



## The NICS Improvement Amendments Act: State Estimates of Available Records Information Collection

### I. INTRODUCTION

This form has been developed pursuant to the National Instant Criminal Background Check System (NICS) Improvement Amendments Act (P.L. 110-180) (“the NICS Improvement Act”), enacted January 8, 2008, and reflects the Attorney General’s methodology established to calculate the number of reportable records for the purposes of the Act.

In accordance with Section 102 (b)(2) of the Act, states are to provide the Attorney General with reasonable estimates of certain categories of available records in the state “concerning any event occurring within the prior 20 years.” Therefore, the estimates requested herein – with the exception of three categories dealing with “active” records - pertain to the period from January 1, 1990, through December 31, 2009.

For the purposes of these estimates, the term “event” means an action by a government agency that results in the creation of one or more of the following categories of records pertaining to persons prohibited from purchasing a firearm pursuant to the Federal Gun Control Act of 1968, as amended, 18 U.S.C. 921 *et. seq.* including the following:

- Category 1: Records that identify a person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year (*e.g.*, federal or state felonies) and of any state misdemeanor punishable by imprisonment for more than 2 years.
- Category 2: Records that identify a person who is currently under an indictment or information returned or filed with a court, or a criminal complaint issued or verified by a prosecutor, for the crimes described in Category 1.
- Category 3: Records that identify a person who is a fugitive from justice, as demonstrated by an active felony or misdemeanor want or warrant.
- Category 4: Records that identify a person who is an unlawful user of or addicted to any controlled substance, as demonstrated by specified arrests, convictions and adjudications, not protected from

disclosure to the Attorney General by federal or state law.

- Category 5: Records that are available and identify a person who has been adjudicated as a mental defective or has been formally and involuntarily committed to any mental institution, not protected from disclosure to the Attorney General by federal or state law.
- Category 6: Records that are electronically available and identify a person subject to an active court order (*e.g.*, issued by a criminal court or any civil court, such as divorce court, family court, magistrate or general jurisdiction court) which restrains a person from committing acts of violence against another person.
- Category 7: Records that are electronically available and identify a person convicted in any court of a

Please note that in some instances the information collection form seeks estimates of records typically used by the NICS, ATF, and state firearm programs in determining whether a prospective purchaser is prohibited from receiving a firearm. In other words, such estimates pertain to records which may or may not reflect disqualifying information (*e.g.* Category 7). Ultimately, that determination may require additional research and analysis which typically is performed by the NICS, ATF, and/or a state firearm program at the time of a firearm background check. In other instances the form seeks estimates of records which, by definition, are disqualifying (*e.g.* Category 1).

misdemeanor crime of domestic violence.

### Collaboration in Developing Estimates and Certification

It is expected that state agency executives, judicial agencies, and other entities will need to collaborate in developing the estimates required to complete this form. In some cases, a state court may have information about events in a certain time period that are only in a paper or manual format, or may have destroyed the records

pursuant to a record retention policy, while a police agency or prosecutor's office may have electronic records about those events during that time period, or may have provided the information to the state central record repository. Collaboration between these agencies can assist in developing a more complete and informative estimate.

For these reasons, this form requires a certification that such collaboration has occurred to be signed by both the state's NCHIP grant administering agency and the State Court Administrator.

#### Narrative Description of Record Systems and Explanation of Approach to Arriving at the Estimates

The state's assessment of record availability will undoubtedly involve several considerations, including what agencies or entities originate the records, the number of these agencies, the number of available records, the format of the records, and how long agencies may retain such records.

The reporting form solicits some information about these issues in an effort to help guide the state's development of record estimates. (This information may also help states formulate record improvement plans and could be useful in evaluating whether eventual grant proposals satisfy the authorized uses for funds).

Because each state's record system is unique, the reporting form calls for a narrative description of how records on the relevant events are maintained in the state. It also calls for an explanation of the approach taken in using these information sources to develop the estimates. This part of the form is also the place where an explanation should be provided for any missing data or failure to provide breakdowns of the estimates as requested.

The narrative will be used by the Attorney General as a basis for evaluating the reasonableness of the estimates, as required under the Act.

#### Originating Agencies vs. Record Repositories

The primary sources of information about these events are the originating agencies, *i.e.*, the agencies that make the arrests, issue the warrants, indictments, or informations, or enter the convictions or orders. These agencies will typically have "original" records about these events, although other agencies involved may also have records of the event. For example, a court will have a record of a conviction it enters, but so may the

arresting agency or prosecutor's office involved in the case. Estimates are requested for records available at appropriate originating agencies in each record category.

At the same time, each state has a central record repository for criminal justice information and some may have central record repositories for mental health adjudications and commitments. It is through the state central record repositories that automated information about these events is electronically entered into the national repositories maintained by the FBI and used for NICS checks. Estimates are requested for records available at the state repositories in each record category.

#### What the Estimates Cover

The basic issue of record completeness being addressed by the NICS Improvement Act is the fact that not all relevant events, even though recorded in some fashion at the originating agency, are being recorded at the state central record repositories and/or provided to the FBI's national automated record systems that are used for NICS checks. Therefore, the record estimates seek to obtain a count of the number of unique records of the events, *i.e.*, the number of convictions, adjudications, commitments, orders, outstanding indictments, *etc.*, and, for comparison purposes, the number of those events reflected in records that are electronically available through state record repositories.

These comparisons will allow an assessment of the percentage of automated records of the events that are or can be made available for use by the NICS.

#### Disqualifying Events and Records that Reflect Them

It is recognized that the disqualifying events reflected in the categories of records specified in the Act may be available from more than one agency in the state. For example, a record of a single arrest or conviction may appear in the record systems of a police agency, a prosecutor's office, the courts, and the state central record repository. It is not intended that each record associated with a single event be counted but rather that a single report of the event be identified in the estimates for both the originating agency and state levels.

**The estimates of available records should be based on the number of unique records available at both the local (originating agency) level and the state (repository or equivalent statewide database) level.**

A court's judgment and conviction order, whether it involves multiple counts or one count, represents a

single record of a disqualifying event for purposes of these estimates. Conversely, several events may be included on a single, consolidated record about a person in a central record system, such as the “Record of Arrest and Prosecution” or “RAP Sheet,” reflecting that the person has two or more felony convictions or other disqualifying events. That consolidated record should not be counted as a “single” disqualifying event, if the convictions are the subject of separate Judgment and Conviction Orders as stated above. Each conviction on a consolidated record or RAP sheet should be counted as a separate conviction if it meets the definition of a conviction or disqualifying event.

### Definitions

**Active records** – a record is considered “active” in several contexts:

- In the case of indictments, informations, and verified complaints (Category 2), the term “active” means the prosecution associated with the indictment, information, or complaint has not been concluded, finally disposed of by the court, or otherwise terminated.
- In the case of wants or warrants (Category 3), the term “active” means the want or warrant has not expired or been satisfied, removed, retired, deleted, or otherwise invalidated in terms of its status and retains its authority for a law enforcement officer to arrest the subject of the want or warrant.
- In the case of protection or restraining orders (Category 6), the term “active” means the order has not expired or been removed, retired, deleted, or otherwise invalidated in terms of its status, and retains its authority to be enforced by a court and/or law enforcement.

**Available records** – A record is deemed available if a) it exists and b) it contains the minimum data required for entry into the III, NCIC or the NICS Index.<sup>1</sup> A record may be considered “available” in either paper or electronic form.

**Conviction** – A court’s judgment and conviction order, whether it involves multiple counts or a single count, represents a “conviction.” The counting rule for

convictions is as follows: When a defendant’s criminal court case results in convictions on multiple counts of the same offense (e.g. burglary), it should be counted as one conviction. Alternatively, when a defendant’s criminal court case results in convictions on single counts of multiple charges (e.g., burglary, assault, and armed robbery), this should be counted as three convictions.

**Electronically available records** – a record is considered “electronically available” if it contains the minimum data required for entry into the III, NCIC or the NICS Index, and currently resides in a database, spreadsheet, data file, or other electronic structure from which an automated transfer of the relevant data can be made. Paper records are not considered electronically available. By statute, the only two categories that specify electronically available are Protection and Restraining Orders (Category 6) and Convictions for Potential Misdemeanor Crimes of Domestic Violence (Category 7).

**Event** – an action by a government agency that results in the creation of one or more of specific categories of records pertaining to persons prohibited from purchasing a firearm pursuant to the Federal Gun Control Act of 1968, as amended, 18 U.S.C. 921 et. seq.

**Misdemeanor Crimes of Domestic Violence** – Misdemeanor offenses such as battery, assault, disorderly conduct, breach of peace, family violence/domestic violence, family assault or battery/domestic assault or battery, stalking, harassment, etc. This category utilizes a list of the most common offenses which may qualify as misdemeanor crimes of domestic violence. Inclusion of a record in a state count for estimation purposes only is *not* a determination that the subject of the record either is or is not prohibited from firearm possession under federal law. That determination requires additional research and analysis which typically is performed by FBI NICS and point of contact states.

**Originating agency** – the entity that makes arrests, issues warrants, files indictments or informations, or enters convictions or other orders into local, state, or national record systems. These agencies will typically have “original” records about these events, although other agencies involved may also have records of the event. For example, a court will have a record of a conviction it enters, but so may the arresting agency or prosecutor’s office involved in the case. In this instance, the court would be considered the originating agency.

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<sup>1</sup> States should contact the NICS Liaison Specialist at (304) 625-7348 or email [sbaker2@leo.gov](mailto:sbaker2@leo.gov) for information on minimum requirements for entry into III, NCIC, and the NICS Index.

**Record repository** – Each state has a central record repository for criminal justice information and some may have central record repositories for mental health adjudications and commitments. It is through the state central record repositories that automated information about these events is electronically entered into the national repositories maintained by the FBI and used for NICS checks. Estimates are requested for records available at the state repository in each record category.

**Records that identify a person** – a record is considered to “identify a person” if either (1) it is a fingerprint-based record which may be made available to the

Interstate Identification Index (“III”) or (2) a name-based records which may be made available to the files in either the (a) the National Crime Information Center (“NCIC”) or (b) the National Instant Criminal Background Check System (NICS) Index Files (“NICS Index”). Such records may be available in state (repository) or local (originating agency) files and systems.

## II. INITIAL STATE ESTIMATES

**Category 1. Felony Convictions** - Records that identify a person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year (*e.g.*, state ‘felonies’), and state misdemeanors punishable by a term of more than 2 years.

Please estimate the number of available records in the state covering the twenty-year period (January 1, 1990 through December 31, 2009).

RECORD TYPE	NUMBER OF RECORDS IN THE STATE REPOSITORY		NUMBER OF CONVICTION RECORDS AT THE COURTS
	The number already linked or associated with criminal history records:	The number not linked or associated with criminal history records ( <i>e.g.</i> records in a pending or suspense file, <i>etc.</i> ):	
Felony Convictions	1A	1B	1C

**Category 2. Active Indictments/Informations/Verified Complaints** - Records that identify a person who is under an indictment or information returned or filed with a court, or a criminal complaint issued or verified by a prosecutor, for the crimes described in Category 1. The term “active” means the prosecution associated with the indictment, information, or complaint has not concluded, been finally disposed of by the court, or has not been otherwise terminated.

Please indicate how many active records were available in the state as of December 31, 2009.

RECORD TYPE	NUMBER OF RECORDS IN THE STATE REPOSITORY	NUMBER OF RECORDS AT THE COURTS OR PROSECUTORS’ OFFICES
Active indictments returned/filed		
Active informations returned/filed		
Active criminal complaints issued or verified by a prosecutor		
<b>TOTAL</b>	2A	2B

**Category 3. Active Wants/Warrants** - Records that identify a person who is a fugitive from justice, as demonstrated by an active felony or misdemeanor want or warrant. The term “active” means the want or warrant has not expired or been satisfied, removed, retired, deleted, or otherwise invalidated in terms of its status, and it retains its authority for a police officer to arrest the subject of the want or warrant.

Please indicate how many active records were available in the state as of December 31, 2009.

RECORD TYPE	NUMBER OF RECORDS IN THE STATE REPOSITORY (State equivalent to the NCIC Wanted Persons File)	NUMBER OF RECORDS AT THE COURTS
Active Wants/Warrants	3A	3B

**Category 4. Unlawful Drug Use Records** - Records that identify a person unlawfully using or addicted to a controlled substance, as demonstrated by specified arrests, convictions and adjudications, not protected from disclosure to the Attorney General by federal or state law. The term “arrests” means arrests for use or possession of a controlled substance. “Adjudications” include orders imposing: pretrial diversion, drug diversion, probation without judgment, adjudication withheld, probation or parole conditions or sentencing conditions which include mandatory drug treatment programs. “Convictions” mean convictions for use or possession of a controlled substance, which are not included in the estimates of felony convictions included under Category 1.

For the purposes of these record estimates, we are requesting only the following: (1) the number of arrests and adjudications for felony offenses (excludes convictions which have already been counted under Category 1), and (2) the number of arrests, adjudications, and convictions for all other drug offenses. This is to avoid duplication with records identified in Category 1.

Please estimate the number of available records in the state covering the twenty-year period (January 1, 1990 through December 31, 2009).

RECORD TYPE	NUMBER OF RECORDS IN THE STATE REPOSITORY	NUMBER OF RECORDS AT ORIGINATING AGENCIES
For drug offenses punishable by imprisonment for a term exceeding one year ( <i>i.e.</i> , felonies) or state misdemeanors punishable by imprisonment for more than 2 years.	Arrests	
	Adjudications	
For all other drug offenses.	Arrests	
	Adjudications	
	Convictions	
<b>TOTAL</b>	4A	4B

**Category 5. Mental Health Adjudications or Commitments** - Records not protected from disclosure to the Attorney General by federal or state law that identify persons who have been:

- (1) Adjudicated mentally defective, meaning that a court, board, commission or other lawful authority has determined that the person as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (a) is a danger to himself or others, or (b) lacks the mental capacity to contract or manage his own affairs. This category also includes records of persons found incompetent to stand trial or found insane by a court in a criminal case.
- (2) Formally and involuntarily committed to a mental institution. This category of records does not include persons committed to a mental institution voluntarily or merely for observation or evaluation.

Please estimate the number of available records in the state covering the twenty-year period (January 1, 1990, through December 31, 2009).

RECORD TYPE	NUMBER OF RECORDS IN THE STATE REPOSITORY	NUMBER OF RECORDS AT THE COURTS	NUMBER OF RECORDS AT A BOARD OR COMMISSION <sup>1</sup>	NUMBER OF RECORDS AT OTHER LAWFUL AUTHORITY <sup>1,2</sup>
Adjudications of mental defect.				
Findings of incompetency to stand trial.				
Findings of insanity by a court in a criminal case.				
Formal involuntary commitments to a mental institution.				
<b>TOTAL</b>	5A	5B	5C	5D

<sup>1</sup>Please identify the board, commission, or other lawful authority making the determination: \_\_\_\_\_

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<sup>2</sup> Other lawful authority can include a state mental health authority database.

**Category 6. Protection or Restraining Orders** - Records that are electronically available and identify a person subject to an active court order (including criminal or any civil court such as divorce court, family court, magistrate or general jurisdiction court) which restrains a person from committing acts of violence against another person, and includes both temporary and permanent orders. The term “active” means the order has not expired or been removed, retired, deleted, or otherwise invalidated in terms of its status, and it retains its authority to be enforced by a court and/or the police.

Please indicate how many of the following active records were electronically available in the state as of December 31, 2009.

<b>RECORD TYPE</b>	<b>NUMBER OF RECORDS IN THE STATE REPOSITORY</b> <b>(State equivalent to the NCIC Protection Order File)</b>	<b>NUMBER OF RECORDS AT THE COURTS</b>
Active Protection or Restraining Orders	6A	6B

Note: Criminal court orders would include bail, probation, and parole conditions imposed by a court.

**Category 7. Convictions for Potential Misdemeanor Crimes of Domestic Violence (MCDV)** - Records that are electronically available and that may identify a person convicted of misdemeanor offenses such as battery, assault, disorderly conduct, breach of peace, family violence/domestic violence, family assault or battery/domestic assault or battery, stalking, harassment, etc.

Note: This category utilizes a list of the most common offenses which qualify as MCDVs. Inclusion of a record in a state count for estimation purposes only is not a determination that the subject of the record either is or is not prohibited from firearm possession under federal law. That determination requires additional research and analysis which typically is performed by FBI NICS and POC states.

Please estimate the number of electronically available records in the state covering the twenty-year period (January 1, 1990 through December 31, 2009).

<b>RECORD TYPE</b>	<b>NUMBER OF RECORDS IN THE STATE REPOSITORY</b>	<b>NUMBER OF RECORDS AT THE COURTS</b>
Potential MCDV Convictions	7A	7B



**SUMMARY OF RECORD ESTIMATES**

Please transfer the state estimates from individual categories to the table below.

(A) <b>RECORD CATEGORY</b>	(B) <b>NUMBER OF RECORDS IN THE STATE REPOSITORY</b>	(C) <b>NUMBER OF RECORDS AT ORIGINATING AGENCIES</b>
<b>Category 1</b> Felony Convictions	From 1A + 1B	From 1C
<b>Category 2</b> Active Indictments, Informations, Complaints	2A	2B
<b>Category 3</b> Active Wants/Warrants	3A	3B
<b>Category 4</b> Unlawful Drug Use Records	4A	4B
<b>Category 5</b> Mental Health Adjudications or Commitments	5A	5-B + 5-C + 5-D
<b>Category 6</b> Active Protection/Restraining Orders	6A	6B
<b>Category 7</b> Misdemeanor Crimes of Domestic Violence Convictions	7A	7B
<b>TOTAL</b>	Sum of Column B	Sum of Column C

<b>PERCENTAGE OF ALL RECORDS AVAILABLE</b>	(Sum of Column B) Divided by (Sum of Column C) * 100
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Note: The Attorney General's evaluation of the estimates provided herein will include a comparison to the number of records contained in certain FBI files as of December 31, 2009, including: the Interstate Identification Index, the NCIC Protection Order File, the NCIC Convicted Sexual Offender Registry file, the Convicted Persons on Supervised Release file, the Wanted Persons file, and the NICS Index.

### **III. RECORD AVAILABILITY**

Please provide a description of how each category of available records is maintained in your state.

**For each separate category of records** please describe the following:

- a. The type and number of state/local agencies that originally create such records;
- b. The typical “lifecycle” of such original records, including:
  - i. when and where the records are created;
  - ii. whether such records are maintained in paper or electronic form;
  - iii. if and how such records are transmitted to state and national files; and,
  - iv. when/how such records are ultimately disposed of, deleted, or otherwise made unavailable.
- c. Any difficulties or impediments faced in accessing records or submitting records to state and national files; and
- d. Other factors that may affect the availability of the records for state and national files, including whether categories of records may be protected from disclosure to the Attorney General under a provision of state or federal law. Please provide a citation or statutory reference for the applicable law or regulation.

Attach separate sheets if necessary.

#### **IV. ESTIMATION PROCESS**

**For each separate category of records,** please provide a detailed description of the research and/or analysis performed to arrive at the individual record estimate(s) provided. For each separate category of records covered, this description should include an explanation of how the specific estimates were developed including any analysis or assessment of records in the state central record repository, surveys of local reporting agencies, analyses of state court statistics, data collection from sample(s) of local agency records, estimates derived from audits of local reporting agencies, and/or any other analytical work performed to support the development of the applicable record estimate.

If applicable, this section should also include an explanation for any missing information or record estimates required by the reporting form.

**V. CERTIFICATION**

Submitting State	Submission Date

The undersigned hereby certifies to the Attorney General of the United States that:

- (1) the estimates provided herein are consistent with the guidance provided with this form; and,
- (2) the estimates provided were developed in collaboration with state court officials, the criminal history record repository, and other officials with relevant information as appropriate, including the state firearm licensing or permit program, state mental health program directors, state statistical analysis center, and others.

<b>State NCHIP Program Official</b>	
Signature	Date
Printed Name	Title
Address	Phone & Email address

<b>State Court Administrator</b>	
Signature	Date
Printed Name	Title
Address	Phone & Email address

## **VI. SUBMISSION OF INFORMATION COLLECTION**

The completed form can be mailed to: Devon Adams  
Criminal Justice Data Improvement Program  
Bureau of Justice Statistics  
U.S. Department of Justice, Office of Justice Programs  
810 7<sup>th</sup> Street, N.W., Room 2327  
Washington, DC 20001

The completed form can be emailed to: [Devon.Adams@usdoj.gov](mailto:Devon.Adams@usdoj.gov)

The completed form can be faxed to: Devon Adams at (202)-307-5846

## **VII. QUESTIONS**

- For questions about this information collection, please contact Ms. Devon Adams, Chief of BJS's Criminal Justice Data Improvement Program, at (202) 307-0765 or [Devon.Adams@usdoj.gov](mailto:Devon.Adams@usdoj.gov).
- Additional information about the Act and DOJ efforts to implement it can be found on the BJS website at <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=49>.
- For questions about NICS, please contact the NICS Liaison Specialist at (304) 625-7348 or email [sbaker2@leo.gov](mailto:sbaker2@leo.gov). Additional information is available at <http://www.fbi.gov/hq/cjisd/nics.htm>.
- For general questions relating to the categories of persons prohibited from receiving or possessing firearms under federal law, please contact your local field division of the Bureau of Alcohol, Tobacco, Firearms and Explosives, at 1-800-800-3855, or [NIAAReliefProgram@ATF.gov](mailto:NIAAReliefProgram@ATF.gov). Additional information is available at [www.atf.gov](http://www.atf.gov).

### **Required Burden Statement**

Under the Paperwork Reduction Act, we cannot ask you to respond to a collection of information unless it displays a currently valid OMB control number. The data collection will be sent to NCHIP administering agencies in 56 jurisdictions including the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and the U.S. Virgin Islands. The average time required for each agency to complete the reporting form is estimated at 40 hours. Send comments regarding this burden estimate or any aspect of the data collection, including suggestions for reducing this burden to Gerard Ramker at the Bureau of Justice Statistics, 810 7<sup>th</sup> Street, NW, Room 2323, Washington DC 20531.