

**This report was prepared by SEARCH and the National Center for State Courts under cooperative agreement with the Bureau of Justice Statistics (BJS).**

**Document Title: State Progress in Record Reporting for Firearm-Related Background Checks: Mental Health Submissions**

**Author(s): Becki Goggins; Anne Gallegos**

**Document No.: 249793**

**Publication Date: February 2016**

**Award No.: 2009-NS-BX-K050**

**This resource is part of a series of BJS grant-funded reports on firearm-related background checks. This report presents an overview of legislation and reporting mechanisms for mental health information used in background checks for firearm purchases; identifies the challenges States face in reporting; strategies that have been implemented to address the challenges; and data that illustrate the improvements in this area over the past decade.**

**Opinions or points of view expressed in this report are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.**

# State Progress in Record Reporting for Firearm-Related Background Checks: Mental Health Submissions

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

February, 2016

## Introduction

Over the past ten years, states have made vast progress in providing firearm prohibiting mental health information to the National Instant Criminal Background Check System (NICS) Index. The passage of the NICS Improvement Amendments Act (NIAA) in 2008 was a turning point in reporting; in addition to the approximately 250,000 federally-submitted mental health records, the NICS Index went from holding just over 400,000 state-submitted mental health records to over 3.8 million state-submitted records in July of 2015. This report provides an overview of legislation and reporting mechanisms for mental health information, the challenges states face in reporting, strategies that have been implemented to overcome the challenges, and finally, data that illustrate the improvements that have been accomplished over the past decade in this area.

## 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 domestic violence 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, persons subject to domestic violence protection orders, 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 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.

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.



**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	<b>III:</b> Should most appropriately be placed here so they are available for other criminal justice purposes.	<b>NICS Index:</b> Should be placed here if not available in III.
Fugitives from Justice	<b>NCIC:</b> Should most appropriately be placed here so they are available for other criminal justice purposes.	<b>NICS Index:</b> Should be placed here if not available in NCIC.
Unlawful Drug Use	<b>III:</b> Arrests and convictions for drug offenses should most appropriately be placed here so they are available for other criminal justice purposes.	<b>NICS Index:</b> Information such as admission of use and failed drug test results should be placed here.
Mental Health (focus of this report)	<b>III:</b> 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.	<b>NICS Index:</b> 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	<b>NCIC:</b> Should most appropriately be placed here so they are available for other criminal justice purposes.	<b>NICS Index:</b> 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	<b>III:</b> Should be placed here so they are available for the purpose of sharing criminal justice information.	<b>NICS Index:</b> 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	<b>III:</b> Should most appropriately be placed here so they are available for other criminal justice purposes.	<b>NICS Index:</b> Should be placed here if not available in III.
Dishonorable Discharges	<b>III:</b> Should most appropriately be placed here so they are available for other criminal justice purposes.	<b>NICS Index:</b> Should be placed here if not available in III.
Illegal or Unlawful Aliens	<b>NICS Index:</b> Should be placed here as they would otherwise be unavailable for firearms background check searches.	
Renounced United States Citizenship	<b>NICS Index:</b> Should be placed here as they would otherwise be unavailable for firearms background check searches.	

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.

### Increased Focus on Mental Health Records<sup>1</sup> in NICS

On April 16, 2007, Seung-Hui Cho, a senior at Virginia Tech, shot and killed 32 people and wounded 17 others on the Virginia Tech campus in Blacksburg, Virginia prior to fatally shooting himself. Later it was revealed that he had been ordered by a judge to participate in mental health treatment, although he was not committed to a mental institution. While Virginia was reporting mental health information to the NICS Index at the time, Virginia law did not require outpatient commitments to mental health facilities to be submitted to the NICS Index.

Following the Virginia Tech shootings, there began an increased focus by Congress and the states on increasing the number of records available at the time of a NICS check with a particular emphasis on mental health records.

The NICS Improvement Amendments Act of 2007 (NIAA) was signed into law on January 8, 2008, and it was intended to address the gap in information available to NICS about prohibiting mental health adjudications and commitments along with other prohibiting factors. One of the primary accomplishments of the NIAA was the creation of the NICS Act Record Improvement Program (NARIP), which provides funding to states to develop systems to ensure that all disqualifying mental health information are included in the NICS Index. From FY 2009 to FY 2015, the U.S. Department of Justice Bureau of Justice Statistics (BJS) awarded approximately \$95 million to states under the NARIP program. Additionally, BJS continued to allow states to use National Criminal History Improvement Program (NCHIP) funds to support

efforts to gather and submit disqualifying mental health data to improve the quality and completeness of firearms background checks.

### Mental Health Data in the NICS Index

Understanding what mental health information should be reported to the NICS Index – and who should report it – is an important part of ensuring disqualifying information is searched when conducting a NICS background check. Title 18, section 922(g)(4) of the U.S. Code defines as prohibited persons who have been adjudicated as mental defective or who have been committed to a mental institution. Records that result from these actions include those that find a person to:

- Be a danger to himself or others;
- Lack the mental capacity to contract or manage his own affairs (i.e., be placed in guardianship status);
- Be found insane by a court in a criminal case;
- Be incompetent to stand trial or not qualify by reason of lack of mental responsibility, pursuant to the Uniform Code of Military Justice, or
- Be involuntarily committed to either an inpatient or outpatient facility for treatment.<sup>2</sup>

### Sources of Various Mental Health Data

Adjudications of not-guilty by reason of insanity as well as determinations that a defendant is incompetent to stand trial originate with the criminal courts. Ideally, these types of dispositions should be a part of a person's criminal history and therefore available from III as a routine part of a NICS search. However, in some cases, the disposition may not have an identifiable arrest (or other biometrically supported) record that allows the record to be submitted to the state criminal history repository and to be included in III. In this case, the record would be appropriately entered into the NICS Index instead to ensure disqualifying information is available for NICS background check purposes.

<sup>1</sup> A person's actual mental health history is not submitted to the NICS Index. A record qualifies for entry in the NICS Index if it contains, at a minimum, a NICS record identifier; an agency record identifier; the associated data source; the prohibited category (e.g., mental health); the originating agency identifier; the name and sex of the subject; and at least one numeric identifier for the subject (e.g., date of birth, social security number, or miscellaneous identification number). The record does not contain any information on the diagnosis or treatment of the individual.

<sup>2</sup> For additional definitions, see Department of Alcohol, Tobacco, Firearms, and Explosives (ATF) information at <https://www.atf.gov/file/58791/download> or 27CFR§478.11.

Involuntary commitments to inpatient or outpatient mental health facilities may come from several sources including probate, civil and criminal courts. In some states involuntary commitments are handled by probate courts while in others there may be a probate division within the civil courts. These courts do not routinely interact with the state criminal history repository, and they may be unaware of how/when they should submit records for inclusion in the NICS Index. Special outreach by state criminal history repositories may be necessary to make sure these entries are appropriately reported.

Criminal courts may also order involuntary commitments – especially certain specialty courts such as drug, mental health and veterans’ courts. Since this may reflect an “interim” disposition, it is possible that these may not be reported to the criminal history repository. Once again, training and outreach can help make sure these get included in the NICS Index.

Mental health/public health agencies, boards, or commissions may also have records concerning involuntary commitments that could be contributed to the NICS Index. For instance, they may be able to supply information about historical court ordered commitments that were not reported by the courts, thus serving as a rich data source for discovering and entering older records.

#### **Challenges to Reporting Mental Health Data to the NICS Index**

One of the major challenges to reporting mental health records to NICS is the lack of data made available to state criminal history repositories who are typically responsible for channeling NICS entries to the FBI.

There are several reasons this may occur. First, as noted above certain non-criminal justice entities may not be aware of NICS reporting requirements. Then, even if they are aware, they may be unfamiliar with how to report records to the state criminal history repository. Assuming that they are aware of reporting procedures, lack of electronic connectivity to the state criminal records system may discourage reporting if only manual processes – e.g., mail or fax – are available as transmission methods as this can create an additional burden for staff.

Misinformation about privacy laws can also lead to a lack of reporting. Court ordered participation in mental health programs – including involuntary commitments – are exempt from HIPAA reporting rules.<sup>3</sup> Many records maintained by behavioral health providers fall into this category; however, they are reluctant to report them due to fears of violating the HIPAA privacy rule.

In addition to the challenge of unreported information, there is also the concern of duplication. It is important that members of the behavioral health, criminal justice and repository community work together to ensure that there are clear lines of responsibility relative to reporting mental health information. Duplication is problematic in the event a person applies for relief from disabilities associated with having a mental health entry in the NICS Index as they may have to go to multiple agencies in order to have an entry for the same commitment event removed. Often duplication is due to manual reporting and data entry methods which can be resolved by implementing automated data exchanges.

<sup>3</sup> See Department of Health and Human Services (HHS) HIPAA Privacy Rule and the NICS (<https://www.federalregister.gov/articles/2016/01/06/2015-33181/health-insurance-portability-and-accountability-act-hipaa-privacy-rule-and-the-national-instant#page-382>).

Through the **National Criminal History Improvement Program (NCHIP)**, BJS provides direct awards and technical assistance to states and localities to improve the quality, timeliness, and immediate accessibility of criminal history records and related information. Complete records require that data from all components of the criminal justice system, including law enforcement, prosecutors, courts, and corrections be integrated and linked. NCHIP assists states to establish the integrated infrastructure that meets the needs of all components.

The **National Instant Criminal Background Check System (NICS) Act Record Improvement Program (NARIP)** was created pursuant to the NICS Improvement Amendments Act of 2007, Pub. L. 110-180 (NIAA or the Act) which was signed into law on January 8, 2008, in the wake of the April 2007 shooting tragedy at Virginia Tech. The Virginia Tech shooter was able to purchase firearms from a Federal Firearms Licensee (FFL) because information about his prohibiting mental health history was not available to the NICS, and the system was therefore unable to deny the transfer of the firearms used in the shootings. The NIAA through the NARIP program seeks to address the gap in information available to NICS about such prohibiting mental health adjudications and commitments, and other prohibiting factors. Filling these information gaps will better enable the system to operate as intended to keep guns out of the hands of persons prohibited by federal or state law from receiving or possessing firearms.

**NARIP Funding Awarded by Year**  
(in millions)



### State Strategies for Improvement

States have channeled significant time, effort, and funds into strategies to overcome challenges and to improve reporting of disqualifying mental health records for NICS purposes. Funding, such as NARIP and NCHIP, has provided states with the opportunity to focus on making significant improvements to the number of disqualifying records available. BJS has emphasized mental health reporting improvement and made that a priority area in the NARIP grant solicitations since 2011.

Thus, the majority of mental health-focused work has been conducted under the NARIP. However, not all states qualify for NARIP funding due to the eligibility requirements.<sup>4</sup> Specifically, many states do not have a qualifying relief from disabilities statute certified by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Some states that have not been eligible for NARIP funding have used other Federal grants to fund improvements in mental health record reporting.

<sup>4</sup> The NIAA legislation includes two specific conditions for eligibility for NARIP grants: 1) provision of reasonable estimates of records and 2) implement a relief from disabilities program. (see 18 U.S.C. § 922 note)

Recipients of NARIP awards were required to create a NICS Task Force as a condition of the grant. Additionally, the majority of states, including all of the NARIP grantee states, have passed some type of legislation addressing mental health record reporting.

The table below displays NARIP grantee states by year from 2009-2014, where there was a mental health component included in the grant project(s).<sup>5</sup> Project components, other than NICS task forces and legislation, are indicated in the table.

NARIP Grantee States: Funded Years and Strategies									
	Funded Years						Mental health project strategies <sup>6</sup>		
	2009	2010	2011	2012	2013	2014	Training	Addressing historical/ back-logged records	Automation
Alabama					●	●	✓		✓
Alaska						●			✓
Arizona			●	●	●	●		✓	
Connecticut			●	●					✓
Delaware						●		✓	
Florida		●	●	●	●	●	✓	✓	✓
Idaho		●	●	●	●		✓	✓	
Illinois		●		●	●				✓
Indiana				●	●	●			✓
Iowa						●		✓	
Kentucky			●	●				✓	✓
Louisiana					●	●		✓	
Maryland					●	●		✓	✓
Missouri				●	●	●		✓	
Nebraska				●	●	●	✓		✓
Nevada	●				●	●			✓
New Jersey		●	●					✓	✓
New York	●	●	●			●	✓	✓	✓
North Dakota			●	●		●			✓
Oregon	●	●	●	●	●	●		✓	
South Carolina						●			✓
Texas		●	●	●	●		✓		
Virginia			●						✓
West Virginia				●	●	●	✓	✓	

<sup>5</sup> The few states without a mental health-focused project are omitted from this table. For NARIP funding amounts by state from 2009-2014 and 2014 project summaries, go to <http://www.bjs.gov/index.cfm?ty=tp&tid=491#funding>.

<sup>6</sup> According to NARIP project summaries submitted by states.

With these resources, states have made vast improvements to the quality and quantity of reported mental health-related records, which have historically been very difficult to obtain and report.

The majority of state improvement strategies can be grouped into five categories:

- Creating dedicated NICS task forces
- State legislation
- Training
- Addressing historical/backlogged records
- Automation

#### *Task Forces*

Assembling stakeholders at the state level to focus on and provide leadership for addressing NICS reporting issues has been an important initial step toward records improvement. Many states have established dedicated NICS Improvement Task Forces over the past several years. In fact, every state that received a NARIP grant was required to create and support a task force. Typically, the task forces are multi-disciplinary and are comprised of members from many stakeholder groups, both local and state level. For example, Arizona’s NICS task force meets quarterly. Members represent law enforcement, prosecution, courts, and corrections agencies from across the state, as well as key state agencies such as the Department of Public Safety and the Administrative Office of the Courts.

While the NICS task forces vary from state to state, they primarily serve to identify gaps in reporting structures and procedures and to develop strategies and recommendations for addressing those gaps. Some state task forces have spent significant time mapping out the business process and structure of NICS-related information, as a tool to identify reporting gaps and barriers (e.g., Arizona, Connecticut). Conducting audits of records currently held in courts and repositories has also been coordinated by some states’ task forces (e.g., Arizona, Delaware). Another achievement of NICS task forces has been planning for and coordinating multiple

available funding streams in order to make improvement work sustainable. This has been accomplished through NICS Improvement Plans. These plans are used to focus and coordinate NICS-related efforts, including goals and objectives.

Leadership is critical for systemic technological and procedural changes, and the task forces, in many states, have brought the necessary multi-agency leaders together. The groups are particularly useful when non-traditional partners are included (see Ohio example below). NICS task forces have been instrumental in focusing resources and achieving improvement in records reporting for many states.

#### **Mental Health Task Force: Ohio**

Through federal funding, Ohio created a sub-group from their greater NICS improvement task force that focused solely on improving reporting through automating mental health information transfer. Members of the Mental Health subgroup included representatives from the Ohio Supreme Court, Probate courts, Bureau of Criminal Investigation (which houses the computerized criminal history repository), Office of the Attorney General, a state psychiatric hospital, and the Ohio Department of Mental Health and Addiction Services.

Including the mental health professionals, as well as court and repository representatives, was effective in identifying all perspectives of the issues. The multi-disciplinary approach helped not only with the quality of the finished product but also with the quick adoption of use across the probate courts and state hospitals.

#### *State Legislation*

There are two types of legislation that states have passed regarding mental health reporting. One is the authorization or requirement to report particular types of mental health records. The other is legislation that creates a certified relief from disabilities program, as described by the NIAA statute.

Forty-three states have enacted laws that authorize or require the reporting of mental health records for firearms background check purposes (32 require reporting vs. authorize reporting).<sup>7</sup> The components of state statutes vary, but most often include the types of records to be reported (civil commitments, guardianships, criminal adjudications), where they must be reported (directly to the Federal database or a state entity), and the timeline for reporting (ranging from “immediately” to 30 days). Passing such statutes has provided clarity on what should be reported and eliminated confusion about confidentiality and privacy requirements, which were previously significant barriers to reporting. Passing legislation requiring reporting appears to be effective as the majority of states with the largest increase in reported mental health data from 2008 to 2015 have such statutes.

Thirty-two states have relief from disabilities statutes.<sup>8</sup> This allows a court, agency, or board to restore firearm purchasing rights to a person who had them previously removed because of a mental health adjudication or involuntary commitment. In order to establish a relief from disabilities program, a state must comply with the NIAA requirements, as follows:

1. Pass state law or administrative order
2. Complete an application
3. Indicate the lawful authority that will consider the petition
4. Abide by due process
5. Create a proper record of the proceeding
6. Create proper findings
7. Allow for de novo judicial review of denial
8. Update state and federal records once made aware that the disqualifier no longer applies
9. Establish a written procedure to address updating requirements (recommended)

In addition to providing reasonable estimates of available records, states who establish a certified program are then eligible for NARIP grant funding which is the funding source with a mental health record priority. Receiving NARIP funding has also proven successful in increasing the number of mental health records to the NICS Index. Twenty of the 26 states with the largest increase in reported mental health data from 2008 to 2015 received NARIP funding.

### *Training*

The first step in accurate and complete reporting is ensuring that stakeholders have a clear understanding of the types of records that are required to be reported to which databases. This can be particularly challenging with the mental health records. While state statutes have been helpful in clarifying and directing this, the information must be disseminated at the practitioner level. Several states have implemented some type of training efforts to address the confusion that has historically existed regarding mental health prohibitors. Training has primarily been directed at court clerks, who are typically responsible for managing court dispositions and records. Topics have focused on clarifying which civil mental health dispositions and types of criminal dispositions or determinations disqualify a person from purchasing a firearm. This is particularly important for mental health records, given the concerns about confidentiality and HIPAA regulations that have often arisen. States have also addressed the issue of coordination with state and private mental health institutions, so personnel at both courts and hospitals are clear on their reporting responsibilities. For example, Florida’s Administrative Office of the Courts (AOC) assembled a working group of cross-disciplined subject matter experts to develop standard forms and workflows as well as an informational seminar tracking the life of the mental health record from creation through each point at which the record may be modified or used.

<sup>7</sup> <http://smartgunlaws.org/mental-health-reporting-policy-summary>

<sup>8</sup> Twenty-nine of those states have an ATF certified relief from disabilities statute: Alabama, Alaska, Arizona, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Missouri, Nebraska, Nevada, New Jersey, New York, North Dakota, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin. Colorado and North Carolina passed legislation that meets the federal criteria but these states have not sought to have their programs certified by ATF, and Connecticut’s 2011 certification is no longer considered qualified or approved due to 2013 changes in the Connecticut Mental Health Law. As a result, Connecticut must reapply to ATF for certification.

The seminar was delivered by a panel of representatives from the mental health care industry, clerks of court, the judiciary, and law enforcement at training sites across the state to attendees who ranged from mental health facility managers and physicians as well as judges and clerks of the court. The seminar topics focused on the importance of collecting sufficient identifying information, clear documentation of the disability by medical staff for judicial review, and timely entry of the record into the NICS Index. Templates were provided to promote the use of standard forms including a petition for Relief of Firearm Disabilities.

The Texas Office of Court Administration (OCA) also conducted training activities, which included guidance on guardianship and criminal records, in addition to civil commitments, as well as how to handle records without necessary identification information for Federal reporting. Texas OCA created and conducted training for court clerks either in person or by phone, conducted outreach activities through articles in clerk association newsletters and presentations at regional and state conferences, and created a manual and frequently asked questions document. These efforts provided significant information to current staff, but also provide for ongoing training and sustaining knowledge in the future. For many states, training court staff is a necessary and important piece to increasing the level of understanding of, and subsequently improving, the process of mental health record reporting.

#### *Historical/Backlogged Records*

While reporting records “day forward” is the goal for states, adding historical records to the background check databases is also critical for completeness of data. Older records comprise a significant proportion of the records currently available to NICS. For mental health records, historical records are entered into III as the result of general criminal backlog research, or are entered via the NICS Index as legacy civil mental health records and/or criminal records that do not meet III requirements.

Many states have used NARIP, NCHIP, and other Federal funding to hire staff to research missing dispositions and resolve backlogged dispositions at the criminal history repository. Hundreds of thousands of records have been added to Federal databases as result of these efforts; among those records are criminal mental health dispositions. A few examples of states that have conducted significant disposition research include Florida, Kentucky, Maryland, and West Virginia. While these records typically were felony convictions, they also resulted in additional criminal mental health records being completed and updated in repositories.

To specifically address missing civil mental health data, states have used grant funds to hire staff to research and enter historical mental health records. In some cases, this occurred as a result of a state passing mental health reporting legislation. For example, Iowa passed legislation in 2011 that authorized reporting of electronically available historical disqualifying mental health orders and judgments. Records from a twenty year period were reviewed, verified, and if any information was missing from the record, researched. Thousands of verified records were sent to the FBI for inclusion in the NICS Index. In other states, research into legacy records occurred due to the implementation of an automation solution for current mental health records. Once the technical solution was rolled out, attention then turned to the historical records in order to enter them into the new system. Review of hard copy files is often necessary to identify prohibiting records that should be entered. West Virginia has been using NARIP grant funds to conduct this type of review, and, since 2010, staff stationed in circuit courts have reviewed over 70,000 records and about 20,000 case files have been added into their Central State Mental Health Registry for inclusion in NICS. Similarly, North Carolina is using NCHIP funds to review about 500,000 historical mental health commitment cases and enter qualifying information into their automated system, and thus into the NICS index, to make them available to law enforcement at the time of a NICS background check.

### *Automation*

Record automation and data exchanges have been the ultimate solutions for most states with significant improvement in mental health records reporting. These strategies have made it possible for states to overcome the accessibility challenges that have plagued mental health reporting in the past. Creating a means to track and exchange information electronically provides a clear path for reporting and accountability that has historically been lacking, given that there are several different types of disqualifying mental health records and these records can reside outside of the typical criminal justice and court arenas.

State automation strategies have typically fallen under these four categories, depending on the structure and existing process of record flow in the state:

- Improving all types of automated criminal dispositions sent to III and the NICS index
- Automating transfer of mental health data from the courts, through the criminal history repository, to the NICS index
- Establishing connectivity from mental health databases (e.g., public mental health hospitals, state health agency) where records are held through the criminal history repository, to the NICS index
- Automating all mental health record reporting through a single central database

#### Automating all criminal dispositions

Many states have focused efforts on automating all of their criminal dispositions or improving the accuracy, timeliness, and completeness of their disposition reporting systems. While this work is not focused on mental health disqualifiers solely, it does result in the addition of not-guilty by reason of insanity and incompetency to stand trial dispositions to Federal databases.

#### Automating mental health data from the Courts to the NICS Index through the Criminal History Repository

Several states have automated the transfer of court information to NICS through the criminal history repository.

In some places, local courts enter information and it is sent directly to the NICS Index via the repository, while in others, data goes to the state's administrative office of the courts and the connection to the criminal history repository happens at that level. Since many states have data management systems at the courts and repositories that were not initially built to store mental health information, the first step in automation is often creating fields in databases to accept the mental health data. With grant funding, software developers have been hired to update and add capabilities to the court and repository data systems so they can accept civil commitment, guardianship, and other mental health adjudications. Depending on how flexible the systems are, this task can require a significant amount of programming and also subsequent training.

#### **New Jersey's Civil Commitment Automated Tracking System (CCATS)**

New Jersey's challenge in reporting involuntary civil commitment data to NICS was that the information was not available at the state Administrative Office of the Courts (AOC) level. Local county adjusters manually recorded these commitments and there was no central way to view the information.

New Jersey's solution was to create a computer application (the Civil Commitment Automated Tracking System or CCATS) that would capture commitments at the local level and make them available to the AOC, New Jersey State Police, and NICS database. Temporary staff was hired to input 35 years of historical involuntary civil commitment records into CCATS. Going forward, the data needed for NICS reporting is input into CCATS by county adjusters who use CCATS to case manage civil commitments with the data electronically transferred to NICS in real time. Prior to the NARIP Grant, New Jersey had one mental health entry in the NICS Index. Today, New Jersey has well over 400,000 entries.

Another way states have tackled this automation strategy, mostly for civil commitment data, is through electronic forms. These forms have the NICS Index required fields. They do not necessarily have to be entered through the court case management system, but have a dedicated information exchange with the criminal history repository. This works well for states that do not have a statewide court case management system.

*Establishing connectivity from mental health databases through the Criminal History Repository to the NICS Index*

One of the most difficult pieces of information to track and report are commitment data that are held outside of the courts. Typically, they are held by state hospitals or departments of health or social services. While the criminal history repository is usually held accountable for making records available for background checks, these records are often difficult for them to obtain. Hard copy forms were a common way of getting information to the repository in many places. Others bypass the repository completely and the repository staff do not know if the required commitment records are even being reported. Timeliness, quality, and completeness of commitment data have been improved greatly by creating a mechanism to electronically share information from these mental health entities to the repository. States have either automated the exchange of information from individual hospitals or doctors to the repository, or where they exist, create a data transfer between the state-level entities (e.g., Department of Health) to the repository. For example, Ohio developed an electronic form to gather mental health data from probate courts and state hospitals to submit to NICS via the criminal history repository. Maryland created an electronic form to collect data from individual institutions and hospitals that populates a database maintained by the Department of Health and Mental Hygiene which then connects to the state police for reporting to NICS.

*Submitting information to a central mental health database*

Accountability of reporting can be a major challenge with mental health data, given the multiple origination sources. Some states have been able to implement a direct automation from origination sources to criminal history repository databases (i.e., implemented both of the previously discussed strategies). Other states have taken a different approach and created a centrally managed database at the state level that houses all of the mental health disqualifying entries that should be forwarded to the NICS Index, separate from the criminal history repository. Instead of courts and/or other mental health agencies sending information directly to the criminal history repository exclusive of one another, a central repository can act as layer of quality control for data before it is reported to NICS. Since all entities with information submit to the central database, duplicate entries will be identified before they get forwarded on. It also creates a level of accountability because the data are being centrally managed.

**New York's NICS Transmission System**

New York faced significant challenges gathering necessary mental health data from the multiple agencies and health facilities that hold them. The repository and AOC were unable to track whether required records were being reported to NICS.

In order to solve this problem, New York developed a centrally managed automated NICS Transmission System that allows each agency that holds mental health records to electronically transfer those records to the NICS Index. Using this strategy, they are able to not only transfer records in a secure manner but also impose quality control and efficiencies through automated and manual submission methods. Prior to the NIAA, New York had four mental health records in the NICS Index. As of August 2015, they had more than 350,000 entries.

### Improvements in Reporting Mental Health Data to the NICS Index

Due to the funds made available through the NCHIP and NARIP programs and the greater focus among states to increase the number of submissions to the NICS Index, there has been a marked growth in the number of mental health records available for firearms background checks

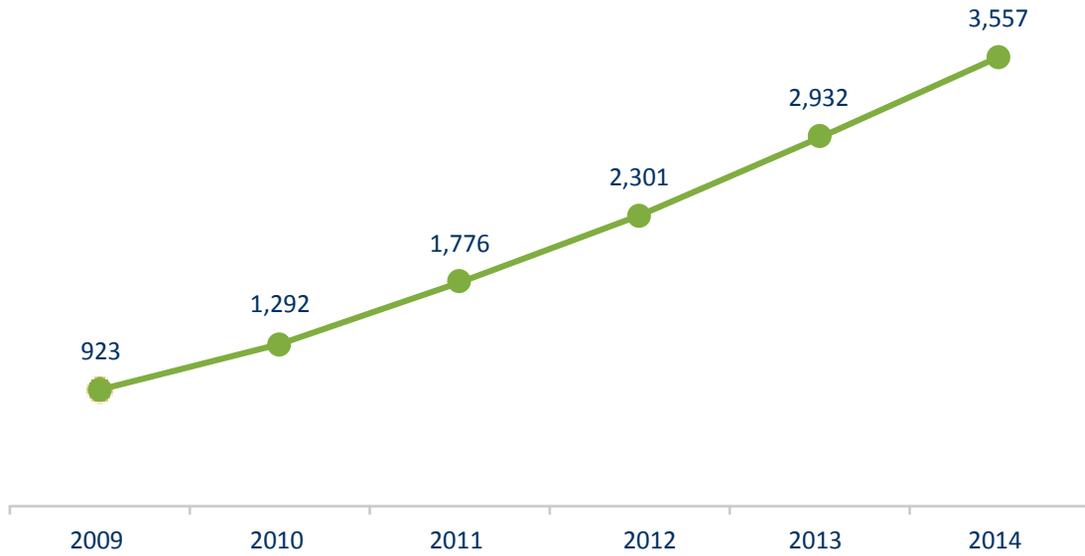
in recent years. According to the FBI, there were 234,628 state and federal mental health records in the NICS Index as of December 31, 2005. By July 31, 2015, this number had increased to 4,087,528 million records—representing a 1600% increase in the past 10 years.<sup>9</sup>

Mental Health Records in the NICS Index



<sup>9</sup> <http://www.fbi.gov/about-us/cjis/nics>

### Federal Mental Health Denials for Firearm Purchases



During 2009, the first year NARIP funds were awarded, there were 923 federal denials to purchase firearms based on mental health records in the NICS Index. During 2014, there were 3,557 federal denials – a 285% increase.

#### Conclusion

Because of the increased awareness of the need to report mental health records to the NICS Index – coupled with enhanced funding made available by BJS for criminal history systems improvements in reporting these records – significant progress has been made in recent years in terms of reporting levels. However, there is still much work to be done. The promising practices identified in this analysis can help serve as a roadmap for states seeking to continue improving their participation in the NICS. While the strategies described in this bulletin were focused primarily on mental health submissions, they could be used to increase the availability of other disqualifiers as well. Task forces improve communication

between agencies in terms of what information should be available for NICS background checks and can lead to procedural and/or technical changes that promote the availability of necessary information. Ongoing training is also critical to make sure all stakeholders remain aware of the need for timely and accurate information. Ensuring that historical or backlogged records are made available – whether through III, NCIC or the NICS Index – can meaningfully enhance information quality. Finally, automation is critical to ensuring records availability and efforts to promote the electronic exchange of information can provide long-term benefits for the purpose of improving firearms background checks and beyond.

*This project was conducted under cooperative agreement 2009-NS-BX-K050 from the Bureau of Justice Statistics, U.S. Department of Justice. Points of view or opinions expressed in this publication are those of the authors and do not necessarily reflect the official position or policies of the funding agency.*

