



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

2014 Report on NICS Reporting Related to Firearms Laws

[Report Pursuant to Section 23.5 of S.L. 2014-115/H1133]

October 1, 2014



INTRODUCTION

Section 23.5 of S.L. 2014-115 provides as follows:

SECTION 23.5.(b) By October 1, 2014, the Administrative Office of the Courts shall report to the Joint Legislative Oversight Committee on Justice and Public Safety its findings and recommendations regarding the information required under G.S. 14-404(c1) that can practicably be transmitted to the National Instant Criminal Background Check System (NICS).

This report is intended to meet the legislative mandate.

PROCEDURAL BACKGROUND

In 2013, the General Assembly passed S.L. 2013-369 (H937 – Amend Various Firearms Laws), which amended G.S. 14-401(c1) to provide as follows:

(c1) Excluding Saturdays, Sundays, and holidays, not later than 48 hours after receiving notice of any of the judicial findings, court orders, or other factual matters, relevant to any of the disqualifying conditions specified in subsection (c) of this section, the clerk of superior court shall cause a record of the determination or finding to be transmitted to the National Instant Criminal Background Check System (NICS). The record shall include a reference to the relevant statutory provision of G.S. 14-404 that precludes the issuance of a permit. The 48-hour period for transmitting a record of a judicial determination or finding to the NICS under this subsection begins upon receipt by the clerk of a copy of the judicial determination or finding.

S.L. 2013-369 passed the General Assembly in the final days of the 2013 session, and NCAOC did not have the opportunity to provide input and consultation regarding the new reporting requirements for the clerks prior to passage of the bill. As a result, numerous technical and legal issues existed related to implementation of the expanded reporting requirements.

During the 2014 session, NCAOC attempted to work with legislators to resolve technical and legal concerns about the language included in the bill. In section 23.5 of S.L. 2014-115, the General Assembly amended G.S. 14-404(c1), as enacted by section 17.2(a) of S.L. 2013-369, as follows:

"(c1) Excluding Saturdays, Sundays, and holidays, not later than 48 hours after receiving notice of any of the judicial findings, court orders, or other factual matters, relevant to any of the disqualifying conditions specified in subsection (c) of this section, the clerk of superior court shall determine which information can practicably be transmitted to the National Instant Criminal Background Check System (NICS) the clerk of superior court shall cause a record of the determination or finding to be transmitted to the National Instant Criminal Background Check System (NICS). and shall transmit that information to NICS within 48 hours of that determination. The record information shall include a reference to the relevant statutory provision of G.S. 14-404 that precludes the



issuance of a permit. The 48-hour period for transmitting a record of a judicial determination or finding to the NICS under this subsection begins upon receipt by the clerk of a copy of the judicial determination or finding."

Although the General Assembly amended the language, the amendment failed to resolve the technical and legal concerns regarding the reporting requirements.

The amended G.S. 14-404(c1) still requires the clerks to send information to the National Instant Criminal Background Check System (NICS) "after receiving notice of any of the judicial findings, court orders, or other factual matters, relevant to any of the disqualifying conditions specified in subsection (c) of this section." As indicated in the 2013 report, the language presents problems if the expectation is that a clerk is required to analyze the information contained in a court record to find "relevant" information contained in the record and report those issues to NICS. In their recordkeeping capacity, the clerks of courts' duties are purely ministerial; the legislation as amended still can be interpreted as requiring clerks to go beyond that role and read pleadings and filings, looking for information "relevant" to any of the disqualifying conditions.

G.S. 7A-102 specifically provides that "(a) deputy clerk is authorized to certify the existence and correctness of any record in the clerk's office, to take the proofs and examinations of the witnesses touching the execution of a will as required by G.S. 31-17, and **to perform any other ministerial act** which the clerk may be authorized and empowered to do, in his own name and without reciting the name of his principal." (Emphasis added.) The legislation as rewritten continues to anticipate action that exceeds that authority.

In addition, the amended language fails to take into consideration that the Judicial Branch does not make unilateral decisions about what information it will report to NICS. As discussed more fully below, NCAOC works closely with NICS to confirm the specific information NICS will accept and to ensure that the information submitted is in an automated format acceptable to NICS. NCAOC hopes to continue to work with the General Assembly to resolve the concerns about the language in G.S. 14-404(c1) during the 2015 legislative session.

INFORMATION PROVIDED TO NICS RELATED TO G.S. 14-404(c)

NICS is a national system that checks available records relevant to an individual's eligibility to possess firearms and explosives in accordance with federal law. As indicated in the 2013 Report, NCAOC works closely with the NICS and the North Carolina State Bureau of Investigation (SBI) to determine what specific state information should be sent to NICS related to the sale of firearms, and to ensure that the information submitted is in a format acceptable to NICS.



North Carolina's disqualifying conditions related to the purchase of firearms is set forth in G.S. 14-404(c), which reads as follows:

- (c) A permit may not be issued to the following persons:
- (1) One who is under an indictment or information for or has been convicted in any state, or in any court of the United States, of a felony (other than an offense pertaining to antitrust violations, unfair trade practices, or restraints of trade). However, a person who has been convicted of a felony in a court of any state or in a court of the United States and (i) who is later pardoned, or (ii) whose firearms rights have been restored pursuant to G.S. 14-415.4, may obtain a permit, if the purchase or receipt of a pistol permitted in this Article does not violate a condition of the pardon or restoration of firearms rights.
 - (2) One who is a fugitive from justice.
 - (3) One who is an unlawful user of or addicted to marijuana or any depressant, stimulant, or narcotic drug (as defined in 21 U.S.C. § 802).
 - (4) One who has been adjudicated mentally incompetent or has been committed to any mental institution.
 - (5) One who is an alien illegally or unlawfully in the United States.
 - (6) One who has been discharged from the Armed Forces of the United States under dishonorable conditions.
 - (7) One who, having been a citizen of the United States, has renounced his or her citizenship.
 - (8) One who is subject to a court order that:
 - a. Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;
 - b. Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner of the person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - c. Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

Based on the most recent consultation among NCAOC, NICS and the SBI in September, the status of NCAOC's ability to report information related to the disqualifying factors in G.S. 14-404(c) is as follows:

- Regarding the **disqualifying condition in G.S. 14-404(c)(1)**, NCAOC already provides information to NICS if someone has been *convicted* of a felony, but does not provide information regarding someone "under an indictment or information" in felony cases.



NCAOC's Automated Criminal/Infractions System (ACIS) has indicators for bills of information and bills of indictment and can indicate if a process is not disposed. NCAOC is working with NICS and the SBI to determine whether and how this information could be provided to NICS.

- Regarding the **disqualifying condition in G.S. 14-404(c)(2)**, law enforcement currently may enter the warrant information for felonies and serious misdemeanors into the National Crime Information Center (NCIC) Wanted Persons database, which is accessed via a NICS query, but less serious misdemeanors are not available to NICS. NCAOC is working with NICS and the SBI to determine whether NICS is capable of accepting warrants and orders for arrest for less serious misdemeanors.
- Regarding the **disqualifying condition in G.S. 14-404(c)(3)**, NICS already receives information on those who are convicted of drug offenses, if those individuals have been arrested and fingerprinted. NCAOC is working with NICS and the SBI to determine whether certain non-fingerprinted drug offense convictions can be accepted by NICS.
- Regarding the **disqualifying condition in G.S. 14-404(c)(4)**, NCAOC already provides this data to NICS.
- Regarding the **disqualifying conditions in G.S. 14-404(c)(5), (c)(6), and (c)(7)**, NCAOC is not the primary source of this information and will not be providing any information to NICS related to these disqualifying factors.
- Regarding the **disqualifying condition in G.S. 14-404(c)(8)**, pursuant to G.S. 50B-3(d), the sheriff of the county in which a domestic violence order is entered is required to enter the order into the NCIC, which can be accessed through a NICS inquiry. NCAOC will not be providing any additional information to NICS related to this disqualifying factors.

NCAOC continues to work with representatives from NICS and the SBI to determine the specific type of information that NICS is willing to accept regarding the disqualifying factors in section 14-404(c)(1), (c)(2), and (c)(3), and the acceptable technology formats required for transmitting the information to NICS. Once NCAOC and NICS confirm what specific state information NICS will accept, NCAOC will determine what technology upgrades or enhancements will be required to collect and transmit the data in a format acceptable to NICS.

SUMMARY

NCAOC provides all pertinent information related to G.S. 14-404(c)(4), while the sheriffs provide information related to G.S. 14-404(c)(8). NCAOC continues to work with NICS and the SBI to determine what enhanced reporting is possible regarding the disqualifying factors in section 14-404(c)(1), (c)(2), and (c)(3). However, NCAOC is not the primary source of information related to disqualifying conditions in G.S. 14-404(c)(5), (c)(6), and (c)(7), and will not be providing any information to NICS regarding those factors. NCAOC looks forward to working with the General Assembly during the 2015 legislative session to address the problems identified with the language in G.S. 14-404(c1).

