

HB

366

<TARGET><BILL>HB 366</BILL><SUBJECT>HB
366</SUBJECT><COMM>SJUD28</COMM></TARGET>

ALASKA STATE LEGISLATURE

Interim:
716 West 4th Avenue
Anchorage, Alaska 99501-2133
Phone: 907-269-0100
Fax: 907-269-0105
Rep.Lance.Pruitt@akleg.gov



Session:
State Capitol
Juneau, Alaska 99801-1182
Phone: 907-465-3438
Fax: 907-465-4565
Toll Free: 888-478-3438

REPRESENTATIVE LANCE PRUITT HOUSE MAJORITY LEADER

Sponsor Statement

HB 366

An Act relating to reporting an involuntary mental health commitment to the National Instant Criminal Background Check System; and relating to relief from disabilities of a record of involuntary commitment and an adjudication of mental illness or mental incompetence.

Alaska upholds a steadfast tradition of the right to responsible firearm ownership. A fundamental component of this responsibility is the assurance that firearm retailers will have access to timely and relevant information in the National Instant Criminal Background Check System (NICS) database.

HB 366 pertains to the transmittal of information from the Alaska Court System to the NICS administrators. The database was established in 1994 to provide information to Federal Firearms Licensees (FFLs) regarding persons who are prohibited from possessing a firearm under Section 922 (g) or (n) of Title 18 USC.

Currently, the State of Alaska does not require the courts to transmit these records. This places the Federal Firearms Licensees at a greater risk of selling a firearm to an individual who may pose a risk to themselves or to the public. Alaskan FFLs submitted 93,405 transaction inquiries to the NICS database in 2013, ranking the state second highest in the number of inquiries per capita. However, the NICS database only contains a single entry regarding an individual who is prevented from firearm possession due to mental health reasons, as adjudicated by the courts.

House Bill 366 works with the courts to establish a system to transfer the limited necessary information with the NICS administrators regarding persons who are adjudicated in Alaska courts as unfit to possess a firearm due to mental health reasons. The bill also addresses the process for appealing such adjudications.

The State of Alaska leads the way in our defense of firearms rights, and the key to preserving that right is the assurance that FFLs will not be at risk of selling a firearm to an individual who is legally barred by the courts. HB 366 assures that Alaska's courts will transmit information to the NICS database, thereby protecting our FFLs, our gun rights, and the people of Alaska.

ALASKA STATE LEGISLATURE

Interim:
716 West 4th Avenue
Anchorage, Alaska 99501-2133
Phone: 907-269-0100
Fax: 907-269-0105
Rep.Lance.Pruitt@akleg.gov



Session:
State Capitol
Juneau, Alaska 99801-1182
Phone: 907-465-3438
Fax: 907-465-4565
Toll Free: 888-478-3438

REPRESENTATIVE LANCE PRUITT HOUSE MAJORITY LEADER

Summary of Changes

HB 366(STA) (28-LS1172\P) CSHB 366(JUD) (28-LS1172\R)

Section 4 Subsection (b)(1) the words 'record of' were replaced with 'resulting from' to conform the statutory language with federal requirements for relief from disability. This technical change is also found in **Section 4** Subsection (b)(2), and **Section 5** Subsection (a).

Section 4 Subsection (b)(2) the word 'may' was replaced with the word shall in regard to the court's role in granting relief from disability in the form of a petition to remove the individual's name from the National Instant Criminal Background Check System (NICS) database if the court finds, by a preponderance of the evidence that the person is, (A) unlikely to act in a manner dangerous to self or to public safety; and (B) granting the relief is not contrary to the public interest.

Section 5 Subsection (b) was amended to remove Health and Social Services from mention of entities responsible for transmitting records, as it was determined that they do not handle such records.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSHB 366(STA)
Fiscal Note Number: 1
(H) Publish Date: 3/12/14

Identifier: HB366- ACS-TRC-03-07-14
Title: INVOLUNTARY COMMITMENT
Sponsor: PRUITT
Requester: House State Affairs

Department: Alaska Court System
Appropriation: Alaska Court System
Allocation: Trial Courts
OMB Component Number: 768

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

| | FY2015 | Included in | Out-Year Cost Estimates | | | | |
|-------------------------------|-------------------------|---------------------------|-------------------------|----------------|----------------|----------------|----------------|
| | Appropriation Requested | Governor's FY2015 Request | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| OPERATING EXPENDITURES | FY 2015 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Personal Services | | | | | | | |
| Travel | | | | | | | |
| Services | | | | | | | |
| Commodities | | | | | | | |
| Capital Outlay | | | | | | | |
| Grants & Benefits | | | | | | | |
| Miscellaneous | | | | | | | |
| Total Operating | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Fund Source (Operating Only)

| | | | | | | | |
|--------------|------------|------------|------------|------------|------------|------------|------------|
| None | | | | | | | |
| Total | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Positions

| | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| Full-time | | | | | | | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

| | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|
| Change in Revenues | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

| |
|-----------------|
| Initial version |
|-----------------|

| | |
|--|----------------------------------|
| Prepared By: <u>Nancy Meade, General Counsel</u> | Phone: <u>(907)463-4736</u> |
| Division: <u>Alaska Court System</u> | Date: <u>03/07/2014 01:00 PM</u> |
| Approved By: <u>Nancy Meade for Christine Johnson, Administrative Director</u> | Date: <u>03/07/14</u> |
| Agency: <u>Alaska Court System</u> | |

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB 366(STA)

Analysis

House Bill 366 would require the Court System to handle two additional case types and to report certain information about cases that involve involuntary commitments or certain adjudications.

Specifically, Section 3 gives persons the right to file a motion with the court to seal certain records that involve the discharge from the disabilities of a mental commitment or adjudication of mental incompetence.

Section 4 allows persons with a record of involuntary commitment or an adjudication of mental illness or mental incompetence to file a motion and go through certain steps to seek relief from the disabilities of that record. The court would typically hold a hearing and make findings, as set forth in Section 4.

Section 5 requires the Court System to transmit listed information about persons who are involuntarily committed or who obtain relief under Section 4 to the Department of Public Safety.

The requirements in HB 366 will increase the number of cases that are handled in the courts, but the number is anticipated to be small. The court anticipates that it can absorb the increased workload with no fiscal impact, and therefore submits this zero fiscal note.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSHB 366(STA)
Fiscal Note Number: 2
(H) Publish Date: 3/12/14

Identifier: HB366-DHSS-API-03-07-14
Title: INVOLUNTARY COMMITMENT
Sponsor: PRUITT
Requester: House State Affairs Committee

Department: Department of Health and Social Services
Appropriation: Behavioral Health
Allocation: Alaska Psychiatric Institute
OMB Component Number: 311

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

| | FY2015 | Included in | Out-Year Cost Estimates | | | | |
|-------------------------------|-------------------------|---------------------------|-------------------------|----------------|----------------|----------------|----------------|
| | Appropriation Requested | Governor's FY2015 Request | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| OPERATING EXPENDITURES | FY 2015 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Personal Services | | | | | | | |
| Travel | | | | | | | |
| Services | | | | | | | |
| Commodities | | | | | | | |
| Capital Outlay | | | | | | | |
| Grants & Benefits | | | | | | | |
| Miscellaneous | | | | | | | |
| Total Operating | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Fund Source (Operating Only)

| | | | | | | | |
|--------------|------------|------------|------------|------------|------------|------------|------------|
| None | | | | | | | |
| Total | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Positions

| | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| Full-time | | | | | | | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

| | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|
| Change in Revenues | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

| | |
|---|----------------------------------|
| Prepared By: <u>Barbara Henjum</u> | Phone: <u>(907)269-3410</u> |
| Division: <u>Behavioral Health</u> | Date: <u>03/07/2014 03:00 PM</u> |
| Approved By: <u>Sarah Woods, Deputy Director, Finance & Management Services</u> | Date: <u>03/07/14</u> |
| Agency: <u>Health and Social Services</u> | |

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB 366(STA)

Analysis

HB366 requires the State of Alaska to make a report to the FBI's National Instant Criminal Background Check System (NICBCS) when a person is adjudicated mentally ill or mentally incompetent (to stand trial). A report to the FBI database will effectively prohibit that person from owning or buying a gun or ammunition. It requires the report to the NICBCS to be made by the Department of Public Safety, based on information received from both the Alaska Court System and the Department of Health & Social Services.

This would require API medical records staff to inform DPS whenever a person was adjudicated mentally ill and involuntarily committed to API for up to 30 days or more. This could be efficiently handled by the development of a form by DPS (or DHSS) for the transmittal of the required information to DPS within a few days of the actual commitment. The form could be faxed to DPS.

The bill also creates provisions whereby a person adjudicated mentally ill or mentally incompetent may seek to have that information expunged or sealed by an Alaska superior court judge. If the record is sealed or expunged, it would effectively remove the prohibition of gun ownership from the individual.

If API receives notice that a superior court judge has sealed a record, or ordered that the adjudication of a commitment be expunged from a patient's record, then API will need to develop an internal process within its medical records department to ensure that a sealed record is, indeed, identified as sealed, and that the expunged parts of a patient record are indeed removed from the patient's record.

The financial impact of the legislation on DHSS/Division of Behavioral Health/API is limited, so long as the legislation is future oriented.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSHB 366(STA)
Fiscal Note Number: 3
(H) Publish Date: 3/12/14

Identifier: HB366-LAW-CIV-03-07-14
Title: INVOLUNTARY COMMITMENT
Sponsor: PRUITT
Requester: (H) STATE AFFAIRS

Department: Department of Law
Appropriation: Civil Division
Allocation: Human Services
OMB Component Number: 2962

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

| | FY2015 | Included in | Out-Year Cost Estimates | | | | |
|-------------------------------|-------------------------|---------------------------|-------------------------|----------------|----------------|----------------|----------------|
| | Appropriation Requested | Governor's FY2015 Request | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| OPERATING EXPENDITURES | FY 2015 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Personal Services | *** | | *** | *** | *** | *** | *** |
| Travel | | | | | | | |
| Services | | | | | | | |
| Commodities | | | | | | | |
| Capital Outlay | | | | | | | |
| Grants & Benefits | | | | | | | |
| Miscellaneous | | | | | | | |
| Total Operating | *** | 0.0 | *** | *** | *** | *** | *** |

Fund Source (Operating Only)

| | | | | | | | |
|--------------|-----|-----|-----|-----|-----|-----|-----|
| None | | | | | | | |
| Total | *** | 0.0 | *** | *** | *** | *** | *** |

Positions

| | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| Full-time | | | | | | | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

| | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|
| Change in Revenues | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version, not applicable.

| | |
|---|----------------------------------|
| Prepared By: <u>Loretta Withington, Division Operations Manager</u> | Phone: <u>(907)465-5427</u> |
| Division: <u>Department of Law</u> | Date: <u>03/07/2014 03:53 PM</u> |
| Approved By: <u>Michael C. Geraghty, Attorney General</u> | Date: <u>03/07/14</u> |
| Agency: <u>Department of Law</u> | |

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB 366(STA)

Analysis

Section 1: Amends existing statute to expand the duties of the Department of Public Safety to transmit information regarding a person's adjudication as mentally ill (i.e., an involuntary commitment) to a U.S. Department of Justice database for inclusion in its criminal background check system (NICBCS).

Section 2: Amends current statute AS 47.30.845 to make clear that the only information to be reported by Public Safety to the national criminal background check system is the adjudication not specific patient diagnostic or clinical information.

Section 3: Amends an existing statute (AS 47.30.850) regarding the expunging or sealing of patient records to including a mechanism for a person to petition/motion the court to have the actual adjudication for mental illness (i.e., an involuntary commitment for up 30, 90, or 180 days) expunged or sealed.

Section 4: Creates a new section to AS 47.30.850 related to the sealing or expunging of patient records by setting out the grounds on which a superior court judge may erase a person's previous adjudicated as mentally ill from that person's record. This decision would effectively take this person out from under the federal law that prohibits a person adjudicated mentally ill from possessing a firearm or ammunition. The decision to deny or grant the request to expunge or seal knowledge of the adjudication is appealable to the Alaska Supreme Court.

Section 5: Creates a new section (AS 47.30.907) that will require the Alaska Court System and Department of Health and Social Services to report to Public Safety when a person is either adjudicated mentally ill and involuntarily committed for treatment or when the superior court allows the record of an adjudication for mental illness to be expunged or sealed. The report requires identification of the person and a number of details regarding the adjudication or judicial seal. This section also makes it clear that an adjudication for mental illness does not include emergency detention or hospitalization for evaluation (i.e., the 72-hour hold).

Section 6: Amends AS 47.30.915 to include a definition of "adjudication of mental illness or mental incompetence" and "disabilities of a record of an involuntary commitment or an adjudication of mental illness or mental competence."

The cost of HB 366 to the Department of Law is indeterminate. The inclusion of sections 3 and 4 to this bill that allows for a person to petition the court to seal or expunge their records will result in increased work by the Department of Law. Each of these matters will be noticed to the Department of Law, who will need to take a position and in many instances litigate whether the request to seal or expunge the records should be granted. This could result in participation at the hearing by attorneys from both the civil and criminal divisions. At this time there is no way to estimate how many persons would seek this judicial relief and as such we cannot estimate the overall cost to the Department of Law.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSHB 366(STA)
Fiscal Note Number: 4
(H) Publish Date: 3/12/14

Identifier: HB366-DPS-CRID-03-07-14
Title: INVOLUNTARY COMMITMENT
Sponsor: PRUITT
Requester: House State Affairs

Department: Department of Public Safety
Appropriation: Statewide Support
Allocation: Alaska Criminal Records and Identification
OMB Component Number: 1190

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

| | FY2015 Appropriation Requested | Included in Governor's FY2015 Request | Out-Year Cost Estimates | | | | | |
|-------------------------------|--------------------------------------|--|-------------------------|------------|------------|------------|------------|------------|
| | | | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| OPERATING EXPENDITURES | | | | | | | | |
| Personal Services | | | | | | | | |
| Travel | | | | | | | | |
| Services | 24.4 | | | | | | | |
| Commodities | | | | | | | | |
| Capital Outlay | | | | | | | | |
| Grants & Benefits | | | | | | | | |
| Miscellaneous | | | | | | | | |
| Total Operating | 24.4 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Fund Source (Operating Only)

| | | | | | | | | |
|---------------|-------------|------------|------------|------------|------------|------------|------------|------------|
| 1004 Gen Fund | 24.4 | | | | | | | |
| Total | 24.4 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Positions

| | | | | | | | | |
|-----------|--|--|--|--|--|--|--|--|
| Full-time | | | | | | | | |
| Part-time | | | | | | | | |
| Temporary | | | | | | | | |

| | | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|--|
| Change in Revenues | | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

| |
|----------------------------------|
| Not applicable, initial version. |
|----------------------------------|

| | | | |
|--------------|--|--------|---------------------|
| Prepared By: | Kathy Monfreda, Criminal Records & Identification Bureau Chief | Phone: | (907)269-5581 |
| Division: | Statewide Services | Date: | 03/07/2014 04:00 PM |
| Approved By: | Gary Folger, Commissioner | Date: | 03/07/14 |
| Agency: | Department of Public Safety | | |

FISCAL NOTE ANALYSIS #4

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB 366(STA)

Analysis

This bill would allow the Department of Public Safety (DPS) to receive from the Alaska Court System and the Department of Health and Social Services certain records related to involuntary commitments and adjudications of mental illness or mental incompetence and subsequently transmit those records to the FBI for inclusion in the National Instant Criminal Background Check System (NICS).

The NICS is a national system that checks available records in three databases to determine if prospective firearm buyers are disqualified from receiving firearms. A NICS check includes a check of the following three databases that are maintained by the FBI:

- Interstate Identification Index (III or "Triple I"), a database on criminal history record information;
- National Crime Information Center (NCIC) which includes information on persons subject to civil protection orders and arrest warrants; and
- NICS Index which includes the information contributed by federal and state agencies identifying persons prohibited from possessing firearms who are not included in the III or NCIC, such as persons with a prohibiting mental health history.

When information about involuntary commitments and adjudications of mental illness or mental incompetence is provided to the NICS, the FBI can deny firearm transfers to persons with disqualifying mental health histories both in the state where the record was created and in other states to which the person may have subsequently moved.

The records DPS would receive under this bill would be maintained in a separate database. This would further protect the confidentiality of the records and ensure they would only be available for the purposes outlined in the bill.

This fiscal note includes software development and programming costs necessary to: create a separate repository for records related to involuntary commitments and adjudications of mental illness or mental incompetence; safeguard access to them; allow semi-automated submission of records; allow modification or withdrawal of submitted records; and allow audits and reporting against the new database.

The estimated costs are based on 232 hours of contracted programming costs at \$105 per hour.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSHB 366(JUD)
Fiscal Note Number: 5
(H) Publish Date: 3/24/14

Identifier: HB366CS(STA)-DOA-PDA-03-14-14
Title: INVOLUNTARY COMMITMENT
Sponsor: PRUITT
Requester: House Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Public Defender Agency
OMB Component Number: 1631

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

| | FY2015 Appropriation Requested | Included in Governor's FY2015 Request | Out-Year Cost Estimates | | | | |
|-------------------------------|--------------------------------------|--|-------------------------|----------------|----------------|----------------|----------------|
| | | | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| OPERATING EXPENDITURES | FY 2015 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Personal Services | | | | | | | |
| Travel | | | | | | | |
| Services | | | | | | | |
| Commodities | | | | | | | |
| Capital Outlay | | | | | | | |
| Grants & Benefits | | | | | | | |
| Miscellaneous | | | | | | | |
| Total Operating | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Fund Source (Operating Only)

| | | | | | | | |
|--------------|------------|------------|------------|------------|------------|------------|------------|
| None | | | | | | | |
| Total | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Positions

| | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| Full-time | | | | | | | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

| | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|
| Change in Revenues | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

| |
|----------------------------------|
| updated for committee substitute |
|----------------------------------|

| | |
|--|----------------------------------|
| Prepared By: <u>Quinlan Steiner, Public Defender</u> | Phone: <u>(907)334-4414</u> |
| Division: <u>Public Defender Agency</u> | Date: <u>03/14/2014 02:30 PM</u> |
| Approved By: <u>Curtis Thayer, Commissioner</u> | Date: <u>03/14/14</u> |
| Agency: <u>Department of Administration</u> | |

FISCAL NOTE ANALYSIS #5

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB 366(JUD)

Analysis

HB366 requires the transmittal of information regarding persons adjudicated as mentally ill to the Department of Public Safety and then to the United States Department of Justice for the purpose of conducting background checks and making determinations regarding applications to possess firearms.

HB366 is not expected to have a fiscal impact on the Public Defender Agency. The agency therefore submits a zero fiscal note.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSHB 366(JUD)
Fiscal Note Number: 6
(H) Publish Date: 3/24/14

Identifier: HB366CS(STA)-DOA-OPA-03-14-2014
Title: INVOLUNTARY COMMITMENT
Sponsor: PRUITT
Requester: House Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Office of Public Advocacy
OMB Component Number: 43

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

| | FY2015 Appropriation Requested | Included in Governor's FY2015 Request | Out-Year Cost Estimates | | | | | |
|-------------------------------|--------------------------------------|--|-------------------------|------------|------------|------------|------------|------------|
| | | | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| OPERATING EXPENDITURES | | | | | | | | |
| Personal Services | | | | | | | | |
| Travel | | | | | | | | |
| Services | | | | | | | | |
| Commodities | | | | | | | | |
| Capital Outlay | | | | | | | | |
| Grants & Benefits | | | | | | | | |
| Miscellaneous | | | | | | | | |
| Total Operating | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Fund Source (Operating Only)

| | | | | | | | | |
|--------------|------------|------------|------------|------------|------------|------------|------------|------------|
| None | | | | | | | | |
| Total | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Positions

| | | | | | | | | |
|-----------|--|--|--|--|--|--|--|--|
| Full-time | | | | | | | | |
| Part-time | | | | | | | | |
| Temporary | | | | | | | | |

| | | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|--|
| Change in Revenues | | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

| |
|--------------------------------------|
| Updated for new committee substitute |
|--------------------------------------|

| | | | |
|--------------|------------------------------|--------|---------------------|
| Prepared By: | Richard Allen, Director | Phone: | (907)269-3504 |
| Division: | Office of Public Advocacy | Date: | 03/14/2014 09:45 PM |
| Approved By: | Curtis Thayer, Commissioner | Date: | 03/14/14 |
| Agency: | Department of Administration | | |

FISCAL NOTE ANALYSIS #6

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB 366(JUD)

Analysis

This legislation amends AS 44.41, concerning involuntary commitment proceedings, in several aspects. The effect of the bill would be to strengthen the role of the Department of Public Safety (DPS) in involuntary commitment proceedings, eliminate the option of expungement of the proceedings records for the person post-commitment and allow the person, post-commitment, to seek relief from the disability of being prohibited from owning a firearm.

The bill if enacted would impact both the persons who are committed and the general public, in that the question of such persons being able to possess firearms post-commitment would be able to be brought and litigated in the courts. The bill specifically allows for a person to appeal from an adverse ruling to the state supreme court under a de novo standard of review. Agencies affected would include the departments of Law, Public Safety, Administration and the Alaska Court System. Attorneys from the Office of Public Advocacy (OPA) and/or the Public Defender Agency (PD) assigned to represent a person in involuntary commitment proceedings would also be affected.

If enacted as most recently amended, the bill would likely have some impact on the caseloads of those Office of Public Advocacy (OPA) attorneys working those cases. The bill would likely not have any material impact upon the operations, administration or overall budget of OPA therefore, OPA submits a zero fiscal note.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSHB 366(JUD)
Fiscal Note Number: 7
(H) Publish Date: 3/24/14

Identifier: HB366CS(JUD)-LAW-CIV-03-20-14
Title: INVOLUNTARY COMMITMENT
Sponsor: PRUITT
Requester: (H) JUDICIARY

Department: Department of Law
Appropriation: Civil Division
Allocation: Human Services
OMB Component Number: 2962

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

| | FY2015 | Included in | Out-Year Cost Estimates | | | | |
|-------------------------------|-------------------------|---------------------------|-------------------------|----------------|----------------|----------------|----------------|
| | Appropriation Requested | Governor's FY2015 Request | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 |
| OPERATING EXPENDITURES | FY 2015 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Personal Services | | | | | | | |
| Travel | | | | | | | |
| Services | | | | | | | |
| Commodities | | | | | | | |
| Capital Outlay | | | | | | | |
| Grants & Benefits | | | | | | | |
| Miscellaneous | | | | | | | |
| Total Operating | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Fund Source (Operating Only)

| | | | | | | | |
|--------------|------------|------------|------------|------------|------------|------------|------------|
| None | | | | | | | |
| Total | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Positions

| | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| Full-time | | | | | | | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

| | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|
| Change in Revenues | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? **No**
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Upon further consideration of the bill the amount of this fiscal note has been changed to zero. The reasoning behind the change can be found in the analysis below.

| | |
|---|----------------------------------|
| Prepared By: <u>Loretta Withington, Division Operations Manager</u> | Phone: <u>(907)465-5427</u> |
| Division: <u>Department of Law</u> | Date: <u>03/20/2014 03:53 PM</u> |
| Approved By: <u>Michael C. Geraghty, Attorney General</u> | Date: <u>03/20/14</u> |
| Agency: <u>Department of Law</u> | |

FISCAL NOTE ANALYSIS #7

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB 366(JUD)

Analysis

Section 1: Amends existing statute to expand the duties of the Department of Public Safety to transmit information regarding a person's adjudication as mentally ill (i.e., an involuntary commitment) to a U.S. Department of Justice database for inclusion in its criminal background check system (NICBCS).

Section 2: Amends current statute AS 47.30.845 to make clear that the only information to be reported by Public Safety to the national criminal background check system is the adjudication not specific patient diagnostic or clinical information.

Section 3: Amends an existing statute (AS 47.30.850) regarding the expunging or sealing of patient records to including a mechanism for a person to petition/motion the court to have the actual adjudication for mental illness (i.e., an involuntary commitment for up 30, 90, or 180 days) expunged or sealed.

Section 4: Creates a new section to AS 47.30.850 related to the sealing or expunging of patient records by setting out the grounds on which a superior court judge may erase a person's previous adjudicated as mentally ill from that person's record. This decision would effectively take this person out from under the federal law that prohibits a person adjudicated mentally ill from possessing a firearm or ammunition. The decision to deny or grant the request to expunge or seal knowledge of the adjudication is appealable to the Alaska Supreme Court.

Section 5: Creates a new section (AS 47.30.907) that will require the Alaska Court System and Department of Health and Social Services to report to Public Safety when a person is either adjudicated mentally ill and involuntarily committed for treatment or when the superior court allows the record of an adjudication for mental illness to be expunged or sealed. The report requires identification of the person and a number of details regarding the adjudication or judicial seal. This section also makes it clear that an adjudication for mental illness does not include emergency detention or hospitalization for evaluation (i.e., the 72-hour hold).

Section 6: Amends AS 47.30.915 to include a definition of "adjudication of mental illness or mental incompetence" and "disabilities of a record of an involuntary commitment or an adjudication of mental illness or mental competence."

Although it is still not clear what the exact impact of section 4 will be; with the following assumptions the Department of Law's fiscal note is zero:

1. the application of the bill will be prospective;
2. the number of persons who seek this relief will not be significant;
3. we expect a very small number of those committed in the future to seek the relief offered under section 4; and
4. the hearings will be limited, with no court appointed attorney to represent the petitioner.

With the above assumptions, if there are cases where the state may want to assert an interest, it is anticipated that the number will be small and could be absorbed with current staffing.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSHB 366(JUD)
Fiscal Note Number: 8
(H) Publish Date: 3/24/14

Identifier: HB366CS(JUD)-DPS-CRID-03-20-14
Title: INVOLUNTARY COMMITMENT
Sponsor: PRUITT
Requester: House Judiciary

Department: Department of Public Safety
Appropriation: Statewide Support
Allocation: Alaska Criminal Records and Identification
OMB Component Number: 1190

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

| | FY2015 Appropriation Requested | Included in Governor's FY2015 Request | Out-Year Cost Estimates | | | | | |
|-------------------------------|--------------------------------------|--|-------------------------|------------|------------|------------|------------|------------|
| | | | FY 2015 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 |
| OPERATING EXPENDITURES | | | | | | | | |
| Personal Services | | | | | | | | |
| Travel | | | | | | | | |
| Services | | | | | | | | |
| Commodities | | | | | | | | |
| Capital Outlay | | | | | | | | |
| Grants & Benefits | | | | | | | | |
| Miscellaneous | | | | | | | | |
| Total Operating | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Fund Source (Operating Only)

| | | | | | | | | |
|--------------|------------|------------|------------|------------|------------|------------|------------|------------|
| None | | | | | | | | |
| Total | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Positions

| | | | | | | | | |
|-----------|--|--|--|--|--|--|--|--|
| Full-time | | | | | | | | |
| Part-time | | | | | | | | |
| Temporary | | | | | | | | |

| | | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|--|
| Change in Revenues | | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

| |
|--------------------------------|
| Updated to reflect zero costs. |
|--------------------------------|

| | | | |
|--------------|--|--------|---------------------|
| Prepared By: | Kathy Monfreda, Criminal Records & Identification Bureau Chief | Phone: | (907)269-5581 |
| Division: | Statewide Services | Date: | 03/20/2014 03:15 PM |
| Approved By: | Gary Folger, Commissioner | Date: | 03/20/14 |
| Agency: | Department of Public Safety | | |

FISCAL NOTE ANALYSIS #8

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB 366(JUD)

Analysis

This bill would allow the Department of Public Safety (DPS) to receive from the Alaska Court System and the Department of Health and Social Services certain records related to involuntary commitments and adjudications of mental illness or mental incompetence and subsequently transmit those records to the FBI for inclusion in the National Instant Criminal Background Check System (NICS).

The NICS is a national system that checks available records in three databases to determine if prospective firearm buyers are disqualified from receiving firearms. A NICS check includes a check of the following three databases that are maintained by the FBI:

- Interstate Identification Index (III or "Triple I"), a database on criminal history record information;
- National Crime Information Center (NCIC) which includes information on persons subject to civil protection orders and arrest warrants; and
- NICS Index which includes the information contributed by federal and state agencies identifying persons prohibited from possessing firearms who are not included in the III or NCIC, such as persons with a prohibiting mental health history.

When information about involuntary commitments and adjudications of mental illness or mental incompetence is provided to the NICS, the FBI can deny firearm transfers to persons with disqualifying mental health histories both in the state where the record was created and in other states to which the person may have subsequently moved.

The records DPS would receive under this bill would be maintained in a separate database. This would further protect the confidentiality of the records and ensure they would only be available for the purposes outlined in the bill.

Software development and programming is necessary to create a separate repository for records related to involuntary commitments and adjudications of mental illness or mental incompetence, safeguard access to them, allow semi-automated submission of records, allow modification or withdrawal of submitted records, and allow audits and reporting against the new database.

The one-time costs associated with this work were initially estimated at \$24,400 for contractor costs. DPS has reevaluated this estimate and believes these costs can be absorbed from within the department's existing budget. Passage of this bill would make DPS eligible to apply for grant funds made available through the NICS Improvement Amendments Act (NIAA) of 2007. Grant funds received through NIAA would be used to establish and upgrade information automation and identification technologies for timely submission of information relevant to NICS checks.



FAST FACTS

Federally licensed retailers are required to run a background check through the FBI's National Instant Criminal Background Check System (NICS) when transferring a firearm to an individual. Firearms retailers rely on NICS to ensure the lawful transfer of firearms to law-abiding citizens. Over 160 million NICS background checks have been conducted from Nov. 30, 1998 through Dec. 30, 2012; more than 19.5 million were conducted in 2012 alone.

However, a background check is only as good as the records in the database. That is why the firearms industry supports improving the current NICS system by increasing the number of prohibiting records states submit to the FBI databases, helping to prevent illegal transfers of firearms to those who are prohibited from owning firearms under current law. Including these missing records will help ensure more accurate and complete background checks.

States must improve the NICS database by submitting any and all records establishing an individual is a prohibited person, such as mental health records showing someone is an "adjudicated mental defective" or involuntarily committed to a mental institute, as well as records showing someone is the subject of a domestic violence protective order, a drug addict or subject to another prohibited category.ⁱⁱ

The firearms industry has a long record of supporting background checks.ⁱⁱⁱ The NSSF supported background checks prior to the



- **FBI NICS databases are incomplete because many states have not provided all records that establish someone is prohibited from owning a firearm under current law, especially including mental health adjudications and involuntary commitments orders.**
- **The firearms industry is launching a campaign, Fix NICSSM to encourage states to report to NICS all records that establish someone is prohibited from owning a firearm under current law.**
- **Congress should condition federal grants to states on submitting prohibiting records. States that fail to provide records to NICS should face grant penalties, just as states that fail to meet certain drunk-driving law thresholds may lose federal highway funds.**

passage in 1993 of the Brady Act that created a background check system and NICS in 1998. The existing background check system must be fixed, however, before Congress even considers whether to expand background checks, otherwise we'll just have more incomplete and inaccurate checks.

The Problem

The federal government cannot mandate state participation due to the 10th Amendment of the U.S. Constitution.^{iv} Unfortunately, far too

many states fall short on submitting prohibiting mental health and other records. Twelve states and 5 territories had made fewer than 10 records available and sixteen states had made fewer than 100 records available as of March 31, 2013, according to FBI data.^v

While some progress has been made over the last few years, much of it is concentrated in just a few states.^{vi} The failure of states

continued on back →



to submit prohibiting records is simply unacceptable and limits the effectiveness of NICS.

Industry Working Toward Solution

The firearms industry is launching a campaign to encourage states to report to NICS all records that establish someone is prohibited from owning a firearm under current law. Through a multi-state effort focused on forming coalitions in the states with the fewest submitted records, the industry is dedicating significant resources to helping states overcome the legal, technological, and intrastate coordination challenges preventing effective record sharing.

“Fix NICSSM” is about keeping firearms out of the hands of prohibited persons, like the shooter in the Virginia Tech tragedy who was able to purchase a firearm from a federally licensed firearms retailer because his prohibiting mental health records were not in the NICS system.

Carrot & Stick Approach Needed

Our industry isn't calling on Congress to appropriate new federal funds to fix the NICS system. In these tough fiscal times, the tools are already in place to encourage states to submit more records. Just as states that fail to meet certain drunk-driving law thresholds may lose federal highway funds, states that fail to provide records to NICS should face grant penalties. Congress simply needs to do a better job conditioning current federal monies going to the states to incentivize record sharing.

The NSSF supported the NICS Improvement Amendments Act of 2007, which was enacted to encourage states to submit more records on prohibited individuals to the NICS database.^{vii} However, the law has never been fully implemented due to problems in quantifying records.

One incentive not yet implemented would allow a state to obtain a waiver of the matching requirement for

National Criminal History Record Improvement Program's (NCHIP) grants, if a state submits at least 90 percent of its records identifying prohibited individuals. There were also Byrne grant penalties included in the 2007 law that have not yet been implemented.

Congress must rework such a “carrot and stick” approach in a way that can be fully implemented to encourage states to fully participate in NICS. Increasing the number of prohibiting records is the best way to keep prohibited individuals from purchasing firearms, without punishing law-abiding retailers and firearms owners.

The National Shooting Sports Foundation represents over 8,000 firearms and ammunition manufacturers, retailers and ranges. Our members are committed to following the law and promoting safe, legal transfer of firearms. For more information about the FixNICS campaign, visit FixNICS.org.

i There are 21 full or partial Point of Contact states, which have a state-designated agency responsible for processing some or all NICS background checks on behalf of the federal firearm licensees (FFLs) within the state.

ii Note: Fix NICS does not seek to require all mental health records be submitted to NICS, only those that establish an individual falls into one of the current federal categories of persons prohibited from receiving firearms. The categories are available here in full: <http://www.fbi.gov/about-us/cjis/nics/general-information/fact-sheet>

iii NSSF press release, “At NICS User Conference, NSSF Supports Virginia Governor’s Call to Add Mental Health and Other Records to Background Check System,” May 2012, <http://www.nssf.org/newsroom/releases/2012/050112.cfm> (Last accessed Feb. 5, 2013).

iv *Printz v. United States* - 521 U.S. 898 (1996)

v The National Shooting Sports Foundation obtained data on the number of active adjudicated mental health records in the NICS Index from the Federal Bureau of Investigation.

vi U.S. Government Accountability Office, “Gun Control: Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks,” GAO-12-684, July 2012.

vii The NICS Improvement Amendments Act of 2007 (NIAA), Pub. L. 110-180



11 Mile Hill Road
Newtown, CT 06470-2359
T: 203.426.1320
F: 203.426.1087
nssf.org



Submission of Mental Health Records to NICS and the HIPAA Privacy Rule

Edward C. Liu, Coordinator
Legislative Attorney

Erin Bagalman
Analyst in Health Policy

Vivian S. Chu
Legislative Attorney

C. Stephen Redhead
Specialist in Health Policy

April 15, 2013

Congressional Research Service

7-5700

www.crs.gov

R43040

Summary

Questions about the scope and efficacy of the background checks required during certain firearm purchases have gained prominence following recent mass shootings. These background checks are intended to identify whether potential purchasers are prohibited from purchasing or possessing firearms due to one or more “prohibiting factors,” such as a prior felony conviction or a prior involuntary commitment for mental health reasons. Operationally, such background checks primarily use information contained within the National Instant Criminal Background Check System (NICS) and a particular focus of the debate in Congress has been whether federal privacy standards promulgated under the Health Insurance Portability and Accountability Act (i.e., the HIPAA privacy rule) or state privacy laws are an obstacle to the submission of mental health records to NICS.

Under the Gun Control Act of 1968 (GCA), as amended, persons adjudicated to be mentally defective or who have been committed to a mental institution are prohibited from possessing, shipping, transporting, and receiving firearms and ammunition. Neither a diagnosis of a mental illness nor treatment for a mental illness is sufficient to qualify a person as “adjudicated as a mental defective.” Rather, an individual’s “adjudication as a mental defective” relies upon a determination or decision by a court, board, commission, or other lawful authority. The definition of “committed to a mental institution” may apply only to inpatient settings. At least one federal court has held that the Supreme Court’s recent recognition of an individual right to possess a firearm suggests that some emergency hospitalization or commitment procedures, that may not have as many procedural safeguards as formal commitment, should not be included within the meaning of “involuntary commitment” for purposes of the GCA. In 2007, Congress passed the NICS Improvement Amendments Act (NIAA), which authorizes the Attorney General to make additional grants to states to improve electronic access to records as well as to incentivize states to turn over records of persons who would be prohibited from possessing or receiving firearms.

In 2012, the Government Accountability Office (GAO) reported that a variety of technological, coordination, and legal (i.e., privacy) challenges limit the states’ ability to report mental health records to NICS. The HIPAA privacy rule, which applies to most health care providers, regulates the use or disclosure of protected health information. On February 14, 2013, HHS announced that it will seek to amend the HIPAA privacy rule to remove any potential impediments to state reporting of mental health records to NICS. The privacy rule is most relevant as a potential obstacle where information used to generate mental health records on individuals prohibited from gun possession under the GCA is held by health care providers in states that do not expressly require disclosure of such records to NICS. Courts and health care providers that generate such prohibiting mental health records may also be subject to state health privacy laws that may be more restrictive than the HIPAA privacy rule.



March 11, 2014

The Honorable Lance Pruitt
Alaska State House of Representatives
State Capitol Rm. 204
120 4th Street
Juneau AK 99801-1182

Dear Representative Pruitt:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for sponsoring House Bill 366, **"An Act relating to reporting an involuntary mental health commitment to the National Instant Criminal Background Check System; and relating to relief from disabilities of a record of involuntary commitment and an adjudication of mental illness or mental incompetence."**

The APOA Legislative Committee recently reviewed this proposed legislation and unanimously supports this bill in its current form. There is currently no method by which individuals legally barred from firearm possession have his or her name provided to firearms dealers. Even if this legislation passes there will be many ways for people who are mentally ill to acquire firearms, from family, from private sales, etc., however, this is a step in the right direction. APOA supports your efforts to protect the public, and police officers from armed, mentally ill assailants.

Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Brad Johnson
State President

Presidential Documents

Memorandum of January 16, 2013

Improving Availability of Relevant Executive Branch Records to the National Instant Criminal Background Check System

Memorandum for the Heads of Executive Departments and Agencies

Since it became operational in 1998, the National Instant Criminal Background Check System (NICS) has been an essential tool in the effort to ensure that individuals who are prohibited under Federal or State law from possessing firearms do not acquire them from Federal Firearms Licensees (FFLs). The ability of the NICS to determine quickly and effectively whether an individual is prohibited from possessing or receiving a firearm depends on the completeness and accuracy of the information made available to it by Federal, State, and tribal authorities.

The NICS Improvement Amendments Act of 2007 (NIAA) (Public Law 1107–180) was a bipartisan effort to strengthen the NICS by increasing the quantity and quality of relevant records from Federal, State, and tribal authorities accessible by the system. Among its requirements, the NIAA mandated that executive departments and agencies (agencies) provide relevant information, including criminal history records, certain adjudications related to the mental health of a person, and other information, to databases accessible by the NICS. Much progress has been made to identify information generated by agencies that is relevant to determining whether a person is prohibited from receiving or possessing firearms, but more must be done. Greater participation by agencies in identifying records they possess that are relevant to determining whether an individual is prohibited from possessing a firearm and a regularized process for submitting those records to the NICS will strengthen the accuracy and efficiency of the NICS, increasing public safety by keeping guns out of the hands of persons who cannot lawfully possess them.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. *Improving the Availability of Records to the NICS.* (a) Within 45 days of the date of this memorandum, and consistent with the process described in section 3 of this memorandum, the Department of Justice (DOJ) shall issue guidance to agencies regarding the identification and sharing of relevant Federal records and their submission to the NICS.

(b) Within 60 days of issuance of guidance pursuant to subsection (a) of this section, agencies shall submit a report to DOJ advising whether they possess relevant records, as set forth in the guidance, and setting forth an implementation plan for making information in those records available to the NICS, consistent with applicable law.

(c) In accordance with the authority and responsibility provided to the Attorney General by the Brady Handgun Violence Prevention Act (Public Law 103–159), as amended, the Attorney General, consistent with the process described in section 3 of this memorandum, shall resolve any disputes concerning whether agency records are relevant and should be made available to the NICS.

(d) To the extent they possess relevant records, as set forth in the guidance issued pursuant to subsection (a) of this section, agencies shall prioritize making those records available to the NICS on a regular and ongoing basis.

Sec. 2. Measuring Progress. (a) By October 1, 2013, and annually thereafter, agencies that possess relevant records shall submit a report to the President through the Attorney General describing:

- (i) the relevant records possessed by the agency that can be shared with the NICS consistent with applicable law;
- (ii) the number of those records submitted to databases accessible by the NICS during each reporting period;
- (iii) the efforts made to increase the percentage of relevant records possessed by the agency that are submitted to databases accessible by the NICS;
- (iv) any obstacles to increasing the percentage of records that are submitted to databases accessible by the NICS;
- (v) for agencies that make qualifying adjudications related to the mental health of a person, the measures put in place to provide notice and programs for relief from disabilities as required under the NIAA;
- (vi) the measures put in place to correct, modify, or remove records accessible by the NICS when the basis under which the record was made available no longer applies; and
- (vii) additional steps that will be taken within 1 year of the report to improve the processes by which records are identified, made accessible, and corrected, modified, or removed.

(b) If an agency certifies in its annual report that it has made available to the NICS its relevant records that can be shared consistent with applicable law, and describes its plan to make new records available to the NICS and to update, modify, or remove existing records electronically no less often than quarterly as required by the NIAA, such agency will not be required to submit further annual reports. Instead, the agency will be required to submit an annual certification to DOJ, attesting that the agency continues to submit relevant records and has corrected, modified, or removed appropriate records.

Sec. 3. NICS Consultation and Coordination Working Group. To ensure adequate agency input in the guidance required by section 1(a) of this memorandum, subsequent decisions about whether an agency possesses relevant records, and determinations concerning whether relevant records should be provided to the NICS, there is established a NICS Consultation and Coordination Working Group (Working Group), to be chaired by the Attorney General or his designee.

(a) *Membership.* In addition to the Chair, the Working Group shall consist of representatives of the following agencies:

- (i) the Department of Defense;
- (ii) the Department of Health and Human Services;
- (iii) the Department of Transportation;
- (iv) the Department of Veterans Affairs;
- (v) the Department of Homeland Security;
- (vi) the Social Security Administration;
- (vii) the Office of Personnel Management;
- (viii) the Office of Management and Budget; and
- (ix) such other agencies or offices as the Chair may designate.

(b) *Functions.* The Working Group shall convene regularly and as needed to allow for consultation and coordination between DOJ and agencies affected by the Attorney General's implementation of the NIAA, including with respect to the guidance required by section 1(a) of this memorandum, subsequent decisions about whether an agency possesses relevant records, and determinations concerning whether relevant records should be provided to the NICS. The Working Group may also consider, as appropriate:

- (i) developing means and methods for identifying agency records deemed relevant by DOJ's guidance;
- (ii) addressing obstacles faced by agencies in making their relevant records available to the NICS;
- (iii) implementing notice and relief from disabilities programs; and
- (iv) ensuring means to correct, modify, or remove records when the basis under which the record was made available no longer applies.

(c) *Reporting.* The Working Group will review the annual reports required by section 2(a) of this memorandum, and member agencies may append to the reports any material they deem appropriate, including an identification of any agency best practices that may be of assistance to States in supplying records to the NICS.

Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) the authority granted by law to a department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Independent agencies are strongly encouraged to comply with the requirements of this memorandum.

Sec. 5. Publication. The Attorney General is hereby authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, January 16, 2013



NATIONAL SHOOTING SPORTS FOUNDATION, INC.

11 Mile Hill Road • Newtown, CT 06470-2359 • Tel (203) 426-1320 • Fax (203) 426-7182

E-mail jmcguigan@nssf.org • www.nssf.org

JAKE MCGUIGAN
DIRECTOR, GOVERNMENT
RELATIONS/STATE AFFAIRS

March 11, 2014

Representative Bob Lynn
Chair
120 4th St
House State Affairs Capitol 106
Juneau, Alaska 99801

Re: Support HB 366 and NSSF's FixNICS®

Dear Chair Lynn and Members of the State Affairs Committee:

The National Shooting Sports Foundation ("NSSF") is the trade association for America's firearms, ammunition, hunting and recreational shooting sports industry. Its mission is to promote, protect and preserve hunting and the shooting sports. NSSF has a membership of more than 10,000 manufacturers, distributors, firearms retailers, shooting ranges, and sportsmen's organizations. Our manufacturer members make the firearms used by law-abiding Alaska sportsmen, the U.S. military and law enforcement agencies throughout the state.

On behalf of our membership, we would like to introduce committee members to our Fix NICS initiative while at the same time expressing our strong support in making Alaska compliant by submitting records to the National Instant Criminal Background Check System (NICS) of those individuals prohibited from owning a firearm under federal law.

The goal of the firearms industry's FixNICS campaign is to encourage states to report to NICS all records that establish someone is prohibited from owning a firearm under current law. Through a multi-state effort focused on forming coalitions in the states with the fewest submitted records, the industry is dedicating significant resources to helping states overcome the legal, technological, and intrastate coordination challenges preventing effective record sharing. In Alaska we hope that the work of this committee addresses this problem and makes the citizens of the state safer.

FixNICS is about keeping firearms out of the hands of prohibited persons, like the shooter in the Virginia Tech tragedy who was able to purchase a firearm from a federally licensed firearms retailer because his prohibiting mental health records were not in the NICS system.

This past legislative session (2013) Alabama, Louisiana, Mississippi, New Jersey, South Carolina, and Tennessee all passed FixNICS legislation. These states are now fully compliant with sending the appropriate records of prohibited individuals to NICS.

So far this legislative session we have experienced numerous victories as well, advancing the FixNICS initiative in Hawaii, Massachusetts, Nebraska, Rhode Island, South Dakota and Wyoming.

Over the past couple of months NSSF has been working with various state agencies in Nebraska in hopes of making sure the state is reporting to NICS mental health records that establish someone is prohibited from owning a firearm under current law. We can report that over the past month Nebraska has begun to successfully transmit those records to NICS that would prohibit someone from owning a firearm.

Alaska's federally licensed retailers are required to run a background check through FBI's NICS when transferring a firearm to an individual. Firearms retailers rely on NICS to ensure the lawful transfer of firearms to law-abiding citizens. Since 1998 until October 2013 NICS has conducted about 725,000 background checks for Alaska retailers. By analyzing the federal denial rate there could be over 7,000 firearms in the hands of federally prohibited individuals in Alaska.

However, a background check is only as good as the records in the database. That is why the firearms industry supports improving the current NICS system by increasing the number of prohibiting records states submit to the FBI databases, helping to prevent illegal transfers of firearms to those who are prohibited from owning firearms under current law. Including these missing records will help ensure more accurate and complete background checks.

States must improve the NICS database by submitting any and all records establishing an individual is a prohibited person, such as mental health records showing someone is an "adjudicated mental defective" or involuntarily committed to a mental institute, as well as records showing someone is the subject of a domestic violence protective order, a drug addict or subject to another prohibited category.

We would like to continue to discuss some of the mental health record problems in Alaska and possibly direct some substantive changes with FixNICS. NSSF would also ask for your support of HB 366. Finally, we welcome the opportunity to participate in this important, public policy discussion and to make known our views. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jake McGuigan", with a long horizontal flourish extending to the right.

Jake McGuigan



The FixNICS campaign has won victories in 13 states over the past year. In addition to the successes below, NSSF-backed legislation has been introduced and is under consideration this year in Alaska, Vermont, New Hampshire, Maine, and Oklahoma.

| State | Summary of New Laws/Actions |
|----------------|---|
| Alabama | May 2013: Strengthens requirements for state officials to send mental health records to NICS. |
| Hawaii | March 2014: HB 2246, passed the House with no dissenters and now it is in the Senate. House Committee on Judiciary voted (10-0) in favor of the bill. |
| Louisiana | May 2013: Requires any Louisiana resident who loses the right to possess firearms under state law to be reported to the State Supreme Court which will send this information to NICS. |
| Massachusetts | February 2014: MA Task Force supports FixNICS. Legislation will be introduced soon. |
| Mississippi | March 2013: Requires state officials to report mental health adjudications and court-ordered commitments to NICS. |
| Nebraska | Jan. 2014: State has started to transmit mental health records to NICS following an NSSF-backed administrative fix. |
| New Jersey | May 2013: Requires state to submit to NICS records showing those who have been involuntarily committed for mental health treatment. |
| Pennsylvania | Jan. 2013: State police submitted 643,167 records to NICS and will send to NICS on a continuous basis moving forward after administrative fix. |
| Rhode Island | Jan. 2014: NSSF-backed State task force recommended changing state law to mandate reporting of mental health records to NICS. Legislation pending. |
| South Carolina | May 2013: Requires the submission of records to NICS. |
| South Dakota | March 2014: HB 1229 Overwhelming passed both chambers. House (53-17) and Senate (26-9). Awaiting Governor's signature (3-7-14). |
| Tennessee | April 2013: Requires courts to submit mental health commitment information to NICS. |
| Wyoming | March 2014: FixNICS approved for an interim committee that will be studied in order to craft committee legislation. |

For more information visit: www.FixNics.org



NATIONAL SHOOTING SPORTS FOUNDATION, INC.

11 Mile Hill Road • Newtown, CT 06470-2359 • Tel (203) 426-1320 • Fax (203) 426-1087 • www.nssf.org

FixNICS

The FixNICS campaign has won victories in 13 states over the past year. In addition to the successes below, NSSF-backed legislation has been introduced and is under consideration this year in Alaska, Vermont, New Hampshire, Maine, and Oklahoma.

| State | Summary of New Laws/Actions |
|----------------|---|
| Alabama | May 2013: Strengthens requirements for state officials to send mental health records to NICS. |
| Hawaii | March 2014: HB 2246, passed the House with no dissenters and now it is in the Senate. House Committee on Judiciary voted (10-0) in favor of the bill. |
| Louisiana | May 2013: Requires any Louisiana resident who loses the right to possess firearms under state law to be reported to the State Supreme Court which will send this information to NICS. |
| Massachusetts | February 2014: MA Task Force supports FixNICS. Legislation will be introduced soon. |
| Mississippi | March 2013: Requires state officials to report mental health adjudications and court-ordered commitments to NICS. |
| Nebraska | Jan. 2014: State has started to transmit mental health records to NICS following an NSSF-backed administrative fix. |
| New Jersey | May 2013: Requires state to submit to NICS records showing those who have been involuntarily committed for mental health treatment. |
| Pennsylvania | Jan. 2013: State police submitted 643,167 records to NICS and will send to NICS on a continuous basis moving forward after administrative fix. |
| Rhode Island | Jan. 2014: NSSF-backed State task force recommended changing state law to mandate reporting of mental health records to NICS. Legislation pending. |
| South Carolina | May 2013: Requires the submission of records to NICS. |
| South Dakota | March 2014: HB 1229 Overwhelming passed both chambers. House (53-17) and Senate (26-9). Awaiting Governor's signature (3-7-14). |
| Tennessee | April 2013: Requires courts to submit mental health commitment information to NICS. |
| Wyoming | March 2014: FixNICS approved for an interim committee that will be studied in order to craft committee legislation. |

For more information visit: www.FixNics.org

PROMOTE

PROTECT

PRESERVE



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

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

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.

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.^{1,2} 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.³

¹ 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>.

² 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>.

³ 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

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.⁴

States with Laws Requiring Reporting of Mental Health Adjudications to NICS

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.⁵ 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.⁶ 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.⁷

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.

⁴ 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.

⁵ 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.

⁶ We include copies of relevant statutes from these seven states as Attachment A.

⁷ 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

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.⁸ When reviewing the data below, please note the time period those data represent.

⁸ 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.⁹

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.¹⁰ 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.¹¹

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.¹² 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 |
| Adjudicated Mental Health | 1.25 |
| Illegal/Unlawful Alien | 1.21 |
| Federally Denied Persons File | 0.52 |
| Dishonorable Discharge | 0.07 |
| Renounced U.S. Citizenship | 0.01 |

⁹ 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.

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

¹¹ 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>.

¹² 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.¹³ 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.¹⁴

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:¹⁵

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

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

¹⁴ 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>.

¹⁵ "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/malg_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.”¹⁶

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

¹⁶ 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 ¹ | | Mental Health Adjudication Statutes and Selected Requirements ³ | | | |
|----------------|-------------------------------------|----------------------------------|---|-------------------------------|----------------------|---------------------------------|
| | Total | Per 1,000 Residents ² | Reporting Requirement Citation | Point of Contact ⁴ | | Adjudication Reporting Deadline |
| | | | | 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 ¹ | | Mental Health Adjudication Statutes and Selected Requirements ³ | | | |
|----------------|-------------------------------------|----------------------------------|--|-------------------------------|----------------------|---------------------------------|
| | Total | Per 1,000 Residents ² | Reporting Requirement Citation | Point of Contact ⁴ | | 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.).

WHERE DOES YOUR STATE STAND?

Number of Mental Health Records Provided to NICS

