

NATIONAL LAW ENFORCEMENT PARTNERSHIP TO PREVENT GUN VIOLENCE

IMPROVING RECORDS REPORTING TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS)

THE NEED

Background checks have a demonstrated record of success when disqualified purchasers' information is contained in the databases being checked. Overall, federal and state background checks stopped 2,079,000 prohibited purchases from federally licensed dealers between 1994 – when the Brady Law took effect – and 2010, according to the Department of Justice's Bureau of Justice Statistics.¹

Unfortunately, too many purchasers are passing background checks despite being prohibited from possessing a firearm under existing law because critical disqualifying records were never reported to the National Instant Criminal Background Check System (NICS). To prevent these unlawful purchases, NICS, which maintains records of those who are legally prohibited from purchasing guns, must be complete. It is essential that states and federal agencies improve submissions to NICS, particularly of mental health and substance abuse records.

BACKGROUND ON NICS

The Brady Law became effective on February 28, 1994. The measure established a five-business-day waiting period for firearm purchases through federally licensed gun dealers, providing law enforcement time to conduct background checks during a period when record histories were largely not computerized or accessible. The Brady Law also provided \$200 million to states to improve their criminal record histories and required the Attorney General to establish NICS within five years of the law's enactment, at which point the waiting period requirement ended.

NICS became operational on November 30, 1998. Federal firearms dealers submit purchaser information to NICS, either over the telephone or Internet. The NICS check involves running the purchaser's identifying information through three national databases managed by the FBI: the Interstate Identification Index (III), which maintains criminal history records; the National Crime Information Center (NCIC); and the NICS Index, which contains records of prohibited purchasers falling into other categories.² Dealers usually receive a response within minutes. Some states, called Point of Contact states, run their own checks.



¹ Bureau of Justice Statistics, "Background Checks for Firearms Transfers, 2010 - Statistical Tables," U.S. Department of Justice, February 2013 (<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=4596>).

² David Cuthbertson, "Statement Before the Senate Judiciary Committee, Subcommittee on Crime and Terrorism," Federal Bureau of Investigation, 15 November 2011 (<http://www.fbi.gov/news/testimony/the-fix-gun-checks-act-better-state-and-federal-compliance-smarter-enforcement>).

THE NICS IMPROVEMENT AMENDMENTS ACT OF 2007

In the wake of the Virginia Tech tragedy, Congress amended the Brady Law, passing the NICS Improvement Amendments Act of 2007 (NIAA). Signed into law on January 8, 2008, the NIAA gave more authority to the Attorney General to acquire prohibited purchaser information from federal departments and agencies. It also provided incentives for states, tribes, and court systems to provide their records to NICS through the NICS Act Record Improvement Program (NARIP), which implements the grant provisions of the NIAA.

Between 2009 and 2013, more than \$60 million in NARIP funds have been distributed in 22 states.³ In 2012, NICS expanded its index to include state prohibited purchaser records. By the end of 2013, the NICS database contained more than 11.1 million unique records, up more than 2.8 from the previous year.⁴ Between 2011 and 2014, the number of mental health records in NICS tripled to more than 3.6 million.⁵ Despite progress, significant challenges remain and the records, particularly mental health records, are far from complete.

MISSING INFORMATION

Millions of records identifying prohibited purchasers with mental health disqualifications are still missing from the system, according to a May 2014 Everytown for Gun Safety report, "Closing the Gaps: Strengthening the Background Check System to Keep Guns Away from the Dangerously Mentally Ill."⁶

Too many states have had abysmal reporting of mental health disqualifying records to NICS. In November 2011, 23 states and the District of Columbia had submitted fewer than 100 mental health disqualifying records to NICS. In 2012 that number fell to 19 states, and by November 2013, 12 states had submitted fewer than 100 mental health disqualifying records.⁷

Some large states are responsible for the significant increase in the number of mental health disqualifying records reported to NICS. By the end of 2013, Pennsylvania had submitted more than 670,000 mental health records to NICS, up from only one record in 2011. Other states, including New Jersey, Oregon, and California also showed significant improvement in mental health records reporting. Virginia, which became one of the top mental health record reporters to NICS after the Virginia Tech tragedy, blocked 47 percent more firearm sales to individuals with mental health disqualifiers between 2010 and 2013, demonstrating how effective a strong background check system is to keeping guns out of the wrong hands.⁸

In October 2012, of 61 federal agencies reviewed, only nine had reported mental health disqualifying records to NICS.⁹ In 2013, federal agencies were directed to "make all relevant records," including criminal histories and mental health disqualifying records available to NICS.

³ Bureau of Justice Statistics, "NICS Act Record Improvement Program (NARIP) Awards FY 2009-2013," (<http://www.bjs.gov/index.cfm?ty=tp&tid=491>).

⁴ Federal Bureau of Investigation, "National Instant Criminal Background Check System (NICS) Operations 2013" (<http://www.fbi.gov/about-us/cjis/nics/reports/2013-operations-report>).

⁵ Federal Bureau of Investigation, "Active Records in the NCIS Index," 30 September 2014 (<http://www.fbi.gov/about-us/cjis/nics/reports/nics-index.pdf>).

⁶ Everytown for Gun Safety, "Closing the Gaps: Strengthening the Background Check System to Keep Guns Away from the Dangerously Mentally Ill," 22 May 2014 (<http://everytown.org/wp-content/uploads/2014/05/ClosingTheGaps.pdf>).

⁷ Mayors Against Illegal Guns, "New FBI Data Shows Gun Background Checks Still Undermined By Information Gaps," 25 May 2012 (http://www.mayorsagainstillegalguns.org/html/media-center/pr_052512.shtml).

and
Everytown for Gun Safety, "Closing the Gaps: Strengthening the Background Check System to Keep Guns Away from the Dangerously Mentally Ill," 22 May 2014 (<http://everytown.org/wp-content/uploads/2014/05/ClosingTheGaps.pdf>).

⁸ Everytown for Gun Safety, "Closing the Gaps: Strengthening the Background Check System to Keep Guns Away from the Dangerously Mentally Ill," 22 May 2014 (<http://everytown.org/wp-content/uploads/2014/05/ClosingTheGaps.pdf>).

⁹ Mayors Against Illegal Guns, "Fatal Gaps: Can Dangerous People Buy Guns in Your State?," 31 October 2012 (<http://www.demandaplan.org/fatalgaps>).

Within nine months of the directive, federal agencies provided NICS with more than 1.2 million disqualifying records. This represented an approximate 23 percent increase in the number of records reported by federal agencies.¹⁰

Substance abuse records have been reported with even less frequency than mental health disqualifying records. As of October 2011, 44 states had submitted fewer than ten substance abuse disqualification records to NICS, with 33 of the 44 states submitting none. In addition, the majority of federal agencies failed to report any substance abuse records as of October 2011. Only the FBI, the U.S. Coast Guard, and the Court Services and Offenders Supervision Agency had submitted any substance abuse records to NICS.¹¹

PREVENTABLE TRAGEDIES

The following are examples in which incomplete records allowed prohibited purchasers to pass background checks, buy firearms, and wreak havoc.

- On January 8, 2011, Jared Loughner went on a shooting spree that killed six and wounded 13, including Congresswoman Gabrielle Giffords. Loughner had been rejected by the U.S. Army after admitting to habitual drug use. Despite drug use being a disqualification for possessing firearms under existing law, Loughner's records were never reported to NICS.¹²
- At Virginia Tech on April 16, 2007, Seung Hui Cho killed 32 people, injured 17, and then turned the gun on himself. Cho carried out the massacre with two guns – a Walther P22 .22 caliber pistol, which he purchased online from TGSCOM, Inc., a store in Green Bay, WI, and retrieved at a pawnshop in Virginia (where the background check was conducted), and a Glock 19 9mm pistol, which he purchased at a store in Virginia. The Virginia Tech Review Panel found that although Cho was a prohibited firearm purchaser under federal law, he passed background checks because his disqualifying mental health history had not been entered into the background check system. In 2005, a Montgomery County, Virginia, General District Court special justice had found that Cho was a danger to himself. But in spite of this, the panel said, "Cho, a person disqualified from purchasing firearms, was readily able to obtain them."¹³
- On January 2, 2004, Farron Barksdale was able to pass a background check and purchase a rifle even though he had been involuntarily committed to a mental hospital at least twice. Two days after purchasing the firearm, he shot and killed two Alabama police officers.¹⁴
- On July 24, 1998, Russell Weston shot and killed two police officers in the U.S. Capitol with a .38-caliber handgun he purchased after passing a background check. Weston should have been flagged as a prohibited purchaser because he "had an extensive history of mental illness and had been involuntarily committed to a Montana mental hospital in 1996."¹⁵

¹⁰ Office of the Press Secretary, "Fact Sheet: Strengthening the Federal Background Check System to Keep Guns out of Potentially Dangerous Hands," The White House, 3 January 2014 (<http://www.whitehouse.gov/the-press-office/2014/01/03/fact-sheet-strengthening-federal-background-check-system-keep-guns-out-p>).

¹¹ Mayors Against Illegal Guns, "Fatal Gaps: How Missing Records in the Federal Background Check System Put Guns in the Hands of Killers," November 2011 (http://www.mayorsagainstillegalguns.org/downloads/pdf/maig_mimeo_revb.pdf).

¹² Daniel Gonzalez and Ronald J. Hansen, "Arizona Shooting Suspect Allowed to Buy Gun, Despite his Past," The Arizona Republic, 18 January 2011 (<http://www.azcentral.com/news/articles/2011/01/18/20110118gabrielle-giffords-arizona-shooting-gun-sale-laws.html>).

¹³ Virginia Tech Review Panel "Mass Shootings at Virginia Tech: Report of the Review Panel," August 2007 (<http://www.governor.virginia.gov/tempcontent/techPanelReport-docs/FullReport.pdf>).

¹⁴ Mayors Against Illegal Guns "Fatal Gaps: How Missing Records in the Federal Background Check System Put Guns in the Hands of Killers," November 2011 (http://www.mayorsagainstillegalguns.org/downloads/pdf/maig_mimeo_revb.pdf).

¹⁵ Mayors Against Illegal Guns, "Fatal Gaps: How Missing Records in the Federal Background Check System Put Guns in the Hands of Killers," November 2011 (http://www.mayorsagainstillegalguns.org/downloads/pdf/maig_mimeo_revb.pdf).