California Department of Justice Bureau of Firearms

National Instant Criminal Background Check System

Audit Report

February 26, 2008

Executive Summary

Two FBI CJIS auditors met with California Department of Justice Bureau of Firearms (CalDOJBOF) staff members on February 26, 2008, to ascertain California's level of compliance with federal rules and regulations relating to the National Instant Criminal Background Check System (NICS) and to determine if the CalDOJBOF was following the Point of Contact state guidelines for firearm purchases. The FBI CJIS auditors determined that on all issues related to the NICS, California was in full compliance with both federally established and FBI NICS Section guidelines. Furthermore, the FBI CJIS auditors found the entire CalDOJBOF staff to be well informed on all issues and policy matters related to the NICS. Moreover, the FBI CJIS auditors found the CalDOJBOF staff to be more than willing to assist them with any policy questions.

Response of the California DOJBOF

In an e-mail correspondence dated April 21, 2008,	Program
Manager, CalDOJBOF, provided the following response to the audit report:	

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Purpose

Every three years the FBI audits each NICS Point of Contact (POC) state that conducts NICS checks for firearm purchases. The goal of the audit is to ensure that all POC states follow federal guidelines and FBI NICS Section directives regarding firearm background checks.

Background

Federal Firearms Licensees (FFLs) must contact the NICS to conduct a NICS check through an established POC within their respective state or the FBI NICS Section. In order that all citizens and dealers, regardless of their state of residence, receive at a minimum, the level of service mandated by the Brady Handgun Violence Prevention Act of 1993 (Brady Act), the FBI in conjunction with the Bureau of Alcohol, Tobacco and Firearms (ATF), and the U.S. Department of Justice has developed the *National Instant Criminal Background Check System Point of Contact Guidelines*. These guidelines do not impose requirements above or beyond those contained in the Brady Act and associated implementing regulations, such as the FBI's rule on the NICS privacy and security matters. As such, an audit program was developed to verify that NICS POC states are following applicable federal guidelines so that all potential purchasers receive a consistent level of service.

Methodology

The Gun Control Act of 1968 prohibits certain individuals, such as convicted felons, from purchasing a firearm. In November 1993, the Brady Act was signed into law. Until the Brady Act was passed into law, there was no system in place to prevent these individuals from obtaining a firearm. Firearms were sold by FFLs and other dealers on an honor system. Virtually the only recourse federal law enforcement agencies had against prohibited people who purchased a firearm was to prosecute them *after* they illegally gained possession of the firearm.

Introduction

The Brady Act discontinued the honor system by requiring mandatory background checks on potential firearm purchasers. The Brady Act requires FFLs to request background checks on individuals attempting to purchase a firearm. The permanent provisions of the Brady Act which went into effect on November 30, 1998, required the Attorney General to establish the NICS for FFLs to contact to obtain immediate information on whether the transfer of a firearm to a prospective buyer would violate state or federal law.

The NICS is a partnership between the FBI, the ATF, state, and other federal agencies. The FBI worked in conjunction with the ATF to design and implement the NICS. State and federal agencies contribute information on disqualified persons to be included in the NICS' databases. Individual states may serve as POCs to support their own FFLs in conducting NICS checks. California serves as a POC state for all firearm transfers. The audit findings for the California Department of Justice Firearms Division (CalDOJBOF) will cover seven separate areas: Transaction Logging, Operational Environment, Appeals, Security/Training, Protection Orders, General NICS Information, and IFFS.

Audit Requirements

Minimum Requirements

As per the agreement between the FBI NICS Section and the POC states, the following are the minimum requirements for a state to act as the POC for the NICS and, as such, are subject to audit:

- All FFLs within a state are provided access to the NICS through a designated state POC. Note, it is not necessary that there be a single state POC; a network of state or local agencies may be used to provide NICS access to all FFLs within the state.
- The POC, with assistance from the ATF and the FBI, will notify FFLs in its state regarding the procedures for contacting the POC, and all other procedures related to firearm background checks.
- The POC will have automated access to the NICS via the National Crime Information Center (NCIC) telecommunications network.

Identification For Firearms Sales (IFFS) Flags

California sets IFFS flags. California sets its IFFS flags based on its state felony statutes which parallel the NICS' definition of a felony. California does not set its IFFS flags prior to an actual felony conviction. California will remove an IFFS flag after a pardon, expungement, or restoration of rights takes place. There is programming in place to reverse or remove an IFFS flag. California's Automated Criminal History System checks the status of IFFS flags on an ongoing basis.

Acknowledgment

The FBI CJIS Audit Unit's (CAU) goal is to provide a comprehensive assessment of the CalDOJBOF's compliance with federal guidelines and FBI NICS Section directives relating to the NICS. The third triennial audit of the CalDOJBOF identified a concentrated effort by the CalDOJBOF to comply with these guidelines and directives. The FBI CAU wishes to acknowledge the participation and assistance of the state agency representatives who contributed to the findings in this report.

Transaction Logging

CJIS Audit Unit representatives determined that California Penal Code (PC) Section 11106 (c)(1) requires the California Attorney General to permanently keep and properly file and maintain all information reported to the CalDOJBOF on all handgun Dealer's Record of Sale (DROS) applications. Information retained within the Consolidated Firearms Information System (CFIS) includes the DROS number or STN, purchasers name and address, the make, model and serial number of the handgun. Conversely, California PC Section 11106(b)(1) mandates that the Attorney General shall not retain any approved long gun DROS application information and requires the destruction of data related to an approval transaction within five days. California PC Section 11106 (b)(2) allows the California Attorney General to retain long gun DROS transactions if the information is necessary for use in a criminal prosecution. Denial transactions for both handguns and long guns are retained indefinitely. The CalDOJBOF is able to retrieve previous transactions with the exception of approved long gun transactions through the CFIS. Data from the CFIS can be obtained with the DROS number, subject's name, or driver license number. The DROS number is provided to FFLs for all firearms background checks. The CFIS is also used to populate select information into the Automated Firearms System (AFS) for use by law enforcement throughout California.

Operational Environment

The CalDOJBOF has full inquiry capability into the NICS database. The CalDOJBOF acts as the single POC for all firearm transfers within California. As of January 1, 2003, licensed firearms dealers in California are required to submit all background checks to CalDOJBOF electronically via a point of sale device (POSD). As such, 100 percent of California's NICS checks coming from FFLs are run via POSDs. California PC 12082 requires that all private firearm sales and transfers have a background check conducted via an FFL on the individual acquiring the firearm (henceforth known as the transferee). These checks are conducted via FFLs in accordance with all federal regulations.

An ATF Form 4473 is completed by the transferee and the FFL takes the firearm into its inventory. If the transferee is denied a check is conducted on the seller before the firearm is returned.

All firearms transferees in California must have their right thumb print taken on the back of the DROS form. Furthermore, all firearms transferred in the state must include or be accompanied by a CalDOJBOF certified firearms safety device (i.e. gunlock). Otherwise, the transferee must demonstrate that they possess such a device or sign an affidavit that they either possess such a device or a CalDOJBOF certified lock box under penalty of perjury. There is a 10 day waiting period for the transfer of all firearms in California.

California PC sets a number of unique requirements in order to transfer a handgun including the following: all transferees must possess a handgun safety certificate; all handguns sold by FFLs must have passed a safety test certified by CalDOJBOF; all transferees of handguns must demonstrate they can safely handle a handgun prior to taking possession of the handgun. There is a limit of one handgun acquisition every 30 days in California.

California does not issue permits to purchase a firearm. Checks conducted by the CalDOJBOF for firearm transfers search the following California databases: California criminal history database; California wanted person database; California protection order database; California mental health database; and the California Department of Motor Vehicles database. In addition, for handgun transfers an inquiry is made into the AFS and the National Crime Information Center to ensure the handgun is not stolen. A query is also made into CFIS to ensure compliance with the one handgun within 30 days law. California has submitted approximately 200,000 records into the NICS Index. The majority of the NICS Index submissions are mental health records that meet the federal criteria.

The CalDOJBOF does not currently inform the FBI NICS Section of the status of its NICS background checks. CalDOJBOF is in the process of enhancing its capability regarding transmitting NICS status information to the FBI NICS Section. The capability for the expanded NICS status reporting will become operational in 2009. California does not deny the transfer of a firearm based on "naked arrest." California has a specified list of many misdemeanor

convictions that prohibit the individual from possessing a firearm for ten years. There are also four specific misdemeanor convictions that result in a lifetime ban of firearms possession in California. California has a broader set of conditions then federal law for which a protection order and mental health problems can disqualify the possession of a firearm. The denial rate for firearm background checks is approximately 1 percent. The CalDOJBOF provides electronic service to FFLs from 7:00 a.m. to 11:00 p.m. 365 days a year. There is a \$20 fee for a firearm background check. California runs IAQ's via the FBI NICS Section on all non-U.S. citizens attempting to procure a firearm. California denies all individuals with outstanding warrants, both felony and misdemeanor.

Appeals

California has a very efficient and structured appeals process. Denied individuals are provided with the CalDOJBOF telephone number by the FFL if they wish to appeal.

CalDOJBOF will attempt to resolve the appeal during the telephone conversation. If the issue can not be resolved the appellant is sent an official appeal form and fingerprint card so they can initiate the appeals process. Upon receiving the appeal form and fingerprint card CalDOJBOF will conduct the necessary research on the area of dispute. If the denial is overturned CalDOJBOF will take all the necessary steps to correct any deficient or erroneous records. During the initial telephone conversation CalDOJBOF informs the appellant of their right to appeal directly to the FBI. All appeals based on a record from the NICS Index are referred directly to the FBI NICS Section. The CalDOJBOF is in the process of re-engineering the appeals process. When the new process is implemented all denied individuals will be sent a letter via U.S. Mail outlining the exact reason for their denial. The letter will include the CalDOJBOF telephone number necessary to contact for an appeal.

Security/Training

All CalDOJBOF firearms check personnel go through an extensive background screening process that includes a fingerprint card submission and III check. Any alleged misuse of CalDOJBOF databases are investigated. If an employee is found guilty of misuse of any CalDOJBOF database they are subject to strict disciplinary and criminal action including termination of employment. The CalDOJBOF is located in a secure location. The POSDs found at FFLs connect to CalDOJBOF via a web portal and the FFL is identified and authenticated at the firewall level. The data transmitted from the FFL to the CalDOJBOF is encrypted. Internally CalDOJBOF security consists of a user sign-on and password to access the databases as well as an audit trail and security log to monitor all inquires into the databases. All new CalDOJBOF employees receive extensive on the job training by supervisory personnel. Moreover, personnel from the FBI NICS Section POC Support Team have conducted extensive training at the CalDOJBOF.

Protection Orders

The CalDOJBOF is mandated by state law to deny on all protection orders that are defined as domestic violence under Section 6218 of the Family Code. The California definition of domestic violence is broader than the federal definition. The California definition includes dating relationships and any other person related by consanguinity or affinity within the second degree. California law also provides that other categories of protection orders can result in a firearms disqualification if the issuing judge orders such disqualification as part of the terms of the order. California law includes severe criminal penalties for individuals with prohibiting protection orders who possess or attempt to purchase or receive a firearm.

General National Instant Criminal Background Check System (NICS) Information

California has specific legislation in place governing its NICS POC operation.

California does not inform the FFL of the reason for a denial. California has a superlative website with which to access up-to-date information regarding its NICS POC operation. The web site includes all California firearms laws, updates to California firearms laws, and the forms utilized by the CalDOJBOF.

Subsequent to the January/February 2003 NICS POC audit of California an agreement was forged between upper level FBI CJIS Division Management and the California Department of Justice related to the CalDOJBOF's use of the NICS System. The agreement gave the CalDOJBOF the authority to conduct NICS checks for the following reasons: Concealed Carry Weapons Licenses; Dangerous Weapons Permits; Certificates of Eligibility; Assault Weapons Licenses; Police Officer Applicants; Security Guard with Exposed Weapon Permits; New Resident Registration Permits; Collector Permits; Operation of Law Permits; Firearms Factory Manufactures and Employees; Gun Show Operators and Promoters; Firearms Dealer License Applicants; Explosive Industry License Applicants; Entertainment Industry Permits; POST Applicants; DOJ Certified Instructor Applicants; Armed and Prohibited Program; firearms returns; and periodic rechecks of permit holders. The FBI CJIS Division also specifically banned the use of NICS checks for the California Personal Firearms Eligibility Check program. During the audit the CalDOJBOF staff indicated that they had ceased using the NICS for the Personal Firearms Eligibility Check program. The CJIS auditors as part of the audit process had CalDOJBOF staff verify the reason 30 NICS permit checks that were run by California. All 30 of the checks fell within California's agreement with FBI CJIS management. There was no evidence of any use of the NICS for any reason outside the agreement.

In addition, the FBI CJIS auditors reviewed 100 records entered by the CalDOJBOF into the NICS Index. The vast majority of the records were for federal prohibitor 922 g (4) i.e. the mental health prohibition. The FBI CJIS auditors determined that all 100 (100 percent) of the records were qualified to be in the NICS Index.

Introduction

- The POC will offer telephone access to FFLs, at a minimum between the hours of 10 a.m. and 9 p.m., Monday through Saturday, and during normal retail business hours within the state on Sunday.
- The POC will have procedures in place that provide assurance that NICS background checks are initiated only by authorized personnel and only for purposes authorized under the Brady Act.
- The POC will deny firearm sales based on criteria equal to or more stringent than that imposed by the Gun Control Act of 1968, as amended.
- The POC will provide supporting processes and personnel to review record data, make disqualification decisions, respond to FFLs, and manage an appeals process.
- · All applicable federal laws regarding the NICS not mentioned above must also be adhered to by the POC.

Additional Audit Criteria

- Ascertain if state POCs are denying the purchase of a firearm based on a "naked arrest" i.e., an arrest without a disposition. If such a practice is occurring, a state law must be in place authorizing the practice.
- Determine if the state POCs are following federal guidelines related to the purging of NICS proceed transaction data within 24 hours. If the 24 hour time limit is exceeded, there must be an independent state law regarding firearm transactions authorizing the practice.
- Determine if the state generated State Transaction Number (STN) for a NICS inquiry can be crossed referenced with the NICS Transaction Number (NTN) generated by the FBI.
- Determine if Immigration Alien Queries (IAQs) are being run on non U.S. citizens attempting to purchase a firearm.
- Determine if IFFS flags are being properly set in POC states that place IFFS flags on Interstate Identification Index (III) records.