

# HR 2640, NICS Improvement Amendments Act of 2007

On December 19, 2007, both the House and the Senate passed HR 2640 by unanimous consent.

## Enforce 1968 Gun Control Act

Under the 1968 Gun Control Act, an individual is prohibited from possessing a firearm if he:

- (a) is under indictment or has been convicted of a crime punishable by more than one year;
- (b) is a fugitive from justice;
- (c) is an unlawful user or an addict of any controlled substance;
- (d) has been adjudicated as a mental defective or has been committed to any mental institution;
- (e) is subject to a court order restraining them from domestic violence;
- (f) has been convicted of a domestic violence misdemeanor;
- (g) has been dishonorably discharged from the military;
- (h) is an illegal alien; or
- (i) renounced U.S. citizenship.

The NICS Improvement Act enforces existing law by encouraging states to automate and share disqualifying records with the FBI's NICS database.

## Transmittal of Federal Records to NICS

All federal agencies shall transmit all relevant records relating to persons disqualified from acquiring a firearm under federal law to the Attorney General for inclusion in NICS. Pertinent information must be put into or removed from NICS within 30 days of receipt.

For example, the Department of Homeland Security shall transmit all relevant records of persons disqualified from acquiring a firearm under federal law, including illegal aliens, visitors to the United States on student visas, and visitors on tourist visas.

NICS records from the VA and other federal agencies must reflect accurately the person's status. For example, only veterans who were properly adjudicated as mentally ill or properly committed to a mental institution would remain in NICS, since only these people are barred from getting guns under current law. The bill creates a program through which veterans or others whose names may have been sent to NICS in error can get their names removed from the NICS database. If the federal agency rejects the petition to remove a name, the petitioner may appeal to federal court. If the petitioner wins on appeal, we will be entitled to reasonable attorney's fees, based on fees paid to a legal aid lawyer. If a federal department or agency fails to resolve an individual's initial petition within one year, the petition will be deemed to be denied. The petitioner then may seek *de novo* review in federal court.

The bill requires that before an adjudication of mental illness, the federal agency notify the individual that should he or she be found mentally ill, he or she will be barred from possessing or purchasing firearms.

The bill is drafted to ensure that NICS contains information on only persons who meet the current legal threshold that disqualifies them from possessing a gun.

## Transmittal of State Records to the NICS

Each State shall provide information on disqualified persons to the U.S. Attorney General for inclusion in NICS.

- **Access to information** - Any information provided to the Attorney General under this section may only be accessed by personnel legally entitled to access NICS for the purposes of conducting a background check for a firearm purchase.
- **Privacy protections** - The Attorney General shall work with federal, state, local law enforcement and the mental health community to establish protocols for protecting the privacy of information sharing.

## Grants to States

The Attorney General shall award a grant to each state to offset the initial costs directly associated with complying with this section.

- **Authorization** - \$125 million for fiscal year 2009; \$250 million for each of FY10 and FY11; \$125 million for each of FY12 and FY13. Half the funds are reserved for states that are making the best effort to increase the number of the records they send to NICS.
- **Requirements for Grants** – Before becoming eligible for funds, a state must provide to the Attorney General an initial estimate of records on disqualified persons. The state also must establish a process to review petitions, submitted by people now disqualified because of mental illness, seeking reinstatement of gun rights.
- **Mental Health Relief Program** – Before becoming eligible for funds, a state must establish a due process program through which a person may seek to challenge his mental health status. A successful petitioner will have his gun rights restored. The bill sets aside between 3% and 10% of the state grants to implement this relief program.
- **Incentive for State Participation** – The bill waives the 10 percent state matching requirement for National Criminal History Improvement Program (NCHIP) grants for a state that automates and shares at least 90 percent of all disqualifying records. The waiver period shall not exceed 5 years
- **Noncompliance** - After three years, the FBI will report on the progress of states automating their databases and supplying that information to the federal NICS database. The Department of Justice is authorized, but not required, to deny up to 3 percent of certain funds available under the Omnibus Crime Control and Safe Streets Act of 1968 to any state that fails to automate 50 percent of its disqualifying records and to supply that information to the federal NICS database.

After 5 years, if states have failed to automate at least 70 percent of its disqualifying records, and supply that information to the federal NICS database, the Department of Justice may deny 4 percent of certain funds available each year under the Omnibus Crime Control and Safe Streets Act of 1968.

## **Grants to State Courts for the Improvement in Automation and Transmittal of Disposition Records**

The bill establishes a grant program for state courts to assess and improve handling of proceedings related to criminal history dispositions, and temporary restraining orders, as they relate to disqualification from firearms ownership under state and federal laws.

In the first fiscal year after the enactment of this Act, the Attorney General shall make grants to the Chief Judicial Officer of each state for the purpose of conducting *assessments* of state courts, and automating and transmitting court arrest and conviction disposition records as they relate to disqualification from firearms ownership under state and federal laws.

In subsequent fiscal years, the Attorney General shall make grants to the Chief Judicial Officer of each state for the purpose of *implementing systems and procedures* for the automation and transmittal of court arrest and conviction disposition records as they relate to disqualification from firearms ownership under state and federal laws.

- **Authorization** - \$62.5 million for fiscal year 2009; \$125 million for each of FY10 and FY11; \$62.5 million for FY12 and FY13.

If you have any questions, please contact Rep. Carolyn McCarthy or Bob Dobek at 202-225-5516.