

FATAL GAPS

HOW MISSING RECORDS IN THE FEDERAL
BACKGROUND CHECK SYSTEM PUT GUNS
IN THE HANDS OF KILLERS



NOVEMBER 2011

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EXECUTIVE SUMMARY

Since its creation in 1999, the National Instant Criminal Background Check System (NICS) has blocked more than 1.9 million permit applications and gun sales to felons, the seriously mentally ill, drug abusers and other dangerous people who are prohibited by federal law from possessing firearms.

Completing the necessary paperwork for a background check takes a gun buyer mere minutes, and more than 91 percent of these electronic screens are completed instantaneously. And, amidst a polarized national debate about gun control, the background check system enjoys nearly universal public support.

Despite its relative success, NICS has serious gaps and limitations that still allow firearms to be sold to dangerous people, including some of the nation's worst mass murderers.

The NICS database can access the names of individuals who are barred from possessing guns due to citizenship status and other prohibiting factors with relative ease. That data is regularly and efficiently shared among government and law enforcement agencies. However, for complex legal and logistical reasons discussed in this report, records about the kinds of serious mental health and drug abuse problems that disqualify people from gun ownership have proven more difficult to capture.

In 2007, Seung Hui Cho shot and killed 32 people at Virginia Tech before taking his own

life. More than a year earlier, a judge had found Cho to be mentally ill—a determination that should have barred him for life from possessing a firearm. But the records documenting his profound mental illness were never submitted to NICS, and Cho was able to pass several background checks before buying the guns he used in the mass shooting.¹

On January 8, 2011, Jared Loughner shot and killed six people and critically wounded 13 others in Tucson, including Congresswoman Gabrielle Giffords. Media reports indicated that Loughner had a troubled past that included a drug-related arrest, an admission of drug use to the U.S. Army and suspension from community college for a pattern of disturbing behavior.² He nevertheless passed background checks and bought firearms on two separate occasions, including the Glock 19 he used in his alleged attempt to assassinate Congresswoman Giffords. News accounts suggested that Loughner's admission of drug use should have barred him from purchasing his first gun, an assertion the government has never confirmed.³

After the Tucson mass shooting, Mayors Against Illegal Guns conducted an investigation to discover why critical mental health and drug abuse records are missing from the NICS database. We obtained Federal Bureau of Investigation (FBI) data on the number of records states and federal agencies have shared with the system, analyzed related state and federal policies and interviewed

more than 60 government officials responsible for NICS record collection and submission in 49 states and the District of Columbia.⁴

Based on our analysis and FBI data released on October 31, 2011, we drew the following conclusions:

Millions of records identifying seriously mentally ill people and drug abusers as prohibited purchasers are missing from the federal background check database because of lax reporting by state agencies.

- **Many state mental health records are still missing:** Twenty-three states and the District of Columbia have submitted fewer than 100 mental health records to the federal database. Seventeen states have submitted fewer than ten mental health records, and four states have not submitted any mental records at all.
- **State substance abuse records are also underreported:** Forty-four states have submitted fewer than ten records to the controlled substance file in the NICS Index, and 33 have not submitted any records at all. Even though federal regulations and policy establish that a failed drug test, single drug-related arrest or admission of drug use within the past year temporarily disqualify a person from possessing a gun,⁵ the vast majority of states are unaware that these records should be shared with NICS.
- **While still inadequate, mental health record reporting by the states has improved:** From August 2010 to October 2011, the number of state-submitted mental health records in the federal background check database increased by 35.4 percent.
- **States with the highest rates of mental health record submission have typically enacted policies that require or permit reporting of records:** Nine of the ten states that submitted the most mental health records per capita have adopted laws or policies that mandate or permit the sharing of mental health records with NICS, while just two of the ten states that submitted

records at the lowest rates have such laws or policies.

- **States with access to federal funding tend to submit more records:** From August 2010 to October 2011, the nine states that received NICS Act Record Improvement Program (NARIP) grants to improve NICS submission increased their rate of mental health record sharing by nearly twice as many records per capita as states with no federal funding.
- **Leadership makes a difference:** In each state that has significantly improved at sharing records with the federal database, one or more state actors have taken the lead in identifying and surmounting the logistical, legal and political obstacles to compliance.

Federal agencies are not reporting records to NICS despite a federal law requiring all federal agencies to report “any record of any person” who is prohibited from purchasing firearms to the FBI.⁶

- **Federal agencies have shared very few mental health records:** Fifty-two of the 61 agencies for which the FBI keeps relevant data have reported no mental health records to NICS. The vast majority of federal records were submitted by just one agency—the Department of Veterans Affairs.⁷
- **Most federal agencies have not submitted any substance abuse records:** Only three federal agencies—the FBI, the U.S. Coast Guard and the Court Services and Offenders Supervision Agency (CSOSA)—have shared any substance abuse records with NICS, with the vast majority submitted by CSOSA.
- **A Clinton-era policy directive may discourage federal reporting:** Federal agencies may continue to rely on a policy memorandum issued in 1994 by former Attorney General Janet Reno that instructs federal agencies not to submit certain substance abuse records to NICS.⁸

Recommendations

To improve state and federal submission to the NICS database, the federal government should:

- **Enforce the law on federal agency reporting:** The NICS Improvement Amendments Act of 2007 (The NICS Improvement Act) requires that federal agencies share mental health, substance abuse and other records that prohibit a person from owning a gun, but few agencies comply. The President should issue an executive order requiring all federal agency heads to certify twice annually, in writing, to the U.S. Attorney General that their agency has submitted all relevant records to NICS.
- **Increase incentives and penalties for state compliance:** The modest financial incentives and penalties the federal government wields under the NICS Improvement Act have not prompted states to fully report. Congress should significantly increase both the federal funding available to assist record sharing and the penalties for states that do not comply, and tie them to far more ambitious reporting targets. The Fix Gun Checks Act, introduced by Sen. Charles Schumer and Rep. Carolyn McCarthy as S.436 and H.R.1781 in the 112th Congress, would make these improvements.
- **Retain the names of prohibited purchasers who fail background checks:** The FBI should preserve the names of all individuals who have failed a gun background check in its National Crime Information Center (NCIC) database. This would save the FBI valuable time and resources by avoiding a full NICS investigation should those people attempt to buy another gun. In addition, retaining these names in NCIC would alert local and state law enforcement when a person prohibited from possessing a gun attempts to buy one.
- **Issue clear guidance on what mental health and drug abuse records should be submitted to NICS:** Many states are unaware of what mental health and drug abuse records should be sent to NICS. The FBI currently holds periodic regional conferences on record sharing for state officials, and it has sent some written guidance to state attorneys general. Nevertheless, many state officials reported that they do not have a clear understanding of which records should be shared. The need for clear guidance is particularly acute for mental health records that are held by entities other than courts, and for substance abuse records that do not involve arrests. The FBI and the ATF should issue clear, complete guidance and make it available online.
- **Help states that already have record repositories to transfer their records to NICS:** Many states already have centralized repositories with tens or hundreds of thousands of mental health records that should be shared with the federal database. The FBI should work more aggressively with these states to overcome the logistical, technical or other hurdles to sharing these records.
- **Help states develop qualified “relief from disability” programs:** Many states are unable to get NARIP grants to improve their record sharing because they have difficulty enacting the gun rights restoration program that federal law requires. The ATF should develop a set of model bills that satisfy federal requirements, while insuring that a petitioner’s right to buy a gun may be restored only after his or her mental health records are thoroughly reviewed by qualified experts. The Justice Department should make those materials and other guidance available to state agencies and policymakers.
- **Fully fund NICS programs:** While federal NARIP grants are the largest source of funding to support state record sharing, Congress has appropriated only 4.96 percent of the amount authorized for the grant from FY2009 through FY2010. The federal government should increase funding for the program.

INTRODUCTION

IN 1968, AFTER THE ASSASSINATIONS OF MARTIN LUTHER KING, JR. AND ROBERT F. KENNEDY, CONGRESS ENACTED THE FIRST FEDERAL LAWS TO PROHIBIT ACCESS TO FIREARMS BY CERTAIN CATEGORIES OF DANGEROUS PEOPLE, INCLUDING CONVICTED FELONS, THE SERIOUSLY MENTALLY ILL AND DRUG ABUSERS.⁹

Twenty-five years later, Congress passed the Brady Bill, named for President Reagan's press secretary James Brady, who was shot and critically wounded when a mentally unstable man attempted to assassinate the President.¹⁰ The Brady Bill established the National Instant Criminal Background Check System (NICS) and required prospective buyers at federally licensed firearms dealers to pass a background check before purchasing a gun.

Today, amidst a polarized national debate about gun control, the background check system enjoys nearly universal public support.¹¹ Between 1999 and 2009, NICS processed roughly 100 million background checks and blocked an estimated 1.9 million permit applications and gun sales to people prohibited by law from possessing guns.¹² Completing the necessary paperwork takes the buyer mere minutes, and more than 91 percent of these electronic checks are resolved instantaneously.¹³

Despite its relative success, NICS has serious gaps and limitations that still allow firearms to be sold to dangerous people, including some of the nation's worst mass murderers.

The NICS database can access the names of individuals who are barred from possessing guns because of citizenship status and other prohibiting factors relatively easily. That data is regularly and efficiently shared among government and law enforcement agencies. But, for complex legal and logistical reasons discussed below, records on serious mental health and drug abuse problems that also disqualify people from gun ownership have proven more difficult to capture.

In 2007, Seung Hui Cho shot and killed 32 people at Virginia Tech before taking his own life. Two years earlier, a judge had found Cho to be mentally ill—a determination that should have barred him for life under federal law from possessing a firearm. But the records documenting his profound mental illness were never submitted to NICS, and Cho was able to

pass several background checks before buying the guns he used in the mass shooting.¹⁴

In response to the Virginia Tech shooting, Congress unanimously passed the NICS Improvement Amendments Act of 2007 (the NICS Improvement Act), which was intended to increase reporting of records into the system.¹⁵ It requires all federal agencies to report relevant records to NICS on a quarterly basis, and requires the U.S. Attorney General to report on federal and state compliance every year in a report to Congress.¹⁶

The law was also intended to improve reporting by states. Because the Tenth Amendment to the U.S. Constitution prevents the federal government from compelling state agencies to submit records,¹⁷ the NICS Improvement Act created a system of financial incentives to encourage robust state reporting.¹⁸

Under this new law, states that share at least 90 percent of their records on prohibited persons with NICS receive a waiver of the 10 percent state matching requirement for National Criminal History Improvement Program (NCHIP) grants, which are awarded to expand criminal justice information technology and communications.¹⁹ States that fail to make adequate progress towards the 90-percent records goal face the possibility of slight reductions in their Byrne Justice Assistance Grants (JAG).²⁰

In addition to these incentives, the NICS Improvement Act also created the NICS Act Record Improvement Program (NARIP) to provide direct financial assistance to states for improving their infrastructure for collecting and submitting relevant records to NICS. NARIP is the largest source of funding to support state efforts to improve record reporting; the program awarded more than \$39.5 million to states between 2009 and 2011.²¹ To qualify for NARIP grants, states must provide the Justice Department with a “reasonable estimate” of the number of state records on federally prohibited gun purchasers that should be submitted to the

database. States must also enact a “relief from disability” program—also known as a gun rights restoration law—that establishes a procedure by which people who are ineligible for gun ownership due to mental illness can regain their rights if they no longer pose a danger to the public.²²

The number of records entered into NICS has increased significantly since the law was signed in January 2008. As of December 2010, NICS officials were able to access nearly 70 million records when conducting a background check, including more than 1.1 million records identifying people who are prohibited for reasons of mental health.²³ By October 2011, the number of mental health records in the NICS database had risen to more than 1.3 million.²⁴

As the number of records in NICS has increased, so has the number of attempted firearms purchases that have been denied because of the mental health status of the buyer. In 2006, for example, only 405 gun sales were declined for mental health reasons;²⁵ in 2010, that number increased to 6,103.²⁶

Despite the progress prompted by Virginia Tech, another mass shooting less than four years later demonstrated that dangerous people are still able to pass background checks and buy firearms, to disastrous results.

On January 8, 2011, Jared Loughner shot and killed six people and critically wounded 13 others in Tucson, including Congresswoman Gabrielle Giffords. Media reports indicated that Loughner had a troubled past that included a drug-related arrest, an admission of drug use to the U.S. Army and suspension from community college for a pattern of disturbing behavior.²⁷ He nevertheless passed background checks and bought firearms on two separate occasions, including the Glock 19 he used in his alleged attempt to assassinate Congresswoman Giffords. News accounts suggested that Loughner’s admission of drug use should have barred him from purchasing his first gun, an assertion the government has never confirmed.²⁸



After the Tucson shooting, Mayors Against Illegal Guns attorneys conducted an investigation to discover what records are missing from NICS, and why. We obtained previously unreleased FBI data on the number of records states and federal agencies have shared with the system; analyzed related state and federal policies; and interviewed more than 60 government officials responsible for NICS record collection and submission in 49 states and the District of Columbia.²⁹

We reached the following conclusions:

Millions of records identifying seriously mentally ill people and drug abusers as prohibited gun purchasers are still missing from the federal background check database because of lax reporting by state agencies.

- **Many state mental health records are still missing:** Twenty-three states and the District of Columbia have submitted fewer than 100 mental health records to the federal database. Seventeen states have submitted fewer than ten mental health records, and four states have not submitted any records.
- **State substance abuse records are also underreported:** Forty-four states have submitted fewer than ten records to the controlled substance file in the NICS Index, and 33 have not submitted any records. Even though federal regulations establish that a failed drug test, single drug-related arrest or admission of drug use within the past year temporarily disqualify a person from possessing a gun,³⁰ the vast majority of states are unaware that these records should be sent to NICS.
- **While still inadequate, mental health record reporting by the states has improved:** From August 31, 2010 to October 31, 2011, the number of state-submitted mental health records in the federal background check database increased by 35.4 percent, from 864,962 to 1,171,029.

Federal agencies are not reporting records to NICS, even though the NICS Improvement Act requires all federal agencies to provide “any record of any person” who is prohibited from purchasing firearms to the FBI on at least a quarterly basis.³¹

- **Federal agencies have shared very few mental health records:** Fifty-two of 61 federal agencies listed in the FBI data obtained by Mayors Against Illegal Guns have reported zero mental health records to NICS. Federal agency reporting of mental health records increased by ten percent between March 2011³² and October 2011, to a combined total of 143,579, the vast majority of which were submitted by one agency, the Department of Veterans Affairs.³³
- **Most federal agencies have not submitted any relevant substance abuse records to NICS:** According to the latest data obtained from the FBI, only three federal agencies—the FBI, the U.S. Coast Guard, and the Court Services and Offenders Supervision Agency (CSOSA), the probation and parole services agency for the District of Columbia—have submitted any substance abuse records. Of the combined total of 12,023 federal controlled substance records in NICS, all but 1,391 came from CSOSA. The vast majority of federal agencies, including the Drug Enforcement Administration, the Department of Defense and the Air Force, Army, Navy and Marine Corps, have not submitted a single substance abuse record.

The remainder of this report explores the complex set of factors that complicate federal and state sharing of records with the NICS system, identifies the reasons some states have experienced significantly more success in sharing those records than others, and makes recommendations for reform.

HOW THE FEDERAL BACKGROUND CHECK SYSTEM SHOULD WORK

THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM, ADMINISTERED BY THE FBI, IS DESIGNED TO SCREEN PROSPECTIVE GUN PURCHASERS TO MAKE SURE THEY ARE NOT PROHIBITED FROM PURCHASING OR POSSESSING A FIREARM.

Federal law prohibits ten categories of people from owning a gun: felons, people under indictment for a felony, fugitives, drug abusers, individuals who have been adjudicated as a mental defective or who have been committed to a mental institution, illegal aliens, people who were dishonorably discharged from the military, people who have renounced their U.S. citizenship, people who have been convicted of domestic violence misdemeanors and people who are subject to certain domestic violence protective orders.³⁴

These federal prohibitors define the baseline standard for legal gun possession in the United States, though some states have enacted additional restrictions—for example, limiting ownership to people over the age of 21.

Every gun purchase from a federally licensed firearms dealer is subject to a background check. At the time of an attempted purchase, the dealer will run a background check on the purchaser by phoning the NICS call center or submitting the buyer's information to NICS

through its web-based E-Check system.³⁵ Phone calls to NICS are answered within seven seconds, on average, and resolved immediately while the dealer is on the phone more than 90 percent of the time.³⁶ The investigator will then tell the dealer to allow the sale, deny the sale or wait three days while NICS personnel make a final determination.³⁷ Neither NICS nor the dealer retains any record of the search.

In 13 states known as point-of-contact (POC) states, the state implements and maintains its own background check system. Instead of contacting the federal system directly, federally licensed firearms dealers in POC states contact a designated state agency to electronically access NICS and run a background check in the same manner described above.³⁸ An additional eight states are "partial-POCs" that designate a state agency to electronically access NICS for some background checks, typically for handgun and/or handgun permit checks, but allow NICS to conduct other background checks for the state.³⁹

The NICS background check involves a search of three separate databases: the National Crime Information Center (NCIC), the Interstate Identification Index (III) and the NICS Index. NCIC and III are databases used by law enforcement for a wide range of investigative purposes, while the NICS Index was created specifically and exclusively for gun purchase background checks.

NCIC is a criminal record database accessible to federal, state and local law enforcement personnel 24 hours a day, 365 days a year. The database is comprised of 19 separate files, containing a total of more than 15 million records as of December 31, 2010.⁴⁰ Seven of these files relate to stolen property, and 12 relate to individuals who fall into the following categories: Supervised Release; National Sex Offender Registry; Foreign Fugitive; Immigration Violator; Missing Person; Protection Order; Unidentified Person; U.S. Secret Service Protective; Gang; Known or Appropriately Suspected Terrorist; Wanted Person; and Identity Theft Files. From the time the system was established through December 31, 2010, NICS had searched more than 4.8 million NCIC records in the course of conducting background checks⁴¹

According to a former ATF official, the system would operate more effectively if NCIC also contained a separate file listing the names of individuals who have failed background checks and were denied gun purchases. If the names of denied persons were listed in NCIC, the FBI would not need to conduct a new, comprehensive NICS investigation if these individuals make another attempt to buy a gun, which would save time and resources. In addition, entering these names into NCIC would make the fact that a prohibited purchaser had attempted to purchase a firearm available to state and local law enforcement.

The Interstate Identification Index (III) contains criminal history records submitted by states to the FBI. As of December 31, 2010, NICS had searched more than 58.5 million records

in the III.⁴² According to the FBI, however, only 36 states submit III records.⁴³ According to the Department of Justice, "If an agency does not fingerprint the individual or does not submit the fingerprints to the state, the arrest/conviction information will not be in the database." Some of the state officials Mayors Against Illegal Guns interviewed reported that some conviction records are not being sent into III, particularly from states where arrest records do not include a fingerprint card, a subject not addressed by this report.

The NICS Index was created for the sole purpose of housing information on individuals prohibited by federal law from purchasing a gun. Although some of the information may be duplicative, most of the records in the NICS Index are not available in III or NCIC. For example, a record of a court-ordered involuntary commitment for mental health treatment is not a criminal arrest or conviction record that would be submitted to III. But because it is dispositive evidence that a person is prohibited from purchasing a gun, it should be reported to the NICS Index. A conviction for a misdemeanor crime of domestic violence, on the other hand, may appropriately be submitted to both III and the NICS Index. The extent to which such records are double-counted depends on whether the reporting agency has chosen to double-flag such records and to submit them to both the NICS Index and III. As of October 31, 2011, the NICS Index contained more than 7.2 million records, including more than 1.3 million records in the mental health file and 13,415 records in the controlled substance file.⁴⁴

It must be noted, however, that even if the NICS database were complete, federal law only requires background checks to be conducted by federally licensed dealers. About 40 percent of U.S. gun sales are conducted by unlicensed "private sellers."⁴⁵ Until this private sale loophole is closed, many prohibited purchasers will continue to escape any background check at all.⁴⁶

SUBMISSION OF MENTAL HEALTH + DRUG ABUSE RECORDS INTO NICS

FOUR YEARS AFTER THE MASS SHOOTING AT VIRGINIA TECH, THE NUMBER OF FEDERAL AND STATE MENTAL HEALTH RECORDS IN THE NICS INDEX HAS GROWN BY ROUGHLY ONE MILLION RECORDS. NEVERTHELESS, AN ESTIMATED 1.5 MILLION RECORDS OR MORE REMAIN MISSING FROM THE FEDERAL SYSTEM.⁴⁷

Twenty-three states and the District of Columbia have submitted fewer than 100 mental health records to NICS as of October 31, 2011. Seventeen of these states have submitted fewer than ten records, and four of these states have submitted no records.

The reasons for noncompliance are widely disparate and complex. Even among states with relatively successful record submission programs, there is great variation in both the number and kind of mental health records being submitted to NICS. But a few common obstacles—privacy issues, logistical problems, lack of funding and lack of leadership—impair efforts in many states.

States that have significantly improved their performance also have at least two attributes in common: the ability to commit funding to their efforts and the political leadership to succeed, most often driven by one or more champions.

To understand the scope of the problem, Mayors Against Illegal Guns obtained data

from the FBI about state record submissions to the NICS Index. Tables 1 and 2 on the following page show the number of records sent by each state to the mental health file of the NICS Index as of October 31, 2011. The charts include the total number of record submissions and, to control for population, the number of record submissions per 100,000 residents of each state.⁴⁸ These charts also note which states have passed laws or policies requiring or permitting the sharing of mental health records with NICS—an issue discussed later in this report in the section entitled “Issues Affecting State Submission of Mental Health Records.”

Mayors Against Illegal Guns also compared record-sharing data from October 31, 2011 with data from August 31, 2010 to determine which states have increased the number of mental health records they shared with NICS over the past 14 months. Tables 3 and 4 below display the change in the number of records submitted, and the change per 100,000 residents to control for each state’s population.

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STATES WITHOUT LAWS/
POLICIES RELATED TO RECORD
SHARING IN RED

TABLE 1

NUMBER OF MENTAL HEALTH RECORDS
SUBMITTED

AS OF OCTOBER 31, 2011

State	Number of Records
California	279,589
Texas	174,802
Virginia	161,334
New York	160,092
Michigan	99,268
Washington	79,651
Florida	40,775
Missouri	31,498
Colorado	27,002
Ohio	26,876
National Average	22,961
North Carolina	21,894
Connecticut	11,141
Arizona	8,516
Illinois	7,127
Wisconsin	5,943
New Mexico	5,758
West Virginia	5,653
Georgia	5,185
Minnesota	3,960
Kansas	3,435
Indiana	3,269
Tennessee	3,142
Iowa	2,040
Arkansas	1,897
Nevada	484
Alabama	243
Utah	109
Kentucky	91
District of Columbia	80
Maryland	58
Maine	35
Vermont	25
South Carolina	17
New Jersey	15
Wyoming	4
Montana	3
Oregon	3
Mississippi	2
Nebraska	2
New Hampshire	2
Oklahoma	2
South Dakota	2
Hawaii	1
Louisiana	1
Massachusetts	1
North Dakota	1
Pennsylvania	1
Alaska	0
Delaware	0
Idaho	0
Rhode Island	0

TABLE 2

MENTAL HEALTH RECORDS SUBMITTED
PER 100,000 INHABITANTS

AS OF OCTOBER 31, 2011

State	Submissions per 100,000 inhabitants
Virginia	2,016.4
Washington	1,184.5
Michigan	1,004.4
New York	826.1
California	750.5
Texas	695.2
Colorado	536.9
Missouri	525.9
National Average	379.3
Connecticut	311.7
West Virginia	305.1
New Mexico	279.6
Ohio	233.0
North Carolina	229.6
Florida	216.9
Arizona	133.2
Kansas	120.4
Wisconsin	104.5
Minnesota	74.7
Iowa	67.0
Arkansas	65.1
Illinois	55.5
Georgia	53.5
Indiana	50.4
Tennessee	49.5
Nevada	17.9
District of Columbia	13.3
Alabama	5.1
Vermont	4.0
Utah	3.9
Maine	2.6
Kentucky	2.1
Maryland	1.0
Wyoming	0.7
South Carolina	0.4
Montana	0.3
South Dakota	0.2
New Jersey	0.2
New Hampshire	0.2
North Dakota	0.1
Nebraska	0.1
Oregon	0.1
Hawaii	0.1
Mississippi	0.1
Oklahoma	0.1
Louisiana	0.0
Massachusetts	0.0
Pennsylvania	0.0
Alaska	0.0
Delaware	0.0
Idaho	0.0
Rhode Island	0.0

TABLE 3

CHANGE IN NUMBER OF MENTAL HEALTH
RECORD SUBMISSIONS

BETWEEN AUGUST 31, 2010 AND OCTOBER 31, 2011

State	Number of Records
Texas	114,122
Washington	46,704
California	23,483
Virginia	22,149
Missouri	20,094
North Carolina	8,962
Florida	8,364
Illinois	7,113
National Average	6,001
Connecticut	5,814
New Mexico	5,758
Wisconsin	5,425
Colorado	5,306
New York	5,130
West Virginia	5,044
Ohio	4,436
Minnesota	3,960
Arizona	3,480
Tennessee	2,382
Georgia	2,194
Iowa	1,946
Indiana	1,533
Michigan	1,441
Arkansas	475
Nevada	321
Kansas	250
Kentucky	87
Utah	37
Alabama	13
Maryland	13
Maine	11
New Jersey	7
South Carolina	4
Oregon	2
Hawaii	1
Massachusetts	1
Nebraska	1
North Dakota	1
Pennsylvania	1
South Dakota	1
Wyoming	1
Alaska	0
Delaware	0
District of Columbia	0
Idaho	0
Louisiana	0
Mississippi	0
Montana	0
New Hampshire	0
Oklahoma	0
Rhode Island	0
Vermont	0

TABLE 4

CHANGE IN RECORDS SUBMITTED PER
100,000 INHABITANTS

BETWEEN AUGUST 2010 AND OCTOBER 2011

State	Number of Records
Washington	694.5
Texas	453.8
Missouri	335.5
New Mexico	279.6
Virginia	276.8
West Virginia	272.2
Connecticut	162.7
Colorado	105.5
National Average	99.1
Wisconsin	95.4
North Carolina	94.0
Minnesota	74.7
Iowa	63.9
California	63.0
Illinois	55.4
Arizona	54.4
Florida	44.5
Ohio	38.5
Tennessee	37.5
New York	26.5
Indiana	23.6
Georgia	22.6
Arkansas	16.3
Michigan	14.6
Nevada	11.9
Kansas	8.8
Kentucky	2.0
Utah	1.3
Maine	0.8
Alabama	0.3
Maryland	0.2
Wyoming	0.2
North Dakota	0.1
South Dakota	0.1
South Carolina	0.1
New Jersey	0.1
Hawaii	0.1
Nebraska	0.1
Oregon	0.1
Massachusetts	0.0
Pennsylvania	0.0
Alaska	0.0
Delaware	0.0
District of Columbia	0.0
Idaho	0.0
Louisiana	0.0
Mississippi	0.0
Montana	0.0
New Hampshire	0.0
Oklahoma	0.0
Rhode Island	0.0
Vermont	0.0

According to these data, between August 31, 2010 and October 31, 2011:

- On average, each state increased its mental health record submissions by an additional 6,001 records, or 99.1 records per 100,000 residents.
- Five states increased submissions by more than 20,000 records: Texas, Washington, California, Virginia and Missouri.
- When controlling for population, the five states with the highest rate of submission as of August 31, 2010—Virginia, Michigan, New York, California and Washington—were still the five highest performing states as of October 31, 2011.

Despite improvement by some states, almost half of the states have submitted 100 or fewer mental health records to NICS.

Issues Affecting State Submission of Mental Health Records

To understand why so many states have failed to submit mental health records to NICS, Mayors Against Illegal Guns reviewed record sharing laws in each state and conducted interviews with more than 60 officials from state agencies responsible for record sharing. Our staff agreed to keep the identity of interviewees confidential. Several common themes appear to explain the variation in state success at reporting mental health records, and two factors explain why some states have significantly improved their reporting rates.

Variation in State Reporting Statutes

Despite the increased urgency to report records in the wake of the Virginia Tech shooting, many states have faced legal barriers to sharing sensitive mental health information with NICS. Some states have not provided their agencies with the authority to share mental health records with the federal government, and other states have faced state privacy laws barring the sharing of such records.⁴⁹ To solve either or both problems, 28 states have passed laws requiring or

permitting relevant mental health records to be submitted to NICS. As a result, there is a strong association between higher rates of mental health record reporting and the enactment of state laws or policies that require or permit agencies to report their records.

Before Virginia Tech, few states had implemented legal reforms to facilitate reporting. At the time of the shootings, only four states had laws that required agencies to share relevant mental health records with NICS: Alabama (2004),⁵⁰ Colorado (2002),⁵¹ Connecticut (2005)⁵² and Georgia (2005).⁵³ A fifth state, Florida (2006),⁵⁴ permitted sharing of mental health records with NICS, but did not require it.

In the wake of Virginia Tech, 18 states changed their laws to require that mental health records be sent to NICS: Delaware (2011),⁵⁵ Idaho (2010),⁵⁶ Illinois (2008),⁵⁷ Indiana (2009),⁵⁸ Iowa (2011),⁵⁹ Kansas (2007),⁶⁰ Kentucky (2011),⁶¹ Maine (2008),⁶² Minnesota (2010),⁶³ Nebraska (2011),⁶⁴ Nevada (2010),⁶⁵ North Carolina (2010),⁶⁶ Oregon (2009),⁶⁷ Tennessee (2010),⁶⁸ Texas (2009),⁶⁹ Virginia (2008),⁷⁰ Washington (2009)⁷¹ and Wisconsin (2010).⁷² An additional four states changed their laws to permit sharing of mental health records with NICS: Missouri (2008),⁷³ New Jersey (2010),⁷⁴ New York (2008)⁷⁵ and West Virginia (2008).⁷⁶ California (2008) also entered into a memorandum of understanding with the FBI to facilitate record sharing.

For the most part, these laws have been successful in helping states overcome the legal barriers to compliance. Several of these states—most notably New York, Texas, Virginia and Washington—made dramatic improvements in the number of mental health records shared since passing their statutes. New York increased the number of records submitted from one to 160,092; Texas from zero to 174,802; Virginia from 78,478 to 161,334; and Washington from 15 to 79,651.

Of the ten states with the greatest number of mental health records in the NICS index, eight have enacted relevant laws or policies. Among

the ten states with the least number of mental health records in the NICS index, eight have not taken these affirmative steps.

The same is true when controlling for population: of the ten states with the highest number of records submitted per 100,000 inhabitants, nine have enacted relevant laws or policies. Of the ten states with the lowest number of submissions per 100,000 residents, eight have not. Moreover, the states with reporting laws and policies have submitted, on average, 460.0 records per 100,000 residents, while the remaining states have submitted just 167.5. The national average is 379.3.

Among the ten states with the greatest increase in records submitted between August 31, 2010 and October 31, 2011, nine have laws or policies requiring or permitting the sharing of mental health data with NICS.

The same is true when controlling for population: of the ten states that registered the greatest increase in rate of record submission during this period, nine have enacted relevant laws or policies.

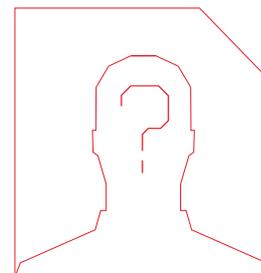
But even states that have passed laws requiring record sharing face a host of complications in trying to fully comply, and variations between state statutes may explain some of the disparity in record reporting. States have made different decisions about what constitutes having been “committed to a mental institution” under federal law. Different state laws define relevant records differently, and state officials charged with implementing record-sharing statutes interpret the requirements differently, leading to further variation in state reporting.

For example, Alabama changed its law in 2004 to require that mental health records be sent to NICS, but it defined relevant records so narrowly that only 243 records have been submitted. Under the Alabama definition, records need only be submitted when an involuntary commitment ordered by a court is based on evidence from law enforcement that the individual has “shown a history of inappropriate use of firearms or poses a

threat to use firearms inappropriately.”⁷⁷ State officials have interpreted this standard to apply only to evidence that has been presented in open court about a person’s history of misuse of a gun or likelihood to use a gun inappropriately—a standard that falls far short of the baseline federal law that prohibits the seriously mentally ill from possessing a gun, regardless of their past history with firearms. As a result, it is likely that prohibited individuals in Alabama are slipping through the cracks and passing gun background checks.

In Arkansas, the record-sharing statute requires submission of records of any involuntary commitment of 45 days or more. In Maine, which had submitted only 35 records as of October 31, 2011, a state official attributed some of the reporting delay to a disagreement between the Department of Public Safety and the legislature as to what records should be submitted. According to the official, the legislature intended to allow sharing only records of involuntary commitments for longer than 72 hours, while the Department of Public Safety contends that shorter periods of involuntary commitment also trigger the federal prohibition. Apparently this dispute has stalled submissions rates, and Maine has made little progress since passing its law in 2008. And in Utah, an official reported that the Bureau of Criminal Identification takes the position that it does not have the legal authority to determine who is prohibited under federal law, so it only submits records when it is absolutely clear from the court record that a person is prohibited for mental health reasons. Only 109 mental health records from Utah have been sent to NICS.

States have also made inconsistent determinations about who must send records to NICS. At least 13 states and the District of Columbia take the view that only mental health records held by courts are relevant to firearms possession and should be submitted to NICS. Many other states were unclear about whether their courts held all relevant mental health records or whether mental health providers should also be submitting records.



ATHENS, AL • JANUARY 2004
Two Police Officers Killed

Farron Barksdale passed a background check and purchased an SKS rifle despite having been involuntarily committed to mental hospitals on at least two occasions. Two days later, he shot and killed two Athens, Alabama police officers.



Existence of a Centralized State Record Database

States that already maintain their own state repository of mental health records may face an additional set of challenges. Many of these states are point-of-contact (POC) states, which designate state agencies to run background checks for federally licensed dealers instead of contacting NICS to do so on their behalf. Even though these states maintain their own databases for background checks, it is still vital that mental health records are reported to NICS in case prohibited individuals move to a different state and attempt to buy a gun.

States such as California, Illinois, Virginia and Washington were once slow to submit mental health records because of the difficulty in disaggregating records that are relevant to federal restrictions on firearms purchases from those records that are relevant to state restrictions, according to officials in these states. California overcame this hurdle by using National Criminal History Improvement Program (NCHIP) grants to help fund the work to disaggregate records. Some states have failed to share the records in their databases, perhaps due to state privacy laws or confusion about how to appropriately differentiate certain records. For example, Pennsylvania has still submitted just one mental health record to NICS despite the fact that it has thousands of mental health records in its state database.⁷⁸

The existence of a centralized state repository may also complicate a state's ability to provide a mental health records estimate to NICS, which the NICS Improvement Act requires as a prerequisite for NARIP funding. For example, Maryland has been unable to qualify for federal funding because it cannot disaggregate its records and arrive at a reasonable records estimate.

Lack of Accountability for Noncompliance

Even among states that have been relatively successful at submitting mental health records to NICS, lack of accountability for reporting procedures has prevented many

relevant records from being submitted to NICS. For example, Connecticut record-sharing procedures require the Connecticut Department of Mental Health & Addiction Services to conduct a daily review of its records and send the name, date of birth and social security number of any person who has been involuntarily committed to the Connecticut Department of Public Safety, which then sends the records to NICS. But there are no provisions for auditing the Department of Mental Health to ensure compliance.

Similarly, in Arizona, relevant mental health records are held by the clerks of each county court, who are required by a 2002 state law to share certain records with the Department of Public Safety. Even after the Department of Public Safety sent letters to each of the 15 county clerks requesting relevant records, three clerks have not submitted relevant records, according to an Arizona state official. But even among those clerks who comply, the Department has no way of ensuring that all relevant records do get entered. The Department makes population-based estimates to gauge compliance, but there is no mechanism to verify the number of records held or to compel county clerks to submit all relevant records.

Federal Funding and Mental Health Record Reporting

NICS Act Record Improvement Program (NARIP) grants are the largest funding source to support record sharing with NICS. The NICS Improvement Act of 2007 authorized the Attorney General to grant up to \$187,500,000 in FY2009 and \$375,000,000 in FY2010 and FY2011 to states to help with record sharing.⁷⁹ Only a small fraction of this authorized amount—4.96 percent—has been appropriated, however, by Congress.⁸⁰

Through FY2010, just nine states had received NARIP grants.⁸¹ In the past 14 months, these nine states increased their rates of mental health record submission by an average of 142.3 records per 100,000 residents, or nearly

NARIP FUNDING 2009-2010

State	Mental Health Records as of 4/2011	Mental Health Records as of 10/2011	Total 2009-2010 Funding	Mental Health Component of Grant (where specified in award)
Florida	38,117	40,775	\$ 3,159,228	Supports efforts to analyze data from the state repository and other sources to identify weaknesses or deficiencies in the Mental Competency Database, determine the reasons for unavailability of records and address potential system enhancements
Idaho	0	0	\$ 1,949,578	N/A
Illinois	5,792	7,127	\$ 1,209,500	Supports automating the process by which the state police submit mental health adjudication records
Nevada	335	484	\$ 798,471	N/A
New Jersey	15	15	\$ 860,331	Supports improving the recording, automation and transmittal of mental health adjudications
New York	157,583	160,092	\$ 6,931,999	Supports improving the tracking of involuntary commitments and civil guardianship records to state agencies and increasing the availability of these records to the NICS Index
Oregon	1	3	\$ 2,770,849	Maintaining a gun rights restoration program
Texas	129,449	174,802	\$ 751,537	N/A
Wisconsin	3,550	5,943	\$ 981,372	Supports a gun rights restoration program
Grantee State Totals	334,842	389,241	\$ 19,412,865	

double the rate of increase—78.8 records per 100,000 residents—submitted by states that did not receive grants. The rate of increase for NARIP recipients also far exceeded the overall national average of 99.1 records per 100,000 residents.

Still, the full impact of FY2010 grant funding is not yet known. According to officials in three states that received FY2010 NARIP grants but are not yet reporting many mental health records—Idaho (no records), Oregon (three records) and New Jersey (15 records)—the grants are funding projects to improve reporting and, for at least Idaho and New Jersey, will likely lead to the submission of thousands of records. Both of those states are using their NARIP grant money to create a fully automated system for submitting mental

health records. An Idaho official told Mayors Against Illegal Guns attorneys in November 2011 that the state’s system will go live in the next few months, and a New Jersey official reported that their system is expected to be up and running by the spring of 2012.

The vast majority of states have been unable to obtain NARIP grants, principally because they do not have a sufficient “relief from disabilities” program, otherwise known as a gun rights restoration law. In exchange for its support for the NICS Improvement Act, the National Rifle Association (NRA) reportedly insisted that the bill require, as a prerequisite to obtaining funding, that states create a procedure through which individuals can petition to have their mental health records removed from the NICS Index and have their

gun rights restored.⁸²The Justice Department must approve these programs. If a state's program is determined to be inadequate, the state is declared ineligible for NARIP monies and sent back to the legislative drawing board.

At least 22 states have successfully enacted gun rights restoration laws.⁸³Ten others have enacted these programs, but half of those laws do not appear to have been approved by the Justice Department, and have been found to be inadequate.

In every state where a gun rights restoration law was rejected by the Justice Department, state legislators had drafted laws without asking for input from the FBI or the ATF. For example, Indiana officials report that their restoration law was ruled ineligible because it used imprecise terms, such as "handgun" instead of "firearm." The Indiana legislature is now considering a bill that would correct these errors. Similarly, Iowa passed a law in 2010, but DOJ deemed it insufficient because it applied only prospectively. With drafting help from representatives of NICS and the NRA, the state passed an updated bill in 2011. Officials in Missouri reported that the Justice Department rejected its 2009 law because it did not require that an individual's reputation be taken into account when she petitioned to restore her rights.

User Fees and NCHIP Grants

Several states that are ineligible for NARIP grants have looked for alternate sources of funding to implement or improve their record-sharing programs.

Officials in three states told Mayors Against Illegal Guns that they have generated funds for record sharing through user fees. Since the economic downturn, Georgia has stopped allocating money from the state general fund to its record-sharing program. Instead, it has started charging a user fee for criminal history information, which, according to a Georgia state official, raises about a third of the funds necessary to support its record-

sharing program. Kansas also uses the \$20 fee it charges residents for running criminal background checks to fund improvements to its system, including transitioning from a paper system to an electronic submission process. And Kentucky, which received a NARIP grant in 2011, had already adopted the practice of allocating \$10 of each \$60 concealed carry permit application or renewal fee to the state courts to fund background checks.⁸⁴

Examples of states that pay for their own programs through existing state funding are few and far between. The Arkansas Crime Information Center, which bears the cost of two full-time employees to enter data into the NICS Index, is one of these outliers.

A larger number of states that are ineligible for NARIP grants have instead obtained National Criminal History Improvement Program (NCHIP) grants. Since 1995, NCHIP grants have provided funds to states seeking to improve the collection and distribution of criminal history record information used in a wide range of criminal justice and noncriminal justice background check systems.⁸⁵ NCHIP grants stress NICS improvement as a core goal of the grant awards, but unlike NARIP, NCHIP grants may be used for other purposes. Though the eligibility criteria for NCHIP and NARIP grants are similar, NCHIP grants do not require state applicants to have a gun rights restoration law.

NCHIP grants tend to be much smaller than NARIP grants, and many more states apply for them. In FY2011, \$31.2 million in NCHIP grants was divided among the states, with \$20.1 million of that going to just 12 states.⁸⁶

In 2010, eight states were granted NCHIP funds for projects that addressed NICS-related issues: Arkansas, Connecticut, Delaware, Kansas, Louisiana, Maryland, Virginia and West Virginia.⁸⁷These states used NCHIP funds, at least in part, for a variety of NICS improvements, from digitizing records to reviewing state criminal records databases

for federal gun prohibitors. Several of these states showed marked improvement in mental health record submissions in 2010 over prior years, including Arkansas, Connecticut, Kansas, Virginia and West Virginia.

The recently announced NCHIP awards for FY2011 are intended to fund a range of state NICS improvements.⁸⁸

Though NCHIP funding awards are modest, even small grants enabled some states to make progress on reporting mental health records.

No Funding, Poor Reporting

States without federal or state funding are generally not submitting mental health records, even if they have the legal structure in place to do so.

Illinois passed a law in 2008 mandating reporting,⁸⁹ but records were not submitted in any real number until December 2010, when it allocated state funding to pay for programmers at both the Illinois State Police and the Department of Human Services. With the additional support, Illinois submitted 5,000 records. The state has since received a NARIP grant that it is using to improve its reporting system and, by October 31, 2011, it had submitted 7,127 mental health records to the NICS Index.

It took California two years after entering into a Memorandum of Understanding with the FBI for the state to submit any records because there was no funding to pay for the necessary logistical changes to disaggregate records of individuals prohibited from owning a gun by state law, but not federal law. The state was eventually able to use some of its NCHIP grant to complete these improvements.

Leadership and Political Will to Improve Submission of Mental Health Records

A review of the states that have dramatically improved mental health record submissions reveals that, despite their range of

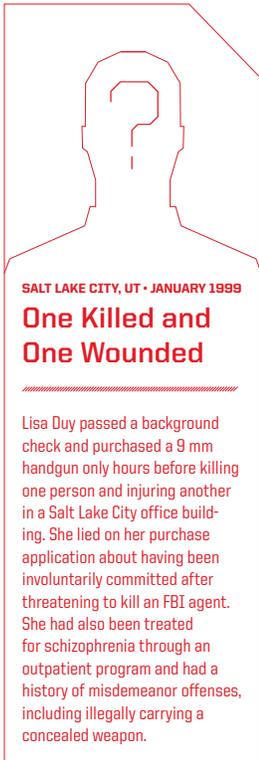
FY 2010 NCHIP GRANTS FOR NICS IMPROVEMENT

State	Grant Award	Mental Health Records as of			
		Dec. 2006	Aug. 2010	Apr. 2011	Oct. 2011
Arkansas	\$240,427	46	1,422	1,644	1,897
Connecticut	\$565,437	0	5,327	10,347	11,141
Delaware	\$135,405	0	0	0	0
Kansas	\$327,435	972	3,185	3,077	3,435
Louisiana	\$171,108	0	1	1	1
Maryland	\$379,164	2	45	53	58
Virginia	\$349,039	78,478	139,185	151,747	161,334
West Virginia	\$535,058	0	609	3,988	5,653

circumstances, they have one attribute in common: strong and creative leadership.

Without question, tragic events like the mass shootings at Virginia Tech and Tucson supplied a strong incentive for states to submit more records to NICS. For example, a California official reported that the state overcame all legal obstacles two years before any records were shared, but Virginia Tech prompted faster action. This story was echoed by an official in North Carolina who reported that the tragedy kick-started the state's efforts. And, more recently, an official in Arizona said that publicity following the Tucson shooting prompted both the governor and the Administrative Office of the Courts to get involved in finding ways to get more mental health records into NICS.

But dozens of interviews suggest that these tragedies were only part of a larger explanation: the states that were able to make the changes necessary to submit mental health records to NICS were the states where



determined leaders championed the issue, built the necessary coalitions and found innovative ways to overcome the logistical, political and budgetary obstacles in their way.

A review of successful states provides useful examples of how effective collaboration among state agencies, consultation with federal agencies and partnering with interest groups and other stakeholders can produce good results:

- California:** California's statute governing the sharing of mental health records contained a confidentiality provision that made NICS compliance difficult.⁹⁰ The prospects for amending the law were unclear, so California leaders took an alternative approach. These leaders worked with NICS to enter into a memorandum of understanding to ensure that the federal government would only use state records for purposes that were permissible under state law. This creative approach facilitated the submission of nearly 280,000 California mental health records into NICS.
- Connecticut:** According to a Connecticut official, mental health providers in the state were initially adamant that records could not be shared because of privacy concerns. State leaders responded by bringing NICS legal staff to the state to brief the Connecticut Assembly's Public Safety Committee on how to adjust state law to overcome privacy concerns. The law was changed in 2005;⁹¹ as of October 31, 2011, Connecticut has submitted more than 11,000 mental health records.
- New York:** The Division of Criminal Justice Services (DCJS) reached out to the Office of Mental Health, the Office for People with Disabilities and the Office of Court Administration to compile the record estimates necessary to obtain a NARIP grant. DCJS then helped develop an encrypted file format the Department of Mental Health's public hospitals could use to submit records, and obtained funding to expand this system to the Department of Health and private

hospitals. The results have been dramatic: as of October 31, 2011, New York has submitted more than 160,000 mental health records to NICS, up from just one in 2006.

- Idaho:** In Idaho, the Bureau of Criminal Investigation brought together NICS, the ATF and the mental health community to draft and pass a statute requiring submission of mental health records and creating the gun rights restoration program necessary to obtain federal funding.⁹² Idaho then used a NARIP grant to create a fully automated system for record submission that is, according to a state official interviewed in November 2011, expected to become operational by early 2012.
- Florida:** A Florida official reported that the state was able to improve from zero records in 2006 to more than 40,000 in 2011 because the Florida Department of Law Enforcement and the NRA worked together to pass a state law mandating record sharing.⁹³ To ensure eligibility for NARIP grant funding, the Department of Law Enforcement worked with the ATF to draft the statutory language for a gun rights restoration program. To ensure that the infrastructure was in place to locate, collect and transmit the records, the Department worked closely with the state clerks' association.
- Michigan:** In Michigan, legal staff from the state mental health agency, the state police, the state attorney general's office and the ATF met to resolve their privacy concerns. Together, the agencies were able to convince the state courts to send mental health records to NICS. As of October 31, 2011, Michigan has submitted nearly 100,000 mental health records to the system.

Task forces and working groups have often helped identify creative solutions to a state's idiosyncratic circumstances. For example, West Virginia has a relatively unique system in which county mental health examiners often make commitment decisions and report them to the West Virginia Supreme Court of Appeals.⁹⁴ According to a state official, these

county examiners are located throughout West Virginia and had antiquated recordkeeping systems. The state police and the courts formed a steering committee and invited a representative from NICS to help identify ways to overcome obstacles.

The committee developed a unique strategy to meet West Virginia's needs. The state gave every county mental health examiner a laptop to enter records of mental health hearings, which are then automatically sent to a database administered by the state supreme court. The court then uses a secure file transfer protocol or "ftp" link to the West Virginia State Police to submit relevant records, and the police send the records to NICS. Since the system was instituted in 2010, the state has increased its submissions from around 609 to more than 5,600 as of October 31, 2011.

In other instances, leadership entailed seizing political opportunities. In Ohio, for example, the state attorney general seized the chance to insert language into a 2004 bill on concealed carry gun permits. The language mandated that all mental health records be sent to the Ohio Bureau of Criminal Identification and Information and shared with NICS. Ohio has since jumped from just one mental health record in the federal database to more than 26,000.

Similarly, during 2006 negotiations on a concealed carry bill in Kansas, the state Bureau of Investigations (BOI) researched which kinds of records should go into NICS and worked to ensure that the new state law required courts to submit all involuntary commitments for mental health, substance abuse and alcohol from the past 20 years to a central state repository that it would control. Since then, BOI has regularly trained state officials on how to comply with record-sharing requirements. Although BOI did not receive federal funding to implement these changes, it has used a \$20 fee it charges for access to criminal history data to fund the creation of an electronic system to automatically transmit records to NICS. These efforts have resulted in a three-

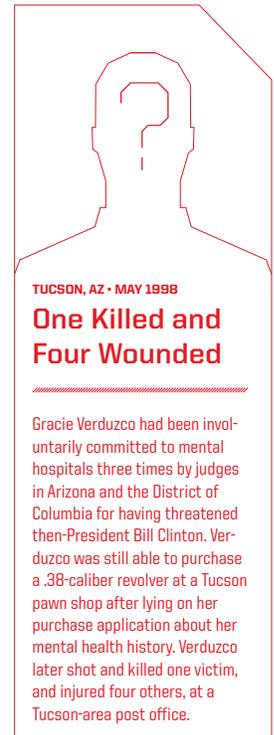
fold increase in the number of mental health records submitted by Kansas over the past five years. According to a state official, BOI is now spearheading an effort to get a NARIP grant to improve reporting of the remaining missing records. Kansas completed its first record estimates this year, and for the last several years, a gun rights restoration bill has been advanced in (though never passed by) the legislature.

Potential financial penalties may soon begin to encourage additional states to ramp up their efforts. Vermont, for example, has faced various funding, logistics and privacy obstacles to submitting mental health records; as of October 31, 2011, the state had submitted only 25. A Vermont official expressed optimism that records would soon be shared with NICS, however, because the Justice Department may begin penalizing states that miss reporting targets established by the NICS Improvement Act.⁹⁵ If the Justice Department chooses to waive these penalties, states' motivation to act will likely wane.

Issues Affecting State and Federal Submission of Substance Abuse Records

Federal law prohibits any person who is an "unlawful user of or addicted to any controlled substance" from purchasing or possessing a gun.⁹⁶

Both the ATF and the FBI have clarified the meaning of this prohibition and identified the kinds of substance abuse records that must be shared with NICS. Regulations promulgated by the ATF explain that "[a]n inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time."⁹⁷ This includes "persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year."⁹⁸ FBI policy guidelines further clarify that a failed drug test, a single drug-related arrest or an admission of drug use within the past



TUCSON, AZ • MAY 1998

One Killed and Four Wounded

Gracie Verduzco had been involuntarily committed to mental hospitals three times by judges in Arizona and the District of Columbia for having threatened then-President Bill Clinton. Verduzco was still able to purchase a .38-caliber revolver at a Tucson pawn shop after lying on her purchase application about her mental health history. Verduzco later shot and killed one victim, and injured four others, at a Tucson-area post office.

year are also evidence of “current use” and disqualify a person from possessing a gun for one year.⁹⁹

Given those broad criteria, states and federal agencies are plainly failing to report relevant records to NICS.

According to the 2007 National Survey of Drug Use and Health conducted by the U.S. Department of Health and Human Services, the use of illicit drugs among Americans is widespread.¹⁰⁰ An estimated 1,645,500 adults and 195,700 juveniles were arrested for drug abuse violations in the year the survey was conducted.¹⁰¹ Many of these arrest records should be submitted to the NCIC or III and thereby become searchable by NICS. Yet millions of Americans who use illicit drugs are never arrested, even though they might meet the federal definition of habitual drug user because they had, for example, failed a drug test, and even though records of this drug use are held by state and federal agencies.

Neither the states nor the federal government appear to have a protocol for submitting non-arrest relevant drug information to the NICS Index. As of October 31, 2011, states submitted just 1,392 drug abuse records. Thirty states did not submit a single record to the NICS Index substance abuse file. Just five states submitted more than 100 records, led by Minnesota with 556 records. The evident underreporting of relevant records suggests that many illegal drug users could pass NICS checks despite being federally barred from buying or owning firearms.

Interviews with state officials suggest that the dearth of substance abuse records is the result of widespread confusion about the kinds of records that must be shared with NICS. Roughly half of the state officials interviewed wrongly believed that all relevant substance abuse records were contained in the criminal history records sent into the III database. Officials in 32 states reported that they were making no effort to share drug abuse information that did not involve convictions or arrests, such as drug treatment commitments or failed drug tests. Most reported that

their states did not have the necessary infrastructure to report such information in any event.

California has maintained a centralized mental health database for firearms background checks since 1991.¹⁰² But there is no repository for substance abuse records that are not related to criminal proceedings because such records do not bar gun possession under California law. According to a state official, a new law would have to be passed to prompt California to share these records with NICS.

The federal government has fared little better than the states. The NICS Improvement Act specifically requires all federal agencies—including the military—to provide “any record of any person” who is prohibited from purchasing firearms to the FBI on at least a quarterly basis. Even so, the federal government has submitted only 12,023 prohibiting controlled substance records into the NICS Index. Despite the fact that many federal agencies administer employment-related drug tests, the vast majority of these records were shared by just one agency that operates exclusively in the District of Columbia: the Court Services and Offenders Supervision Agency (CSOSA).

The Department of Justice may actually discourage some federal entities from sharing substance abuse records. In 1994, then-Attorney General Janet Reno reportedly established a policy exempting the Department of Defense from providing NICS with information about potential military enlistees who fail drug tests.¹⁰³ This guidance apparently remained in place even after Congress reiterated in the NICS Improvement Act of 2007 that all federal agencies are required to report these records.¹⁰⁴

The table below contains data provided by the FBI on October 31, 2011 on the federal agencies that have submitted drug abuse records and/or mental health records to NICS. The FBI tracks record reporting from 61 different federal entities; the remaining agencies have submitted zero.



NUMBER OF MENTAL HEALTH AND DRUG ABUSE RECORDS SUBMITTED BY FEDERAL AGENCIES

AS OF OCTOBER 31, 2011

Federal Agency	Controlled Substance 3/31/11	Controlled Substance 10/31/11	Mental Health 3/31/11	Mental Health 10/31/11
ATF	0	0	15	18
US Coast Guard	29	48	0	0
Dept. of Defense	0	0	1	1
Dept. of Justice	0	0	1	1
Dept. of State	0	0	1	1
Federal Bureau of Investigation	1,276	1,343	1,061	1,082
Federal Court Services and Offenders Supervision Agency	8,443	10,632	0	0
U.S. District Court TX	0	0	1	1
Railroad Retirement Board	1	0	1	1
Secret Service	0	0	8	13
Veteran's Affairs	0	0	129,483	142,461
Federal Subtotals	9,749	12,023	130,582	143,579

RECOMMENDATIONS

The legal, financial and logistical challenges federal and state governments face are idiosyncratic and complex, but they are not insurmountable. Indeed, many states are overcoming them.

Based on our review, we believe the federal government could take several steps that would significantly improve reporting of mental health and substance abuse records by federal agencies and the states:

+ Enforce the law on federal agency reporting:

The NICS Improvement Act requires that federal agencies share mental health, substance abuse and other records that prohibit a person from owning a gun, but few agencies comply. The President should issue an executive order requiring all federal agency heads to certify twice annually, in writing, to the U.S. Attorney General that their agency has submitted all relevant records to NICS.

+ Increase incentives and penalties related to state compliance:

The modest financial incentives and penalties the federal government wields under the NICS Improvement Act have not prompted states to fully report. Congress should significantly increase both the federal funding available to assist record sharing and the penalties for states that do not comply, and tie them to far more ambitious reporting targets. The Fix Gun Checks Act, introduced by Sen. Charles Schumer and Rep. Carolyn McCarthy as S.436 and H.R. 1781 in the 112th Congress, would make these improvements.

+ Retain the names of prohibited purchasers who fail background checks:

The FBI should preserve the names of all individuals who have failed a gun background check in its National Crime Information Center (NCIC) database. Tracking these prohibited purchasers would save the FBI valuable time and resources by avoiding a full NICS investigation should those people attempt to buy another gun. In addition, retaining these names in NCIC would alert local and state law enforcement when a person prohibited from possessing a gun just attempted to buy one.

+ Issue clear guidance on which mental health and drug abuse records should be submitted to NICS:

Many states are unaware of which mental health and drug abuse records should be sent to NICS. The FBI currently holds periodic regional conferences on record sharing for state officials, and has sent some written guidance to state attorneys general. Nevertheless, many state officials reported that they do not have a clear understanding of which records should be shared. The need for clear guidance is particularly acute for mental health records that are held by entities other than courts, and for substance abuse records that do not involve arrests. The FBI and the ATF should issue clear, complete guidance and make it available online.

- + **Help states that already have record repositories to transfer their records to NICS:**
Many states already have centralized repositories with tens or hundreds of thousands of mental health records that should be shared with the federal database. The FBI should work more aggressively with these states to overcome the logistical, technical or other hurdles to sharing these records.
- + **Help states develop qualified “relief from disability” programs:**
Many states are unable to get NARIP grants to improve their record sharing because they have difficulty enacting the gun rights restoration program that federal law requires. The ATF should develop a set of model bills that satisfy federal requirements, while insuring that a petitioner’s right to buy a gun may only be restored after his or her mental health records are thoroughly reviewed by qualified experts. The Justice Department should make those materials and other guidance available to state agencies and policymakers.
- + **Fully fund NICS programs:**
While federal NARIP grants are the largest source of funding to support state record sharing, Congress has appropriated only 4.96 percent of the amount authorized for the grant from FY2009 through FY2011. The federal government should increase funding for the program.

APPENDIX

50-STATE SUMMARY OF REPORTING TO THE NATIONAL INSTANT GUN BACKGROUND CHECK SYSTEM

The following 50 state summaries incorporate Federal Bureau of Investigation data that Mayors Against Illegal Guns obtained on state record sharing with the National Instant Criminal Background Check System (NICS) as of December 2006, August 2010, April 2011 and October 2011. The summaries are also based on interviews Mayors Against Illegal Guns attorneys conducted between March 2011 and November 2011 with at least one, and often multiple, state officials with direct knowledge of or responsibility for the collection or submission of records to NICS in 49 states and the District of Columbia. All interviews except one were conducted by phone; South Dakota officials responded to inquiries by email. Officials in North Dakota, alone among the 50 states, did not make themselves available for an interview.

The principal focus of each interview was identifying obstacles to the submission of state mental health records to NICS. The obstacles to submission of substance abuse records were also explored.

Mayors Against Illegal Guns attorneys found that the state officials responsible for collection and submission of information to NICS often did not know what information they should be submitting, where that information was located or what the obstacles to obtaining it actually are. In other instances, state officials gave answers that were contradicted by others in the state, or by data our attorneys independently collected on the number and kind of records the state has submitted. The following summaries note those inconsistencies where applicable. The summaries also indicate which states are “point-of-contact” or “partial point-of-contact” states that maintain their own databases and conduct their own background checks as described in the foregoing report.

ALABAMA

Mental Health Records Submitted Per 100,000 Residents (Rank):	5.1 (27th)
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Law Requiring/Permitting That Records Be Shared (Year):	Yes (2004)
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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In 2004, Alabama changed its law to require that certain mental health records be submitted to NICS, but the law limits reporting to records evincing “a history of inappropriate use of firearms or poses a threat to use firearms inappropriately.”¹⁰⁵ Other mental health records that should prohibit a prospective buyer from purchasing a gun under federal law are not required to be shared, including records of involuntary commitment that do not contain any evidence of inappropriate use or threat of inappropriate use of a firearm. As a result, Alabama has submitted just 243 mental health records to NICS.

Mental health records responsive to the new reporting law are faxed from the probate court to the Alabama Criminal Justice Information Center, which then enters them into NICS. Based on conversations with Alabama officials, it appears that mental health records are not being collected from health providers.

Alabama’s 2004 law included a gun rights restoration program, but the ATF rejected it. In March 2011, an Alabama official reported that there had been no attempt by the legislature to pass a new gun rights restoration program until recently, and a new a bill has been drafted but not introduced.

For substance abuse records, Alabama is reporting arrests and conviction information into III, but is not sending any other substance abuse-related information, such as failed drug tests, into the NICS Index. An Alabama official reported that NICS has not requested such information.

ALASKA

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.0 (51st)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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Alaska has yet to submit a single mental health record into the NICS Index. According to an Alaskan official, Alaskan courts currently take the position that records of involuntary commitment for mental health treatment cannot be shared with NICS because they are not criminal history records. The official is currently working with NICS to determine if a state law is needed to share records. In the future, if records are permitted to be shared, the logistical hurdles will be minimized because Alaska is undergoing a revision of its statewide criminal justice computer system, and a record-sharing mechanism could be incorporated into the larger reforms.

Alaska is now ineligible for a federal NARIP grant to assist in record sharing.

According to state officials, Alaska has not yet explored how to submit substance abuse records that are not related to arrests or convictions.

ARIZONA

Mental Health Records Submitted
Per 100,000 Residents (Rank): **133.2 (15th)**

Law Requiring/Permitting That
Records Be Shared (Year): **No**

Gun Rights Restoration Program (Year): **Yes (2009)**

NICS Act Record Improvement Program
(NARIP) Grant Recipient (Year): **Yes (2011)**

In 2002, the Arizona legislature enacted a law requiring courts to provide the Arizona Department of Public Safety (DPS), but not the federal background check database, with access to records of any person whom a court has ordered to undergo mental health treatment.¹⁰⁶ The law did not require that DPS share the records with NICS, and by the end of 2006 Arizona had not submitted a single mental health record to the federal database. DPS did, however, once make an effort to collect and submit mental health records to NICS when it sent letters to the court clerk in each of the state's 15 counties to request records. The two counties with 90% of Arizona's residents started complying immediately, and all but three of the counties now send in records. DPS estimates each county's population to ensure that the number of records each county submits is close to the expected total number of records.

An official reported that after the shooting of Congresswoman Gabrielle Giffords in January 2011, and after a new study publicized the fact that thousands of Arizona records were missing from NICS, the governor and the Administrative Office of the Courts began inquiring into the matter. DPS also sent another letter to the three counties that were not in compliance urging them to submit relevant mental health records. The official reported that these events spurred more record submission, and by the end of October 2011 Arizona had submitted 8,516 mental health records.

Arizona established a gun rights restoration program in 2009,¹⁰⁷ and in 2011 it was awarded a NARIP grant for \$582,930. Arizona will use its NARIP grant to develop a strategic plan to assess current reporting processes, especially concerning mental health records; determine whether future law changes are necessary to improve reporting; assess the reporting infrastructure to make technological recommendations to improve reporting; and competitively grant sub-awards to local criminal justice agencies to assist their record reporting capabilities.¹⁰⁸

Arizona submits very few drug abuse records that are not related to arrests or conviction. By May 2011, it had submitted only 11 records to the substance abuse file in the NICS Index.

ARKANSAS

Mental Health Records Submitted Per 100,000 Residents (Rank):	65.1 (20th)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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A 2007 law mandates Arkansas law enforcement, prosecutors, court clerks and “[o]ther state, county, and local officials and agencies so directed” to share mental health records with the Arkansas Crime Information Center (ACIC).¹⁰⁹ The state law does not in turn require ACIC to submit records to NICS, but in practice ACIC has been doing so. Apparently mental health facilities, although not specifically required to do so under the Arkansas statute, have provided a very small number of prohibitive records to ACIC as well. The law only affected future record submissions, however, leaving many pre-2007 court records out of ACIC. As a result, Arkansas has submitted a total of 1,897 mental health records.

The state is ineligible for federal NICS Improvement Act funding because it has not implemented a gun rights restoration program. ACIC bears the cost of two employees who enter data into the NICS Index full time.

Arkansas has only submitted two prohibitive substance abuse records to the NICS Index. According to the official interviewed, the state lacks infrastructure to submit substance abuse records that are not related to arrests or convictions.

CALIFORNIA (POC)¹¹⁰

Mental Health Records Submitted Per 100,000 Residents (Rank):	750.5 (5th)
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Law Requiring/Permitting That Records Be Shared (Year):	No (but memorandum of understanding entered into with NICS to allow records to be shared)
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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California has maintained a centralized mental health database that has been used for state background checks since 1991.¹¹¹ For at least the first 15 years, however, the state did not submit mental health records in the state database to NICS because a state law protected confidentiality and was perceived to prohibit submission to NICS. As of 2006, California had submitted just one mental health record to NICS. But in 2006, California entered into a Memorandum of Understanding with the federal government that allowed the state to share mental health information for limited purposes in a manner compliant with the state privacy laws. Even after the MOU was reached, California lacked the infrastructure to discern which records in the state database were prohibitive under federal law and which were not, and the state initially had trouble finding funding to identify records that were relevant to NICS. It took two years for California to figure out how to sort the records and get them into NICS, which it was finally able to do with funds appropriated from an NCHIP grant. Once a process was instituted, records began to flow in and California has now submitted more mental health records into NICS—279,589—than any other state. California remains ineligible for additional funding from a NARIP grant because it has not created a gun rights restoration program.

A California official reported that the state lacks the infrastructure to submit records of substance abuse that are unrelated to an individual’s criminal history, such as treatment commitments or failed drug tests. According to the state official, California must pass a law creating a centralized state substance abuse database, which would aggregate relevant records that could then be sent to NICS.

COLORADO (POC)¹¹²

Mental Health Records Submitted Per 100,000 Residents (Rank):	536.9 (7th)
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Law Requiring/Permitting That Records Be Shared (Year):	Yes (2002)
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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Colorado passed a law in 2002 that requires the clerk of every judicial district¹¹³ and the clerk of every probate court¹¹⁴ in the state to “periodically” submit prohibitive mental health records to NICS. In practice, according to a state official, clerks of the courts send mental health records to the Colorado Bureau of Investigation, which in turn submits these records to NICS on a quarterly basis. As of October 2011, Colorado had submitted 27,002 mental health records to NICS. According to a Colorado official, the Colorado Bureau of Investigation has explored how to improve record submission so that records are submitted to NICS in real time rather than quarterly, but the agency needs additional funding to implement new procedures. Colorado does not qualify for NARIP funding because it has not created a gun rights restoration program.

Colorado has been submitting few substance abuse records to NICS. As of October 2011, the state had one record in the NICS Index file for controlled substances. A Colorado state official reported that the state only submits substance abuse records that also appear in an applicant’s criminal history in III.

CONNECTICUT (POC)¹¹⁵

Mental Health Records Submitted Per 100,000 Residents (Rank):	311.7 (9th)
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Law Requiring/Permitting That Records Be Shared (Year):	Yes (2005)
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Gun Rights Restoration Program (Year):	Yes (2011)
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	Yes (2011)
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As of October 2011, Connecticut has submitted 11,141 mental health records to NICS. According to a state official, Connecticut officials previously believed that privacy laws restricted the sharing of records with NICS. In 2005, NICS legal staff worked with the state legislature to pass a law that requires state agencies to submit prohibiting records to NICS.¹¹⁶ Aided by a 2005 NCHIP grant, Connecticut devised procedures for submitting records from both courts and mental health providers to NICS. The Department of Mental Health and Addiction Services now submits records of involuntary commitments to the Connecticut Department of Public Safety (DPS), which subsequently submits them to NICS. However, according to a state official, DPS does not audit the Department of Mental Health and Addiction Services and cannot determine whether courts are submitting all relevant records. Mental health records originating from courts, such as incompetency to stand trial and findings of not guilty by reason of insanity, are being submitted in paper form.

In 2011, Connecticut passed a gun rights restoration program,¹¹⁷ after which it received a \$3.25 million NARIP grant for FY 2011. The grant awarded funds to the state to create a NICS Record Improvement Task Force to develop and implement records improvement plans; design and build an electronic record system; improve the automation and transmittal of relevant probate court records, specifically mental health records; and provide the Department of Mental Health and Addiction Services with automated access to civil commitment data.¹¹⁸

Connecticut had not submitted any records to the NICS Index substance abuse file as of April 2011, but as of October 31, 2011, the state had submitted 176 substance abuse records. According to a state official interviewed in March 2011, Connecticut does not have any infrastructure for capturing substance abuse prohibition records that are not arrests or convictions. Connecticut has received some federal funding to test a pilot program that would catch positive urine tests for probationers, but this system is still in development.

DELAWARE

Mental Health Records Submitted Per 100,000 Residents (Rank):	0 (51st)
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Law Requiring/Permitting That Records Be Shared (Year):	Yes (2011)
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Gun Rights Restoration Program (Year):	Yes (2011)
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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As of October 2011, Delaware had not submitted a single record of any kind to NICS. For mental health records, the major obstacle has been a Delaware state law that requires record sharing among state agencies but does not explicitly permit sharing with the federal government.¹¹⁹

According to a state official, the Delaware Department of Health and Social Services currently shares mental health records with the State Bureau of Investigation, but neither agency shares those records with NICS. A bill enacted in July 2011 requires the Department of Health and Social Services to send information directly to NICS, as well as creates a gun rights restoration program.¹²⁰

Delaware currently has submitted no substance abuse records to the NICS Index. The state does not even appear to be sending in criminal history records, although a state official indicated that it has provided NICS access to its criminal history records in the state database. It is not clear to state officials who or which agency in the state would collect non-criminal-history-related substance abuse information.

DISTRICT OF COLUMBIA

Mental Health Records Submitted Per 100,000 Residents (Rank):	13.3 (26th)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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As of October of 2011, the District had submitted 80 mental health records to NICS and zero records of any other kind. Two officials from the District of Columbia reported that the Department of Mental Health is not submitting records because it takes the position that HIPAA forbids record sharing.¹²¹ The 80 mental health records that have been submitted have come from the courts. The officials interviewed gave conflicting accounts of why so few records were shared. One official reported that courts were unwilling to submit records without a judicial order. Another official reported that courts are freely sharing mental health records and that the 80 records submitted is the sum total of all prohibitive records that exist in DC. That official reported that the Superior Court submits all domestic, criminal court, and other involuntary commitments to the District's central repository as well as to NICS.

According to the FBI data on state reporting, the District has not submitted any substance abuse records to the NICS Index. When asked about the District's failure to submit these files, an official reported that privacy concerns and a lack of infrastructure impede the submission of substance abuse hospital records, and NICS operators have not asked for these records. According to FBI data about federal agency record-sharing, however, the Federal Court Services and Offenders Supervision Agency, which is a federal agency created by Congress to perform probation, parole and supervised release for offenders and ex-offenders in the District,¹²² had submitted 10,632 controlled substance records as of October 31, 2011.

FLORIDA (POC)¹²³

Mental Health Records Submitted Per 100,000 Residents (Rank):	216.9 (14th)
Law Requiring/Permitting That Records Be Shared (Year):	Yes (2008)
Gun Rights Restoration Program (Year):	Yes (2008)
NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	Yes (FY 2010, 2011)

As of October 2011, Florida had submitted 40,775 mental health records to NICS. State officials report that in 2008, the Florida legislature worked with the National Rifle Association, the state association of court clerks and the ATF to pass a law permitting the Department of Law Enforcement to report prohibitive court mental health records to NICS and to establish a gun rights restoration program.¹²⁴ The law requires that mental health records be submitted electronically, but a state official reported that because of scarce resources, not all jurisdictions are complying with the electronic reporting requirement.

In 2010, Florida received a \$3.2 million NARIP grant to analyze and enhance data sharing and to redesign the state's Firearm Purchase Program system.¹²⁵ In 2011, the state was awarded a second NARIP grant, of over \$2.5 million, to work with the clerks of the court to identify relevant mental health records and make them available to NICS and to purchase the necessary infrastructure to electronically store mental health information, among other purposes.¹²⁶

As of October 2011, Florida had not submitted any records to the controlled substance file in the NICS Index. According to a state official, Florida makes no effort to submit substance abuse records that are not related to arrests or convictions.

GEORGIA

Mental Health Records Submitted Per 100,000 Residents (Rank): **50.4 (22nd)**

Law Requiring/Permitting That Records Be Shared (Year): **Yes (2005)**

Gun Rights Restoration Program (Year): **No**

NICS Act Record Improvement Program (NARIP) Grant Recipient (Year): **No**

In 1995, the Georgia legislature passed a law requiring the Georgia Crime Information Center (GCIC) to create and manage a state database of mental health records from state courts that would prohibit a person from purchasing or possessing a firearm. For a decade, Georgia functioned as a point of contact state, managing the background check database itself. But, according to a state official, Georgia ceased to be a point of contact state in 2005 for budgetary reasons. Since then, NICS has conducted the state's background checks. In ending its role as point of contact state, Georgia lawmakers also amended the relevant statute to require that GCIC forward to NICS all court records of a person's involuntary hospitalization.¹²⁷ The statute also requires the GCIC to purge all involuntary hospitalization records after five years have elapsed from the date the records were received.¹²⁸

An official reported that despite its existing law and infrastructure, the state still did not begin submitting these records to NICS until officials from the Department of Behavioral Health, GCIC, the courts and others convened a working group as a response to the NICS Improvement Amendments Act of 2007. To accommodate the statutory requirement of purging hospitalization records after five years, GCIC initially submitted mental health records to the Denied Persons file in the NICS Index rather than the Mental Health file, which NICS had told Georgia must receive files on a permanent basis. According to a Georgia official, NICS has since amended its position so that GCIC now submits involuntary hospitalization records to the mental health file of the NICS Index and retains the ability to purge them five years later.

As of October 2011, Georgia had submitted 5,185 mental health records to the NICS Index. State law still only requires the submissions of court-generated mental health records, such as involuntary commitments and court adjudications of mental illness, to GCIC, and the state is still not comprehensively submitting even these mental health records due to compliance problems in the state courts, according to a state official. Only 25 courts, or about a third of the total, are submitting mental health records to GCIC, and they are submitting records in paper form.

When asked which issues posed the greatest challenges to Georgia's record submission, those interviewed indicated that political will and improved communication and outreach could improve its record-sharing. Privacy and logistics were not central concerns. Funding has also not been a problem in Georgia, despite its ineligibility for a NARIP grant. Until recently, Georgia used money from the state general fund to fund its record-sharing program. Since the economic downturn, it has started charging a user fee for criminal history information, which, according to the official, raises about a third of the necessary funds.

For substance abuse records, Georgia is only submitting records that appear in an applicant's criminal history. The GCIC official who was interviewed was unsure of who would be responsible for collecting and reporting non-criminal-history-related substance abuse records.

HAWAII (POC)

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.1 (42nd)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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Hawaii is a point of contact state, and the Hawaii Department of Health maintains a statewide computerized system of mental health records that it uses for state background checks.¹²⁹ But as of October 2011, Hawaii had submitted one mental health record to the NICS Index. Officials from the Hawaii Criminal Justice Data Center who are responsible for record submission did not know how that single record came to be submitted. According to one official, the state lacks the funding and political will to pass a law that would implement a credible record submission scheme. Complicating matters are Hawaii's strong state privacy laws, both statutory and constitutional, which may prohibit sharing mental health records with the federal government. Hawaii is also ineligible for NARIP funding to improve record submission because it has not passed a gun rights restoration program.

A state official reported that Hawaii sends criminal history-related substance abuse records to Ill, but it has submitted only two substance abuse records to the NICS Index file for controlled substances.

IDAHO

Mental Health Records Submitted Per 100,000 Residents (Rank):	0 (51st)
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Law Requiring/Permitting That Records Be Shared (Year):	Yes (2010)
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Gun Rights Restoration Program (Year):	Yes (2010)
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	Yes (FY 2010, 2011)
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Because of privacy and logistical issues that the state is attempting to address, Idaho has not submitted a single mental health record to the NICS Index. In 2010, working with ATF, NICS officials and the mental health community, the Idaho legislature passed a law requiring the submission to NICS of all electronic records that have "information relating to eligibility to receive or possess a firearm pursuant to state or federal law."¹³⁰ Prior to 2010, the Idaho Bureau of Criminal Identification (BOCI) took the position that it needed specific legal authority to submit prohibiting mental records to the NICS Index even though the officials interviewed could not identify a specific privacy law that prohibited record sharing.

Importantly, the 2010 law also created a gun rights restoration program, making Idaho eligible to apply for a NARIP grant.¹³¹ In 2010, the state received a NARIP grant of almost \$2 million to enhance data sharing to include all relevant prohibiting records in the state database.¹³² As of October 2011, Idaho was still not submitting records. An official reported in November 2011 that an automated system for record sharing should be operational by early 2012. Idaho was awarded a 2011 NARIP grant for more than \$1.2 million to improve criminal history record-sharing.¹³³

Substance abuse records are not being submitted to the NICS Index.

ILLINOIS (POC)¹³⁴

Mental Health Records Submitted Per 100,000 Residents (Rank):	55.5 (21st)
Law Requiring/Permitting That Records Be Shared (Year):	Yes (2008)
Gun Rights Restoration Program (Year):	Yes (2008)
NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	Yes (FY 2010)

As of October 2011, Illinois had submitted only 7,127 mental health records to NICS. For many years, the Illinois State Police has maintained a centralized database of mental health records containing records of involuntary, as well as voluntary, mental health commitments from each of the state's 102 counties. The state had not, however, historically submitted these records to NICS. In 2008, Illinois passed a law requiring the state to "enter into a memorandum of understanding with the Federal Bureau of Investigation for the purpose of implementing the National Instant Criminal Background Check System in the State," whereby Illinois State Police would "report the name, date of birth, and physical description of any person prohibited from possessing a firearm" under federal law to the NICS Index Denied Persons Files.¹³⁵ But according to one official, the state lacked funding to commit enough employees to submit records to NICS. One of the primary obstacles to NICS submission was the fact that the Illinois database contains voluntary commitments, which are prohibitive under Illinois law but not federal law. Disaggregating the federally prohibitive records is costly and time consuming. The Illinois State Police recently secured some state funding to hire staff at both the Illinois State Police and the Department of Human Services to address this issue, and in December 2010, the state was able to submit 5,000 mental health records to NICS.

A state official reported that there have also been problems getting records into the Illinois state database in the first place. The Department of Human Services should have access to data from both state and private facilities, but private facilities have not been consistent about sharing data. Even the court-submitted data is often missing key information.

According to state officials, however, Illinois expects to submit many more records soon. The 2008 law requiring records submission to NICS also created a gun rights restoration program.¹³⁶ After the state became eligible, Illinois applied for a NARIP grant and received \$1.2 million dollars to completely automate the records submission process.¹³⁷ According to an official interviewed in March 2011, the state is working on a new electronic system for record sharing.

As of October 2011, Illinois had submitted zero substance abuse files to the NICS Index.

INDIANA

Mental Health Records Submitted Per 100,000 Residents (Rank):	50.4 (23rd)
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Law Requiring/Permitting That Records Be Shared (Year):	Yes (2011)
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Gun Rights Restoration Program (Year):	Yes (2011)
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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As of October 2011, Indiana had submitted 3,269 mental health records to the system. In 2009, Indiana passed a law requiring state courts to electronically submit to NICS records of any individuals found not competent to understand the proceedings, not responsible by reason of insanity, guilty but mentally ill or “mentally ill and either dangerous or gravely disabled” and ordered by the court for custody or treatment or an outpatient therapy program.¹³⁸ In practice, according to a state official, courts submit records to the Indiana State Police, which subsequently submits them to NICS. Although the statute does not require the Department of Mental Health to collect and submit records to NICS, an official reported that some individual psychiatrists have sent records directly to the system.

The 2009 statute included a gun rights restoration program. However, an official reported that the ATF objected to the statute’s use of the term “handgun” instead of “firearm” and deemed the program insufficient to qualify Indiana for a NARIP grant. In 2011, Indiana passed an updated gun rights restoration program.¹³⁹

As of October 2011, Indiana had not submitted any substance abuse records to the NICS Index. According to a state official, Indiana makes no effort to submit records that are not related to arrests or convictions.

IOWA (PARTIAL POC)¹⁴⁰

Mental Health Records Submitted Per 100,000 Residents (Rank):	67.0 (19th)
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Law Requiring/Permitting That Records Be Shared (Year):	Yes (2009)
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Gun Rights Restoration Program (Year):	Yes (2011)
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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Iowa has never compiled a centralized database of mental health records, even though it has functioned as a partial point of contact state. The Iowa Department of Public Safety is the state agency tasked with submitting Iowa records to NICS, but it has had difficulty obtaining prohibitive mental health records from other agencies, including from the courts. A new statute that went into effect on January 1, 2011, requires courts to send records to the Department of Public Service,¹⁴¹ and records are now beginning to be sent. Iowa had submitted just 94 mental health records to NICS by August 2010, but had improved to 2,040 mental health records submitted by October 2011.

The 2009 record-sharing statute also created a gun rights restoration program, but the ATF found the language insufficient in part because it only applied prospectively. A bill to amend the language—drafted, according to a state official, with the help of both the NRA and federal officials at NICS conferences—was enacted and went into effect in April 2011.¹⁴² Assuming ATF has approved the new statutory language, Iowa is now eligible for NARIP funding.

As of October 2011, Iowa had submitted nine substance abuse records to the NICS Index. According to a state official, no infrastructure exists to collect and submit substance abuse records not related to arrests or convictions into NICS.

KANSAS

Mental Health Records Submitted Per 100,000 Residents (Rank):	120.4 (16th)
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Law Requiring/Permitting That Records Be Shared (Year):	Yes (2006)
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Gun Rights Restoration Program (Year):	Yes (2011)
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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As of October 2011, Kansas had submitted 3,435 mental health records to the NICS Index. A 2006 Kansas law creating a concealed carry permitting scheme also included a requirement that state courts submit involuntary commitments for mental health, substance abuse and alcohol to a centralized state database with the state Bureau of Investigation (BOI), which then shares the records with NICS. The statute also required that records from the previous 20 years be submitted to the state database.¹⁴³

According to a state official, no general state funding or grant funding was made available to operate the state database, and, without a gun rights restoration program, Kansas was ineligible for NARIP funding. However, the state took creative and proactive measures to muster the necessary resources for improving its record-sharing system. Kansas charges a \$20 fee for running criminal background checks on residents, and BOI was able use those funds to digitize their record submission process. Records that were originally submitted in paper form are now sent electronically. Kansas also worked with ATF to draft a bill that would create an effective gun rights restoration program. After being introduced in several previous sessions, the bill passed in 2011.¹⁴⁴ Kansas also made its first records estimates to NICS in 2011 and so is presumably now eligible for NARIP funding.

A state official reported that, because of the 2006 record-sharing statute, the state submits substance abuse records to the NICS Index at the same time as mental health records are submitted. As of October 2011, however, Kansas had not submitted a single record to the NICS Index Substance Abuse File.

KENTUCKY

Mental Health Records Submitted Per 100,000 Residents (Rank):	2.1 (31st)
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Law Requiring/Permitting That Records Be Shared (Year):	Yes (2011)
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Gun Rights Restoration Program (Year):	Yes (2011)
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	Yes (FY 2011)
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The Kentucky Administrative Office of the Courts has maintained a database of involuntary commitment records and certain other mental health records; for example, being declared incompetent to manage one's own affairs. The infrastructure is therefore in place for record sharing with NICS. Because of privacy concerns, however, Kentucky had submitted only 91 mental health records to the NICS Index as of October 2011. In 2011, the state legislature passed a statute requiring courts to submit mental health records to the Kentucky State Police, which in turn had to submit them to NICS starting in July 2011.¹⁴⁵ A state official reported that the Kentucky State Police also submits to NICS any mental health records revealed to them when individuals apply for gun permits. There was initially no funding to pay for the submission of the records even after the legislative change, but \$10 of each \$60 concealed carry permit application or renewal fee is now allocated to the courts to fund background checks.¹⁴⁶ The 2011 record-sharing statute also established a gun rights restoration program, making the state eligible to apply for NARIP grants.¹⁴⁷

A state official emphasized that substantial mental health record sharing should occur shortly. Before receiving any federal funding, Kentucky was already in the process of revamping its computer data systems. In 2011, Kentucky was awarded a \$1.39 million NARIP grant to develop the infrastructure necessary to create a statewide electronic repository for court mental health records.¹⁴⁸

As of October 2011, Kentucky had submitted zero substance abuse records to the NICS Index. According to a state official, no infrastructure exists to submit these records to NICS, and the state is making no effort to improve sharing of these records.

LOUISIANA

Mental Health Records Submitted Per 100,000 Residents (Rank): **0.0 (51st)**

Law Requiring/Permitting That Records Be Shared (Year): **No**

Gun Rights Restoration Program (Year): **No**

NICS Act Record Improvement Program (NARIP) Grant Recipient (Year): **No**

As of October 2011, Louisiana had submitted only one mental health record to NICS. An official from the Louisiana Supreme Court indicated that a state privacy law was a barrier to submitting records.¹⁴⁹ The official believed that the state police would need a subpoena to request that courts submit records to NICS. Further, the official—who was familiar with NICS record sharing—believed that there is no one individual in Louisiana tasked with collecting and submitting mental health records. There is also a lack of funding to collect relevant records. Because the state has not passed a gun rights restoration program, it remains ineligible for a NARIP grant.

As of October 2011, Louisiana had not submitted a single record to the NICS Index substance abuse file.

MAINE

Mental Health Records Submitted Per 100,000 Residents (Rank): **2.6 (30th)**

Law Requiring/Permitting That Records Be Shared (Year): **Yes (2009)**

Gun Rights Restoration Program (Year): **Yes (2009)**

NICS Act Record Improvement Program (NARIP) Grant Recipient (Year): **No**

As of October 2011, Maine had submitted only 35 mental health records to NICS, despite a state law requiring record sharing. A 2007 statute that went into effect in 2009 requires the state police to disclose to NICS the mental health records of (1) individuals who have been involuntarily committed after a full court hearing with legal representation (known as “blue papers”); (2) individuals found not criminally responsible by reason of insanity; and (3) individuals found not competent to stand trial.¹⁵⁰ The record-sharing statute does not require other pertinent mental health records—such as those of individuals committed in emergency proceedings (known as “white papers”); those of individuals adjudicated to be a danger to themselves or others but not committed; and those found by a court to lack the capacity to manage their own affairs—to be submitted to NICS. Many of these kinds of records are held by courts, which could submit them to NICS without any new enabling legislation, provided there was political will to do so. Moreover, civil health commitments are handled by the probate courts, and the Department of Public Safety currently has no ability to obtain those courts’ records. According to a state official, the Maine Legislature and the Maine Department of Public Safety have disagreed about what mental health records should be submitted to NICS, and the Department of Public Safety has recently been in discussion with NICS to determine which civil mental health commitment records can and should be sent in.

Maine also struggles with the logistics of reporting records to NICS because the state does not have an electronic reporting infrastructure for civil or criminal records. According to a state official, an electronic system for criminal commitments is currently in the works. State officials are also exploring how to apply for NICS grants to improve their background check system.

Maine has not submitted any records of substance abuse to the NICS Index.

MARYLAND (PARTIAL POC)¹⁵¹

Mental Health Records Submitted Per 100,000 Residents (Rank):	1.0 (32nd)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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As of October 2011, Maryland had submitted only 58 mental health records to the NICS Index. State law requires that all private and public institutions notify the Maryland Department of Health and Mental Hygiene of any individual's admission to a treatment facility for mental health.¹⁵² Accordingly, Maryland maintains a centralized database of mental health data, but no state law requires submission of relevant records to NICS. A state official reported that the state database may be incomplete. According to the official, almost all state-ordered mental health treatment is contracted out to private mental health clinics, but private clinics rarely relay the names of involuntary commitments. As a result, only a small portion of the relevant mental health records actually end up in the mental health database. Further, an official reported that for many involuntary commitments, the Administrative Law Judge does not retain the name of the person committed. The official reported that Maryland is, however, taking steps to improve its NICS submission rates. Maryland State Police have recently been working with IT personnel to locate and solve record collection gaps, and Maryland courts are developing electronic record infrastructure.

Maryland has a 2003 statutory provision allowing an individual with a mental health history to apply for a firearms permit with proper certification from a physician that the person is capable of possessing a firearm without undue danger to themselves or others.¹⁵³ It is not clear whether ATF considers this a sufficient gun rights restoration program that would qualify for NARIP funding. Nevertheless, Maryland remains ineligible for a NARIP grant because it has not completed record estimates. However, Maryland manages to fund its databases from a combination of other state and federal grants, along with fines from citations.

As of October 2011, Maryland had not submitted any records to the substance abuse file of the NICS Index. According to a state official, Maryland lacks infrastructure to submit substance abuse records not related to arrests or convictions.

MASSACHUSETTS

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.0 (51st)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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As of October 2011, Massachusetts had submitted only one mental health record to the NICS Index. According to a state official, the primary obstacle to record sharing has been privacy concerns. Massachusetts State Mental Health Department attorneys have interpreted privacy laws to prohibit record sharing notwithstanding any other laws to permit sending mental health records to NICS.¹⁵⁴ The state apparently does consult mental health records when Massachusetts residents apply for firearms licenses, but it does not share these records with NICS and there is no state repository for these records.

Logistical hurdles reportedly impede reporting as well. Private hospitals do not share relevant mental health records with the Massachusetts Criminal Justice Information Services Support Services Unit (CJIS), and the courts currently have no mechanism to send information to CJIS.

Because Massachusetts has not passed a gun rights restoration program, the state is ineligible for NARIP grants that could be used to fix some of these logistical problems. The state has set up a task force, similar to the one successfully created in New York, to explore how to improve record sharing.

As of October 2011, Massachusetts had not submitted any substance abuse records to the NICS Index. The failure to report substance abuse records may be attributed to the fact that no agency or individual has been tasked with inputting failed drug tests and other substance abuse information into the NICS Index.

In 2009 and 2011, Governor Patrick filed legislation (H.3569) that would bring Massachusetts into compliance. It has been referred to the Judiciary Committee and awaits a hearing.

MICHIGAN (PARTIAL POC)¹⁵⁵

Mental Health Records Submitted Per 100,000 Residents (Rank):	1,004.4 (3rd)
Law Requiring/Permitting That Records Be Shared (Year):	No
Gun Rights Restoration Program (Year):	No
NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No

As of October 2011, Michigan had submitted 99,268 mental health records to the NICS Index, making it the state with the third-highest rate of mental health records submission per capita in the country. State agency attorneys, the state police, the state Attorney General, and ATF formed a joint committee to meet and allay any privacy concerns. State courts automatically input mental health records into the Michigan Law Enforcement Information Network, which then in turn submits the data to NICS. Michigan was able to automate its record entry system using technical programming staff that was already working for the state. However, a state official reports that the state still does not collect records from mental health providers, and it remains ineligible for NARIP grants because its legislature has not passed a gun rights restoration program.

As of October 2011, Michigan had submitted 233 records of substance abuse to the NICS Index. The state officials interviewed by Mayors Against Illegal Guns provided slightly conflicting information regarding how these records were submitted. Two officials reported that each time the state conducts a background check, state officials investigate probation urine tests or other substance abuse evidence, and the agency notifies NICS of the prohibiting record. Another official, however, reported that most substance abuse records were not being submitted because there is a decentralized system for record keeping. According to this third official, most local jurisdictions do not report records of drug use even when they know about it because they are unaware of how to remove them after a year.

MINNESOTA

Mental Health Records Submitted Per 100,000 Residents (Rank):	74.7 (18th)
Law Requiring/Permitting That Records Be Shared (Year):	Yes (2010)
Gun Rights Restoration Program (Year):	Yes (2009 but not yet approved by FBI)
NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No

As of October 2011, Minnesota had submitted 3,960 mental health records to NICS, which, while a low rate per capita, is a great improvement since August 2010, when the state had submitted zero. Minnesota until recently faced several obstacles that impeded mental health record sharing with NICS, the most prominent of which was a lack of statutory authority permitting state agencies to share data. Additionally, it was unclear whose responsibility it was to submit mental health records to NICS. The Department of Human Services had the responsibility to do a paper check of its mental health records when an in-state background check was conducted, but the agency had no clear responsibility to send any records to NICS. No funding was available for either the software development or human capital costs of obtaining and submitting the data. In 2009, the state eliminated the legal hurdles by passing a statute, effective 2010, requiring agencies to disclose to NICS information about individuals who are involuntary committed or otherwise found seriously mentally ill “as soon as practicable.”¹⁵⁶ The statute also clarified a logistical obstacle by designating the Minnesota courts as the responsible agency for submitting records. To address the remaining logistical issues, Minnesota Justice Information Services created a program that wraps NICS functions into its already existent web services. As a result of these initiatives, the state has dramatically improved its mental health record submission to NICS, although funding continues to be a concern. The state recently established a gun rights restoration program,¹⁵⁷ but as of March 28, 2011, the FBI had not yet approved the program, leaving the state ineligible for NARIP grants.

As of October 2011, Minnesota had submitted 556 records to the NICS Index substance abuse file—or twice as much as any other state in the nation. How the state has done this is not clear. According to a state official interviewed by Mayors Against Illegal Guns, the state has not tasked any agency with collecting and submitting substance abuse records that are not connected to arrests or convictions, such as records of failed drug tests.

MISSISSIPPI

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.1 (42nd)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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As of October 2011, Mississippi had submitted two mental health records to the NICS Index. Its failure to report appears to result from a mix of insufficient political will, infrastructure, and funding. The state does not have a centralized database of mental health records. Many mental illness records are held by the chancery courts, but law enforcement has no way to determine which records are disqualifying for gun purchases. According to a state official, mental health providers have been unwilling to share records because of privacy concerns based on HIPAA, despite explanations from NICS that HIPAA does not apply to relevant NICS records. Even if the providers were willing to share the records, no system is in place to collect them. The official interviewed by Mayors Against Illegal Guns described a lack of coordinated effort or communication on the part of state agencies to collect and submit records, and, while there has been some talk of establishing a statewide task force to improve records submission, none is yet in the works. There has also been some discussion of legislation to require record sharing, but the official interviewed expressed doubt that this would be successful even if passed because other laws requiring that other records be sent to the Mississippi Justice Information Center are not enforced. Additionally, there are no penalties for failing to submit records.

Mississippi has not passed a gun rights restoration program or conducted mental health record estimates and is thus ineligible for NARIP grants.

As of October 2011, Mississippi had submitted only one substance abuse record to the NICS Index. According to a state official, Mississippi makes no effort and has no infrastructure to submit drug abuse evidence that is not related to an arrest or conviction.

MISSOURI

Mental Health Records Submitted Per 100,000 Residents (Rank):	525.9 (8th)
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Law Requiring/Permitting That Records Be Shared (Year):	Yes (2008)
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Gun Rights Restoration Program (Year):	No (passed but deemed insufficient)
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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As of October 2011, Missouri had submitted 31,498 mental health records to the NICS Index, giving it one of the highest per capita submission rates in the country. Until recently, the state had submitted criminal mental health records to NICS, but privacy concerns prevented the state from sharing other relevant mental health records. In 2008, the state legislature passed a statute setting guidelines for mental health record sharing between courts and the Missouri State Highway Patrol, which in turn now submits both criminal and civil mental health records to the NICS Index.¹⁵⁸

In 2009, the Missouri legislature created a gun rights restoration program, but the law contained two errors, including a failure to mandate that reputation be taken into account.¹⁵⁹ The FBI rejected the program and continues to deem Missouri ineligible for NARIP grants.

As of October 2011, Missouri had submitted zero substance abuse records to the NICS Index. According to a state official, Missouri makes no effort to and has no infrastructure to submit drug abuse evidence that is not related to an arrest or conviction.

MONTANA

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.3 (35th)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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As of October 2011, Montana had submitted only three mental health records to the NICS Index. According to a state official, Montana has not been submitting mental health records largely because of perceived privacy concerns, some stemming from a belief that HIPAA forbids record sharing. The official interviewed believed that legislative change was necessary to submit records, but he found this extremely unlikely given the political orientation of the Montana legislature. Montana has conducted record estimates, though it lacks a gun rights restoration program and therefore remains ineligible for NARIP funding.

Montana had submitted zero substance abuse records to the NICS Index as of October 2011. According to the interviewed official, the state lacks the infrastructure and political will to submit substance abuse records that are not related to arrests and convictions.

NEBRASKA (PARTIAL POC)¹⁶⁰

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.1 (42nd)
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Law Requiring/Permitting That Records Be Shared (Year):	Yes (2011)
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Gun Rights Restoration Program (Year):	Yes (2011)
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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Since the late 1990s, Nebraska State Patrol has maintained its own central mental health record repository which, as required by statute, the Department of Health and Human Services regularly updates with a data file.¹⁶¹ However, according to a state official, the Department of Health and Human Services has been reluctant to regularly share data and has pushed back against sending it to NICS. Perhaps as a result, as of October 2011, Nebraska had submitted only two mental health records to the NICS Index.

However, in April 2011, Nebraska amended its record-sharing statute to strengthen the reporting requirements. Courts must now submit relevant mental health records to both the Department of Health and Human Services and directly to the Nebraska State Patrol within 30 days of issuing an order of commitment, an order of discharge, or an order of removal of a firearms-related disability.¹⁶² The 2011 statute also created a gun rights restoration,¹⁶³ possibly making Nebraska eligible for NARIP funding.

Nebraska had not submitted any substance abuse records as of October 2011. According to the state official, Nebraska makes no effort and has no infrastructure to submit drug abuse evidence that is not related to an arrest or conviction.

NEVADA (POC)

Mental Health Records Submitted Per 100,000 Residents (Rank):	17.9 (25th)
Law Requiring/Permitting That Records Be Shared (Year):	Yes (2009)
Gun Rights Restoration Program (Year):	Yes (2009)
NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	Yes (FY 2009)

As of October 2011, Nevada had submitted 484 mental health records to the NICS Index. Nevada started submitting records to NICS after the state legislature passed a statute in 2009 that required each of the state's courts to submit mental health records to the state Division of Public Safety's Brady Unit, which would then submit them to NICS. The statute requires courts to submit any "judgment, plea or verdict concerning the involuntary admission of a person to a mental health facility, the appointment of a guardian for a person who has a mental defect, a finding that a person is incompetent to stand trial, [or] a verdict acquitting a person by reason of insanity or a plea of guilty but mentally ill."¹⁶⁴ The statute also established a gun rights restoration program.¹⁶⁵ According to a Department of Public Safety official, only Nevada's largest court is currently complying with the record-sharing requirements, and there is no effort or legal requirement that the mental health providers themselves submit records. The official reported that the agency was planning to send a letter to the remaining courts to remind them to submit records.

In FY2009, Nevada was awarded a NARIP grant of \$798,471 to improve its data collection system.¹⁶⁶ With this funding, the state has created an interagency task force and an electronic, web-based system for sharing data with NICS. It also plans to improve the state's protection order system.

As of April 2011, Nevada had submitted 44 substance abuse records to the NICS Index. According to a state official, Nevada flags not only records from drug-related arrests and convictions but also from other crimes that may involve substance abuse, a practice which may account for its relatively high submission rate.

NEW HAMPSHIRE (PARTIAL POC)¹⁶⁷

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.2 (37th)
Law Requiring/Permitting That Records Be Shared (Year):	No
Gun Rights Restoration Program (Year):	No
NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No

As of October 2011, New Hampshire had submitted only two mental health records to the NICS Index. A state law explicitly provides for record sharing to "protect the welfare of the individual or for the public interest,"¹⁶⁸ but, according to a state official, New Hampshire officials believe that the state legislature must act to specifically allay privacy concerns that bar sharing mental health data. The Administrative Office of the Courts is the agency that would submit records to NICS in the event of record sharing, and, according to a state official interviewed by Mayors Against Illegal Guns, the agency is currently exploring the legal issues to determine if it can share records. Apparently no effort is underway to collect and submit involuntary commitments records that are held by mental health providers or agencies other than the courts. New Hampshire has not passed a gun rights restoration program and is therefore ineligible for NARIP funding.

New Hampshire has not submitted any substance abuse records to the NICS Index, and, according to the state official interviewed, there is no funding or effort to collect and submit non-arrest or non-conviction-based evidence of drug abuse.

NEW JERSEY (POC)

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.2 (37th)
Law Requiring/Permitting That Records Be Shared (Year):	Yes (2010)
Gun Rights Restoration Program (Year):	Yes (2010)¹⁶⁹
NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	Yes (FY 2010, 2011)

As of October 2011, New Jersey had submitted only 15 mental health records to the NICS Index. However, recent legal and policy developments have altered the conditions for reporting. After privacy concerns impeded the state's willingness to submit records to NICS for years, the New Jersey legislature passed a law in 2010 clarifying that compliance with the NICS Record Improvement Act and the Brady Act requires state disclosure of mental health records.¹⁷⁰ In FY 2010, New Jersey received a NARIP grant of \$860,331 to improve the recording, automation, and transmittal of mental health adjudications in real time to the New Jersey State Police.¹⁷¹ According to a state official interviewed in March 2011, New Jersey has convened a task force to improve record sharing and is developing an automated system by which county adjusters will input data directly into NICS. The official interviewed reported that this system will be ready by the spring of 2012. New Jersey was also awarded a FY 2011 NARIP grant of \$2.8 million to improve the recording, automating, and real-time transmission of mental health records to the New Jersey State Police and NICS.¹⁷²

New Jersey had not submitted a single record to the NICS Index substance abuse file as of October 2011. According to a state official, the state submits criminal substance abuse records to Ill, but it does not have any mechanism to collect and maintain non-criminal evidence, such as failed drug tests or admissions of drug use.

NEW MEXICO

Mental Health Records Submitted
Per 100,000 Residents (Rank): **279.6 (11th)**

Law Requiring/Permitting That
Records Be Shared (Year): **No**

Gun Rights Restoration Program (Year): **No**

NICS Act Record Improvement Program
(NARIP) Grant Recipient (Year): **No**

New Mexico has made tremendous strides within the last few months in submitting mental health records to NICS, although it is not clear to Mayors Against Illegal Guns how this change has transpired. As of April 2011, New Mexico had not submitted a single mental health record to NICS. According to a state official interviewed in April 2011, this failure to report was primarily because the state privacy law bars the disclosure of mental health records except in very limited circumstances, such as delivering further care or addressing an immediate threat of harm.¹⁷³ Legislation to overcome these hurdles was introduced in 2007 after Virginia Tech, but it did not pass, and there apparently has not been sufficient political will to pass a bill since then.

In addition to its legal obstacles, New Mexico reportedly faced logistical problems that would complicate mental health record sharing. According to a state official, no agency was willing to take the lead on this issue. The Department of Public Safety reportedly declined to take responsibility for mental health records submission, in part because it believes that it has a conflict of interest as the FBI's Criminal Justice Information Services representative for the state. The state courts were reportedly willing to be the repository for records, but they believed that they could not under NICS guidelines because they are not open 24 hours a day. And the State Police reportedly believed that it could not be the repository because sending records to the State Police would be a disclosure to a third party that would violate HIPAA.

New Mexico also faced a funding issue. To send mental health records to NICS, the state would have to alter its current system for submitting information to NCIC, which required hiring a new vendor. The state has not passed a gun rights restoration program, so is ineligible for NARIP funding for such a task.

However, by October 31, 2011, the state had submitted 5758 mental health records, which was the fifth highest raw increase in the country between April and October. With its relatively small population, New Mexico therefore had the highest per capita increase in the country between April and October 2011.

As of October 2011, New Mexico had not submitted any substance abuse records to the NICS Index file. According to a state official, New Mexico has no infrastructure to submit drug abuse evidence that is not related to an arrest or conviction, and no agency or person is tasked with collecting these records. The official interviewed reported that the state is attempting to deal with mental health records first, and then will focus on submitting other prohibitive records to NICS.

NEW YORK

Mental Health Records Submitted Per 100,000 Residents (Rank):	826.1 (4th)
Law Requiring/Permitting That Records Be Shared (Year):	Yes (2008)
Gun Rights Restoration Program (Year):	Yes (2009)¹⁷⁴
NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	Yes (FY 2009, 2010, 2011)

As of October 2011, New York had submitted 160,092 mental health records to NICS, the fourth most in the country by volume and the fourth most per capita. Until recently, New York faced abundant logistical obstacles to submitting mental health records, but in the last several years the state, through various legal and policy initiatives, has been able to overcome virtually all of them. The most significant hurdle was legal: privacy concerns restricted New York's ability to share mental health records until 2008, when the state passed a law requiring records of guardianship, involuntary commitments and other relevant mental health records to be sent to NICS.¹⁷⁵ The state then faced funding and logistical obstacles to collecting the records and submitting them to NICS. To overcome these hurdles, the state created a gun rights restoration program in its court rules¹⁷⁶ and embarked on a six-month effort to collect the information necessary to conduct record estimates from the Office of Mental Health, the Office for People with Disabilities and the Office of Court Administration. These accomplishments made New York eligible for the three NARIP grants it subsequently received. The state's first grant (\$937,411) was used, in part, to automate the record submission system for public hospitals run by the Department of Mental Health, and the second (\$5,994,588) will do the same for public hospitals run by the Department of Health.¹⁷⁷ In FY 2011, New York was awarded \$3.2 million to continue efforts to improve mental health records tracking and transmission and to continue to maintain the state's gun rights restoration program.¹⁷⁸

As of October 2011, New York had submitted only one record to the NICS Index file for controlled substances. According to a state official, New York currently sends only criminal history-related substance abuse records into NICS, reportedly to accommodate NICS's preferred practice of avoiding receipt of duplicate records.

NORTH CAROLINA

(PARTIAL POC)¹⁷⁹

Mental Health Records Submitted Per 100,000 Residents (Rank):	229.6 (13th)
Law Requiring/Permitting That Records Be Shared (Year):	Yes (2008)
Gun Rights Restoration Program (Year):	No
NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No

As of October 2011, North Carolina had submitted 21,894 mental health records to the NICS Index. Before Virginia Tech, North Carolina had submitted very few mental health records to NICS simply due to lack of political will, not because of privacy concerns or any need for legal change, according to a state official. Following the tragedy at Virginia Tech, the state enacted a record-sharing law that requires courts to share involuntary commitment records with NICS.¹⁸⁰ The North Carolina Bureau of Investigation then worked with technical staff from the Administrative Office of the Courts to fully automate the state record system. In part through NCHIP funding, North Carolina made the technical changes to the state database that were necessary to collect mental health records, although one state official interviewed believes that non-criminal mental health records still may not be getting into the database.

A state official reported in 2011 that North Carolina does not have a gun rights restoration program, although the 2008 record-sharing statute did contain such a provision (which perhaps ATF did not approve).¹⁸¹ The state official also reported in 2011 that North Carolina had not submitted a records estimate in part because, without a gun rights restoration program in place, the state considered a records estimate to be a futile undertaking.

North Carolina had submitted 17 records to the NICS Index substance abuse file. It is not clear how to account for those submissions; the state official interviewed by Mayors Against Illegal Guns was not even aware that such a NICS file existed.

NORTH DAKOTA

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.1 (42nd)
Law Requiring/Permitting That Records Be Shared (Year):	No
Gun Rights Restoration Program (Year):	Yes (2011)¹⁸²
NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	Yes (FY 2011)

As of October 2011, North Dakota had submitted one mental health record to the NICS Index and zero records to the NICS Index substance abuse file. Mayors Against Illegal Guns was unable to conduct an interview with state officials who have knowledge about North Dakota's experience with record sharing. However, in 2011 North Dakota passed a gun rights restoration program,¹⁸³ and it was subsequently awarded a NARIP grant for \$205,973 to create a computerized system to collect and retain mental health information relevant to firearms possession.¹⁸⁴

OHIO

Mental Health Records Submitted Per 100,000 Residents (Rank):	233.0 (12th)
Law Requiring/Permitting That Records Be Shared (Year):	No (2004)
Gun Rights Restoration Program (Year):	Yes (2011)
NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No

As of October 2011, Ohio had submitted 26,876 mental health records to NICS. According to a state official, Ohio made no effort to submit mental health records for many years due to a lack of political will. In 2004, when the state legislature was considering a concealed carry gun law, officials expressed new concern about the background check system. Included in the final concealed carry gun legislation was a requirement that mental health providers and probate courts send mental health records to the state Bureau of Criminal Identification & Information in the state attorney general's office.¹⁸⁵ Since then, with regular receipt of records from mental health providers and probate courts, the attorney general has been able to submit significantly more records to NICS, although Ohio state law still does not explicitly require as much. According to the state official interviewed in 2011, Ohio was working on automating its record submission system to further improve its record collection and submission. Ineligible for NARIP funding at the time because it did not have a sufficient gun rights restoration program, Ohio was paying for the project with NCHIP funding. In 2011, Ohio amended its gun rights restoration statute to clarify the conditions of gun rights restoration following a mental health disability.¹⁸⁶ As of this writing it is not clear whether the amended statute satisfies the NICS Improvement Act and makes Ohio eligible for NARIP funding.

Ohio had not submitted a single record to the NICS Index substance abuse file as of October 2011. According to a state official, the state lacks the infrastructure to submit evidence of substance abuse outside of arrest and conviction records.

OKLAHOMA

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.1 (42nd)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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As of October 2011, Oklahoma had submitted two mental health records to the NICS Index. Lack of political will appears to be the only barrier to submission, as the state official interviewed by Mayors Against Illegal Guns did not believe that any state privacy law or logistical hurdles block record submission. The state has not enacted a gun rights restoration program, so it is ineligible for NARIP funding to improve record sharing.

Oklahoma has submitted 108 records to the NICS Index substance abuse file, the fifth most in the nation. Nevertheless, the procedure for doing so remains unclear, and the official interviewed described a similar lack of will or infrastructure regarding the submission of substance abuse records.

OREGON (POC)

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.0 (51st)
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Law Requiring/Permitting That Records Be Shared (Year):	Yes (2009)
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Gun Rights Restoration Program (Year):	Yes (2009)¹⁸⁷
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	Yes (FY 2009, 2010, 2011)
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As of October 2011, Oregon had submitted just three mental health records to the NICS Index mental health file. A 2009 state statute requires the Department of Human Services, the Psychiatric Security Review Board, and the Judicial Department to provide the State Police with records identifying people who: (1) have been involuntarily committed; (2) have been found by a court to lack fitness to proceed; (3) have been found guilty or responsible except for insanity; or (4) have been placed under court-ordered psychiatric review.¹⁸⁸ Because Oregon is a point of contact state, the State Police runs its own background checks against these records each time a prospective purchaser attempts to buy a gun in Oregon.¹⁸⁹ According to a state official, the state has historically made little effort to also submit those records to the NICS file for mental health. Instead, Oregon created a “Prohibited Persons” file and gave NICS access to the names in that file.

Oregon has received three rounds of NARIP funding, in FY 2009 (\$770,849), 2010 (\$2 million), and 2011 (\$1.13 million).¹⁹⁰ Oregon has used the funding to digitize millions of records, improve the technical infrastructure enabling state agencies to transmit mental health records to NICS, and maintain its gun rights restoration program.

As of October 2011, Oregon had not submitted a single record to the NICS Index substance abuse file. According to the state official interviewed by Mayors Against Illegal Guns, Oregon has not begun to think about how to report such records to the NICS Index.

PENNSYLVANIA (POC)¹⁹¹

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.0 (51st)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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Pennsylvania has submitted only one mental health record to the NICS Index, even though state law has established a robust state database of prohibitive mental health records, known as the PICS system. According to a state official, there are no privacy problems with sending the records in PICS to the federal NICS database, yet the state faces multiple logistical obstacles to sharing this data with the federal government. First, the state lacks the technical infrastructure to physically share the records. Second, the state does not know which records to share. Because Pennsylvania's state prohibitions on gun purchasers are not entirely consistent with the federal prohibitions, not all records in PICS are prohibitive under federal law, and the state has not determined how to screen out only federally prohibited records. The state has had difficulty—both for reasons of funding and political will, according to the official interviewed by Mayors Against Illegal Guns—in sorting out the records. Pennsylvania is ineligible for a NARIP grant because it has not passed a gun rights restoration program.

A state official told Mayors Against Illegal Guns in March 2011 that Pennsylvania is working on submitting substance abuse records to the NICS Index, collecting records of substance abuse from various agencies and sharing with the NICS Index if the record is not already in III. However, as of October 31, 2011, Pennsylvania had submitted zero records to the NICS Index substance abuse file.

RHODE ISLAND

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.0 (51st)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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As of October 2011, Rhode Island had not submitted a single mental health record to the NICS Index. However, a state official reported that the state is actively working to get records in. Representatives from the Rhode Island Law Enforcement Telecommunications System, the state attorney general, the state courts, and others held a summit to discuss record sharing, and state officials recently attended a regional NICS conference in Connecticut to determine how to overcome Rhode Island's funding, logistical, and privacy obstacles. The state's primary problem is a lack of funding to update software or implement record sharing. Rhode Island does not have a gun rights restoration program and is thus currently ineligible for federal NARIP grants. The NICS legal team is actively helping Rhode Island to draft laws. Privacy does not appear to be a major problem, but a state official believes that HIPAA privacy laws will be a hurdle for some civil commitment files. State officials are also apparently unsure of exactly which mental health records must be gathered for NICS submission, though the official interviewed by Mayors Against Illegal Guns contends that record submission should move swiftly once that is clarified and the software is in place, especially because Rhode Island mental health records are already kept in electronic form.

As of October 2011, the state had not submitted a single record to the NICS Index substance abuse file.

SOUTH CAROLINA

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.4 (34th)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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As of October 2011, South Carolina had submitted only 17 mental health records to the NICS Index. According to a state official, the only mental health records that the state currently submits to the NICS Index are for concealed carry permit applicants whose mental health records come to the state's attention during the application process. South Carolina apparently struggles with reporting the vast majority of mental health records to NICS because no automated system exists to collect records from mental health agencies and courts, and no law mandates record sharing with NICS. According to a state official, most agencies are unwilling to send records without a law requiring them to do so, citing privacy concerns among other reasons that were unclear to the official interviewed. The South Carolina legislature has made no effort to pass a new law requiring record submission.

A state official also reported that South Carolina lacks funding to implement a mental health record reporting infrastructure. South Carolina has not passed a gun rights restoration program and is thus ineligible for NARIP grants. The official interviewed was unaware that the state is required to submit a records estimate, which South Carolina has not done.

South Carolina had submitted four records to the NICS Index substance abuse file as of October 2011. According to the state official interviewed by Mayors Against Illegal Guns, South Carolina has collected a small number of substance abuse records from gun applicants with arrests where narcotics were found, which the state has sent into NICS.

SOUTH DAKOTA

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.2 (37th)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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South Dakota has submitted just two mental health records to the NICS Index. No law mandates or permits the sharing of records with other agencies, and a state official reported that funding, logistics, and privacy concerns all inhibit mental health record sharing. The official reported that funding is the primary obstacle, and that without funding it would be difficult to overcome the privacy and logistical barriers. South Dakota has not passed a restoration of gun rights law, and the state has not submitted a single record to the NICS Index substance abuse file.

TENNESSEE (POC)

Mental Health Records Submitted Per 100,000 Residents (Rank): **49.5 (24th)**

Law Requiring/Permitting That Records Be Shared (Year): **Yes (2010)**

Gun Rights Restoration Program (Year): **No**

NICS Act Record Improvement Program (NARIP) Grant Recipient (Year): **No**

Tennessee's new law requiring the submission of mental health records to state databases went into effect in 2010.¹⁹² A state official reported that this law was necessary because mental health providers and even some courts had refused to share civil commitment records with law enforcement. The official did not believe the privacy concerns had an actual basis in law, but the legislative change was nonetheless necessary to provide an impetus for agencies to share records. The state had submitted 3,142 mental health records to the NICS Index as of October 2011, an increase from 760 records in the mental health file as of August 2010. The pace of records submission to NICS is slow in part because state officials receive records haphazardly, by paper fax or email, and Tennessee lacks funding to automate its records.

The state has not passed a law permitting restoration of gun rights, and is therefore ineligible for federal NARIP grant funding. The state is working closely with NICS to pass such a law, however, and the state official reported that there appears to be some movement to establish one.

Tennessee reports misdemeanor drug arrests to III, but only five substance abuse records were shared with the NICS Index.

TEXAS

Mental Health Records Submitted Per 100,000 Residents (Rank): **695.2 (6th)**

Law Requiring/Permitting That Records Be Shared (Year): **Yes (2009)**

Gun Rights Restoration Program (Year): **Yes (2010)¹⁹³**

NICS Act Record Improvement Program (NARIP) Grant Recipient (Year): **Yes (FY 2010, 2011)**

In 2009, Texas passed a law that required state agencies to share mental health records with the NICS Index.¹⁹⁴ The bill overcame privacy concerns that had been expressed by the state Department of Mental Health by limiting the use of the information. The new law also authorizes restoration of gun rights, which allowed Texas to apply for the \$751,537 NARIP grant it received for FY2010 to automate arrest records in order to submit to NICS.¹⁹⁵ Since the passage of the law, Texas has increased its record submission dramatically and has now submitted 174,802 mental health records to the NICS Index. In FY 2011, Texas was awarded a NARIP grant of \$547,039 specifically to conduct physical reviews of records in judicial districts where mental health records have not been identified or reported and to train local administrators to improve mental health record reporting.¹⁹⁶

For substance abuse, a state official reported that records did not need to be sent to the NICS Index because all relevant records are already in III. Texas requires all individuals who are convicted of class B misdemeanors and more severe crimes to be fingerprinted, so those records may be submitted to III. Texas also sends records of individuals diverted to pretrial drug treatment to III. The state has not submitted any records to the NICS substance abuse file.

UTAH (POC)

Mental Health Records Submitted Per 100,000 Residents (Rank):	3.9 (29th)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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Utah has submitted just 109 mental health records to the NICS Index and faces myriad obstacles to reporting. Despite its status as a point of contact state¹⁹⁷, Utah has no automated process for collecting relevant records or centralized database of records. More importantly, according to the state official we interviewed, the Utah Bureau of Criminal Investigation (BCI) does not have the legal authority to determine who is prohibited, and therefore only submits records in the most extreme instances when the courts are absolutely clear that someone is prohibited for mental health reasons. According to the official, there is no political will to pass legislation that would help BCI overcome its real or perceived legal hurdles. Similarly, the Utah legislature has not passed a law permitting restoration of gun rights, and Utah is thus not eligible to apply for NARIP grant funding.

The state official reported that there has been no effort at all to submit substance abuse records. However, the state has submitted 130 records to the NICS Index substance abuse file—the fourth highest total in the nation.

VERMONT

Mental Health Records Submitted Per 100,000 Residents (Rank):	4.0 (28th)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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Vermont has submitted only 25 mental health records to the NICS Index. According the state official interviewed, Vermont lacks both the political will and the funding necessary to improve reporting. Vermont law does not require or permit record sharing. The Vermont Criminal Information Center (VCIC) is nonetheless collecting criminal mental health records and submitting them to NICS, but it does not collect civil involuntary commitments. The agency has no working relationship with civil courts, so VCIC has asked the mental health providers to share their copies of the civil commitment records. These providers, however, have been unwilling to devote the time and resources to locate and catalog the relevant records. A few providers also expressed privacy concerns, but the state official interviewed did not believe that these concerns had basis in law. Some Vermont legislators also oppose data sharing as a matter of principle. In addition, Vermont has not passed a law permitting restoration of gun rights, and Vermont is therefore not eligible to apply for NARIP grant funding.

There is some cause for optimism, however. The state official interviewed believes that mental health providers will be more amenable to sharing records because the state is facing funding penalties authorized by the NICS Improvement Act.

No infrastructure exists in Vermont to track or submit non-arrest or conviction-related evidence of drug abuse, such as positive drug tests. As a result, no substance abuse records are in the NICS Index.

VIRGINIA (POC)

Mental Health Records Submitted Per 100,000 Residents (Rank):	2,016.4 (1st)
Law Requiring/Permitting That Records Be Shared (Year):	Yes (2008)
Gun Rights Restoration Program (Year):	Yes (2011)¹⁹⁸
NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	Yes (FY 2011)

Virginia leads the country in mental health records submitted per capita to the NICS Index, with over 2,000 records for every 100,000 residents. The state began collecting mental health records into a state database in 1995. According to the state official interviewed, Virginia began sharing these records with NICS as early as 2002 or 2003. Then, after the tragedy at Virginia Tech in 2007, then Virginia governor Tim Kaine issued an executive order directing executive branch employees, the Virginia State Police, and the state Department of Mental Health, Mental Retardation, and Substance Abuse to report relevant records to the Central Criminal Records Exchange.¹⁹⁹ The following year, the legislature passed a law that directed records of court-ordered outpatient mental health treatment, among others, to be shared with the Central Criminal Records Exchange and with NICS.²⁰⁰ The state passed a law in 2011 permitting restoration of gun rights²⁰¹, and in FY 2011 Virginia was awarded a NARIP grant of \$764,100 to upgrade the state background check system and to equip 40 district courts with infrastructure to automate the receipt of mental health data from the Supreme Court to the VA State Police to submit to NICS.²⁰²

For substance abuse records, the official reported that Virginia has entered some records and is working with NICS to improve reporting. The state has reportedly implemented a program that allows state administrators to input names directly into NICS, and also allows for these names to be deleted or altered in real time. As of October 31, 2011, Virginia had submitted 36 records to the NICS substance abuse file.

WASHINGTON (PARTIAL POC)²⁰³

Mental Health Records Submitted Per 100,000 Residents (Rank):	1,184.5 (2nd)
Law Requiring/Permitting That Records Be Shared (Year):	Yes (2009)
Gun Rights Restoration Program (Year):	Yes (2009)
NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No

With 79,651 total mental health records submitted, Washington ranks second in the nation behind Virginia in per capita reporting. Before Washington started to share records with NICS in 2006, the state had established the infrastructure for searching and compiling mental health records in a state repository, and a state law requires that such searches be undertaken for concealed carry licenses and gun purchases. A state official reported that legal changes in 2003 allowed records to be shared with NICS.²⁰⁴ It took years, however, for NICS to convince the Washington Department of Social and Health Services (DSHS) to submit the records, and data received by Mayors Against Illegal Guns indicates that 30,000 records were submitted to NICS sometime after December of 2006. In 2009, the state adopted a policy for courts to submit mental records directly to NICS via email, and the number of the state's mental health records in the NICS Index has swelled to more than 75,000. Despite the increase, the official interviewed said that many local mental health providers are still not sending names in a timely manner—if it all.

Washington was able to accomplish this increase without NARIP funding, primarily because courts were already reporting records to the state division of licensing and the logistical hurdles were minor. Washington is making efforts to get a NARIP grant. The state passed a law permitting restoration of gun rights,²⁰⁵ but the program was deemed inadequate by ATF for several reasons. The state is currently working to implement an acceptable program to attain eligibility for NARIP funding.

Washington has submitted 49 substance abuse records to the NICS Index. The official reported that while criminal drug abuse records are being submitted to NICS, NICS operators are training state agencies on how to enter other substance abuse records.

WEST VIRGINIA

Mental Health Records Submitted Per 100,000 Residents (Rank): **305.1 (10th)**

Law Requiring/Permitting That Records Be Shared (Year): **Yes (2008)**

Gun Rights Restoration Program (Year): **No**

NICS Act Record Improvement Program (NARIP) Grant Recipient (Year): **No**

West Virginia has recently improved its record sharing, jumping from 609 records in August 2010 to 5,653 records in October 2011. A 2008 statute authorized the creation of a state registry of mental health records, to be maintained by either the Supreme Court of Appeals or the State Police, and authorized the state registry to share relevant records with NICS.²⁰⁶ According to a state official interviewed by Mayors Against Illegal Guns, the West Virginia Supreme Court has been reluctant to electronically submit mental health records to the state registry due to security concerns. A steering committee with representatives from the courts, state police and NICS representatives was formed to allay these concerns. The state has now equipped mental health examiners in each county with laptops where records of hearings can be entered and sent to a database administered by the Supreme Court. The records are then sent by a secure link to the West Virginia Police to be sent through another secure link to NICS. The state is working to automate the system. To date, all West Virginia mental health records reported to NICS originate from the courts and not from mental health providers.

NCHIP grants have funded all of the work done so far to set up the link between the health examiners and the Courts. West Virginia is unable to get NARIP funding grant because the state has not passed a law permitting restoration of gun rights, and—according to the official interviewed—no political will exists to pass such a law.

West Virginia has yet to send a single record to the NICS Index substance abuse file. There is no infrastructure or effort to input substance abuse records into the NICS Index. NICS has asked for the information, but there is no way to generate the data and no funding to create such a system.

WISCONSIN

Mental Health Records Submitted Per 100,000 Residents (Rank): **104.5 (17th)**

Law Requiring/Permitting That Records Be Shared (Year): **Yes (2010)**

Gun Rights Restoration Program (Year): **Yes (2009)²⁰⁷**

NICS Act Record Improvement Program (NARIP) Grant Recipient (Year): **Yes (FY 2010, 2011)**

As of October 2011, Wisconsin had reported 5,943 mental health records to the NICS system. In 2010, the Wisconsin legislature enacted a law requiring the state Department of Justice to promulgate rules for sharing mental health records with NICS.²⁰⁸ The state already had a centralized database for mental health records, and this law merely increased the accessibility of this database to NICS. As a result, state reporting increased from 518 mental health records in August 2010 to 5,943 in October 2011. Wisconsin still faces significant logistical hurdles as records are sent in hard copy and must be input by hand.

Wisconsin has enacted a law permitting restoration of gun rights, which made the state eligible for a \$981,372 NARIP grant in FY 2010 to, in part, establish a NICS Record Improvement Task Force to improve record sharing.²⁰⁹ Wisconsin was also awarded a FY 2011 grant for \$2.5 million to develop electronic infrastructure to better submit automatic mental health and criminal records to NICS.²¹⁰

The official reported that there is no infrastructure for sharing substance abuse information with the NICS Index, and the state has submitted just five records to the NICS Index substance abuse file.

WYOMING

Mental Health Records Submitted Per 100,000 Residents (Rank):	0.7 (33 rd)
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Law Requiring/Permitting That Records Be Shared (Year):	No
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Gun Rights Restoration Program (Year):	No
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NICS Act Record Improvement Program (NARIP) Grant Recipient (Year):	No
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Wyoming has submitted just four mental health records to the NICS Index. Several obstacles stand in the way of Wyoming's ability to submit mental health records to the national NICS database. First, the state's privacy law bars their disclosure without the patient's consent, a court order, need for further treatment or transfer to another mental health facility.²¹¹ Changing or overriding this law is likely necessary for the state to submit mental health records to the NICS database. However, no bill to permit or require record sharing has been introduced, and NICS is not working with state legislators to draft one due to lack of interest.

Even if Wyoming were to pass such a bill, logistical hurdles would likely slow down the collection of mental health records because the state has no central repository. The state would need funding and technical support to create one, neither of which is currently available, according to the state official interviewed. Nor can Wyoming receive a federal NARIP grant because the state has not passed a law permitting restoration of gun rights. The administration of such a law would be complex in Wyoming, as there is no appellate-level court apart from the Wyoming Supreme Court, which would have to hear all petitions to restore gun rights.

Reporting substance abuse records faces similar obstacles. No centralized databases exist for the collection of substance abuse records and there has been no political will to create one. The state has submitted only one record to the NICS Index substance abuse file.

ENDNOTES

¹ Michael Luo, "U.S. Rules Made Killer Ineligible to Purchase Gun," *New York Times*, April 21, 2007.

² See John Faherty, "Moments from a life in spiral," *The Arizona Republic*, January 16, 2011 (describing 2007 arrest for possession of drug paraphernalia); "U.S. Officials Should Report Drug Use," *CBS New York*, January 16, 2011 ("A military official in Washington said the Army rejected Loughner in 2008 because he failed a drug test"); Josh White, "Jared Loughner unable to enlist in Army because of drug use," *Washington Post*, January 9, 2011 (reporting that Loughner was "rejected from enlistment in the U.S. Army because of issues related to history of drug abuse, military officials said Sunday"); Jacques Billeaud, "College Releases AZ Suspect's Suspension Records," *The Associated Press*, July 13, 2011 (describing school suspension).

³ James V. Grimaldi, "Reno-era policy kept Loughner off FBI list," *The Washington Post*, January 19, 2011.

⁴ Interviews were conducted by telephone with officials from relevant state agencies in 48 states and the District of Columbia in March, April, and November 2011. A state official from South Dakota submitted responses to Mayors Against Illegal Guns's inquiries by email. Mayors Against Illegal Guns was unable to conduct an interview with state officials who have knowledge of North Dakota's experience with record sharing.

⁵ 27 C.F.R. § 478.11 (2011).

⁶ NICS Improvement Amendments Act of 2007, Public Law No. 110-180 (Jan. 8, 2008).

⁷ The dearth of records submitted by federal agencies implies widespread noncompliance with the NICS Improvement Act federal agency reporting requirements. Mayors Against Illegal Guns could not determine the volume or kind of relevant records currently held by federal agencies. The Attorney General has submitted NICS Improvement Act reports to the Senate Judiciary Committee that may explain the scope of relevant federal records, but those reports have not been made available to the public.

⁸ James V. Grimaldi, "Reno-era policy kept Loughner off FBI list," *The Washington Post*, January 19, 2011.

⁹ "America's longtime love-hate affair with guns," *Chattanooga Times Free Press*, November 6, 2011.

¹⁰ Andrew Glass, "Brady Bill signed into law, Nov. 30, 1993," *Politico*, November 30, 2009.

¹¹ Mayors Against Illegal Guns, "In aftermath of Tucson shooting, new bipartisan poll shows Americans - including gun owners - support tougher laws to keep firearms out of dangerous hands" January 18, 2011, available at http://mayorsagainstillegalguns.org/downloads/pdf/advisory_6_arizona_poll.pdf. Polling conducted jointly by Momentum Analysis, a polling firm with Democratic clients, and American Viewpoint, a polling firm with Republican clients. The firms surveyed 1,003 registered voters who are demographically representative of registered voters across the country.

¹² See U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Background Checks for Firearm Transfers, 2009*, available at <http://bjs.ojp.usdoj.gov/content/pub/html/bcft/2009/bcft09st.cfm>

¹³ *Id.*

¹⁴ Michael Luo, "U.S. Rules Made Killer Ineligible to Purchase Gun," *New York Times*, April 21, 2007.

¹⁵ NICS Improvement Amendments Act of 2007, Public Law No. 110-180 (Jan. 8, 2008).

¹⁶ *Id.* § 101(a)(4).

¹⁷ See *U.S. v. Printz*, 521 U.S. 898 (1997) (holding that the interim provisions of the Brady Bill, which required states to perform firearms background checks until the federal NICS system was operative, were unconstitutional under the 10th Amendment). Note that Printz had little practical effect on the implementation of the Brady Bill because most

state and local law enforcement agencies continued to voluntarily comply with the interim plan while the federal NICS system was under development.

¹⁸ See *South Dakota v. Dole*, 483 U.S. 203 (1987) (upholding the constitutionality of the National Minimum Drinking Age Act, which discourages states from lowering the legal drinking age by withholding 5% of federal highway funding from states that do not comply).

¹⁹ NICS Improvement Amendments Act of 2007, Public Law No. 110-180 § 102 (Jan. 8, 2008).

²⁰ *Id.* JAG Grants totaled \$302 million in FY2010. Through FY2010, states are not subject to penalties. In FY11 & 12, states may be subject to a 3% reduction unless 50% of records are available to NICS; in FY13-17, states may be subject to a 4% reduction unless 70% of records are available to NICS; and in FY18 and beyond states are subject to a 5% reduction unless 90% of records are available to NICS. These penalties may be reduced or waived by the Attorney General.

²¹ NICS Improvement Amendments Act of 2007, Public Law No. 110-180 § 103 (Jan. 8, 2008). The statute provides that grants may be awarded to: (1) create electronic systems which provide accurate and up-to-date information for NICS; (2) assist States in establishing or enhancing their own capacities to perform NICS background checks; (3) supply accurate and timely information to the Attorney General concerning final dispositions of criminal records to databases accessed by NICS; (4) supply accurate and timely information to the Attorney General concerning the identity of prohibited purchasers to be used by the FBI to conduct NICS background checks; (5) supply accurate and timely court orders and records of misdemeanor crimes of domestic violence for inclusion in Federal and State law enforcement databases used to conduct NICS background checks; (6) collect and analyze data needed to demonstrate levels of State compliance with the NICS Improvement Act; and (7) maintain the relief from disabilities program (though only 3-10% of each grant may be used for this purpose).

²² *Id.* § 105.

²³ See U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, 2010 NICS Operations Report, available at <http://www.fbi.gov/about-us/cjis/nics/reports/2010-operations-report/2010-operations-report-pdf/view>.

²⁴ U.S. Department of Justice, Federal Bureau of Investigation, "Active Records in the NICS Index as of Oct. 31, 2011," available at <http://www.fbi.gov/about-us/cjis/nics/reports/110711nics-index.pdf>.

²⁵ Note that this does not include denials for mental health reasons by "Point of Contact" states that designate state agencies to conduct the NICS background check rather than relying on the FBI. See U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, 2006 NICS Operations Report, available at http://www.fbi.gov/about-us/cjis/nics/reports/2006-operations-report/ops_report_2006.pdf.

²⁶ U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, 2010 NICS Operations Report, available at <http://www.fbi.gov/about-us/cjis/nics/reports/2010-operations-report/2010-operations-report-pdf/view>.

²⁷ See John Faherty, "Moments from a life in spiral," *The Arizona Republic*, January 16, 2011 (describing 2007 arrest for possession of drug paraphernalia); "U.S. Officials Should Report Drug Use," *CBS New York*, January 16, 2011 ("A military official in Washington said the Army rejected Loughner in 2008 because he failed a drug test"); Josh White, "Jared Loughner unable to enlist in Army because of drug use," *Washington Post*, January 9, 2011 (reporting that Loughner was "rejected from enlistment in the U.S. Army because of issues related to history of drug abuse, military officials said Sunday"); Jacques Billeaud, "College Releases AZ Suspect's Suspension Records," *The Associated Press*, July 13, 2011 (describing school suspension).

²⁸ James V. Grimaldi, "Reno-era policy kept Loughner off FBI list," *The Washington Post*, January 19, 2011.

²⁹ See note 4

³⁰ 27 C.F.R. § 478.11 (2011).

³¹ NICS Improvement Amendments Act of 2007, Public Law No. 110-180 (Jan. 8, 2008).

³² In this report, baseline comparison data for record reporting by states is from August 31, 2010. This data source was not available for record reporting by federal agencies. Instead, the coalition has utilized baseline data from March 31, 2011.

³³ The dearth of records submitted by federal agencies implies widespread noncompliance with the NICS Improvement Act federal agency reporting requirements. Mayors Against Illegal Guns was unable to determine the volume or kind of relevant records currently held by federal agencies. The Attorney General has submitted NICS Improvement Act reports to the Senate Judiciary Committee that may explain the scope of relevant federal records, but those reports have not been made available to the public.

³⁴ 18 U.S.C. § 922(g)(1)-(9), (n).

³⁵ Only purchasers who attempt to buy firearms from federally licensed firearms dealers are required to undergo a background check. Approximately 40% of gun sales in the United States are private sales, which are not subject to mandatory background checks under current law. Some states require that background checks be conducted in other settings as well. See Philip J. Cook & Jens Ludwig, U.S. Department of Justice, National Institute of Justice Research in Brief, *Guns in America: National Survey on Private Ownership and Use of Firearms*, May 1997, available at <http://www.ncjrs.org/pdffiles/165476.pdf>

³⁶ See U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, 2010 NICS Operations Report, available at <http://www.fbi.gov/about-us/cjis/nics/reports/2010-operations-report/2010-operations-report-pdf/view>. In 2010, the specific decision rate averaged at 91.29 percent, and the average time a caller waits for their call to be answered is 6.37 seconds.

³⁷ When a prohibited purchaser fails a background check, dealers are not told the specific reason the buyer's attempted purchase was declined. If a sale is delayed and the NICS investigator cannot resolve the investigation within three days, the purchase is allowed to proceed, though dealers are not obligated to sell the gun in that circumstance.

³⁸ The 13 full POC states are California; Colorado; Connecticut; Florida; Hawaii; Illinois; Nevada; New Jersey; Oregon; Pennsylvania; Tennessee; Utah and Virginia. See Department of Justice, Federal Bureau of Investigation, National Instant Criminal Background Check System, NICS Point of Contact States & Territories, available at <http://www.fbi.gov/about-us/cjis/nics/poc>.

³⁹ The eight partial POC states are Iowa; Maryland; Michigan; Nebraska; New Hampshire; North Carolina; Washington; and Wisconsin. See Department of Justice, Federal Bureau of Investigation, National Instant Criminal Background Check System, NICS Point of Contact States & Territories, available at <http://www.fbi.gov/about-us/cjis/nics/poc>.

⁴⁰ U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, 2010 NICS Operations Report, available at <http://www.fbi.gov/about-us/cjis/nics/reports/2010-operations-report/2010-operations-report-pdf/view>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ <http://www.fbi.gov/about-us/cjis/cc/quick-links-to-maps/lllmaps>.

⁴⁴ See Federal Bureau of Investigation, Criminal Justice Information Services Division, Active Records in the NICS Index as of Oct. 31, 2011, available at <http://www.fbi.gov/about-us/cjis/nics/reports/110711nics-index.pdf>.

⁴⁵ See Philip J. Cook & Jens Ludwig, U.S. Department of Justice, National Institute of Justice Research in Brief, *Guns in America: National Survey on Private Ownership and Use of Firearms*, May 1997, available at <http://www.ncjrs.org/pdffiles/165476.pdf>.

⁴⁶ See Bureau of Alcohol, Tobacco, and Firearms, *Gun Shows, Brady Checks, and Crime Gun Traces*, January 1999, available at: <http://www.atf.gov/publications/download/treas/treas-gun-shows-brady-checks-and-crime-gun-traces.pdf>. According to the ATF, 34.4 percent of the investigations (108 of 314) had at least one firearm associated with a gun show investigation recovered in a crime.

⁴⁷ U.S. Government Accountability Office, *Gun Control: Options for Improving the National Instant Criminal Background Check System*, March 2000, available at <http://www.gao.gov/archive/2000/gg00056.pdf>. The report includes an estimate that 2.7 million persons are prohibited from purchasing guns in the United States due to involuntary mental health commitments.

⁴⁸ Numbers were calculated by dividing the cumulative number of state mental health record submissions by the population of that state, then multiplying by 100,000. The result is a state's cumulative record submission total per 100,000 inhabitants. 2010 U.S. Census Data, available at <http://2010.census.gov/2010census/data/>.

⁴⁹ Some states may not be reporting mental health records because of state privacy laws, a claim our attorneys heard from some state officials. The federal Health Insurance Information Portability and Privacy Act (HIPAA) Public Law No. 110-180 (August 21, 1996) currently sets the minimum privacy standards under federal law for the sharing of medical information, and states can and have enacted laws that afford broader protections. If Congress chose to do so, it could craft narrowly tailored exceptions to HIPAA and related federal privacy statutes to clarify that state privacy laws are not a barrier to compliance with NICS reporting requirements with respect to mental health status and drug abuse. In fact, there have been recent congressional efforts to alter the privacy standard in different versions of the Health Information Technology Promotion Act. See H.R. 4157, 109th Cong.; H.R. 5885, 110th Cong.; H.R. 1031, 111th Cong.

⁵⁰ Alabama's law required sharing of records, but contained a very restrictive definition of records that qualified. See discussion of Ala. Code § 22-52-10.8 (2011), *infra*.

⁵¹ Colo. Rev. Stat. §§ 13-5-142, 13-9-123 (2011)

⁵² Conn. Gen. Stat. § 29-36l(d)(2) (2011).

⁵³ Ga. Code Ann. § 16-11-172 (2011).

⁵⁴ Fl. Stat. § 790.065 (2008).

⁵⁵ Del. Code Ann. tit. 11 § 1448A (2011).

⁵⁶ Idaho Code Ann. §§ 66-356, 67-3003 (2011).

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⁷⁶ W. Va. Code § 61-71-3 (2011).

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⁷⁸ Dana DiFilippo, "Report: Database used in gun background checks not up to date," The Philadelphia Daily News, January 18, 2011.

⁷⁹ NICS Improvement Amendments Act of 2007, Public Law No. 110-180 § 103 (Jan. 8, 2008).

- ⁸⁰ William J. Krouse, "Gun Control Legislation," Congressional Research Service, June 9, 2011, available at <http://www.scribd.com/doc/61773304/29/Table-7-NICS-Improvement-Authorizations-and-Appropriations-under-P-L-110-180>.
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- ⁸⁷ Id. Note that other NCHIP grants, while not required to be used solely to improve NICS infrastructure, may indirectly improve NICS submission rates. For example, NCHIP grants awarded for digitizing records submitted to III or flagging domestic relationships in criminal history records may also ultimately improve the reach and efficacy of NICS background check searches.
- ⁸⁸ Id.
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- ⁹⁸ Id.
- ⁹⁹ U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, National Instant Criminal Background Check System (NICS) State Support Team Quick Reference Guide 2010.
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