

Mental Health Reporting

Background

Federal law prohibits the sale of firearms and ammunition to certain individuals with a history of mental illness, and requires licensed dealers (but not unlicensed sellers) to request a background check prior to transfer of a firearm to screen out prohibited purchasers.¹ However, federal law does not require states to make mental health information available to the federal or state agencies that perform background checks,² and many states fail to report to the FBI's National Instant Criminal Background Check System (NICS) all relevant mental health information necessary for a background check to identify persons who are prohibited from purchasing firearms.

Between November 1999 and November 2007, the number of disqualifying mental health records in the NICS Mental Defective File increased from about 90,000 to about 400,000.³ However, the U.S. General Accounting Office has estimated that there should be at least 2.7 million such records in the database.⁴ Hence, the total number of records currently reported to NICS is still a small fraction of the number of persons prohibited from purchasing firearms due to a history of mental illness. In 2005, of the total number of prospective purchasers who were denied following an FBI background check, only 0.5% were denied for mental health reasons.⁵

When mental health information is submitted to NICS, it can be effective at preventing firearm transfers by licensed dealers to the mentally ill. During the first three years after Virginia began submitting certain mental health information to NICS, Virginia's disqualifying mental health records resulted in 438 denials of firearm purchases.⁶

However, even states that report mental health information to NICS may fail to report *all* disqualifying mental health records due to loopholes in state law. As a result of the

¹ 18 U.S.C. § 922(d)(4), (t). Sales by unlicensed sellers are not subject to background checks under federal law. For additional information on sales by unlicensed sellers, see the section on [Private Sales](#).

² See 28 C.F.R. § 25.4; Legal Community Against Violence, *Lessons From Virginia Tech: Recommendations for State Law Changes to Close Loopholes in Background Check Systems* 4 n.16 (May 2007), at http://www.lcav.org/pdf/memo_re_state_loopholes.pdf.

³ U.S. General Accounting Office, *Gun Control: Options for Improving the National Instant Criminal Background Check System* 7-8 (Apr. 2000), at <http://www.gao.gov/archive/2000/gg00056.pdf>; 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. 200,000 records were submitted by California in October 2007. *Id.*

⁴ *Gun Control*, *supra* note 3, at 59.

⁵ U.S. Department of Justice, *Background Checks for Firearm Transfers, 2005*, Bureau of Justice Statistics Bulletin 5 (Nov. 2006), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/bcft05.pdf>.

⁶ Rachel L. Brand, Assistant Attorney General for Legal Policy, U.S. Department of Justice, *Lethal Loopholes: Deficiencies in State and Federal Gun Purchase Laws*, Statement before the House Committee on Oversight and Government Reform, Subcommittee on Domestic Policy, U.S. House of Representatives 12 (May 10, 2007), at <http://www.usdoj.gov/olp/pdf/guns07a.pdf>.

underreporting of mental health information by some states, mentally ill individuals have been able to obtain firearms even though they are prohibited by law from doing so.

The most tragic incident involving such a loophole occurred in April 2007, when Virginia Polytechnic Institute and State University (Virginia Tech) student Seung-Hui Cho shot and killed 32 people and injured 17 others before committing suicide on the Virginia Tech campus in Blacksburg, Virginia.⁷ Cho was, in fact, prohibited from purchasing a firearm under federal law because of a history of mental illness.⁸ However, Cho was able to purchase firearms through two licensed dealers after two background checks. While Virginia law at that time required that some mental health information be submitted to NICS, it did not require reporting of orders adjudicating persons to be a danger to themselves or others if they were only directed to outpatient, as opposed to inpatient, mental health treatment.⁹ In response to the shooting, a panel convened by Virginia Governor Timothy Kaine issued a report recommending that all states report to NICS *all* information necessary to conduct federal background checks for firearm transfers.¹⁰

Similarly, soon after the shooting, Secretary of the Department of Health and Human Services Michael Leavitt, Secretary of the Department of Education Margaret Spellings, and then-Attorney General Alberto Gonzales issued a report finding that state laws and practices do not uniformly ensure that information regarding persons restricted from possessing firearms is appropriately captured and available to NICS, and recommending that states submit all relevant disqualifying information to NICS.¹¹ The National Association of Attorneys General also issued a report making the same recommendation.¹²

In an ABC News poll conducted after the Virginia Tech shooting, 83% of respondents answered that states should be required to report mentally ill people to a federal database, in order to prevent them from buying guns.¹³

The FBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) also are encouraging states to provide more mental health records to NICS.¹⁴ Nevertheless, as of April 30, 2007, the FBI identified only 23 states as having submitted mental health

⁷ *Mass Shootings at Virginia Tech, April 16, 2007, Report of the Review Panel Presented to Governor Timothy M. Kaine* 5 (Aug. 2007), at <http://www.governor.virginia.gov/TempContent/techPanelReport.cfm>.

⁸ A Virginia special justice declared Mr. Cho to be “an imminent danger” to himself as a result of mental illness on December 14, 2005, and directed Mr. Cho to seek outpatient treatment. *Id.* at 48, 71.

⁹ *Id.* at 71-73.

¹⁰ *Id.* at 76.

¹¹ *Report to the President on Issues Raised by the Virginia Tech Tragedy* 10-11 (June 13, 2007), at <http://www.hhs.gov/vtreport.pdf>.

¹² National Association of Attorneys General Task Force on School and Campus Safety, *Report and Recommendations* (Sept. 2007), at <http://www.naag.org/assets/files/pdf/2007.TaskForceOnSchoolAndCampusSafety.pdf>.

¹³ ABC News Poll, *VA Tech, Guns, and Mental Illness* (Apr. 22, 2007), at <http://abcnews.go.com/images/US/1037a1VaTechGuns.pdf>.

¹⁴ Brand, *supra* note 6, at 10-11.

records to the FBI for inclusion in NICS.¹⁵ Thirteen of the 23 had submitted less than 50 records.¹⁶ Some had submitted only one record.¹⁷ A few more states began reporting mental health records to NICS soon after the Virginia Tech shooting. Nevertheless, according to Attorney General Michael Mukasey, as of November 2007, only 32 states had submitted mental health records to the FBI for inclusion in NICS.¹⁸

States that do not submit mental health records to NICS may nevertheless require a check of their own mental health records prior to a firearm transfer.¹⁹ However, a person attempting to purchase a firearm in one state may have a disqualifying mental health history in another state. For example, of the 438 denials of firearm purchases by persons with mental health histories in Virginia in the three years after Virginia began submitting its mental health records to NICS, 378 were attempts to purchase firearms in states other than Virginia.²⁰ Thus, a search of in-state mental health records ensures that a person disqualified on mental health grounds will not be allowed to purchase a firearm in the state where the mental health record exists, but does not prevent such a person from purchasing a firearm in another state.

Summary of Federal Law

The Gun Control Act of 1968 prohibits any person from selling or otherwise transferring a firearm or ammunition to any person who has been “adjudicated as a mental defective” or “committed to any mental institution.”²¹ According to federal regulations, a person has been “adjudicated as a mental defective” if a court, board, commission or other lawful authority has determined that he or she, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) is a danger to himself, herself, or others, or (2) lacks the mental capacity to contract or manage his or her own affairs.²² The term “adjudicated as a mental defective” explicitly includes a finding of not guilty by reason of insanity or incompetence to stand trial.²³

Federal regulations define a person as “committed to a mental institution” if a court, board, commission, or other lawful authority has formally committed him or her to a mental institution.²⁴ The term is defined to include involuntary commitments, but does not include persons who are admitted to a mental institution voluntarily or for observation.²⁵

¹⁵ These states are: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Iowa, Kansas, Kentucky, Maryland, Michigan, Missouri, New Hampshire, New York, North Carolina, Ohio, South Carolina, Tennessee, Utah, Virginia, Washington and Wyoming. Brand, *supra* note 6, at 11-12.

¹⁶ *Id.* at 11.

¹⁷ *Id.*

¹⁸ Mukasey, *supra* note 3.

¹⁹ *See infra* p. 127.

²⁰ Brand, *supra* note 6, at 12.

²¹ 18 U.S.C. § 922(d)(4). Such persons are prohibited from possessing firearms. 18 U.S.C. § 922(g)(4).

²² 27 C.F.R. § 478.11.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* The term includes commitments for mental defectiveness, mental illness, and other reasons, such as drug use. *Id.*

The Brady Handgun Violence Prevention Act (the “Brady Act”) requires licensed dealers to request a background check prior to transfer of a firearm.²⁶ Background checks are performed through a search of the NICS system.²⁷ The NICS system includes three federal databases; two of these - the Interstate Identification Index and the NICS Index - contain information used to determine whether a person is disqualified from possessing firearms on the basis of mental health.

The Interstate Identification Index (III) includes mental health information that states have reported to the FBI as part of their criminal history records, such as findings of not guilty by reason of insanity or incompetence to stand trial. The NICS Index includes two files into which federal agencies and the states can enter information about individuals who have a disqualifying mental health history – the Mental Defective File and the Denied Persons File.²⁸ The Denied Persons File includes the names of individuals who are prohibited from purchasing a firearm but does not identify the reason they are prohibited.²⁹ Hence, states may avoid transferring private mental health information by identifying persons to NICS as prohibited purchasers without indicating that they are denied due to a mental health history.³⁰

Federal law does not require states to submit mental health information to NICS; participation is strictly voluntary.³¹ However, effective background checks on prospective firearm purchasers depend on having complete, accurate information in the NICS database. Therefore, to fully capture all records that would disqualify someone under federal law from purchasing or possessing firearms due to mental illness, state law should require that states report to NICS whenever a court, board, or other lawful authority:

- Determines that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself, herself, or

²⁶ 18 U.S.C. § 922(t).

²⁷ *Id.* In most states, dealers request background checks by contacting the FBI, which performs these background checks by searching NICS. Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Sales, 2005* 3-4 (Nov. 2006), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ssprfs05.pdf>. Only 13 states – called Point of Contact states – require dealers to contact a state agency, which searches NICS and other in-state databases for information regarding the prospective purchaser. *Id.* For more information, see the section on [Background Checks](#).

²⁸ Brand, *supra* note 6, at 10.

²⁹ *Id.*

³⁰ *Id.*

³¹ See 28 C.F.R. § 25.4.; Brand, *supra* note 6, at 5. There is considerable uncertainty regarding whether a federal statute requiring states to disclose mental health records to the FBI would violate the Tenth Amendment. In *Printz v. U.S.*, 521 U.S. 898 (1997), a 5-4 decision, the Supreme Court struck down the interim provisions of the Brady Act obligating local law enforcement officers to conduct background checks on prospective handgun purchasers. The Court held that Congress cannot compel state officials to enact or enforce a federal regulatory program. See also Legal Community Against Violence, *Lessons From Virginia Tech: Recommendations for State Law Changes to Close Loopholes in Background Check Systems* 4 n.16 (May 2007), at http://www.lcav.org/pdf/memo_re_state_loopholes.pdf.

others (even if that person is not involuntarily committed to a mental institution as a result);

- Determines that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease lacks the mental capacity to contract or manage his or her own affairs (depending on state law, this may include a finding that a person is “incapacitated” or disabled by mental illness, or it may result in the appointment of a guardian or conservator);
- Finds a person not guilty by reason of insanity, mental disease or defect, or lack of mental responsibility in a criminal case;
- Finds a person guilty but insane in a criminal case;
- Finds a person incompetent to stand trial; or
- Formally commits a person involuntarily to a mental institution or asylum for mental defectiveness, mental illness, and other reasons, such as drug use.³²

Federal and state privacy laws are frequently cited as reasons why states do not provide complete mental health records to the FBI.³³ However, the federal Health Insurance and Portability and Accountability Act of 1996 (HIPAA) and implementing regulations restrict disclosure of protected health information only by health care plans, providers, and clearinghouses.³⁴ In addition, HIPAA and its regulations permit any disclosure made:

- When authorized by the patient;
- When required by law, including state law;
- For a law enforcement purpose in response to a relevant and specific request from a law enforcement official; or
- To prevent or lessen a serious and imminent threat to the health and safety of a person or the public.³⁵

In addition, federal regulations include requirements to ensure the privacy and security of mental health records that have been submitted to NICS. Access to data stored in NICS is tightly controlled, and safeguards protect against unauthorized disclosures.³⁶

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,

³² 27 C.F.R. § 478.11. Note that state laws may prohibit additional categories of persons from purchasing or possessing firearms on the basis of mental illness. Detailed information on these laws is contained in the section on [Prohibited Purchasers](#).

³³ Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Records Included in Presale Background Checks: Mental Health Records, Domestic Violence Misdemeanor Records, and Restraining Orders, 2003* (Aug. 2004); Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Sales, 2005* 8 (Nov. 2006), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ssprfs05.pdf>.

³⁴ 45 C.F.R. § 164.104.

³⁵ 45 C.F.R. §§ 164.508, 164.512(a), (f), (j). State privacy laws are similar. See *Mass Shootings at Virginia Tech*, *supra* note 7, at 65. LCAV has not conducted an independent survey of all 50 states’ privacy laws with respect to mental health records.

³⁶ 28 C.F.R. § 25.1, *et seq.*

provides financial incentives for states to provide to NICS information relevant to whether a person is prohibited from possessing firearms, including the names and other relevant identifying information of persons adjudicated as a mental defective or those committed to mental institutions.³⁷

The Act also changes the standard for persons deemed to be “adjudicated as a mental defective” or “committed to a mental institution” by a federal agency or department. Such adjudications or commitments by federal agencies and departments are “deemed not to have occurred” for purposes of the federal prohibition against purchase or possession of firearms if:

- The adjudication or commitment has been “set aside or expunged;”
 - The person has been “fully released or discharged from all mandatory treatment, supervision, or monitoring;”
 - A court, board, commission, or other lawful authority has found the person no longer suffers from the mental health condition that was the basis of the adjudication or commitment;
 - The person has been found to be rehabilitated “through any procedure available under law;”
 - The adjudication or commitment was based solely on a medical finding of disability without a hearing before a court, board, commission, or other lawful authority, and the person has not otherwise been adjudicated a mental defective;
- or
- The person has been granted “relief” under a “relief from disabilities” program established by the federal agency or department in accordance with the Act’s requirements.³⁸

Under the Act, states are eligible to receive a waiver of the 10% matching requirement for National Criminal History Improvement Grants³⁹ if they certify to the Attorney General at least once every two-year period that they have provided at least 90% of relevant records concerning persons who are prohibited from purchasing or possessing a firearm.⁴⁰ 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, including mental health information, to NICS and to perform background checks pursuant to the Brady Act.⁴¹

³⁷ Pub. L. No. 110-180, §§ 102, 104, 121 Stat. 2559 (2008).

³⁸ *Id.*, §§ 101(c)(1)(A), (1)(B), (1)(C), (2)(B). Under prior law the prohibition on persons “adjudicated as a mental defective” or “committed to a mental institution” was permanent.

³⁹ *See generally* 42 U.S.C. § 14601. National Criminal History Improvement Grants are grants made by the federal government to states for programs to upgrade their criminal history record information systems. The federal grant may not exceed 90% of the costs of the program incurred by a state. *Id.*, § 14601(d).

⁴⁰ *Id.*, § 102. The Act also authorizes the Attorney General to withhold a certain percentage of the funding the state would receive under the Omnibus Crime Control and Safe Streets Act of 1968 for states that fail to submit a certain percentage of their relevant records. *Id.* § 104.

⁴¹ *Id.*, § 103(a), (b).

However, in order to be eligible for the grants authorized by the Act, a state must implement a “relief from disabilities” program that meets the Act’s requirements.⁴² More specifically, the state program must:

- Allow a person who has been adjudicated 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;⁴³
- Provide that a state court, board, commission, or other lawful authority shall grant a person this “relief” (thereby making the person once again eligible to purchase and possess firearms), “pursuant to State law” and in accordance with due process;⁴⁴
- Provide that a state court, board, commission, or other lawful authority will grant the relief if the circumstances regarding the adjudication or commitment, and the person's record and reputation, are “such that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest”;⁴⁵ and
- Permit a person whose application for relief is denied to file a petition with the appropriate state court for judicial review of the denial.⁴⁶

The Act provides that when an application for relief is granted under a state program, the adjudication or commitment that formerly rendered the person prohibited from purchasing or possessing firearms is then “deemed not to have occurred” for purposes of federal law.⁴⁷

In addition, the Act requires the Attorney General to establish regulations and protocols for protecting the privacy of mental health information provided by states to NICS.⁴⁸ The Attorney General must work with states, local law enforcement, and the mental health community to establish these regulations and protocols, and must meet with any mental health group seeking to express its views concerning them.⁴⁹

⁴² *Id.*, § 103(c)

⁴³ *Id.*, § 105(a)(1).

⁴⁴ *Id.*, § 105(a)(2).

⁴⁵ *Id.*

⁴⁶ *Id.*, § 105(a)(3).

⁴⁷ *Id.*, § 105(b).

⁴⁸ *Id.*, § 102(d).

⁴⁹ LCAV publicly has expressed concerns about the NICS Improvement Amendments Act of 2007, including: (1) the Act changes the standard by which mental health records are required to be submitted to NICS by federal agencies, which will result in far fewer records being submitted; and (2) the Act requires that federal agencies, and states that participate in the grant program, create relief from disability programs to restore the rights of some prohibited purchasers with mental health histories. Overall, the bill creates new loopholes that may allow dangerous individuals to gain access to firearms. *See Legal Community Against Violence, House of Representative Passes “NICS Improvement Act of 2007” with Troubling Amendments* (June 15, 2007) at: http://www.lcav.org/pdf/HR_2640.pdf.

SUMMARY OF STATE LAWS GOVERNING THE REPORTING OF MENTAL HEALTH INFORMATION⁵⁰

States that Authorize or Require Reporting of Mental Health Records to NICS

Alabama	Ala. Code § 22-52-10.8
Colorado	Colo. Rev. Stat. §§ 13-5-142, 13-9-123, 15-14-102, 18-4-412(4), 19-1-304
Connecticut	Conn. Gen. Stat. §§ 17a-500(b), 29-36f(b)(8), 29-36l, 29-38b
Florida	Fla. Stat. Ann. § 790.065
Georgia	Ga. Code Ann. §§ 16-11-172(b), 35-3-34(e); Ga. Comp. R & Regs. 140-2-.17(6)
Illinois	430 Ill. Comp. Stat. 65/3.1, 65/4(3), 65/8.1; 740 Ill. Comp. Stat. 110/12(b)
Iowa	Iowa Code §§ 690.4, 692.17, 724.17
Kansas	Kan. Stat. Ann. §§ 59-2946, 75-7c25
Maine	Me. Exec. Order No. 02 FY 08/09 (July 3, 2007)
Michigan	Mich. Comp. Laws §§ 28.422, 28.243, 330.1464a, 700.5107, 769.16a – 769.16b; Mich. Admin. Code r. 28.5306
Missouri	Mo. Rev. Stat. §§ 43.503(6), 43.543, 552.030(7), 610.120(1), 630.140
Virginia	Va. Code Ann. §§ 19.2-389, 19.2-390, 37.2-819, 37.2-1014; Va. Exec. Order No. 50 (April 30, 2007)
Washington	Wash. Rev. Code Ann. §§ 9.41.040, 9.41.090, 9.41.094, 9.41.097, 9.41.170, 10.97.030(4), 10.97.045, 43.43.745(3); 71.05.390(17), 71.34.340

States that Authorize or Require Reporting of Mental Health Records for In-State Transfers Only

Arkansas	Ark. Code Ann. §§ 5-2-310(b), 5-2-314, 20-47-214, 20-47-215, 2007 Ark. Acts 463, 2007 Ark. S.B. 184 (March 23, 2007)
California	Cal. Welf. & Inst. Code §§ 8100, 8103 – 8105; Cal. Penal Code § 12076
Delaware	Del. Code Ann. tit. 11, §§ 1448A(a), 8509; tit. 16, §§ 5001, 5161

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⁵⁰ Many states report findings of not guilty by reason of insanity or incompetence to stand trial as part of their criminal history information to the Interstate Identification Index (III). The Bureau of Justice Statistics has determined that mental health information appears in the criminal histories of the following 24 states: Alabama, Alaska, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Iowa, Maine, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New York, Oklahoma, South Dakota, Tennessee, Utah, Vermont, Virginia, and Washington. Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Sales, 2005* 84 (Nov. 2006) at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ssprfs05.pdf>. In some cases these states have no statute or formal regulation requiring this reporting. As a result, it is not clear that the records submitted are complete.

States that Authorize or Require Reporting of Mental Health Records for In-State Transfers Only (continued from previous page)

Hawaii	Haw. Rev. Stat. Ann. §§ 134-3.5, 334-2.5(c)(4); 334-60.2, 704-406, 704-411
Maryland	Md. Code Ann., Health-Gen. § 10-605; Md. Code Ann., Pub. Safety §§ 5-117, 5-118, 5-121; Md. Code Regs. 29.03.01.11(9), 29.03.01.26(5)
Massachusetts	Mass. Gen. Laws ch. 123, § 36; ch. 140, §§ 129B(2), 131(e)
Minnesota	Minn. Stat. §§ 245.041, 253B.09, 624.7131, 624.7132,
Nebraska	Neb. Rev. Stat. Ann. §§ 69-2409.01, 69-2402, 69-2410
New Jersey	N.J. Stat. Ann. § 2C:58-3; N.J. Admin. Code §§ 10:7-7.1, 13:54-1.4 – 13:54-1.6
New York	N.Y. Penal Law §§ 265.00 – 265.01, 400.00; N.Y. Crim. Proc. Law §§ 330.20, 730.60; N.Y. Correct. Law § 439; N.Y. Mental Hyg. Law § 9.11; N.Y. Comp. Codes R. & Regs. tit. 14, § 541.2
Oregon	Or. Rev. Stat. §§ 166.412, 166.432, 426.130
Pennsylvania	18 Pa. Cons. Stat. §§ 6109(i.1), 6111, 6111.1; 37 Pa. Code §§ 33.103(e), 33.120
Utah	Utah Code Ann. § 53-10-208.1
Wisconsin	Wis. Stat. § 51.20(13)(cv)(4)

States that Require a Transferee to Authorize Disclosure of Mental Health Records

Illinois	430 Ill. Comp. Stat. 65/4(3)
Hawaii	Haw. Rev. Stat. Ann. §§ 134-2(c), 134-3.5(2)
Maryland	Md. Code Regs. 29.03.01.03(A)(8)
Minnesota	Minn. Stat. § 624.7131
New Jersey	N.J. Stat. Ann. § 2C:58-3(e)
Washington	Wash. Rev. Code Ann. § 9.41.094

Description of State Laws Regarding Mental Health Reporting

1. *States that Authorize or Require Reporting of Mental Health Records to NICS:*
The following 13 states have statutes or formal regulations explicitly requiring or authorizing submission of at least some mental health records to the FBI for inclusion in NICS: Alabama, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Michigan, Missouri, Virginia, and Washington.⁵¹

⁵¹ This description reflects only state statutes and formal regulations explicitly authorizing or requiring the disclosure of mental health records to NICS and state agencies. State agencies may have informal policies or procedures that authorize or require additional reporting. In addition, states may have entered into informal agreements with the FBI regarding submission of records to NICS. Brand, *supra* note 5, at 12. Because they are likely to be unpublished, LCAV has not completed a survey of these informal policies, procedures, and agreements.

a. *States that Require Reporting of At Least Some Mental Health Records to NICS:* Eight states have statutes or regulations that make reporting of certain mental health information to NICS mandatory: Alabama, Colorado, Connecticut, Georgia, Illinois, Iowa, Kansas, and Maine.

- *States that require the reporting of all relevant mental health records to NICS:* Connecticut and Illinois both require state agencies to report to NICS all persons prohibited by federal law from purchasing or possessing a firearm due to mental illness.

Connecticut: In Connecticut, the Department of Public Safety is required to report to NICS' Denied Persons File the name, date of birth and physical description of any person "prohibited from possessing a firearm" pursuant to federal law. The Department of Public Safety, the Department of Mental Health and Addiction Services, and Judicial Department are required to enter into a memorandum of understanding with the FBI for the purpose of implementing NICS.

Illinois: In 2007 Illinois enacted a law requiring the Department of State Police (DSP) and the Department of Human Services, in accordance with state and federal law regarding confidentiality, to enter into a memorandum of understanding with the FBI for the purpose of implementing NICS.⁵² Effective June 1, 2008, the DSP must report the name, date of birth, and physical description of any person prohibited from possessing a firearm pursuant to Illinois or federal law to the NICS Denied Persons File. Court clerks, the Department of Human Services, and all public or private hospitals and mental health facilities are required to inform the DSP of any such individual.⁵³ The information disclosed is deemed privileged and confidential, and must be provided in such a way as to guarantee that no information is released beyond what is necessary to determine the eligibility of the person to possess a firearm.⁵⁴

- *States that require the reporting of some, but not all, mental health records to NICS:* Six states (Alabama, Colorado, Georgia, Iowa, Kansas, and Maine) require reporting of some, but not all, mentally ill persons prohibited by federal law from purchasing or possessing firearms to the NICS database.⁵⁵

Alabama: Alabama requires judges who enter final orders for involuntary commitment for inpatient treatment to the Department of Mental Health and Mental Retardation or a Veterans' Administration hospital, to forward such orders to the state's

⁵² 2007 Ill. Laws 564, S.B. 940, Public Act 95-564, § 5 (Aug. 31, 2007) (amending 430 Ill. Comp. Stat. 65/3.1).

⁵³ *Id.* § 10 (amending 740 Ill. Comp. Stat. 110/12); 2007 Ill. Laws 581, S.B. 1094, Public Act 95-581, § 5 (Aug. 31, 2007) (amending 430 Ill. Comp. Stat. 65/8.1).

⁵⁴ 740 Ill. Comp. Stat. 110/12(b).

⁵⁵ For the number of records submitted by each state to the Mental Defective File as of April 30, 2007, see Brand, *supra* note 6, at 11. Note that states can alternatively submit the names of persons disqualified from firearm purchase and possession to the Denied Persons File without identifying the reason they are disqualified. *Id.* at 10. It is not clear how many names of persons disqualified for mental health reasons the states have submitted to the Denied Persons File. *Id.*

Criminal Justice Information Center. This requirement applies only to commitment orders based on evidence that the person has a history of inappropriate use of firearms or poses a threat to use firearms inappropriately. The Criminal Justice Information Center must enter the information into the NICS Denied Persons File.

Colorado: In Colorado, court clerks are required to report periodically to NICS the name of each person determined by the court to be: incapacitated; committed to the custody of the Division of Alcohol and Drug Abuse in the Department of Human Services; ordered for involuntary certification for short-term treatment of mental illness; ordered for extended certification for treatment of mental illness; or ordered for long-term care and treatment for mental illness.

Georgia: In Georgia, court clerks are required to provide the Georgia Crime Information Center with information regarding all individuals adjudicated mentally incompetent to stand trial or not guilty by reason of insanity, or involuntarily hospitalized as an inpatient as a risk to self or others, or unable to care for himself or herself.⁵⁶ However, the Center is required to forward to NICS only information concerning persons involuntarily hospitalized; it is authorized to forward other information to NICS.

Iowa: In Iowa, the warden of the Iowa Medical and Classification Center must forward to the state Department of Public Safety and the FBI fingerprint records and photographs of persons committed to that institution.

Kansas: Kansas requires all district courts to forward all orders of involuntary commitment for care and treatment to the Kansas Bureau of Investigation for entry into “the appropriate state and federal databases.”

Maine: On July 3, 2007, the Governor John Baldacci of Maine issued an Executive Order requiring the Maine Department of Public Safety to work cooperatively with the Judicial Branch to collect the identities of individuals determined by a court to be not guilty by reason of insanity or not competent to stand trial in a criminal matter. The Department must then work with the FBI to transmit this information to NICS.⁵⁷

b. States that Authorize Reporting of Mental Health Records to NICS: The following five states authorize, but do not require, reporting of certain mentally ill individuals to NICS: Florida, Michigan, Missouri, Virginia and Washington. Only Florida authorizes the reporting of all relevant disqualifying mental health information.⁵⁸

Florida: Effective February 1, 2007, court clerks in Florida must submit to the Department of Law Enforcement for entry into an automated database the names of persons

⁵⁶ Georgia maintains records of involuntary hospitalizations only for five years.

⁵⁷ The Maine Executive Order also created a Task Force to evaluate the state record systems as they relate to the timely transmission to federal officials of final adjudication rulings concerning involuntary mental health commitments. Me. Exec. Order No. 02 FY 08/09 (July 3, 2007).

⁵⁸ Many states report fewer records to NICS than their laws allow. See Brand, *supra* note 6, at 11-12. For this reason, state laws that authorize but do not require the reporting of mental health records to NICS are less effective in terms of ensuring that complete information is reported to NICS.

who are prohibited from purchasing a firearm based on adjudications of mental defectiveness or commitments to mental institutions.⁵⁹ The Department is authorized to disclose the collected data to agencies of the federal government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer.⁶⁰

Michigan: In Michigan, upon entry of a court order directing that an individual be involuntarily hospitalized or involuntarily undergo a program of alternative treatment or a program of combined hospitalization and alternative treatment, the court must immediately order the Department of State Police to enter the court order into the Law Enforcement Information Network (LEIN). Findings of legal incapacity and not guilty by reason of insanity are treated in the same manner. The FBI has access to this information.⁶¹

Missouri: In 2007, Missouri enacted a law making available to the Missouri State Highway Patrol for reporting to NICS the records and files of any person detained because of a mental disorder who presents a likelihood of serious harm to himself or to others.⁶²

Virginia: In Virginia, the chief law enforcement officer of a county or city must ensure that any acquittal by reason of insanity is reported to the Department of State Police (DSP). In addition, court clerks are required to certify and forward a copy of all court orders requiring involuntary commitment of an individual, or containing a finding that an individual is “incapacitated,” to DSP.⁶³ DSP is then authorized to forward this information to the FBI for inclusion in the NICS database.⁶⁴ In response to the Virginia Tech tragedy, Virginia Governor Timothy Kaine issued an Executive Order on April 30, 2007 directing all executive branch employees and law enforcement to consider court-ordered outpatient treatment as involuntary admission to a mental health facility, and to report it to the State Police and NICS.⁶⁵

⁵⁹ Florida defines “adjudicated as a mental defective” or “committed to a mental institution” as those terms are defined under federal law.

⁶⁰ While Florida law allows the disclosure of all relevant mental health records to NICS, it is not clear to what extent these records have been submitted to NICS.

⁶¹ Mich. Admin. Code r. 28.5306 grants a federal criminal justice agency access to LEIN data under certain conditions.

⁶² 2007 Mo. S.B. 3 § A (approved by Governor July 13, 2007) (amending Mo. Rev. Stat. § 630.140).

⁶³ The definition of “incapacitated” under Virginia law is not as broad as the definition of “mental defective” under federal law. Virginia law defines “incapacitated person” as an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to: (i) meet the essential requirements for his or her health, care, safety, or therapeutic needs without the assistance or protection of a guardian; or (ii) manage property or financial affairs or provide for his or her support or for the support of his or her legal dependents without the assistance or protection of a conservator. Va. Code Ann. §§ 18.2-308.1:2, 37.2-1000. A person found to be a danger to himself, herself, or others is a “mental defective” under federal law, but is not necessarily “incapacitated” under Virginia law. See 27 C.F.R. § 478.11.

⁶⁴ A 2002 Virginia Attorney General Opinion determined that the Department of State Police is authorized to provide mental health information to the FBI so long as the information is kept confidential and used only to determine a person’s eligibility to possess, purchase or transfer a firearm. Va. Att’y Gen. Op. No. 01-062, 2002 Va. AG LEXIS 72 (April 4, 2002).

⁶⁵ Va. Exec. Order No. 50 (April 30, 2007).

Washington: In Washington, information and records regarding involuntary commitments in excess of 14 days may be disclosed only for specified purposes, including to law enforcement officers as necessary to enforce the prohibition against firearm possession.⁶⁶ In addition, an application to purchase a handgun constitutes a waiver of confidentiality and written request that the Department of Social and Health Services, Mental Health Institutions and Other Facilities release information relevant to the person's eligibility to purchase a handgun.

2. *States that Authorize or Require Reporting of Mental Health Records to an In-State Database Only:* Fourteen states (Arkansas, California, Delaware, Hawaii, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Utah, and Wisconsin) collect some of their own state mental health records and check them prior to approving a firearm transfer, even though they have no statute or formal regulation authorizing submission of that information to NICS.⁶⁷ This ensures that a background check will identify mentally ill individuals whose records have been reported in the state where the mental health record exists, but will not prevent such a person from purchasing a firearm in another state. Nine states (California, Delaware, Hawaii, Massachusetts, New Jersey, Oregon, Pennsylvania, Utah, and Wisconsin) search in-state mental health records in connection with all firearm transfers; five states (Arkansas, Maryland, Minnesota, Nebraska and New York) search records only for transfers of certain firearms. None of these states authorize or require the collection of the records of all mentally ill persons prohibited by federal law from possessing firearms.

a. *States that Search In-State Mental Health Records For Transfers of All Types of Firearms:* Arkansas, California, Delaware, Hawaii, Massachusetts, New Jersey, Oregon, Pennsylvania, Utah, and Wisconsin collect some mental health information in a state database for use in connection with firearm transfers. In all of these states except Arkansas a state agency is required to search that database prior to transfers of all types of firearms.⁶⁸ None of these states explicitly authorize or require submission of this information to NICS.⁶⁹

⁶⁶ For an extensive discussion of Washington's laws regarding the reporting of mental health information for firearm transfers, see Rob McKenna, Attorney General of the State of Washington, *White Paper: Restricting Access to Firearms by Persons with Mental Health Commitments in Washington State* (Dec. 13, 2007), at

[http://www.atg.wa.gov/uploadedFiles/Home/News/Press_Releases/2007/White%20Paper%20FINAL%20\(Complete\)%20\(12-13-07\).pdf](http://www.atg.wa.gov/uploadedFiles/Home/News/Press_Releases/2007/White%20Paper%20FINAL%20(Complete)%20(12-13-07).pdf).

⁶⁷ In addition, Ohio and Oklahoma gather mental health information, but state law requires them to utilize this information only when issuing concealed handgun permits. Ohio Rev. Code Ann. §§ 2923.129(B)(1), 5122.311; Ohio Admin. Code 109:5-3-01; Okla. Stat. tit. 21, § 1290.12(A)(11). Arizona, Kentucky, Louisiana and the District of Columbia report mental health information to a centralized database, but there is no indication in statutes or regulations for these jurisdictions that the database is used in connection with firearm transfers or sent to the FBI. Ariz. Rev. Stat. § 36-540(N); Ky. Rev. Stat. Ann. §§ 202B.200, 17.150; La. Rev. Stat. Ann. §§ 15:578, 15:590, 15:591; D.C. SCR-MH Rule 6.

⁶⁸ Arkansas law is ambiguous with respect to the circumstances under which its database of mental health records created for use in connection with firearm transfers is searched.

⁶⁹ In addition, in North Carolina, a report of the disposition of criminal charges must be made to the State Bureau of Investigation within 60 days. N.C. Gen. Stat. § 15A-1382. A "disposition" may be a finding of a defendant's incapacity to proceed, or a verdict of not guilty on the ground that the defendant was insane at the time of the commission of the offense charged. *Id.*, § 15A-1381. An applicant for a permit to purchase

Arkansas: In 2007, Arkansas enacted a law stating that its purpose is to require the submission of information to a confidential database that may only be used for firearm sales or transactions.⁷⁰ The law requires a court clerk to forward to the Arkansas Crime Information Center a copy of any order:

- Finding that a defendant lacks the capacity to understand the proceeding against him or her or to assist effectively in his or her own defense as a result of mental disease or defect;
- Committing a person acquitted of a crime by reason of a mental disease or defect, who continues to be affected by the mental disease or defect, to the custody of the director of the Department of Health and Human Services for an examination by a psychiatrist or a licensed psychologist;
- Detaining a person for treatment for 45 days after determining that a person is a danger to self or others; or
- Detaining a person beyond 45 days because he or she continues to be a danger to self or others.

These orders must be submitted to the Center as soon as they are filed with the court. The statute does not indicate whether these orders are searched prior to all in-state firearm transfers or whether the orders are reported to NICS.

California: In California, with certain limited exceptions, courts must immediately report to the state Department of Justice when they adjudicate someone to be a danger to others as a result of a mental disorder or mental illness, a mentally disordered sex offender, not guilty of a crime by reason of insanity, or mentally incompetent to stand trial. Mental health facilities must immediately report to the state Department of Justice whenever, as a result of a mental disorder or impairment by chronic alcoholism, any individual is taken into custody and determined to be a danger to him or herself or others or gravely disabled. Licensed psychotherapists also are required to report to local law enforcement the identity of a person who communicates a serious threat of physical violence against a reasonably identifiable victim or victims. The Department of Mental Health and mental health facilities must also make available to the Department of Justice all records pertinent to whether a person receiving inpatient treatment is a danger to self or others, even if that person consented to the treatment. These reports from mental health facilities, the Department of Mental Health, and psychotherapists may only be used to determine the person's eligibility to possess a firearm.

Delaware: Delaware requires every person in responsible charge of an institution to transmit to the State Bureau of Identification the names, dates of birth and social security numbers of all adults committed to that institution who have been declared to be not guilty by reason of mental illness or incompetent to stand trial for criminal offenses, or involuntarily committed as mentally ill. Delaware law requires any licensed dealer to

a handgun must sign a release authorizing the sheriff to access this information before issuing a permit to purchase a handgun. *Id.*, § 14-415.13. For additional information regarding the reporting of mental health information as part of criminal histories, see *supra* note 50.

⁷⁰ 2007 Ark. Acts 463, 2007 Ark. S.B. 184 (Mar, 23, 2007).

request an “involuntary commitment of an adult” record check from the State Bureau of Identification before any firearm is transferred.

Hawaii: In Hawaii, the Department of Health is required to keep a medical record of each person committed to the custody of the department or hospitalized because the person is dangerous and there is no less restrictive alternative available, because he or she lacks fitness to proceed in a criminal case, or because he or she has been acquitted on grounds of mental disorder or defect, is dangerous and is not a proper subject for conditional release. Individuals seeking to purchase a firearm must waive their rights to confidentiality with respect to certain mental health records and allow mental health providers to disclose this information.

New Jersey: Individuals in New Jersey seeking to purchase a firearm must obtain either a permit to purchase a handgun or a firearms purchaser identification card. Applicants for these permits and cards must sign a waiver of their rights to confidentiality of mental health records. A state regulation requires the “county adjuster” to search for any history of psychiatric admissions of these individuals within the county.

Massachusetts: In Massachusetts, a person must obtain a Class A or B license or a Firearm Identification Card before purchasing a firearm. The Colonel of State Police is charged with determining whether applicants are eligible for these licenses and cards. The Department of Mental Health is required keep records of all persons admitted to facilities under its supervision, and in searching for any disqualifying history of an applicant for a Class A or B license or a Firearm Identification Card, the Colonel must utilize the files maintained by the Department of Mental Health.

Oregon: Oregon requires courts to report all mentally ill individuals who appear reasonably likely to constitute a danger to themselves or others or the community at large to the sheriff of the county, who enters the information into the Law Enforcement Data System. In addition, the Department of Human Services must provide the Department of State Police with direct electronic access to information identifying these individuals, as well as other individuals committed to the Department of Human Services. All background checks include a search of the Law Enforcement Data System and the “Oregon mental health data system.”

Pennsylvania: Pennsylvania requires judges, mental health review officers, and county mental health and mental retardation administrators to notify the Pennsylvania State Police of the identity of any person adjudicated incompetent or involuntarily committed to a mental institution for inpatient care and treatment.

Utah: Utah requires magistrates and court clerks to report all orders of civil involuntary commitment and judgments of “guilty and mentally ill” and “not guilty by

reason of insanity” to the Criminal Investigations and Technical Services Division of the state Bureau of Criminal Identification, which maintains criminal records.⁷¹

Wisconsin: Wisconsin requires court clerks to report to the Wisconsin Department of Justice when a person is involuntarily committed and there is a substantial probability that the person may use a firearm to cause physical harm to him or herself or to endanger public safety.

b. States that Search In-State Mental Health Records For Some Firearm Transfers Only: Four states – Maryland, Minnesota, Nebraska and New York – collect some mental health records for purposes of conducting background checks in connection with certain in-state firearm transfers. None of these states authorize or require the collection of the records of all mentally ill persons prohibited by federal law from possessing firearms.

Maryland, Nebraska and New York require a search of mental health commitments prior to transfer of a handgun, but not other firearms. Minnesota requires a search of mental health commitments prior to transfers of handguns and assault weapons only.

Maryland: Maryland requires any facility that admits an individual with a mental disorder to submit a report to the State Department of Health and Mental Hygiene within 10 days after admission. Maryland’s privacy laws appear to prohibit the use of the Department’s records for use in background checks.⁷² As a result, the firearm application form used by the State Police requires handgun applicants to authorize release of their mental health records.⁷³

Minnesota: The Minnesota Commissioner of Human Services receives a copy of any commitment order through the state’s Supreme Court information system whenever a patient is committed to a state-operated facility for persons who are mentally ill, or to a treatment program or facility other than a state-operated program or facility. The Commissioner must provide commitment information to local law enforcement agencies by means of electronic data transfer through the Minnesota Crime Information System when individually requested for the sole purpose of facilitating a background check for purchasers of handguns or assault weapons. A person seeking to purchase a handgun or assault weapon must authorize the release of this information for this purpose.

⁷¹ Although Utah law prohibits a person from possession of firearms if he or she has been “adjudicated as mentally defective as provided in” the Brady Act, Utah law does not explicitly require courts to report these adjudications. Utah Code Ann. § 76-10-503(1)(b)(vii).

⁷² Md. Code Ann., Health-Gen. § 4-307 governs the privacy of mental health records, and makes no provision for release of information for the purpose of background checks for firearm transfers.

⁷³ Lisa Rein, *Md. Mental Records to be Checked in Gun Buys; State Requirement is Adopted After Va. Tech Shootings*, Wash. Post, Sept. 18, 2007, at B01. In addition, a court must notify the Criminal Justice Information System Central Repository of any commitment ordered upon a determination that a defendant is incompetent to stand trial, or a determination that a person is not criminally responsible because of a mental disorder or mental retardation. State law is unclear, however, as to whether this information affects firearm transfers. Md. Code Ann., Crim. Proc. §§ 3-106(h); 3-112(d).

Nebraska: The Nebraska Department of Health and Human Services maintains a database of all persons ordered committed by the various courts or mental health boards after a determination that the person is or will be dangerous to himself or herself or others by reason of mental illness or defect. Court clerks are required to furnish this information to the Department within 30 days of the order of commitment.⁷⁴ Any such information maintained or disclosed is confidential and may not be utilized for any purpose other than determining the person's eligibility to possess a handgun.

New York: In New York, local law enforcement may access the records of the Department of Mental Health to verify that an applicant for a license to purchase a handgun is not prohibited from possessing a handgun.⁷⁵ The Commissioner of Mental Health may require the director of a hospital that admits a mentally ill person to forward information about the person to the Department of Mental Health within 5 days. In addition, orders of commitment following a verdict or plea of not responsible "by reason of mental disease or defect" are directed either to the Commissioner of Mental Health or the Commissioner of Mental Retardation and Development Disabilities. A similar requirement applies when a local criminal court issues an order of commitment upon a finding that a defendant lacks fitness to proceed, and when a person in the custody of the department of corrections is committed to an institution for the mentally retarded.

3. *States that Require a Transferee to Authorize Disclosure of Mental Health Records:* State privacy laws may limit the disclosure and release of mental health records. As a result, five states (Hawaii, Illinois, Maryland, Minnesota, and New Jersey) require applicants for firearm licenses or persons seeking to purchase firearms to authorize disclosure of mental health information.⁷⁶ Hawaii, Illinois and New Jersey require persons applying for licenses to purchase firearms to agree to the disclosure of mental health records. In Minnesota persons applying for a permit to purchase a handgun or assault weapon are required to authorize the disclosure of mental health records.⁷⁷ Maryland requires a person purchasing a handgun from a licensed dealer to authorize disclosure of all such records.

⁷⁴ This information is not retained for persons who have been discharged from those commitments more than five years previously.

⁷⁵ Also, the director or physician in charge of a hospital or institution for mental illness may certify to law enforcement that certain persons are not suitable to possess a long gun. Whenever a person is so certified, a member of the police department to which such certification is made, or of the state police, must then seize any rifle or shotgun possessed by such person. N.Y. Penal Law §§ 265.00(16), 265.01.

⁷⁶ Under Washington law, an application to purchase a handgun is deemed a waiver of confidentiality with respect to mental health records.

⁷⁷ For more information on state licensing laws, see section on [Licensing of Gun Owners or Purchasers](#).

SUMMARY OF SELECTED⁷⁸ LOCAL LAWS REGARDING MENTAL HEALTH REPORTING

Local Laws Regarding Mental Health Reporting

New York City

New York, N.Y., Admin. Code § 10-303

New York City requires the Department of Mental Hygiene to make its records available for inspection by an officer of the police department who is investigating an applicant for a permit to purchase and possess a rifle or shotgun.

FEATURES OF COMPREHENSIVE MENTAL HEALTH REPORTING 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.

- State law requires reporting to the FBI for inclusion in NICS all persons prohibited by federal law from purchasing or possessing a firearm due to mental illness, as determined by a court, public or private hospital, institution, or mental health facility (*Connecticut, Illinois*)
- Complete reporting by states to the FBI for inclusion in NICS of all persons prohibited by federal law from purchasing or possessing a firearm due to mental illness includes the following:
 - A determination that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself, herself, or others (even if that person is not involuntarily committed to a mental institution as an inpatient or outpatient as a result) (*Connecticut, Illinois, Virginia*);
 - A determination that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease lacks the mental capacity to contract or manage his or her own affairs (*Connecticut, Illinois*);

⁷⁸ 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.](#)"

- A finding that a person is not guilty by reason of insanity, mental disease or defect, or lack of mental responsibility in a criminal case (*Connecticut, Illinois, Maine*);
- A finding that a person is guilty but insane in a criminal case;
- A finding that a person is incompetent to stand trial (*Connecticut, Illinois, Maine*); and
- An order formally committing a person involuntarily to a mental institution or asylum for mental defectiveness, mental illness, or other reasons, such as drug use (*Colorado, Connecticut, Georgia, Illinois, Kansas*).
- Mental health records are reported to NICS immediately upon an adjudication or commitment that renders a person prohibited from purchasing or possessing a firearm (*Alabama, Illinois, Kansas*)
- In jurisdictions where use and disclosure of mental health information may violate privacy laws, all applications for firearm transfers include a waiver of confidentiality to permit release of mental health records for the limited purpose of determining eligibility to obtain a firearm (*Illinois, Hawaii, Maryland (handguns only), Minnesota (handguns and assault weapons), New Jersey*)