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Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Gretta L. Goodwin, (202) 512-8777, GoodwinG@gao.gov

Staff Acknowledgments

In addition to the contact named above Eric Erdman, Assistant Director, and Andrew Curry, Analyst-in-Charge, managed this assignment. Winchee Lin, John Hocker, Billy Commons, Dominick M. Dale, Michele C. Fejfar, Eric D. Hauswirth, and John Yee made significant contributions to the work.

Ms. Gretta L. Goodwin

denials. The New NICS will provide a better mechanism in which to capture and track incoming fax responses. Also in New NICS, the FBI can monitor, on an annual basis, the prohibiting categories for delayed denial transactions and take action, as necessary, to work with DOJ entities and states to improve timely completion of transactions.

However, as the FBI advised GAO, although New NICS reporting capabilities should enable the FBI to learn the number of delayed denials for each prohibiting category(ies), it may not be truly representative of the prohibiting category(ies) causing the most delay. For example, if a transaction is delayed based on potential disqualifying information related to prohibiting categories 2 and 8, and information to deny on prohibiting category 2 is received first, the subject is denied firearm possession based on category 2. The statistics would therefore reveal that category 2 was the delay in the transaction when in actuality category 8 would have caused a longer delay. Therefore, the statistics may not be truly representative of the prohibiting categories causing the most delay when more than one potential prohibiting category exists for a transaction.

Again, thank you for the opportunity to comment on this report. We look forward to GAO closing the recommendation the FBI has agreed to implement.

Sincerely yours,



Stephen L. Morris
Assistant Director
Criminal Justice Information
Services Division

Appendix IV: Comments from the Department of Justice



U.S. Department of Justice
Federal Bureau of Investigation

Clarksburg, WV 26306

June 17, 2016

Ms. Gretta L. Goodwin
Acting Director
Homeland Security and Justice Issues
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Goodwin:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report entitled *GUN CONTROL: Analyzing Available Data Could Help Improve Gun Checks Involving Domestic Violence Records (GAO-16-483)*. The FBI's planned actions to address the recommendation are outlined below:

Recommendation: To help the National Instant Criminal Background Check System (NICS) Section achieve its mission to enhance national security and public safety by providing the timely and accurate determination of a person's eligibility to possess firearms, we recommend that the Director of the FBI monitor NICS check outcomes for specific categories of prohibited individuals to assess timeliness and provide this information to other DOJ entities for use in establishing priorities and tools to assist states in submitting more complete records for use during NICS checks.

FBI's response: The FBI agrees with the recommendation. The FBI plans to implement New NICS in the near future as the replacement system for its current NICS. The New NICS will provide new capabilities and functionality to make NICS transaction processing more efficient and accurate and to provide enhanced reporting capabilities. In its New NICS, the FBI will include the capability to produce reports that will include, among other things, how long delayed denial transactions are taking to complete and the prohibiting categories for the delayed

**Appendix III: Protection Orders in the National
Crime Information Center Protection Order File
for States, District of Columbia, and
Territories, 2006 through 2015**

State	Category	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
	Brady	5	0	174	789	232	0	0	3	2	2
Wyoming	Total	961	1074	1033	1299	1155	1066	998	939	897	1011
	Brady	579	574	619	781	688	644	615	628	583	718
Total Protection Orders		721914	781463	892307	818617	864378	816180	818353	793652	843744	907300

Legend:

Total = Total protection orders active during the year

Brady = Total protection orders with a disqualifying Brady Indicator. The Brady Indicator flags protection orders related to domestic violence that prohibit the individual from receiving or possessing firearms under federal law.

Source: GAO analysis of Federal Bureau of Investigation data. | GAO-16-483

Note: The data only include protection orders that were active at some point during the calendar year, including protection orders that expired or were subsequently cancelled.

**Appendix III: Protection Orders in the National
Crime Information Center Protection Order File
for States, District of Columbia, and
Territories, 2006 through 2015**

State	Category	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Nevada	Total	1	1	8	19	15	43	52	36	30	48
	Brady	0	0	7	8	9	10	22	18	18	39
New York	Total	57195	57933	55813	77576	75967	78545	77670	82211	148427	153636
	Brady	43469	35415	26038	36775	32746	31116	30392	25085	45427	75868
Ohio	Total	35447	37100	38938	38411	37748	34784	32574	31167	29204	28261
	Brady	20472	21134	21583	21809	21605	20907	19865	18933	17459	17837
Oklahoma	Total	1456	1794	1458	2162	2117	1652	1643	1974	1738	2321
	Brady	352	398	318	1034	759	590	520	562	581	500
Oregon	Total	12033	12540	12795	13118	13493	14791	14898	14614	14367	15129
	Brady	1716	1822	1846	1847	1288	996	825	684	635	612
Pennsylvania	Total	15016	14640	14562	15367	15085	14460	14324	13367	12356	12276
	Brady	9293	9639	9576	8280	8054	7822	7686	7039	6649	6478
Puerto Rico	Total	0	0	2	0	0	0	0	0	0	0
	Brady	0	0	0	0	0	0	0	0	0	0
Rhode Island	Total	4664	4572	5189	6767	10412	9739	10063	8626	9385	10142
	Brady	1347	834	1650	1294	1358	1687	2182	1731	2190	3785
South Carolina	Total	3629	3821	3621	3684	3536	3627	3162	3098	2765	2810
	Brady	2572	2834	2412	2448	2326	2419	2178	2101	1902	1912
South Dakota	Total	1167	1286	1363	1341	1322	1239	1274	1204	1112	1245
	Brady	308	324	286	273	313	355	351	280	275	291
Tennessee	Total	9239	10008	10599	10666	10510	10137	9591	9085	8655	8619
	Brady	6735	6622	6827	7232	6976	6766	6026	5731	4879	4523
Texas	Total	11144	12547	13726	16659	19099	19608	18934	19935	20255	20738
	Brady	10713	10642	8037	5665	4808	4969	4301	2943	2005	2169
Utah	Total	0	12240	1236	6957	462	941	14008	6004	1732	8788
	Brady	0	1547	74	697	93	139	0	0	0	0
Virginia	Total	20917	29498	13022	12618	14389	16948	19564	17795	15775	15254
	Brady	9791	15276	7711	7832	7823	7781	8300	7687	8199	7998
Virgin Islands	Total	0	0	255	99	99	85	72	60	79	82
	Brady	0	0	242	86	99	70	67	41	51	60
Vermont	Total	1441	1457	1448	1446	1420	1424	1488	1370	1408	1311
	Brady	1080	1056	997	887	859	779	903	883	876	767
Washington	Total	48105	49972	50153	51643	51840	50590	49704	48202	47603	50688
	Brady	24563	24294	24442	23652	23177	23280	23707	22497	22773	23924
Wisconsin	Total	7181	7014	6556	7149	7286	6730	7131	6527	6325	6062
	Brady	3973	3941	3818	3936	3800	3573	3680	3640	3449	3285
West Virginia	Total	30	28	201	2044	4788	971	5295	4509	1161	1965

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State	Category	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Kansas	Brady	8563	8490	8955	11605	13873	13988	13365	13033	12108	16027
	Total	3968	4057	4389	4490	4436	4156	4158	3737	3969	4229
Kentucky	Brady	1706	1819	1858	1793	1522	931	944	788	891	908
	Total	11010	11044	10798	10786	9928	8499	8204	7578	7350	7171
Louisiana	Brady	7879	8105	7948	7990	7592	6692	6476	5879	5636	5382
	Total	5624	6604	7280	7947	12848	7827	7920	10901	9445	13674
Massachusetts	Brady	4272	4207	4490	5083	9991	4511	4544	6068	5577	9167
	Total	45392	45843	46661	48418	55098	56019	47528	32903	30475	30172
Maryland	Brady	0	0	0	0	0	0	0	0	0	0
	Total	9904	9545	9330	9505	9040	8358	8521	8894	8843	9016
Maine	Brady	9904	9545	9330	9505	9040	8358	8521	8894	8843	9016
	Total	4142	4238	4304	4045	4392	4300	4290	3741	3753	3693
Michigan	Brady	2122	2107	2381	2216	2399	2392	2453	2273	2299	2285
	Total	16348	15235	15030	16013	15909	14549	15058	14236	13042	13339
Minnesota	Brady	16273	15193	14891	5990	3503	9241	8839	6598	4688	4824
	Total	9036	8860	10030	26200	26592	26370	23800	23212	23060	22760
Missouri	Brady	4437	4250	4318	4735	4417	4660	4652	4457	3996	4180
	Total	12917	12886	12603	13500	14308	13343	12961	13238	13179	13610
Mississippi	Brady	4134	4729	4977	5502	4108	3413	2291	3822	5535	5436
	Total	2	18	63	76	108	743	1888	2003	2318	2604
Montana	Brady	1	0	2	1	11	641	1863	1985	2311	2043
	Total	1692	1759	1817	1647	1609	1636	1653	1561	1513	1620
Nebraska	Brady	799	840	789	687	597	599	616	539	510	650
	Total	575	419	453	611	762	735	1249	1103	1056	928
North Carolina	Brady	221	203	232	267	272	221	266	260	292	251
	Total	11778	11847	12130	12163	11960	11994	11183	10826	10682	10751
North Dakota	Brady	8541	8355	8694	8556	8358	8285	7874	7568	7283	7205
	Total	57	39	43	18	32	22	11	9	31	112
No. Mariana Islands	Brady	40	31	34	17	23	19	8	8	19	49
	Total	0	0	0	0	0	0	0	0	0	0
New Hampshire	Brady	0	0	0	0	0	0	0	0	0	0
	Total	1861	1923	4597	5404	5482	5270	5179	4675	5451	5553
New Jersey	Brady	1223	1080	2023	2360	2584	2672	2484	3292	4649	4744
	Total	0	0	154090	9459	9826	7374	6649	6119	6254	5994
New Mexico	Brady	0	0	154090	9459	9826	7374	6649	6119	6254	5994
	Total	1057	1507	2060	3741	3943	3259	3219	3224	3275	3402
	Brady	820	923	1226	2259	2415	2141	2254	2054	2098	1953

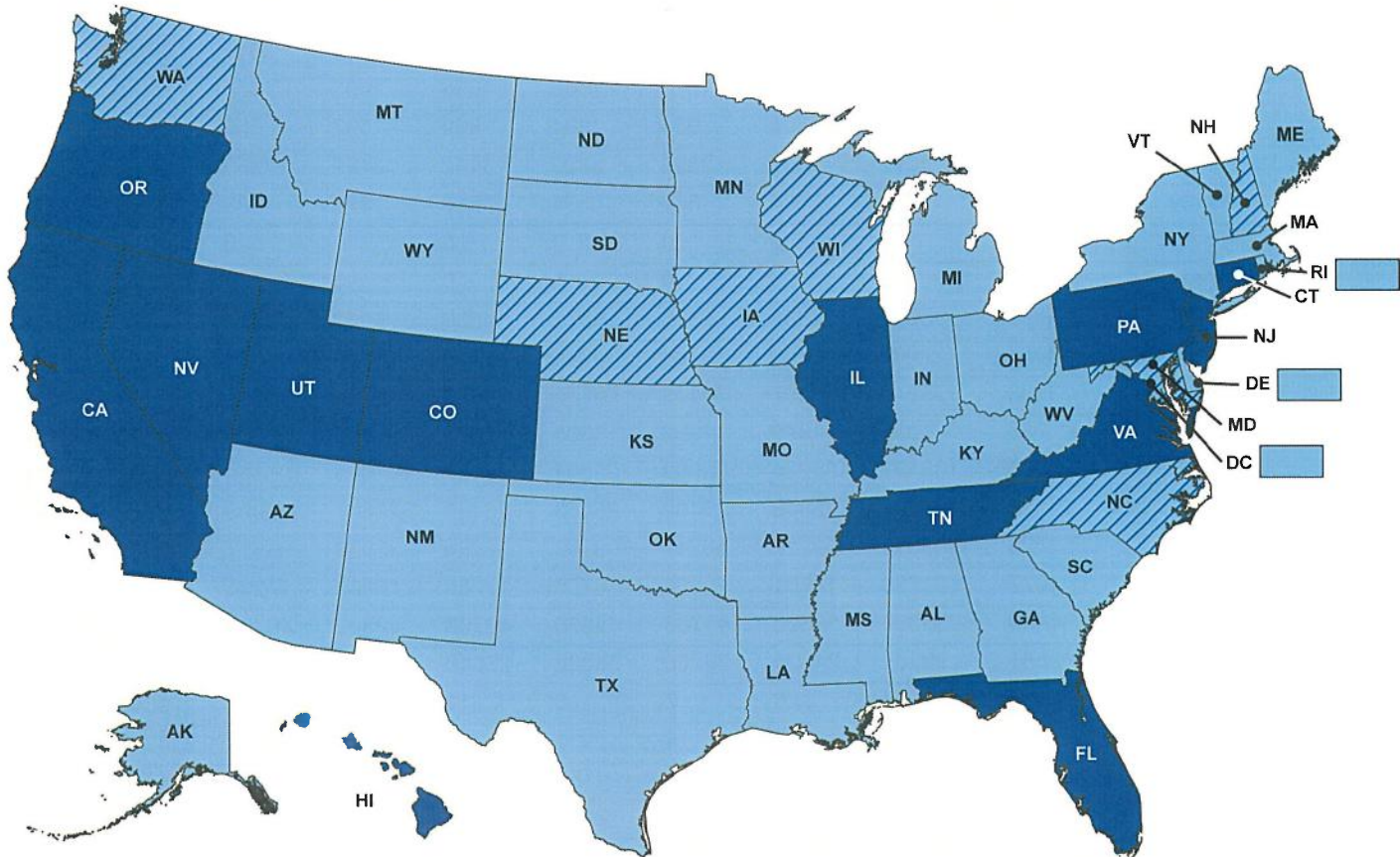
Appendix III: Protection Orders in the National Crime Information Center Protection Order File for States, District of Columbia, and Territories, 2006 through 2015

Table 1: Protection Orders in the National Crime Information Center Protection Order File for States, District of Columbia, and Territories, 2006 through 2015

State	Category	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Alaska	Total	1095	1115	1224	1513	1665	1698	1665	1450	1468	1278
	Brady	673	737	804	931	904	859	592	550	488	398
Alabama	Total	585	1072	1607	3396	3729	3442	3782	3969	3730	3427
	Brady	104	798	184	349	334	516	478	888	1160	1008
American Samoa	Total	0	0	0	0	0	0	0	0	0	0
	Brady	0	0	0	0	0	0	0	0	0	0
Arkansas	Total	5867	6097	4838	5306	5271	6009	6062	6119	6378	6887
	Brady	3087	2892	2496	3185	4048	4750	4340	4384	3781	3417
Arizona	Total	23989	25240	25497	26449	26189	25069	25779	25311	25101	25224
	Brady	786	1035	1628	1692	1805	1393	1583	1294	1226	1143
California	Total	100791	103427	104924	103903	101504	103462	101625	106356	107091	109494
	Brady	25319	25251	25848	26402	25153	25134	23607	23000	22902	22847
Colorado	Total	61720	85916	59217	58211	90133	52434	50038	53511	52060	86073
	Brady	1677	21736	18901	13586	16756	17785	16682	17234	16156	24009
Connecticut	Total	34069	36390	38600	41763	43876	42708	42380	40770	43041	46325
	Brady	19531	23235	24526	26268	28022	27519	27049	25771	22210	22882
District of Columbia	Total	4	38	6	7	8	11	1894	1727	1846	1879
	Brady	1	0	4	4	1	0	0	0	0	1
Delaware	Total	759	1646	2031	2165	2157	2383	2003	1852	1778	1789
	Brady	673	1540	2000	2146	2140	2380	2002	1851	1774	1786
Florida	Total	43657	42897	42548	40286	38410	36620	35239	36242	32606	31104
	Brady	25260	21592	15521	9703	7988	5336	5039	5652	6166	6399
Georgia	Total	7007	7407	7050	7124	6976	6710	6694	6662	6580	7208
	Brady	3513	3826	3348	3422	3290	3138	3202	3354	3316	3461
Guam	Total	1	198	52	209	68	89	33	45	163	121
	Brady	0	193	52	23	0	0	1	3	10	99
Hawaii	Total	0	0	0	0	0	1857	1675	1797	1697	1971
	Brady	0	0	0	0	0	0	0	0	0	0
Iowa	Total	11140	11335	11567	12076	12158	11947	13011	13752	14051	14319
	Brady	9676	9835	9890	10258	1645	1837	5708	11408	11510	11531
Idaho	Total	1661	1597	1383	1454	1431	1510	1516	1442	1508	1414
	Brady	1169	1148	949	898	921	1048	998	917	1014	965
Illinois	Total	29123	27711	27496	26513	26208	27295	30274	24677	24165	23570
	Brady	2832	3912	4202	3892	3885	3617	3782	3415	3457	3093
Indiana	Total	35457	36028	36611	45194	47579	51102	48767	49287	53511	56203

Appendix II: State Options for Conducting Background Checks Using the National Instant Criminal Background Check System (NICS)

Figure 9: Point of Contact States as of May 2016



- Non-Point-of-Contact states** States in which the FBI conducts checks using the National Instant Criminal Background Check System (NICS) for all firearms transactions
- Point-of-Contact states** States that conduct checks using NICS for all firearm transactions
- Partial Point-of-Contact states** States in which the FBI conducts checks using NICS for long gun transactions and state conducts checks using NICS for all other firearm transactions

Source: GAO analysis of Department of Justice data; Map Resources (map). | GAO-16-483

Appendix II: State Options for Conducting Background Checks Using the National Instant Criminal Background Check System (NICS)

States have three options for conducting NICS checks, referred to as non-point of contact (non-POC), full point of contact (full-POC), and partial-POC states. In non-POC states, Federal Firearm Licensees initiate a NICS check by contacting the Federal Bureau of Investigation's (FBI) NICS directly by telephone or via the Internet and any required follow-up research is performed by NICS Section staff. In full-POC states, Federal Firearms Licensees initiate a NICS check by contacting one or more state organizations, such as a state or local law enforcement agency, to query NICS databases and related state files and then, if necessary, the state organization carries out any required follow-up research.¹ In partial POC states, Federal Firearm Licensees initiate a NICS check for handgun purchases or permits by contacting the state who then queries NICS and state files but contacts the NICS to initiate checks for long gun purchases, such as shot guns or rifles.

According to the DOJ-funded report, states elect POC or non-POC status for various reasons, such as a state's attitude toward gun ownership, since many POC states have prohibiting legislation that is stricter than federal regulations. For example, Oregon has five statutorily prohibiting categories of misdemeanor convictions in addition to domestic violence. Additionally, there may be an economic incentive for states to elect non-POC status, since implementing and operating a POC may cost a state more money than it can collect in fees charged to Federal Firearm Licensees for conducting background checks. For example, DOJ reported that Idaho elected not to become a full-POC state because of the added expense of performing background checks for long gun purchases.

¹J. M. Tien, et. al, *Cost-Benefit of Point of Contact (POC) Versus Non-POC Firearm Eligibility Background Checks*, 2001-RU-BX-K002 (2008).

the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

data to identify trends in NICS checks appeals. To assess the reliability of these data, we questioned knowledgeable officials about their information collection procedures and systems, reviewed relevant documentation, and examined data for obvious errors. We determined that the data were sufficiently reliable for the purposes of our report.

To determine whether challenges exist that may increase the time it takes to complete a NICS check, we analyzed testimony from DOJ and the selected states regarding characteristics of domestic violence records that can present challenges and lead to checks exceeding the federally allowed 3 business days before a firearm can be transferred. We also obtained documentation and testimony from DOJ and selected states regarding federal and state efforts to increase the number of checks completed before firearms are transferred, including grant awards and training to states. We also interviewed DOJ management and program officials to determine DOJ's efforts to help NICS and states overcome challenges that could contribute to delayed denials, including guidance, training, and actions to share best practices. We analyzed documentation and interviewed officials from ATF about its efforts to review delayed denial cases prior to initiating a firearm retrieval, challenges it faced, and actions that could minimize the number of retrieval efforts. Finally, we compared DOJ's actions to monitor the outcomes of the checks and use the results to establish and manage program priorities against criteria outlined in federal internal control standards.²

We conducted this performance audit from June 2015 to July 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that

²GAO, *Internal Control: Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November, 1999). Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations. These standards, issued pursuant to the requirements of the Federal Managers' Financial Integrity Act of 1982 (FMFIA), provide the overall framework for establishing and maintaining internal control in the federal government, which includes assessing the risks an agency faces from both internal and external sources.

with an interest in, among other things, individuals with a history of domestic violence and firearm background checks, including Everytown for Gun Safety, the National Rifle Association, and the Law Center to Prevent Gun Violence, SEARCH—the National Consortium for Justice Information and Statistics—and the National Center for State Courts. Finally, we interviewed officials from various DOJ components with responsibility for maintaining NICS records or supporting related activities, including the FBI’s Criminal Justice Information Services (CJIS) Division and NICS Section, the Bureau of Justice Statistics (BJS), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to obtain additional perspectives on the records states provide for use during NICS checks.¹

To determine the extent to which NICS checks involving domestic violence records are completed before firearm transfers take place, we analyzed DOJ documentation and data to identify trends in total number of NICS checks, denials, delayed denials, firearm retrievals, and days required to determine the outcome of a check. Specifically, we obtained record level FBI data on NICS check denials and delayed denials—798,401 records from fiscal years 2006 through 2015—and analyzed NICS transaction dates, denial codes, prohibiting categories, and other information to identify the length of time it took examiners to make a denial determination, by year and by prohibiting category. We did not analyze record level data on proceeded NICS checks because FBI is required to purge all identifying information related to the NICS transaction.

To illustrate variation in the amount of time denials in different prohibiting categories took, we compared the number of business days taken to complete 90 percent of denials by category. For most prohibiting categories, once 90 percent of denials were completed, the percentage completed each subsequent day was diminishingly small. Specifically, after most prohibiting categories reached a 90 percent denial rate, the rate increased by less than 2 percent each day. We also obtained data from ATF and the FBI on retrieval referrals and appeals by individuals denied a firearm for fiscal years 2006 through 2015 and analyzed these

¹The mission of the NICS Section is to enhance national security and public safety by providing the timely and accurate determination of a person’s eligibility to possess firearms in accordance with federal law.

Appendix I: Scope and Methodology

To describe the extent to which states identify domestic violence records for use during National Instant Criminal Background Check System (NICS) checks, we analyzed Federal Bureau of Investigation (FBI) data on the number of domestic violence records that states identified and made available to NICS, including those protection orders flagged with the Brady Indicator, provided by states and territories from 2006 through 2015. We selected this time frame in order to have a sufficient length of time to identify trends in the number of records available to NICS. To assess the reliability of these data, we questioned knowledgeable officials about the data and the systems that produced the data, reviewed relevant documentation, and examined the data for obvious errors. We determined that some of the data were not sufficiently reliable for the purposes of our report. Specifically, we did not report the Identification for Firearms Sales (IFFS) flag data from 2006 through 2014 due to inaccurate flag settings and the lack of controls on who could modify the flag settings. These issues were corrected for 2015, so we determined that the 2015 IFFS flag data were sufficiently reliable for our purposes.

We were not able to identify all of the domestic violence records that states have made available to the FBI because of challenges in disaggregating some of these records from other criminal history records, but to the extent possible we took steps to identify trends in the data. We analyzed, on a more limited basis, the number of records that each state had made available regarding other prohibiting categories, such as mental health records, to provide context for trends we identified related to domestic violence records. We also analyzed the last 3 years of FBI state audit findings to report on general challenges states face with respect to the accuracy, validity, and completeness of domestic violence records. Additionally, we analyzed U.S. Department of Justice's (DOJ) National Criminal History Improvement Program and NICS Act Record Improvement Program grant solicitations and award amounts to identify prioritization and trends in the grant award decisions.

In addition, we interviewed officials from eight selected states (Connecticut, Nebraska, Nevada, New Mexico, New York, Pennsylvania, Texas, and Washington) to gain an understanding of their processes for submitting domestic violence records to the FBI and the extent to which they have encountered challenges, if any, in submitting records. We selected this non-generalizable sample of states to reflect a range of factors, including five point of contact (POC) states and three non-POC states, the number of domestic violence records they currently make available to the FBI and whether they have received grant funding to improve their record submissions. Additionally, we interviewed groups

Agency Comments and Our Evaluation

We provided a draft of this report for review and comment to DOJ. DOJ provided written comments, which are reproduced in appendix IV. DOJ agreed with our recommendation.

We are sending copies of this report to the Attorney General, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have questions about this report, please contact me at (202) 512-8777 or goodwing@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix V.

Sincerely yours,



Gretta L. Goodwin
Acting Director, Homeland Security and Justice Issues

individual because information necessary to complete a background check prior to a firearm transfer is not immediately available and additional research must be conducted. *Standards for Internal Control in the Federal Government* states that internal control monitoring should assess the quality of performance over time and ensure that the findings of audits and other reviews are promptly resolved. Monitoring is to be performed continually and ingrained in the agency's operations, and managers are to evaluate findings to determine if any corrective actions are needed. Ongoing monitoring or analysis similar to the analysis we conducted could help the FBI determine if specific prohibiting categories present greater challenges in completing determinations than other categories and, in turn, the FBI could use the results and provide them to other DOJ entities to help establish priorities. For example, BJS could use the results of the FBI's analysis to help prioritize grants to states or focus state training and outreach to address challenges with specific prohibiting categories, among other actions.

Conclusions

Sustained federal and state efforts to support NICS background checks are critical in helping to ensure public safety. The national system of criminal background checks relies first and foremost on the efforts of state and local governments to provide complete and accurate records to the FBI. State and local governments often rely on DOJ's guidance, grants, and identification of practices that can help mitigate challenges in conducting background checks. DOJ has steps in place to reduce the risk of erroneously denying individuals from possessing firearms and an appeals process for individuals who believe they were wrongfully denied the ability to possess a firearm. However, because it has not assessed its data to identify which prohibiting categories result in more delayed denials and firearm transfers to prohibited individuals, the agency cannot reasonably ensure it has effectively prioritized resources and tools to assist states in providing more complete and accurate records for those categories.

Recommendation for Executive Action

To help the NICS Section achieve its mission to enhance national security and public safety by providing the timely and accurate determination of a person's eligibility to possess firearms, we recommend that the Director of the FBI monitor NICS check outcomes for specific categories of prohibited individuals to assess timeliness and provide this information to other DOJ entities for use in establishing priorities and tools to assist states in submitting more complete records for use during NICS checks.

FBI Does Not Analyze Some Available Data to Monitor the Timeliness of NICS Checks and Share Results to Help Set Priorities

DOJ and the FBI have taken steps to help improve the timely completion of NICS checks but have not established procedures to assess or monitor how long it takes to complete checks for each prohibiting category, which could help inform FBI and other DOJ entities on which areas they should prioritize resources, such as grant funding and training. Specifically, the FBI and other DOJ entities have identified some state practices that could help improve the timely completion of NICS checks. In addition, DOJ issues grants to states in order to help make more records readily available during NICS checks and reduce the time needed to conduct research and make final determinations. BJS officials responsible for administering grants noted that they work with the NICS Section to the extent possible to coordinate and prioritize grant funding. FBI officials also said that they are in the process of changing how they manage the receipt of information from states, such as dispositions and incident reports, in an effort to reduce the amount of time necessary to complete NICS checks.

However, the FBI does not assess or monitor how long it takes to complete checks for each prohibiting category. According to NICS Section officials, an analysis of denial data would not affect how the FBI conducts checks because the time required to make determinations (i.e., proceed or denial) is dependent on the availability of information supplied by states. BJS officials noted that an analysis of the time required to complete checks for each prohibiting category could help them identify areas in which they could conduct state outreach and assist states in providing more complete records, such as through the use of grant funding.

Our analysis of FBI denial data shows that completing NICS checks involving certain prohibiting categories, including those we focused on for this report—MCDV and protection orders—present challenges. Specifically, more than 500 firearms were transferred to individuals with prohibiting domestic violence records each year from 2006 through 2015. Our analysis also found that the time needed to complete checks involving domestic violence records declined between fiscal years 2006 and 2015, but DOJ and FBI officials were not able to identify what actions they may have taken that contributed to the improvement.

The mission of the NICS Section is to enhance national security and public safety by providing the timely and accurate determination of a person's eligibility to possess firearms in accordance with federal law. However, as discussed previously, some NICS checks are delayed and denied after the firearm has already been transferred to the prohibited

Secondary review of denial determinations: ATF, within DOJ, is responsible for reviewing denied firearm transactions. Specifically, ATF reviews all delayed denial referrals it receives from the FBI, after the FBI has reviewed the case and made the determination that a firearm was transferred to a prohibited individual. According to ATF officials, when the FBI makes a delayed denial determination and refers a case to ATF for retrieval, ATF reviews the referrals to determine whether the denial is valid and a retrieval action is necessary. ATF's process helps ensure that prohibited individuals do not retain possession of a firearm. ATF officials said they sometimes find that the firearm was not transferred, or that the denied individual should have been allowed to purchase the firearm.⁵⁴ According to our analysis of ATF data, ATF referred about 76 percent of domestic violence-related delayed denials to its field offices for retrieval actions from October 1, 2006, through July 13, 2015.⁵⁵ ATF determined through its review process that the remaining 24 percent of referrals did not need to be sent to the field for retrieval because the firearm was not transferred, the firearm was returned to the dealer without ATF intervention, or the denial was overturned.⁵⁶

Appeals: DOJ has a process for individuals to appeal a decision when they are denied a firearm. According to FBI data, from fiscal years 2006 through 2015, the FBI received about 188,000 total appeals.⁵⁷ The data also show that about 35,000 of those denial determinations were overturned on appeal.

⁵⁴We reported in June 2014 that ATF did not have readily available data to track and monitor how field divisions initiate and resolve delayed denial investigations. We recommended that ATF establish a mechanism to provide managers readily available data to monitor timeliness and investigation outcomes. ATF concurred with our recommendation, and provided GAO with documentation that it has implemented a monthly NICS report which is reviewed by ATF management. As of May 2016, GAO has closed the recommendation as implemented. See GAO, *Bureau of Alcohol, Tobacco, Firearms and Explosives: Enhancing Data Collection Could Improve Management of Investigations*, GAO-14-553 (Washington, D.C.: June 30, 2014).

⁵⁵Retrieval actions can include seizing the firearm, returning the firearm to the dealer, or transferring the firearm to a third party.

⁵⁶Overtaken decisions made by FBI are sent to ATF. ATF does not separate reasons for overturned decisions, which, according to ATF officials, could result from an appeal or continued research leading to a proceed determination.

⁵⁷These appeals include checks denied due to any of the prohibiting categories, including MCDV.

violence record. Connecticut law allows up to 60 days to conduct a NICS check for an eligibility certificate, which is required to purchase a firearm in the state and an eligibility certificate is not issued if a final determination of eligibility cannot be made.⁵³

Other actions taken to help complete checks before firearm

transfers occur: According to Texas officials, Texas references state statutes on all criminal records that are submitted to the FBI. The officials said this allows examiners to more quickly identify prohibiting crimes and make accurate determinations. Some POC states, such as Washington and Nevada, enter records into the NICS Index after state officials have researched and identified a prohibiting record in order to expedite future checks involving the same individual. In addition to state actions, the NICS Section adds records to the NICS Index when prohibiting criteria are identified and the information is unable to be updated in III or NCIC.

DOJ Actions to Complete
Timely and Accurate NICS
Checks

DOJ has also taken actions to help make timely determinations of NICS checks, including providing grants to states to improve records. To help ensure accurate determinations, DOJ conducts a secondary review of denial determinations, and established an appeal process for individuals who believe they were wrongfully denied the ability to purchase a firearm.

Grants: As previously mentioned, DOJ provides NCHIP and NARIP grant funds to states to improve general record availability and to better ensure that arrest records and corresponding court dispositions are available for NICS checks. According to DOJ guidance for grant applications, gaps in records significantly hinder the ability of NICS to quickly and accurately confirm whether a prospective purchaser is prohibited from acquiring a firearm. Officials from BJS, the agency responsible for soliciting grant proposals and issuing funds, said that, to the extent possible, they work closely with the FBI to ensure projects are addressing challenges related to prohibited categories. For example, states can use grant funds to help make more records available for use in NICS checks. Officials from one state we spoke with, New York, said they utilized federal grant funds to help make more records available in the NICS Index, thereby addressing gaps in records from the state.

⁵³Conn. Gen. Stat. §§ 29-36f, 29-36g (pertaining to eligibility certificate for a pistol or revolver); Conn. Gen. Stat. §§ 29-37p, 29-37q (pertaining to eligibility certificate for a long gun).

prohibited from purchasing a firearm on their criminal history records. The officials said they have also utilized federal grant funds to develop a calculation process to identify firearm prohibiting protection orders to make them available in the NICS Index.

- Pennsylvania officials said they use the IFFS flag to indicate when an arresting charge is a firearm disqualifier. Pennsylvania also uses an automated process that includes identifying the relationship between the victim and offender to apply the Brady Indicator to prohibiting protection orders.
- Nebraska officials said they use a system for NCIC protection order entries to assist in identifying firearm-prohibiting criteria, which is verified and supplemented by law enforcement officials. The system then applies the Brady Indicator based on criteria provided to the system.
- New Mexico officials said they report relevant court records to the NICS Index and use a computer query program to identify MCDV records and protection orders that should be included.
- Washington state officials said they use the Brady Indicator to flag prohibiting domestic violence protection orders entered into the NCIC protection order file.

Allowing additional time to complete checks before firearm

transfers: Three of our eight sample states have passed laws that allow additional time to complete checks (for all prohibiting categories) before a firearm is transferred. Specifically, Washington law provides for 10 business days to complete a NICS check.⁵¹ Washington examiners said that the additional time is necessary to identify prohibiting criteria and to make a determination if an individual is prohibited. Pennsylvania law requires a 48 hour mandatory wait period before a firearm can be transferred even when a background check is completed within 3 business days and provides for a temporary delay of a firearm transfer if there is a potential prohibiting MCDV record to allow for obtaining all information necessary to make an accurate determination.⁵² Pennsylvania officials noted that the temporary delay can be extended indefinitely to prevent a firearm transfer to an individual prohibited due to a domestic

⁵¹Wash. Rev. Code § 9.41.092 (2016).

⁵²18 Pa. Cons. Stat. § 6111(a)(1) and (b)(7).

relationship between the offender and victim, and due process. Another challenge is that states differ on the criminal offenses that can be considered an MCDV. For example, some states have assault, battery, or disturbing the peace offenses while other states have specific domestic violence offenses.

Officials from the NICS Section and POC states we contacted said that it may take more than 3 business days to complete checks that involve multiple criteria in part because of the required coordination with local agencies to obtain information related to the criteria. Officials from one POC state noted that communication and document retrieval can sometimes take a week or longer to obtain the necessary information to make a determination. State officials said it often takes time to identify which office or agency to contact in order to gain access to the necessary information. Examiners from three POC states we contacted said it can be difficult to get the necessary information in a timely manner. Also, according to officials from two states, some local agencies charge a fee for copies of documents which they said can inhibit accessing necessary information to make a determination. Officials from three states we spoke with also said they face particular challenges retrieving older criminal records because they are not electronic or have been purged from state criminal record repositories.

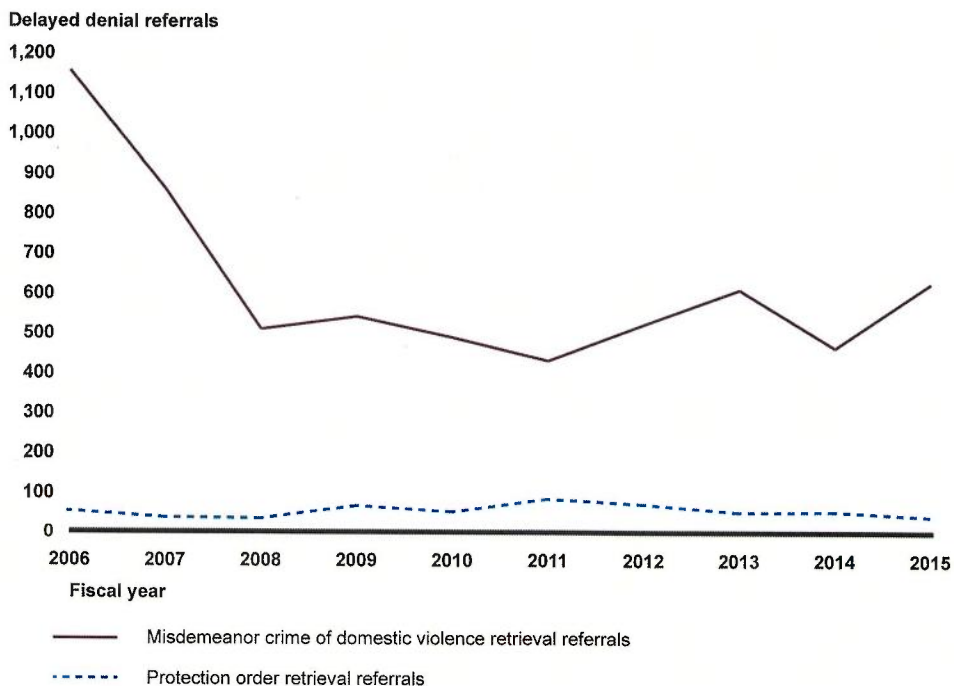
State Actions to Address Challenges

Officials from the eight states we contacted identified some actions they have taken to address challenges to completing checks before firearm transfers occur.

Pre-validating prohibiting domestic violence records: Officials from six of the eight states we spoke with have established processes to proactively identify or pre-validate prohibiting domestic violence records to help get checks completed faster. Pre-validated records are those that can be used to immediately deny a firearm transfer, and are notated by the use of the Brady Indicator, IFFS flag, or made available in the NICS Index. For example,

- Connecticut officials said they have developed a process in which potentially prohibiting MCDV records are identified, independently validated, and then entered into the NICS Index. The officials told us this effort was to help ensure that all prohibiting MCDV records were made available for NICS checks.
- New York officials said they identify federal and state prohibiting MCDVs using a text banner that explicitly states that an individual is

Figure 8: Federal Bureau of Investigation (FBI) Domestic Violence Delayed Denial Referrals to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for Firearm Retrieval, Fiscal Years 2006 through 2015^a



Source: GAO analysis of FBI referral data. | GAO-16-483

^aThe FBI was not able to specifically identify the cause of the decline in firearm transfer referrals to ATF from 2006 to 2008.

Challenges the FBI and States Face in Completing Checks Involving Domestic Violence Records and Actions Taken to Address Challenges

Challenges Conducting Checks

Officials from the NICS Section said that it can be difficult to determine the outcome of a NICS check—proceed or denied—when a prohibiting category has multiple criteria that must be met in order to prohibit a firearm transfer. As previously discussed, in order to deny a firearm transfer for the MCDV and protection order prohibiting categories, multiple criteria must be met, including the element of force, the

with prohibiting domestic violence records acquired a firearm.⁴⁹ During the same period, according to FBI data, the number of NICS checks the FBI processed increased from about 5.2 million checks in fiscal year 2006 to about 9 million checks in fiscal year 2015.⁵⁰ Also, from fiscal years 2006 through 2008, the number of FBI referrals to ATF related to domestic violence declined from more than 1,200 to about 550 and remained between 520 and 670 through fiscal year 2015 (see fig. 8). FBI officials were not able to explain how the number of referrals to ATF has remained relatively constant since fiscal year 2008 while the number of NICS checks increased. The FBI was not able to specifically identify the cause of the decline in firearm transfer referrals to ATF from 2006 to 2008, but noted that a change in the NICS process could account for the initial decline.

⁴⁹These numbers represent delayed denial referrals in which MCDVs and protection orders were the highest ranked or only category that met criteria for a denial determination. According to FBI officials, multiple prohibiting categories could result in a denial determination. For instance, the FBI reported that there were 14 additional delayed denials (6,235 total) related to MCDVs that could have been referred to ATF but were also denied for a higher ranked category. Similarly, there were 19 additional protection orders (578 total) that were denied for a different category.

⁵⁰States can conduct their own checks as a POC state, partial-POC state, or a non-POC state that requires a background check for a firearm permit.

to them if tracking additional information could help reduce the number of unresolved checks. For example, they noted that, in accordance with some states' records management practices, some records they would need to complete the checks are no longer available and have been destroyed.

More than 500 Firearms Transferred Each Year to Individuals with Prohibiting Domestic Violence Records Because Denial Determinations Were Made after 3 Business Days

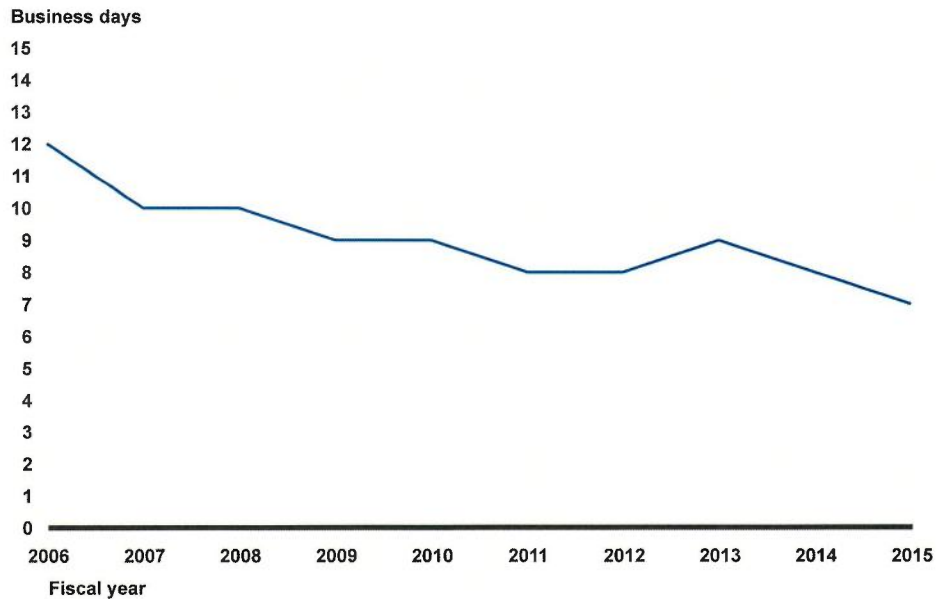
According to FBI data, more than 500 firearms were transferred to individuals with prohibiting MCDV records or prohibiting protection orders each year from fiscal years 2006 through 2015—about 6,700 total transfers—because the FBI denial determination was made after 3 business days, which resulted in the FBI referring these cases to ATF for firearm retrieval.⁴⁷ Under federal law, firearm dealers may transfer a firearm to an individual if the dealer has not received a response from the NICS Section after 3 business days.⁴⁸ In cases where a proceed or denial determination cannot be made within 3 business days, NICS examiners continue to conduct research to determine whether an individual is eligible for a firearm. The officials added that the NICS Section is to refer any firearm transactions that they deny after 3 business days—known as a delayed denial—to ATF for firearm retrieval if the NICS examiner determines that the dealer has already transferred the firearm to the individual.

FBI data show that the FBI referred a total of 6,221 MCDV delayed denials and 559 protection order delayed denials to ATF for potential firearm retrieval from fiscal years 2006 through 2015 because individuals

⁴⁷According to FBI officials, POC states are responsible for conducting their own NICS checks and are not required to provide the status of firearm retrievals to ATF or the FBI. Our data reflects only those delayed denials that resulted from an FBI-initiated check that was referred to ATF for retrieval action.

⁴⁸18 U.S.C. § 922(t)(1)(B)(ii). States may allow additional time to conduct background checks. If the state is a non-POC state and the FBI conducts the check, the FBI will provide the Federal Firearms Licensee (FFL) with the allowable transfer date under federal law and the FFL will use state guidelines for when a firearm transfer may take place.

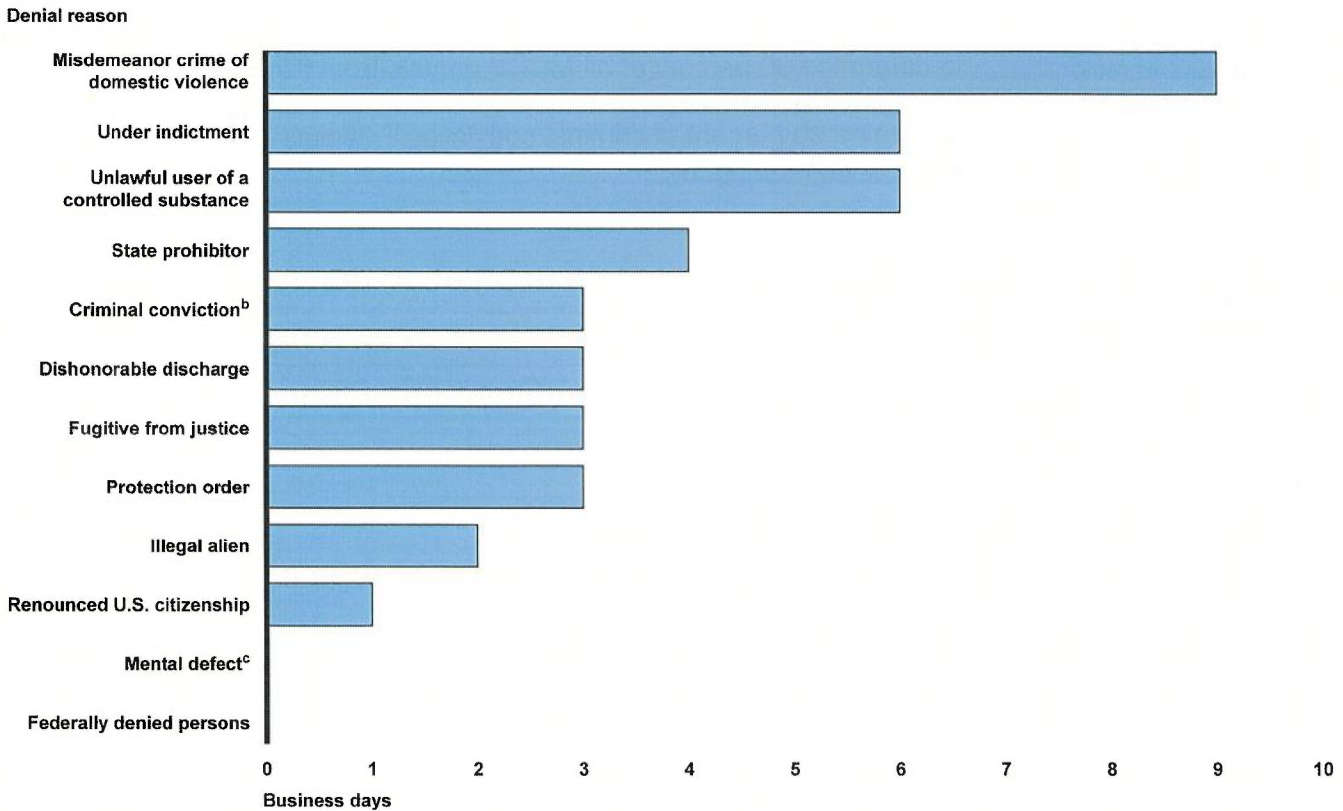
Figure 7: Business Days Needed to Determine 90 Percent of Misdemeanor Crimes of Domestic Violence Denials, Fiscal Years 2006 through 2015



Source: GAO analysis of Federal Bureau of Investigation denial data. | GAO-16-483

In addition, NICS examiners were not able to complete many checks initiated by the NICS Section before the FBI was required to stop investigating and purge information related to the transactions from NICS. The FBI is required to purge information related to unresolved NICS checks within 90 days after the check was initiated. According to FBI officials, the FBI purges unresolved NICS checks after 88 days to ensure that they comply with the regulation. Our analysis of FBI data show that 171,994 (2.1 percent) of the 8,256,688 checks that the FBI initiated in 2014 had no proceed or denial determination made by the FBI within 88 days. According to FBI officials, these cases were categorized as unresolved and the FBI does not track the outcomes of these cases. Our analysis indicates that if the 2014 denial rates of NICS checks involving domestic violence records applied to these unresolved checks, approximately 1,930 would have been denied during 2014 for all categories, of which about 130 because of a MCDV record and about 56 because of a protection order. FBI officials said they do not identify or track information on unresolved checks—such as the possible prohibiting offense that led to the check needing additional review or the reason a determination was not made—due to system limitations and multiple prohibiting categories being researched. The officials told us that because they use all available resources to make a final determination, it is unclear

Figure 6: Business Days Needed for the Federal Bureau of Investigation to Determine 90 Percent^a of National Instant Criminal Background Check Denials, Fiscal Years 2006 through 2015



Source: GAO analysis of Federal Bureau of Investigation denial data. | GAO-16-483

^aFor illustrative purposes, our analysis used 90 percent as a threshold for identifying the number of business days needed to reach a denial determination. For two categories, the FBI completed 90 percent of denials within 0 business days because denials can be made immediately or on the same day that a check was initiated.

^bConvicted of a crime punishable by more than 1 year or a state misdemeanor punishable by more than 2 years.

^cAdjudicated Mental Defective/Committed to a Mental Institution.

Our analysis of FBI data also found that the number of business days needed to complete 90 percent of MCDV denials has improved over time—decreasing from 12 days in fiscal year 2006 to 7 days in fiscal year 2015 (see fig. 7). Other prohibiting categories also required fewer business days to complete 90 percent of denials over time. For example, criminal convictions decreased from 5 business days in fiscal year 2006 to 2 business days in fiscal year 2015. FBI officials were not aware of what actions have contributed to the reduced number of days to reach denial determinations.

Days to complete misdemeanor crime of domestic violence denials

- Fiscal Years 2006 through 2015 (59,000 denials)
 - Within 3 business days: 41,000 (70 percent)
 - Between 4 and 9 business days: 12,000 (20 percent)
 - Between 10 and 20 business days: 3,800 (6 percent)
 - 21 or more business days: 2,100 (4 percent)
- Fiscal Year 2015 (7,500 denials)
 - Within 3 business days: 5,700 (76 percent)
 - Between 4 and 9 business days: 1,200 (16 percent)
 - Between 10 and 20 business days: 360 (5 percent)
 - 21 or more business days: 200 (3 percent)

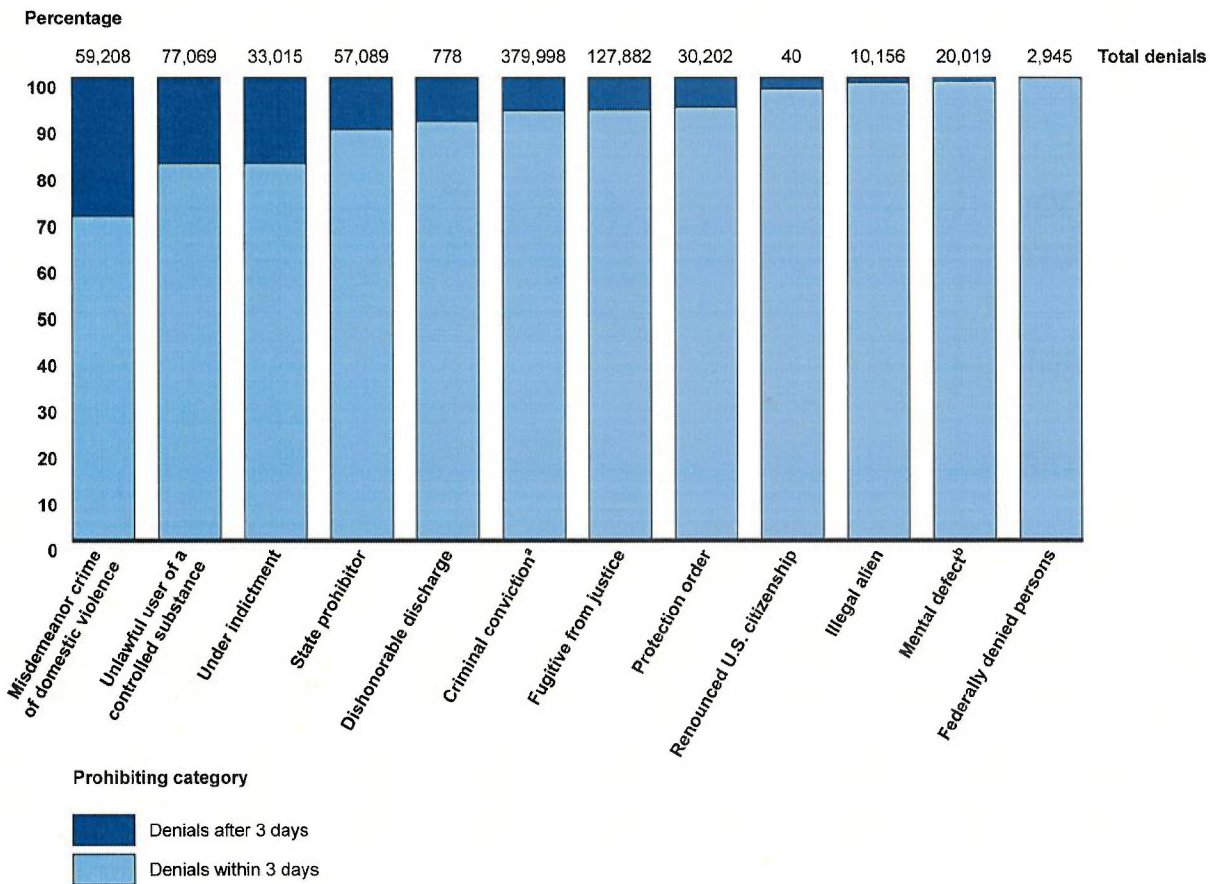
Source: GAO analysis of Federal Bureau of Investigation denial data. | GAO-16-483

According to our analysis of FBI data, denial determinations for checks involving MCDV records also took longer than checks for other prohibited categories. For example, while the FBI denied 70 percent of MCDV-related checks within 3 business days, it took the Bureau 9 business days to determine 90 percent of all MCDV denials from fiscal years 2006 through 2015. As a comparison, it took the FBI 3 business days to determine 90 percent of criminal conviction⁴⁵ denials during the same time period (see fig. 6).⁴⁶

⁴⁵A criminal conviction prohibits a person from receiving or possessing a firearm when the person is convicted of a crime punishable by imprisonment exceeding 1 year or a state misdemeanor punishable by more than 2 years.

⁴⁶For illustrative purposes, our analysis used 90 percent as a threshold for identifying the number of business days needed to reach a denial determination. For most prohibiting categories, once 90 percent of denials were completed, the percentage completed each subsequent day was diminishingly small (see appendix I for methodology).

Figure 5: Percentage of National Instant Criminal Background Check System (NICS) Checks Denied by Prohibiting Category, Fiscal Years 2006 through 2015



Source: GAO analysis of Federal Bureau of Investigation record level denial data. | GAO-16-483

^aConvicted of a crime punishable by more than 1 year or a state misdemeanor punishable by more than 2 years.

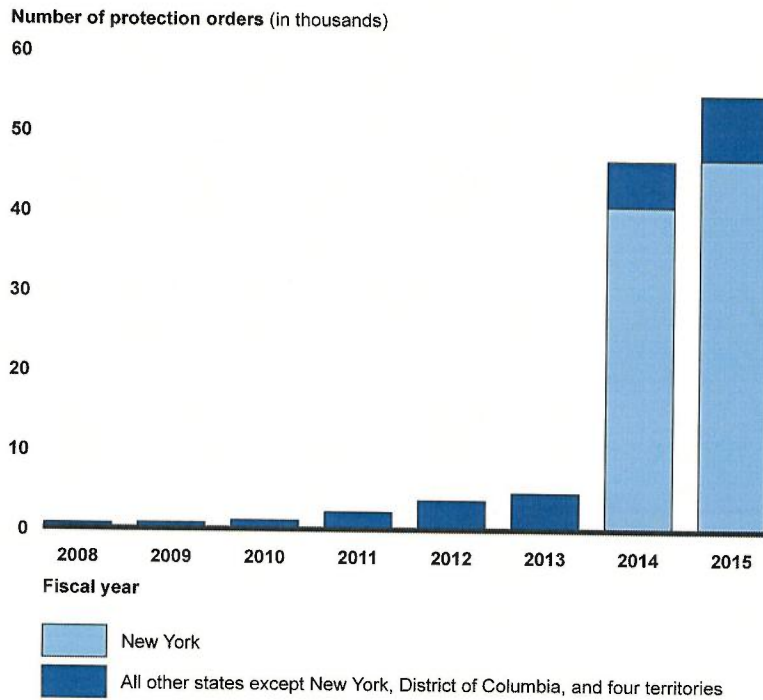
^bAdjudicated Mental Defective/Committed to a Mental Institution.

Most NICS Checks Involving Domestic Violence Records Are Completed before Firearm Transfers Take Place, but About 6,700 Firearms Were Transferred to Prohibited Individuals Since 2006; DOJ Could Analyze Denial Data to Help Establish Priorities

About 70 Percent of MCDV-Related Denials Were Completed within 3 Business Days, Which Is a Lower Percentage than for Other Prohibiting Categories

FBI data show that about 70 percent of NICS checks involving prohibiting MCDV records were denied within 3 business days. Specifically, about 41,000 of the approximately 59,000 MCDV denials from fiscal years 2006 through 2015 were denied within 3 business days, with the remaining 18,000 transactions (30 percent) denied after 3 business days. No other category had more than 20 percent of its denials delayed beyond 3 business days. FBI data also show that about 28,000 (94 percent) of the approximately 30,000 domestic violence protection order denials from fiscal years 2006 through 2015 were denied within 3 business days, with the remaining 2,000 transactions (6 percent) denied after 3 business days (see fig. 5).

Figure 4: Number of Protection Orders in the National Instant Criminal Background Check System (NICS) Index, Fiscal Years 2008 through 2015^a



Source: GAO analysis of Federal Bureau of Investigation data. | GAO-16-483

^aNo states or territories had protection orders in the NICS Index for fiscal years 2006 and 2007.

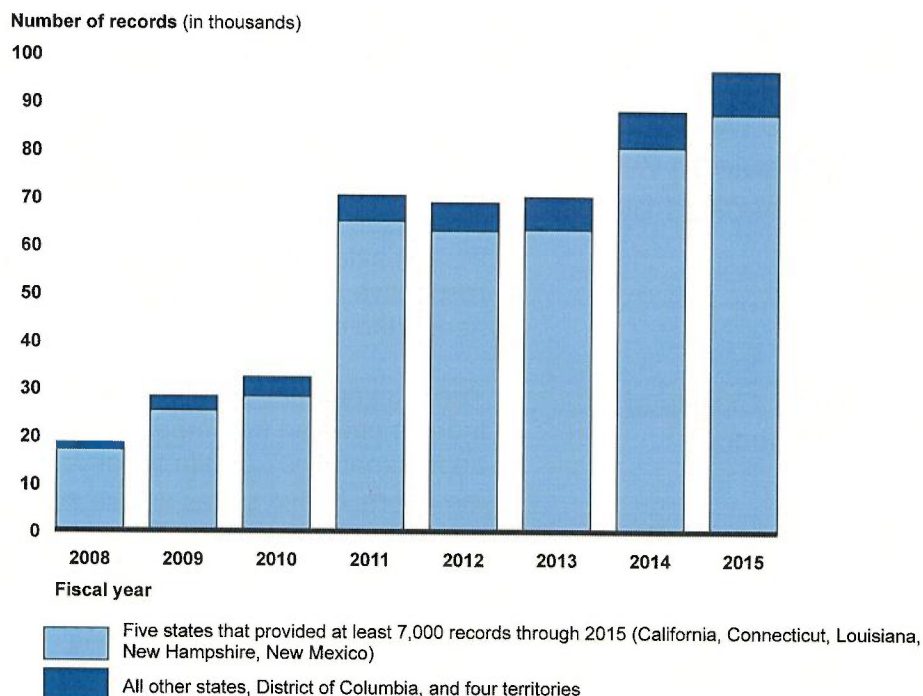
records during a NICS checks in order to expedite potential future NICS checks of the same individual.

Protection Orders

The total number of protection orders that states entered into the NICS Index increased from approximately 700 in fiscal year 2008 to approximately 55,000 in fiscal year 2015.⁴⁴ This increase in protection orders predominantly reflects the effort of one state. Specifically, approximately 47,000 (85 percent) of the approximately 55,000 records were due to New York's efforts to enter protection orders into the NICS Index starting in fiscal year 2014 (see fig. 4). New York state officials said they used federal grant funding to develop an automatic process that uses protection order information collected by court clerks to identify disqualifying protection orders and then enter these records into the NICS Index and the NCIC. Officials said the motivation for this process is to ensure that all disqualifying protection orders are available for NICS checks and to facilitate and expedite the NICS check process. In total, 23 states had protection orders in the NICS Index as of September 30, 2015.

⁴⁴From fiscal years 2006 through 2007, no states or territories had protection orders in the NICS Index.

Figure 3: Number of Misdemeanor Crime of Domestic Violence (MCDV) Records in the National Instant Criminal Background Check System (NICS) Index, Fiscal Years 2008 through 2015^a



Source: GAO analysis of Federal Bureau of Investigation data. | GAO-16-483

^aNo states or territories had MCDV records in the NICS Index for fiscal years 2006 and 2007.

Some states have developed processes to submit pre-validated prohibiting MCDV records to the NICS Index in order to expedite NICS checks or make records available to NICS that are not available in other FBI databases, such as the III. For example, Connecticut state officials said they developed a process where court personnel identify potentially prohibiting MCDV records and then a centralized clerk validates the records as firearm-prohibiting and enters them into the NICS Index. The officials noted that the motivation to enter MCDV records into the NICS Index was to ensure that all prohibiting MCDV records were made available for NICS checks because (1) Connecticut state law allows for cite and release arrests for misdemeanor crimes and (2) the information needed to determine if the record prohibits a firearm transfer may not be available in the state primary court records or the criminal history repository. Officials from two POC states we spoke with said they entered disqualifying MCDV records into the NICS Index as they identified these

Most States Submit a Limited Number of Domestic Violence Records to the NICS Index, Because Such Records Are More Often Made Available to Other Systems Checked by NICS

States can submit pre-validated, firearm disqualifying MCDV records and protection orders to the NICS Index for use solely during NICS checks. Pre-validated records are those that can be used to immediately deny a firearm transfer, and are notated by the use of the Brady Indicator, IFFS flag, or made available in the NICS Index. Pre-validated records expedite NICS checks because NICS examiners and POC states can automatically deny firearm transfers based on a NICS Index entry. However, the FBI encourages states to first submit MCDV records and protection orders to the III and NCIC, respectively, because these databases are used for general criminal justice purposes in addition to firearm sales. States may also enter records into the NICS Index if the respective records in the III or NCIC do not contain all the information needed to determine whether the record would prohibit a firearm transfer.

Misdemeanor Crimes of Domestic Violence

The total number of MCDV records that states entered into the NICS Index increased from approximately 19,000 in fiscal year 2008 to approximately 97,000 in fiscal year 2015.⁴² This increase largely reflects the efforts of five states whose MCDV records made up approximately 91 percent of these records in the NICS Index in fiscal year 2015 (see fig. 3).⁴³ Thirty-seven states had MCDV records in the NICS Index as of September 30, 2015, and 18 states had made available more than 100 MCDV records to the NICS Index.

⁴²From fiscal years 2006 through 2007, no states or territories had MCDV records in the NICS Index.

⁴³Five states (California, Connecticut, Louisiana, New Hampshire, and New Mexico) each contributed at least 7,000 MCDV records to the NICS Index through fiscal year 2015.

conditions, such as removing firearms from the subject of the protection order.

DOJ has engaged in other efforts to help states enter protection orders into the NCIC, such as in person and distance trainings, sharing best practices, conferences, and audits. For example, the NCSC worked with DOJ to develop an online training course for judges on how to develop protection orders under domestic violence situations. Additionally, under the direction of BJS, the NCSC and SEARCH plan to publish a series of reports describing, among other things, the challenges states face in providing NICS-related records and best practices that states have used to make these records available. BJS made available the first of these reports on mental health records in March 2016, and a BJS official said the next report on protection orders will be available by late summer 2016.⁴⁰ FBI also conducts audits of states with access to certain FBI systems, such as NCIC, every 3 years. These audits can help improve, among other things, the accuracy and completeness of protection orders in NCIC by reviewing a sample of protection orders and comparing these protection orders against supporting documentation.⁴¹ For example, DOJ auditors identified a state where the NCIC protection orders did not contain all available information, and the state redesigned its existing protection order system to capture the additional information into NCIC.

⁴⁰Becki Goggins, SEARCH, and Anne Gallegos, National Center for State Courts. *State Progress in Record Reporting for Firearm-Related Background Checks: Mental Health Submissions*, a report prepared under a cooperative agreement with the Department of Justice, Bureau of Justice Statistics, March 2016.

⁴¹GAO analyzed 54 FBI audit reports of states and territories from fiscal years 2012 to 2015. Of the 6,138 protection orders that the FBI audited during these 54 audits, the FBI found that about 5 percent (334) of the protection orders were inaccurate, 12 percent (711) were incomplete, and 4 percent (233) were invalid. According to the FBI, inaccurate protection orders are where critical information in the NCIC record did not match with the information on the protection order or supporting documentation. Incomplete protection orders are where the protection order or supporting documentation contains additional data that should be included in the NCIC record. Invalid protection orders are where the case which resulted in the NCIC protection order has been resolved but the record has not been removed from NCIC.

information, and, as a result, each year the state will average approximately 1,200 to 1,400 protection orders that they cannot enter into NCIC. Officials from another state said that they lacked sufficient staff and resources to enter all protection orders that do not involve a familial relationship into NCIC. Officials from the third state said that the state and local criminal justice agencies did not have the staff and resources to respond to “hit” inquiries 24 hours a day on protection orders.³⁹ As a result, only one district court in the state enters protection orders into NCIC.

DOJ has grant programs available to states to, among other things, facilitate submitting protection orders to NCIC and also to provide judicial education on administering protection orders in domestic violence situations and handling firearm prohibitions. For example, Nebraska state officials said they used NARIP and NCHIP grant funds to develop a mechanism for law enforcement agencies to enter protection orders directly into NCIC. The officials said the portal has significantly increased the number of protection orders entered into the NCIC. States have also used NCHIP grants to validate and enter protection orders into the NICS Index. For example, Pennsylvania officials said they received a 2015 NCHIP grant award to develop a process to enter protection orders into the NICS Index that did not have all the information the FBI requires for entry into NCIC. The officials said that these protection orders currently are only available for in-state law enforcement purposes or firearm checks and entering these protection orders into the NICS Index would make them available for firearm checks outside of the state. Lastly, DOJ’s Office on Violence Against Women (OVW) offers multiple grants to state and local criminal justice agencies, victim services organizations, and other entities that address domestic violence. For example, OVW grants fund programs and staff that assist domestic violence victims in obtaining a protection order, train judges on when it is appropriate to include a firearm prohibition in a protection order, and enforce protection order

³⁹Every agency that enters records into NCIC must assure that hit confirmation is available for NCIC records 24 hours a day, 7 days a week. Generally, a hit confirmation means to confirm (1) the identity of the person inquired upon is identical to the person identified in the protection order, (2) the protection order is active, and (3) the terms, service, and conditions of the protection order. Hit confirmation policies allow agencies that are not available 24 hours a day, 7 days a week to enter into agreements with agencies that are available to perform hit confirmations during off-hours. (Federal Bureau of Investigation, *NCIC 2000 Operating Manual*)

enforcement officials to use the Brady Indicator on protection orders because of the complexity of the flag setting. The officials added that high staff turnover in the local law enforcement agencies responsible for entering the protection order information could also result in staff incorrectly flagging protection orders with the Brady Indicator.

According to FBI guidance, NICS examiners and POC states can deny a firearm transfer based on a disqualifying Brady Indicator after verifying that the protection order is active without verifying that the other elements of the firearm prohibition for protection orders were met.³⁶ Officials from three of five POC states we spoke with said they follow this guidance and rely on the Brady Indicator to deny firearm transfers after verifying the protection order is active without further research on whether the protection order disqualifies firearm transfers.³⁷ Officials from two other states said they prefer to conduct additional research to ensure the protection order meets the criteria to prohibit a firearm transfer prior to denying a firearm transaction, such as reviewing a copy of the petition for the protection order.³⁸

State Challenges in Submitting Protection Orders and DOJ Assistance

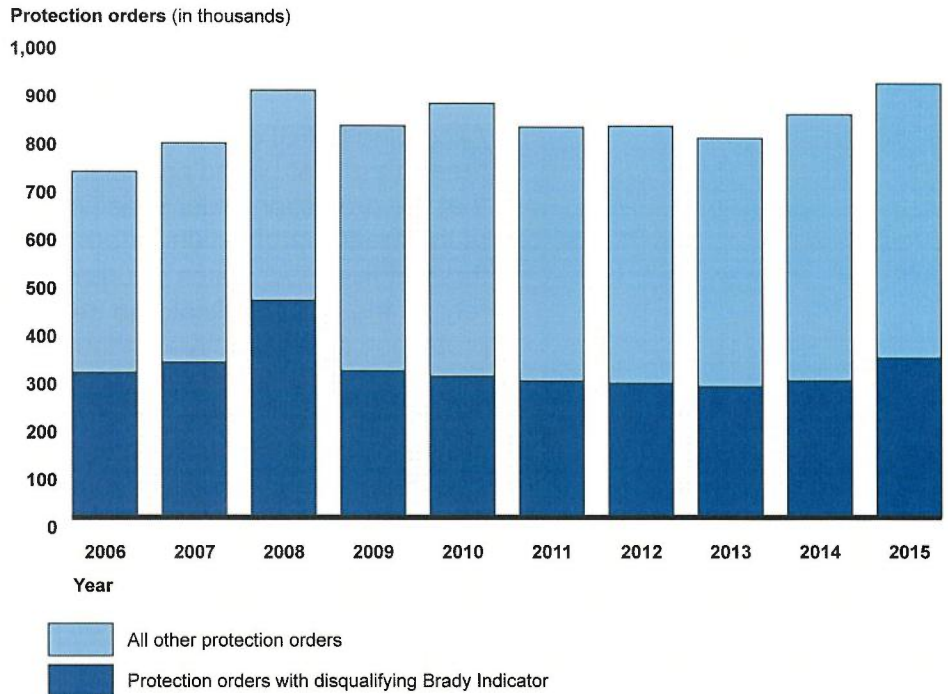
Officials from five of the eight states we spoke with said that they generally do not face challenges entering protection orders into the NCIC protection order file. Officials from the other three states said they face challenges entering protection orders to NCIC due to the NCIC entry requirements or the lack of resources and staff. For example, to enter a protection order into NCIC, the protection order must contain certain information, such as name, sex, and race, and it must include at least one numeric identifier, such as date of birth or social security number. Officials from one state said that it is not always possible to collect all the required

³⁶State courts can also use another indicator ("PCO Code 07") to identify protection orders that prohibit an individual from receiving or possessing a firearm. Both protection orders and temporary protection orders can have the PCO Code 07 condition, and these protection orders may be related to domestic violence.

³⁷One of the POC states attempts to obtain additional information to verify there is a firearm disqualifying protection order but will deny the firearm transfer based on the Brady Indicator if the information is not received.

³⁸We spoke with officials from two law enforcement agencies in one of the states. Officials from one of the agencies were unaware of the Brady Indicator, while officials from the other agency said they prefer to conduct additional research prior to denying a firearm transaction based on a disqualifying Brady Indicator.

Figure 2: Total Number of Protection Orders^a with a Disqualifying Brady Indicator in the National Crime Information Center Protection Order File, 2006 through 2015^b



Source: GAO analysis of Federal Bureau of Investigation data. | GAO-16-483

^aData include only protection orders that were active at some point during the calendar year, including protection orders that expired or were subsequently cancelled.

^bA disqualifying Brady Indicator indicates that the protection order prohibits an individual from receiving or possessing a firearm under federal law.

According to FBI officials, the total number of domestic violence-related protection orders in NCIC is unknown because the only way to identify these protection orders is through the use of the Brady Indicator. States are not required to use the Brady Indicator when entering protection orders into NCIC and vary in the degree to which they voluntarily flag disqualifying protection orders. Some states have developed practices for using the Brady Indicator on protection orders. For example, Washington state officials said that the state courts and law enforcement agencies consistently use the Brady Indicator to identify firearm prohibiting protection orders. State officials developed a standardized protection order form that captures all the information needed to determine if the order qualifies for the federal firearm prohibition. Additionally, state officials offered training to court staff on how to use the form to determine the Brady Indicator setting for the protection order. Officials from one of the states we spoke with said that they do not encourage law

criminal justice agencies. According to DOJ officials, the toolkit was completed in April 2016.

47 States Use Indicators
to Identify Domestic
Violence-Related
Protection Orders That
Prohibit Firearms
Transfers, and About
334,000 Protection Orders
Were Flagged in 2015

Protection Orders in NCIC

According to FBI data, all states; Washington, D.C.; and two territories enter protection orders to the NCIC protection order file, and 47 states; Washington, D.C.; and two territories also submit orders with the “Brady Indicator,” which flags orders related to domestic violence that prohibit the individual from receiving or possessing firearms under federal law.³⁵ In 2015, approximately 334,000 (37 percent) of the 907,000 protection orders in NCIC had the Brady Indicator (see fig. 2). State participation in the NCIC protection order file is voluntary, and the extent to which states enter protection orders into the NCIC varies (see appendix III for state and territory protection order data). FBI officials said that they encourage states to enter protection orders into the NCIC protection order file rather than the NICS Index because these protection orders are then available for all criminal justice purposes, not just NICS background checks.

³⁵Courts can issue full and temporary protection orders. Temporary protection orders can not include the Brady Indicator because courts generally do not hold hearings prior to issuing temporary protection orders. However, the court judge can prohibit the subject of a temporary protection order from possessing or receiving a firearm as a condition of the temporary protection order. Unless otherwise noted, “protection orders” refers to full protection orders.

they are using federal grant funds, such as NCHIP or NARIP, to enter non-fingerprinted MCDV records into the NICS Index. For example, Nebraska officials are using NARIP funds to develop a court process that will automatically identify MCDV records that qualify for the federal firearm prohibition and enter these records into the NICS Index. DOJ also provides grant funds to states to purchase mobile live scan devices that digitally record and electronically transmit fingerprint images or to place live scan devices in courtrooms to help ensure that all arrests have a fingerprinted arrest record in the III. From fiscal years 2009 through 2015, DOJ provided approximately \$6 million of the \$95 million in NARIP grants to 13 states specifically for MCDV and protection order projects.

Criminal history records not complete: States may face challenges in providing complete criminal records (records that have the arrest charge and the disposition of the arrest, such as conviction or acquittal), which can make it challenging to determine if an individual should be prohibited under federal law from receiving or possessing a firearm. Officials from seven of the eight states we contacted said providing complete criminal records to the III, which include felony and misdemeanor records, was a challenge. As we previously reported, DOJ has engaged in various efforts to address state challenges in providing complete criminal history records.³⁴ For example, states have used NCHIP grant funds to improve the completeness of domestic violence records available to NICS by updating records that only contain arrests to include disposition information and upgrading and automating criminal history record systems to capture data on dispositions from courts and prosecutors. According to senior BJS officials, from fiscal years 2006 through 2015, DOJ provided approximately \$11 million of the \$137 million in NCHIP grants to states and territories specifically for protection order and MCDV projects. DOJ also helps states by sharing best practices through informational websites and reports and on-site technical assistance. For example, under a DOJ grant through the Office of Justice Programs, Bureau of Justice Assistance, the NCSC created a web-based toolkit that identifies, among other things, best practices on how to overcome disposition reporting and coordination challenges among state and local

³⁴GAO-15-162; GAO, *Gun Control: Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks*, GAO-12-684 (Washington, D.C.: July 16, 2012).

State Challenges in Submitting
Criminal Records and DOJ
Assistance

for MCDVs were met. Officials from three of five POC states we spoke with said they will deny a firearm transfer if the IFFS flag indicates there is a firearm-disqualifying record.³⁰ Officials from the other two POC states said they will conduct additional research prior to denying the firearm transfer, such as obtaining and reviewing a police report or court record, to verify that all of the prohibiting criteria are met.

Based on our discussions with officials from eight states, DOJ, SEARCH, and NCSC, we identified two general challenges (versus challenges related to flags) that state officials most frequently cited as negatively affecting their ability to make criminal records—both felony and misdemeanor records—available to the III: (1) lack of fingerprinted arrest records, such as when law enforcement cites and then releases an individual and (2) incomplete criminal records where the arrest record does not have a final disposition.³¹ These are consistent with challenges we have previously reported.³²

Fingerprints not collected and cite-and-release practices: As we previously reported, incomplete or missing criminal history records can result from law enforcement officials citing and releasing individuals without formally arresting and fingerprinting them.³³ Criminal records without fingerprints are not available in the III, and hence, these records would not be available for a NICS check. Officials from four of the eight states we contacted said their state has laws that allow law enforcement officials to issue a citation to individuals for misdemeanor crimes, including crimes that are domestic-violence related, instead of a formal, fingerprinted arrest. Officials from the remaining four states said their state has laws that require a fingerprinted arrest for misdemeanor crimes that could be related to domestic violence. Officials from two states said

³⁰Officials from one of the POC states said they attempt to obtain additional information to verify there is a firearm-disqualifying record, but will deny the firearm transfer based on the IFFS flag if the information is not received.

³¹In general, disposition refers to the result or conclusion of criminal proceedings, such as charge dismissed, acquittal, adjudication withheld, probation, or conviction.

³²GAO, *Criminal History Records: Additional Actions Could Enhance the Completeness of Records Used for Employment Related Background Checks*, GAO-15-162 (Washington, D.C.: Feb. 12, 2015).

³³GAO-15-162.

IFFS flag to identify disqualifying convictions in any court of a crime punishable by imprisonment for a term exceeding 1 year.²⁷ States can also use the IFFS flag to identify disqualifying MCDV records, but the total number of MCDV records that states make available to the III for use during NICS checks is generally unknown. FBI officials noted that it is not possible to identify all of the domestic violence records in the III because there is no automatic process that can disaggregate these records from the 88 million other criminal records. As of October 2015, states used the IFFS flag to indicate that approximately 5 million (6 percent) of 88 million total III records were firearm disqualifying for the range of criteria, including domestic violence records.

According to NICS Section and BJS officials, states predominantly make MCDV records available for NICS checks through the III versus the NICS Index. NICS officials said that they encourage states to enter criminal records into III because the records are then available for all criminal justice purposes, not just NICS checks. BJS was responsible, under the NIAA, for collecting initial state estimates of the number of MCDV records, among the other prohibiting categories, that exist at the local or originating agencies and the number of records that are or could be made available to NICS.²⁸ However, in 2012, BJS decided to stop collecting state record estimates because feedback from focus groups comprised of FBI and state officials and analysis of the collected record estimates demonstrated that certain estimates were not sufficiently reliable for their intended use due to factors such as states using widely different methods to estimate the number of records.²⁹

According to FBI guidance, NICS examiners and POC states can deny a firearm transfer based on a disqualifying IFFS flag after verifying that the person seeking to obtain the firearm matches with the record and reviewing the criminal record information that is returned from the NICS check without verifying that the other elements of the firearm prohibition

²⁷ See 18 U.S.C. §§ 922(g)(1) and 921(a)(20).

²⁸ Pub. L. No. 110-180, § 201, 121 Stat. 2559, 2570-2571.

²⁹ *Id.* §§ 102, 104. The NIAA specifies that state record estimates should serve as the basis for the reward and penalty provisions of the act. However, according to a BJS official, BJS has not administered these provisions because of the limited reliability of the state record estimates.

authorities of the NICS Improvement Amendments Act of 2007.²⁵ These grants were to, among other things, assist states and tribes in supplying 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. Since 2011, DOJ has placed a funding priority on NARIP grant projects that increase the number of mental health records accessible to NICS. According to the grant solicitations, states must use a portion of awarded funds to make such records accessible to NICS unless the state can provide information showing that another prohibiting category represents a greater information gap.

States Vary in Their Use of Indicators That Identify Domestic Violence Records That Prohibit a Firearm Transfer

22 States Use Indicators to Identify Criminal History Records That Prohibit Firearm Transfers, Which Include Domestic Violence Records

MCDV records in the Interstate Identification Index

Twenty-two states voluntarily participate in the Identification for Firearms Sales (IFFS) program and flag criminal records in the IFFS that prohibit an individual from receiving or possessing a firearm.²⁶ States can use the

²⁵Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242, 2307 (2015).

²⁶All states and territories contribute criminal records to the IFFS.

the case to an ATF field office for potential retrieval actions.²² ATF field offices conduct additional research by coordinating with local law enforcement agencies. If ATF determines that a person should not have been denied, ATF notifies the FBI that the firearm transaction was not prohibited and that the transfer was permissible. If ATF confirms that the person who received the firearm was prohibited, an ATF official contacts the firearm purchaser to coordinate transferring the firearm to a licensed dealer or a third party who is not a prohibited person, or seizes the firearm.

Grant Programs for Record Submissions Used in NICS Checks

The goal of the National Criminal History Improvement Program (NCHIP) is, among other things, to improve the nation's safety and security by enhancing the quality, completeness, and accessibility of criminal history record information by providing direct financial and technical assistance to states and tribes to improve their criminal record systems and other related systems. For example, according to the 2016 grant solicitation, the funds can be used to, among other things, assist states and tribes in finding ways to make more records available to NICS through the III, NCIC, and NICS Index and to address gaps in the federal and state records currently available in NICS. All states and five territories have received NCHIP grant funds at least once since the inception of the NCHIP grants in 1995.²³ The NICS Act Record Improvement Program (NARIP) implements the grant provisions of the NICS Improvement Amendments Act of 2007 (NIAA) to improve records available to NICS and help eligible states and tribes improve completeness, automation, and transmittal of records to state and federal systems.²⁴ The Consolidated Appropriations Act, 2016, appropriated \$73 million for grants to states to upgrade criminal and mental health records for NICS, of which no less than \$25 million shall be for grants made under the

²²For states that conduct their own NICS checks, firearm retrievals may be handled by local law enforcement, a statewide firearms unit, or the nearest ATF field office. There are 25 ATF field divisions.

²³The five territories are American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands.

²⁴In the aftermath of the Virginia Tech shooting on April 16, 2007, the NICS Improvement Amendments Act of 2007 (NIAA) was enacted into law to, among other things, help states make more records available for use during NICS background checks. Pub. L. No. 110-180, § 103, 121 Stat. 2559, 2567-2568.

qualifying MCDV is generally an offense that is a misdemeanor offense under federal, state, or local law,

- includes the use or attempted use of physical force or the threatened use of a deadly weapon, and
- involves an intimate partner relationship between the defendant and the victim, among other things.¹⁸

As defined in ATF regulations, a qualifying protection order generally must include

- issuance after a hearing where the defendant was given actual notice and the opportunity to participate;
- the restraint of future conduct by the defendant, such as harassing or stalking of an intimate partner or child of the intimate partner or defendant;¹⁹ and
- a finding that the defendant represents a credible threat to the physical safety of an intimate partner or child, or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury, among other things.²⁰

ATF Firearm Retrieval Process

ATF is responsible for, among other things, retrieval of firearms that have been transferred to prohibited individuals. Specifically, when the FBI determines, after 3 business days, that an individual to whom a firearm was transferred is prohibited from receiving or possessing a firearm, the FBI refers this delayed denial case to ATF.²¹ ATF reviews delayed denial cases it receives from the FBI to confirm the prohibition, and then refers

¹⁸27 C.F.R. § 478.11.

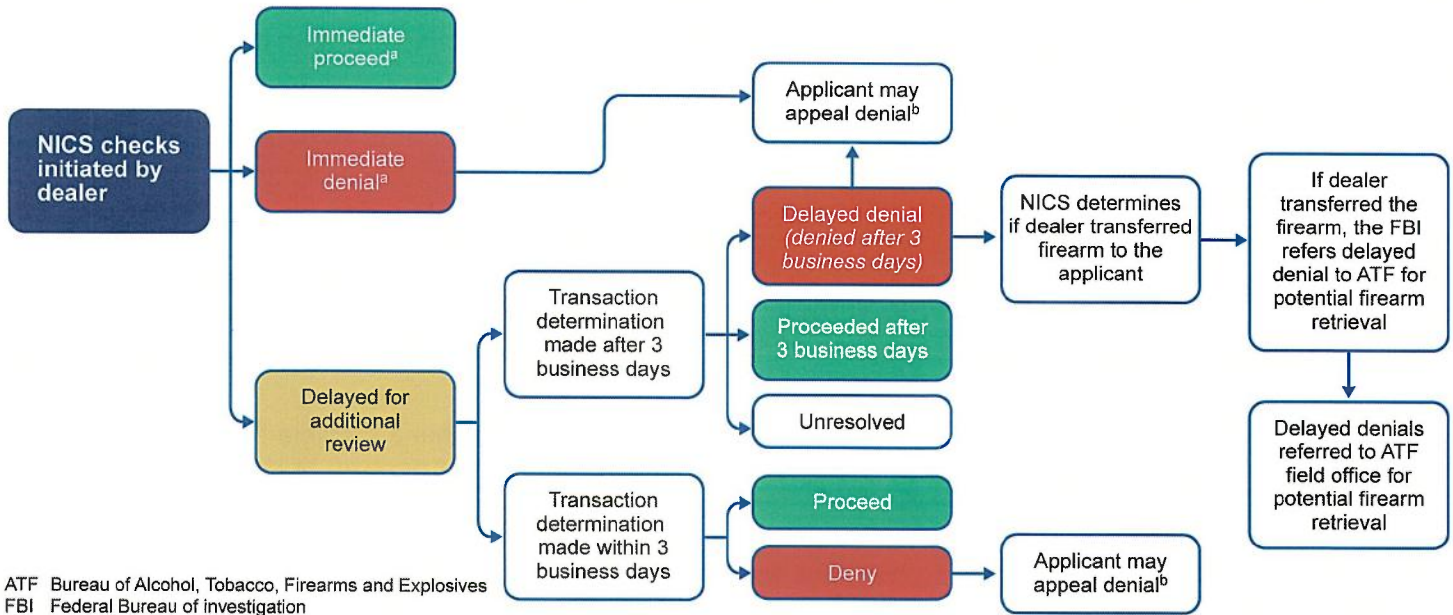
¹⁹Under 27 C.F.R. § 478.11, an "intimate partner" is defined with respect to a person as "the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabitated with the person."

²⁰27 C.F.R. § 478.32(a)(8).

²¹States can establish their own firearm laws, which can include providing for additional time to complete checks before a dealer may transfer the firearm.

checks for a state.¹⁶ Figure 1 shows the general NICS check process for gun purchases through a firearm dealer.

Figure 1: National Instant Criminal Background Check System (NICS) Process for Purchasing a Firearm from a Dealer



ATF Bureau of Alcohol, Tobacco, Firearms and Explosives
 FBI Federal Bureau of investigation

Source: GAO analysis of FBI data. | GAO-16-483

^aImmediate proceeds and immediate denials are when the outcome of the NICS check is determined while the firearm dealer is on the phone with a NICS representative or through an internet-based check called “E-check.”

^bIndividuals who believe they were wrongfully denied the ability to purchase a firearm can appeal the denial decision.

The Gun Control Act of 1968,¹⁷ as amended, and ATF regulations establish the types of MCDV convictions and domestic violence protection orders that prohibit a person from possessing a firearm under federal law. Specifically, federal law prohibits individuals who are subject to qualifying MCDV convictions or active domestic violence protection orders from possessing or receiving a firearm. As defined by ATF regulations, a

¹⁶See appendix II for further discussion of state options for conducting background checks using NICS.

¹⁷Pub. L. No. 90-618, 82 Stat. 1213 (1968).

In general, states make MCDV records available to the III and protection orders to the NCIC Protection Order file.¹⁴ To facilitate determining if a MCDV record or protection order would prohibit an individual from receiving or possessing a firearm, state and local criminal justice agencies can identify (“flag”) prohibiting records from among all the other records that they provide to the III and NCIC. The flagged criminal history records and protection orders, as well as records submitted to the NICS Index, have been pre-validated by the submitting agency as prohibiting an individual from receiving or possessing a firearm, thereby expediting the NICS check process. For criminal records in the III, agencies can use the Identification for Firearms Sales (IFFS) flag to indicate a prohibiting record for both persons who have been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year or a misdemeanor crime of domestic violence. For records in the NCIC, agencies can flag a prohibiting protection order with the “Brady Indicator,” which flags orders related to domestic violence that prohibit the individual from receiving or possessing firearms under federal law.

According to the FBI, approximately 23.1 million background checks were run through NICS during 2015, of which the FBI’s NICS Section processed about 9 million transactions and designated state and local criminal justice agencies processed about 14.1 million. The FBI has a goal of completing 90 percent of all NICS checks immediately, and completes the vast majority of checks before firearms are transferred.¹⁵ FBI officials noted that the NICS Section has achieved this goal every year since 2003, and had a 90.4 percent immediate determination rate in 2015. States may choose among three options for performing NICS checks: (1) the state can conduct all of its own background checks, referred to as point of contact (POC) states; (2) the state and FBI’s NICS Section can share responsibility for background checks, referred to as partial-POC states; or (3) the NICS Section can conduct all background

¹⁴The NCIC Protection Order file contains records on individuals against whom protection orders have been issued.

¹⁵The Attorney General directed the FBI to complete 90 percent of all NICS determinations immediately—i.e. while the firearm dealer remains on the phone with the NICS examiner.

domestic violence protection order.¹² States can also establish their own prohibitions in addition to the federal prohibitions. During a NICS check, descriptive data provided by an individual, such as name and date of birth, are used to search three national databases—managed by the FBI—containing criminal history and other relevant records to determine whether or not the person is disqualified by law from receiving or possessing firearms.¹³ The majority of the records found in these three databases come from states and territories, though federal and international criminal justice agencies also contribute some records.

- Interstate Identification Index (III): The III is a system for the interstate exchange of criminal history records. III records include information on persons who are indicted for, or have been convicted of, a crime punishable by imprisonment for a term exceeding 1 year or have been convicted of a misdemeanor crime of domestic violence.
- National Crime Information Center (NCIC): NCIC is an automated database of criminal justice-related records consisting of 21 files (7 property files and 14 person files), accessible to law enforcement and criminal justice agencies. The files pertain to, among other things, information on wanted persons (fugitives), persons subject to protection orders, and stolen property.
- NICS Index: The NICS Index is a database that was created for use in connection with NICS background checks and contains information on persons determined to be prohibited from possessing or receiving a firearm.

¹²In general, under federal law, persons are prohibited from possessing or receiving a firearm if they (1) have been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year; (2) are a fugitive from justice; (3) are an unlawful user of or addicted to any controlled substance; (4) have been adjudicated as a “mental defective” or committed to a mental institution; (5) are aliens illegally or unlawfully in the United States, or certain other aliens admitted under a nonimmigrant visa; (6) have been dishonorably discharged from the military; (7) have renounced their U.S. citizenship; (8) are under a qualifying domestic violence restraining order; (9) have been convicted of a misdemeanor crime of domestic violence. In addition, federal law prohibits (10) persons under felony indictment from receiving a firearm. See 18 U.S.C. § 922(g) and (n).

¹³In addition to searching the three national databases, states can also search state and local databases to which they may have access.

priorities against criteria outlined in federal internal control standards.¹⁰ Appendix I contains a more detailed discussion of our scope and methodology.

We conducted this performance audit from June 2015 to July 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Overview of NICS Process

NICS is used by federally licensed firearm dealers to initiate a background check on individuals seeking to possess or receive a firearm. The permanent provisions of the Brady Handgun Violence Prevention Act (Brady Act) took effect on November 30, 1998. Under the Brady Act, before a firearm dealer can transfer a firearm to an unlicensed individual, the dealer must initiate a background check through NICS to determine whether the prospective firearm transfer would violate federal or state law.¹¹ Under federal law, generally there are 10 categories of individuals who are prohibited from receiving or possessing a firearm, including individuals convicted of a MCDV and those subject to a qualifying

¹⁰GAO, *Internal Control: Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999). Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives, among others, are being achieved: effectiveness and efficiency of operations and compliance with applicable laws and regulations, which include assessing the risks an agency faces from both internal and external sources.

¹¹18 U.S.C. § 922(t)(1). In general, a Federal Firearms Licensee (FFL) has a license that enables the FFL to engage in commerce in firearms, including dealing in firearms, manufacturing ammunition and firearms, and importing firearms.

National Consortium for Justice Information and Statistics—and the National Center for State Courts (NCSC).⁸

To determine the extent to which NICS checks involving domestic violence records are completed before firearm transfers take place, we analyzed DOJ documentation and data to identify trends in the total number of NICS checks, denials, delayed denials, firearm retrievals, and days to determine the outcome of a check. Specifically, we obtained FBI data on each NICS check denial—798,401 records from fiscal years 2006 through 2015—and analyzed these data to identify trends in NICS check denials. We did not analyze data on NICS checks that are allowed to proceed because the FBI is required to purge all identifying information related to the NICS transaction within 24 hours of the transaction being completed.⁹ We also obtained data over the same time period from ATF and the FBI on retrieval referrals and appeals by individuals denied a firearm and analyzed these data to identify trends in NICS checks appeals, by prohibited category. To assess the reliability of these data, we questioned knowledgeable officials about their information collection procedures and systems, reviewed relevant documentation, and examined data for obvious errors. We determined that the data were sufficiently reliable for the purposes of our report. To determine whether challenges exist that may increase the time it takes to complete a NICS check, we analyzed testimonial evidence from DOJ and the eight selected states regarding characteristics of domestic violence records that can present challenges and lead to checks exceeding the federally-allowed 3 business days before a firearm can be transferred. We also obtained documentation and testimony from DOJ and selected states regarding federal and state efforts to increase the number of checks completed before firearms are transferred, including grant awards and training to states. Finally, we compared DOJ's actions to monitor the outcomes of the checks and use the results to establish and manage program

⁸SEARCH—the National Consortium for Justice Information and Statistics—is a non-profit organization governed by governor appointees from the 50 states and is a resource for information, best practices, services, and solutions for criminal justice information sharing. The National Center for State Courts is an independent, nonprofit court improvement organization that conducts research, information services, education, and consulting.

⁹See 28 C.F.R. § 25.9(b)(1)(iii).

violence records and challenges the FBI and states could face in conducting NICS checks involving those records. This report

- describes the extent to which states identify domestic violence records for use during NICS checks that prohibit an individual from obtaining a firearm, and
- evaluates the extent to which NICS checks involving domestic violence records are completed before firearm transfers take place, and what challenges, if any, the FBI and selected states face in completing such checks that DOJ could help mitigate.

To describe the extent to which states identify prohibiting domestic violence records for use during NICS checks, we analyzed FBI data on the number of domestic violence records that states identified and made available to NICS from 2006 through 2015—the most recent 10 years of available data.⁷ To assess the reliability of these data, we questioned knowledgeable officials about their information collection procedures and systems, reviewed relevant documentation, and examined data for obvious errors. We determined that the data we reported were sufficiently reliable for the purposes of our report. In addition, we interviewed officials from eight states (Connecticut, Nebraska, Nevada, New Mexico, New York, Pennsylvania, Texas, and Washington) to gain an understanding of their processes for submitting domestic violence records to the FBI and the extent to which they have encountered challenges, if any, in submitting records. We selected this non-generalizable sample of states to reflect a range of factors, including the number of domestic violence records they made available to the FBI and whether they have received grant funding to improve their record submissions. We interviewed officials from various DOJ components with responsibility for maintaining NICS records or supporting related activities, including the FBI's Criminal Justice Information Services (CJIS) Division and NICS Section, the Bureau of Justice Statistics (BJS), and the ATF to obtain additional perspectives on the records states provide for use during NICS checks. Additionally, we interviewed entities that support DOJ efforts to address issues related to firearm background checks, including SEARCH—the

⁷Unless otherwise noted, "states" refers to all 50 states and the District of Columbia.

dealer may transfer the firearm pursuant to federal law (unless state law provides otherwise).⁴ However, the FBI can continue to research the transaction for potentially prohibiting information—for up to 90 days—at which time information related to the transaction is to be destroyed to comply with federal record retention requirements.⁵ When the FBI makes a denial determination after 3 business days—called a delayed denial—the FBI determines if the firearm dealer transferred the firearm to the individual and, if so, refers these cases to DOJ’s Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for possible retrieval of the firearm.

Most criminal history records and protection orders originate from states, which are not required to share records with the FBI but do so voluntarily for public safety and other law enforcement purposes. In previous reports, we noted that states had made progress in automating criminal history records and making them nationally available for NICS checks and other law enforcement purposes, but that additional actions could be taken to enhance the number and completeness of records.⁶ Additionally, DOJ has established grant programs intended to help states improve the availability and completeness of records to NICS. In this context, you requested that we review states’ efforts to identify prohibiting domestic

⁴18 U.S.C. § 922(t)(1)(B)(ii). States can establish their own firearm laws, such as additional prohibiting categories or additional time frames for completing checks before a dealer may transfer the firearm.

⁵28 C.F.R. § 25.9. According to NICS Section officials, to comply with federal record retention requirements, the NICS Section destroys these records after 88 days. States that conduct their own checks, known as point of contact (POC) states, may have differing record retention requirements. The mission of the FBI’s NICS Section is to enhance national security and public safety by providing the timely and accurate determination of a person’s eligibility to possess firearms in accordance with federal law.

⁶See, for example, GAO, *Gun Control: Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks*, GAO-12-684 (Washington, D.C.: July 16, 2012). We recommended, among other things, that DOJ share promising practices in making mental health records available for use during NICS checks. DOJ agreed with our recommendations and has addressed them. See also, GAO, *Criminal History Records: Additional Actions Could Enhance the Completeness of Records Used for Employment-Related Background Checks*, GAO-15-162 (Washington, D.C.: Feb. 12, 2015). We recommended, among other things, that the FBI establish plans with time frames for completing certain goals. DOJ concurred with our recommendations and plans to take actions to address them.



July 5, 2016

The Honorable Michael M. Honda
Acting Ranking Member
Subcommittee on Commerce, Justice, Science,
and Related Agencies
Committee on Appropriations
House of Representatives

Dear Mr. Honda:

Persons prohibited by federal law from possessing firearms include individuals who have been convicted of a misdemeanor crime of domestic violence (MCDV) and individuals who are subject to a qualifying domestic violence restraining or protection order—(hereafter referred to as domestic violence records)—among others, such as convicted felons and fugitives.¹ Under the Brady Handgun Violence Prevention Act and implementing regulations,² the Federal Bureau of Investigation (FBI), within the U.S. Department of Justice (DOJ), and designated state and local criminal justice agencies use the FBI's National Instant Criminal Background Check System (NICS) to conduct background checks on individuals seeking to purchase firearms from federally licensed firearm dealers or obtain permits to possess, acquire, or carry firearms.

During the NICS check, descriptive data provided by an individual—such as name and date of birth—are used to search databases containing criminal history and other relevant records to determine whether or not the person is disqualified by law from possessing firearms.³ If the FBI or state agency cannot complete a background check within 3 business days and make a final determination (i.e., proceed or denied) the gun

¹18 U.S.C. § 922(g) and (n). Qualifying domestic violence restraining or protection orders meet all federal criteria for prohibiting a person from possessing a firearm.

²Pub. L. No. 103-159, 107 Stat. 1536 (1993).

³Criminal history records include, among other things, the name of the agency that submitted the criminal record, the arrest charge, and the disposition of the arrest, if known. A disposition is the result or conclusion of criminal proceedings, such as charge dismissed, acquittal, or conviction. See 28 C.F.R. § 20.3(i).

Abbreviations

ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
BJS	Bureau of Justice Statistics
CJIS	Criminal Justice Information Services
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
FFL	Federal Firearms Licensee
IFFS	Identification for Firearm Sales
III	Interstate Identification Index
MCDV	misdemeanor crime of domestic violence
NARIP	NICS Act Record Improvement Program
NCHIP	National Criminal History Improvement Program
NCIC	National Crime Information Center
NCSC	National Center for State Courts
NIAA	NICS Improvement Amendments Act of 2007
NICS	National Instant Criminal Background Check System
OVW	Office on Violence Against Women
POC	point of contact
SEARCH	National Consortium for Justice Information and Statistics

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GAO Highlights

Highlights of GAO-16-483, a report to the Acting Ranking Member, Subcommittee on Commerce, Justice, Science, and Related Agencies, Committee on Appropriations, House of Representatives

Why GAO Did This Study

The FBI and designated state and local criminal justice agencies use the FBI's NICS to conduct background checks on individuals seeking to obtain firearms. Persons prohibited by federal law from possessing firearms include individuals who have domestic violence records that meet federal disqualifying criteria. Under federal law, firearm dealers may transfer a firearm to an individual if the FBI has not made a proceed or denial determination within 3 business days.

GAO was asked to review NICS checks involving domestic violence records. This report (1) describes the extent to which states identify domestic violence records that prohibit an individual from obtaining a firearm and (2) evaluates the extent to which NICS checks involving domestic violence records are completed before firearm transfers take place and any related challenges in completing these checks.

GAO reviewed laws and regulations; analyzed FBI data from 2006 through 2015 on domestic violence records that states submitted to the FBI, FBI total checks and denial determinations, and DOJ firearm retrieval actions; and interviewed officials from DOJ and eight states (chosen based on number of domestic violence records submitted to NICS and other factors). State interview results are not generalizable but provide insights on state practices.

What GAO Recommends

GAO recommends that FBI monitor the timeliness of NICS checks to assist DOJ entities in establishing priorities for improving the timeliness of checks. FBI agreed with the recommendation.

View GAO-16-483. For more information, contact Gretta L. Goodwin at (202) 512-8777 or goodwing@gao.gov.

GUN CONTROL

Analyzing Available Data Could Help Improve Background Checks Involving Domestic Violence Records

What GAO Found

Most of the 50 states submit domestic violence records—misdemeanor crime of domestic violence (MCDV) convictions and domestic violence protection orders—to the Department of Justice's (DOJ) Federal Bureau of Investigation (FBI) for use during National Instant Criminal Background Check System (NICS) checks, but states vary in their efforts to identify ("flag") such records that prohibit an individual from obtaining a firearm under federal law. For example, in 2015, 22 states voluntarily participated in a program to identify criminal history records that prohibit individuals from obtaining firearms, which can include domestic violence records. FBI data also show that 47 states identified domestic violence protection orders that prohibit firearm purchases. Since not all domestic violence records that states submit to the FBI meet federal prohibiting criteria, flagging prohibiting records can help expedite NICS checks. The total number of prohibiting domestic violence records that states submit to the FBI is generally unknown because states are not required to flag prohibiting records and there is no automated process to disaggregate such records from other records checked by NICS.

For fiscal years 2006 to 2015, FBI data show that most NICS checks involving domestic violence records that resulted in denials were completed before firearm transfers took place (see table). However, about 6,700 firearms were transferred to individuals with prohibiting domestic violence records, which resulted in the FBI referring these cases to DOJ's Bureau of Alcohol, Tobacco, Firearms and Explosives for firearm retrieval. Under federal law, firearm dealers may (but are not required to) transfer a firearm to an individual if the dealer has not received a response (proceed or denial) from the FBI after 3 business days.

Table: Background Check Denials and Firearm Transfers for Misdemeanor Crimes of Domestic Violence (MCDV) Convictions and Protection Orders, Fiscal Years 2006 to 2015

Category	Total denials	Within 3 days	After 3 days	Firearm transfers
MCDV convictions	59,000	41,000	18,000	6,221
Protection orders	30,000	28,000	2,000	559

Source: GAO analysis of Federal Bureau of Investigation data. | GAO-16-483

FBI data also show that during fiscal year 2015, the FBI completed 90 percent of denials that involved MCDV convictions within 7 business days, which was longer than for any other prohibiting category (e.g., felony convictions). The FBI completed 90 percent of denials that involved domestic violence protection orders in fewer than 3 business days. According to federal and selected state officials GAO contacted, the information needed to determine whether domestic violence records—and in particular MCDV convictions—meet the criteria to prohibit a firearm transfer is not always readily available in NICS databases and can require additional outreach to state agencies to obtain information. DOJ has taken steps to help states make prohibiting information more readily available to NICS—such as through training and grant programs—but does not monitor the timeliness of checks that result in denials by prohibiting category. Ongoing monitoring could help the FBI determine if specific prohibiting categories present greater challenges in making determinations than other categories and, in turn, the FBI could provide the results to other DOJ entities to help them establish priorities, such as for grants, state outreach, or training.



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