

The federal Brady Act of 1993 mandated the establishment of the National Instant Criminal Background Check System or NICS. As allowed by this Act, all states are granted the authority to determine their own level of involvement with the NICS system. States may choose to implement their own background check program, rely solely on the NICS system, or use a combination of both.

Pursuant to Pennsylvania General Assembly Act 1995-17, known as the Pennsylvania Uniform Firearms Act Amendment, the Pennsylvania State Police was required to establish, maintain, and operate an instantaneous background records check system used for firearms transactions. The Act itself was formulated by a committee which included members from the House and Senate, the National Rifle Association, the United Sportsmen of Pennsylvania, the Attorney Generals office, the Governors office and numerous other interested groups. In furtherance of the mandate placed on the Department by this Act, the PICS Operations Section became operational on July 1, 1998 within the Firearms Division of the Bureau of Records and Identification.

The Pennsylvania State Police Firearms Division currently has a total authorized complement of 97 positions. The Division is comprised of 3 enlisted members and 94 civilian personnel. It encompasses 4 different Units; the PICS Instant Check Unit, the PICS Challenge Unit, which together form the PICS Operations Section; the Firearms Compliance Unit, and the Firearms Records Check Unit. Each of these Units operates autonomously, but all are reliant on the PICS Instant Check Unit and in particular on the background checks conducted by this Unit.

The PICS Instant Check Unit itself is currently comprised of one enlisted Corporal, 8 civilian supervisors, and 53 legal assistants. There have been 5 legal

assistant vacancies within the Unit for approximately 1 year due to the Commonwealth hiring freeze.

PICS provides licensed firearms dealers, Pennsylvania Sheriffs, and the Philadelphia Police Department with immediate access to background check information on individuals attempting to purchase a firearm, receive a firearm through transfer, or apply for a license to carry a firearm. As mandated by statute, PICS operates 365 days a year and is accessible from 8am to 10pm.

Since its inception in 1998 PICS has processed over 6.6 million calls for background checks, an average of over 550,000 calls per year. In 2009 alone the PICS Instant Check Unit processed a record high number of over 663,000 background checks. Through its diligent work, the PICS Instant Check Unit and the Pennsylvania State Police have prevented thousands of prohibited persons from illegally obtaining firearms.

The Commonwealth of Pennsylvania, along with twelve other states, is deemed a "point of contact" state under federal law, due to our individual ability and desire, as indicated through legislative mandate, to conduct these background checks at the state level. To that individual ability, we feel that the Pennsylvania State Police have provided exceptional service, accountability, professionalism and above all added safety and assurance to both the licensed firearms dealers and all citizens of the Commonwealth.

Currently, there is some legislative sentiment that the Commonwealth would be better served by allowing the National Instant Check System to conduct all background checks for Pennsylvania Firearms transactions. While on its face this may sound like a

simple, cost effective measure, please allow me to address some subtle issues, which raise concern.

At this time, Title 18 Section 6111 requires a licensed dealer to contact the Pennsylvania State Police via telephone to conduct a background check, prior to the sale or transfer of a firearm. When PICS receives that call, multiple sources are then checked including both federal and state databases. Presently the PICS check provides exclusive access to the database containing information on Pennsylvania involuntary mental health commitments. This database alone contains over 560,000 records of firearm prohibited persons and it continues to expand daily. A check through NICS would not provide this information. Similarly, a background check through PICS provides access to the Commonwealth Law Enforcement Access Network or CLEAN system. This access affords PICS the opportunity to view and gather records of arrest warrants, which may form the basis for a firearm disqualification. This benefit is not available through NICS.

In terms of public safety, the PICS Instant Check Units' role cannot be overstated. In 2009 the PICS unit was directly involved in the capture of 114 wanted persons as a result of the PICS background check. As recently as August 10, 2010, a PICS legal assistant identified a subject during a background check who was wanted for armed robbery charges. As a direct result of the identification and follow up actions of the PICS legal assistant, the subject was taken into custody. Since the inception of PICS in 1998 there have been 1,251 wanted persons captured with the assistance of a PICS legal assistant or supervisor.

Not only is the PICS Instant Check Unit actively assisting in the capture of fugitives, it is also an important source for identifying and initiating investigations on possible straw purchases and the falsifying of information on both state and federal firearm forms. In 2009 the unit initiated 328 criminal investigations which were forwarded to state, local, or federal law enforcement for follow up investigation. Since its inception in 1998 PICS has been responsible for initiating over 3,700 of these investigations, which have resulted in the successful arrest and prosecution of 1,963 subjects.

PICS also provides proactive means to fight domestic violence. When a background check call is forwarded to a legal assistant and the subject is found to be prohibited, due to a valid protection form abuse order, PICS personnel immediately notify the entering PFA police agency that the subject is attempting to acquire a firearm.

An often overlooked service of PICS is its availability to provide every law enforcement department in the Commonwealth with background checks for the purpose of firearm evidence returns. To explain, there are many instances when law enforcement personnel are required to take possession of a firearm, whether it be directed by court order, for evidentiary purposes, for safekeeping during a domestic situation, or countless other possibilities. In many instances that seized firearm is ultimately returned to its owner. Prior to return, PICS provides the law enforcement agency with an instantaneous check to determine if the subject claiming the firearm is prohibited. In 2009 PICS provided 3,911 checks for this purpose. As a side note, NICS is unable to provide this service as federal law currently does not permit use of the NICS system for this type of transaction.

In comparing the PICS and NICS processes and statistics, we find many similarities, but also a few glaring differences. In regard to similarities, we find that both PICS and NICS are operational or up and running for background checks over 99% of all available hours. Both have high immediate determination rates with PICS over 95% and NICS over 91%. Both place approximately 7% of their calls into a delayed status, and both ultimately deny slightly over 1% of their checks.

Regarding significant differences, one would certainly start with the research waiting period for both agencies. NICS is required to conduct research and reply to a delayed background check within three days of receipt. If within that time a final approval or denial determination cannot be made, the licensed dealer is allowed to proceed with the sale of the firearm. We believe this scenario creates a safety concern for all persons within the Commonwealth; specifically if the sale of a firearm is made prior to a final determination on a subject, who may in fact be disqualified upon further research. By statute, the PICS Instant Check Unit is currently afforded 15 days to make a determination after an initial check is placed into a delayed status. Within that time frame, trained PICS personnel conduct in depth investigation and record gathering in an attempt to approve or deny the subject of the check. If after 15 days a final determination cannot be made, the transaction is placed into an undetermined status and the subject may then file an appeal regarding the decision. The PICS delayed/undetermined status process provides additional assurance that no firearm will be sold or transferred to a prohibited person once the background check is initiated.

Next, let me address the difference in what each agency terms the “appeals process”. Both offer a denied person the right to appeal or challenge a denial decision. Examination of the federal process reveals that a citizen of the Commonwealth

appealing a NICS denial has a large burden of proof placed on them to produce documents or justification that a denial was unjust or should be reversed. Without question, the common person filing an appeal would have great difficulty in obtaining court documents, criminal histories, dispositions, or countless other records used in this process. The PICS Challenge Unit assumes that burden of proof from the denied. This Units sole purpose is to further investigate a denied persons challenge or appeal. Many times, after in-depth investigation, this unit is able to reverse an original denial or approve a subject, who was in a delayed status. In 2009 alone, this Unit investigated 3,721 challenges; ultimately reversing 1,448 denials, further protecting the second amendment rights of the citizens we serve.

One unique component of PICS is the Immediate Voice Response or IVR system. I know of no other entity in the country that employs a similar system. Utilizing the PICS IVR, a licensed firearm dealer can use a touch tone phone, punch in a few required key responses, and if no restrictions are present, receive in a matter of minutes an approval of a subject to purchase a firearm, all the while never actually speaking to an operator. Currently this occurs in nearly 60% of the calls received by the PICS Instant Check Unit. I have personally given tours and explained our IVR system to NICS personnel and other state firearm sections personnel, who marvel at the efficiency and accuracy of our system.

In regard to the fee charged for a PICS background check, Title 18 Section 6111 mandates that a fee of \$2 be collected by the Pennsylvania State Police for each background check conducted on a prospective buyer or transfer. This fee was established and mandated in 1995 and has not increased since the inception of PICS. Of the thirteen "point of contact" states in the country, Pennsylvania currently is the third

most active, following only California and Illinois in the amount of background checks initiated. Yet, when examining the fees of those thirteen states, Pennsylvania is in the bottom three regarding the fee charged per background check. The majority of these states charge anywhere between five and twenty-five dollars for their background check service.

This revenue deficiency has led to a situation in which General Fund money directed to the Pennsylvania State Police must be used to support the operation of PICS. To explain further, the total cost to operate PICS is roughly \$5.9 million. The \$2 fee collected for PICS calls and a \$3 transfer fee on gun sales results in an approximately \$2 million revenue stream. This leaves a \$3.9 million shortfall, which must be subsidized from the State Police budget. To have a fully self-sufficient PICS, and assuming one transfer fee per each phone call; fees would need to be raised to a combination totaling \$17. This increase should cover the normal costs associated with operating the system, as well as allow for future enhancements, system upgrades, and contracted salary increases through the year 2020.

In closing, let me state that the Pennsylvania General Assembly amended the Uniform Firearms Act in 1995, creating a Pennsylvania background check system designed to protect public safety and further the fundamental right of all law abiding Pennsylvania citizens to keep and bear arms. For the past 12 years, the Pennsylvania State Police PICS Instant Check Unit has embraced these ideals, and will continue to carry out its mandated duty and obligations for the benefit all citizens of the Commonwealth.