

Gun violence policy is focusing on mental health but Federal records still lack some states

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Federal officials say the FBI's database of people prohibited from purchasing firearms only works if it has "complete, accurate and timely

information."

Mental health records are a key prong in the system. But three states—New Hampshire, Montana and Wyoming—still refuse to submit them.

As U.S. Senators iron out gun reform initiatives, many Republicans like Sen. John Cornyn of Texas have repeatedly pointed to legislation that stops people with criminal records or [mental health challenges](#) from obtaining firearms.

Cornyn backed a 2018 bill that sought to shore up the FBI's National Instant Criminal Background Check System, or NICS, in the wake of a Texas church shooting that left 27 dead. The fatalities included the gunman, an Air Force airman, whose criminal records that would have barred him from purchasing guns had not been submitted to NICS.

"For years, agencies and states haven't complied with the law, failing to upload these critical records without consequence," Cornyn said while celebrating the "Fix NICS" solutions that pushed for faster and more accurate submissions. "Just one [record](#) that's not properly reported can lead to tragedy."

President Donald Trump signed that bill, which has pumped \$615 million into states to close loopholes and shore up reporting into the FBI's system.

States have made significant progress reporting into the database of 26 million records, including for 6.9 million people found by a judge to be mentally ill.

Without [state laws](#) mandating participation, Montana and Wyoming have submitted 36 and 17 mental health records respectively. New Hampshire

has submitted 657. By comparison, Hawaii—with about the same population as New Hampshire—has submitted nearly 10,000 mental health records.

Records from the three states' government-run mental health facilities show that many hundreds more people have been involuntarily committed—all of whom should have been submitted into NICS.

History of this program

The national background check system was established as part of the 1993 Brady Handgun Violence Prevention Act. Gun stores, pawn shops and others licensed dealers nationwide must use it when someone wants to purchase a firearm.

Prospective gun buyers must fill out a form from the Bureau of Alcohol Tobacco Firearms and Explosives attesting to certain questions, then their name is run through the FBI system.

The FBI says more than 300 million checks have been made over time, leading to more than 2 million denials.

Holes in the mental health reporting system gained attention in 2007 after a shooting at Virginia Tech left 32 dead. Two years earlier, a court had found the student shooter "an imminent danger to self or others" after he was accused of stalking two female classmates, resulting in temporary detention that should have disqualified him from purchasing firearms.

At the time, only about half of the states reported mental health records to NICS. By 2012, that number had shrunk to about 19 states that reported fewer than 100 records and by 2014 it fell to eight. In 2016, it fell to four until Alaska increased its reporting.

"We know that a background check is only as good as the records it contains, so efforts to improve reporting of records into NICS are critical for [public safety](#)," said Kelly Drane, research director with Giffords Law Center, a gun violence prevention group. "Research has shown that as states improve reporting of prohibiting mental health events into the background check system, we see a reduced risk of violent crime arrest for individuals that are prohibited."

The "Fix NICS" law written by Cornyn and Democratic Sen. Chris Murphy was dubbed a "baby step" by gun control advocates, but won the support of both large gun lobbies, the National Rifle Association and the National Shooting Sports Foundation.

The National Shooting Sports Foundation continues to lobby in New Hampshire, Montana and Wyoming to tighten up the reporting.

"We are committed to ensuring the background check system reflects the most accurate data available," said Mark Oliva, the foundation's spokesman.

Strange bedfellows continue

Efforts to broaden background checks to be "universal"—applying to private sales—have failed to pass at both state and federal levels. But gun rights lobbyists and gun safety groups both have coalesced around strengthening NICS.

Opposition to doing so has created some "strange bedfellows," said Susan Stearns, executive director of the New Hampshire branch of the National Alliance on Mental Illness.

Stearns' group opposed a measure in 2017 to report mental illness to NICS, largely because it did not include a way to get off the list.

The alliance's "position has always been: If they're a danger to themselves or others, they should be prevented from accessing lethal means, period," Stearns said. "But you shouldn't lose Constitutional rights for your lifetime."

Stearns said people in a mental health crisis often recover yet could be permanently prevented from participating in shooting sports and hunting.

New Hampshire officials submit court records for anyone deemed incompetent to stand trial or not guilty by reason of insanity, but not those who are involuntarily committed to a health facility.

The alliance was lukewarm about a bill by former Democratic state Sen. Margie MacDonald in Montana, too, even though her bill included a pathway to be removed from the list after five years.

MacDonald tried in 2014 and again in 2019 to pass a bill requiring that the records be submitted. Ultimately, she said Republican opposition fueled by hardline gun rights groups in the state sunk her effort.

"It's disheartening, dismaying and very dangerous," she said.

MacDonald hosted a Virginia Tech victim's father for a 2014 hearing in Helena, Montana. The mother of a woman killed in 2008 by a man who purchased a firearm just days after being involuntarily committed to a mental hospital testified as well. He had lied on the ATF's form, answering "no" to whether he had ever been found to be mentally ill.

Lying on the form can prompt fines and up to 10 years in prison.

Data released to the Washington Post from the Department of Justice shows that cases tied to lying on the form are exceedingly rare: 243 in the fiscal year 2020, out of millions of checks.

In Wyoming, former Rep. Sara Burlingame, D-Cheyenne, sponsored an effort in 2019 to mandate NICS mental health reporting that also failed. She said she faced "top-notch misinformation testimony" from groups like the Wyoming Gun Owners backed by the Dorr Brothers.

Burlingame said Wyoming's ranking as the worst place for suicides per capita is reason enough to keep firearms away from people in crisis.

"This is tied to older white men, isolated and having access to firearms," Burlingame said. "If that doesn't inspire people to create a culture that preserves our cultural right to firearms and moral obligations, I don't know what will.

"It's common-sense legislation that every other state has understood."

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