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The Adequacy of Fees Charged in Pennsylvania's Instant Check System for Firearms Purchases

Conducted Pursuant to
Act 1995-17 (First Special Session of 1995)

September 2015

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Report Summary

The federal Brady handgun Violence Prevention Act (the Brady Act) of 1993 mandated the establishment of the National Instant Criminal Background Check System (NICS). The NICS is a national computerized background check system that uses available records on persons who may be disqualified from receiving firearms. The Brady Act required that this system be in place by November 1998.

Each state is free to determine the form of its involvement in NICS. At any time, a state may choose to implement their own NICS Program by designating a local or state law enforcement authority within its boundaries to serve as an intermediary between its firearms licensees and the NICS in a point-of-contact capacity. Alternatively, states may choose to be a "non-POC" state in which firearms licensees contact NICS directly for background check purposes. All NICS checks by the FBI are conducted without charge; fees for NICS checks conducted by POC agencies are determined by state law.

Pennsylvania's involvement in the National Instant Criminal Background Check System was formalized with the passage of Act 1995-17 during the special Legislative Session on Crime. Act 17 amended Pennsylvania's Uniform Firearms Act to require the Pennsylvania State Police to establish, maintain, and operate an instantaneous firearm background check program. This system, known as the Pennsylvania Instant Check System (PICS), is designed to provide immediate access to a background check on individuals who attempt to purchase a firearm, receive a firearm through a transfer from another individual, or apply for a license to carry a firearm (commonly referred to as a "conceal carry permit").

Act 17 also established two separate fees pertaining to firearm sales and background record checks conducted in Pennsylvania. These include a $2 fee charged to firearm dealers for each telephone request they make to the Pennsylvania State Police for a PICS instant background check and a $3 surcharge on the sale of each taxable firearm. Revenues collected from these fees are deposited in the Firearm Records Check Fund and are to be appropriated annually to the State Police to carry out the PICS records check function.

Another provision in Act 17 requires the Legislative Budget and Finance Committee (LB&FC) to review the need to increase or decrease the $2 instant check fee every five years and to issue a report of its findings and recommendations to the General Assembly. This is the fourth review carried out under this mandate—the first being in 2000, five years following the effective date of the act.

PICS Operational Highlights

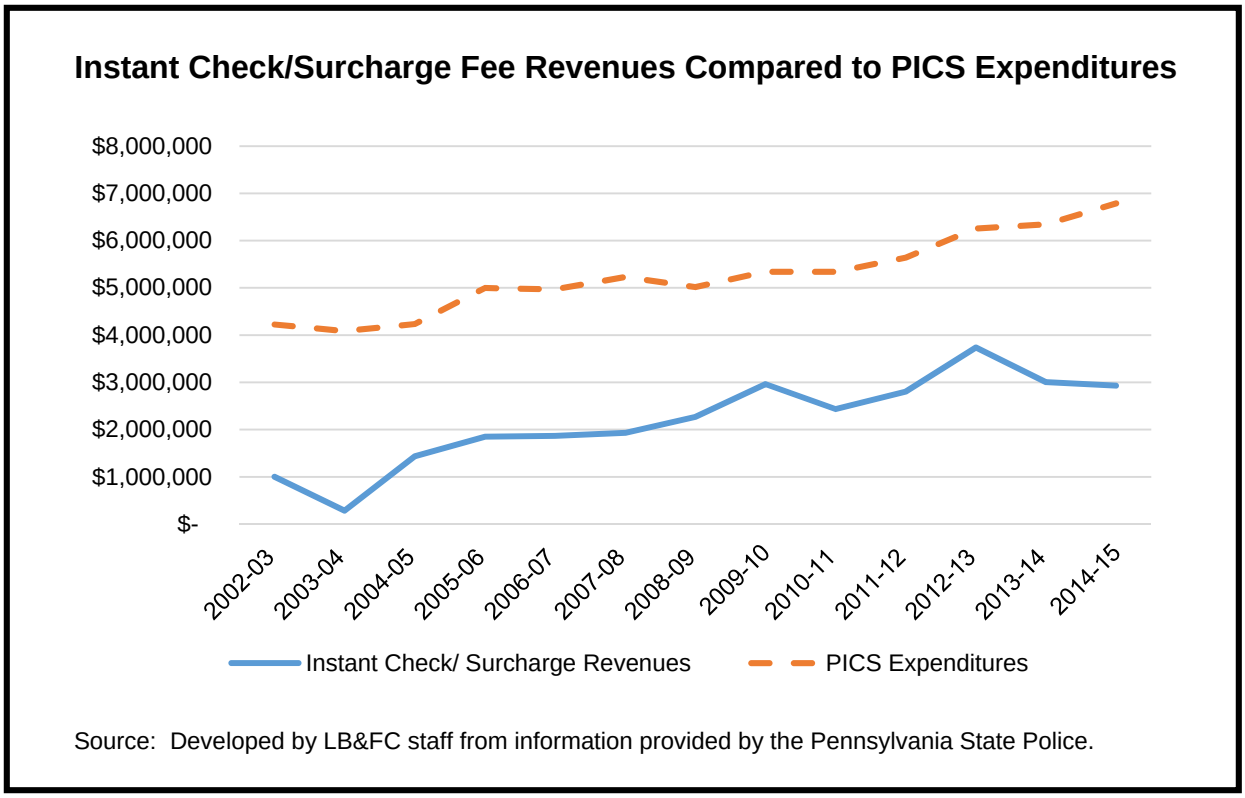
In 2014:

- Approximately 2,600 active Pennsylvania licensed firearm dealers made a total of 676,099 firearms sales and transfers. Of those, 354,603 were hand guns and 321,496 were long guns.
- PICS handled 893,054 calls and web-based requests. Of those, 98 percent were approved without further investigation (64 percent were approved automatically and 34 percent required operator assistance).
- Of the requests automatically approved, the average time until approval was 1 minute 12 seconds.
- The initial denial rate was 1.5 percent, or 13,178. Of these, 4,345 denials were challenged. Of these, 1,439 were reversed and 2,543 were issued a final denial.

The PICS system also underwent significant system upgrades that were implemented in February 2014, including the introduction of a web-based component called Flexcheck. Flexcheck allows for many improvements for firearm dealers, such as on-line account management, and has eliminated the problem of busy signals.

Adequacy of Fees

The following graph shows PICS expenditures compared to revenues generated by the $5 instant check fee/surcharge. Over the past four years, the $5 fee/surcharge has generated enough revenue to cover about 50 percent of PICS expenditures. At no point in the study period did fees generate enough revenues to cover the cost of the program. Additional resources came from the General Fund through the Pennsylvania State Police (PSP) General Government Operations appropriation and the Gun Check appropriation.



In order to fully fund the PICS program, the $5 combined instant check/surcharge fee would need to increase by about 120 percent, or to approximately $11.

Instant Check Systems in Other States

Thirteen states, including Pennsylvania, are POC states. That is to say they use a state agency to conduct checks on all firearm transactions. An additional eight states use a state agency to conduct background checks for some, but not all, firearm transactions.

The remaining states and territories do not use a state (or territorial) agency; the FBI performs the background checks in these states. In non-POC states and territories, licensed dealers must contact the FBI directly for instant background checks on all gun transfers. The FBI does not charge a fee for this service.

As shown on the following list, instant check fees in POC states range from no fee to $25.

Instant Check Fees in PA and Other Point-of-Contact (POC) States
(POC for All Firearm Transactions)

State	Fee
California	$20
Colorado	7
Connecticut	0
Florida	5[a]
Hawaii	n/a
Illinois	2
Nevada	25
New Jersey	15
Oregon	10
Pennsylvania	**2**
Tennessee	10
Utah	7.50
Virginia	2/5[b]

[a] The FBI conducts checks on pawn redemptions within 90 days of being pawned without charge. For all other transfers, the fee is $5.00.
[b] The fee is $2.00 for any resident, and $5.00 for any nonresident purchasing a firearm in Virginia.

Advantages to Pennsylvania Continuing as a POC State

The Pennsylvania State Police has identified the following as among the key advantages to the Commonwealth continuing to operate as a POC:

- Within the NICS system, if there is an issue with an instant check transaction, three days are allowed to resolve the issue. If not resolved within that time, the default is to allow the person to purchase a weapon. The research period may continue for 90 days and, if the purchaser is found to be a prohibited person, AFT will attempt to retrieve the weapon.

  In Pennsylvania, the research period is 15 days. If at the end of this period the issue cannot be resolved, the applicant's status becomes "undetermined," and the person is not allowed to purchase the weapon.
- According to the PSP, at any given time there are about 1,300 to 1,400 Protection From Abuse (PFA) orders that lack sufficient numeric identifiers (e.g., Social Security number or date of birth) to be entered into the National Crime Information Center, one of the federal databases used in a National Instant Criminal Background Check System (NICS) background check. These are, however, included in the Pennsylvania PFA database and would be recognized on a PICS check and result in a denial.

- There are some crimes that cause a person to be a prohibited person in Pennsylvania, that are not prohibitive within the NICS system, for example, a misdemeanor of the second degree and certain juvenile offenses.
- PICS has been responsible for the identification and capture of 1,818 (as of 2014) fugitives attempting to acquire a firearm that likely would not have occurred if Pennsylvania was a NICS-only state. (If a fugitive attempted to purchase a firearm in a NICS-only state, only the arresting jurisdiction would be notified, not the jurisdiction in which the fugitive is attempting a purchase.)
- Decisions regarding who can and cannot possess a firearm in Pennsylvania are made at the state level, not the federal level. The PSP can therefore be more accessible to both the public and firearms dealers and can provide a higher level of service than would occur if decisions were made at the federal level.

I. Introduction

Act 1995-17 (Special Session No. 1 of 1995) amended the Uniform Firearms Act to require the Pennsylvania State Police (PSP) to establish and operate a system capable of performing instantaneous firearm background checks. The law also requires that the State Police charge a $2.00 fee for conducting these background checks and a $3.00 surcharge on the sale of each taxable firearm and that every five years the Legislative Budget and Finance Committee (LB&FC) review the need to increase or decrease the amount of the instant check fee. This is our fourth review of the adequacy of the fee.

Study Objectives

1. To determine pertinent program measures and financial and statistical data, including the number of instant checks the State Police conducts annually and associated administrative costs and revenue collections.

2. To examine the financial condition of the Firearm Records Check Fund and assess the adequacy of the fee the State Police currently charges to conduct the instant check on firearms purchases.

3. To present findings to the General Assembly relative to the need to increase or decrease the instant check/firearm surcharge fee on firearms purchases.

Scope and Methodology

To determine the number of instant checks the PSP conducts annually and the associated revenue collections as well as related program activity and statistical measures, we reviewed the PSP's *Firearms Division Annual Reports* as well as other relevant materials obtained from PSP staff. We also conducted a telephone survey of a sample of Pennsylvania firearms dealers to assess the extent that they charged administrative and processing fees beyond the required instant check fees.

Acknowledgements

LB&FC staff gratefully acknowledges the cooperation and assistance provided by the Pennsylvania State Police during the conduct of this project.

Important Note

This report was developed by Legislative Budget and Finance Committee staff. The release of this report should not be construed as indicating that the Committee's members endorse all the report's findings and recommendations.

Any questions or comments regarding the contents of this report should be directed to Philip R. Durgin, Executive Director, Legislative Budget and Finance Committee, P.O. Box 8737, Harrisburg, Pennsylvania 17105-8737.

II. Pennsylvania's Instant Check System for Firearms Purchases (PICS)

The federal Brady Handgun Violence Prevention Act, P.L. 103-159, amended the federal Gun Control Act to provide a method for blocking firearm transfers to prohibited persons. The act included both interim and permanent provisions, with the permanent provisions requiring the establishment of the National Instant Criminal Background Check System (NICS) by November 30, 1998.

Legal Background

The U.S. Department of Justice and Federal Bureau of Investigation, along with the states, developed a national instant check system during the "interim Brady Act period" (February 1994 through November 1998). Pennsylvania's involvement was formalized during the 1995 Special Legislative Session on Crime.

At that time, Act 1995-17 (Special Session No. 1 of 1995) amended the portion of the Pennsylvania Crimes Code known as the Uniform Firearms Act to require the development of an instantaneous firearms background check program. During this period, Pennsylvania was established as a full point-of-contact (POC) state. A full POC state (some states are partial POC states) has responsibility for conducting background checks for all federal firearms licensees.

Pursuant to Act 17, the Pennsylvania State Police (PSP) is required to establish, maintain, and operate an instantaneous records check system for firearms purchases. Among other provisions, the act requires the State Police to:

- establish a telephone number operational seven days each week between 8:00 a.m. and 10:00 p.m. in order to respond to background check requests from licensed manufacturers, licensed importers, and licensed dealers;
- distribute without charge summaries of uniform firearm laws and firearm safety brochures;
- conduct criminal history, juvenile delinquency, and mental health records background checks on all available and applicable state and federal databases;
- institute procedures for challenging the accuracy of a person's criminal history, juvenile delinquency history, or mental health record pursuant to a denial by the instantaneous records check; and
- provide for the confidentiality of all information provided by a potential purchaser, transferee, or applicant.

The PSP is also to annually report to the General Assembly on the instant records check system, including the number and types of firearms sales, the number of applications denied and challenged, a summary of PSP instant check activities, and related statistics.

More recently, the NICS Improvement Act was enacted in the wake of the April 2007 shooting tragedy at Virginia Tech. The Virginia Tech shooter was able to purchase firearms from a licensed firearm dealer because information about his prohibiting mental health history was not available to the NICS. The system was therefore unable to deny the transfer of the firearms used in the shootings. The NICS Improvement Act sought to address these and other gaps in information reporting by:

- enhancing the Brady Act requirement that federal departments and agencies provide relevant information to the NICS; and
- providing incentives to states to submit complete information to the Attorney General on persons prohibited from receiving or possessing firearms through:
  - authorizing new grant programs for state executive and judicial branch agencies to improve information sharing with NICS, and
  - providing for Byrne Justice Assistance Grant (JAG) program penalties for states that do not comply with the act's record completeness goals.

Also, prior to the NICS Improvement Act, 18 U.S.C. §922(g)(4) was effectively a lifetime prohibition on possessing firearms by any person "who has been adjudicated as a mental defective or has been committed to a mental institution." The act, however, provides that when relief is granted under a qualified federal or state relief program, or when certain automatic relief conditions are met, the event giving rise to the mental health disability is "deemed not to have occurred" for purposes of the federal firearm prohibition.[1]

Since our last PICS report, the PSP has received correspondence, dated February 13, 2013, regarding NICS treatment of mental health emergency commitments under Section 302 of the Mental Health Procedures Act, (i.e., involuntary 302 commitments) and made inquiry to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). ATF determined that the inclusion of 302 commitments in the NICS database is appropriate under existing case precedent applicable to

[1] Pennsylvania, however, does not have a "qualified" relief program. According to the Pennsylvania State Police, a statutory amendment would be required for Pennsylvania to become qualified.

Pennsylvania, and that such commitments qualify under federal law as prohibiting the sale and/or possession of firearms.[2]

PICS Organization and Staffing

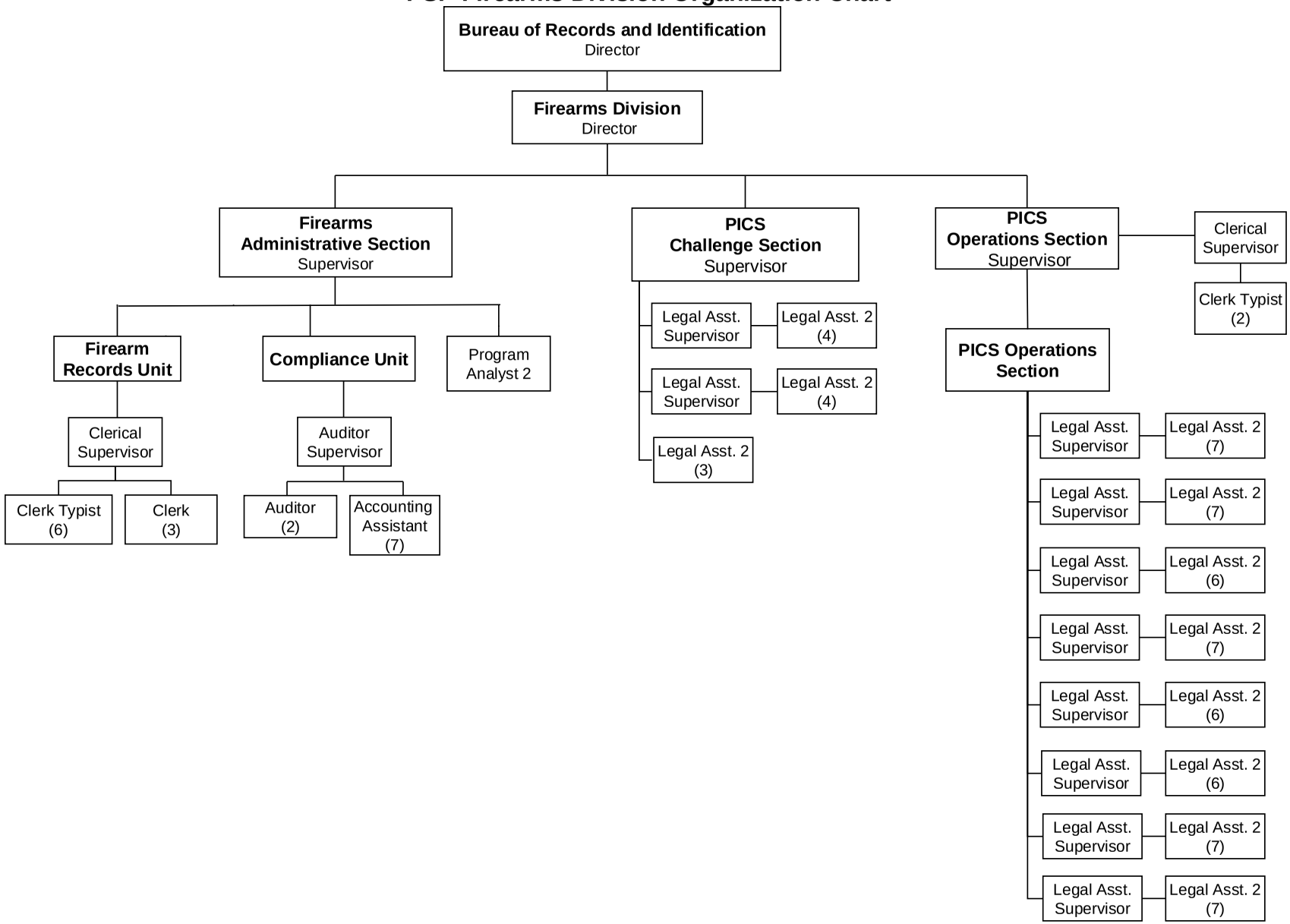
The Pennsylvania State Police is responsible for administering the provisions of the Pennsylvania Uniform Firearms Act (PUFA). The Firearms Division, located within the Bureau of Records and Identification, has responsibility for the firearm background check program. As shown in Exhibit 1, the Firearms Division is organized into three sections: the Administrative Section, Operations Section, and PICS Challenge Section.

As shown on Table 1, the Firearms Division has an authorized staff complement of 102. As of May 2015, the Division had 96 filled positions. The only significant change in the staff complement since our last report is that the PICS Challenge Unit became its own section, rather than being located within the Operations Section.

[2] The ATF also stated that relevant case law continues to evolve toward a more restrictive interpretation of what type of mental health commitments qualify under federal law as prohibiting possession of firearms. Thus, the inclusion of 302 commitments in the NICS Federal Index "poses significant future litigation risk." Pennsylvania law, 18 Pa.C.S. §6105 prohibits the sale to and/or possession of firearms by an individual who has been subject to a section 302 commitment.

Exhibit 1

PSP Firearms Division Organization Chart



Source: Pennsylvania State Police.

Table 1

PSP Firearms Division Staff Complement
(As of May 2015)

	Total Authorized	Filled Positions	Vacant Positions
Division Director's Office	1	1	0
Administrative Section:			
Section Supervisor	1	1	0
Program Analyst	1	1	0
Subtotal	2	2	0
Firearm Records Unit:			
Clerical Supervisor	1	1	0
Clerk/Typist	6	5	1
Clerical	3	3	0
Unit Subtotal	10	9	1
Firearm Compliance Unit:			
Auditor Supervisor	1	1	0
Auditor I	2	1	1
Accounting Assistant	7	7	0
Unit Subtotal	10	9	1
Administrative Section Subtotal	22	20	2
Operations Section:			
Section Supervisor	1	1	0
Clerical Supervisor	1	1	0
Clerk/Typist	2	1	1
Subtotal	4	3	1
PICS Operations Unit:			
Legal Assistant Supervisor	8	8	0
Legal Assistant 2	53	53	0
Unit Subtotal	61	61	0
Operations Section Subtotal	65	64	1
PICS Challenge Section :			
Legal Assistant Supervisor	2	2	0
Legal Assistant 2	10	9	1
Clerical	1	1	0
PICS Challenge Section Subtotal	13	12	1
Firearms Division Total	101	97	4

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police.

Administrative Section

This section is responsible for initiating and coordinating all firearm-related investigations involving dealer license compliance issues under state law. The Administrative Section also handles all division-related special projects, maintains the automated systems, obtains statistical information from the computer systems, identifies procedural modification requirements, coordinates division staff training programs, and responds to many firearm-related questions.

The section, in authorized positions, has an enlisted Section Supervisor, a Program Analyst 2, and two separate units: the Firearm Compliance Unit, with 10 staff members, and the Firearm Records Unit, with 10 staff members.

The Firearm Records Unit. This unit processes all firearm records of sale (ROS) forms submitted by Pennsylvania licensed firearm dealers for the sale or transfer of hand guns, information regarding license to carry concealed firearms submitted by county sheriffs, and sportsman's firearm permits submitted by county treasurers. All fees collected through the surcharge remittance and PICS background checks are processed through this unit. The Firearm Records Unit is also the source for firearms-related forms; firearm information and safety brochures; certification regarding hand guns, licenses, and permits; and general information regarding the administrative provisions of the act.

The Firearm Compliance Unit. This unit coordinates and controls all compliance and auditing functions of the division. The unit is responsible for the review and processing of surcharge remittance forms submitted by firearms dealers. Staff members are also responsible for auditing dealer accounts, reviewing policy and procedures with firearm dealers, and referring noncompliant dealers for possible investigation. Compliance auditing of dealer accounts is conducted through review of firearm record of sale and surcharge documents received by the Firearm Records Unit. The unit also completes on-site dealer inspections in addition to conducting training or review for dealers as requested.

Operations Section

This section is comprised of an enlisted Section Supervisor, a Clerk Typist 3, a Clerk Typist 2 and the Instant Check Unit with 61 staff members.

The Instant Check Unit. This unit is the call center that conducts the background check requests for the purchase/transfer of firearms or application for license to carry a concealed firearm. This responsibility requires ensuring accurate identification of the subject of the background check, conducting evaluation and research of records, maintaining comprehensive documentation, and keeping positive communication with firearm dealers and sheriffs. This unit also processes and

maintains the mental health database and updates Pennsylvania criminal history records with information obtained as a result of research conducted by PICS staff.

As part of a continuing effort to upgrade its technology and systems, the PSP completed a complete re-write of the PICS in February 2014. County sheriffs, local law enforcement, and firearm dealers are now able to initiate a background check through the web-based Flexcheck System. Additionally, statutorily mandated fees and forms may be submitted electronically. County mental health agencies now have the ability to directly transmit mental health records into the PICS system. This change reduces the need for manually entering these records by PSP staff.

The Challenge Section

This section is comprised of an enlisted Section Supervisor and 13 staff members. The Challenge Section handles all PICS denial challenges submitted to the Department. All "denied" and "undetermined" status background check subjects have the right to challenge a PICS determination. If challenged, the PICS Challenge Unit assumes research responsibilities and ultimately upholds or reverses the initial determination.

If records are incomplete, the staff researches records and attempts to obtain information from originating sources. The unit also prepares case files for appeals through the Office of the Attorney General; testifies at the appeal hearings when required; and attends and testifies at relief hearings for restoration of firearms rights, which are conducted in the various county courts of common pleas throughout the state. It also handles enforcement investigations involving individuals who knowingly and intentionally furnish false information in the attempt to acquire a firearm in violation of the Pennsylvania Uniform Firearms Act.

System Overview and Procedures

PICS provides for immediate access to a background check on individuals attempting to purchase a firearm, receive a firearm through a transfer, or apply for a license to carry a firearm. PICS uses both a web-based Flexcheck system and an Interactive Voice Response (IVR) system that provide for a completely automated background check when no adverse or prohibitive records are identified on the subject of an inquiry.

As a point-of-contact agency, the State Police uses PICS to access the state and federal databases listed on Exhibit 2 to determine an individual's eligibility to acquire a firearm or license to carry a firearm. In addition to the record check databases, PICS also accesses the Pennsylvania Bureau of Motor Vehicle records to

Exhibit 2

State and Federal Databases Searched During Pennsylvania's Instant Background Checks

State databases searched include:[a]

- Pennsylvania Criminal History Records
- Juvenile Records (contained within the criminal history record file)
- Mental Health File (containing involuntary commitment information and adjudication of incompetence)
- Pennsylvania Protection From Abuse File (PFA) File
- Pennsylvania Wanted/Missing Persons File

Federal databases searched include:[b]

- *Interstate Identification Index (III)*—contains criminal history records submitted by states throughout the country; also federal and military records.
- *National Crime Information Center (NCIC)*—contains federal, state, and international information on wanted persons, a Protection Order File, foreign fugitives, deported felons, immigration violators, convicted persons on supervised release, U.S. Secret Service Protective File, SENTRY file (persons under supervision of the Federal Bureau of Prisons), convicted persons on supervised release, convicted sexual offenders, and the Violent Gang and Terrorist Organization File (VGTOF).
- *NICS Index*—contains records contributed by local, state, and federal agencies pertaining to individuals *federally* prohibited from transferring a firearm; including a Denied Persons File, mental defectives/commitments file, controlled substance abusers, illegal/unlawful aliens, renounced citizenship, and dishonorable discharges from the Armed Services.
- Applicable databases in the Department of Homeland Security's United States Immigration and Customs Enforcement (ICE).[c]

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[a] In addition to the record check databases, PICS also accesses the Pennsylvania Bureau of Motor Vehicle records to obtain the individual's complete name, date of birth, and Social Security number prior to the initiation of the background check.

[b] As a point-of-contact state, PICS conducts the check of the federal databases through the National Instant Criminal Background Check System (NICS).

[c] A directive from the Attorney General in 2002 mandates that an Automated Immigration Alien Query (IAQ) be conducted on all non-U.S. citizens via the applicable Immigration and Customs Enforcement databases.

Source: Pennsylvania State Police and the FBI/NICS Section.

obtain the individual's complete name, date of birth, and Social Security number prior to initiating the background check.

Approximately 2,600 active Pennsylvania licensed firearm dealers[3] use PICS. Each dealer has a security code for lawfully accessing the system. County sheriffs are also authorized PICS users. Sheriffs request instant background checks when processing applications for a license to carry a firearm. Firearm dealers are required to pay a $2.00 fee for each background check they request. While not expressly provided for by statute, sheriffs historically have not been required to pay the $2.00 instant check fee for background checks when issuing a license to carry.

An overview description of the background check process involving licensed dealers, county sheriffs, and PICS operators working in the Instant Check Unit is provided in the narrative and flowchart shown in Exhibit 3. The applicability of the background check requirements in the cases of private transfers and gun show transactions is discussed below.

Private Transfers. Private transfers of long guns between two Pennsylvania residents are not required to be conducted through a dealer. Therefore, a background check is not conducted to determine the individual's eligibility to possess the firearm on private long gun transactions. It is illegal under federal and state law, however, for an individual to knowingly transfer a long gun to a prohibited individual on a private basis.

Private transfers of handguns must use an Application/Record of Sale form through a Federal Firearms Licensee (FFL) and require a PICS background check. This requirement does not apply to private transfers between husband/wife, parent/child, or grandparent/grandchild.

[3] Pennsylvania law requires that a dealer be licensed by the state to sell or transfer firearms direct to the consumer. A Pennsylvania-licensed dealer is also required to have a federal license and thus, in this case, the term "licensed firearm dealer" under state law is synonymous with "federal firearms licensee." The total shown does not include county sheriffs.

Exhibit 3

An Overview of the Pennsylvania PICS Firearms Background Check Process

Step 1: The dealer or sheriff initiates either a call to the PICS toll-free number or logs onto the Flexcheck System. If on a rotary or pulse telephone, or if requesting a background check on a non-U.S. citizen or a resident of another state, the dealer or sheriff is transferred to a PICS operator and the check then proceeds with operator assistance. If the call remains automated, the Interactive Voice Response (IVR) computer program prompts the caller for the security access code.

Step 2: With a touch tone telephone, the caller is prompted through each step. The IVR requests the Pennsylvania driver's license number or photo identification card number. The number is entered on the telephone key pad.

Step 3: Upon receiving the license number, the IVR initiates a database inquiry to the Pennsylvania Bureau of Motor Vehicles. The database returns the name, date of birth, and Social Security number of the subject of the background check.

Step 4: The IVR asks the dealer to verify the information received. Upon indicating the information is correct, the IVR system will then initiate the background check query through Pennsylvania and federal databases. The databases queried at this time are listed on Exhibit 2.

Step 5: The IVR advises the dealer at this time that he/she has been charged $2.00 for the background check. County sheriffs are not required to collect and pay this fee.

Step 6: If no record is found for the individual, the IVR system automatically approves the transaction and issues a unique approval number.

Step 7: If a potentially prohibitive record is located, the call is transferred through the Automatic Call Distribution (ACD) system to an operator, who then continues to process the background check.

Step 8: The operator re-verifies the identification information and reviews the information returned from the various databases. If the information is determined to be non-prohibiting, the operator will issue an approval number.

Step 9: If the information is prohibiting, the dealer/sheriff is advised that the transaction must be denied. The dealer/sheriff should, at this time, provide the denied individual with a copy of the Pennsylvania State Police Denial Challenge form. If the individual feels they may have been denied in error, he/she may read and complete the form and submit it to the Pennsylvania State Police's Challenge Unit.

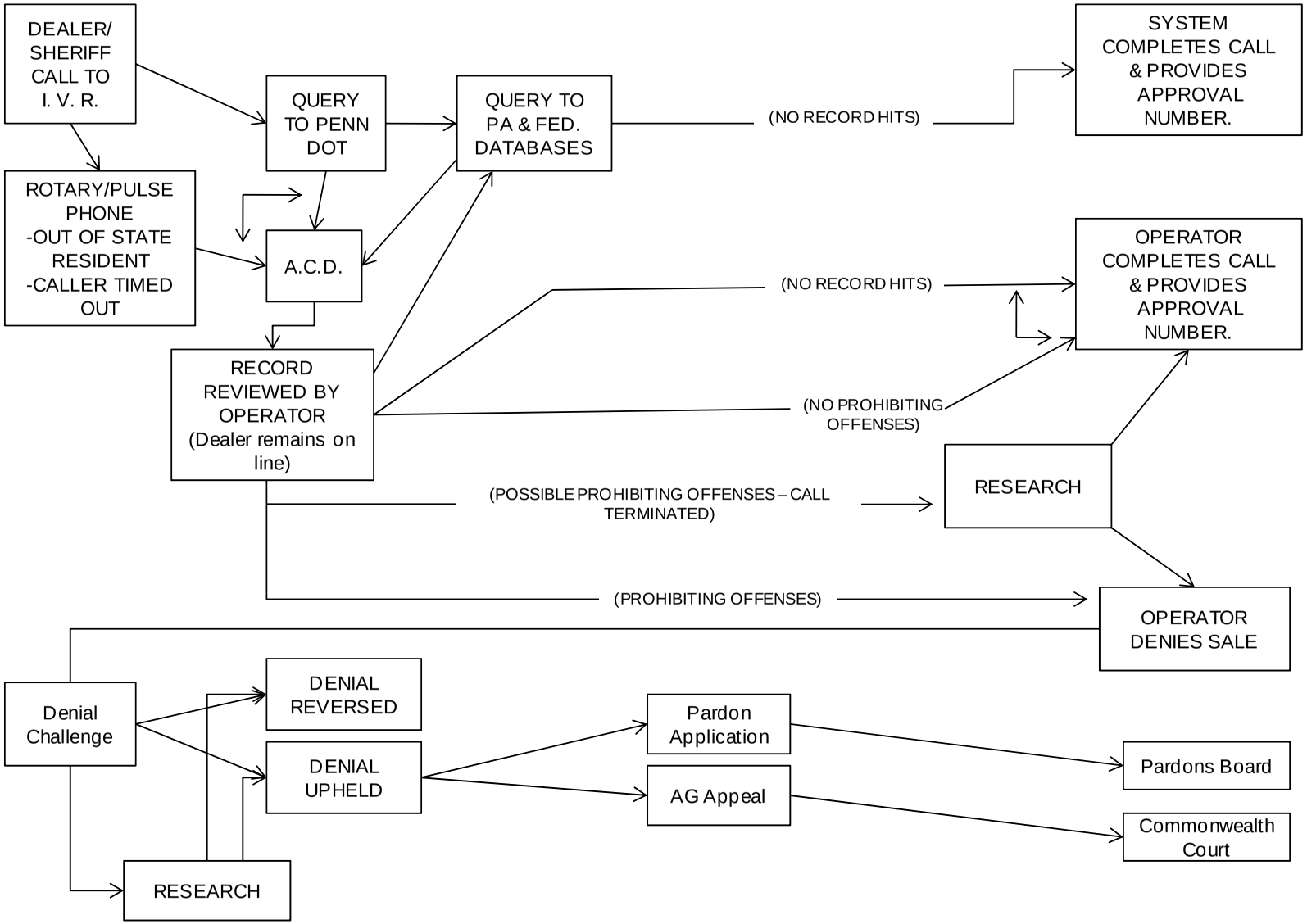
Step 10: Occasionally, a transaction cannot be completed instantly for a number of reasons:

- A lack of numeric identifiers on the record--i.e., date of birth or Social Security number.
- A similar name exists, making identification difficult without fingerprints.
- Research of potentially prohibiting offenses from another state is needed.
- Research of missing criminal record disposition information is needed.
- Pennsylvania was not the sole source for criminal record submission to the FBI prior to 1983. Local agencies could submit records directly. Occasionally, the records have conflicting or ambiguous information.

Step 11: If a timely resolution cannot be obtained, the transaction is placed into research and the dealer/sheriff is advised that PICS will re-contact them as soon as possible, and at the very latest within 15 days, with a determination.

(A flow-chart illustrating the PICS call process is provided on the next page.)

Exhibit 3 (Continued)



Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police.

Gun Show Transactions. A PICS official clarified the popular perception of a "gun show loophole" concerning firearm transactions. Under federal law, private individuals (who are not FFLs) may sell firearms at gun shows or meets without completing a NICS check. However, states may—and Pennsylvania does—require that only FFLs may complete the sale or transfer of handguns at gun shows and meets. Additionally, the narrative in Exhibit 4 describes the process for approving or denying a gun purchase through the new Flexcheck system.

Exhibit 4

An Overview of the Pennsylvania PICS Firearms Background Check Process – Flexcheck

Step 1: The dealer sets up a secure account in the PICS Flexcheck System and adds the user to his account as needed to initiate PICS background check requests.

Step 2: Upon login, the user verifies the location of the sale (business or gun show).

Step 3: The user is prompted to enter the buyer's information on a web based form. If a driver's license number or a PennDOT photo identification card number is entered, certain data fields are automatically populated. The remaining fields are then populated by the user.

Step 4: The user then enters the number of handguns, long guns, or frames/receivers.

Step 5: After all the required fields have been populated, the user clicks the "Save Subject and Proceed" button and the PICS check is automatically started.

Step 6: If the database queries find no "hits," the purchase is approved and an approval number is presented on screen. If possible hits are identified, the check goes into the queue for a review by a PICS legal assistant. The Flexcheck user will receive the first in a series of status log messages – "Pending." The status log will be periodically updated with "Approved – Waiting for Acceptance," "Research," "Denied," or "Undetermined."

Source: Pennsylvania State Police.

Act 1995-17, which amended 18 Pa.C.S.A., specifies in §6113 conditions by which dealers may be licensed to sell firearms: "the business [FFL] shall be carried on only upon the premises designated in the license or at a lawful gun show or meet." Therefore, an FFL selling firearms at a "lawful gun show or meet" is, according to state law, acting in the same capacity as it would were the transactions occurring at the place of business specified on the FFL's License to Sell Firearms.

Further, 37 Pa. Code §33.111 specifies the pre-sale check procedures conducted at gun shows. This procedure mirrors the procedure that would occur at an FFL's place of business. Included in these provisions are identical procedures for completion of an Application/Record of Sale form (for completed handgun transactions) and their required submittal to the State Police. Also detailed are procedures

for including all instant check fees and firearm sale surcharges (if a sale is completed) for inclusion in a dealer's surcharge remittance form.

Despite the prohibitions against private individuals (non-FFLs) selling handguns at gun shows, PICS Administrative Section staff have indicated that a categorical guarantee of no such sales occurring at gun shows is not possible given the lack of complete monitoring of all gun show vendors.

PICS Operational Statistics

As can be seen from Table 2, there were 2,614 licensed firearm dealers in Pennsylvania in calendar year 2014, which accounted for total firearm sales and transfers of 676,099 weapons, including 354,603 handguns and 321,496 long guns. (See Appendix A for a county-by-county breakdown of firearm sales and transfers.) Additionally, 219,782 license to carry permits, which also require PICS background checks, were issued in 2014.

Table 2

Number of PA Licensed Firearm Dealers and Related PICS Activities
(Firearm Sales/Transfers and License to Carry Permits)

Calendar Year	Licensed Firearm Dealers[a]	Firearm Sales and Transfers			License to Carry Permits
		Handguns	Long Guns	Total	
2010	2,022	238,136	258,584	496,720	142,477
2011	2,297	302,457	304,467	606,924	167,656
2012	2,411	414,039	386,851	800,890	245,444
2013	2,163	420,507	388,043	808,507	269,273
2014	2,614	354,603	321,496	676,099	219,782

[a] See Appendix B for the number of licensed firearm dealers on a county-by-county basis.

Source: Developed by LB&FC staff with information obtained from the Pennsylvania State Police.

PICS Operating Hours and System Downtime

PICS is to be operational 365 days a year from 8:00 a.m. until 10:00 p.m. This equates to 5,110 operating hours yearly. Periods in which the PICS system is not operational are classified as "system downtime." Table 3 provides a five-year breakdown of total operating time, system downtime in hours, and the number of days affected by downtime.

Table 3

PICS Operating Hours and System Downtime

Calendar Year	Total Potential Operating Hours	Total System Downtime (Hours)	Percent of Total	Number of Days Affected
2010	5,110	95.7	1.87%	38 days
2011	5,110	67.4	1.32	57 days
2012	5,124	73.1	1.43	45 days
2013	5,110	26.2	0.51	29 days
2014	5,110	22.4	0.44	23 days
Five -Year Totals	25,564	364.87		

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police.

Reasons for PICS System Outages

Reasons for PICS system downtime include technical problems exclusively with federal databases, problems with PSP systems, downtime due to other unspecified technical difficulties, and technical difficulties in both state and federal systems. Table 4 illustrates outages for each of these reasons.

Table 4

Reasons for PICS System Outages

	2010	2011	2012	2013	2014
Technical Difficulties – Federal Databases	27%	19%	5%	19%	42%
PSP System Problems	72	60	43	77	56
Downtime Due to Other Technical/System Difficulties	0	20	52	4	1
Technical Difficulties in both State and Federal Systems	2	0	0	0	0
Total	100%	100%	100%	100%	100%

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police.

Outcomes of Initial Instant Check Calls to PICS

As shown on Table 5, 64 percent of all calls to PICS were automatically approved by the IVR/Web system in 2014. Another 34 percent of the calls were approved once transferred to an operator. Thus, 98 percent of the background check calls received approval during the first call.

Table 5

Initial Disposition of Calls Requesting PICS Background Checks

Calendar Year	Total PICS Calls[a]	Number Approved on Initial Contact			
		By IVR/Web System		By Operator	
		No.	%	No.	%
2010	645,475	371,183	58%	234,355	36%
2011	739,682	430,304	58	263,373	36
2012	1,028,113	589,167	57	344,556	34
2013	1,125,362	632,170	56	374,584	33
2014	893,054	571,870	64	305,769	34

[a] Represents background checks requested by firearm dealers and sheriffs for firearm sales/transfers license to carry permits, and information on pending cases.

Source: Compiled by LB&FC staff using information obtained from the Pennsylvania State Police.

Average PICS Approval Call Time

Table 6 presents average background check call times, in minutes, for calls automatically approved by the IVR computer system and calls transferred to an operator and approved immediately.

Table 6

Average PICS Call Times for IVR and Operator Approvals

Calendar Year	Average Background Check Call Time (Minutes) for:			
	Automatically Approved - IVR Phone System[a]	Operator-Assisted IVR Approvals	Automatically Approved - Web System	Operator-Assisted Web Approvals
2010	2.5 Minutes	5.8 Minutes		
2011	2.6	6.3		
2012	2.4	9.9[b]		
2013	2.1	8.3[b]		
2014	1.2	14.3[b]	1.52 Minutes	13.88 Minutes

[a] Interactive Voice Response system.
[b] This new statistic represents operator assisted calls that occurred after the implementation of the upgraded IVR system in July 2012.

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police.

PICS Initial Denials, Challenges, and Final Denials

Table 7 provides a summary of the total number of initial denials issued by PICS and the subsequent number of denials challenged.

Table 7

Initial PICS Denials and Challenges

Calendar Year	Total Number of of Initial Denials Issued by PICS	Initial Denial Rate	Number of Denials Challenged	
			Number	% of Total Denials
2010	10,596	1.6%	3,826	36.1
2011	11,088	1.5	4,134	37.2
2012	10,907	1.1	5,196	47.7
2013	13,268	1.2	5,785	43.6
2014	13,178	1.5	4,345	33.0

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police.

In 2014, of the 4,345 denials challenged, 2,543 final denials were issued, 1,439 denials were reversed, and 363 were returned to the challenger unprocessed for reasons such as incompleteness, untimely filing, or because the file being appealed was not a PICS denial.

Pennsylvania's 1.5 percent initial denial rate in 2014 is the same as the national rate (FBI and states). The FBI-only denial rate is 1.2 percent.

PICS Appeals Actions

Denials that are upheld by the PICS Challenge Unit may be appealed to the Office of Attorney General. Subsequent decisions may then be appealed to the Commonwealth Court and the Pennsylvania Supreme Court. Table 8 provides a summary of the actions taken on appeals of PICS denials brought before the Office of Attorney General during calendar years 2010-2014.

Table 8

Actions Taken by the Office of Attorney General on Appeals of PICS Denials

	2010	2011	2012	2013	2014
Office of the Attorney General					
Total Number of Appeals	63	55	84	85	100
Outcome:					
Cases Approved Prior to Hearing Date	3	3	5	0	5
Cases Upheld	5	15	17	17	17
Cases Overturned	0	0	1	0	1
Cases Withdrawn/Cancelled	16	24	48	46	19
Cases Pending	39	13	13	22	58

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police.

The first appeals to reach the Commonwealth Court level were in the year 2000. As of 2014, a total of 42 cases had been filed in Commonwealth Court.

Cases Upheld	20
Cases Overturned[4]	16
Cases Refused/Withdrawn/Cancelled	4
Cases Pending	2

The first appeals to reach the Pennsylvania Supreme Court occurred in 2001. As of December 31, 2014, the cumulative statistics for Supreme Court review of appealed PICS cases were as follows (no appeals were filed with the Supreme Court in 2014):

Cases Upheld	5
Cases Reversed	0
Cases Refused/Withdrawn/Cancelled/Remanded	11
Cases Accepted, Pending Hearing/Decision	0

PICS-Related Arrests

During 2014, law enforcement authorities reported the arrest of 95 fugitives with active warrants as a result of an attempted firearm purchase. Law enforcement authorities are notified immediately when a fugitive is attempting to purchase a firearm and is identified through a PICS check. The State Police report that PICS has been responsible for the arrests of 1,818 individuals since its inception on July 1, 1998.

The PSP also shares information and coordinates investigative efforts with the U.S. Department of Justice and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in investigating and prosecuting individuals attempting to acquire

[4] Seven of these cases resulted from a single court decision stemming from the same issue.

firearms illegally. In 2014, the PSP Challenge Unit referred 4,154 files to PSP Troops, the ATF, and local police departments for investigation. A total of 782 arrests and 367 convictions were reported as a result of these referrals (including investigations initiated in past years).

System Upgrades

In our 2011 report, we noted that the PSP intended to upgrade its PICS system. The new system, Flexcheck, was implemented in February 2014. The total cost of the system was $991,127, paid for through a federal grant from the Pennsylvania Commission on Crime and Delinquency (PCCD). The previous system was a phone-based system (Interactive Voice Response), whereas the new Flexcheck system also includes the ability to make transactions over the Internet. As discussed below, there are several benefits and improvements to the PICS process with the upgraded system.

For example, certain problematic issues have been eliminated with the new system. One of the most frequent complaints was that callers were often encountering busy signals, even after the PSP went from 70 phone lines to 90. With a web-based system, busy signals have been eliminated and the PSP reports that, with the increased use of the web for instant check, the agency has realized significant savings in long distance charges. The PSP also had an issue with dealers not submitting payment of the instant check fees. This issue has been eliminated as well because the new system automates the surcharge remittance reporting and allows for online credit card payment of fees and surcharges, as well as online dealer account management, and the auto-filling of certain data fields.

Access to the system has also increased. The web-based system can now also be accessed by county sheriffs' departments to expedite the carry permit process. Additionally, PSP stations across the state have access, which makes returning guns that were used as evidence to their owners an easier process.[5]

Another improvement is that dealers can initiate more checks in a shorter period of time than with the phone system alone. With the new system, once a check is initiated, the dealer/user can immediately start another check instead of waiting for a determination of the first check. The system includes a status log so that the dealer/user can monitor the status of each check requested.

[5] Gun owners must undergo the same instant check in order to have their weapons returned to them.

III. PICS Costs and Funding

PICS Expenditures

As shown in Table 9 below, PICS costs have recently been running between $6 million and $7 million annually, with about 95 percent of these expenditures being for personnel services. Table 10 provides a further breakdown of PICS expenditures, by major and minor object, for the past three fiscal years.

Table 9

PICS Expenditures

Fiscal Year	Personnel Services	Operational Expenses	Total
2009-10	$5,124,895	$219,139	$5,344,035
2010-11	5,156,589	182,211	5,338,799
2011-12	5,432,725	209,503	5,642,228
2012-13	5,783,174	474,818	6,257,993
2013-14	6,268,132	79,128	6,347,260
2014-15	6,715,135	63,681	6,788,997

Source: Pennsylvania State Police.

These costs are for PICS operations only. The PSP notes that certain other administrative costs, which amount to $777,509 in FY 2013-14, would be incurred even if Pennsylvania were to become a NICS-only state. This is because the PSP would still need to provide data and conduct certain other record-keeping activities related to firearm sales even if Pennsylvania was a NICS-only state.

PICS is funded through a combination of Gun Check appropriations, instant check/firearm surcharge fees, and the PSP General Government Operations (GGO) appropriation. As Table 11 shows, the amounts coming from these sources vary from year to year.

Table 10

PICS Expenditures

Description	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Personnel Services				
Salaries	$3,326,670	$3,361,265	$3,415279	$3,565,944
Shift Differential Pay	33,892	35,003	35,970	39,561
Higher Classification Pay	382	216	464	0
General Pay Increase—Cash Payment	0	3,522	2,602	1,193
Repay Salaries Overpay	0	579	0	-609
Wages – Reg. Hours	0	0	23,540	55,889
Overtime	44,048	101,845	134,967	61,025
Hospitalization Insurance	533,891	600,979	694,586	775,915
Social Security Contributions	207,624	212,395	219,871	223,997
Medicare	48,557	49,673	51,421	52,386
Retirement Contributions	236,985	351,913	507,148	673,065
State Workmen's Insurance Premium Payments	76,931	80,656	79,187	75,694
Employees' Group Life Insurance	9,598	9,427	9,534	9,854
Health Benefits	828,033	882,336	966,908	1,050,316
Unemployment Compensation	530	4,438	190	2,760
Leave Payout	85,584	88,926	126,466	128,142
Subtotal - Personnel Services	$5,432,725	$5,783,174	$6,268,132	$6,715,135
Operational Expenses:				
Travel	$ 2,209	$ 1,169	$ 1,694	$ 1,764
Training	0	0	0	288
Telecommunications—Recurring	171,745	408,133	34,139	31,481
Telecommunications—Nonrecurring	729	403	0	0
Legal Services/Fees	0	0	0	0
Specialized Services	1,601	17,894	17,331	782
Office Supplies	24,627	37,422	18,192	8,518
Other Specialized Services	0	0	475	2979
Contracted Maintenance Serves – Non EDP	146	300	0	0
Telecom – Data – Services	0	221	0	0
Miscellaneous Supplies	0	1,939	759	1,258
Furniture/Fixtures	0	65	124	41
Office Equipment	3,288	3,945	6,614	6,639
Other Equipment	0	467	0	0
Hardware Network	0	209	0	466
Other Operating Expenses	5,159	2,650	0	9,646
Subtotal - Operational Expenses	$ 209,503	$ 474,818	$ 79,128	$ 63,861
Fixed Assets:				
Capital—Construction	$ 0	$ 0	$ 0	$ 0
EDP—Computers and Peripherals	0	0	0	0
EDP—Software	0	0	0	0
Other Equipment	0	0	0	0
Subtotal - Fixed Assets	$ 0	$ 0	$ 0	$ 0
Total	$5,642,228	$6,257,993	$6,347,260	$6,778,997

Source: Pennsylvania State Police.

Table 11

PICS Funding, by Source

Fiscal Year	Gun Checks Appropriation	$5 Instant Check/ Firearms Surcharge	PSP General Government Operations	Total
2009-10	$2,376,000	$2,885,357	$ 82,678	$5,344,035
2010-11	2,243,000	166,610	2,929,189	5,338,799
2011-12	2,195,000	2,486,609	960,619	5,642,228
2012-13	2,195,000	3,113,996	948,996	6,257,993
2013-14	2,000,000	1,928,852	2,418,409	6,347,260
2014-15	1,000,000	5,776,332	2,665	6,778,997

Source: Pennsylvania State Police.

The $5 instant check/firearm surcharge has remained the same since the program's inception. However, as Table 12 shows, the amount of PICS funding that comes from the instant check/firearm surcharge varies from year to year, ranging from a low of 3 percent of all PICS expenditures in FY 2010-11 to a high of 85 percent in FY 2014-15. According to the Pennsylvania State Police, funding from the surcharges is, to the extent possible, held in reserve to ensure against the fiscal risks associated with varying availability of funds from both the Gun Check Appropriation and the PSP General Government Operations Appropriation.

Table 12

Instant Check/Surcharge Fees as a Percentage of PICS Expenditures

Year	Instant Check/ Surcharge Fees	PICS Expenditures	Fees as % of Expenditures
2007-08	$1,172,426	$5,231,976	22%
2008-09	236,172	5,017,095	5
2009-10	2,885,357	5,344,035	54
2010-11	166,610	5,338,799	3
2011-12	2,486,609	5,642,228	44
2012-13	3,113,996	6,257,993	50
2013-14	1,928,852	6,347,260	30
2014-15	5,776,332	6,778,997	85

Source: Developed by LB&FC staff from information provided by the Pennsylvania State Police.

The fees actually expended do not necessarily reflect the total fee revenues, which, as can be seen in Table 13 below, are much more stable. For example, in 2010-11, total fee revenues were $2,435,669, however, only $166,610 was used for PICS expenditures. The remainder is held in the Firearm Records Check Fund.

Table 13 below shows total instant check and surcharge revenues as a percentage of PICS spending. Total revenues, as a percentage of total expenditures, range from a low of 43 percent to a high of 60 percent.

Table 13

Instant Check/Surcharge Revenues as a Percentage of PICS Expenditures

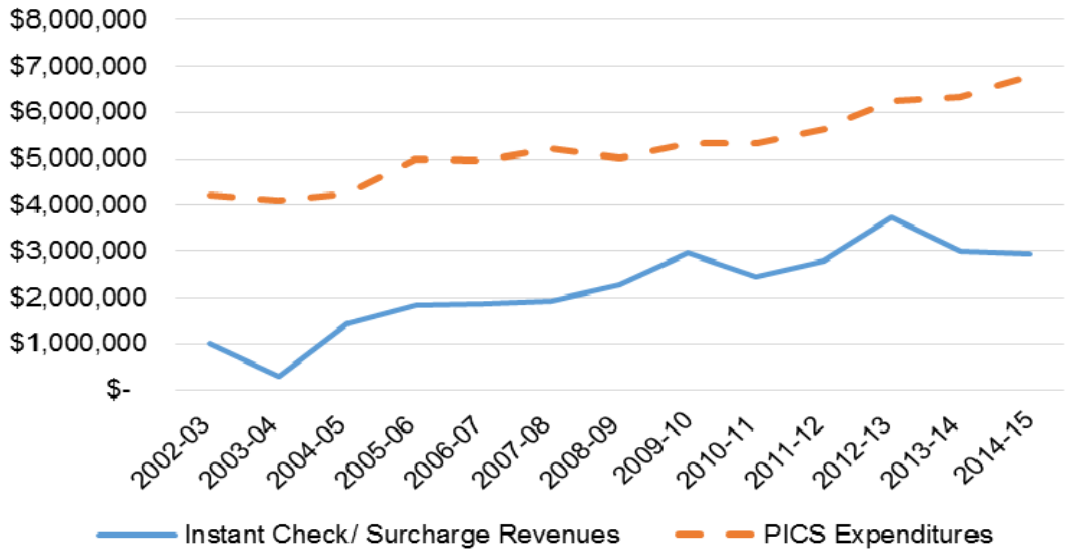
Year	Instant Check/ Surcharge Revenues	PICS Expenditures	Fees as % of Expenditures
2008-09.....	$2,269,137	$5,017,095	45%
2009-10.....	2,961,324	5,344,035	55
2010-11.....	2,435,669	5,338,799	46
2011-12.....	2,804,437	5,642,228	50
2012-13.....	3,736,864	6,257,993	60
2013-14.....	3,002,854	6,347,260	47
2014-15.....	2,928,005	6,788,997	43

Source: Developed by LB&FC staff from information provided by the Pennsylvania State Police.

Table 13 also shows the fee/surcharge collections as a percentage of PICS expenditures. Exhibit 5 shows this information in graphic form.

Exhibit 5

Instant Check/Surcharge Fee Revenues Compared to PICS Expenditures



Source: Developed by LB&FC staff from information provided by the Pennsylvania State Police.

Finally, Table 14 shows the beginning and ending balances of the Firearms Record Check Fund, the fund into which the fees/surcharges are deposited.

Table 14

Firearm Records Check Fund Financial Statement

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Beginning Balance ...	$2,434,474	$2,496,502	$4,758,794	$5,071,771	$5,689,331	$6,744,161
Revenues	2,961,324	2,435,669	2,804,437	3,736,864	3,002,854	2,928,005
Available Funds.....	5,395,797	4,932,171	7,563,231	8,808,635	8,692,185	9,672,166
Expenditures	2,899,294	173,377	2,491,459	3,119,304	1,948,024	5,788,977
Ending Balance	$2,496,502	$4,758,794	$5,071,771	$5,689,331	$6,744,161	$3,883,189

Source: Developed by LB&FC staff from information provided by the Pennsylvania State Police.

Fee Revenues Compared to PICS Costs

As established in the Uniform Firearms Act, 18 Pa.C.S.A. §6111(b)(3), "the requester shall be charged a fee equivalent to the cost of providing the service but not to exceed $2.00 per buyer or transferee." This fee, along with the $3.00 surcharge, is to be deposited into the Firearm Records Check Fund established by §6111.3(a) of the act and is to be used for carrying out the provisions of §6111.[1] The act, at 18 Pa.C.S.A. §6111.2(b), also states that the Legislative Budget and Finance Committee shall review the need to increase or decrease the $2.00 instant check fee.[2]

As shown in Table 13 (above), revenues from the instant check and firearm surcharge fees have not been sufficient to fully cover PICS program costs, with revenues generally meeting between 43 percent and 60 percent of PICS annual expenditures. To have fully funded the PICS program in FY 2013-14 and FY 2014-15, the $5 combined instant check/surcharge fee would need to increase by about 120 percent, or from $5 to $11. Table 15 below shows how much of an increase would have been necessary in the past five fiscal years to make the PICS system reliant only on instant check/firearms surcharges.

[1] The provisions of §6111 include the following: the process of sale or transfer of firearms, such as application/record requirements; carrying out the instant background checks; PSP investigation of criminal and court records, and monitoring licensee adherence to statutory requirements.

[2] Since all the funds in the Firearm Records Check Fund are to be used in carrying out the provisions of §6111,which establishes the instant check fee as well as the requirements for that check, we assume that both the $2.00 instant check fee and the $3.00 firearms sales surcharge are to be used in carrying out this function. However, the section of the act requiring the review by the Legislative Budget and Finance Committee specifically states that the Committee is to issue a report only for a statutory change to the instant check fee.

Table 15

Increases Necessary to Make PICS Self-Sufficient

Fiscal Year	Instant check/ Surcharge Revenues	PICS Expenditures	Fees as % of Expenditures	% Increase in Fee to Cover Expenses	Current Fee	Fee Needed to Make PICS Self-Sufficient
2010-11	$2,435,669	$5,338,799	46%	119%	$5	$11
2011-12	2,804,437	5,642,228	50	101	5	10
2012-13	3,736,864	6,257,993	60	67	5	8
2013-14	3,002,854	6,347,260	47	111	5	11
2014-15	2,928,005	6,788,996	43	132	5	12

Source: Developed by LB&FC staff with data provided by the PSP.

IV. Instant Check Systems in Other States

Forms of State Involvement

Each state is free to determine the nature and extent of its involvement in the NICS process. According to the U.S. Department of Justice, there are three basic forms of state involvement:

- In states where the state government has agreed to serve as the point-of-contact (POC) for the system, Federal Firearms Licensees (FFLs) contact the NICS through the state POC for all firearm transfers. The state POC conducts the NICS check and determines whether or not the transfer would violate state or federal law.
- In states where the state government has declined to serve as a POC, the FFLs initiate a NICS background check by contacting the NICS Section directly for all firearm transfers. The FBI conducts the NICS check and determines whether or not the transfer would violate state or federal law.
- Finally, in states where the state government has agreed to serve as a POC for handgun purchases but not for long gun purchases, the FFLs contact the NICS through the designated state POC for handgun transfers and the NICS Section for long gun transfers.

While these are the three basic models, some states combine elements of the above models with some incorporating the use of an "ATF Qualified Alternative Permit."[1]

The specific methods used by the states to conduct instant firearm background checks are shown on Exhibit 6. As shown, 13 states, including Pennsylvania, have a POC agency that conducts checks on all firearm transactions. An additional eight states have a POC agency that serves as a POC for some, but not all, firearm transactions. The remaining 35 states and territories do not have a POC agency; the FBI performs the background checks in these states.

[1]An ATF-Qualified Alternative Permit is determined on a state-specific basis as being an exception to an NICS check. ATF advises licensees in each state as to which permits qualify as alternatives to an NICS check at the time of purchase or transfer. A permit qualifies as an NICS alternative only if it was issued by the state in which the transfer is to take place. Permits qualify as alternatives to the background check requirements of the Brady Act for no more than five years from the date of issuance.

Exhibit 6

National Instant Criminal Background Check System (NICS)
Point of Contact for States and Territories

Full participants (13): States that conduct NICS checks for all firearms purchases and/or for alternate permits for handguns and long guns:

California[a]	New Jersey
Colorado	Oregon
Connecticut	Pennsylvania
Florida	Tennessee
Hawaii[a]	Utah[a]
Illinois	Virginia
Nevada	

Partial Participants (8): States that perform checks for handgun permits, while the FBI performs NICS checks for long gun purchases:

Iowa[a]	Nebraska[a]
Michigan[a]	North Carolina[a]

States that perform NICS checks for handgun purchases, while the FBI performs NICS checks for long gun purchases:

Maryland	Washington
New Hampshire	Wisconsin

Nonparticipants (35): The FBI performs NICS checks on both handguns and long guns for:

Alabama	Montana[a]
Alaska[a]	New Mexico
American Samoa	New York
Arizona[a]	North Dakota[a]
Arkansas[a]	Northern Mariana Island
Delaware	Ohio
Georgia[a]	Oklahoma
Guam	Puerto Rico
Idaho[a]	Rhode Island
Indiana	South Carolina[a]
Kansas	South Dakota
Kentucky[a]	Texas[a]
Louisiana	Vermont
Maine	U.S. Virgin Islands
Massachusetts	West Virginia
Minnesota	Wyoming[a]
Mississippi[a]	Washington, DC
Missouri	

[a] Denotes states that have an ATF-qualified alternate permit. An ATF-Qualified Alternative Permit is determined on a state-specific basis as being an exception to an NICS check. ATF advises licenses in each state as to which permits qualify as alternative to an NICS check at the time of purchase or transfer.

Source: Federal Bureau of Investigation.

Many states, including Pennsylvania, have designated a single agency with statewide jurisdiction as their NICS point of contact (e.g., a department of public safety or their state police). Others have multiple points of contact, which are usually county sheriffs or municipal police departments.

In non-POC states, licensed dealers must contact the FBI directly for approval on all gun transfers; the FBI does not charge a fee for this service.

Fees Charged in Full POC States

As shown in Table 16 below, instant check fees in POC states range from no fee to $25.

Table 16

Instant Check Fees in PA and Other Point-of-Contact (POC) States
(POC for All Firearm Transactions)

State	Fee
California	$20
Colorado	7
Connecticut	0
Florida	5[a]
Hawaii	n/a
Illinois	2
Nevada	25
New Jersey	15
Oregon	10
Pennsylvania	**2**
Tennessee	10
Utah	7.50
Virginia	2/5[b]

[a] The FBI conducts checks on pawn redemptions within 90 days of being pawned without charge. For all other transfers, the fee is $5.00.
[b] The fee is $2.00 for any resident, and $5.00 for any nonresident purchasing a firearm in Virginia.

Source: Developed by LB&FC staff using information obtained from the U.S. Department of Justice and POC agencies in other states.

While Pennsylvania requires a $2 fee, we found that gun dealers/shops across the state often charge administrative fees in addition to those required under Pennsylvania law. These administrative fees are to cover the reporting and records maintenance costs associated with background checks, as well as to offset the costs incurred when an application is denied. The fees range from as little as $5 to as high as $50 on the sale or third party transfer of firearms. Through our research we found the average fee was about $25 and was most often applied to third party firearms transfers, although they may also be charged on retail sales. We were informed that firearms dealers in other states, including NICS only states, often have similar charges.

Advantages to Pennsylvania as a POC State

POC (Point of Contact) means a state or local law enforcement agency serving as an intermediary between a federal firearms license (FFL) and the federal databases checked by the NICS. A POC will receive NICS background check requests from FFLs, check state or local record systems, perform NICS inquiries, determine whether matching records provide information demonstrating that an individual is disqualified from possessing a firearm under federal or state law, and respond to FFLs with the results of the background check. A POC will be an agency with express or implied authority to perform POC duties pursuant to state statute, regulation, or executive order. 28 C.F.R. §25.2. Pennsylvania became a POC through state statute.

There are certain advantages to Pennsylvania remaining a POC state, rather than having gun checks performed at the federal level. The Pennsylvania State Police have identified the following as advantages to Pennsylvania continuing to operate as a POC state:

- Within the NICS system, if there is an issue with an instant check transaction, three days are allowed to resolve the issue. If not resolved within that time, the default is to allow the person to purchase a weapon. The research period may continue for 90 days and if the purchaser is found to be a prohibited person, AFT will attempt to retrieve the weapon.

  In Pennsylvania, the research period is 15 days.[2] If, at the end of this period, the issue cannot be resolved, the applicant's status becomes 'undetermined' and the person is not allowed to purchase the weapon.

[2] The PSP is in process of inquiring that if Pennsylvania changed to using the federal system, would the 15-day research period be allowed. The three-day waiting period became more visible after the Charleston Church shooting occurred. The shooter, Dylann Roof, was allowed to purchase a weapon after the three-day federal default period.

- According to the PSP, at any given time, there are about 1,300-1,400 Protection From Abuse (PFA) orders that lack sufficient numeric identifiers (e.g., Social Security number or date of birth) to be entered into the National Crime Information Center, one of the federal databases used in a National Instant Criminal Background Check System (NICS) background check. These are, however, included in the Pennsylvania PFA database and would be recognized on a PICS check and result in a denial.
- PICS has been responsible for the identification and capture of 1,818 (as of 2014) fugitives attempting to acquire a firearm that likely would not have occurred if Pennsylvania was a NICS-only state. (If a fugitive attempted to purchase a firearm in a NICS-only state, only the arresting jurisdiction would be notified, not the jurisdiction in which the fugitive is attempting purchase.)
- The PSP receives requests from law enforcement agencies for the return of confiscated and stolen firearms and PFA-related third-party safekeeping checks to ensure the owners are not prohibited from possessing firearms. In 2014, the PSP reports it conducted 5,929 checks for these purposes.
- When a state POC performs an NICS check, the record interpretation process is decentralized. Decisions regarding who can and cannot possess a firearm in the State of Pennsylvania are therefore made at the state level. The PSP is, therefore more accessible to both the public and firearms dealers and can provide a higher level of service.
- Within the appeal process, the PSP has the burden of proof in a decision to prevent a prohibited person from purchasing a firearm. Within the federal system, the burden is on the prospective buyer to prove that the prohibition is invalid.
- There are some crimes that cause a person to be a prohibited person in Pennsylvania, that do not prohibit within the NICS system, for example, misdemeanor of the second degree and certain juvenile offenses.
- In Pennsylvania, applicants are considered to have committed falsities if they lie on their firearm purchase applications. In 2014, the PSP found approximately 4,000 falsifications of applications, which they refer to local district attorneys for possible prosecution. The PSP was unsure how falsifications are handled at the federal level.

V. Appendices

APPENDIX A

Reported Firearm Sales/Transfers in Pennsylvania in 2014, by County

County	Handguns[a]	Long Guns[b]	County	Handguns[a]	Long Guns[b]
Adams	3,906	4,740	Lackawanna	5,684	3,958
Allegheny	25,264	16,554	Lancaster	19,110	16,019
Armstrong	2,427	2,073	Lawrence	4,270	2,911
Beaver	4,777	3,597	Lebanon	5,967	5,844
Bedford	2,943	4,557	Lehigh	8,010	6,129
Berks	19,174	19,421	Luzerne	13,363	9,828
Blair	4,940	4,976	Lycoming	6,629	6,986
Bradford	2,629	4,421	McKean	1,082	1,180
Bucks	19,315	16,171	Mercer	4,176	3,417
Butler	8,604	8,293	Mifflin	1,459	1,797
Cambria	5,509	5,181	Monroe	6,864	5,206
Cameron	65	65	Montgomery	11,984	8,992
Carbon	1,339	1,612	Montour	98	102
Centre	3,068	3,532	Northampton	5,782	5,796
Chester	7,537	5,320	Northumberland	2,263	2,315
Clarion	1,881	2,554	Perry	1,468	1,546
Clearfield	7,735	9,205	Philadelphia	10,063	2,906
Clinton	1,132	1,801	Pike	907	1,038
Columbia	3,832	3,411	Potter	606	876
Crawford	1,677	2,010	Schuylkill	6,003	5,601
Cumberland	5,258	5,110	Snyder	1,120	2,007
Dauphin	5,456	5,882	Somerset	1,998	2,699
Delaware	10,022	4,529	Sullivan	144	200
Elk	1,601	2,445	Susquehanna	1,347	1,834
Erie	9,203	10,321	Tioga	2,283	4,153
Fayette	6,627	5,891	Union	588	829
Forest	10	7	Venango	2,417	2,747
Franklin	5,198	6,615	Warren	1,849	2,843
Fulton	424	623	Washington	12,801	9,139
Greene	1,951	1,939	Wayne	4,171	4,253
Huntingdon	1,230	1,701	Westmoreland	14,492	12,290
Indiana	2,377	2,706	Wyoming	1,787	2,307
Jefferson	2,996	3,370	York	13,197	12,253
Juniata	514	862	State Totals	354,603	321,496
			Total Firearm Sales/Transfers		676,099

Note: Totals include any taxed and non-taxed sales/transfers reported for the year 2014.

[a] A handgun is defined as: a pistol or revolver with a barrel length less than 15 inches, a shotgun with a barrel length less than 18 inches, or a rifle with a barrel length less than 16 inches, or a pistol, revolver, rifle, or shotgun with an overall length of less than 26 inches. The barrel length of a firearm is determined by measuring from the muzzle of the barrel to the face of the closed action, bolt, or cylinder, whichever is applicable.

[b] A long gun is defined as: any weapon, that is not a handgun, designed to or that may readily be converted to expel a projectile by the action of an explosion.

Source: Pennsylvania State Police, *2014 Firearms Annual Report*.

APPENDIX B

Number of Pennsylvania Licensed Firearm Dealers in 2014, by County

County	Number of Dealers	County	Number of Dealers
Adams	39	Lancaster	60
Allegheny	134	Lawrence	26
Armstrong	27	Lebanon	29
Beaver	46	Lehigh	48
Bedford	27	Luzerne	57
Berks	82	Lycoming	50
Blair	55	McKean	22
Bradford	41	Mercer	46
Bucks	91	Mifflin	16
Butler	59	Monroe	53
Cambria	38	Montgomery	89
Cameron	6	Montour	9
Carbon	12	Northampton	55
Centre	38	Northumberland	34
Chester	77	Perry	33
Clarion	16	Philadelphia	12
Clearfield	22	Pike	32
Clinton	12	Potter	17
Columbia	33	Schuylkill	36
Crawford	29	Snyder	18
Cumberland	55	Somerset	30
Dauphin	44	Sullivan	6
Delaware	40	Susquehanna	33
Elk	13	Tioga	36
Erie	46	Union	10
Fayette	45	Venango	19
Forest	3	Warren	25
Franklin	56	Washington	56
Fulton	10	Wayne	32
Greene	12	Westmoreland	132
Huntingdon	38	Wyoming	15
Indiana	45	York	101
Jefferson	28		
Juniata	17		
Lackawanna	41	State Total	2,614

Source: Pennsylvania State Police, *2014 Firearms Annual Report.*

APPENDIX C

Pennsylvania State Police Response to This Report

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE
1800 ELMERTON AVENUE
HARRISBURG, PA. 17110

OFFICE OF COMMISSIONER

September 25, 2015

Mr. Philip R. Durgin
Executive Director
Legislative Budget and Finance Committee
Post Office Box 8737
Harrisburg, Pennsylvania 17105-8737

Dear Mr. Durgin,

Thank you for the opportunity to provide comment on the Legislative Budget and Finance Committee report entitled "The Adequacy of Fees Charged in Pennsylvania's Instant Check System (PICS) for Firearms Purchases." This is the fourth such evaluation conducted pursuant to mandates of the Pennsylvania Uniform Firearms Act (Act 1995-17).

Over the course of the past several months, representatives of our Department's Firearms and Fiscal Divisions have been privileged to work with you and your staff to provide the information necessary for the Committee to conduct a thorough review. I commend your professionalism and diligence in efforts to accurately address the adequacy of fees associated with the mandated responsibility of the Pennsylvania State Police (PSP) to administer the PICS.

Your report indicates, during the period examined, revenues generally met 37 percent to 60 percent of PICS annual expenditures. As demonstrated by the data, revenue is highly variable based upon firearms industry trends and current events. As it currently stands, monies to support PICS operations not covered by this revenue stream are disbursed from the PSP General Government Operations and Gun Check appropriations as necessary.

Taking into account the most common expenditures such as personnel costs, benefits and supplies, and based on 2014 transaction volumes, our internal estimates reveal a fee/surcharge structure of approximately $11 would be needed to fully fund the PICS at this time. We provided this data for consideration by the Committee since the surcharge and fee structure are provided for in statute. My staff remains ready to assist in any way should there be further questions or interest regarding these calculations.

The Committee's report clearly details Pennsylvania's status as a Point of Contact (POC) state, as defined by the National Instant Criminal Background Check System. We believe Pennsylvania's decision to conduct firearms purchase inquiries as a POC state remains prudent for the reasons cited in your report. What perhaps cannot

be adequately captured is the commitment of our personnel to ensure firearms do not fall into the hands of persons prohibited by law, while ensuring the second amendment rights of those persons legally permitted to purchase/possess firearms can be exercised.

Additionally, PSP PICS personnel remain accessible and serve as a local resource regarding PICS and, more generally, firearms law. In concert with our Office of Chief Counsel, PICS personnel are widely regarded as subject matter experts in the fields of firearms law and the sometimes complex interplay of the Pennsylvania's Uniform Firearms Act with United States Code. Accordingly, we receive numerous inquiries from members of the General Assembly; Pennsylvania's licensed firearms dealers; citizens of the Commonwealth; law enforcement agencies; and the judiciary.

Since inception of the PICS in 1998, PSP has strived to remain responsive to our stakeholders. This is reflected in reductions in system downtime and time for automated approvals, as well as improved efficiency for dealers and customers through web-access. Investigations of purchase denials have increased over ten-fold in recent years, demonstrating the PSP commitment to our public safety mission.

I am justifiably proud of our efforts and our commitment to the citizens of the Commonwealth in carrying out the mandate given us by the Legislature. We embrace the opportunity to continue our cooperative efforts to administer the PICS and facilitate safe and lawful ownership of firearms.

Once again, thank you for your efforts in evaluating the PICS and allowing me this opportunity to comment.

Sincerely,

Col. Tyree C. Blocker

Colonel Tyree C. Blocker
Acting Commissioner