



LAW ENFORCEMENT RISK ANALYSIS



OFFICER AND COMMUNITY SAFETY CONSIDERATIONS IN LIGHT OF THE NICS DENIAL NOTIFICATION ACT

Law enforcement agencies should be aware of the implementation of the [NICS Denial Notification Act](#) passed in March 2022, which requires the National Instant Background Check System (NICS) to report denied attempts to purchase a firearm to local authorities.

It is likely that New Jersey-specific procedures and protocols have or will be provided to law enforcement agencies; however, since such notifications are scheduled to begin today, September 26, 2022, this bulletin delineates essential considerations for the law enforcement agency leader.

Law enforcement agency leaders should be familiar with the importance of verifying the identity of any person subject to a [NICS Denial Notification](#) and review the Federal Bureau of Investigation Resource Page, [NICS Denial Notifications for Law Enforcement](#). As agency leaders review these resources, they should also consider:

- What role, if any, should such information be retained, managed, or reviewed by other agency members?
- Should a specific "flag alert" or other warning mechanism be implemented through an agency's police records or dispatch system so that officers can be aware that they are responding to an incident where a person was recently denied the purchase of a firearm? If so, how long should these "flags" remain in place?
- Is a specific person assigned to monitor the receipt of NICS Denial Notifications? If yes, is a procedure in place when such assigned persons are unavailable?
- When a NICS Denial Notification is received and verified, is there a need to see if the person has other legally possessed firearms or a New Jersey Firearms Identification Card? If so, will it be necessary to investigate whether this person is permitted to have such weapons? Will there be times that an agency may need to determine if an application for [New Jersey Extreme Risk Protection Order](#) is warranted or required?
- Will the agency assign a person to review past calls for service involving the subject of the denial to determine if there is a reason for concern?
- When an agency is notified, should it review its existing records to determine if the person who was denied a firearms transaction is a defendant in a current domestic violence incident or subject to a Temporary or Final Restraining Order? If so, is there a responsibility to notify the victim? Should patrols be increased at the victim's residence or other locations if the victim resides and is employed in the same jurisdiction? Should the applicable law enforcement agency be notified if the victim lives or works in another jurisdiction? Should there be a concern for subjects facing charges or under investigation for matters other than domestic violence? If so, what specific types of incidents or crimes should warrant further attention and review?
- How will a verified notification impact the New Jersey [School Threat Assessment Team](#) process? If a law enforcement agency is notified that a student was the subject of a NICS Denial, can or should they inform the school principal? What records from a Threat Assessment Team meeting can later be reviewed, if any, for when a young adult who is no longer in school but is the subject of a NICS Denial?

As law enforcement agencies begin to receive NICS Denial Notifications, it is important that they discuss these considerations with their Municipal Attorney. Although the reasons for these considerations are apparent, some hypothetical scenarios are described below to illustrate potential risks.

- **Hypothetical Example #1:**

A local law enforcement agency receives a NICS Denial Notification on a Friday morning. The person responsible for accepting the receipt of the denial is off until Monday. There is no action taken. On Sunday morning, the subject, who was denied a firearms transaction, murders his estranged wife. A long domestic violence history was known to the law enforcement agency, and the agency assisted the victim in obtaining a temporary restraining order one week before the denial of the firearms transaction.

- **Hypothetical Example #2:**

A local law enforcement agency receives a NICS Denial Notification and assigns such to an officer to review. Three days later, officers from the same agency responded to a mental health call for the person who was denied a firearms transaction, but they had no knowledge the person had tried to purchase a weapon just days prior. Since the subject was denied a legal purchase, he obtained a gun illegally the next day and attacked the officers.

- **Hypothetical Example #3:**

The local law enforcement agency receives a NICS Denial Notification but doesn't assign anyone to look further into the subject. If an officer or member of the agency had been assigned to review past calls for service involving the subject, they would have realized that they had responded to his home for mental health issues three times that month. The officers who responded to the home those times for mental health calls had never checked the firearms database, so the officers were unaware that the subject already had a legally owned handgun. The subject was attempting to buy a rifle when he was denied the firearm purchase. There is no action taken, and a day later, the subject walks into the local supermarket with his handgun, kills three people, and wounds seven.

- **Hypothetical Example #4:**

The local law enforcement agency receives a NICS Denial Notification but doesn't assign anyone to look further into the subject. The subject is an eighteen-year-old student at the local high school. Two days later, the subject obtains access to a firearm owned by a parent and kills three classmates, and injures another five.

Please contact your Law Enforcement Risk Control Consultant if you have any questions.

