

**Questions for the Record from Senator Charles E. Grassley
for David Slayton
U.S. Senate Committee on the Judiciary
Hearing on “Firearm Accessory Regulation and Enforcing Federal and State Reporting to
the National Instant Criminal Background Check System”
December 6, 2017**

In your testimony you discussed steps that the State of Texas has taken to ensure the submission of domestic violence records to NICS

1. What could the Federal Bureau of Investigation do to make it easier for states to report records to NICS?

State and local courts have not been able to apply directly for some Department of Justice (DOJ) administered programs because of the definition of “unit of local government” that has been included in the enabling legislation for the various programs. The result of this language is that state and local courts are not able to apply directly for these funds, but must ask an executive agency to submit an application on their behalf. As part of the NICS reauthorization and as grant programs are reauthorized, we ask that the definition of eligible entities be broadened so that state and local courts can apply directly for federal grant funds. As an example, when the Violence Against Women Act (VAWA) was reauthorized in 2013, the reauthorization legislation contained specific language authorizing, “State and local courts (including juvenile courts) ...” to apply directly for VAWA funds. These federal grant funds could be used by state and local courts to assist with implementing automation in their reporting of NICS records.

2. Would it help states if they were able to verify that the records your state sends to the FBI have been entered into the NICS system?

Yes, because the NICS system queries records from three databases, it is difficult for state courts and other agencies to verify the number of records available to the NICS system. If a record is not directly entered into the NICS system, there is not a report of the number of records available to NICS through the NCIC or III databases. The inability to verify whether the NICS system contains the appropriate number of records anticipated in various categories limits the ability to determine if there are systemic issues with reporting. We suggest that states be given access to reports that allow the state to verify on a regular basis the number of records available to the NICS system.

Questions for the Record from Senator Dianne Feinstein for Mr. David Slayton, Administrative Director for Texas Office of Court Administration

1. Director Slayton, over the past several years, have you seen an improvement in the completeness of protective orders entered into NICS.
 - ***How has Texas used federal funding (such as under the NICS Act Record Improvement Program (NARIP)) to improve submission of disqualifying records into the FBI NICS system?***

Texas has made great strides in improving the reporting of mental health records and domestic violence disqualifiers to NICS. This is in large part due to funding received from the federal government that enabled Texas to concentrate its efforts on improving the records available to NICS. In Fiscal Year 2012, the Texas Office of Court Administration (OCA) received a NICS Act Record Improvement Program (NARIP) grant from the U.S. Department of Justice, Bureau of Justice Statistics, to develop a plan for improving NICS reporting and to assist clerks in reviewing historical case files and docket sheets to identify eligible mental health records to be reported, and when requested, to enter the information into CJIS. NICS mental health records from Texas increased from 168,384 in October 2011 to 285,067 records as of December 1, 2017. This represents a 69 percent increase in the number of records over this period as clerks work to ensure historical and new records are added. Texas' efforts have been recognized by several groups, including the United States General Accountability Office.

In addition to the efforts made on mental health records, OCA has been working to ensure that records related to domestic violence convictions and family violence protection orders are entered into the systems. In Fiscal Year 2013, OCA received another NARIP grant from the U.S. Department of Justice, Bureau of Justice Statistics, to improve reporting of protective orders in the NICS database. Under this grant, OCA hired a domestic violence resource attorney and established a task force to study the issue and make recommendations to improve reporting. The task force developed a proposed five (5) training modules to assist stakeholders in reporting to the databases. These recommendations were reflected in Texas Senate Bill 737 (84th Legislature, became law September 1, 2015.)

Texas now requires court clerks to send family violence protective orders and emergency protective orders to law enforcement agencies to enter the protective order in the CJIS system no later than the next business day after the order is entered. It also requires law enforcement agencies to enter the protective order into the CJIS system no later than three (3) business days after receipt of the protective order. Prior to this, Texas law was silent as to the timeframe under which protective orders were to be provided to law enforcement or entered into the CJIS system.

Without the federal funding for these projects, the significant improvements in Texas likely would not have occurred.

- ***What are the common issues identified that keep protective orders from being entered into NICS?***

Lack of automation and funding for automation are the two common issues identified that keep protective orders from being entered into NICS. Another issue is that the state's criminal history database does not have a method for entering emergency protective orders issue in connection with domestic violence cases. This limits the ability to ensure this information is entered appropriately into NICS.

- ***What percentage of protective orders would you estimate are incomplete when submitted to NICS in your state?***

We do not have information to accurately estimate the percentage of protective orders that are incomplete. In our work around the state, we believe that most protective orders are accurately reported to NICS. The only exception would be those emergency protective orders that are entered as conditions of bond in response to domestic violence arrests, which I have discussed in a previous answer.