



Department of Justice

STATEMENT OF

**RACHEL L. BRAND
ASSISTANT ATTORNEY GENERAL FOR LEGAL POLICY
DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON DOMESTIC POLICY
UNITED STATES HOUSE OF REPRESENTATIVES**

CONCERNING

**“LETHAL LOOPHOLES: DEFICIENCIES IN STATE AND FEDERAL
GUN PURCHASE LAWS”**

PRESENTED

MAY 10, 2007

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Good afternoon, Chairman Kucinich, Ranking Member Issa, and members of the Subcommittee. Thank you for the opportunity to speak to you today about the National Instant Criminal Background Check System (NICS), established by the Attorney General under the Brady Handgun Violence Prevention Act of 1993, Pub. L. 103-159, known as the Brady Act.

The Federal Gun Control Act (GCA) of 1968, and subsequent amendments, created categories of persons who are prohibited from receiving or possessing firearms, including any person who: (1) has been convicted of, or is under indictment for, a felony; (2) is a fugitive from justice; (3) is an unlawful user or addicted to any controlled substance; (4) has been adjudicated as a mental defective or committed to a mental institution; (5) is an illegal or unlawful alien or, with certain exceptions, a non-immigrant alien; (6) has been dishonorably discharged from the Armed Forces; (7) has renounced his United States citizenship; (8) is subject to a domestic violence protection order; and (9) has been convicted of a misdemeanor crime of domestic violence. See 18 U.S.C. 922(g). In addition, some States have laws that impose additional restrictions on gun ownership.

The Brady Act, enacted in 1993, required the Attorney General to establish no later than November 1998 a system for federally licensed gun dealers to contact to obtain information, “to be supplied immediately,” on whether a non-licensed gun buyer (i.e., a person who is not a federally licensed dealer) is prohibited from receiving a firearm under Federal or State law. Brady Act background checks replaced an honor system under the GCA in which gun dealers generally had to accept at face value buyers’ representations that they were not prohibited from receiving a firearm.

The NICS has had a significant impact in preventing prohibited persons from buying firearms from federally licensed gun dealers, while at the same time facilitating immediate completion of the vast majority of background checks so that lawful purchasers can buy a firearm without unreasonable delay. After more than eight years of operations, over 75 million

background checks have been processed through the NICS. Those checks have denied approximately 1.1 million gun transfers to persons prohibited by law from possessing firearms. The NICS has also gone a long way toward fulfilling the Brady Act's requirement that the background checks be completed promptly, with 92% of checks being completed during the initial call by the dealer, and 95% of the checks being completed within 2 hours.

What is the NICS?

At the Attorney General's direction, the Federal Bureau of Investigation (FBI) developed the NICS through a cooperative effort with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and State and local law enforcement agencies. The system is operated by the NICS Section of the FBI's Criminal Justice Information Services (CJIS) Division located in Clarksburg, West Virginia.

The NICS is a computerized system that queries several national databases simultaneously in order to process a name-based background check. The databases checked include (1) the Interstate Identification Index (III or "Triple I"), a database of criminal history records, (2) the National Crime Information Center (NCIC), which includes files of protection orders and wanted persons relevant to gun background checks, and (3) the NICS Index, which includes records collected by the FBI relevant to gun background checks that are not in the III or NCIC. The NICS is designed to respond to a dealer within 30 seconds in the vast majority of cases with information on whether a prospective buyer is prohibited from receiving a firearm under Federal or State law.

FBI personnel process NICS checks generated by most States, but the system is designed so that States can elect to serve as a point of contact (POC) for NICS checks in their States. As a POC, a State designates a State or local law enforcement agency to process NICS checks for the gun dealers in that State. Currently, 13 States serve as POCs for all firearm transactions within those States, so they are referred to as full POCs. An additional 8 States serve as partial POCs for background checks for either handgun sales or handgun permits within those States.

How a NICS Check Works

The NICS is available to its users 364 days a year, from 8:00 am to 1:00 am EST. Gun dealers submitting checks directly to the FBI NICS Section can do so either by calling a toll-free number and submitting the required information about the buyer to a contract call center that sends the request to the FBI for the database check or by sending a request directly to the NICS electronically via a secure internet portal, referred to as "NICS e-check." Dealers in POC States use the method prescribed by the POC agency.

A NICS check begins after a prospective purchaser provides a government-issued photo identification to the gun dealer and fills out an ATF firearms transaction form, known as the ATF form 4473. The gun dealer then contacts the appropriate agency, either the FBI (through its contract call center or through NICS e-check) or the State POC, and provides the purchaser's descriptive information from the ATF form 4473. This information is used to search the databases queried by the NICS for possible matching records. This descriptive information

includes name, date of birth, sex, race, State of residence, and citizenship, as well as other information voluntarily provided by the purchaser, such as social security number.

After the purchaser's information is entered into the NICS, a search is conducted for matching records in III, the relevant files in NCIC, and the NICS Index. If the database search does not yield a record that potentially matches the descriptive information provided by the dealer, then the call center responds immediately advising the FFL that the firearm transaction may "proceed," signifying that no information was discovered to indicate that the purchaser is prohibited from purchasing or possessing a firearm. In addition to the "proceed" response, the NICS generates a unique number associated with the check, referred to as a NICS transaction number, or NTN, which the gun dealer is required to record on the ATF form 4473. These "immediate proceed" transactions take 30 seconds or less.

If the search hits on a record that potentially matches the purchaser, the call center provides the dealer with the NTN and immediately transfers the dealer and transaction to a NICS legal instruments examiner, or "NICS examiner," at CJIS. NICS examiners are FBI personnel who, unlike the call center personnel, are authorized to access and trained to analyze criminal history and other sensitive information. Once the transaction is transferred, the NICS examiner reviews the records returned by the NICS search to determine if any match the prospective firearm purchaser, if the matching records are complete, and whether a matching record indicates that the purchaser is prohibited from the purchase or possession of a firearm. If a record matches the purchaser and does not demonstrate a disqualification from purchasing or possessing firearms, then the NICS examiner will instruct the dealer that the transaction may "proceed." If the matching record does indicate a disqualification from purchasing or possessing firearms, the dealer is instructed to "deny" the transaction. If the record is incomplete or inconclusive, then the NICS examiner advises the dealer that the transaction has been "delayed" for further review. Delayed transactions are automatically placed in a "delay queue" by the NICS and are then assigned to a NICS examiner to attempt to obtain complete information in order to make a final determination regarding the prospective purchaser's eligibility to purchase or possess a firearm. In no case is the gun dealer provided information about the underlying reason for a "denied" or "delayed" response.

The NICS has an appeal process that provides delayed or denied purchasers the reasons for the delay or denial and the opportunity to seek the correction of the underlying records through an appeal that can be filed with the NICS Section or the State POC.

The Record of NICS Operations

Of the more than 75 million checks processed by the NICS since November 1998, over 38 million were processed by the FBI and over 36 million were processed by POC States. Through the end of 2006, the NICS Section made more than 540,000 denials, and State POCs made more than 500,000 denials. More than half of the denials were based on a felony conviction, with the next biggest category of denials relating to domestic violence (including convictions for a misdemeanor crime of domestic violence and domestic violence restraining orders). A breakdown of the reasons for denials by the FBI through the end of 2006 is provided in the attached chart, and a similar breakdown for State POC denials through the end of 2005 can

be found in the publication “Background Checks for Firearm Transfers, 2005,” available on the Bureau of Justice Statistics (BJS) website.

Since 2002, an average of 92 percent of the checks processed through the NICS Section provided the gun dealer with a final status of proceed or deny during the initial call. The following is a breakdown of the remaining 8 percent of the FBI-processed transactions that are delayed beyond the initial call for further review or research:

- An additional 3 % are completed within two hours, so that 95 % of all checks are completed within two hours.
- The remaining 5 % require a call or fax to a State agency for additional information to make the determination. These inquiries are usually only handled by the court or State agency on business days (Monday through Friday).
- Approximately 2 % of this remaining 5 % of checks reach final determination within 3 business days, for a total of 97 percent of checks completed within 3 business days.
- Of the remaining 3 % of checks that are still open by the end of 3 business days, approximately 1.23 % reach final determination (based on information returned by State courts or agencies) within 20 days, and approximately 1.77 % never reach a final determination because no response from the court or agency contacted by the NICS is ever provided (mostly as a result of the unavailability of older records).

In 2006, the NICS processed over 10 million background checks, which was the highest number of transactions ever processed in a single year. On December 22, 2006, the NICS experienced a record day, processing 75,132 background checks through the NICS. While there have been a small number of unscheduled system outages, the NICS experienced an average system availability rate of 99.58% in 2006.

NICS Firearm Retrieval Referrals

Under the Brady Act, if the NICS is unable to provide a gun dealer with a final determination of “proceed” or “deny” for a background check within three business days, the dealer is allowed to transfer the firearm, although some dealers have a policy not to transfer the firearm without a “proceed” from the NICS. The NICS Section continues to actively seek information for up to 20 days to try to reach a final determination on an “open” transaction. In cases where the NICS receives prohibiting information about a delayed transaction more than 3 business days after the check was submitted, the FBI contacts the dealer to change the status from “delayed” to “denied.” If the dealer has already transferred the firearm, the FBI refers the case to ATF so that ATF can investigate and retrieve the firearm or otherwise ensure that the firearm is not in the hands of the prohibited person. These are priority cases for ATF field agents who are required to initiate action on retrieval cases within 7 days of referral to the field office.

Authority to Obtain Relevant Records for the Databases Checked by the NICS

The effectiveness of the NICS in preventing gun transfers to prohibited persons depends directly on the availability to the system of automated information about which individuals are prohibited from receiving a firearm. The Brady Act requires Federal agencies to submit to the

NICS upon the request of the Attorney General information on persons prohibited from receipt of a firearm under Federal or State law. The Brady Act does not require States to submit information on prohibited persons to the NICS. Thus, the States are under no obligation or requirement under the Brady Act or any other Federal law to submit information on disqualified persons to the NICS. To the extent that States submit information on prohibited persons to the NICS, they do so voluntarily. Similarly, States' submission to the FBI of criminal history and other information relied upon by NICS and generally used by law enforcement officials in the III and NCIC is not mandated by Federal law. States submit such information voluntarily in order to gain the mutual benefit of having ready access to criminal history and other information relevant to law enforcement activities on an individual arising in other States. Thus, all of the relevant State information available for NICS checks is provided voluntarily by the States to the FBI and entered into one of the three information systems checked by the NICS – the III, the NCIC, or the NICS Index.

The III

The III is the FBI's national system designed to provide access to automated criminal history record information to authorized government agencies. Under the III, the FBI maintains an index of persons arrested for felonies or misdemeanors under either State or Federal law. The vast majority of the records in the III are provided by the States. The index includes identification data such as name, birth date, race, and sex. Search queries using names and other identifiers are made by law enforcement agencies throughout the country. The automated name search process takes about two seconds and, if a hit occurs, data are automatically retrieved from the appropriate repositories, including State repositories, and forwarded to the requesting agency. A broad range of criminal justice uses are made of the III, including assisting law enforcement investigators in arrest and charging decisions and assisting criminal justice agencies in making case processing decisions, such as pretrial release, career criminal charging, sentencing inmate classification, and community supervision. The information is also used by Federal agencies in support of immigration enforcement and border control. The III is used in NICS checks because it provides automated access to criminal history information that is relevant to a determination on whether a person is prohibited by law from receiving a firearm.

The NCIC

The NCIC is the FBI's broad information system that supports law enforcement, criminal justice, and homeland security agencies in the United States. It provides access to the III and includes other files of interest to law enforcement, such as those relating to wanted persons, civil protection orders, registered sex offenders, known or suspected terrorists, and missing persons. The great majority of this information comes from the States. Two of the files in the NCIC that are checked by the NICS include the Wanted Persons File, which contains information on over 1.3 million individuals subject to an outstanding arrest warrant, and the Protection Order File, which contains information about nearly one million individuals subject to protection or restraining orders.

The NICS Index

When the NICS was first established, the FBI created a new database for the collection of information not already included in the III or NCIC on persons who are prohibited under Federal law from possessing firearms. The NICS Index currently contains over 4.3 million such records. Of these, 3.6 million have been submitted by the United States Bureau of Immigration and Customs Enforcement (ICE) on removable aliens who fall within the category of illegal aliens prohibited from receiving guns. The other categories of records contained within the NICS Index include individuals who have received a dishonorable discharge from the armed forces, individuals who have renounced their United States citizenship, individuals who have been adjudicated by a court, commission, board, or other lawful authority as a danger to themselves or others or incapable of managing their own affairs or who have been involuntarily committed to a mental institution, and individuals who have been convicted of a misdemeanor crime of domestic violence. The NICS Index also includes a Denied Persons File that contains any records that do not meet the criteria for entry into NCIC or III, but that nevertheless demonstrate an individual is federally prohibited under any of the categories under the Gun Control Act. Examples of records in the Denied Persons File include protection orders or active arrest warrants that are not eligible for entry in NCIC, persons who are under court order not to possess a firearm as a condition of deferred adjudication, a felony conviction posted to the State record that is not reflected in the III, and prohibiting mental health records that cannot be placed in the NICS Index's Mental Defective File because State law or policy prevents the submitting State from identifying the information as a mental health record.

NICS Index records are not available for general law enforcement purposes. The NICS regulations provide that the NICS Index may only be used for gun and explosives-related background checks and enforcement efforts relating to firearms laws. See 28 CFR 25.6(j).

DHS Records On Aliens

When the information supplied by the prospective purchaser indicates a citizenship other than United States, the NICS automatically initiates a query to the ICE Law Enforcement Support Center (LESC), which searches for matching records in DHS databases and responds electronically to the NICS indicating the purchaser's immigration status.

State Databases

In addition to the databases searched by the NICS, State databases may also be checked by POC States for disqualifying information. These State databases include the State's own criminal history records, which generally have more complete information on arrest dispositions, including information on whether the charges were dismissed or the person was convicted of the arrest charge or some different charge. POC States may also check State records that have not been provided to the FBI on individuals who have a disqualifying mental health record or are under a domestic violence restraining order.

The National Criminal History Improvement Program (NCHIP)

As noted above, State provision of information to the NICS and related databases is voluntary. The amount and quality of data provided varies among States. The Brady Act established the NCHIP Federal funding program, administered by BJS, to improve the automation and accessibility of State criminal records. NCHIP awards totaled just over \$506 million between 1995 and 2006, and the States have spent approximately \$30 million in matching funds since a matching requirement was imposed in 2000. In general, NCHIP allows States to: (1) develop and enhance automated adult and juvenile criminal history record systems, including arrest and disposition reporting; (2) implement and upgrade their automated fingerprint identification (AFIS) systems, which must be compatible with the FBI's integrated automated fingerprint identification system (IAFIS); (3) establish programs and systems to facilitate full participation in the III and the NICS, including the submission of records on individuals prohibited from possessing firearms under Federal or State law; (4) support court-based criminal justice systems that report dispositions to the State repositories and the FBI and are compatible with other criminal justice systems; (5) to support the development of accurate and complete State sex offender identification and registration systems that interface with the FBI's National Sex Offender Registry; and (6) to identify, classify, collect, and maintain records of arrest warrants (wanted persons) and of protection orders to protect victims of stalking and domestic violence.

NCHIP has been successful in increasing the accessibility of records. Among the estimated 71 million criminal records in the United States, about 9 out of 10 are now automated, and 3 out of 4 of these are accessible for a firearms check. Over the last decade, increases in the number of records available for a background check has increased at twice the rate of increase in the number of records held by repositories. All but two States are now III participants, which entails compliance with rigorous FBI standards. Over the last 10 years, the number of States participating in III has roughly doubled to 48, with only Vermont and Maine still working to make the technological changes needed to become III participants. Finally, two NCIC files created since the beginning of NCHIP, the Protection Order File and the National Sex Offender Registry, now have nearly one million records and over 474,000 records, respectively, available for background checks. Information on the number of records that have been submitted by each State into the NCIC Protection Order and Wanted Persons files is reflected in an attached chart.

In addition to providing funding to States through NCHIP, the FBI, in coordination with ATF, has been working to encourage the States to submit information on prohibited persons to the NICS. This outreach has included education on the Federal firearm prohibitions, as well as technical support to facilitate the electronic submission of information.

The Continuing Need for Record Improvements

Despite the tremendous progress NCHIP and the Department's other efforts have made in creating a national system for automated access to criminal history records and other information used by law enforcement, significant shortcomings remain in the completeness of the records in the system and the availability of relevant records for NICS checks. They include:

- Most significantly, the fact that approximately one half of III arrest records are missing dispositions. The lack of complete information about arrest dispositions is the major reason for NICS checks being delayed, as well as the main reason more than half of delayed checks remain in that status for more than 3 business days.
- The limited submission by the States of disqualifying mental health records to the NICS Index. As explained in more detail below, only a handful of States currently provide such records in any significant number.
- Less than full State participation in and complete submission of records to the NCIC Protection Order File. This file contains records of individuals who are the subject of certain protective orders, such as in domestic violence and stalking cases, and therefore legally prohibited from receiving a firearm. BJS and the NICS Section have worked with the National Center for State Courts and other State court associations in outreach to courts personnel on protection orders and their proper entry into the NCIC file. However, while the majority of States now are submitting records to the Protection Order File, some States have yet to submit any protection order information. In addition, many States that are submitting information do not have the systems in place to submit all protection orders that would prohibit a subject from receiving or possessing a firearm. Resource limitations for State and local agencies are the primary factor cited to the FBI for less than complete reporting.
- Less than complete submission of records to the NCIC Wanted Person File. Although all States submit records to the Wanted Persons File, according to BJS, there is great variation among the States in arrest warrant submissions to NCIC, and many States are not submitting all arrest warrants that would prohibit the subject from receiving or possessing a firearm. Resource limitations is one of the factors cited for less than complete reporting.
- The lack of flagging of misdemeanor convictions of domestic violence, preventing the NICS from readily identifying these disqualifying records. The records of most misdemeanor assault convictions do not identify whether the victim had a domestic relationship with the offender that makes the offense one that prohibits the offender from receiving or possessing a firearm.

The challenge of achieving greater record completeness in our national criminal history record systems was noted in a report recently submitted to Congress in June 2006 entitled *The Attorney General's Report on Criminal History Background Checks*. The report was called for in the *Intelligence Reform and Terrorism Prevention Act of 2004* and made recommendations concerning the authority and programs for access to the III for non-criminal-justice purposes. The FBI's national criminal history record system has a myriad of uses in addition to the NICS, including uses for a wide variety of criminal justice, homeland security, and non-criminal justice purposes.

The report includes recommendations on record improvement. Two of the report's recommendations are particularly relevant to this discussion. First, the report recommends that "there should be a renewed federal effort to improve the accuracy, completeness, and integration of the national criminal history records system." The report noted that over the last several years, NCHIP has been funded at smaller and smaller fractions of the amount requested in the President's budget each year. NCHIP Budget requests for FY 2003-2006 averaged approximately \$60 million dollars, and the NCHIP request in FY 2007 was approximately \$40. In contrast, the direct appropriations for NCHIP were \$40 million in FY 2003, \$30 million in FY 2004, \$25 million in FY 2005, \$10 million in FY 2006, and \$10 million in FY 2007. At the same time that funding has declined, the purposes for which the money is to be used have increased, such as participation by the States in the national sex offender registry and the creation of Protection Order File. The report indicates that, in order to guide budget requests and funding decisions, it is important to "develop a realistic assessment of the cost to achieve these record improvement goals."

Second, the report recommends that "federal funds should be targeted at reaching national standards established by the Attorney General relating to prompt disposition reporting and record completeness," so that there is uniformity in record improvements nationwide. The report states that financial support to the States should be restricted to applications that will meet national standards established by the Attorney General concerning the content of records systems and the mechanisms by which such records can be merged and shared with the law enforcement and criminal justice community. The report notes that accomplishing prompt disposition reporting will require developing electronic connections between record repositories and all local law enforcement agencies, including investigative agencies, prosecutors' offices, and courts. Creating these electronic connections should allow for much prompter and automated updating of the dispositions, perhaps allowing for updating at the repository on the same day the disposition is entered by the responsible agency. Such uniform national improvements in record completeness would improve the service provided by the FBI's national criminal records systems for all of its uses, including NICS checks.

Prohibiting Mental Health Records

The Mental Health Prohibitor

The Gun Control Act makes it unlawful for any person who has been "adjudicated as a mental defective" or who has been "committed to a mental institution" to receive or possess firearms. ATF regulations published in 1997 (27 C.F.R. § 478.11) define those terms as follows:

Adjudicated as a mental defective.

(a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

- (1) Is a danger to himself or to others; or
- (2) Lacks the mental capacity to contract or manage his own affairs.

(b) The term shall include—

- (1) A finding of insanity by a court in a criminal case; and
- (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

Committed to a mental institution. A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

Thus, a person is disqualified under Federal law on the basis of mental illness only when a court or other lawful authority makes a finding of dangerousness to self or others or of incompetence *or* issues a formal order involuntarily committing a person to a mental institution. The prohibition does not cover persons who voluntarily seek or receive treatment for mental illness. Only records of findings or orders by courts or other lawful authorities identified in the ATF definition are used for purposes of identifying a person in this category.

There are two files in the NICS Index into which Federal agencies and the States can enter information about individuals who have a disqualifying mental health history – the Mental Defective File and the Denied Person File. The Mental Defective File contains only the names and other biographical information, such as date of birth or social security numbers, of the individuals with a disqualifying mental health history. The Denied Persons File contains the names and biographical information of individuals who are prohibited from receiving a firearm, but whose record is not entered into another system or file checked by the NICS. The FBI allows States to enter names about disqualifying mental health histories in the Denied Persons file. This allows a State to share this information for purposes of NICS checks without necessarily identifying the person whose name is entered as having a mental health history. Neither file contains information about medical records or the details of the mental health history. If a prospective firearm purchaser is found to match a name in the file, the proposed gun transfer is denied. If the individual wishes to challenge the denial, the agency that provided the name then becomes involved in the appeal and the review of the underlying facts.

Outreach Seeking State Mental Health Records

The FBI and ATF have made continuing efforts to encourage States to provide more mental health records to NICS. Examples of outreach efforts seeking relevant mental health records include a letter sent by the NICS in June 2001 to the heads of all State central records repositories urging the States to make submissions to the NICS Index, including mental health records. Letters specifically urging the submission of relevant mental health records also were sent on May 14, 2004, to all State attorneys general, all State governors, and to all State departments of mental health. A similar letter was sent on March 7, 2007, to the attorneys general of all States and territories that are not yet making significant, or any, submissions of records to the Mental Defective File. Additional outreach by the NICS Section includes, for

example, presentations on the topic of disqualifying mental health records to annual NICS User Conferences that have in attendance representatives from most States, State clerk of court and court manager conferences, the National Association of State Mental Health Program Directors, judicial conferences, and sheriff association meetings. The three NICS Operation Reports published by the FBI since the NICS began have also included information on this topic.

In addition to these efforts by the FBI to encourage State submission of mental health records to the NICS, BJS has included in all NCHIP program announcements as an allowable cost funding for providing disqualifying mental health information for gun background checks. Every NCHIP program announcement since 2002 has identified the submission of such information to the NICS Index as a “program priority.”

ATF is also now planning to send letters to all State attorneys general, offering to provide additional guidance on the Federal mental health prohibitor and to work with the States in reviewing State laws making relevant mental health records available for NICS checks. In addition, ATF is planning to amend its form 4473 to provide additional information to purchasers about the definitions of “adjudicated mentally defective” and “committed to a mental institution.”

Mental Health Records Currently Available for NICS Checks

The FBI has obtained 138,766 disqualifying mental health records from the Veterans Administration and one such record from the Department of Defense, all of which are entered into the Mental Defective file. The following is a list of States that submit mental health information directly to the Mental Defective File. The totals represent the number of records submitted as of April 30, 2007.

Alabama	24	Missouri	401
Arkansas	51	North Carolina	330
Arizona	1	New Hampshire	1
California	27	New York	1
Colorado	9,269	Ohio	2
Florida	1,530	South Carolina	1
Iowa	47	Tennessee	15
Kentucky	1	Utah	12
Kansas	1,506	Virginia	81,233
Maryland	3	Washington	63
Michigan	73,382	Wyoming	3

States may, at their discretion, submit names of persons disqualified on mental health grounds into the Denied Persons File instead of the Mental Defective File. When a State submits a name to the Denied Persons File, it does not indicate why the person is disqualified. Therefore, the NICS Section is unaware of how many of the records submitted to the Denied Persons File relate to mental health. A State may choose to submit information this way if, for example, it has privacy-related concerns about informing the Federal system which records relate to mental health. The States of Georgia and Washington have advised the NICS that they submit mental

health information to the Denied Persons File, although they did not specify the number of mental health records entered. The total entries in the Denied Persons File by those States are:

Georgia	2,713
Washington	37,453

Certain POC States, including California, Oregon, Illinois, Nebraska, and Connecticut, check their own state mental health records when processing their gun eligibility background checks even though they have not submitted that information to the NICS Index. This ensures that a person disqualified on mental health grounds by a State agency in Illinois, for example, will not be allowed to purchase a gun from a dealer in Illinois. It does not, however, prevent such a person from purchasing a gun in another State because a check performed in that State will not have access to Illinois' records. Virginia began submitting its mental health information to the NICS Index in November 2003, and the hits on those records demonstrate the difference this can make. As of November 2006, the Virginia disqualifying mental health records had resulted in 438 denials, of which 60 of the attempts to purchase were in Virginia and 378 of the attempts were in other States.

Some States that do not currently submit mental health information to the NICS Index have State statutes that require a court order to allow the sharing of mental health information. In some States, a change in law would be required to allow the sharing of such information with the NICS. Other States simply do not have the funding to support the gathering and submission of mental health information. BJS is currently developing and expects to send out soon a survey to identify States whose barriers to sharing this information are simply resource limitations, rather than issues of law or policy.

Some States already are working with the NICS to make the necessary changes in State law to authorize the submission to mental health records to the NICS Index. For example, in February 2007, based on a recent State law change, the State of Florida began the process of collecting and submitting information on current involuntary commitments to the Mental Defective File. FBI representatives testified before the Connecticut legislature on the submission of mental health records to the NICS and provided State officials with information on the definition of the Federal mental health prohibitor. On November 17, 2006, the NICS Section signed a memorandum of understanding with the Connecticut Department of Public Safety authorizing the submission of mental health information to the NICS Index. The NICS and the California Department of Justice have been working through the technical requirements that will enable California to soon submit to the NICS Index information on the existence of disqualifying mental health records held by California on over 300,000 individuals. In addition, the FBI's NICS Index Liaison Office has worked with officials in the States of Arkansas, New York, and Texas, where State legislative proposals recently were introduced to allow the submission of information about disqualifying mental records to the NICS Index. In Arkansas, the legislation was passed on March 23, 2007, and will become effective on July 1, 2007.

Conclusion

Thank you for the opportunity to speak to you today about the NICS. I am happy to answer your questions.