**National Instant Criminal Background Check System**

**Bipartisan Safer Communities Act**

**Frequently Asked Questions**

**What is the National Instant Criminal Background Check System (NICS)?**

The NICS was originally established by the Brady Handgun Violence Protection Act of 1993 when Congress mandated a nationwide background check system be created for instances when a federal firearm licensee (FFL) is seeking to transfer a firearm to a non-licensee. The NICS checks are conducted by the FBI’s NICS Section. State or local criminal justice agencies are allowed, when authorized by statute or executive order, to stand in the place of the NICS Section as full or partial points of contact and those POCs are contacted by FFLs in their jurisdiction for all or some prospective firearm transfers. NICS has other uses authorized by Federal law – for example, allowing criminal justice agencies to contact NICS for firearms and explosives licensing, and to return firearms in their custody.

**What is the** **Bipartisan Safer Communities Act (The Act)?**

The Bipartisan Safer Communities Act (the Act) took effect on June 25, 2022. Among other things, the Act mandates expanded juvenile NICS background checks on persons under the age of 21 (U21 requests) who are seeking to purchase a firearm.  The legislation states that NICS checks for individuals under the age of 21 NICS shall immediately contact the following agencies in the potential firearm transferee’s state/city of residence:

* Local law enforcement agencies
* Criminal history repositories or juvenile justice information systems
* State custodians of mental health adjudication records

This outreach is meant to determine if the person has possibly disqualifying juvenile information (as described under 18 U.S.C. 922(d)) that is not already available to NICS, such as a history of criminal acts or mental health adjudications/commitments.

By law, NICS is generally allowed 3 business days to conduct research for prospective firearm transfers. However, the Act allows up through the tenth business day, if necessary, to determine the person’s eligibility if possibly disqualifying juvenile information is obtained within the first 3 business days.

**How will an agency receive a U21 request?**

Agencies currently receive U21 requests via an NCIC $.H unsolicited message. When responding to an NCIC $.H.U21 request, agencies will be asked to send a response back via e-mail to NICS\_U21@fbi.gov. The NICS Section is currently working to move all agencies to receive U21 requests through a secure link-and-pin connection via e-mail as their method of contact.

**How does a** **secure link-and-pin connection work?**

The secure link-and-pin connection is a request made via e-mail that includes a secure link and access pin to view the request from NICS. It will allow agencies to simply click appropriate radio buttons based on desired responses and submit information directly to NICS, eliminating the need to create a separate e-mail back to the NICS Section. The secure link-and-pin connection allows U21 requests to be delivered and received, meeting security standards, and provides options to easily indicate if records were or were not located, if another agency should be contacted, or if an agency is unable to share due to state law. After the agency selects a radio button and adds any comments or attachments, the individual can select “Submit” at the bottom of the page to submit the agency’s response to the NICS Section. Agencies are encouraged to e-mail NICSLiaison@fbi.gov to transition from the NCIC $.H unsolicited message and request a secure link-and-pin connection.

**What is asked of agencies that receive a U21 request?**

Often information can be located in a local database/file to which not everyone conducting a NICS background check has access. For example, for inference of current use or possession of a controlled substance, the most important information can be found in an incident report that can include details regarding the individual’s possession or use of a controlled substance that may not be located in one of the national databases searched by NICS. State and local agencies are highly encouraged, if allowed by state law, to search their databases/files for any possibly disqualifying interactions with the prospective transferee as a juvenile. Agencies are encouraged to respond (again, in accordance with any, if any, state-implemented limitations) to the U21 request with their findings—whether they have disqualifying information or not, or if they are prohibited from sharing information by state law. If agencies receive the request via a secure link-and-pin connection, they can respond in the secure portal. If agencies receive the request via an NCIC $.H message, they are encouraged to e-mail their response to NICS\_U21@fbi.gov.

**Are state and local agencies required to respond to the U21 request?**

State and local agencies (law enforcement or otherwise) are not required to respond to the U21 requests; however, the NICS Section encourages agencies, if not prohibited by state laws, to search their internal databases/files and provide any disqualifying or possibly disqualifying information to the NICS Section. For law enforcement agencies, every warrant, mental health interaction, incident report, and drug test result, etc., can make the difference in these crucial determinations. The NICS Section recognizes the time involved with locating and communicating relative U21 information and greatly appreciates the efforts of state and local agencies to ensure the fulfillment of the Act. The attempted firearm transfers that have been halted as a result of state, tribal and local efforts are proof that your agency’s contributions are of the utmost importance.

**What information is relevant to provide?**

This request for additional research is meant to determine if the person has a possible disqualifying juvenile record under subsection (d) of Title 18, *United States Code*, section 922.  Examples of potentially disqualifying information include:

* Arrests, admittance/known use, and/or a positive test of unlawful controlled substance (to include recreational and/or medical marijuana)
* Active warrants
* Interactions involving mental health concerns
* Known felony or serious misdemeanor offenses/arrests
* Active protection orders/extreme risk protection orders
* Court-ordered firearm restrictions

**What if an agency does not have juvenile information on an individual to provide to the NICS Section?**

Agencies should respond to the NICS Section in a timely manner stating no additional juvenile records are available.

**What qualifies as a prohibition?**

18 U.S.C. 922 (g)(1) through (9) and 922(n) define who is federally prohibited from possessing, acquiring, or receiving a firearm. Federal prohibitors are:

* Felony convictions
* Fugitive from justice
* Unlawful use of a controlled substance
* Mental health adjudications/commitments
* Illegal unlawful alien
* Dishonorable discharge
* Renounced citizenship
* Protection order
* Misdemeanor crime of domestic violence
* Indictment/information
* State firearm prohibitions

Under the Act, the additional delay of a U21 transaction and possibly disqualifying records is keyed off of 18 U.S.C. 922(d) which differs in some regard to the provisions of 922(g) and (n). Notably a unverified mental health encounter believed to have occurred at the age of 14 is not sufficient to invoke additional delay to allow further research beyond business day three (see 18 U.S.C. 922(d)(4) speaking to those aged 16 or older), but if a sufficient adjudication as a mental defective or “commitment to a mental institution” occurred at age 14, as established by the information provided during the enhanced outreach, then 18 U.S.C. 922(g)(4) would still require the transfer of a firearm to that person be denied.

**What is the NICS Indices?**

Federal, state, local, and tribal agencies can share descriptors on persons who are disqualified from the transfer of a firearm into the NICS Indices. A valid match to a NICS Indices record with the subject of a firearm transaction results in an automatic denial. This applies to all NICS Indices records, whether it is a federal or state prohibition. Law enforcement agencies should submit persons who are subject to the disqualifying information, discussed in the question above, into the NICS Indices when applicable.

**How can agencies change their contact information or request more information?**

Agencies should contact the NICS Business and Liaison Unit by telephone at 1-844-265-6716 or by e-mail at NICSLiaison@fbi.gov to change contact information or request more information.