

CONFERENCE OF STATE COURT ADMINISTRATORS

TESTIMONY

by

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On

***Firearm Accessory Regulation and Enforcing Federal and State Reporting to
the National Instant Criminal Background Check System (NICS)***

Submitted to the

**SENATE JUDICIARY COMMITTEE
UNITED STATES SENATE**

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Chairman Grassley/Ranking Member Feinstein, thank you for allowing me to testify today on state court reporting to the National Instant Criminal Background Check System (NICS).

ABOUT COSCA

My name is David Slayton and I am testifying on behalf of the Conference of State Court Administrators (COSCA). I am the current Administrative Director of the Texas Office of Court Administration.

Before I begin my remarks, I would like to provide some background on COSCA and its membership. COSCA was organized in 1955 and is dedicated to the improvement of state court systems. Its membership consists of the principal court administrative officer in each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Territories of American Samoa, Guam, and the Virgin Islands. The state court administrators are responsible for implementing policy and programs for the state judicial systems. COSCA is a nonprofit corporation endeavoring to increase the efficiency and fairness of the nation's state court systems. As you know, state courts handle 98% of all judicial proceedings in the country. The purposes of COSCA are:

- To encourage the formulation of fundamental policies, principles, and standards for state court administration;
- To facilitate cooperation, consultation, and exchange of information by and among national, state, and local offices and organizations directly concerned with court administration;
- To foster the utilization of the principles and techniques of modern management in the field of judicial administration; and
- To improve administrative practices and procedures and to increase the efficiency and effectiveness of all courts.

I also would like to tell you about the Conference of Chief Justices (CCJ), a national organization that represents the top judicial officers of the 58 states, commonwealths, and U.S. territories. Founded in 1949, CCJ, along with COSCA, speaks for state courts before the federal legislative and executive branches and works to promote reforms to improve the administration of justice. COSCA works very closely with CCJ on policy development and administration of justice issues.

TEXAS REPORTING TO THE NICS

NICS is a national system that checks available records in three databases: the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS Indices to determine if individuals are disqualified from receiving firearms. Records in the NCIC and III are populated with entries from local, state, tribal, and federal agencies, including law enforcement, jails and courts.

In Texas, information about arrests and prosecutions for various criminal offenses entered by law enforcement, jails, prosecutors, and courts into the Criminal Justice Information System (CJIS)

operated by the Department of Public Safety populates the NCIC and III systems. Information about mental health disqualifiers, including persons under guardianship, individuals found incompetent to stand trial, individuals found not guilty by reason of insanity, and individuals involuntarily committed for inpatient mental health services, are submitted by court clerks to CJIS and forwarded to the NICS database.

To be clear, ensuring that records are accurately and promptly entered into the various databases takes concerted effort by all of those that contribute to the systems. This is due to the complexity of the justice system and the various stakeholders who must contribute records. As you know, the NICS database is only as good as the records it contains, and we feel that Texas has made great strides in improving the reporting of mental health records and domestic violence disqualifiers to it. 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 Years 2012 and 2013, the Texas Office of Court Administration (OCA) received NICS Act Record Improvement Program (NARIP) grants from the U.S. Department of Justice, Bureau of Justice Statistics, to develop a plan for improving NICS reporting¹ 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 to work to ensure historical and new records are added. Texas' efforts have been recognized by several groups, including the United States General Accountability Office.²

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).

The law 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

¹ See *Texas NICS Mental Health Record Improvement Plan: Progress, Challenges and Recommendations* (October 2012) at <http://www.txcourts.gov/media/273989/nics-record-improvement-plan-final.pdf>. Also, see *Texas NICS Mental Health Reporting Manual* (January 2015) at <http://www.txcourts.gov/media/273988/nics-mental-health-record-improvement-manual.pdf>.

² U.S. General Accountability Office. "Gun Control: Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Back Checks." July 16, 2012, www.gao.gov/products/GAO-12-684. The U.S. Department of Justice Bureau of Statistics also released a publication that profiled the Texas project entitled "*NICS Improvement Amendments Act of 2007: Promising Practices for Improved Record Report*" (available at <https://www.bjs.gov/content/pub/pdf/practices/Texas.pdf>). The Mayors Against Gun Violence/Everytown for Gun Safety has labeled Texas as a "Best Performing State" in terms of submitting mental health submissions to the NICS (see <https://everytownresearch.org/fata-gaps/>).

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.

STATE SUCCESS STORIES IN NICS REPORTING

Other states are also working to improve data submissions to the NICS.

Arizona: The state of Arizona received funding from the Department of Justice, Bureau of Justice Statistics, to improve the completeness of data submitted to the NICS database. The Arizona NICS Task Force, with participation from state court judges, court administrators and other criminal justice stakeholders, identified missing case disposition information as a problem. Funding was used to quantify missing disposition data by county. Thanks to the data on missing dispositions, grants were offered to local agencies that had the largest number of missing dispositions or had a high percentage of prohibiting arrest offenses that were missing disposition information in the Arizona Computerized Criminal History repository.

Arizona counties continue to evaluate how they are performing relative to their historical NICS submission data as well as how they compare to each other. In addition, the Arizona NICS Task Force meets quarterly and continues to assess problems, examine barriers, and plan solutions that are consistent with the Arizona NICS strategic plan.

Illinois: One problem that states face is distinguishing involuntary commitments (a prohibitor) from voluntary commitments. This is important in terms of determining the correct, total number of records in the NICS database. Illinois has added a number of procedures that state personnel can perform so that an accurate count can be determined.

Louisiana: Louisiana is improving the data quality of criminal history records and the reporting of mental health records to NICS by implementing an electronic data exchange for the automated, nightly transmission of mental health records from the Department of Health and Hospitals. This project will eliminate data entry errors, and reduce the time it takes to make these records available to the NICS. They will be implementing modern case management systems in Louisiana city and parish courts to automate manual disposition reporting tasks performed by court clerks for the transmission of misdemeanor conviction information to the NICS.

Nebraska: In the area of mental health submissions to the NICS, Nebraska has evolved from paper-based reports submitted by district court clerks to an automated internet-based reporting of mental health disqualifications. In 1996, paper spreadsheet reports were mailed to the Nebraska State Patrol monthly. These paper reports were then entered into a mental health file used to review firearm permit application within Nebraska. As you can imagine, this was a slow, cumbersome process.

The current automated reporting system debuted in 2009. This success was a combined effort of multiple Nebraska state agencies, Nebraska Revised Statute §69-2409.01 section 5, and U.S. Department of Justice, Bureau of Justice Statistics funding.

RECOMMENDATIONS FOR POLICY LEGISLATION

Funding Challenges: Perhaps the greatest challenge facing state courts that want to report records that need to be in the NICS is the issue of resources. Many courts depend on cities and counties to fund court personnel or special projects to upload these records, especially historical records. As you know, most local governments struggle to meet day-to-day operations and have few resources to devote to courts for developing improvements in the transmittal of these records.

States have difficulties submitting the records because of: 1) the large number of records to process and 2) computer systems incompatibility. Many of the records are paper-based. They need to be converted to an electronic format. Even when they are electronic, they often have to be converted into the accepted format that the NICS will recognize. Information about adjudications and commitments is often not in an automated format in many jurisdictions. Some states, including Texas, do not have a single automated computer system that contains these records across jurisdictions. Some states may require automation upgrades and adoption of state legislation to fully comply with the NICS standards.

Thank you Senator Cornyn for your bill, S. 2135, the Fix NICS legislation. This bill reauthorizes the NICS Record Improvement Program and the National Criminal History Improvement Program (NCHIP). This bill provides good authorization funding levels for these programs. However, as you know, Congress still must appropriate funds for these programs. The high-water mark in terms of funding for the NICS was \$25 million (FY 2012). This was less than the highest annual authorized level of \$370 million. We ask that you fully fund both of these programs in the annual appropriations cycle.

Direct Application to Apply for Federal Funds: 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.

State Court Consultation: As I mentioned, state courts have particular challenges in automating and transmitting criminal disposition records and mental health adjudications to federal repositories. Therefore, we ask that state courts be included in discussion at the federal and state level on how to improve reporting to the databases. We also ask that state courts be included in the planning for disbursement of federal funding administered by State Executive Agencies. The language we suggest is as follows:

“An assurance that, in the development of the grant application, the States and units of local government took into consideration the needs of the state judicial branch in strengthening the administration of justice systems and specifically sought the advice of the chief of the highest court of the State and, where appropriate, the chief judge of the local court, with respect to the application.”

I want to share recent consultation language that was added to the Justice for All legislation, which is now law (PL 114-324). The language states:

“A comprehensive Statewide plan detailing how grants received under this section will be used to improve the administration of justice, which shall be designed in consultation with local governments, and representatives for all segments of the criminal justice system, including judges, prosecutors, law enforcement personnel, corrections personnel, and providers of indigent defense services, victim services, juvenile justice delinquency prevention programs, community corrections, and reentry services.”

Ability to Verify Records Available to NICS: 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.

In closing, I want to express appreciation for the Judiciary Committee’s recognition of the state courts’ role in improving NICS. COSCA and the state courts look forward to working with the Committee to develop legislation that addresses the shortcomings in the current system and considers the varied needs of the state courts of this country. We commend the Committee for recognizing the national interest in ensuring that our judiciary and courts be part of the solution.

Thank you for the opportunity to testify on these important matters. I will be happy to answer any questions you may have.