

## Background Checks

### Background

At the federal level, background checks are conducted pursuant to the Brady Handgun Violence Prevention Act (the “Brady Act”), 18 U.S.C. § 921 *et seq.*, which is described in detail below. Background checks are designed to identify persons who are ineligible to purchase firearms under federal, state or local law, and prevent those persons from obtaining firearms.<sup>1</sup>

### Summary of Federal Law

The Brady Act requires federally licensed firearms dealers (FFLs) to perform background checks on prospective firearms purchasers to ensure that the firearm transfer would not violate federal, state or local law.<sup>2</sup> Since 1998, the Brady Act has been implemented through the National Instant Criminal Background Check System (NICS).<sup>3</sup> NICS is used for purchasers of handguns and long guns, and for persons who redeem a pawned firearm.<sup>4</sup> The Brady Act does not apply to unlicensed sellers.

States have the option of serving as a state Point of Contact (POC) and conducting their own NICS checks, or having those checks performed by the FBI.<sup>5</sup> FBI checks are provided at no charge; state law determines the cost of background checks performed by POCs.<sup>6</sup> FFLs initiate a NICS check by contacting the FBI or state POC (typically by telephone or computer) after the prospective purchaser has provided a government-issued photo I.D. and completed a federal Firearms Transaction Record (also known as Form 4473).<sup>7</sup> The FBI or POC must then conduct a name-based search of federal and state databases. FBI searches include three federal databases:

- The National Crime Information Center (NCIC), which includes records regarding wanted persons (fugitives) and persons subject to protective/restraining orders;

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<sup>1</sup> Categories of persons who are prohibited from possessing firearms under federal and state law are detailed in the section on [Prohibited Purchasers](#).

<sup>2</sup> 18 U.S.C. § 922(s).

<sup>3</sup> As originally adopted, the Brady Act included interim as well as permanent provisions. The Act's interim provisions, implemented on February 28, 1994, applied to handgun sales only. On November 30, 1998, the permanent provisions of the Brady Act went into effect, establishing the NICS system and extending the Act's application to purchasers of long guns and persons who redeem a pawned firearm.

<sup>4</sup> 18 U.S.C. § 922(t).

<sup>5</sup> Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Transfers, 2005 3-4* (Nov. 2006), at <http://www.ojp.usdoj.gov/bjs/abstract/ssprfs05.htm>.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> 27 C.F.R. § 478.124. The prospective purchaser completes a portion of Form 4473 by providing identifying information, including name, sex, home address, date and place of birth, etc., and signing and dating the form. The FFL is required to verify the identity of the prospective purchaser. *Id.*

- The Interstate Identification Index, which contains state criminal history records; and
- The NICS Index, which contains records of other persons prohibited under federal law from receiving or possessing firearms.<sup>8</sup>

A state POC search includes the three federal databases, and may include the state's independent criminal history database and mental health records.<sup>9</sup>

Once the initial search is complete, the FBI or POC notifies the FFL that the sale: (1) may proceed; (2) may not proceed; or (3) is delayed pending further investigation. If the transaction may proceed, NICS provides the dealer with a unique identification number which the FFL must record on Form 4473.<sup>10</sup> The NICS check is valid for a single transaction for up to 30 calendar days from the date NICS was initially contacted.<sup>11</sup>

If the FFL has not been notified within three business days that the sale would violate federal or state laws, the sale may proceed by default.<sup>12</sup>

A person holding a state-issued permit allowing the person to acquire or possess firearms (e.g., a concealed weapons permit) is not required to undergo a background check if the permit was issued: (1) within the previous five years in the state in which the transfer is to take place; and (2) after an authorized government official has conducted a background investigation to verify that possession of a firearm would not be unlawful.<sup>13</sup> Permits issued after November 30, 1998 qualify as exempt only if the approval process included a NICS check.<sup>14</sup> This exemption could allow some prohibited persons to acquire firearms, in cases where a state permit holder falls into a prohibited category after issuance of the state permit. Under the federal exemption, no background check is required and the seller would have no way to learn that the prospective purchaser is prohibited from possessing firearms.

Although the Brady Act provides an essential mechanism for keeping guns away from convicted felons and other prohibited purchasers, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), FBI and other federal agencies have made several recommendations to strengthen the law. Those recommendations include the following:

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<sup>8</sup> Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Department of Justice, *National Instant Criminal Background Check System (NICS) Operations 2005 2* (Jan. 2006), at [http://www.fbi.gov/hq/cjisd/nics/ops\\_report2005/ops\\_report2005.pdf](http://www.fbi.gov/hq/cjisd/nics/ops_report2005/ops_report2005.pdf).

<sup>9</sup> *Survey of State Procedures Related to Firearm Transfers, 2005*, *supra* note 5, at 3-4.

<sup>10</sup> 27 C.F.R. § 478.102(a). After recording the unique identification number provided by NICS, the dealer records certain information about the firearm to be transferred, including the manufacturer, type, model, caliber or gauge and serial number. 27 C.F.R. § 478.124(c)(4). The dealer is required to retain Form 4473, regardless of whether the transaction is approved or denied or whether the firearm is actually transferred. 27 C.F.R. § 478.102.

<sup>11</sup> 27 C.F.R. § 478.102(c). The 30-day period covers only a single transaction as reflected on Form 4473. The transaction may, however, involve the transfer of multiple firearms.

<sup>12</sup> 18 U.S.C. § 922(t)(1).

<sup>13</sup> 18 U.S.C. § 922(t)(3); 27 C.F.R. § 478.102(d).

<sup>14</sup> 27 C.F.R. § 478.102(d).

- **Close the private sale loophole** – The Brady Act applies only to sales by FFLs. Accordingly, persons who purchase firearms from private sellers – estimated to be 40 percent of all gun purchasers – are not required to undergo background checks.<sup>15</sup>
- **Extend the three-day limit for background checks** – Under the Brady Act, if the FFL has not been notified within three business days that the sale would violate federal or state laws, the sale may proceed by default.<sup>16</sup> This default provision, known as a “default proceed,” allowed 3,849 prohibited purchasers to buy guns during the first year of operation (November 30, 1998 through November 30, 1999) of NICS.<sup>17</sup> Moreover, between November 1998 and December 31, 2005, ATF received 26,600 referrals from the FBI requesting further review, evaluation and possible retrieval of firearms that had been sold to ineligible persons by default.<sup>18</sup> As a result, the FBI has recommended extending the maximum time allowed for conducting background checks to allow more research time to complete background checks and to reduce the number of prohibited purchasers who are able to purchase firearms by default.<sup>19</sup>
- **Improve access to state records** – At the end of 2003, only three out of four criminal history records were accessible through the NICS system.<sup>20</sup> According to the FBI, state background checks are more thorough than those performed by the FBI because the states can access their independent criminal history database in addition to the databases maintained by NICS. State databases typically include information that is unavailable to the FBI, including outstanding felony warrants, mental health records, domestic violence restraining orders and final disposition records (those showing whether an arrest resulted in an acquittal or a

<sup>15</sup> See Educational Fund to Stop Gun Violence, *Closing Illegal Gun Markets: Extending Criminal Background Checks to All Gun Sales* (May 2002). Additional information about private transfers is contained in the section on [Private Sales](#).

<sup>16</sup> 18 U.S.C. § 922(t)(1). See also *Survey of State Procedures Related to Firearm Transfers, 2005*, *supra* note 5, at 3-4.

<sup>17</sup> Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Department of Justice, *National Instant Criminal Background Check System (NICS) Operations Report (November 30, 1998-December 31, 1999)* 11 (March 2000). In fact, the FBI has found that a purchaser whose NICS check takes longer than 24 hours to complete is 20 times more likely to be a prohibited purchaser than other applicants. *Id.* at 6.

<sup>18</sup> *NICS Operations 2005*, *supra* note 8, at 12.

<sup>19</sup> U.S. General Accounting Office, *Gun Control: Implementation of the National Instant Criminal Background Check System* 13 (Feb. 2000), at <http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.21&filename=g100064.pdf&directory=/diskb/wais/data/gao>. FBI investigations of prohibited purchasers who were allowed to buy firearms by default typically take 25 days to complete. *Id.*

<sup>20</sup> Bureau of Justice Statistics, U.S. Department of Justice, *National Criminal History Improvement Program: Improving Criminal History Records for Background Checks, 2005* 3 (July 2006) at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ichrbc05.pdf>. The percentage of criminal records that are accessible for NICS checks varies by state. See U.S. General Accounting Office, *Gun Control: Options for Improving the National Instant Criminal Background Check System* 12-14 (Apr. 2000), at <http://www.gao.gov/archive/2000/gg00056.pdf>.

conviction). Accordingly, the FBI is encouraging states to provide more complete records to the NICS system.<sup>21</sup>

- **Increase access to mental health records** – Although federal law prohibits the purchase of a firearm by any person who has been adjudicated as a mental defective or involuntarily committed to a mental institution, many states do not collect information about persons who fit this criteria or provide law enforcement access to this information. There are many Americans who have been involuntarily committed to mental institutions and are barred by federal law from possessing firearms, but, as of November 30, 1999, the FBI had received from all states a total of only 41 records of mentally ill persons.<sup>22</sup> Although the number of mental health records provided to NICS has increased – in 2007 there were approximately 400,000<sup>23</sup> – mental illness remains significantly underreported. As a result of the FBI’s lack of information about mentally ill persons, a FBI background check is unlikely to find that a person is ineligible to possess a firearm due to mental illness. Because of these reporting deficiencies, mentally ill persons in this country are easily able to buy guns in violation of federal law.<sup>24</sup>

*NICS Improvement Amendments Act of 2007:* In January 2008, President Bush signed into law the NICS Improvement Amendments Act of 2007, which, among other things, provides financial incentives for states to provide to NICS information relevant to whether a person is prohibited from purchasing or possessing firearms.<sup>25</sup> Under the Act, states are eligible to receive a waiver of the 10% matching requirement for National Criminal History Improvement Grants<sup>26</sup> if they provide at least 90% of relevant records concerning persons who are prohibited from purchasing or possessing a firearm within specified deadlines.<sup>27</sup> The Act also authorizes the Attorney General to make grants to the states for use in establishing and upgrading the states’ ability to report information to NICS and to perform background checks pursuant to the Brady Act.<sup>28</sup>

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<sup>21</sup> *Gun Control: Implementation of the National Instant Criminal Background Check System*, *supra* note 19, at 12-13.

<sup>22</sup> *Gun Control: Options for Improving the National Instant Criminal Background Check System*, *supra* note 20, at 8.

<sup>23</sup> Michael B. Mukasey, *Prepared Remarks of Attorney General Michael B. Mukasey at the National Association of Attorneys General Winter Meeting*, Park City, Utah (Nov. 29, 2007), at [http://www.usdoj.gov/ag/speeches/2007/ag\\_speech\\_071129.html](http://www.usdoj.gov/ag/speeches/2007/ag_speech_071129.html).

<sup>24</sup> For more information on access to records of persons with mental illness for firearm purchaser background checks, see section on [Mental Health Reporting](#).

<sup>25</sup> Pub. L. No. 110-180, §§ 102, 104, 121 Stat. 2559 (2008).

<sup>26</sup> *See generally* 42 U.S.C. § 14601.

<sup>27</sup> Pub. L. No. 110-180, § 102, 121 Stat. 2559 (2008).

<sup>28</sup> *Id.*, § 103(a), (b). In order to be eligible for these grants, a state must implement a “relief from disabilities” program meeting the Act’s requirements, and allowing a person who has been adjudicated as a mental defective or committed to a mental institution to apply to the state for relief from the federal prohibition on purchase and possession of firearms and ammunition. *Id.*, § 105(a)(1). For more information on the Act’s application to records of persons with mental illness, see section on [Mental Health Reporting](#).

## SUMMARY OF STATE LAWS GOVERNING BACKGROUND CHECKS

Only Vermont has no state law governing background checks.<sup>29</sup> State laws describing important differences in the background check process are described below.

<a href="#">Alabama</a>	<b>Ala. Code § 13A-11-72</b>
<a href="#">Alaska</a>	<b>Alaska Stat. § 11.61.200</b>
<a href="#">Arizona</a>	<b>Ariz. Rev. Stat. §§ 13-3101(A)(6), 13-3111, 13-3113</b>
<a href="#">Arkansas</a>	<b>Ark. Code Ann. § 5-73-103(a), 5-73-129</b>
<a href="#">California</a>	<b>Cal. Penal Code §§ 12021, 12021.1, 12076, 12077; Cal. Welf. &amp; Inst. Code §§ 8100, 8101, 8103, 8105</b>
<a href="#">Colorado</a>	<b>Colo. Rev. Stat. §§ 13-5-142, 13-9-123, 18-12-108, 18-12-108.5, 24-33.5-424</b>
<a href="#">Connecticut</a>	<b>Conn. Gen. Stat. §§ 29-33, 29-36f – 29-36l, 29-37a, 53a-217, 53a-217c</b>
<a href="#">Delaware</a>	<b>Del. Code Ann. tit. 11, §§ 1448, 1448A; tit. 24, §§ 901, 903</b>
<a href="#">District of Columbia</a>	<b>D.C. Code Ann. §§ 7-2502.01 – 7-2502.10</b>
<a href="#">Florida</a>	<b>Fla. Stat. Ann. §§ 790.065, 790.18, 790.23, 790.233, 790.235</b>
<a href="#">Georgia</a>	<b>Ga. Code Ann. §§ 16-11-131(b), (b.1), 16-11-132, 16-11-171 – 16-11-172</b>
<a href="#">Hawaii</a>	<b>Haw. Rev. Stat. Ann. §§ 134-2, 134-7</b>
<a href="#">Idaho</a>	<b>Idaho Code Ann. § 18-3316</b>
<a href="#">Illinois</a>	<b>430 Ill. Comp. Stat. 65/1 – 65/16-3</b>
<a href="#">Indiana</a>	<b>Ind. Code Ann. §§ 35-47-1-7, 35-47-2.5-1 – 35-47-2.5-12</b>
<a href="#">Iowa</a>	<b>Iowa Code §§ 724.15 – 724.23, 724.26</b>
<a href="#">Kansas</a>	<b>Kan. Stat. Ann. §§ 21-4204, 21-4204a</b>
<a href="#">Kentucky</a>	<b>Ky. Rev. Stat. Ann. §§ 527.040, 527.100</b>
<a href="#">Louisiana</a>	<b>La. Rev. Stat. Ann. § 14:95.1</b>
<a href="#">Maine</a>	<b>Me. Rev. Stat. Ann. tit. 15, § 393(1)</b>
<a href="#">Maryland</a>	<b>Md. Code Ann., Pub. Safety §§ 5-101(g), 5-117 – 5-127, 5-133, 5-134</b>
<a href="#">Massachusetts</a>	<b>Mass. Gen. Laws ch. 140, §§ 129B, 130, 131, 131E</b>
<a href="#">Michigan</a>	<b>Mich. Comp. Laws §§ 28.422 – 28.422b, 750.224f</b>
<a href="#">Minnesota</a>	<b>Minn. Stat. §§ 624.713 – 624.7132, 624.719</b>
<a href="#">Mississippi</a>	<b>Miss. Code Ann. § 97-37-5, 97-37-13, 97-37-14</b>
<a href="#">Missouri</a>	<b>Mo. Rev. Stat. §§ 571.060, 571.070, 571.080</b>
<a href="#">Montana</a>	<b>Mont. Code Ann. § 45-8-313</b>
<a href="#">Nebraska</a>	<b>Neb. Rev. Stat. Ann. §§ 28-1204.01, 28-1206, 69-2401 – 69-2421</b>
<a href="#">Nevada</a>	<b>Nev. Rev. Stat. Ann. §§ 202.300, 202.310, 202.360, 202.362</b>
<a href="#">New Hampshire</a>	<b>N.H. Rev. Stat. Ann. §§ 159-D:1, 159:3, 159:7, 159:8-a, 159:12, 173-B:5</b>

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<sup>29</sup> Federal law requiring background checks for all dealer sales does apply in Vermont, however, as it does in all other states.

<a href="#">New Jersey</a>	<b>N.J. Stat. Ann. § 2C:58-3</b>
<a href="#">New Mexico</a>	<b>N.M. Stat. Ann. § 30-7-16</b>
<a href="#">New York</a>	<b>N.Y. Penal Law §§ 265.00, 265.01, 400.00</b>
<a href="#">North Carolina</a>	<b>N.C. Gen. Stat. §§ 14-402 – 14-406, 14-415.1, 14-415.3, 14-269.8</b>
<a href="#">North Dakota</a>	<b>N.D. Cent. Code § 62.1-02-01</b>
<a href="#">Ohio</a>	<b>Ohio Rev. Code Ann. §§ 2923.13, 2923.211</b>
<a href="#">Oklahoma</a>	<b>Okla. Stat. tit. 21, §§ 1273, 1283, 1289.10, 1289.12</b>
<a href="#">Oregon</a>	<b>Or. Rev. Stat. §§ 166.412, 166.250(1)(c), 166.414, 166.470</b>
<a href="#">Pennsylvania</a>	<b>18 Pa. Cons. Stat. §§ 6105, 6110.1, 6111, 6111.1</b>
<a href="#">Rhode Island</a>	<b>R.I. Gen. Laws §§ 11-47-5 – 11-47-7, 11-47-30, 11-47-33, 11-47-35 – 11-47-35.3, 8-8.1-3; 15-15-3</b>
<a href="#">South Carolina</a>	<b>S.C. Code Ann. §§ 16-23-30</b>
<a href="#">South Dakota</a>	<b>S.D. Codified Laws §§ 22-14-15, 22-14-15.1, 23-7-44, 23-7-46</b>
<a href="#">Tennessee</a>	<b>Tenn. Code Ann. §§ 39-17-1303, 39-17-1307, 39-17-1316, 39-17-1319, 39-17-1321</b>
<a href="#">Texas</a>	<b>Tex. Penal Code Ann. § 46.04, 46.06</b>
<a href="#">Utah</a>	<b>Utah Code Ann. §§ 76-10-503, 76-10-509, 76-10-509.4</b>
<a href="#">Virginia</a>	<b>Va. Code Ann. §§ 18.2-308.1:1 – 18.2-308.2:2, 18.2-308.4, 18.2-308.7</b>
<a href="#">Washington</a>	<b>Wash. Rev. Code Ann. §§ 9.41.040, 9.41.090, 9.41.170</b>
<a href="#">West Virginia</a>	<b>W. Va. Code § 61-7-7, 61-7-8</b>
<a href="#">Wisconsin</a>	<b>Wis. Stat. §§ 175.35, 941.29, 948.60</b>
<a href="#">Wyoming</a>	<b>Wyo. Stat. Ann. § 6-8-102</b>

### Description of State Laws Governing Background Checks

1. *State Points of Contact:* According to the FBI, state background checks are more thorough than those performed by the FBI because states can access their independent criminal history databases in addition to databases maintained by NICS.<sup>30</sup> Thirteen states serve as POC states for all firearm transfers.<sup>31</sup> Eight states use a state or local POC for handgun background checks only, using the FBI for background checks on long gun transfers.<sup>32</sup> The remaining twenty-nine states and the District of Columbia process all background checks through the FBI.<sup>33</sup>

<sup>30</sup> *Gun Control: Implementation of the National Instant Criminal Background Check System*, *supra* note 19, at 12-13. See also *NICS Operations 2005*, *supra* note 8, at 5.

<sup>31</sup> Criminal Justice Information Systems of the Federal Bureau of Investigation, U.S. Department of Justice, *NICS Program Summary* (July 2006), at <http://www.fbi.gov/hq/cjisd/nics.htm>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

POC States for All Firearms

California  
Colorado  
Connecticut  
Florida  
Hawaii  
Illinois  
Nevada  
New Jersey  
Oregon  
Pennsylvania  
Tennessee  
Utah  
Virginia

POC States for Handguns Only

Iowa  
Maryland (“regulated firearms”)<sup>34</sup>  
Michigan  
Nebraska  
New Hampshire  
North Carolina  
Washington  
Wisconsin

2. *States that Issue Permits that Qualify the Holder for an Exemption from a NICS Check:* Pursuant to 18 U.S.C. § 922(t)(3), twenty-one states issue permits or licenses that exempt the holder from a background check.<sup>35</sup>

States that Issue Permits or Licenses that Qualify the Holder for an Exemption from a NICS Check

Alaska (concealed weapons permits)  
Arizona (concealed weapons permits)  
Arkansas (concealed weapons permits issued on or after 4/1/99)  
California (“entertainment firearms permits” only)  
Georgia (concealed weapons permits)  
Hawaii (permits to acquire and licenses to carry)  
Idaho (concealed weapons permits)  
Iowa (permits to acquire a handgun and concealed weapons permits)  
Kentucky (concealed weapons permits issued on or after 7/12/06)  
Michigan (licenses to purchase a pistol and concealed pistol licenses issued on or after 11/22/05)  
Mississippi (concealed weapons permits, but not security guard permits)  
Montana (concealed weapons permits)  
Nebraska (handgun purchase certificates)  
Nevada (concealed weapons permits)  
New York (licenses to carry and possess handguns)  
North Carolina (permits to purchase a handgun and concealed handgun permits)  
North Dakota (concealed weapons permits issued on or after 12/1/99)  
South Carolina (concealed weapons permits)

*(continued on next page)*

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<sup>34</sup> Maryland defines “regulated firearms” as handguns and assault weapons.

<sup>35</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice, *Permanent Brady Permit Chart* (June 28, 2007), at [http://www.atf.gov/firearms/bradylaw/permit\\_chart.htm](http://www.atf.gov/firearms/bradylaw/permit_chart.htm) (last visited Dec 4, 2007). The FBI determines whether a state’s permitting process exempts purchasers from background checks, based on the statutory criteria set forth in 18 U.S.C. § 922(t)(3) and 27 C.F.R. § 478.102(d).

States that Issue Permits or Licenses that Qualify the Holder for an Exemption from a NICS Check (*continued from previous page*)

Texas (concealed weapons permits)

Utah (concealed weapons permits)

Wyoming (concealed weapons permits)

3. *State Laws Addressing the Problem of “Default Proceeds:”*<sup>36</sup> Several states have taken measures to extend the time allowed for completion of a background check, so that firearms cannot be transferred by default when a background check cannot be completed within three days.

In California, all firearm transfers are subject to a 10-day waiting period.<sup>37</sup> If the background check information received is incomplete, preventing the background check from being approved or denied within the 10-day period, the California Department of Justice (DOJ) may notify the dealer of that fact.<sup>38</sup> The DOJ interprets this provision to allow (but not require) DOJ to notify the dealer to delay the transfer until the background check can be completed.

In Colorado, the state can deny a prospective purchaser’s application if the background check cannot be completed within the 3-day default period.<sup>39</sup>

In New Jersey, retail firearms dealers may not deliver a handgun to any person unless the person possesses a valid permit to purchase a handgun and at least seven days have elapsed since the date of application for the permit. The time period to obtain the permit itself can be as long as 30 days (45 days for non-residents)<sup>40</sup> while the permit application is processed.

Washington allows five days to complete a background check on prospective handgun purchasers. However, if records indicate that a prospective purchaser has an arrest for a potentially disqualifying offense, a hold may be placed on the transaction for up to 30 days, pending receipt of information on the disposition of the arrest. After 30 days, if the

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<sup>36</sup> LCAV has not undertaken a comprehensive survey of state approaches to “default proceeds.” The states noted provide examples of ways to address this issue.

<sup>37</sup> Cal. Penal Code §§ 12071(b)(3)(A), 12072(c)(1).

<sup>38</sup> Cal. Penal Code § 12076(d)(4), (5).

<sup>39</sup> Colorado provides that an application must be denied in cases in which there has been no final disposition or the final disposition is not noted in the NICS or state databases, where the applicant: (1) has been arrested for or charged with a crime that would prohibit him or her from purchasing, receiving, or possessing a firearm under state or federal law; or (2) is the subject of an indictment, an information, or a felony complaint alleging that the prospective transferee has committed a crime punishable by imprisonment for a term exceeding one year as defined in 18 U.S.C. § 921(a)(20). This provision has a sunset clause and will be automatically repealed July 1, 2010, unless renewed. Colo. Rev. Stat. § 24-33.5-424(3)(b).

<sup>40</sup> N.J. Stat. Ann. §§ 2C:58-2a(5)(a), 2C:58-3. Note that FFLs may not sell handguns to out-of-state residents. Additional information on transfer restrictions imposed on FFLs is contained in the section on [Dealer Regulations](#).

disposition still cannot be verified, the hold may be extended by a judicial order on a showing of good cause.<sup>41</sup>

In Wisconsin, if the background check indicates a felony charge without a recorded disposition, the state's 48-hour waiting period for handgun purchases is extended to the end of the third complete working day commencing after the day on which the finding is made. The Department of Justice must notify the firearms dealer of the extension as soon as practicable. During the extended period, the Department of Justice is required to make every reasonable effort to determine the disposition of the charge and notify the firearms dealer of the results as soon as practicable.<sup>42</sup>

4. *Mental Health Reporting:* Although persons who have been adjudicated as mental defectives or involuntarily committed to mental institutions are prohibited by federal law from possessing firearms, the current status of the FBI databases makes it difficult to prevent such a person from obtaining firearms if the person undergoes only an FBI background check. As discussed above, that is because a great deal of information about mentally ill people is not reported to the FBI and the FBI does not currently have access to mental health records that are maintained by the states. A detailed discussion of state laws governing mental health reporting is contained in the section on [Mental Health Reporting](#).

## **SUMMARY OF SELECTED<sup>43</sup> LOCAL LAWS GOVERNING BACKGROUND CHECKS**

### **Local Laws Governing Background Checks**

<b>Cleveland</b>	<b>Cleveland, Ohio, Code §§ 674.04, 674.05</b>
<b>Columbus</b>	<b>Columbus, Ohio, Code §§ 545.06(a), 545.07</b>
<b>New York City</b>	<b>New York, N.Y., Admin. Code § 10-303, New York, N.Y., Rules tit. 38, §§ 5-01 - 5-07</b>
<b>Omaha</b>	<b>Omaha, Neb., Code § 20-253(b)</b>

*Cleveland:* In Cleveland, background checks are required for issuance of handgun owner's identification cards and handgun registration cards.

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<sup>41</sup> Wash. Rev. Code Ann. § 9.41.090(3), (4).

<sup>42</sup> Wis. Stat. §§ 175.35(2)(d), 175.35(2g)(c)4.c.

<sup>43</sup> This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "[The Legal Background.](#)"

*Columbus:* Firearms purchasers in Columbus are required to have a “weapon transaction permit” to purchase or possess any lawful weapon. The permit application process requires a background check on the applicant.

*New York City:* New York City requires a rifle or shotgun permit for the purchase and/or possession of rifles and shotguns. New York City also requires handgun licenses, which are granted for particular uses. A background check is required prior to issuance of rifle/shotgun permits and handgun licenses.

*Omaha:* Omaha requires handgun owners to register their firearms. A background check is required during the handgun registration process.

## **FEATURES OF COMPREHENSIVE BACKGROUND CHECK LAW**

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- Universal background checks are required on all firearm purchasers (*California, Rhode Island, District of Columbia, Chicago; Maryland requires universal background checks but only for purchases of handguns and assault weapons; Connecticut and Pennsylvania require universal background checks only for purchases of handguns*)<sup>44</sup>
- State acts as a Point of Contact for all firearm transfers, and background checks include search of state’s independent criminal history and mental health records
- Transfer of any firearm is prohibited until the background check process has been completed (*Colorado, Washington*)
- Background check process includes search of a state’s mental health records (*15 states*)<sup>45</sup>
- Mental health information is reported to federal and state databases of prohibited purchasers (*14 states*)<sup>46</sup>
- Criminal history information and orders of protection are reported to federal and state databases of prohibited purchasers
- Fee for background check is set at least at a level sufficient to cover administrative costs associated with background check system

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<sup>44</sup> Additional information on jurisdictions requiring universal background checks is contained in the section on [Private Sales](#).

<sup>45</sup> Additional information on access to mental health records for firearm purchaser background checks is contained in the section on [Mental Health Reporting](#).

<sup>46</sup> See *supra* note 45.