

# FIX NICS ACT: STATE IMPLEMENTATION PLAN

## I. INTRODUCTION & INSTRUCTIONS

In March 2018, Congress passed the Fix NICS Act, Pub. L. 115-141, tit. VI, which aims to improve the National Instant Criminal Background Check System (NICS) in a number of ways, including by requiring the Attorney General, in coordination with each state, to establish an implementation plan. The plan is intended to “ensure maximum coordination and automation of the reporting or making available appropriate records to the [NICS] ... and the verification of the accuracy of those records during a 4-year period specified in the plan.” In addition, the Act requires that each plan establish annual benchmarks to enable the Attorney General to assess the progress of each plan. These benchmarks include qualitative goals, quantitative measures, and a needs assessment with estimated compliance costs.

This form is intended to collect information to aid in the identification and development of these key areas and to satisfy the requirements of the implementation plan. To that end, please provide concrete data and specific information where available.

We recognize that preparing your state’s implementation plan will be a significant undertaking, and appreciate your efforts. While completing this form is voluntary, states that prepare implementation plans and demonstrate progress toward meeting the benchmarks they set will be given preference in all Bureau of Justice Assistance grant funding for fiscal years 2018 through 2022. And more fundamentally, they will strengthen the NICS system and help to keep firearms out of the hands of people who are prohibited by law from having them.

At the end of each fiscal year, the statute requires the Attorney General to determine whether each state “has achieved substantial compliance with the benchmarks included in the plan.” The names of states that have not done so must be published, including on the Department of Justice website, along with the reasons for that determination. If a state chooses not to complete this form, no implementation plan or benchmarks can be established, and the Attorney General will not be able to make a determination of substantial compliance for that state.

**Final Implementation Plans must be submitted by March 25, 2019. Your response to these questions will serve as your state’s Implementation Plan.**

### Collaboration Is Key

State agency executives, judicial agencies, and other entities should collaborate in answering these questions and completing this form. The scope of the information being requested is broad and spans across agencies involved in criminal justice processes. Your state may want to consider creating a task force for NICS-related purposes, if one is not already in place.

### How to Make Relevant Records Available to the NICS

There are ten federal firearm prohibitors. Local and state agencies are believed to create and likely house needed and relevant records for the NICS in seven of those categories. Within each record section of this document, information is provided about how NICS users establish each

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federal prohibitor based on statutory and regulatory text and court decisions.<sup>1</sup> Please reference this information when assessing what records your state has that are relevant to each category. In addition, a glossary of terms is provided at the end of this document. Please note, when relevant, your response in each section should consider populations of records that your state has in reference to the past ten years (2008-2018).<sup>23</sup> If you are unable to provide information for this time frame, please note the period of time covered or the date of your record count in the response.

In conducting the background check, the NICS compares the potential transferee's personal identifying information with information contained in three databases: the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS Indices. The NCIC contains information on wanted persons, protection orders, and other persons identified as relevant to the NICS searches. The III provides for the decentralized interstate exchange of millions of criminal history records and functions as part of the Next Generation Identification (NGI) System. The NICS Indices contains information that may not be in the NCIC or NGI/III but is relevant to firearm background checks.

If records are relevant to the NCIC or NGI/III, you should make them available to the appropriate system, rather than the NICS Indices. Records submitted to the NCIC and NGI/III are available to local, state, tribal and federal authorities for a wide variety of both criminal justice and noncriminal justice purposes. As a result, the records in the NCIC and the NGI/III benefit not only firearm related background checks, but also law enforcement investigations and eligibility determinations for various employment or volunteer positions involving vulnerable persons such as the elderly, the disabled, and children.

In contrast, the NICS Indices can only be used during the course of a NICS background check. A match to a "hit" in the NICS Indices triggers an automatic denial of the firearm transfer. Therefore, contributors must ensure that a record is *independently adequate* to show that an individual is prohibited from shipping, transporting, possessing or receiving firearms before submitting it to the NICS Indices. A "hit" in either the NCIC or the NGI/III does not prompt an automatic determination and therefore NICS users must assess each on a case-by-case basis.

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<sup>1</sup> Information is based on the Gun Control Act of 1968, 18 U.S.C. §§ 921-22; 27 C.F.R. 478.11; and court decisions interpreting those provisions.

<sup>2</sup> For purposes of compliance evaluation and the creation of implementation plans, we are requesting information from this ten year time frame. However, older records may be relevant for NICS purposes. Therefore, if you have any population of records older than ten years that your state would like to make part of your plan, please so indicate. The Department of Justice is willing to work with any entity in the collection and completion of relevant records, no matter the age. Please note that not all categories of records will have a ten year population available due to inherent expiration dates, such as protection orders, indictments, etc.

<sup>3</sup>

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### Submission of Implementation Plan

The completed implementation plan can be e-mailed to: [nic liaison@fbi.gov](mailto:nic liaison@fbi.gov)

### Questions

For questions about the implementation plan, please contact NICS Business Relations Team at (844) 265-6716 or [nic liaison@fbi.gov](mailto:nic liaison@fbi.gov).

For additional information about your state/agency's current record submissions to the FBI CJIS Division, which houses and maintains the databases searched by the NICS, please contact the following program offices:

NCIC: Zachary P. Hartzell, (304) 625-4718, [zphartzell@fbi.gov](mailto:zphartzell@fbi.gov)

NGI/III: Biometric Services Section, (304) 625-3652, [FBI-III@fbi.gov](mailto:FBI-III@fbi.gov)

NICS Indices: Business Relations Team, (844) 265-6716, [nic liaison@fbi.gov](mailto:nic liaison@fbi.gov)

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### II. PLAN TO IMPROVE RECORD-SHARING THROUGH MAXIMUM COORDINATION AND AUTOMATION

#### A. Criminal History Records

Criminal history records are used to establish multiple federal firearm prohibitors. States contribute arrest fingerprints to establish criminal history records at the national level within the NGI System. Each state's central criminal history record repository relies on integration between an Automated Fingerprint Identification System (AFIS) and a Computerized Criminal History (CCH) to provide fingerprints and corresponding arrest and disposition information to the NGI System. The NICS utilizes the III, which functions as part of the NGI System, to access these criminal history records.

1. Is your state planning a system upgrade to any part of your criminal history record repository? Yes or No.
  - a. If yes, which system is your state upgrading? AFIS, CCH, or other (please explain)? Please provide details of the system upgrade, including a projected timeline and estimated costs.
  - b. If no, please provide an explanation.
2. Are there records in your state repository that have not been sent to the NGI System and consequently are not indexed or accessible by the III (records without an FBI Universal Control Number)? Yes or No.
  - a. If yes, please describe any reasons the records are not submitted to the NGI System, including any hurdles or challenges your state faces.
  - b. Please describe any plan to submit the records to the NGI System, including a projected timeline and estimated costs, or explain why no plan has been established. If there is no plan, are you willing to work with the Department of Justice (DOJ) to identify possible solutions?
3. Does your state have hard copy criminal arrest fingerprint cards that have not been automated? Yes or No.
  - a. If yes, please describe any reasons for having hard copy criminal arrest fingerprint cards, including any hurdles or challenges your state faces with respect to automation.
  - b. Please describe any plan to submit the records to the NGI System, including a projected timeline and estimated costs, or explain why no plan has been established. If there is no plan, are you willing to work with DOJ to identify possible solutions?
4. If your state practices cite and release, are individuals fingerprinted upon conviction at the court? Yes, No, or Not Applicable.

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- a. If yes, please explain the process your state follows to provide these criminal arrest fingerprints to the NGI System.
  - b. If no, please provide an explanation, including any hurdles or challenges your state faces.
5. Are there local agencies that are not submitting criminal arrest fingerprints to the state to update the state criminal history record repository? Yes or No.
  - a. If yes, please describe the plan to address the issue, including a projected timeline and estimated costs, or explain why no plan has been established. If there is no plan, are you willing to work with DOJ to identify possible solutions?
6. Does your state have a plan to take control of any of your state's pseudo pointer records in the NGI System? Yes or No.
  - a. If yes, has your state requested a Correlation file? Yes or No. Please describe any plan to take control of your state's pseudo-pointer records, including a projected timeline and estimated costs.
  - b. If there is no plan, please explain why no plan has been established, including any hurdles or challenges your state faces.
7. Does your state submit dispositions for those pseudo-pointer arrests that your state cannot take control, set the active state pointer and begin maintenance and dissemination responsibility? Yes or No.
  - a. If yes, how are the dispositions sent to the NGI System? Electronically or hard copy disposition forms.
  - b. If no, please provide any reasons for not submitting the dispositions to the NGI System. Are you willing to work with DOJ to identify possible solutions?
8. Are dispositions electronically received and processed within your state? Yes or No.
  - a. Please explain how your state processes dispositions within your state.
9. Are indictments noted on the arrest record prior to conviction? Yes or No.
  - a. If yes, where on the arrest record is the indictment noted?
10. As a practice, do dispositions from your state include the following:
  - a. Firearm restrictions? Yes or No.
  - b. Level of conviction? Yes or No.
  - c. Victim relationship? Yes or No.

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### **B. Felony Conviction or Qualifying Misdemeanor Conviction Records**

NICS Prohibitor Information: Pursuant to 18 U.S.C § 922(g)(1), any person “who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year” is prohibited from shipping, transporting, possessing or receiving firearms under federal firearms laws. Please note the following three important things about this prohibitor: *First*, this category of records applies to any person who has been convicted of any offense that is *punishable* by imprisonment for a term exceeding one year, whether or not such term of imprisonment was imposed.

*Second*, the term “offense punishable by imprisonment for a term exceeding one year” does not include (a) any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulation of business practices, or (b) any state offense classified by the laws of the state as a misdemeanor and punishable by a term of imprisonment of two years or less.

*Third*, what constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held: Any conviction that has been expunged, or set aside, or for which a person has been pardoned or has had civil rights restored, shall not be considered a conviction, unless such pardon, expungement or restoration of civil rights expressly provides that the person may not ship, transport, possess or receive firearms.

These types of records are generally found within the NGI/III or the NICS Indices. Some examples of records and record information that are relevant to this prohibitor include final criminal dispositions (including dismissals), crime severity levels/classifications, statute citations and subsections, pardons, judgment and commitment orders from the courts, certificates of relief, and expungements.

Because arrest and conviction records can be relevant to a number of different federal and state firearm prohibitions, the NICS user community needs access to all records of arrest and conviction. It is very important that records be made available and that they are complete so a timely eligibility determination can be made. With this in mind, please answer the following questions regarding your state’s records.

1. Please provide an explanation and quantify (if possible) any incomplete reporting, including any hurdles or challenges your state faces in making these types of records available to the NICS.
2. Does your state have any plans or projects underway to address any challenges identified in Question 1? If yes, please describe them in detail including estimated costs. If no, are you willing to work with DOJ to identify possible solutions?
3. Please set numeric goals (either raw numbers or percentages) for improved record reporting over the next four years. If your state is already making all relevant records available to the NICS, you may skip this question.

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4. Please describe any processes currently in place, or planned for implementation, to ensure or improve the accuracy and completeness of the records shared with the NICS. Please also describe any known challenges to verifying the accuracy and completeness of your state's records, along with any plans to address those challenges.
5. Please provide any additional information that is relevant to understanding your state's reporting of records in this category.

### **C. Fugitive from Justice Wanted Person File Records**

NICS Prohibitor Information: Pursuant to 18 U.S.C. § 922(g)(2), any person “who is a fugitive from justice” is prohibited from shipping, transporting, possessing or receiving firearms under federal firearms laws. This prohibitor covers the following categories of individuals:

- (1) Any person who has fled from any state to avoid prosecution for a felony or a misdemeanor;
- (2) Any person who leaves the state to avoid giving testimony in any criminal proceeding;
- (3) Any person who knows that misdemeanor or felony charges are pending against such person and who leaves the state of prosecution.

Please note that a person is not a fugitive from justice merely because he or she has an outstanding civil traffic citation; a criminal warrant must have been issued.

These types of records are generally found within the NCIC or the NICS Indices. Some examples of records that are relevant to this prohibitor include misdemeanor/felony warrants and charging documents.

The NICS user community needs access to all potential fugitive from justice records, regardless of whether they meet the prohibiting criteria explained above or not. It is very important that records are made available and that they are complete so a timely eligibility determination can be made. With this in mind, please answer the following questions regarding your state's records.

1. Please provide an explanation and quantify (if possible) any incomplete reporting, including any hurdles or challenges your state faces in making these types of records available to the NICS.

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2. Does your state have any plans or projects underway to address any challenges identified in Question 1? If yes, please describe them in detail including estimated costs. If no, are you willing to work with DOJ to identify possible solutions?
3. Please set numeric goals (either raw numbers or percentages) for improved record reporting over the next four years. If your state is already making all relevant records available to the NICS, you may skip this question.

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4. Please describe any processes currently in place, or planned for implementation, to ensure or improve the accuracy and completeness of the records shared with the NICS. Please also describe any known challenges to verifying the accuracy and completeness of your state's records, along with any plans to address those challenges.
5. Please provide any additional information that is relevant to understanding your state's reporting of records in this category.

### **D. Unlawful User/Addicted to Controlled Substance Records**

NICS Prohibitor Information: Pursuant to 18 U.S.C. § 922(g)(3), any person “who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802])” is prohibited from shipping, transporting, possessing or receiving firearms under federal firearms laws. The Bureau of Alcohol, Tobacco, Firearm and Explosives (ATF) has clarified through regulations that this prohibitor covers the following categories of individuals:

- (1) Any person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance;
- (2) Any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician.

Please note the following three important things about this prohibitor:

*First*, unlawful use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before receiving a firearm. Instead, the unlawful use only needs to have occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm.



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*Second*, an inference of current use may be drawn from evidence of recent use or possession of a controlled substance, or a pattern of use or possession that reasonably covers the present time. For example,

- A conviction for use or possession of a controlled substance within the past year; or
- Multiple arrests for use or possession of a controlled substance within the past five years if the most recent arrest occurred within the past year.

*Third*, the term “controlled substance” includes but is not limited to marijuana, depressants, stimulants and narcotic drugs. It does not include distilled spirits, wine, malt beverages or tobacco (as those terms are defined or used in Subtitle E of the Internal Revenue Code of 1986, as amended). See 21 U.S.C. § 802; 21 C.F.R. Part 1308. Marijuana is listed in the Controlled Substances Act as a Schedule I controlled substance. 21 U.S.C. § 812(c)(10). There are no exceptions in federal law for marijuana used for purported medicinal purposes. Accordingly, as a matter of federal law, anyone who uses marijuana, regardless of whether their state has passed legislation purporting to authorize marijuana use and regardless of whether they possess a state-issued marijuana card, is considered an “unlawful drug user” under 18 U.S.C. § 922(g)(3).

These types of records are generally located within the NGI/III or the NICS Indices. Some examples of records and record information relevant to this prohibitor include drug-related convictions, drug-related arrests, failed drug test reports, probation reports, final criminal dispositions, crime severity levels/classifications, statute citations and subsections, pardons, certificates of relief, and expungements.

It is very important that these records are made available and that they are complete so a timely eligibility determination can be made. With this in mind, please answer the following questions regarding your state’s records.

1. Please provide an explanation and quantify (if possible) any incomplete reporting, including any hurdles or challenges your state faces in making these types of records available to the NICS.
2. Does your state have any plans or projects underway to address any challenges identified in Question 1? If yes, please describe them in detail including estimated costs. If no, are you willing to work with DOJ to identify possible solutions?
3. Please set numeric goals (either raw numbers or percentages) for improved record reporting over the next four years. If your state is already making all relevant records available to the NICS, you may skip this question.

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4. Please describe any processes currently in place, or planned for implementation, to ensure or improve the accuracy and completeness of the records shared with the NICS. Please also describe any known challenges to verifying the accuracy and completeness of your state's records, along with any plans to address those challenges.
5. Please provide any additional information that is relevant to understanding your state's reporting of records in this category.

### **E. Mental Health Adjudication and Commitment Records**

NICS Prohibitor Information: Pursuant to 18 U.S.C. § 922(g)(4), any person “who has been adjudicated as a mental defective or who has been committed to a mental institution” is prohibited from shipping, transporting, possessing or receiving firearms under federal firearms laws. The ATF has clarified through regulations that this prohibitor covers the following circumstances and categories of individuals:

- (1) A determination by a court, board, commission or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition or disease:
  - Is a danger to himself, herself, or others; or
  - Lacks the mental capacity to contract or manage his or her own affairs.

This includes a person found to be insane by a court in a criminal case, and a person found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.

- (2) A formal commitment of a person to a mental institution by a court, board, commission or other lawful authority. This includes commitment to a mental institution involuntarily, commitment for mental defectiveness or mental illness or commitment for other reasons, such as for drug use. It does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

Please note the following important things about this prohibitor:

*First*, “mental institution” includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

*Second*, “mental defective” does not include a person who has been granted relief from the disability through a qualifying federal or state relief from disability program as authorized by the NICS Improvement Amendments Act of 2007.

These types of records are generally located within the NGI/III or NICS Indices. Some examples of records relevant to this prohibitor include involuntary commitments to a mental

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health facility for treatment, negative adjudications of mental health in a criminal matter, a finding by a court, board, commission, or other lawful authority that a person represents a danger to himself or others, or is unable to contract or manage his/her own affairs.

Please answer the following questions regarding your state's records when considering the information provided above.

1. Please provide an explanation and quantify (if possible) any incomplete reporting, including any hurdles or challenges your state faces in making all qualifying records available to the NICS.
2. Does your state have any plans or projects underway to address any challenges identified in Question 1? If yes, please describe them in detail including estimated costs. If no, are you willing to work with DOJ to identify possible solutions?
3. Please set numeric goals (either raw numbers or percentages) for improved record reporting over the next four years. If your state is already making all relevant records available to the NICS, you may skip this question.

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4. Please describe any processes currently in place, or planned for implementation, to ensure or improve the accuracy and completeness of the records shared with the NICS. Please also describe any known challenges to verifying the accuracy and completeness of your state's records, along with any plans to address those challenges.
5. Please provide any additional information that is relevant to understanding your state's reporting of records in this category.

### **F. Domestic Violence Restraining/Protection Order Records**

NICS Prohibitor Information: Title 18, U.S.C. § 922(g)(8) prohibits the shipping, transporting, possessing or receiving firearms under federal firearms laws by any person who is subject to a court order that:

- Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
- Restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; *and*

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- Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child, *or* by its terms expressly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

The ATF has clarified through regulation that the term “intimate partner” means (1) the spouse of the person, (2) a former spouse of the person, (3) an individual who is a parent of a child of the person, or (4) an individual who cohabits or has cohabited with the person.

Generally, these types of records are located within the NCIC or the NICS Indices. Some examples of records relevant to this prohibitor include protective/restraining orders, incident reports or other documents that establish the relationship of the protected parties to the respondent.

It can be difficult to assess whether a protective/restraining order meets all of the criteria described above. Therefore, it is recommended that agencies ensure access to all active orders for NICS purposes. By doing so, the NICS user community can make timely and accurate determinations. Since there are several criteria that must be evaluated, it is also very important that these records be as complete as possible. With this in mind, please answer the following questions regarding your state’s records.

1. Please provide an explanation and quantify (if possible) any incomplete reporting, including any hurdles or challenges your state faces in making these types of records available to the NICS.
2. Does your state have any plans or projects underway to address any challenges identified in Question 1? If yes, please describe them in detail including estimated costs. If no, are you willing to work with DOJ to identify possible solutions?
3. Please set numeric goals (either raw numbers or percentages) for improved record reporting over the next four years. If your state is already making all relevant records available to the NICS, you may skip this question.

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4. Please describe any processes currently in place, or planned for implementation, to ensure or improve the accuracy and completeness of the records shared with the NICS. Please also describe any known challenges to verifying the accuracy and completeness of your state’s records, along with any plans to address those challenges.
5. Please provide any additional information that is relevant to understanding your state’s reporting of records in this category.

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### **G. Misdemeanor Crimes of Domestic Violence (MCDV) Records**

NICS Prohibitor Information: Pursuant to 18 U.S.C. § 922(g)(9), any person “who has been convicted in any court of a misdemeanor crime of domestic violence” is prohibited from shipping, transporting, possessing or receiving firearms under federal firearms laws. This prohibitor covers any person who has been convicted of a local, state, tribal or federal offense that meets all of the following criteria:

- (1) The offense is a misdemeanor under local, state, tribal or federal law, *or*, in states that do not classify offenses as misdemeanors, is an offense that is punishable by imprisonment for a term of one year or less, and includes offenses that are punishable only by a fine (this is true whether or not the state statute specifically defines the offense as a “misdemeanor” or as a “misdemeanor crime of domestic violence”);
- (2) The offense has, as an element, the use or attempted use of physical force (*e.g.*, assault and battery), or the threatened use of a deadly weapon; and
- (3) The offense was committed by a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian (*e.g.*, the equivalent of a “common law” marriage even if such relationship is not recognized under the law), or by a person similarly situated to a spouse, parent or guardian of the victim (*e.g.*, two persons who are residing at the same location in an intimate relationship with the intent to make that place their home would be similarly situated to a spouse).

Note that a person is not considered to have been convicted of a misdemeanor crime of domestic violence if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the jurisdiction in which the proceedings were held provides for the loss of civil rights upon conviction for such an offense), unless the pardon, expungement or restoration of civil rights expressly provides that the person may not ship, transport, possess or receive firearms and the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

Generally, these types of records are located within the NGI/III or the NICS Indices. Some examples of records that may be relevant to this prohibitor include misdemeanor level final criminal dispositions, documents establishing the specific statute and subsection(s) of misdemeanor convictions, documents establishing the relationship of the victim to the defendant, documents detailing the specific behaviors the subject has been convicted of committing, or specific behaviors the subject has pled guilty to committing.

It can be difficult to assess whether a potential misdemeanor arrest meets all of the criteria described above. Therefore, it is recommended that agencies ensure access to all relevant arrests for NICS purposes. By doing so, the NICS user community can make timely and

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accurate determinations. Since there are several criteria that must be evaluated, it is also very important that these records be as complete as possible. With this in mind, please answer the following questions regarding your state's records.

1. Please provide an explanation and quantify (if possible) any incomplete reporting, including any hurdles or challenges your state faces in making these types of records available to the NICS.
2. Does your state have any plans or projects underway to address any challenges identified in Question 1? If yes, please describe them in detail including estimated costs. If no, are you willing to work with DOJ to identify possible solutions?
3. Please set numeric goals (either raw numbers or percentages) for improved record reporting over the next four years. If your state is already making all relevant records available to the NICS, you may skip this question.

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4. Please describe any processes currently in place, or planned for implementation, to ensure or improve the accuracy and completeness of the records shared with the NICS. Please also describe any known challenges to verifying the accuracy and completeness of your state's records, along with any plans to address those challenges.
5. Please provide any additional information that is relevant to understanding your state's reporting of records in this category.

### **H. Indictment/Information Records**

NICS Prohibitor Information: Pursuant to 18 U.S.C. § 922(n), any person "who is under indictment for a crime punishable by imprisonment for a term exceeding one year" is prohibited from shipping, transporting or receiving firearms under federal firearms laws. The ATF has clarified through regulations that this prohibitor covers a person under indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

Generally, records relevant to this prohibitor are located in the NGI/III or the NICS Indices. Some examples of records that are relevant to this prohibitor include criminal history records noting when a subject has been placed under indictment by a grand jury or placed under information by a prosecuting attorney, documents that establish the range of possible punishments related to the offense and documents establishing the projected trial date.

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The NICS user community needs access to all indictment/information records. It is very important that these records are made available and that they are complete so a timely eligibility determination can be made. With this in mind, please answer the following questions regarding your state's records.

1. Please provide an explanation and quantify (if possible) any incomplete reporting including any hurdles or challenges your state faces in making these types of records available to the NICS.
2. Does your state have any plans or projects underway that address any challenges identified in Question 1? If yes, please describe them in detail including estimated costs. If no, are you willing to work with the DOJ to identify possible solutions?
3. Please set numeric goals (either raw numbers or percentages) for improved record reporting over the next four years. If your state is already making all relevant records available to the NICS, you may skip this question.

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4. Please describe any processes currently in place, or planned for implementation, to ensure or improve the accuracy and completeness of the records shared with the NICS. Please also describe any known challenges to verifying the accuracy and completeness of your state's records, along with any plans to address those challenges.

Please provide any additional information that is relevant to understanding your state's reporting of records in this category.

### III. FUNDING

- A. Has your state previously received state or federal funding for projects aimed at improving record reporting, as it relates to the prohibiting category of records addressed here since the passage of the NICS Improvement Amendments Act of 2007? Yes or No.
  1. If yes, how have you used the funding to improve the reporting of these records?
  2. If no, why not?
- B. Is your state currently seeking state or federal funding to address any of the hurdles identified that are impacting your ability to report records needed for the NICS? Yes or No.
  1. If yes, through what mechanism?

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### **IV. ADDITIONAL INFORMATION**

Please utilize the section below to provide any other information or explanation your state may wish to share that provides substantial evidence of your state's efforts to address any hurdles or obstacles to reporting relevant records.



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**V. CERTIFICATION AND POINT-OF-CONTACT INFORMATION**

\_\_\_\_\_  
**Submitting State**

\_\_\_\_\_  
**Submission Date**

The undersigned hereby certify to the Attorney General of the United States that the data provided with this implementation plan was submitted consistent with the guidelines provided on the various record types needed by the NICS.

\_\_\_\_\_  
Signature/Title

\_\_\_\_\_  
Date

To support ongoing collaboration and coordination with the Attorney General, please utilize the contact(s) listed below as representatives of the state for purposes of this implementation plan.

\_\_\_\_\_  
Signature/Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
*Contact Number*

\_\_\_\_\_  
*Contact E-Mail*

\_\_\_\_\_  
Signature/Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
*Contact Number*

\_\_\_\_\_  
*Contact E-Mail*

## **FIX NICS ACT: STATE IMPLEMENTATION PLAN**

### **VI. GLOSSARY OF TERMS**

**Accuracy** – This term refers to the overall quality of records. Accurate records are those found to be free from error, that represent truth and/or fact, and that are maintained in a manner reflecting care and due diligence.

**Available** – A record is deemed available if it contains the minimum data required for entry into the NGI/III, NCIC or the NICS Indices and is housed within one or more of the aforementioned databases.

**Benchmark** – A standard, or a set of standards, used as a point of reference for evaluating performance or level of quality.

**Cite and Release** – The issuance of a citation in lieu of arrest provides the offender with a written or electronic order issued by a law enforcement or other authorized official. The citation releases the person on the promise to appear in court (or other government office) at a specified date and time.

**Completeness** – In the context of records, completeness has the connotation of ensuring that all required information is included when the record is completed and/or needed/necessary information is added to supplement the record with due diligence.

**Compliance Cost** – An expenditure of time or money in conforming with government requirements. These costs can include, for example, the cost of systems needed to collect information for compliance reporting, cost of personnel needed to monitor the compliance system, or cost to compile and issue reports.

**Conviction** – A court’s Judgment and Conviction Order, whether it involves multiple counts or a single count, represents a “conviction.”

**Interstate Identification Index (III)** – A national index pointer system for the interstate and Federal/State exchange of criminal history records information.

**National Crime Information Center (NCIC)** – A national electronic clearinghouse of crime data. It contains relevant records for NICS purposes such as fugitives from justice, orders of protection, suspected terrorists and gang members, and more.

**Needs Assessment** – A systematic process for determining and addressing needs or gaps between current conditions and desired conditions. The discrepancy between the current condition and wanted condition must be measured to appropriately identify the need.

**National Instant Criminal Background Check System (NICS)** – A national system that checks available records to determine if prospective transferees are disqualified from receiving firearms or explosives.

## FIX NICS ACT: STATE IMPLEMENTATION PLAN

NICS Indices – Formerly known as the NICS Index, it contains records provided by local, state, tribal and federal agencies about persons known to have a verified and established firearm and/or explosive prohibition.

Pseudo Pointer – Each criminal history record in the NGI System contains III pointers. These pointers indicate whether a state or the FBI is responsible for the maintenance and dissemination of the various portions of a criminal history record. If a III state is responsible for disseminating its record for a subject, the pointer will be the active state identification number. If the FBI is responsible for disseminating the record for a subject in a state or territory not participating in the III or for a III participant that has not assumed responsibility for that particular record, the III pointer will be a pseudo-pointer.

### Paperwork Reduction Act Notice

This notice is given under the Paperwork Reduction Act of 1995. The Paperwork Reduction Act requires that the Federal Bureau of Investigation inform individuals and other entities of the following when asking for information. The information collected will document the current status and future commitment of each submitting entity in making identified records available for purposes related to the National Instant Criminal Background Check System (NICS.) The NICS is utilized nationwide to determine a person's eligibility to purchase and possess a firearm, explosives and/or related permit. The availability to accurate and complete records is crucial in allowing NICS to benefit public safety. The information requested is necessary to support the requirements set forth within the Fix NICS Act of 2018.

The estimate average burden associated with this collection is 40 hours per respondent, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Washington, DC 20530.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.