



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

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To: All Criminal Justice Information Services (CJIS) Users

The Brady Handgun Violence Prevention Act of 1993 (Brady Act) requires the use of the National Instant Criminal Background Check System (NICS) by federally licensed firearms dealers to determine whether a prospective firearm transfer to individuals applying to receive or possess firearms would violate state or federal law. The NICS is a computerized system designed to immediately make such a determination by conducting a search of available records.

A NICS check searches by name and descriptive data for matching records in three databases. These databases are the NCIC which contains information on wanted persons and protection orders; the Interstate Identification Index (III) which contains criminal history records; and the NICS Index which contains the names of prohibited persons as defined in the Brady Act. The NICS Index includes individuals who have been determined to be federally prohibited from receiving or possessing a firearm and the disqualifying information is not available through the NCIC or III systems.

The NCIC's Protection Order File (POF) was established in accordance with the Violence Against Women Act (VAWA), and in support of the Violent Crime Control and Law Enforcement Act which permits information from the NCIC databases, including protection orders, to be disseminated to civil and criminal courts for use in domestic violence and stalking cases. The VAWA also authorizes state and federal criminal justice agencies to enter information into the POF for the purpose of protecting persons from domestic violence and stalking. Additionally, the VAWA amended the Gun Control Act of 1968, making it unlawful for any person who is subject to a qualifying protection order to ship, transport, possess, or receive any firearm.

When analyzing information contained in the POF, the effectiveness of determining an individual's eligibility to receive or possess a firearm becomes a true life saver for a victim, a community, and law enforcement. The FBI CJIS Division's NICS Section would like to make all NCIC POF users aware of two unique tools available to entering agencies when submitting information into the POF. These tools assist all users of the NICS in making an expeditious interpretation of firearm eligibility.

Presently, the POF has two immediate indicators to identify whether a subject is prohibited from the receipt or possession of a firearm. They are the Brady Indicator (BRD) field

To: All Criminal Justice Information Services (CJIS) Users

and the Protection Order Condition (PCO) code 07. It may be simplest to differentiate these as the BRD is to be used when the subject is prohibited under federal law, while the PCO code 07 should be applied when the subject is state prohibited. The following is a breakdown and review of these fields.

The BRD Field

The BRD field was established to aid states in the decision whether an active protection order would prohibit the receipt or possession of a firearm under Title 18, United States Code (U.S.C.), Section 922(g)(8). To qualify under this code, the order must possess the following criteria:

1. The order was issued after a hearing of which the subject of the order received actual notice, and at which such person had an opportunity to participate;
2. The protected person is either an intimate partner, child of the intimate partner, or the child of the respondent;
3. The order restrains respondent from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child;
4. The order includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

The BRD is an optional field for NCIC entry; however, the NICS Section strongly encourages entering agencies to utilize the BRD field. If all four of the criteria listed above are present, then the BRD field should be set to "Y," indicating the respondent is prohibited under federal law from receiving or possessing a firearm. If the order does not contain the above criterion, the respondent is not *federally* prohibited and the BRD is to be set to "N." The BRD indicator of "U" is utilized when a determination cannot be made regarding a federal prohibition. Currently, the NICS Section's Standard Operating Procedure mandates the NICS user to request and review the actual order to ensure whether or not the prohibition exists.

To: All Criminal Justice Information Services (CJIS) Users

The PCO Code 07

The second tool available in the POF is the use of the PCO code 07. The following paragraphs will provide insight and information with regard to the merits, the effectiveness, and the critical time-saving benefits for the utilization of the PCO code 07 in the determination of eligibility for the receipt or possession of a firearm.

The PCO code 07 states the “subject is prohibited from possessing and/or purchasing a firearm or other weapon.” The PCO code 07 is a mandatory field for NCIC entry and must be utilized by the entering agency if any of the three following conditions are present, regardless of any federal prohibition:

1. The judge notes on the order the subject shall not possess/purchase a firearm.
2. Any prohibition to possess and/or purchase a firearm or other weapon is included on the order.
3. If under state statute or local ordinance, the existence or the circumstances of the protection order would prohibit the subject from possession and/or purchasing a firearm or other weapon.

The PCO code 07 is viewed as a state prohibition; however, it can be disqualifying and enforced on a national level under full faith and credit. For example, if PCO code 07 or the above prohibited language is present in an active order’s PCO fields, and the subject is attempting to receive a firearm or resides in the state of issuance, then the subject is automatically prohibited under state law. In these instances, the determination can be made immediately and the four federal criteria under 18 U.S.C. §922(g)(8) do not have to be established. Furthermore, if the subject’s state of purchase and state of residence is different than that of the issuing state, the order will be honored throughout the nation upon verification that the order is active and has been served. Additionally, active temporary (ex parte) orders which are not federally prohibiting can be used for a basis of firearms prohibition if the PCO code 07 is populated within the protection order, the temporary order has been served, and a hearing date for the permanent order has been set. This criterion generally can be established telephonically and actual review of the order is not necessary.

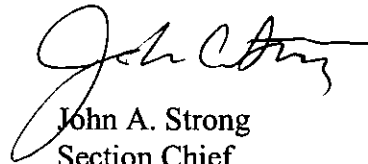
PCO code 07 provides an instantaneous alert to law enforcement nationwide (for full faith and credit enforcement) that the individual could be armed and dangerous and, with hit confirmation, the order can be enforced and firearms may be seized by both local and federal law enforcement.

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Granted, not all orders in the POF may contain a PCO code 07, and additional research and authentication may be required. However, this is a required field and standard language in protection orders. If applicable, it is imperative to utilize this tool to permit a quick interpretation of firearm eligibility.

The NICS Section thanks you for your consideration in this matter. Together we can enhance public safety through accurate and prompt firearm eligibility determinations. If you have any questions regarding this letter, you may contact Venetia King, Management and Program Analyst, NCIC Operations and Policy Unit, Global Operations Section, at (304) 625-2747, or Diana Jo Linn-Cook, NICS Liaison Specialist, NICS Section, at (304) 625-7451.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John A. Strong". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John A. Strong
Section Chief
NICS Section
CJIS Division