

OHIO AUDITOR OF STATE  
**KEITH FABER**



# Audit Compliance with Reporting Standards

Ohio Auditor of State NICS reporting compliance testing

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# Agenda

- Brief overview of relevant executive orders
  - Executive Order 2018-03K
  - Executive Order 2019-10D
- Auditor of States Ohio Compliance supplement
  - Brief overview,
  - Detail NICS related procedures
- Summary of Results
- Recommendations/suggestions
- Resources

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2

## Executive Orders 2018-03K

### Issued:

- April 23, 2018

### By:

- Governor Kasich

### Summary:

- Created a working group to survey almost 1,000 public officials,
- Requested the Auditor of State to:
  - Test NICS compliance for timeliness and accuracy
  - Annually publish the results on the public web site.

## Executive Orders 2019-10D

### Issued:

- February 14, 2019

### By:

- Governor Dewine

### Summary:

- Renamed the working group as a 'Task Force'
- Assigned the task force to study, discuss, and make recommendations to improve NICS compliance with a focus on warrants

## Why involve the AOS?

Standards require audits to include **reporting on compliance** with provisions of laws, regulations, contracts, and grant agreements that **have a material effect**

Materiality can be:

**Quantitative:** Direct impact,  
Indirect impact,

**Qualitative:** Statutorily mandated,  
Stewardship responsibility.

## Ohio Compliance Supplement

### Chapter 1:

- Direct and material Compliance requirements,

### Chapter 2:

- Indirect and material compliance requirements,
- Statutorily mandated tests,

### Chapter 3:

- Laws and regulations which have significant stewardship considerations

# Ohio Compliance Supplement

## Where is it located?

- Auditor of State's website  
<http://www.ohioauditor.gov/references/compliancemanuals.html>
- Resources / Publications & Manuals
- **Note:** NICS procedures were new to the 2019 OCS and are located in chapter 3 section 3-19

# Ohio Compliance Supplement

The screenshot shows the website's navigation menu at the top with links for AUDITS, LOCAL GOVERNMENT, OPEN GOVERNMENT, RESOURCES, and CONTACT US. Below the navigation is the 'Reference Materials' section, which includes links for Clients & IPA Firms, GASB 75, GASB FAQs, Ohio Compliance Supplement Manuals, Financial Statement Shells and Footnotes, Single Audit Practice Aids & Report Shells, Agreed-Upon Procedure Shells, Audit Report Shells, Additional Audit Guidance, Ohio Laws & Rules, Publications & Manuals, Public Contracting Form / Financial Review Checklist, and Clients. The 'Publications & Manuals' section is expanded to show 'Ohio Compliance Supplement Manuals'. Under the '2019' heading, there is a link for 'Ohio Compliance Supplement Implementation Guide (PDF)' and a list of three chapters: 'Chapter 1 - Direct Laws (PDF) (Microsoft Word)', 'Chapter 2 - Indirect Laws and Statutorily Mandated Tests (PDF) (Microsoft Word)', and 'Chapter 3 - Stewardship (PDF) (Microsoft Word)'. A red arrow points to the 'Chapter 3 - Stewardship (PDF) (Microsoft Word)' link. Below this, there is a link for 'Optional Procedures Manual (Microsoft Word)'. The '2018' section is also visible at the bottom of the list.

## NICS summary of requirements

The National Instant Criminal Background Check System (NICS) was created pursuant to the Brady Handgun Violence Protection Act of 1993 to provide information to Federal Firearm Licensees **to use in determining whether a person is prohibited from purchasing a firearm.**

The NICS database is supplied with information from the Computerized Criminal History database (CCH), which is maintained by Bureau of Criminal Investigation (BCI).

## NICS summary of requirements

CCH relies on information local gov't entities to provide to BCI.

- This information can be sent electronically or manually depending on the preference of the local entity.

Ohio Rev. Code requires these gov't entities to provide information to BCI:

- Clerk of Courts – per Ohio Rev. Code § 109.57(A)(2)
- Law Enforcement – per Ohio Rev. Code § 109.60(A)(1)
- Probate Judge – per Ohio Rev. Code § 5122.311

Note: NICS, which is run by the FBI, audits the BCI (and others that input to them) triennially to make sure they are compliant with filing requirements

## NICS Audit Procedures

**As detailed in OCS 3-19:**

Gain an understanding of the system,

Gain assurance over completeness.

Select 10 cases with a disposition required to be reported to BCI, verify evidence supports:

- It was sent on time,
- Required info was accurately included.

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11

## NICS Timeliness Determinations

**Clerks of Courts:**

- Ohio Rev. Code § 109.60(A)(3) indicates a court superintendent of courts shall inquire whether fingerprints were taken, and order them to be taken if not done initially

**Probate Court:**

- Ohio Rev. Code § 5122.07 requires that fingerprints be taken within seven days after the adjudication of commitment

**Law Enforcement\*:**

- Ohio Rev. Code § 109.60(A)(1): immediately upon the arrest...shall take the person's fingerprints...and immediately shall forward copies of the completed forms...to the bureau [BCI]...and to the clerk of the court

Ohio Rev. Code § 109.60(A)(3) indicates a court shall inquire whether fingerprints were taken, and order them to be taken if not done initially

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12

## NICS Accuracy Determinations

### Court dispositions:

- Ohio Rev. Code § 109.57(A)(2): shall include
  - i. The incident tracking number (ITN) contained on the standard forms;
  - ii. The style (i.e. State of Ohio vs. Jane Doe) and number of the case;
  - iii. The date of arrest, offense, summons, or arraignment;
  - iv. The date of determination that constitutes final resolution of the case (i.e. conviction, dismissal, found not guilty, etc.);
  - v. A statement of the original charge
  - vi. If the person **or child** was convicted, pleaded guilty, or was adjudicated a delinquent child, the sentence or terms of probation imposed or any other disposition of the offender or the delinquent child.

### Probate Court:

- Ohio Rev. Code § 5122.311(C): a form is to be used
- Outlined in Ohio Admin. Code 109: 5-3-01

## Summary of NICS Results

At the invitation of Gov. Kasich, AOS tested NICS compliance for the audit period ending 12/31/18.

Testing revealed a weakness in the system; no mechanism was built in to generate proof of submission by filers. When called upon later to demonstrate timely filing there was a high rate of an inability to demonstrate compliance.

Stakeholders were advised of AOS statewide testing results.

## Summary of Results

In a letter dated 10/9/19, AOS informed:

- Governor Dewine
- Chief Justice O' Connor
- Att'y General Yost
- House Speaker Householder, and
- Senate President Obhof

The summarized results of the year long effort to test NICS compliance

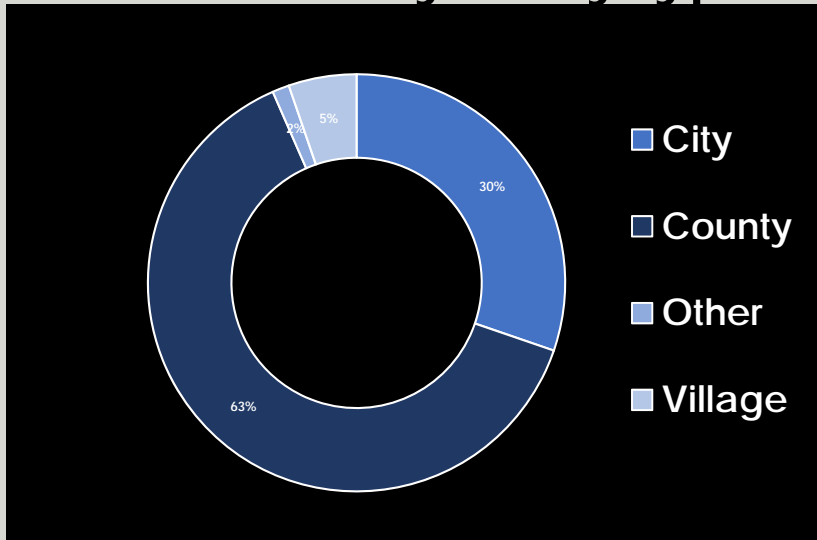
## Summary of Results

Key points from the Letter:

- Our office found numerous ways in which the pertinent public office had not complied with statutory requirements or situations where our office was unable to substantiate the entity's compliance with the various statutory requirements.
- The most frequently occurring type of noncompliance involved the requirement that a clerk of court file a weekly report under Ohio Rev. Code 109.57(A)(2)



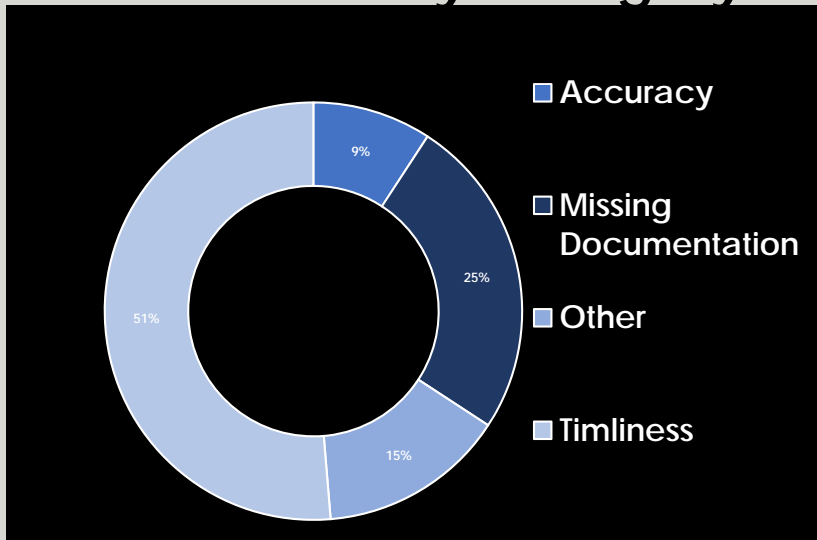
## Comments by entity type



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## Comments by category



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18

## NICS Going Forward

AOS has suspended NICS testing until there has been changes to the system; testing would then be a helpful tool to evaluate the effectiveness of the new reporting system.

Courts/Clerks/Law Enforcement should look to the Ohio Supreme Court and the Attorney General for guidance regarding ensuring and later demonstrating compliance until the system is revised.

## Recommendations/Suggestions

Develop a thorough understanding of who is responsible for what, and make sure all involved in the information chain know their role.

- Put it in writing if possible, and share that process documentation, not only internally, but also with your auditor.

Understand your records system well enough to be able to provide a complete list of cases with filing requirements

- Use that report to select cases to test for compliance with accuracy/timeliness requirements.

## Recommendations/Suggestions

### MAINTAIN EVIDENCE OF COMPLIANCE

#### Things you should save include:

- Electronic filers - Confirmations received from BCI that show uploading was completed/successful (Note: if you don't currently get these, start requesting them immediately!)
- Manual filers – save copies of what was sent, and postage records to support the timing of when it was mailed, along with a cover letter with the list of case numbers included
- Evidence of any agreements with others that have assumed some of the compliance responsibility (i.e. if hospital sends info in lieu of the probate court)

## Resources

- ORC refs
  - [ORC 109.57](#)
  - [ORC 109.572\(A\)](#)
  - [ORC 109.60](#)
  - [ORC 5122.311](#)
- Federal Law
  - 18 U.S.C. §922 (g)
- Executive orders
  - <http://ohioauditor.gov/ocs/2019/2018-03K.pdf>
  - <https://governor.ohio.gov/wps/portal/gov/governor/media/executive-orders/2019-10d>

## NICS Resources

- AOS Resources:
  - Ohio Compliance Supplement (OCS) Chapter 3-19  
– found here  
<http://www.ohioauditor.gov/references/compliancemanuals.html>
  - NICS FAQ -  
<http://www.ohioauditor.gov/references/NICS%20FAQ.docx>
- Supreme court
  - <http://www.supremecourt.ohio.gov/JCS/courtSvcs/NICS/>
- BCI
  - <https://www.ohioattorneygeneral.gov/Law-Enforcement/Bureau-of-Criminal-Investigation/Identification-Division>

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