

**This report was prepared by SEARCH and the National Center for State Courts using Federal funding provided by the Bureau of Justice Statistics (BJS).**

**Document Title:** State Progress in Record Reporting for  
Firearm-Related Background Checks:  
Misdemeanor Crimes of Domestic Violence

**Author(s):** Anne Gallegos; Becki Goggins

**Document Number:** 250392

**Date Received:** December 2016

**Award Number:** 2009-NS-BX-K050

**This resource is part of a series of BJS grant-funded reports on firearm-related background checks. This report provides an overview of legislation (National Instant Criminal Background Check System Improvement Amendments Act) and reporting mechanisms for misdemeanor crimes of domestic violence, the challenges states face in reporting, strategies implemented to overcome the challenges, and data that illustrate the improvements accomplished over the past 20 years in this area.**

**Opinions and/or points of view expressed in this report are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.**

# State Progress in Record Reporting for Firearm-Related Background Checks: Misdemeanor Crimes of Domestic Violence

by Anne Gallegos, National Center for State Courts and Becki Goggins, SEARCH

December, 2016

## Introduction

A conviction for a qualifying misdemeanor crime of domestic violence (MCDV) prohibits a person from possessing a firearm. There is a wide universe of state offenses that could potentially be MCDV related; however, the conviction must meet several specific criteria in order for the Federal prohibition to apply. Federal law<sup>1</sup> defines an MCDV as “an offense” that:

- Is a misdemeanor under federal, state, or tribal law or, in jurisdictions which do not classify offenses as misdemeanors, is an offense which is punishable by imprisonment for a term of one year or less, and includes offenses that are punishable only by a fine;
- Has as an element of the use or attempted use of physical force or the threatened use of a deadly weapon; and
- At the time the offense was committed, the defendant was:
  - A current or former spouse, parent, or guardian of the victim;
  - A person with whom the victim shares a child in common;
  - A person who is cohabiting with or has cohabitated with the victim as a spouse, parent, or guardian; or
  - A person who was or is similarly situated to a spouse, parent, or guardian of the victim.

## MCDV Entries in the NICS Index

|      |         |
|------|---------|
| 2008 | 46,286  |
| 2016 | 131,101 |

Source: <https://www.fbi.gov/services/cjis/nics>

Note: NIAA was signed into law on January 8, 2008 (see page 8 for details).

Disqualifying convictions that meet the physical force element and qualifying relationship requirements listed above are reported to the appropriate federal databases to be available for conducting background checks. When fingerprints are required for misdemeanor offenses, the MCDV record will be available through the Interstate Identification Index (III). It is, however, difficult to recognize MCDV records in III because they are often not labeled as such. For instance, a state may list offenses as assaults or simple assaults, making it unclear which ones were crimes of domestic violence, something that can only be established by looking at the relationship information in the police report or charging document on a case-by-case basis. Twelve states currently use flagging within their state criminal history record systems to indicate domestic violence convictions.<sup>2</sup> While this is helpful in identifying potential disqualifying records, it does not necessarily mean that the record meets the complete federal MCDV definition. For this and other reasons (e.g., if fingerprints are not required for misdemeanor offenses, the specific relationship and/or physical force elements are not included in the record available to III) MCDV records are often reported to the National Instant Criminal Background Check System (NICS) Index.

1 Title 18, United States Code (U.S.C.), Section 922(g)(9); see also 18 U.S.C. § 925(a)(1).

2 Survey of State Criminal History Systems, 2014, <https://www.ncjrs.gov/pdffiles1/bjs/grants/249799.pdf>

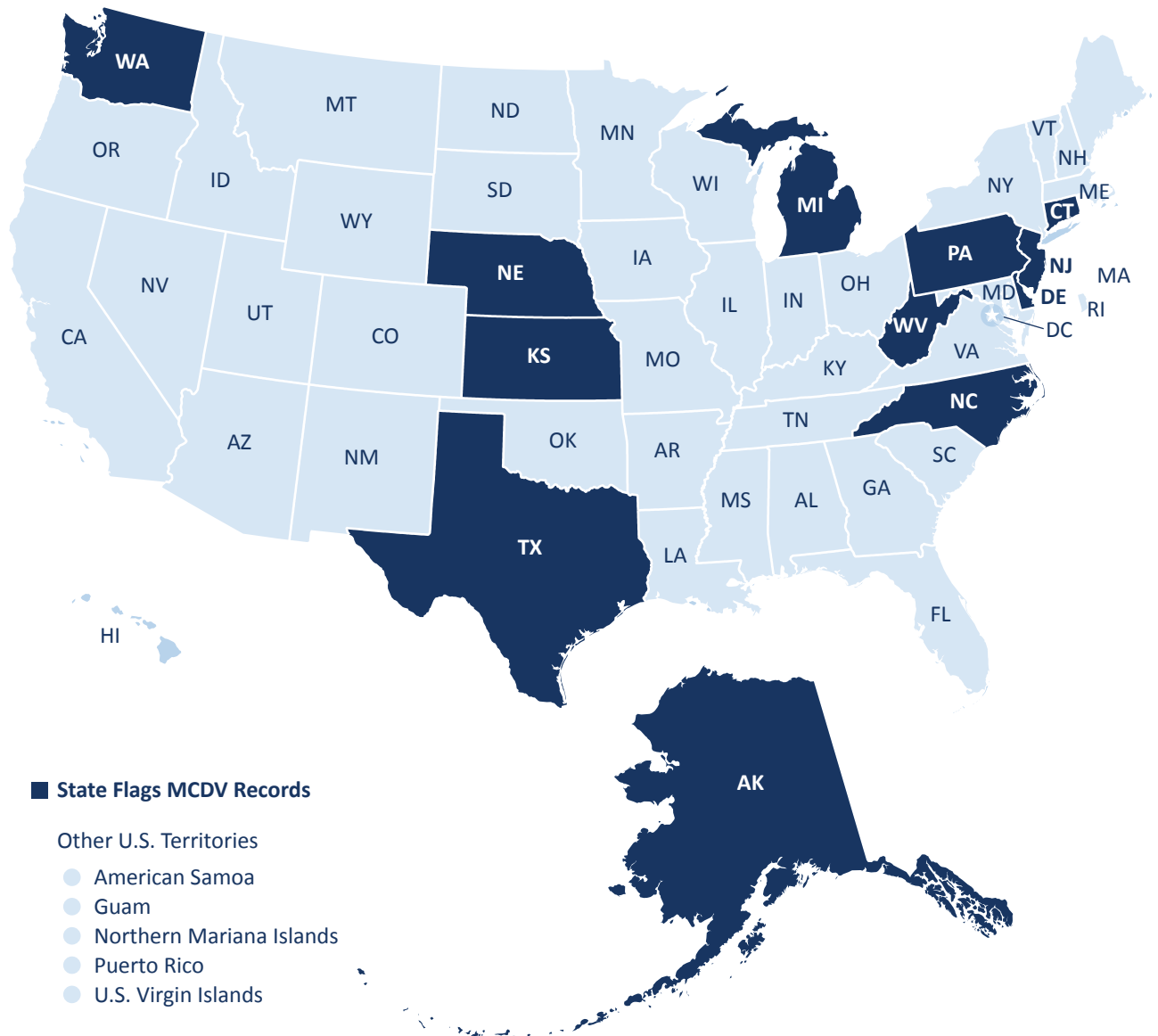


SEARCH



## States that “Flag” MCDV Records in Criminal History Repositories, 2014

- The number of MCDV entries in the NICS Index has nearly tripled since 2008 due to ongoing state efforts to improve this category of records.
- Over 80,000 additional candidate MCDV disqualifier records can be searched when making firearm eligibility determinations.



## Background

In 1993, Congress passed the Brady Handgun Violence Prevention Act (Brady Act) that, among other things, created the National Instant Criminal Background Check System (NICS). The NICS is the national system that enables Federal Firearms Licensees (FFL) to initiate a background check through the FBI or a State Point of Contact (POC). The FBI or POC will check all available records to identify persons who may be prohibited from receiving or possessing firearms. The records may be included in the following databases.

- **National Crime Information Center (NCIC)** – An electronic database consisting of 21 files, 10 of which are queried for a NICS-related background check. These files help criminal justice professionals apprehend fugitives from justice, identify terrorists, and verify persons subject to domestic violence protection orders.
- **Interstate Identification Index (III)** – Administered by the FBI, and participated in by all states, the III is a fingerprint-supported automated criminal records exchange system that includes arrest and disposition information for individuals charged with felonies or misdemeanors. Information that may be available via III includes persons who are fugitives from justice, persons found not guilty by reason of insanity or adjudicated to be incompetent to stand trial, persons found guilty of misdemeanor crimes of domestic violence, and persons under indictment.
- **NICS Index** – A database, separate from NCIC and III, created specifically for the purpose of conducting a background check for a firearms-related purpose. The NICS Index contains information contributed by local, state, tribal, and federal agencies pertaining to persons prohibited from receiving or possessing a firearm pursuant to state and/or federal law. While any disqualifying record may be entered into the NICS Index, it is not intended to duplicate information entered in NCIC or III. Instead, the database was designed to house disqualifying information not otherwise available at the national level.
- **Department of Homeland Security’s U.S. Immigration and Customs Enforcement (ICE)**: Relevant databases of the ICE are routinely queried by the FBI NICS section, and can be queried by POC states, for non-U.S. citizens attempting to receive firearms in the United States.

Additionally, states acting as a POC also search additional databases containing large volumes of state and local court and law enforcement records. Such records may render prospective gun purchasers disqualified under federal and/or state laws.

## Where are NICS Prohibiting Records Reported?

The following lists the firearm purchase-prohibiting categories identified in the Brady Act and shows the federal database in which those records are appropriately stored.

| Prohibiting Record Type                             | Federal Database(s)                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Felony/Serious Misdemeanor Convictions              | <b>III:</b> Should most appropriately be placed here so they are available for other criminal justice purposes.                                                                                                | <b>NICS Index:</b> Should be placed here if not available in III.                                                                                                                                                                                                                                                                                                                  |
| Fugitives from Justice                              | <b>NCIC:</b> Should most appropriately be placed here so they are available for other criminal justice purposes.                                                                                               | <b>NICS Index:</b> Should be placed here if not available in NCIC.                                                                                                                                                                                                                                                                                                                 |
| Unlawful Drug Use                                   | <b>III:</b> Arrests and convictions for drug offenses should most appropriately be placed here so they are available for other criminal justice purposes.                                                      | <b>NICS Index:</b> Information such as admission of use and failed drug tests should be placed here.                                                                                                                                                                                                                                                                               |
| Mental Health                                       | <b>III:</b> Persons found not guilty by reason of insanity or adjudicated to be incompetent to stand trial should most appropriately be placed here so they are available for other criminal justice purposes. | <b>NICS Index:</b> Involuntary commitments to mental institutions for the purpose of treatment should be placed here as they would be otherwise unavailable for firearms background check searches. Persons found not guilty by reason of insanity or adjudicated to be mentally defective should most appropriately be placed here if they are otherwise unavailable through III. |
| Subjects of Domestic Violence Protection Orders     | <b>NCIC:</b> Should most appropriately be placed here so they are available for other criminal justice purposes.                                                                                               | <b>NICS Index:</b> Should be placed here if not available in NCIC. (as well as orders prohibited under state law).                                                                                                                                                                                                                                                                 |
| Misdemeanor Crimes of Domestic Violence Convictions | <b>III:</b> Should most appropriately be placed here so they are available for other criminal justice purposes.                                                                                                | <b>NICS Index:</b> Should be placed here if not available in III or, if conviction is available in III, should also be placed here if qualifying relationship and/or force element is not available in III.                                                                                                                                                                        |
| Indictments                                         | <b>III:</b> Should most appropriately be placed here so they are available for other criminal justice purposes.                                                                                                | <b>NICS Index:</b> Should be placed here if not available in III.                                                                                                                                                                                                                                                                                                                  |
| Dishonorable Discharges                             | <b>III:</b> Should most appropriately be placed here so they are available for other criminal justice purposes.                                                                                                | <b>NICS Index:</b> Should be placed here if not available in III.                                                                                                                                                                                                                                                                                                                  |
| Illegal or Unlawful Aliens                          | <b>NICS Index:</b> Should be placed here as they would otherwise be unavailable for firearms background check searches.                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                    |
| Renounced United States Citizenship                 | <b>NICS Index:</b> Should be placed here as they would otherwise be unavailable for firearms background check searches.                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                    |

## Importance of placing MCDV records in III or NICS Index

The III and the NICS Index are two federal databases included in a NICS firearm eligibility background check that contain MCDV records. Ideally, MCDV records will be placed in III. This means that there is a criminal history record associated with an individual, which includes fingerprint data. When an MCDV conviction is available in III, it is accessible by law enforcement nationwide.

MCDV records that do not qualify for entry into III may be placed in the NICS Index. Unlike III entries, records in the NICS Index do not require a fingerprint-supported criminal history record. Since not all states require fingerprinting for misdemeanors, the only way to report MCDV convictions for those states is through the NICS Index. Additionally, many states have adopted laws broader than the distinct federal definition of MCDV. Records from states with expanded parameters that disqualify persons convicted of an MCDV from obtaining gun permits and/or receiving firearms can be placed in the NICS Index as a state disqualifier. These state laws include components such as expanded relationship categories, firearms surrender, and firearm removal provisions.<sup>3</sup> While placing records in the NICS Index does not make them available for routine law enforcement purposes, it does make them available for a timely determination on whether an individual is eligible for a firearm.

For MCDV records, there is some duplication between databases. States may have potential MCDV records in their criminal history record repository that do not include the information necessary for a federal MCDV determination through III. If it is not an option to update the criminal history record to include these fields, the FBI encourages states to enter and maintain the disqualifying information in the NICS Index.

While the NICS background check is mostly successful in determining eligibility through the database check alone,<sup>4</sup> there are times when additional information is necessary to make a decision. This is particularly true of

MCDV records. Given the specific criteria of the federal definition of an MCDV and the fact that many types of offenses can fall under the MCDV umbrella, it is common for additional research to be conducted during the background check. Many offenses that could qualify as an MCDV have multiple subsections under the applicable offense's statute. Some of the subsections contain the element of physical force, and some may not. The NICS Section or state agency processing a NICS background check must determine the existence of a requisite qualifying relationship as well as must obtain information to determine whether the individual was convicted of an offense or subsection of an offense which has an element of use or attempted use of physical force, or threatened use of a deadly weapon.

Because the MCDV physical force element may not be readily apparent in an automated record found during the NICS background check process, a transaction frequently must be delayed for further research to determine the existence and location of the required information. If the information is obtained during the research process but cannot be updated to a criminal history record, the information should be submitted to the NICS Index for retention and accessibility.

It is very difficult to make disqualifying domestic violence determinations within 3 business days, the length of time before a firearm transfer is allowed under federal law. In fact, according to a recent Government Accountability Office (GAO) report on domestic violence records, 2015 FBI data show that approximately 30 percent of firearm transfer denials that occur as a result of a MCDV occur after three days.<sup>5</sup> Subsequently, it is critical for documentation at the local law enforcement and court level to be comprehensive and complete, indicating the relationship between victim and offender as well as demonstration of the use or attempted use of physical force or deadly weapon (state statute/subsection).

3 <http://smartgunlaws.org/domestic-violence-firearms-policy-summary/>

4 The FBI NICS section reported an "Immediate Determination Rate" of 91% in 2014. See: <https://www.fbi.gov/about-us/cjis/nics/reports/2014-operations-report>

5 United States Government Accountability Office, Gun Control: Analyzing Available Data Could Help Improve Background Checks Involving Domestic Violence Records, GAO-16-483 (Washington, D. C., July 2016). <http://www.gao.gov/products/GAO-16-483>

## Challenges to placing MCDV records in III or NICS Index

There are unique challenges that states face in reporting MCDV records to federal databases. For instance, definitional issues plague the MCDV category of records. Determining whether an offense meets the criteria established by the federal law can be challenging. Historically, it has been uncommon for a state's criminal code to include the relationship in the definition of the offense. Thus, any offense that includes the element of physical force (use or attempted use of physical force or threats of use of a deadly weapon), such as an assault or disorderly conduct offense, could potentially be an MCDV, depending on the relationship of the two parties.

Establishing the relationship component can be difficult, as the information is not always available in records such as charging documents, records of court proceedings, or police reports. If it is able to be determined, an additional challenge is determining and implementing the best way to add the relationship information to the record.

The physical force element of an MCDV can also prove problematic for states when disjunctive elements exist in their statutes. The FBI NICS section provides the following explanation of disjunctive elements:

"...a conviction may be obtained under the applicable provision either with or without the use or attempted use of physical force or the threatened use of a deadly weapon. For example, a state generic assault statute may provide that a person commits an assault either by using physical force against another person or by verbally threatening another person. Assuming the requisite domestic relationship is present, a conviction under the first prong of the statute would satisfy the MCDV definition, while a conviction under the second prong of the statute would not."<sup>6</sup>

When the element of conviction in a disjunctive statute is not included in the automated record, an immediate determination is not made. The transaction is delayed and

further research is conducted to determine whether the conviction was under the part of the statute that meets the federal physical force requirement.

Including the qualifying element of a disjunctive statute in the electronic record in III or the NICS Index is ideal. Yet, when criminal codes are two-pronged, this is problematic for programming these automated records. If there is not a subsection of the code to be applied, the record must be coded as either meeting or not meeting the criteria of the entire statute.

Even when states are able to establish specific violation codes, subsections of law, or tailored processes to identify domestic violence cases, they are not always consistently or correctly used. If court clerks or law enforcement officers are not trained in the methods their jurisdiction is using to identify these cases, the effectiveness of such strategies is significantly reduced.

Another challenge is record availability. In some states, crimes that would qualify under the MCDV criteria are designated as fingerprintable offenses. Thus, barring occasional oversights, these records should have the fingerprint data necessary to include in the state criminal records repository and made available through III (although they may not include the necessary information to make an MCDV determination). However, this is not the case in jurisdictions where misdemeanors arrests are not supported by fingerprints. Since a state criminal history record repository, which holds records that are made available through III, cannot create a criminal record for an event that is not biometrically based, misdemeanors without fingerprint data will remain at the local court and law enforcement level. For the reasons noted above, the only way these records are available for a NICS background check is if they are included in the NICS Index. Establishing a process for including these records in the NICS Index can be costly and complicated, both procedurally and technologically.

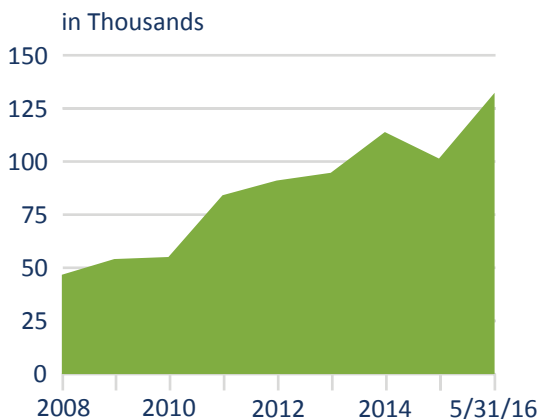
6 18 U.S.C. § 921(a)(33)(A)(ii); Title 27, Code of Federal Regulations, Sections 478.11, 478.32. (See: <https://www2.fbi.gov/hq/cjisd/nics/mcdvb brochure.htm>)

## Improvements in Available Records and State Strategies

Due to their complex nature, MCDV records are difficult to identify and make available for background searches. Yet, these types of convictions are critical to the background check process. As seen in the chart below, an MCDV conviction is the third most common reason for a federal firearm purchase denial, behind only felony conviction and fugitive from justice prohibitors.<sup>7</sup>

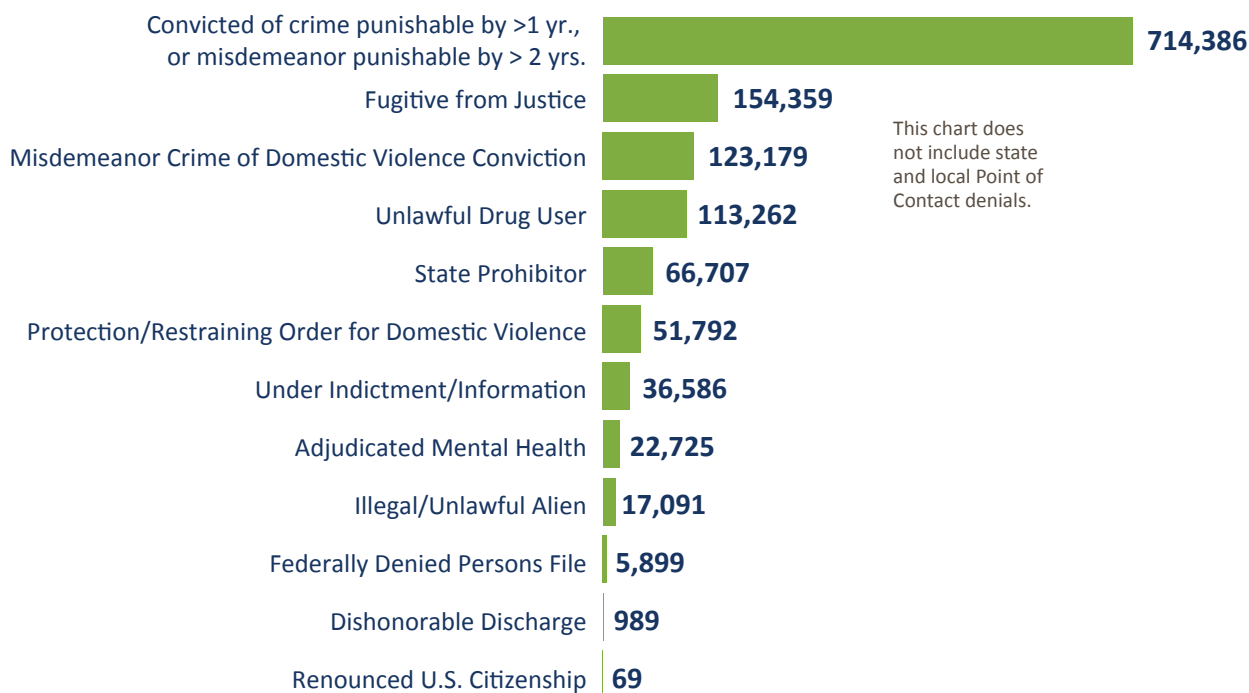
Improvements in the availability of MCDV records are evident in the steady increase of these records in the NICS Index. By mid-2016, over 131,000 MCDV records were available for background checks, nearly triple the 46,000 in 2008. NCHIP and NARIP grants have been significant funding sources for states working to improve their MCDV reporting.

## Misdemeanor Crimes of Domestic Violence Reported to the NICS Index



Source: <https://www.fbi.gov/services/cjis/nics>  
 Note: NIAA was signed into law on January 8, 2008  
 (see page 8 for details).

## Number of Federal NICS Denials, 1998-2016



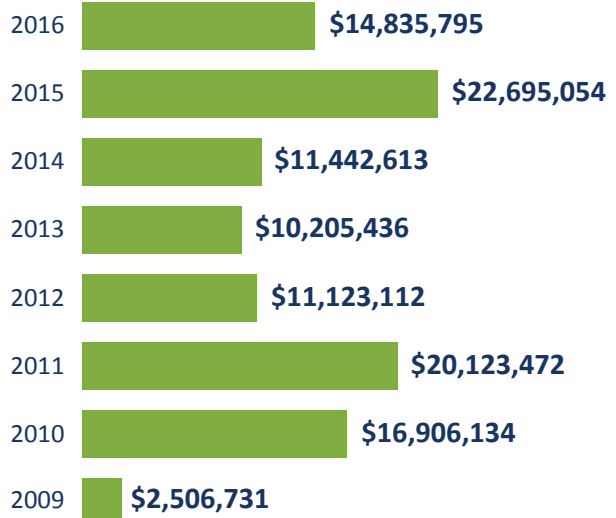
<sup>7</sup> [https://www.fbi.gov/about-us/cjis/nics/reports/federal\\_denials.pdf](https://www.fbi.gov/about-us/cjis/nics/reports/federal_denials.pdf)

Through the **National Criminal History Improvement Program (NCHIP)**, BJS provides direct awards and technical assistance to states and localities to improve the quality, timeliness, and immediate accessibility of criminal history records and related information. Complete records require that data from all components of the criminal justice system, including law enforcement, prosecutors, courts, and corrections be integrated and linked. NCHIP assists states to establish the integrated infrastructure that meets the needs of all components.

The **National Instant Criminal Background Check System (NICS) Act Record Improvement Program (NARIP)**<sup>8</sup> was created pursuant to the NICS Improvement Amendments Act of 2007, Pub. L. 110-180 (NIAA or the Act) which was signed into law on January 8, 2008, in the wake of the April 2007 shooting tragedy at Virginia Tech. The Virginia Tech shooter was able to purchase firearms from a Federal Firearms Licensee (FFL) because information about his prohibiting mental health history was not available to the NICS, and the system was therefore unable to deny the transfer of the firearms used in the shootings. The NIAA through the NARIP program seeks to address the gap in information available to NICS about such prohibiting mental health adjudications and commitments, and other prohibiting factors. Filling these information gaps will better enable the system to operate as intended to keep guns out of the hands of persons prohibited by federal or state law from receiving or possessing firearms.

8 Not all states qualify for NARIP funding due to eligibility requirements. The NIAA legislation includes two specific conditions for eligibility for NARIP grants: 1) provision of reasonable estimates of records and 2) implement a relief from disabilities program. (see 18 U.S.C. § 922 note)

#### NARIP Funding Awarded by Year



Using these and other funding streams, states have been working to overcome the challenges of making nuanced MCDV records available for background checks, mainly:

- Definitional issues—aligning state misdemeanors with federal MCDV criteria
- Disjunctive statutes
- Lack of biometric (e.g., fingerprint) data for potential MCDV convictions
- Absence of a process to transmit MCDV records to the NICS Index

The majority of state improvement strategies fall under the following categories:

- Enacting new or revised state legislation
- Including MCDV information in court and criminal history records
- Automating the determination of a record as a disqualifying MCDV
- Automating the submission of a MCDV record to the NICS Index

## State Legislation

The most comprehensive way that states have dealt with the definitional challenges inherent to identifying MCDV records is to create a state statute that establishes a misdemeanor crime of domestic violence that conforms to the federal standards. New York is one example where this was successfully passed. Historically, MCDV offenses were not flagged in a way that indicated they met the specific federal requirements for relationship and physical force, so these records were not able to be reported to the NICS Index. New York's NICS Task Force played a pivotal role in recommending legislation that established a misdemeanor crime of domestic violence (MCDV) in 2011.<sup>9</sup> The new law conforms to federal MCDV standards. New York's MCDV conviction data is now being collected and made available for background checks. Illinois (in 2011) and Minnesota (in 2013) enacted similar legislation.<sup>10</sup>

### *Including MCDV information in court and criminal history records*

Absent comprehensive legislation that mirrors the federal MCDV law, states have developed other strategies to parse qualifying MCDV records from the universe of state misdemeanor convictions. A common approach that state courts and law enforcement agencies have taken is to indicate whether a conviction has elements of domestic violence present. Arkansas has implemented such a strategy. The fingerprint cards, sentencing report, and final disposition of charge reports used statewide have a place to indicate whether the conviction and/or charge was domestic violence-related. They also have a field for the specific relationship between the victim and offender. The relationship information is included in the miscellaneous field in the criminal history record, which is available to III. Including this information on the fingerprint card and in the criminal history record eliminates the need for searching for the relationship data and indicates that the conviction should be further investigated for the elements of physical force necessary for an MCDV.

Nebraska is implementing a system where their county attorneys include information on the relationship to victim on their criminal complaint form. The relationship codes that are used align with the federal MCDV categories and become part of the court record. This creates documentation that can be used to determine whether a conviction meets the federal MCDV criteria.

Delaware's Criminal Justice Information Center (DELJIS) used NCHIP funds to make programming changes to their criminal history record information system. Previously, data that flagged a case as domestic violence-related were not passed to the other criminal justice entities. Through their grant, all appropriate cases were flagged with the domestic incident (DV) indicator. DELJIS modified the criminal history view of a record to show the DV cases that are flagged. These flags make it easier for the police, courts, NICS, as well as all interested agencies to see any individual that is technically prohibited from the purchase of a firearm due to a misdemeanor domestic violence case.

Another approach that takes the identification of MCDV records further is developing a process that aligns state criminal codes and subsections to the federal MCDV requirements. States have implemented processes like this to identify the records that have the necessary federal MCDV relationship and physical force components. This key information is then added to the electronic record sent to the NICS Index. Connecticut has a paper form that does this, which is completed by the court clerk. The form is filled out in any case with one or more of the misdemeanor convictions determined to fall into the potential MCDV universe. The information in the form is validated and the record is sent to the NICS Index as an MCDV and is available for background checks.

<sup>9</sup> N.Y. Crim. Proc. Law §§ 370.15, 380.97.

<sup>10</sup> 725 Ill. Comp. Stat. 5/112A-11.1, 5/112A-11.2. & Minn. Stat. § 624.713, subd. 5. (See <http://smartgunlaws.org/domestic-violence-firearms-policy-summary/>)

## Automation

There are two main automation strategies for MCDV records. First, automating the determination of whether a misdemeanor is a MCDV. Second, automating the transmittal of records to the NICS Index.

Nebraska has automated both stages of the process. First, the court case management system runs a code to electronically parse out the misdemeanor convictions under state statutes and subsections that qualify as MCDV. These records are then passed through the state patrol and submitted to the NICS Index.

New Mexico implemented an automated process in 2010 to transfer MCDV data from the courts to the NICS Index. A monthly query runs against the court case management system based on case type rules. The data are compiled into flat files that are emailed to the FBI for entry into the NICS Index. At the end of 2015, New Mexico had more active MCDV records in the NICS Index than any other state, with over 27,000.

Alabama is currently developing and piloting an automated transfer of court data with MCDV indicators to the NICS Index. Using NARIP and NCHIP funds, the Alabama Law Enforcement Agency is partnering with the University of Alabama's Center for Advanced Public Safety to develop their MCDV solution. Previously, most MCDV conviction records existed only at Alabama's municipal court level, and they did not have a mechanism to get those records to the state repository. Their solution is to build a centralized repository to collect the MCDV dispositions, map them with the arrests that exist in their ULTRA (incident case management) system, make determinations as to whether they meet the MCDV criteria, and send those that do to the NICS Index. They are working with multiple court vendors to develop XML schema that extracts court data, including the relationship and force elements necessary for an MCDV indicator. They are currently testing the system; as it is fully implemented and rolled out statewide, this solution will provide an automated mechanism for submitting records to the NICS Index when previously no records were submitted.





## Connecticut's MCDV Reporting Program

In 2008 the Connecticut Judicial Branch began collaborating with state and national partners to develop an MCDV reporting program. The statewide, court-led program developed both a court form for use in all criminal courts to assist with identifying conviction records that may meet the MCDV criteria and a central computer system that transmitted MCDV records validated by the Judicial Branch to the NICS Index through the Department of Emergency Services and Public Protection (DESPP), the state's Point of Contact for NICS. In 2011, the Judicial Branch and DESPP collaborated to replace the previous record transfer process with a unique solution to enter and maintain records in the NICS Index through the NCIC front-end interface. Through this solution, Connecticut has automated the transfer and receives a confirmation for each entry from NCIC, which allows the Judicial Branch to directly confirm, validate, and automatically maintain records in NICS without third party interventions. Most potential MCDV convictions in the state are not fingerprint supported. Records that do include fingerprints are included in the NCIC front-end interface to the NICS Index since the criminal history records do not contain the necessary indicators for an MCDV determination.

Connecticut's court form is the key to sorting out the definitional components for misdemeanor convictions. Research was conducted to align ten state misdemeanors to the federal requirements for MCDV; these are the misdemeanors included on the form. The form is set up as a three-step process—clerks must 1) indicate the misdemeanor conviction code, 2) indicate whether there was an element of physical force in the judicial determination, and 3) select the relationship between the victim and offender based on existing court records.

The second step—indicating whether or not there was an element of physical force—addresses the issue of disjunctive statutes. Four of the state misdemeanors or subsections do not require the clerk to complete the second step of indicating an element of physical force, since the required physical force element is included in the definition of the offense. The clerk is, however, required to confirm this conviction with other court records.

The process is currently based on the use of a paper form due to the limitations of the court case management system. The court clerk completes the form and faxes or emails it to the judicial branch central office, where the information is manually validated and entered into the database. There are plans to eliminate the paper form and upgrade this process to an electronic system once the new court case management system comes online. The data will then be part of the electronic case record and can be transmitted to the NICS Index without additional data entry.

Connecticut has automated transferring MCDV records to the NICS Index. The information that is manually entered from their MCDV court form is passed from the central database to the NICS Index through the NCIC front-end interface. Before this process was implemented, court records were created and then sent to the DESPP, for manual checks and entry into NICS.

NCHIP funding has been critical for this project since 2008. Grants have been used to develop strategies, build computer systems, automate processes, and fund dedicated staff positions. As of Dec. 31, 2015, Connecticut has entered over 21,000 MCDV records into the NICS Index, which is the second-highest contribution by a single state.



SEARCH





## Nebraska's MCDV Automation Project

Nebraska is implementing an automation project to extract MCDV information from the courts and send it to the NICS Index. The Nebraska State Patrol (NSP) contracted with the Administrative Office of the Courts (AOC) to program a data extraction from the court computer system (JUSTICE) identified with statutes specific to MCDV. Further programming consolidates all of the files extracted in JUSTICE from each of the 186 county and district courts into one file. The consolidated file is sent to the Office of the Chief Information Officer (OCIO), which is the state agency that holds the data. The OCIO reformats the data into the format acceptable for data transfer through the NSP to the NICS Index. Nebraska used BJS Stalking and Domestic Violence Records Improvement Program (SDVRIP) and NARIP funds to conduct these projects.

In order to create the computer programming that runs in JUSTICE and pulls qualifying MCDV convictions, NSP created a working group focused on this project. The group worked with NSP's legal department and the FBI's legal department to determine which state statutes and subsections qualified for the element of force. Conducting this research and information gathering was challenging but it was critical to creating a high quality data pull. The working group also created a set of relationship codes that are aligned with the federal codes, with the additional codes of "Other/Unknown" and "Is dating or has dated the victim," which is a state prohibitor.

Since Nebraska is not required to fingerprint those convicted of all misdemeanors that would qualify for an MCDV, many of these records would not be included in the state repository and III. Even those that are in III are not flagged to indicate that they are a potential MCDV.

Thus, Nebraska developed this separate solution, which makes the records available in the NICS Index.

In addition to programming, statewide training for county prosecutors is a critical piece of this project. Prosecutors are educated on the need to provide key information on their complaint documentation to facilitate accurate and complete reporting. Specifically, the Relationship to Victim (RTV) and the statute and subsection are critical in determining if a crime meets the criteria for the MCDV prohibitor. The NSP Domestic Violence/Sexual Assault Program Manager has coordinated with the county prosecutors in the pilot counties to facilitate implementation. Development of additional training and reference materials is ongoing and outreach with additional county prosecutors is planned.

The limitations of this project as it currently works is that it is a day-forward solution only. There is no way to use this strategy to capture historical records because it relies on the prosecutor including the relationship element. Also, it does not solve the issue of a disjunctive statute, since the programming is designed to pull all of the convictions under certain statutes and subsections. However, since Nebraska's state prohibitors do not require the element of force to be established, convictions under a disjunctive statute can be included as a state prohibitor.

Nebraska's project went live in February of 2016 in two pilot counties. Prior to this, Nebraska was not submitting any MCDV records to the NICS Index.

## Conclusion

Misdemeanor crimes of domestic violence records are critical components to making firearms background checks as effective as possible. Despite the challenges, states have nearly tripled the number of MCDV records available

in the NICS Index since 2008 and continue to work on legislative, procedural, and technical solutions to improve reporting.