National Instant Criminal Background Check System (NICS)

Federal Firearms Prohibitions

DATA REPORTING MANUAL FOR OHIO

AUGUST 2018

The following agencies and organizations partnered in the development of this first edition of the National Instant Criminal Background Check System (NICS) Data Reporting Manual for Ohio

Ohio Department of Public Safety, Office of Criminal Justice Services

Ohio State Highway Patrol, Law Enforcement Automated Data System (LEADS)

Ohio Attorney General's Office, Bureau of Criminal Investigation (BCI)

Supreme Court of Ohio

Ohio Department of Mental Health and Addiction Services

Ohio Clerk of Courts Association

Ohio Association of Municipal / County Court Clerks

Ohio Association of Chiefs of Police

Buckeye State Sheriffs' Association

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INTRODUCTION TO THE MANUAL

On April 23, 2018, Ohio Governor John R. Kasich signed Executive Order 2018-03K "National Instant Criminal Background Check System ("NICS") Compliance". The Executive Order directs a working group to develop a NICS data reporting compliance manual. This manual provides information for Ohio courts, mental health entities, and law enforcement to help provide complete and accurate data used by the National Instant Criminal Background Check System (NICS).

NICS BACKGROUND

In 1968, President Lyndon Johnson signed The Gun Control Act in response to the assassinations of President John F. Kennedy, Malcolm X, Martin Luther King, and Robert F. Kennedy.[1] An amendment to The Gun Control Act, called the Brady Handgun Violence Act (Brady Act) was signed by President Bill Clinton in 1993. As a result of the Brady Act, the National Instant Criminal Background Check System (NICS) was created. NICS is a national system that checks available records of persons to determine whether they are disqualified from obtaining a firearm or explosives.

States fall within three categories of NICS participation:

- **Full point of contact** – 13 states have implemented their own Brady NICS program and act on behalf of the FBI NICS Section; therefore, Federal Firearms Licensees, or FFLs, contact the state for all firearm background checks and permits.
- **Partial point of contact** – 7 states share the responsibility for processing NICS checks with the FBI NICS section; therefore, FFLs contact the state for handgun checks and state-required handgun permits while long gun transactions are processed by the FBI NICS Section.
- **Non-point of contact** – 36 states, including Ohio, have elected not to implement a state-based NICS program; therefore, FFLs in these states contact the FBI NICS Section for all firearm transactions.

Additionally – 28 states, including Ohio, have at least one ATF-Qualified Alternative Permit. These permits qualify as alternatives to the background check requirements of the Brady law for no more than 5 years from the date of issuance. Ohio's concealed weapons permit qualifies as an alternative to the background check requirements.

Three nationally held databases are queried for a NICS check:

- The National Crime Information Center, or NCIC
  - 10 NCIC files are queried in a NICS check:
    - Wanted Persons
    - Protection orders
    - Immigration Violators
    - Protective Interest File
    - Foreign Fugitive File
    - Supervised Release
    - National Sexual Offender Registry
    - Gang File
    - KST File
    - Violent Persons File

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[1] Federal Bureau of Investigation. NICS Process. https://www.fbi.gov/services/cjis/nics/nics-process-in-motion-video.

- The Interstate Identification Index, or III
  - Contains state and federal criminal history records.
- The NICS Index
  - This database serves as a centralized, national database for criminal justice agencies to submit the descriptive data of persons who are prohibited from the purchase or possession of firearms under federal or state law.

Using NICS, Federal Firearm Licensees (FFLs) are able to be supplied almost immediately with information 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. There are several categories of disqualifying events that would prohibit an individual from purchasing or receiving a firearm.[2] These federal prohibitors pertain to individuals who:

- Have been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, and of any misdemeanor punishable by imprisonment for more than two years;
- Are fugitives of justice;
- Are unlawful users and/or addicts of any controlled substances;
- Adjudicated mental defective or involuntarily committed to a mental institution or incompetent to handle their own affairs, including dispositions to criminal charges of found not guilty by reason of insanity or found incompetent to stand trial;
- Are aliens illegally or unlawfully in the United States, or are aliens, except as provided in subsection (y) (2), who have been admitted to the United States under a non-immigrant visa;
- Have renounced their United States citizenship;
- Have been dishonorably discharged from the United States Armed Forces;
- Are the subject of a protective order which restrains them from harassing, stalking, or threatening an intimate partner or child of such partner;
- Have been convicted in any court of a misdemeanor crime of domestic violence;
- Are under indictment or information for a crime punishable by imprisonment for a term exceeding one year.

NICS Examiners depend on the presence and quality of criminal history, mental illness adjudication, protection order and warrant entries made by federal, state, county and local agencies to make eligibility determinations on firearm transfers. It is of the utmost importance for agency administrators to understand the criticality of entering this data in a timely manner. The absence of information could result in a firearm transfer to a disqualified individual. NICS Examiners will contact agencies directly if records are incomplete or unclear to make a transfer determination.

FFLs are required to perform background checks prior to proceeding with a firearm sale. FFLs contact the NICS, and the NICS examiner will provide one of three responses:
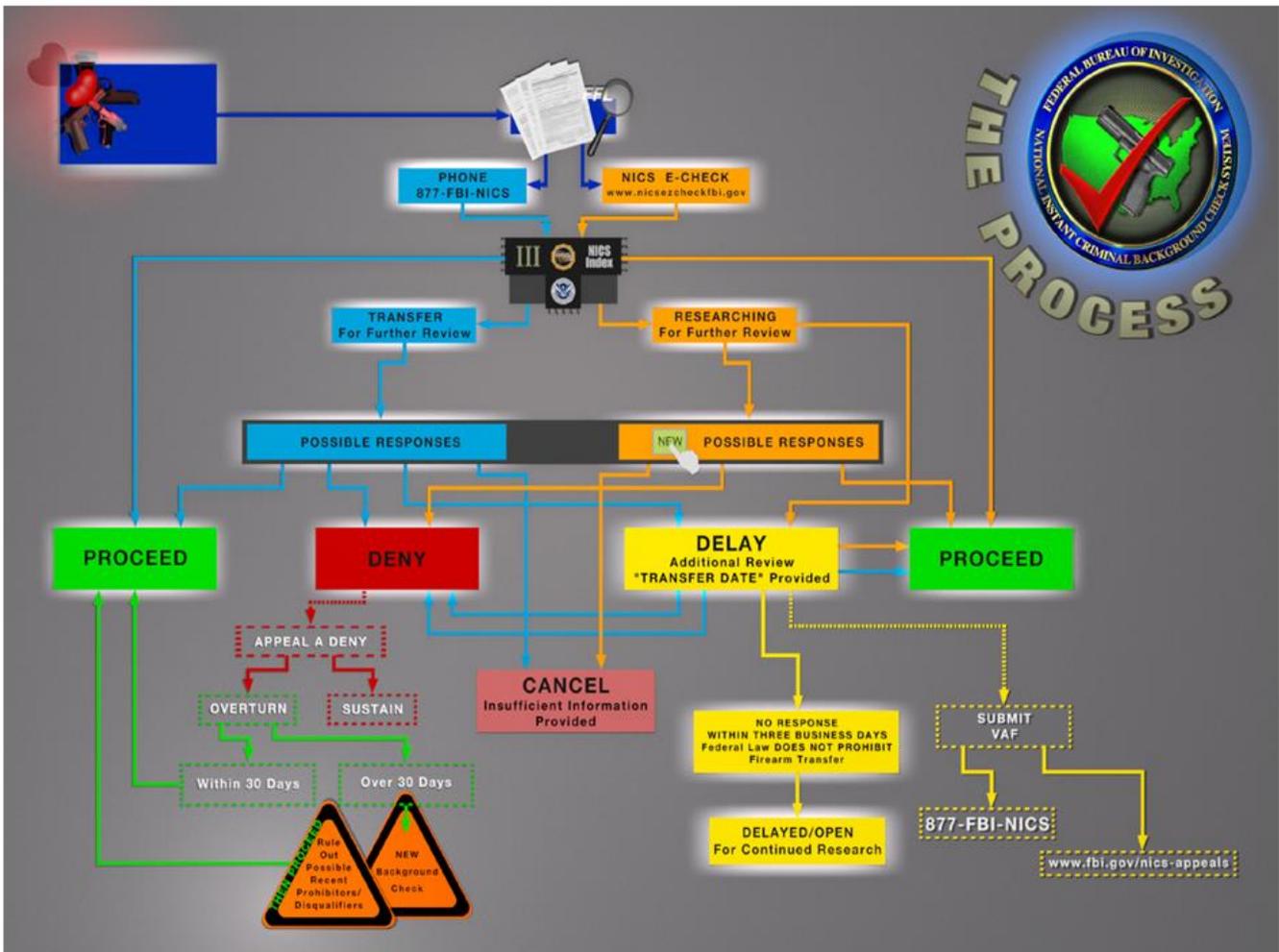
1. to PROCEED with the firearm transaction;
2. to DENY the firearm transaction; or
3. to DELAY the firearm transaction.

If delayed, the NICS Examiner must provide the FFL with a final determination within three business days. If the FFL has not received a response in this time, it is up to the discretion of the FFL as to whether to continue with the transaction. See the NICS process flowchart in Figure 1.

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[2] Federal Bureau of Investigation. Information Sheet. https://www.fbi.gov/services/cjis/nics/nics-information-sheet.

Figure 1. NICS Process Flowchart [3]

[3] Federal Bureau of Investigation. NICS Flow Chart Graphic. https://www.fbi.gov/image-repository/nics-flow-chart-graphic.jpg/view.

OHIO REQUIREMENTS THAT PROVIDE INFORMATION USED BY NICS

CRIMINAL HISTORIES

DISPOSITIONS

- R.C. 109.57(A)(2) – Requires weekly reporting by every **clerk of courts** for each felony and certain misdemeanor cases to the Superintendent of the Ohio Bureau of Criminal Investigation (BCI).
- R.C. 109.57(A)(5) – Requires BCI to perform central recordkeeping functions of criminal history records for purposes of the National Crime Prevention and Privacy Compact.
- R.C. 1905.033(B)(2) – Requires **mayor's courts** to report to BCI a conviction for an offense that is a misdemeanor on a first offense and a felony on any subsequent offense.

ARRESTS

- R.C. 109.60(A)(1) – Requires **sheriffs and chiefs of police** immediately upon the arrest of any person for each felony and certain misdemeanor cases to take and report to BCI that person's fingerprints.
- R.C. 109.60(A)(2) – If fingerprints are not taken in accordance with division (A)(1), the court shall order the person or child to appear before the sheriff or chief of police within twenty-four hours to have the person's or child's fingerprints taken.

MENTAL ILLNESS

- R.C. 5122.311(A) – Requires a **probate judge or chief clinical officer** to notify the Ohio Attorney General's Office not later than seven days of adjudication or involuntary commitment of individuals found by a court to be mentally ill.
- R.C. 5122.311(B) – Requires the Ohio Attorney General's Office to compile notices received under division (A) for the purpose of incompetency record check use.
- R.C 2929.44 & 2945.402 – Requires **courts** to report mental health convictions, evaluations or treatments and conditional releases to the local law enforcement agency for entry into the National Crime Information Center (NCIC) Supervised Release File through the Law Enforcement Automated Data System (LEADS).
  - Note that R.C. 2945.402 refers to people who have been granted conditional release by a criminal court. This applies only to people who have previously been found to be not guilty by reason of insanity or incompetent to stand trial with no substantial probability of being restored to competency.

PROTECTION ORDERS

Rules of Superintendence for the Courts of Ohio, Rule 10:

(A) Upon issuance of a civil or criminal protection order by a court pursuant to section 2151.34, 2903.213, 2903.214, division (E)(2) of 2919.26, or 3113.31 of the Revised Code, the court shall complete "Form 10-A." "Form 10-A" and a copy of the order shall be filed by the court with the local enforcement agency for entry in the "National Crime Information Center" database and nationwide dissemination. To accommodate local court or law enforcement procedures, the format of "Form 10-A" may be modified, provided the modification does not affect the substantive content of "Form 10-A."

(B) A court shall follow the instructions in "Form 10-B" for thorough and accurate completion of "Form 10-A" and to facilitate correct entry of criminal or civil protection orders in the "National Crime Information Center" database.

METHODS TO REPORT AND RESOURCES

COURTS

INFORMATION COURTS ARE REQUIRED TO REPORT TO BCI

Dispositions in Criminal Cases – **Elected Clerk of Courts** and **Municipal/County Court Appointed Clerk of Courts** (R.C. 109.57(A)(2)), **Mayor** (R.C. 1905.033(B)(2))

There are three methods to send disposition data to BCI:

1. Submit a 2-71 Disposition paper form provided by law enforcement with preprinted Incident Tracking Number (ITN) and mail to BCI Identification, P.O. Box 365, London, OH 43140.
2. Electronically submit dispositions via FTP (File Transfer Protocol) in accordance with the Electronic Disposition Reporting Methods Specification.
   o To establish an electronic account, please contact the Attorney General's Office Information Technology Section at ITSSupport@ohioattorneygeneral.gov. Should you have operational questions, please contact electronic_dispositions@ohioattorneygeneral.gov.
3. Electronically submit dispositions using the OCN (option for Clerks of Court)
   o For information on using the Supreme Court of Ohio's Ohio Courts Network as an automated method to report dispositions to BCI, contact the Supreme Court of Ohio's OCN Help Desk at 1-888-558-8994 or ocnhelpdesk@sc.ohio.gov.

Dispositions in juvenile delinquency cases in accordance with R.C. 2152.71(A)(2) – **Common Pleas** (if Juvenile Jurisdiction).

- The court should only be receiving disposition (2-71 forms) with an ITN from the arresting agency listing reportable offenses.
- Even if the case was adjudicated to a lesser, non-reportable offense or was dismissed, the disposition should still be sent to BCI.
- For more information on reporting to BCI, see Section XII of the Desktop Guide for Juvenile Court Clerks.

Courts sending disposition information electronically to BCI either via FTP or the OCN will still need to report certain things manually to BCI, either through fax at 866-239-5524 or by e-mail at electronic_dispositions@ohioattorneygeneral.gov. Click here for information that highlights some of the more frequent instances where courts will need to communicate with BCI through manual reporting.

Additional guidance/comments on Disposition reporting:

- Include level of conviction and subsections with the Ohio Revised Code when reporting information. When provided, the information can be used by NICS when determining gun purchases.
- Report when a case is No Billed or No Indictment is found and also when no charges are filed with cases from a prosecutor's office.
- Diversion and Intervention in lieu of conviction information should be reported and is not dependent on whether or not the person completed the program, the charge was dismissed or whether they were unsuccessful and were convicted.
- Relief from disability information is used by NICS when making determinations on gun purchases.

For any questions, please contact:

- Conchita Matson, Criminal Identification Supervisor at 740-845-2212
- Rob Sollars, Quality Assurance Manager at 740-845-2213 or the regional Quality Assurance Specialist

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Mental Illness Adjudication Reporting in accordance with 5122.311 – **Common Pleas** (if Probate Jurisdiction)*

There are two methods to send mental illness adjudication information to BCI:

1. Electronic via Mental Illness Adjudication Reporting (MIAR) through the Ohio Courts Network (OCN) to BCI.
    o For information on using the MIAR system available within the Ohio Courts Network portal, contact the Supreme Court of Ohio's OCN Help Desk at 1-888-558-8994 or ocnhelpdesk@sc.ohio.gov. A user guide providing an overview of the features of the MIAR system is available here.
2. Manually complete and mail BCI's Notification Form for Records Checks directly to BCI Identification, P.O. Box 365, London, OH 43140.

For any questions, please contact: Mona Barnes at 740-845-2015

R.C. 5122.311 requires the probate judge or chief clinical officer to report. Who reports this information should be determined through an arrangement between the Probate Court and Mental Health Provider's Chief Clinical Officer.

COURTS TO PROVIDE TO LAW ENFORCEMENT

Domestic Violence Temporary Protection Orders (DVTPO) Sup.R. 10(A) – **Common Pleas** (if General Jurisdiction), **Municipal/County Court Elected/Appointed Clerk of Court**

- Complete Form 10-A, also obtain form and instructions at Rules of Superintendence for the Courts of Ohio, Rule 10

Civil Protection Order (CPO) Sup. R. 10(A) – **Common Pleas** (if Domestic Relations or Juvenile Jurisdiction)

- Complete Form 10-A, also obtain form and instructions at Rules of Superintendence for the Courts of Ohio, Rule 10
- For additional information on notifying law enforcement agencies of the issuance of juvenile civil protection orders pursuant to Sup.R. 10, see Section XXXV of the Desktop Guide for Juvenile Court Clerks.

Not Guilty by Reason of Insanity and conditional release (NGRI) Sup.R. 95 – **Common Pleas** (if General Jurisdiction), **Municipal/County Court Elected/Appointed Clerk of Courts**

- Complete Form 95, obtain form and instructions at Rules of Superintendence for the Courts of Ohio, Rule 95

Incompetent to Stand Trial – Unrestorable and conditional release (IST) Sup.R. 95 – **Common Pleas** (if General Jurisdiction or Juvenile Jurisdiction), **Municipal/County Court Elected/Appointed Clerk of Courts**

- Complete Form 95, obtain form and instructions at Rules of Superintendence for the Courts of Ohio, Rule 95

Issuance of Capiases (Warrants) Crim.R. 9(A) – **Elected Clerk of Courts, Mayor, Municipal/County Court Appointed Clerk of Courts**

- For Crim.R. 9(A) complete form based on instructions in Crim.R. 4(C)(1) at Ohio Rules of Criminal Procedure

MENTAL HEALTH PROVIDERS

MENTAL HEALTH PROVIDERS TO PROVIDE TO BCI

Mental Illness Adjudication Reporting in accordance with R.C. 5122.311 – **Chief Clinical Officer***

There are two methods to send mental illness adjudication information to BCI:

1. Electronic via Mental Illness Adjudication Reporting (MIAR) through the Ohio Courts Network (OCN) to BCI.
   - For information on using the MIAR system available within the Ohio Courts Network portal, contact the Supreme Court of Ohio's OCN Help Desk at 1-888-558-8994 or ocnhelpdesk@sc.ohio.gov. A user guide providing an overview of the features of the MIAR system is available here.
2. Manually complete and mail BCI's Notification Form for Records Checks to BCI Identification, P.O. Box 365, London, OH 43140.

For any questions, please contact: Mona Barnes at 740-845-2015

*R.C. 5122.311 requires the probate judge <u>or</u> chief clinical officer to report. Who reports this information should be determined through an arrangement between the Probate Court and Mental Health Provider's Chief Clinical Officer.

LAW ENFORCEMENT

PROTECTION ORDERS ENTERED INTO LEADS

This information is based on when a law enforcement agency receives Form 10-A from a court.

NCIC Protection Order File
The NCIC Protection Order File (POF) contains court orders that are issued to prevent acts of domestic violence against a person or to prevent a person from stalking, intimidating, or harassing another person. Orders are issued by both civil and criminal state courts. The types of protection orders issued and the information contained in them vary from state to state.

Each record in the POF must be supported by a protection order (electronic or hard copy). **Protection Order entry criteria can be found in the NCIC Manual at: https://leads.ohio.gov/Manuals.**

Indicators within the NCIC Protection Order file for identifying individuals with firearm prohibitions and the protection order bench card can be found under the NICS heading at: https://leads.ohio.gov/Manuals.

WARRANTS ENTERED INTO LEADS

This information is based on when a law enforcement agency receives a warrant from a court.

NCIC Wanted Person File
An entry in the Wanted Person File should be made immediately after: 1) the decision to arrest or authorize arrest has been made, and 2) the decision has been made regarding extradition. The criteria for entry follow.

Agencies must have a warrant (electronic or hard copy) on file to support a wanted person entry. Only the agency that holds the warrant may make an NCIC wanted person entry. The only exception is that any criminal justice agency or regional dispatch center may act as holder of the record for another agency that has no telecommunications equipment. When such an entry is made, the agency holding the record may place its own Originating Agency Identifier (ORI) in the ORI Field but only when there is a written agreement between the two agencies that delineates the legal responsibility of each for the record. **Wanted Person entry criteria can be found in the NCIC Manual at: https://leads.ohio.gov/Manuals.**

Guidelines for establishing the fugitive from justice firearm prohibition can be found under the NICS heading at: https://leads.ohio.gov/Manuals.

MENTAL ILLNESS FORM 95 ENTERED INTO LEADS

When a law enforcement agency receives Form 95 from a court regarding certain findings concerning mental illness, the law enforcement agency is required to enter the information into the National Crime Information Center (NCIC) Supervised Release File through the Law Enforcement Automated Data System (LEADS). **Supervised Released entry criteria can be found in the NCIC Manual at: https://leads.ohio.gov/Manuals.**

INFORMATION LAW ENFORCEMENT IS REQUIRED TO REPORT TO BCI

In accordance with R.C. 109.60(A)(1) and (A)(2), there are two methods to send arrest data on reportable offenses to BCI:

1. Electronically submit arrest data via a livescan.
   https://www.ohioattorneygeneral.gov/Law-Enforcement/Bureau-of-Criminal-Investigation/Identification-Division/Livescan
2. Submit a paper fingerprint card to BCI Identification, P.O. Box 365, London, OH 43140

Applicable statutes regarding reportable offenses:

- R.C. 109.572 (A)(1)(a), (A)(5)(a) or (A)(7)(a) – Adult Reportable Offenses
- R.C. 2901.01(A)(9)(a) – Juvenile Reportable Offenses

Additional guidance/comment on Arrest reporting:

- Remember to submit the necessary sealing information to BCI.

For any questions, please contact Rob Sollars, Quality Assurance Manager at 740-845-2213.

CONTACT INFORMATION

Ohio Attorney General's Office, Bureau of Criminal Investigation (BCI)

Identification Section: 740-845-2210

Arrest and Disposition Reporting:

Electronic Disposition Reporting Questions: electronic_dispositions@ohioattorneygeneral.gov

Mental Illness Adjudication Reporting:

BCI Identification, P.O. Box 365, London, OH 43140

Supreme Court of Ohio, Ohio Courts Network (OCN)

OCN Help Desk: 1-888-558-8994 or ocnhelpdesk@sc.ohio.gov

Ohio State Highway Patrol, Law Enforcement Automated Data System (LEADS)

LEADS: 1-800-589-2077

LEADS Administration Questions: LEADSAdmin@dps.ohio.gov

LEADS Information: https://leads.ohio.gov

For more information on the Federal Bureau of Investigation's (FBI) NICS program, go to https://www.fbi.gov/services/cjis/nics.