

Why GAO Did This Study

The 2007 Virginia Tech shootings raised questions about how the gunman was able to obtain firearms given his history of mental illness. In the wake of this tragedy, the NICS Improvement Amendments Act of 2007 was enacted to, among other things, provide incentives for states to make more records available for use during firearm-related background checks. GAO was asked to assess the extent to which (1) states have made progress in making mental health records available for use during NICS checks and related challenges, (2) states have made progress in making unlawful drug records available and related challenges, (3) DOJ is administering provisions in the act to reward and penalize states based on the amount of records they provide, and (4) states are providing a means for individuals with a precluding mental health adjudication or commitment to seek relief from the associated federal firearms prohibition. GAO reviewed laws and regulations, analyzed Federal Bureau of Investigation data from 2004 to 2011 on mental health and unlawful drug use records, interviewed officials from a nongeneralizable sample of 6 states (selected because they provided varying numbers of records) to obtain insights on challenges, and interviewed officials from all 16 states that had legislation as of May 2012 that allows individuals to seek relief from their federal firearms prohibition.

What GAO Recommends

GAO recommends that DOJ share promising practices in making mental health records available and assess the effectiveness of rewards and penalties and how to best implement them. DOJ agreed with the results.

View [GAO-12-684](#). For more information, contact Carol Cha at (202) 512-4456 or chac@gao.gov.

GUN CONTROL

Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks

What GAO Found

From 2004 to 2011, the total number of mental health records that states made available to the National Instant Criminal Background Check System (NICS) increased by approximately 800 percent—from about 126,000 to 1.2 million records—although a variety of challenges limited states' ability to share such records. This increase largely reflects the efforts of 12 states. However, almost half of all states increased the number of mental health records they made available by fewer than 100 over this same time period. Technological, legal, and other challenges limited the states' ability to share mental health records. To help address these challenges, the Department of Justice (DOJ) provides assistance to states, such as grants and training, which the 6 states GAO reviewed reported as helpful. DOJ has begun to have states share their promising practices at conferences, but has not distributed such practices nationally. By disseminating practices that states used to overcome barriers to sharing mental health records, DOJ could further assist states efforts.

The states' overall progress in making unlawful drug use records available to NICS is generally unknown because of how these records are maintained. The vast majority of records made available are criminal records—such as those containing arrests or convictions for possession of a controlled substance—which cannot readily be disaggregated from other records in the databases checked by NICS. Most states are not providing noncriminal records, such as those related to positive drug test results for persons on probation. On May 1, 2012, DOJ data showed that 30 states were not making any noncriminal records available. Four of the 6 states GAO reviewed raised concerns about providing records outside an official court decision. Two states also noted that they did not have centralized databases that would be needed to collect these records. DOJ has issued guidance for providing noncriminal records to NICS.

DOJ has not administered the reward and penalty provisions of the NICS Improvement Amendments Act of 2007 because of limitations in state estimates of the number of records they possess that could be made available to NICS. DOJ officials were unsure if the estimates, as currently collected, could reach the level of precision needed to serve as the basis for implementing the provisions. The 6 states GAO reviewed had mixed views on the extent to which the reward and penalty provisions—if implemented as currently structured—would provide incentives for them to make more records available. DOJ had not obtained the states' views. Until DOJ establishes a basis for administering these provisions—which could include revising its current methodology for collecting estimates or developing a new basis—and determining the extent to which the current provisions provide incentives to states, the department cannot provide the incentives to states that were envisioned by the act.

Nineteen states have received federal certification of their programs that allow individuals with a precluding mental health adjudication or commitment to seek relief from the associated firearms prohibition. Having such a program is required to receive grants under the 2007 NICS act. Officials from 10 of the 16 states we contacted said that grant eligibility was a strong incentive for developing the program. Reductions in grant funding could affect incentives moving forward.