



SNAPSHOT



A policy brief from the Legislative Research Office

Firearm Purchase Background Checks

Recent tragic events have focused attention on the background check system for firearm purchases – here's what you need to know

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What is this system and how does it work?

The federal firearms background check system was mandated by the Brady Handgun Violence Prevention Act of 1993 (Brady Law) and fully implemented in 1998. The law established the National Instant Criminal Background Check System (NICS) and required federally licensed gun sellers to confirm with the FBI or a state official that gun buyers making purchases in their stores were not prohibited by law from receiving a firearm.

Each state has the option of turning over all background checks on firearms to the FBI or it can choose to act as a state point-of-contact (POC) to conduct background checks on either handguns, long guns, or both. Additionally, a state can choose to issue alternative permits. Alternative permits must be approved by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

Nebraska is a Brady alternative permit state and serves as a POC for purchasing handguns, but defers to the federal government to regulate long gun sales. Nebraska law prescribing handgun purchases (Laws 1991, LB 355) actually predates the Brady Law.

In Nebraska, an individual must apply in his or her county of residence for a firearms purchase certificate from a designated local law enforcement official. This is most often the county sheriff, but can be the chief of police. The local law enforcement official performs the background check, which includes NICS, as well as the ability to search additional local criminal databases. Applications can be made in person or by mail.

The local law enforcement official has three business days to complete a background check and is required to



approve the certificate if the applicant is (1) 21 years of age or older and (2) not prohibited from purchasing or possessing a handgun per federal law (18 USC 922). If the application is denied, the applicant must be told why in writing. Purchase certificates are valid for three years and allow the holder to purchase an unlimited number of firearms with one background check.

Federal law proscribes certain categories of individuals who cannot buy, possess, or sell firearms, including prohibitions enacted under state law. A bill introduced in 2018, LB 990, would add a state prohibitor for juveniles adjudicated of serious or violent crime. Such juveniles would be barred from possessing firearms until age 25, with some exceptions.

In 2006, the Legislature enacted the Concealed Handgun Permit Act. Concealed handgun permits are processed by the Nebraska State Patrol. The requirements for a concealed handgun permit exceed those required for a Nebraska firearms purchase certificate. However, once granted, a concealed carry handgun permit also qualifies as an alternative permit. Concealed carry permits are valid for five years.



ATF has approved both of the state's firearms purchase and concealed carry permits as alternative permits for buying long guns. State law does not require a purchase permit for buying long guns. If the buyer does not have a purchase permit, gun stores follow the Brady Law protocol and contact the FBI for the NICS check on long gun sales.

The NICS databases

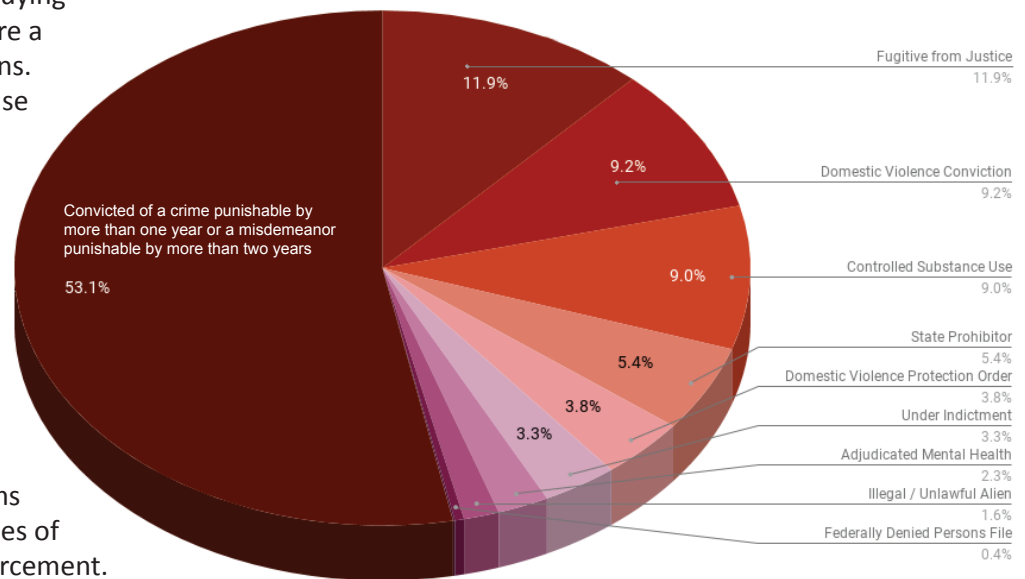
A NICS background check is actually a search of three national databases, including two broad criminal information databases and one database exclusively for firearms purchases, and can include databases of U.S. Immigration and Customs Enforcement. The three primary databases are:

- National Crime Information Center (NCIC), which, pertinent to firearms purchases, contains information on warrants and protection orders;
- Interstate Identification Index (III), which contains fingerprint-based criminal history records; and
- NICS Indices, which contains information specifically pertaining to persons who are prohibited from receiving firearms under state or federal law. The NICS Indices contains records that do not meet the criteria for entry into the NCIC or III, such as information on time-limited, noncriminal, or state-only prohibitors. Nebraska uses the NICS Indices primarily for reporting pertinent mental health information.

The Nebraska State Patrol serves as the conduit through which records from Nebraska are transmitted to the FBI for inclusion in the databases. The records are supplied to the patrol by sheriff's offices, police departments, and other qualified agencies, including court clerks, who enter the mental health records.

According to the FBI, approximately 92 percent of background checks it conducts take a matter of minutes to approve or deny. However, the FBI has three days to make a decision, after which the sale can proceed without explicit approval. If the FBI eventually determines a firearms sale should have been denied, the information is referred to the ATF for retrieval of the firearm.

Reasons for Federal Background Check Denials



Source: FBI

NICS is specifically designed to broker firearm sales between federally licensed firearm dealers and individuals. Private firearm sales are not regulated under federal law. So, unless required by state law, sales of firearms between private parties are not subject to background checks.

Notably, Nebraska includes private handgun sales in the requirement to have a purchase certificate. Specifically, Neb. Rev. Stat. sec. 69-2403 states "a person shall not sell, lease, rent, or transfer a handgun to a person who has not obtained a certificate." However, there is no statutory mechanism for enforcement of sales between private sellers. Nor can private firearm sellers access the federal NICS databases for background checks.

Further, the background check system relies on timely and accurate uploading of conviction records and other relevant information from multiple jurisdictions, including the 50 states, the military, and the federal government. The NICS Improvement Amendments Act of 2007 requires federal agencies to report records identifying prohibited persons no less than quarterly, but not states.

Mental health and domestic violence records have been a particular source of incomplete information being relayed to NICS. Congressional efforts to "fix NICS" often center on financially incentivizing states to timely provide pertinent records.