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Document Title: State Progress in Record Reporting for Firearm-Related Background Checks: Protection Order Submissions

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This resource is part of a series of BJS grant-funded reports on firearm-related background checks. This report provides background information and examples related to how States are facilitating firearm-related background checks that identify persons named in protection orders who are prohibited from owning a firearm.

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State Progress in Record Reporting for Firearm-Related Background Checks: Protection Order Submissions

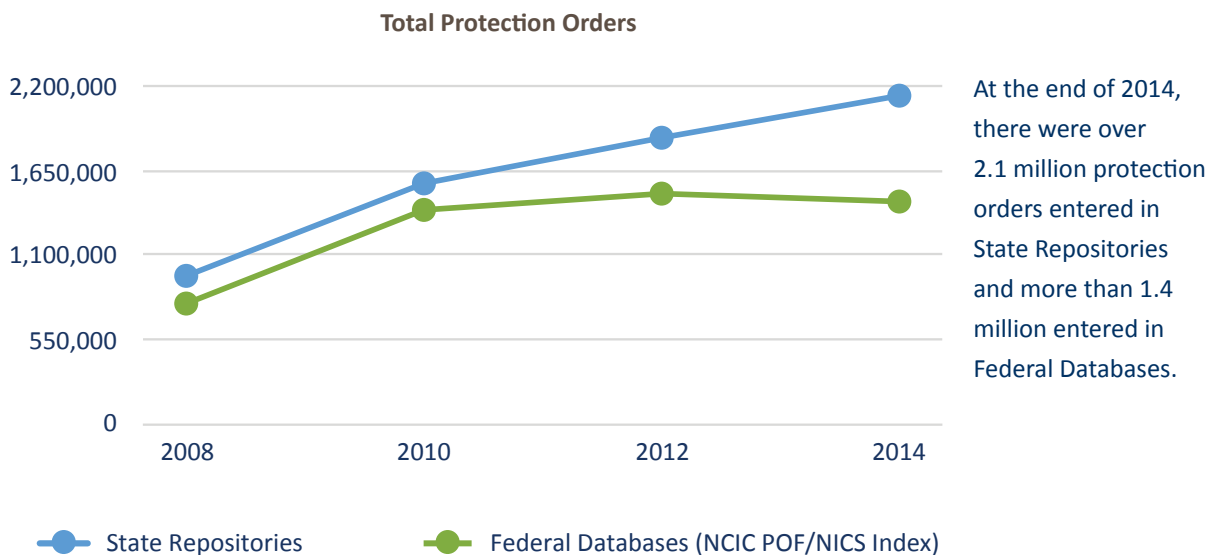
by Becki Goggins, SEARCH and Anne Gallegos, National Center for State Courts

April, 2016

Introduction

A protection order – also known as a restraining order, order of protection, protective order, or an injunction – is an order issued by a civil or criminal court for the purpose of preventing violence or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to another person.¹

This order may also contain other provisions such as requiring the abuser to relinquish firearms and/or refrain from all contact with the victim of abuse. When the subject of the protection order violates the terms established by the court, the victim can ask law enforcement (or the court) to enforce the order.



The **National Instant Criminal Background Check System**, or NICS, was mandated by the Brady Act and launched by the FBI on November 30, 1998. NICS is used by Federal Firearms Licensees (FFLs) to instantly determine whether a prospective transferee is eligible to receive firearms or explosives.

1 18 U.S.C. § 2265(5)(A)

In 1994, Congress enacted the Violence Against Women Act (VAWA), which requires all U.S. states and territories to give “full faith and credit” to all valid orders of protection issued by other jurisdictions including tribal lands, the District of Columbia, and U.S. territories.² The intent of this provision is to ensure that victims of abuse can call upon law enforcement for protection no matter where they are in the country. While persons who have been granted protection orders are encouraged to keep a copy of the order with them at all times, sometimes this is simply not practical or even possible. Since many jurisdictions require validation of a protection order if it cannot be visually inspected, it is important that protection orders be entered into the Protection Order File of the National Crime Information Center (NCIC) as this is the best way to ensure that a record of its existence can be confirmed by law enforcement across the nation.

For firearm- and explosive-related background checks the federal law contains provisions that narrow the circumstances when a protection order serves as a bar to receiving a firearm.³ The protection order must restrain the person who is the subject of the protection order from harassing, stalking, or threatening an intimate partner or child of such intimate partner, or prevent the subject of the order from engaging in other conduct that would place the partner or child in reasonable fear of bodily injury. An intimate partner is defined as the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabits or has cohabited with the person.⁴ In addition, the protection order must arise from a hearing in which the subject of the order had both notice and opportunity to participate. Some states have enacted laws expanding the nature of the relationship or types of conduct underlying the issuance of a protection order; these expanded-parameter protection orders serve as state disqualifiers for receiving a firearm.

Background

In 1993, Congress passed the Brady Handgun Violence Prevention Act (Brady Act) that, among other things, created the NICS. The NICS is the national system that enables Federal Firearms Licensees (FFL) to initiate a background

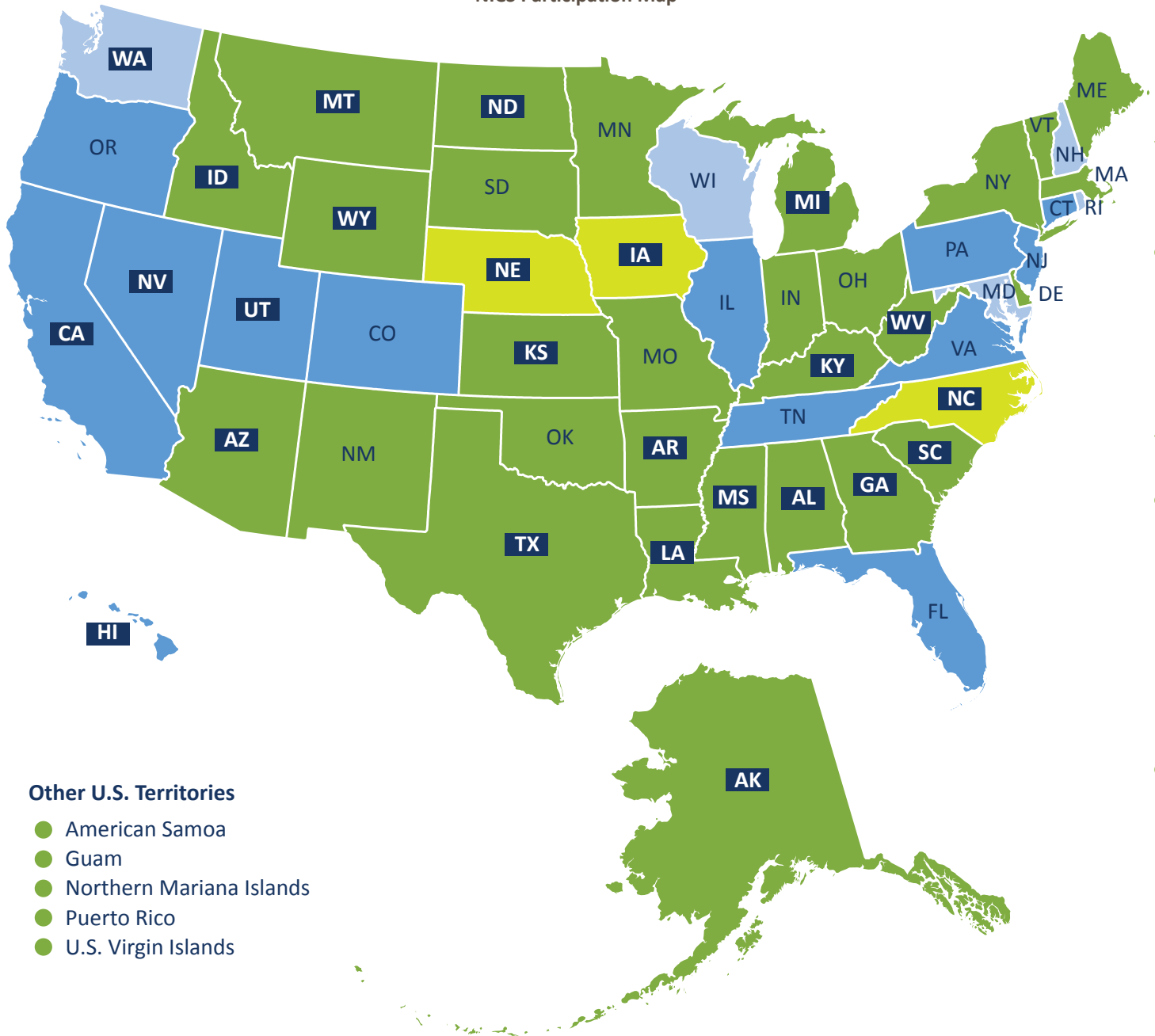
check through the FBI or a State Point of Contact (POC). The FBI or POC will check all available records to identify persons who may be prohibited from receiving or possessing firearms. The records may be included in the following databases.

- National Crime Information Center (NCIC) – An electronic database consisting of 21 files, 10 of which are queried for a NICS-related background check. These files help criminal justice professionals apprehend fugitives from justice, locate missing persons, recover stolen property, identify terrorists, and verify persons subject to protection orders.
- Interstate Identification Index (III) – Administered by the FBI, and participated in by all states, the III is a fingerprint supported automated criminal records exchange system that includes arrest and disposition information for individuals charged with felonies or misdemeanors. Additional information that may be available via III include persons that are fugitives from justice, persons found not guilty by reason of insanity or adjudicated to be incompetent to stand trial, persons found guilty of misdemeanor crimes of domestic violence, and persons under indictment.
- NICS Index – A database, separate from NCIC and III, created specifically for the purpose of conducting a firearm-related background check, the NICS Index contains information contributed by local, state, tribal, and federal agencies pertaining to persons prohibited from receiving or possessing a firearm pursuant to state and/or federal law. While any disqualifying record may be entered into the NICS Index, it is not intended to duplicate information entered in NCIC or III. Instead, the database was designed to house disqualifying information not otherwise available at the national level.
- Department of Homeland Security’s U.S. Immigration and Customs Enforcement (ICE): Relevant databases of the ICE are queried for non-U.S. citizens attempting to receive firearms in the United States.

States acting as a POC also search additional databases containing large volumes of state and local court and law enforcement records. Such records may render prospective gun purchasers disqualified under federal and/or state laws.

2 18 U.S.C., § 2265-66
 3 18 U.S.C., § 922(g)(8)
 4 18 U.S.C., § 921(a)(32)

NICS Participation Map



Other U.S. Territories

- American Samoa
- Guam
- Northern Mariana Islands
- Puerto Rico
- U.S. Virgin Islands

Point of Contact (POC)

- 25** At Least One ATF-Qualified Alternate Permit — The permits are issued by local or state agencies.
- 13** Full POC State — Contact state/territory for all firearm background checks including permits
- 4** Partial POC — Contact state for handgun and FBI for long gun background checks
- 3** Partial POC — Contact state for handgun permit and FBI for long gun background checks
- 36** Non-POC — Contact FBI for all firearm background checks

Please refer to the latest Permanent Brady Permit Chart for specific permit details at www.atf.gov/rules-and-regulations/permanent-brady-chart

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Where are NICS Prohibiting Records Reported?

The following lists the firearm purchase prohibiting categories identified in the Brady Act and shows the federal database in which those records are appropriately stored.

Prohibiting Record Type	Federal Database(s)	
Felony/Serious Misdemeanor Convictions	III: Should most appropriately be placed here so they are available for other criminal justice purposes.	NICS Index: Should be placed here if not available in III.
Fugitives from Justice	NCIC: Should most appropriately be placed here so they are available for other criminal justice purposes.	NICS Index: Should be placed here if not available in NCIC.
Unlawful Drug Use	III: Arrests and convictions for drug offenses should most appropriately be placed here so they are available for other criminal justice purposes.	NICS Index: Information such as admission of use and failed drug tests should be placed here.
Mental Health	III: Persons found not guilty by reason of insanity or adjudicated to be incompetent to stand trial should most appropriately be placed here so they are available for other criminal justice purposes.	NICS Index: Involuntary commitments to mental institutions for the purpose of treatment should be placed here as they would be otherwise unavailable for firearms background check searches. Persons found not guilty by reason of insanity or adjudicated to be mentally defective should most appropriately be placed here if they are otherwise unavailable through III.
Subjects of Domestic Violence Protection Orders (focus of this report)	NCIC: Should most appropriately be placed here so they are available for other criminal justice purposes.	NICS Index: Should be placed here if qualified for, but not available in, NCIC or if not qualified for NCIC, but still prohibited by state law.
Misdemeanor Crimes of Domestic Violence Convictions	III: Should be placed here so they are available for the purpose of sharing criminal justice information.	NICS Index: Should be placed here if not available in III or, if conviction is available in III, should also be placed here if qualifying relationship and/or force element is not available in III.
Indictments	III: Should most appropriately be placed here so they are available for other criminal justice purposes.	NICS Index: Should be placed here if not available in III.
Dishonorable Discharges	III: Should most appropriately be placed here so they are available for other criminal justice purposes.	NICS Index: Should be placed here if not available in III.
Illegal or Unlawful Aliens	NICS Index: Should be placed here as they would otherwise be unavailable for firearms background check searches.	
Renounced United States Citizenship	NICS Index: Should be placed here as they would otherwise be unavailable for firearms background check searches.	

Challenges to placing protection orders in NCIC

Despite the importance of making protection orders available through NCIC, there are many challenges that prevent them from being entered. At the end of 2014, there were 2,143,002 records in state protection order databases and 1,404,205 records in the NCIC Protection Order File.⁵ This means 738,797 records were present in state databases, but missing from NCIC. While some difference in the number of records in state versus federal databases is expected due to the fact that protection orders are continuously entered, recalled, or expire, the size of the disparity is a concern. The reasons for this gap and solutions for bridging it are discussed below.

As mentioned earlier, if a victim cannot produce a hard copy of a protection order, then many jurisdictions require law enforcement to verify the protection order through NCIC. In order to do this, the officer or dispatcher must verify the validity of the record by contacting the originating agency that entered the record. Once a record is entered into NCIC, the originating agency is required to provide “hit confirmations” 24 hours a day, 7 days a week.⁶ This presents a problem if a court is the custodian of record for the protection order, as most courts are not staffed 24/7. Additionally, many courts do not have direct access to NCIC. To overcome this obstacle, some courts have developed formal agreements with local sheriff’s offices to enter and support, or confirm, protection orders on their behalf while others have issued standing orders to the same effect.⁷ Another option is for state courts to partner with their court of last resort, which may be staffed by marshals 24/7 who can support after-hours hit confirmations. However, there are many courts (for example, those in states where the court of last resort is not staffed 24/7) that are unable to enter into such agreements and, thus, are unable to enter protection orders into NCIC since they cannot meet the NCIC requirements for 24/7 hit confirmation capabilities.

Two additional NCIC requirements for originating agencies – those that enter records into NCIC – are to “pack” the record and to provide for periodic validation of records.⁸ Packing the record means that the person entering the record consults source documents – e.g., driver’s license file, criminal history file, vehicle registration database, etc. – to ensure that as much descriptive information as possible about the subject of the protective order is included. To confirm the validity of the record, the originating agency must inspect each entry to ensure that it is accurate, complete, and still outstanding or active. This must be done within 60-90 days from initial entry and yearly thereafter, as well as any time an entry is modified. Both of these activities are time consuming and create another reason that some courts and law enforcement agencies do not routinely enter protection orders into NCIC. If they do not have the staffing to meet all of the responsibilities of supporting records in NCIC, they may elect to simply not enter them.

In some instances, protection orders may not be entered because the order from the court does not contain all of the necessary information to meet the requirements for inclusion in NCIC. In addition to administrative data about the originating agency, the following data elements are required for subjects of protection orders:

- name
- sex
- race
- protection order conditions
- date of expiration
- date of issue
- originating case number/protection order number
- at least one of the following: date of birth, FBI number, social security number, operator (driver’s) license number, vehicle identification number, or miscellaneous number (other government issued identification document such as a state identification card or passport)

5 Survey of State Criminal History Information Systems, 2014 (<http://www.search.org/resources/surveys/>).

6 <https://www.fbi.gov/about-us/cjis/ncic>

7 For example, in Pennsylvania: <http://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=23&div=0&chpt=61&sctn=5&subsctn=0>

8 FBI National Crime Information Center (NCIC) 2000 Operating Manual: Protection Order File

If any of these are missing from the court's order, then the record cannot be entered into the NCIC Protection Order File. Some courts have developed coversheets or templates to help ensure that judges include all of the required information.⁹

Finally, it is important to note that, unlike warrants, protection orders may not be entered until they are served and the subject has a chance to address the court. (In emergency situations, a temporary protection order may be granted. However, these typically expire within 3 to 7 days.¹⁰) In some cases, the law enforcement agency responsible for entering the protection order may not be advised that the order has been served. In other cases, they may enter the temporary protection order in NCIC, but the final order is not forwarded, resulting in the absence of the final order from the NCIC Protection Order File. In short, any breakdown in communication between the court and law enforcement can result in failure to properly enter a protection order.

Availability of Protection Order Records

Largely due to the challenges stated above, most states have created state Protection Order Files (POFs) to allow courts and other authorized agencies to enter protection orders into a state-administered database. As of yearend 2014, 42 states, the District of Columbia and Guam reported having their own centralized POF.¹¹ These files may house records that would not qualify for entry into NCIC, but they are still accessible to in-state law enforcement. Additionally, states may have more relaxed requirements for hit confirmations and validation requirements. For instance, in some states that maintain a POF, a POF "hit" with a scanned copy of the protection order attached may be acceptable confirmation, thus eliminating the need for courts to support records 24/7. In states where the state or local agency conducts the NICS check for the FFL, state POF files can also be queried before issuing a firearm permit or allowing a firearm transfer to proceed.

9 http://www.americanbar.org/content/dam/aba/migrated/domviol/publications/187815_ABA_Checklist_FINAL_authcheckdam.pdf

10 <http://family.findlaw.com/domestic-violence/domestic-violence-orders-of-protection-and-restraining-orders.html>

11 Survey of State Criminal History Information Systems, 2014 (<http://www.search.org/resources/surveys/>).

12 See: "CJIS Spring 2008 Assessment of NCIC Policies at Agencies Using Electronic Records Management Systems", "CJIS Spring 2012 Proposal to Modify the NCIC Validation Policy and Second-Party Check Requirement", and "CJIS Spring 2013 proposal to modify the NCIC Second-Party Check requirement for and Electronic Records Management System (ERMS)".

NCIC Policy Provides Guidance for Electronic Records as the Source Documentation for NCIC Records.

As many states continue to move toward automating data exchanges, modifications are also being made to requirements for NCIC submission. Over a decade ago the NCIC's Advisory Policy Board (APB), began work to update outdated NCIC policies so they would align with agencies using Electronic Records Management Systems (ERMS). The first policy was approved by the FBI in 2003 and in 2008, 2012, and 2013 the NCIC policies regarding information transmitted via ERMS were updated substantially. The current guidance specifies that second party checks and validation can be performed either manually or by synchronization of databases, and hit confirmation requests may be confirmed using the ERMS because it is considered to be the "source document." These changes were intended to accommodate the use of scanned documents and electronic databases (including court databases), encourage the reporting of information to NCIC, and still preserve the quality and accuracy of NCIC records.¹² Allowing for database synchronization and electronic documentation for hit confirmations is particularly helpful for submitting protection orders to NCIC, since protection orders are often difficult to manually track and validate given their dynamic nature.

Protection Orders in the NICS Index

Protection orders that do not qualify for entry into NCIC may be placed in the NICS Index – for example, orders from states with expanded parameters that disqualify persons under protection orders from obtaining gun permits and/or receiving firearms. Unlike NCIC entries, protection orders in the NICS Index do not require 24/7 hit confirmations, and they are not subject to the same rigorous validation rules. While placing protection orders in the NICS Index does not make them available for routine law enforcement purposes, it does make them available

for firearms background checks. Importantly, the NICS Index is accessible for all firearms permitting and transfers throughout the country as opposed to those records that only exist within a state POF.

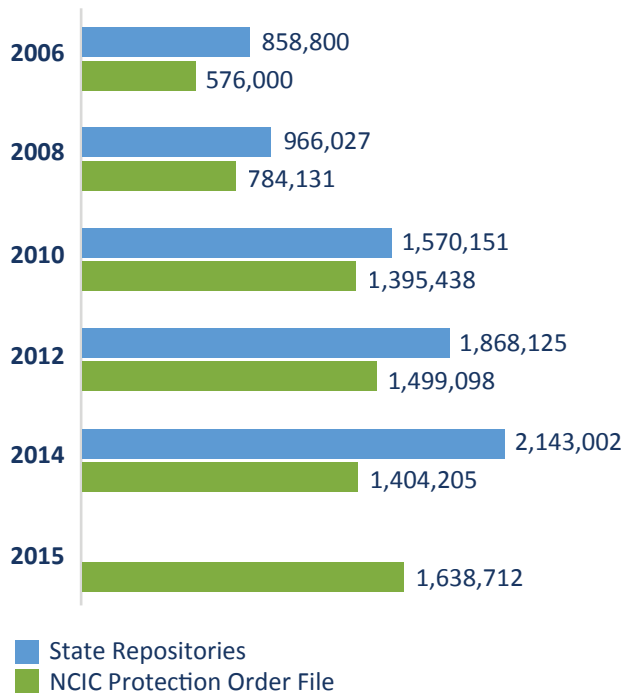
Once again, the challenge for courts is that they may lack access to their state’s Criminal Justice Information Services Agency, which is the primary mechanism for placing records in the NICS Index. However, batch submissions may be submitted via the internet through the Law Enforcement Enterprise Portal (LEEP).¹³ While this requires a court to create a LEEP account, there is no cost as long as there is an existing computer with internet access. Alternatively, courts may partner with a local law enforcement entity to enter protection orders into the NICS Index, requiring far less support in terms of maintaining the records.

Recent improvements in including protection orders in NCIC and the NICS Index

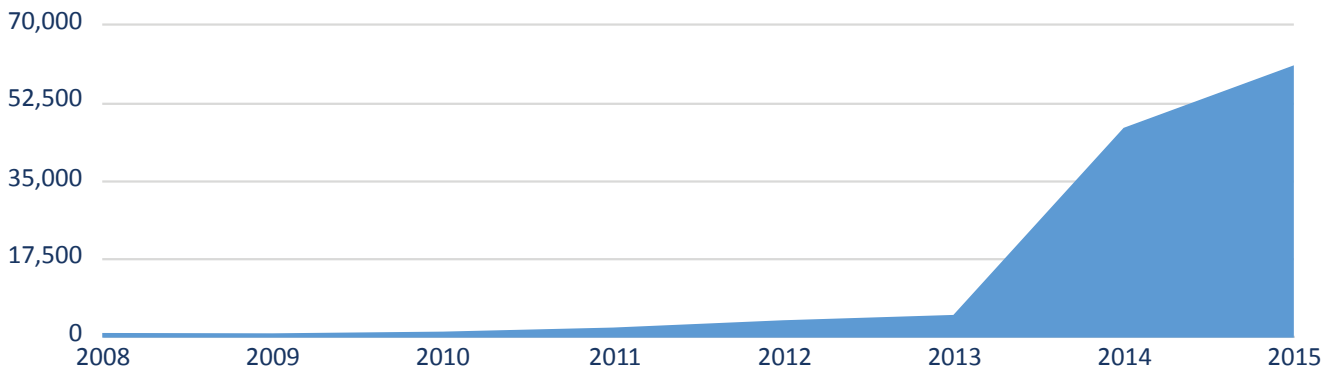
The Bureau of Justice Statistics (BJS) has encouraged states to increase the number of protection orders submitted to NCIC and the NICS Index by making grant funding available to states seeking to improve the quality of firearms background checks. Specifically, the National Criminal History Improvement Program (NCHIP) and the NICS Act Record Improvement Program (NARIP) provide funding to states to enhance the availability of protection orders through NCIC and the NICS Index. Since 1995, NCHIP has made over \$632 million dollars

available to states and territories to support criminal history record improvement. The NARIP program – which began more recently in 2009 – has awarded over \$95 million to states specifically for NICS-related efforts. Since 2006, when BJS first started tracking the number of protection orders in state POFs versus NCIC, the percentage of records available at the national level has remained steady at 60%. Since the inception of NARIP, the number of protection orders in the NICS Index has increased from 1,058 to 61,039 as of December 31, 2015.

Protection Orders in State Repositories v. NCIC



State Submitted Protection Orders in NICS Index



13 <https://www.fbi.gov/about-us/cjis/nics/general-information/nics-index-brochure>

State Success Stories

As outlined earlier in this report, the nature of protection orders and the requirements of NCIC together can make it challenging for states to make these records available at the national level. Several states have focused efforts on improving protection order reporting over the past few years, and federal grant funds, such as NARIP and NCHIP, have provided states with resources to develop strategies for overcoming the barriers to reporting protection orders to NCIC.

West Virginia Supreme Court of Appeals



Typically, the state police or criminal justice agency in a state has the responsibility of reporting protection orders to NCIC. However, in some cases, the courts have taken on that role and they are the entity that manages the protection order reporting process.

West Virginia is an example of a state that has successfully created a court-led system to maintain and report protection orders. By making the protection order itself accessible by law enforcement electronically, the 24/7 hit confirmation barrier was overcome. Employing court staff to conduct validation of NCIC records against court records provides a dedicated resource for this activity, allowing protection orders to be sent to NCIC.

The West Virginia Domestic Violence Registry (DV Registry) was established in 2009 as a tool to communicate domestic violence protective orders to law enforcement. The protection orders are made available to law enforcement statewide and are submitted to NCIC.

The DV Registry provides:

- Access to all active DV records in the state
- Access to services recorded by law enforcement and court staff throughout the state
- 24-hour support via phone and email
- Inclusion of out-of-state orders
- Technical assistance and training
- GEO mapping for service and law enforcement protection
- Firearm seizure and 3rd party transfer records

The database that supports the DV Registry includes a scanned copy of the protective order and petition. Staff in both magistrate court and family court scan DV protective orders into the database within minutes of when they are issued by a court. Throughout the day, the computer system pulls those new orders, formats them, and submits them through the West Virginia State Police to NCIC.

When an officer in the field runs a name through the NCIC and there is a "hit" for a protective order, the officer is required to confirm the data from the original source within ten minutes. Because West Virginia courthouses are not open 24/7, it was not previously possible to confirm a "hit" for a protective order. Now officers in West Virginia State Police detachments and 911 centers are able to access the scanned image of the protective order and confirm its existence and effective date. Because these centers are open around the clock, they can provide hit confirmations at any time. NCIC and state policies and procedures allow the website to be used for hit confirmation, service, and as an arrest tool without having to confirm whether the record is still active with the courthouse first.

The orders in the DV registry are passed through the state police to the NCIC Protection Order File (POF), and the State Police receive verification from the FBI that the records were accepted. As of February 1, 2016, West Virginia had 2,615 active protection orders in the NCIC POF and there was a 98% acceptance rate from the DV registry to NCIC. This is due to quality control



New York Office of Court Administration

procedures that find and correct errors before the record is submitted to NCIC. Any updates to the DV Registry trigger an NCIC message to update in their file, so NCIC has the most up-to-date information that the courts produce.

Since the registry system is maintained by the West Virginia Supreme Court Administrative Office of the Courts (AOC), staff do not “pack” the records with information from other criminal justice sources. When they periodically validate the records, court staff ensure that the information in NCIC is synchronous to the court records.

Several factors led to the creation and success of the DV Registry. One of those factors is an ongoing partnership with the state police. Establishing the process, roles, and responsibilities were key in getting the DV Registry from an idea to implementation, particularly since the courts are a non-traditional entity for handling and storing criminal justice information. Another necessary factor was policy and statute change. State statute changes allowed the courts to house the DV registry, and court rules mandated that judges and magistrates scan protection orders and protection order updates into the registry immediately after they are issued.

The DV Registry has two dedicated staff. Initially, these staff were funded by a VAWA grant, but the court now funds these positions. The staff provide quality control on orders entered into NCIC by conducting second-party checks to assure data quality and completeness, as well as checking against court activity to make sure no orders are missed. They also do the validation of records, as required by NCIC.

Training is a critical piece of making the DV Registry successful. The West Virginia Supreme Court AOC provides ongoing training in several venues for judges and court staff on DV and the DV registry. They also provide training to law enforcement officers on using the registry, including training at the police academy. Reinforcing the importance of entering protection orders into NCIC and making them available is key to continued support and use of the registry.

New York is an example of a court system that has partnered with the state police to submit protection orders to NCIC. New York’s strategy employs an automated central searchable repository. They have also been successful in sending state disqualifying protection orders to the NICS Index, which is a unique strategy.

Since 1996, New York has ensured that protection orders are registered in the court system’s statewide domestic violence registry database. These orders are transmitted in real-time to the State Police repository which then transmits to the NCIC Protection Order File (POF), thus providing all law enforcement nationally with access to New York protection orders. This was primarily accomplished through the implementation of a statewide portal—known as WebDVS—that allows all court clerks to generate protection orders and simultaneously register them into a single, searchable repository. Prior to the implementation of the portal, the New York Office of Court Administration (OCA) employed a team of approximately 20 data entry specialists to process the registration of 300,000+ protection orders issued annually. Today, with statewide implementation of WebDVS, only a single data entry person is needed to keep up with the remaining paper submissions in the state. Local police agencies are provided access to all orders entered into NCIC, and they assist the courts by providing the majority of hit confirmations.

Along with the NCIC POF transmissions, New York contributed nearly 174,000 firearms-disqualifying orders to the NICS Index in 2014, the highest of any state. Of these, approximately 39%, or 68,000, were federally disqualifying protection orders and the remaining 61%, or 106,000 orders, were state disqualifying. This effort was supported by NARIP grant funding which allowed OCA to automate the federal and state eligibility calculation for protection orders issued in family and criminal courts statewide. This required modifications to WebDVS to capture relationship information as a required field for any protection order entered into the system, as well as careful analysis of the state terms, conditions, and service requirements of orders to match up with the federal definitions for protection order firearms prohibitions.

Those that are determined to be federal disqualifiers under Section 922(g) (8) of the Brady Act as well as those that meet the state disqualifiers are transmitted to the NICS Index in real-time. Based on review of the transmission data, approximately one-third are issued out of family courts and the remaining two-thirds are issued out of criminal courts. The total number of transmissions averages 650 per day.

It is worth noting the increase in the number of state disqualifying records New York has submitted to the NICS Index. For the past several years, the FBI has encouraged states to place state-specific disqualifiers into the NICS Index to allow them to be enforced on a national basis. It is quite common for judges in New York to restrict subjects of protection orders from obtaining firearms and firearms permits, to order subjects to surrender weapons, and to suspend/revoke an existing firearms permit. When such restrictions are placed on subjects who are not “intimate partners” with the victim, the protection order cannot be entered into the protection order category of the NICS Index, but can, instead, be entered into the state disqualifying category. As noted above, the majority of the protection orders transmitted to the NICS Index from New York fall under this state-disqualifying category.

The OCA also used NARIP funds to analyze, design, develop, and deploy direct inquiry functionality for non-court agency staff (e.g. FBI NICS staff) in the WebDVS protection order registry system. This involved working closely with external staff to ensure that their functional requirements were met and providing training to enable them to use the new features. This access allows the NICS Examiners to directly view PDF images of orders in WebDVS, cutting back the time otherwise required to contact the issuing courts directly for copies of the order forms. This is crucial given the 72-hour window for background checks. A Memorandum of Understanding between the FBI NICS unit and the New York Unified Court System was signed by all parties in January, 2014, formalizing the security requirements and conditions of use of the WebDVS Registry application by NICS Investigators. Since this time, over 60 NICS Investigators have been trained and are able to use the WebDVS system to directly look up orders issued by the New York courts.

In addition to the NARIP funding, New York has the underlying benefits of a unified court system, a statewide high-speed private computer network for all of the courts, and a single domestic violence registry database managed and supported by the court system. All of these combined factors supported the ability to automate the immediate calculation and transmission of statewide firearms-prohibiting data to the NCIC and NICS Index data files.

Nebraska State Patrol



Nebraska is an example of a state that is using a centrally managed database that pulls data directly from court and other case management systems. Nebraska’s system is managed not by the courts, but by the Nebraska State Patrol. Their strategy leverages an existing data repository, NCJIS, which connects to court and other state databases, to create a mechanism for entering qualifying protection orders into NCIC.

Nebraska’s Protection Order Portal has improved information sharing of protection order records by creating an online portal, connecting Nebraska’s court record system (JUSTICE) and NCIC. Previously, only about 30% of Nebraska’s protection orders were being sent to NCIC, primarily due to the lack of time and resources necessary in local sheriff’s offices for the NCIC process. The Protection Order Portal (hereafter, Portal) leverages an existing data repository, the Nebraska Criminal Justice Information System (NCJIS), to enable electronic protection order sharing that is effective and manageable for both small and large counties.

In July 2014, the Portal went live in Adams County, connecting JUSTICE via the Portal to NCJIS. The Portal enables users to enter, modify, clear, cancel and submit records to the NCIC POF without having to manually re-enter data. The Portal allows agencies to “pack” their NCIC records with data from other Nebraska criminal justice sources (such as DMV, criminal history, and jail records) and local data

sources, through NCJIS. The Portal also improves records by incorporating data quality measures within the system. NCIC compliance checks are performed prior to submission to NCIC POF to minimize errors.

The system provides users resources in matching the terms and conditions of a Nebraska-issued protection order to the federally standardized NCIC Protection Order Conditions (PCO) codes. These codes may include judge ordered firearms prohibitions. The Portal requires users to provide the information to properly complete the Brady Indicator¹⁴ based on the circumstances. When possible, criteria for the Brady Indicator is automatically populated. In the event the Brady Indicator fields cannot be automatically populated, the Portal user provides the necessary information to complete the Brady Indicator criteria. The Portal has also automated the parsing of records required by NCIC, which saves the entering dispatcher time and effort.

Documentation of the restricted party's right to due process having been met is necessary for protection order enforcement (both for firearms enforcement as well as violation enforcement). As such, the Portal enables agencies to maintain real-time protection order service records by allowing users to submit Return of Service (ROS) documentation. ROS documentation is captured and electronically submitted to the courts, enabling 24/7 record updates and minimizing the possibility of errant protection order enforcement – or the lack of legitimate enforcement.

As of September 30, 2015, 88 of the 93 Nebraska counties have committed to implementing the Portal. Included in those 88 are four of the five largest populated counties in Nebraska, which issue the highest numbers of protection orders each year. These four counties have historically not entered records into NCIC POF: before the Portal, 30% of protection orders were going into NCIC POF; since implementation of the Portal, 44% of protection orders are being submitted. Nebraska's largest county, which issues

about one-third of the state's protection orders, is currently engaged in discussion with the working group on how to meet their unique volume needs in order to implement the Portal.

A NARIP grant funds two crime analyst positions, which are key to the Portal implementation and success. The analysts' duties include assisting with the development of the Protection Order Portal by researching the structure and use of the criminal justice data systems, as well as working with the NICS legal team to determine how to apply the Brady criteria to Nebraska protection orders. Clear and simple reference documents and checklists were created by analysts to assist Portal users in making quick and accurate decisions when necessary. Analysts coordinate with the application developer to ensure proper coding, functionality, etc. Furthermore, analysts solicit voluntary implementation, work to secure a formal inter-agency agreement, provide training, and monitor the use of the Portal and NCIC POF entry rates by local agencies. Proactive monitoring addresses usage barriers, audits submission timeliness, and augments development of user reference materials to aid in the entry process. The analysts provide ongoing technical assistance by addressing questions on a case-by-case basis and researching individuals that local agency staff are not able to identify for entry.

Training and education are critical pieces of the Portal implementation. One of the reasons for low entry rates prior to the Portal was lack of clarity about whose responsibility it was to submit protection orders to NCIC (sheriffs versus courts). The two crime analysts conduct regional training for dispatchers – who enter the protection orders into the Portal – on several topics including background on the process to obtain a Protection Order (PO), the roles of criminal justice personnel in the handling of a PO, the nuances of service of POs, and understanding the Brady disqualifiers. The analysts conducted 47 system introduction and user training sessions for over 335 attendees representing law enforcement and district courts during this project.

¹⁴ To qualify under the Brady Act, and thus include information to complete the Brady Indicator, a protection order must 1) have been issued after a hearing of which the respondent/defendant received actual notice and had an opportunity to participate; 2) restrain respondent from harassing, stalking, or threatening an intimate partner or a child of the intimate partner or engaging in conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or the partner's child; and 3) include a finding that respondent/defendant represents a credible threat to the physical safety of the intimate partner or child or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child. Title 18, U.S.C., § 922[(g)] [8].



Hawaii Criminal Justice Data Center

Hawaii employs a more traditional model of protection order reporting in that the process is managed by the criminal justice entity in the state. The courts send the scanned protection order and basic information needed for NCIC entry to the entering criminal justice agency, and the maintenance and validation of the records all happen at the repository. Hawaii employs dedicated staff to conduct the second-party checks and validation.

Hawaii's impetus for entering protection orders came with provisions of the VAWA Act, which required "full faith and credit" be given to valid protection orders from other jurisdictions. A joint work group's efforts, with representatives from the judiciary, criminal history repository, and service providers, resulted in a process for transferring protection orders from the courts to the criminal justice data center and to NCIC.

In Hawaii, the courts enter the minimum fields required by NCIC on the case, petitioner, and respondent and scan the protection order document. This information is held in the repository and the criminal justice data center maintains and validates the data. The protection order data is sent in real time to NCIC.

A validation clerk position was created in 2009 in the criminal justice data center. This position is funded by NCHIP grants. This clerk is solely responsible for doing daily second party checks and monthly validation of the protection orders. The validation is done against the electronic data fields provided by the courts as well as the scanned court order. Initially, a computer program completes an automatic comparison with the information in the electronic file. If necessary, the clerk then checks on the scanned documents.

In order to provide 24/7 hit confirmations, the local police department information is entered in the miscellaneous field.

Hawaii began transmitting protection orders to NCIC in 2011 on a day-forward basis and currently has 51% of active protection orders in NCIC.

Conclusion

Successful strategies in reporting protection orders to the Federal databases include some key components:

- Dedicated staff
- Comprehensive training
- Automation
- Collaboration between courts, the criminal history repository agency, and state and local law enforcement.

Focusing on these components has allowed many states to overcome common barriers to reporting protection orders and resulted in improvements of the number and quality of protection orders made available at a national level.

