

TULALIP OFFICE OF THE RESERVATION ATTORNEY
NICS ACT RECORDS IMPROVEMENT PROGRAM (NARIP) POLICY
2016-NS-BX-K012

Purpose:

The Tulalip Office of the Reservation Attorney (ORA) has received a NARIP grant to develop and implement a process for entry of events into the NICS Indices that would disqualify a person from possessing or purchasing a firearm. We have 1000's of historical records to evaluate, thus given our limited resources, and stated goals of the NARIP grant, we have developed the following process to begin this program.

Entry of misdemeanor crimes of domestic violence convictions and qualified protection and no contact orders are critical components to making firearm background checks as effective as possible. The Brady Handgun Violence Prevention Act of 1993 (Brady Act) required Federal Firearms Licensees to request background checks on prospective firearm transferees. In 1998, the FBI established the NICS Indices to process these background checks. The NICS Indices is a national system that queries available records in the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS Indices to determine if prospective transferees are disqualified from receiving firearms.

Goal:

We have identified that the following events will have priority for evaluation and entry. This process will evaluate the records consistent with these priorities: 1) conviction of a misdemeanor or felony-level crime of domestic violence; 2) domestic violence civil protection orders; 3) criminal domestic violence no contact orders and 4) qualifying mental health prohibitions. As time and resources allow, we will develop a process for pretrial release requirements.

Commonly Used Acronyms:

CJIS – Criminal Justice Information Services
DMS – Document Management System
DOJ – Department of Justice
FBI – Federal Bureau of Investigation
III – Interstate Identification Index
NARIP – NICS Act Records Improvement Program
NCIC – National Crime Information Center
NICS – National Instant Criminal Background Check System
ORI – Originating Agency Identifier
TAC – Terminal Agency Coordinator
TAP – Tribal Access Program

Process:

The Tulalip Office of the Reservation Attorney (ORA) Prosecutor's Office is authorized to enter firearm disqualifiers into the necessary federal database(s).

A "misdemeanor crime of domestic violence" is an offense that:

- (1) Is a misdemeanor under Federal, State, or Tribal law;
- (2) Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; and
- (3) At the time the offense was committed, the defendant was 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, or by a person who was or had been similarly situated to a spouse, parent, or guardian of the victim.

A protection order is an order used by a court to protect a person or entity, and the general public, in a situation involving alleged domestic violence, harassment, stalking, or sexual assault.

A no-contact order is a prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group. Such orders are most commonly associated with family or household violence, stalking, or sex offenses.

Example of the process for entry of qualifying domestic violence or qualified mental health events.

The NICS Indices and the III are two federal systems included in a NICS firearm eligibility background check. Crimes of domestic violence should be placed in III whenever possible. Putting data into III means that there is a criminal history record associated with an individual, which includes fingerprint data. When data is entered into III, it is available by law enforcement nationwide.

Prohibiting Record Type	Federal Database(s)	
Subjects of Domestic Violence Protection Orders	NCIC Protection Order File: Should most appropriately be placed here so they are available for other criminal justice purposes.	NICS Indices: Should be placed here if not available in NCIC.
Misdemeanor Crimes of Domestic Violence Convictions	III: Should most appropriately be placed here so they are available for other criminal justice purposes.	NICS Indices: Should be placed here if not available in III or, if conviction is available in III, should also be placed here if qualifying relationship and/or force element is not available in III.

Mental Health	III: Persons found not guilty by reason of insanity or adjudicated to be incompetent to stand trial should most appropriately be placed here so they are available for other criminal justice purposes.	NICS Indices: Involuntary commitments to mental institutions for the purpose of treatment should be placed here as they would be otherwise unavailable for firearms background check searches. Persons found not guilty by reason of insanity or adjudicated to be mentally defective should most appropriately be placed here if they are otherwise unavailable through III.
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Domestic violence records that do not qualify for entry into III may be placed in the NICS Indices. Records in the NICS Indices do not require fingerprints. The reason being is that not all individuals are arrested, booked, and fingerprinted when a crime has been committed. The only way to report this domestic violence conviction is through the NICS Indices. If it is not an option to update the III to include domestic violence convictions, the FBI encourages the NICS Indices be utilized.

The records coordinator's functions are necessary and vital to the accomplishment of the Tulalip Tribes goal to improve records and implement the reporting of qualified events to the NICS Indices and the III. It is the policy of this position to comply with all reporting requirements of the federal government while maintaining strict adherence to confidentiality and the laws of the Tulalip Tribes.

HISTORICAL DATA –

Domestic violence charges and convictions dating back to 2001 have been collected from Tulalip Tribal Court and Tulalip Police Department records. Prosecution Records Specialists will determine which federal database to enter the disqualifiers. If there has been an arrest with a booking into jail and fingerprinting, the data will be entered into III. If there was no arrest but there was a court conviction, the information will be entered into NICS Indices.

Entries in the NCIC Protection Order File will be completed using the OpenFox Messenger application. OpenFox Messenger is a web based application used to access NCIC. This application allows the Prosecution Records Specialists to make entries in the NCIC Protection Order File and firearm disqualifiers into NCIC and the NICS Indices. Submission of historical disposition information to update III will be done manually by FBI JCIS personnel after the Prosecution Records Specialists populate the spreadsheet with the required information.

DATE FORWARD CHARGES –

All current arrests, charges and court proceedings are being monitored using Odyssey. Within 72 hours of an individual's case being closed by Tulalip Tribal Court, the data will be entered into the NICS Indices or the III.

FILING SYSTEM –

Each disqualifying event and entry into the NICS Indices and the III will be maintained for future access. According to the NARIP grant requirements, it states that the contributing agency is responsible for responding to appeals, assessments, and audits of the submitted records. Any documentation justifying a valid entry must be available. This will be done by scanning each required document into DocuShare (DMS), as well as logging each entry on a master spreadsheet.

INCOMPLETE COURT PAPERWORK OR COURT PAPERWORK WITH ERROR(S) –

Any paperwork that is found to be incomplete or has an error will be brought to the attention of the Tulalip Tribal Court Administrator.

TAP MACHINE –

See manual at https://nextest.just.jmd.usdoj.gov/resources.doj_mesa_user_guide.pdf.

VALIDATIONS –

Record validations are received from the DOJ Service Desk. These validations will be completed and returned within the time required. These are to be completed by the TAC.

METHOD OF DISPOSAL –

All documents from Tulalip Tribal Court and Tulalip Police Department are considered confidential. When a paper document or disc is no longer required, both will be destroyed by shredding. These items will be dropped into the provided locking bin. American Data Guard will collect the bin and authorized Tulalip Tribes personnel will ensure the shredding process is witnessed.

RETENTION –

Once a case has been closed and filed in long-term storage it will be retained for ten (10) years, after that time it will be shredded. Documents that have been scanned into DMS will be retained consistent with tribal retention law.

DISPOSITION WORKFLOW –

The attached workflow chart was completed by the DOJ. This chart shows the entire process beginning with a prisoner being transported to jail and ending with fingerprints being submitted by Tulalip's ORI to the FBI.