



THE SUPREME COURT of OHIO
OFFICE OF COURT SERVICES

**The FBI's Role in NICS Reporting
& the Controlled Substance Disqualifier Webinar
Audience Questions & Answers**

Disclaimer: There are Ohio Revised Code requirements related to the reporting of criminal background information to the NICS Indices that may differ from federal law. Please see the [Supreme Court of Ohio's website](#) for more information.

Question: What is Triple III?

Answer: III is the Interstate Identification Index – a nationwide index of state criminal history records.

This is the method used by the NICS and also nationwide law enforcement to view state criminal histories. An update to the Ohio state criminal history record will be visible to the NICS for any person matching the descriptive data entered on a prospective firearms transfer.

Question: Is there any requirement for reporting information that postconviction, such as probation drug testing results? If so, what is the supporting authority?

Answer: Although there may be state level reporting requirements for this type of information, there is no federal “mandate” to provide prohibitive information to the NICS Indices. However, there are compelling reasons for an agency to provide this information voluntarily, such as the safety of the public and those who may be in contact with the prohibited person.

Question: Is state court actually required by federal law?

Although there is no federal requirement to submit information to the databases that are accessed by the NICS, it is the NICS Section’s recommendation that providing such a prohibitive information, when done in accordance with state law, is a best practice.

Note: There are Ohio Revised Code requirements to report fingerprint and dispositional information to the Bureau of Criminal Investigation (BCI) which reports information to the NICS Indices. Please see the [Supreme Court of Ohio's website](#) for more information.

Question: What is the best way to report a DUI if in fact it is a controlled substance rather than alcohol?

Answer: There are two methods of reporting this information.

- (1) The first is that the state criminal history record can be updated with detailed information in the court segment. For instance, citing the specific subsection of conviction and/or citing the specific substance involved in the subject’s conviction (example – “Found Guilty, DUI – Marijuana”).

These questions were asked by the webinar participants and subsequently answered by the presenter John Keough, FBI, National Instant Criminal Background Check System Section

- (2) The second is submitting this individual's descriptive data to the NICS Indices with the date and type of conviction to support the 18 U.S.C. 922(g)(3) prohibition.

The NICS Section recommends that the first method (state record update) to be accomplished at a minimum; thereby allowing nationwide law enforcement (not just the NICS Section) to view the importation criminal history information in its entirety. You may also choose to enter the prohibitive information into the NICS Indices as this assists the NICS and our state partners (court clerks, police records, etc.) by reducing the amount of research required in order to establish that the person is prohibited. The NICS Indices entry also virtually assures a denial decision before the elapsing of three-business-days, after which a Federal Firearms Licensee is not prohibited by federal law from transferring the firearm to a person still being researched by the NICS.

Note: The arresting agency can also submit using the appropriate subsections and/or literal description.

Question: Are juvenile adjudications treated as a conviction?

Answer: Ohio juvenile adjudications are not "convictions" for federal firearms purposes, but the underlying incident may still be enough to meet an "inference of use" depending on the circumstances.

Question: What is the drug possession charge is a minor misdemeanor? Do courts still report?

Answer: I have researched Ohio statutes and located R.C. 2901.02 and Crim.R. 4.1; per my review, it appears that this still constitutes a "conviction" under Ohio law (please correct me if I am wrong). If that is the case, then a court may report this as an 18 U.S.C. 922(g)(3) "conviction within the past year".

Question: A minor misdemeanor possession of marijuana is not a printable offense, so no fingerprints would be taken; therefore, there would no Computerize Criminal History record to attach. How do courts report this information?

Answer: Reporting this information to the Ohio Criminal history record may not be possible due to the lack of fingerprints. The NICS Indices is still a viable option for reporting, though, because an entry is descriptive data (rather than biometric/fingerprint) based. Because of this, the NICS Indices entry may be your only option to ensure that the NICS is aware of a prohibited person who is likely living and attempting to purchase a firearm in your state. If your agency does make this type of submission to the NICS Indices, please ensure that your agency retains the prohibitive documentation to support such an entry.

Question: In regards to juveniles, if a juvenile wants to buy a firearm once he/she turns 18 and had prior drug charges, can the juvenile buy a firearm at 18 or will he/she need to wait the one year after the adjudication?

Answer: An Ohio juvenile adjudication is not a "conviction" for federal firearms purposes, so there would not be a prohibition based on the adjudication itself. However, if the underlying events constitute a prohibition (such as an inference of use based on admission) – then the subject would remain prohibited for one year from the date of the prohibiting event (admission in this case) – regardless of when the subject turns 18.

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As a note: this analysis only pertains to federal firearms prohibitions and is focused primarily on 18 USC 922(g)(3) – Unlawful User of or Addicted to A Controlled Substance – there are also state level prohibitions which may make the individual prohibited if purchasing or living in Ohio. For instance, R.C. 2923.13 would make certain juvenile adjudications prohibiting at the state level. These prohibited persons may be entered into the NICS Indices under the state PCA Code of “J” and would need a corresponding SPC code. Upon the matching of a subject living and/or buying in Ohio to an Ohio state prohibition NICS Indices entry, the NICS Section would deny the transaction on an Ohio state prohibition rather than the federal prohibitions we previously discussed.

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John Keough, FBI, National Instant Criminal Background Check System Section*