

## NICS Act State Record Estimates Information Collection Form

### SUPPORTING STATEMENT

#### **A. Justification**

##### 1. Necessity of Information Collection

This information collection implements certain provisions of recently enacted legislation, delegated by the Attorney General to the Office of Justice Programs, Bureau of Justice Statistics (BJS). The NICS Improvement Amendments Act of 2007 (Pub. L. 110-180 – see Attachment A), was signed into law by the President on January 8, 2008. The Act amends the Brady Handgun Violence Prevention Act of 1993 (“the Brady Act”) (Pub. L. 103-159), under which the Attorney General established the National Instant Criminal Background Check System (or “NICS”). The Brady Act requires Federal Firearms Licensees (FFLs) to contact the NICS before transferring a firearm to an unlicensed person for information on whether the proposed transferee is prohibited from receiving or possessing a firearm under state or federal law.

The NICS Improvement Act was enacted in the wake of the April 2007 shooting tragedy at Virginia Tech. The Virginia Tech shooter was able to purchase firearms from an 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 Act seeks to address the gap in information available to NICS about such prohibiting mental health adjudications and commitments and other prohibiting backgrounds. 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.

The Act authorizes two new federal grant programs to assist states in providing certain information to the NICS, and prescribes grant penalties for non-compliance with the Act’s record completeness goals. Assuming Congress appropriates funds for the programs, the Act provides that states must satisfy two conditions in advance of receiving grants:

- (1) First, a state must provide to the Attorney General a “reasonable estimate,” based on a methodology established by the Attorney General, of records subject to the Act’s completeness requirements; and
- (2) Second, a state must certify, to the satisfaction of the Attorney General, that the state has implemented a program permitting persons who have been adjudicated a mental defective or committed to a mental institution to obtain relief from the firearms disabilities imposed by law as a result of such adjudication or commitment. This relief must be based upon a finding, in accordance with principles of due process, by a state court, board, commission, or other lawful authority, that the circumstances of the disability and the person’s record and reputation are such that the person will not be likely to act in a manner dangerous to the public safety and that the granting of relief would not be contrary to the public interest.

The proposed BJS information collection (Attachment B) provides the instructions and guidance for states and territories to follow to provide the record estimates required under the Act.

## 2. Uses of Information

The information collected will be used to evaluate the degree of completeness of states' submission of specified records to the Attorney General. The Act has provisions that require states to meet specified goals for completeness of the records submitted on individuals prohibited by federal law from possessing firearms in order to receive a waiver of a matching funds requirement associated with the National Criminal History Improvement Program (NCHIP) and/or to avoid withholding of federal grant funds under the Byrne Justice Assistance Grant (JAG) program. The Act provides incentives for states to meet the goals it sets for greater record completeness.

- First, the Act allows states to obtain a waiver, beginning in 2011, of the state matching requirement under the NCHIP grant program, if a state provides at least 90 percent of its records identifying persons in specified prohibited categories.
- Second, the Act authorizes grant programs (not yet funded), to be administered consistent with NCHIP, for state executive and judicial agencies to establish and upgrade information automation and identification technologies for timely submission of final criminal record dispositions and other information relevant to NICS checks.
- Finally, the Act provides for discretionary and mandatory Byrne JAG program grant penalties, beginning 3 years after enactment, for non-compliance with specified record completeness requirements within certain timeframes: after 3 years, 3 percent may be withheld in the case of less than 50 percent completeness; after 5 years, 4 percent may be withheld in the case of less than 70 percent completeness; and after 10 years, 5 percent shall be withheld in the case of less than 90 percent completeness (although the mandatory reduction can be waived if there is substantial evidence of the state making a reasonable effort to comply).

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, with the exception of categories dealing with “active” records, pertain to the period from January 1, 1989, through December 31, 2008.

For the purposes of the 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 active 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 warrant 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 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 misdemeanor crime of domestic violence.

Essentially, the states are asked to provide individual estimates of the number of such records available in the state, and the number of these records already made available to the Attorney General for use by the National Instant Criminal Background Check System (NICS). BJS will use these estimates to calculate the percentage of records already provided based on the total number of records available.

The form also requests that the state provide (a) a general description of factors that may affect the availability of records or impede their reporting to state or national files taking into account their location, originating agencies, current format, record retention practices, and similar practical considerations, and (b) an explanation of the methods employed to develop the requested estimates, which may include analysis of records in the state central repository, data collection from reporting agencies, analysis of court statistics, surveys, or similar information gathering activities.

Finally, the form requires a certification that the estimates submitted were derived from a collaborative statewide assessment process coordinated by the NCHIP administering agency and involving representatives of the state courts, state criminal record repository, state statistical analysis center, firearm licensing or permit program, state mental health program, and/or other appropriate entities with relevant information. BJS views such collaboration as critical to the successful implementation of the Act. Further, such partnerships can serve as a springboard for

the development of a NICS record improvement plan for states which, in turn, can form the basis for future NICS grant applications under the Act. For these reasons, the reporting form must be certified by both the state's NCHIP administering agency and the State Court Administrator.

### 3. Efforts to Minimize Burden

BJS will allow respondent entities to submit information on paper (fax or regular mail), compact disc, or electronically via the Internet using a fillable pdf (email).

### 4. Efforts to Identify Duplication

The information requested is not directly attainable from any other data source. Thus, there is no duplication of effort created by this information collection.

### 5. Minimizing Burden on Small Businesses

Not applicable. No information will be gathered from small businesses.

### 6. Consequences of Not Conducting Collection

The provision of the information sought by this collection is a pre-condition for states' eligibility to apply for grant funds pursuant to federal legislation. There is no other source of the information required by the legislation.

### 7. Special Circumstances That Would Increase Respondent Burden

There are no special circumstances that would cause this information collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;
- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- requiring respondents to submit more than an original and two copies of any document;
- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

## 8. Public Comment and Consultations

In the development of this information collection, BJS has consulted many times with Department of Justice officials in the Office of Legal Policy, Federal Bureau of Investigation's Criminal Justice Information Services Division staff of the National Instant Criminal Background Check System program, and the Bureau of Alcohol, Tobacco, Firearms and Explosives. Also, consultations with representatives of state criminal record repositories, SEARCH Group, Inc., local and state court officials including the National Center for State Courts, NICS users, and state mental health programs have taken place. Issues of content, form, data availability, and clarity of instructions and guidance were discussed at length in these consultations.

In response to the 60-day notice of this proposed information collection posted in the Federal Register on August 1, 2008, BJS received written comments from fourteen (14) entities. The comments were consolidated around issues, questions, and aspects of the information collection. Attachment C contains the consolidated comments and indicates the BJS responses thereto and/or actions taken as a result of the comments received.

## 9. Provision of Payments or Gifts to Respondents

Not applicable. BJS will not provide any payment or gift of any type to respondents. The provision of the information sought by this collection is a pre-condition for states' eligibility to apply for grant funds pursuant to federal legislation.

## 10. Assurance of Confidentiality

Respondents are informed that information collection participation is voluntary, but is a pre-condition for states' eligibility to apply for grant funds under the Act. The federal grants under the Act are discretionary and will be awarded on a competitive basis based on available funds. The provision of information in no way guarantees that a subsequent grant application will be funded. The information collected is considered in the public domain and, under the Act, is required to be publicly reported to Congress.

## 11. Justification for Sensitive Questions

Not applicable. There are no questions of a sensitive nature included in the information collection.

## 12. Estimate of Respondent Burden

The information collection will be sent annually to fifty-six (56) jurisdictions: the states, District of Columbia, and the U.S. territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands.

The average time required for each jurisdiction to complete the annual collection is estimated to be about 40 hours. The estimated burden hours factors in time to consult with local agencies, state court and state mental health representatives to obtain information on the number of available records in the state. (For further details related to respondent's burden refer to 2. Uses of Information.)

13. Estimate of Respondents' Cost Burden

The estimated cost of the respondent's burden is unknown. It should be noted that these costs, pursuant to the NICS legislation, are an allowable use of the grant funds available to the states and territories after the initial round of estimates are provided.

14. Cost to Federal Government

The total cost to the Federal Government for this information collection is estimated at \$47,262.50, all to be borne by the Bureau of Justice Statistics. Office costs are based on two (2) months full-time work of a GS-13 Justice Statistics Policy Analyst (\$91,259 annual salary) and two (2) months full-time work of a GS-15 Supervisory Program Manager (\$126,850 annual salary) and benefits (25 percent of salary) and per employee administrative costs of BJS.

Summary of Costs Estimates:

|                   |                    |
|-------------------|--------------------|
| BJS Office Costs: |                    |
| Salaries          | \$35,810.00        |
| Benefits (25%)    | \$ 8,952.50        |
| Other Admin Costs | <u>\$ 2,500.00</u> |
| Total Cost        | \$47,262.50        |

15. Reasons for Change in Burden

Not applicable. This is a new information collection.

16. Publication Plans and Schedule

Information collected will be compiled for the Attorney General and will eventually be reported to Congress. Regardless of whether funds are appropriated by Congress in FY 2009, BJS is required to collect initial state estimates on record completeness. The projected schedule for the initial information collection, publication and data release is as follows:

|  |                                     |
|--|-------------------------------------|
| Reference Period for Initial Estimates:    | January 1, 1989 - December 31, 2008 |
| Preparation of Information Collection Form | January 2009                        |
| Data Collection Period                     | January – May 2009                  |
| Data Processing and Analysis               | May – December 2009                 |
| Report to Congress                         | January 2010                        |

For FY 2010, the expected information collection schedule is as follows:

|  |                                     |
|--|-------------------------------------|
| Reference Period for 2 <sup>nd</sup> Round Estimates | January 1, 1990 – December 31, 2009 |
| Preparation of Information Collection Form           | November 2010                       |
| Data Collection                                      | December – March 2010               |
| Data Processing and analysis                         | March – December 2010               |
| Report to Congress                                   | January 2011                        |

17. Display of Expiration Date

Not applicable. The expiration date for the data collection will be displayed.

18. Exceptions to the Certification Statement

Not applicable. No exceptions to the certification statement are being sought.

**B. Statistical Methods**

1. Respondent universe.

Each state and territory has an agency designated by the chief executive to administer National Criminal History Improvement Program (NCHIP) grants. These fifty-six entities include the fifty states, the District of Columbia, and the U.S. territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands represent the universe of respondents. BJS maintains regular contact with these entities (ranging from daily to monthly) and keeps contact information up-to-date. The respondent's for the information collection are, in most instances, current grantees under the NCHIP, as a result, BJS already has developed close working relationships with each agency.

2. Information collection procedures.

a. Collection of Initial State Estimates

As indicated previously, the information gathered pursuant to this initial collection will be used to calculate the completeness of states' submission of specified records to the Attorney General for use by the National Instant Criminal Background Check System (NICS).

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, with the exception of two categories dealing with "active" records, pertain to the period from January 1, 1989, through December 31, 2008. For the purposes of the 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 under an active 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 warrant 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 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 misdemeanor crime of domestic violence.

Essentially, the information collection asks respondents to provide individual estimates of the number of such records available (physically and/or electronically) in the state, and the number of these records already made available to the Attorney General for use by the National Instant Criminal Background Check System (NICS). BJS will use these estimates to calculate the percentage of records already provided based on the total number of records available. This is the calculation defined in the Act.

b. Development of Estimates for Non-Respondent States

For states that choose not to provide estimates, BJS (with the assistance of an independent contractor) will calculate an estimate of record completeness. The Office of Justice Programs' Office of General Counsel has interpreted the intent of Congress in the Act to obtain/calculate estimates from every state. The penalties stipulated in the Act associated with record completeness apply to every state regardless of whether the state plans to seek grant funds or

submits estimates. The estimates of record completeness will be calculated based on other available information, including:

- Estimates provided by the states who choose to submit them;
- Information on record automation and completeness provided by states in response to the Criminal History Information System Survey conducted on behalf of BJS by SEARCH Group, Inc.; and
- Counts of records in relevant FBI files in the National Crime Information Center (NCIC), Interstate Identification Index (Triple I), and the NICS Index.

The SEARCH survey provides relevant information regarding “completeness” of state criminal history records in terms of: numbers of fingerprint-based records; the number of records of arrest for which the states report having final court disposition; backlogs of arrest, prosecution and conviction records awaiting entry into information systems; extent of automation utilized in the record submission process within the state (e.g. the extent of usage of electronic fingerprint image capture; system interfaces between law enforcement and court agencies; and, similar measures regarding state repository policy and practice.

We expect to develop record category estimates based on observed completeness rates for similar states in terms of total state criminal history records and which are proportionate to state population. However, the specific estimation methods are dependent on the availability (and distribution) of these alternative data and, therefore, are subject to change.

c. Independent Evaluation of Estimates

Depending on sufficient appropriations in FY 2009 for this purpose, BJS will employ the services of an independent contractor to: (1) develop a plan and timetable for evaluating the quality of the state estimates provided; and, (2) plan and develop record completeness estimates for non-responding states. BJS hopes to procure these contractual services by June 2009.

d. Workshops to Help Specify Estimate Development Processes

Inasmuch as the state jurisdictions vary greatly in terms of record availability, data reporting and record keeping regulations, analytical resources and abilities, and other factors, some degree of technical assistance may be required to help ensure that reliable methods are employed by respondent states for the initial collection. Therefore, in conjunction with the inaugural collection of estimates under the NICS Improvement Act, BJS will conduct at least one national workshop (in April or May 2009) targeted at state criminal record repositories and court officials to review and discuss their planned record estimation methods. Based on feedback BJS received from the states during the comment period, the following areas will likely serve as the focus for the workshop:

- Analysis of records in the state central record repository;
- Analysis of state crime and/or arrest statistics;
- Analysis of state court records;
- Surveys of local reporting agencies;

- Analyses of state court statistics programs;
- Data collection from a sample(s) of local agency records;
- Estimates derived from data quality audits of local reporting agencies and/or audits of the state central repository.

The workshop could also review activities already undertaken by at least two states that closely monitor and analyze workloads at their record repositories. BJS is working with SEARCH Group, Inc. in the planning and implementation of this workshop.

### 3. Procedures to maximize response rates.

The information collection will be sent via email to the fifty-six entities. The email will be sent to the agency's authorized official and an NCHIP grant contact person. Respondents will be able to submit responses via email or paper form (fax or regular mail).

The submission of record estimates is voluntary under the Act. However, the estimates must be submitted for the state to be eligible for grants under the Act.

Although appropriations for the grants have not yet been made, BJS intends to send the information collection to the NCHIP agencies as soon as it is approved in order to afford the states and territories the maximum amount of time to develop the required record estimates. In the absence of the incentive accorded by enacted appropriations, BJS will encourage state responses for the purpose of the report to Congress mandated by the Act. However, given the timeframes for public review and comment, and allowing sufficient response development time for the states, we propose a due date for the initial state estimates of May 1, 2009. Assuming an initial transmission to the states on or before February 1, 2009, a reminder email will be sent in early March and phone calls will be placed during the first week of April. A final email will be sent in mid-April.

We expect that subsequent calls for the annual state estimates will be sent in December with a due date set in March.

BJS plans to treat this first round of estimates to be collected as a pilot study. Based on the success of the response and the input of the independent contractor, some modification to the information collection may be needed. Additional training, national workshops, and/or other outreach may be warranted. The first report to Congress is due by the end of January 2009; consequently the first round of estimates will not be incorporated until the January 2010 report to Congress.

BJS has a number of efforts underway which reflect a broad strategy to improve the quality of Nation's criminal history records. In addition to providing direct grant funding to the eligible states and territories for this purpose, BJS has long supported a number of national initiatives which help focus attention on criminal history record data quality issues and encourage state efforts to address shortcomings. Current efforts in this regard include the following:

- In partnership with SEARCH and the state central repositories of criminal records, BJS has launched a "Criminal Record Repository Quality Assurance Project." For this

project, BJS is collaborating with SEARCH Group, Inc. to design, develop, establish, and sustain an on-going program involving performance and reporting standards which will address, among other things, criminal history record operations (including quality assurance practices), mandatory reports and data collection/verification requests, surveys, and NICS and Sex Offender Registry information to the extent that these fall within the responsibilities of the state criminal record repositories. The project is intended to implement several of the record improvement recommendations in the Attorney General's Report to Congress on Criminal History Background Checks, which was published in June 2006: (1) a renewed federal effort to improve the accuracy, completeness, and integration of national criminal history record system; (2) establishment of national standards relating to prompt disposition reporting and record completeness; (3) expansion of the number of repositories adopting the standardized rap sheet; (4) establishment of a national accreditation process for criminal history record repositories; and (5) development of a comprehensive ongoing data collection and research program.

- In partnership with the Justice Research and Statistics Association, BJS has launched several multi-state research projects utilizing the states' criminal history records carried out by state statistical analysis centers (SACs). These projects have provided support to the SACs to develop automated access to the state records to facilitate analyses aimed at sex offender recidivism, criminal history profiles of drug offenders, and summaries of felony case processing in state courts. A critical piece of these projects, in addition to coordinated analyses on the substantive research focus, involves providing detailed data quality and completeness reports to the state's criminal record repository. Thus, in addition to building the SACs' capabilities to access these records, BJS has been able to help the states address data shortcomings that may hinder the use of such records.
- In partnership with the FBI and Nlets, the International Justice and Public Safety Network, over which states and federal agencies share the Nation's criminal history records, BJS has launched an effort to automate its access to state and federal criminal history records for research and evaluation purposes. In addition to improving BJS statistical capabilities, this project will augment the Criminal History Data Improvement Program's activities around evaluating the quality and completeness of state and federal criminal history records, and focusing grant program resources more effectively on data quality issues.
- Also, in partnership with the FBI and Nlets, BJS has launched an effort to encourage states to adopt common data transmission and representation standards for the interstate exchange of criminal history records (i.e. RAP sheets). These efforts, based on the National Information Exchange Model, are focusing on adopting consensus standards for common coding schemes for structured data as well as instructional guidance for unstructured data fields which compose criminal history records.

#### 4. Tests of procedures.

No such tests are planned.

5. BJS Contact person(s).

|              |                |  |
|--------------|----------------|--|
| Devon Adams  | (202) 514-9157 | <a href="mailto:Devon.Adams@usdoj.gov">Devon.Adams@usdoj.gov</a>     |
| Gerry Ramker | (202) 307-0759 | <a href="mailto:Gerard.Ramker@usdoj.gov">Gerard.Ramker@usdoj.gov</a> |

**Attachment A**

**The NICS Improvement Amendments Act of 2007  
Public Law 110-180, Enacted January 8, 2008**

**Attachment B**

**Cover Letter & Reporting Form**

**Attachment C**

**Comments Received in Response to Information Collection Notice  
Posted in the Federal Register (8/1/2008 – 10/3/2008)**