



# COURT PRACTICE IN DOMESTIC VIOLENCE PROTECTION ORDER CASES:

## SUMMARY INFORMATION FORMS

The National Resource Center on  
Domestic Violence and Firearms

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# Why Create a Summary Information Form for Reporting Required Statutory Information to NICS?

The National Instant Criminal Background Check System (NICS) at the FBI is used to determine if someone is eligible to purchase or possess a firearm and is required for any purchase made from a federally licensed firearm dealer.<sup>1</sup> Because protection orders can be the basis by which someone is ineligible to receive a firearm, a NICS background check relies on state, local and tribal court protection order information. Generally, protection order information can be entered into the National Crime Information Center (NCIC) Protection Order Files (POF) and/or the NICS Indices.

The term protection orders here encompasses numerous types of injunctions or restraining orders that may be issued pursuant to the criminal, family, child welfare, and civil chapters of state, tribal, or territorial statutes which--if an order meets all other criteria--could activate the federal (or a state) firearms prohibition. The federal definition of a protection order appears at 18 U.S.C. 2266(5).

In general, NICS has 72 hours to complete the background check or the firearm transfer can be made without the background check results. If the information about a particular protection order is not immediately available in the referenced federal databases, NICS personnel may have to contact the issuing court and inquire about the missing information. This delays the background check process and consumes court resources responding to the inquiry. If NICS is unable to complete the background check within the three business-day period the purchase or transfer may proceed, which potentially puts a firearm in the hands of a prohibited domestic violence abuser and then requires law enforcement resources to attempt to recover that unlawfully possessed firearm.<sup>2</sup> The easiest way to ensure that the proper information is uploaded from state, tribal and local justice system databases into federal databases that are used to conduct background checks is to develop a summary information form or cover sheet that includes all of the information needed for NICS to run a firearms-related background check. This summary information form or cover sheet should issue with the related protection order.

The information needed by NICS is based on the statutory requirements of 18 U.S.C. § 922 (g)(8), the federal firearms prohibition triggered by a qualifying state, tribal or local protection order. Note that the criteria in state law(s) that prohibit firearm access based on being subject to a protection order may be defined differently from the federal prohibition.

A “qualifying” protection order needs to meet four criteria under federal law, 18 U.S.C. § 922(g)(8):

- ✓ There must be a hearing for which the Respondent had notice and an opportunity to be participate.
- ✓ The protected party must be an “intimate partner” of the Respondent, as defined by the federal statute, or a child of either the intimate partner or Respondent.
- ✓ The protection order includes a finding that the respondent presents a credible threat to the physical safety of the intimate partner or child or the protection order expressly prohibits the respondent from the use, attempted use, or threatened use of physical force against the intimate partner or child of either that would reasonably be expected to cause bodily injury.
- ✓ The terms of the protection order restrain the respondent from harassing, stalking or threatening an intimate partner or engaging in certain conduct that would reasonably be expected to cause bodily injury to the intimate partner or child of either the respondent or intimate partner.

An intimate partner is someone to whom the Respondent is currently or formerly married, is currently or has formerly cohabitated, or with whom they share a child in common. 18 U.S.C. 921(a)(32).

Protection orders are documents that can run from one to many pages and include many pieces of information required under state, territorial, tribal or local law. To make it easier to find the requisite information for uploading into the NICS system, courts can develop summary information reporting forms that can serve as a cover sheet for the protection order, making it easier to upload the information expeditiously and accurately.

In addition to the statutorily required pieces of information, the protection order summary information form can also include related data that is needed by NICS to complete the background check process. For example, names are not reliably unique identifiers so NICS will need additional biographical information to ensure the person subject to the protection order and the person attempting to purchase a firearm are the same. A birth date, address, or a social security number will help distinguish one John Smith from another. Similarly, providing the expiration date of the order will allow NICS to automatically expunge the record of the protection order from the system once it is no longer in effect.

Developing a uniform NICS summary information reporting form for all issued protection orders will ensure that all the needed information makes it into the federal background check system.

## **SUMMARY INFORMATION FORMS**

# What to Include in a Summary Information Form for Reporting Required Statutory Information to NICS

## *Heading of the Form*

The form should be clearly titled as a cover sheet. For example, the top of the form can say:

**SUMMARY OF PROTECTION ORDER  
INFORMATION FOR NICS**

## *Identifying the court*

Even with clear and complete orders, instances will likely still arise in which NICS personnel need information from the issuing court. Providing as much information possible about the issuing court on the form will help expedite the process on both ends. In particular, providing the name and reliable contact information of the person in the court who is readily available to answer questions that NICS personnel may have will help with completing the background check in a timely manner.

State of \_\_\_\_\_  
County of \_\_\_\_\_  
Name of Court \_\_\_\_\_  
Court Contact Name \_\_\_\_\_  
Court Contact Phone and Email \_\_\_\_\_

## *Statement of purpose and authority*

It is always helpful, as with all court documents, to provide statutory authorities. Cite the state, tribal or local statute that governs reporting information to the federal databases if possible. In addition to or instead of the state authority (if there is no state authority), the statement can reference the federal law that authorizes background checks on the basis of qualifying protection orders.

For the purposes of reporting to the National Instant Criminal Background Check System (NICS), the following information related to the protection order issued by the \_\_\_\_\_ Court is collected and reported to state and federal firearms regulatory authorities, pursuant to [State] statute [Code number authorizing reporting of protection order information to state and federal databases] and federal statute 18 U.S.C. 922(g)(8).

## *Including case and party information*

To clearly establish which protection order is being summarized, the summary information form should include the case caption as it appears in the order, as well as other case-related information that NICS requires to conduct a background check. This also provides an opportunity to identify the relationship between the parties, which is one of the criteria that must be satisfied for a protection order to activate the federal firearms prohibition.

_____ ,	Plaintiff	
	[Relationship to Respondent]	
v.		Case No.
		_____
_____ ,	Respondent	
	[Relationship to Petitioner]	
Date of Issuance _____		
Date of Expiration _____		

Alternatively, the relationship information can be addressed in the body of the form in a check box format.

- |  |
|--|
| <input type="checkbox"/> Protected Party is                          |
| <input type="checkbox"/> Spouse of the Respondent                    |
| <input type="checkbox"/> Former spouse of the Respondent             |
| <input type="checkbox"/> Cohabitant of the Respondent                |
| <input type="checkbox"/> Parent of a child in common with Respondent |
| <input type="checkbox"/> Child of Respondent's intimate partner      |
| <input type="checkbox"/> Child of the Respondent                     |

Either way, the summary information form should clearly identify the intimate partner relationship required under the federal firearms prohibition.

## *Information relating to the respondent*

As noted above, many people have the same or very similar names. To help NICS identify the exact person named in the protection order, it is helpful to provide NICS with a unique numeric identifier for the respondent.

Respondent resides at _____
Respondent's date of birth _____
Respondent's Social Security Number is _____

Any of these pieces of information will make it easier for NICS to ensure they are locating records for the right person.

## *Information relating to notice/service and the hearing*

The statutory criteria for application of the federal firearms prohibition includes due process in that the respondent must have had notice of the hearing related to the protection order and an opportunity to be heard at the hearing. Whether the respondent chooses to appear or participate at the hearing for which the respondent had notice does not affect whether the order qualifies for purposes of the federal firearms prohibition. The summary information form should indicate that the respondent was properly served with the order/was provided notice, as well as the date on which the hearing was held and whether the respondent appeared or not despite having received notice.

- A hearing on the protection order was held on \_\_\_\_\_ in \_\_\_\_\_ Court, and
- Respondent had notice of the hearing:
  - Advised in court on \_\_\_\_\_ of the scheduled hearing date.
  - Served with notice on \_\_\_\_\_.
- Respondent appeared at the protection order hearing held on \_\_\_\_\_ in \_\_\_\_\_ Court.
- Respondent did not appear at the protection order hearing held on \_\_\_\_\_ in \_\_\_\_\_ Court.

## *Terms of the order*

The federal firearms prohibition is not activated unless the court makes certain findings or issues certain provisions restraining the respondent from specific future actions. When conducting a background check, NICS looks for these criteria within the order. Including these terms on the summary information form will ensure that the correct terms are quickly identified during upload to the federal databases.

- The Court has [check all that apply]
  - Restrained the Respondent from harrassing, stalking, or threatening an intimate partner or child or enaging in other conduct that would place an intimate partner in reasonable fear of bodily injury.
  - Found the Respondent represents a credible threat to the physical safety of the Petitioner or child.
  - Prohibited the Respondent from the use, or threatened use of physical force against the Petitioner or child that would reasonably be expected to cause bodily injury.
  - Ordered the Respondent to relinquish any firearms or ammunition to [Law enforcement agency] within XX hours

## State Law Prohibitors

Some state laws have broader protection order firearms prohibitions than federal law. For example, some states include dating partners and/or ex parte orders. If your state law includes a protection order firearm prohibitor, include a section on the data information sheet to establish whether the criteria of that statute(s) is met by the order. The NICS background check includes any known prohibiting status under state law in addition to the federal prohibitions.

## Brady flag

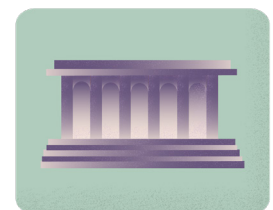
Finally, state, tribal or local personnel uploading protection order data into the federal databases will be asked to provide information about whether the protection order meets the requirements to activate the federal firearms prohibition. This is called a “Brady flag.” The personnel in the local, state, or tribal jurisdiction uploading the protection order information will look through the entire protection order to make that preliminary interpretation. It will expedite the upload process if the court issuing the protection order can also indicate on the protection order summary information form if the federal statutory requirements have been met. That can be done by the court when filling out the summary information form.

- Brady Indicator (BRD) field = Yes or No
- Protection Order Conditions (PCO) = 07

## Conclusion

Utilizing a summary information form is a simple way to identify which protection orders activate the federal (or state) firearms prohibition and which do not, and to preserve court resources by reducing the time necessary to register the order in state/federal database(s) and reduce time spent locating missing information necessary for enforcement via the federal background check system. Ensuring the databases that inform the federal background check have all the information necessary from state, local and Tribal orders enables NICS to complete their process in the required 72-hour time period so that purchases and transfers will not move forward putting firearms in the hands of prohibited domestic violence abusers and those who have no prohibiting status are timely permitted to proceed.

A sample form, which could be used as a starting point, is below.



# SAMPLE

- Brady Indicator (BRD) field = Yes or No
- Protection Order Conditions (PCO) = 07

## SUMMARY OF PROTECTION ORDER: INFORMATION FOR NICS REPORTING

Court/Case Information	
Case Number:	Date of Issuance:
County and State:	Date of Expiration:
Name of Court:	Court Contact Name:
Court Contact Phone:	Court Contact Email:

For the purposes of reporting to the National Instant Criminal Background Check System (NICS), the following information related to the protection order issued by the [XXX] Court is collected and reported to state and federal firearms regulatory authorities, pursuant to [state statute(s), if applicable] and federal statute 18 U.S.C. 922(g)(8).

Defendant/Relationship Information		
Respondent's Full Name:	DOB:	SSN:
Respondent's Known Address(es):		
Respondent's Known Alias(es):		
Protected party is a:		
<ul style="list-style-type: none"><li><input type="checkbox"/> current or former spouse or cohabitant of the Respondent;</li><li><input type="checkbox"/> person with whom the Respondent shares a child in common;</li><li><input type="checkbox"/> child of Respondent's intimate partner; or</li><li><input type="checkbox"/> child of the Respondent</li></ul>		
Notice and Hearing Requirements		
<ul style="list-style-type: none"><li><input type="checkbox"/> A hearing on the protection order was held on _____ (Date) in _____ [XXX] Court, and</li><li><input type="checkbox"/> Respondent had notice of the hearing:<ul style="list-style-type: none"><li><input type="checkbox"/> Advised in court on _____ (Date) of the scheduled hearing date.</li><li><input type="checkbox"/> Served with notice on _____ (Date).</li></ul></li><li><input type="checkbox"/> Respondent appeared at the protection order hearing held on _____ (Date) in _____ [XXX] Court. OR</li><li><input type="checkbox"/> Respondent did not appear at the protection order hearing held on _____ (Date) in _____ [XXX] Court.</li></ul>		
Terms of the Order		
The Court has (check all that apply):		
<ul style="list-style-type: none"><li><input type="checkbox"/> Restrained the Respondent from harassing, stalking, or threatening an intimate partner or child of either Respondent or their intimate partner or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury.</li><li><input type="checkbox"/> Found the Respondent represents a credible threat to the physical safety of the Petitioner or child of either Petitioner or Respondent.</li><li><input type="checkbox"/> Prohibited the Respondent from the use, attempted use, or threatened use of physical force against the Petitioner or child of either Petitioner or Respondent that would reasonably be expected to cause bodily injury.</li><li><input type="checkbox"/> Ordered the Respondent to relinquish any firearms or ammunition to [law enforcement agency/ FFL/other suitable party] within _____ hours.</li></ul>		



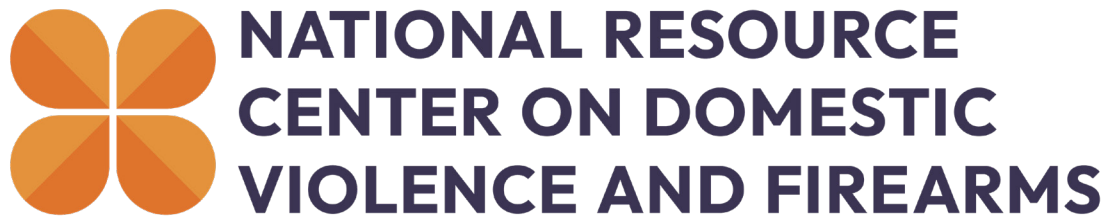
# EXAMPLE

- Brady Indicator (BRD) field = Yes or No
- Protection Order Conditions (PCO) = 07

## SUMMARY OF PROTECTION ORDER: INFORMATION FOR NICS REPORTING

For the purposes of reporting to the National Instant Criminal Background Check System (NICS), the following information related to the protection order issued by the Jackson County, MO 16th Circuit Court is collected and reported to state and federal firearms regulatory authorities, pursuant to federal statute 18 U.S.C. 922(g)(8).

<b>Court/Case Information</b>		
Case Number: 2416-FC777	Date of Issuance: 12.5.24	
County and State: Jackson, Missouri	Date of Expiration: 12.5.25	
Name of Court: 16th Circuit	Court Contact Name: Jane Smith	
Court Contact Phone: 816.555.5555	Court Contact Email: jane.smith@jackson.gov	
<b>Defendant/Relationship Information</b>		
Respondent's Full Name: John Doe	DOB: 4.24.67	SSN: 444.44.4444
Respondent's Known Address(es): 5512 E. Spruce St. Kansas City, MO 64433		
Respondent's Known Alias(es):		
Protected party is a:		
<input type="checkbox"/> current or former spouse or cohabitant of the Respondent; <input checked="" type="checkbox"/> person with whom the Respondent shares a child in common; <input type="checkbox"/> child of Respondent's intimate partner; or <input type="checkbox"/> child of the Respondent		
<b>Notice and Hearing Requirements</b>		
<input checked="" type="checkbox"/> A hearing on the protection order was held on <u>12.5.24</u> in Jackson County Court <input checked="" type="checkbox"/> Respondent had notice of the hearing: <ul style="list-style-type: none"> <li><input type="checkbox"/> Advised in court on _____ (Date) of the scheduled hearing date.</li> <li><input checked="" type="checkbox"/> Served with notice on <u>12.1.24</u>.</li> </ul> <input type="checkbox"/> Respondent appeared at the protection order hearing held on _____ (Date) in _____ [XXX]Court. OR <input checked="" type="checkbox"/> Respondent did not appear at the protection order hearing held on <u>12.5.24</u> in Jackson County Court.		
<b>Terms of the Order</b>		
The Court has (check all that apply):		
<input checked="" type="checkbox"/> Restrained the Respondent from harassing, stalking, or threatening an intimate partner or child of either Respondent or their intimate partner or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury. <input checked="" type="checkbox"/> Found the Respondent represents a credible threat to the physical safety of the Petitioner or child of either Petitioner or Respondent. <input checked="" type="checkbox"/> Prohibited the Respondent from the use, attempted use, or threatened use of physical force against the Petitioner or child of either Petitioner or Respondent that would reasonably be expected to cause bodily injury. <input checked="" type="checkbox"/> Ordered the Respondent to relinquish any firearms or ammunition to [law enforcement agency/FFL/other suitable party] within <u>24</u> hours.		



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