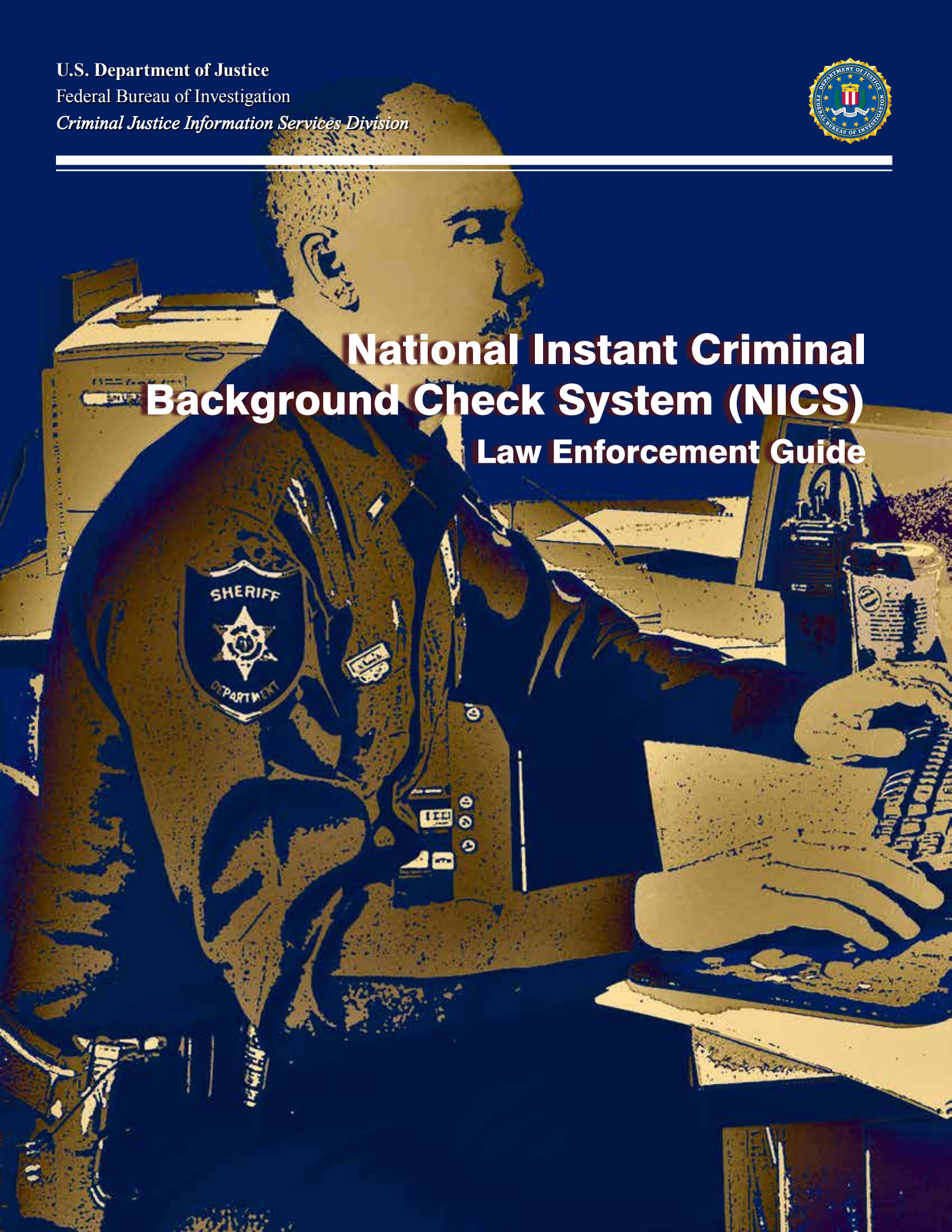




National Instant Criminal Background Check System (NICS) Law Enforcement Guide





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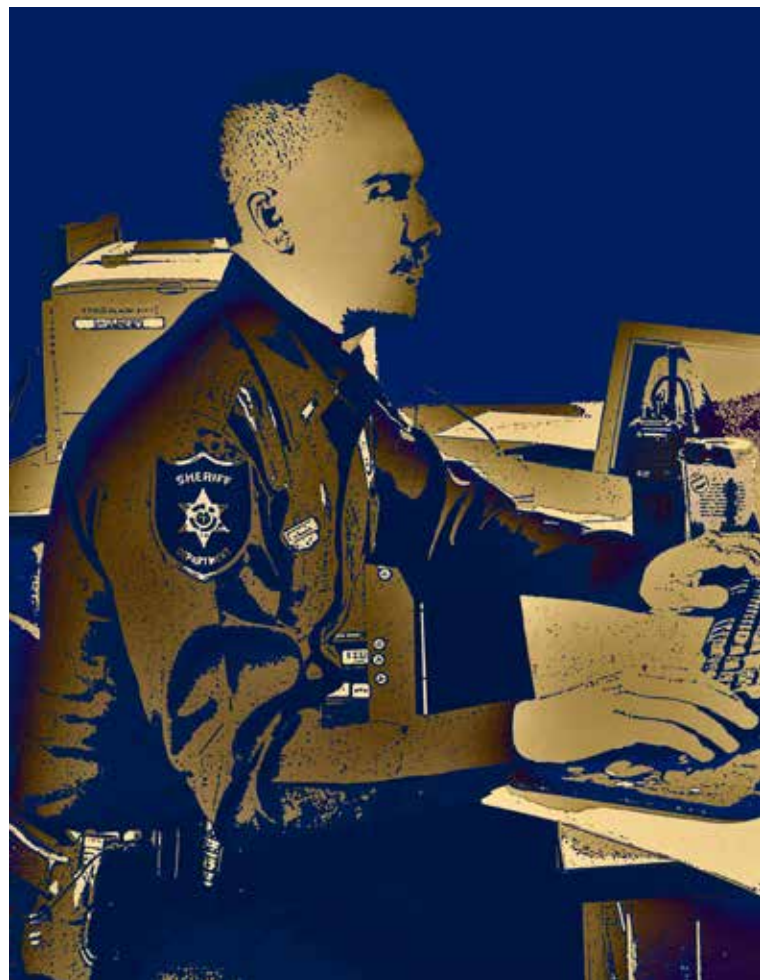


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National Instant Criminal Background Check System (NICS) Law Enforcement Guide



1.0 Introduction

What is the National Instant Criminal Background Check System (NICS)?

The NICS is a computerized system designed to immediately determine if a person is disqualified from receiving or possessing firearms by conducting a search of available records. The NICS was implemented as a result of the attempted assassination of former President Ronald Reagan on March 30, 1981, in which former White House Press Secretary James Brady and two law enforcement officials were wounded. Following the shooting, Mr. Brady and his wife, Sarah, spent much time lobbying for stronger gun laws. On November 30, 1993, President William J. Clinton signed the Brady Handgun Violence Prevention Act of 1993 (Brady Act) into law. The Brady Act required the U.S. Attorney General to establish the NICS to assist Federal Firearms Licensees (FFL) in determining if a potential firearm purchaser is prohibited from receiving or possessing firearms in accordance with state or federal law. Through a cooperative effort with local and state law enforcement agencies, the Department of Justice, and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the FBI developed the NICS, which was implemented on November 30, 1998.

Firearm background checks may be conducted by either the NICS Section of the FBI's Criminal Justice Information Services Division or a state or local law enforcement agency serving as an intermediary between an FFL and the NICS Section. These intermediaries are referred to as Points of Contact (POC). When an FFL initiates a NICS background check through the FBI or designated agency in a POC state, a prospective firearm transferee's name and descriptive information is searched against the records maintained in three national databases, which may reveal state and federal records prohibiting receipt or possession of firearms. Those databases are (1) the Interstate Identification Index (III), which contains criminal history records; (2) the National Crime Information Center (NCIC), which contains records regarding wanted persons, protection orders, deported felons, and other matters; and (3) the NICS Indices, formerly known as the NICS Index, which contains records regarding individuals subject to state and federal firearm prohibitions.

In addition, when an FFL states that a prospective purchaser has indicated he or she is not a U.S. citizen, an immigration alien inquiry is submitted to the Department of Homeland Security's U.S. Immigration and Customs Enforcement to determine if the individual is an illegal or unlawful alien or a person who is not an immigrant prohibited from possessing, acquiring, or receiving firearms.

Each time a NICS check is conducted, a NICS Transaction Number (NTN) is electronically generated by the NICS and provided to the requester. A *proceed response* received from an initial search of the NICS denotes no disqualifying information was located for the prospective firearms purchaser. A *deny response* from this search indicates disqualifying information was located in one or more of the databases mentioned above. A *delay response* from this search indicates the descriptive information supplied by the prospective firearms purchaser has matched records contained in one or more of the databases. The delay response requires the NICS Section or POC state personnel to review the matching records to determine if any prohibitions exist, and to clarify or obtain complete disposition information when necessary. Complete disposition information is essential to make an accurate determination of a person's eligibility to receive or possess a firearm.

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In accordance with the Brady Act, the agency performing the background check must obtain all relevant documentation and render a decision regarding the prospective purchaser's eligibility to receive or possess a firearm within three business days. If the background check is not resolved within the allowed three business days, it is at the discretion of the FFL whether to transfer the firearm; however, the NICS Section continues to work on the case in an effort to obtain complete disposition information.

In most cases, the agency performing the background check is required to seek the final disposition associated with any potentially disqualifying arrest or conviction. When determining a person's eligibility to receive or possess firearms, the agency researches both state and federal laws. If records are incomplete or missing, the agency must contact all entities that may potentially have information pertinent to a subject's background check. In an effort to obtain needed or missing information, the agency may contact your agency to obtain dispositions or other appropriate documentation in order to make these determinations.

As mentioned earlier, if the information cannot be obtained and a final determination cannot be rendered, the FFL legally has the option to transfer the firearm beginning on the next day following the third business day without an approval from the NICS Section. This could result in a potentially prohibited person taking possession of a firearm. If the FBI receives prohibiting information after the third business day and the FFL has transferred the firearm, the matter is referred to the ATF for firearm retrieval consideration. This creates a potentially dangerous situation for ATF agents, local law enforcement, and the general public.

However, your agency can prevent this situation. First, submit incident reports and report dispositions to your state central repository in a timely manner. Second, provide records to the FBI as quickly as possible when requested. Finally, maintain a working relationship with the NICS Section, so we can work together to inform others about the importance and value of this type of documentation. If you have any questions about proper and timely records, contact the FBI at [<NICSliaison@fbi.gov>](mailto:NICSliaison@fbi.gov).

The goal of the NICS Section and state POCs is to ensure that law-abiding citizens are able to obtain firearms legally and to prevent firearms from falling into the hands of those individuals who are disqualified from having them. The public safety benefits derived from the NICS are immeasurable, and it is the assistance of all law enforcement agencies that make it successful. The policies and practices of these agencies are of the utmost importance to the mission of the NICS. The FBI's partnership with its state and federal counterparts is paramount to the success of the NICS. Every disposition, every warrant, every incident report, and every drug test result can make the difference in these crucial determinations. The NICS Section recognizes the extensive time involved with locating and communicating criminal dispositions and other relative information, and greatly appreciates the efforts your office takes to ensure that fulfillment of the Brady Act is successful. Your office's contributions, combined with those of other local and state agencies throughout the United States, are key factors in contributing to safer streets and neighborhoods within your state. By working together, we can continue to provide the best service possible to our communities.



The purpose of this guide

The *NICS Law Enforcement Guide* was created to assist you in understanding the mission of the NICS and to teach you the basics of the NICS process. This guide will allow the FBI and your agency to coordinate efforts to assist each other and enhance public safety while creating partnerships with the ATF and the FFLs.

2.0 The NICS Indices

The NICS Indices contains information provided by local, state, tribal, and federal agencies regarding persons prohibited from receiving firearms, which may not be found in the Interstate Identification Index (III) or the National Crime Information Center (NCIC). A valid match to the NICS Indices based on descriptive information results in an immediate denial for a prospective firearms purchaser.

Various laws support participation in the NICS Indices. They are the [Gun Control Act of 1968](#), the [Brady Handgun Violence Prevention Act of 1993 \(Brady Act\)](#), the [NICS Improvement Amendments Act of 2007](#), and various state statutes.

Prohibiting categories of the NICS Indices mirror the federal firearm prohibitions listed below and also include prohibitions that disqualify based on state statute:

- Felony convictions of 1 year or more or misdemeanors punishable by more than 2 years
- Under indictment/information
- Fugitives from justice
- Unlawful users/addicted to a controlled substance
- Adjudicated mental defective/committed to a mental institution
- Illegal/unlawful aliens
- Dishonorable discharge from the U.S. Armed Forces
- Renounced U.S. citizenship
- Protection/restraining order
- Misdemeanor crimes of domestic violence (MCDV)
- State prohibitions

Prohibiting information possessed by law enforcement may not qualify for entry into the III or the NCIC, depending on the requirements and information available. Examples include positive drug tests, involuntary mental health commitments, warrants and protection orders, MCDV, and indictment/information data. However, law enforcement agencies may submit prohibiting information to the NICS Indices when applicable.

If courts in your state do not participate in submitting to the NICS Indices, your agency can provide the required information to the FBI Criminal Justice Information Services Division's National Instant Criminal Background Check (NICS) System Section for submission in an emergency situation. Required fields of entry in the NICS Indices are name, date of birth, race, and sex. [An Interface Control Document \(ICD\)](#) provides technical assistance to NICS users.

The NICS Indices Submission Process

The local, state, tribal, and federal law enforcement agencies are provided with two modes to add, modify, supplement, or cancel NICS Indices entries. The first mode is an electronic connection between the NICS and

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the contributing agency utilizing the NCIC communications infrastructure. An agency may use this interface to electronically submit, modify, supplement, cancel, or display a denied person's disqualifying information in the NICS Indices. The second mode is batch data transfer through the Law Enforcement Enterprise Portal (LEEP) online connection via a NICS E-Check icon. The NICS Indices entries, modifications, supplements, and cancellations are to be processed by the contributing agency, since the contributing agency is responsible for the accuracy and validity of the NICS Indices' information. It is imperative to update the NICS Indices, as necessary, to minimize erroneous denials. The contributing agency is responsible for responding to appeals and audits of the submitted records. Supporting documentation of entries into the NICS Indices must be maintained by the appropriate agencies in order to confirm the validity and accuracy of the entries for auditing purposes or appeal of a deny decision. Access to the information contained within the NICS and the NICS Indices may only be used for purposes authorized by the Brady Act. The NICS Section encourages you to research your state's laws to ensure you are in compliance when submitting information to the NICS Indices. Information contained within the NICS Indices will be audited for validity, accuracy, and completeness by the CJIS Audit Unit (CAU) of the CJIS Division's Law Enforcement Support Section. As part of the triennial NICS audit, the CAU will review a sample of NICS Indices' records submitted by your agency. A brochure describing this process is available at the [NICS Indices](#). For additional information regarding the NICS Indices, contact the NICS Business Unit by telephone at 1-844-265-6716 or by e-mail at [<NICSLiasion@fbi.gov>](mailto:NICSLiasion@fbi.gov).

3.0 Authorized Access to the NICS

If you work for a law enforcement agency, you are likely familiar with and may use the Interstate Identification Index (III) or the National Crime Information Center (NCIC). In addition to these two databases, the NICS Indices, is also searched when agencies conduct background checks for the transfer of a firearm, a firearm-related permit, or an explosives-related permit or license. The NICS Indices contains information provided by local, state, tribal, and federal agencies regarding persons prohibited from receiving firearms under state and federal law. The NICS Indices contains prohibiting information that may not be found in the III or the NCIC. Furthermore, the data in the NICS Indices is highly sensitive and regulated for use by state and federal laws. For this reason, access to the National Instant Criminal Background Check System (NICS) is limited to queries for the firearm-related purposes noted above.

Access to the NICS for law enforcement and criminal justice agencies unrelated to the Brady Handgun Violence Prevention Act of 1993 background checks is limited to the following circumstances:

- Pursuant to Title 28, *Code of Federal Regulations (C.F.R.), Part 25.6 (j)(1)*, to provide information to local, state, tribal, or federal criminal justice agencies only in connection with the issuance of a firearm-related or an explosives-related permit or license.
- Pursuant to Title 28, *Code of Federal Regulations (C.F.R.), Part 25.6 (j)(3)*, to provide criminal justice agencies access to the NICS for the purpose of conducting disposition of firearm background checks.

Local or state law enforcement officers or agencies *cannot* conduct a query of the NICS for:

- Requesting record checks on behalf of non-licensed sellers.
- Gathering information as a part of a criminal or civil investigation.



4.0 What Federally Prohibits an Individual?

The National Instant Criminal Background Check System (NICS) Section of the FBI's Criminal Justice Information Services Division operates in accordance with federal laws. The United States Code defines who is federally prohibited from possessing, acquiring, or receiving a firearm. This section defines the following federal prohibitions and explains what your agency may need to know about each one:

- Felony prohibition
- Fugitive From Justice prohibition
- Drug prohibition
- Mental health prohibition
- Illegal unlawful alien prohibition
- Dishonorable discharge prohibition
- Renounced citizenship prohibition
- Protection order prohibition
- Misdemeanor crime of domestic violence prohibition
- Indictment/information prohibition



4.1 Felony Prohibition

Title 18, United States Code, Section 922 (g)(1)—A person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year or any state offense classified by the state as a misdemeanor and is punishable by a term of imprisonment of more than 2 years.

- **What does this mean?**

This refers to a felony or disqualifying misdemeanor conviction. A criminal conviction is determined in accordance with the law of the jurisdiction in which the proceedings are held. In accordance with federal regulation, the agency performing the background check does not base its decisions upon what sentence was actually rendered, but rather what sentence could have been rendered. In certain situations, pardons, restorations of rights, or the passage of time can remove the firearm prohibition associated with these convictions; however, the NICS Section works in conjunction with courts, agencies, and Attorneys' General offices to verify if firearm restrictions are fully removed

4.2 Fugitive from Justice Prohibition

Title 18, United States Code, Section 922 (g)(2)—A person who is a fugitive from justice.

- **What is the NICS Section looking for?**

When applying this prohibition, the NICS Section is searching records for an individual who is a fugitive from justice. Fugitive from justice is defined as any person who has fled from any state to avoid prosecution for a felony or misdemeanor, or any person who leaves the state to avoid giving testimony in any criminal proceeding. This also includes any person who knows that felony or misdemeanor charges are pending against such person and who leaves the state of prosecution. An active warrant is an indication a person may be a fugitive from justice. The NICS Section considers any individual who is a fugitive from justice to be prohibited from the receipt and/or possession of firearms.

- **As a law enforcement officer or employee, what do I need to know?**

Be aware that any active warrant, felony or misdemeanor, issued for any reason, should be reviewed as the subject may be a fugitive from justice. However, if the subject appears in your office and satisfies the warrant through the correct process, the warrant is no longer active.

- **Help the NICS help you.**

Many felony and misdemeanor warrants are recorded in the National Crime Information Center (NCIC); however, many states do not place misdemeanor warrant data in the NCIC. Often it is located in separate state databases to which not everyone conducting a NICS background check has access. Your agency can assist the nation by placing active felony and misdemeanor warrants into the NCIC. If circumstances prevent you from entering warrant information into the NCIC, active felony and misdemeanor warrants can be entered into the [NICS Indices](#).



4.3 Drug Prohibition

Title 18, United States Code, Section 922(g)(3)—Persons who are unlawful users of or addicted to any controlled substance as defined in Title 21, United States Code, Section 802 and Title 21, *Code of Federal Regulations*, Part 1308.

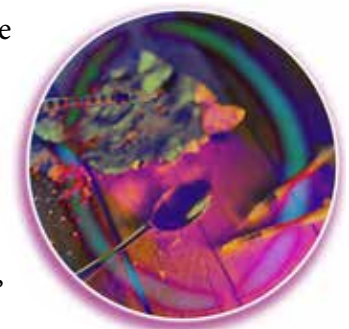
- **What does this mean?**

This refers to a person who has lost the power of self-control due to the use of a controlled substance or a person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician.

- **How is a current user identified for this prohibition?**

An inference of current use may be drawn from evidence of recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time. Examples include:

- A person convicted for use or possession of a controlled substance within the past year.
- A person with two or more arrests for use or possession of a controlled substance within the past five years if the most recent arrest occurred within the past year. The arrests can be from different states, and convictions are not necessary. Dismissed charges do qualify as multiple arrests.
- A person found through a drug test to use a controlled substance unlawfully, provided the test was administered within the past year.



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- A person who admits to the use or possession of a controlled substance within the past year.
- A current or former military service member who received disciplinary or other administrative action based on confirmed drug use. This includes a court-martial conviction, non-judicial punishment, or an administrative discharge based on drug use or drug rehabilitation failure.
- A person who has a drug paraphernalia charge within the past year and the paraphernalia has been field tested or lab tested positive for residue of a controlled substance.

Note: Use of or possession of prescription drugs may qualify if the prescribed controlled substance is used in a non-prescribed manner. Use of or possession of a prescription drug may also qualify if it is a controlled substance and the person has it in his/her possession by unlawful means, such as forging a prescription, stealing a prescribed controlled substance, obtaining a prescribed controlled substance by fraud, or by using another prescribed person's prescription medication even with that person's permission.

- **Help the NICS help you.**

For inference of current use or possession of a controlled substance, the most critical information can be found in an incident report or other record of conviction documents that include details regarding the individual's use or possession of a controlled substance. Your agency can play a vital role in the success of processing of NICS background checks in the following ways:

- When making an arrest, provide specific details about the person using or possessing the controlled substance. It is especially important to specify who actually possessed the controlled substance when an incident involves more than one suspect. Another important aspect is to note the specific type of controlled substance used or possessed by the person and that it was field tested or lab tested. In addition, if the person has been tested for the use of a controlled substance, please provide the final test results.
- ■ If you have information establishing that a person is prohibited from purchasing or possessing a firearm under Title 18, United States Code, Section 922(g)(3), you may submit the information for entry into the [NICS Indices](#).

4.4 Mental Health Prohibition

Title 18, United States Code, Section 922 (g)(4)—Persons who have been adjudicated as mental defectives or have been committed to a mental institution.

- **What does this mean to you?**

During the course of an investigation or upon arrest, you may have knowledge of:

- A person's involuntary commitment for mental health treatment (outpatient or inpatient).
- A person's involuntary commitment for drug abuse.
- A person being adjudicated mentally incompetent to handle his/her own affairs.
- A person being determined to be a danger to self or others. As a law enforcement official, you may complete a [NICS Indices Mental Submission Checklist Form](#). This form requires identifying information on the individual and depending on the situation, also on the institution or facility he or/she was committed to or the court in possession of the adjudicating order.



- **Help the NICS help you.**

Some examples follow:

John Doe is diagnosed as **mentally unstable**. As an officer, you have knowledge of a court-ordered **involuntary commitment for treatment**, but do not have immediate access to the supporting documentation. However, you know how and where to locate the appropriate court documentation. The order is for treatment and not just evaluation. No criminal history exists relating to this information. You can submit the information for entry into the [NICS Indices](#), which will result in the immediate denial of an attempted firearm purchase.

James Doe has a history of **threatening behavior**, and as an officer you have knowledge he was determined a **danger to self or others** by the courts. No criminal history exists relating to this information. You can submit the information for entry into the [NICS Indices](#).

Jane Doe has an **involuntary commitment for treatment of drug abuse**. The commitment was involuntary and for treatment, not just evaluation. You can submit her information for entry into the [NICS Indices](#).

4.5 Illegal/Unlawful Alien Prohibition

Title 18, United States Code, Section 922 (g)(5)—An alien who is illegally or unlawfully in the United States; or has been admitted to the United States under a nonimmigrant visa, except as provided in Title 18, United States Code Section 922, subsection (y)(2).

- **What does this mean?**

This prohibition refers to all aliens who are illegally or unlawfully in the United States. In certain situations, nonimmigrant aliens who were once legally in the United States have allowed their immigrant status to expire. Under the firearm laws, this is an illegal status. It also refers to those nonimmigrant aliens who were admitted to the United States under a nonimmigrant visa. They are prohibited from purchasing and possessing a firearm, unless they meet one of the exceptions listed in subsection (y)(2) of Title 18, United States Code Section 922.



- **As a law enforcement officer or employee, what do I need to know?**

On occasion, a local resident may request your assistance as a result of his or her appeal, or challenge, of a NICS firearm background check denial. Please advise the subject to contact the local U.S. Citizenship and Immigration Services office to determine his or her current immigration status for firearm purposes.

- **Help the NICS help you.**

The NICS Section typically receives information regarding illegal/unlawful aliens only from the Department of Homeland Security's U.S. Immigration and Customs Enforcement. Therefore, your agency plays a minimal role, if any at all, in relation to this federal firearm prohibition.

4.6 Dishonorable Discharge Prohibition

Title 18, United States Code, Section 922 (g)(6)—An individual who has been dishonorably discharged from the U.S. Armed Forces.

- **As a law enforcement officer or employee, what do I need to know?**

There are several types of military discharges; however, an individual who has been dishonorably discharged from the U.S. Armed Forces is not permitted to purchase and/or possess a firearm. In most instances, an individual's Department of Defense Document 214, also known as the DD 214, can provide

the type of discharge received. An individual prohibited under this statute can only obtain reprieve from the prohibition if the branch of service which issued the discharge makes a change to the type of discharge received.

- **Help the NICS help you.**

If you become aware of an individual who has been dishonorably discharged from the U.S. Armed Forces, you can assist the NICS Section by forwarding the information to the [NICS Business Unit](#) so the individual's FBI record can be updated.

4.7 Renounced Citizenship Prohibition

Title 18, United States Code, Section 922 (g)(7)—An individual who has renounced his or her U.S. citizenship.

- **As a law enforcement officer or employee, what do I need to know?**

An individual may renounce his or her U.S. citizenship for various reasons. Regardless of the reason, renunciation remains a prohibition for firearm purposes. It is not a common prohibition. Information concerning individuals who renounced his or her U.S. citizenship is reported to the NICS Section by the Department of State and is entered into the NICS Indices.

- **Help the NICS help you.**

If an individual has been denied the purchase/possession of a firearm and comes to you for assistance, there are a few things you can do to help. If the individual believes an error has been made and, in fact, he or she has not renounced U.S. citizenship, please refer the person to the NICS Appeal Web site where an appeal request may be initiated. If U.S. citizenship has been renounced, you may still refer to the [NICS Appeal](#) Web site as it provides helpful information on the federal prohibitions for individuals who have been denied.

4.8 Protection Order Prohibition

Title 18, United States Code, Section 922 (g)(8)—A person who is subject of a court order that (A) was issued after a hearing for which such person received actual notice, and at which the subject had an opportunity to participate; (B) restrains the subject from harassing, stalking, or threatening an intimate partner of or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that the subject represents a credible threat to the physical safety of the intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

- **What does this mean?**

Under federal law, the subject of a protection order may be prohibited from receiving or possessing any firearms—not just a handgun. State-judged determinations or orders do not supersede protection orders that satisfy the criteria discussed above.

- **As a law enforcement officer or employee, what do I need to know?**

Only protection orders entered into the NCIC are available on a national level. If your agency enters protection orders, the NICS Section of the FBI's Criminal Justice Information Services Division encourages you to enter them into the NCIC.

- **Help the NICS help you.**

If your agency is responsible for entering protection orders into the NCIC Protection Order File (POF) or into the [NICS Indices](#), please ensure the following information is made available, if possible:

- Service date (of petition, including notice of hearing)
- Hearing date
- Intimate partner relationship
- Fact that order restrains future conduct
- Fact that order finds respondent to be credible threat or physical force

The NCIC POF contains a [Brady Indicator](#) that was created to quickly identify those protection orders that prohibit the receipt or possession of firearms in accordance with Title 18, United States Code, Section 922 (g)(8). If your agency enters protection orders into the NCIC POF and the federal criteria has been met, set the Brady Indicator to Y, which means “yes, the subject is prohibited under federal law.”

The [Protection Order Bench Card](#) lists in detail the necessary criteria to establish the 922 g(8) prohibition.

4.9 Misdemeanor Crime of Domestic Violence (MCDV) Prohibition

Title 18, United States Code, Section 922 (g)(9)—A person who has been convicted in any court of a misdemeanor crime of domestic violence (MCDV) which has as an element of the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim; by a person with whom the victim shares a child in common; by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian; or by a person similarly situated to a spouse, parent or guardian of the victim.

- **What does this mean?**

Determining what constitutes a valid MCDV prohibition can be confusing. For example, does this only include misdemeanor offenses that have been designated on a rap sheet as “domestic,” or “domestic violence,” or “family,” or “family abuse?”

The answer to this question is no. A qualifying MCDV conviction can be ANY misdemeanor conviction that satisfies the federal criteria regarding the use or attempted use of physical force, or the threatened use of a deadly weapon, if committed upon a person who falls within the federal definition for the relationship of the victim. For example, a person convicted of a misdemeanor disorderly conduct offense could be disqualified from the receipt or possession of any firearms under the MCDV criteria.

- **As a law enforcement officer or employee, what do I need to know?**

It is imperative to the successful function of NICS background checks that agencies record the statute, subsection, and the relationship of the victim to the offender when completing arrest or incident reports. Although the NICS Section must rely on court documents for most of the conviction data, thorough notation in the arrest reports may provide information needed when a background check is being evaluated. It is equally vital that the data is maintained indefinitely because there is no statute of limitations on the occurrence of the offense as it relates to the subject’s current firearm eligibility.

- **Help the NICS help you.**

The following information should be made available in the Interstate Identification Index and the NICS Indices:

- Statute, subsection, and/or citation numbers
- Crime classification level (felony/misdemeanor class)
- Victim relationship

- Sentencing date
- Sentencing terms (including probation and its conditions)
- Completion date of sentencing terms

NOTE: *Not all may apply to your agency.*

The [MCDV Bench Card](#) lists in detail the necessary criteria to establish the 922 g(9) prohibition.

4.10 Indictment/Information Prohibition

Title 18, United States Code, Section 922 (n)—A person who is under current indictment or information for a felony crime.

- **What does this mean?**

This prohibition refers to a person who is under indictment or information in any court for a crime that is punishable by an imprisonment term exceeding one year. Generally, these are felony indictments or information. (Note: An information is a formal accusation of a crime made by the prosecuting attorney; an indictment is made by the grand jury.)

- **As a law enforcement officer or employee, what do I need to know?**

An individual under indictment or information is disqualified from receiving a firearm. What is interesting about this particular prohibition is that these individuals have the right to maintain the firearm(s) they already own. This prohibition only disqualifies an individual from purchasing new firearms while he or she is under indictment or information. You may come across an individual under indictment or information who is unaware that it is legal for him or her to maintain physical possession of previously obtained firearms.

- **Help the NICS help you.**

If applicable to your agency, your accurate documentation of the indictment or information will allow NICS users to be informed of the prohibition and act accordingly if that individual attempts to purchase a firearm. If you have information establishing that a person is prohibited from receiving a firearm under Title 18, United States Code, Section 922 (n), you may submit the information for entry into the [NICS Indices](#).

5.0 State Prohibitions

In addition to the federal prohibitions identified in this document, persons may be prohibited from receiving or possessing firearms based upon various state laws. Because laws prohibiting firearms vary dramatically from state to state, they cannot all be included within this manual. However, it is important to note that individuals making firearm purchase determinations must factor applicable state statutes in their decisions whether to proceed or deny a transaction. If information indicates a state statute may exist, it is incumbent upon the person making the purchase determination to conduct the appropriate research and make any required requests for information. For additional information regarding specific [state prohibition information](#), you may reference the state prohibition pages of the NICS State Support Teams Special Interest Group located on the Law Enforcement Online Web site.

6.0 National Instant Criminal Background Check System (NICS) Denied Transaction File (DTF) (Part of the National Crime Information Center, or NCIC)

In November 1993, the Brady Handgun Violence Prevention Act of 1993 (Brady Act), Public Law 103- 159, requiring Federal Firearms Licensees (FFL) to request background checks on individuals attempting to transfer a firearm, was signed into law. The permanent provisions of the Brady Act, which went into effect on November 30, 1998, required the U.S. Attorney General to establish the NICS. It also required FFLs to contact the NICS by telephone or other electronic means for immediate information about whether the receipt of a firearm by a prospective transferee would violate Section 922 (g) or (n) of Title 18, United States Code (U.S.C.), or state law.

The NICS Section has served as the Point of Contact (POC) for FFLs in approximately 35 states and territories since November 30, 1998. Several states serve as POCs, conducting all or part of the NICS background checks within their respective states. The NICS Section and the POC states deny proposed transfers of firearms when available information demonstrates the prospective transferee is disqualified from receiving or possessing a firearm under state or federal law. When a search of the NICS returns records matched by the system to the descriptive information of the prospective firearms transferee (or firearms/explosives permit applicant), the transaction is delayed for further review and research. Statistically, the NICS Section needs to conduct additional research on 8 out of every 100 delayed transactions. Most of the additional research involves contacting external local, state, or federal agencies to obtain a final criminal disposition or other vital data to help make the eligibility determination. If, after further research, the NICS Section staff or the POC states determine the subject of the NICS check is validly matched to a disqualifying record, the individual's request is denied. The NICS is a name-based check; thus, a "deny" message from the NICS indicates either the prospective transferee or another individual with a similar name and/or descriptive information has been matched with either state or federal prohibitive criteria pursuant to 18 U.S.C. Section 922 (g) and (n), or state law.



The FBI received approval to make specific information relating to individuals who have been denied a firearm via the NICS available to local, state, tribal, and federal criminal justice agencies for general law enforcement purposes. The dissemination of this information is admissible through 65 Federal Register 78190, amending the Routine Uses of the NICS System of Records Notice (SORN). The information located in the NICS DTF is available through the NCIC via the inquiry message key, Query NICS Denied (QND), which will query all historical denials. The NICS DTF information will also respond through the Wanted Person Inquiry (QW) Message. The QW contains a rolling 6 months' worth of denial data. The NICS DTF is updated nightly with denial information. The queries are searchable primarily by name and numeric identifier. The file contains biographical descriptive information (name, date of birth, place of birth, height, weight, sex, race, and social security number) of the purchaser which identifies the individual who was denied by the NICS Section based on state and/or federal prohibitions. The record also includes the state of purchase, the state of residence, the

date of the NICS denial, and the date of entry; however, the reason for the denial is not included in the response. Information on individuals denied by state entities is also available in this file if the state provided the denial status to the FBI.

When an individual receives a response from the QND, a caveat will be included to notify the querying agency of the following:

**** NOTICE: DO NOT DETAIN OR ARREST BASED ON THIS HIT. THE DATE OF NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS) DENIAL (DND) PROVIDED IN THIS RECORD IS THE DATE THE SUBJECT WAS DENIED BY THE NICS FROM THE PURCHASE/ POSSESSION OF A FIREARM PURSUANT TO THE STATE AND/OR FEDERAL LAW. HOWEVER, IT IS POSSIBLE THIS SUBJECT MAY NO LONGER BE PROHIBITED FROM PURCHASING/POSSESSING FIREARMS.
This message precedes a NICS Denial Transaction File record.
*** THE INFORMATION DISPLAYED IN THIS RECORD IS A POSSIBLE MATCH TO THE INDIVIDUAL QUERIED. THIS MATCH IS BASED ON NAME AND DESCRIPTIVE DATA ONLY. NO LAW ENFORCEMENT ACTION SHOULD BE INITIATED BASED SOLELY ON THIS INFORMATION.
This message appears at the end of a NICS Denied Transaction File record.

For complete information relating to the NICS DTF and the NCIC inquiry processing capabilities, please refer to the NCIC 2000 Operating Manual.

When an inquiry is made resulting in a hit to the NICS DTF, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) receives an electronic notification. This alerts the ATF of the inquiry and allows it to take appropriate action, if necessary.

The partnership between the NICS Section and your agency is a key factor in contributing to safer streets and neighborhoods in your state. Previously, the NICS DTF information was not released by the FBI; however, releasing this information can be extremely beneficial. There are significant public safety benefits to be realized when the NICS deny information is shared with local, state, tribal, and federal law enforcement agencies for general law enforcement purposes. In some cases, law enforcement agencies may be aware of or may be investigating individuals in the community who are suspected of being, or who have been, major offenders; who are the subject of a domestic violence restraining order; or whose conduct otherwise suggests they pose a possible threat to public safety or law enforcement officer safety. Knowledge that such individuals unlawfully attempted to acquire firearms may suggest a range of appropriate actions that law enforcement officials may take to enhance public safety and/or ensure law enforcement officer safety. In the case of domestic violence restraining orders, for example, it may be particularly important for the local law enforcement agency to be aware of an individual's attempt to purchase a gun after entry of the order since that tends to be a particularly dangerous time for victims of domestic violence. In some instances, no action may be necessary by law enforcement when receiving a hit to the NICS DTF. The NICS DTF was developed to alert law enforcement of the possibility that an individual has been previously denied a firearm and to aid in information sharing.

7.0 Disposition of Firearms in Law Enforcement Possession

A frequent question presented to the FBI Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section is, "*Can I use the NICS for the disposition of firearms in my agency's possession?*" The answer is yes; Title 28, Code of Federal Regulations (C.F.R.), Part 25.6 (j)(3) has been amended to make this access available for the disposition of firearms.

Many agencies conduct background checks using the Interstate Identification Index (III), the National Crime Information Center (NCIC), and additional state databases prior to the disposition of firearms in law enforcement possession. Previously, access to the NICS was limited, and a query of the NICS for the disposition of firearms was not authorized. Following the CJIS Advisory Policy Board's approval in 2005, changes to federal regulation were sought to allow law enforcement and criminal justice agencies access to the NICS for the purpose of conducting NICS background checks when returning firearms in their possession. On, November 20, 2014, the United States Department of Justice published a final rule that authorizes criminal justice agencies to access the NICS for the purpose of disposing firearms in their possession. Individuals who wish to access the NICS for the dispositions of firearms will be able to search the prospective firearm transferee's name and descriptive information against the records maintained in the III, the NCIC, and the [NICS Indices](#) simultaneously.

Although it is not a federal requirement to access the NICS to conduct disposition of firearm background checks, the NICS Section has developed training resources to assist in educating law enforcement in the current processes available. These resources include the process of using the NICS E-Check method and also accessing the NICS via the NCIC for the purpose of disposing of firearms in an agency's possession. The NICS Section recommends discussion between your agency and your state CJIS Systems Officer regarding the options available to criminal justice agencies within your state. To learn more about the disposition of firearms and the options available to your agency, please review the [Law Enforcement and Criminal Justice Agencies' User Guide for the Disposition of Firearms](#).

8.0 Assisting Denied or Delayed Customers

When a Federal Firearms Licensee (FFL) initiates a National Instant Criminal Background Check System (NICS) transaction, a name search is conducted to search three national databases for possible matches. These databases are the National Crime Information Center (NCIC), which contains information on wanted persons, protection orders, and other persons identified as relevant to the NICS searches; the Interstate Identification Index (III), which contains criminal history records; and the NICS Indices, which contains information on prohibited persons as defined in the Gun Control Act of 1968. The NICS Indices includes individuals who have been determined to be federally or state prohibited from possessing a firearm and the disqualifying information may not be available through the NCIC or III systems.

A denial indicates the individual has been determined to be prohibited from receiving or possessing a firearm due to matching a record in one or more of the aforementioned databases. The individual may request, in writing, the reason for denial. The FBI Criminal Justice Information Services Division's NICS Section will respond to the initial appeal request providing a general reason for denial within five business days. By law, the FBI cannot provide additional information regarding any criminal record without the determination of a positive identification through comparison of fingerprints with the record. Once the prospective firearm purchaser receives the reason for denial, if he/she wishes to challenge the accuracy of the record or declare his/her firearm rights have been restored, a written request to the FBI is required, along with submission of fingerprints and/or documentation. If the challenge is successful, the FBI ensures the FBI record is corrected or clarified and coordinates efforts to correct records maintained by state agencies. Upon conclusion, the FBI will provide written approval to overturn the previous decision. If the FBI cannot resolve the challenge, the individual will be provided the name of the agency originating the record, e.g., arresting agency, court with jurisdiction over the records, or the state bureau, in order to initiate a review of the record.

A delay response indicates the information supplied by the prospective firearms purchaser has matched a record contained in one or more of the databases. This requires the NICS Section to review the matching record(s), determine if any prohibitors exist, and clarify or obtain complete disposition information when necessary. If the transaction is not resolved within the allowed three-business-day time frame, it is at the discretion of the FFL whether to transfer the firearm. However, the NICS Section continues to work on the case in an effort to obtain complete disposition information. When disposition information is required on a matching record but cannot be found, the transaction is delayed and remains open until either the information is found or 88 days have passed. If 88 days pass, then the transaction is purged from the NICS.

Upon *initial receipt* of an appeal, the prospective firearm purchaser is issued a letter (if applicable) containing the reason for denial and provided referral agencies. If the individual wishes to challenge the accuracy of the record upon which the denial is based, he or she is directed to contact the agency maintaining the disqualifying information. For more information please visit [What to Expect—The Appeal Process](#).

You may be asking:

- **What does being directed to the agency maintaining the disqualifying information mean?**
Because the CJIS Division serves only as the custodian of arrest information submitted voluntarily by local, state, tribal, and federal agencies, the NICS Section must clarify information from external agencies when necessary.

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- **What does the individual need from our agency?**

The individual may need one of the following:

- To be directed to the appropriate court having jurisdiction over the specific arrest to obtain more complete crime classification level and/or disposition and sentencing information.
- Resolution of a warrant/protection order.
- A copy of an arrest incident report.

To assist in determining the appropriate documents needed to process an appeal you may reference [Documents Requested to Further the Appeal](#).

For additional information regarding appeals, you may reference the [NICS Appeals](#) Web site.

NICS Acronyms

AKA	Also Known As
AOL	Arrest Offense Literal
ARI	Agency Record Identifier
ARN	Alien Registration Number
ART	Article
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
ATFRDD	ATF Relief from Disabilities Database
AWOL	Absent Without Leave
BCD	Bad Conduct Discharge
BRD	Brady Indicator
CHR	Criminal History Record
COC	Country of Citizenship
COB	Close of Business
CUS	Custody
DD	Dishonorable Discharge
DD214	Department of Defense Document 214
DDF	Disposition Document File
DLU	Date Last Updated
DOA	Date of Arrest
DOB	Date of Birth
DOJ	Department of Justice
DUI	Driving Under the Influence
EDP	Enter Denied Person
FBI	Federal Bureau of Investigation
FFL	Federal Firearms Licensee
FNU	FBI Number
FQ	Full Record Query for NLETS
FTA	Failure to Appear
FTC	Failure to Comply
FTP	Failure to Pay
GCM	General Court Martial
HDR	Header
IAQ	Immigration Alien Query
IAR	Immigration Alien Response
ICD	Interface Control Document
ICE	U.S. Immigration and Customs Enforcement
ID	Identification
IDR	Immediate Determination Rate

National Instant Criminal Background Check System (NICS) Law Enforcement Guide

IFFS	Identification for Firearms Sales
III	Interstate Identification Index
IQ	Index Query for NLETS
KST	Known or Appropriately Suspected Terrorist File
LESC	Law Enforcement Support Center
LEO	Law Enforcement Online
LPR	Legal Permanent Resident
LRAT	Legal Research and Analysis Team
MCDV	Misdemeanor Crime of Domestic Violence
MDP	Modify Denied Person
MISC	Miscellaneous
MKE	Message Key
MPF	Missing Persons File
NCIC	National Crime Information Center
NCHIP	National Criminal History Improvement Program
NDN	NICS Denial Notification
NDO	NICS Denial Overturn
NI	Non Ident
NIAA	NICS Improvement Amendments Act of 2007
NIC	NCIC Identification Code
NICS	National Instant Criminal Background Check System
NLETS	International Justice and Public Safety Information Sharing Network
NLN	NICS Delay Notification
NPN	NICS Proceed Notification
NRI	NICS Record Identifier
NSST	NICS State Support Team
NTN	NICS Transaction Number
OFF	Offense Code
ORI	Originating Agency Identifier
PCA	Prohibiting Category for NICS Indices
PCO	Protection Order Condition
PII	Personally Identifiable Information
PO	Protection Order
POB	Place of Birth
POC	Point of Contact
QDP	Query Denied Persons on NICS
QNP	Query NICS and Protection Orders on NICS
QNR	Query NICS Record on NICS
SCM	Summary Court Martial
SDP	Supplement Denied Persons

SID	State Identification Number
SIG	Special Interest Group
SISI	State Information Sharing Initiative
SPCM	Special Court Martial
SOP	State of Purchase
SOR	State of Residence
SRI	State Record Identifier
UPIN	Unique Personal Identification Number
VAF	Voluntary Appeal File
XDP	Cancel Denied Person



Criminal Justice Information Services Division

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