



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

June 15, 2001

Corporal Albert Picca
Pennsylvania State Police
Pennsylvania Instant Check System
1800 Elmerton Avenue
Harrisburg, PA 17710

Dear Corporal Picca:

As you are aware, representatives of the FBI's Criminal Justice Information Services (CJIS) Division Audit Unit recently met with you to ascertain Pennsylvania's level of compliance with federal rules and regulations relating to the National Instant Criminal Background Check System (NICS) and to determine if Pennsylvania was following the Point of Contact state guidelines for firearms purchases.

CJIS representatives determined that on the majority of the issues related to the NICS, Pennsylvania was in full compliance with federally established guidelines. Furthermore, CJIS representatives found your entire staff to be well informed on all issues and policy matters related to the NICS. Moreover, our staff found your staff to be more than willing to assist them with any policy questions. However, the FBI staff identified four areas of concern during their visit.

- CJIS Audit Unit representatives ascertained that the Pennsylvania Instant Check System (PICS) automated computer log retains the date, State Transaction Number (STN), and State Firearms Licensee (SFL) number for a period of 13 months for all firearm background checks where the purchase of a firearm is allowed. Additionally, PICS retains the aforementioned data for an additional 20 years via a query table and computer tapes. Federal regulation does allow for the indefinite retention of the date and STN for proceed transactions. However, the applicable regulation limits the retention of the SFL number for firearm transfers (proceed transactions) to 180 days. (At some time in the near future the time frame may drop to 90 days or less.) Please reference 18 U.S. Code 922 which states, "If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall - (A) assign a unique identification number to the transfer; (B) provide the licensee with the number; and (C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer." PICS must immediately cease retention of this information.

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- In addition, CJIS Audit Unit representatives determined that for all handgun purchases the SFL must send a Record of Sale Form (SP4-113) to the Pennsylvania State Police where the data contained on such form is entered into the Record of Sale Database and retained indefinitely. The data contained in the Record of Sale Database includes the purchaser's descriptive data, home address, and the make, model, and serial number of the handgun. According to the CJIS Access Integrity Unit Attorney Advisor, Pennsylvania Crimes Code Section 6111 specifically prohibits this type of retention. Section 6111 (v) states, "Unless it has been discovered pursuant to a criminal history, juvenile delinquency and mental health records background check that the potential purchaser or transferee is prohibited from possessing a firearm pursuant to Section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), no information on the application/record of sale provided pursuant to this subsection shall be retained as precluded by Section 6111.4 (relating to registration of firearms) by the Pennsylvania State Police either through retention of the application/record of sale or by entering the information on a computer, and, further, an application/record of sale received by the Pennsylvania State Police pursuant to this subsection shall be destroyed within 72 hours of the completion of the criminal history, juvenile delinquency and mental health records background check." In addition, as previously outlined, 18 U.S. Code Section 922 prohibits retaining such data in excess of 180 days if the firearms transfer is allowed. Therefore, the existence of the Record of Sale Database is in violation of federal legislation and the Pennsylvania Crimes Code. This practice must cease immediately.
- The Pennsylvania Crimes Code, Title 18 Crimes and Offenses, Article G (Miscellaneous Offenses, Section 6111 (Sale or Transfer of Firearms) Part C states, "Any person who is not a licensed importer, manufacturer or dealer and who desires to sell or transfer a firearm to another unlicensed person shall do so only upon the place of business of a licensed importer, manufacturer, dealer or county sheriff's office, the later of whom shall follow the procedure set forth in this section as if he were the seller of the firearm. The provisions of this section shall not apply to transfers between parent and child or to transfers between grandparent and grandchild." This process is not allowable under federal law. The only allowable method for a Federal Firearms Licensee (FFL) to run a NICS check as part of a private firearms sale would be for the FFL to place the firearm in "his" inventory and record the firearm in "his" bound inventory book before conducting the NICS check. Moreover, the purchaser would be required to complete Bureau of Alcohol, Tobacco and Firearms (ATF) Form 4473. Additionally, if the purchase was denied, the original owner would have to complete ATF Form 4473 and a NICS check would have to be conducted on the original owner in order to return the firearm to said owner. Furthermore, a sheriff's office is not allowed to request a NICS checks for private firearms sales under NICS Rules and Regulations 28 CFR 25.6 (j) (1) which states, "Access to the NICS Index for purposes unrelated to 18 USC 922 (t) shall be limited to users for the purpose of: Providing information to Federal, state, or local criminal justice agencies in connection with the issuance of a firearm-related or explosive-related permit or license, including permits or licenses to possess, acquire or

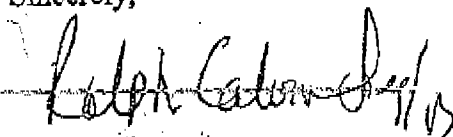
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transfer a firearm, or to carry a concealed firearm, or to import, manufacture, deal in or purchase explosives." Pennsylvania has conducted over 100,000 NICS checks on private firearms sales since July 1998 utilizing the aforementioned methods. According to PICS personnel, the overwhelming majority of the checks were conducted by FFLs. This practice must cease immediately.

- PICS will keep a background check in a "delayed" status for up to 15 days if a decision cannot be reached to either approve or deny a purchaser. If the status cannot be determined after 15 days, the individual is automatically placed in a 'denied' status and it is up to the potential purchaser to appeal the denial. There is no state law in place authorizing this procedure. This practice conflicts with NICS regulations which state, "A 'Delayed' response to the FFL indicates that the firearm transfer should not proceed pending receipt of a follow-up proceed response from the NICS or the expiration of three business days (exclusive of the day on which the query is made), whichever occurs first." Therefore, PICS should not be placing firearm background queries into a "delayed" status in excess of three business days and should not be automatically denying individuals where the information cannot be obtained by PICS.

Please discuss these potential problematic areas with other PICS program officials so as to receive their input on these issues. If you determine that the facts as presented above are correct, please make every possible effort to take corrective measures. I am also requesting that you submit a written response to me within 30 days outlining the corrective action you plan to take regarding the issues outlined above. The FBI NICS Program Office is very interested in the status of any corrective actions Pennsylvania takes on these issues. If you have any questions regarding the audit findings, please contact Mr. Stephen Koval, Supervisory Management Analyst, at (304) 625-2932.

Sincerely,



Ralph Calvin Sieg
Acting Chief
Programs Support Section
Criminal Justice Information
Services Division

1 - Corporal John Albring
Bureau of Technology Services
Operations Division
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110