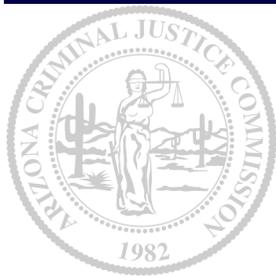


# Arizona Criminal Justice Commission



## National Instant Criminal Background Check System in Arizona Fact Sheet

Our mission is to sustain and enhance the coordination, cohesiveness, productivity and effectiveness of the criminal justice system in Arizona.

August 2013

### National Instant Criminal Background Check System

The National Instant Criminal Background Check System (NICS), created and maintained by the Federal Bureau of Investigation (FBI), is a service provided to Federal Firearms Licensees (FFLs) for background checks of prospective firearms purchasers. The NICS collects the following information from participating states, U.S. territories, and federal agencies: 1) convictions and indictments for offenses punishable by imprisonment for more than one year, 2) fugitives from justice, 3) illegal controlled substance users and addicts, 4) mental health adjudications and commitments, 5) illegal/unlawful aliens and non-immigrant aliens residing in the U.S., 6) dishonorable discharges from the U.S. military, 7) U.S. citizens who renounced their citizenship, 8) misdemeanor convictions for domestic violence, and 9) certain protection orders for domestic violence. The information listed above disqualifies individuals from purchasing a firearm. During a background check for an FFL, the FBI consults the information in the NICS, the Interstate Identification Index (III) repository, the National Crime Information Center (NCIC), and local and state agency data if additional research is necessary.

### Arizona's Compliance with NICS

The Arizona Criminal Justice Commission (ACJC) continues to assess the completeness of information submitted by the state to NICS, the III, and NCIC. The quality of reporting by Arizona is determined by the state's ability to report convictions and indictments for offenses punishable by imprisonment for more than a year, fugitives from justice, illegal controlled substance users and addicts, mental health adjudications and commitments, and misdemeanor convictions and certain protection orders for domestic violence. The following information highlights Arizona's compliance with the submission requirements associated with each of these categories.

Arizona is currently reporting all felony convictions (convictions eligible for imprisonment over one year), drug arrests and convictions, "Guilty, but Insane" court convictions, and misdemeanor domestic violence-related convictions available in the ACCH repository to the III.

Despite the existence of a reporting pipeline, there is continued concern over the completeness of criminal history record data in the ACCH. First, many criminal justice agencies across Arizona are submitting drug arrest and conviction information (ARS Title 13, Chapter 34) to the ACCH; however, arrests for some drug charges are not mandated for entry into the ACCH (i.e., arrests for misdemeanor drug offenses). Second, a significant percentage of arrest charges are missing subsequent case disposition information in the ACCH. Currently, the disposition submission process is predominantly paper-based; however, the Arizona DPS is working at transitioning agencies across the state to an electronic submission system, known as the Arizona Disposition Reporting System (ADRS). Third, a number of alleged offenders are not being booked and fingerprinted (i.e. citations, cite and release, long form complaints, etc.) resulting in no arrest record and associated case activity in the ACCH. Although mandatory fingerprint compliance forms are to be used when an alleged offender is cited and released, according to ARS §13-3903.C, the impact of the form has yet to be fully assessed.

### Criminal Arrest and Case Disposition Information in Arizona

Per Arizona Revised Statute (ARS) §41-1750.A1, the Arizona Department of Public Safety (DPS) is mandated to collect accurate and complete data for all arrests (i.e. personally identifiable information on the offender, fingerprints, charges, process control numbers, etc.) and subsequent case disposition information (i.e. law enforcement/prosecutor/court findings, sentencing data (if applicable), etc.) processed by Arizona criminal justice agencies for felony offenses, offenses relating to driving under the influence (ARS Title 28, Chapter 4), sexual offenses (ARS Title 13, Chapter 14), and domestic violence-related offenses. Information collected is stored electronically in the state criminal history record repository, called the Arizona Computerized Criminal History (ACCH), and each arrest charge is matched to the associated case disposition information for that charge by way of fingerprints. The ACCH repository has an established feed into the Federal Bureau of Investigation's III repository of criminal history records.

### The NICS Task Force in Arizona

Funding provided by the Bureau of Justice Statistics' NICS Act Record Improvement Program (NARIP) continues to support the NICS compliance efforts of Arizona's criminal justice agencies. The ACJC was awarded a NARIP grant, and in 2012, the agency established the Arizona NICS Task Force. Representation on the Task Force is geographically and professionally diverse. At the quarterly meetings, Task Force members from all over Arizona attend representing law enforcement, prosecution, courts, and corrections agencies. A number of members are also from key state and federal agencies.

The Arizona NICS Task Force is responsible for identifying existing complications and barriers to full compliance with NICS reporting in Arizona and making short and long-term recommendations to remedy the barriers. Barriers to the collection of complete and accurate NICS data include, but are not limited to, data not being collected for a certain category or subcategory within a category, data that is not collected due to gaps in the collection process, disparate processes and policies across criminal justice agencies that inhibit NICS data collection, and lack of training. Recommendations are intended to resolve these issues through changes in policy, processes, technology, training, and resources.

## Arizona NICS Task Force Disqualifying Categories

The following categories summarize Arizona's NICS data collection obligations. The Arizona NICS Task Force is in the process of identifying the barriers to complete and accurate data collection and reporting within each category. The following is a brief discussion of the barriers discovered within each NICS reporting category.

### Category 1: Convictions Punishable by Imprisonment for More than One Year

Data within this category is available through felony convictions entered in the ACCH. The NICS Task Force noted that the records available in the ACCH fall noticeably short of being timely and complete because some arrestees are not being formally booked (i.e. defendants summoned to court), arrest information that is rejected based on illegible fingerprints, disposition information is rejected when a matching arrest charge is missing or the match to an arrest charge is not made, and when no disposition information is submitted by law enforcement, the prosecutor, or the court.

According to the NICS Task Force, one additional barrier to the complete capture of felony convictions in the ACCH submission process is the lack of training in the Arizona Disposition Reporting System (ADRS), the electronic disposition submission system for the ACCH. Approximately 12 percent of all disposition charges entered into the ACCH in 2011 were submitted through ADRS, and widespread use of the ADRS would lead to more timely criminal history records in the ACCH.

### Category 2: Active Indictments, Informations, and Verified Complaints for Category 1 Offenses

At this time, active indictments, informations, and verified complaints are not being submitted to NICS. The Task Force recognizes the case management systems at the superior courts as being the optimal sources for active indictment and information data to be submitted to NICS, and a mechanism for submitting that information to NICS needs to be developed.

### Category 3: Active Criminal Wants and Warrants

Although many warrants are entered into the Arizona Crime Information Center (ACIC) and submitted to NCIC, certain misdemeanor and bench warrants are not entered into the ACIC repository. Thus, complications exist in the effort to collect 100 percent of all criminal warrants across Arizona because there is no statewide repository that accounts for the warrants entered only into local records management systems.

### Category 4: Unlawful Users or Addicts of Controlled Substances

The NICS Task Force confirmed that all drug arrest and conviction charges in the ACCH are forwarded to III for NICS purposes. Similar to Category 1, there are barriers to the ACCH data that prevent full compliance with this category. In addition to the barriers identified in the discussion of felony convictions, ARS §41-1750.A1 does not mandate the submission of misdemeanor drug arrests and case disposition information to DPS for entry into ACCH. Although many agencies are submitting all felony and misdemeanor drug charges to DPS, it is possible that some misdemeanor drug arrests are not being submitted to the ACCH.

The legalization of medical marijuana in Arizona creates further challenges to full NICS reporting. Presently, submission of the list of medical marijuana permit card holders, a reasonable indicator of marijuana drug users in Arizona, to NICS is not permissible by Arizona law.

### Category 5: Mental Health Adjudications and Commitments

Per Title 18, U.S.C. §922(g)(4), Category 5 includes all individuals found to be a "mental defective," identified as individuals adjudicated criminally guilty by reason of insanity or found incompetent to stand trial, and individuals involuntarily committed to a mental institution through a civil commitment process. Currently, both civil and criminal involuntary commitment orders are made available to DPS for submission to NICS, and "Guilty, but Insane" court findings are forwarded to the ACCH then to the III. However, court dismissals due to incompetency to assist in the defense and civil guardianship orders are not made available to DPS at this time and are not submitted to NICS.

### Category 6: Active Protection and Restraining Orders

Civil protection orders served in Arizona are required to be submitted to NICS. The Centralized Protective Order Repository (CPOR) was established as a repository for such protection orders, and the data is currently being submitted to NICS. One setback is the lack of an interface for submission by Maricopa and Pima Counties and users of other court case management systems. Also, some protection orders entered into CPOR have been issued by the courts but have not yet been served to the subject, a requirement for submission to NICS.

### Category 7: Misdemeanor Domestic Violence-Related Convictions

Misdemeanor domestic violence arrests and conviction information submitted to the ACCH will appear in the III data. Importantly, because Arizona does not have a specific state statute for a misdemeanor domestic violence offense, misdemeanor domestic violence offenses must be flagged for domestic violence before being forwarded to NICS. It is the prosecutor's duty to update charges for domestic violence, which may or may not result. Also, there is no method of recording the victim and offender relationship, which is required for NICS entry because Arizona's domestic relationships are broader than the federal law definition.

## Conclusion

All NICS-related information reported in this fact sheet is up-to-date at the time of initial release of the fact sheet. The Arizona NICS Task Force is continuing to address these issues, and updates to the fact sheet are anticipated as recommendations and new developments in reporting occur.

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