

November 15, 2011

Washington's Historical Progress With the National Instant Criminal Background Check System (NICS) Submissions

In 1998, a written agreement was signed between the Federal Bureau of Investigation (FBI) Director and the Washington Governor to become a Brady State and conduct background checks on handgun purchases. Concealed pistol licenses were grandfathered if issued prior to November 30, 1998.

In 2001, the FBI conducted the first NICS audit in Washington with the Department of Licensing Firearms Unit. At the time, WSP's only involvement was providing the technical capability to allow NICS checks through the State switch, because the gun transfers and concealed pistol licenses (CPLs) were conducted at the local level. The Washington State Patrol (WSP) then took over the management, training, and audits for NICS after this first audit. It was a confusing time for our law enforcement community in trying to understand what was expected of them. WSP continues, today, to work with the FBI, providing decentralized training and support for our law enforcement agencies that conduct these checks.

In 2003, WSP and NICS conducted meetings with the Washington State Department of Social and Health Services (DSHS) to encourage entry of mental health records into the NICS Index. In 2004, DSHS agreed to provide a data transfer of mental health records into the NICS Index, Denied Persons file. The initial transfer was 30,000-plus records. That transfer was then followed up with more current data transfers, provided monthly via CD through the mail. Records were not transferred to the Mental Defectives file within NICS because we knew that each record would need to be researched in the future should it become the subject of a denial. Through this process we learned the following:

- o Not all data provided to NICS was cause for a denial. There were false positives and still individuals who were never entered but should have been. Records were not consistently sent in by local mental health facilities.
- o DSHS lacked some records for commitments that had their own personal insurance.
- o Timeliness of the NICS submissions was compromised by the sources of data and the lack of real-time transmission.
- o In 2009, WSP staff began entry and clearing of false positives and false negatives. These requests originate from public requests to DSHS who challenge the denial decision. DSHS has to research each one, and if determined to be an inaccurate entry, they now advise WSP for removal.
- o WSP also receives record information from local law enforcement entities that are entered as needed.

In July of 2009 a change in state legislation required the courts to directly enter records into the NICS Index. The Administrative Office of the Courts (AOC) began providing day-forward mental commitment records to NICS in an electronic format. These records are provided to both state databases and NICS in nightly batched transmissions.

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Washington's Successes

NICS is now receiving a high percentage of mental health records into the Index from the right sources (DSHS and AOC). The records are made available through an electronic process that is much timelier.

Ongoing training by NICS staff over the years has educated our decentralized state, but the need for ongoing training remains a priority due to turnover in personnel at the local law enforcement agencies. The commitment of NICS to partner with WSP is providing the best possible service despite the obstacles and continued issues we face.

WSP has reached out to various state and local entities to work as a united force to ensure compliance with state and federal laws and to work together to improve challenges. Washington is hosting NICS and five other states on December 7, 2011, for an NIAA discussion.

Lastly, there is continued improvement during Washington's NICS triennial audits.

Washington's Continued Efforts

Misdemeanor crimes of domestic violence are not all entered into our state criminal history repository. The courts have reported many of these charges are not followed up with fingerprints, so the information is not available from the repository.

WSP is not connected to the AOC database to pull data. AOC information is name-based and WSP data results from fingerprint cards.

State misdemeanor and felony warrants are not all forwarded to the National Crime Information Center (NCIC). There is much stakeholder work to accomplish this move of, on average, 165,000 misdemeanor warrants and 19,000 felony warrants. We are currently working on the felony state warrants.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has determined that Washington State does not meet the requirements of the NIAA for firearm restoration of rights and a relief program. ATF considers Washington's relief law too permissive in some areas and too restrictive in others. This does not allow Washington to participate in NIAA requests for grant funding. The legislature has not updated state law to match federal requirements. There is continued effort by multiple agencies to accomplish this in the future.

Existing records provided by DSHS are not well documented within their databases to separate those that qualify for the NICS Index. Some records are not available and DSHS has to review billing records to obtain names and facilities.

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Due to current state law, local law enforcement agencies are still required to complete separate requests for mental health information to DSHS. DSHS staffing and resources are extremely limited. DSHS is unable to keep up with the volume of requests because of a five day processing limitation for conducting the background checks. Requests are averaging more than 1,000 per week and Washington is a "shall issue" state.

The NICS Alternative State permit status was granted to Washington by the ATF in August 2011 and allows a handgun transfer by a federal firearms licensee without a NICS check so long as the purchaser has a valid CPL. State law, however, still requires the dealer to check with NICS and various state agencies, regardless of whether the transferee has a valid CPL.

Final Thoughts

Continued federal funding of the NIAA for years to come will enable states to improve technology for more accurate and faster reporting to the NICS Index. The funding will allow states to bridge legacy data systems and ensure information can be made available. The power of more information can be measured in lessened risk and the prevention of such devastating events as the Virginia Tech shootings.