

COURT PRACTICE IN MISDEMEANOR CRIMES OF DOMESTIC AND DATING VIOLENCE 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.¹ Because misdemeanor convictions for crimes of domestic and dating violence can be the basis by which someone is prohibited from receiving a firearm, a NICS background check relies on state, local and tribal court criminal records information. Generally, information about convictions for misdemeanor crimes of domestic and dating violence can be entered into the National Crime Information Center (NCIC), the Interstate Identification Index (III), and/or the NICS Indices.

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 conviction for a misdemeanor crime of domestic or dating violence is not immediately available in the referenced federal databases, NICS personnel may have to contact the convicting 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 convicted domestic violence abuser and then requires law enforcement resources to attempt to recover that unlawfully possessed firearm.²

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 at the time the conviction is entered.

The information needed by NICS is based on the statutory requirements of 18 U.S.C. § 922 (g) (9), the federal firearms prohibition triggered by a qualifying state, tribal or local conviction for a misdemeanor crime of domestic or dating violence. (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.)

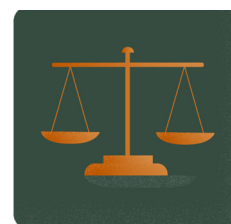
A “qualifying” conviction for a misdemeanor crime of domestic or dating violence needs to meet the following criteria under federal law, 18 U.S.C. § 922(g)(9):

Misdemeanor Crime of DOMESTIC VIOLENCE (MCDV)	Misdemeanor Crime of DATING VIOLENCE (DMCDV)
Must be a misdemeanor under federal, state, Tribal or local law. 18 U.S.C. 921(a)(33)(A)(i).	Must be a misdemeanor under federal, state, Tribal or local law. 18 U.S.C. 921(a)(33)(A)(i).
Misdemeanor has as an element the use or attempted use of physical force or threatened use of a deadly weapon. 18 U.S.C. 921(a)(33)(A)(ii).	Misdemeanor has as an element the use or attempted use of physical force or threatened use of a deadly weapon. 18 U.S.C. 921(a)(33)(A)(ii).
Date of conviction any time before or after 1996.	Date of conviction only on or after June 25, 2022
<p>Relationships covered:</p> <ul style="list-style-type: none"> • Current or former spouse, parent or guardian of the victim • Person with whom the victim shares a child in common • Person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian • Person similarly situated to a spouse, parent, or guardian of the victim 	<p>Relationship covered:</p> <p>A person who has a current or recent former dating relationship with the victim, which means a relationship between individuals who have or have recently had a continuing serious relationship of a romantic or intimate nature determined by: the length of the relationship, the nature of the relationship, and the frequency and type of interaction between the individuals involved in the relationship.</p>
<p>The MCDV prohibitor does not end so long as the qualifying conviction remains.</p> <p>The MCDV prohibition can end only if the qualifying conviction is: expunged or set aside; or if the convicted person is pardoned or has their civil rights restored.</p>	<p>If the convicted person does not have more than one misdemeanor dating violence conviction, the MCDV(DR) prohibitor generally ends 5 years after the qualifying conviction. IF the convicted person has, during that period, been subsequently convicted of any further dating violence crimes, or a misdemeanor under state, federal, tribal, or local law which has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, or any other offense that would disqualify the person under 18 U.S.C. 922(g) then the prohibition will not end after 5 years and will remain permanent. Then, the only actions that will lift the prohibition would be an expungement or set aside of the qualifying conviction or if the convicted person is pardoned or has their civil rights restored.</p>

Information about the misdemeanor crimes in the court jacket can run from one to many pages and include many pieces of information required under state, tribal or local law. To make it easier to find the requisite information for uploading into the NICS system, courts can develop summary information forms that can serve as a cover sheet for the conviction record, making it easier for those who upload the information to do so expeditiously and accurately.

In addition to the statutorily required pieces of information, the conviction 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 prohibited convicted person 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. Because there is a significant distinction in the prohibitor applied for a misdemeanor committed against a dating partner versus another domestic violence-qualifying relationship, and because the nature of relationships in real life do not always appear easily labeled, information about the nature of the relationship between the convicted person and crime victim are essential.

Developing a uniform NICS summary information reporting form for all entered domestic violence and dating violence misdemeanor convictions will ensure that all the needed information makes it into the federal background check system.



What to Include in a Summary Information Form for Reporting Required Statutory Information to NICS About Domestic/Dating Violence Misdemeanor Convictions

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 CONVICTION FOR MISDEMEANOR
CRIME OF DOMESTIC/DATING VIOLENCE
INFORMATION FOR NICS REPORTING

Identifying the court

Even with clear and complete records, 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 convictions for misdemeanor crimes of domestic/dating violence.

For the purposes of reporting to the National Instant Criminal Background Check System (NICS), the following information related to the conviction for a misdemeanor crime of domestic/dating violence entered by the _____ Court is collected and reported to state and federal firearms regulatory authorities, pursuant to [State] statute [section] and federal statute 18 U.S.C. 922(g)(9).

Including case and relationship information

To clearly establish which misdemeanor crime 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. The case caption also provides an opportunity to identify the relationship between the parties, which is one of the criteria that must be satisfied for a misdemeanor conviction for domestic or dating violence to activate the federal firearms prohibition. Very often the statute under which the prohibited person was convicted will not, on its face, indicate that the crime was one of domestic/dating violence. Whether the convicted statute does or not, it is essential to clearly identify the qualifying relationship between the convicted person and crime victim.

State of _____	Case No. _____
v.	
_____, Defendant [Relationship to Victim]	
Date of conviction _____	

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

Defendant is related to victim as:
<input type="checkbox"/> Spouse/former spouse
<input type="checkbox"/> Parent/former parent
<input type="checkbox"/> Guardian/former guardian
<input type="checkbox"/> Cohabitant/former cohabitant
<input type="checkbox"/> Person with whom the victim shares a child with
<input type="checkbox"/> Person similarly situated to a spouse, parent or guardian
<input type="checkbox"/> Dating partner/recent former dating partner

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 convicted of the misdemeanor crime of domestic or dating violence, it is helpful to provide NICS with a unique numeric identifier for the respondent.

Defendant resides at _____
Defendant's date of birth _____
Defendant'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 preservation of the convicted person's rights

The statute mandates that the defendant's rights to legal representation and right to a jury trial (if state, tribal or local allows) must be afforded.

These are affirmative elements that the statute requires before the prohibition is activated, so the summary information form should include information about them.

Defendant:

- Was represented by counsel.
- Knowingly and intelligently waived the right to counsel.
- Was entitled to a jury trial and was convicted after a jury trial.
- Was entitled to a jury trial and knowingly and intelligently waived the right to a jury trial.
- Was not entitled to a jury trial.

Required elements of the conviction statutes

The relationship between the victim and defendant does not have to be part of the statute defining the crime and the offense for which the defendant was convicted does not have to be classified as domestic/dating violence, as was made clear by the U.S. Supreme Court in *U.S. v. Hayes*, 555 U.S. 415 (2009). For example, the conviction could be for something generic such as "assault" and as long as the actual relationship between the victim and defendant is one of the relationships enumerated in the federal statute, the federal firearm prohibition will apply.

What is required of the statute underlying the conviction, however, is that the misdemeanor crime for which the defendant was convicted includes as an element the use of physical force, or the threatened use of a deadly weapon (18 U.S.C. 921(a)(33)(A)(ii)). Defendant's specific conduct underlying the conviction is not relevant in this instance, only the elements of the specific statute, including any relevant subsections, for which the defendant was convicted.

The conviction statute need not have the precise language of "use of physical force" or "use, attempted use, or threatened use of a deadly weapon." The Supreme Court has defined "physical force" under the federal misdemeanor crime of domestic or dating violence prohibitor as any degree of force supporting a common-law battery conviction, ranging from "offensive touching" to "violent contact." *U.S. v. Castleman*, 572 U.S. 157 (2014).

If your state, tribal or local misdemeanor statute in a case of domestic/dating violence includes subsections, the relevant subsection for which defendant was convicted must be noted in the records submitted to NICS.

For example, a misdemeanor harassment statute which reads:

166.065(1) A person commits the crime of harassment if the person intentionally:

- (a) Harasses or annoys another person by:
 - A. Subjecting such other person to offensive physical contact; or
 - B. Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violence response.

Section 166.065(1)(a)(A) would activate the federal firearms prohibition as a misdemeanor crime of domestic/dating violence, assuming a qualifying relationship exists. However, section 166.065(1)(a)(B) would not as this particular subsection does not include the required element regarding use of force.

To help NICS determine whether the physical force requirement has been met, summary information forms should list the specific prong under which the defendant was convicted. In the above example, simply noting that the defendant was convicted under Section 166.065, 166.065(1), or even 166.065(1)(a) would be insufficient to determine if the federal prohibition is activated.

One way to simplify this process is to include a checklist of all the misdemeanor crimes that could meet this physical force requirement. An example of this, from the Superior Court of Connecticut, is below.

Crime(s) Convicted	Conviction Date
<input type="checkbox"/> § 53a-61 Assault in the third degree.	
<input type="checkbox"/> § 53a-61a Assault of an elderly, blind, disabled, pregnant or mentally retarded person in the third degree.	
<input type="checkbox"/> § 53a-64cc Strangulation in the third degree.	
<input type="checkbox"/> § 53a-73a Sexual assault in the fourth degree.	<i>Specify Subsection: (Note: this offense is a felony if the victim is under sixteen years of age)</i>
<input type="checkbox"/> § 53a-96 Unlawful restraint in the second degree.	
<input type="checkbox"/> § 53a-181 Breach of the peace in the second degree.	<i>Specify Subsection: ___(a)(1) ___(a)(2) Other:</i>
<input type="checkbox"/> § 53a-182 Disorderly Conduct	<i>Specify Subsection: ___(a)(1) Other:</i>
<input type="checkbox"/> Other <i>Specify Offense Name, Statute Number, and Subsection:</i>	

Brady flag

Finally, state, tribal or local personnel uploading data about misdemeanor crimes of domestic and dating violence into the federal databases used by NICS will be asked to provide information about whether the misdemeanor crime 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 information will look through the entire misdemeanor crime record to make that preliminary interpretation—the summary information form will serve to give this personnel everything they need in order to do that. It is a good idea, also, to include on the summary information form a checkbox to indicate whether the Brady indicator field is “yes” or “no”.

Conclusion

Using a summary information form is a simple way to identify which misdemeanor convictions activate the federal 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 records 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

SUMMARY OF CONVICTION FOR MISDEMEANOR CRIME OF DOMESTIC DATING VIOLENCE: INFORMATION FOR NICS

Court Information
Case Number:
State of:
County of:
Name of Court:
Court Contact Name:
Court Contact Phone and Email:

For the purposes of reporting to the National Instant Criminal Background Check System (NICS), the following information related to the conviction for a misdemeanor crime of domestic/dating violence entered 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) (9).

Defendant Information
Defendant's Full Name (and known aliases) and DOB:
Defendant's Known Address(es):
Defendant's SSN:

For relationship information below, identify whether the defendant is a current or former spouse, parent, guardian, or cohabitant of the victim; person with whom the victim shares a child in common; person similarly situated to a spouse, parent or guardian of the victim; or a current or recently former dating partner.

Crime(s) Convicted (include subsection if applicable)	Date of Conviction	Is an element of this statute the use of physical force OR the use, attempted use, or threatened use of a deadly weapon (regardless of the defendant's specific conduct underlying the case)?	Relationship of Defendant to Victim (see note above)
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	

Counsel and Jury Information (Mark one box from each column)	
Defendant:	Defendant:
<input type="checkbox"/> Was represented by counsel	<input type="checkbox"/> Was entitled to a jury trial and was convicted after a jury trial
<input type="checkbox"/> Knowingly and affirmatively waived the right to counsel	<input type="checkbox"/> Was entitled to a jury trial and knowingly and intelligently waived the right to a jury trial
	<input type="checkbox"/> Was not entitled to a jury trial

SUMMARY OF CONVICTION FOR MISDEMEANOR CRIME OF DOMESTIC/DATING VIOLENCE FOR NICS - **EXAMPLE**

For the purposes of reporting to the National Instant Criminal Background Check System (NICS), the following information related to the conviction for a misdemeanor crime of domestic/dating violence entered by the 17th Circuit Court is collected and reported to state and federal firearms regulatory authorities, pursuant to federal statute 18 U.S.C. 922(g)(9).

Court Information
Case Number: 2416-FC8888
State of: New Mexico
County of: Harding
Name of Court: 17th Circuit Court
Court Contact Name: Mary Smith
Court Contact Phone and Email: Mary.Smith@hardingcounty.gov
Defendant Information
Defendant's Full Name (and known aliases) and DOB: John Doe 3/5/70
Defendant's Known Address(es): 4354 E 13th St. Mosquero, NM 87733
Defendant's SSN: 555-55-5555

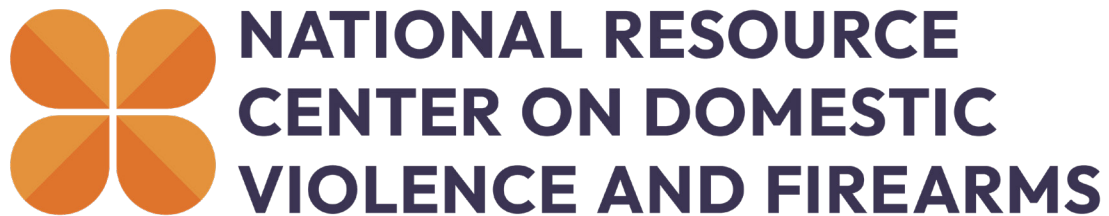
For relationship information below, identify whether the victim is a current or former spouse, parent, guardian, or cohabitant; person with whom the victim shares a child in common; person similarly situated to a spouse, parent or guardian; or a dating partner.

Crime(s) Convicted (include subsection if applicable)	Date of Conviction	Is an element of this statute the use of physical force OR the use, attempted use, or threatened use of a deadly weapon (regardless of the defendant's specific conduct underlying the case)?	Relationship of Defendant to Victim (see note above)
Assault § 30-3-12(A)(1)	2.1.24	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Spouse
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	

Counsel and Jury Information (Mark one box from each column)	
Defendant:	Defendant:
<input checked="" type="checkbox"/> Was represented by counsel	<input type="checkbox"/> Was entitled to a jury trial and was convicted after a jury trial
<input type="checkbox"/> Knowingly and affirmatively waived the right to counsel	<input checked="" type="checkbox"/> Was entitled to a jury trial and knowingly and intelligently waived the right to a jury trial
	<input type="checkbox"/> Was not entitled to a jury trial

Endnotes

- 1 See “About NICS,” Federal Bureau of Investigation, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/about-nics>
- 2 See “Firearm-Related Challenge and Voluntary Appeal File,” Federal Bureau of Investigation, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/national-instant-criminal-background-check-system-nics-appeals-vaf#Federal-Categories%20of%20Persons%20Prohibited%20from%20Receiving%20Firearms>



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