



How Background Checks Work

What is the National Instant Criminal Background Check System (NICS)?

Mandated by the Brady Handgun Violence Prevention Act (Brady Act), the National Instant Criminal Background Check System (NICS) provides Federal Firearms Licensees (FFLs) with immediate information as to whether a prospective buyer is prohibited under federal or state law from possessing a firearm.

Prohibitors under federal law include¹:

- Conviction of a crime punishable by imprisonment for a term exceeding one year, 18 U.S.C. § 922(g)(1)
- Adjudication as mentally ill or commitment to a mental institution, § 922(g)(4)
- Conviction of a misdemeanor crime of domestic violence, § 922(g)(9)

Depending on the willingness of state governments to act as a liaison, FFLs must contact either the FBI's NICS Section or a designated state *Point of Contact* (POC) to initiate background checks on individuals purchasing or redeeming firearms.

- All states have the option to serve as Points of Contact between the NICS Section and state FFLs.
- FFLs conducting business in these states contact a state-designated agency, rather than the FBI, to initiate background checks.
- Some states share responsibility with the FBI for processing background checks, with the state processing handgun checks and the FBI processing long gun checks.

How are background checks conducted?

FFLs have three methods of performing background checks:

1. In POC states, FFLs contact the NICS through their state POC for firearm transfers.
2. In non-POC states, FFLs contact the NICS Call Centers in order to initiate an FBI background check.
3. In partial-POC states, FFLs contact their designated state POC for handgun transfers and the NICS for other gun sales.

When an FFL initiates a NICS background check, a name and descriptive information search is conducted for matching records in three national databases:

1. The National Crime Information Center (NCIC), which contains information on wanted individuals and protection orders

¹ For a complete list of prohibitive criteria, see <http://www.rip.uscourts.gov/rip/supervision/firearmpossession/FirearmPossessionProhibition.pdf>.

2. The Interstate Identification Index (III), which contains criminal history records
3. The NICS Index

A search of the applicable databases of the Department of Homeland Security's U.S. Immigration and Customs Enforcement is also conducted on all non-U.S. citizens.

If the search yields a valid match to prohibiting information, the FFL is advised to deny the transfer of the firearm.

- If the search is matched to any potentially prohibiting records, the NICS Section has three business days to obtain further information from judicial and/or law enforcement agencies.
- If the information is not obtained within the three-business day time frame and a final decision of proceed or deny is not made, the FFL has the option to legally transfer the firearm. (This is also referred to as the 'Charleston Loophole' since the Charleston shooter obtained the handgun he used to kill nine people in June 2015 because the background check could not be completed within a 72-hour period.)

May prospective purchasers appeal a firearm transfer denial?

Yes, individuals who are denied the purchase of a firearm may request that the NICS or state POC agency provide the reasons for the denial, and may submit an appeal.

Is the NICS a federal firearm registry?

No, information about inquiries resulting in firearm transfers is *not* retained in a permanent registry. All such information must be destroyed prior to the start of the next business day.

How many states act as Points of Contact?

There are thirteen full POC states: California, Colorado, Connecticut, Florida, Hawaii, Illinois, Nevada, New Jersey, Oregon, Pennsylvania, Tennessee, Utah, Virginia.²

- Four partial-POC states serve as contacts for handgun background checks only: Maryland, New Hampshire, Washington, Wisconsin.³
- Three partial-POC states serve as contact states for handgun *permit* background checks only: Iowa, Nebraska, North Carolina.⁴

Why do states agree to serve as Points of Contact?

State POC systems are less expensive and more efficient than FBI background checks.

- According to the Department of Justice, the average cost of a POC check is \$9.79, while the average non-POC check costs \$13.98.⁵
- State POCs also add value to the overall efficacy of firearm eligibility checks, with POC denials of prohibited sales yielding a 19.5% increase over non-POC transactions.⁶

² See <https://www.fbi.gov/about-us/cjis/nics/poc>.

³ *Id.*

⁴ *Id.*

⁵ Bureau of Justice Statistics, U.S. Department of Justice, "Cost-Benefit of Point-of-Contact (POC) Versus Non-POC Firearm Eligibility Background Checks," p. 41.

⁶ *Id.*, p. 42.