other express legal permissions obtained prior to April 14, 2003.<sup>46</sup></p> <p><b>Psychotherapy Notes<sup>47</sup>.</b> A covered entity must obtain an individual's authorization to use or disclose psychotherapy notes with the following exceptions<sup>48</sup>:</p> <ul style="list-style-type: none"> <li>• The covered entity who originated the notes may use them for treatment.</li> <li>• A covered entity may use or disclose, without an individual's authorization, the psychotherapy notes, for its own training, and to defend itself in legal proceedings brought by the individual, for HHS to investigate or determine the covered entity's compliance with the Privacy Rules, to avert a serious and imminent threat to public health or safety, to a health oversight agency for lawful oversight of the originator of the psychotherapy notes, for the lawful activities of a coroner or medical examiner or as required by law.</li> </ul> <p><b>Marketing.</b> Marketing is any communication about a product or service that encourages recipients to purchase or use the product or service.<sup>49</sup> The Privacy Rule carves out the following health-related activities from this definition of marketing:</p> <ul style="list-style-type: none"> <li>• Communications to describe health-related products or services, or payment</li> </ul>

	<p>for them, provided by or included in a benefit plan of the covered entity making the communication;</p> <ul style="list-style-type: none"> <li>• Communications about participating providers in a provider or health plan network, replacement of or enhancements to a health plan, and health-related products or services available only to a health plan’s enrollees that add value to, but are not part of, the benefits plan;</li> <li>• Communications for treatment of the individual; and</li> <li>• Communications for case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or care settings to the individual.</li> </ul> <p>Marketing also is an arrangement between a covered entity and any other entity whereby the covered entity discloses protected health information, in exchange for direct or indirect remuneration, for the other entity to communicate about its own products or services encouraging the use or purchase of those products or services. A covered entity must obtain an authorization to use or disclose protected health information for marketing, except for face-to-face marketing communications between a covered entity and an individual, and for a covered entity’s provision of promotional gifts of nominal value. No authorization is needed, however, to make a communication that falls within one of the exceptions to the marketing definition. An authorization for marketing that involves the covered entity’s receipt of direct or indirect remuneration from a third party must reveal that fact. See <a href="#">OCR "Marketing" Guidance</a>.</p>
<p><b>Limiting Uses and Disclosures to the Minimum Necessary</b></p>	<p><b>Minimum Necessary.</b> A central aspect of the Privacy Rule is the principle of “minimum necessary” use and disclosure. A covered entity must make reasonable efforts to use, disclose, and request only the minimum amount of protected health information needed to accomplish the intended purpose of the use, disclosure, or request.<sup>50</sup> A covered entity must develop and implement policies and procedures to reasonably limit uses and disclosures to the minimum necessary. When the minimum necessary standard applies to a use or disclosure, a covered entity may not use, disclose, or request the entire medical record for a particular purpose, unless it can specifically justify the whole record as the amount reasonably needed for the purpose. See <a href="#">OCR “Minimum Necessary” Guidance</a>.</p> <p>The minimum necessary requirement is not imposed in any of the following circumstances: (a) disclosure to or a request by a health care provider for treatment; (b) disclosure to an individual who is the subject of the information, or the individual’s personal representative; (c) use or disclosure made pursuant to an authorization; (d) disclosure to HHS for complaint investigation, compliance review or enforcement; (e) use or disclosure that is required by law; or (f) use or disclosure required for compliance with the HIPAA Transactions Rule or other HIPAA Administrative Simplification Rules.</p> <p><b>Access and Uses.</b> For internal uses, a covered entity must develop and implement policies and procedures that restrict access and uses of protected health information based on the specific roles of the members of their workforce. These policies and procedures must identify the persons, or classes of persons, in the workforce who need access to protected health information to carry out their duties, the categories of</p>

	<p>protected health information to which access is needed, and any conditions under which they need the information to do their jobs.</p> <p><b>Disclosures and Requests for Disclosures.</b> Covered entities must establish and implement policies and procedures (which may be standard protocols) for <i>routine, recurring disclosures, or requests for disclosures</i>, that limits the protected health information disclosed to that which is the minimum amount reasonably necessary to achieve the purpose of the disclosure. Individual review of each disclosure is not required. For non-routine, non-recurring disclosures, or requests for disclosures that it makes, covered entities must develop criteria designed to limit disclosures to the information reasonably necessary to accomplish the purpose of the disclosure and review each of these requests individually in accordance with the established criteria.</p> <p><b>Reasonable Reliance.</b> If another covered entity makes a request for protected health information, a covered entity may rely, if reasonable under the circumstances, on the request as complying with this minimum necessary standard. Similarly, a covered entity may rely upon requests as being the minimum necessary protected health information from: (a) a public official, (b) a professional (such as an attorney or accountant) who is the covered entity’s business associate, seeking the information to provide services to or for the covered entity; or (c) a researcher who provides the documentation or representation required by the Privacy Rule for research.</p>
<p><b>Notice and Other Individual Rights</b></p>	<p><b>Privacy Practices Notice.</b> Each covered entity, with certain exceptions, must provide a notice of its privacy practices.<sup>51</sup> The Privacy Rule requires that the notice contain certain elements. The notice must describe the ways in which the covered entity may use and disclose protected health information. The notice must state the covered entity’s duties to protect privacy, provide a notice of privacy practices, and abide by the terms of the current notice. The notice must describe individuals’ rights, including the right to complain to HHS and to the covered entity if they believe their privacy rights have been violated. The notice must include a point of contact for further information and for making complaints to the covered entity. Covered entities must act in accordance with their notices. The Rule also contains specific distribution requirements for direct treatment providers, all other health care providers, and health plans. See <a href="#">OCR “Notice” Guidance</a>.</p> <ul style="list-style-type: none"> <li>• <b>Notice Distribution.</b> A covered health care provider with a <i>direct treatment relationship</i> with individuals must deliver a privacy practices notice to patients starting April 14, 2003 as follows: <ul style="list-style-type: none"> <li>○ Not later than the first service encounter by personal delivery (for patient visits), by automatic and contemporaneous electronic response (for electronic service delivery), and by prompt mailing (for telephonic service delivery);</li> <li>○ By posting the notice at each service delivery site in a clear and prominent place where people seeking service may reasonably be expected to be able to read the notice; and</li> <li>○ In emergency treatment situations, the provider must furnish its notice as soon as practicable after the emergency abates.</li> </ul> </li> </ul>

Covered entities, whether *direct treatment providers* or *indirect treatment providers* (such as laboratories) or *health plans* must supply notice to anyone on request.<sup>52</sup> A covered entity must also make its notice electronically available on any web site it maintains for customer service or benefits information.

The covered entities in an *organized health care arrangement* may use a joint privacy practices notice, as long as each agrees to abide by the notice content with respect to the protected health information created or received in connection with participation in the arrangement.<sup>53</sup> Distribution of a joint notice by any covered entity participating in the organized health care arrangement at the first point that an OHCA member has an obligation to provide notice satisfies the distribution obligation of the other participants in the organized health care arrangement.

A health plan must distribute its privacy practices notice to each of its enrollees by its Privacy Rule compliance date. Thereafter, the health plan must give its notice to each new enrollee at enrollment, and send a reminder to every enrollee at least once every three years that the notice is available upon request. A health plan satisfies its distribution obligation by furnishing the notice to the “named insured,” that is, the subscriber for coverage that also applies to spouses and dependents.

- **Acknowledgement of Notice Receipt.** A covered health care provider with a direct treatment relationship with individuals must make a good faith effort to obtain written acknowledgement from patients of receipt of the privacy practices notice.<sup>54</sup> The Privacy Rule does not prescribe any particular content for the acknowledgement. The provider must document the reason for any failure to obtain the patient’s written acknowledgement. The provider is relieved of the need to request acknowledgement in an emergency treatment situation.

**Access.** Except in certain circumstances, individuals have the right to review and obtain a copy of their protected health information in a covered entity’s *designated record set*.<sup>55</sup> The “designated record set” is that group of records maintained by or for a covered entity that is used, in whole or part, to make decisions about individuals, or that is a provider’s medical and billing records about individuals or a health plan’s enrollment, payment, claims adjudication, and case or medical management record systems.<sup>56</sup> The Rule excepts from the right of access the following protected health information: psychotherapy notes, information compiled for legal proceedings, laboratory results to which the Clinical Laboratory Improvement Act (CLIA) prohibits access, or information held by certain research laboratories. For information included within the right of access, covered entities may deny an individual access in certain specified situations, such as when a health care professional believes access could cause harm to the individual or another. In such situations, the individual must be given the right to have such denials reviewed by a licensed health care professional for a second opinion.<sup>57</sup> Covered entities may impose reasonable, cost-based fees for the cost of copying and postage.

**Amendment.** The Rule gives individuals the right to have covered entities amend their protected health information in a designated record set when that information is

inaccurate or incomplete.<sup>58</sup> If a covered entity accepts an amendment request, it must make reasonable efforts to provide the amendment to persons that the individual has identified as needing it, and to persons that the covered entity knows might rely on the information to the individual's detriment.<sup>59</sup> If the request is denied, covered entities must provide the individual with a written denial and allow the individual to submit a statement of disagreement for inclusion in the record. The Rule specifies processes for requesting and responding to a request for amendment. A covered entity must amend protected health information in its designated record set upon receipt of notice to amend from another covered entity.

**Disclosure Accounting.** Individuals have a right to an accounting of the disclosures of their protected health information by a covered entity or the covered entity's business associates.<sup>60</sup> The maximum disclosure accounting period is the six years immediately preceding the accounting request, except a covered entity is not obligated to account for any disclosure made before its Privacy Rule compliance date.

The Privacy Rule does not require accounting for disclosures: (a) for treatment, payment, or health care operations; (b) to the individual or the individual's personal representative; (c) for notification of or to persons involved in an individual's health care or payment for health care, for disaster relief, or for facility directories; (d) pursuant to an authorization; (e) of a limited data set; (f) for national security or intelligence purposes; (g) to correctional institutions or law enforcement officials for certain purposes regarding inmates or individuals in lawful custody; or (h) incident to otherwise permitted or required uses or disclosures. Accounting for disclosures to health oversight agencies and law enforcement officials must be temporarily suspended on their written representation that an accounting would likely impede their activities.

**Restriction Request.** Individuals have the right to request that a covered entity restrict use or disclosure of protected health information for treatment, payment or health care operations, disclosure to persons involved in the individual's health care or payment for health care, or disclosure to notify family members or others about the individual's general condition, location, or death.<sup>61</sup> A covered entity is under no obligation to agree to requests for restrictions. A covered entity that does agree must comply with the agreed restrictions, except for purposes of treating the individual in a medical emergency.<sup>62</sup>

**Confidential Communications Requirements.** Health plans and covered health care providers must permit individuals to request an alternative means or location for receiving communications of protected health information by means other than those that the covered entity typically employs.<sup>63</sup> For example, an individual may request that the provider communicate with the individual through a designated address or phone number. Similarly, an individual may request that the provider send communications in a closed envelope rather than a post card.

Health plans must accommodate reasonable requests if the individual indicates that the disclosure of all or part of the protected health information could endanger the individual. The health plan may not question the individual's statement of endangerment. Any covered entity may condition compliance with a confidential communication request on the individual specifying an alternative address or method of contact and explaining how any payment will be handled.

## Administrative Requirements

HHS recognizes that covered entities range from the smallest provider to the largest, multi-state health plan. Therefore the flexibility and scalability of the Rule are intended to allow covered entities to analyze their own needs and implement solutions appropriate for their own environment. What is appropriate for a particular covered entity will depend on the nature of the covered entity's business, as well as the covered entity's size and resources.

**Privacy Policies and Procedures.** A covered entity must develop and implement written privacy policies and procedures that are consistent with the Privacy Rule.<sup>64</sup>

**Privacy Personnel.** A covered entity must designate a privacy official responsible for developing and implementing its privacy policies and procedures, and a contact person or contact office responsible for receiving complaints and providing individuals with information on the covered entity's privacy practices.<sup>65</sup>

**Workforce Training and Management.** Workforce members include employees, volunteers, trainees, and may also include other persons whose conduct is under the direct control of the entity (whether or not they are paid by the entity).<sup>66</sup> A covered entity must train all workforce members on its privacy policies and procedures, as necessary and appropriate for them to carry out their functions.<sup>67</sup> A covered entity must have and apply appropriate sanctions against workforce members who violate its privacy policies and procedures or the Privacy Rule.<sup>68</sup>

**Mitigation.** A covered entity must mitigate, to the extent practicable, any harmful effect it learns was caused by use or disclosure of protected health information by its workforce or its business associates in violation of its privacy policies and procedures or the Privacy Rule.<sup>69</sup>

**Data Safeguards.** A covered entity must maintain reasonable and appropriate administrative, technical, and physical safeguards to prevent intentional or unintentional use or disclosure of protected health information in violation of the Privacy Rule and to limit its incidental use and disclosure pursuant to otherwise permitted or required use or disclosure.<sup>70</sup> For example, such safeguards might include shredding documents containing protected health information before discarding them, securing medical records with lock and key or pass code, and limiting access to keys or pass codes. See [OCR "Incidental Uses and Disclosures" Guidance](#).

**Complaints.** A covered entity must have procedures for individuals to complain about its compliance with its privacy policies and procedures and the Privacy Rule.<sup>71</sup> The covered entity must explain those procedures in its privacy practices notice.<sup>72</sup>

Among other things, the covered entity must identify to whom individuals can submit complaints to at the covered entity and advise that complaints also can be submitted to the Secretary of HHS.

**Retaliation and Waiver.** A covered entity may not retaliate against a person for exercising rights provided by the Privacy Rule, for assisting in an investigation by HHS or another appropriate authority, or for opposing an act or practice that the person believes in good faith violates the Privacy Rule.<sup>73</sup> A covered entity may not

	<p>require an individual to waive any right under the Privacy Rule as a condition for obtaining treatment, payment, and enrollment or benefits eligibility.<sup>74</sup></p> <p><b>Documentation and Record Retention.</b> A covered entity must maintain, until six years after the later of the date of their creation or last effective date, its privacy policies and procedures, its privacy practices notices, disposition of complaints, and other actions, activities, and designations that the Privacy Rule requires to be documented.<sup>75</sup></p> <p><b>Fully-Insured Group Health Plan Exception.</b> The only administrative obligations with which a fully-insured group health plan that has no more than enrollment data and summary health information is required to comply are the (1) ban on retaliatory acts and waiver of individual rights, and (2) documentation requirements with respect to plan documents if such documents are amended to provide for the disclosure of protected health information to the plan sponsor by a health insurance issuer or HMO that services the group health plan.<sup>76</sup></p>
<p><b>Organizational Options</b></p>	<p>The Rule contains provisions that address a variety of organizational issues that may affect the operation of the privacy protections.</p> <p><b>Hybrid Entity.</b> The Privacy Rule permits a covered entity that is a single legal entity and that conducts both covered and non-covered functions to elect to be a “hybrid entity.”<sup>77</sup> (The activities that make a person or organization a covered entity are its “covered functions.”<sup>78</sup>) To be a hybrid entity, the covered entity must designate in writing its operations that perform covered functions as one or more “health care components.” After making this designation, most of the requirements of the Privacy Rule will apply only to the health care components. A covered entity that does not make this designation is subject in its entirety to the Privacy Rule.</p> <p><b>Affiliated Covered Entity.</b> Legally separate covered entities that are affiliated by common ownership or control may designate themselves (including their health care components) as a single covered entity for Privacy Rule compliance.<sup>79</sup> The designation must be in writing. An affiliated covered entity that performs multiple covered functions must operate its different covered functions in compliance with the Privacy Rule provisions applicable to those covered functions.</p> <p><b>Organized Health Care Arrangement.</b> The Privacy Rule identifies relationships in which participating covered entities share protected health information to manage and benefit their common enterprise as “organized health care arrangements.”<sup>80</sup> Covered entities in an organized health care arrangement can share protected health information with each other for the arrangement’s joint health care operations.<sup>81</sup></p> <p><b>Covered Entities With Multiple Covered Functions.</b> A covered entity that performs multiple covered functions must operate its different covered functions in compliance with the Privacy Rule provisions applicable to those covered functions.<sup>82</sup> The covered entity may not use or disclose the protected health information of an individual who receives services from one covered function (e.g., health care provider) for another covered function (e.g., health plan) if the individual is not involved with the other function.</p>

	<p><b>Group Health Plan disclosures to Plan Sponsors.</b> A group health plan and the health insurer or HMO offered by the plan may disclose the following protected health information to the “plan sponsor”—the employer, union, or other employee organization that sponsors and maintains the group health plan<sup>83</sup>:</p> <ul style="list-style-type: none"> <li>• Enrollment or disenrollment information with respect to the group health plan or a health insurer or HMO offered by the plan.</li> <li>• If requested by the plan sponsor, summary health information for the plan sponsor to use to obtain premium bids for providing health insurance coverage through the group health plan, or to modify, amend, or terminate the group health plan. “Summary health information” is information that summarizes claims history, claims expenses, or types of claims experience of the individuals for whom the plan sponsor has provided health benefits through the group health plan, and that is stripped of all individual identifiers other than five digit zip code (though it need not qualify as de-identified protected health information).</li> <li>• Protected health information of the group health plan’s enrollees for the plan sponsor to perform plan administration functions. The plan must receive certification from the plan sponsor that the group health plan document has been amended to impose restrictions on the plan sponsor’s use and disclosure of the protected health information. These restrictions must include the representation that the plan sponsor will not use or disclose the protected health information for any employment-related action or decision or in connection with any other benefit plan.</li> </ul>
<p><b>Other Provisions: Personal Representatives and Minors</b></p>	<p><b>Personal Representatives.</b> The Privacy Rule requires a covered entity to treat a “personal representative” the same as the individual, with respect to uses and disclosures of the individual’s protected health information, as well as the individual’s rights under the Rule.<sup>84</sup> A personal representative is a person legally authorized to make health care decisions on an individual’s behalf or to act for a deceased individual or the estate. The Privacy Rule permits an exception when a covered entity has a reasonable belief that the personal representative may be abusing or neglecting the individual, or that treating the person as the personal representative could otherwise endanger the individual.</p> <p><b>Special case: Minors.</b> In most cases, parents are the personal representatives for their minor children. Therefore, in most cases, parents can exercise individual rights, such as access to the medical record, on behalf of their minor children. In certain exceptional cases, the parent is not considered the personal representative. In these situations, the Privacy Rule defers to State and other law to determine the rights of parents to access and control the protected health information of their minor children. If State and other law is silent concerning parental access to the minor’s protected health information, a covered entity has discretion to provide or deny a parent access to the minor’s health information, provided the decision is made by a licensed health care professional in the exercise of professional judgment. See <a href="#">OCR “Personal Representatives” Guidance</a>.</p>

<p><b>State Law</b></p>	<p><b>Preemption.</b> In general, State laws that are contrary to the Privacy Rule are preempted by the federal requirements, which means that the federal requirements will apply.<sup>85</sup> “Contrary” means that it would be impossible for a covered entity to comply with both the State and federal requirements, or that the provision of State law is an obstacle to accomplishing the full purposes and objectives of the Administrative Simplification provisions of HIPAA.<sup>86</sup> The Privacy Rule provides exceptions to the general rule of federal preemption for contrary State laws that (1) relate to the privacy of individually identifiable health information and provide greater privacy protections or privacy rights with respect to such information, (2) provide for the reporting of disease or injury, child abuse, birth, or death, or for public health surveillance, investigation, or intervention, or (3) require certain health plan reporting, such as for management or financial audits.</p> <p><b>Exception Determination.</b> In addition, preemption of a contrary State law will not occur if HHS determines, in response to a request from a State or other entity or person, that the State law:</p> <ul style="list-style-type: none"> <li>• Is necessary to prevent fraud and abuse related to the provision of or payment for health care,</li> <li>• Is necessary to ensure appropriate State regulation of insurance and health plans to the extent expressly authorized by statute or regulation,</li> <li>• Is necessary for State reporting on health care delivery or costs,</li> <li>• Is necessary for purposes of serving a compelling public health, safety, or welfare need, and, if a Privacy Rule provision is at issue, if the Secretary determines that the intrusion into privacy is warranted when balanced against the need to be served; or</li> <li>• Has as its principal purpose the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances (as defined in 21 U.S.C. 802), or that is deemed a controlled substance by State law.</li> </ul>
<p><b>Enforcement and Penalties for Noncompliance</b></p>	<p><b>Compliance.</b> Consistent with the principles for achieving compliance provided in the Rule, HHS will seek the cooperation of covered entities and may provide technical assistance to help them comply voluntarily with the Rule.<sup>87</sup> The Rule provides processes for persons to file complaints with HHS, describes the responsibilities of covered entities to provide records and compliance reports and to cooperate with, and permit access to information for, investigations and compliance reviews.</p> <p><b>Civil Money Penalties.</b> HHS may impose civil money penalties on a covered entity of \$100 per failure to comply with a Privacy Rule requirement.<sup>88</sup> That penalty may not exceed \$25,000 per year for multiple violations of the identical Privacy Rule requirement in a calendar year. HHS may not impose a civil money penalty under specific circumstances, such as when a violation is due to reasonable cause and did not involve willful neglect and the covered entity corrected the violation within 30 days of when it knew or should have known of the violation.</p>

	<p><b>Criminal Penalties.</b> A person who knowingly obtains or discloses individually identifiable health information in violation of HIPAA faces a fine of \$50,000 and up to one-year imprisonment.<sup>89</sup> The criminal penalties increase to \$100,000 and up to five years imprisonment if the wrongful conduct involves false pretenses, and to \$250,000 and up to ten years imprisonment if the wrongful conduct involves the intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm. Criminal sanctions will be enforced by the Department of Justice.</p>
<p><b>Compliance Dates</b></p>	<p><b>Compliance Schedule.</b> All covered entities, except “small health plans,” must be compliant with the Privacy Rule by April 14, 2003.<sup>90</sup> Small health plans, however, have until April 14, 2004 to comply.</p> <p><b>Small Health Plans.</b> A health plan with annual receipts of not more than \$5 million is a small health plan.<sup>91</sup> Health plans that file certain federal tax returns and report receipts on those returns should use the guidance provided by the Small Business Administration at 13 Code of Federal Regulations (CFR) 121.104 to calculate annual receipts. Health plans that do not report receipts to the Internal Revenue Service (IRS), for example, group health plans regulated by the Employee Retirement Income Security Act 1974 (ERISA) that are exempt from filing income tax returns, should use proxy measures to determine their annual receipts.<sup>92</sup> See <a href="#">What constitutes a small health plan?</a></p>
<p><b>Copies of the Rule &amp; Related Materials</b></p>	<p>The entire Privacy Rule, as well as guidance and additional materials, may be found on our website, <a href="http://www.hhs.gov/ocr/hipaa">http://www.hhs.gov/ocr/hipaa</a>.</p>

## End Notes

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<sup>1</sup> Pub. L. 104-191.

<sup>2</sup> 65 FR 82462.

<sup>3</sup> 67 FR 53182.

<sup>4</sup> 45 C.F.R. §§ 160.102, 160.103.

<sup>5</sup> Even if an entity, such as a community health center, does not meet the definition of a health plan, it may, nonetheless, meet the definition of a health care provider, and, if it transmits health information in electronic form in connection with the transactions for which the Secretary of HHS has adopted standards under HIPAA, may still be a covered entity.

<sup>6</sup> 45 C.F.R. §§ 160.102, 160.103; *see* Social Security Act § 1172(a)(3), 42 U.S.C. § 1320d-1(a)(3). The transaction standards are established by the HIPAA Transactions Rule at 45 C.F.R. Part 162.

<sup>7</sup> 45 C.F.R. § 160.103.

<sup>8</sup> 45 C.F.R. § 164.500(b).

<sup>9</sup> 45 C.F.R. § 160.103.

<sup>10</sup> 45 C.F.R. §§ 164.502(e), 164.504(e).

<sup>11</sup> 45 C.F.R. § 164.532

<sup>12</sup> 45 C.F.R. § 160.103.

<sup>13</sup> 45 C.F.R. § 160.103

<sup>14</sup> 45 C.F.R. §§ 164.502(d)(2), 164.514(a) and (b).

<sup>15</sup> The following identifiers of the individual or of relatives, employers, or household members of the individual must be removed to achieve the “safe harbor” method of de-identification: (A) Names; (B) All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of Census (1) the geographic units formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and (2) the initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000; (C) All elements of dates (except year) for dates directly related to the individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older; (D) Telephone numbers; (E) Fax numbers; (F) Electronic mail addresses; (G) Social security numbers; (H) Medical record numbers; (I) Health plan beneficiary numbers; (J) Account numbers; (K) Certificate/license numbers; (L) Vehicle identifiers and serial numbers, including license plate numbers; (M) Device identifiers and serial numbers; (N) Web Universal Resource Locators (URLs); (O) Internet Protocol (IP) address numbers; (P) Biometric identifiers, including finger and voice prints; (Q) Full face photographic images and any comparable images; and ® any other unique identifying number, characteristic, or code, except as permitted for re-identification purposes provided certain conditions are met. In addition to the removal of the above-stated identifiers, the covered entity may not have actual knowledge that the remaining information could be used alone or in combination with any other information to identify an individual who is subject of the information. 45 C.F.R. § 164.514(b).

<sup>16</sup> 45 C.F.R. § 164.502(a).

<sup>17</sup> 45 C.F.R. § 164.502(a)(2).

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<sup>18</sup> 45 C.F.R. § 164.502(a)(1).

<sup>19</sup> 45 C.F.R. § 164.506(c).

<sup>20</sup> 45 C.F.R. § 164.501.

<sup>21</sup> 45 C.F.R. § 164.501.

<sup>22</sup> 45 C.F.R. § 164.501.

<sup>23</sup> 45 C.F.R. § 164.508(a)(2)

<sup>24</sup> 45 C.F.R. § 164.506(b).

<sup>25</sup> 45 C.F.R. § 164.510(a).

<sup>26</sup> 45 C.F.R. § 164.510(b).

<sup>27</sup> 45 C.F.R. §§ 164.502(a)(1)(iii).

<sup>28</sup> *See* 45 C.F.R. § 164.512.

<sup>29</sup> 45 C.F.R. § 164.512(a).

<sup>30</sup> 45 C.F.R. § 164.512(b).

<sup>31</sup> 45 C.F.R. § 164.512(a), (c).

<sup>32</sup> 45 C.F.R. § 164.512(d).

<sup>33</sup> 45 C.F.R. § 164.512(e).

<sup>34</sup> 45 C.F.R. § 164.512(f).

<sup>35</sup> 45 C.F.R. § 164.512(g).

<sup>36</sup> 45 C.F.R. § 164.512(h).

<sup>37</sup> The Privacy Rule defines research as, “a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.” 45 C.F.R. § 164.501.

<sup>38</sup> 45 C.F.R. § 164.512(i).

<sup>39</sup> 45 CFR § 164.514(e).

<sup>40</sup> 45 C.F.R. § 164.512(j).

<sup>41</sup> 45 C.F.R. § 164.512(k).

<sup>42</sup> 45 C.F.R. § 164.512(l).

<sup>43</sup> 45 C.F.R. § 164.514(e). A limited data set is protected health information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual: (i) Names; (ii) Postal address information, other than town or city, State and zip code; (iii) Telephone numbers; (iv) Fax numbers; (v) Electronic mail addresses; (vi) Social security numbers; (vii) Medical record numbers; (viii) Health plan beneficiary numbers; (ix) Account numbers; (x) Certificate/license numbers; (xi) Vehicle identifiers and serial numbers, including license plate numbers; (xii) Device identifiers and serial numbers; (xiii) Web Universal Resource Locators (URLs); (xiv) Internet Protocol (IP) address numbers; (xv) Biometric identifiers, including finger and voice prints; (xvi) Full face photographic images and any comparable images. 45 C.F.R. § 164.514(e)(2).

<sup>44</sup> 45 C.F.R. § 164.508.

<sup>45</sup> A covered entity may condition the provision of health care solely to generate protected health information for disclosure to a third party on the individual giving authorization to disclose the

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information to the third party. For example, a covered entity physician may condition the provision of a physical examination to be paid for by a life insurance issuer on an individual's authorization to disclose the results of that examination to the life insurance issuer. A health plan may condition enrollment or benefits eligibility on the individual giving authorization, requested before the individual's enrollment, to obtain protected health information (other than psychotherapy notes) to determine the individual's eligibility or enrollment or for underwriting or risk rating. A covered health care provider may condition treatment related to research (e.g., clinical trials) on the individual giving authorization to use or disclose the individual's protected health information for the research. 45 C.F.R. 508(b)(4).

<sup>46</sup> 45 CFR § 164.532.

<sup>47</sup> "Psychotherapy notes" means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the of the individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date. 45 C.F.R. § 164.501.

<sup>48</sup> 45 C.F.R. § 164.508(a)(2).

<sup>49</sup> 45 C.F.R. §§ 164.501 and 164.508(a)(3).

<sup>50</sup> 45 C.F.R. §§ 164.502(b) and 164.514 (d).

<sup>51</sup> 45 C.F.R. §§ 164.520(a) and (b). A group health plan, or a health insurer or HMO with respect to the group health plan, that intends to disclose protected health information (including enrollment data or summary health information) to the plan sponsor, must state that fact in the notice. Special statements are also required in the notice if a covered entity intends to contact individuals about health-related benefits or services, treatment alternatives, or appointment reminders, or for the covered entity's own fundraising.

<sup>52</sup> 45 C.F.R. § 164.520(c).

<sup>53</sup> 45 C.F.R. § 164.520(d).

<sup>54</sup> 45 C.F.R. § 164.520(c).

<sup>55</sup> 45 C.F.R. § 164.524.

<sup>56</sup> 45 C.F.R. § 164.501.

<sup>57</sup> A covered entity may deny an individual access, provided that the individual is given a right to have such denials reviewed by a licensed health care professional (who is designated by the covered entity and who did not participate in the original decision to deny), when a licensed health care professional has determined, in the exercise of professional judgment, that: (a) the access requested is reasonably likely to endanger the life or physical safety of the individual or another person; (b) the protected health information makes reference to another person (unless such other person is a health care provider) and the access requested is reasonably likely to cause substantial harm to such other person; or (c) the request for access is made by the individual's personal representative and the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

A covered entity may deny access to individuals, without providing the individual an opportunity for review, in the following protected situations: (a) the protected health information falls under an exception to the right of access; (b) an inmate request for protected health information under certain circumstances; (c) information that a provider creates or obtains in the course of research that includes treatment for which the individual has agreed not to have access as part of consenting

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to participate in the research (as long as access to the information is restored upon completion of the research); (d) for records subject to the Privacy Act, information to which access may be denied under the Privacy Act, 5 U.S.C. § 552a; and (e) information obtained under a promise of confidentiality from a source other than a health care provider, if granting access would likely reveal the source. 45 C.F.R. § 164.524.

<sup>58</sup> 45 C.F.R. § 164.526.

<sup>59</sup> Covered entities may deny an individual's request for amendment only under specified circumstances. A covered entity may deny the request if it: (a) may exclude the information from access by the individual; (b) did not create the information (unless the individual provides a reasonable basis to believe the originator is no longer available); (c) determines that the information is accurate and complete; or (d) does not hold the information in its designated record set. 164.526(a)(2).

<sup>60</sup> 45 C.F.R. § 164.528.

<sup>61</sup> 45 C.F.R. § 164.522(a).

<sup>62</sup> 45 C.F.R. § 164.522(a). In addition, a restriction agreed to by a covered entity is not effective under this subpart to prevent uses or disclosures permitted or required under §§ 164.502(a)(2)(ii), 164.510(a) or 164.512.

<sup>63</sup> 45 C.F.R. § 164.522(b).

<sup>64</sup> 45 C.F.R. § 164.530(i).

<sup>65</sup> 45 C.F.R. § 164.530(a).

<sup>66</sup> 45 C.F.R. § 160.103.

<sup>67</sup> 45 C.F.R. § 164.530(b).

<sup>68</sup> 45 C.F.R. § 164.530(e).

<sup>69</sup> 45 C.F.R. § 164.530(f).

<sup>70</sup> 45 C.F.R. § 164.530(c).

<sup>71</sup> 45 C.F.R. § 164.530(d).

<sup>72</sup> 45 C.F.R. § 164.520(b)(1)(vi).

<sup>73</sup> 45 C.F.R. § 164.530(g).

<sup>74</sup> 45 C.F.R. § 164.530(h).

<sup>75</sup> 45 C.F.R. § 164.530(j).

<sup>76</sup> 45 C.F.R. § 164.530(k).

<sup>77</sup> 45 C.F.R. §§ 164.103, 164.105.

<sup>78</sup> 45 C.F.R. § 164.103.

<sup>79</sup> 45 C.F.R. § 164.105. Common ownership exists if an entity possesses an ownership or equity interest of five percent or more in another entity; common control exists if an entity has the direct or indirect power significantly to influence or direct the actions or policies of another entity. 45 C.F.R. §§ 164.103.

<sup>80</sup> The Privacy Rule at 45 C.F.R. § 160.103 identifies five types of organized health care arrangements:

- A clinically-integrated setting where individuals typically receive health care from more than one provider.
- An organized system of health care in which the participating covered entities hold themselves out to the public as part of a joint arrangement and jointly engage in

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utilization review, quality assessment and improvement activities, or risk-sharing payment activities.

- A group health plan and the health insurer or HMO that insures the plan's benefits, with respect to protected health information created or received by the insurer or HMO that relates to individuals who are or have been participants or beneficiaries of the group health plan.
- All group health plans maintained by the same plan sponsor.
- All group health plans maintained by the same plan sponsor and all health insurers and HMOs that insure the plans' benefits, with respect to protected health information created or received by the insurers or HMOs that relates to individuals who are or have been participants or beneficiaries in the group health plans.

<sup>81</sup> 45 C.F.R. § 164.506(c)(5).

<sup>82</sup> 45 C.F.R. § 164.504(g).

<sup>83</sup> 45 C.F.R. § 164.504(f).

<sup>84</sup> 45 C.F.R. § 164.502(g).

<sup>85</sup> 45 C.F.R. § 160.203.

<sup>86</sup> 45 C.F.R. § 160.202.

<sup>87</sup> 45 C.F.R. § 160.304

<sup>88</sup> Pub. L. 104-191; 42 U.S.C. § 1320d-5.

<sup>89</sup> Pub. L. 104-191; 42 U.S.C. § 1320d-6.

<sup>90</sup> 45 C.F.R. § 164.534.

<sup>91</sup> 45 C.F.R. § 160.103.

<sup>92</sup> Fully insured health plans should use the amount of total premiums that they paid for health insurance benefits during the plan's last full fiscal year. Self-insured plans, both funded and unfunded, should use the total amount paid for health care claims by the employer, plan sponsor or benefit fund, as applicable to their circumstances, on behalf of the plan during the plan's last full fiscal year. Those plans that provide health benefits through a mix of purchased insurance and self-insurance should combine proxy measures to determine their total annual receipts.

# II

## Family Educational Rights and Privacy Act (FERPA)



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## Family Educational Rights and Privacy Act (FERPA)

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### [Family Policy Compliance Office \(FPCO\) Home](#)

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

- Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.
- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
  - School officials with legitimate educational interest;
  - Other schools to which a student is transferring;
  - Specified officials for audit or evaluation purposes;
  - Appropriate parties in connection with financial aid to a student;
  - Organizations conducting certain studies for or on behalf of the school;
  - Accrediting organizations;
  - To comply with a judicial order or lawfully issued subpoena;
  - Appropriate officials in cases of health and safety emergencies; and
  - State and local authorities, within a juvenile justice system, pursuant to specific State law.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student

handbook, or newspaper article) is left to the discretion of each school.

For additional information or technical assistance, you may call (202) 260-3887 (voice). Individuals who use TDD may call the Federal Information Relay Service at 1-800-877-8339.

Or you may contact us at the following address:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-5920

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Last Modified: 04/27/2007

# III

## National Instant Criminal Background Check System Fact Sheet

## National Instant Criminal Background Check System Fact Sheet

[\[Brady Act Requirements\]](#) [\[NICS Section\]](#) [\[POC States\]](#)

[\[NICS Background Checks\]](#) [\[NICS E-Check\]](#) [\[Privacy and Security of NICS Information\]](#) [\[NICS Appeals\]](#)

[\[Additional Information\]](#) [\[Federal Categories of Persons Prohibited from Receiving\]](#)

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### Brady Act Requirements

Mandated by the Brady Handgun Violence Prevention Act (Brady Act) of 1993, Public Law 103-159, the National Instant Criminal Background Check System (NICS) was established for Federal Firearms Licensees (FFLs) to contact by telephone, or other electronic means, for information to be supplied immediately on whether the transfer of a firearm would be in violation of Section 922 (g) or (n) of Title 18, United States Code, or state law. The Brady Act is a public record and is available from many sources including the Internet at [www.atf.treas.gov](http://www.atf.treas.gov).

The NICS is a national system that checks available records on persons who may be disqualified from receiving firearms. The FBI developed the system through a cooperative effort with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and local and state law enforcement agencies. The NICS is a computerized background check system designed to respond within 30 seconds on most background check inquiries so the FFLs receive an almost immediate response. Depending on the willingness of state governments to act as a liaison for the NICS, the FFLs contact either the FBI or a designated state point-of-contact (POC) to initiate background checks on individuals purchasing or redeeming firearms, and in certain instances, firearm-related permits. The background check process, as performed by the FBI and by state POCs, is described below.

### The NICS Section

Located at the FBI's Criminal Justice Information Services (CJIS) Division in Clarksburg, West Virginia, the NICS Section processes background checks for the FFLs in those states that have declined to serve as POCs for the NICS. The FFLs conducting business in these states will contact the NICS either by telephone, via one of two contracted call centers, or electronically by the NICS E-Check System via the Internet. When contacting the NICS by telephone, the FFL will provide the prospective After contacting the NICS, via two contracted call centers, either by telephone or electronically by the NICS E-Check System via the Internet, FFLs will provide the descriptive information provided on the ATF Form 4473, which is required by law to be completed and signed by every prospective firearm transferee. The prospective firearm transferee's descriptive information is required descriptive , the FFL will receive a response that the transfer may proceed or is delayed. This response is typically provided within 30 seconds.

If **no** matching records are returned by any of the databases, the transaction is automatically proceeded. If the NICS returns a match of the prospective firearm transferee's descriptive information to that of record information located in any of the databases, the FFL is advised that the transaction is delayed. While the FFL is still on the telephone, the call is placed on hold and transferred to the NICS Section in Clarksburg, West Virginia, for a quick review and evaluation by an FBI NICS Legal Instruments Examiner (NICS Examiner). If the record information returned by the NICS presents a valid match to the descriptive information of the prospective firearm transferee, the NICS Examiners, who have access to protected information (as opposed to Call Center personnel who do not have such access) reviews the information if state and federal firearm prohibitive criteria exists. If the information matched by the NICS is not a valid match or no prohibitive criteria exists, the FBI NICS Examiner will advise the FFL to **PROCEED** with the firearm transaction. The FFL must record the NICS Transaction Number (NTN) on the ATF Form 4473 and retain the form for auditing purposes.

If it is determined that prohibitive criteria exists, the FBI NICS Examiner will advise the FFL to **DENY** the firearm transaction. If *potentially* prohibitive criteria exists and more information is required in order to make the determination, the NICS Examiner will advise the FFL to **DELAY** the firearm transaction and the call is concluded.

The FFL must record the NTN on the ATF Form 4473 and retain the form for auditing purposes.

When a transaction is **DELAYED**, the FBI NICS Examiner begins extensive research on the potential prohibitor. When the research is complete, the FBI NICS Examiner calls the FFL and gives a **PROCEED** or **DENY** decision on the firearm transaction.

On the third business day of a **DELAYED** transaction, the NICS Examiner is required to call the FFL and advise him/her of their rights under the Brady Act to transfer the firearm **after** the third business day. If the delayed transaction cannot be resolved within the allowed three business days, it is at the discretion of the FFL whether to allow the firearm transfer. However, the NICS Section continues to research the case in an effort to obtain complete disposition information. Business days do not include the day the check was initiated Saturdays, Sundays, and any day state offices in the state of purchase are closed.

### **POC States**

In states that agree to serve as POCs for the NICS, the functions performed by the NICS Section are performed by a local or state law enforcement agency which services the FFLs. The FFLs call these local or state agencies, which perform the check, make the decision whether the check indicates an individual is disqualified or not from possessing firearm, and notify the FFL of the results of the results of the check.

### **NICS Background Checks**

The FFLs have the following three methods of performing background checks depending upon the state in which the FFL is conducting business:

1. In states where the state government has agreed to serve as the POC for the system, the FFLs contact the NICS through the state POC for all firearm transfers. The state POC conducts the NICS check and determines whether or not the transfer would violate state or federal law.
2. In states where the state government has declined to serve as a POC, the FFLs initiate a NICS background check by contacting the NICS Section for all firearm transfers. The FBI conducts the NICS check and determines whether or not the transfer would violate state or federal law.
3. Finally, in states where the state government has agreed to serve as a POC for handgun purchases but not for long gun purchases, the FFLs contact the NICS through the designated state POC for handgun transfers and the NICS Section for long gun transfers.

Each state decides whether the FFLs in its state call a state POC or the FBI to initiate firearm background checks.

### **NICS E-Check**

The NICS Section, in a joint effort with the FBI Information Technology Management Section (ITMS), Lockheed Martin Energy Systems, Science Applications International Corporation, and an FFL focus group, developed the NICS E-Check. This function enables FFLs to initiate an unassisted NICS background check for firearm transfers via the internet. The NICS Section ensured that security was a priority during the development and implementation of the NICS E-Check. The NICS E-Check is monitored 24 hours a day, 7 days per week, for misuse and unauthorized access. In addition, the NICS E-Check denies access to any individual whose identification is not known to the system.

### **Privacy and Security of NICS Information**

The privacy and security of the information in the NICS is of great importance. In October of 1998, the Attorney General published regulations on the privacy and security of NICS information, including the proper and official use of this information. These regulations are available on the NICS web site ([www.fbi.gov/hq/cjisd/nics/index.htm](http://www.fbi.gov/hq/cjisd/nics/index.htm)). Data stored in the NICS are documented federal data, and access to that information is restricted to agencies authorized by the FBI. Extensive measures are taken to ensure the security

and integrity of the system information and agency use. The NICS is not to be used to establish a federal firearm registry; information about an inquiry resulting in an allowed transfer is destroyed in accordance with NICS regulations.

### **NICS Appeals**

Individuals who are denied the purchase of a firearm may request that the NICS or the state which processed their transaction provide the reasons for the denial. The regulations address the process for filing an appeal. Appellants must include the NTN assigned to their transaction. Appeals may be submitted via facsimile at 1-888-55-6427; by e-mail at [nicsappeals@leo.gov](mailto:nicsappeals@leo.gov); or by mail to the NICS Section, Appeal Services Unit, Post Office Box 4278, Clarksburg, West Virginia 26302-9922.

### **Additional Information**

For the FFL to initiate background checks with the NICS Section, the FFL MUST BE ENROLLED WITH THE FBI. Enrollment packets may be obtained by contacting the NICS Section via mail at 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, via e-mail at [a\\_nics@leo.gov](mailto:a_nics@leo.gov), or via telephone at 1-877-444-NICS (6427).

Persons holding firearm permits which qualify as alternatives, per the ATF, under the permanent provision of the Brady Act are not required to undergo a NICS check.

The former pawnshop exemption for background checks on individuals who are redeeming firearms ceased to exist on November 30, 1998. NICS background checks are required for the transfer of redeemed firearms, including both handguns and long guns.

The NICS Section attends ATF regional firearms seminars in selected states around the country to provide a NICS overview, answer questions and provide updates on new developments in NICS operations.

### **Federal Categories of Persons Prohibited From Receiving**

A delay response from the NICS Section indicates that either you or another individual with a similar name and/or similar descriptive features (name, sex, race, date of birth, state of residence, social security number, height, weight, or place of birth) has been matched with either state prohibitive criteria or one or more of the following federally prohibitive criteria:

- A person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year or any state offense classified by the state as a misdemeanor and is punishable by a term of imprisonment of more than two years.
- Persons who are fugitives of justice; for example, the subject of an active felony or misdemeanor warrant.
- An unlawful user and/or an addict of any controlled substance; for example, a person convicted for the use or possession of a controlled substance within the past year, or a person with multiple arrests for the use or possession of a controlled substance within the past five years with the most recent arrest occurring within the past year, or a person found through a drug test to use a controlled substance unlawfully, provided the test was administered within the past year.
- A person adjudicated mental defective or involuntarily committed to a mental institution or incompetent to handle own affairs, including dispositions to criminal charges pertaining to found not guilty by reason of insanity or found incompetent to stand trial.
- A person who, being an alien, is illegally or unlawfully in the United States. A person who, being an alien except as provided in subsection (y) (2), has been admitted to the United States under a non-immigrant visa.
- A person dishonorably discharged from the United States Armed Forces.

- A person who has renounced his/her United States citizenship.
- The subject of a protective order issued after a hearing in which the respondent had notice that restrains them from harassing, stalking, or threatening an intimate partner or child of such partner. This does not include ex parte orders.
- A person convicted in any court of a misdemeanor crime which includes the use or attempted use of physical force or threatened use of a deadly weapon and the defendant was the spouse, former spouse, parent, 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 in the past with the victim as a spouse, parent, guardian or similarly situated to a spouse, parent or guardian of the victim.
- A person who is under indictment or information for a crime punishable by imprisonment for a term exceeding one year.

A delay response indicates that information you supplied on the Bureau of Alcohol, Tobacco, Firearms and Explosives Form 4473 has been matched with information contained in the National Crime Information Center, the Interstate Identification Index, and/or the NICS Index. Complete information is not always available and a further review of these records is necessary. The NICS Section exhausts all efforts to retrieve current record information by contacting all applicable law enforcement agencies, i.e., local, state, federal, courts, etc. The Brady Handgun Violence Prevention Act of 1993 allows three business days to obtain this information before a Federal Firearms Licensee (FFL) can transfer a firearm. The FFL is not prohibited from transferring the firearm after three business days have passed; however, the FFL is not required to transfer the firearm.


The Privacy Act of 1974 restricts the dissemination of specific information to you via the telephone. Under the provisions of Title 28, United States Code, Sections 16.30 through 16.34, you can obtain a copy (for a fee) of any identification record the FBI may maintain on you by contacting the following unit at the address and telephone number provided:

Federal Bureau of Investigation  
Criminal Justice Information Services Division  
Attention: Correspondence Group, Module D-2  
1000 Custer Hollow Road  
Clarksburg, WV 26306  
Telephone Number: (304) 625-3878

Additional information is available on the Internet at the following address:

<http://www.fbi.gov/hq/cjisd/nics/index.htm>

NICS Home Page

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# IV

## National Criminal Background Check System and Mental Health Reporting

## INTEROFFICE MEMORANDUM

**DATE:** July 3, 2007

**TO:** Nick Alexander

**FROM:** Jacqueline N. Fernandez

**RE:** **National Instant Criminal Background Check System and Mental Health Reporting**

### I. The Brady Handgun Violence Prevention Act of 1993<sup>1</sup> (“Act”)

The Act established the National Instant Criminal Background Check System (“NICS”) – a system that gives Federal Firearm Licensees a source from which they can quickly obtain information to perform background checks on those seeking to buy firearms or explosives. In an effort to ensure national security and public safety, the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms, and Explosives designed the NICS to facilitate the identification of potential purchasers of firearms or explosives who are disqualified under federal law from making such a purchase because they:

- have been dishonorably discharged from the Armed Forces;
- are unlawful users or addicted to a controlled substance;
- have been adjudicated as a mental defective or been committed to a mental institution;
- are illegal or unlawful aliens;
- have renounced their U.S. citizenship;
- are convicted felons;
- have been convicted of misdemeanor crimes of domestic violence;
- have protection orders against them;
- are active wanted persons; or
- are deported felons.

The NICS allows Federal Firearm Licensees to check available records provided by federal and state agencies to identify individuals who fall within the above categories. Once identified, they will be denied the right to purchase firearms or explosives.

The NICS utilizes six databases when searching for those prohibited from purchasing firearms or explosives. They are:

- **Illegal/Unlawful Aliens:** includes records (entered and updated by the United States Immigration Naturalization Services and state law enforcement) of individuals who are aliens and are illegally or unlawfully in the United States;
- **Controlled Substance Abusers:** includes records (entered and updated by the Department of Defense, the U.S. Coast Guard, and state law enforcement) of individuals who have been unlawful users of or are addicted to any controlled substance;

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<sup>1</sup> Brady Handgun Violence Prevention Act of 1993, Pub. L. No. 103-159, 107 Stat. 1536 (codified as amended at 18 U.S.C. §§ 921, 922 (1993)).

- **Dishonorable Discharges:** includes records (entered and updated by the Department of Defense and the U.S. Coast Guard) of individuals who have been dishonorably discharged from the Armed Forces;
- **Citizenship Renunciants:** includes records (entered and updated by the Department of State) of individuals who have renounced their U.S. citizenship;
- **Mental Defectives/Commitments:** includes records (entered and updated by the Department of Veteran Affairs, the Department of Defense, and state law enforcement) of individuals who have been adjudicated as a mental defective<sup>2</sup> or have been involuntarily committed to a mental institution<sup>3</sup>; and
- **Denied Persons:** includes records (entered and updated by state law enforcement) that are not already in the National Crime Information Center and the Interstate Identification Index – two databases that the NICS collaborates with.<sup>4</sup> Examples include records of individuals who are federally disqualified from purchasing firearms or explosives because they have been indicted, have warrants against them, have committed misdemeanor crimes of domestic violence, have protection orders against them, or because they meet the federally established criteria pertaining to mental defectiveness, yet their records cannot be placed in the Mental Defective File due to state laws.<sup>5</sup>

## II. The NICS and Mental Health Background Checks

Among the categories of information searched by the NICS, two are geared at identifying those potential purchasers of firearms or explosives who are severely afflicted with mental illness: the Mental Defective File and Denied Persons File. According to a press release issued by the Federal Bureau of Investigation, the Act prescribes a general rule that federal and state agencies must provide the name of the mental defective or denied person along with specific documentation (proof that an individual was in fact adjudicated as a mental defective or committed to a mental institution) when reporting to the NICS.<sup>6</sup> **If a state has privacy laws prohibiting the sharing of mental health information, however, it can provide information to the Denied Persons file without giving any specifics on the mental health issue.<sup>7</sup> States can submit mental health records to the Denied Persons File even if they do not or cannot identify the information specifically as a mental health record.<sup>8</sup>**

<sup>2</sup> “Adjudicated as a mental defective” is defined as a person who is found by a court or other authority to be a danger to himself or others, unable to manage his own affairs, insane in a criminal case, incompetent to stand trial, or not guilty by lack of mental responsibility. 27 C.F.R. § 478.11 (2006).

<sup>3</sup> “Committed to a mental institution” is defined as an involuntary commitment by a court or other authority, but does not include a voluntary admission. 27 C.F.R. § 478.11 (2006).

<sup>4</sup> <http://www.fbi.gov/hq/cjis/nics/nicsindex.htm>

<sup>5</sup> Criminal Justice Information Services Div., Fed. Bureau of Investigation, National Instant Criminal Background Check System Operations 2005, at 27 (2006)

<sup>6</sup> Press Release, Fed. Bureau of Investigation, Responses to Inquiries on the FBI’s National Instant Criminal Background Check System (April 19, 2007).

<sup>7</sup> *Id.*

<sup>8</sup> Criminal Justice Information Services Div., Fed. Bureau of Investigation, National Instant Criminal Background Check System Operations 2005, at 27 (2006).

According to the FBI, as of April 2007, there are 22 states that submit mental health information to the NCIS Index.<sup>9</sup> These states are: AL, AR, AK, CA, CO, FL, IA, KS, KY, MD, MI, MO, NH, NY, NC, OH, SC, TN, UT, VA, WA, and WY. More information regarding state-by-state procedures on NICS reporting can be found in a report published by the Bureau of Justice Statistics entitled, *Survey of State Procedures Related to Firearm Transfers, 2005*. The report summarizes each state's policy on the sale of firearms or explosives, thus providing information about NICS reporting and background checks. The publication is included in the supplemental materials provided by NAAG.

The efficacy of the NICS with regard to preventing those with mental health problems from purchasing firearms or explosives largely depends on state and federal agencies reporting the relevant records. The General Accounting Office reported in 2000 that at least 2.7 million disqualifying mental health records should have been in the system.<sup>10</sup> As of last year, 234,628 had been entered into the NICS.<sup>11</sup> This indicates, assuming that the numbers are still fairly accurate, that a significant majority of records are missing from the NICS.

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<sup>9</sup> Press Release, Fed. Bureau of Investigation, Responses to Inquiries on the FBI's National Instant Criminal Background Check System (April 19, 2007).

<sup>10</sup> General Accounting Office, Gun Control: Options for Improving the National Instant Criminal Background Check System 61 (2000).

<sup>11</sup> Bureau of Justice Statistics, Improving Criminal History Records for Background Checks 2005, at 3 (2006).

# V

## Survey of State Procedures Related to Firearm Sales, 2005



## Bureau of Justice Statistics

# Survey of State Procedures Related to Firearm Sales, 2005

### State by State

- Prohibitions against purchasing firearms
- Restoration of rights to purchase firearms
- Permits
- Waiting periods
- Fees
- Appeals

Includes the FBI's  
National Instant Criminal Background Check System

**U.S. Department of Justice**

Office of Justice Programs

810 Seventh Street, N.W.

Washington, D.C. 20531

Alberto R. Gonzales

Attorney General

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**Office of Justice Programs**

Partnerships for Safer Communities

Regina B. Schofield

Assistant Attorney General

World Wide Web site:

<http://www.ojp.usdoj.gov>

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**Bureau of Justice Statistics**

Jeffrey L. Sedgwick

Director

World Wide Web site:

<http://www.ojp.usdoj.gov/bjs>

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For information contact

**National Criminal Justice Reference Service**

1-800-851-3420



# **Survey of State Procedures Related to Firearm Sales, 2005**

**Prepared by the  
Regional Justice Information Service  
St. Louis, Missouri**

**November 2006, NCJ 214645**

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**U.S. Department of Justice**  
Bureau of Justice Statistics

Jeffrey L. Sedgwick  
Director

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Fax: (314) 535-1729

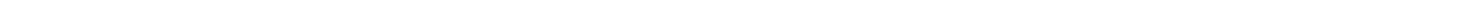
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This report is only available as an electronic  
publication on the BJS World Wide Web  
Internet site at:

**<<http://www.ojp.usdoj.gov/bjs/abstract/ssprfs05.htm>>**

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*Survey of State Procedures Related to Firearm Sales, 2005* is the tenth in a series of Bureau of Justice Statistics (BJS) reports. This report describes laws, regulations, procedures, and information systems related to sales and other transfers of firearms that were in effect as of December 31, 2005. Procedures summarized in the survey are required by the laws and regulations of the United States, the 50 States, and other jurisdictions.

**History of the survey and related bulletins** This national survey is produced by the BJS Firearm Inquiry Statistics (FIST) project, a component of the National Criminal History Improvement Program (NCHIP). NCHIP provides funding and technical assistance to improve the quality, timeliness, and accessibility of State criminal records and support interfaces between State and national record systems. The FIST project was established in 1995 to collect data that describe the scope and impact of firearm background checks required under Federal or State law.

The first three editions of the survey primarily described procedures related to background checks on handgun purchasers, especially those required by the interim provisions of the Brady Act. The fourth through ninth editions described procedures required by the permanent provisions of the Brady Act or State law for transfers of handguns and other types of firearms. This edition incorporates recent changes in Federal and State procedures and provides updated coverage on topics related to firearm sales.

Data collected and analyzed by the FIST project are also reported in BJS Bulletins. Five bulletins reported counts of firearm transfer applications and denials for the Brady interim period. (A cumulative summary is presented in *Presale Handgun Checks, the Brady Interim Period, 1994-1998*, <<http://www.ojp.usdoj.gov/bjs/abstract/phc98.htm>>.) More recent bulletins have summarized counts of firearm transfer applications and denials for the first full 7 years of the permanent Brady period. For the most recent bulletin, see *Background Checks for*

*Firearm Transfers, 2005*, <<http://www.ojp.usdoj.gov/bjs/abstract/bcft05.htm>>.

(All prior surveys and bulletins may be viewed or ordered through the BJS web site listed at the end of the *Background* section.)

The regular release of updated information in BJS surveys and bulletins is intended to highlight changes in the number of firearm transfer applications and denials as well as changes in the overall denial rate or the reasons for denial. The changes reported may be influenced by a variety of factors, including revisions in Federal and State laws, policies, or procedures, and the availability of different categories of law enforcement records. BJS anticipates that the procedural information presented in this report will be used with the statistical information about background checks to provide a more thorough understanding of the scope and impact of firearm transfer regulations.

**Survey methodology** Information for this report was collected from hundreds of Federal, State, and local agencies, including law enforcement organizations, statistical analysis centers, and legislative research bureaus. Descriptions of procedures and statistical data were voluntarily provided by agencies participating in the survey. Data analysis and supplementary legal research were provided by the Regional Justice Information Service (REJIS), the organization conducting the study pursuant to a cooperative agreement with BJS.

To ensure the accuracy of the information as of December 31, 2005, a draft of each State's summary was sent to the agency designated by the State for review and comment. The final version of each summary, as contained in this report, was reviewed and approved by a State contact.

Consistent with privacy protection procedures followed by the FIST project, the information collected for this survey did not disclose the identity of any individual involved in a firearm transaction. Additionally, the software provided to help agencies submit statistical data to

REJIS contains a purging mechanism that destroys data in accordance with applicable Federal or State law.

**Assault weapon** A semiautomatic firearm with a large-capacity magazine and special features common to military weapons.

**Antique firearm** A firearm manufactured in or before 1898 or a replica thereof, provided it is not designed for using rimfire or conventional centerfire fixed ammunition; or any muzzle loading rifle, shotgun or pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition.

**Curio or relic** A firearm manufactured at least 50 years prior to the current date or certified by the curator of a municipal, State, or Federal museum, or that derives a substantial part of its monetary value from the fact that it is novel, rare, bizarre, or associated with some historical figure, period, or event.

**Firearm** Any weapon that is designed to or may readily be converted to expel a projectile by the action of an explosive.

**Handgun** A firearm that has a short stock and is designed to be held and fired by the use of a single hand, such as a pistol or revolver.

**Long gun** A firearm with a barrel extended to around 30 inches to improve accuracy and range, and commonly with a shoulder butt, designed to be fired with two hands, such as a rifle or shotgun.

**Machine gun** (automatic firearm) A firearm that shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one bullet, without manual reloading, by a single function of the trigger.

**Pistol** A weapon originally designed, made, and intended to fire a projectile from a barrel when held in one hand, and having a chamber as an integral part of, or permanently aligned with, the bore, and a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore.

**Revolver** A projectile weapon, of the pistol type, having a breech loading chambered cylinder so arranged that the cocking of the hammer or move-

ment of the trigger rotates it and brings the next cartridge in line with the barrel for firing.

**Rifle** A weapon, designed, made, and intended to be fired from the shoulder; and designed and made to use the energy of an explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

**Semi-automatic firearm** A firearm that utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

**Short-barreled rifle** A rifle having one or more barrels less than 16 inches in length, and any weapon made from a rifle, whether by alteration, modification, or otherwise, if such weapon, as modified, has an overall length of less than 26 inches.

**Short-barreled shotgun** A shotgun having one or more barrels less than 18 inches in length, and any weapon made from a shotgun, whether altered or modified, if such weapon has an overall length of less than 26 inches.

**Shotgun** A weapon designed, made, and intended to be fired from the shoulder, and designed and made to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each pull of the trigger.

**Unsafe handgun** ("Saturday night special" or "junk gun") A handgun with a barrel length under 4 inches that is easily concealable and not effective for sporting or self defense purposes due to its poor quality of construction, inaccuracy, and lack of essential safety features.

Definitions are from or adapted from Federal and State Codes (a jurisdiction's laws should be consulted for specific definitions).

**Federal prohibitions** The Gun Control Act (GCA), 18 U.S.C. 922(d), prohibits the transfer of any firearm to any person who —

- is under indictment for or has been convicted of a crime punishable by imprisonment for more than 1 year;
- is a fugitive from justice;
- is an unlawful user of or addicted to any controlled substance;
- has been adjudicated as a mental defective or committed to a mental institution;
- is an alien unlawfully in the U.S. or admitted under a nonimmigrant visa;
- was discharged from the armed forces under dishonorable conditions;
- has renounced U.S. citizenship;
- is subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child of an intimate partner; or
- has been convicted in any court of a misdemeanor crime of domestic violence.

In addition, it is unlawful for a Federal Firearms Licensee (FFL) to transfer a long gun to a person less than 18 years old or a handgun to a person less than 21 years old. It is unlawful, with limited exceptions, for any person to transfer a handgun to a juvenile (under 18). (18 U.S.C. 922(b) and (x)).

**Brady interim system** In 1993 the Brady Handgun Violence Prevention Act (Brady Act) amended the Gun Control Act to provide a method for blocking transfers to prohibited persons. From February 28, 1994, until November 30, 1998, the interim provisions of the Brady Act, 18 U.S.C. 922(s), required an FFL to request a background check on a prospective handgun purchaser by the Chief Law Enforcement Officer (CLEO) of the jurisdiction where the licensee operated. A handgun could be transferred if a denial was not transmitted within 5 days by the CLEO. The interim provisions allowed States with prohibitory statutes comparable to Federal law to utilize handgun purchase permits and other alternative procedures.

**National Instant Criminal Background Check System** The permanent provisions of the Brady Act, 18 U.S.C. 922(t), required establishment of the National Instant Criminal Background Check System (NICS) by November 30, 1998. The U.S. Department of Justice, with the States, developed the system during the 57-month interim period.

The NICS allows a licensee to contact the system by telephone or other electronic means for information, to be supplied immediately, on whether receipt of a firearm by a transferee would violate Federal or State law. In addition to regulation of handgun sales, the permanent provisions mandate background checks on long gun purchasers and persons who redeem a pawned firearm. A licensee has the option of requesting a check on a person who attempts to pawn a firearm.

A NICS check by a dealer is not required if a transferee presents a State permit qualified by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as an alternative to the point-of-transfer check. Qualifying permits are those which:

1. allow a transferee to possess, acquire, or carry a firearm, and
2. were issued not more than 5 years earlier by the State in which the transfer is to take place, after verification by an authorized government official that possession of a firearm by the transferee would not be a violation of law.

A permit issued after November 30, 1998, qualifies as an alternative only if the information available to the State authority includes the NICS. As of December 31, 2005, 18 States authorized permits that exempted the holder from a NICS check. (See table 10.)

Prior to initiating a NICS check, a licensee must receive a completed Firearm Transaction Record (ATF Form 4473) and verify the transferee's identity through a photo identification issued by a government agency. A transferee may also be required to complete a State disclosure form. Submitting false information in regard to a

firearm transaction may subject a transferee to arrest and prosecution under Federal law and many State statutes.

A licensee initiates a NICS check by contacting either the FBI or a point of contact (POC) agency designated by State government. Most inquiries are conducted by telephone. The FBI provides Internet access to dealers through a program known as "e-check." Computerized access is also available through some POC agencies. All NICS checks by the FBI are without charge; POC fees are determined by State law or agency regulations. (See table 8.)

The FBI and the POC agencies always check three major Federal databases, the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS Index. If the transferee is not a citizen of the United States, the NICS will query Bureau of Immigration and Customs Enforcement (ICE) records. A POC may check additional State records. A check may include contacting an agency that maintains a record that the FBI or POC cannot access directly.

After a search of available records, the checking agency responds with a notice to the licensee that the transfer may proceed, may not proceed, or is delayed pending further review of the applicant's record. If further review of a record indicates the transfer would not violate Federal or State law, the checking agency notifies the licensee that the transfer may proceed. If the licensee does not receive a response within 3 business days, the transfer may proceed at the licensee's discretion.

A NICS regulation requires that POC agencies notify the FBI of all denied and open transactions and any subsequent changes to the status of those transactions.

A person who is prohibited from purchasing a firearm may request the reason for denial from the FBI or POC, which has 5 business days to respond. The applicant may then submit information to correct the record on which

the denial was based and may be required to contact the agency where the record originated. As an alternative the applicant's challenge to the record may be directed to the FBI, which will contact the denying agency or the source of the record. A person who is denied by a POC may also have appeal rights pursuant to State law.

NICS denial data are electronically transmitted by the FBI on a daily basis to ATF's Brady Operations Branch, which screens the data and refers potential violations to ATF field divisions. Referrals to ATF include cases where the FBI discovers that a firearm was transferred to a prohibited person. An ATF investigation may result in retrieval of the firearm or a transfer back to the dealer.

In addition to background checks related to firearm transfers, the NICS Index may be accessed for information related to a permit or license for explosives, or in response to ATF inquiries regarding enforcement of Federal firearms laws.

**State involvement in firearm transfer regulation** Each State determines the extent of its participation in the NICS process. Three basic forms of State involvement currently exist:

1. a POC requests a NICS check on all firearm transfers originating in the State;
2. a POC requests a NICS check on all handgun transfers; licensees in the State are required to contact the FBI for approval of long gun transfers; or
3. the State does not maintain a point of contact; licensees are required to contact the FBI for NICS checks on all firearm transfers originating in the State.

During the survey period the FBI assumed responsibility for all Georgia checks and for New York handgun transfer checks. As of December 31, 2005, handgun transfer checks were conducted by the FBI for 29 States and by POC agencies for 21 States; long gun transfer checks were conducted by the FBI for 37 States and by POC agencies for 13 States. (See table 10.)

In a few States the FBI conducts the NICS check on certain pawn transactions instead of the POC.

Most States have designated a single agency with statewide jurisdiction as their NICS point of contact. Some States have multiple points of contact, which are usually county sheriffs or municipal police departments. Local agencies access the NICS through a State interface.

In addition to transfer checks, POC agencies may also conduct NICS checks on persons who apply for a State permit required to receive a firearm. Agencies that issue ATF-qualified permits usually request a check by sending information (such as fingerprints) to the FBI.

The NICS process does not automatically supplant State firearm transfer regulations. State background check and permit statutes that existed before the effective date of the NICS remain in force unless repealed by legislative action or allowed to expire. The background check requirements of the Brady Act are the prevailing minimum nationwide. Some States have enacted additional requirements.

Most background checks required by State laws are conducted by agencies that also serve as NICS points of contact. However, transferees in eight States are required to undergo two checks conducted by different agencies.

Seven States (Delaware, Indiana, Massachusetts, Minnesota, Missouri, New York, and Rhode Island) have checking agencies that are not points of contact and licensees in these States must contact the FBI for NICS checks. In New Jersey the local agencies that conduct permit checks are not points of contact and licensees must contact the State Police for NICS sales checks.

**Sources of additional information** NICS regulations have been promulgated by the FBI (28 Code of Federal Regulations (CFR) 25) and ATF (27 CFR 478). Internet sites for State agencies that provide information about firearm laws are listed in the

Appendix. Further information on Federal law and BJS-related publications is available from the following sites:

ATF: <<http://www.atf.gov/firearms/index.htm>>

FBI: <<http://www.fbi.gov/hq/cjisd/nics/index.htm>>

BJS: <<http://www.ojp.usdoj.gov/bjs/guns.htm>>

## Prohibited persons

The categories of prohibited persons in the Federal Gun Control Act (GCA) are the prevailing minimum nationwide (see *Background*). Firearm transfer to or possession by such persons is unlawful. State statutes may include additional or more restrictive prohibitions. These prohibitory laws are intended to prevent firearm possession or purchase by persons believed to be incapable of handling a weapon in a safe and legal manner. In some cases Federal and State laws allow a prohibited person to regain firearm rights.

The most common categories of prohibited persons are described below. The number of States that have enacted each type of prohibition is listed in parentheses. (See also table 4.)

**Felons** (49 States) — Generally, a felony is an offense that carries a penalty of incarceration for more than 1 year. The GCA prohibits a person who is under indictment for or has been convicted of a crime punishable by imprisonment for more than 1 year.

A crime is not within this prohibition if it is an offense related to the regulation of business practices or a State offense classified as a misdemeanor and punishable by imprisonment of 2 years or less. A conviction is not prohibitory if it was expunged or set aside, or if the offender was pardoned or had civil rights restored. See 18 U.S.C. 921(a)(20). A conviction in a foreign court is not prohibitory.

Although statutory definitions vary widely, the laws of 49 States prohibit firearm purchase or possession by at least some categories of felons. Some statutes disqualify all convicted felons from firearm possession. Other statutes disqualify persons who committed specific felonies, which may be enumerated in the statute or categorized by terms such as "crimes of violence," "serious offenses," or "firearm offenses." Many statutes extend purchase or possession restrictions to persons convicted of a felony or a similar offense in other jurisdictions. Only

Vermont lacks a statute that bars firearm possession by a convicted felon.

Federal relief from firearm disabilities may be obtained through a presidential pardon or an ATF decision. Nearly all States allow firearm rights to be regained by a pardon or restoration of civil rights, or by expungement or set aside of a conviction (see *Jurisdictional summaries*). Restoration of State firearm rights may be obtained from the Governor or through a court order, an administrative proceeding, or the passage of a certain number of years after conviction or discharge from a sentence without further violations.

Many States require several steps before rights are restored. For example, a person who obtained a pardon or has not committed a new offense for a specified number of years may be required to petition a court for an order that restores firearm rights. The method of restoration may depend on the type of offense that was committed. In some States certain offenders can never regain the right to possess a firearm.

State relief from firearm disabilities does not automatically restore rights under Federal law or in another State. A State proceeding that does not fully restore the right to possess or receive firearms is insufficient to remove a Federal disability (27 CFR 478.142).

Besides restricting the rights of convicted felons, 12 States prohibit firearm purchase or possession by at least some persons who have been charged with a felony. Colorado and Florida extend the prohibition to persons who have been arrested for certain disqualifying offenses. Firearm rights are restored in these States if an arrest or criminal charge does not result in a disqualifying guilty plea or conviction.

**Misdemeanor offenders** (26 States) — Generally, a misdemeanor is a crime punishable by incarceration for less than 1 year. A few States have offenses defined as misdemeanors that are punishable by incarceration for more than 1 year. The types of misdemeanor-level offenses included in prohibitory statutes vary widely.

Federal law and a few State codes only prohibit a misdemeanor offender who has been convicted of an act of domestic violence (generally, an assault against a spouse, an intimate partner, or a child). Several other States deny a misdemeanor offender who has been convicted of any crime of violence or a firearm offense.

Requirements for misdemeanor offenders to regain firearm rights after a conviction are generally less stringent than those for felons. A few States disqualify persons who have been arrested for or charged with certain misdemeanors.

**Fugitives** (13 States) — The GCA, at 18 U.S.C. 921 (a)(15), defines "fugitive from justice" as any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in a criminal proceeding. Most States apply a similar definition and some limit the prohibition to persons who are wanted for certain types of offenses.

**Mentally ill** (33 States) — The GCA prohibits firearm possession by a person who has been adjudicated as a mental defective or committed to a mental institution. Only an ATF ruling may grant relief from this prohibition.

The definition of "adjudicated as a mental defective" (27 CFR 478.11) includes a person who is found by a court or other authority to be a danger to himself or others, unable to manage his own affairs, insane in a criminal case, incompetent to stand trial, or not guilty by lack of mental responsibility. "Committed to a mental institution" includes an involuntary commitment by a court or other authority, but does not include a voluntary admission.

State definitions of disqualifying mental illness are generally similar to the Federal definition although a variety of terminology is used. Some States list specific court orders that will cause a mental illness prohibition. A person who is prohibited may be able to regain firearm rights if a certain number of years have elapsed after discharge from a mental institution, or if documentation from a mental health profes-

sional demonstrates that the person's condition has stabilized.

**Subject to a restraining order** (22 States) — A person prohibited under this category is usually subject to a court order (entitled restraining order, protection order, injunction, etc.) intended to prevent domestic violence. The applicable orders commonly restrain the subject from contacting or harming a spouse, former spouse, child, domestic partner, or other intimately related person. A prohibitory order may also restrain other types of unlawful conduct such as the intimidation of a witness in a criminal case.

In a few States the prohibition attaches if the order specifically bars the subject from possessing firearms. A statute may provide that the order becomes prohibitory when it is issued after a hearing with the subject present (instead of *ex parte*) or entered into a law enforcement information network. The prohibition will be in effect for the duration of the order, which may be temporary.

**Drug or alcohol abusers and offenders** (drug, 30 States; alcohol, 20 States) — Many States prohibit persons convicted of drug sale or possession offenses, either through a statute that lists a variety of disqualifying offenses or by way of a separate statute. A few statutes disqualify persons who committed offenses involving alcohol, such as driving while intoxicated. Generally, drug and alcohol offenders may regain firearm rights in the same manner as other prohibited offenders.

Another common prohibition involves persons addicted to drugs or alcohol, who are described by terms such as "addicted to a controlled substance," "habitually intoxicated," or "chronic alcoholic." In several States a firearm cannot be transferred to or possessed by a person who is intoxicated.

**Minors** (49 States) — The firearm rights of minors are often restricted solely on the basis of age. State laws include prohibitions on purchase or possession of firearms by minors and prohibitions on transfer of firearms to

minors. Some of these laws predate the enactment of federal minimum ages for possession and purchase of firearms. Limitations based on age apply to handguns in 49 States and to long guns in 38 States.

The minimum age for unrestricted purchase and possession of a handgun by a minor is usually 18 (28 States) or 21 (17 States). The minimum age for unrestricted purchase and possession of a long gun by a minor is usually 18 (31 States), with other minimum ages ranging from 12 to 21. (See table 5.) In Rhode Island a person under age 18 must have a permit to participate in legal firearm activities.

The laws provide for numerous exceptions to prohibitions based solely upon age. Generally, possession of a firearm is permissible when a minor is engaged in educational or recreational activities under the supervision of a parent, guardian, or certified firearms instructor.

**Juvenile offenders** (27 States) — Statutes in this category prohibit persons who were adjudicated delinquent or committed an act as a juvenile that would have been a disqualifying offense if committed by an adult. A juvenile offender's access to all firearms is restricted in 23 States and access to handguns is restricted in 4 additional States. (See table 5.) The prohibitions usually continue into early adulthood or until the person regains firearm rights through a pardon, court order, or other process. In several States persons who committed juvenile offenses must follow the same restoration of rights procedures available to adult offenders.

**Aliens** (15 States) — The Gun Control Act prohibits transfer of a firearm to a person who has entered the United States illegally or has been admitted under a nonimmigrant visa. Pursuant to the Immigration and Nationality Act, a nonimmigrant visa may be issued to an alien who is allowed to reside or travel in the United States temporarily. See 8 U.S.C. 1101(a)(15), (26). Certain aliens admitted under a nonimmigrant visa are exempt from the firearm restrictions. 18 U.S.C. 922(y)(2).

Among the States Massachusetts prohibits issuance of a license to carry or a firearm identification card to an alien; Hawaii (with exceptions) and Missouri require a purchase permit applicant to be a United States citizen. In 12 other States firearm purchase or possession by an illegal alien is prohibited. Hawaii, Massachusetts, and Washington allow certain aliens to apply for a permit to possess a firearm.

**Other restrictions** Additional categories of prohibited persons are defined in State statutes, including persons who have failed to complete a firearm safety course, or renounced their citizenship, or were dishonorably discharged from military service. In addition, several States penalize a "straw purchase," an attempt to buy a firearm on behalf of a known prohibited person. (See *Jurisdictional summaries* for details.)

Between July 1, 2004, and December 31, 2005, 14 States enacted prohibited person legislation, including four new laws that concerned protective orders. (See table 15.) New categories of prohibited persons included aliens in Arizona, domestic violence offenders in South Dakota, and persons convicted of stalking in Tennessee. Four States enacted new legislation regarding restoration of firearm rights.

### Prohibitory records

Record systems are necessary to identify persons who are ineligible to receive and possess a firearm. Prohibitory records are maintained by Federal, State, tribal, and local agencies, and may be computerized or on paper. These records may be in a database that is used for a variety of law enforcement purposes or in a specialized database that is used only for background checks on firearm purchase or permit applicants. The most common types of prohibitory records are summarized below.

**Criminal history** All States maintain a central repository with criminal history records that include, at a minimum, felony arrests and dispositions. The first entry for a subject is normally an arrest record supported by fingerprints. Sub-

sequent dispositions that may be recorded include dismissals of charges, guilty pleas, convictions, acquittals, admissions to and discharges from correctional facilities, and probation and parole events. Criminal history repositories also record modifications such as an expungement or a set aside of a conviction, a pardon, or a restoration of civil rights. Agencies that submit records to the repositories include police and sheriffs' departments, courts, prosecutors, jails, and prisons.

State criminal record systems differ in regard to procedures, the extent of automation, and the completeness and accessibility of the data. Forty-nine States, the District of Columbia and Puerto Rico had automated at least some criminal history records by December 31, 2003. See *Survey of State Criminal History Information Systems, 2003*, <<http://www.ojp.usdoj.gov/bjs/abstract/sschis03.htm>>.

#### **Domestic violence misdemeanors**

Forty-five States and the District of Columbia are able to distinguish between felony and misdemeanor records in the central repository (*Improving Criminal History Records for Background Checks*, <[www.ojp.usdoj.gov/bjs/abstract/ichrbc.htm](http://www.ojp.usdoj.gov/bjs/abstract/ichrbc.htm)>). Because Federal law prohibits a transfer of a firearm to a person who was convicted of a domestic violence misdemeanor, all States need to identify such convictions in their criminal records. However, a conviction that results from a domestic violence incident is only prohibitory if it falls within the specific definition found at 18 U.S.C. 921(a)(33). A State prohibition may be triggered by a domestic violence offense with a definition that differs from Federal law.

Domestic violence misdemeanor convictions may be identified from criminal history records in 44 States. (See table 13.) These convictions must be distinguished in the records from misdemeanors that are not prohibitory. Most States identify prohibitory convictions by use of a "flag," a record entry that denotes the offense as being the result of a domestic violence incident. A few

States have criminal laws that apply only in domestic incidents, with convictions pursuant to these laws identified in the records by an offense code.

If a central repository record does not clearly indicate that a misdemeanor conviction resulted from domestic violence, a checking agency may obtain further information from the court that submitted the record. For example, court records may disclose the relationship of the victim and the perpetrator.

**Restraining orders** An order that restrains acts of domestic violence or other unlawful conduct is issued by a judge and usually entered by court or law enforcement personnel into a State system or NCIC or both. Forty-three States utilize a centralized court administrative file or a statewide law enforcement network to record orders. Maintenance of a registry includes procedures to remove orders that have expired.

Federal law requires all States and Indian tribes to accord full faith and credit to protection orders issued by courts of other States or tribes if certain conditions are met.

The NCIC protection order file receives entries that meet Federal criteria from 46 States, including 7 States that do not have their own registry of orders. (See table 13.)

**Mental illness** Federal and State prohibitions encompass a variety of civil court orders, including a commitment to a mental hospital and a finding that a person is incompetent to manage his or her affairs. A prohibition may also be caused by a disposition in a criminal prosecution, such as a finding of incompetence to stand trial or a verdict of not guilty by reason of insanity.

A criminal case disposition is usually reported by the trial court to the State's central records repository. Civil commitment records are often protected from disclosure by privacy laws. However, some States have enacted laws (cited in appendix tables A, B, and C) that allow such records to be used for determining whether an individual is

eligible to purchase a firearm or receive a permit.

Twenty-three States have a database containing prohibitory mental illness records that are submitted by courts or treatment facilities. The records are maintained by a statewide checking agency or a mental health department. A variety of dispositions are recorded in these databases, with mental hospital commitments being the most common.

In addition, 24 States reported that prohibitory mental illness dispositions may be found within the central repository's criminal history records. Insanity and incompetent to stand trial findings are the most prevalent dispositions in State criminal records. In a few States an agency conducting a background check may obtain data directly from a local court or mental health facility. (See table 14.)

**Other State records** Centralized data on fugitives from justice is maintained by 46 States and 21 States have records on juvenile offenders or persons who were adjudicated delinquent. (See table 14.) Several States have specialized data, such as a file that is used to enforce a purchase limit of one handgun per month.

**Federal databases** The Federal system for background checks on firearm applicants primarily depends on three databases administered by the FBI: the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS Index. Checking agencies normally access NCIC and III, and NICS point of contact agencies also access the NICS Index. If the transferee is not a citizen of the United States, the NICS will query records of the Bureau of Immigration and Customs Enforcement (ICE).

NCIC contains supervised release, federal prisoner, protection order, foreign fugitive, immigration violator, wanted person, secret service, violent gang and terrorist, and sexual offender files. The III is a national system which points to States with a criminal history record on an individual. The NICS Index contains records of persons pro-

hibited by Federal law from receiving a firearm and includes controlled substance, mental defective, illegal alien, dishonorable discharge, citizenship renunciation, and denied person files. Alien registrations and admissions and other records are contained in several databases managed by ICE.

Federal, State, tribal, and local agencies supply information to NCIC and the NICS Index pursuant to law or on a voluntary basis. During the survey period Connecticut and Georgia enacted laws that authorize a State agency to share information with the NICS. (See table 15.)

**Impediments to record checks** The absence of flags, missing dispositions, insufficient details on relationships between victims and offenders, and other incomplete records issues are the most common impediments to identifying domestic violence misdemeanor convictions in State databases. Incomplete records are also the most common difficulty encountered by statewide restraining order repositories, mainly due to the inability of courts to provide all necessary information to the repositories.

Checking agencies' ability to retrieve complete and accurate mental illness data is significantly affected by the absence of interfaces between mental health databases and criminal history repositories, the lack of biometric identifiers in the records, incomplete automation of record systems, and privacy laws.

The impediments to checking agency access also inhibit the ability of States to send records to NCIC and the NICS Index. See *Improving Access to and Integrity of Criminal History Records*, <<http://www.ojp.usdoj.gov/bjs/abstract/iaichr.htm>>.

**Record improvements** The number of criminal history records held by State repositories increased from over 64 million at yearend 2001 to 71 million at yearend 2003. During the same period automation of criminal records increased from 90% to 94%. About 75% of the automated records were accessible through III at yearend 2003

(available at <<http://www.ojp.usdoj.gov/bjs/crs.htm>>).

### Types of firearms

A typical definition of a firearm is "any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive." 44 U.S.C. 921(a)(3). Firearms may generally be divided into two major categories, handguns and long guns. A handgun is a weapon that can be held or fired with one hand, such as a pistol or revolver. A long gun is a weapon that requires two hands to hold or fire, such as a rifle or shotgun. (Also see the *Glossary* on page 2 for definitions.) State codes sometimes divide firearms into categories based upon the length of the barrel.

The sale and possession of handguns is extensively regulated because a handgun can be easily concealed upon a person and is carried during the overwhelming majority of crimes committed while the offender is in possession of a firearm. A survey of inmates who carried a firearm while committing a crime found that 83% of State inmates and 87% of Federal inmates possessed a handgun during their offense (*Firearm Use by Offenders*, <<http://www.ojp.usdoj.gov/bjs/abstract/fuo.htm>>). Long guns are used much less frequently in crime and are subject to less extensive regulation than handguns.

Certain types of firearms are regulated because they are deemed by legislators to be inappropriate for self-defense or sporting purposes. The sale and possession of assault weapons, machine guns, short-barreled ("sawed-off") rifles and shotguns, and unsafe handguns is often prohibited or allowed only in limited circumstances. Federal law and the laws of 43 States either prohibit, severely restrict, or require registration for at least one type of firearm. (See table 9.)

Exceptions to restrictions on certain types of weapons are often allowed for law enforcement officers and firearm collectors.

An assault weapon may be a handgun or long gun, but is distinguished by the presence of special features common to military weapons. The most common features of an assault weapon are a semiautomatic firing mechanism that allows a shot to be fired with each pull of the trigger without reloading, and a large-capacity magazine that holds numerous rounds of ammunition.

Nine States regulate assault weapons either by enacting a list of makes and models that are banned or restricted, or by statutorily defining the attributes of a prohibited firearm. The Federal assault weapons ban expired on September 13, 2004. During the survey period Massachusetts passed an amendment to keep its assault weapons law in effect and California added .50 BMG rifles to its roster of regulated weapons.

A machine gun (automatic firearm) will automatically fire more than one bullet, without manual reloading, by a single function of the trigger. Like assault weapons, machine guns are designed to rapidly fire a high volume of ammunition. Federal law, 18 U.S.C. 922(o), provides that it shall be unlawful for a person to transfer or possess a machine gun, unless it was lawfully possessed before May 19, 1986. In addition, 39 States regulate machine guns.

A short-barreled rifle has one or more barrels less than 16 inches in length or has an overall length of less than 26 inches due to modification. A short-barreled shotgun has one or more barrels less than 18 inches in length or has an overall length of less than 26 inches due to modification. Short-barreled rifles and shotguns (and machine guns) must be registered pursuant to Federal law, 26 U.S.C. 5841. Thirty-three States regulate short-barreled rifles and 40 States regulate short-barreled shotguns.

An unsafe handgun ("Saturday night special" or "junk gun") has a barrel length under 4 inches, is easily concealable, and is not effective for sporting or self defense purposes due to its poor quality of construction, inaccuracy, and lack of essential safety fea-

tures. Seven States forbid sales of handgun models that are determined to be unsafe. The quality of a handgun's construction is determined by its melting point or by technical standards found in State codes.

Other weapons that may be prohibited include zip guns and firearms that are made for silent discharge or that cannot be detected by airport security devices.

The primary focus of this report is upon regulation of transfers involving handguns, long guns, and assault weapons. Methods of regulating various types of firearms are described in *Regulated sales* and *Approval systems*. Types of firearms that are exempt from regulation in many jurisdictions are generally not discussed in this report. These types include antique, curio, and replica firearms, and weapons that have been rendered permanently inoperable.

Terms such as firearm, handgun, long gun, and assault weapon, as defined above, are generally used throughout this report to facilitate comparisons between the laws and procedures of the jurisdictions summarized. However, terms and definitions used in firearm codes vary considerably by jurisdiction. For the sake of clarity, several of the summaries use terms and definitions specific to a particular jurisdiction. Readers are advised to consult a jurisdiction's laws for a complete understanding of its terminology. (Citations are included in the jurisdictional summaries, table 5, and appendix tables A, B, and C.)

### Regulated sales

Firearms are usually sold at retail by dealers licensed under Federal and State laws or by unlicensed persons (private sales). Most sales occur at the business premises of licensed dealers or at gun shows, which may include displays by licensed and unlicensed sellers. In addition to sales and gifts, firearms may be transferred in pawn transactions, where a weapon is pledged as collateral for a loan and redeemed when the loan is repaid.

Statutes that require prospective purchasers to obtain a permit or undergo a background check usually allow exemptions for certain types of persons or transactions. Common exemptions are those for purchases by law enforcement officers, transfers of antique and replica firearms, and gifts or loans of firearms from parents or guardians to minor children.

**Dealer transfers** The Brady Act requires a Federal Firearms Licensee (FFL) to request a NICS check on all persons who purchase a firearm or redeem a pawned firearm (see *Background*).

In addition to the Federal system, 30 States require licensed dealers to request a background check or review a prospective buyer's permit. (See table 6.) Of these States 19 regulate dealer transfers of all types of firearms, 2 regulate dealer transfers of handguns and assault weapons, and 9 regulate only handgun transfers by dealers.

Several States regulate pawn transactions in the same manner as sales — by licensing pawnbrokers and requiring a background check on a person who redeems a firearm. The pawning of any firearm is prohibited in New Jersey, while five other States ban the pawning of handguns. (See table 10).

**Private sales** The laws of 17 States regulate at least some private sales by requiring that purchasers obtain a permit or undergo a background check before receiving a firearm. Of these States 10 regulate private transfers of all types of firearms, 1 (Maryland) regulates private transfers of handguns and assault weapons, and 6 regulate only handgun transfers. (See table 6.)

Fifteen States regulate all private sales. Colorado and Oregon only regulate private sales that occur at gun shows. Delaware, Nevada, and Oregon allow unregulated private sellers the option of requesting a check on a purchaser.

**Gun shows** Eight States have statutes that specifically regulate gun shows. Most of these statutes define a gun show as an event where a certain

number of firearms are exhibited for transfer (for example, 25 or more in Colorado and Oregon; 50 or more in Connecticut and Illinois; 25 or more pistols or revolvers or 50 or more firearms, rifles, or shotguns in New York). Some laws also define a gun show according to the number of vendors who are exhibiting firearms for transfer.

State laws regulate gun show organizers, vendors, and buyers. For example, California requires a show organizer to obtain a certificate of eligibility from the Department of Justice, provide local law enforcement with a list of the show's sellers, and exclude minors unless they are accompanied at all times by a parent or guardian. Maryland requires unlicensed gun show sellers to obtain a temporary transfer permit from the State, have a fixed display, and comply with all restrictions imposed upon dealer transfers. Any person who sells a firearm at a Virginia gun show must submit to a background check and obtain a seller identification number from the State Police.

Colorado, Connecticut, Illinois (as of July 29, 2005), New York, and Oregon require vendors to request an instant check on every unlicensed person who attempts to make a purchase. Colorado and New York require a show organizer to secure the presence of at least one licensed dealer to process the background checks. In Connecticut, Illinois, and Oregon, any seller may contact the State checking agency directly.

**Residency rules** The Gun Control Act generally prohibits interstate transfers of firearms between unlicensed persons (18 U.S.C. 922(a)(5)), a prohibition intended to channel interstate transfers through licensed dealers who are subject to scrutiny by ATF. A licensed dealer generally cannot transfer a firearm other than a rifle or shotgun to an unlicensed person who does not reside in the State where the licensee's place of business is located. A rifle or shotgun may be transferred in person by a dealer to a nonresident if the transfer complies with the laws of the State where the dealer's place of business is located and the State

where the purchaser resides. (18 U.S.C. 922(b)(3).)

To ensure compliance with Federal law, many States have passed statutes that allow nonresidents to purchase long guns. Three States (Maryland, Missouri, and Virginia) require fixed periods of residency, ranging from 1 to 6 months, before a person may purchase certain firearms. Residency rules are intended to prevent nonresidents from purchasing and reselling firearms that they could not obtain in their home State.

A State POC may opt to receive notification from NICS when a resident of their State attempts to purchase a rifle or shotgun in another jurisdiction (known as "long gun notification"). The POC agency may have access to a record on the prospective purchaser that is not available to the checking agency in the other jurisdiction.

**Handgun purchase limits** Federal law does not restrict the frequency of firearm acquisition or the quantity of firearms that may be acquired. However, a handgun purchase limit of one per month prevails in California, Maryland, and Virginia. These limits are intended to deter persons who would purchase large quantities of handguns for resale to prohibited persons.

### Approval systems

Over 3,000 State and local agencies are required by law to determine the eligibility of persons who apply to receive a firearm or a permit that may be used for a purchase. Systems for determining the legal eligibility of prospective purchasers may generally be classified as "instant approval," "purchase permit," "exempt carry permit" or "other approval" systems.

Of the 28 States that require a background check or a permit for a buyer, 15 have instant approval, 12 utilize purchase permits, and 5 maintain other approval systems. (See table 7.) Connecticut, Illinois, and New Jersey are each counted twice because these States operate permit and instant approval systems. Minnesota allows purchasers the options of obtaining a

1-year permit or undergoing a background check for a single purchase transaction (the "other approval" process).

Exempt carry permits, issued in 17 States (see appendix table D), are not required for purchase but may be used to exempt the holder from a background check at the point of sale.

**Instant approval** This type of system allows a licensed firearms dealer to contact a checking agency by telephone or other electronic means and receive a response immediately, or as soon as possible without delay, as to whether a prospective purchaser is ineligible under law. Five instant approval systems (Colorado, Connecticut, Illinois, Oregon, and Pennsylvania) require some unlicensed sellers to request a check from a statewide agency. Unlicensed sellers either contact the checking agency directly or request a check through a licensed dealer or police station.

Instant approval laws usually allow a firearm to be transferred when the checking agency informs the seller that the transfer may proceed or if no response is received by the seller within 3 business days. A few States require all applicants to wait a certain length of time before receiving a firearm (see *Waiting periods*).

All States with instant approval systems have a NICS point of contact (see *Background*) except Delaware. On July 1, 2005, Georgia discontinued its instant check operations. A Georgia FFL is now required to contact the FBI for a background check.

**Purchase permits** These documents are issued by a government agency after a background check and must be presented to a seller in order to receive a firearm (the required documents have a variety of titles, such as license or identification card, but all are referred to below as "permits").

The period that a checking agency may investigate a permit applicant ranges from 2 days in Nebraska to 180 days in New York. Most purchase permit systems allow a checking agency 7 to 30 days to approve or deny an appli-

cation. A few States mandate a waiting period after a permit application is filed and before the permit may be issued or a firearm may be acquired.

Federal law does not mandate a permit to purchase firearms. Twelve States administer purchase permit systems that regulate sales of handguns. Four of these States also require a permit to purchase a long gun. Minnesota's permit is required for purchase of a handgun or an assault weapon.

In addition to the handgun and long gun permits, seven States require special permits in order to acquire or possess certain types of firearms, such as machine guns, that are generally prohibited (see *Jurisdictional summaries*).

The handgun and long gun purchase permits vary according to the duration of a permit and the number of firearms that can be purchased at one time or during the tenure of a permit. Most handgun permits have a duration of between 10 days and 1 year, with a few remaining in effect for a longer duration. Long gun permits generally remain effective for a longer period than handgun permits. New Jersey's identification card for long guns remains in effect until revoked for a violation of law; among the other three States with long gun permits, the duration ranges from 1 to 5 years.

Generally, permits with a lengthy duration may be revoked by the issuing agency if the holder is convicted of a crime or otherwise becomes ineligible to possess a firearm.

The number of handguns that may be purchased by one person is sometimes limited by a State permit. In seven States, only one handgun may be purchased with a permit. Six of these States mandate a new permit for a second handgun, while New York requires an amendment to the purchaser's handgun license. Five States allow unlimited handgun purchases during the effective period of a permit. Unlimited purchases of rifles and shotguns are allowed in the four States that issue long gun permits.

In six States holders of purchase permits must undergo another back-

ground check before receiving a firearm from a licensed dealer. Connecticut and Illinois mandate the additional check by statute; in Massachusetts, Minnesota, Missouri, and New Jersey, purchasers must undergo a NICS check requested by a dealer because their purchase permits have not been qualified by ATF as an alternative to the NICS requirements (see *Background*).

**Exempt carry permits** These documents primarily allow holders to carry a concealed firearm, but also may be used as purchase permits. A carry permit is exempt pursuant to Federal law if ATF determines that the permit meets the requirements of the Brady Act. Some carry permits may be used to exempt the holder from a background check required by State law. In addition, a few States exempt certain permit holders from waiting period requirements.

Overall, 44 States require a concealed firearm permit. Four States generally prohibit carrying a concealed firearm. A firearm may be carried without a permit in Vermont and Alaska (an Alaska concealed handgun permit may still be obtained in order to purchase firearms without a new background check or receive reciprocity from another State).

Exempt carry permits were issued in 17 States as of December 31, 2005. Beginning October 19, 2005, ATF decisions changed the status of carry permits in three states. Holders of Georgia and Nevada concealed handgun permits were no longer allowed to purchase a firearm without a new NICS check. (However, ATF restored the Nevada permit's status as a NICS alternative on January 5, 2006.) Alaska now has two types of concealed handgun permits: "NICS exempt" and "not NICS exempt."

Agencies that issue exempt carry permits usually have between 30 and 120 days to approve or deny an application. States that authorize carry permits are generally categorized as having either a "shall issue" or a "discretionary" system. The former system mandates issuance of a permit if no statutory reason for denial is revealed

during a background check of the applicant. The latter system allows the issuing officer to consider the applicant's history, character, and intended purpose for carrying a firearm.

Most exempt carry permits are valid for 4 or 5 years. Generally, a permit may be revoked by the issuing agency if the holder becomes ineligible to carry a concealed firearm.

**Other approval systems** These systems combine some of the characteristics found in instant check and permit systems. Generally, sellers are required to convey purchaser information to a checking agency by mail, telephone, or other electronic means. Three of five other approval systems require licensed dealers and private sellers to request background checks. The California and Maryland systems function as NICS points of contact.

In other approval systems the checking agency is not required to respond immediately to the seller, but must respond within a waiting period or other statutory time limit. The applicable time periods for a response range from 7 to 10 days. These systems usually allow a transfer to proceed if the seller has not received a response from the checking agency by the end of the applicable period.

**Checking delays** Several States allow an extension of the time available to complete a background check if specific circumstances are present. For example, if an applicant's history includes a felony arrest without a recorded disposition, the checking agency may be granted additional time to contact the agency that originated the record and inquire about the outcome of charges against the applicant (for more details, see *Checking process*). In a few States the checking agency is allowed more time to investigate an applicant who resides in another jurisdiction.

### Waiting periods

A waiting period is a length of time after a firearm purchase application is filed with a seller or a permit application is filed with a law enforcement

agency, that must expire before transfer of the firearm or issuance of the permit can be completed.

The length of time an applicant must wait is sometimes referred to as a "cooling-off" period, intended to deter persons who desire a firearm immediately for use in a specific misdeed. Another purpose of a waiting period is to provide sufficient time for law enforcement agencies to investigate and resolve questions about an applicant's background, especially if searches of local or manual records are necessary.

Mandatory waiting periods should be distinguished from the time periods allowed for checking agency inquiries into an applicant's background (see *Approval systems*).

Twelve States require waiting periods, ranging from 1 to 14 days. Of these States 11 require a waiting period for handgun permits or purchases, 2 include assault weapons, and 5 include long guns within their waiting period regulations. (See table 7.)

Exemptions from waiting periods have been enacted in some States for law enforcement officers, holders of valid carry permits, or other specific classes of persons who have demonstrated the ability to handle a firearm responsibly.

Several States mandate both a waiting period and a time limit on inquiries by a checking agency, which may or may not be the same length of time. The Brady Act provides 3 days for a checking agency to respond to an inquiry from a licensed dealer, but does not mandate a waiting period for purchasers (see *Background*).

The sole change to waiting period laws between July 1, 2004, and December 31, 2005, occurred when South Dakota made its 48-hour wait applicable only to pistol sales by licensed firearms dealers.

### Checking process

Development of the NICS has increased the national uniformity of procedures used to approve or disapprove firearm transfers. However,

approval systems established by State laws still employ a variety of procedures to determine the eligibility of prospective purchasers. The process for determining eligibility may be divided into application and background check stages.

**Application** Federal and State laws require prospective firearm purchasers to provide information that is needed to initiate a background check. In order to receive a firearm from a licensed dealer, federal law requires submission of a Firearm Transaction Record, ATF Form 4473. The form requires the buyer's full name, residence address, place of birth, height, weight, gender, date of birth, race, State of residence, country of citizenship, and alien or admission number. A Social Security Number is optional.

A few instant approval systems only require information from the ATF form, but most require the completion of an additional form as well. All purchase permit systems require specific information from applicants except in North Carolina, where the county sheriff is allowed to determine what information is necessary. State laws vary widely in regard to the types of information required from applicants.

Depending on the type of approval system, checking agencies receive applicant information in person or by mail, telephone, or the Internet. Federal law, at 18 U.S.C. 922(a)(6), makes it unlawful to acquire or attempt to acquire a firearm by making a false statement or furnishing false identification to a licensee. Twenty-seven States have similar laws (see appendix table C). Attempting to obtain a firearm or a permit under false pretenses may be grounds for denial of an application, or subject the applicant to a fine or incarceration.

The laws of 20 States allow a checking agency to charge a fee for processing a sale transaction or issuing a purchase permit. (See table 8.) Seven States do not charge a fee for a background check that is related to a sale transaction. Fees charged at the point of sale (usually collected by dealers and remitted to the State) range from

\$2 in Illinois, Pennsylvania, and Virginia to \$25 in California and Nevada.

Checking agencies in Michigan and Minnesota do not charge for a purchase permit. Hawaiian checking agencies collect a fee from first-time applicants but do not charge for permit renewals. Fees charged for purchase permits range from \$5 in a few States to \$100 for a firearm identification card or a license to carry in Massachusetts. Several States include a charge that covers fingerprint processing by the FBI. In some States the checking agency can adjust the amount of the fee or is given discretion as to whether any fee will be charged.

**Background check** Many agencies that issue purchase or exempt carry permits initiate a check by sending an applicant's fingerprints to a State unit or the FBI or both. The prints are compared against arrestee records already on file. Instant check systems compare the applicant's name and other identifying information against computerized prohibitory records. Generally, the automated agencies conduct a single background check that incorporates Federal and State requirements for each transaction.

A background check may also involve obtaining a record that is not available in a national or statewide electronic database. A sheriff's office or police department may search county court files or other local records. If an electronic record is not complete, the agency that created the original record may be contacted to find out if it has been updated.

The effectiveness of background checks is affected by the degree of automation involved, the types of prohibitory records available, and the extent to which the records are complete. The time an agency needs to obtain complete information may be lengthened if records on an applicant are maintained in another jurisdiction. A delay may also occur if research is needed to determine whether an entry on an applicant's record disqualifies the person from receiving a firearm.

Most background checks processed by State approval systems are initiated with information received by telephone or computer from a licensed dealer. State instant approval systems use a variety of terminology, but all generate an initial response to the dealer indicating that the transaction may proceed, may not proceed, or must be delayed pending further research on an applicant's records. If no record retrieval problems emerge, most State instant approval systems are able to process a check and provide a final response to a dealer in less than 5 minutes. Some systems complete the checking process in less than 1 minute (see *Jurisdictional summaries*).

If a transaction is allowed to proceed, the firearm dealer is given an approval number to record on the forms filed by the applicant. Federal and State procedures vary as to the period of time for which the approval remains valid (the period during which the applicant must complete a transaction by receiving a firearm from the seller). For example, an approval by the FBI is valid for 30 days; an approval of a private sale by the Oregon State Police is valid for 24 hours. A person who does not receive the firearm during the applicable period is required to undergo another background check.

State laws differ regarding the length of time that a transaction can be delayed and the circumstances that allow a delay. A checking agency's search for a missing arrest disposition is the most common reason for a delay. If a final disposition such as a conviction cannot be found, Federal or State law usually dictates the checking agency's response to the firearm dealer. Some States apply the Brady Act's rule that if a disqualifying conviction record is not found within 3 days, a transfer may proceed at the discretion of the dealer. Other States have laws and regulations that allow their agencies to deny a transfer if an applicant was arrested for an offense that would be disqualifying upon conviction.

A checking agency may continue to research an incomplete record after a dealer has been allowed to proceed

with a transfer. If a disqualifying record is found at a later date, the dealer may be contacted to determine if the applicant completed the transaction and received a firearm. If the transfer has occurred, law enforcement officers may locate the purchaser and confiscate the firearm (see *Actions against denied persons*).

### **Transaction and registration records**

Federal and State laws mandate the information that must be provided by prospective firearm purchasers, the types of information that must be retained or purged by checking agencies, and time periods for saving or destroying records.

Some checking agencies receive and retain paper records of permit or purchase applications. Nevertheless, most buyer information is transmitted over the telephone or via computer by a licensed dealer and stored electronically by a checking agency.

Retention of information on allowed transactions is often limited by law because of concern for the privacy of lawful firearm owners. In contrast, retention of information on denied transactions is seldom limited, due to its usefulness for judicial and law enforcement purposes.

Federal law requires destruction of identifying data from allowed NICS transactions within 24 hours after the dealer is notified of the decision, except in States where a different retention period is mandated by law. The new law applies only to NICS sales transactions, not to alternative permit applications. Federal law does not require purging of data from denied transactions.

Thirty States retain records from sales transactions or purchase permit applications. Nearly all instant check agencies retain allowed transaction records for less than 60 days but retain denied transaction records for more than 90 days. (See table 8.)

In States where county sheriffs or municipal police departments issue permits or purchase approvals, the

retention period for transaction records is usually at the discretion of the checking agency. Some State agencies are required to maintain copies of transaction records forwarded by local checking agencies.

Records of permit applications or sale transactions are retained by checking agencies in order to monitor agency performance or achieve a law enforcement objective. With computerized checking systems, the complete electronic record of a transaction is generally maintained for a short period of time in order to facilitate audits of system performance or correction of errors. In some States certain information such as a name, approval number, and date from an allowed transaction may be retained for auditing purposes for a longer period than other data about the applicant. Retention of all allowed transaction records is mandated in two States for certain types of firearms: handguns in California and regulated firearms (handguns and assault weapons) in Maryland.

Checking agency records may also be referenced in order to verify that licensed firearms dealers are maintaining records as required by law. In States that require a firearm owner to have a license or identification card, records of approved applications are retained in order for law enforcement officers to determine whether a particular person is legally in possession of a firearm. States that require a waiting period retain records of allowed transactions in order to verify that a seller waited the proper length of time before transferring a firearm to the buyer. Records of denied transactions are retained to facilitate appeals, arrests, and prosecutions, and to build databases on prohibited persons.

During the survey period Georgia and South Carolina eliminated requirements for retention of purchase records. South Dakota's law on retention of pistol sales records was made applicable only to licensed dealers. (See table 15.)

Registration records, which normally include information on a firearm and its owner, facilitate tracing of firearms that

are resold illegally, used in a crime, or stolen. Federal law requires registration of a machine gun or a short-barrel rifle or shotgun. Twelve States register at least one type of firearm. The types of firearms most commonly registered by these States are machine guns, assault weapons, and handguns. A few States register short-barrel rifles or shotguns, or all rifles and shotguns. (Statutes requiring registration are listed in appendix C.) The laws of several States prohibit registration of firearms.

### **Appeals of denials**

Specific procedures for appealing the denial of a firearm purchase or permit are codified in Federal law and in the laws of nearly all States that process background checks. Appeals often serve the practical purposes of resolving questions of identity and updating incomplete criminal history records.

Federal law provides the right to challenge a NICS denial by the FBI or a State point of contact (see *Background*). The most common State procedure provides an appeal to the checking agency for reconsideration of a denial, and a subsequent appeal to a court.

Seventeen States provide an appeal to the checking agency for a person who is denied a firearm purchase or permit. A different group of 17 States provide an appeal to a court. (See table 8.) Connecticut and Pennsylvania provide an appeal to an agency that is separate from the checking unit.

Most purchase permit statutes require the checking agency to inform an applicant in writing of the reason for a denial. With instant approval systems an applicant usually is informed of a denial by the dealer who requested the background check. The applicant must then call or write the checking agency to learn the reason for the denial. Statewide checking agencies often have forms available for requesting reconsideration. Some States impose a deadline for filing the initial appeal.

Other agencies involved in firearm appeals are those that maintain crimi-

nal history, restraining order, mental health, or other records that could disqualify an applicant. The appellant may be required to obtain data from or submit data to the agency that originated a disputed record.

Appeals often arise when a denied person claims that he or she is not the individual named in a disqualifying record found by the checking agency. To resolve the identity question, the appellant will ordinarily submit fingerprints (if they are not already on file) which will be checked against Federal and/or State arrestee print records. If the appellant's prints do not match any disqualifying records on file, the denial may be reversed. A few States require submission of fingerprints with all requests for reconsideration.

Another common appeal issue arises when a denied person claims that a disqualifying record is incomplete. For example, if a background check reveals a felony charge without a recorded disposition, the checking agency may be required by State law to issue a denial. The applicant may have the denial reversed by submitting court records to prove that the charge was subsequently dismissed. An appeal procedure may give the denied person the alternative of requesting that the appellate review agency contact the agency of record to inquire about a missing disposition.

An appeal may be filed when there is no entry in criminal history records for a proceeding that restored the applicant's firearm rights. An administrative agency or a court may also need to decide whether a pardon or an expungement of a conviction was sufficient to restore an applicant's firearm rights.

In addition to record challenge procedures, some States allow an appellant or the reviewing agency to request an administrative hearing. Deadlines for administrative decisions and subsequent appeals by a denied applicant vary widely by State.

The vast majority of disputed firearm denials are resolved at the administrative level and are based upon the

accuracy of records instead of interpretation of the law.

### **Actions against denied persons**

A person who is prevented by a background check from receiving a firearm or a permit may be in violation of Federal or State law. A denied person may have acted illegally by submitting false information or failing to disclose required information on an application, by attempting to make a purchase while subject to a prohibition, or by attempting to obtain a firearm on behalf of a prohibited person.

Numerous agencies receive notices of denied persons (see table 9), including special police units, ATF, and agencies with jurisdiction over the location of the transaction (usually a dealer's premises) or the applicant's residence.

**ATF enforcement** NICS denial data are electronically transmitted by the FBI on a daily basis to ATF's Brady Operations Branch. Standard referrals by the FBI contain data on prohibited persons who unlawfully attempted to purchase a firearm.

Some prohibited persons obtain a firearm during an "open transaction," where the FBI has not completed a check in 3 business days and the dealer is allowed to transfer the firearm. When the FBI finds a prohibitory record and is informed by the dealer that a transfer occurred, a "delayed denial" referral is made to ATF.

Brady Operations searches databases available to ATF for additional data on denied persons referred by the FBI. After an initial screening denials are referred to the 19 of ATF's 23 field divisions serviced by Brady Operations, according to referral criteria for the Federal judicial districts within each division's territory. (The other four divisions' territory is comprised of POC States.)

ATF and United States Attorneys have developed referral criteria for all 94 judicial districts that reflect the types of cases most likely to merit prosecution. Cases involving restraining orders, domestic violence misdemeanors, non-immigrant aliens, violent felonies,

warrants, and indictments are most often included in referral criteria.

In 2005 the FBI referred 67,713 NICS denials to Brady Operations. After screening Brady Operations referred 9,575 denials within the established guidelines to field divisions. Cases that did not meet guidelines were held in a database. The referred transactions included 3,215 delayed denials and 6,360 standard referrals. (See table 12.)

A NICS coordinator in each ATF division receives and distributes referrals to the appropriate field office. A State point of contact may also refer denials to the nearest field office. Special agents at the field offices verify conviction and prohibition information and conduct additional investigations. The FBI or the POC is notified if ATF determines that a person should not have been denied.

In a delayed denial case, the agent contacts the firearm purchaser and seizes or takes an abandonment of the firearm or coordinates a transfer of the firearm to a licensed dealer or to a third party who is not a prohibited person. In POC States a retrieval may be handled by local law enforcement, a statewide firearms unit, or ATF, depending on jurisdiction over the dealer and the applicant.

When an investigation is complete, the field office and the U.S. Attorney decide whether the case merits prosecution. A case not deemed appropriate for Federal prosecution may be referred to a State prosecutor. If the U.S. Attorney decides to prosecute, an arrest is made or a warrant is issued.

### **Rejection rates**

State and local checking agencies received an estimated 3.3 million firearm transfer applications during 2005; an estimated 65,000 applications were rejected, a rejection rate of 2% (FBI checks are not included in these figures). The most common reason for rejection of an application by a State or local checking agency was the applicant's indictment or conviction for a felony offense (46%), followed by a con-

viction for a domestic violence misdemeanor (12%). (See *Background Checks for Firearm Transfers, 2005*, <<http://www.ojp.usdoj.gov/bjs/abstract/bcft05.htm>>.)

The 2005 background check statistics included applications for transfers, permits required for transfers, and carry permits that could be used to exempt the holder from a check at the point of transfer. This national estimate combined actual counts from statewide reporting agencies with an estimate for aggregated local agencies.

The rejection rates among State and local agencies in 2005 for the various types of firearm approval systems were estimated to be 2% for instant approvals, 2.4% for purchase permits, 1.7% for exempt carry permits, and 1% for other approval systems.

**Statewide rates** The number of applications received and rejected and rejection rates for statewide agencies during 2005 are reproduced in table 1.

Twelve instant approval systems varied in rejection rates, ranging from 0.3% in Connecticut to 3.8% in Delaware. Statewide rejection rates for purchase permit applications ranged from 1.3% in Hawaii to 2.6% in Illinois. Rejection rates for nine States that reported exempt carry permit counts ranged between 0.2% in North Dakota to 7.5% in Arizona. Rejection rates were also available for the "other approval" systems in Maryland (1.6%) and California (1.0%).

Variations in rejection rates among States may be influenced by many interrelated factors including the type of approval system, the number of years the system has operated, the extent of State firearm regulation, the length of time allowed for an agency to complete a check, the decision process for records with missing dispositions, and the extent of automation of criminal histories and other records. Although the full impact of these factors has not been quantified, a few observations are possible from the limited information available.

Among the lowest rates were those of New Jersey (0.3%) and Illinois (0.6%),

where an instant check at the point of transfer is the second step required for approval of prospective firearm owners. Before an instant sale check can be conducted, both States require a prospective owner to obtain some type of purchase permit such as an identification card or a handgun permit. During the first step of the process, the rejection rates are considerably higher in New Jersey (1.7%) and Illinois (2.6%).

Generally, higher rejection rates occur in States that implemented an instant approval system on or after February 28, 1994, the effective date of the Brady Act. These States include Tennessee (3.5%) and Colorado (3.1%). Approval systems established before passage of the Brady Act tend to have lower rejection rates. In addition to California, Connecticut, Illinois, and New Jersey, these systems include Virginia (1.2%) and Wisconsin (1.5%).

Extensive regulation of firearm sales by States with older approval systems may influence rejection rates. As prospective firearm owners become more knowledgeable about laws and procedures in the States with well-established systems, some persons with potentially disqualifying records may be discouraged from applying for a purchase or permit in those States.

Rejection rates may be influenced by a State's policy toward applicants who have incomplete records for criminal history and other disqualifying factors. Checking agencies most frequently encounter delays while attempting to determine the final disposition of a criminal charge that is indicated by an arrest, information, or indictment record. If the final disposition cannot be found during the time allowed for a background check, the agency must decide, based on Federal or State law, whether the application will be approved, denied, or delayed pending further research. A State's rejection rate may tend to be low if an approval is mandated and high if a denial is mandated.

Some States apply the Brady Act's rule that if a disqualifying record is not found within 3 days, a transfer may

proceed. Other States have laws and regulations that allow their agencies to deny or delay a transfer if an incomplete record is being researched when the time limit for a response expires. These types of rules may partially account for the comparatively high rejection rates in States such as Colorado and Tennessee.

**Local agency rates** Rejection rates among local agencies may be influenced by many of the same factors that influence the rates of agencies with statewide jurisdiction.

Local agencies that provided data for the FIST project were grouped according to the size of the community they served: small (under 10,000 people), medium (10,000 to 100,000), or large (over 100,000).

In 2005 rates varied among local agencies by size of the population served and type of permit. The rejection rate for purchase permits was highest in large communities (3.3%) and lowest in small communities (1%). Exempt carry permits exhibited a similar pattern, with the highest rate occurring in large communities (1.4%) and the lowest rate occurring in small communities (0.6%). (See table 2.)

**FBI rejection rates** Among the States for which the FBI conducted all NICS checks in 2005, rates ranged from 2.2% in Arizona and South Carolina to 0.1% in Massachusetts. (See table 3.)

The rejection rate in Massachusetts may have been extremely low because State law requires that every prospective buyer obtain a permit from a local police department before proceeding to a firearm dealer for a NICS check. The local background check most likely eliminates some applicants before a NICS check is necessary. In Rhode Island, which also requires a local agency check that is separate from the NICS, the FBI rejection rate is only 0.7%. Delaware is similar because the State Police conduct a check that is separate from the NICS process. In 2005 the Delaware State Police reported a rejection rate of 3.8% while the FBI rejection rate for Delaware was 1.4%.

### **Information included in the Federal and State summaries**

References on this page to "State" generally include all jurisdictions summarized (the United States and each State, Territory, Commonwealth, and District). Topics listed are not alphabetized; they follow the order of presentation used in the summaries. Laws that apply nationwide are included in the Federal summary and are generally not repeated elsewhere. State participation in the NICS is described in sub-headings for the summaries.

**Prohibited persons** Categories of persons prohibited permanently or temporarily from purchasing, possessing, or transferring firearms.

**Restoration of rights** Pardons, court procedures, or other means by which adult or juvenile offenders can regain the right to possess or purchase firearms.

**Prohibited firearms** Types of firearms that cannot be purchased or possessed by any person or that may only be purchased or possessed pursuant to a limited exception.

**Regulated sales** The scope of firearm transfer restrictions such as background checks, permit and license requirements, residency rules, and handgun purchase limits. Includes types of transferors (licensed or unlicensed), firearms (such as handguns or long guns), and transactions (such as sales or redemptions) that are regulated.

**Permits** Documents (such as a permit, license, or identification card) issued by law enforcement agencies, which are required for the purchase, possession, or carrying of firearms.

**Background checks** Procedures and requirements for conducting criminal history and other checks on firearms purchasers or permit applicants under Federal and State laws, including time limits imposed on checking agencies.

**Waiting period** A period of time after a firearm purchase application is filed with a seller or a permit application is filed with a law enforcement agency, which must expire before transfer of the firearm or issuance of the permit may be completed.

**Purchaser fees** The amounts charged to firearms purchasers for background checks or the issuance of documents needed for purchase.

**State data** Automated and manual prohibited person data that are maintained by State agencies. The data are available to agencies within the State for background checks on firearm buyers or permit applicants and may also be available to agencies outside the State. Local record sources may also be described.

**Check processing time** The length of time needed, on average, for checking agencies to complete background checks on routine transactions and those that require additional research on missing dispositions and other questions.

**Retention of records** Time limits on retention of data from allowed and denied firearm transactions by checking agencies and other agencies, based on Federal or State law or agency policies.

**Registration** State procedures for maintaining permanent records on firearms and firearms owners.

**Appeals of denials** Statutory or administrative procedures for appealing a denial of the right to purchase a firearm or obtain a permit that may be used for a purchase.

**Arrests of denied persons** Arrest and notification procedures followed by checking agencies in regard to persons who are denied a firearm or a permit because they submitted false information or have an outstanding warrant.

**2004/2005 legislation** Significant changes in laws related to firearm sales that became effective between July 1, 2004, and December 31, 2005.

**Relevant laws** Citations to statutes governing the transfer, possession, and use of firearms.

**Source of information** Agencies that contributed to the survey.

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## Federal system

### FBI conducts NICS checks

**Prohibited persons** Federal law prohibits firearm possession by or transfer to a person who is: under indictment for or convicted of a crime punishable by imprisonment for more than 1 year; a fugitive from justice; an unlawful user of or addicted to any controlled substance; adjudicated as a mental defective or committed to a mental institution; an illegal alien or an alien admitted under a nonimmigrant visa; dishonorably discharged from the armed forces; a renounced U.S. citizen; restrained by court order from harassing, stalking, or threatening an intimate partner or child; or convicted in any court of a misdemeanor crime of domestic violence. It is unlawful for a federally-licensed dealer to transfer a long gun to a person under age 18 or a handgun to a person under age 21. Further, it is unlawful for any person to transfer a handgun to a juvenile (under 18) or for a juvenile to possess a handgun, except in limited circumstances.

**Restoration of rights** Federal firearm rights may be restored by a presidential pardon or by ATF; agency decisions may be appealed to Federal district court.

**Prohibited firearms** It is unlawful, with limited exceptions, to possess or transfer a machine gun or a firearm not detectable by airport security devices.

**Regulated sales** Record checks through the National Instant Criminal Background Check System (NICS) are required on persons who purchase firearms or redeem pawned firearms from federally-licensed dealers. A licensee has the option of requesting a check when a firearm is pawned. A handgun cannot be transferred by a licensee to a person who does not reside in the State where the licensee's business is located. A long gun may be transferred in person by a dealer to a nonresident if the transfer complies with the laws of the State where the dealer's place of business is located and the State where the buyer resides. An interstate transfer of a handgun or long gun between unlicensed persons is prohibited.

**Permits** Federal law does not require a permit to purchase a firearm.

**Background checks** NICS checks are conducted by the FBI and State point of contact (POC) agencies. The FBI checks handgun and long gun buyers in 29 States and only long gun buyers in 8 additional States. Dealers contact the system by telephone or other electronic means and receive an immediate response as to whether a transfer may proceed, may not proceed, or will be delayed pending further review. If no response is received within 3 business days, the transfer may proceed.

**Waiting period** No Federal requirements.

**Purchaser fees** NICS checks by the FBI are without charge. State laws establish POC fees.

**Federal data** The three major Federal databases are the Interstate Identification Index (III), containing pointers to State criminal histories; the National Crime Information Center (NCIC), which includes protection order, fugitive, and other data; and the NICS Index, which includes mental defective, illegal alien, denied person, and other data. Immigration and Customs Enforcement (ICE) data are queried for non-citizen buyers.

**Check processing time** Over 90% of the inquiries conducted by the FBI in 2005 resulted in an immediate "proceed" response.

**Retention of records** Identifying information on transactions allowed by the FBI is purged within 24 hours. Open transaction information is purged within 90 days. Information on applicants denied by the FBI is retained indefinitely.

**Registration** A short-barrel shotgun or rifle or a machine gun must be registered.

**Appeals of denials** A person who is denied a firearm after a NICS check may appeal to the denying agency (FBI or POC) and may be required to contact the agency that originated the disqualifying record. As an alternative, the appellant can ask the FBI to review a POC denial. A further appeal may be filed in Federal district court.

**Arrests of denied persons** The FBI notifies ATF of NICS denials and persons who obtain a firearm but are subsequently determined to be prohibited. If an applicant has an outstanding warrant, the agency with jurisdiction over the fugitive is notified.

**2004/2005 legislation** The assault weapons ban expired on September 13, 2004. A new section allows certain law enforcement officers to carry a concealed firearm notwithstanding any State or local law.

**Relevant laws** United States Code 18-922 et seq; 26-5801 et seq.

**Source of information** Federal Bureau of Investigation, NICS Program Office; Bureau of Alcohol, Tobacco, Firearms and Explosives.

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## Alabama

### FBI conducts NICS checks

**Prohibited persons** State law prohibits ownership, possession, or control of a handgun by a person who has been convicted in Alabama or elsewhere of committing or attempting to commit a crime of violence or is a drug addict or an habitual drunkard. It is illegal to deliver a handgun to any person under the age of 18 or to one who the seller has reasonable cause to believe has been convicted of a crime of violence or is a drug addict, an habitual drunkard, or of unsound mind.

**Restoration of rights** A person who has been convicted of a crime may regain the right to possess a handgun through a pardon.

**Prohibited firearms** It is illegal for a person to possess, obtain, receive, sell, or use a short-barreled rifle or shotgun, except for a peace officer engaged in official duties.

**Regulated sales** All transfers of firearms conducted by a licensed importer, manufacturer, or dealer shall be subject to a NICS check. Residents of adjoining States may purchase long guns in Alabama unless otherwise prohibited. No person shall make any loan secured by a mortgage, deposit, or pledge of a handgun, nor lend, give, or otherwise deliver a handgun contrary to the provisions of the law. A State license is required for retail dealers of handguns.

**Permits** No permit is required to purchase firearms. A permit is required to carry a concealed handgun.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Alabama contact the FBI for all checks required by the Brady Act.

**Waiting period** No State requirement.

**Purchaser fees** None.

**State data** Alabama makes fugitive, criminal history, probation/parole, and domestic violence restraining order data available on the statewide computer network. Criminal histories may contain domestic violence misdemeanor convictions (flagged records) and insanity, incompetent to stand trial, and involuntary commitment dispositions. A statewide database of probate court mental health records is maintained for the purpose of supplying data to the NICS.

**Check processing time** Not applicable.

**Retention of records** A form in triplicate is made for every pistol sold by a licensed dealer. One copy of the form shall be sent within 6 hours by registered or certified mail to the chief of police of the municipality or the sheriff of the county of which the dealer is a resident; the dealer shall within 7 days send the duplicate to the Secretary of State; and the dealer shall retain the triplicate for 6 years.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal under Federal law.

**Arrests of denied persons** Not applicable.

**2004/2005 legislation** No significant changes.

**Relevant laws** Code of Alabama 13A-11-50 et seq.

**Source of information** Alabama Bureau of Investigation; Alabama Criminal Justice Information Center.

**Contact** Mark Hartley, Criminal Justice Information Center, 770 Washington Avenue, Room 350, Montgomery, AL 36130, (334) 242-4900.

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## Alaska

### FBI conducts NICS checks

**Prohibited persons** Alaska law makes it a crime for a person to: knowingly possess a handgun after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this State, a court of the United States, or a court of another State or territory; knowingly sell or transfer a handgun to a person who has been convicted of a felony by a court of this State, a court of the United States, or a court of another State or territory; knowingly sell or transfer a firearm to a person whose physical or mental condition is substantially impaired by intoxicating liquor or controlled substances; knowingly sell a firearm to a person under age 18; or possess a firearm as an unemancipated minor under age 16 without the consent of a parent or guardian. A domestic violence protective order may prohibit the respondent from possessing a firearm.

**Restoration of rights** The State allows a convicted felon's right to own a handgun to be restored if the conviction is pardoned or set aside. If at least 10 years have elapsed since the offender's unconditional discharge, firearm rights are restored except for those who committed felony "crimes against persons."

**Prohibited firearms** It is illegal to manufacture, possess, transport, sell, or transfer a prohibited weapon (which includes a machine gun, short-barrel rifle, or short-barrel shotgun), unless it is registered under the National Firearms Act.

**Regulated sales** State law does not require background checks on firearms purchasers.

**Permits** Alaska does not require a permit to purchase firearms. A person who may legally carry a firearm is not required to obtain a permit to carry a concealed handgun. However, a person may obtain a concealed handgun permit in order to purchase a firearm without a new background check or receive reciprocity from other States. ATF allows a "NICS exempt" permit to be used for a purchase without a background check; other permits are "not NICS exempt."

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Alaska contact the FBI for all sales checks required by the Brady Act. The Alaska Department of Public Safety conducts background checks on applicants for concealed handgun permits that are "NICS exempt" (includes a NICS check) and "not NICS exempt" (without a NICS check).

**Waiting period** No State requirements.

**Purchaser fees** None.

**State data** Alaska maintains fully automated fugitive, criminal history, and domestic violence protective order data on a statewide network. Domestic violence misdemeanor convictions may be identified from flagged criminal history records

created after January 15, 1998. Insanity and incompetent to stand trial dispositions may be found within criminal histories.

**Check processing time** Not applicable.

**Retention of records** Information on persons who are denied a concealed handgun permit is retained for a minimum of 5 years.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal pursuant to Federal law. A denial of a concealed handgun permit application may be appealed to the commissioner of public safety.

**Arrests of denied persons** No information is available.

**2004/2005 legislation** No significant legislative changes. An ATF decision designated "NICS exempt" concealed handgun permits as an alternative to a NICS purchase check.

**Relevant laws** Alaska Statutes 11.61.200; 11.61.210; 11.61.220; 18.65.700; 18.66.100.

**Source of information** Alaska Department of Public Safety.

**Contact** David Schade, Department of Public Safety, 5700 East Tudor Road, Anchorage, AK 99507, (907) 269-5708.

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## Arizona

### FBI conducts NICS checks

**Prohibited persons** Arizona law makes it illegal to sell or transfer a firearm to a prohibited possessor, defined as any person who has been found to be a danger to himself or others by a court order and is under treatment, convicted of a felony within or without Arizona, adjudicated delinquent, imprisoned, or is serving a term of probation, parole, community supervision, work furlough, home arrest, or release on any other basis because of a domestic violence or felony offense, or is an illegal alien or a non-immigrant alien. It is illegal to knowingly transfer a firearm to a person who intends to use the firearm in the commission of any felony. A firearm cannot be transferred to or possessed by a minor under age 18 except in limited circumstances.

**Restoration of rights** Adult felons convicted of "dangerous offenses" cannot regain the right to possess firearms. All other felons discharged from probation must wait a certain length of time, depending on the offense, before applying for a court order to restore firearm rights. For adult felons the waiting period is 10 years for "serious offenses" and 2 years for other offenses. For juvenile felons the waiting period is until age 30 for dangerous and serious offenses and 2 years for most other offenses.

**Prohibited firearms** It is illegal to manufacture, possess, transport, sell, or transfer a prohibited weapon, which includes a machine gun or a short-barreled rifle or shotgun (unless it is registered in accord with Federal law).

**Regulated sales** State law does not require background checks on private person-to-person transfers of firearms.

**Permits** Arizona does not require a permit to purchase firearms. Carrying a concealed weapon requires a permit.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Arizona contact the FBI for all checks required by the Brady Act. The Department of Public Safety (DPS) Concealed Weapons Unit conducts background checks on applicants for concealed carry permits. ATF allows a holder of a valid Arizona permit to purchase a firearm in the State without a new NICS check.

**Waiting period** No State requirements.

**Purchaser fees** There is no fee for a purchase. The concealed weapon permit fee is \$65.

**State data** Arizona maintains fully automated fugitive and criminal history data on a statewide network. Probation, parole, and flagged domestic violence misdemeanor data are found within criminal history records. Sex offender registration and corrections data are also available. The courts report limited data on involuntary commitments to DPS. Domestic violence protective orders are entered into a court repository which is being expanded to include all State courts.

**Check processing time** Not applicable.

**Retention of records** Data on persons who are denied a concealed weapon permit are retained for 5 years.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal pursuant to Federal law. A person who is denied a concealed weapon permit may request reconsideration by submitting additional data to DPS. An administrative hearing may be held. A further appeal may be filed in superior court.

**Arrests of denied persons** No information is available.

**2004/2005 legislation** The definition of a prohibited firearm possessor was amended to include a person who is an illegal alien or a non-immigrant alien, as defined in 18 U.S.C. 922(g)(5).

**Relevant laws** Arizona Revised Statutes 13-905 et seq; 13-3101 et seq.

**Source of information** Arizona Department of Public Safety.

**Contact** Rene Wilson, Supervisor, Department of Public Safety, Concealed Weapon Permit Unit, P.O. Box 6488, Phoenix, AZ 85005, (602) 223-2704.

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## Arkansas

### FBI conducts NICS checks

**Prohibited persons** Arkansas law provides that no person shall possess or own any firearm who has been convicted of a felony, adjudicated mentally ill, or committed involuntarily to any mental institution. No person under the age 18 shall possess a handgun except in limited circumstances. It is illegal to furnish a firearm or other deadly weapon to a minor (under 18) without the consent of a parent or guardian, or to furnish a handgun or prohibited weapon to a felon, or to knowingly sell, rent, or transfer a firearm to a person prohibited by State or Federal law.

**Restoration of rights** The Governor may restore a felon's right to own a firearm upon a recommendation from a chief law enforcement officer if the underlying offense did not involve the use of a weapon and occurred more than 8 years ago. Restoration of rights may also occur with a pardon.

**Prohibited firearms** It is illegal, with limited exceptions, to use, possess, make, repair, sell, or otherwise deal in a machine gun or sawed-off shotgun or rifle, or a firearm specially made or specially adapted for silent discharge.

**Regulated sales** State law does not require background checks on firearms purchasers. Residents of adjacent States may purchase long guns in Arkansas unless otherwise prohibited.

**Permits** Arkansas does not require a permit to purchase firearms. A permit is required to carry a concealed handgun.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Arkansas contact the FBI for all checks required by the Brady Act. The Arkansas State Police conducts background checks on applicants for concealed handgun permits. ATF allows a holder of a valid concealed handgun permit to purchase a firearm without a new NICS check, if the permit was issued on or after April 1, 1999.

**Waiting period** No State requirements.

**Purchaser fees** None.

**State data** Fully automated fugitive, criminal history, restraining order, and flagged domestic violence misdemeanor conviction data are available on the statewide network.

**Check processing time** Not applicable.

**Retention of records** Information on persons who are denied a concealed handgun permit is retained indefinitely.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal under Federal law.

**Arrests of denied persons** No information is available.

**2004/2005 legislation** No significant changes.

**Relevant laws** Arkansas Code 5-73-101 et seq; 5-73-301 et seq.

**Source of information** Arkansas State Police and the Office of the Attorney General.

**Contact** Lt. Cora Gentry, Arkansas State Police Concealed Handgun Licensing Section, 1 State Police Plaza Drive, Little Rock, AR 72209, (501) 618-8600.

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## California

### State requests NICS checks

**Prohibited persons** State law prohibits possession of a firearm by a person who has been convicted of a felony in California or another jurisdiction or a misdemeanor specified in State law; is addicted to any narcotic drug; is prohibited as a condition of probation; is subject to a protective order; was adjudged a ward of the juvenile court; or is mentally ill or disabled as defined in State law. A firearm cannot be transferred to a minor (under 21 for handguns; under 18 for long guns) except in limited circumstances. Handgun owners must pass a safety course or show proof of exemption.

**Restoration of rights** Firearm rights may be restored by a Governor's pardon (if the conviction did not involve use of a deadly weapon) or if an underlying conviction is reopened and the subject pleads to a lesser charge. Persons convicted of specified misdemeanors or committed to a mental institution may have their rights restored by the proper court. Those who committed disqualifying acts as juveniles may have their right to possess a firearm automatically restored at age 30 if no additional violations occur.

**Prohibited firearms** Short-barreled rifles and shotguns, unsafe handguns, machine guns, assault weapons, and several other types of firearms are prohibited, with limited exceptions.

**Regulated sales** Background checks are required for firearm sales by State-licensed dealers and unlicensed persons and for pawn redemptions processed through dealers. Additional regulations apply to gun shows. Handgun purchases are limited to 1 in a 30-day period.

**Permits** A permit is required to possess a machine gun or an assault weapon. Carrying a concealed firearm requires a license. A permit is required to use a firearm solely for entertainment purposes.

**Background checks** The California Department of Justice (DOJ) is a NICS point of contact and conducts all checks required by Federal and State law. Gun show transfers and other private sales are processed through a licensed dealer or law enforcement agency. Dealers contact DOJ with a computerized "point-of-sale device." An entertainment firearms permit (for entertainment activities only, not for routine purchase) is allowed by ATF as a NICS alternative.

**Waiting period** A 10-day wait is required for all firearms, regardless of when a check is completed.

**Purchaser fees** DOJ charges \$25 for a check on a single handgun or an unlimited number of long guns, and \$21 for additional handguns purchased at the same time (if exempt from the one per 30-day rule). A dealer may charge an additional \$10 fee per firearm to process a private transfer.

**State data** California maintains fully automated fugitive, criminal history, restraining order, domestic violence convic-

tion (flagged records), probation/parole, juvenile, and prohibited armed persons data. DOJ maintains a database of prohibited mental patients and some may also be included in criminal histories.

**Check processing time** Background checks are processed within the 10-day waiting period.

**Retention of records** Data on approved long gun transactions may be retained for 5 days; data on prohibited long gun transfers are retained indefinitely. Other transaction data are retained indefinitely in the State's Automated Firearms System (AFS).

**Registration** Handguns are not registered, but the automated files maintain a record of handgun sales and transfers. New residents must report handgun ownership within 60 days of moving to California. Assault weapons must have been registered prior to the registration deadline.

**Appeals of denials** A person who is denied a firearm may appeal to California DOJ.

**Arrests of denied persons** In cases involving falsified applications or outstanding warrants, DOJ informs the agency with jurisdiction over the individual. Persons with warrants cannot receive a firearm if a conviction would disqualify them. DOJ enforcement and local law enforcement serve search warrants and arrest and prosecute armed prohibited persons who are found to be in possession of firearms.

**2004/2005 legislation** Assault weapon permit and registration requirements were amended to include .50 BMG rifles. An entertainment firearms permit was authorized. An eligibility check is required before the return of seized firearms.

**Relevant laws** California Penal Code 12000 et seq; Welfare and Institutions Code 8100 et seq.

**Source of information** California Department of Justice.

**Contact** Steve Buford, Department of Justice Firearms Division, P.O. Box 820200, Sacramento, CA 94203, (916) 227-4340.

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## Colorado

### State requests NICS checks

**Prohibited persons** Colorado law forbids transfer of a firearm to any person who is: prohibited by Federal or State law; arrested for or charged with a crime for which the person, if convicted, would be prohibited by Federal or State law; or the subject of an indictment, information, or felony complaint alleging a crime punishable by imprisonment exceeding 1 year. A firearm cannot be possessed by a person who is a previous felony offender or was adjudicated for an act that would be a felony if committed by an adult. A firearm cannot be possessed by or transferred to a person who has not attained the age of 18 years, except in limited circumstances. It is illegal to knowingly obtain a firearm on behalf of a prohibited person.

**Restoration of rights** Felons and juvenile offenders may regain firearm rights if they receive a pardon from the President or the Governor.

**Prohibited firearms** It is illegal, with limited exceptions, to knowingly possess a dangerous weapon, which includes a machine gun, short shotgun, or short rifle.

**Regulated sales** State law requires background checks on persons who purchase firearms from licensed dealers or at a gun show. Residents of any State may purchase long guns in Colorado unless otherwise prohibited.

**Permits** Colorado does not require a permit to purchase firearms. A permit is required to carry a concealed handgun.

**Background checks** The Colorado Bureau of Investigation (CBI) is a point of contact for the NICS and conducts all checks required by Federal and State law. Licensed firearms dealers in Colorado request instant checks by using a 1-800 number or by accessing CBI's web site. Gun show transactions are processed through dealers. State law mandates denial of a person arrested or indicted for a potentially disqualifying offense if no final disposition of the case is noted in databases searched.

**Waiting period** No State requirements.

**Purchaser fees** CBI does not charge a fee for an instant check. A licensed dealer may charge a fee not to exceed \$10 for processing a gun show transaction.

**State data** Colorado maintains fully automated fugitive, criminal history, probation, parole, restraining order, and flagged domestic abuse misdemeanor data on a statewide network. CBI receives court records of persons who have been adjudicated as a juvenile delinquent. Criminal histories may contain insanity and incompetent to stand trial dispositions. Data on persons who are incapacitated or committed for drug, alcohol or mental health treatment are reported by State courts to the NICS.

**Check processing time** Routine transactions are processed within 1 hour; transactions requiring additional research are processed within 3 days.

**Retention of records** CBI purges data from allowed NICS transactions within 24 hours. Data from denied transactions may be retained indefinitely.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm may request reconsideration by submitting additional information to CBI.

**Arrests of denied persons** All persons who are denied or have an outstanding warrant are reported to Federal, State, and local law enforcement agencies with jurisdiction over the applicant's residence and the dealer's premises.

**2004/2005 legislation** No significant changes.

**Relevant laws** Colorado Revised Statutes 12-26.1-101; 18-12-101 et seq; 24-33.5-424.

**Source of information** Colorado Bureau of Investigation.

**Contact** Susan Kitchen, CBI InstaCheck Unit, 690 Kipling Street, Room 3000, Denver, CO 80215, (303) 239-4235.

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## Connecticut

### State requests NICS checks

**Prohibited persons** A pistol permit or an eligibility certificate shall not be issued to a person who failed to complete a firearm safety course. A person may not obtain a pistol permit or an eligibility certificate or possess a handgun if the person is: convicted of a felony, any of 11 specified misdemeanors, or a serious juvenile offense; discharged from custody within the preceding 20 years after being found not guilty of a crime by reason of mental disease; confined to a hospital for psychiatric disabilities within the preceding 12 months by court order; subject to a restraining, protective, or firearm seizure order; prohibited by Federal law; an illegal alien; or under age 21. A firearm may not be possessed by a person who has been convicted of a felony, a serious juvenile offense, or a domestic violence misdemeanor, is subject to a restraining, protective, or firearm seizure order, or is prohibited by Federal law.

**Restoration of rights** The Board of Pardons may restore the right to possess a firearm or it may override a conviction.

**Prohibited firearms** Assault weapons and sawed-off shotguns are prohibited, with few exceptions.

**Regulated sales** State law requires background checks on persons who apply for a permit or receive a firearm, except for a long gun transfer between unlicensed persons who are not at a gun show. A person who becomes ineligible to possess a firearm must transfer all firearms owned within 2 business days and notify the Department of Public Safety of the transfer. Firearms dealers must have a State permit for retail sales of handguns.

**Permits** An eligibility certificate or pistol permit is required to purchase a handgun. Both documents are valid for 5 years, allow unlimited purchases, and will waive the long gun waiting period. Carrying a handgun also requires a pistol permit, with a 60-day permit issued by a local official required as a prerequisite to receiving the 5-year permit issued by the Connecticut State Police (CSP).

**Background checks** CSP is a NICS point of contact and conducts checks on applicants for pistol permits, eligibility certificates, and firearm purchases. Applications are approved or denied within 8 weeks for a pistol permit or 90 days for an eligibility certificate. Instant checks on buyers are conducted by telephone (1-888-335-8438 in the State).

**Waiting period** A 14-day waiting period, which begins when an application is filed, is required for a long gun transfer, unless the buyer has a valid permit or qualifies for an exemption.

**Purchaser fees** A fee of \$70 is charged to receive a 60-day and a 5-year pistol permit. Eligibility certificates cost \$35. An additional \$24 is charged to cover the FBI fingerprinting fee for criminal history.

**State data** Connecticut maintains fugitive, criminal history, probation, parole, protective order, flagged domestic abuse misdemeanor, involuntary commitment, and juvenile data. Criminal histories may contain insanity dispositions or commitments to a mental institution.

**Check processing time** Sale checks are normally processed in less than 30 seconds if no eligibility questions arise, within 1 minute if there is an eligibility question, or within 3 days if further research is needed.

**Retention of records** CSP maintains a database of valid permits and keeps denied purchase applications for 5 years. Data from approved NICS transactions are not retained.

**Registration** Data on the sale, weapon, buyer, and seller are recorded on a registration form for a handgun or long gun. Machine guns are registered. A certificate of possession is required for an assault weapon legally owned prior to 10/1/93.

**Appeals of denials** A person who is denied a firearm purchase may appeal to CSP. A denial or revocation of a pistol permit or eligibility certificate may be appealed to the Board of Firearm Permit Examiners.

**Arrests of denied persons** Cases involving falsified applications or attempts by prohibited persons to buy firearms are referred to the Firearms Trafficking Unit.

**2004/2005 legislation.** Amendments incorporated Federal restrictions into firearm possession and permits laws and require the State to transmit prohibited person data to NICS.

**Relevant laws** Connecticut General Statutes 29-27 et seq; 53-202 et seq; 53-217a et seq.

**Source of information** Connecticut State Police, Special Licensing and Firearms Unit (860) 685-8290.

**Contact** Capt. Michael Guillot, Commanding Officer, Special Licensing and Firearms Unit, 1111 Country Club Road, Middletown, CT 06457, (860) 685-8290.

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## Delaware

### FBI conducts NICS checks

#### State conducts separate checks

**Prohibited persons** Delaware law prohibits purchase or possession of a firearm by any person who is: convicted of a felony or crime of violence involving physical injury to another; committed for a mental disorder to any hospital, mental institution, or sanitarium; convicted for unlawful use, possession, or sale of a narcotic, dangerous drug, central nervous system depressant or stimulant, or controlled substance; adjudicated delinquent for conduct which if committed by an adult would constitute a felony; subject to a protection from abuse order; or convicted of any misdemeanor crime of domestic violence as defined by statute. It is unlawful to transfer a firearm to a child under 18 years of age without parental consent or to a person who intends to commit certain crimes. It is unlawful to transfer a firearm to or obtain a firearm on behalf of a prohibited person. A handgun cannot be sold to a person under the age of 21 or to an intoxicated person. A juvenile cannot possess a handgun unless engaged in lawful activity under adult supervision.

**Restoration of rights** A convicted felon's right to own a firearm may be restored through a Governor's pardon. A person who committed a disqualifying misdemeanor may regain firearm rights 5 years after conviction; those who committed disqualifying juvenile offenses regain their rights at age 25.

**Prohibited firearms** It is illegal, with limited exceptions, to sell, transfer, buy, receive, or possess a sawed-off shotgun or machine gun or any other firearm adaptable for use as a machine gun.

**Regulated sales** Delaware law requires background checks on persons who purchase a handgun or rifle from a licensed dealer, but a shotgun purchase is exempt. Checks through a licensed dealer are optional for private sales. A handgun dealer is required to have a State license.

**Permits** A permit is not required to purchase firearms. A permit is required to carry a concealed handgun.

**Background checks** State law requires that licensed dealers call the Delaware State Police (DSP) for instant sales checks by using a 1-800 number. DSP has a maximum of 3 days to complete a check. A holder of a concealed handgun permit issued by a county superior court is exempt from the check required by State law. Delaware is not a point of contact for the NICS; dealers must contact the FBI for checks required by the Brady Act on handgun, rifle, and shotgun buyers.

**Waiting period** No State requirements.

**Purchaser fees** DSP does not charge a fee for an instant check. A dealer may charge a fee not to exceed \$20 per criminal history check to process a private sale.

**State data** Delaware maintains fully automated fugitive, criminal history, probation, parole, juvenile, mental health, restraining order, and flagged domestic violence misdemeanor data on a statewide network.

**Check processing time** Routine transactions are normally processed in less than 6 minutes. Transactions requiring additional research are normally processed in less than 14 minutes.

**Retention of records** DSP retains records of approved transactions for 60 days and records of denied transactions indefinitely.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by DSP may petition for amendment of errors in the record. A further appeal may be filed in superior court. The superior court's refusal to issue a concealed handgun permit may be appealed to the State supreme court.

**Arrests of denied persons** In cases involving falsified applications, DSP informs the agency with jurisdiction over the individual. When a person is denied because of an outstanding warrant, the agency with jurisdiction over the dealer is notified to apprehend the suspect.

**2004/2005 legislation** No significant changes.

**Relevant laws** Delaware Code 11-1441 et seq; 24-901 et seq.

**Source of information** Delaware State Police.

**Contact** Elizabeth Shamany, State Police Bureau of Identification, P.O. Box 430, Dover, DE 19903, (302) 739-5872.

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## Florida

### State requests NICS checks

**Prohibited persons** Florida law prohibits a transfer of a firearm to a person who: has been convicted of a felony, a delinquent act that would be a felony if committed by an adult and the offender is under 24 years of age, or a misdemeanor crime of domestic violence; had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence and 3 years have not elapsed since the completion date of any court provisions; has been indicted for a felony; is subject to a protective order; has been arrested for a "dangerous crime" or other enumerated offenses; or is a minor under the age of 18 and lacks permission of a parent or guardian. It is illegal to acquire a firearm for the use of a prohibited person. A firearm cannot be possessed by a person who is a minor, a felon, a delinquent, restrained by a domestic violence injunction, a violent career criminal, mentally incompetent, a drug addict, or a chronic alcoholic.

**Restoration of rights** Florida allows a convicted felon's right to own firearms to be restored through a pardon from the jurisdiction where the felony conviction occurred. A person convicted of a delinquent act that would be a felony if committed by an adult can regain firearm rights when the jurisdiction of the court expires.

**Prohibited firearms** It is unlawful, with limited exceptions, for any person to own or have care, custody, possession, or control of a short-barreled rifle or shotgun or a machine gun which is or may readily be made operable.

**Regulated sales** Background checks are required for firearm sales by licensed importers, manufacturers, and dealers. Certain pawnshop redemptions are also subject to checks.

**Permits** No permit is required to purchase firearms. A license is needed to carry a concealed firearm.

**Background checks** The Florida Department of Law Enforcement (FDLE) is a point of contact for the NICS and conducts instant checks required by Federal and State law. Checks on firearms redeemed within 90 days of being pawned may be conducted by the FBI; if a weapon is redeemed after 90 days, the check is conducted by FDLE. If a purchaser is not disapproved within 3 business days, the dealer must contact FDLE before releasing the firearm.

**Waiting period** Handgun purchases require a waiting period of 3 business days, beginning with the transfer of money or other valuable consideration to the dealer, regardless of when a background check is completed. Some counties extend the waiting period by ordinance.

**Purchaser fees** FDLE currently charges \$5 for a check. The maximum fee allowed by statute is \$8.

**State data** Florida maintains fugitive, criminal history, restraining order, juvenile, probation, and parole data. Crim-

inal histories may contain domestic violence misdemeanor convictions and findings of insanity or incompetent to stand trial.

**Check processing time** Routine transactions are normally processed in less than 4 minutes. Transactions requiring additional research are normally processed in fewer than 3 days.

**Retention of records** Information on an approved transaction is destroyed by FDLE within 2 days after the response to a licensee's request for a check. Information on denied transactions is retained for 1 year on paper and 2 years in electronic format.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm may appeal through the FDLE within 21 days of the non-approval issuance. In order for FDLE to process the appeal after 21 days, a licensed firearm dealer must conduct another background check. Alternatively, a denied person may request the NICS to process an appeal after the 21 day period has expired.

**Arrests of denied persons** A person with an outstanding warrant is reported to agencies with jurisdiction over the fugitive and the location of the dealer. All denied persons are reported monthly to ATF, special agency personnel, and local law enforcement by the Firearm Purchase Program.

**2004/2005 legislation** No significant changes.

**Relevant laws** Florida Statutes 790.001 et seq.

**Source of information** Florida Department of Law Enforcement, Firearm Purchase Program.

**Contact** Martha Wright, Department of Law Enforcement, P.O. Box 1489, Tallahassee, FL 32302, (850) 488-4931.

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## Georgia

### FBI conducts NICS checks

**Prohibited persons** State law prohibits receipt, possession, or transfer of a firearm by a person who is on probation as a first offender or has been convicted of a felony in a court of Georgia, any other State, the United States, or any foreign nation. A person under the age of 18 may only possess a handgun in certain circumstances, unless the person has been convicted of a forcible offense or adjudicated delinquent.

**Restoration of rights** A convicted felon may regain the right to possess firearms if the person is granted a pardon and the Pardon and Parole Board specifically restores possession rights.

**Prohibited firearms** It is illegal, with limited exceptions, to possess a sawed-off shotgun, sawed-off rifle, or machine gun.

**Regulated sales** State law provides that all transfers or purchases of firearms conducted by a licensed importer, manufacturer, or dealer shall be subject to the NICS. A resident of any State may purchase rifles and shotguns in Georgia unless otherwise prohibited. A State license is required for a dealer of handguns or short-barreled firearms.

**Permits** Georgia does not require a permit to purchase firearms. A permit issued by a county probate court is required to carry a concealed handgun.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Georgia contact the FBI for all checks required by the Brady Act and State law.

**Waiting period** No State requirements.

**Purchaser fees** None.

**State data** Georgia maintains fully automated fugitive, criminal history, probation, parole, flagged domestic violence misdemeanor, and protective order data. Insanity, incompetent to stand trial, and involuntary commitment dispositions are contained in a database maintained by the Georgia Bureau of Investigation and may also be included in criminal histories.

**Check processing time** Not applicable.

**Retention of records** No State requirements.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal pursuant to Federal law.

**Arrests of denied persons** Not applicable.

**2004/2005 legislation** The statute that required the Georgia Bureau of Investigation to conduct instant sales checks was amended to provide that all transfers or purchases of firearms conducted by a licensed importer, manufacturer, or dealer shall be subject to the NICS. An amendment autho-

rized the Georgia Crime Information Center to provide criminal history, wanted person, and involuntary hospitalization records to the NICS. In addition, a holder of a Georgia concealed handgun permit is no longer allowed to purchase a firearm without a NICS check, pursuant to an ATF decision.

**Relevant laws** Official Code of Georgia 16-11-101.1 et seq; 16-11-171; 16-11-172; 35-3-34; 43-16-2.

**Source of information** Georgia Bureau of Investigation, Crime Information Center.

**Contact** Terry Gibbons, Bureau of Investigation Crime Information Center, P.O. Box 370808, Decatur, GA 30037, (404) 244-2638.

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## Hawaii

### State requests NICS checks

**Prohibited persons** State law prohibits ownership, possession, or control of a firearm by a person who is: a fugitive from justice; indicted or bound over for or convicted in Hawaii or elsewhere of a felony, a crime of violence, or an illegal drug sale; addicted to drugs or alcohol; acquitted of a crime on grounds of mental disease; diagnosed as having significant behavioral, emotional, or mental disorders; under 25 years old and adjudicated to have committed certain crimes; or subject to a restraining order that prohibits firearm possession. A U.S. citizen must be age 21 or older to apply for a permit to acquire. Handgun permit applicants must complete a hunter education or firearm safety course. A long gun cannot be transferred to a person under age 18.

**Restoration of rights** A convicted felon may possess a firearm if the right to acquire firearms was specifically restored by a Governor's pardon.

**Prohibited firearms** Since July 1, 1992, an assault pistol cannot be brought into Hawaii and, if legally owned before that date, can only be transferred to a licensed dealer or a county chief of police. Possession, sale, or transfer of an automatic firearm or a short barrel rifle or shotgun is prohibited. It is unlawful to possess or sell a handgun made of zinc alloy with a melting temperature of less than 800 degrees Fahrenheit.

**Regulated sales** Hawaii law requires a permit to acquire the ownership of any firearm. A firearms dealer is required to have a State license.

**Permits** A permit to acquire, valid for 10 days, is required for every purchase of a handgun. A permit to acquire, valid for 1 year, is required for unlimited purchases of long guns. A license is needed to carry a handgun. Certain aliens may obtain a permit to acquire or use a firearm.

**Background checks** Four police departments are points of contact for the NICS and conduct checks required by Federal and State law on applicants for permits to acquire handguns or long guns. State law mandates that a permit application be approved or denied within 20 days. ATF allows permits to acquire and licenses to carry to be used for purchases in lieu of the NICS check.

**Waiting period** A 14-day waiting period, which begins when an application is filed, must expire before a permit to acquire may be issued, regardless of when a background check is completed.

**Purchaser fees** First-time permit applicants are charged \$24 to subsidize the FBI fingerprint check.

**State data** Hawaii's criminal justice information system contains criminal histories, domestic violence misdemeanors (flagged records), and some restraining orders. A wants and warrants file is being developed. Criminal histories may include an acquittal by reason of insanity or an involuntary

commitment to a mental institution. A State mental health facility database is queried and files are manually reviewed for names with a positive hit. Data may be obtained from a private mental health agency if a permit applicant signs a waiver or the agency receives State funding.

**Check processing time** No statewide information is available.

**Retention of records** Information on permit applications is retained permanently.

**Registration** All firearms acquired in Hawaii or brought into the State are required to be registered, except for certain antique or inoperable devices.

**Appeals of denials** State law does not provide an appeal procedure for permit denials.

**Arrests of denied persons** No information is available.

**2004/2005 legislation** No significant changes.

**Relevant laws** Hawaii Revised Statutes 134-1 et seq.

**Source of information** Hawaii Criminal Justice Data Center; Honolulu Police Department.

**Contact** Liane Moriyama, Criminal Justice Data Center, 465 South King Street, Room 101, Honolulu, HI 96813, (808) 587-3110.

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## Idaho

### FBI conducts NICS checks

**Prohibited persons** Idaho law does not allow persons convicted of certain felonies to ship, transport, possess, or receive firearms. It is unlawful for persons who were previously convicted of these felonies (or comparable offenses in other U.S. jurisdictions) to purchase, own, possess, or have custody or control of any firearm, unless the conviction was nullified by expungement, pardon, setting aside the conviction, or restoration of civil rights. A firearm cannot be sold to or possessed by a minor under the age of 18 without the written consent of a parent or guardian.

**Restoration of rights** Some convicted felons regain firearm rights upon completion of imprisonment, probation, or parole. Other felons, except for those convicted of specified offenses, may apply to the commission of pardons and parole for restoration of firearm rights if 5 years have elapsed after final discharge. The restoration laws apply to persons who have been convicted of a felony and achieved final discharge in Idaho or another State or jurisdiction.

**Prohibited firearms** None.

**Regulated sales** State law does not require background checks on firearms purchasers. Residents of contiguous States may purchase long guns in Idaho unless otherwise prohibited.

**Permits** No permit is required to purchase firearms. A permit is required to carry a concealed weapon.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Idaho contact the FBI for all background checks required by the Brady Act. County sheriffs conduct background checks on applicants for concealed weapon permits. ATF allows a holder of a valid concealed weapon permit to purchase a firearm without a new NICS check.

**Waiting period** No State requirements.

**Purchaser fees** None.

**State data.** Idaho maintains fully automated fugitive and criminal history data on a statewide network, as well as a sex offender registry. Domestic violence misdemeanor convictions are found within criminal history records and civil protection orders are entered into the NCIC protection order file.

**Check processing time** Not applicable.

**Retention of records** No State requirements.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal under Federal law. A person who is denied a concealed weapon permit may bring a civil action in the county of application or Ada County.

**Arrests of denied persons** No information is available.

**2004/2005 legislation** An amendment clarified that procedures for restoration of Idaho firearm rights apply to persons who have been convicted of a felony and achieved final discharge in another State or jurisdiction.

**Relevant laws** Idaho Code 18-310; 18-3302 et seq.

**Source of information** Idaho State Police.

**Contact** Dawn A. Peck, State Police Bureau of Criminal Identification, 700 South Stratford, Meridian, ID 83642, (208) 884-7136.

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## Illinois

### State requests NICS checks

**Prohibited persons** Firearm Owners Identification (FOID) cards cannot be issued to persons who are prohibited by any Illinois statute or Federal law. State law prohibits firearm possession by a person who is: under 21 years of age and has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent; under 21 and lacks parental consent to possess firearms; a convicted felon; a narcotics addict; mentally ill or retarded; an illegal alien; subject to a protective order; convicted of a firearm or domestic violence offense; or adjudicated delinquent for an offense that would be a felony if committed by an adult. It is illegal to make a straw purchase for a prohibited person.

**Restoration of rights** A felon may regain firearm rights if relief from an Illinois conviction is granted. A person who committed a forcible felony must complete the sentence and 20 years without additional violations before applying to the Circuit Court. A person who committed a non-forcible felony may apply to the Director of State Police.

**Prohibited firearms** It is illegal to sell, manufacture, purchase, possess, or carry a machine gun, a short-barreled rifle or shotgun, or a firearm shaped like a wireless telephone. A dealer cannot transfer a handgun made of zinc alloy or other metal which will melt or deform at a temperature of less than 800 degrees Fahrenheit.

**Regulated sales** A person who receives a firearm from a licensed dealer or from an unlicensed person at a gun show must display a valid FOID card and undergo a background check. Private sellers must retain transaction records for 10 years. Long guns may be purchased in Illinois by residents of adjacent States and other nonresidents who meet certain requirements.

**Permits** An Illinois resident must possess a valid FOID card in order to buy a firearm or ammunition. The card is valid for 5 years, with no limit on the number of firearms purchased. State law does not provide for concealed firearm permits.

**Background checks** The Illinois State Police (ISP) is a point of contact for the NICS and conducts checks required by Federal and State law. Checks are conducted on applicants for FOID cards, with a maximum of 30 days allowed to process an application. The Firearm Transfer Inquiry Program (FTIP) Unit of ISP conducts instant checks on persons who receive a firearm at a licensed retail store or gun show. Sellers use a toll free number to request checks.

**Waiting period** After a sale application is filed, the wait is 24 hours for a long gun and 72 hours for a handgun, regardless of when a check is completed.

**Purchaser fees** ISP charges \$5 for a FOID card and \$2 for the FTIP inquiry at the time of a request from an Illinois FFL.

**State data** A statewide network contains automated data on fugitives, criminal history, and convictions. Other files cover mental health, juveniles, protective orders, and domestic violence convictions.

**Check processing time** FTIP inquiries requiring limited analysis are completed in less than 2 minutes. Inquiries requiring a more in-depth analysis are completed within 3 business days, in accordance with the time frame of the Brady Act.

**Retention of records** FOID applications are retained on microfilm and FOID denial data is kept for 10 years. FTIP denied transaction data is retained indefinitely.

**Registration** Firearms are registered by some local governments, but not by the State.

**Appeals of denials** A FOID card denial or revocation may be appealed to the director of State Police and further to circuit court (denials for certain reasons can only be appealed to circuit court). The same procedure applies to a purchase denial because it results in a FOID revocation.

**Arrests of denied persons** A person with an outstanding warrant is reported by ISP to the agency with jurisdiction over the fugitive. Denied persons are referred to a unit within ISP which analyzes denial information and reports significant violations to ATF.

**2004/2005 legislation** A background check is now required on a person who receives a firearm at a gun show from an unlicensed seller. Other amendments covered orders of protection and persons who make a purchase without having a FOID card.

**Relevant laws** Compiled Statutes 430:65/0.01 et seq; 720:5/24-1 et seq; 725:5/112A-14.5.

**Source of information** Illinois State Police.

**Contact** Lt. Richard Rodrick, Bureau Chief, Illinois State Police, Firearms Services Bureau, 100 Iles Park Place, Springfield, IL 62708, (217) 782-3310.

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## Indiana

### FBI conducts NICS checks

#### State conducts separate checks

**Prohibited persons** Indiana law prohibits a sale, gift, or other transfer of a handgun or an assault weapon to a person under 18 years of age, except in limited circumstances. It is unlawful to sell, give, or in any manner transfer a handgun to a person who is convicted of a felony, adjudicated a delinquent child for an act that would be a felony if committed by an adult, a drug abuser, an alcohol abuser, or mentally incompetent. Further, it is unlawful to purchase a handgun with the intent to transfer it to a person known to be ineligible to receive it. A firearm cannot be possessed by a person who is prohibited by a protective order, has been convicted of a serious violent felony or domestic battery, or is less than 18 years of age (except in limited circumstances).

**Restoration of rights** A convicted felon's right to possess a handgun may be restored by post-conviction relief or a Governor's pardon. A person who has been convicted of domestic battery may petition the court for restoration of firearm rights not earlier than 5 years after the date of conviction. Persons who have been adjudicated delinquent can regain their rights at age 23.

**Prohibited firearms** It is illegal, with limited exceptions, to manufacture, cause to be manufactured, import, keep for sale, offer or expose for sale, give, lend, or possess a sawed-off shotgun, or to own or possess a machine gun.

**Regulated sales** State law requires a background check on a person who obtains a handgun license or buys a handgun from a licensed dealer. Residents of contiguous States may purchase long guns in Indiana unless otherwise prohibited. A retail dealer of handguns must have a State license. It is illegal to secure a loan by a mortgage, deposit, or pledge of a handgun.

**Permits** Indiana does not require a permit to purchase firearms. A handgun license is required for personal protection (concealed carry), hunting, and target shooting.

**Background checks** The Indiana State Police (ISP) conducts background checks on applicants for handgun licenses. A person without a license who receives a handgun from a dealer must undergo a telephone instant check by ISP. After receiving a dealer's request for a check, ISP has until the end of the next business day to advise of a prohibition. Indiana is not a point of contact for the NICS. Licensed dealers in the State must contact the FBI for all checks required by the Brady Act.

**Waiting period** No State requirements.

**Fees charged** The ISP charges \$3 for an instant check, \$5 for a hunting and target license, and \$15 for a personal protection license.

**State data** The statewide network available for background checks includes automated criminal history, wanted person, protection order, and juvenile offender data. Domestic violence misdemeanor convictions may be found in court records.

**Check processing time** No information is available.

**Retention of records** Limited data on approved transactions (buyer name, dealer and approval numbers, and transaction date) may be retained by ISP for not more than 1 year; other data on approvals may be retained for up to 30 days. Data on denied transactions are retained indefinitely.

**Registration** Handguns are voluntarily registered in Indiana; there are no State requirements.

**Appeals of denials** A person who is denied a handgun by ISP may appeal to that agency or to the agency with the disqualifying record. A further appeal may be filed in circuit court. A purchase denial by the FBI may be appealed pursuant to Federal law.

**Arrests of denied persons** ISP informs ATF of persons who submit false information on a firearm application. A person with an outstanding warrant is reported to the agency with jurisdiction over the fugitive.

**2004/2005 legislation** Amendments provide that a handgun license may only be issued to a citizen or to a noncitizen who is allowed by federal law to carry a firearm in the U.S. A person who is prohibited by court order from possessing a handgun or has been convicted of a crime of domestic violence (and no rights have been restored) may not obtain a license.

**Relevant laws** Indiana Code 34-26-2-12; 35-47-1-1 et seq.

**Source of information** Indiana State Police.

**Contact** Lt. Jerry Berkey, Indiana State Police, Records Division, Traffic Records Operations Manager, 100 N. Senate Avenue—IGCN, Indianapolis, IN 46204, (317) 232-8263.

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## Iowa

### **FBI conducts long gun NICS checks State requests handgun NICS checks**

**Prohibited persons** Applicants for permits to acquire pistols and revolvers must meet all Federal requirements for possessing firearms. Additionally, Iowa law prohibits issuing a permit to a person who is less than 21 years of age, has been convicted of a felony, is addicted to the use of alcohol or a controlled substance, has a history of repeated acts of violence, has been convicted of certain misdemeanor crimes of assault, or has been adjudged mentally incompetent. A person who is convicted of a felony or adjudicated delinquent for conduct that would constitute a felony if committed by an adult cannot possess or receive a firearm. It is illegal to sell, loan, give, or make available a long gun to a person below the age of 18 or a handgun to a person below the age of 21, except in limited circumstances.

**Restoration of rights** Iowa allows a convicted felon's right to own a handgun to be restored through a pardon or a special restoration of rights with firearms privileges.

**Prohibited firearms** It is illegal, with limited exceptions, to knowingly possess a machine gun, short-barreled rifle, short-barreled shotgun, silenced firearm, or any part or combination of parts designed or intended to be used to convert any device into a prohibited firearm.

**Regulated sales** Permit regulations pertain to all handgun sales by licensed dealers, pawnshops, and unlicensed persons.

**Permits** Iowa requires an annually renewed permit to acquire pistols or revolvers, unless the purchaser holds a valid permit to carry firearms. An unlimited number of handguns can be purchased with either permit.

**Background checks** Ninety-nine county sheriffs are partial points of contact for the NICS, conducting checks of applicants for permits to acquire or carry handguns. State employees and nonresidents are checked by the Iowa Department of Public Safety. Licensed dealers in Iowa contact the FBI for checks on persons who purchase long guns or redeem a firearm without a permit. ATF allows a holder of a valid permit to acquire or carry to make a purchase without a new NICS check.

**Waiting period** An Iowa permit to acquire handguns becomes valid 3 days after the date of application unless the applicant is found to be disqualified.

**Fees charged** There is no statutory fee for a permit to acquire handguns. The statutory fee for a new permit to carry weapons is \$10 and a renewal is \$5. Some sheriffs charge a fee for processing a permit.

**State data** Iowa maintains fully automated fugitive, criminal history, protective order, and flagged domestic abuse misdemeanor data on a statewide network. Checking agencies also have access to some probation, parole, and juvenile

data. Insanity dispositions may be included in criminal histories and some agencies check county court records to obtain mental incompetence data.

**Check processing time** No statewide information is available.

**Retention of records** Sheriffs retain approved permits for the remainder of the issuing year plus an additional 3 years.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a permit under Iowa law can appeal to Iowa district court. A person who is denied under Federal law can appeal to the FBI's NICS Program Office.

**Arrests of denied persons** Persons with outstanding warrants are arrested by the checking agency in some cases.

**2004/2005 legislation** No significant changes.

**Relevant laws** Iowa Code 702.7; 724.1 et seq.

**Source of information.** Iowa Department of Public Safety.

**Contact** Sam Knowles, Department of Public Safety, Wallace State Office Building, Des Moines, IA 50319, (515) 281-7663.

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## Kansas

### FBI conducts NICS checks

**Prohibited persons** It is illegal to knowingly transfer a firearm with a barrel less than 12 inches to a person under 18 years of age, or to knowingly transfer a firearm to a person who is both addicted to and an unlawful user of a controlled substance, or has been convicted of a felony described in the criminal disposal of firearms statute. A firearm cannot be possessed by a person who is both addicted to and an unlawful user of a controlled substance, or has been convicted of a felony or adjudicated as a juvenile offender, under circumstances described in the criminal possession of a firearm statute. A person less than 18 years of age cannot knowingly possess a firearm with a barrel less than 12 inches except in limited circumstances.

**Restoration of rights** The prohibition against possession of a firearm no longer applies if 5 years (or 10 years in certain cases) have elapsed since the date of conviction for a felony or release from imprisonment for a felony (whichever date is later) or adjudication as a juvenile offender. Rights are not restored to certain offenders who possessed a firearm at the time of commission of the offense. An expungement or a pardon may also restore possession rights in certain cases.

**Prohibited firearms** It is a criminal use of a weapon to knowingly sell, manufacture, purchase, possess, or carry a shotgun with a barrel less than 18 inches in length or any other firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger. This prohibition does not apply to certain persons and uses.

**Regulated sales** Kansas law does not require background checks on firearms purchasers. Residents of contiguous States are allowed to purchase long guns from a licensed importer, manufacturer, dealer, or collector in Kansas unless otherwise prohibited.

**Permits** A permit is not required to purchase a firearm. State law does not provide for a permit to carry a concealed firearm.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Kansas contact the FBI for all checks required by the Brady Act.

**Waiting period** No State requirements.

**Purchaser fees** No State requirements.

**State data** Kansas maintains criminal history, protection from abuse order, juvenile offender, and offender registration data on the statewide criminal justice information system. Domestic violence misdemeanor convictions may be identified within criminal history by statutory citation.

**Check processing time** Not applicable.

**Retention of records** No State requirements.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal under Federal law.

**Arrests of denied persons** Not applicable.

**2004/2005 legislation** The prohibited weapons statute was amended to allow an exception for the transportation or sale of such weapons to a laboratory certified by the U.S. Department of Justice.

**Relevant laws** Kansas Statutes 21-4201 et seq.

**Source of information** Kansas Bureau of Investigation.

**Contact** David Sim, Bureau of Investigation, 1620 Southwest Tyler, Topeka, KS 66612, (785) 296-8265.

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## Kentucky

### FBI conducts NICS checks

**Prohibited persons** Kentucky law prohibits the possession, manufacture, or transport of a firearm by a person who has been convicted of a felony in any State or Federal court, and by any youthful offender convicted of a felony offense under the laws of Kentucky. No person shall knowingly sell or transfer a firearm to any person prohibited from possessing the firearm. A handgun cannot be possessed, manufactured, or transported by a person under the age of 18 except in limited circumstances. It is unlawful for any person to intentionally, knowingly, or recklessly provide a handgun to a person under the age of 18, or for a parent or guardian to provide a handgun to a juvenile child or ward in certain circumstances.

**Restoration of rights** A convicted felon's right to possess a firearm may be restored through a full pardon from the Governor or the President, or through relief by the Secretary of the Treasury.

**Prohibited firearms** None.

**Regulated sales** Residents of States contiguous to the Commonwealth of Kentucky may purchase rifles, shotguns, and any other firearms which they are permitted to purchase under federal law from properly licensed dealers, manufacturers, importers, or collectors located in the Commonwealth. All such sales shall conform to the requirements of Federal law, the Kentucky Revised Statutes, applicable local ordinances, and the law of purchaser's State.

**Permits** Kentucky does not require a permit to purchase a firearm. A license is required to carry a concealed firearm.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Kentucky contact the FBI for all background checks required by the Brady Act.

**Waiting period** No State requirements.

**Purchaser fees** No State requirements.

**State data** Kentucky maintains fully automated fugitive, criminal history, and domestic violence restraining order data on a statewide network. Misdemeanor convictions involving domestic violence may be found in court records and the Kentucky State Police criminal history repository. Review of the specific facts underlying a conviction must be undertaken to determine whether the offense in question satisfies the criteria of "misdemeanor crime of domestic violence" as set forth in 18 U.S.C. 921(a)(33).

**Check processing time** Not applicable.

**Retention of records** No State requirements.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI can appeal under Federal law.

**Arrests of denied persons** When a person subject to a restraining order attempts to buy a firearm in violation of federal law, the Justice Cabinet must make a reasonable effort to notify the petitioner of the order if a notification request has been made.

**2004/2005 legislation** No significant changes.

**Relevant laws** Kentucky Revised Statutes 237.020 et seq; 431.064; 527.010 et seq.

**Source of information** Kentucky State Police.

**Contact** Joe West, State Police Support Services, 1250 Louisville Road, Frankfort, KY 40601, (502) 695-6205.

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## Louisiana

### FBI conducts NICS checks

**Prohibited persons** Louisiana law prohibits possession of a firearm by a person who has been convicted of certain State felonies (or a similar offense in another jurisdiction), unless the person has not been convicted of a felony for a period of 10 years from the date of completion of sentence, probation, parole, or suspension of sentence. It is a crime to intentionally supply a felon with a firearm. A firearm cannot be sold or otherwise delivered to a person under the age of 18. It is unlawful for a person who has not attained the age of 17 years to possess a handgun except in limited circumstances. Ownership or possession of a firearm may be prohibited under a misdemeanor sentence for domestic abuse battery.

**Restoration of rights** A convicted felon's right to possess a firearm may be restored in Louisiana through a Governor's pardon or by certain law enforcement officers. Upon completion of sentence, probation, parole, or suspension of sentence, convicted felons may apply to the sheriff of their parish of residence (or in Orleans parish, the superintendent of police) for a permit to possess firearms.

**Prohibited firearms** No person (with limited exceptions) shall sell, keep or offer for sale, loan or give away, purchase, possess, carry, or transport a machine gun.

**Regulated sales** State law does not require background checks on firearms purchasers. Residents of contiguous States may purchase long guns in Louisiana unless otherwise prohibited.

**Permits** A permit is required to carry a concealed handgun. A person authorized by law to purchase a machine gun from a manufacturer or merchant must present a permit.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Louisiana contact the FBI for all background checks required by the Brady Act.

**Waiting period** No State requirements.

**Purchaser fees** No State requirements.

**State data** A fully automated statewide computer network contains fugitive data and criminal histories that include domestic violence offenses. A protective order registry is maintained by the judicial administrator's office. Documentation of services or treatment received at a public mental health facility is available to the State Police for concealed handgun permit checks.

**Check processing time** Not applicable.

**Retention of records** No State requirements.

**Registration** Machine guns, firearms with obliterated serial numbers, short barrel rifles and shotguns, and certain modified firearms are required to be registered.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal under Federal law.

**Arrests of denied persons** Not applicable.

**2004/2005 legislation** A new section makes it a crime to intentionally supply a felon with a firearm.

**Relevant laws** Louisiana Revised Statutes 14:35.3; 14:91; 14:95 et seq; 40:1379.3; 40:1751 et seq.

**Source of information** Louisiana State Police.

**Contact** Sgt. Randy Fandal, State Police Concealed Handgun Section, P.O. Box 66375, Baton Rouge, LA 79896, (225) 925-4867.

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## Maine

### FBI conducts NICS checks

**Prohibited persons** Maine law prohibits ownership, possession, or control of a firearm by a person who has: been convicted or found not criminally responsible by reason of mental disease or defect of committing a crime punishable by imprisonment for 1 year or more, a crime in another State that is similar to an offense punishable by imprisonment for 1 year or more in Maine, or a firearm or dangerous weapon crime; engaged in conduct as a juvenile that if committed by an adult would have been a disqualifying conviction; or is subject to a domestic violence restraining order. An individual may not transfer a handgun to a person under 18 years of age (except in limited circumstances) and a licensed dealer may not sell or deliver a handgun to a person under 21 years of age. It is unlawful for a person other than a parent or guardian to transfer a long gun to a person under 16 years of age.

**Restoration of rights** Firearm rights may be restored by a court order or a Governor's pardon. A person convicted of a disqualifying offense may apply to the Commissioner of Public Safety for a permit to possess a nonconcealable firearm if 5 years have elapsed since the date of final discharge from the sentence. The commissioner's decision may be appealed to superior court. (This permit is limited to weapons such as black powder guns that are not defined as firearms under Federal law.) Nonviolent juvenile offenders regain firearm rights 3 years after completion of their dispositions or upon reaching 18 years of age, whichever is later.

**Prohibited firearms** It is illegal for a person to possess a machine gun, except for law enforcement or military personnel in the discharge of official duties or if the machine gun is possessed in accordance with the National Firearms Act.

**Regulated sales** State law does not require background checks on firearms purchasers.

**Permits** Maine does not require a permit to purchase firearms. A permit is required to carry a concealed firearm. An offender whose rights have been restored may be issued a possession permit but cannot carry a concealed firearm. This permit does not authorize the holder to possess a weapon defined as a firearm under federal law.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Maine contact the FBI for all checks required by the Brady Act.

**Waiting period** No State requirements.

**Purchaser fees** No State requirements.

**State data** State agencies maintain criminal history, fugitive, juvenile offense, domestic violence restraining order, and motor vehicle data. Criminal histories may contain insanity and incompetent to stand trial dispositions.

**Check processing time** Not applicable.

**Retention of records** An issuing authority must make permanent records of concealed firearms permits that are issued.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal under Federal law.

**Arrests of denied persons** Not applicable.

**2004/2005 legislation** A new section imposes a tax on firearm and ammunition sales by licensed dealers for the purpose of funding courthouse security.

**Relevant laws** 15 MRSA 393; 17-A MRSA 554A; 17-A MRSA 554B; 17-A MRSA 1051; 25 MRSA 2001-2006.

**Source of information** Maine State Police.

**Contact** Sgt. William Gomane, Maine State Police Special Investigations Unit, State House Station #164, Augusta, ME 04333, (207) 624-7212.

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## Maryland

### FBI conducts long gun NICS checks State requests handgun NICS checks

**Prohibited persons** A "regulated firearm" (handgun or assault weapon) cannot be transferred to or possessed by a person who is: convicted of a crime of violence, a felony, or any common law offense or misdemeanor that carries more than a 2-year term of imprisonment; a fugitive; an habitual drunkard; addicted to a controlled substance; mentally disordered as defined in State law; under 21 years of age; less than 30 years of age and was adjudicated delinquent; or subject to a protective order. In addition, it is illegal to transfer a regulated firearm to a person who is visibly under the influence of alcohol or drugs or a participant in a straw purchase. A regulated firearm buyer is required to complete a safety training course. A long gun cannot be purchased by a person under the age of 18 or possessed by a person who suffers from a mental disorder.

**Restoration of rights** The right to own a firearm may be restored by a Governor's pardon.

**Prohibited firearms** It is illegal, with limited exceptions, to possess or transfer an assault pistol on or after 7/1/94, or to possess a short-barreled rifle or shotgun. Any type of handgun that is not on the Maryland handgun roster may not be manufactured for sale in the State.

**Regulated sales** Background checks are required on all persons who buy a regulated firearm. A dealer is required to have a Maryland regulated-firearms license. An unlicensed person selling at a gun show must obtain a temporary transfer permit, have a fixed display, and comply with the same restrictions imposed upon licensed dealers. Regulated firearm purchasers must have resided in Maryland for 90 days, and are limited to one purchase every 30 days. Residents of adjacent States may purchase long guns from licensed dealers in Maryland unless otherwise prohibited.

**Permits** A permit is not required to purchase firearms. A permit issued by the secretary of the Maryland State Police (MSP) is required to carry a handgun.

**Background checks** The Maryland State Police is a partial point of contact for the NICS and conducts checks on regulated firearms buyers. Dealers transmit applications to MSP by certified mail or fax. Private sales are processed through dealers or MSP installations. Checks must be completed within 7 days unless placed on hold because of a criminal proceeding without a disposition. The FBI checks all redemptions and sales of long guns not regulated by Maryland law.

**Waiting period** Transfers of regulated firearms require a 7-day waiting period that begins when an application is forwarded, regardless of when a check is completed.

**Purchaser fees** A \$10 application fee is required.

**State data** Maryland maintains fully automated fugitive and criminal history files, plus restraining order, flagged domestic violence misdemeanor, probation, and parole data. Information on mentally ill persons who attempt to purchase firearms is maintained when it is voluntarily provided by family members or other persons.

**Check processing time** Routine applications are processed in about 5 days. Additional research is normally completed in less than 1 month.

**Retention of records** Permanent transaction records, containing the caliber, make, model, serial number, and special characteristics of each regulated firearm transferred are maintained by MSP. Denied applications are retained indefinitely.

**Registration** Machine guns and assault pistols (owned before 7/1/94) must be registered.

**Appeals of denials** A person denied a regulated firearm can appeal to MSP and further to State court.

**Arrests of denied persons** All denied persons are reported to the MSP Firearms Enforcement Section.

**2004/2005 legislation** An amendment provided penalties for failure to surrender firearms to law enforcement while subject to a protective order.

**Relevant laws** Code of Maryland: Criminal Law Title 4; Public Safety Title 5.

**Source of information** Maryland State Police Licensing Division, Firearms Registration Section.

**Contact** Sgt. Frank Smith, Supervisor, Firearms Registration Section, 7751 Washington Boulevard, Jessup, MD 20794, (410) 799-0191.

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## Massachusetts

### FBI conducts NICS checks

### State conducts separate checks

**Prohibited persons** A firearm identification card or license to carry will not be issued to: a person who is convicted or adjudicated a youthful offender or delinquent child in Massachusetts, another State, or a federal jurisdiction for commission of a felony, a misdemeanor punishable by more than 2 years imprisonment, a violent crime, or a weapon or drug offense; or to a person who is mentally ill, a drug or alcohol addict, under age, subject to a protection order, or a wanted person. An identification card or a license cannot be used to buy a firearm, rifle, or shotgun for the unlawful use of another or for transfer to an unlicensed person. A permit to purchase may be issued with restrictions to a person who is not a minor if it appears that the purchase is for a proper purpose.

**Restoration of rights** A person who committed a disqualifying adult or juvenile offense (except for certain offenses) may possess a rifle or shotgun 5 years after completion of a sentence or an adjudication without new violations, if this right is fully restored in the jurisdiction where the adjudication or conviction occurred. Addicted persons or persons confined for mental illness may apply for restoration if 5 years have elapsed after completion of treatment.

**Prohibited firearms** It is illegal to possess a machine gun (with limited exceptions) or a sawed-off shotgun. A firearm cannot be sold if it does not meet certain manufacturing standards or pass a firing test.

**Regulated sales** A permit is required to receive a rifle, shotgun, or "firearm" from a dealer or private person. Weapon types are mainly distinguished by barrel length: rifles, equal to or greater than 16 inches; shotguns, equal to or greater than 18 inches; "firearms," less than 16 inches or shotguns less than 18 inches. Firearms cannot be pawned. A dealer must have a State license.

**Permits** Two classes of licenses to carry allow, for 6 years, possession of certain types of weapons: Class A, large capacity firearms, rifles, and shotguns; Class B, non-large capacity firearms, and large capacity rifles and shotguns. A firearms identification card allows, for 6 years, possession of rifles, shotguns, ammunition, and chemical mace or similar substances. Certain firearm purchases require a permit that is valid for 10 days. A machine gun permit may be issued to a police instructor or a collector. Temporary licenses and permits may be issued to nonresidents and aliens, with certain restrictions.

**Background checks** A new electronic system enables licensing authorities to conduct criminal history fingerprint checks on license and identification card applicants. Authorities not yet on the system forward prints to the Massachusetts State Police (MP), which conducts a check. MP informs a licensing authority of check results within 30 days; the authority renders a decision within 40 days from the

date of application. Dealers use the State system to verify a buyer's eligibility; the FBI is contacted for all NICS checks.

**Waiting period** No State requirements.

**Purchaser fees** A \$100 fee is charged for licenses to carry, identification cards, and permits to purchase.

**State data** The State maintains fully automated criminal history, probation, parole, juvenile, domestic restraining order, and fugitive data. Domestic assault and other violent misdemeanors are found in criminal histories. Licensing authorities contact the Department of Mental Health by phone or e-mail. The State will notify the licensing authority of any disqualifying events which may occur after the license is issued.

**Check processing time** No data are available.

**Retention of records** Licensing authorities keep copies of approved and denied applications indefinitely. Information on applicants is also maintained in the Firearms Record Bureau database.

**Registration** Rifles, shotguns, and firearms purchased in Massachusetts are registered. New residents have 60 days to register their firearms.

**Appeals of denials** Identification card and license to carry denials may be appealed to State district court.

**Arrests of denied persons** An applicant who is denied a license or identification card may be arrested if the person has an outstanding warrant.

**2004/2005 legislation** New laws set up a licensing review board, kept an assault weapons ban in effect, and extended the term of identification cards and licenses.

**Relevant laws** Massachusetts General Laws, chapter 140, section 121 et seq; chapter 269, section 10.

**Source of information** Massachusetts Criminal History Systems Board.

**Contact** Barry LaCroix, Criminal History Systems Board, 200 Arlington Street, Suite 2200, Chelsea, MA 02150, (617) 660-4704.

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## Michigan

### **FBI conducts long gun NICS checks State requests handgun NICS checks**

**Prohibited persons** A license to purchase a handgun may not be issued to a person subject to an order or disposition pursuant to: involuntary hospitalization or alternative treatment, legal incapacity, personal protection, stalking, a restraining order, release subject to protective conditions, or found not guilty by reason of insanity. A license may not be issued to a person who is under 18, is not a U.S. citizen or resident alien, is not a resident of Michigan, has a pending felony charge, is prohibited from possessing, using, or transporting a firearm due to certain types of felonies, has been adjudged insane, is under an order of involuntarily committed, or has been adjudged legally incapacitated. A license may be denied if the licensing agency has probable cause to believe that the applicant would be a threat to himself or herself or to other individuals, or would commit an offense with the pistol. An applicant must score 70% or more on a pistol safety questionnaire. It is illegal to sell a long gun to a person who is under 18 or has been indicted for or convicted of a felony. A firearm cannot be possessed by a person less than 18 who is not under the supervision of an individual 18 or older.

**Restoration of rights** State law allows persons convicted of nonviolent or drug offenses to regain the right to own a handgun 3 years after completion of their sentences. Violent offenders may have their rights restored 5 years after completion of a sentence, if approved by a county Concealed Weapons Licensing Board, or upon appeal to circuit court. Rights may also be restored if a conviction is expunged or set aside or the offender is pardoned. However, current Federal law does not recognize restoration by a licensing board after July 1, 2001.

**Prohibited firearms** A person shall not manufacture, sell, offer for sale, or possess a machine gun or a short-barreled shotgun or rifle, with limited exceptions.

**Regulated sales** A person shall not purchase a handgun without first having obtained a license. Handguns cannot be pawned for resale. Residents of contiguous States may purchase long guns in Michigan unless otherwise prohibited.

**Permits** A license (valid for 10 days) is required for every purchase of a handgun unless the purchaser holds a license to carry a concealed handgun.

**Background checks** Checks on applicants for handgun purchase licenses are conducted by 595 sheriffs and police departments, which are partial points of contact for the NICS. Licensed firearms dealers in Michigan must contact the FBI for checks on sales and redemptions of long guns required by the Brady Act. ATF allows a handgun purchase license (but not a concealed carry license) to be used at the point of sale in lieu of the NICS check.

**Waiting period** No State requirements.

**Purchaser fees** None.

**State data** Fully automated fugitive, criminal history, restraining order, probation/parole, adjudicated mentally defective, and juvenile (if reportable to the State) data are available statewide. Criminal histories may contain insanity dispositions. Flagged domestic violence misdemeanors may be located through an automated pointer that requires manual research. Some corrections data are also available.

**Check processing time** Routine license applications are normally processed by non-automated agencies in less than 1 hour and by automated agencies in less than 5 minutes. Applications requiring additional research are normally processed in less than 5 days.

**Retention of records** State law requires that sheriffs and police departments retain approved license applications for 6 years. Denied applications are kept at the discretion of the licensing agencies.

**Registration** Michigan requires registration of handguns. Copies of the registration are retained by the registering law enforcement agency and the Michigan State Police.

**Appeals of denials** A person denied a handgun purchase or concealed carry license may appeal to circuit court or through NICS.

**Arrests of denied persons** Persons with outstanding warrants are arrested in some cases.

**2004/2005 legislation** A new section requires use of the NICS and ICE databases during permit checks.

**Relevant laws** Michigan Compiled Laws 3.111 et seq; 28.421 et seq; 750.222 et seq.

**Source of information** Michigan State Police.

**Contact** Katie Bower, State Police Criminal Justice Information Center, 7150 Harris Drive, Lansing, MI 48913, (517) 322-5518.

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## Minnesota

### FBI conducts NICS checks

#### State conducts separate checks

**Prohibited persons** Minnesota law prohibits firearm possession by certain persons who are under age 18, convicted of or adjudicated delinquent for or charged with committing crimes of violence, mentally ill, drug addicts, domestic violence offenders, convicted of a crime punishable by imprisonment for more than 1 year, fugitives, or illegal aliens, or who have been dishonorably discharged from the military or have renounced U.S. citizenship.

**Restoration of rights** A person convicted of or adjudicated delinquent for committing a crime of violence cannot possess a firearm unless the offender was discharged from a sentence before August 1, 1993, firearm rights have been restored by court order under 609.165.1(d), and no further conviction or adjudication for another crime of violence has occurred. A person convicted of a gross misdemeanor may regain firearm rights if 3 years have expired since the date of conviction.

**Prohibited firearms** It is illegal, with limited exceptions, to own or possess a machine gun or short-barreled shotgun. A "Saturday Night Special Pistol" cannot be sold by a licensed dealer or manufactured or assembled by any person.

**Regulated sales** A background check is required on a person who attempts to obtain a permit or buy a handgun or an assault weapon from a licensed dealer. Residents of contiguous States may purchase long guns in Minnesota unless otherwise prohibited.

**Permits** A resident may obtain a transferee permit which is valid for 1 year and allows unlimited purchases of handguns and assault weapons. A permit to carry is required to possess a concealed firearm and also constitutes a transferee permit. In the alternative, a buyer may undergo a background check for each purchase of an unlimited number of handguns or assault weapons.

**Background checks** Five-hundred sixty-eight sheriffs and police departments conduct checks after receiving transferee permit applications or transfer reports (on persons without permits) from dealers. A permit shall be issued or denied within 7 days of application. After a transfer report is filed, a dealer may complete the transaction if a notice of disqualification from the checking agency is not received within 5 business days. In addition, dealers contact the FBI for checks required by the Brady Act.

**Waiting period** No person shall deliver a handgun or assault weapon until 5 business days after the date the agreement to transfer is delivered to a chief of police or sheriff. All or part of the waiting period may be waived by the checking agency because of a threat to the life of the transferee or a member of the transferee's household.

**Purchaser fees** There is no fee for a transferee permit or a transfer report. A fee not to exceed \$10 may be charged for a check on a carry permit applicant.

**State data** A statewide network maintains automated criminal history, fugitive, juvenile, and order for protection data. Domestic violence misdemeanors are identified in criminal histories by the offense charge. Checking agencies call the Department of Human Services for involuntary commitment data. Criminal histories may contain incompetent to stand trial and involuntary commitment dispositions.

**Check processing time** Background checks are normally completed in less than 5 days.

**Retention of records** Copies of applications are retained at the discretion of the checking agency. However, a sheriff or chief of police will not maintain any record of an approved transferee's identity if that person requests return of the transfer report.

**Registration** A report of ownership must be filed for a machine gun or short-barreled shotgun.

**Appeals of denials** A person who is denied a permit or firearm may appeal to the district court.

**Arrests of denied persons** A person who makes a false statement on a permit or transfer application may be charged with a gross misdemeanor.

**2004/2005 legislation** After the concealed weapon permit law was found unconstitutional, a new permit law was enacted and made retroactive to April 28, 2003.

**Relevant laws** Minnesota Statutes 609.165; 609.66 et seq; 624.71 et seq.

**Source of information** Minnesota Department of Public Safety.

**Contact** Robert Johnson, Dept. of Public Safety, Bureau of Criminal Apprehension, 1430 Maryland Avenue East, St. Paul MN, 55106, (651) 793-1012.

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## Mississippi

### FBI conducts NICS checks

**Prohibited persons** Mississippi law makes it unlawful to sell, give, or lend a firearm to a person whom the transferor knows to be a minor under 18 years of age or intoxicated. A person convicted of a felony under the laws of Mississippi, any other State, or the United States cannot possess any firearm. It is an act of delinquency for a person under the age of 18 years to knowingly possess a handgun, except in limited circumstances.

**Restoration of rights** A convicted felon's right to possess a firearm can be restored by a Governor's pardon, Federal relief, or a certificate of rehabilitation from the court of conviction.

**Prohibited firearms** None.

**Regulated sales** State law does not require background checks on firearm purchasers.

**Permits** A permit is not required to purchase firearms. A license is required to carry a concealed handgun.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Mississippi contact the FBI for all background checks required by the Brady Act. The Mississippi Department of Public Safety conducts background checks on applicants for concealed handgun licenses. ATF allows a valid license issued to an individual to be used for a purchase without a new NICS check.

**Waiting period** There is no State waiting period to purchase a firearm.

**Purchaser fees** No State requirements.

**State data** Mississippi maintains an automated message switch that allows local agencies to access the National Crime Information Center (NCIC) and the Interstate Identification Index (III). Arrest and disposition records on felonies and misdemeanors are available online, along with fugitive from justice information.

**Check processing time** No statewide data are available.

**Retention of records** Information on persons who are denied a concealed handgun license is retained indefinitely.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal under Federal law. A person who is denied a concealed handgun license may appeal to the commissioner of public safety and further to the circuit or county court.

**Arrests of denied persons** No information is available.

**2004/2005 legislation** An amendment to the concealed handgun statute provided that a license may not be issued if an applicant is disqualified to possess or own a weapon based on Federal law.

**Relevant laws** Mississippi Code 45-9-101; 97-37-1 et seq.

**Source of information** Mississippi Department of Public Safety. (Note: The Department of Public Safety is the agency responsible for the issuance of individual firearm permits and does not regulate the purchasing of firearms.)

**Contact** James Gann, Department of Public Safety, Firearm Permit Unit, P.O. Box 958, Jackson, MS 39205, (601) 987-1586.

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## Missouri

### FBI conducts NICS checks

#### State conducts separate checks

**Prohibited persons** Missouri law requires that an applicant for a permit to acquire a concealable firearm (handgun) be at least 21 years old (23 years old to obtain a concealed carry permit), a U.S. citizen, and a State resident for at least 6 months. A permit cannot be issued to a person who: has pled guilty to, been convicted of, is a fugitive from justice for, or currently charged with a crime punishable by imprisonment for a term exceeding 1 year under the laws of any State or the U.S., or a weapons misdemeanor; has been dishonorably discharged from U.S. armed forces; is publicly known to be habitually intoxicated or drugged; is currently adjudged mentally incompetent; has been committed to a mental health facility; or has rendered a false statement on the application. It is unlawful to transfer a firearm to a person who is not entitled to possess it, is less than 18 years old (without consent of the child's parent or guardian), or is intoxicated. It is unlawful to receive a handgun without obtaining a valid permit or to deliver a handgun to a person who lacks a valid permit.

**Restoration of rights** A convicted felon's right to own a handgun may be restored through a Governor's pardon.

**Prohibited firearms** It is illegal, with limited exceptions, to knowingly possess, manufacture, transport, repair, or sell a machine gun or a short-barreled rifle or shotgun.

**Regulated sales** Permit regulations pertain to all handgun transfers by licensed dealers, pawnshops, and unlicensed persons. Residents of contiguous States may purchase long guns in Missouri unless otherwise prohibited.

**Permits** Missouri mandates a permit to acquire a concealable firearm, which is valid for 30 days and may be used to purchase one handgun. An endorsement issued by a county sheriff is required to carry a concealed handgun. This endorsement requires passing an approved firearms safety training course.

**Background checks** One-hundred fourteen county sheriffs and the St. Louis County Police Department conduct background checks on applicants for permits to acquire handguns. A permit shall be issued or denied within 7 business days. The State is not a point of contact for the NICS. Licensed firearms dealers in Missouri contact the FBI for all checks required by the Brady Act.

**Waiting period** No State requirements.

**Purchaser fees** A fee not to exceed \$10 is charged for a permit to acquire. A concealed carry permit has an initial fee not to exceed \$100 and is good for 3 years; the renewal fee is not to exceed \$50.

**State data** Missouri maintains fully automated fugitive, criminal history, domestic violence restraining order, probation, and parole data on a statewide computer network.

Criminal histories may contain flagged domestic violence misdemeanor convictions and insanity dispositions.

**Check processing time** No statewide information is available.

**Retention of records** Sheriffs are required to keep a record of all applications for permits to acquire and the actions taken on applications, and to preserve all returned permits. The permit statute does not specify a record retention period.

**Registration** Handguns are not registered by the State, but are registered by county and municipal law enforcement agencies.

**Appeals of denials** A person who is denied a permit may appeal to small claims court in the county where they reside and the permit was requested.

**Arrests of denied persons** An applicant may be arrested for obtaining a permit upon a false representation.

**2004/2005 legislation** An amendment allows county sheriffs to use their revolving funds to cover the costs associated with processing concealed carry permits.

**Relevant laws** Missouri Revised Statutes 407.500, 407.505; 571.010 et seq.

**Source of information** Missouri State Highway Patrol.

**Contact** Timothy P. McGrail, State Highway Patrol, Criminal Records and Identification Division, P.O. Box 9500, Jefferson City, MO 65102, (573) 526-6160.

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## Montana

### FBI conducts NICS checks

**Prohibited persons** Montana law makes it unlawful for a person to purposely or knowingly purchase or possess a firearm after the person has been convicted of certain felonies or an equivalent offense under the law of another State or the United States. A minor child under the age of 14 years cannot carry or use firearms in public without adult supervision.

**Restoration of rights** A convicted felon's right to possess a firearm may be restored by a Governor's pardon or upon completion of the sentence, except for certain offenders who must apply to the district court for a permit to purchase and possess firearms.

**Prohibited firearms** It is an offense, except under certain circumstances, to possess a sawed-off rifle or a sawed-off shotgun.

**Regulated sales** State law does not require background checks on firearms purchasers. Residents of contiguous States may purchase long guns in Montana unless otherwise prohibited.

**Permits** A permit to purchase a firearm is only required for certain offenders who must apply to the district court. A permit is required to carry a concealed weapon.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Montana contact the FBI for all checks required by the Brady Act. County sheriffs conduct background checks on applicants for concealed weapon permits. ATF allows a holder of a valid concealed weapon permit to purchase a firearm without a new NICS check.

**Waiting period** No State requirements.

**Purchaser fees** No State requirements.

**State data** Montana maintains fully automated fugitive and criminal history data on a statewide network. Criminal histories may contain flagged domestic violence misdemeanor convictions and dispositions of acquitted by reason of mental defect. State law requires entry of domestic violence restraining orders into the NCIC protection order file.

**Check processing time** Not applicable.

**Retention of records** No State requirements.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal under Federal law. A denial of a concealed weapon permit application may be appealed to a Montana district court.

**Arrests of denied persons** A person who is denied a concealed weapon permit may be arrested if wanted in an outstanding warrant.

**2004/2005 legislation** No significant changes.

**Relevant laws** Montana Code 45-8-301 et seq; 46-18-801.

**Source of information** Montana Department of Justice.

**Contact** Nancy Bloom, Department of Justice, CJIS Bureau, 303 N. Roberts, P.O. Box 1417 Helena, MT 59620, (406) 444-2802.

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## Nebraska

### **FBI conducts long gun NICS checks State requests handgun NICS checks**

**Prohibited persons** A handgun transfer certificate cannot be issued to a person who is under 21 years of age or whose purchase or possession of a handgun would be in violation of applicable Federal, State, or local law. It is unlawful to knowingly and intentionally obtain a handgun for the purpose of transferring it to a prohibited person. It is unlawful for a handgun to be possessed by or transferred to a person under the age of 18, except in limited circumstances. A person who has previously been convicted of a felony in any United States jurisdiction or is a fugitive from justice cannot possess a firearm.

**Restoration of rights** A person who was convicted of a felony may possess a firearm if restoration of such rights is included in a pardon.

**Prohibited firearms** It is an offense, except under certain circumstances, to possess a sawed-off rifle or a sawed-off shotgun.

**Regulated sales** A transfer certificate is required to purchase, lease, rent, or receive a handgun from a licensed dealer or an unlicensed person, with limited exceptions.

**Permits** The transfer certificate needed to receive a handgun is valid for up to 3 years and may be used for an unlimited number of purchases. State law does not provide for concealed firearm permits.

**Background checks** Ninety-three county sheriffs and the Lincoln and Omaha Police departments are partial points of contact for the NICS. These agencies conduct checks required by Federal and State law on applicants for handgun transfer certificates. The application may be made in person or by mail. State law allows a maximum period of 2 days to investigate and decide on an application for a certificate. Licensed firearms dealers in Nebraska contact the FBI for checks on long gun purchasers required by the Brady Act. ATF allows a handgun transfer certificate to be used in lieu of a NICS check at the point of sale.

**Waiting period** No State requirements.

**Purchaser fees** State agencies charge \$5 for a background check.

**State data** Nebraska maintains a statewide network with automated data on fugitives, criminal histories, domestic violence restraining orders, probation, parole, and mental health commitments. Criminal histories may contain flagged domestic violence misdemeanor convictions.

**Check processing time** Routine applications are normally processed in less than 1 day. Applications requiring additional research are normally processed in less than 2 days.

**Retention of records** Approved and denied permit applications are retained at the discretion of the checking agencies.

**Registration** No State requirements.

**Appeals of denials** A denial or revocation of a handgun transfer certificate may be appealed to the county court.

**Arrests of denied persons** Persons who are denied handgun transfer certificates because they submitted false information or have an outstanding warrant are arrested in some cases.

**2004/2005 legislation** No significant changes.

**Relevant laws** Nebraska Revised Statutes 28-1201 et seq; 69-2401 et seq.

**Source of information** Nebraska State Patrol.

**Contact** John Shelton, State Patrol, Communications Division, P.O. Box 94907, Lincoln, NE 68509, (402) 479-4099.

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## Nevada

### State requests NICS checks

**Prohibited persons** Nevada law prohibits possession or control of a firearm by a child under 18 years of age, except in limited circumstances. It is illegal to recklessly or knowingly sell or barter a handgun to a child who is under age 18. A person shall not own, possess, or have custody or control over any firearm if the person has been convicted of a felony under the laws of Nevada, another State, or the United States, or is a fugitive, an unlawful drug user or addict, adjudicated mentally ill, committed to a mental health facility, or illegally in the U.S. It is illegal to knowingly transfer a firearm to a person who is under indictment for or convicted of a felony, a fugitive, adjudicated mentally ill, committed to a mental health facility, or illegally in the U.S. A person on probation for a gross misdemeanor conviction is prohibited from possessing a firearm during the duration of probation.

**Restoration of rights** Restoration may occur through a Governor's pardon that does not restrict the right to bear arms. If a pardon does not restore civil rights, the person may apply to a board of pardon commissioners, whose decision may be appealed to Nevada district court.

**Prohibited firearms** It is illegal to knowingly or willfully possess, manufacture, or dispose of a short-barreled rifle or shotgun, with limited exceptions. A person shall not manufacture or cause to be manufactured, or import into the State, or keep, offer or expose for sale, or give, lend, possess or use a machine gun, unless authorized by federal law.

**Regulated sales** Pursuant to an executive order of the Governor, Nevada enforces the Brady Act's requirement of background checks on firearm transfers by licensed dealers. State law gives unlicensed sellers the option of requesting a check on a purchaser from the Nevada Point-Of-Sale Firearms Program. Residents of contiguous States (except California) may purchase long guns in Nevada unless otherwise prohibited.

**Permits** State law does not require a permit to purchase firearms. A permit issued by a county sheriff is required to carry a concealed firearm.

**Background checks** The Department of Public Safety (DPS) is a point of contact for the NICS and conducts all checks required by the Brady Act. Licensed firearms dealers in Nevada request instant checks by telephone. In addition, DPS conducts checks requested by unlicensed sellers, which must be completed within 3 business days.

**Waiting period** No State requirements. Clark County requires a 72 hour wait for first time handgun buyers.

**Purchaser fees** The fee for a firearms background check is \$25.

**State data** Nevada maintains fully automated fugitive, criminal history, flagged domestic violence misdemeanor, and

protective order data on a statewide network. Mental health facilities may be contacted by DPS for data on mental illness prohibitions.

**Check processing time** Routine transactions are normally processed in less than 3 minutes. Transactions requiring additional research normally are processed in less than 3 days.

**Retention of records** Identifying data from allowed NICS transactions are purged within 24 hours. Data from denied transactions are retained indefinitely.

**Registration** Firearms are not registered in Nevada except in Clark County.

**Appeals of denials** A person who is denied a firearm may request reconsideration from the DPS Records and Technology Bureau and/or the FBI. A person who is denied a concealed firearm permit may file a petition in Nevada district court.

**Arrests of denied persons** DPS notifies ATF of persons who submit false information on purchase forms. When a person is denied because of an outstanding warrant, DPS notifies the agency with jurisdiction over the site of the transaction.

**2004/2005 legislation** The statute that generally prohibits possession of a short-barreled firearm was amended to allow exceptions for a collector's item, curio, or relic. ATF determined that a Nevada concealed handgun permit was no longer an alternative to a NICS sale check as of 10/19/05 (however, ATF restored alternative status on 01/05/06).

**Relevant laws** Nevada Revised Statutes 176A.860; 202.253 et seq; 213.090.

**Source of information** Department of Public Safety.

**Contact** Bonnie McCabe, Department of Public Safety Records and Technology Bureau, 808 West Nye Lane, Carson City, NV 89703, (775) 687-1600.

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## New Hampshire

### **FBI conducts long gun NICS checks State requests handgun NICS checks**

**Prohibited persons** A firearm cannot be owned, possessed, or controlled by a person who has been convicted of certain felonies in any United States jurisdiction. No person shall sell, deliver, or otherwise transfer a firearm to a person who has been convicted in any jurisdiction of a felony. It is illegal to sell, barter, hire, lend, or give a handgun to a minor (under age 18) except in limited circumstances. A licensed dealer shall not sell handguns to nonresidents who are prohibited in their States of residence. It is illegal to knowingly attempt to purchase a firearm while subject to a protective order.

**Restoration of rights** A felon convicted in New Hampshire may regain firearm rights through a full and unconditional pardon by the Governor or an annulment of the conviction.

**Prohibited firearms** None.

**Regulated sales** New Hampshire law requires a retail seller of handguns to obtain a license from the selectmen of a town or the chief of police of a city. The State conducts background checks on persons who purchase handguns from licensed dealers.

**Permits** No permit is required to purchase firearms. A permit is required to carry a concealed handgun.

**Background checks** The New Hampshire Department of Safety (DOS) is a partial point of contact for the NICS, processing background checks on persons who purchase or redeem handguns from licensed dealers. An instant check may be requested by way of a 1-800 number. A handgun transfer may proceed if the dealer is not informed of a prohibition by DOS within 3 days. In addition, licensed firearms dealers in New Hampshire contact the FBI for checks on persons who purchase or redeem long guns.

**Waiting period** No State requirements.

**Purchaser fees** None.

**State data** New Hampshire maintains fugitive, criminal history, restraining order, and flagged domestic violence misdemeanor data on a statewide computer network. Criminal histories may contain insanity and incompetent to stand trial dispositions.

**Check processing time** Routine transactions are normally processed in less than 5 minutes. Transactions requiring additional research normally are processed in less than 4 hours.

**Retention of records** State law requires destruction of information on approved transactions within 24 hours after approval (except for request dates and approval numbers, which may be maintained indefinitely). Information on denied transactions shall be retained for 3 years.

**Registration** No State requirements.

**Appeals of denials** A person denied a handgun by DOS may appeal to that agency and further to superior court.

**Arrests of denied persons** If an applicant submits false information, DOS notifies ATF and agencies with jurisdiction over the venue of the transaction and the person's residence. In cases involving outstanding warrants, DOS notifies the agency with jurisdiction over the fugitive.

**2004/2005 legislation** No significant changes.

**Relevant laws** New Hampshire Revised Statutes, Chapters 159 and 159-D.

**Source of information** New Hampshire State Police.

**Contact** Joanne Leppard, Gunline Supervisor, Department of Safety, State Police, 33 Hazen Drive, Concord, NH 03305, (603) 271-6452.

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## New Jersey

### State conducts NICS checks

#### State conducts separate checks

**Prohibited persons** A handgun permit or firearm identification card cannot be issued to a person who is convicted of a crime, drug dependent, confined for a mental disorder, an habitual drunkard, physically unable to handle firearms, found to have submitted false information, under age 18 (for an identification card) or 21 (for a permit), barred from firearm possession by court order, or adjudicated delinquent for firearm, weapon, explosive, or destructive device offenses or offenses enumerated in NJS 2C:43-7.2. Issuance of a permit must not contravene the interest of public health, safety, or welfare. No person under the age of 18 years shall acquire or possess a firearm except in limited circumstances.

**Restoration of rights** A convicted felon's right to possess firearms may be restored if the offender's criminal record is expunged by the court.

**Prohibited firearms** It is unlawful, with limited exceptions, to possess, manufacture, cause to be manufactured, transport, ship, sell, or dispose of a sawed-off shotgun, machine gun, or assault firearm.

**Regulated sales** Permit regulations apply to all handgun transfers, and an identification card is required to receive a long gun. A firearm cannot be security for a loan. A dealer must have a State license.

**Permits** State law mandates a permit to purchase a handgun, which is valid for 90 days and may be renewed for an additional 90 days. A firearms purchaser identification card, which is valid until revoked for a violation of law, is required for unlimited long gun purchases. A permit is required to carry a handgun. A license issued by the superior court is required to purchase or possess a machine gun or an assault firearm.

**Background checks** Applicants for permits and identification cards are checked by 505 local police departments and the New Jersey State Police (NJSP) for some unincorporated areas. If no cause for denial exists, a permit or identification card shall be granted within 30 days (45 days for a nonresident) from the completion date of the investigation of the applicant. In addition, NJSP is a point of contact for the NICS and conducts all checks required by the Brady Act. Licensed dealers call NJSP for instant checks on purchasers who have obtained a permit or an identification card.

**Waiting period** No handgun shall be delivered by a licensed dealer unless a valid permit is exhibited and at least 7 days have elapsed since the date of application for the permit.

**Purchaser fees** The fingerprint fee is \$54. Document fees are \$2 for a handgun permit and \$5 for an identification card. An assault firearm or machine gun license costs \$75.

**State data** New Jersey maintains fugitive, criminal history, domestic violence restraining order, misdemeanor, juvenile, and probation/parole data. NJSP's NICS unit accesses Department of Mental Health data and local police may check county mental illness records. Some mental health dispositions may be included in criminal histories.

**Check processing time** Permit and identification card applications are normally processed in less than 1 month, or less than 6 months if additional research is needed.

**Retention of records** Permit and identification card applications are retained indefinitely by police departments. NJSP purges identifying data from allowed NICS transactions within 24 hours; denial data are retained indefinitely.

**Registration** Handguns and assault firearms are registered.

**Appeals of denials** A permit or identification card denial may be appealed to the superior court for the county where the application was filed, with notice to the issuing authority. A purchase denial may be appealed to the NICS unit.

**Arrests of denied persons** Local police departments arrest denied persons in some cases. NJSP's NICS Unit reports all denied persons to the Firearms Investigation Unit. NCIC felony warrants are reported to the fugitive unit; other felony warrants are reported to local departments.

**2004/2005 legislation** No significant changes.

**Relevant laws** New Jersey Statutes 2C:39-1 et seq; 2C:58-1 et seq.

**Source of information** New Jersey State Police.

**Contact** S.M. Rowley / John O'Brien, Division of State Police, P.O. Box 7068, West Trenton, NJ 08628, (609) 882-2000.

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## New Mexico

**Contact** Paul V. Herrera, Department of Public Safety, Law Enforcement Records Bureau, P.O. Box 1628, Santa Fe, NM 87504, (505) 827-9191.

### FBI conducts NICS checks

**Prohibited persons** New Mexico makes it unlawful for a person under the age of 19 to knowingly possess or transport a handgun, except in limited circumstances. It is unlawful for a firearm to be received, transported, or possessed by a felon, defined as a person convicted of a felony offense by a court of the United States or of any State or political subdivision thereof and less than ten years have passed since the person completed a sentence or period of probation (whichever is later) and the person has not been pardoned or received a deferred sentence.

**Restoration of rights** State law allows a convicted felon's right to possess firearms to be restored by a Governor's pardon or upon the expiration of 10 years after completion of a sentence or a period of probation without additional violations.

**Prohibited firearms** None.

**Regulated sales** New Mexico law does not require background checks on firearms purchasers. Residents of contiguous States may purchase firearms in New Mexico unless otherwise prohibited.

**Permit** A permit is not required to purchase firearms. A license is required to carry a concealed handgun.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in New Mexico contact the FBI for all checks required by the Brady Act.

**Waiting period** No State requirements.

**Purchaser fees** None.

**State data** New Mexico maintains criminal history, flagged domestic violence misdemeanor, and juvenile data on a statewide network. These files are partially automated, with search requests made by teletype to the Department of Public Safety. A domestic violence protection order database is being developed.

**Check processing time** Not applicable.

**Retention of records** No State requirements.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal under Federal law.

**Arrests of denied persons** Not applicable.

**2004/2005 legislation** No significant changes.

**Relevant laws** New Mexico Statutes 29-19-1 et seq; 30-7-1 et seq.

**Source of information** New Mexico Department of Public Safety.

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## New York

### FBI conducts NICS checks

#### State conducts separate checks

**Prohibited persons** New York law prohibits issuing a license to carry or possess a handgun to any person who is under 21, is not of good moral character, has been convicted of a felony or "serious offense," suffers from mental illness or has been confined to any hospital or institution for mental illness, has had a license revoked, is under a suspension or ineligibility order, or did not complete a safety course and test (Westchester County only), or concerning whom good cause exists for denial. A long gun cannot be possessed by a person who has been convicted of a felony or serious offense or certified not suitable to possess a rifle or shotgun. A person under 16 cannot possess a firearm except in limited circumstances. It is unlawful to knowingly purchase a firearm on behalf of a prohibited person.

**Restoration of rights** Certificates of relief from disabilities and good conduct are issued at the discretion of the court of conviction or the Board of Parole. Even if relief from a firearms disability is granted, a licensing official may rely on the underlying conviction to deny a handgun license application.

**Prohibited firearms** It is illegal to possess a short barrel rifle or shotgun, a machine gun, a disguised gun, or an assault weapon, with limited exceptions.

**Regulated sales** Every person who receives a handgun must have a license. A firearms dealer is required to have a New York license. A NICS check through a dealer is required on all persons who receive a firearm at a gun show.

**Permits** Each handgun purchased requires a license, issued by a designated county or city judicial or law enforcement officer, which specifies conditions for possession and carrying. A license is valid throughout the State, except in New York City, where additional rules of validity apply. Licenses are valid until revoked but have a fixed duration in New York City (3 years) and in Nassau, Suffolk, and Westchester counties (5 years). Purchasing additional handguns requires a license amendment.

**Background checks** Sheriffs and police departments conduct checks of handgun license applicants on behalf of licensing officers. Fingerprints of applicants are processed by the Division of Criminal Justice Services and the FBI. Applications must be acted upon within 6 months unless there is good cause for delay. A NICS check is required for amendments to non-expiring licenses unless a check on the holder occurred during the preceding 5 years. Dealers contact the FBI for all checks required by the Brady Act, and for gun show transfer checks required by New York law. ATF allows a license to be used for a purchase from a dealer without the Brady check.

**Waiting period** No State requirements.

**Purchaser fees** Handgun license fees vary by issuing authority, but are at least \$99, the cost of State and Federal fingerprint processing.

**State data** New York maintains criminal history, fugitive, order of protection, and domestic violence misdemeanor data. Limited mental health information is available from the New York State Office of Mental Health, on patients and former patients of State-operated mental health facilities. Criminal histories may contain dispositions of incompetent to stand trial or not responsible by reason of mental disease.

**Check processing time** No statewide data available.

**Retention of records** The State Police Pistol Permit Bureau receives copies of approved license applications, renewals, and amendments. Denied applications are retained at the discretion of the licensing authorities.

**Registration** Handguns are registered in New York.

**Appeals of denials** State law does not provide an appeal procedure for handgun license denials.

**Arrests of denied persons** Persons denied a license are arrested in some cases.

**2004/2005 legislation** Amendments to the penal laws increased the criminal penalties for persons who illegally possess or sell multiple firearms.

**Relevant laws** Penal Law articles 265 & 400; General Business Law article 39-DD.

**Source of information** New York State Division of Criminal Justice Services.

**Contact** Gina L. Bianchi, Esq., Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, (518) 457-4181.

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## North Carolina

### **FBI conducts long gun NICS checks State requests handgun NICS checks**

**Prohibited persons** North Carolina law requires that an applicant for a handgun purchase permit be of good moral character and desire possession of the weapon for protection, target shooting, collecting, or hunting. A permit may not be issued to a person who is: under indictment for or convicted of certain felonies; a fugitive; an unlawful user of drugs or a drug addict; adjudicated mentally incompetent or committed to a mental institution; an illegal alien; dishonorably discharged from the armed forces; subject to a domestic violence restraining order; or who has renounced U.S. citizenship. It is illegal for a minor under the age of 18 to possess a handgun and for a minor under the age of 12 to possess any firearm, except in limited circumstances. A firearm cannot be purchased by a person who has been restrained by a domestic violence order, convicted of a felony, acquitted by reason of insanity, or determined to lack the capacity to stand trial.

**Restoration of rights** Firearm rights may be regained only if a conviction has been expunged or set aside (the person is not considered to have been convicted).

**Prohibited firearms** It is unlawful to manufacture, possess, sell, purchase, or acquire a fully automatic firearm, a short-barrel rifle or shotgun, or certain other firearms or to manufacture, sell, give away, or possess machine guns, sub-machine guns, or other like weapons, except in limited circumstances.

**Regulated sales** Handgun permit requirements apply to all transfers by licensed dealers and unlicensed persons.

**Permits** State law requires a permit, valid for 5 years, to purchase a handgun unless the purchaser has a valid North Carolina permit to carry a concealed handgun. A person who may possess a machine gun is required to obtain a permit from the county sheriff.

**Background checks** One hundred county sheriffs are partial points of contact for the NICS and conduct checks on applicants for permits to purchase or carry a handgun. State law allows a sheriff 30 days to decide on a purchase permit application. Licensed dealers in North Carolina contact the FBI for checks on long gun sales and firearm redemptions. ATF allows handgun purchase and carry permits to be used at the point of sale in lieu of the NICS check. These permits can be used to purchase multiple long guns, but only in a single transaction.

**Waiting period** No State requirements.

**Purchaser fees** State law mandates a charge of \$5 for processing a purchase permit application.

**State data** North Carolina maintains fully automated fugitive, criminal history, probation, parole, flagged domestic violence misdemeanor conviction, and motor vehicle data

on a statewide network. State law requires prompt entry of all domestic violence orders into the NCIC protection order file. Local mental health records may be accessed manually by checking agencies.

**Check processing time** No statewide information is available.

**Retention of records** Identifying data from permit transactions allowed by NICS are purged within 90 days. County sheriffs destroy permits and licenses after 10 years; other records are destroyed when their reference value ends.

**Registration** No State requirements.

**Appeals of denials** Handgun permit denials may be appealed to the Chief District Court Judge for the district in which the application is filed.

**Arrests of denied persons** No information is available.

**2004/2005 legislation** Restrictions on the ownership or possession of a handgun by a felon were made applicable to any firearm without exception. A valid North Carolina concealed handgun permit may now be used to purchase a pistol without first obtaining a separate purchase permit.

**Relevant laws** North Carolina General Statutes 14-269.7 et seq; 14-402 et seq.

**Source of information** North Carolina State Bureau of Investigation; North Carolina Department of Justice.

**Contact** Gene Melvin, Bureau of Investigation, 3320 Garner Road, Raleigh, NC 27626, (919) 662-4509.

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## North Dakota

### FBI conducts NICS checks

**Prohibited persons** North Dakota law prohibits ownership, possession, or control of a firearm for a period of 10 years by a person who has been convicted anywhere of a felony involving violence or intimidation, or for a period of 5 years by a person convicted of any other felony or a misdemeanor involving violence or intimidation committed while using a firearm or dangerous weapon. A person who was diagnosed and confined or committed to a hospital or institution in North Dakota or elsewhere as mentally ill or mentally deficient is prohibited from purchasing, possessing, or controlling a firearm except when the person has not suffered from the disability for the previous 3 years. It is illegal for a handgun or other firearm to be transferred if the transferor knows or has reasonable cause to believe that the transferee is a prohibited person. A handgun cannot be possessed by or transferred to a person under the age of 18 except in limited circumstances.

**Restoration of rights** A person who has been convicted of a felony or a disqualifying misdemeanor will regain the right to possess a firearm 5 or 10 years (depending on the type of offense committed) after the date of conviction or the date of release from incarceration or probation, whichever is later.

**Prohibited firearms** No person may possess, obtain, receive, sell, or use a short-barreled rifle or shotgun, or purchase, sell, have, or possess a machine gun or fully automatic rifle, unless the person is within one of the limited exceptions.

**Regulated sales** State law does not require background checks on firearms purchasers.

**Permits** North Dakota does not require a permit to purchase a firearm. A license is required to carry a concealed weapon.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in North Dakota contact the FBI for all checks required by the Brady Act. The North Dakota Bureau of Criminal Investigation (BCI) conducts background checks on applicants for concealed weapon licenses. ATF allows a holder of a valid license to purchase a firearm without a new NICS check.

**Waiting period** No State requirements.

**Purchaser fees** None.

**State data** North Dakota maintains partially automated fugitive and criminal history data on a statewide network. Court protection order data are also available. An automated protection order system allows electronic entry of records by courts.

**Check processing time** Not applicable.

**Retention of records** Information on persons who are denied a concealed weapon license is retained for 6 years.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal under Federal law. A denial of a concealed weapon license may be appealed to North Dakota district court.

**Arrests of denied persons** BCI notifies other agencies of concealed weapon license applicants who have outstanding warrants.

**2004/2005 legislation** The statute that regulated the purchase of a rifle or shotgun by a North Dakota resident in a contiguous State was repealed.

**Relevant laws** North Dakota Century Code 62.1-01 et seq.

**Source of information** North Dakota Office of the Attorney General, Bureau of Criminal Investigation.

**Contact** Judith Volk, Bureau of Criminal Investigation, P.O. Box 1054, Bismarck, ND 58502, (701) 328-5507.

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## Ohio

### FBI conducts NICS checks

**Prohibited persons** No person shall knowingly acquire, have, carry, or use any firearm if the person is a fugitive from justice; under indictment for or convicted of any felony offense of violence; adjudicated as a delinquent child for an offense that if committed by an adult would have been a felony offense of violence; under indictment for or convicted of any offense involving possession or sale of drugs; adjudicated as a delinquent child for an offense that if committed by an adult would have been an offense involving possession or sale of drugs; drug dependent; a chronic alcoholic; under adjudication of mental incompetence; committed to a mental institution; subject to hospitalization by court order; or an involuntary patient who is not hospitalized only for observation. It is unlawful to transfer a firearm to a prohibited person. A handgun cannot be transferred to or purchased by a person under 21 years of age. It is unlawful for any type of firearm to be transferred to or purchased by a person under 18 years of age, except in limited circumstances.

**Restoration of rights** A person convicted of or adjudicated delinquent for a felony offense of violence or a drug offense may have firearm rights restored by a court of common pleas if the person has been law abiding since completion of the sentence or adjudication, and is not otherwise prohibited.

**Prohibited firearms** No person shall knowingly acquire, have, carry, or use any dangerous ordnance, which includes any automatic or sawed-off firearm or zip-gun. Certain exceptions are allowed.

**Regulated sales** State law does not require background checks on firearm purchasers. Residents of adjacent States may purchase long guns in Ohio unless otherwise prohibited.

**Permits** A permit is not required to purchase firearms. A license is required to carry a concealed handgun. A person who is qualified to acquire, possess, carry, or use any automatic or sawed-off firearm or zip-gun must apply to the sheriff of a county or safety director or police chief of a municipality for a license or temporary permit.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Ohio contact the FBI for all background checks required by the Brady Act.

**Waiting period** No State requirements.

**Purchaser fees** None.

**State data** Ohio maintains automated fugitive, criminal history, domestic violence misdemeanor, probation, and parole data on a statewide network. The bureau of criminal identification and investigation maintains involuntary commitment data that is accessed only during a check on a concealed handgun license applicant. Domestic violence restraining

order data is maintained by counties and entered into the NCIC protection order file.

**Check processing time** Not applicable.

**Retention of records** No State requirements.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal pursuant to Federal law.

**Arrests of denied persons** Not applicable.

**2004/2005 legislation** No significant changes.

**Relevant laws** Ohio Revised Code 2923.11 et seq.

**Source of information** Ohio Office of the Attorney General, Bureau of Criminal Identification and Investigation.

**Contact** Lonnie Rudasill, Bureau of Criminal Identification and Investigation, P.O. Box 365, London, OH 43140, (740) 845-2215.

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## Oklahoma

### FBI conducts NICS checks

**Prohibited persons** Oklahoma law prohibits transfer of a firearm to a person who is under 18 years of age (except in limited circumstances), to any convicted felon or adjudicated delinquent, or to any individual who is under the influence of alcohol or drugs or is mentally or emotionally unbalanced or disturbed. It is unlawful for a firearm to be possessed or controlled by a person who is a convicted felon, adjudicated as a delinquent child or a youthful offender, or subject to Department of Corrections supervision, probation, parole, or inmate status.

**Restoration of rights** In Oklahoma a convicted felon's right to possess a firearm may be restored if the person was convicted of a non-violent felony, has received a full and complete pardon from the proper authority, and has not been convicted of any other felony offense which has not been pardoned. An adjudicated delinquent regains the right to possess a firearm when 10 years have elapsed since the adjudication occurred.

**Prohibited firearms** It is illegal to possess or control a sawed-off shotgun or a sawed-off rifle, unless the firearm has been registered pursuant to Federal law.

**Regulated sales** State law does not require background checks on firearms purchasers. Residents of contiguous States may purchase long guns in Oklahoma unless otherwise prohibited.

**Permits** No permit is required to purchase firearms. A permit is required to carry a concealed handgun.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Oklahoma contact the FBI for all checks required by the Brady Act.

**Waiting period** No State requirements.

**Purchaser fees** None.

**State data** Oklahoma maintains fully automated criminal history data on a statewide network. Domestic violence misdemeanor convictions may be identified in criminal history records by the title of the charging offense. Criminal histories may include dismissals based on insanity or hospital commitments. Involuntary commitment records are searched by the Department of Mental Health during a check on an applicant for a concealed handgun license. Fugitive warrants and domestic violence restraining orders are entered into NCIC files.

**Check processing time** Not applicable.

**Retention of records** No State requirements.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal under Federal law.

**Arrests of denied persons** Not applicable.

**2004/2005 legislation** No significant changes.

**Relevant laws** Oklahoma Statutes 21-1271.1 et seq.

**Source of information** Oklahoma State Bureau of Investigation.

**Contact** Rusty Featherstone, Bureau of Investigation, 6600 North Harvey, Suite 300, Oklahoma City, OK 73116, (405) 879-2536.

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## Oregon

### State requests NICS checks

**Prohibited persons** Oregon law prohibits the knowing possession of a firearm by a person who is under 18 years of age, a juvenile offender, convicted of a felony, committed to the Department of Human Services (DHS), or found to be mentally ill and ordered not to purchase or possess a firearm. It is unlawful to intentionally transfer a firearm to a person who is under 18 years of age, convicted of a felony, named in a felony arrest warrant, free on felony pretrial release, committed to DHS, found to be mentally ill and ordered not to purchase or possess a firearm, or convicted within the previous 4 years of a misdemeanor involving violence (assault in the 4th degree, menacing, reckless endangering, or intimidation in the 2nd degree). Further, it is unlawful to ship, transport, receive, sell, or otherwise furnish a firearm in furtherance of a felony.

**Restoration of rights** A convicted felon's right to possess a firearm may be restored by expungement or the passage of 15 years since completion of a sentence for a felony which did not involve criminal homicide or the use of a weapon, provided there is only one felony conviction on the person's record. Other prohibited persons may petition a justice court or circuit court for relief.

**Prohibited firearms** It is unlawful to knowingly possess a machine gun, short-barreled rifle, or short-barreled shotgun, unless the firearm is registered as required under Federal law.

**Regulated sales** State law requires background checks on persons who purchase a firearm from a licensed dealer or at a gun show. A seller who is not subject to these requirements may voluntarily request a background check on a purchaser.

**Permits** Oregon does not require a permit to purchase firearms. A license is required to carry a concealed weapon.

**Background checks** The Oregon State Police Firearms Unit is a point of contact for the NICS and conducts all checks required by Federal and State law. Licensed dealers call a 1-800 number for the Firearms Unit. Unlicensed sellers may call the 1-800 number or complete a transfer through a dealer. Queries are processed on the purchaser and the weapon being sold; the caller is given a transaction number for an approval or informed that the applicant is denied. An approval number is valid for 24 hours on a private sale or 30 days on a dealer transfer.

**Waiting period** No State requirements.

**Purchaser fees** A fee of \$10 is charged for a background check by the Firearms Unit.

**State data** Oregon maintains criminal history, flagged domestic violence misdemeanor, fugitive, stolen gun, restraining order, and juvenile data on a statewide computer

network. A DHS database contains mental illness and commitment information.

**Check processing time** Routine transactions are normally processed in less than 5 minutes. Transactions that require additional research are normally processed in less than 3 days.

**Retention of records** The firearms unit retains records of approved and denied transactions for 5 years.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm may appeal to the State Police Identification Services Section.

**Arrests of denied persons** For persons who submit false information or have outstanding warrants, the Firearms Unit notifies the agency with jurisdiction over the individual.

**2004/2005 legislation** No significant changes.

**Relevant laws** Oregon Revised Statutes 166.170 et seq.

**Source of information** Oregon State Police.

**Contact** Marie Severson, State Police Firearms Unit, 3772 Portland Road NE, Salem, OR 97303, (503) 378-3070.

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## Pennsylvania

### State requests NICS checks

**Prohibited persons** State law prohibits firearm possession by a person who is convicted of an "enumerated offense" or an equivalent offense in another jurisdiction, a fugitive from justice, convicted of certain drug offenses or equivalent offenses in other jurisdictions, convicted of three alcohol-related driving offenses in a 5-year period, adjudicated incompetent or involuntarily committed to a mental institution, an illegal alien, subject to an active protection from abuse order; adjudicated delinquent for certain offenses, or under 18 (with limited exceptions). State records that are prohibiting under Federal law include all convictions for a felony, a misdemeanor 1, a misdemeanor for which a person could have been sentenced to more than 2 years in prison, or a domestic violence misdemeanor conviction as defined by the Lautenberg Amendment.

**Restoration of rights** A prohibited person may apply to the court of common pleas in their county of principal residence for relief from disability under certain conditions (but such relief does not restore federal rights). A prohibition based on juvenile records terminates 15 years after the last applicable delinquent adjudication or upon the person reaching the age of 30, whichever is earlier under certain conditions.

**Prohibited firearms** It is illegal to sell or possess a machine gun, a sawed-off shotgun with a barrel less than 18 inches, or a firearm made or adapted for concealment or silent discharge, except when in compliance with the National Firearms Act.

**Regulated sales** Background checks are required on persons who purchase any firearms from a licensed dealer and on all private transfers of handguns except those between certain related persons. A firearms dealer conducting any business in Pennsylvania must have a State license. Private transfers of long guns must comply with Federal law. Handguns cannot be pawned.

**Permits** A permit is not required to buy a firearm. A license is required to carry a concealed firearm.

**Background checks** The Pennsylvania State Police (PSP) is a NICS point of contact for checks on sales or redemptions required by Federal and State law. State licensees contact the Pennsylvania Instant Check System (PICS) by using a toll-free number. On average, 57% of checks are handled through automation and an Interactive Voice Response (IVR) component. If a potentially prohibiting record is identified or the buyer is not a State resident, the call is automatically transferred to a staff operator.

**Waiting period** No State requirements.

**Purchaser fees** State law requires a fee of \$2 for each background check and a \$3 surcharge for each taxable sale of a firearm.

**State data** A statewide network contains automated criminal history, fugitive, protection order, probation, and parole data. Mental health data supplied by county officials are available to PICS staff only to enforce the State firearms act. Updated records from research and denial challenges are kept to eliminate duplicate research on future transactions. A conviction determined to involve domestic violence is flagged and record upgrades will incorporate flagging routines.

**Check processing time** Approximately 57% of calls are approved automatically, averaging less than 1.5 minutes. An additional 34% of calls are approved during the initial call with the assistance of an operator. The remaining calls are either denied on the initial call by the operator or placed in research.

**Retention of records** Information on the subject of a background check is not retained by PICS upon approval of a transaction. PICS retains records on denied persons for 6 months on paper (8 years if a challenge occurs) and 20 years in electronic format.

**Registration** No State requirements.

**Appeals of denials** A person who is denied by PICS may file a challenge with the PICS Challenge Unit. Subsequent appeals may be filed with the State attorney general and commonwealth court.

**Arrests of denied persons** Notice of persons who submit false purchase applications is given to local, State, and Federal (ATF) authorities. If a fugitive is identified at the time of purchase, the local agency with jurisdiction is notified immediately.

**2004/2005 legislation** No significant changes.

**Relevant laws** Pennsylvania Consolidated Statutes Title 18, Chapter 61 (Uniform Firearms Act).

**Source of information** Pennsylvania State Police.

**Contact** Lt. Joseph G. Elias, Director, Firearms Division, Bureau of Records & Identification, 1800 Elmerton Ave., Harrisburg, PA 17110, (717) 783-5598.

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## Rhode Island

### FBI conducts NICS checks

#### State conducts separate checks

**Prohibited persons** A firearm shall not be purchased or possessed by a person who is convicted of a crime of violence in Rhode Island or elsewhere, a fugitive from justice, convicted of a domestic violence felony, in community confinement or subject to electronic surveillance or monitoring as a condition of parole, mentally incompetent, a drug addict, an habitual drunkard, or an illegal alien. It is unlawful to sell, transfer, give, or convey a firearm to a person under 18 years of age without consent of a parent or guardian. A person under 18 years of age cannot possess a firearm except in limited circumstances. Handgun purchasers must be 21 years of age and complete a firearm safety course. It is unlawful to sell a handgun to a person under the age of 21 or to a person otherwise prohibited. A domestic abuse protective order may prohibit a defendant from buying or receiving firearms.

**Restoration of rights** A convicted felon's right to own firearms may be restored through a Governor's pardon.

**Prohibited firearms** No person shall manufacture, sell, purchase, or possess a machine gun, or possess or control a sawed-off shotgun or sawed-off rifle unless the person is within one of the limited exceptions.

**Regulated sales** State law requires a background check on any person who purchases a firearm. Any citizen of the United States may purchase a long gun in Rhode Island unless otherwise prohibited. A retail dealer of firearms must have a license from a city, town, or political subdivision of the State.

**Permits** Rhode Island does not require a permit to purchase firearms. A permit is required to carry a concealed handgun. A person under 18 years of age must have a permit to participate in legal firearm activities.

**Background checks** Thirty-nine local police departments conduct checks on firearms purchasers required by Rhode Island law. Sellers transmit purchase applications by certified mail or in person to the police departments. If a notice of denial is not received by the seller within 7 days, a transfer can proceed. The State is not a point of contact for the NICS. Licensed firearms dealers in Rhode Island contact the FBI for all checks required by the Brady Act.

**Waiting period** A 7-day waiting period, which begins at noon on the day after an application is filed, is required for all firearm transfers, regardless of when a background check is completed.

**Purchaser fees** Fees are not mandated by State law but are at the discretion of the police departments.

**State data** Rhode Island maintains automated fugitive, criminal history, probation, parole, restraining order, and

flagged domestic violence misdemeanor data on a state-wide network.

**Check processing time** Background checks are normally completed within 5 days.

**Retention of records** The checking agency and the State attorney general receive copies of each purchase application and are required to retain approved and denied applications for no more than 30 days. Original copies of applications must be retained by sellers for 6 years.

**Registration** No State requirements.

**Appeals of denials** State law does not provide a procedure for appealing a firearm denial. A person who is denied by the FBI may appeal pursuant to Federal law.

**Arrests of denied persons** No information is available.

**2004/2005 legislation** Amendments allow a district or family court to require a defendant, after a hearing and pursuant to the issuance of a domestic abuse protective order, to surrender possession of firearms and refrain from purchasing or receiving firearms for the duration of the order.

**Relevant laws** Rhode Island General Laws 8-8.1-3; 11-47-1 et seq; 15-15-3.

**Source of information** Rhode Island Department of the Attorney General.

**Contact** William Devine, Department of the Attorney General, Bureau of Criminal Investigation, 150 S. Main, Providence, RI 02903, (401) 274-4400.

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## South Carolina

### FBI conducts NICS checks

**Prohibited persons** South Carolina law prohibits handgun sales to or possession by any person who is convicted of a crime of violence in any U.S. jurisdiction, a fugitive from justice, an habitual drunkard, a drug addict, adjudicated mentally incompetent, a member of a subversive organization, under 21 years of age (with limited exceptions), or adjudged unfit to carry or possess a pistol.

**Restoration of rights** A convicted felon's right to own a handgun may be restored if that person receives a pardon or an expungement of the conviction, unless the offense committed was a crime of violence.

**Prohibited firearms** It is unlawful, with limited exceptions, for a person to transport, store, keep, possess, sell, rent, or give away a machine gun, military firearm, or sawed-off shotgun or rifle. No licensed retail dealer may hold, store, handle, sell, offer for sale, or otherwise possess a pistol or other handgun with a die-cast, metal alloy frame or receiver which melts at a temperature of less than 800 degrees Fahrenheit.

**Regulated sales** Retail dealers of handguns must have a State license. A person who buys a handgun from a licensed dealer must be a South Carolina resident. A resident of any State may purchase a long gun in South Carolina unless otherwise prohibited.

**Permits** No permit is required to purchase firearms. The South Carolina Law Enforcement Division (SLED) issues concealed handgun permits and special licenses required for possession, transportation, or sale of machine guns.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in South Carolina contact the FBI for all checks required by the Brady Act. ATF allows a concealed handgun permit issued by SLED to be used for a purchase without a NICS check.

**Waiting period** No State requirements.

**Purchaser fees** No State requirements.

**State data** South Carolina maintains fully automated fugitive, criminal history, juvenile, and flagged domestic violence misdemeanor data on a statewide network. Domestic violence restraining orders with proper identifiers are entered into the NCIC protection order file.

**Check processing time** Not applicable.

**Retention of records** Information on persons who are denied a concealed handgun permit is retained by SLED indefinitely.

**Registration** Every person permitted to possess a machine gun, sawed-off shotgun, or sawed-off rifle must register the firearm with SLED.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal pursuant to Federal law. A person who is denied a concealed handgun permit may appeal to the Chief of SLED or his designee and further to an administrative law judge.

**Arrests of denied persons** SLED notifies other agencies of concealed handgun permits applicants who have outstanding warrants.

**2004/2005 legislation.** Amendments deleted the requirement that every pistol purchaser must complete a State application and the requirement that a licensed firearms dealer must keep a record of every pistol sold.

**Relevant laws.** South Carolina Code of Laws 16-23-10 et seq; 23-31-10 et seq.

**Source of information** South Carolina Law Enforcement Division.

**Contact** Carlotta Stackhouse, Law Enforcement Division, 4400 Broad River Road, Columbia, SC 29221, (803) 896-7143.

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## South Dakota

### FBI conducts NICS checks

**Prohibited persons** South Dakota law prohibits possession or control of a firearm by a person who has been convicted in the State or elsewhere of a crime of violence or a felony controlled substance or marijuana violation, or who has a prior conviction for drug possession. No person who has been convicted of a domestic violence misdemeanor may possess or have control of a firearm for 1 year from the date of conviction. A person under the age of 18 cannot knowingly possess a handgun except in limited circumstances. It is illegal to transfer a firearm to a known prohibited person or to a person under the age of 18 if the transferor knows or reasonably believes that the minor recipient intends to use the firearm to commit a crime of violence.

**Restoration of rights** The right to possess a firearm may be restored through a Governor's pardon or the passage of time. A person who was last discharged from prison, jail, probation, or parole for a crime of violence or a felony controlled substances or marijuana violation (except mere possession) more than 15 years ago regains the right to possess or control a firearm. The time period is 5 years for felony possession of controlled substances or marijuana, and 1 year for a domestic violence misdemeanor. However, no person convicted of a crime of violence may ever lawfully purchase a pistol at retail.

**Prohibited firearms** It is illegal, with limited exceptions, to knowingly possess a controlled weapon, which includes a machine gun or short shotgun.

**Regulated sales** State law does not require background checks on firearms purchasers. A State application is required to purchase a pistol from a licensed dealer if the purchaser does not have a permit to carry a concealed handgun. Residents of other States may purchase long guns in South Dakota unless otherwise prohibited.

**Permits** A permit is not required to purchase a firearm. A permit is required to carry a concealed handgun.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in South Dakota contact the FBI for all checks required by the Brady Act.

**Waiting period** A licensed firearms dealer may not deliver a handgun to a purchaser until 48 hours have elapsed from the time of the sale, regardless of when a background check is completed. Holders of valid, concealed handgun permits are exempt from the waiting period.

**Purchaser fees** None.

**State data** South Dakota maintains fully automated fugitive, criminal history, flagged domestic violence misdemeanor, probation, parole, and protective order data on a statewide network. Criminal histories may contain insanity or incompetent to stand trial dispositions. A driver's history file is available to check for additional data.

**Check processing time** Not applicable.

**Retention of records** A licensed firearms dealer who sells a pistol shall within 6 hours send by first class mail or hand deliver the completed application to the chief of police of the municipality or the sheriff of the county of which the purchaser is a resident. State law requires chiefs of police and sheriffs to retain their copies of pistol applications for a period of 1 year.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal pursuant to Federal law.

**Arrests of denied persons** Not applicable.

**2004/2005 legislation** New laws forbid a person who was convicted of a domestic violence misdemeanor from possessing a firearm for 1 year and prohibit registries of firearms owners or concealed pistol permit holders. Amendments make waiting period and application form statutes applicable only to pistol sales by Federal firearm licensees.

**Relevant laws** South Dakota Codified Laws, Chapters 22-14 and 23-7.

**Source of information** South Dakota Attorney General's Office.

**Contact** Robert Grandpre, Attorney General's Office, Division of Criminal Investigation, 1302 East Highway 14, Pierre, SD 57501, (605) 773-3331.

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## Tennessee

### State requests NICS checks

**Prohibited persons** Tennessee law prohibits the intentional, knowing, or reckless sale, loan, or gift of a firearm to a person who is a minor or intoxicated. A licensed dealer cannot sell a firearm to a person who is convicted of stalking, addicted to alcohol, or ineligible to receive a firearm under 18 U.S.C. 922. A firearm transfer is denied if the buyer was charged with a crime for which a conviction would cause a prohibition under State or Federal law, and the final disposition of the case has not occurred or is not recorded. A handgun cannot be possessed by a person who is convicted of a felony involving the use of force, violence, or a deadly weapon, convicted of a felony drug offense, less than 18 (with limited exceptions), or under the influence of alcohol or any controlled substance.

**Restoration of rights** Firearm rights may be regained by a convicted felon who obtains a pardon, a set aside or an expungement of the conviction, or restoration of civil rights by a circuit court. A person convicted of a felony involving use or attempted use of force, violence, or a deadly weapon, or a felony drug offense cannot possess a handgun even if civil rights have been restored.

**Prohibited firearms** It is an offense to intentionally or knowingly possess, manufacture, transport, repair, or sell a machine gun or short-barrel rifle or shotgun, except in limited circumstances.

**Regulated sales** State law requires background checks on persons who purchase firearms from licensed dealers.

**Permits** No permit is required to purchase a firearm. A permit is required to carry a handgun.

**Background checks** The Tennessee Bureau of Investigation (TBI) is a point of contact for the NICS and conducts all checks required by Federal and State law. Licensed dealers contact TBI by telephone or by internet via a secure server; high volume dealers may also use computers with a "point-of-sale device."

**Waiting period** No State requirements.

**Purchaser fees** TBI may charge a reasonable fee, not to exceed \$10, for a background check.

**State data** Tennessee's law enforcement communications network maintains criminal history, fugitive, flagged domestic abuse misdemeanor, restraining order, and sex offender data. The Administrative Office of the Courts forwards not guilty by reason of insanity dispositions to TBI for entry into criminal history records.

**Check processing time** Transactions are normally processed in less than 5 minutes or in less than 1 day if additional research is required.

**Retention of records** Information on approved transactions is not retained by TBI, except for approval numbers

and dates assigned. Information on denied transactions is retained indefinitely, but is destroyed if the decision is reversed on appeal.

**Registration** No State requirements.

**Appeals of denials** A person who requests reconsideration of a TBI denial is furnished a letter of instructions and an FBI final disposition form, which must be filled out by the arresting agency or clerk of the appropriate court and returned to TBI. For a denial based upon an arrest with no disposition recorded, TBI has 15 calendar days after the applicant appeals to obtain the final disposition. If TBI cannot obtain the disposition, the dealer is notified that the transaction is a "conditional proceed," (neither denied nor approved) and the dealer may lawfully transfer the firearm.

**Arrests of denied persons** TBI notifies ATF of persons who submit false information on an application. For persons with outstanding warrants, TBI notifies the agency with jurisdiction over the dealer's premises and the agency which entered the warrant.

**2004/2005 legislation** An amendment prohibits licensed firearms dealers from selling firearms to persons who have been convicted of the offense of stalking.

**Relevant laws** Tennessee Code 39-17-1301 et seq.

**Source of information** Tennessee Bureau of Investigation.

**Contact** Jeanne Broadwell, Bureau of Investigation, 901 R.S. Gass Boulevard, Nashville, TN 37216, (615) 744-4208.

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## Texas

### FBI conducts NICS checks

**Prohibited persons** Texas law prohibits possession of a firearm by a person who has been convicted of any felony or a Class A misdemeanor involving a member of the person's family or household, and 5 years have not elapsed since the person's release from confinement or supervision. A firearm cannot be possessed by a person who is subject to certain protective orders. It is unlawful to knowingly transfer a handgun to a person who intends to use it unlawfully or in the commission of an unlawful act, or is subject to an active protective order. A firearm cannot be knowingly transferred to a person who is younger than 18 years (without parental consent), intoxicated, or a convicted felon.

**Restoration of rights** A person who has been convicted of any felony or a Class A misdemeanor involving a member of the person's family or household may possess a firearm if 5 years have elapsed since the person's release from confinement or supervision. A convicted felon with restored rights may only possess a firearm on the premises where the person lives.

**Prohibited firearms** It is an offense to intentionally or knowingly possess, manufacture, transport, repair, or sell a machine gun, a short-barrel rifle or shotgun, or a zip gun except in limited circumstances.

**Regulated sales** State law does not require background checks on firearms purchasers.

**Permits** No permit is required to purchase firearms. A license is required to carry a concealed handgun.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Texas contact the FBI for all background checks required by the Brady Act. The Texas Department of Public Safety conducts background checks on applicants for concealed handgun licenses. ATF allows a holder of a valid concealed handgun license to purchase a firearm without a new NICS check.

**Waiting period** No State requirements.

**Purchaser fees** None.

**State data** Texas maintains fully automated fugitive, criminal history, flagged domestic violence misdemeanor, protective order, juvenile, probation, and parole data on a state-wide network. Court records are manually checked for mental illness dispositions.

**Check processing time** Not applicable.

**Retention of records** Information on persons who are denied a concealed handgun license is retained indefinitely.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal pursuant to Federal law. A denial of a

concealed handgun license application may be appealed to justice court.

**Arrests of denied persons** No information is available.

**2004/2005 legislation** Certain persons with deferred adjudications more than 10 years old are no longer disqualified from obtaining a concealed handgun license. Renewed concealed handgun licenses were given a 5-year duration and license requirements for nonresidents of Texas were amended. The process for recognizing licenses from another State was amended to require use of NCIC and III in a background check.

**Relevant laws** Texas Penal Code 30.06; 42.12; 46.01 et seq; Government Code, Chapter 411, Subchapter H.

**Source of information** Texas Department of Public Safety.

**Contact** Valerie Fulmer, Department of Public Safety, Administration Division, P.O. Box 4087, Austin, TX 78773, (512) 424-2092.

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## Utah

### State requests NICS checks

**Prohibited persons** A firearm cannot be purchased, transferred, or possessed by a Category 1 or Category 2 restricted person. A Category 1 restricted person has been convicted of a violent felony, is on parole or probation for a felony, is on parole from a secure facility, or has been adjudicated delinquent within the past 10 years for an offense which if committed by an adult would have been a violent felony. A Category 2 restricted person has been convicted of or is under indictment for a felony, has been adjudicated delinquent within the past 7 years for an offense which if committed by an adult would have been a felony, is an unlawful user of a controlled substance, is in possession of a dangerous weapon and a controlled substance, has been found not guilty by reason of insanity or found mentally incompetent to stand trial for a felony, has been adjudicated mentally defective or committed to a mental institution, is an illegal alien, has been dishonorably discharged from the armed forces, or has renounced U.S. citizenship. A minor under 18 cannot possess a handgun, sawed-off rifle or shotgun, or automatic weapon except as provided by Federal law. It is illegal to provide a firearm to a minor who is prohibited or lacks parental consent.

**Restoration of rights** The right to possess a firearm may be restored if a conviction is expunged or otherwise removed from the record.

**Prohibited firearms** None.

**Regulated sales** State law requires background checks on persons who purchase firearms from licensed dealers.

**Permits** Utah does not require a permit to purchase firearms. A permit is required to carry a concealed firearm.

**Background checks** The Utah Bureau of Criminal Identification (BCI) is a point of contact for the NICS and conducts all checks required by Federal and State law. Licensed firearms dealers request instant checks by using a 1-800 number, a regular telephone number, or a computer. Holders of concealed firearm permits issued by BCI are exempt from point-of-sale background checks under an ATF ruling and Utah law. BCI verifies the validity of permits presented to dealers.

**Waiting period** No State requirements.

**Purchaser fees** BCI charges \$7.50 for a background check.

**State data** Utah maintains automated fugitive, criminal history, flagged domestic abuse misdemeanor, restraining order, adjudicated mentally defective, and motor vehicle data on a statewide network. Criminal histories may include various mental health dispositions.

**Check processing time** Routine transactions are normally processed in less than 5 minutes.

**Retention of records** State law allows BCI to retain data on approved transactions for a maximum period of 20 days. Dealer numbers and transaction numbers and dates are maintained for 12 months. Data on denied transactions are retained indefinitely.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm may appeal to BCI and further to the Commissioner of Public Safety. An appeal may also be filed with the FBI or the State that maintains the prohibitory record. A concealed firearm permit denial may be appealed to a State of Utah review board.

**Arrests of denied persons** A person who submits false information on an application or has an outstanding warrant is reported by BCI to the agency with jurisdiction over the location of the dealer. Federal offenders are reported to ATF.

**2004/2005 legislation** No significant changes.

**Relevant laws** Utah Code 53-5-702 et seq; 76-10-501 et seq.

**Source of information** Utah Bureau of Criminal Identification.

**Contact** Joyce Carter, Bureau of Criminal Identification, 4501 South 2700 West, Salt Lake City, UT 84119, (801) 965-3810.

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## Vermont

### FBI conducts NICS checks

**Prohibited persons** Vermont law prohibits a person, firm, or corporation, other than a parent or guardian, from selling or furnishing a firearm to a minor under the age of 16 years. (An instructor or a teacher may furnish firearms to pupils for instruction and drill.) A handgun cannot be possessed or controlled by a child under the age of 16 years without the consent of a parent or guardian.

**Restoration of rights** No State requirements.

**Prohibited firearms** A person who possesses, sells, or offers for sale a zip gun shall be imprisoned or fined or both.

**Regulated sales** Vermont does not require background checks on firearms purchasers. Residents of contiguous States may purchase long guns in Vermont unless otherwise prohibited.

**Permits** State law does not require a permit to purchase a firearm or to carry a concealed firearm.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Vermont contact the FBI for all background checks required by the Brady Act.

**Waiting period** No State requirements.

**Purchaser fees** No State requirements.

**State data** The State of Vermont maintains automated information on criminal histories, fugitives from justice, abuse prevention orders, probation, and parole. Domestic violence misdemeanor convictions are flagged within criminal history records. Insanity dispositions may also be included in criminal histories.

**Check processing time** Not applicable.

**Retention of records** State agencies are not required to retain any firearm transaction records. Firearm dealers are required to retain sales records for 6 years.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal pursuant to Federal law.

**Arrests of denied persons** Not applicable.

**2004/2005 legislation** No significant changes.

**Relevant laws** Vermont Statutes 13-4001 et seq.

**Source of information** Vermont Department of Public Safety; Newport City Police Department.

**Contact** J. Paul Duquette, Newport City Police Department, 222 Main Street, Newport, VT 05855, (802) 334-6733.

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## Virginia

### State requests NICS checks

**Prohibited persons** Virginia law prohibits: possession of a firearm by a person who is acquitted of certain offenses by reason of insanity; purchase or possession of a firearm by a person who has been adjudicated incompetent or incapacitated, or involuntarily committed; purchase of a firearm by a person who is subject to a protective order; purchase of a handgun by certain persons who have been convicted of two misdemeanor drug offenses within 36 months; possession of a firearm by a person who has been convicted of a felony or found guilty as a juvenile of a delinquent act which would be a felony if committed by an adult; possession of an assault firearm or other firearm by a person who is not a U.S. citizen or lawfully admitted for permanent residence; and possession of a handgun or an assault firearm by a person under 18 years of age.

**Restoration of rights** The Governor may grant a pardon or removal of political disabilities to a person who committed a felony or a delinquent act, and may condition reinstatement of firearm rights. The circuit court may issue a permit to carry a firearm to a person whose civil rights have been restored.

**Prohibited firearms** It is unlawful to possess a sawed-off shotgun or rifle (except for limited purposes), or to sell, transfer, or possess a plastic firearm or certain semi-automatic shotguns.

**Regulated sales** State law requires background checks on persons who purchase firearms from licensed dealers. Virginia residents may purchase firearms upon proof of residency in the State for at least 30 days. A person cannot purchase more than one handgun in a 30-day period unless authorized by the State Police or specifically exempted by State law.

**Permits** A permit is not required to purchase a firearm. A permit issued by a circuit court is needed to carry a concealed handgun. The Virginia State Police (VSP) is the issuing agency for nonresident concealed handgun permits.

**Background checks** VSP is a point of contact for the NICS and conducts all checks required by Federal and State law. Some dealers request instant checks by using a 1-800 number or the mail to contact the Firearms Transaction Program. High-volume dealers in the Direct Access Program use dial-in technology to request checks.

**Waiting period** No State requirements.

**Purchaser fees** VSP charges \$2 for a check on a Virginia resident and \$5 for a nonresident.

**State data** Virginia maintains fully automated criminal history, fugitive, juvenile, mental health, protective order, flagged domestic violence misdemeanor, drug user, and misdemeanor drug convictions data. A calendar file is main-

tained for handgun purchases. Criminal histories may include various mental health dispositions.

**Check processing time** Routine transactions are normally processed in less than 2 minutes. Transactions that require additional research are normally processed in less than 1 day.

**Retention of records** Data on approved transactions may be retained for no more than 30 days. Multiple handgun transaction records and a log of requests (with purchaser name, dealer and approval numbers, and date) may be maintained for 12 months. Records of denied transactions are retained for 2 years.

**Registration** Machine guns are registered.

**Appeals of denials** A person who is denied a firearm may request correction of a criminal history record or appeal to the VSP, or institute a civil action within 30 days of such denial.

**Arrests of denied persons** VSP arrests all persons denied because of an outstanding warrant and arrests persons who submit false information in some cases. Using set criteria, VSP, in conjunction with commonwealth attorneys, decides which denied persons should be prosecuted under Virginia law.

**2004/2005 legislation** Amendments covered restrictions on noncitizens, exemptions to handgun purchase limits, record checks, possession by persons adjudicated delinquent, and gun shows. Statutes that regulated interstate sales were repealed.

**Relevant laws** Code of Va. Title 18.2, Ch. 7, Art. 7.

**Source of information** Virginia State Police.

**Contact** Donna Tate, State Police Firearms Transaction Center, P.O. Box 85608, Richmond, VA 23285-5608, (804) 674-2210.

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## Washington

### **FBI conducts long gun NICS checks State requests handgun NICS checks**

**Prohibited persons** State law prohibits ownership, possession, or control of a firearm by a person who is convicted, found not guilty by reason of insanity, or adjudicated in juvenile court for a serious offense, felony, or misdemeanor as specified by statute; involuntarily committed for mental health treatment; under 18 years of age; or free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense. Offenders under the supervision of the department of corrections shall not own, use, or possess firearms. A person at least 18 but less than 21 may possess a handgun only in certain places. Children under 18 may possess certain firearms for events such as hunting or trapping under a valid license, target shooting or practicing at an established range, or an organized competition.

**Restoration of rights** Firearm possession rights may be restored by a court of record or a Governor's pardon. A person convicted of a felony or found not guilty by reason of insanity who has no prior violation and no subsequent violation for any offense for 5 years (3 years if convicted of a nonfelony offense) after completing a sentence may petition the court of record. Certain offenders are not eligible for restoration.

**Prohibited firearms** It is unlawful, with limited exceptions, for any person to manufacture, own, buy, sell, loan, furnish, transport, or have in possession or under control any machine gun, short-barreled shotgun, or short-barreled rifle.

**Regulated sales** State law requires background checks on persons who purchase handguns from licensed dealers. Residents of other States may purchase long guns in Washington unless otherwise prohibited. A firearms dealer is required to have State and Federal licenses.

**Permits** A license is required to carry a concealed handgun. An alien lawfully present in the U.S. must obtain a license to possess or carry any firearm.

**Background checks** Sheriffs and police departments are partial points of contact for the NICS and request handgun NICS checks for persons who do not possess a concealed pistol license (CPL). Applications are received from dealers in person, by fax, or by regular or certified mail. A handgun may be delivered to the purchaser when the dealer is notified of an approval or after 5 business days have elapsed. The time allowed for a check may be extended up to 30 days when an applicant's record lacks certain dispositions, or up to 60 days for a person who is a new Washington resident or lacks required identification. The FBI conducts long gun NICS checks, handgun checks when the person has a valid CPL, and pawn redemption checks.

**Waiting period** No State requirements.

**Purchaser fees** None.

**State data** A statewide network maintains automated fugitive, criminal history, restraining order, and flagged domestic violence misdemeanor data. Some juvenile data are also available. Checking agencies receive Department of Social and Health Services commitment data from the NICS Index Denied Persons File and are instructed to check with local mental health agencies by letter, telephone, or e-mail if necessary. Criminal histories may include insanity or incompetent to stand trial dispositions.

**Check processing time** Background checks are completed in less than 60 days.

**Retention of records** Under State law a checking agency shall retain or destroy handgun purchase applications in accord with 18 U.S.C. 922. Identifying data from allowed NICS transactions are purged within 24 hours. Denied applications are retained indefinitely. The department of licensing may keep copies or records of handgun purchase applications. Dealers retain copies of applications for 6 years.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a handgun purchase may appeal to superior court, directly to the FBI, or to their local agency.

**Arrests of denied persons** In cases of outstanding warrants, checking agencies normally notify the agency with jurisdiction over the fugitive.

**2004/2005 legislation** Amendments made a verdict of not guilty by reason of insanity the equivalent of a guilty verdict for purposes of determining eligibility to possess a firearm and restoration of rights.

**Relevant laws** WA. Revised Code 9.41.010 et seq.

**Source of information** Washington State Patrol.

**Contact** Ms. Mary Neff, Washington State Patrol Criminal History Section, P.O. Box 42619, Olympia, WA 98504, (360) 570-5230.

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## West Virginia

### FBI conducts NICS checks

**Prohibited persons** West Virginia law prohibits possession of a firearm by a person who is convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year, addicted to alcohol, an unlawful user of or addicted to any controlled substance, adjudicated as a mental defective or committed involuntarily to a mental institution, an illegal alien, dishonorably discharged from the armed forces, subject to a domestic violence protective order, convicted in any court of a misdemeanor crime of domestic violence, or a minor under the age of 18 (except in limited circumstances). It is illegal to sell, rent, give, or lend a firearm to a prohibited person.

**Restoration of rights** State law provides that prohibited persons may petition the circuit court of the county where they reside for an order which allows firearm possession. The court may enter an order if it finds such person capable of exercising the responsibility concomitant with possession of a firearm.

**Prohibited firearms** It is unlawful for any person to carry, transport, or possess any machine gun or submachine gun or any other fully automatic weapon, except in compliance with Federal law.

**Regulated sales** West Virginia law does not require background checks on firearms purchasers.

**Permits** A permit is not required to purchase firearms. A license is required to carry a concealed handgun.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in West Virginia contact the FBI for all checks required by the Brady Act.

**Waiting period** No State requirements.

**Purchaser fees** No State requirements.

**State data** West Virginia maintains fully automated fugitive and criminal history data on a statewide network. Domestic violence misdemeanor convictions may be found within criminal history records. A registry of domestic violence protective orders is being developed.

**Check processing time** Not applicable.

**Retention of records** No State requirements.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal pursuant to Federal law.

**Arrests of denied persons** Not applicable.

**2004/2005 legislation** No significant changes.

**Relevant laws** West Virginia Code 61-7-1 et seq.

**Source of information** West Virginia State Police.

**Contact** First Lieutenant Michael G. Corsaro, West Virginia State Police, 725 Jefferson Road, South Charleston, WV 25309, (304) 746-2170.

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## Wisconsin

### FBI conducts long gun NICS checks State requests handgun NICS checks

**Prohibited persons** State law prohibits firearm possession by or transfer to a person who has been convicted of a felony in Wisconsin or of a similar crime elsewhere, adjudicated delinquent for an act that would be a felony if committed by an adult, found not guilty of a felony in Wisconsin or of a similar offense in another jurisdiction by reason of mental disease or defect, committed for treatment and ordered not to possess a firearm, enjoined or ordered not to possess a firearm under a domestic violence injunction, or is under 18 years of age (except in limited circumstances).

**Restoration of rights** A convicted felon's right to possess firearms may be restored by a Governor's pardon or Federal relief. A person who was adjudicated delinquent as a juvenile (after April 1994) may regain firearm rights if the court determines that the offender is not likely to act in a manner dangerous to public safety.

**Prohibited firearms** No person, with limited exceptions, may sell, possess, use, or transport any machine gun or other fully automatic weapon, or sell, offer to sell, transport, purchase, or possess a short-barreled shotgun or short-barreled rifle.

**Regulated sales** State law requires background checks on persons who purchase handguns from licensed dealers.

**Permits** A permit is not required to purchase firearms. State law does not provide for concealed firearm permits.

**Background checks** The Wisconsin Department of Justice (DOJ) is a point of contact for the NICS and conducts checks on handgun purchasers required by Federal and State law. Licensed firearms dealers request instant checks by using a 1-800 number to contact DOJ. State law requires that a check be completed before 48 hours have expired; however, the time limit may be extended by 3 days for felony charges with no recorded disposition. Dealers contact the FBI for checks required by the Brady Act on persons who purchase a long gun or redeem a pawned firearm.

**Waiting period** A 48-hour waiting period is required for handgun sales regardless of when a check is completed. The waiting period begins when DOJ acknowledges receipt of purchaser information from a dealer.

**Purchaser fees** A fee of \$8 is charged for a background check.

**State data** A statewide network maintains fully automated fugitive, criminal history, juvenile, involuntary commitment, restraining order, and flagged domestic violence misdemeanor data. Probation and parole files are kept manually.

**Check processing time** Routine transactions are normally processed in less than 2 minutes. Transactions that require additional research normally are processed in less than 1 day.

**Retention of records** State law requires that DOJ destroy all records from approved transactions within 30 days. Data from denied transactions are retained indefinitely.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a handgun may appeal first to the DOJ Crime Information Bureau and then to the Administrator of the Division of Law Enforcement Services. A further appeal may be filed in State court.

**Arrests of denied persons** DOJ reports denied persons to ATF, the Wisconsin Department of Investigation, local police, district attorneys, and the U.S. Attorney's Office.

**2004/2005 legislation** No significant changes.

**Relevant laws** Wisconsin Statutes 175.30; 175.35; 941.20 et seq; 948.60.

**Source of information** Wisconsin Department of Justice.

**Contact** Mary Sturdevant, Department of Justice Criminal Information Bureau, P.O. Box 2718, Madison, WI 53701, (608) 267-2776.

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## Wyoming

### FBI conducts NICS checks

**Prohibited persons** Wyoming law prohibits knowing possession of a firearm by a person who has previously pleaded guilty to or been convicted of committing or attempting to commit a violent felony or a felony of causing bodily injury to a peace officer and has not been pardoned.

**Restoration of rights** A person convicted of a violent felony may regain the right to possess a firearm through a Governor's pardon. A person convicted of a misdemeanor may seek a record expungement solely for the purpose of restoration of federal firearm rights if 1 year has passed since expiration of the sentence, the petitioner has not been previously convicted of a misdemeanor that caused loss of firearm rights, and the offense for which expungement is sought did not involve the use of a firearm.

**Prohibited firearms** None.

**Regulated sales** State law does not require background checks on firearms purchasers.

**Permits** A permit is not required to purchase firearms. A license is required to carry a concealed dangerous weapon.

**Background checks** The State is not a point of contact for the NICS. Licensed firearms dealers in Wyoming contact the FBI for all checks required by the Brady Act. The Wyoming Attorney General's Division of Criminal Investigation conducts background checks on applicants for concealed weapon licenses, after receiving applications from county sheriffs. ATF allows a holder of a valid concealed weapon license to purchase a firearm without a new NICS check.

**Waiting period** No State requirements.

**Purchaser fees** No State requirements.

**State data** A statewide network maintains fully automated records of criminal histories and fugitives who are wanted in felony or misdemeanor warrants. Misdemeanor convictions for domestic violence offenses are flagged within criminal history records. Domestic violence restraining orders are entered into State and NCIC protection order files.

**Check processing time** Not applicable.

**Retention of records** Information on persons who are denied a concealed weapon license is retained indefinitely.

**Registration** No State requirements.

**Appeals of denials** A person who is denied a firearm by the FBI may appeal pursuant to Federal law. A person who is denied a concealed weapon license may submit additional documents and request reconsideration by the Attorney General.

**Arrests of denied persons** No information is available.

**2004/2005 legislation** A new statute allows a person convicted of a misdemeanor to seek expungement of the con-

viction record solely for the purpose of restoration of federal firearm rights, provided that 1 year has passed since expiration of the sentence, the petitioner has not been previously convicted of a misdemeanor that caused loss of firearm rights, and the offense for which expungement is sought did not involve the use of a firearm.

**Relevant laws** Wyoming Statutes 6-8-101 et seq; 7-13-1501.

**Source of information** Wyoming Attorney General, Division of Criminal Investigation.

**Contact** James M. Wilson, Division of Criminal Investigation, 316 West 22nd Street, Cheyenne, WY 82002, (307) 777-7181.

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## American Samoa

### **Territory requests NICS checks and conducts separate checks**

**Prohibited persons** The Territory of American Samoa does not allow handguns on the island. Police officers are not required to carry firearms in the performance of their normal duties. However, police officers are authorized by statute to carry firearms, providing they have completed firearms training and are certified by a competent authority. A person's baggage is checked for firearms upon arrival. Shotguns of various gauges and .22-caliber rifles are allowed. It is unlawful to transfer a firearm to a person who is prohibited from possession, less than 18 years old (except in limited circumstances) or intoxicated. A firearm cannot be possessed by a person who has been convicted of or confined for a dangerous felony in the territory or elsewhere during the preceding 5 years, or who is a fugitive from justice, an habitual drunkard, a drug addict, or currently adjudged mentally incompetent.

**Restoration of rights** Restoration of firearm rights may be given at the discretion of the attorney general or the Department of Public Safety, upon review of an application.

**Prohibited firearms** It is unlawful to knowingly possess, manufacture, transport, repair, or sell a machine gun, a short barreled rifle or shotgun, or any other firearm for which a valid license from the commissioner of public safety has not been obtained. (Exceptions to these prohibitions are stated in the prohibited weapons statute.)

**Regulated sales** Territorial licensing requirements apply to all transfers of legal firearms.

**Permits** A license is required to possess, import, or sell firearms. Each license issued shall specify the number, quantity, and description of the arms which may be possessed, imported, or sold, or otherwise transferred. A license to possess must be renewed every year and must be in the licensee's possession when carrying such arms.

**Background checks** The background checks required by American Samoa law on purchasers of shotguns and .22-caliber rifles are performed by the territorial police, after the owner brings in the sales receipt and the weapon. The police conduct the checks and issue licenses. The process includes checking NCIC through the American Samoa Office of Territorial and International Criminal Intelligence and Drug Enforcement (OTICIDE), as well as checking with police departments on neighboring islands. OTICIDE conducts NICS checks for the territory.

**Waiting period** No requirements.

**Purchaser fees** A fee of \$2 is charged by the police for first time license applicants, and \$2 is charged for renewal of a license. The late registration fee is \$2.

**State data** Information is maintained manually.

**Check processing time** No information is available.

**Retention of records** License records are retained in accordance with territorial statutes of limitation or as long as a licensee is in possession of firearms.

**Registration** Legal firearms are marked with such letters as may be designated by the commissioner of public safety and also marked with a number indicating the order of the license and registration as specified in the license, unless the arm has a plainly visible and distinctive serial number stamped on it.

**Appeals of denials** An appeal of a license denial may be addressed to the attorney general.

**Arrests of denied persons** No information is available.

**2004/2005 legislation** No information is available.

**Relevant laws.** American Samoa Code Annotated 46.4201 et seq.

**Source of information** American Samoa Office of Territorial and International Criminal Intelligence and Drug Enforcement (OTICIDE).

**Contact** Jacinta Brown, O.T.I.C.I.D.E., P.O. Box 4567, Pago Pago, AS 96799, (684) 633-2827.

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## Guam

### FBI conducts NICS checks

#### Territory conducts separate checks

**Prohibited persons** Guam law prohibits issuing a firearms identification card to a person who is a convicted felon, not a resident of the territory, adjudicated incompetent, subject to a physical or mental disease which would adversely affect the safe use of the firearm, under the age of 18 years old, convicted of a drug offense, knowingly subject to a restraining order from a current or former intimate partner, under an indictment or information for any felony offense, arrested for or convicted of a family violence offense, arrested or convicted in any case where personal injury resulted from the offense, or arrested for or convicted of offenses where a firearm was an element or factor of the offense.

**Restoration of rights** A convicted felon's right to receive a firearms identification card cannot be restored. A person convicted of a misdemeanor where a firearm was an element or factor of the offense or where personal injury resulted from the offense may have rights restored 10 years from the judgment date.

**Prohibited firearms** The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of any machine guns, submachine guns, automatic guns, pre-banned and post-banned weapons, or certain short firearms is prohibited.

**Regulated sales** All transfers of lawful firearms, except for temporary transfers at shooting galleries, require that the person transferring or receiving the firearm holds a current identification card. All weapons must have a safety inspection by the Guam Police Department's Armory Section. Both parties to a transfer must appear at the Armory and Record and ID Sections to conduct a transfer.

**Permits** A valid identification card is required to own, possess, use, carry, acquire, or transfer any lawful firearm. The permit is renewed tri-annually on the holder's birthday.

**Background checks** The Guam Police Department (GPD) fingerprints all applicants for a firearm identification background check and submits the prints to the Superior Court of Guam, which conducts the State Identifications Bureau checks for the Territory. NICS checks for the Territory are conducted by the FBI. Military personnel with top secret or secret clearance have the option to waive fees by providing a copy of their clearance. First-time applications and renewals past 10 years require a check.

**Waiting period** New applicants must wait until check results are received by GPD (about 30 days). The waiting period is waived for military personnel with a top secret or secret clearance. Renewal applicants have no waiting period if they do not have a criminal case or restraining order that prevents renewal.

**Purchaser fees** First-time applicants are charged \$24 by the Superior Court for the FBI background information fee. GPD charges \$10 for fingerprinting in order to obtain the background information. When the application is approved, the applicant is charged \$15 for the identification card (renewable every 3 years). There is a \$20 fee for permanent registration of each firearm.

**State data** Guam agencies maintain fugitive, criminal history, and mental health data.

**Check processing time** For first time applicants, the processing time is approximately 4 to 6 weeks.

**Retention of records** GPD retains all identifications indefinitely and all applications received since 1998 are maintained indefinitely.

**Registration** All weapons must be accompanied by either an authorized gun dealer receipt, shipped household goods declaration or a customs declaration sheet and an inspection sheet from the GPD armorer prior to registering a weapon at the GPD Records and ID Section. All transfers require a new registration.

**Appeals of denials** Territorial law does not provide a procedure for appealing an identification denial. Judgments from Superior Court or U.S. District Court of Guam may reinstate the privilege to own a weapon.

**Arrests of denied persons** A person in possession of a weapon without a valid firearms identification card is in violation of Guam law and may be arrested.

**2004/2005 legislation** No information is available.

**Relevant laws** 10 G.C.A., Chapter 60: Firearms.

**Source of information** Guam Police Department.

**Contact** John P. Rabon, Police Department Armory Section, P.O. Box 23909, GMF, Bamgada, GU 96921, (671) 475-8497.

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## Puerto Rico

### FBI conducts NICS checks

#### Commonwealth conducts separate checks

**Prohibited persons** The Superintendent of Police of Puerto Rico shall not issue a license to have or possess firearms to any person who has been convicted of any of the following offenses or of the attempt to commit the same, in or outside Puerto Rico: murder in any degree, manslaughter, kidnapping, rape, mayhem, intent to commit any felony, aggravated assault and battery with a weapon, robbery, burglary, misappropriation, aggravated misappropriation, arson, aggravated arson, or incest. In addition, a license cannot be issued to any person who is mentally unbalanced, an habitual drunkard, addicted to a controlled substance, or an alien, or who has been a citizen of the United States and renounced such citizenship, adjudicated as a mental defective by a court, or discharged from the armed forces under dishonorable conditions, or is under a court order prohibiting stalking, spying, threatening, or approaching an intimate partner or children of an intimate partner, or has a history of violence or aggravated mistreatment.

**Restoration of rights** No regulations cover restoration of rights.

**Prohibited firearms** It is unlawful to sell or keep for sale, or offer, give, lease or otherwise dispose of or transport any automatic firearm, or to possess a machine gun, carbine, rifle, sawed-off shotgun or any other modification of these, or any other firearm that may be fired automatically.

**Regulated sales** The Weapons Law establishes that no dealer in firearms or ammunition shall deliver a firearm or issue the corresponding delivery permit to a purchaser without the latter producing a license to have and possess a firearm. No weapon is sold to the holder of a license from which the sales permit has been removed.

**Permits** A license is required to purchase or carry a firearm.

**Background checks** License applications require background checks conducted by the Police of Puerto Rico. Applications are received by certified mail or in person. The commonwealth is not a point of contact for the NICS. Federally-licensed dealers contact the FBI for all checks required by the Brady Act.

**Waiting period** The waiting period for the license evaluation process may be from 5 to 120 days.

**Purchaser fees** Commonwealth law requires that every application shall be accompanied by an internal voucher for \$100.

**State data** The police department maintains an electronic registry according to Art.2.01, Law 89 of August 26, 2005. The Commonwealth has an automated criminal history repository.

**Check processing time** The background check process may take from 4 months to more than 6 months.

**Retention of records** Approved applications are retained by the police for a maximum period of 130 days.

**Registration** Every firearm sold is registered with the Superintendent of Police.

**Appeals of denials** A license denial may be appealed under the uniform administrative procedures of the Commonwealth, Art. 6.09, supra.

**Arrests of denied persons** ATF is notified of persons who submit false information on an application.

**2004/2005 legislation** Laws amended: Art.2.15, Law 125 of May 31, 2004; Law 137 of June 3, 2004; Law 89 amended Art. 2.02.

**Relevant laws** Laws of Puerto Rico 25-411 et seq; Law No. 54 of August 15, 1989; Law No. 284 of August 21, 1999; Law No. 404 of March 1, 2001; Law No. 177 of August 1, 2003.

**Source of information** Puerto Rico Department of Justice.

**Contact** Julio L. Rosa, Department of Justice, Criminal Justice Information System, Statistical Analysis Center, P.O. Box 9020192, San Juan, PR 00902-0192, (787) 457-9830, (787) 729-2121.

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## Virgin Islands

### FBI conducts NICS checks

#### Territory conducts separate checks

**Prohibited persons** Virgin Islands law provides that a license to have and possess a firearm cannot be issued to a person who has been convicted in or outside the territory of a crime of violence, a drug law violation, or a firearms law violation, or is mentally incompetent, an habitual drunkard, a drug addict, or deemed to be an improper person by the police. A firearm cannot be sold or furnished to a minor except in limited circumstances.

**Restoration of rights** No information is available.

**Prohibited firearms** It is an offense, unless otherwise authorized by law, to have, possess, bear, transport, or carry any machine gun or sawed-off shotgun.

**Regulated sales** Licensing requirements apply to all firearm sales.

**Permits** A license is required to possess, transport, or carry a firearm. A purchase coupon is issued to a license applicant when the application is approved. The weapon purchased is brought in to the firearms unit of the Virgin Islands Police Department. Information about the weapon is recorded and listed on the license issued to the applicant.

**Background checks** License applications require a background check by the Virgin Islands Police Department. The applicant completes and returns a notarized application. If no problems are found during the check, the information is forwarded to the Police Commissioner, who approves or disapproves the application. The territory is not a point of contact for the NICS. Firearms dealers contact the FBI for sales checks required by the Brady Act.

**Waiting period** Firearm transfers require a 48-hour waiting period, regardless of when a background check is completed.

**Purchaser fees** The Virgin Islands charges a \$5 application fee, a \$50 registration fee per weapon, and a \$15 late registration fee. The renewal fee is \$30 per weapon. New photographs are required with each renewal.

**State data** The territory maintains manual criminal history information.

**Check processing time** No information is available.

**Retention of records** No information is available.

**Registration** After purchase, the bill of sale and the weapon are brought to the police, who record all pertinent information.

**Appeals of denials** A person who is denied a firearm license may appeal to territorial court.

**Arrests of denied persons** No information is available.

**2004/2005 legislation** No information is available.

**Relevant laws** Virgin Islands Code 14-2253; 23-451 et seq.

**Source of information** Virgin Islands Police Department.

**Contact** Anthenia Brown, Police Department, Alexander Farrelly Justice Complex, Charlotte Amalie, St. Thomas, VI 00802, (340) 774-2211.

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## Washington, DC

### **FBI conducts NICS checks**

### **District conducts separate checks**

**Prohibited persons** A registration certificate for a legal firearm cannot be issued to a person who is under 18 years of age (those between the ages of 18 and 21 need a notarized statement from a parent or guardian), convicted of or under indictment for a crime of violence or a weapons offense, convicted of an offense involving drugs, assaults, or threats, acquitted by reason of insanity, adjudicated a chronic alcoholic, committed to a mental hospital, suffering from a physical defect and unable to use a firearm safely, adjudicated negligent in a firearm mishap causing death or serious injury, or otherwise ineligible under District law. Registration applicants are required to demonstrate adequate vision and pass a written test evidencing satisfactory knowledge of district firearm laws.

**Restoration of rights** Persons convicted of misdemeanor offenses involving drugs, certain assaults, or threats, and certain other prohibited persons may be allowed to register a firearm after a 5-year disqualification.

**Prohibited firearms** A registration certificate shall not be issued for a sawed-off shotgun, machine gun, short-barreled rifle; or for a handgun not validly registered prior to September 24, 1976. Handguns cannot be purchased, except by law enforcement officers, retired District police officers, military personnel, licensed dealers, and organizations employing at least one commissioned special police officer.

**Regulated sales** Private individuals may only sell or transfer registered firearms and ammunition to a licensed dealer in the District, and may only purchase long guns in person from a licensed dealer. Delivery of a firearm to a District resident will be withheld until a registration certificate is issued by the Metropolitan Police Department.

**Permits** A valid registration certificate is required for possession or transfer of any firearm.

**Background checks** The Chief of Police conducts background checks and issues registration certificates. The District is not a point of contact for the NICS. Licensed firearms dealers contact the FBI for all checks required by the Brady Act.

**Waiting period** No requirements.

**Purchaser fees** The fingerprint fee is \$35 and the firearms registration fee is \$13.

**State data** Criminal history records are partially automated and include domestic violence misdemeanor convictions and restraining order data. Mental health records are checked if a registration applicant indicates a commitment.

**Check processing time** A background check is processed in approximately 6 to 8 weeks.

**Retention of records** Indefinite.

**Registration** All handguns owned prior to September 24, 1976, were required to be registered on or before November 22, 1976. Long guns acquired after September 24, 1976, must also be registered.

**Appeals of denials** Registration denials and revocations may be appealed to the Police Department. Evidence supporting reconsideration must be submitted otherwise the denial or revocation will be upheld. A police decision may be appealed to the District of Columbia Court of Appeals. In the event of a final unfavorable decision, the applicant or registrant must lawfully dispose of the firearm.

**Arrests of denied persons** A violation of the District's firearms control act may result in a \$1,000 fine or 1 year in jail, or both.

**2004/2005 legislation** No information is available.

**Relevant laws** District of Columbia Code 2001, Title 7, Chapter 25; Firearms Control Act of 1975.

**Source of information** District of Columbia Metropolitan Police Department; United States Attorney's Office.

**Contact** Lt. Jon Shelton, Metropolitan Police Department Registration Unit, P.O. Box 1606, Washington, D.C. 20013, (202) 621-3159.

State procedure tables

**Table 1. Applications for firearm transfers and permits processed by States, 2005**

State	Firearm transfer applications <sup>a</sup>			Purchase or carry permit applications <sup>b</sup>		
	Received	Rejected	Rejection rate	Received	Rejected	Rejection rate
Alaska	--	--	--	1,487	28	1.9%
Arizona	--	--	--	19,754	1,473	7.5
Arkansas	--	--	--	4,736	183	3.9
California	344,847	3,470	1.0%	--	--	--
Colorado	151,758	4,734	3.1	--	--	--
Connecticut	57,874	146	0.3	--	--	--
Delaware	10,803	415	3.8	--	--	--
Florida	350,790	8,103	2.3	--	--	--
Hawaii	--	--	--	8,695	110	1.3
Illinois	154,633	969	0.6	231,693	5,981	2.6
Indiana	--	--	--	70,904	1,008	1.4
Maryland	24,287	396	1.6	--	--	--
Minnesota	--	--	--	7,393	157	2.1
Nevada	61,539	1,391	2.3	--	--	--
New Hampshire	14,628	116	0.8	--	--	--
New Jersey	38,007	96	0.3	39,379	682	1.7
North Dakota	--	--	--	2,250	4	0.2
Oregon	139,797	2,549	1.8	--	--	--
South Carolina	--	--	--	5,847	137	2.3
Tennessee	211,308	7,336	3.5	--	--	--
Texas	--	--	--	26,682	353	1.3
Utah	72,564	2,332	3.2	10,597	162	1.5
Virginia	217,051	2,668	1.2	--	--	--
Wisconsin	35,254	530	1.5	--	--	--
Wyoming	--	--	--	1,165	25	2.1

Notes: Counts are from agencies that reported complete statewide data for the entire period. Hawaii, Minnesota, and New Jersey permits are issued locally but counts are reported by a State agency.

--Not applicable or data not available.

<sup>a</sup>Counts include all types of firearms except those for New Hampshire and Wisconsin (handguns only); States listed use instant check, except for California and Maryland, which have "other approval" systems.

<sup>b</sup>Counts are for carry permits that may waive a purchase check, except for Hawaii (permits to acquire), Illinois (identification cards), and New Jersey (identification cards and handgun permits).

Source: *Background Checks for Firearm Transfers, 2005*, <<http://www.ojp.usdoj.gov/bjs/abstract/bcft05.htm>>.

**Table 2. Applications for firearm permits processed by local agencies grouped by population level of community served, 2005**

Population level*	Purchase permit applications			Number of Agencies	Number of States
	Received	Rejected	Rejection rate		
Small	9,470	99	1.0%	209	8
Medium	57,711	1,041	1.8	249	9
Large	36,263	1,183	3.3'	26	9
Exempt carry permit applications					
Small	4,871	27	0.6%	39	4
Medium	31,583	391	1.2	69	4
Large	12,943	183	1.4	8	4

Note: Counts are from agencies that provided data.

\*Based on populations of communities served by checking agencies: under 10,000 (small); 10,000 to 100,000 (medium); over 100,000 (large).

**Table 3. Transactions processed by FBI for selected States, 2005**

State*	Transactions	Rejections	Rejection rate
Alabama	235,873	3,165	1.3%
Alaska	44,514	923	2.1
Arizona	176,649	3,970	2.2
Arkansas	164,001	2,470	1.5
Delaware	17,121	242	1.4
Idaho	80,343	1,285	1.6%
Indiana	172,249	1,886	1.1
Kansas	98,311	840	0.9
Kentucky	232,589	2,334	1.0
Louisiana	207,954	3,847	1.8
Maine	50,319	290	0.6%
Massachusetts	105,347	82	0.1
Minnesota	224,165	2,420	1.1
Mississippi	167,713	1,778	1.1
Missouri	214,241	1,938	0.9
Montana	84,060	1,150	1.4%
New Mexico	82,051	1,167	1.4
New York	158,781	1,416	0.9
North Dakota	36,000	448	1.2
Ohio	313,159	3,818	1.2
Oklahoma	182,031	1,936	1.1%
Rhode Island	9,649	63	0.7
South Carolina	141,811	3,082	2.2
South Dakota	50,768	494	1.0
Texas	738,793	8,393	1.1%
Vermont	18,607	212	1.1
West Virginia	133,667	957	0.7
Wyoming	37,911	526	1.4

\*The FBI conducted all NICS checks for these 28 states during 2005. The FBI also conducts all NICS checks for Georgia as of July 1, 2005.

Source: FBI NICS Program Office.

**Table 4. Prohibited persons: statutory basis for denial of firearm sale or possession, December 31, 2005**

Jurisdiction	Felony <sup>a</sup>	Misdemeanor <sup>a</sup>	Fugitive	Mental illness <sup>b</sup>	Court order	Drug abuse <sup>c</sup>	Alcohol abuse <sup>c</sup>	Minor underage	Juvenile offense	Aliens <sup>d</sup>
Federal	■	■	■	■	■	■	--	■	--	■
State totals	49	26	13	33	22	30	20	49	27	15
Alabama	■	--	--	■	--	■	■	■	--	--
Alaska	■	--	--	--	■	■	■	■	■	--
Arizona	■	--	--	■	--	--	--	■	■	■
Arkansas	■	--	--	■	--	--	--	■	--	--
California	■	■	--	■	■	■	--	■	■	--
Colorado	■	--	--	--	--	--	--	■	■	--
Connecticut	■	■	--	■	■	--	--	■	■	■
Delaware	■	■	--	■	■	■	■	■	■	--
Florida	■	■	--	■	■	■	■	■	■	--
Georgia	■	--	--	--	--	--	--	■	■	--
Hawaii	■	■	■	■	■	■	■	■	■	■
Idaho	■	--	--	--	--	--	--	■	--	--
Illinois	■	■	--	■	■	■	--	■	■	■
Indiana	■	■	--	■	■	■	■	■	■	--
Iowa	■	■	--	■	--	■	■	■	■	--
Kansas	■	--	--	--	--	■	--	■	■	--
Kentucky	■	--	--	--	--	--	--	■	■	--
Louisiana	■	■	--	--	--	--	--	■	--	--
Maine	■	--	--	■	■	--	--	■	■	--
Maryland	■	■	■	■	■	■	■	■	■	--
Massachusetts	■	■	■	■	■	■	■	■	■	■
Michigan	■	--	--	■	■	--	--	■	--	■
Minnesota	■	■	■	■	--	■	--	■	■	■
Mississippi	■	--	--	--	--	■	■	■	--	--
Missouri	■	■	■	■	--	■	■	■	--	■
Montana	■	--	--	--	--	--	--	■	--	--
Nebraska	■	--	■	--	--	--	--	■	--	--
Nevada	■	■	■	■	--	■	--	■	--	■
New Hampshire	■	--	--	--	■	--	--	■	--	--
New Jersey	■	■	--	■	■	■	■	■	■	--
New Mexico	■	--	--	--	--	--	--	■	--	--
New York	■	■	--	■	■	--	--	■	--	--
North Carolina	■	--	■	■	■	■	--	■	--	■
North Dakota	■	■	--	■	--	--	--	■	--	--
Ohio	■	--	■	■	--	■	■	■	■	--
Oklahoma	■	--	--	■	--	■	■	■	■	--
Oregon	■	■	■	■	--	--	--	■	■	--
Pennsylvania	■	■	■	■	■	■	■	■	■	■
Rhode Island	■	--	■	■	■	■	■	■	--	■
South Carolina	■	■	■	■	--	■	■	■	--	--
South Dakota	■	■	--	--	--	■	--	■	--	--
Tennessee	■	■	--	--	--	■	■	■	--	--
Texas	■	■	--	--	■	■	■	■	--	--
Utah	■	--	--	■	--	■	--	■	■	■
Vermont	--	--	--	--	--	--	--	■	--	--
Virginia	■	■	--	■	■	■	--	■	--	■
Washington	■	■	--	■	--	■	--	■	■	--
West Virginia	■	■	--	■	■	■	■	■	--	■
Wisconsin	■	--	--	■	■	--	--	■	■	--
Wyoming	■	--	--	--	--	--	--	--	--	--

Note: Does not include State laws that incorporate Federal prohibitions. Types of firearms covered by statutes varies.

--Not available or not applicable.

■ Indicates prohibition of firearm sale or possession under State law.

<sup>a</sup>Generally, felony has penalty of 1 year sentence or more, misdemeanor less than 1 year; offenses included vary by State.

<sup>b</sup>Includes persons adjudicated mentally ill, committed to a mental institution, or acquitted by reason of insanity.

<sup>c</sup>Includes persons convicted of substance-related offenses, addicted to a substance, or intoxicated at time of purchase.

<sup>d</sup>Includes laws that require U.S. citizenship or prohibit some or all aliens.

**Table 5. Minors: restrictions based on age or juvenile offender status, December 31, 2005**

Jurisdiction	Minimum age: unrestricted possession and purchase <sup>a</sup>			Juvenile offenders restricted <sup>b</sup>		
	Handgun	Long Gun	Statute	Handgun	Long Gun	Statute
Federal	21	18	18:922(b), (x)	--	--	--
Alabama	18	--	13A-11-76	--	--	--
Alaska	18	18	11-61-210, 220	■	--	11-61-200
Arizona	18	18	13-3109	■	■	13-3101
Arkansas	18	18	5-73-119	--	--	--
California	21	18	PC 12072(a),(b)	■	■	PC 12021(e)
Colorado	18	18	18-12-108.5, 108.7	■	■	18-12-108
Connecticut	21	18	29-34, 36f	■	■	53a-217
Delaware	21	18	11-1445; 24-903	■	■	11-1448
Florida	18	18	790.17	■	■	790.23
Georgia	18	--	16-11-132	■	--	16-11-132
Hawaii	21	18	134-4	■	■	134-7(d)
Idaho	18	18	18-3302A	--	--	--
Illinois	21	21	430:65/8	■	■	430:65/8
Indiana	18	18	35-47-2-7	■	--	35-47-2-7
Iowa	21	18	724.15, 724.22	■	■	724.26
Kansas	18	--	21-4204a	■	■	21-4204
Kentucky	18	--	527.1	■	■	527.04
Louisiana	18	--	14:91; 14:95.8	--	--	--
Maine	21	16	17:554-A, B, C	■	■	15:393(1)
Maryland	21	18	PS 5-133, 134	■	--	PS 5-133, 134
Massachusetts	21	18	140:130	■	■	140:129B
Michigan	21	18	28.422; 750.223	--	--	--
Minnesota	18	18	624.713	■	■	624.713
Mississippi	18	18	97-37-13, 14	--	--	--
Missouri	21	18	571.090.1	--	--	--
Montana	14	14	45-8-344	--	--	--
Nebraska	21	--	28-1204, 69-2404	--	--	--
Nevada	18	18	202.300, 310	--	--	--
New Hampshire	18	--	159:12	--	--	--
New Jersey	21	18	2C:58-3, 2C:58-6.1	■	■	2C:58-3
New Mexico	19	--	30-7-2.2	--	--	--
New York	21	16	PL 265.05; 400.00	--	--	--
North Carolina	18	12	14-269.7	--	--	--
North Dakota	18	--	62.1-02-01	--	--	--
Ohio	21	18	2923.21	■	■	2923.13(A)
Oklahoma	18	18	21:1273	■	■	21:1289.12
Oregon	18	18	166.470	■	■	166.250
Pennsylvania	18	18	18:6110.1	■	■	18:6105(c)
Rhode Island	21	18	11-47-30 et seq.	--	--	--
South Carolina	21	--	16-23-30	--	--	--
South Dakota	18	--	23-7-44, 46	--	--	--
Tennessee	18	18	39-17-1303, 1319	--	--	--
Texas	18	18	PC 46.06	--	--	--
Utah	18	18	76-10-509 et seq.	■	■	76-10-503
Vermont	16	16	13:4008	--	--	--
Virginia	18	18	18.2-308.7	■	■	18.2-308.2
Washington	21	18	9.41.040; 9.41.240	■	■	9.41.040
West Virginia	18	18	61-7-8	--	--	--
Wisconsin	18	18	948.60	■	■	941.29
Wyoming	--	--	--	--	--	--

■Indicates that juveniles are restricted from purchasing a handgun or long gun under State law.

<sup>a</sup>No restrictions on purchase or possession by or transfer to persons over this age.

<sup>b</sup>See State summaries for details of restrictions on purchase and possession.

**Table 6. Regulation of dealer, private, and gun show sales, December 31, 2005**

Jurisdiction	Handgun sales regulated			Long gun sales regulated		
	Licensed dealers <sup>a</sup>	Unlicensed persons		Licensed dealers <sup>a</sup>	Unlicensed persons	
		All sales	Gun show only		All sales	Gun show only
Federal	■	--	--	■	--	--
State totals	30	15	2	19	6	4
Alabama <sup>b</sup>	■	--	--	■	--	--
California	■	■	--	■	■	--
Colorado	■	--	■	■	--	■
Connecticut	■	■	--	■	--	■
Delaware <sup>c</sup>	■	--	--	■ <sup>d</sup>	--	--
Florida	■	--	--	■	--	--
Georgia <sup>b</sup>	■	--	--	■	--	--
Hawaii	■	■	--	■	■	--
Illinois	■	■	--	■	■	--
Indiana	■	--	--	--	--	--
Iowa	■	■	--	--	--	--
Maryland <sup>e</sup>	■	■	--	--	--	--
Massachusetts	■	■	--	■	■	--
Michigan	■	■	--	--	--	--
Minnesota <sup>e</sup>	■	--	--	--	--	--
Missouri	■	■	--	--	--	--
Nebraska	■	■	--	--	--	--
Nevada <sup>c</sup>	■	--	--	■	--	--
New Hampshire	■	--	--	--	--	--
New Jersey	■	■	--	■	■	--
New York <sup>f</sup>	■	■	--	■	--	■
North Carolina	■	■	--	--	--	--
Oregon <sup>c</sup>	■	--	■	■	--	■
Pennsylvania	■	■	--	■	--	--
Rhode Island	■	■	--	■	■	--
Tennessee	■	--	--	■	--	--
Utah	■	--	--	■	--	--
Virginia	■	--	--	■	--	--
Washington	■	--	--	--	--	--
Wisconsin	■	--	--	--	--	--

--Not applicable.

■ Indicates that a buyer must present a permit or undergo a background check (or both) before the seller can transfer a firearm (see table 7 for details).

<sup>a</sup>Includes dealer sales at retail stores and gun shows.

<sup>b</sup>State law requires dealers to request a NICS check which is conducted by the FBI.

<sup>c</sup>Unlicensed sellers who are not required to request a background check may do so voluntarily.

<sup>d</sup>Includes only rifle sales; shotgun sales are exempt.

<sup>e</sup>Handgun procedures also apply to certain assault weapon sales.

<sup>f</sup>Gun show sales require a NICS check which is conducted by the FBI.

**Table 7. Background check and permit procedures, December 31, 2005**

Jurisdiction	Handgun sales			Waiting period <sup>e</sup>	Long gun sales			Waiting period <sup>e</sup>	Check time limit <sup>a</sup>	
	Instant check <sup>b</sup>	Purchase permit <sup>c</sup>	Other approval <sup>d</sup>		Instant check <sup>b</sup>	Purchase permit <sup>c</sup>	Other approval <sup>d</sup>		Sale	Permit
Federal	■	--	--	--	■	--	--	--	3 days	--
State totals	15	12	5	--	13	4	2	--	--	--
California	--	--	■	10 days	--	--	■	10 days	10 days	--
Colorado	■	--	--	--	■	--	--	--	3 days	--
Connecticut	■	■	--	--	■	--	--	14 days <sup>f</sup>	14 days	90 days
Delaware	■	--	--	--	■	--	--	--	3 days	--
Florida	■	--	--	3 days	■	--	--	--	3 days	--
Hawaii	--	■	--	14 days	--	■	--	14 days	--	20 days
Illinois	■	■	--	3 days	■	■	--	1 day	1-3 days	30 days
Indiana	■	--	--	--	--	--	--	--	2 days	--
Iowa	--	■	--	3 days	--	--	--	--	--	None
Maryland <sup>g</sup>	--	--	■	7 days	--	--	--	--	7 days	--
Massachusetts	--	■	--	--	--	■	--	--	--	40 days
Michigan	--	■	--	--	--	--	--	--	--	None
Minnesota <sup>h</sup>	--	■	■	7 days	--	--	--	--	7 days	7 days
Missouri	--	■	--	--	--	--	--	--	--	7 days
Nebraska	--	■	--	--	--	--	--	--	--	2 days
Nevada	■	--	--	--	■	--	--	--	3 days	--
New Hampshire	■	--	--	--	--	--	--	--	3 days	--
New Jersey	■	■	--	7 days	■	■	--	--	3 days	30 days
New York	--	■	--	--	■	--	--	--	--	180 days
North Carolina	--	■	--	--	--	--	--	--	--	30 days
Oregon	■	--	--	--	■	--	--	--	3 days	--
Pennsylvania	■	--	--	--	■	--	--	--	15 days	--
Rhode Island	--	--	■	7 days	--	--	■	7 days	7 days	--
South Dakota	--	--	--	2 days	--	--	--	--	--	--
Tennessee	■	--	--	--	■	--	--	--	3 days	--
Utah	■	--	--	--	■	--	--	--	3 days	--
Virginia	■	--	--	--	■	--	--	--	3 days	--
Washington	--	--	■	--	--	--	--	--	7 days	--
Wisconsin	■	--	--	2 days	--	--	--	--	2 days	--

--Not applicable.

■For a State, indicates type of check required by State law (see table 10 for NICS participation).

<sup>a</sup>Maximum time allowed for checking agency to decide on sale (instant check or other approval) or permit application. Extension may be allowed in some cases. NICS 3-day rule may apply in absence of State law.

<sup>b</sup>"Instant check" generally requires an agency to respond to seller inquiries immediately or as soon as possible. Includes State systems implemented to enforce Federal law.

<sup>c</sup>"Purchase permit" includes documents (permits, licenses, identification cards, etc.) issued by State agency and required for purchase. Not included are documents which allow waiver of a point-of-sale check but are not required for a purchase.

<sup>d</sup>"Other approval" generally requires a seller to transmit an application to a checking agency, with transfers delayed until a waiting period expires or the agency completes a check.

<sup>e</sup>Period of time after sale or permit application is filed which must expire before transfer of firearm or issuance of permit.

<sup>f</sup>Long gun waiting period is waived if buyer has a handgun permit.

<sup>g</sup>Handgun procedures also apply to sales of certain assault weapons.

<sup>h</sup>Handgun and assault weapon buyers have the options of a purchase permit or the other approval process.

**Table 8. Fees, record retention, and appeals, December 31, 2005**

Jurisdiction	Maximum agency fee <sup>a</sup>		Length of time agencies retain transaction records <sup>b</sup>		Appeal forums		
	Sale check	Permit	Allowed	Denied	Denying agency	Other agency <sup>c</sup>	Court system
Federal	None	--	1 day	Indefinitely	■	--	■
State totals	--	--	--	--	17	2	17
Alabama	--	--	Indefinitely	--	--	--	--
California	\$25.00 <sup>d</sup>	--	Indefinitely	Indefinitely	■	--	--
Colorado	None	--	1 day	Indefinitely	■	--	--
Connecticut	None	\$94.00 <sup>e</sup>	5 years	5 years	■ <sup>f</sup>	■ <sup>f</sup>	--
Delaware	None	--	60 days	Indefinitely	■	--	■
Florida	\$5.00	--	2 days	2 years	■	--	--
Hawaii	--	\$24.00	Indefinitely	Indefinitely	--	--	--
Illinois	\$2.00	\$5.00	Indefinitely	10 years	■	--	■
Indiana	\$3.00	--	30 days	Indefinitely	■	--	■
Iowa	--	Varies	4 years	Varies	--	--	■
Maryland	\$10.00	--	Indefinitely	Indefinitely	■	--	■
Massachusetts	--	\$100.00	Indefinitely	Indefinitely	--	--	■
Michigan	--	None	6 years	Varies	--	--	■
Minnesota	None	None	Varies	Varies	--	--	■
Missouri	--	\$10.00	Indefinitely	Indefinitely	--	--	■
Nebraska	--	\$5.00	Varies	Varies	--	--	■
Nevada	25.00	--	1 day	Indefinitely	■	--	--
New Hampshire	None	--	1 day	3 years	■	--	■
New Jersey	None	\$54.00 <sup>g</sup>	Indefinitely	Indefinitely	■ <sup>h</sup>	--	■ <sup>h</sup>
New York	--	\$99.00 <sup>i</sup>	Indefinitely	Indefinitely	--	--	--
North Carolina	--	\$5.00	10 years	Indefinitely	--	--	■
Oregon	10.00	--	5 years	5 years	■	--	--
Pennsylvania	\$2.00 <sup>j</sup>	--	Not kept	20 years	■	■	■
Rhode Island	Varies	--	30 days	30 days	--	--	--
South Dakota	--	--	1 year	1 year	--	--	--
Tennessee	\$10.00	--	Not kept	Indefinitely	■	--	--
Utah	\$7.50	--	20 days	Indefinitely	■	--	--
Virginia	\$2.00 <sup>k</sup>	--	30 days	2 years	■	--	■
Washington	None	--	1 day	Indefinitely	--	--	■
Wisconsin	\$8.00	--	30 days	Indefinitely	■	--	■

--Not applicable or data not available

■ Statute or regulation provides a specific process to appeal a denial of a firearm purchase or a permit required for purchase. Some denying agencies may reconsider a decision even if not required to do so by State law.

<sup>a</sup>Covers check or permit required for firearm purchase. "None" means a fee is prohibited or not required.

<sup>b</sup>Retention of firearm permit or purchase records by law enforcement pursuant to statute or agency policy. If a State has retention periods that vary by type of data, the longest applicable period is listed.

<sup>c</sup>An agency apart from the one that denied the application.

<sup>d</sup>Fee covers single handgun or unlimited number of long guns; fee for each additional handgun is \$16.

<sup>e</sup>Fee for pistol permit; eligibility certificate is \$59.

<sup>f</sup>Denying agency hears purchase appeals; Board of Firearm Permit Examiners hears permit appeals.

<sup>g</sup>Fee for firearms purchaser identification card; permit to purchase a handgun is \$51.

<sup>h</sup>Denying agency hears purchase appeals; court hears permit appeals.

<sup>i</sup>Some issuing authorities may charge additional fees.

<sup>j</sup>An additional \$3 may be charged for sales tax on certain firearms.

<sup>k</sup>Fee for a check on a Virginia resident; a check on a nonresident costs \$5.

**Table 9. Prohibited and restricted firearms, December 31, 2005**

Jurisdiction	Assault weapon	Machine gun	Short-barrel rifle	Short-barrel shotgun	Unsafe handgun	Other types of firearms
Federal	--	■	■	■	--	Firearm undetectable by airport security
State totals	9	39	33	40	7	
Alabama	--	--	■	■	--	--
Alaska	--	■	■	■	--	--
Arizona	--	■	■	■	--	--
Arkansas	--	■	■	■	--	Silent discharge firearm
California	■	■	■	■	■	Unrecognizable, cane, wallet, and zip guns, etc.
Colorado	--	■	■	■	--	--
Connecticut	■	■	--	■	--	--
Delaware	--	■	--	■	--	--
Florida	--	■	■	■	--	--
Georgia	--	■	■	■	--	--
Hawaii	■	■	■	■	■	--
Idaho	--	--	--	--	--	--
Illinois	--	■	■	■	■	Firearm shaped like a wireless telephone
Indiana	--	■	--	■	--	--
Iowa	--	■	■	■	--	Silenced firearm
Kansas	--	■	■	■	--	--
Kentucky	--	--	--	--	--	--
Louisiana	--	■	■	■	--	--
Maine	--	■	--	--	--	--
Maryland	■	■	■	■	■	--
Massachusetts	■	■	■	■	■	--
Michigan	--	■	■	■	--	--
Minnesota	--	■	--	■	■	--
Mississippi	--	--	--	--	--	--
Missouri	--	■	■	■	--	--
Montana	--	--	■	■	--	--
Nebraska	--	■	■	■	--	--
Nevada	--	■	■	■	--	--
New Hampshire	--	--	--	--	--	--
New Jersey	■	■	--	■	--	--
New Mexico	--	--	--	--	--	--
New York	■	■	■	■	--	Disguised gun
North Carolina	--	■	■	■	--	Barrel with bore over 1/2 inch in diameter
North Dakota	--	■	■	■	--	--
Ohio	--	■	■	■	--	Zip gun
Oklahoma	--	--	■	■	--	--
Oregon	--	■	■	■	--	--
Pennsylvania	--	■	--	■	--	Silent discharge firearm
Rhode Island	--	■	■	■	--	--
South Carolina	■	■	■	■	■	--
South Dakota	--	■	--	■	--	--
Tennessee	--	■	■	■	--	--
Texas	--	■	■	■	--	Zip gun
Utah	--	--	--	--	--	--
Vermont	--	--	--	--	--	Zip gun
Virginia	■	■	■	■	--	Plastic firearm
Washington	--	■	■	■	--	--
West Virginia	--	■	--	--	--	--
Wisconsin	--	■	■	■	--	--
Wyoming	--	--	--	--	--	--

Note: See Glossary for definitions of firearm types. The table does not include firearm accessories.

--Not available.

■ Possession is prohibited or allowed only under limited exceptions, or there is a registration requirement.

**Table 10. National Instant Criminal Background Check System (NICS): Checking agencies, December 31, 2005**

State	FBI or State point of contact for firearm transfers <sup>a</sup>						Exempt permit <sup>b</sup>	Name of exempt permit
	Handguns		Long guns		Pawn Redemptions			
	FBI	POC	FBI	POC	FBI	POC		
Total	29	21	37	13	38	13	18	--
Alabama	■	--	■	--	■ <sup>c</sup>	--	--	--
Alaska	■	--	■	--	■	--	■	Concealed handgun
Arizona	■	--	■	--	■	--	■	Concealed weapon
Arkansas	■	--	■	--	■	--	■	Concealed handgun
California	--	■	--	■	--	■	■	Entertainment firearms
Colorado	--	■	--	■	--	■	--	--
Connecticut	--	■	--	■	--	■	--	--
Delaware	■	--	■	--	■	--	--	--
Florida	--	■	--	■	■ <sup>d</sup>	■ <sup>d</sup>	--	--
Georgia	■	--	■	--	■	--	--	--
Hawaii	--	■	--	■	--	■	■	Permits to acquire
Idaho	■	--	■	--	■	--	■	Concealed weapon
Illinois	--	■	--	■	--	■	--	--
Indiana	■	--	■	--	■ <sup>c</sup>	--	--	--
Iowa	--	■	■	--	■	--	■	Permits to acquire or carry
Kansas	■	--	■	--	■	--	--	--
Kentucky	■	--	■	--	■	--	--	--
Louisiana	■	--	■	--	■	--	--	--
Maine	■	--	■	--	■	--	--	--
Maryland	--	■	■	--	■	--	--	--
Massachusetts	■	--	■	--	■ <sup>c</sup>	--	--	--
Michigan	--	■	■	--	■ <sup>c</sup>	--	■	License to purchase
Minnesota	■	--	■	--	■	--	--	--
Mississippi	■	--	■	--	■	--	■	Concealed handgun
Missouri	■	--	■	--	■	--	--	--
Montana	■	--	■	--	■	--	■	Concealed weapon
Nebraska	--	■	■	--	■	--	■	Transfer certificate
Nevada	--	■	--	■	--	■	--	--
New Hampshire	--	■	■	--	■ <sup>e</sup>	■ <sup>e</sup>	--	--
New Jersey	--	■	--	■	--	■ <sup>c</sup>	--	--
New Mexico	■	--	■	--	■	--	--	--
New York	■	--	■	--	■	--	■	Handgun license
North Carolina	--	■	■	--	■	--	■	Permits to purchase or carry
North Dakota	■	--	■	--	■	--	■	Concealed weapon
Ohio	■	--	■	--	■	--	--	--
Oklahoma	■	--	■	--	■	--	--	--
Oregon	--	■	--	■	--	■	--	--
Pennsylvania	--	■	--	■	--	■ <sup>c</sup>	--	--
Rhode Island	■	--	■	--	■	--	--	--
South Carolina	■	--	■	--	■	--	■	Concealed handgun
South Dakota	■	--	■	--	■	--	--	--
Tennessee	--	■	--	■	--	■	--	--
Texas	■	--	■	--	■	--	■	Concealed handgun
Utah	--	■	--	■	--	■	■	Concealed firearm
Vermont	■	--	■	--	■	--	--	--
Virginia	--	■	--	■	--	■	--	--
Washington	--	■	■	--	■	--	--	--
West Virginia	■	--	■	--	■	--	--	--
Wisconsin	--	■	■	--	■	--	--	--
Wyoming	■	--	■	--	■	--	■	Concealed weapon

--Not applicable.

■Indicates the responsible checking agency by type of firearm transaction.

<sup>a</sup>Includes checks on applicants for a purchase or a permit required for a purchase.

<sup>b</sup>State or local agency issues ATF-qualified permit that exempts holder from NICS sale check.

<sup>c</sup>State forbids pawning a handgun (all firearms in New Jersey); any redemption checks are for long guns.

<sup>d</sup>If less than 90 days after pawn, broker may call FBI or State; more than 90 days, broker must call State.

<sup>e</sup>FBI checks long gun redemptions; POC checks handgun redemptions.

**Table 11. Notification procedures of Federal and State agencies regarding denied persons subject to arrest, December 31, 2005**

Jurisdiction	Notice of outstanding warrant		Notice of false application or illegal attempt to buy		
	Agency with jurisdiction <sup>a</sup>	Special State unit <sup>b</sup>	Agency with jurisdiction <sup>a</sup>	Special State unit <sup>b</sup>	ATF
Federal (FBI)	■	--	--	--	■
State totals	15	4	9	7	11
California	■	--	■	--	--
Colorado	■	--	■	--	■
Connecticut	■	--	--	■	--
Delaware	■	--	■	--	--
Florida	■	--	■	■	■
Illinois	■	--	--	■	■
Indiana	■	--	--	--	■
Maryland	--	■	--	■	--
Nevada	■	--	--	--	■
New Hampshire	■	--	■	--	■
New Jersey	■	■	--	■	--
Oregon	■	--	■	--	--
Pennsylvania	■	--	■	--	■
Tennessee	■	--	--	--	■
Utah	■	--	■	--	■
Virginia	--	■	--	■	■
Wisconsin	■	■	■	■	■

Note: States listed have one statewide agency that checks purchase or permit applicants.

-- Not applicable or information not available.

■ Indicates agency responsible for providing notice of outstanding warrants or of false application or illegal attempt to buy.

<sup>a</sup>May include Federal, State, or local agencies that issued a warrant or have jurisdiction over the site of the transaction or the location of the denied person's residence.

<sup>b</sup>Includes units within the same agency as the checking unit.

**Table 12. ATF investigation of NICS denials by FBI, 2005**

	Count	Percent
FBI denials referred to ATF Brady Operations	67,713	100%
Brady Operations referrals to ATF field divisions*		
Delayed denials	3,215	4.7%
Standard referrals	6,360	9.4
Total referrals to field	9,575	14.1
Not referred	58,138	85.9

\*A denial is referred if it is likely to merit prosecution under ATF and U.S. Attorney criteria.

Source: Bureau of Alcohol, Tobacco, Firearms and Explosives, Brady Operations Branch.

**Table 13. Data accessed for firearm background checks: domestic violence, December 31, 2005**

Jurisdiction	Restraining (protective) orders		Domestic violence misdemeanor convictions	
	Statewide database	Entered into NCIC file	In criminal history (CH) records	Method used to distinguish from other misdemeanors in CH <sup>a</sup>
Federal	--	■	■	Flagged records (from States)
State totals	43	46	44	
Alabama	■	■	■	Flagged records
Alaska	■	■	■	Flagged records
Arizona	■	■	■	Flagged records
Arkansas	■	■	■	Flagged records
California	■	■	■	Flagged records
Colorado	■	■	■	Flagged records
Connecticut	■	■	■	Flagged records
Delaware	■	■	■	Flagged records
Florida	■	■	■	
Georgia	■	■	■	Flagged records
Hawaii	■	--	■	Flagged records
Idaho	--	■	■	
Illinois	■	■	■	Flagged records
Indiana	■	■	--	
Iowa	■	■	■	Flagged records
Kansas	■	■	■	Statute citations
Kentucky	■	■	■	
Louisiana	■	■	■	Modifier denoting DV
Maine	■	■	--	
Maryland	■	■	■	Flagged records
Massachusetts	■	■	■	Included in crimes of violence <sup>b</sup>
Michigan	■	■	■	Flagged records
Minnesota	■	■	■	Offense codes
Mississippi	--	■	--	
Missouri	■	■	■	Flagged records
Montana	--	■	■	Flagged records
Nebraska	■	■	■	Flagged records
Nevada	■	--	■	Flagged records
New Hampshire	■	■	■	Flagged records
New Jersey	■	--	■	Flagged records
New Mexico	■	■	■	Flagged records
New York	■	■	--	
North Carolina	--	■	■	Flagged records
North Dakota	■	■	--	
Ohio	--	■	--	
Oklahoma	--	■	■	Offense codes / flagged records
Oregon	■	■	■	Flagged records
Pennsylvania	■	■	■	Flagged records
Rhode Island	■	■	■	Flagged records
South Carolina	--	■	■	Flagged records
South Dakota	■	■	■	Flagged records
Tennessee	■	■	■	Flagged records
Texas	■	■	■	Flagged records
Utah	■	--	■	Flagged records
Vermont	■	■	■	Flagged records
Virginia	■	■	■	Flagged records
Washington	■	■	■	Flagged records
West Virginia	■	■	■	
Wisconsin	■	■	■	Flagged records
Wyoming	■	■	■	Flagged records

--No data are available for firearm background checks or availability is unknown.

■Data are accessed by checking agencies within the jurisdiction (may not be available to other checking agencies).

<sup>a</sup>Extent of flagging and ability to distinguish domestic crimes from other misdemeanors varies significantly by jurisdiction.

<sup>b</sup>Domestic misdemeanors are not flagged because all crimes of violence are disqualifying offenses.

**Table 14. Data accessed for firearm background checks: other prohibitions, December 31, 2005**

Jurisdiction	Criminal histories <sup>b</sup>	Wanted fugitives	Mental defective / committed <sup>a</sup>			Juvenile offenders	Other records <sup>d</sup>
			Agency database <sup>c</sup>	In criminal histories	Local or other source		
Federal	■	■	■	--	--	--	■
Alabama	■	■	■	■	--	--	■
Alaska	■	■	--	■	--	--	--
Arizona	■	■	■	--	--	--	■
Arkansas	■	■	--	--	--	--	■
California	■	■	■	■	--	■	■
Colorado	■	■	--	■	■	■	■
Connecticut	■	■	■	■	--	■	■
Delaware	■	■	■	--	--	■	■
Florida	■	■	--	■	--	■	■
Georgia	■	■	■	■	--	--	■
Hawaii	■	--	■	■	■	--	--
Idaho	■	■	--	--	--	--	■
Illinois	■	■	■	--	--	■	--
Indiana	■	■	--	--	--	■	■
Iowa	■	■	--	■	■	■	■
Kansas	■	--	--	--	--	■	■
Kentucky	■	■	--	--	--	--	--
Louisiana	■	■	■	--	--	--	■
Maine	■	■	■	■	--	■	■
Maryland	■	■	--	--	■	--	■
Massachusetts	■	■	■	--	--	■	■
Michigan	■	■	■	■	--	■	■
Minnesota	■	■	■	■	--	■	■
Mississippi	■	■	--	--	--	--	--
Missouri	■	■	■	■	--	--	■
Montana	■	■	--	■	--	--	■
Nebraska	■	■	■	--	--	--	■
Nevada	■	■	--	--	■	--	--
New Hampshire	■	■	--	■	--	--	■
New Jersey	■	■	■	■	■	■	■
New Mexico	■	--	--	--	--	■	--
New York	■	■	■	■	--	--	--
North Carolina	■	■	--	--	■	--	■
North Dakota	■	■	--	--	--	--	■
Ohio	■	■	■	--	--	--	■
Oklahoma	■	--	■	■	--	--	--
Oregon	■	■	■	--	--	■	■
Pennsylvania	■	■	■	--	--	--	■
Rhode Island	■	■	--	--	--	--	■
South Carolina	■	■	--	--	--	■	--
South Dakota	■	■	--	■	--	--	■
Tennessee	■	■	--	■	--	--	■
Texas	■	■	--	--	■	■	■
Utah	■	■	■	■	--	--	■
Vermont	■	■	--	■	--	--	■
Virginia	■	■	■	■	--	■	■
Washington	■	■	■	■	--	■	■
West Virginia	■	■	--	--	--	--	--
Wisconsin	■	■	■	--	--	■	■
Wyoming	■	■	--	--	--	--	--
State totals	50	46	23	24	8	21	38

■ Data are accessed by checking agencies within the jurisdiction (may not be available to other checking agencies).

--No data are available for firearm background checks or availability is unknown.

<sup>a</sup>May include involuntary commitment, not guilty by reason of insanity, incompetent to stand trial, or other data.

<sup>b</sup>Contain at least felony arrests and dispositions; may have data on misdemeanors and mental illness.

<sup>c</sup>Accessed by statewide checking agency or mental health department (FBI maintains Federal data).

<sup>d</sup>May include probation, parole, motor vehicle, and specialized files.

**Table 15. Revisions of sales regulations and other significant changes in firearm laws, July 1, 2004, to December 31, 2005**

Jurisdiction	Topic; summary of change in law; citation; effective date
Federal	<p><b>Prohibited firearms:</b> The prohibition on the manufacture, transfer, and possession of semiautomatic assault weapons and large capacity ammunition feeding devices expired. 18 U.S.C. 922(v); September 13, 2004.</p> <p><b>Permits:</b> New sections authorize a qualified law enforcement officer to carry a concealed firearm notwithstanding any State or local law. Certain types of restrictions on concealed firearms are not superseded. 18 U.S.C 926B, 926C, HR 218; July 22, 2004.</p>
Alaska	<p><b>Permits:</b> Pursuant to an ATF decision, Alaska will have two types of concealed handgun permits. A "NICS exempt" permit (includes a NICS check) may be used for a purchase without a new background check. Other permits are "not NICS exempt" (without a NICS check). October 19, 2005.</p>
Arizona	<p><b>Prohibited persons:</b> The definition of a prohibited firearm possessor was amended to include a person who is an illegal alien or a nonimmigrant alien, as defined in 18 U.S.C. 922(g)(5). AZ Rev Stat 13-3101, 2004 SB 1345; August 25, 2004.</p>
California	<p><b>Prohibited firearms:</b> An amendment expands current assault weapon provisions to include .50 BMG rifles. CA Penal Code 12280, 2004 AB 50; January 1, 2005.</p> <p><b>Permits:</b> A person who wants to acquire a .50 BMG rifle after January 1, 2005 or use a lawfully acquired .50 BMG rifle in a manner not specified by statute shall first obtain a permit from the California Department of Justice. CA Penal Code 12286, 2004 AB 50; January 1, 2005. An Entertainment Firearms Permit, valid for 1 year, may be issued to a person who is not prohibited from possessing or receiving firearms and uses a firearm solely as a prop in an entertainment production. CA Penal Code 12081, 2004 SB 231; January 1, 2005.</p> <p><b>Background checks:</b> A new section allows a person who owns a firearm that is in the custody of a court or law enforcement agency to apply to the California Department of Justice for a determination of eligibility to possess firearms. A firearm may not be released until the owner clears an eligibility check. CA Penal Code 12021.3, 2004 AB 2431; January 1, 2005.</p> <p><b>Registration:</b> A person who is in lawful possession of a .50 BMG rifle is required to register that rifle by April 30, 2006, unless it was previously registered as an assault weapon. CA Penal Code 12285, 2004 AB 50; January 1, 2005.</p>
Connecticut	<p><b>Prohibited persons:</b> Amendments made it illegal for a person who is prohibited from shipping, transporting, possessing, or receiving a firearm pursuant to 18 USC 922(G)(4) to possess a firearm, pistol, or revolver or obtain a pistol permit or an eligibility certificate. CT Gen Stat 53a-217, 53a-217c, 29-28, 29-36f, PA 05-283; October 1, 2005.</p> <p><b>State data:</b> The Department of Public Safety is now required to report data on any person prohibited from possessing a firearm to the NICS Denied Person File. CT Gen Stat 29-36f, PA 05-283; October 1, 2005.</p>
Georgia	<p><b>Permits:</b> Pursuant to an ATF decision, a holder of a Georgia concealed handgun permit is no longer allowed to purchase a firearm without a NICS check. October 19, 2005.</p> <p><b>Background checks:</b> The statute that required the Georgia Bureau of Investigation to conduct instant sales checks was amended to provide that all transfers or purchases of firearms conducted by a licensed importer, manufacturer, or dealer shall be subject to the NICS. GA Code 16-11-172, 2005 SB 175; July 1, 2005.</p> <p><b>State data:</b> The Georgia Crime Information Center shall be authorized to provide criminal history, wanted person, and involuntary hospitalization records to the NICS. GA Code 35-3-34, 2005 SB 175; July 1, 2005.</p>
Idaho	<p><b>Restoration of rights:</b> An amendment clarified that procedures for restoration of Idaho firearm rights apply to persons who have been convicted of a felony and achieved final discharge in another State or jurisdiction. ID Code 18-310, 2004 HB 564; July 1, 2004.</p>
Illinois	<p><b>Prohibited persons:</b> Amendments provide that interim or plenary orders of protection shall state that the respondent may be subject to federal criminal penalties for possessing, transporting, shipping, or receiving any firearm or ammunition under the Gun Control Act. 725 ILCS 5/112A-21, 750 ILCS 60/221, PA 93-944; January 1, 2005.</p> <p><b>Permits:</b> An amendment made it an offense to sell or transfer ownership of a firearm to a person who does not display a currently valid Firearm Owner's Identification Card. Penalties and a statute of limitations were established for the offense. 720 ILCS 5/24-3, PA 93-0906; August 11, 2004.</p> <p><b>Regulated sales:</b> A background check is now required on a person who receives a firearm at a gun show from a person who is not a federally licensed firearm dealer. 430 ILCS 65/3, PA 94-353; July 29, 2005.</p> <p><b>Background checks:</b> The Department of State Police is now authorized to conduct a background check on a person who receives a firearm at a gun show from a person who is not a federally licensed firearm dealer. 430 ILCS 65/3, PA 94-353; July 29, 2005.</p>

**Table 15. Revisions of sales regulations and other significant changes in firearm laws, July 1, 2004, to December 31, 2005 (continued)**

Jurisdiction	Topic; summary of change in law; citation; effective date
Indiana	<b>Prohibited persons:</b> Amendments provide that a handgun license may only be issued to a citizen or to a noncitizen who is allowed under federal law to carry a firearm in the United States. A person who is prohibited by court order from possessing a handgun or has been convicted of a crime of domestic violence (and no rights have been restored) may not obtain a handgun license. IN Code 35-47-1-7, 35-47-2-3, 2005 SB 32; July 1, 2005.
Kansas	<b>Prohibited firearms:</b> The prohibited weapons statute was amended to allow an exception for the transportation or sale of such weapons to a laboratory certified by the U.S. department of justice. KS Stat 21-4201, 2004 SB 431; July 1, 2004.
Louisiana	<b>Prohibited persons:</b> A new section makes it a crime to intentionally supply a felon with a firearm. LA Rev Stat 14:95.1.1, 2004 Act 385; August 15, 2004.
Maine	<b>Purchaser fees:</b> A new section imposes a tax on firearm and ammunition sales by licensed dealers for the purpose of funding courthouse security. 2.36 ME Rev Stat 1811-C; LD 1012, Chapter 113; May 13, 2005.
Maryland	<b>Prohibited persons:</b> An amendment provided penalties for failure to surrender firearms to law enforcement while subject to a protective order. MD Fam L art. 4-506, 4-509, 2004 Chapter 537; October 1, 2004.
Massachusetts	<b>Restoration of rights:</b> A new section set up a firearm licensing review board which may, under certain conditions, restore the right to possess a firearm to a person who committed an offense punishable by 2.5 years imprisonment or less. MA Gen L 140-130B, 2004 SB 2367; July 1, 2004. <b>Prohibited firearms:</b> Amendments kept the law that regulates assault weapons in effect after September 13, 2004. MA Gen L 140-121, 2004 SB 2367; September 14, 2004. <b>Permit:</b> The term of a firearm identification card and a license to carry was extended to 6 years. MA Gen L 140-129B, 140-131, 2004 SB 2367; September 14, 2004.
Michigan	<b>Background checks:</b> A license to purchase or carry a pistol shall not be issued unless the issuing agency has determined through the NICS that the applicant is not prohibited under federal law from possessing or transporting a firearm. If the applicant is not a U.S. citizen, the issuing agency must also verify through the ICE databases that the applicant is not an illegal alien or a nonimmigrant alien. MI Comp L 28.426, 2005 PA 242; November 22, 2005.
Minnesota	<b>Permits:</b> After the State's concealed weapon permit law was found unconstitutional, a new permit law was enacted and made retroactive to April 28, 2003. MN Stat 624.714; 2005 SF 2259; May 25, 2005.
Mississippi	<b>Prohibited persons:</b> An amendment to the concealed handgun statute provided that a license may not be issued if an applicant is disqualified to possess or own a weapon based on Federal law. MS Code 45-9-101, 2004 HB 989; July 1, 2004.
Missouri	<b>Permits:</b> An amendment allows county sheriffs to use their revolving funds to cover the costs of processing concealed carry permits. 50.535 RSMo, 2005 HB 365; July 12, 2005.
Nevada	<b>Prohibited firearms:</b> The statute that in most circumstances prohibits possession of a short-barreled rifle or a short-barreled shotgun was amended to allow possession of a short-barreled firearm that has been determined to be a collector's item, curio, or relic pursuant to Federal law. NRS 202.275, 2005 AB 88; October 1, 2005. <b>Permits:</b> Pursuant to an ATF decision, a holder of a Nevada concealed handgun permit is no longer allowed to purchase a firearm without a NICS check. October 19, 2005.
New York	<b>Regulated sales:</b> Amendments increased the criminal penalties for persons who illegally possess or sell multiple firearms. NY Penal Laws 265.02, 265.03, 265.04, 265.11, 265.12, 265.13, Chapter 764 of the Laws of 2005; December 21, 2005.
North Carolina	<b>Prohibited persons:</b> The statute that makes it unlawful for a person who has been convicted of a felony to purchase, own, possess, or have custody, care, or control of a handgun was amended to make it applicable to any firearm without exception. NC Gen Stat 14-415.1, SL 2004-186; December 1, 2004. <b>Permits:</b> An amendment allows a holder of a valid North Carolina concealed handgun permit to purchase a pistol without first obtaining a separate purchase permit. NC Gen Stat 14-402, SL 2004-183; August 10, 2004.
North Dakota	<b>Regulated sales:</b> The statute that regulated the purchase of a rifle or shotgun by a North Dakota resident in a contiguous State was repealed. ND Cent Code 62.1-02-12, 2005 Chapter 598; August 1, 2005.
Rhode Island	<b>Prohibited persons:</b> Amendments allow a district court or a family court to require a defendant, after a hearing and pursuant to the issuance of a domestic abuse protective order, to surrender possession of all firearms and refrain from purchasing or receiving firearms for the duration of the protective order. RI Gen L 8-8.1-3, 15-15-3, 2005 H5812 substitute A; July 1, 2005.

**Table 15. Revisions of sales regulations and other significant changes in firearm laws, July 1, 2004, to December 31, 2005 (continued)**

Jurisdiction	Topic; summary of change in law; citation; effective date
South Carolina	<b>Retention of records:</b> Amendments deleted the requirement that every pistol purchaser must complete a State application and the requirement that a licensed firearms dealer must maintain a firearm transaction record for every pistol sold. SC Code 23-31-140, 23-31-150; A169, R168, S654; June 7, 2005.
South Dakota	<b>Prohibited persons:</b> A new statute provides that no person who has been convicted of a domestic violence misdemeanor offense may possess or have control of a firearm for a period of 1 year from the date of the conviction. At the end of the 1 year disqualification period, any civil rights lost shall be restored. SD Codified L 22-14-15.2; 2005 SB 43, section 269; July 1, 2005. <b>Waiting period:</b> An amendment to the statute that mandated a 48 hour waiting period after the sale of every pistol makes the statute only applicable to a sale of a pistol by a federal firearms licensee. SD Codified L 23-7-9; 2005 HB 1189; July 1, 2005. <b>Retention of records:</b> An amendment to the statute that requires retention of pistol purchase records makes the statute only applicable to transactions by a federal firearms licensee. SD Codified L 23-7-10; 2005 HB 1189; July 1, 2005. <b>Registration:</b> A new law prohibits a state agency, a political subdivision, or any person from keeping a registry of firearms, firearm owners, or concealed pistol permit holders. The prohibition does not apply to certain types of records. SD Codified L 23-7-8.6, 23-7-8.7, 2005 HB 1209; July 1, 2005.
Tennessee	<b>Prohibited persons:</b> An amendment prohibits licensed firearms dealers from selling firearms to persons who have been convicted of the offense of stalking. TN Code 39-17-1316, 2005 Chapter 482, SB 1061; July 1, 2005.
Texas	<b>Prohibited persons:</b> Certain persons with deferred adjudications more than 10 years old are no longer disqualified from obtaining a concealed handgun license. TX Government Code 411.1711, HB 1831; September 1, 2005. <b>Permits:</b> Renewed concealed handgun licenses were given a 5-year duration and license requirements for nonresidents of Texas were amended. The process for recognizing licenses from another State was amended to require use of NCIC and III in a background check. TX Government Code 411.173, 411.183, HB 225; September 1, 2005.
Virginia	<b>Prohibited persons:</b> Firearm restrictions on noncitizens of the U.S. were amended to make it a felony for a person who is not a citizen and not lawfully present in the U.S. to knowingly and intentionally possess, transport, or carry any firearm. VA Code 18.2-308.2:01, 2004 HB 79; July 1, 2004. A person who is adjudicated delinquent for murder, kidnapping, armed robbery, or rape and who was 14 or older at the time of the offense is now subject to a lifetime ban on possession of a firearm. VA Code 18.2-308.2, 2005 HB 2722; July 1, 2005. <b>Regulated sales:</b> Statutes regulating sales of firearms to residents of contiguous States and purchase of firearms by Virginia residents in contiguous States were repealed. VA Code 59.1-148.1, 59.1-148.2, 2004 HB 1302; July 1, 2004. More than one handgun per month may now be purchased by a holder of a valid Virginia concealed weapon permit or if the sale is made from a private collection of curios or relics. VA Code 18.2-308.2.2, 2004 HB 404; July 1, 2004. An amendment exempts law enforcement officers from the provision that limits a person to one handgun purchase in a 30-day period. VA Code 18.2-308.2.2, 2005 HB 2060; July 1, 2005. <b>Background checks:</b> A record check on a buyer may now be initiated by any type of communication allowed by the State Police, not just a telephone call. VA Code 18.2-308.2.2; 2004 HB 375; July 1, 2004. <b>State data:</b> An amendment changes the process by which a gun show promoter provides law enforcement with a list of the show's vendors and exhibitors. VA Code 54.1-4201.1, 2005 HB 2683; July 1, 2005.
Washington	<b>Prohibited persons:</b> Amendments make a verdict of not guilty by reason of insanity the equivalent of a guilty verdict for purposes of making a person ineligible to possess a firearm. RCW 9.41.040, 2005 Chapter 453; July 24, 2005. <b>Restoration of rights:</b> Amendments provide that a person found not guilty by reason of insanity who is seeking restoration of firearm rights must meet the same eligibility requirements as would have applied had the person been found guilty of the crime. RCW 9.41.047, 2005 Chapter 453; July 24, 2005.
Wyoming	<b>Restoration of rights:</b> A new statute allows a person convicted of a misdemeanor to seek expungement of the conviction record solely for the purpose of restoration of federal firearm rights, provided that a year has passed since expiration of the sentence, the petitioner has not been previously convicted of a misdemeanor that caused loss of firearm rights, and the offense for which expungement is sought did not involve the use of a firearm. WY Stat 7-13-1501, 2004 SF 64; July 1, 2004.

**Appendix Table A. Federal and State firearm laws, December 31, 2005**

Jurisdiction	Title of laws	Relevant sections
Federal	Code	18-922 et seq; 26-5801 et seq.
Alabama	Code	13A-11-50 et seq.
Alaska	Statutes	11.61.190 et seq; 18.65.700 et seq; 18.66.100
Arizona	Revised Statutes	13-905 et seq; 13-3101 et seq.
Arkansas	Code	5-73-101 et seq; 5-73-201 et seq.
California	Penal Code	12000 et seq; Welf. & Inst. Code 8100 et seq.
Colorado	Revised Statutes	12-26.1-101; 18-12-101 et seq; 24-33.5-424
Connecticut	General Statutes	29-27 et seq; 53-202 et seq; 53a-211 et seq.
Delaware	Code	11-1441 et seq; 24-901 et seq.
Florida	Statutes	790.001 et seq.
Georgia	Official Code	16-11-101.1 et seq; 16-11-171; 16-11-172; 35-3-34
Hawaii	Revised Statutes	134-1 et seq.
Idaho	Code	18-310; 18-3302 et seq.
Illinois	Compiled Statutes	430:65/0.01 et seq; 720:5/24-1 et seq; 725:5/112A-14
Indiana	Code	34-26-2-12; 35-47-1-1 et seq.
Iowa	Code	702.7; 724.1 et seq.
Kansas	Statutes	21-4201 et seq.
Kentucky	Revised Statutes	237.060 et seq; 431.064; 527.010 et seq.
Louisiana	Revised Statutes	14:35.3, 91, 95 et seq; 40:1379.3, 1751 et seq.
Maine	Revised Statutes	15.393; 17A.554A et seq; 17A.1051; 25.2001 et seq
Maryland	Code	Criminal Law Title 4; Public Safety Title 5
Massachusetts	General Laws	140-121 et seq; 269-10
Michigan	Compiled Laws	3.111 et seq; 28.421 et seq; 750.222 et seq.
Minnesota	Statutes	609.165; 609.66 et seq; 624.71 et seq.
Mississippi	Code	45-9-101; 97-37-1 et seq.
Missouri	Revised Statutes	407.500, 505; 571.010 et seq.
Montana	Code	45-8-301 et seq; 46-18-801
Nebraska	Revised Statutes	28-1201 et seq; 69-2401 et seq.
Nevada	Revised Statutes	176A.860; 202.253 et seq; 213.090
New Hampshire	Revised Statutes	Chapters 159 and 159-D
New Jersey	Statutes	2C:39-1 et seq; 2C:58-1 et seq.
New Mexico	Statutes	30-7-1 et seq.
New York	Penal Law	Articles 265 & 400; Gen. Bus. Law art. 39-DD
North Carolina	General Statutes	14-269.7 et seq; 14-402 et seq.
North Dakota	Century Code	62.1-01 et seq.
Ohio	Revised Code	2923.11 et seq.
Oklahoma	Statutes	21-1271.1 et seq.
Oregon	Revised Statutes	166.170 et seq.
Pennsylvania	Consolidated Statutes	18-6101 et seq.
Rhode Island	General Laws	8-8.1-3; 11-47-1 et seq; 15-15-3
South Carolina	Code of Laws	16-23-10 et seq; 23-31-10 et seq.
South Dakota	Codified Laws	Chapters 22-14 and 23-7
Tennessee	Code	39-17-1301 et seq.
Texas	Penal Code	30.06; 42.12; 46.01 et seq; Gov. Code Ch. 411, sub. H
Utah	Code	53-5-702 et seq; 76-10-501 et seq.
Vermont	Statutes	13-4001 et seq.
Virginia	Code	18.2-279 et seq; 54.1-4201.1; 59.1-148.2
Washington	Revised Code	9.41.010 et seq.
West Virginia	Code	61-7-1 et seq.
Wisconsin	Statutes	175.30; 175.35; 941.20 et seq; 948.60
Wyoming	Statutes	6-8-101 et seq.

**Appendix Table B. Federal and State firearm laws by type of section, December 31, 2005**

Jurisdiction	Prohibited persons	Restoration of rights	Prohibited firearms	Regulated sales		Handgun-transfer limits <sup>a</sup>	Permits and licenses	
				Licensed dealers	Private/gun show		Purchase	Carry
Federal	18:922(g),(n)	18:925(c)	18:922(o)	18:922(t)	--	--	--	--
Alabama	13A-11-76	15-22-36	13A-11-63	13A-11-78	--	13A-11-80	--	13A-11-75
Alaska	11-61-200	11-61-200	11-61-200	--	--	--	--	18-65-700
Arizona	13-3101	13-905	13-3102	--	--	--	--	13-3112
Arkansas	5-73-103	5-73-103	5-73-104	--	--	--	--	5-73-309
California <sup>b</sup>	12021	12021	12280	12070	12071.1	12072	--	12050
Colorado	24-33.5-424	18-12-108	18-12-102	24-33.5-424	12-26.1-101	--	--	18-12-201
Connecticut	53a-217	29-32b	53-202b, c	29-36l	29-36l	--	29-28, 36f	29-28
Delaware	11-1448	11-1448	11-1444	11-1448A	24-904A	--	--	11-1441
Florida	790.23	790.23	790.221	790.065	--	--	--	790.06
Georgia	16-11-131	16-11-131	16-11-122	16-11-172	--	--	--	16-11-129
Hawaii	134-7	--	134-4, 8, 15	134-2	134-2	--	134-2	134-9
Idaho	18-3316	18-3316	--	--	--	--	--	18-3302
Illinois	430:65/8	430:65/10	720:5/24-1	430:65/3	430:65/3	--	430:65/2	--
Indiana	35-47-2-7	35-47-2-20	35-47-5-4.1	35-47-2-8	35-47-2-8	35-47-4-2	--	35-47-2-3
Iowa	724.15, 26	724.27	724.1, 2, 3	724.16	724.16	--	724.15	724.11
Kansas	21-4204	21-4204	21-4201	--	--	--	--	--
Kentucky	527.04	527.040	--	--	--	--	--	237.110
Louisiana	14:95.1	14:95.1	40:1752	--	--	--	--	40:1379.3
Maine	15:393	15.393	17A-1051	--	--	--	--	25:2003
Maryland	PS 5-133	--	CL 4-303	PS 5-120	PS 5-124	PS 5-128	--	PS 5-301
Massachusetts	140.129B	140.130B	269.10	140.122	140.129C	140.131B	140.131A	140.131
Michigan	28.422	28.424	750.224	28.422	28.422	750.229	28.422	28.425b
Minnesota	624.713	609.165	609.67	624.7132	--	--	624.7131	624:714
Mississippi	97-37-5	97-37-5	--	--	--	--	--	45-9-101
Missouri	571.090.1	Art IV s 7	571.020	571.080	571.080	--	571.080	571.101
Montana	45-8-313	46-18-801	45-8-340	--	--	--	--	45-8-321
Nebraska	28-1206	83-1,130	28-1203	69-2403	69-2403	--	69-2403	--
Nevada	202.360	202.360	202.275	--	202.254	--	--	202.3657
New Hampshire	159:3	--	--	159:8	--	--	--	159:6
New Jersey	2C:58-3	2A:167-5	2C:39-3	2C:58-2	2C:58-3	2C:39-11	2C:58-3	2C:58-4
New Mexico	30-7-16	30-7-16	--	--	--	--	--	29-19-1
New York <sup>b</sup>	265.01	400.00	265.02	400.00	GBL 39dd	--	400.00	400.00
North Carolina	14-404	14-404	14-288.8	14-402	14-402	--	14-402	14-415.12
North Dakota	62.1-02-01	62.1-02-01	62.1-02-03	--	--	--	--	62.1-04-03
Ohio	2923.13	2923.14	2923.17	--	--	--	--	2923.125
Oklahoma	21:1289.12	21:1283	21-1289.18	--	--	--	--	21:1290.3
Oregon	166.470	166.270	166.272	166.412	166.438	--	--	166.291
Pennsylvania	18:6105	18:6105	18:908	18:6111	18:6111	18:6115	--	18:6109
Rhode Island	11-47-5	13-10-2	11-47-8	11-47-35	11-47-35	--	--	11-47-11
South Carolina	16-23-30	24-21-990	16-23-220	23-31-130	--	--	--	23-31-215
South Dakota	22-14-15	22-14-15	22-14-6	--	--	--	--	23-7-7
Tennessee	39-17-1307	39-17-1316	39-17-1302	39-17-1316	--	--	--	39-17-1351
Texas <sup>b</sup>	46.06	46.04	46.05	--	--	--	--	Gov411.172
Utah	76-10-503	77-18-11	--	76-10-526	--	--	--	53-5-704
Vermont	13:4007	--	13-4013	--	--	--	--	--
Virginia	18.2-308.2	18.2-308.2	18.2-300	18.2-308.2:2	54.1-4201.1	18.2-308.2:2	--	18.2-308
Washington	9.41.040	9.41.047	9.41.190	9.41.090	--	--	--	9.41.070
West Virginia	61-7-7	61-7-7	61-7-9	--	--	--	--	61-7-4
Wisconsin	941.29	941.29(5)	941.26	175.35(2)	--	--	--	--
Wyoming	6-8-102	6-8-102	--	--	--	--	--	6-8-104

Note: See *Jurisdictional Summaries* for the scope of topics. If a jurisdiction has more than one statute on a topic, the most applicable or first in a series is cited.

<sup>a</sup>Includes one handgun purchase per month limits and restrictions on pawning a handgun.

<sup>b</sup>References are to the State's penal code unless otherwise indicated.

**Appendix Table C. Federal and State firearm laws by type of transaction, December 31, 2005**

Jurisdiction	Background check		Waiting period	Mental health records <sup>a</sup>	Transaction records	Firearm registration	False application	Appeals of denials
	Handguns	Long Guns						
Federal	18:922(t)	18:922(t)	--	--	18:922(t)	26:5841	18:922(a)(6)	18:922(t)
Alabama	--	--	--	Act 641	13A-11-79	--	13A-11-81	--
Alaska	--	--	--	--	--	--	--	--
Arizona	--	--	--	36-540(n)	--	--	--	--
Arkansas	--	--	--	--	--	--	--	--
California <sup>b</sup>	12076	12076	12071	8105 WIC	11106	12285	12076	--
Colorado	24-33.5-424	24-33.5-424	--	13-5-142	24-33.5-424	--	24-33.5-424	24-33.5-424
Connecticut	29-36l	29-36l	29-37a	29-38b	29-33, 37a	53-202d	29-34	29-32b
Delaware	11-1448A	11-1448A	--	11-1448A	11-1448A	--	11-1448A	11-1448A
Florida	790.065	790.065	790.0655	--	790.065	--	790.065	790.065
Georgia	16-11-172	16-11-172	--	35-3-34	--	--	--	--
Hawaii	134-2	134-2	134-2	134-3.5	134-2	134-3	--	--
Idaho	--	--	--	--	--	--	--	18-3302
Illinois	430:65/3.1	430:65/3.1	720.5/24-3	430:65/3.1	--	--	720.5/24-3.5	430:65/10
Indiana	35-47-2.5-3	--	--	--	35-47-2.5-8	--	35-47-2.5-12	35-47-2.5-9
Iowa	724.17	--	724.20	--	--	--	724.21	--
Kansas	--	--	--	--	--	--	--	--
Kentucky	--	--	--	--	--	--	--	--
Louisiana	--	--	--	--	--	40:1783	--	--
Maine	--	--	--	--	--	--	--	--
Maryland	PS 5-121	--	PS 5-123	--	PS 5-123	CL 4-403	PS 5-139	PS 5-126
Massachusetts	140.131	140.129B	--	140.129B	--	140.129C	140.129B	140.129B
Michigan	28.422	--	--	28.422	28.422	28.422	750.232a	28.422b
Minnesota	624.7132	--	624.7132	245.041	--	609.67	624.7132	624.7132
Mississippi	--	--	--	--	--	--	--	45-9-101
Missouri	571.090.3	--	--	--	571.090.5	--	571.090.6	571.090.8
Montana	--	--	--	--	--	--	--	45-8-324
Nebraska	69-2405	--	--	69-2409.01	--	--	69-2408	69-2406
Nevada	202.254	202.254	--	--	--	--	--	202.3663
New Hampshire	159-D:1	--	--	--	159-D:2	--	159:11	--
New Jersey	2C:58-3	2C:58-3	2C:58-2	2C:58-3	--	2C:58-2, 12	2C:39-10	2C:58-3
New Mexico	--	--	--	--	--	--	--	--
New York <sup>b</sup>	400.00	GBL 39dd	--	400.00	--	400.00	--	--
North Carolina	14-404	--	--	--	14-405	--	--	14-404
North Dakota	--	--	--	--	--	--	62.01-03-04	62.1-04-03
Ohio	--	--	--	5122.311	--	--	--	--
Oklahoma	--	--	--	--	--	--	--	--
Oregon	166.412	166.434	--	166.412	166.412	--	166.416	--
Pennsylvania	18:6111	18:6111	--	18:6111.1	18:6111	--	18:6111	18:6111.1
Rhode Island	11-47-35	11-47-35.2	11-47-35	--	11-47-35	--	11-47-23	--
South Carolina	--	--	--	--	--	23-31-330	23-31-160	23-31-215
South Dakota	--	--	23-7-9	--	23-7-10	--	23-7-12	--
Tennessee	39-17-1316	39-17-1316	--	--	39-17-1316	--	--	39-17-1316
Texas <sup>b</sup>	--	--	--	--	--	--	--	Gov411.180
Utah	76-10-526	76-10-526	--	53-10-208.1	76-10-526	--	76-10-527	76-10-526
Vermont	--	--	--	--	--	--	--	--
Virginia	18.2-308.2:2	18.2-308.2:2	--	37.1-67.3	18.2-308.2:2	18.2-295	18.2-308.2:2	18.2-308.2:2
Washington	9.41.090	--	--	9.41.097	9.41.090	--	9.41.090	9.41.0975
West Virginia	--	--	--	--	--	--	--	--
Wisconsin	175.35(2g)	--	175.35(2d)	51.20	175.35(2k)	--	175.35(2e)	175.35(2L)
Wyoming	--	--	--	--	--	--	--	6-8-104

Note: See *Jurisdictional Summaries* for the scope of topics. If a jurisdiction has more than one statute on a topic, the most applicable or first in a series is cited.

<sup>a</sup>Laws that allow access to records of mentally ill persons during a firearm background check.

<sup>b</sup>References are to the State's penal code unless otherwise indicated.

**Appendix Table D. Agencies conducting firearm background checks, December 31, 2005**

Jurisdiction	Names or description of checking agencies	
	Purchase check or permit	Exempt carry permit <sup>a</sup>
Federal	Federal Bureau of Investigation	--
Alabama	--	--
Alaska	--	Department of Public Safety
Arizona	--	Department of Public Safety
Arkansas	--	State Police
California	Department of Justice Firearms Division	--
Colorado	Bureau of Investigation Insta-Check Unit	--
Connecticut	State Police Special Licensing & Firearms	--
Delaware	State Police Bureau of Identification	Three county superior courts
Florida	Department of Law Enforcement	--
Georgia	--	--
Hawaii	Four police departments	--
Idaho	--	44 county sheriffs
Illinois	State Police FOID and FTIP units	--
Indiana	State Police Firearms Division	State Police Firearms Division
Iowa	Dept. of Public Safety / 99 county sheriffs	Dept. of Public Safety / 99 county sheriffs
Kansas	--	--
Kentucky	--	--
Louisiana	--	--
Maine	--	--
Maryland	State Police Firearms Enforcement Division	--
Massachusetts	351 police departments	351 police departments
Michigan	595 sheriffs and police departments	--
Minnesota	568 sheriffs and police departments	87 county sheriffs
Mississippi	--	Department of Public Safety
Missouri	115 sheriffs and police departments	--
Montana	--	56 county sheriffs
Nebraska	95 sheriffs and police departments	--
Nevada	Highway Patrol	--
New Hampshire	Department of Safety	--
New Jersey	State Police / 505 local police departments	--
New Mexico	--	--
New York	58 county sheriffs; some police departments	-- <sup>b</sup>
North Carolina	100 county sheriffs	100 county sheriffs
North Dakota	--	Bureau of Criminal Investigation
Ohio	--	--
Oklahoma	--	--
Oregon	State Police Firearms Unit	--
Pennsylvania	State Police Firearms Division	--
Rhode Island	39 police departments	--
South Carolina	--	Law Enforcement Division
South Dakota	--	--
Tennessee	Bureau of Investigation Instant Check	--
Texas	--	Department of Public Safety
Utah	Bureau of Criminal Identification	Bureau of Criminal Identification
Vermont	--	--
Virginia	State Police Firearm Transaction Program	--
Washington	291 sheriffs and police departments	--
West Virginia	--	--
Wisconsin	Department of Justice Handgun Hotline	--
Wyoming	--	Wyoming Attorney General

<sup>a</sup>Agencies listed issue carry permits that may be used to waive a purchase check.

<sup>b</sup>License required for purchase may also allow carrying.

**Appendix Table E. State agency Internet sites: firearm information pages and checking agency home page**

Agency	Site address
Alabama Attorney General	<a href="http://www.ago.state.al.us/issue/Alabama_Weapon_Law.pdf">http://www.ago.state.al.us/issue/Alabama_Weapon_Law.pdf</a>
Alaska Department of Public Safety	<a href="http://www.dps.state.ak.us/PermitsLicensing/index.asp">http://www.dps.state.ak.us/PermitsLicensing/index.asp</a>
Arizona Department of Public Safety	<a href="http://www.azdps.gov/ccw/default.asp">http://www.azdps.gov/ccw/default.asp</a>
Arkansas State Police	<a href="http://www.asp.state.ar.us/divisions/rs/rs_chl.html">http://www.asp.state.ar.us/divisions/rs/rs_chl.html</a>
California Department of Justice Firearms Division	<a href="http://caag.state.ca.us/firearms/">http://caag.state.ca.us/firearms/</a>
Colorado Bureau of Investigation Insta-Check Unit	<a href="http://cbi.state.co.us/ic/index.asp">http://cbi.state.co.us/ic/index.asp</a>
Connecticut State Police Special Licensing and Firearms	<a href="http://www.ct.gov/dps/site/default.asp">http://www.ct.gov/dps/site/default.asp</a>
Delaware State Police Bureau of Identification	<a href="http://www.state.de.us/dsp/sbi.htm#Firearms">http://www.state.de.us/dsp/sbi.htm#Firearms</a>
Florida Department of Law Enforcement	<a href="http://www.fdle.state.fl.us/publications/faq/firearm_faq.asp">http://www.fdle.state.fl.us/publications/faq/firearm_faq.asp</a>
Georgia Bureau of Investigation Crime Information Center	<a href="http://www.ganet.org/gbi/firearms/gunckar.html">http://www.ganet.org/gbi/firearms/gunckar.html</a>
Honolulu Police Department Firearms Unit	<a href="http://www.honolulu-pd.org/info/gunlaw.htm">http://www.honolulu-pd.org/info/gunlaw.htm</a>
Illinois State Police	<a href="http://www.isp.state.il.us/foid/firearms.cfm">http://www.isp.state.il.us/foid/firearms.cfm</a>
Indiana State Police	<a href="http://www.in.gov/isp/firearms/">http://www.in.gov/isp/firearms/</a>
Iowa Department of Public Safety Division of Administrative Services	<a href="http://www.state.ia.us/government/dps/asd/license.htm">http://www.state.ia.us/government/dps/asd/license.htm</a>
Kentucky State Police	<a href="http://www.kentuckystatepolice.org/conceal.htm">http://www.kentuckystatepolice.org/conceal.htm</a>
Louisiana State Police Concealed Handgun Section	<a href="http://www.lsp.org/handguns.html">http://www.lsp.org/handguns.html</a>
Maine State Police	<a href="http://www.maine.gov/dps/msp/licenses/weapons_permits.html">http://www.maine.gov/dps/msp/licenses/weapons_permits.html</a>
Maryland State Police Firearms Enforcement Section	<a href="http://www.mdarchives.state.md.us/msa/mdmanual/23dsp/html/23agen.html#firearms">http://www.mdarchives.state.md.us/msa/mdmanual/23dsp/html/23agen.html#firearms</a>
Massachusetts Firearms Record Bureau	<a href="http://www.mass.gov/?pageID=eopstopic&amp;L=3&amp;sid=Eeops&amp;L0=Home&amp;L1=Firearms+Registration+%26+Laws&amp;L2=Firearms+Support+Services">http://www.mass.gov/?pageID=eopstopic&amp;L=3&amp;sid=Eeops&amp;L0=Home&amp;L1=Firearms+Registration+%26+Laws&amp;L2=Firearms+Support+Services</a>
Michigan State Police	<a href="http://www.michigan.gov/msp/0,1607,7-123-1645_3500_4615---,00.html">http://www.michigan.gov/msp/0,1607,7-123-1645_3500_4615---,00.html</a>
Minnesota Bureau of Criminal Apprehension	<a href="http://www.dps.state.mn.us/bca/CJIS/Documents/CarryPermit/permittocarry.html">http://www.dps.state.mn.us/bca/CJIS/Documents/CarryPermit/permittocarry.html</a>
Mississippi Department of Public Safety	<a href="http://www.dps.state.ms.us/dps/dps.nsf/divpages/hp2firearm?OpenDocument">http://www.dps.state.ms.us/dps/dps.nsf/divpages/hp2firearm?OpenDocument</a>
Montana Department of Justice Legal Services	<a href="http://www.doj.state.mt.us/enforcement/concealedweapons.asp">http://www.doj.state.mt.us/enforcement/concealedweapons.asp</a>
Nevada Dept. of Public Safety Firearms Program	<a href="http://nvrepository.state.nv.us/pos.htm">http://nvrepository.state.nv.us/pos.htm</a>
New Hampshire State Police	<a href="http://www.state.nh.us/safety/nhsp/plu.html">http://www.state.nh.us/safety/nhsp/plu.html</a>
New Jersey State Police Bureau of Identification	<a href="http://www.njsp.org/about/id.html">http://www.njsp.org/about/id.html</a>
New Mexico Department of Public Safety	<a href="http://www.dps.nm.org/faq/concealed_weapon.htm">http://www.dps.nm.org/faq/concealed_weapon.htm</a>
New York State Police Pistol Permit Bureau	<a href="http://www.troopers.state.ny.us/Firearms/">http://www.troopers.state.ny.us/Firearms/</a>
North Carolina Department of Justice	<a href="http://www.jus.state.nc.us/NCJA/ncfirearmslaws.pdf">http://www.jus.state.nc.us/NCJA/ncfirearmslaws.pdf</a>
North Dakota Bureau of Criminal Investigation	<a href="http://www.ag.state.nd.us/BCI/BCI.htm">http://www.ag.state.nd.us/BCI/BCI.htm</a>
Ohio Attorney General	<a href="http://www.ag.state.oh.us/le/prevention/concealcarry/index.asp">http://www.ag.state.oh.us/le/prevention/concealcarry/index.asp</a>
Oklahoma State Bureau of Investigation	<a href="http://www.osbi.state.ok.us/PublicServices/SDA.html">http://www.osbi.state.ok.us/PublicServices/SDA.html</a>
Oregon State Police	<a href="http://egov.oregon.gov/OSP/ID/fics.shtml/">http://egov.oregon.gov/OSP/ID/fics.shtml/</a>
Pennsylvania State Police Firearms Division	<a href="http://www.psp2.state.pa.us/ri/">http://www.psp2.state.pa.us/ri/</a>
Rhode Island Bureau of Criminal Investigation	<a href="http://www.riag.ri.gov/criminal/unit.php?name=bci">http://www.riag.ri.gov/criminal/unit.php?name=bci</a>
South Carolina Law Enforcement Division	<a href="http://www.sled.state.sc.us/">http://www.sled.state.sc.us/</a>
Tennessee Bureau of Investigation Instant Check System	<a href="http://www.tbi.state.tn.us/divisions/isd_tics.htm">http://www.tbi.state.tn.us/divisions/isd_tics.htm</a>
Texas Department of Public Safety Concealed Handgun Licensing Section	<a href="http://www.txdps.state.tx.us/administration/crime_records/chl/chlsindex.htm">http://www.txdps.state.tx.us/administration/crime_records/chl/chlsindex.htm</a>
Utah Bureau of Criminal Identification	<a href="http://bci.utah.gov/Brady/BradyHome.html#BRADY">http://bci.utah.gov/Brady/BradyHome.html#BRADY</a>
Vermont Department of Public Safety	<a href="http://170.222.24.9/cjs/vtnics.html">http://170.222.24.9/cjs/vtnics.html</a>
Virginia State Police Firearm Transaction Center	<a href="http://www.vsp.state.va.us/cjis_ftc.htm">http://www.vsp.state.va.us/cjis_ftc.htm</a>
Washington State Department of Licensing	<a href="http://www.dol.wa.gov/ppu/firfront.htm">http://www.dol.wa.gov/ppu/firfront.htm</a>
West Virginia State Police Legal Division	<a href="http://www.wvstatepolice.com/legal/">http://www.wvstatepolice.com/legal/</a>
Wisconsin Department of Justice Handgun Hotline	<a href="http://www.doj.state.wi.us/dles/cib/handgunhotline.asp">http://www.doj.state.wi.us/dles/cib/handgunhotline.asp</a>
Wyoming Attorney General	<a href="http://attorneygeneral.state.wy.us/dci/CWP.html">http://attorneygeneral.state.wy.us/dci/CWP.html</a>

# VI

Survey of State Records Included  
in Presale Background Checks:  
Mental Health Records, Domestic  
Violence Misdemeanor Records,  
and Restraining Orders, 2003



# Bureau of Justice Statistics

August 2004, NCJ 206042

## Survey of State Records Included in Presale Background Checks: Mental Health Records, Domestic Violence Misdemeanor Records, and Restraining Orders, 2003

Peter Brien  
*Bureau of Justice Statistics*

### Overview

Federal law prohibits the transfer of a firearm to several categories of individuals, including those who have been committed to a mental institution, have been adjudicated as mentally ill, are the subject of a domestic violence restraining order, or have been convicted of a domestic violence misdemeanor (18 USC § 922(g)).

The Bureau of Justice Statistics (BJS) conducted a special survey of State repository directors to examine the quality and availability of State records for these categories of individuals. The Survey of State Records Included in Presale Firearm Background Checks: Mental Health Records, Domestic Violence Misdemeanor Records, and Restraining Orders, 2003 was conducted between October 2002 and February 2003 to supplement the information that BJS provides as part of its Firearm Inquiry Statistics (FIST) project.

Some of the highlights from the survey are summarized below.

### *Mental health records*

Fourteen States do not have the ability to access mental health records for purposes of a background check at the time of a firearms purchase.

Among States that are capable of checking records of mental commitments, 24 States and the District of Columbia utilize court records for such checks.

In most States, court records are the primary source for data on those found not guilty by reason of insanity or incompetent to stand trial.

Common reasons given by States for not accessing mental health records directly were; the lack of interface between the checking agency and the agency maintaining the database, mental health records that are incomplete or not automated, the inability to positively identify a person in mental health records, and State privacy laws that prohibit access.

### *Records for misdemeanor crimes of domestic violence*

Fourteen States and the District of Columbia do not have the ability to check records for misdemeanor convictions for domestic violence because such records are either incomplete or not fully automated.

An additional eight States indicated that flags are needed on the conviction transactions to identify the conviction as a domestic violence incident.

Nine States indicated that resource constraints inhibited the identification of such offenders, and seven States indicated that the Federal definition of relevant domestic violence convictions was problematic.

### *Protection orders*

Fifteen States indicated that their records of protection orders are either incomplete or not fully automated and eighteen States indicated that they do not forward all of their protection order information to the FBI for inclusion in the National Protection Order file because of incompleteness or lack of automation.

Twenty-seven States indicated that court record systems were the primary location for obtaining information on the imposition of protection orders.

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## Methodology

This survey is part of the ongoing BJS project, Firearm Inquiries Statistics (FIST), which is conducted by the Regional Justice Information Service (REJIS) of St. Louis, Missouri. BJS and REJIS jointly developed the survey instrument in September 2002, and REJIS mailed it to all 50 States and the District of Columbia in October 2002.

The 39 States that have a “checking agency” (an agency that conducts background checks for firearm sales, purchase permits, or exempt carry permits) received a survey with 13 questions, including questions about the checking agency. The 11 States that do not have a “checking agency” received a survey with nine questions on the status of their records. By February 2003 all 50 States and the District of Columbia had returned the survey to REJIS.

**Table 1. Whether State agencies that conduct background checks for firearm transfers have access to mental health records and procedures used, by State, 2003**

	State agency does not access mental health records	Procedures used to access mental health information			
		Database	Manual check	Phone or e-mail	Other
Alabama	X				
Alaska					
Arizona		X			
Arkansas	X				
California		X			
Colorado	X				
Connecticut		X			
Delaware		X			
District of Columbia					
Florida	X				
Georgia		X			
Hawaii		X			
Idaho	X				
Illinois		X			
Indiana	X				
Iowa <sup>a</sup>					X
Kansas					
Kentucky					
Louisiana					
Maine					
Maryland		X			
Massachusetts				X	
Michigan		X			
Minnesota		X	X		
Mississippi					
Missouri	X				
Montana	X				
Nebraska		X			
Nevada				X	
New Hampshire	X				
New Jersey		X			
New Mexico					
New York <sup>b</sup>		X			X
North Carolina			X		
North Dakota	X				
Ohio					
Oklahoma					
Oregon		X			
Pennsylvania		X			
Rhode Island	X				
South Carolina	X				
South Dakota					
Tennessee	X				
Texas			X		
Utah		X			
Vermont					
Virginia		X			
Washington		X	X	X	
West Virginia					
Wisconsin		X			
Wyoming	X				

<sup>a</sup> In Iowa there is no formal method to examine mental health information; however, some mental health information is contained in court records.

<sup>b</sup> In New York the database of individuals committed to a mental institution is checked prior to a pistol permit application and not a NICS check.

**Table 2. State agencies responsible for updating databases accessed during firearm checks with information that an individual was committed to a mental hospital, by State, 2003**

	Courts	Public mental health facilities or professionals	Private mental health facilities or professionals	No State agency	Other
Alabama		X	X		
Alaska	X				
Arizona	X				
Arkansas				X	
California	X	X	X		
Colorado	X				
Connecticut	X				
Delaware		X	X		
District of Columbia	X				
Florida				X	
Georgia	X				
Hawaii	X				
Idaho				X	
Illinois	X	X	X		
Indiana				X	
Iowa				X	
Kansas				X	
Kentucky				X	
Louisiana					
Maine					
Maryland				X	
Massachusetts	X				
Michigan	X				
Minnesota	X	X			
Mississippi					
Missouri	X	X			
Montana	X				
Nebraska		X	X		
Nevada	X				
New Hampshire				X	
New Jersey <sup>a</sup>	X				X
New Mexico <sup>b</sup>					X
New York				X	
North Carolina				X	
North Dakota				X	
Ohio				X	
Oklahoma <sup>c</sup>					X
Oregon <sup>d</sup>					X
Pennsylvania <sup>e</sup>	X				X
Rhode Island	X				
South Carolina	X				
South Dakota	X				
Tennessee				X	
Texas				X	
Utah	X				
Vermont				X	
Virginia	X				
Washington	X				
West Virginia				X	
Wisconsin	X				
Wyoming	X				

<sup>a</sup> The Department of Human Services provides this information.

<sup>b</sup> Courts and prosecutors provide this information.

<sup>c</sup> Prosecutors submit this information. Records from the State Department of Mental Health are checked as part of the application for a concealed handgun license.

<sup>d</sup> This information is provided by the mental health database maintained by the Department of Human Services.

<sup>e</sup> This information is provided by judges and county mental health officials.

**Table 3. State agencies responsible for updating databases accessed during firearm checks with information that an individual was adjudicated "not guilty by reason of insanity," by State, 2003**

	Courts	Prosecutors	No State agency	Other
Alabama	X			
Alaska	X			
Arizona	X			
Arkansas	X			
California	X			
Colorado	X			
Connecticut <sup>a</sup>				X
Delaware	X			
District of Columbia	X			
Florida	X			
Georgia	X			
Hawaii	X			
Idaho			X	
Illinois	X			
Indiana	X			
Iowa	X			
Kansas		X		
Kentucky <sup>b</sup>				X
Louisiana <sup>c</sup>				X
Maine	X			
Maryland			X	
Massachusetts	X			
Michigan	X			
Minnesota	X			
Mississippi				
Missouri	X			
Montana	X			
Nebraska	X			
Nevada	X			
New Hampshire			X	
New Jersey	X			
New Mexico	X	X		
New York			X	
North Carolina			X	
North Dakota			X	
Ohio	X			
Oklahoma		X		
Oregon	X			
Pennsylvania	X			
Rhode Island	X			
South Carolina	X			
South Dakota	X			
Tennessee			X	
Texas	X			
Utah	X			
Vermont	X			
Virginia	X			
Washington	X	X		
West Virginia	X			
Wisconsin	X			
Wyoming	X			

<sup>a</sup> The Psychiatric Security Review Board is responsible for submitting this information.

<sup>b</sup> Law enforcement officers are required to report dispositions on all persons charged.

<sup>c</sup> The Department of Corrections is responsible for submitting this information.

**Table 4. State agencies responsible for updating databases accessed during firearm checks with information that an individual was found incompetent to stand trial, by State, 2003**

	Courts	Prosecutors	No State agency	Other
Alabama			X	
Alaska	X			
Arizona	X			
Arkansas	X			
California	X			
Colorado	X			
Connecticut				
Delaware	X			
District of Columbia	X			
Florida	X			
Georgia	X			
Hawaii	X			
Idaho			X	
Illinois	X			
Indiana			X	
Iowa	X			
Kansas		X		
Kentucky <sup>a</sup>				X
Louisiana				
Maine	X			
Maryland			X	
Massachusetts	X			
Michigan	X			
Minnesota	X			
Mississippi				
Missouri	X			
Montana	X			
Nebraska	X			
Nevada	X			
New Hampshire			X	
New Jersey	X			
New Mexico	X	X		
New York			X	
North Carolina			X	
North Dakota			X	
Ohio	X			
Oklahoma		X		
Oregon				X
Pennsylvania	X			
Rhode Island	X			
South Carolina	X			
South Dakota			X	
Tennessee			X	
Texas	X			
Utah	X			
Vermont	X			
Virginia	X			
Washington	X	X		
West Virginia	X			
Wisconsin	X			
Wyoming	X			

<sup>a</sup> Law enforcement officers are responsible for submitting this information.

**Table 5. State agencies responsible for updating databases accessed during firearm checks with information that an individual was adjudicated as mentally ill, by State, 2003**

	Courts	No State agency	Other
Alabama	X		
Alaska	X		
Arizona	X		
Arkansas	X		
California <sup>a</sup>	X		X
Colorado	X		
Connecticut		X	
Delaware	X		
District of Columbia	X		
Florida		X	
Georgia	X		
Hawaii	X		
Idaho		X	
Illinois	X		
Indiana		X	
Iowa		X	
Kansas <sup>b</sup>			X
Kentucky <sup>c</sup>			X
Louisiana			
Maine	X		
Maryland	X		
Massachusetts	X		
Michigan	X		
Minnesota	X		
Mississippi			
Missouri	X		
Montana	X		
Nebraska	X		
Nevada	X		
New Hampshire		X	
New Jersey	X		
New Mexico <sup>d</sup>	X		X
New York <sup>e</sup>		X	X
North Carolina		X	
North Dakota		X	
Ohio		X	
Oklahoma <sup>f</sup>			X
Oregon			X
Pennsylvania	X		
Rhode Island	X		
South Carolina	X		
South Dakota	X		
Tennessee		X	
Texas		X	
Utah	X		
Vermont		X	
Virginia	X		
Washington <sup>g</sup>	X		X
West Virginia		X	
Wisconsin		X	
Wyoming	X		

<sup>a</sup> Public and private mental health facilities are responsible for submitting this information.  
<sup>b</sup> The prosecutors are responsible for submitting this information.  
<sup>c</sup> Law enforcement officers are responsible for submitting this information.  
<sup>d</sup> This information is part of the criminal history file.  
<sup>e</sup> Courts share this responsibility with prosecutors for criminal proceedings.  
<sup>f</sup> In New York, checks of individuals committed to a mental institution are conducted prior to a pistol permit application and not a NICS check.  
<sup>g</sup> For criminal cases only, prosecutors are responsible for submitting this information in the case disposition.  
<sup>h</sup> Prosecutors are responsible for submitting this information.

**Table 6. Reasons why State agencies that conduct background checks for firearm transfers do not access complete and accurate mental health information, by State, 2003**

	Condition of mental health records						
	Not fully automated	No interface between checking agency and records database	Are incomplete	Lack biometric identifiers	Limited agency resources	Limited time	Privacy laws
Alabama							
Alaska							X
Arizona	X						
Arkansas		X					
California				X			
Colorado		X			X	X	X
Connecticut							X
Delaware							
District of Columbia	X	X					
Florida	X	X		X	X	X	
Georgia							
Hawaii			X				X
Idaho	X	X		X			
Illinois			X				
Indiana							
Iowa	X	X	X	X			
Kansas							
Kentucky							
Louisiana							
Maine							
Maryland	X						X
Massachusetts	X				X		X
Michigan			X		X	X	
Minnesota	X	X		X	X	X	
Mississippi							
Missouri		X			X		X
Montana	X	X		X	X		
Nebraska		X		X		X	
Nevada		X			X	X	X
New Hampshire							X
New Jersey	X			X			
New Mexico							
New York							X
North Carolina	X	X	X	X	X	X	X
North Dakota	X	X		X	X		X
Ohio							
Oklahoma							
Oregon							
Pennsylvania	X	X	X	X			
Rhode Island							X
South Carolina		X		X	X		X
South Dakota							
Tennessee	X	X		X			X
Texas	X	X		X	X	X	X
Utah							X
Vermont							
Virginia							
Washington	X	X		X			
West Virginia							
Wisconsin		X		X			X
Wyoming							X

Table 7. Reasons why complete and accurate mental health information is not reported to the FBI, by State, 2003

	Condition of mental health records			Agency lacks resources	Privacy laws
	Not fully automated	Are incomplete	Lack biometric identifiers		
Alabama					X
Alaska					X
Arizona					
Arkansas	X				
California					X
Colorado					
Connecticut	X				X
Delaware			X		
District of Columbia	X		X		
Florida	X		X	X	
Georgia					X
Hawaii		X			X
Idaho	X	X	X	X	
Illinois	X	X			X
Indiana	X				
Iowa	X		X		
Kansas	X		X		
Kentucky	X		X		X
Louisiana					
Maine	X				X
Maryland	X				X
Massachusetts	X				X
Michigan		X			
Minnesota	X	X	X	X	X
Mississippi					
Missouri	X			X	X
Montana	X		X	X	
Nebraska	X		X	X	X
Nevada	X			X	X
New Hampshire					X
New Jersey					
New Mexico					
New York					X
North Carolina	X	X		X	X
North Dakota	X		X	X	X
Ohio	X	X			X
Oklahoma	X		X		X
Oregon					
Pennsylvania					X
Rhode Island					X
South Carolina	X				X
South Dakota	X	X	X		X
Tennessee	X				X
Texas	X		X	X	X
Utah	X			X	
Vermont	X			X	X
Virginia					
Washington	X		X		
West Virginia	X				X
Wisconsin	X		X		X
Wyoming					X

**Table 8. State sources of domestic violence misdemeanor information, by State, 2003**

	Court records	Criminal history records
Alabama		X
Alaska		X
Arizona	X	X
Arkansas		X
California	X	X
Colorado	X	X
Connecticut		X
Delaware	X	X
District of Columbia		X
Florida	X	X
Georgia		X
Hawaii	X	X
Idaho		X
Illinois	X	X
Indiana	X	
Iowa	X	X
Kansas		X
Kentucky	X	
Louisiana	X	
Maine		
Maryland		X
Massachusetts	X	
Michigan		X
Minnesota		X
Mississippi		
Missouri	X	X
Montana		X
Nebraska	X	X
Nevada	X	X
New Hampshire	X	X
New Jersey	X	X
New Mexico	X	X
New York	X	
North Carolina	X	X
North Dakota		
Ohio	X	
Oklahoma	X	X
Oregon	X	X
Pennsylvania	X	X
Rhode Island	X	X
South Carolina		X
South Dakota	X	X
Tennessee		X
Texas	X	X
Utah	X	X
Vermont	X	X
Virginia	X	X
Washington	X	X
West Virginia		X
Wisconsin	X	X
Wyoming		X

**Table 9. Reasons why checking agencies that conduct background checks for firearm transfers do not access complete and accurate domestic violence misdemeanor information, by State, 2003**

	Condition of domestic violence records					Federal definition is confusing
	Are incomplete	Are not fully automated	Lack flags	Too few resources	Limited time	
Alabama						
Alaska	X	X				
Arizona						
Arkansas			X			
California						
Colorado	X					
Connecticut				X		
Delaware			X			
District of Columbia		X				
Florida	X					
Georgia						
Hawaii						
Idaho			X			X
Illinois	X					
Indiana			X	X	X	
Iowa	X					
Kansas						
Kentucky						
Louisiana						
Maine						
Maryland						
Massachusetts						
Michigan			X	X	X	X
Minnesota	X		X		X	X
Mississippi						
Missouri	X		X	X		
Montana		X				X
Nebraska	X	X			X	X
Nevada	X				X	
New Hampshire						
New Jersey						
New Mexico						
New York			X			
North Carolina						
North Dakota			X			
Ohio						
Oklahoma						
Oregon						
Pennsylvania						
Rhode Island						
South Carolina						
South Dakota						
Tennessee	X		X			
Texas		X	X	X	X	X
Utah	X	X	X			
Vermont						
Virginia	X					X
Washington						
West Virginia						
Wisconsin						
Wyoming						

**Table 10. Reasons that complete and accurate domestic violence misdemeanor information is not reported to the FBI, by State, 2003**

	Condition of domestic violence misdemeanor records			Agency lacks resources	Federal definition is confusing
	Not fully automated	Are incomplete	Lack flags		
Alabama	X	X	X		
Alaska			X		
Arizona					
Arkansas					
California					
Colorado					
Connecticut	X				
Delaware			X		
District of Columbia					
Florida					
Georgia					
Hawaii					
Idaho			X		X
Illinois		X			
Indiana			X		
Iowa		X			
Kansas	X	X	X	X	
Kentucky			X		
Louisiana	X		X		
Maine	X				
Maryland					
Massachusetts		X	X		
Michigan		X	X		
Minnesota		X			
Mississippi					
Missouri		X	X	X	
Montana	X				
Nebraska	X	X		X	X
Nevada		X	X		
New Hampshire					
New Jersey					
New Mexico		X		X	
New York			X		
North Carolina					
North Dakota			X		
Ohio			X		
Oklahoma					
Oregon					
Pennsylvania					
Rhode Island					
South Carolina					
South Dakota			X		X
Tennessee		X	X		
Texas	X		X		
Utah		X	X		
Vermont					
Virginia		X			X
Washington					
West Virginia			X	X	
Wisconsin					
Wyoming					

**Table 11. Sources of restraining order information, by State, 2003**

	Court records	Criminal history records
Alabama	X	
Alaska		
Arizona	X	X
Arkansas		X
California		
Colorado	X	
Connecticut	X	X
Delaware	X	X
District of Columbia		X
Florida		
Georgia		
Hawaii	X	X
Idaho		
Illinois	X	
Indiana	X	
Iowa		
Kansas		
Kentucky	X	
Louisiana	X	
Maine	X	
Maryland	X	
Massachusetts	X	
Michigan		X
Minnesota		
Mississippi		
Missouri	X	
Montana		
Nebraska		
Nevada		X
New Hampshire	X	X
New Jersey	X	
New Mexico		
New York	X	
North Carolina		
North Dakota		
Ohio		
Oklahoma	X	
Oregon	X	X
Pennsylvania		
Rhode Island	X	X
South Carolina		
South Dakota	X	
Tennessee		
Texas	X	
Utah	X	
Vermont	X	
Virginia		
Washington	X	
West Virginia	X	
Wisconsin	X	
Wyoming		

**Table 12. Reasons why checking agencies that conduct background checks for firearm transfers do not access complete and accurate restraining order information, by State, 2003**

	Condition of restraining orders			
	Are not fully automated	Are incomplete	Too few resources	Limited time
Alabama				
Alaska				
Arizona				
Arkansas				
California				
Colorado		X		X
Connecticut		X		
Delaware				
District of Columbia				
Florida				
Georgia				
Hawaii	X			
Idaho				
Illinois		X		
Indiana				
Iowa				
Kansas				
Kentucky				
Louisiana				
Maine				
Maryland				
Massachusetts				
Michigan		X		
Minnesota				
Mississippi				
Missouri	X	X	X	
Montana				
Nebraska	X	X		
Nevada				
New Hampshire		X		
New Jersey				
New Mexico				
New York				
North Carolina				
North Dakota	X	X		
Ohio				
Oklahoma				
Oregon				
Pennsylvania				
Rhode Island	X	X	X	
South Carolina		X		
South Dakota				
Tennessee		X	X	X
Texas	X			
Utah		X		
Vermont				
Virginia				
Washington	X			
West Virginia				
Wisconsin				
Wyoming				

**Table 13. Reasons that complete and accurate restraining order information is not reported to the FBI, by State, 2003**

	Restraining orders are not fully automated	Restraining orders are incomplete
Alabama	X	
Alaska		
Arizona		
Arkansas		
California		
Colorado		X
Connecticut		
Delaware		
District of Columbia		
Florida		
Georgia		
Hawaii		
Idaho		
Illinois		X
Indiana		
Iowa		
Kansas		
Kentucky		
Louisiana		X
Maine	X	
Maryland		
Massachusetts		
Michigan		
Minnesota		
Mississippi		
Missouri	X	X
Montana		
Nebraska	X	X
Nevada		
New Hampshire		X
New Jersey		
New Mexico	X	
New York		
North Carolina		
North Dakota	X	X
Ohio	X	
Oklahoma	X	X
Oregon		
Pennsylvania		
Rhode Island	X	X
South Carolina		X
South Dakota		
Tennessee		X
Texas	X	X
Utah		X
Vermont		
Virginia		
Washington		
West Virginia	X	
Wisconsin		
Wyoming		

# VII

## Improving Criminal History Records for Background Checks, 2005



# Bureau of Justice Statistics Program Report

July 2006, NCJ 211485

## National Criminal History Improvement Program (NCHIP)

# Improving Criminal History Records for Background Checks, 2005

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Chief, BJS Criminal History  
Improvement Programs

### Introduction

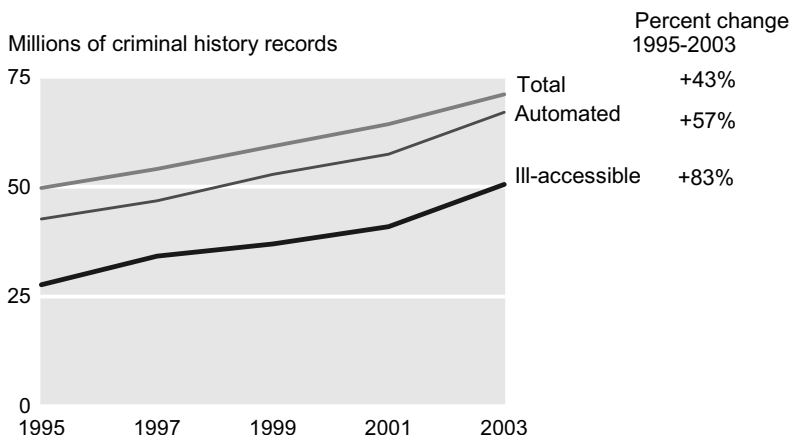
Criminal history records describe an arrest and all subsequent actions concerning each criminal event that are positively identifiable to an individual. Accurate, timely, and complete criminal history record information —

- enables States to immediately identify persons who are prohibited from firearm purchase or are ineligible to hold positions of responsibility involving children, the elderly, or the disabled
- enables criminal justice agencies to make decisions on pretrial release, career criminal charging, determinate sentencing, and correctional assignments
- is critical to assist law enforcement in criminal investigations and decision making
- is required for background checks for national security, employment, licensing, and related economic purposes, as required under recent legislation.

The Bureau of Justice Statistics' National Criminal History Improvement Program (NCHIP) provides grants and technical assistance to the States to improve the quality, timeliness, and immediate

## Highlights

Since 1995 criminal records accessible for background checks increased 83% and the growth rate in automated records was 57%



• At the end of 2003, States held approximately 71 million criminal records on individuals.

• About 9 out of 10 of these records were automated and 3 out of 4 automated records were accessible for conducting presale firearms and other background checks.

• As of December 2005, 48 States belonged to the Interstate Identification Index (III), meeting the FBI's rigorous standards for participation.

• The National Instant Criminal Background Check System (NICS) supports nearly 8 million checks annually at the presale stage of firearms purchases.

• Approximately 1.9% of all applications for firearm purchases were rejected, primarily for the presence of a prior felony conviction history.

• As of January 2006 —

- all 50 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands were contributing to the National Sex Offender Registry file which held 414,470 records.

- 45 States, the District of Columbia, and the U.S. Virgin Islands were submitting data to the National Protection Order File which held over 949,810 records.

accessibility of criminal history records and related information.

The goal of the NCHIP grant program is to improve the Nation's safety and security by enhancing the quality, completeness, and accessibility of criminal history record information and by insuring the nationwide implementation of criminal justice and noncriminal justice background check systems. Achieving this goal is contingent upon accomplishing four objectives —

1. providing direct financial and technical assistance to the States to improve their criminal records systems and other related systems to support background checks
2. ensuring the infrastructure is developed to connect each State's records systems to FBI records systems and, in turn, to connect each State's background check databases to one another
3. providing the training and technical assistance to States needed to insure that records systems are developed and managed to conform to FBI standards and the most appropriate technologies and that States adhere to the highest standards of practice with respect to privacy and confidentiality
4. assessing and measuring through systematic evaluation and standardized performance measurement and statistics, the extent of progress in implementing improvements in state-level and national records holdings and background check systems.

The NCHIP program serves as an umbrella for various records improvements activities and funding streams each of which has unique goals and objectives.

### Program history

Initiated in 1995 the NCHIP program has made awards to all the States, the District of Columbia, and 5 U.S. Territories totaling \$495 million through fiscal year 2005 (see appendix). NCHIP awards are based on need rather than population or other formula-based methodology. California (7.3%), New York (6.1%), and Texas (5.2%) have received awards totaling \$92 million or about 19% of total NCHIP funds awarded.

In FY 2005 BJS awarded approximately \$26 million in NCHIP funds to promote continued development of criminal records infrastructure. The FY 2005 appropriation from Congress included \$24.7 million to support continued assistance to the States and localities and an additional \$2.91 million to support the development of anti-stalking databases (files of protection and/or restraining order records).

### Authorizing legislation

For 2006 the appropriation for the NCHIP program was made pursuant to the Crime Identification Technology Act of 1998 and the procedures for applying for NCHIP grants reflect the provisions of that act. State matching funds are required for NCHIP applications. The NCHIP program implements the grant provisions for —

- the Crime Identification Technology Act of 1998 (CITA), Pub. L. No. 105-251, 112 Stat. 1871 (1998), codified at 42 U.S.C. Section 14601 et seq.
- the Brady Handgun Violence Prevention Act (Brady Act), Pub. L. No. 103-159, 107 Stat. 1536 (1993), codified as amended at 18 U.S.C. Section 921 et seq.
- the National Child Protection Act of 1993 (NCPA), Pub. L. No. 103-209, 107 Stat. 2490 (1993), codified as amended at 42 U.S.C. Sections 3759, 5101 note, 5119, 5119a, 5119b, 5119c
- those provisions of the Omnibus Crime Control and Safe Streets Act of 1968 (Omnibus Act), Pub. L. No.

The FY 2006 NCHIP Program Announcement, released in March 2006, provides for the continued development of the criminal records infrastructure to support NICS and other background check purposes. BJS urges States to develop a component of their program for the courts and prosecutors to electronically communicate disposition transactions for inclusion in criminal records. The announcement also encourages States to incorporate mental health records into background check systems.

The FY 2006 appropriation is \$9.87 million for NCHIP plus \$2.9 million for antistalking databases. The President's proposed budget for FY 2007 seeks \$39.18 million for NCHIP (plus \$2.94 million for anti-stalking databases) to support a court-directed special emphasis on improving disposition reporting.

90-351, 82 Stat. 197 (1968), codified as amended at 42 U.S.C. Section 3711 et seq., as amended; and the Violent Crime Control and Law Enforcement Act of 1994 (Violent Crime Control Act), Pub. L. No. 103-322, 108 Stat. 1796 (1994), codified as amended at 42 U.S.C. Section 13701 et seq., which pertain to the establishment, maintenance, analysis, or use of criminal history records and criminal record systems

- relevant requirements of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, 108 Stat. 2038, Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345, and the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, 110 Stat. 3093
- the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) and related laws pertaining to the identification, collection, analysis and interstate exchange of records relating to domestic violence and stalking (including protection orders).

## Accomplishments

NCHIP-funded criminal records improvement efforts have achieved several successes.

### *Improved accessibility of records*

All States have received funds under NCHIP to upgrade the quality and availability of criminal history record systems. Funds have been awarded for acquisition of advanced equipment, development of software, and conversion of manual records to an automated format which permits instant access and linkage. Automated criminal records permit immediate access for law enforcement and other purposes such as background checks. At the end of 2003, States held approximately 71 million criminal records on individuals. About 9 out of 10 of these records were automated and 3 out of 4 automated records were accessible for conducting presale firearms and other background checks. Since 1995 the number of criminal records accessible for background checks has increased 83%, while the rate of growth in the number of automated records over the same years was 57% (highlights).

### *Full participation in the Interstate Identification Index (III)*

To ensure compatibility, all record enhancements funded under NCHIP are required to conform to FBI standards for III participation. III participation is critical since it constitutes the primary system through which the FBI accesses State-held data for NICS checks. In 1989 only 20 States were members of the FBI's III system that permits instant access to out-of-state data. By yearend 1993, 26 States were participants. As of January 2006, 48 States are members of III indicating that they meet the FBI's rigorous standards for participation.

### *Automation of records and fingerprint data*

States have used funds to establish automated fingerprint identification systems (AFIS) and to purchase live-scan equipment for State and local agencies. AFIS enables States to conduct automated searches for records based on fingerprint characteristics and to interface with the FBI's Integrated Automated Fingerprint Identification Systems (IAFIS).

As of January 2006, 48 States, the District of Columbia, and 3 territories (American Samoa, Guam, and the U.S. Virgin Islands) participate in IAFIS, which became operational in July 1999. In addition to ensuring that records are properly matched to the correct offender, AFIS minimizes the time and manpower required for searching fingerprint databases, which facilitates matching of latent prints obtained at a crime scene.

Livescan equipment permits law enforcement to take fingerprints without use of inkpads or other similar procedures and to electronically transfer fingerprints to the State's AFIS for comparison and matching against State and FBI held prints. Almost all States have received NCHIP funds to use in connection with fingerprint automation systems.

### *National Instant Criminal Background Check System (NICS)*

The Brady Act requires that a background check be conducted using the FBI's NICS to identify potential purchasers who are prohibited from purchasing firearms. Over 63 million records in thirteen files are used for NICS checks (table 1). The effectiveness of the system is dependent on the extent to which complete records are available in response to system inquiries. NCHIP funds have been used to increase the number of records which are accessible to the system and to fund the development of court systems to ensure that records include final dispositions.

The NICS is now supporting nearly 8 million checks annually at the presale stage of firearms purchases. Since 1999 under the permanent provisions of the Brady Act, almost 48 million applications for firearm transfers were subject to background checks. Approximately 896,000, or 1.9% of all applications were rejected, primarily for the presence of a prior felony conviction history, but also in a growing proportion of checks for nonfelony prohibiting background factors, enumerated in the 1968 Gun Control Act as amended

**Table 1. Presale firearms background check databases used for NICS checks and record holdings, January 2006**

Types of records accessed	Number of records
<b>Total records checked</b>	63,177,363
<b>Interstate Identification Index (III)</b>	
Total	56,177,106
State-indexed III records	36,233,286
FBI-maintained III records*	19,943,820
<b>NICS Prohibited Persons Index</b>	
Total	3,960,682
Denied persons file	367,933
Illegal/unlawful aliens records	3,329,853
Controlled Substance Abuse Records	619
Dishonorable dischargees	15,046
Citizenship renounced	12,603
Mental defective records	234,628
<b>National Crime Information Center (NCIC) Files</b>	
Total	3,039,575
Wanted persons and foreign fugitives	1,241,700
Immigration violator	163,583
Protection order file	949,858
Convicted persons on supervised release	269,962
National Sex Offender Registry	414,472

\*Includes Federal and foreign offender records.

(figures 1 and 2). State and local agencies maintain a significant role in background checks, having conducted checks on almost half of the applications for firearm transfers or permits in 2003, while the FBI was responsible for the remainder.

### National Sex Offender Registry

Beginning in FY 1998 NCHIP funds have been provided to assist States in developing and enhancing the operation of State sex offender registries that include information on convicted sex offenders. These funds have been used for purchase of equipment, training, and development of procedures required to ensure that released offenders are registered with proper authorities and that State systems are capable of interfacing with the FBI's National Sex Offender Registry system. The FBI's permanent National Sex Offender Registry became operational in July 1999. As of January 2006 all 50 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands were contributing to the National Crime Information Center (NCIC) file that held 414,470 records.

### Domestic violence records and protection orders

NCHIP has put special emphasis on ensuring that domestic violence-related offenses are included in criminal records. The Federal Gun Control Act as amended prohibits sales of firearms to persons subject to a qualifying domestic violence related protection order or convicted of a qualifying domestic violence misdemeanor. Funds have been awarded specifically for development of State protection order files that are compatible with the FBI's national file so as to permit interstate enforcement of protection orders and the denial of firearm transfers to prohibited persons subject to a protection order. The NCIC's National Protection Order File became operational in May 1997. As of January 2006, 45 States, the District of Columbia, and the U.S. Virgin Islands were submitting data to the file which held over 949,810 records of protection orders.

### Involvement of the Courts and Systems Integration to Improve Disposition Reporting

Ensuring that States demonstrate a commitment to support court efforts relating to the development of record systems is among the most important priorities of NCHIP. All NCHIP applica-

**Among the almost 48 million firearm transfer applications, 1999-2004, checks approved 98.1% and rejected 1.9%.**

**Among the 896,000 rejected applications, 15% were appealed.**

**Among the 138,154 appeals, 64% of the rejections were affirmed and 36% were reversed.**

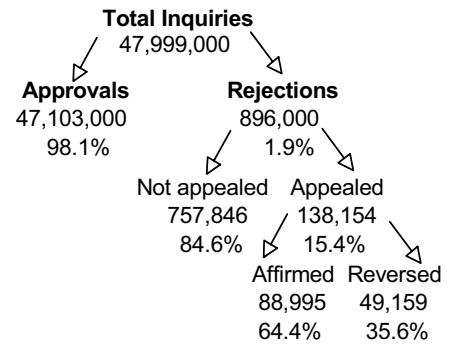


Figure 2

tions are required to demonstrate that court needs have been considered.

For FY 2005, 37 States included direct funding to the courts or funded court-related activities and disposition reporting. Such projects totaled over \$6 million (25%) of the NCHIP funds awarded in 2005. The following are examples of court improvement projects that States are undertaking with 2005 NCHIP awards:

The Administrative Office of the Courts in **Alabama** is continuing to expand its project to collect criminal disposition data from the municipal courts, flagging all court dispositions that are domestic violence related, and is developing a new arrest-to-court disposition automated matching program.

The **Alaska** Department of Public Safety (DPS) is providing funds to the Alaska Court System for data exchange and infrastructure projects, including the exchange of court records and criminal history data between the court system and other criminal justice agencies, and providing training and technical assistance to users of the court information system.

The **Arizona** Criminal Justice Commission is developing a comprehensive disposition reporting system involving

### Among rejections of firearm transfer applications, nonfelony reasons increased 5 1/2-fold between 1995 and 2004

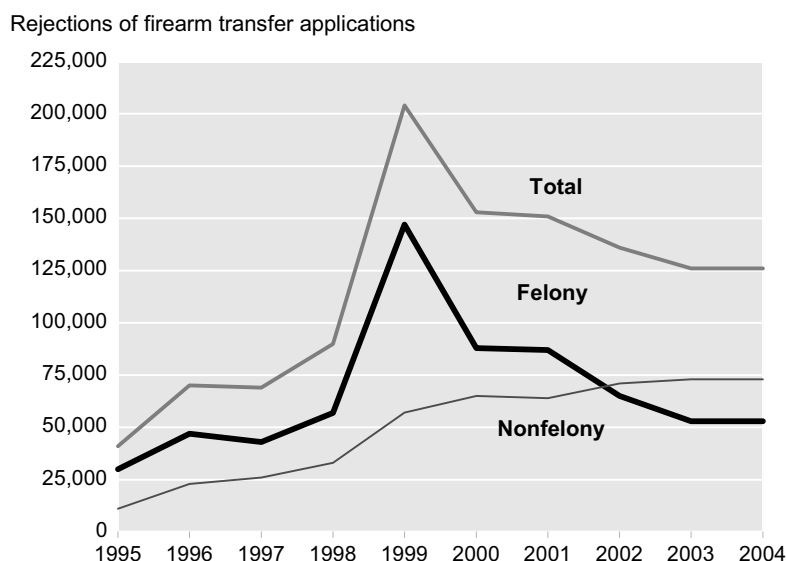


Figure 1

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an improved web entry front-end to include error checking, mass update capabilities, enhanced charge tracking, utilization of the Global Justice XML Data Model, and improved justice and law enforcement system integration.

The **Arkansas** Crime Information Center (ACIC) is using funds to support the identification and collection of missing disposition information. Funds are also being used by the Administrative Office of the Courts for completion of a technology project resulting in the automatic transmission of criminal case dispositions to the ACIC.

The **California** Department of Justice is implementing a pilot project in two county courts to add electronic thumbprint images to dispositions and supporting both the transmission of disposition data from the Administrative Office of the Courts to the State repository and the processing of real-time automated disposition reporting from five counties.

The **Florida** Department of Law Enforcement (FDLE) is implementing a project with the Florida Association of Court Clerks to research and obtain missing disposition data. FDLE will also complete system enhancements to provide criminal judges, Clerks of Court, and State Attorneys electronic access to sentencing and commitment data.

The **Georgia** Bureau of Investigation is assisting the courts in developing a new court case management system that will enable electronic transmission of disposition data from the courts to the central criminal history repository.

The **Hawaii** Department of the Attorney General is supporting the upgrade of the Judiciary's current telecommunications technology to allow the transmission of criminal justice information over the State network to CJIS-Hawaii.

The **Louisiana** Commission on Law Enforcement, in cooperation with the Integrated Criminal Justice Information System (ICJIS) Policy Board, the Supreme Court, the District Attorneys' Association, the Sheriffs' Association, and the State Police, is continuing the

development and implementation of the ICJIS and its component systems.

The **Maine** Department of Public Safety is conducting an analysis of both the quality of court disposition reporting to the criminal record repository and the contributory factors related to low reporting rates, developing a plan to mitigate low disposition reporting rates, and finalizing a strategy to link dispositions to the State's criminal history record system.

**Maryland** is researching and identifying existing Arrest and Disposition Reporting (ADR) system records lacking final court dispositions and matching arrests to the correct disposition for entry into the repository. Also, a process will be created to update the ADR system with court disposition information for older records that have no court tracking number associated with them.

The **Minnesota** Bureau of Criminal Apprehension is using funds to improve information about both misdemeanor domestic violence offenses and dispositions and orders of protection by developing integrated standard business practices on gathering proper identification on targeted misdemeanors and other court disposition data to be transferred to the criminal history files.

The **Mississippi** Department of Public Safety, Criminal Information Center (CIC) is initiating the testing and installation of an interface between the Mississippi Criminal History System and the courts and prosecutor's new case management system.

The **Missouri** State Highway Patrol and the Office of State Court Administrators is supporting an initiative aimed at improving the accuracy and completeness of Missouri's Criminal History Record System. The project involves the identification of missing criminal arrests and final disposition information through manual field research at the criminal justice agencies.

**New Hampshire** is using grant funds to continue support for its Administrative Office of the Courts to review and

enter domestic violence and stalking restraining orders into the State criminal justice information system and to the FBI's NCIC.

The **New Jersey** Department of Law and Public Safety, in collaboration with the Administrative Office of the Courts (AOC), is installing livescan units in a Camden County Jail which will permit an interface with the County Correction Information System. Also, the AOC will continue to build interfaces between its database and the information systems of several State criminal justice agencies to allow for an easy exchange of critical information and to eliminate duplication of effort.

The **New Mexico** Department of Public Safety is implementing security measures in the Magistrate Courts of New Mexico and providing ongoing technical support to the courts and counties in transferring data to the State's Repository. Funds will also support protective order database enhancements necessary to transfer data to the New Mexico Law Enforcement Telecommunications System and the FBI's NCIC.

The **New York** State Division of Criminal Justice Services providing support to the Administrative Office of the Courts to continue the identification and correction of inaccurate court information and to reduce the current number of missing dispositions in the State Repository.

**North Carolina** is initiating the development of a new Criminal Court Information System (CCIS) to replace the outdated Automated Criminal Infraction System (ACIS) currently being used by the courts in North Carolina. The CCIS will greatly increase efficient, accurate, and timely reporting of court data into an electronic database accessible to all law enforcement agencies.

The **Ohio** Office of Criminal Justice Services is continuing its development of the Ohio Courts Network to automate reporting and sharing of information.

The **Oregon** State Police is carrying out a disposition acquisition project with the Oregon Judicial Department.

In **Tennessee**, funds are being used by the Administrative Office of the Courts (AOC) to enhance existing databases to verify judgment information electronically submitted to the AOC and to enable access to the data by other courts and criminal justice agencies.

**Utah** is supporting the development and implementation of an electronic filing interface between county prosecutors and the Administrative Office of the Courts to eliminate duplicate, manual data entry of prosecutor information by the courts and to research and update missing disposition data from the courts to be included into the Utah Computerized Criminal History system.

In **Vermont**, the Office of the Court Administrator is improving access to the judiciary's criminal case and disposition information, electronic protection orders, and mental health records.

The **Wyoming** Supreme Court is developing a data extraction system that maps data from those district courts that are experiencing difficulty transmitting data to the court's central database.

### Improved performance measurement — The Records Quality Index

To help quantify the impact of NCHIP funds, BJS created a Records Quality Index (RQI). The purpose of the RQI is to measure the performance of criminal history record systems and to help BJS to —

- assess the status of records quality at both the State and national levels
- identify critical records improvement activities by pinpointing areas of deficiency
- help BJS target specific State- and local-level problems and deficiencies in NCHIP program announcements.

The Records Quality Index (RQI) is a composite of different outcome and process measures, including:

- the extent of automation of the State's criminal history records
- the response to Interstate Identification Index (III) inquiries
- the automated transmission of arrests to the repository

- the criminal history database flagging of certain convictions
- the transmission of criminal fingerprints to IAFIS, the FBI's automated fingerprint identification system
- the transmission of applicant fingerprints to IAFIS
- the extent of electronic data submission to FBI files
- the transmission of dispositions to the repository
- the authorized access to State files including sex offender registries and registries of the courts' protection or restraining orders
- the State's participation in the National Fingerprint File and National Crime Prevention and Privacy Compact
- the timeliness of criminal case processing in the State
- the completeness of disposition reporting in the State.

Similar to how the Dow Jones Industrial Average may be used to gauge the performance of the overall stock market, the criminal history Records Quality Index, based on a small set of key measures, characterizes the performance of the States' criminal history record systems toward achieving the goals of the Federal records improvement programs.

The National RQI (NRQI) is a weighted average of the individual State RQI's for which the weights reflect the number of criminal history records in each State as a proportion of the total. During the seven-year measurement period, the NRQI reflects steady records quality improvement (figure 3). The NRQI nearly tripled between 1997 and 2003, growing by 169% during this period.

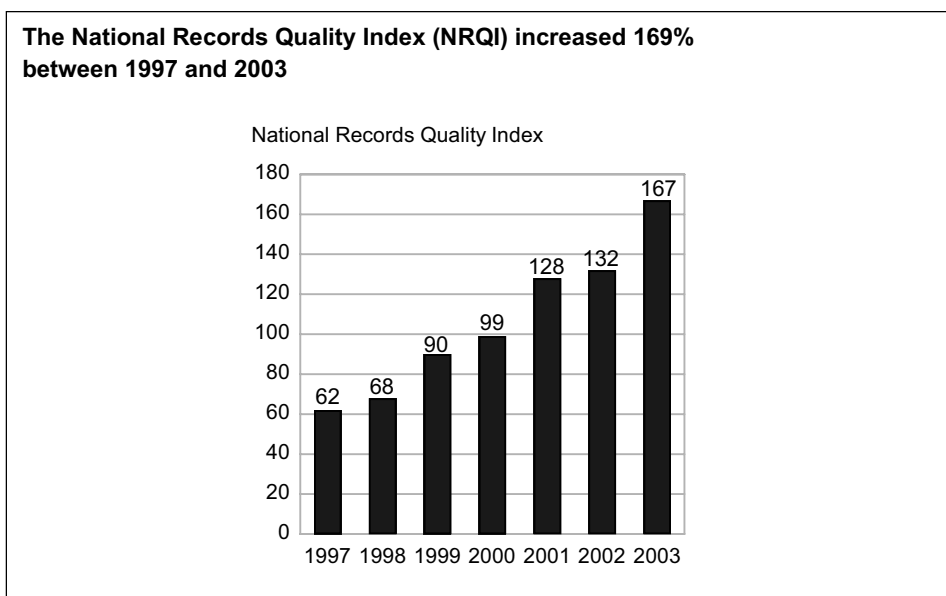


Figure 3

**Appendix. NCHIP awards 1995-2005**

Jurisdiction	Direct awards							Total 1995-2005
	1995-99*	2000	2001	2002	2003	2004	2005	
Alabama	\$3,127,103	\$879,447	\$521,574	\$499,880	\$894,998	\$573,000	\$626,100	\$7,122,102
Alaska	3,456,318	760,000	585,000	475,000	600,000	384,000	268,980	6,529,298
American Samoa	800,000	300,000	300,000	285,000	300,000	250,000	175,000	2,410,000
Arizona	3,888,988	980,000	1,000,000	750,000	1,028,573	493,000	345,000	8,485,561
Arkansas	2,976,857	694,330	630,000	475,000	699,960	383,998	269,000	6,129,145
California	23,095,680	2,350,000	2,238,414	2,200,000	3,000,000	1,922,000	1,425,000	36,231,094
Colorado	3,528,113	960,000	507,000	485,000	735,000	664,240	500,906	7,380,259
Connecticut	4,117,968	700,000	545,000	518,000	657,000	421,000	465,400	7,424,368
Delaware	\$3,130,837	\$491,470	\$500,000	\$475,000	\$600,000		\$250,000	\$5,447,307
District of Columbia	1,804,095		350,000	329,916				2,484,011
Florida	9,373,486	1,980,000	1,650,787	1,369,000	1,800,000	\$1,453,000	973,000	18,599,273
Georgia	6,143,349	803,768	498,979	691,628	1,045,000	669,000	375,600	10,227,324
Guam	799,796	300,000	300,000	285,000	400,000	250,000	175,000	2,509,796
Hawaii	2,967,125	600,000	500,000	500,000	600,000	384,000	468,000	6,019,125
Idaho	1,554,561		342,873	170,000	163,200	142,250	150,000	2,522,884
Illinois	10,372,000	1,590,000	1,352,000	1,284,000	1,669,000	1,069,000		17,336,000
Indiana	\$5,022,273	\$900,000	\$964,500	\$736,000	\$975,000	\$612,000	\$428,000	\$9,637,773
Iowa	2,783,525	238,537	208,915	420,620	561,437	377,093	348,090	4,938,217
Kansas	2,932,319	520,000	540,359	475,000	669,000	429,000	300,000	5,865,678
Kentucky	3,984,961	499,536	507,000	482,000	584,000	384,000	269,000	6,710,497
Louisiana	3,903,751	739,436	578,698	499,000	650,000	416,000	394,000	7,180,885
Maine	4,131,166	90,000		453,000	525,000		384,000	5,583,166
Maryland	4,630,000	922,500	630,462	595,117	627,995	402,000	275,472	8,083,546
Massachusetts	8,275,250	819,762	1,028,000	976,000	1,268,000	812,313	544,000	13,723,325
Michigan	\$7,151,290	\$1,153,032	\$1,200,199	\$881,382	\$1,038,452	\$742,000	\$520,549	\$12,686,904
Minnesota	4,256,989	413,454	984,320	502,000	600,000	384,000	496,500	7,637,263
Mississippi	3,748,079	560,000	534,717	500,000	600,000	384,000	269,000	6,595,796
Missouri	5,172,515	899,133	904,000	652,000	757,627	484,000	338,970	9,208,245
Montana	2,574,486	512,389	546,842	475,341	599,771	384,000	269,000	5,361,829
Nebraska	3,037,053	560,200	553,237	616,825	600,000	384,000	269,000	6,020,315
Nevada	2,500,000	610,000	810,000	513,000	696,000	384,000	269,000	5,782,000
New Hampshire	3,566,713	381,073	407,462	476,996	600,000	384,000	353,691	6,169,935
New Jersey	\$6,700,533	\$1,200,000	\$892,980	\$848,000	\$1,195,000	\$766,000	\$1,748,800	\$13,351,313
New Mexico	4,596,416	579,942	686,860	555,998	563,622	384,000	339,000	7,705,838
New York	17,472,269	2,210,000	2,225,000	2,112,000	2,745,000	1,759,000	1,437,300	29,960,569
North Carolina	4,807,653	809,498	635,000	603,000	663,000	424,996	297,000	8,240,147
North Dakota	2,931,218	562,710	544,470	475,824	600,000	384,000	269,000	5,767,222
N. Mariana Islands	-	300,000		285,000	400,000	250,000		1,235,000
Ohio	9,456,526	1,368,256	1,320,627	1,389,214	1,510,000	967,000	648,000	16,659,623
Oklahoma	2,628,198	702,681	549,999	475,000	600,000	384,000	269,000	5,608,878
Oregon	\$3,678,348	\$1,000,000	\$807,300	\$122,861		\$496,000	\$347,000	\$6,451,509
Pennsylvania	11,395,537	916,600	1,392,000	1,322,000	\$1,499,195	961,000	1,654,273	19,140,605
Puerto Rico	812,436					350,000		1,162,436
Rhode Island	2,365,294	520,000	500,000	475,000	600,000	384,000	294,000	5,138,294
South Carolina	5,266,593	990,000	1,195,406	822,000	1,000,000	641,000	449,000	10,363,999
South Dakota	2,012,211	672,693	452,172	488,156	606,895	385,150	270,000	4,887,277
Tennessee	4,166,817	780,161	550,000	531,000	766,000	491,000	384,000	7,668,978
Texas	17,246,275	795,000		2,000,000	2,900,000	1,903,000	1,085,000	25,929,275
Utah	\$3,073,085	\$540,256	\$530,000	\$475,600	\$600,010	\$384,000	\$324,000	\$5,926,951
Vermont	4,514,810	729,157	683,459	609,688	602,959	384,150	298,218	7,822,441
Virgin Islands	203,157		300,000		400,000	250,000	175,000	1,328,157
Virginia	6,507,577	1,082,781	1,035,143	1,203,182	1,804,670	1,299,000	1,404,263	14,336,616
Washington	5,111,682	846,000	674,000	800,000	1,194,000	1,040,000	697,000	10,362,682
West Virginia	3,384,564	668,422	500,000	270,000	600,000	189,577	554,208	6,166,771
Wisconsin	5,267,700	760,000	681,000	647,000	679,000	435,000	562,733	9,032,433
Wyoming	1,052,389	240,104	529,417	285,000	399,028	255,999	179,000	2,940,937
<b>Total</b>	<b>\$273,457,934</b>	<b>\$41,482,328</b>	<b>\$38,905,171</b>	<b>\$36,842,228</b>	<b>\$47,473,392</b>	<b>\$31,188,766</b>	<b>\$25,881,053</b>	<b>\$495,230,872</b>

\*1998 awards include National Sex Offender Registry Assistance Program awards.



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## Program assessment

In 2003 the NCHIP program was reviewed by the Office of Management and Budget using the Program Assessment Rating Tool (PART) and was determined to be effectively meeting its goals and objectives. A 2004 U.S. Government Accountability Office study for House of Representative Committee on the Judiciary also found that NCHIP helped States make significant progress in building a national criminal records infrastructure.

Efforts carried out under the National Criminal History Improvement Program are highly consistent with the U.S. Department of Justice's strategic goal to, "Improve the crime fighting and criminal justice system administration capabilities of State, tribal, and local governments." The efforts to improve the Nation's criminal history records also contribute directly to the Office of Justice Programs' goal of providing and coordinating information, research and development, statistics, training, and support to help the justice community build the capacity it needs to meet its public safety goals.

This report in portable document format and in ASCII and its related statistical data and tables are available at the BJS World Wide Web Internet site: <<http://www.ojp.usdoj.gov/bjs/>>

### Office of Justice Programs

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The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jeffrey L. Sedgwick is director.

This report was written by Gerard F. Ramker, Chief, BJS Criminal History Improvement Programs. Carolyn C. Williams produced the report and provided editorial review. Jayne Robinson prepared the report for final printing.

July 2006, NCJ 211485