

The NICS failing to keep guns from dangerous people

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The NICS seal

While the National Instant Criminal Background Check System remains the only square inch of compromise between the nation's divided gun camps, the costly federal program is failing to keep guns away from the dangerously mentally ill.

The White House describes the background check system, also known as NICS, as its “[most important tool](#)” to stopping gun crime. But more than a decade of data from the FBI and public health research reveals broad failings of the system, which has cost at least \$650 million to maintain, a News21 investigation found.

Nearly all sides of the gun debate have devoted resources to strengthening the background check system, confronting technology gaps, coordination failures and privacy concerns.

Thirty states have passed laws mandating mental health reporting to NICS, four of which were added in the last six months. Yet no organization has been able to address the larger concern that NICS is poorly designed to identify those in society most likely to be violent.

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Since the shootings in Newtown, a resurgence of the gun control movement is challenging the status quo. Nonprofit organizations on each side of the gun rights issue are battling like they haven't in years, all trying to shape the country's politics and win over the American people.

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Four months after the elementary school shooting in Newtown, Connecticut lawmakers banned at least 115 types of semi-automatic firearms. Four months after the shooting of a congresswoman and a federal judge in Tucson, lawmakers in Arizona declared the Colt Army Action Revolver the official state gun. The differences reflect the wide divide separating Americans from one end of the country to the other.

“It’s really casting a very wide net to try to find a few people, which is largely an impossible task,” said Dr. Michael Norko, head of forensics at the Connecticut Department of Mental Health and Addiction Services. “It’s not really a good public health measure. We really need to find a better way of doing this.”

Federally licensed gun dealers are required to conduct a background check, either online or by phone, before each firearms sale. Within about 30 seconds, the system searches for prior criminal convictions and in 38 states a history of severe mental illness as judged by a court.

But states are not required under federal law to submit mental health records to NICS. There are no consequences, financial or otherwise, if states choose not to send records, resulting in a national record-keeping system that is riddled with information gaps.

Millions of people who have been forced into hospitals for mental health issues are left out of the system. Only about 30 percent of the 4.4 million estimated mental health records in the U.S. over the last two decades can be found in NICS, according to [research compiled in 2012](#) by the National Consortium for Justice Information and Statistics and the National Center for State Courts.

Those whose names are found in the system are unlikely to try to buy a gun. Out of all gun purchases blocked by the FBI over the last 16 years, fewer than 2 percent were because of mental health status. That amounts to 14,613 blocked sales since 1998.

The files are costly to locate and store, according to interviews with officials from 10 different states. Mental health records can be kept in courthouses, private hospitals and state health facilities across each state. There were 2,083 agencies responsible for providing information for background checks across the country in 2010, including courts, state health departments and psychiatric hospitals, according to the most recent [Bureau of Justice Statistics report](#).

The system is also vastly overinclusive, six public health experts said in interviews.

The names of people who are kept in the database is based on a decades-old definition of “mentally defective,” which relies on court decisions rather than doctors’ orders. Under federal law, individuals with histories of violent psychotic episodes can legally buy guns as long as they never set foot in a courtroom.

Every one of the country’s mass shooters since January 2009 could have slipped through NICS, according to a [July 2014 study](#) by the gun control organization Everytown for Gun Safety.

For example, David Cornell Bennett Jr. – a 22-year-old who killed his ex-girlfriend and her three children in Parsons, Kansas, in 2013 – was sent to a state psychiatric hospital one month before the shooting. He had posted a threatening message on Facebook that had been flagged to local police.

But because Kansas law requires someone to be involuntarily committed – not just sent for short-term evaluation, like Bennett – he would not have been barred from buying a gun. It’s still unknown how he obtained his weapon.

In 12 out of the 110 incidents identified by Everytown, the shooters had demonstrated some evidence of a mental illness, but there was no evidence that any of them had been mentally adjudicated or involuntarily committed for treatment.

Research over the last decade shows that it’s nearly impossible to predict which individuals will commit gun violence, let alone find them through NICS.

“The ability of mental health professionals to pick out who’s going to be violent, it’s not much better than a coin toss. It’s a needle in a haystack,” said Jeffrey Swanson, a medical sociologist from Duke University who studies the intersection of guns and mental illness. “To focus only on mental health is misguided.”

A patchwork of regulation

In addition to the FBI’s annual budget for NICS, the Department of Justice has also handed out \$56 million in state grants over the last five years to improve mental health reporting.

Despite years of investments, some states continue to struggle to submit records.

- Massachusetts has received \$2,323,737 and collected just one record
- Idaho has received \$4,359,500 and collected 4,002 records
- North Dakota has received \$297,267 and collected 18 records
- Oregon has received \$4,542,109 and collected 30,059 records
- Wisconsin has received \$3,481,372 and collected 16,616 records

Thirty states have passed laws that require agencies to report mental health records, with the number of records tripling since 2011. But states continue to report difficulties with interagency coordination, technological abilities and privacy laws.

After Nevada passed a law requiring state offices to submit records, it took more than a year for the courts to comply, Nevada state court administrator Julie Butler said. There's still no way to know if the courts are submitting all their records, she said.

"The onus is really on the courts. We don't know what we don't know. There is no audit mechanism. We're totally reliant on them to report," Butler said. "There's no penalty or mechanism in our law to withhold money."

Florida, which has received \$8.6 million since 2007, has retroactively collected more than 60,000 mental health records since it was blasted in [a report from Mayors Against Illegal Guns](#) that showed the state had far fewer records than less-populated states like Pennsylvania.

As the Florida Department of Law Enforcement began educating clerks from the state's 67 counties and offering funds to help address the backlog, most ultimately complied.

"Nobody wants to say, 'Oh, this happened in my (county) and it may have been prevented if I had just done the reporting,'" said Tim Giesecke, who manages the database for the department.

Still, Florida's recordkeeping is imperfect. A 2014 internal audit of the data found that half of its records were submitted after the 30-day deadline and 4,000 records took more than a year. Additionally, nearly 200 records had incorrect birthdates, making it tough for the system to identify disqualified people.

As the state works to improve its compliance, Giesecke said there are limits to his department's ability to enforce the law.

"We're in law enforcement, we are not mental health professionals," he said. "Our job by law is really to house that information and make it available."

Ten states have submitted fewer than 100 records to NICS, including Rhode Island and Montana. Some states with few NICS records have shared a portion of records with local law enforcement departments, though in Massachusetts that amounts to just 1,200 patients a year.

Most state officials pointed to privacy concerns, outdated computer systems and a potential chilling effect of more reporting meaning fewer seeking mental health treatment.

Federal government officials – along with lobbyists from Everytown for Gun Safety and the gun industry association National Shooting Sports Foundation – continue to push for more records. In 2015, the government will hand out \$58 million in NICS mental health grants, its largest-ever pool of funding.

U.S. Rep. Andy Harris, R-Maryland, who sits on the House Appropriations Committee, said he doesn't support increased funding for NICS.

“Throwing money at the problem hasn't solved the problem in Maryland now for a decade and it won't solve the problem now,” Harris said. “It's become clearer and clearer that we have difficulty restricting people with serious mental illness from acquiring a firearm. We need to think of another way.”

Maryland has received \$10 million in criminal justice grants over the last decade, though it had submitted just 285 records as of last fall. Concerned about his state's poor track record, Harris raised the issue with Attorney General Eric Holder in [a hearing about Justice Department funding](#).

“There are certainly places where the amount of information provided by the states is inadequate and we need to take steps to try to remedy that situation,” Holder said during the hearing. “There's no question, I think, the system as it is designed, technically, I think works.”

Mixed success

Connecticut used \$5 million in grants to create a fully automated mental health reporting system within two years.

Before the overhaul, Connecticut courts faxed hard copies of each involuntary commitment file to the state Department of Public Safety, and then sent it separately to the federal government. Now, the system is updated automatically and 14 years of files can be accessed in real time by state police.

"Everything's been computerized and streamlined," Probate Court administrator Vincent Russo said. He added that the state's new case-management system is already being studied by several other states as a potential model.

Three years after Connecticut began sending mental health records to NICS, however, there is little evidence that the policies are helping to reduce violence in the state, according to a [2013 study](#) by public health researchers from Yale University, Duke University and the University of Connecticut.

Out of 23,292 individuals diagnosed with severe mental illnesses or committed to a mental institution, federal law would have disqualified only 7 percent from purchasing a gun, the study found. The majority of those studied never committed a crime, and most of those who did already had criminal records.

The final report concludes that the laws had a minimal impact on reducing gun violence.

“Background checks to enforce the federal mental health prohibitions – even if they are completely effective – will have a very small impact on overall crime in persons with serious mental illness,” according to the report. “Most of those at risk are unaffected by the law.”

System breakdowns

During one of Ben Hundtoft's last hospital visits, his sister Marjorie remembers warning the emergency room doctor that he wasn't safe to be released.

“The doctor looked right at me and said, ‘It's not against the law to be insane,’” said Marjorie Hundtoft, who lives in Portland, Oregon.

Weeks later, on Jan. 1, 2012, her 32-year-old brother rented a hotel room and killed himself using a gun he'd bought in a nearby shop. Despite more than five years of hospitalizations for psychotic episodes related to his bipolar disorder, Ben Hundtoft was able to purchase the gun legally.

Two years later, Marjorie Hundtoft said she wishes her family had been able to help, but had faced limited options.

“If my brother didn't want to see a psychiatrist, then he wouldn't go. We'd set up appointments, but he wouldn't go,” she said. “At a minimum, I thought he needed some kind of outpatient treatment. They didn't offer that. There's really not much you can do.”

Though he had once attacked his sister and threatened an ex-girlfriend, neither woman had wanted to send him to jail so he never acquired a criminal record.

Norko, the Connecticut forensics official who also worked 15 years in the state's maximum-security psychiatric hospital, said he believes the best approach to preventing firearms-related deaths is giving police the authority to temporarily confiscate weapons in dangerous situations.

Norko is now leading a study on guns that have been seized by police in Connecticut, one of just two states that allow the practice. Most of the 800 cases he's studied involve “regular folks” whose relatives or friends call the police because the person is “sitting there with a gun in their lap and an empty bottle of Jack Daniels,” Norko said.

Gun suicides outnumbered gun homicides nationally by about a 2-to-1 margin in 2012, a News21 investigation found.

In most states, though, the boundaries of a police officer's authority aren't clear. An officer would need to make an exceptionally strong case that a person poses a threat to public safety before removing a gun from his or her home, nearly always requiring permission from a court, said Jim Specht, the communications director for the National Law Enforcement Partnership to Prevent Gun Violence.

Some states have attempted to better identify dangerous individuals before they harm others. California and New York have recently passed controversial legislation that requires doctors and other healthcare professionals to report people who present credible threats to themselves or police.

New Jersey is considering mandating mental health screenings for anyone looking to purchase a firearm, while states like Nevada have turned to similar types of screenings in schools to identify people with potentially dangerous mental illnesses.

Under pressure from lobbyists, records flow in

One of the biggest flaws of the background-check system is that the federal government cannot force states to submit records, according to the Supreme Court's 1997 ruling in *Printz v. U.S.*

The Department of Justice has some bargaining power: Officials have threatened to take away federal grants from states that don't participate in NICS. Those penalties are expected to increase through

2018 if states do not submit at least 90 percent of records. But the government has not yet acted on the warning. Instead, it has awarded an average of \$28 million in grants each year since 2009 to states that opt in.

As the federal government stays out of state battles on NICS, an unlikely pairing of lobbying groups has filled the role – the National Shooting Sports Foundation and Everytown for Gun Safety.

Eighteen states have passed new laws on NICS since 2011. Jake McGuidan, the NSSF's director of government relations and state affairs, said he has claimed victories in about 12 out of 15 states where they have paid lobbyists in the last year.

Sitting in the organization's headquarters in Newtown, Connecticut, McGuidan said the federal government has focused too much on guns in the wake of the shooting at nearby Sandy Hook school. When the administration finally turned its focus to mental health, he said it seemed like an afterthought.

“A lot of the time and effort in D.C. is focused on gun control issues,” he said. “It was almost like, ‘Well, we’re not getting gun control, so now let’s look at other issues.’”

McGuidan says he only needs to walk across the street from the gun-lobby group's national headquarters in Newtown for evidence of the country's mental healthcare breakdown.

He's not referring to the grassy lawn where the Sandy Hook Elementary School once stood – which is just a short drive from the building. Instead, he points to the former grounds of the state psychiatric facility called Fairfield Hills Hospital, which housed about 4,000 mentally ill patients before it closed in 1996.

Today, most of the 16 buildings remain standing, now with peeling paint and cracked windows.

Faced with funding cuts, criticism about poor treatment and a national trend away from large institutions for mental health care, facilities like Fairfield Hills have closed down across the country. Now in most cities and towns, people with severe mental illnesses can only be brought to jail or the emergency room.

Thirty-four states cut mental health spending between 2009 and 2011 – a total of \$1.6 billion – at a time when the demand for mental health services has surged across the country, according to the National Alliance on Mental Illness.

Studies have found a slight correlation between mental illness and violence, though psychiatrists like Linda Stalters maintain that the two issues belong in separate policy realms. The vast majority of people with mental illnesses have never committed a violent crime.

Stalters, the president of Schizophrenia and Related Disorders Alliance of America who has spent years working in emergency rooms, said the core issue is about the lack of treatment, not access to guns.

“The people who are generally going to be using guns are not the people who have a psychiatric diagnosis. We just hear about those,” Stalters said. “There are tens of thousands of people each year who have committed murders that don’t have schizophrenia.”

In Rhode Island, a task force of state officials and advocates spent a year reviewing hundreds of gun crimes and found just one case in which the perpetrator’s name would have been entered into NICS. In that instance, the person had received the gun from someone else, not from a store.

“All the research shows that only a very small percentage of people who may be experiencing some degree of mental illness become violent,” said Craig Stenning, director of the Rhode Island Department of Behavioral Health. He added that the group was concerned the policies would prevent individuals from seeking treatment. “Obviously we want people to seek treatment.”

Protecting privacy and personal freedoms

In the wake of the Virginia Tech shooting in 2007, top White House leaders launched an investigation into mental health and violence-prevention programs across the country.

The final report laid out several warnings about the lack of mental health services nationwide and the failure of states to consistently submit information to NICS. But it also had a straight-forward message for preventing tragedies like the one at Virginia Tech.

“We cannot maintain a free and open society and eliminate the possibility that violence in schools, offices or malls will happen again,” [the report stated](#). It was signed by the U.S. attorney general and the secretaries of education and health and human services.

Concerns about privacy and personal freedoms – predominantly, the Second Amendment – have emerged in nearly every state that refuses to require NICS reporting.

Still, groups like Everytown and the NSSF are optimistic that the remaining states will resolve these issues within the next few years and begin submitting all their records. Once the system begins functioning fully, said McGuidan, the NSSF lobbyist, the existing categories will be enough to stop gun crimes.

“Obviously, we in the firearms industry, we do not want to expand categories of who would be prohibited,” McGuidan said. He argued that his stance is the same as the views of mental health professionals concerned about overinclusion. “We’re on the same page.”

Jake Warner, a communications representative for Everytown, said while there is no “silver bullet to end all gun violence,” he agrees the background-check system remains one of the nation’s strongest policy approaches. The organization has worked with officials in every state to increase records reporting.

But many public health researchers continue to criticize what they describe as a crisis-driven policy approach to identifying potential perpetrators, spurred by high-profile mass shootings.

“Yes, it’s horrible that people get gunned down in schools and shopping malls and movie theaters and places that we think should be safe for everybody to go, but (gun violence) is a much, much, much bigger thing” said Daniel Webster, the director of the Johns Hopkins Center for Gun Policy and Research.

Webster, a Kentucky native who has spent 20 years studying gun violence and policy, said if other experts in his field were asked to choose one type of law they’d like to see in America, it would likely be universal background checks.

He said the current system is not built around the individuals who are most likely to commit violence – those with a history of violence, such as individuals with misdemeanor counts of assault and domestic abuse.

“(NICS) does identify a high-risk group, but it’s pretty small high-risk group. I think there are much bigger fish to fry,” Webster said.



This report is part of the project titled [“Gun Wars: The Struggle Over Rights and Regulation in America.”](#) produced by the Carnegie-Knight News21 initiative, a national investigative reporting project involving top college journalism students across the country and headquartered at the Walter Cronkite School of Journalism and Mass Communication at Arizona State University.