



LIMITED-SCOPE PERFORMANCE AUDIT REPORT

National Instant Criminal Background Check System: Reviewing Federal Funding Requirements for Record Improvement

AUDIT ABSTRACT

The National Instant Criminal Background Check System (NICS) contains state and federal records that firearm dealers use to identify people prohibited from owning a gun. The federal government authorized the NICS Act Record Improvement Program (NARIP) grant to help states improve their record reporting for the NICS system. As of 2018, Kansas had not applied for this federal funding even though it was eligible to apply. Kansas Bureau of Investigation officials told us they have not applied because they currently use a different federal grant, the National Criminal History Improvement Program grant, to help with their NICS reporting efforts.

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
December 2018**

From the Legislative Post Auditor:

This limited-scope audit was authorized by the Legislative Post Audit Committee at its April 25, 2018 meeting. It addresses the following question: What steps must the state take to be eligible for the NICS Act Record Improvement Program grant?

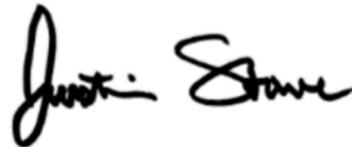
To answer this question, we interviewed federal officials at the Department of Justice's Bureau of Justice Statistics and state officials at the Kansas Bureau of Investigation. We also reviewed program grant documents, including award solicitations, reports, and legal requirements.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Overall, we believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit standards require that we report on any work we did related to internal controls, but a review of internal controls was not part of the scope of the audit as approved by the Legislative Post Audit Committee.

This audit was requested by Representatives Eileen Horn and John Barker and conducted by Amanda Schlumpberger. Kristen Rottinghaus was the audit manager. If you need any additional information about the audit's findings, please contact Amanda Schlumpberger at (785) 296-3792.

Sincerely,

A handwritten signature in black ink that reads "Justin Stowe". The signature is written in a cursive, slightly slanted style.

Justin Stowe
Legislative Post Auditor

What Steps Must the State Take to be Eligible for the NICS Act Record Improvement Program Grant?

Background Information

The National Instant Criminal Background Check System (NICS) is a database of state and federal records that firearm dealers use to identify people prohibited from owning a gun. Federal law prohibits 10 categories of individuals from possessing or purchasing firearms or ammunition such as people who have been convicted of a felony, are subject to a restraining order, or have been convicted of domestic violence. The Brady Handgun Violence Prevention Act of 1993 created a computerized national system, called NICS, that allows federally licensed firearm dealers to check available records for these disqualifiers. Local, state, tribal, and federal agencies are responsible for making relevant records available to the NICS databases. However, federal law does not require states to submit records to NICS.

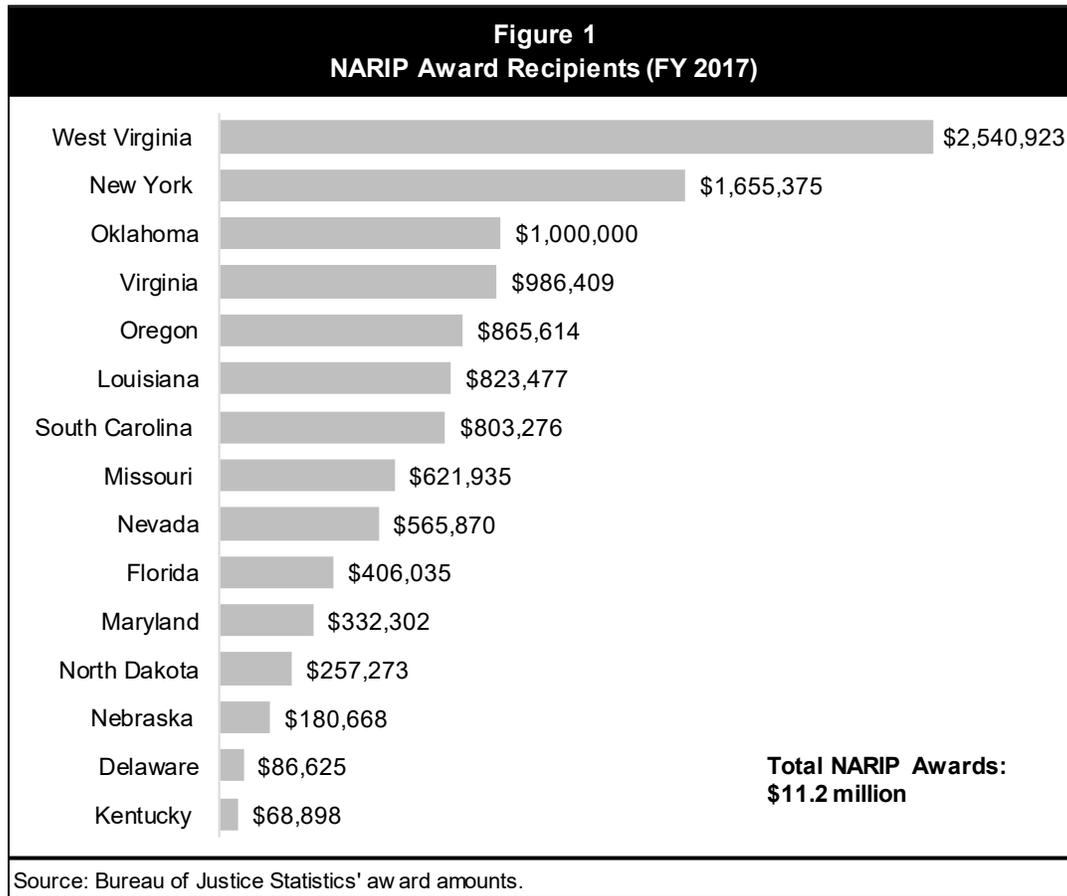
In 2007, federal law authorized grant programs to help states improve record reporting to NICS. Under that federal authorization, the Bureau of Justice Statistics developed the NICS Act Record Improvement Program (NARIP) grant, which seeks to address the gap in information state agencies and state court systems make available to NICS. The NARIP grant can be used to fund a variety of activities.

- create electronic systems that provide accurate and current information directly related to NICS checks, including court dispositions and corrections records
- assist states in establishing or enhancing their own capacities to perform NICS checks
- supply accurate and timely information to the U.S. Attorney General concerning final dispositions of criminal records and the identify of people with a prohibited mental health issue to NICS
- supply accurate and timely court orders and records of misdemeanor crimes of domestic violence
- collect and analyze data needed to demonstrate levels of state compliance with federal law
- maintain a program that allows people who meet certain mental health criteria to have their firearms prohibition lifted in accordance with federal law (3-10% of each award)

State court systems can also apply for NARIP funds to improve the automation and transmittal of NICS-related records to federal and state agencies. NARIP awards to both state and state court systems can be used to fund associated personnel for projects.

As of fiscal year 2017, 30 states and one Indian tribe have received a total of \$121 million in NARIP grants, but Kansas has not participated in the program. *Figure 1* on the next page shows the states that received NARIP grant funds during the most recent fiscal year. As the figure shows, 15 states received \$11 million in grant funds in fiscal year 2017, with awards ranging from \$69,000 to \$2.5 million. States have used grant funds to make various improvements in their NICS record reporting. For example, Oklahoma received \$1 million to convert all manual or other non-automated records to electronic records, whereas Louisiana

received \$823,000 to improve the quality and reporting of criminal history and mental health records through an automated, nightly electronic data exchange and to support two NICS staff positions. Kansas has not participated in the grant since it was first made available in 2009.



Finding #1: Kansas is Eligible for the NARIP Grant, But Has Not Completed an Application to Receive Funding

Kansas has completed the two steps necessary to be eligible for NARIP funds. First, each state is required to provide the U.S. Attorney General with a reasonable estimate of the number of records relevant to NICS. The records must be reported across seven categories, including records related to felony convictions, active indictments, active wants or warrants, unlawful drug use, mental health adjudication, active protection or restraining orders, and misdemeanor crimes of domestic violence. Estimates must use the U.S. Attorney General’s established methodology, which requires records for the past 20 years. Federal officials confirmed Kansas submitted the required record estimates, and the Bureau of Justice Statistics approved them.

Second, each state also needs to certify with the Bureau of Alcohol, Tobacco, Firearms, and Explosives that it has a process to lift firearm bans for people who have been cleared of a mental health issue the court previously prohibited. Federal officials confirmed Kansas has certified its process.

However, Kansas has not completed the final step in the grant process by submitting a NARIP grant application. The application requires several major steps, including:

- a proposed program narrative detailing the issue the project seeks to address and how the project will be implemented
- a budget worksheet that provides a detailed calculation for each budget item
- a budget narrative that describes every category of expense and how the project will maximize cost effectiveness
- a NICS Improvement Plan, which includes forming a task force to assess gaps in reporting and identify solutions.

Under its 2018 reauthorization, NARIP also includes a new requirement for states to develop a four-year implementation plan, which the U.S. Department of Justice can use to assess states' progress submitting NICS records. Federal officials told us the new requirement is still being worked out internally but is intended to replace the current record estimate requirement. Since Kansas has previously submitted record estimates and has a certified program to lift firearm bans for individuals cleared of mental health concerns, federal officials told us Kansas will remain eligible to apply for NARIP funds.

Only certain agencies in the state are eligible to apply for NARIP funds, although additional state agencies can receive funds for improvement projects as subrecipients. In Kansas, the Governor's Grants Program would be responsible for applying for a state agency grant, although the Kansas Bureau of Investigation (KBI) would likely complete the application and administer the funds. The Office of Judicial Administration (OJA) would be responsible for applying for the court grant. However, OJA and KBI officials told us all court records in the state are forwarded directly to law enforcement or KBI, so the state court system is unlikely to pursue a NARIP grant.

KBI officials told us they have not applied because they currently use a different federal grant—the National Criminal History Improvement Program (NCHIP) grant—for their records improvement projects. According to federal officials, both federal grants (NCHIP and NARIP) focus on improved record availability for the NICS system, although NCHIP has a 10% state match requirement that NARIP does not. NCHIP funds are for improving access to records used in all criminal justice and non-criminal background checks, whereas NARIP's emphasis is on records relied on in firearm-related background checks. States can receive funds from NCHIP and NARIP at the same time. KBI officials told us NCHIP funds addressed their NICS reporting improvements, and therefore they were not interested in applying for NARIP funds. We confirmed that Kansas was awarded \$91,000 in fiscal year 2017 through the NCHIP grant to improve data exchange and access, which includes NICS data.

If Kansas decided to apply for NARIP funding, the award amount would depend on several factors. Federal officials told us NARIP award amounts depend on available funds, how well proposed projects support the objective of the funding, and the number of applicants. In general, award decisions are at the discretion of the Bureau of Justice Statistics, and federal officials could not provide an estimate of funds Kansas might receive. In fiscal year 2017, the federal government appropriated \$25 million to NARIP for all grants nationwide, but \$11 million was awarded to states. Other states' awards ranged from \$69,000 to \$2.5 million during that year. *Appendix A* provides examples of these states' projects and the funding amounts they were awarded.

Recommendations

None

Potential Issues for Further Consideration

None

Agency Response

On October 31st, 2018, we provided copies of the draft audit report to the Kansas Bureau of Investigation and the U.S. Bureau of Justice Statistics for technical clarifications. We made several minor clarifications to the final report as a result of the organizations' reviews, but those changes did not affect any of our findings or conclusions.

APPENDIX A
Fiscal Year 2017 NARIP Awards

This appendix summarizes the funding amount and approved projects for each state that received a NARIP award in fiscal year 2017.

Appendix A NARIP Award Recipients (FY 2017)		
State	Amount	Approved Projects
West Virginia	\$2,540,923	Improve the backlog of court dispositions and the reporting of individuals with mental health adjudications on their records
New York	\$1,655,375	Office of Court Administration and State Repository Criminal History Record Improvement project Improve data quality and reporting compliance for mental health records
Oklahoma	\$1,000,000	Convert all manual or non-automated records to electronic records
Virginia	\$986,409	Contract two IT Specialists to assist in programming deferred critical functions and batch reports in computerized history system project Contract with a business analyst and Java developer to provide enhancements to the existing state firearms check system Equipment that allows courts to scan protective orders into systems as they are issued
Oregon	\$865,614	Fund NICS Reconciliation Team to research missing data on qualifying records Firearms Instant Check System research team to obtain missing record information for person in "pending" status for a firearm license
Louisiana	\$823,477	Implement an electronic data exchange for the automated, nightly transmission of mental health records Eliminate errors and increase the timeliness of records submission
South Carolina	\$803,276	NICS Reporting Unit project Automation of older NICS/concealed weapons permit paper files into the Electronic Document Management System project
Missouri	\$621,935	Complete programming of courts case management system Design and develop a new statewide case management system Equipment for researching missing dispositions project Hire two specialized staff to aid in automation interface efforts and ensure disqualifying records are reported and available to NICS
Nevada	\$565,870	Continue efforts to address missing dispositions in Nevada's criminal history record repository
Florida	\$406,035	Fund staff responsible for record maintenance and running background checks
Maryland	\$332,302	Equipment for the Criminal Justice Information Systems Support project Department of Health and Mental Hygiene Automated Data Reporting System project
North Dakota	\$257,273	Automate the transmission of disposition records from the courts to the state's Attorney Records System to further enable automation of disposition data and complete and timely submission to the FBI Continue to develop common codes used for automated transmission Re-write of the North Dakota criminal history system Develop an "e-charging" system that allows paperless submission of charging information
Nebraska	\$180,668	Improve efforts of the NICS taskforce--hire program manager to coordinate efforts among agencies and measure progress Increase mental health reporting--address the designations on records that are beyond current system's reporting Develop upgrades to the Protection Order portal
Delaware	\$86,625	Improve mental health records by correcting inaccuracies in records and databases
Kentucky	\$68,898	Fund staff to help improve the data quality of records and the reporting of misdemeanor crimes of domestic violence records
Total Awards	\$11,194,680	
Source: LPA summary of the Bureau of Justice Statistics' award amounts and project summaries.		