



**U.S. Department of Justice**

Office of Justice Programs

*Bureau of Justice Statistics*

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Washington, D.C. 20531

January 1, 2009

\_\_\_\_\_, Director  
State NCHIP Grant Agency  
Street Address  
City, State Zip Code

Dear Director \_\_\_\_\_,

As you know, President Bush signed the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007 into law on January 8, 2008 (P.L. 110-180) (“the NICS Improvement Act”). The NICS Improvement Act was enacted in the wake of the April 2007 shooting tragedy at Virginia Tech. Information about the prohibiting mental health history of the perpetrator at Virginia Tech was not available to the NICS to enable the system to deny the transfer of the firearms used in the shootings. The NICS Improvement Act seeks to address the gap in information about such prohibiting mental health adjudications and commitments, as well as other prohibiting records. Filling these information gaps will better enable the system to operate as intended to keep guns out of the hands of those prohibited from receiving or owning them by federal or state law.

Among other important provisions, the Act contains an authorization for two new federal grant programs that would provide support for states and state court systems in their efforts to improve the quality and completeness of criminal record information available to the NICS. Please note that funding is not currently available for the grants authorized by the Act. However, if Congress chooses to enact appropriations for this purpose in the future, the grants would be administered by the Bureau of Justice Statistics (BJS) and awarded to the states through the agency designated by the Governor to administer the National Criminal History Improvement Program (NCHIP) grants.

It is important that you know that if such funds are appropriated, a state must satisfy two requirements to be eligible for a grant. First, states must have a program in place that permits persons restricted from obtaining firearms because of the federal mental health prohibitor to apply for relief from that restriction. Second, states must provide the Attorney General with reasonable estimates of certain categories of available records in the state over a 20-year timeframe. Although grants are not available at this time, we want to ensure that states receive all relevant information and reporting forms in preparation for potential future funding. In support of improvements to NICS, states may wish to immediately begin developing estimates in accordance with this methodology.

In addition to being one of two prerequisites for future grant eligibility, should such grants be appropriated, the record estimate serves another important purpose. The Act allows for a potential reward to be granted to states that have reported records at a certain level of completeness and for a potential penalty to be imposed on states that fail to report records at a certain minimum level of

completeness. The reward consists of a waiver of NCHIP matching grant funds and may be granted on a basis outlined in the Act. The penalty consists of the withholding of a percentage of formula grant funds under the Byrne Justice Assistance Grant program and may be imposed, as early as 2011, on a basis outlined in the Act. The reward and penalty are enforceable regardless of whether a state applies for any grant authorized under the Act and regardless of whether a state supplies an initial estimate of available records. However, if a state submits an estimate, the Department will use that estimate in judging whether the state has met the record completeness goals outlined in the Act. If a state chooses not to submit an estimate, the Attorney General has the authority to develop an independent estimate of the states available records.

The enclosed reporting form sets forth the method to be used by the states for submitting record estimate data. In short, the reporting form requests two estimates: the number of records available at originating agencies in the state and the number of such records in the state's criminal record repository. These numbers will be converted to a percentage (repository records as a percentage of all available records) to determine the completeness of the state's reporting of required records. To reiterate, if a state does not provide estimates of available records according to the method set forth in the enclosed reporting form, the Attorney General may specify, for the purposes of calculating the percentage of available records reported by that state and of determining whether the potential penalty may be imposed, the method according to which an estimate of the state's available records will be formulated.

The reporting 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.

**Please note that the reporting form must be returned to the Bureau of Justice Statistics by 5:00 p.m. (ET) on: March 15, 2009.**

In the meantime, please free to contact Gerard Ramker, Chief, Criminal Justice Data Improvement Program (202-307-0765 or [Gerard.Ramker@usdoj.gov](mailto:Gerard.Ramker@usdoj.gov)) if you have any questions regarding the Act or the reporting form. Also, please be advised that additional information about the NICS legislation and DOJ efforts to implement it can be found on the BJS website at <http://www.ojp.usdoj.gov/bjs/niaa.htm>.

We look forward to working with states in achieving the Act's goal of improving the effectiveness of the NICS.

Sincerely,

Jeffrey L. Sedgwick, Ph.D.  
Assistant Attorney General, Office of Justice Programs

Cc: State Court Administrator