



National Instant Criminal Background Check System (NICS)

The NICS is a nationwide database maintained by the FBI of persons who are prohibited from possessing, receiving, shipping, or transporting firearms, ammunition, or explosives, in or affecting interstate or foreign commerce.

Governing statutes and regulations: Title 18, United States Code (U.S.C.), Sections (§§) 921, 922, and 925, Title 27, Code of Federal Regulations, § 478.11, and AFMAN 71-102, *Air Force Criminal Indexing*, Chapter 4.

Basis for entry: Persons will be entered in NICS if they meet the criteria set forth in 18 U.S.C. §§ 922(g) and (n). The categories of prohibited persons include persons:

1. Convicted in any court of a crime punishable by imprisonment for a term exceeding one year (limited to general courts-martial convictions in the military) or of any State offense classified by a State as a misdemeanor punishable by a term of imprisonment exceeding two years (permanent prohibition);
2. Who are fugitives from justice (indefinite prohibition terminates when fugitive status ends);
3. Who are unlawful users of or addicted to any controlled substance (temporary one-year prohibition);
4. Who have been adjudicated as a mental defective or have been committed to any mental institution (indefinite prohibition terminates upon court order declaring competency or ending commitment). In the military, this category includes persons found incompetent to stand trial by court-martial and found not guilty at a court-martial by reason of insanity;
5. Who are aliens and are illegally in the United States (permanent prohibition) (these cases are referred to the Department of Homeland Security);
6. Who have been discharged from the Armed Forces with a dishonorable discharge or dismissal (permanent prohibition);
7. Who have renounced their United States citizenship (permanent prohibition) (these cases are referred to the Department of State);
8. Who are subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner (military protection orders do not qualify) (prohibition ends upon expiration of court order);
9. Who have been convicted of a misdemeanor crime of domestic violence (MCDV) (5-year prohibition based on one conviction involving dating relationship, otherwise permanent prohibition); and
10. Who are under indictment or information for a crime punishable by imprisonment for a term exceeding one year. In the military, referral to a general court-martial of charges punishable by imprisonment for a term exceeding one year qualifies for this prohibition. This prohibition ends upon the conclusion of trial and prohibits the acquisition of new firearms, ammunition, and explosives, but does not prohibit the continued possession of currently held firearms, ammunition, and explosives.

Entry based on unlawful use/addiction to controlled substance: An “unlawful user of or addicted to any controlled substance” is defined by 27 C.F.R. §478.11 as “a person who

uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance; and any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician.” An inference of current use may be drawn, under 27 C.F.R. §478.11, based on evidence of recent use or possession of a controlled substance or a pattern of use or possession that covers the present time. Examples of such evidence include: conviction for wrongful use or possession within the past year; multiple arrests for wrongful use or possession within the past five years if the most recent arrest occurred within the past year; a positive drug test administered within the past year; and, for military members, recent disciplinary or administrative action based on confirmed drug use, including a court-martial conviction, nonjudicial punishment, or an administrative discharge based on drug abuse or drug rehabilitation failure. Evidence of unlawful drug use or addiction also includes admission of wrongful use or possession to law enforcement personnel, a blood test, and positive identification of a controlled substance based on forensic laboratory testing.

Entry based on conviction of an MCDV: An MCDV is defined by 18 U.S.C. §921(a)(33) as an offense that: is a misdemeanor under federal, state, tribal or local law; that has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, by a person similarly situated to a spouse, parent, or guardian of the victim, or by a person who has a current or recent former dating relationship with the victim. A qualifying “dating relationship” is defined by 18 U.S.C. §921(a)(37) as “a relationship between individuals who have or have recently had a continuing serious relationship of a romantic or intimate nature” based on consideration of the length and nature of the relationship and the frequency and type of interaction between the individuals involved in the relationship.

Contents of entry: Name, aliases, date of birth, place of birth, Social Security number, basis for entry, and expiration date of entry (if temporary).

Impact of entry: Entry into this database results in immediate denial of a person’s ability to possess, receive, ship, or transport firearms, ammunition or explosives.

Access to this database: The NICS is accessible by law enforcement agencies and federal firearms licensees.

Criteria for removal: Entries will be expunged, or removed, from the NICS, if the criteria for entry are not met.

Expungement requests: Submit expungement requests to daf.cjic.expungements@us.af.mil. For additional information on expungement requests, including templates to be used to request expungement, please visit: <https://www.osi.af.mil/About/Expungement-Request/>.

