

Disclosure of Juvenile Records under the Bipartisan Safer Communities Act

CONSIDERATIONS FOR COURTS



OVERVIEW

Bipartisan Safer Communities Act (BCSA)

Provides for an enhanced background check for individuals attempting to purchase a firearm between the ages of 18 and 20.

Requires NICS contact state and local authorities to determine if a potential purchaser under 21 has any mental health records or offenses that would disqualify a firearm purchase.

Introduction

The Bipartisan Safer Communities Act (“BCSA”) was signed into law on June 25, 2022. The legislation affects the areas of mental health, firearms, education, and Medicaid and Medicare.¹ Additionally, the BCSA includes appropriations to programs in these areas operated by the Department of Justice, Department of Education, and Department of Health and Human Services.² BCSA funding is also made available to increase the number of mental health providers in schools and update the processes used by the FBI to manage the National Instant Criminal Background Check (NICS).³ One of the law’s goals is to prevent firearms from coming into the hands of individuals who may pose a threat to themselves or others. To that end, the law provides for an enhanced background check for individuals attempting to purchase a firearm between the ages of 18 and 20. Furthermore, the law requires that, for any potential purchaser under 21, NICS contact state and local authorities to determine whether the individual has any juvenile mental health records or offenses that would disqualify them from purchasing a firearm. The implementation of this provision presents potential challenges due to differences in how juvenile and adult criminal matters are handled and tracked.

Currently, 38 states and territories rely on the FBI for all firearm background checks by electronically accessing NICS.⁴ In 13 states and territories, federal firearm licensees rely on state agencies for all firearm background checks.⁵ The 5 remaining states and territories rely on the FBI and state agencies for background checks depending on the type of firearm being sought.⁶ When the FBI receives a request for a background check on a potential firearm purchaser from one of these states or territories, it queries databases, including the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS Index, to determine whether the federal firearm licensee may transfer a firearm to the potential purchaser.⁷ State and local authorities voluntarily

¹ Bipartisan Safer Communities Act (P.L. 117-159): Section-by-Section Summary. Congressional Research Service Report (Nov. 17, 2022).

² *Id.*

³ “Bipartisan Safer Communities Act One Pager,” Office of U.S. Senator Chris Murphy.

⁴ <https://www.fbi.gov/file-repository/nics-participation-map.pdf/view>

⁵ *Id.*

⁶ *Id.*

⁷ “Submission of Mental Health Records to NICS and the HIPAA Privacy Rule,” Congressional Research Service Report (April 15, 2013).

General Considerations for Courts

Confidentiality of juvenile records varies by state with some states expanding access if a young person is adjudicated delinquent.

Differences in terminology in criminal and juvenile statutes can impact your ability to share records for background checks.

Some state laws prohibit sharing juvenile mental health records.

Federal law may preempt conflicting state law.

provide records to the NICS Index, but they are not always shared uniformly. Some states are still determining what to share with federal authorities; others may need more political consensus to establish an efficient and comprehensive record-sharing system.⁸ While some states have laws requiring records to be shared with NICS, the variety of records subject to disclosure requirements may complicate coordination among law enforcement bodies and agencies.⁹ In other states, the disclosure of records may be barred as a matter of law to protect confidentiality and expungement rights, especially for juvenile records.

Legal Considerations for States

Juvenile court records are held to a different standard of confidentiality than criminal records in most states. Because the purpose of the juvenile court is rehabilitation, juvenile records are subject to stricter privacy standards due to the potential consequences their disclosure may have on a young person's ability to access vocational, educational, and housing opportunities. These standards limit sharing of juvenile court records in most states. Most states allow law enforcement officers access to juvenile records, subject to certain limitations. In some states, law enforcement officers can only access juvenile records if a court determines a need exists. In other states, access by law enforcement officers is conditioned upon showing that it is necessary to fulfill their official duties. While most states provide some protections to maintain the confidentiality of juvenile records, many expand access to juvenile records if a young person is adjudicated delinquent. Some states condition the sharing of juvenile records based on the young person's age or the nature of the delinquent act. Often, the sharing of juvenile court records related to violent offenses, such as those likely to result in firearm purchasing restrictions, is subject to less restrictive confidentiality and privacy laws. Some state laws require states to track information related to violent offenses committed by juveniles; states, in turn, may choose to share this information with NICS.

The BSCA clarified the scope of 18 U.S.C. 922(d), which prohibits the sale of firearms to persons with certain criminal or mental health histories, to include acts committed while a

⁸ *Id.*

⁹ *Id.*

States Should Consider:

Whether the differences in terminology between criminal and juvenile statutes (e.g., “conviction” vs. “adjudication”) prohibits sharing juvenile records for background checks.

Whether juvenile mental health records can be shared without violating state law.

Whether federal law preempts conflicting state law.

juvenile. Section 922(d) enumerates disqualifying provisions that prevent an individual from buying a gun, such as having been convicted of a misdemeanor crime of domestic violence. In complying with the BSCA, states should determine whether the text used in Section 922(d) conflicts with the language used in their laws regarding juvenile criminal matters; practically all states recognize the differences between juvenile court proceedings and adult criminal proceedings by referring to juvenile “adjudications” for certain “offenses,” as opposed to the terminology used in adult criminal cases, such as “convictions” and “crimes.” These states have laws that adjudications are not to be treated the same as criminal convictions. Thus, juvenile offenses may not be controlled by provisions such as Section 922(d)(1), which prohibits an individual from purchasing a firearm if such individual is “under indictment for, or has been convicted in any court of, a crime . . .,” because in some states, juveniles cannot be convicted of crimes (emphasis added). These differences in terminology may result in some states finding that they are prohibited from sharing all or a portion of state juvenile records with the FBI for NICS background checks because 922(d) does not apply.

States should also determine whether the operative provisions in Section 922(d) have been defined by federal regulation. For example, under Section 922(d)(4), it is unlawful for any person who, including as a juvenile, “has been adjudicated as a mental defective or has been committed to any mental institution at 16 years of age or older” to purchase a firearm.¹⁰ According to Title 27, Section 478.11 of the Code of Federal Regulations, “adjudicated as a mental defective” in Section 922(d)(4) means that a court or board has determined that a person, due to mental illness, incompetency, or condition is a danger to themselves or others or lacks the mental capacity to contract or manage their own affairs.¹¹ While states generally must follow agency interpretations of federal law, ultimately, states will determine to what extent they can comply with the BSCA and share juvenile records with NICS without violating state law. However, to the extent that state law and the operative provisions of Section 922(d) conflict, states should consider whether state law is preempted by federal law. Additionally, states should examine their laws governing juvenile matters and determine what exactly they prohibit. While state statutes may prevent courts from ruling that a juvenile has committed a crime, they may not prevent other laws from applying to juveniles based on incongruous terminology.

¹⁰ 18 U.S.C. 922(d)(4).

¹¹ 27 CFR § 478.11

Technological Considerations for Courts

Assess how your court's information-sharing systems and process would need to be adapted.

Determine if your case management system is collecting juvenile record data that can be shared with NICS.

Consider the timeliness and security of record sharing to comply with state privacy and confidentiality statutes.

Technological Considerations

After determining the extent to which juvenile records can be shared with NICS, states should assess how their information-sharing systems and processes need to be adapted to account for this change. NICS has recommended that states share all juvenile prohibiting records, or records related to federal and state offenses that disqualify individuals from purchasing a firearm, to the NICS Indices and Interstate Identification Index in accordance with state law. The NICS Indices only store prohibiting records, and access to the database is limited solely to personnel authorized to complete a background check on potential firearm purchasers. NICS Indices records require the submission of limited demographic information at the time of entry to include: full name, sex, date of birth, and other identifying numbers such as a social security number along with the prohibiting category code, agency record identification number, and the originating agency identification number. Additional information, including race, social security number, height, and weight, is encouraged, though optional. The NICS database does not currently distinguish between juvenile and adult entries. Submitting state agencies are responsible for removing prohibiting records from databases queried by NICS in the event of expungements or restorations of rights.

There are several technical considerations concerning the sharing of juvenile records that states should address. As an initial matter, states should determine whether they collect juvenile record data in a case management system that allows for sharing relevant data with NICS. If juvenile record data is not collected systematically, states should consider what must be done to ensure that data required for NICS is collected and captured electronically.

States should also consider how records can be shared in a timely and secure manner consistent with state privacy and confidentiality statutes. For records to be submitted to the NICS Indices, contributing agencies must be able to access and transfer this data. Furthermore, for relevant records stored in state databases, NICS point-of-contacts must be able to access these records while conducting background checks. In both cases, the relevant parties need to have clear guidelines describing exactly what records may or may not be shared. States should examine ways to make the process for determining what records can legally be shared efficiently and securely, such as adding flags that identify the

Technological Considerations for Courts

(continued)

Assess how record sharing can be integrated with case management systems to automate the submission and removal of records from NICS Indices.

Understand what procedures (manual or automated) must be implemented to ensure expired juvenile records are removed and identify an effective process for contributing agencies to follow.

Develop a procedure for communicating expungements and restoration of rights.

status of records and filters for reporting and access control. Additionally, states should determine if they have security controls aligned with state law that can be applied when accessing and sharing juvenile information, especially in jurisdictions where juvenile records are maintained in a shared case management system.

Once states establish their baseline capacity for collecting and storing juvenile records, they should assess how this process can be integrated with courts' case management systems to automate the submission and removal of records from the NICS Indices. Although NICS background checks cannot be automated, several states have successfully automated the record sharing and removal process with NICS. In some states, data entered into case management systems are automatically entered into the NICS Indices, flowing to the database after it is uploaded to the NCIC. Other states have automated this process internally by providing information to local law enforcement records management systems, which update the NICS Indices. This method could also allow law enforcement to respond to background check inquiries. Court IT departments should determine if automation is possible with jurisdictions' current case management systems and, if so, what is needed for implementation.

Additionally, states should consider what procedures (manual or automated) must be implemented to ensure juvenile records are removed when necessary. As contributing agencies are responsible for removing records when they are no longer relevant, determining a way to do so accurately and efficiently is crucial. Courts and relevant agencies should develop processes to ensure that information concerning expungements and restorations of rights is communicated.

NCSC is a resource for courts and can assist states in examining these considerations and developing processes for sharing information while following appropriate privacy, confidentiality, and security guidelines. For assistance with this process, please contact Jim Harris at jharris@ncsc.org.

Funding Opportunities

NCSC will continue assisting state courts interested in applying for NCHIP funds.

If your jurisdiction is considering applying in FY 2024, we invite you to contact Teri Deal at tdeal@ncsc.org.

To keep up to date on the availability of NCHIP and other funding solicitations, please visit the Funding Opportunities section of the NCSC Government Relations Office website at ncsc.org/gro.

Further Opportunities for Funding

Although applications are now closed for the FY 2022-2023 National Criminal History Improvement Program (NCHIP) Supplemental Funding solicitation, portions of the \$200M in discretionary funding appropriated for this grant will be available through future solicitations. NCHIP Supplemental solicitations will be released annually through FY 2026 and will cover one year of funding each. The state central administrative office of the courts or equivalent entity may apply directly for these funds and can submit more than one application, provided that each proposes a different project. Local courts should consult with their state central administrative office to discuss applications for funding. The amount of funding available to specific programs is based on need. Applications for NCHIP funds should be submitted to the Bureau of Justice Statistics.

NCSC will continue assisting state courts interested in applying for NCHIP funds. If your jurisdiction is considering applying in FY 2024, we invite you to contact Teri Deal at tdeal@ncsc.org. To keep up to date on the availability of NCHIP and other funding solicitations, please visit the Funding Opportunities section of the NCSC Government Relations Office website at ncsc.org/gro.

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