

## Comments on the NIAA State Estimates Collection Form

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<b>List of Entities That Submitted Comments:</b> CA - Judicial Council of California FL - Florida Department of Law Enforcement HI - Hawaii Criminal Justice Data Center KS - Kansas Bureau of Investigation LA - Louisiana Commission on Law Enforcement and Administration of Criminal Justice MI - Michigan State Police MN- Minnesota Department of Public Safety, Bureau of Criminal Apprehension MO - Missouri: State Highway Patrol, Office of State Courts Administrator, and Office of Prosecution Services NV- Nevada Department of Public Safety NY- New York Division of Criminal Justice Services RI - Rhode Island Attorney General SEARCH - The National Consortium for Justice Information and Statistics UT - Utah Department of Public Safety WA - Washington Justice Information Network		

### **I. General Comments on the Information Collection**

#### **The Availability of Records for the Full Twenty-Year Period Will be An Issue for Some States**

- CA - 20 years of data collection is problematic for the courts. The state currently has 75 court case management systems and some are able to provide 20 years of electronic data, but many (perhaps most) cannot. Data collection from manual records would be prohibitively time consuming. Additionally, due to the nature of the legacy systems and their level and source for support, not all courts will be able to provide data. The CA DOJ, with some work, will be able to provide the 20 years of data. Working collaboratively, the state should be able to meet the 20 year requirement if it is acceptable that the source data from the courts will be less than 20 years and may not include all 58 Superior Courts.

***Response: None.***

- NV - The state would be able to provide wants/warrants data and felony arrest data within the 20 year timeframe, but some disposition/conviction information would be missing. Additionally, the state has a database for domestic violence protection orders but not stalking or harassment orders. The criminal history record does not include indictments and no mental health record information could be provided. Nevada does not have electronic court records, or complete criminal history records for the last 20 years and cannot identify an obvious way to provide non-overlapping information.

**Response: None.**

- FL – The focus should be on data available electronically that meets the NICS requirement. The number of records maintained by an agency does not ensure accessibility of the information in the electronic format or in a timely manner. The older the data requested, the harder the data will be to retrieve in a manner that meets the needs of the NICS program. Florida asserts that it is more important to identify the estimated number of records that are available for electronic retrieval and inclusion in automated systems. Also, FL recommends using the State Repository to the maximum extent possible. The FL State Repository has collected and maintained arrest and conviction records since the early 1970s, and arrest records date to the early 1900s. At the local level, misdemeanor arrests and convictions are only required to be maintained for a period of 5 years. The state repository would be in a better position to provide the number of actual records available in this instance.

***Response: As the Information Collection form indicates, 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.***

- HI - The central repository may have significantly more information; the repository cannot assess what is available at the Courts and Prosecutors, especially with a 20-year timeframe. Many of the records are already archived meaning manual effort will be required for retrieval. While the central repository has records for all convictions in the state, it is stored as individual charges, so it will be problematic to report on “unique records of the events” as defined.

**Response: None.**

- KS - Court dispositions are most commonly reported to the central repository by prosecutors, not the courts. The Courts have determined that their office would not be able to provide any of the requested statistics in any of the 7 prohibited categories. There are over 400 arresting agencies in the state and about that many prosecutors' offices. Every attempt will be made to obtain the information from the local agencies, but significant participation from the local level is unlikely due to lack of resources. The only way to ensure reasonable compliance from local agencies would be to pass a state statute requiring that the information be submitted to the central repository.
- MO - The Supreme Court of MO allows courts to destroy misdemeanor and relevant municipal case files 12 years after conviction or 3 years after dismissal and therefore

many of the older records would not be covered by the definition of 'available.'  
Prosecutor Response: The records retention schedule provided by the Missouri Secretary of State provides that records of misdemeanor cases be retained 10 years. Cases that result in a deferred prosecution must be retained for 5 years. Records that have not been retained by prosecutors will obviously not be available. In addition, there are few, if any, prosecutors that have electronic information that dates back to 1988. Those prosecutors who have historical data in electronic form will likely be able to provide some of the information requested. Prosecutors who have paper records only would not, as a practical matter, be able to provide the information requested.

***Response: None.***

- RI - There are 39 law enforcement departments in the state. The records are created at the police departments and are electronically forwarded to the state repository via livescan and forwarded to the courts via an interface. From the state repository the arrests are electronically forwarded to NCIC along with the Protective Orders. Records are disposed of by a disposition of the case, which is electronically sent from the courts to the state repository. Expungement orders are sent (not electronically) to the state repository from the courts and are manually expunged into an expunged file from the state repository. A list of expunged records is then faxed to NCIC. The disposition interface from the courts to the repository is not 100% operational. Grant funds are currently being used to fix the disposition interface.

***Response: None.***

- SEARCH – There are several factors that will influence responses to the information collection, including local justice agencies that: (a) have limited reporting capacity due to crude paper-based record management systems and virtually no technology; and (b) installed record management systems in the last 5 to 7 years that have few records available before that time. The survey also seeks to obtain the number of individual criminal history records maintained at both the state repository and at the local justice entity. This could prove difficult given the lack of central clearinghouses for some of these agencies in many states. While some states may have a unified court system from which a single entity could report the requested information, others do not. Collecting information from every local court jurisdiction could be a time-consuming process, particularly when covering a 20-year period. Older court documents may be in paper format, maintained off-site, or in some other condition that does not lend itself to easy retrieval and reporting. The same difficulty can be applied to obtaining information from local law enforcement agencies.

***Response: None.***

- UT - The state believes it can comply with the survey but does have some questions/concerns about the ability to get some of the statistical information. Prosecutors generally keep information for only two or three years. District court has

information from about 1989; misdemeanors are then purged and felonies are sent to the archives.

**Response: None.**

### **The Validity and Reliability of Estimates Will Be Impacted by the Number of Source Agencies and Span of 20 Years in Some States**

- FL - Several factors will impact the validity and reliability of the estimates. One factor is the level of automation of each agency from which information will be collected. In Florida, there are 3 state agencies, 1 state association, 67 county sheriffs, 67 court clerks, 20 state attorneys and over 340 local municipal agencies that maintain criminal justice information, none of which houses all the requested data. Each of these agencies has its own records management process and its own record retention policy. The requirement to estimate the number of records over a 20 year span introduces the potential for tremendous variation and error.

**Response: None.**

### **State to State Estimates Will Not Be Comparable**

- FL - Due to the variations in political structures, data systems, and state laws, each state will need to create its own methodologies for estimation and use different resources to establish estimates for each of the requested datasets. The different methodologies and resources will most likely result in estimates that are not truly comparable from state to state. It will be difficult to allocate grant funds fairly using these estimates.

***Response: As the Information Collection form acknowledges, 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.***

### **Estimates Will Not Reflect Accessible Data**

- FL - Instructions say that states will not need to assess whether an individual has NICS disqualifiers, but determining if missing records are “available” requires deciding if they contain the minimum data needed for entry into automated systems. Estimates can approximate the number of records that exist for each of the defined categories. This will not ensure that these records will be accessible. Analysis of records held by originating agencies to determine if they contain the necessary data will be overwhelming. Many states, including Florida, have been working not only to improve the volume and quality of data that are maintained in the state’s repository, but also have worked on collecting historical information.

**Response: None.**

### **Dual Certification on the Form is Unnecessary**

- HI – The state does not agree that a dual certification is necessary by the Courts and the NCHIP designee. Data gathering involves the Prosecuting Attorney Offices as well as the courts. The state recommends requesting a letter of support from the Courts and/or Prosecutors as is done with NCHIP grant applications.

***Response: As the Information Collection indicates, 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.***

### **Some Definitions are Unclear or Problematic**

MO - The courts have a concern with the definition of “conviction.” This does not appear to be a complete definition of an actual conviction, but rather how the number of charges associated with a case is treated. In Missouri, a suspended imposition of sentence disposition is not considered a conviction. Convictions are considered to be judgments with a sentence imposed. This could be spelled out more clearly in the definition. Under Missouri law the definition of conviction only includes judgments which include a fine or imprisonment. If the purpose is to include cases in which the defendant was found guilty or pleaded guilty, the definition of conviction could be modified as follows: “Conviction” – A Court’s Judgment and Conviction Order, reflecting a finding of guilt or a plea of guilty, whether it involves multiple counts or

a single count, represents a “conviction.” Example: When a defendant’s criminal court case results in a finding of guilt or a plea of guilty on separate charges of burglary, assault, and armed robbery, it should be counted as one conviction.”

***Response: What constitutes a conviction is determined by the law of the jurisdiction in which the proceedings were held. The definition of conviction has been modified to include the phrase, “reflecting a finding of guilt or a plea of guilty.”***

- NY – The definition section should either delineate the minimum data required to be deemed a record for NICS purposes or cross-reference to a document that would clearly and concisely provide that information.

***Response: The FBI’s NICS Section can provide information regarding minimal data requirements for records to be entered into systems utilized by the NICS.***

### **The Information Collection Should be Replaced with a Requirement for a State Plan**

NV – The state suggests rather than having each state complete an intensive survey that could be inconclusive at best, BJS should consider asking states how they plan to comply with the Act with authorized grant funds.

***Response: The record estimates are specifically required under the NICS legislation (Sec. 102(b)).***

## **II. Comments Relating to Specific Record Categories**

### **Category 1 – Felony Convictions**

- KS - The repository is able to provide some of the requested conviction information covering an 18 year period (automated records go back 18 years only). The repository does not have court dispositions attached for every arrest during that period.

***Response: None.***

- MO - Repository Response: All MO records in this category will be felony convictions; no misdemeanor information will be included. Due to the definition of conviction, Suspended Imposition of Sentence information will not be included either. Courts Response: In Missouri all of the records will be felony records, there are no misdemeanor charges that are punishable by more than 2 years (one year is the maximum imprisonment for a misdemeanor in MO). Therefore category one reporting will be primarily from the repository. The local court files for felonies must be retained for over 20 years in either paper or microfilm, so with some effort missing felony convictions can be found.

**Response: None.**

- RI - The state repository does not flag felony convictions.

**Response: None.**

### **Category 2 – Indictments/Informations/Verified Complaints**

- CA - The intent of the term “returned” versus “filed” indictment/information is not clear. Is returned the decision of the charging authority to not file, or are they intended to be synonymous?

**Response: The terms are intended to be synonymous. The information collection has been modified to reflect this relationship between the terms.**

- FL – Recommend limiting Indictments, Information, and Verified Complaints to a snapshot as of December 31, 2007. The practical utility of data covering 20-year period is limited for indictments, information, and verified complaints. These are records of a status, like warrants and protection orders, which is transient.

**Response: The information collection has been modified to request estimates for “active” indictments, informations, and verified complaints as of a date certain. A definition for “active” has also been added.**

- KS - The repository cannot provide information on indictments, informations returned, or verified complaints because prosecutors don’t report this information to the central repository. The repository only receives information after the court action has been completed or the case has been declined or diverted. This information can only be supplied retroactively, but it would not be current or complete due to the time lag in receiving the final court disposition.

**Response: None.**

- MI - No statewide database for indictments or informations exists, so it may be difficult to obtain. The state would like a clearer definition of what information is needed regarding indictments and informations. The state may only be able to provide the number of records with charges after arrest where a conviction is pending.

**Response: None.**

- MN - The timeframe in Category 2 does not make sense. An individual who is currently under indictment, information, or verified complaint is ineligible to possess a firearm. It would be more reasonable to know the number of “active” or current records meeting these criteria and on a specific date rather than over a 20 year period, as the charge may have resulted in a conviction (presumably counted in Category 1 or a non-conviction (outside the scope).

***Response: The information collection has been modified to request estimates for “active” indictments, informations, and verified complaints as of a date certain. A definition for “active” has also been added.***

- **MO - Repository Response:** The State repository does not differentiate between indictments, informations, or criminal complaints. Because of this, the only information the state repository will be able to provide is the number of charges filed that is still pending during the period covered. **Court Response:** Missouri is a unified court system, so prosecutor's (soon to be courts) report to the repository when the felony is initiated either by 'complaint (the process before an information is filed) or by indictment. If the defendant has been fingerprinted (and some have not due to being at large) then the records for those with pending felony actions will be in the repository. If the defendant is at large, the record would be reported in the Category 3 reporting, so we agree with the definition and survey instrument for Category 2. **Prosecutor Response:** All Complaints, Informations, and Indictments are filed by prosecutors with the Court. While those prosecutors with case management systems will have some electronic record of the filing of such documents, so will the Court system, which will also have an electronic record of filings by prosecutors without case management systems. As mentioned above, the Courts should be able to provide estimates of persons under indictment or charged by complaint or information for the crimes described in Category 1.

***Response: None.***

- **NY -** In New York, indictments and informations are both collected, but the electronic records do not distinguish between indictments and informations prior to 5 years ago. The estimate would reflect both indictments and informations as one category prior to 2003.

***Response: None.***

- **RI -** The AG's Office can give information on indictments returned or filed, informations returned or filed, and criminal complaints issued or verified by a prosecutor.

### **Category 3 – Active Wants/Warrants**

- **HI -** Hawaii does not have a central repository of wants/warrants. Would the “number of records in the state repository” be 0? The repository is unsure whether the courts have their warrants information stored in such a way that count can be obtained. The police department may be a better source for this information.

***Response: Yes, in this case, the estimated number of records in the state repository would be zero.***

➤ KS - Kansas has a Misdemeanor Wants and Warrants file and can provide the requested number of records in the state repository for this part of the survey.

➤ **Response: None.**

➤ MO - Repository Response: Due to the structure of the warrant database, a “snapshot” of a particular period may not be possible. Access to real time information only. Court Response. Missouri courts send all warrants for entry into Missouri State Highway Patrol’s wanted person system. Missouri is currently programming an electronic warrant interchange between MSHP and the courts that should improve the ability to keep the court and MSHP repository in sync. At this time there are a limited number of discrepancies, but after the automated interchange is in place, the exact discrepancies should be known and, therefore have no issue with Category 3 definition or the survey instrument.

***Response: The information collection form acknowledges that 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. 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. 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.***

➤ NY - The repository receives warrants from the courts, but also maintains a statewide wanted system that is updated by the police departments (the equivalent of the NCIC Wanted system). The repository count may include records separately reported by the courts.

**Response: None.**

➤ RI - Warrants are not physically kept at the state repository. They are issued at the courts and are electronically forwarded to the State Police. The repository, while conducting a search on an individual, will search the State Police’s database of warrants and will return a message that there is a warrant.

**Response: None.**

➤ WA - The majority of record types are maintained and available through electronic means. The two exceptions are active warrants and protection orders. Both of these records are generated by local courts and paper copies are distributed to the appropriate local law enforcement agency. Each agency must manually enter the

required information to the state NCIC interface. Many of these court records do not contain the minimum data required for entry into NCIC. Local law enforcement records staff often conduct additional searches to find the required information. Upon submission to the NCIC interface, these agencies maintain a paper copy of the record for validation purposes. Misdemeanor warrants are not submitted to NCIC due to the excessive amount of time and resources it would require. Current counts identify over 150,000 active misdemeanor warrants in the state. The inclusion of misdemeanor warrants into NCIC will increase the workload to local law enforcement agencies. Compliance with the new NICS requirements will either necessitate significant changes to the business process and technology infrastructure, or increased staffing levels at law enforcement agencies.

**Response: None.**

- SEARCH - Processes for entering wants/warrants and protection orders into state and national databases vary significantly from state to state (even from jurisdiction to jurisdiction within states). Attempting to quantify the number of these items in each state may very well encounter the difficulties described above that can occur when contacting local jurisdictions to request information.

**Response: None.**

- UT - The repository maintains the statewide warrant database, but does not hold the records. Do you need the total number of records that are housed in this file?

**Response: Yes, the estimate provided should reflect the number of such active records in the file on the date indicated.**

#### **Category 4 – Unlawful Drug Use Records**

- FL – Recommend limiting misdemeanor drug data to a 5-Year period. Per CFR Title 27 Part 478 Section 11 an “unlawful user of or addicted to any controlled substance” is limited to recent activity. The regulation, and subsequently the NICS User Manual have limited the utility of the misdemeanor drug offense to a 5-year period.

**Response: Please note that in developing the record estimates, states are not required to assess individual records to determine whether or not it would disqualify an individual from the receipt of a firearm under federal law. Rather, the form seeks estimates of the categories of records typically used by the NICS and ATF in determining whether available information demonstrates that a prospective purchaser is prohibited from receiving a firearm. The examples given in 27 C.F.R. 478.11, Unlawful User of or Addicted to any Controlled Substance, are merely examples from which an inference of unlawful use can be made and do not provide the exclusive means to make this determination.**

- KS - The repository can provide the number of drug-related arrests, convictions, and adjudications, but will have the same issues as under Category 1. The automated

records cover only an 18 year period, and the repository does not have dispositions for every arrest.

**Response: None.**

- MI - Need further clarification. The state assumes that the difference from what is accounted for under Category 1 for felony records are drug-related cases that have been dismissed or have been made non-public.

**Response:** *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 would include arrests and convictions for misdemeanor drug offenses as well as felony drug arrests. We need further clarification on what is meant by “non-public” to address that portion of the comment.*

- MO - Repository Response: The State repository can provide arrest, conviction, and adjudication information for the areas covered. Since many adjudications covered such as pretrial diversion, drug diversion, probation without judgment, etc. are not usually specifically reported to the repository, the repository would respond with any offense meeting the criteria that has any form of prosecutor action on file. Court Response: All felonies under the 'unlawful drug use' area would be reported under Category 1, 2 or 3. However the misdemeanor and municipal charges for drug use for 20 years will not be available. In Missouri there are over 500 municipal courts (only a handful on the statewide trial court case management system). Probably over 80% of the misdemeanor and municipal charges in this category do not exist in the criminal history repository and are not automated and the case file may not exist. The number of 'arrests' where no charges were filed would be more difficult to determine. Please consider limiting Category 4 cases to the same cases covered under Category 1; limiting only those offenses that are punishable by over 1 year incarceration; and C) changing the survey to electronically available, not just available.

**Response:** *As the information indicates, Category 4 record estimates pertain to unlawful drug use records. These records are defined as 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. Importantly, the term “convictions” refers to convictions for use or possession of a controlled substance, which are not included in the estimates of felony convictions included under Category 1. As the form indicates, for the purposes of the record estimates, only the following are requested: (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.***

- NY - New York does not have misdemeanors punishable by more than 2 years. The state records are not kept in a way to capture all the definitions included within “adjudications.” If an arrest record is sent that is later disposed in favor of the defendant or pled to a non-criminal offense, and sealed, NY law would require the record be sealed or expunged in the NICS system. The state would not be counting appearance tickets as an arrest under Category 4.

***Response: None.***

- RI - The courts use codes in their system of NGBRI (Not Guilty by Reason of Insanity) or NGLCR (Not Guilty Lack of Criminal Responsibility) at the disposition level of a case. The courts also use sentence types for Drug Program, DWI School or AAA Counseling. These codes could be used to capture certain cases.

***Response: None.***

#### **Category 5 – Mental Health Adjudications or Commitments**

- CA - This is an important category and many court case management systems on the civil side capture the fact that a disposition has occurred but not necessarily what the specific mental health disposition is (civil commitment case disposed, but not whether commitment was ordered or not). Will the program support application for funds to do manual sample-based data collection or other strategies to obtain this data?

***Response: Yes, assuming funds are appropriated for the grant programs authorized by the Act, the costs associated with collecting and analyzing data needed to demonstrate levels of compliance with the Act would be allowable.***

- HI - Availability of mental health treatment data continues to be a challenge statutorily and also in an automated fashion. Since state law prohibits sharing of this information, does the state have anything to report for this category?

***Response: The State is asked to provide estimates of the number of records not protected from disclosure to the Attorney General by federal or state law. Therefore, if existing state law prohibits sharing such information with the Attorney General, the estimate(s) for such records would be zero.***

- KS - The repository will be able to provide the number of mental health adjudications or commitments. The State District Court is the only entity that makes mental health determinations.

***Response: None.***

- MI - Request clearer definition of Incompetency to Stand Trial and Findings of Insanity by a court. Basic assumptions of each by state – (1) Incompetency to Stand Trial means that some type of mental health screening occurred where it was found that the individual would not be tried in court; (2) Findings of Insanity are instances where the person was found Guilty but Insane, or Not Guilty by Reason of Insanity.

***Response: The terms Incompetent to Stand Trial and Finding of Insanity are not defined in the Gun Control Act or its implementing regulations but should be given their common meaning. Any state specific inquiries should be directed to the Bureau of Alcohol, Tobacco, Firearms and Explosives.***

- MO - Repository Response: The repository will have limited information on Mental Health Adjudications or Commitments. Reporting is not possible on adjudications of mental defect, findings of incompetency to stand trial, or formal involuntary commitments to a mental institution. However, the repository would be able to report limited information on findings of insanity by a court in a criminal case. Court Response: Since Category 5 is limited to those 'electronically available' records, we are fine with this definition and survey question.

***Response: None.***

- NY - In NYS, persons can be involuntarily committed to a psychiatric hospital upon the recommendation of two physicians without court approval. While the commitment can be challenged in court and must be reviewed by a court within 60 days, many individuals may instead agree to voluntarily remain hospitalized (or be offered release) prior to court review. Similarly, if the court does review the commitment, it may decide that the individual does not require involuntary hospitalization and order a release. Would these situations meet the standard of involuntary commitment for NICS purposes (i.e., would physicians and the receiving hospital be construed as "lawful authorities")?

***Response: Federal regulations defined “committed to a mental institution,” in part, as a formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. State specific or fact specific inquiries should be directed to the Bureau of Alcohol, Tobacco, Firearms and Explosives.***

The last column in the spreadsheet includes records at "other lawful authorities," which in turn references state mental health databases. At this point in time and for the foreseeable future, NY would not be able to provide data that may exist in the approximately 130 licensed private hospital databases.

Are states supposed to count the involuntary commitments of minors? NYS Office of Mental Health (OMH) was advised by the FBI that a mental health-related hospitalization when the person was a minor does not need to be provided to the NICS system. Does this mean the individual involuntarily committed at age 17 or younger would be able to legally purchase a gun upon reaching majority, because

such involuntary commitment would not be noted in the NICS system?

**Response Under development**

Should incompetency to stand trial be counted when it is only an intermediate adjudication and the individual is later restored to competency and adjudicated (perhaps resulting in a favorable adjudication and a sealing of the record) or is it limited to final orders that accompany a dismissal of the case? Also, BJS should provide the option for state mental health authorities to provide counts of incompetency and insanity commitments, rather than relying solely on court or rap sheet information.

**Response: More information regarding what is an “intermediate adjudication” would be needed to respond to this inquiry. State specific or fact specific questions should be referred to the Bureau of Alcohol, Tobacco, Firearms and Explosives.**

- RI - The courts use codes in their system of NGBRI (Not Guilty by Reason of Insanity) or NGLCR (Not Guilty Lack of Criminal Responsibility) at the disposition level of a case. These codes could be used to capture certain cases.

**Response: None.**

- SEARCH - In many states, mental health treatment information is not available in an electronic format, is not collected in a central location, or both. No conduit or process exists to forward this information to the state repository, either from a central point or from individual treatment facilities. There may be laws that prohibit such exchanges. Legislative efforts to address legal barriers may not meet the time requirements established by Congress to provide mental health records, or to report on their number.

**Response: None.**

- UT - Mental Health Files: Does the state need to provide what is in their files for Brady denials as part of the count for the number of records in the state repository, or should they provide the totals of criminal history files that indicate a disposition that meets the mental criteria?

**Response: The information collection form acknowledges that 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. 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. 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.*

### **Category 6 – Protection or Restraining Orders**

- CA - Active protection/restraining orders in many jurisdictions can be both temporary and “permanent” orders. Do you need these to be separately reported since the ex parte order will not set the weapon purchase prohibition under current law?

***Response: The information collection has been modified to clarify that the estimates provided should include both permanent and temporary orders.***

- KS - Kansas does not have a state-equivalent NCIC protection order file. All protection orders are entered directly into NCIC at the local level.

***Response: None.***

- LA - If the language stands as currently written, it would include all restraining orders issued by a civil, juvenile, or criminal court against anyone, no matter the relationship. It should mirror the federal statute which defines the type of protective order that disqualifies a person from purchasing or possessing a firearm. Intimate partner should also be defined (as per the federal statute) and how the order was issued.

***Response: As the information collection notes, in developing the record estimates, states are not required to assess individual records to determine whether or not it would disqualify an individual from the receipt of a firearm under federal law. Rather, the form seeks estimates of the categories of records typically used by the NICS and ATF in determining whether available information demonstrates that a prospective purchaser is prohibited from receiving a firearm. In other words, 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 State POCs during the processing of NICS transactions. Also, as noted previously, the information collection has been modified to clarify that the estimates provided should include both permanent and temporary orders.***

- MO - Repository Response: Due to the “electronically available” definition, the repository concurs with the courts. However, the number of reported protection and restraining orders will be limited to the data collected from the “go live” date of the planned interface. Court Response: Missouri has a current project underway to electronically interchange protection orders; the courts have no issue with the definition for category 6.

***Response: None.***

- RI - Protection orders are issued at the court or the police department and are faxed to the repository. They are manually entered into the state repository and forwarded to NCIC.

***Response: None.***

- SEARCH - In some states, protection orders are entered into state and national systems by local justice agencies over which the state repositories or courts do not have jurisdiction, and are not alerted when the orders are entered into the systems.

***Response: None.***

- WA - The majority of record types are maintained and available through electronic means. The two exceptions are active warrants and protection orders. Both of these records are generated by local courts and paper copies are distributed to the appropriate local law enforcement agency. Each agency must manually enter the required information to the state NCIC interface. Many of these court records do not contain the minimum data required for entry into NCIC. Local law enforcement records staff often conduct additional searches to find the required information. Upon submission to the NCIC interface, these agencies maintain a paper copy of the record for validation purposes. All protection orders entered into the state system are provided to NCIC. Compliance with the new NICS requirements will either necessitate significant changes to the business process and technology infrastructure, or increased staffing levels at law enforcement agencies.

***Response: None.***

- SEARCH - Processes for entering wants/warrants and protection orders into state and national databases vary significantly from state to state (even from jurisdiction to jurisdiction within states). Attempting to quantify the number of these items in each state may very well encounter the difficulties described above that can occur when contacting local jurisdictions to request information.

***Response: None.***

- UT - The repository maintains the statewide protective order database, but does not hold the records. Do you need the total number of records that are housed in this file?

***Response: Yes, the estimate provided should reflect the number of such active records in the file on the date indicated.***

## **Category 7 – Convictions for Potential Misdemeanor Crimes of Domestic Violence**

- KS - The repository will be able to provide estimates for convictions of misdemeanor crimes of domestic violence, but it will not accurately represent domestic violence in the state. Kansas only has one statute that specifies domestic violence for battery and it wasn't enacted until 1996.
- LA - If the language stands as currently written, it would apply for any simple battery charge, no matter the relationship. The State's suggestion for narrowing Category 7: Title 18 USC 922(g)(9); see also 925(a)(1) defines an MCDV as "an offense" that": Is a misdemeanor under federal, state, or tribal law; Has an element of the use or attempted use of physical force, or the threatened use of a deadly weapon; and At the time the offense was committed, the defendant was: (a) A current or former spouse, parent, or guardian of victim; (b) A person with whom the victim shares a child in common; (c) A person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian; or (d) A person who was or is similarly situated to a spouse, parent, or guardian of the victim.

***Response: As the information collection notes, "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 State POCs during the processing of NICS transactions."***

Category 7 is a major problem area for the state because the court minutes do not track the relationship of the defendant to the victim. The record would have to be reviewed to collect the information. The only possible way is if a judge issues a criminal stay away order; but very few state courts are issuing these orders at the time of conviction. The state has no real way of estimating this number and will only be able to report those few cases where the Protective Order Registry gets a sentencing order.

***Response: None.***

- MO - Repository Response: The State repository can report convictions for potential misdemeanor crimes of domestic violence. This will encompass a wide range of state charge codes, and charges. Some of the charges on file might not relate specifically to crimes of domestic violence and should be used for estimation purposes only. Court Response: Since Category 7 is defined as 'electronically available', and in Missouri that would be those cases that exist in JIS or the criminal history repository, the courts have no suggestions for changing Category 7. Prosecutor Response: Cases which qualify as MCDVs under federal law may not be able to be easily distinguished and thus identified. One suggestion would be to amend existing NCIC modification codes to include descriptions that correlate to the factors that relate to MCDVs.

**Response: None.**

- NY - New York does not have misdemeanor crimes of domestic violence as defined by federal law. The State Penal Law doesn't include relationship of the victim to the perpetrator as an element of the offense. Neither the repository nor the courts would consistently indicate an incident as involving domestic violence; as a result the repository would not be able to provide an estimate in this category.

**Response: None.**

- RI - All domestic charges are flagged in the state repository and the court's system.

**Response: None.**

### III. Comments specific to the Federal Register Notice Questions

#### **Recommendations to Enhance the Quality, Utility, and Clarity of Information to be Collected**

- MN - Category 3 and Category 6 require data from a specific date, December 31, 2008. The state is not certain they have the ability to capture data from this specific date. It may be more reasonable to request the same data from the appropriate entities (the state repository and the courts) on one date, but leave it up to the entities to determine the exact date (within a specified timeframe).

***Response: 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 can be provided for any missing data or failure to provide breakdowns of the estimates as requested. If a state cannot provide estimates of active records on the December 31<sup>st</sup> date specified, the explanation should be provided in this part of the form.***

- WA - The NICS Act may improve the quality of the information provided by states to NICS. By coordinating with appropriated stakeholders within the state justice community, states have the opportunity to provide NICS the information through an automated electronic means. By utilizing existing systems and leveraging "middleware" technology, the state may reduce current paper-based exchanges that are prone to mistakes and inefficiencies. Automated exchanges present an opportunity to increase efficiency, but rely on accurate originating records. The record collection form does not address the quality of the original record. The utility of the information provided to NICS and participating systems will increase FFLs' capability to make more accurate and complete determinations at the time of purchase.

**Response: None.**

### **Efforts to Minimize the Burden**

- NV - The burden cannot be minimized since the state does not have a central point of contact for all information required. The state judiciary cannot query a single electronic database to obtain the various requested type filing estimates for the past 20 years. They can estimate the various requested case types by using the Uniform System of Judicial Reports statistical database and provide a fairly reliable estimate for the past 10 years. The state would have an extremely difficult time producing the actual records if so requested as they are predominately still paper records.

**Response: None.**

- FL - The state has already expended more than 60 hours to date evaluating how to collect the necessary data to respond to the survey and preparing comments. The importance of the survey to the continuation of critical funding means that the state will spend a significant amount of time developing and documenting the methodology. The survey requires 2 narratives for each of the 7 categories of data, 1 discussing record availability, and 1 documenting the estimation process. It is not clear if the 5 page limit covers all 7 categories (which may be difficult to address in such a short space) or if the respondent is allowed up to 5 pages per category. The time to prepare these narratives has been grossly underestimated.

**Response: *The information collection has been modified to remove the page limitation tied to the narrative portions of the form.***

The number of variables that impact the validity and reliability of the data also impact the burden associated with collecting the requested information initially, and protocols will have to be established for collecting the information biennially. Based on the number of agencies required to submit data, the time required for developing the necessary data extract formulas for automated data and the process of estimating data that is not automated is very difficult to estimate until the process is started.

Local agencies do not have the resources to research 20 years of historical data. Florida suggests that responses to the survey be limited to data available from agencies and organizations that collect statewide information from the local levels and be limited to only the information that meets the minimum criteria for entry into NCIC or NICS systems.

- HI - The costs/hours could be significant if manual physical record gathering is required and the costs cannot be absorbed by existing resources. The hours estimated may be extremely underestimated.

***Response: None.***

- MN - The burden is grossly underestimated. To identify the required records in the state repository will take more than twice the estimated time. This does not include efforts by local agencies or the time to compare the various sources for “unique” records.

***Response: None.***

- NV - Nevada does not have electronic court records dating back 20 years. Additionally, mental health records are not a part of the criminal history and state law would require changing to include mental health records. The state believes this to be an impossible burden.

***Response: None.***

- NY – Three months is not enough time to develop estimates.

***Response: None.***

- SEARCH - Collecting much of the requested information, particularly older documentation, could be very costly. Many states are affected by the economic challenges facing the country. Taking time to locate the records requested by the survey could present a significant financial hardship and take staff away from more pressing duties.

***Response: None.***

**Necessity of Information to Meet NICS Act Requirements and Practicability of Information**

WA - The state believes the information requested for collection will meet the objectives of the NICS Act. The state anticipates that increasing the amount of information provided through NICS will improve the process to ensure an individual is not prohibited from purchasing a firearm. The State is confident that it will be able to complete the record estimate form and record submissions within the proposed timeframe.

***Response: None.***