



# LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature  
Division of Legal and Research Services  
State Capitol, Juneau, AK 99801

(907) 465-3991 phone  
(907) 465-3908 fax  
[research@legis.state.ak.us](mailto:research@legis.state.ak.us)

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## Research Brief

TO: Representative Lance Pruitt  
FROM: Chuck Burnham, Legislative Analyst  
DATE: March 6, 2014  
RE: Firearms: Mental Health Denials and Associated Issues Related to the National Instant Criminal Background Check System  
LRS Report 14.284

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***You asked a number of question related to firearms and the National Instant Criminal Background Check System (NICS). Specifically, you wanted the following information:***

***The reasons under federal law that an individual can be prevented from owning a firearm;***

***An account of the states that have laws in place requiring certain records of individuals adjudicated to be "mentally deficient" or a danger to themselves or others to be transmitted to the NICS;***

***The volume of firearms transactions by federally licensed firearms dealers in Alaska compared to the states accounted for above;***

***The number of firearms transactions in Alaska denied by NICS;***

***A summary of NICS denials of firearms transactions that are appealed; and***

***Examples of firearm-related murders, the perpetrators of which were subject to prohibitions against firearm ownership under federal law.***

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The National Instant Criminal Background Check System (NICS) is mandated by the Brady Handgun Violence Prevention Act of 1993 (P.L. 105-159, 18 USC § 921, et seq.) and administered by the Federal Bureau of Investigation (FBI). The system is intended to provide determinations to Federal Firearms Licensees (FFLs) regarding the eligibility of prospective buyers to purchase firearms or explosives.<sup>1,2</sup> Federal law requires FFLs to interface with the NICS system via telephone or electronic means prior to executing a transaction involving firearms. Typical checks are processed within 30 seconds, with the NICS instructing the FFL to either "proceed," "deny" the transaction, or to "delay" and await instructions. Delayed transactions must be resolved by NICS staff within three business days or the FFL has the discretion to complete the transaction without approval where state law allows. Denials may be appealed to the FBI.

State governments vary on their degrees of involvement with the NICS system. Thirteen states have established agencies that serve as the point of contact (POC) for FFLs and have implemented their own background records collections systems, some information from which is shared with the NICS. In thirty-six states, including Alaska, firearms dealers contact the NICS directly. In some states, FFLs contact state agencies for background checks related to handgun transactions and/or to confirm a valid handgun permit, but contact the NICS for background checks for long gun (rifle, shotgun, etc.) purchases.<sup>3</sup>

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<sup>1</sup> More information on the NICS is available at <http://www.fbi.gov/about-us/cjis/nics/nics>. Each firearm transaction by an FFL requires the submission of a federal Bureau of Alcohol, Tobacco, Firearms and Explosives Form 4473, a copy of which can be accessed online at <http://www.atf.gov/files/forms/download/atf-f-4473-1.pdf>.

<sup>2</sup> Federal Firearms Licenses were first implemented by the National Firearms Act of 1934 (P.L. 72-474); however, FFLs in their current iteration were implemented by the Gun Control Act of 1968 (P.L. 90-618), which requires anyone involved in the business of manufacturing, selling, or importing firearms, explosives or ammunition to obtain a license. There are at least eleven classes of FLL covering various aspects of the firearms trade. More information on the FLL system is available in the *National Firearms Act Handbook* at <https://www.atf.gov/content/firearms/firearms-industry/guides/publications-firearms-national-firearms-act-handbook>.

<sup>3</sup> In Iowa, Nebraska, and North Carolina the possession of a valid hand gun permit is considered proof of having met state and federal eligibility requirements for purchasing those weapons. More information on state points of contact and participation in the NICS program is available at <http://www.fbi.gov/about-us/cjis/nics/general-information/participation-map>.

## Federal Prohibitions on Firearm Ownership

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Pursuant to 18 USC § 922(g)(1-9), certain individuals are prohibited from possessing, shipping, transporting, or receiving firearms or ammunition. Specifically, those prohibitions include a person who is or has been

- ◆ convicted of a crime punishable by imprisonment exceeding one year;
- ◆ a fugitive from justice;
- ◆ an unlawful user of, or someone who is addicted to, a controlled substance;
- ◆ adjudicated as a mental defective or who has been admitted to a mental institution;
- ◆ an alien who is unlawfully in the United States or who has been admitted to the United States under a nonimmigrant visa;
- ◆ discharged from the Armed Forces under dishonorable conditions;
- ◆ a citizen of the United States who renounces citizenship;
- ◆ subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or partner's child, and which includes a finding that the person remains a credible threat; or
- ◆ convicted of a misdemeanor crime of domestic violence.<sup>4</sup>

## States with Laws Requiring Reporting of Mental Health Adjudications to NICS

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Currently at least 25 states have laws that require state courts and/or agencies to report to the NICS and/or a state agency mental health adjudications and other actions that make the subjects of those actions ineligible to own firearms under federal law.<sup>5</sup> State laws vary on their requirements on such factors as the types of records that must be supplied, who is required to supply them, the agency to which those records are sent, and the time period in which reporting must occur, among other issues. With regard to mental health adjudications, most often court clerks are tasked with supplying records of persons being confined to treatment facilities, findings of incompetence to stand trial, "insanity," lack of fitness to proceed with trial, and similar judgments either directly to the NICS or, in states with agencies that serve as the point of contact (POC) for the NICS system, to the appropriate state agency. Below, we briefly summarize the mental health reporting requirements in seven states that are generally representative of the approaches typically employed.<sup>6</sup> Further, the attached table provides, for each of the 25 states requiring the reporting of mental health adjudications, relevant statutory citations, points of contact for NICS reporting, the types of firearms covered by those POCs, and the reporting deadlines for each, where specified.<sup>7</sup>

**Indiana**—Courts that involuntarily commit offenders for treatment of a mental illness, order outpatient treatment for mental illness of "dangerous or gravely disabled" individuals, find defendants not guilty by reason of insanity, find a defendant guilty but mentally ill, or find that an individual lacks the ability to assist in his or her own defense must report that information to the Division of State Court Administration. The Division must then transmit that information to the NICS.

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<sup>4</sup> Further, pursuant to 18 USC § 922(n), it is unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition.

<sup>5</sup> To be clear, federal law requires all licensed firearms dealers in all states to conduct background checks through the NICS. The state laws we discuss are those that operate in parallel to federal law and/or place additional requirements on firearms sales with regard to the NICS and background checks. In addition to the 25 states that *require* reporting to the NICS, at least nine states—Arizona, Colorado, Delaware, Florida, Louisiana, Missouri, Nebraska, Pennsylvania, and West Virginia—*authorize* reporting to the NICS. Seven others—Arkansas, California, Hawaii, Massachusetts, Michigan, Ohio, and Utah—authorize or require collection of mental health records in state databases for purposes of firearms background checks.

<sup>6</sup> We include copies of relevant statutes from these seven states as Attachment A.

<sup>7</sup> In addition to searches of state statutes, we used information published by the Center to Prevent Gun Violence to compile state laws on mental health adjudication records reporting, <http://smartgunlaws.org/mental-health-reporting-policy-summary/>.



**Iowa**—When a court issues an order or judgment that finds a person to be mentally defective or orders confinement to a mental health institution, the clerk of the district court must forward “only such information as is necessary” to identify the person to the Department of Public Safety. The Department, in turn, forwards the information to the NICS.

**Maryland**—The Department of Public Safety and Correctional Services maintains the Criminal Justice Information System Central Repository, information from which is forwarded to the NICS. Courts must report to the Repository the name and identifying information of persons found “not criminally responsible” or “incompetent to stand trial” as the result of mental illness or a developmental disorder. Healthcare facilities are required to report within 10 days such information for individuals committed to a psychiatric facility for 30 consecutive days or more and those involuntarily committed.

**Oregon**—The Department of State Police (DSP) is required to maintain information on people who have been found to be a danger to themselves or others and therefore committed by a court for psychiatric treatment under the state Department of Human Services or placed under the jurisdiction of the Psychiatric Security Review Board. Also required to be included in that information system are individuals found by courts to “lack fitness to proceed” in legal proceedings, found “guilty except for insanity,” and those found “responsible except for insanity.”

Courts and applicable behavioral health agencies are required to report to the DSP the “minimum information necessary” to accurately identify a person on which reports are to be submitted. These data include the person’s name, date of birth, and gender, but does not include medical, psychiatric, or psychological case histories. The DPS is then required to transmit such information on a daily basis to the NICS. Every three months the DPS is required to reconcile its data system with the data in the NICS to identify discrepancies.

**Texas**—The clerk of the court must provide to the Department of Public Safety (DPS) within 30 days orders or other court actions designating individuals to receive inpatient mental health services, acquitting a defendant by reason of insanity or lack of mental responsibility, determining a person to have mental retardation and committing that person to long-term placement in a residential care facility, appointing a guardian for an incapacitated person, or determining a person incompetent to stand trial. The DPS then prepares and forwards to the NICS the names, race, gender, date of birth, and identifying numbers (social security, driver’s license, and identification card, as applicable).

**Virginia**—Among the information maintained in the state’s Central Criminal Records Exchange are court orders related to behavioral health. Specifically, orders of temporary detention, involuntary commitment, and voluntary commitment as a result of mental illness, and being found incompetent to stand trial, must be reported to the Exchange by the appropriate court clerk. Persons found by the courts to be incapacitated and/or under guardianship must likewise be reported by the clerk. The Department of State Police must then report to the NICS only the impacted person’s eligibility to possess, purchase, or transfer a firearm.

**Washington**—Within three days of a court committing a person to a mental health treatment facility, the committing court must forward to the NICS a copy of the person’s driver’s license or comparable information along with the date of confinement. This provision extends to those found not guilty by reason of insanity.

#### **Firearms Transactions by FFLs, and NICS Denials and Appeals, in Alaska and States with Mental Health Adjudication Reporting Laws**

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We requested firearm transaction data from the FBI but have not yet received a response. As a result, we are forced to rely upon published data for firearms transactions, NICS denials, and appeals of those denials, for state-specific information. Some of those data are somewhat dated.<sup>8</sup> When reviewing the data below, please note the time period those data represent.

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<sup>8</sup> We will continue to pursue recent transaction and NICS data, and will provide this information as an addendum to this report when it becomes available.

## Firearms Transactions by FFLs

We located no definitive source for the numbers of firearms transactions by FFLs in each state; however, because licensed dealers are required to submit a background request to the NICS for each transaction, we believe that the number of such requests submitted represents a rough approximation of the total number of transactions by FFLs.<sup>9</sup>

As the attached table shows, in 2013 Alaska FFLs submitted 93,405 transactions to the NICS. This represents an increase over 2012 and 2011 when there were 85,342 and 65,909 transactions, respectively, and is substantially higher than the 17-year average between 1998 and 2014 of roughly 49,000 transactions annually.<sup>10</sup> Although the aggregate number of transactions in Alaska for 2013 is low compared to most of the 25 states we identified with laws on NICS reporting of mental health adjudications, that relationship is largely a product of Alaska having fewer residents. When we control for population differences, our calculation shows that Alaska's 127 transactions per 1,000 residents is second to Kentucky (359 transactions per 1,000 residents) among the states we reviewed.<sup>11</sup>

## NICS Denials and Appeals

Between November 1998 and February 2014, the NICS issued just over one million transaction denials, or about 1.3 percent of all transactions over that period.<sup>12</sup> An account of the reasons for these denials follows. As you can see, mental health adjudications are a relatively rare factor in the issuance of firearm transaction denials.

	Percent of Denials
Conviction for a crime punishable by more than one year imprisonment	56.99
Fugitive from Justice	10.43
Misdemeanor Crime of Domestic Violence Conviction	9.86
Unlawful User/Addicted to a Controlled Substance	8.43
State Prohibition	4.74
Protection/Restraining Order for Domestic Violence	4.19
Under Indictment/Information	2.30
<b>Adjudicated Mental Health</b>	<b>1.25</b>
Illegal/Unlawful Alien	1.21
Federally Denied Persons File	0.52
Dishonorable Discharge	0.07
Renounced U.S. Citizenship	0.01

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<sup>9</sup> Individual transactions may include the sale or transfer of more than one firearm. Therefore, transaction figures do not necessarily represent the total number of firearms sold or transferred.

<sup>10</sup> These data are available on the NICS website at <http://www.fbi.gov/about-us/cjis/nics/general-information/participation-map>.

<sup>11</sup> As of 2012, Alaska had 998 Federal Firearms Licensees. A list of FFLs by state is available at <https://www.atf.gov/sites/default/files/assets/pdf-files/052013-firearms-commerce-in-the-us-annual-update.pdf>.

<sup>12</sup> Additional denials have been issued by state agencies where those organizations act as the points of contact for the NICS system. More information on state denials is available in the 2012 NICS operations report at <http://www.fbi.gov/about-us/cjis/nics/reports/2012-operations-report>.

According to the FBI, of the nearly 19.6 million transaction requests processed in 2012, roughly 198,000, or 1.01 percent, were denied. In that year, 4,020 transaction denials were overturned on appeal. This equates to a rate of overturn of just about two percent of denials in that year; however, appeals are addressed in the order they are received and not all successful appeals that occurred in 2012 are for denials issued in that same year. We therefore urge caution when interpreting these figures.

### **NICS Denials Reported by State of Transaction Origination**

We were unable to locate comprehensive information for recent years on NICS denials and appeals disaggregated by state. We did review a study funded by the U.S. Department of Justice that included denial information on states in which FFLs contacted the NICS directly for all firearms transactions for the years 1999-2008, including Alaska and nine of the 25 states with laws on reporting mental health adjudication to the NICS.<sup>13</sup> According to the report, Alaska's rate of transaction denial was, at 2.2 percent, the highest among the states studied. Denial rates in the nine states with reporting laws that were studied ranged from 0.6 percent in Kentucky and Maine to 1.9 percent in Idaho.<sup>14</sup>

### **Examples of Murders by Individuals Subject to Federal Prohibitions on Firearm Ownership**

In a 2011 report, the organization Mayors Against Illegal Guns summarize a number of prominent instances of murders committed with firearms by individuals who were ineligible to own guns based on federal law, as follows:<sup>15</sup>

On January 8, 2011, Jared Loughner went on a shooting spree that killed six and wounded 13, including Congresswoman Gabrielle Giffords. Loughner had been rejected by the U.S. Army after admitting to habitual drug use. Despite drug use being a disqualification for possessing firearms under existing law, Loughner's records were never reported to NICS.

At Virginia Tech on April 16, 2007, Seung Hui Cho killed 32 people, injured 17, and then turned the gun on himself. Cho carried out the massacre with two guns – a Walther P22 .22 caliber pistol, which he purchased online from TGSCOM, Inc., a store in Green Bay, WI, and retrieved at a pawnshop in Virginia (where the background check was conducted), and a Glock 19 9mm pistol, which he purchased at a store in Virginia. The Virginia Tech Review Panel found that although Cho was a prohibited firearm purchaser under federal law, he passed background checks because his disqualifying mental health history had not been entered into the background check system. In 2005, a Montgomery County, Virginia, General District Court special justice had found that Cho was a danger to himself. But in spite of this, the panel said, "Cho, a person disqualified from purchasing firearms, was readily able to obtain them."

On January 2, 2004, Farron Barksdale was able to pass a background check and purchase a rifle even though he had been involuntarily committed to a mental hospital at least twice. Two days after purchasing the firearm, he shot and killed two Alabama police officers.

On July 24, 1998, Russell Weston shot and killed two police officers in the U.S. Capitol with a .38-caliber handgun he purchased after passing a background check. Weston should have been flagged

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<sup>13</sup> The nine states are Alabama, Idaho, Kansas, Kentucky, Maine, Minnesota, Mississippi, North Dakota, and Texas.

<sup>14</sup> Ronald J Frandsen, Michael Bowling, Ph.D., and Gene A Lauver, "Trends for Background Checks for Firearm Transfers, 1999-2008," Regional Justice Information Service, Table 3: Transactions and Denials for Selected FBI States, 1999-2008, Table Index p. 4, <https://www.ncjrs.gov/pdffiles1/bjs/grants/231187.pdf>.

<sup>15</sup> "Fatal Gaps: How Missing Records in the Federal Background Check System Put Guns in the Hands of Killers," Mayors Against Illegal Guns, 2011. The full report, which contains substantial information on the strengths and weaknesses of the NICS, is available at [http://www.mayorsagainstillegalguns.org/downloads/pdf/maig\\_mimeo\\_revb.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/maig_mimeo_revb.pdf). Mayors Against Illegal Guns maintains a website at <http://www.mayorsagainstillegalguns.org/html/home/home.shtml>.



as a prohibited purchaser because he “had an extensive history of mental illness and had been involuntarily committed to a Montana mental hospital in 1996.”<sup>16</sup>

We hope this is helpful. If you have questions or need additional information, please let us know.

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<sup>16</sup> Omitted from this list is the murder of 20 children and six adults by Adam Lanza in Newtown, Connecticut, in December 2012. Although the perpetrator had an extensive history of mental health issues, he had not been adjudicated as such or committed for treatment. In addition, the weapons he used were purchased by his mother. For these reasons, this incident does not fit the parameters of your request.

Selected Information on States with Laws Requiring the Reporting of Individuals Adjudicated to Have Mental Illnesses to the National Instant Background Check System (NICS)						
State	2013 NICS Transactions <sup>1</sup>		Reporting Requirement Citation	Point of Contact <sup>4</sup>		Adjudication Reporting Deadline
	Total	Per 1,000 Residents <sup>2</sup>		Background Check	Firearm Type	
Alaska	93,405	127	No Statute in Place			
Alabama	563,880	117	Ala. Code § 22-52-10.8	NICS	All	Not specified
Connecticut	294,338	82	Conn. Gen. Stat. §§ 17a-500(b), (c)(2), 29-36f(b)(8), 29-36l, 29-38b	State	All	Not specified
Georgia	527,885	53	Ga. Code Ann. §§ 16-11-172(b), 35-3-34(e); Ga. Comp. Regs. 140-2-17	NICS	All	Not specified
Idaho	147,494	91	Idaho Code Ann. §§ 67-3003(1)(i), 66-356, 9-340A(2), 9-340C(6), (13)	NICS	All	Not specified
Illinois	1,280,613	99	405 Ill. Comp. Stat. 5/6-103.1, 5/6-103.2, 5/6-103.3; 430 Ill. Comp. Stat. 65/3.1, 65/4(a)(3), 65/8.1; 740 Ill. Comp. Stat. 110/12(b)	State	All	7 days
Indiana	597,124	91	Ind. Code Ann. §§ 11-10-4-3(e), 12-26-6-8(g), 12-26-7-5(c), 33-24-6-3(a)(8), 35-36-2-4(e), 35-36-2-5(f), 35-36-3-1(c)	NICS	All	Not specified
Iowa	160,062	52	Iowa Code §§ 690.4, 692.17, 724.17, 724.31	State/NICS	Handgun/Long gun	Not specified
Kansas	228,105	79	Kan. Stat. Ann. §§ 59-2946, 59-2966, 75-7c25	NICS	All	5 days
Kentucky	1,578,331	359	Ky. Rev. Stat. § 237.108	NICS	All	Not specified
Maine	96,760	73	Me. Rev. Stat. tit. 25, § 1541(3)(c), tit. 34-B, § 3864(12)	NICS	All	Not specified
Maryland	231,182	39	Md. Code, Pub. Safety § 5-133.2; Md. Code, Health-Gen. § 10-605; Md. Code, Crim. Proc. §§ 3-106(h), 3-112(d)	State/NICS	Handgun/Long gun	"Promptly"
Minnesota	525,774	97	Minn. Stat. §§ 245.041, 253B.09, 253B.24, 624.713	NICS	All	3 business days
Mississippi	231,711	77	Miss. Code Ann. §§ 9-1-49, 45-9-103	NICS	All	30 days
Nevada	146,892	53	Nev. Rev. Stat. Ann. §§ 159.0593(1), 174.035(8), 175.533(3), 175.539(4), 178.425(6), 179A.163(1), 179A.165(1), 433A.310(4), (5)	State	All	Not specified
New Jersey	120,071	13	N.J. Stat. Ann. §§ 2C:58-3, 30-4-24.3, 30-4-24.3a; N.J. Admin. Code §§ 10-7-7.1, 13-54-1.4 – 13-54-1.6	State	All	Not specified
New York	353,064	18	N.Y. Penal Law §§ 400.00(4), 400.03(5)-(6); N.Y. Crim. Proc. Law §§ 330.20, 730.60; N.Y. Mental Hyg. Law §§ 7.09(j), 9.11, 9.46, 13.09(g), 31.11(5), 33.13(b), (c); N.Y. Exec. Law § 837(19); N.Y. Jud. Law § 212(2)(q)	NICS	All	Not specified
North Carolina	574,622	58	N.C. Gen. Stat. §§ 122C-54(d1-d2), 122C-54.1, 14-404(c1)	State/NICS	Handgun/Long gun	48 business day hours

**Selected Information on States with Laws Requiring the Reporting of Individuals Adjudicated to Have Mental Illnesses to the National Instant Background Check System (NICS) – continued**

State	2013 NICS Transactions <sup>1</sup>		Mental Health Adjudication Statutes and Selected Requirements <sup>3</sup>			
	Total	Per 1,000 Residents <sup>2</sup>	Reporting Requirement Citation	Point of Contact <sup>4</sup>		Adjudication Reporting Deadline
				Background Check	Firearm Type	
North Dakota	85,812	119	N.D. Cent. Code § 62.1-02-01.2	NICS	All	Not specified
Oregon	274,302	70	Or. Rev. Stat. §§ 166.412, 166.432, 181.740, 426.130, 426.160, 427.293; Or. Admin. R. 257-010-0060	State	All	Not specified
South Carolina	335,695	70	S.C. Code Ann. §§ 23-31-1010, 23-31-1020	NICS	All	5 days
Tennessee	600,869	92	Tenn. Code Ann. §§ 16-1-117(a), 16-3-812, 16-10-213(b), (c), 16-11-206(b), (c), 16-15-303(g), 16-16-120(b), 33-3-115, 33-3-117	State	All	3 business days
Texas	1,633,278	62	Tex. Gov't Code §§ 411.052, 411.0521	NICS	All	30 days
Virginia	498,426	60	Va. Code Ann. §§ 19.2-169.2, 19.2-389, 19.2-390, 37.2-819, 64.2-2014	State	All	End of next business day
Washington	561,122	80	Wash. Rev. Code Ann. §§ 9.41.047, 9.41.090, 9.41.094, 9.41.097, 10.97.030(4), 10.97.045, 71.05.390(17), 71.34.340(16)	State/NICS	Handgun/Long gun	3 judicial days
Wisconsin	434,688	76	Wis. Stat. §§ 51.20(13)(cv)(4), 175.35(2g)(d)(1)	State/NICS	Handgun/Long gun	"In a timely manner"

**Notes and Sources:** This table includes only states that have laws requiring the identity of individuals adjudicated to be mentally ill to be reported to the NICS, which is the federal system for performing background checks on individuals seeking to purchase or transfer firearms. Alaska is included for comparative purposes.

1) A "transaction" in this context is initiated by the submittal of a form jointly completed by the seller and purchaser of a firearm to the NICS for a background check on the purchaser. More than one firearm can be purchased through a single transaction. Transaction data are from <http://www.fbi.gov/about-us/cjis/nics/nics>.

2) Transactions per 1,000 residents are Legislative Research calculations based on NICS transactions reporting and population data from the U.S. Census Bureau for 2013, available online at <http://www.census.gov/popest/data/state/totals/2013/index.html>.

3) Citations and reporting deadlines are from our searches of state laws using as a reference information from the Law Center to Prevent Gun Violence, available at <http://smartgunlaws.org/mental-health-reporting-policy-summary/>.

4) Points of Contact (POC) refer to the agency responsible for executing background checks and issuing approval, delays, or denials of transactions. Where the POC reads State/NICS and the Firearm Type reads Handgun/Long gun, a state agency is responsible for handgun transactions, while the NICS handles long guns (rifles, shotguns, etc.).