

# LEGISLATIVE BUDGET AND FINANCE COMMITTEE

A JOINT COMMITTEE OF THE PENNSYLVANIA GENERAL ASSEMBLY

## The Adequacy of Fees Charged for Pennsylvania's Instant Check System

December 2020



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# REPORT SUMMARY



## **Objectives and Scope**

*The objectives of this study are:*

- ❖ *To determine pertinent program measures and financial and statistical data, including the number of instant checks the PSP conducts annually and associated administrative and associated costs and revenue collections.*
- ❖ *To examine the financial condition of the Firearm Records Check Fund and assess the adequacy of the fee currently charged to conduct the instant check on firearms purchases.*
- ❖ *To present findings to the General Assembly relative to the need to increase or decrease the instant check and firearms surcharge fee on firearms purchases.*

*Scope of this study:*

- ❖ *Operational statistics are from CYs 2015-2019.*
- ❖ *Fiscal data are from FYs 2015-19.*

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. In response to the Brady Act, the Pennsylvania Instant Check System (PICS) was implemented.

Each state is free to determine the form of its involvement in NICS. At any time, a state may choose to implement its own background check program by designating a local or state law enforcement authority within its boundaries to serve as an intermediary between its firearms licensees and NICS in a full or partial point-of-contact (POC) capacity. Alternatively, a state 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 gun checks conducted by POC agencies are determined by state law.

Pennsylvania's involvement as a full POC state in the NICS 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 (PSP) to establish, maintain, and operate an instantaneous firearm background check program. The PICS system, 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 concealed firearm.

Act 1995-17 also established two separate fees pertaining to firearm sales and background record checks conducted in Pennsylvania. These include a \$2.00 fee charged to firearm dealers for each background check request they make to the PSP and a \$3.00 surcharge on the sale of each taxable firearm, known as the Firearms Sale Surcharge. Revenues collected from these fees are deposited in the restricted Firearm Records Check Fund and are to be appropriated annually to the PSP to carry out the PICS records check function.

Another provision in Act 1995-17 requires the Legislative Budget and Finance Committee to review the need to increase or decrease Pennsylvania's instant check fees every five years and to issue a report of its findings and recommendations to the General Assembly. This is the fifth review carried out under this mandate—the first being in 2000, five years following the effective date of the Act.

## **PICS Operations**

Below are highlights of PICS operational statistics from 2019:

- There were 2,740 active Pennsylvania licensed firearm dealers who performed a total of 742,251 firearms sales and transfers. Of those, 421,543 were hand guns and 320,708 were long guns. Additionally, there were sales and transfers of 23,953 frames/receivers.
- PICS handled 982,036 calls and web-based requests for background checks. Of those, 97 percent were approved without further investigation. Of those, 66 percent were approved automatically and 31 percent required operator assistance.
- Of the requests automatically approved via the phone system, the average time until approval was 0.75 minutes; for those requests automatically approved via the web system, approval times averaged 1.57 minutes.
- Of total gun check requests, 15,373, 1.6 percent, were initially denied. Of these denials, 4,641 were challenged. Reversals were issued for 1,633 of challenges and 2,565 were issued a final denial. The 443 remaining challenges were returned to the challenger unprocessed for various reasons.

Since our last report, the PSP has reported several improvements to the PICS system, including Mental Health Verification Reports, Stolen Firearms Query ability, use of iPads/touchscreens for dealers to complete sales, and the Domestic Violence Indicators Project.

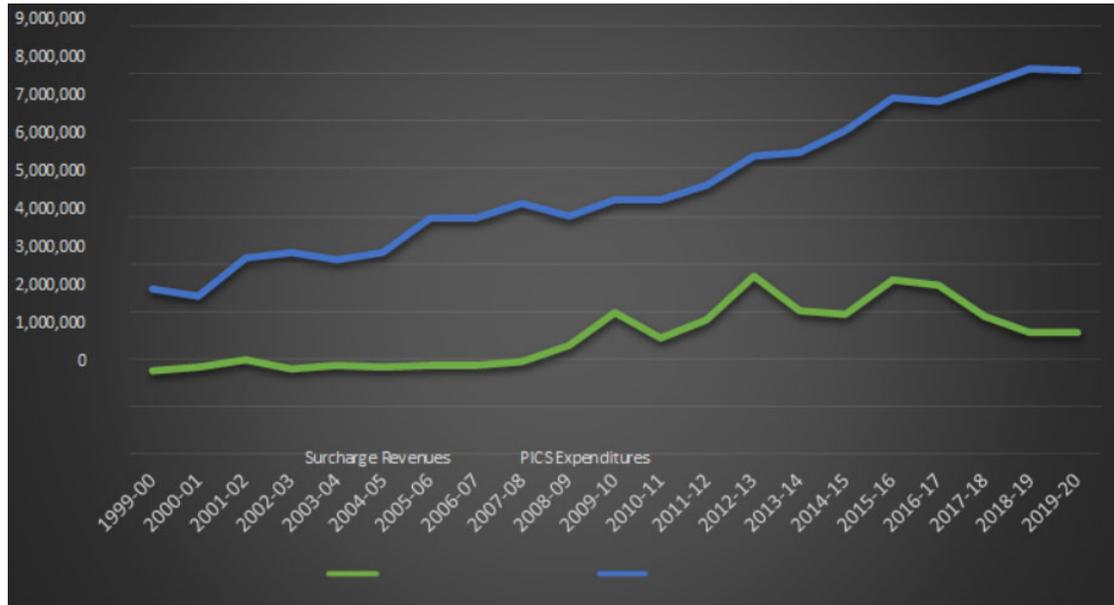
## **Fiscal Information and Adequacy of Fees**

PICS receives funding from three sources: a Gun Check Appropriation, the Firearms Record Check Fund, and PSP General Government Operations. In FY 2019-20, funding was \$8,081,634.

In FY 2019-20, approximately 95 percent of the \$8.1 million in PICS expenditures were used for personnel costs.

The following exhibit shows PICS expenditures compared to revenues generated by the \$5.00 instant check fee and surcharge. For the past two fiscal years, the \$5.00 fee and surcharge has generated enough revenue to cover 31 percent of PICS expenditures. At no point in the study period did fees generate enough revenues to cover the cost of the program, and the fees have continued to cover a lower percentage of costs over time. In order to fully fund PICS with fee and surcharge revenues, the current combined \$5.00 fee would need to be raised to \$16.00.

## Instant Check Surcharge Fee Revenues Compared to PICS Expenditures



Source: Pennsylvania State Police.

### Instant Check Systems in Other States

Thirteen states, including Pennsylvania, are full POC states, meaning that they use a state agency to conduct checks on all firearm transactions, rather than using the federal NICS system. An additional seven states use a state agency to conduct background checks for some firearms transactions or license to carry permits.

The remaining states and territories do not use a state (or territorial) agency and utilize the FBI NICS system for background checks. 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.

At \$5.00, Pennsylvania has the lowest total fee for background checks in all 13 full POC states. In the other 12 states, fees range from \$10.00 in Illinois, Oregon, and Tennessee to over \$200.00 in Connecticut. Some states charge additional fees for various services, including fingerprint checks, permit processing, and civil name checks, among others.

According to the PSP, there are several advantages to Pennsylvania remaining a full POC state versus using only the NICS system. Some examples include:

- A longer period of time to determine if a firearms purchase can proceed if there are questionable areas in a background check, 15 days under PICS versus three days under NICS.
- PICS captures all protection from abuse orders, whereas NICS does not.
- The PICS appeal process has strict response deadlines and right-of-appeal to the courts. With NICS, there is an appeal process, however, there is no clear right-of-appeal to the courts. The burden of proof remains with the person filing the appeal.

# SECTION I OBJECTIVES, SCOPE, AND METHODOLOGY



Act 1995-17 (Special Session No. 1 of 1995) amended the Pennsylvania Uniform Firearms Act (UFA) to require the Pennsylvania State Police (PSP) to establish and operate a system capable of performing instantaneous firearm background checks. The Pennsylvania Instant Check System was implemented, with Pennsylvania opting to become a full point of contact state, meaning that the PICS system would be responsible for checks for all firearms sales and transfers, as opposed to other states that rely in part or in full, on the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS).

The law also requires that the PSP charge a \$2.00 fee for conducting these background checks and a \$3.00 surcharge on the sale of each taxable firearm. The law further requires the Legislative Budget and Finance Committee (LBFC) to review the need to increase or decrease the amount of the instant check fee every five years. This is our fifth review of the adequacy of the fee.

## Objectives

1. To determine pertinent program measures and financial and statistical data, including the number of instant checks the PSP 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 currently charged 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

We reviewed the PICS system and statistics from the time of our fourth report, released in November 2015. Please note that PICS operational data are presented on a calendar year basis and include data from CYs 2015 through 2019. Financial data are presented on a fiscal year basis, and include FYs 2015-16 through 2019-20. Because COVID-19 occurred during FY 2019-20, we make reference to its impact on PICS where applicable in this report.

## Methodology

To determine the number of instant checks the PSP conducts annually, PICS operational statistics, and the associated revenue collections and program expenditures, we reviewed the PSP's *Firearms Annual Reports* as well as other relevant materials obtained from PSP staff. We also undertook a survey of other states to compare their gun check activities to PICS.

## Acknowledgements

LBFC staff gratefully acknowledges the cooperation and assistance provided by Pennsylvania State Police Commissioner Colonel Robert Evanchick during the conduct of this project. We also thank Major Gary Dance, Director, and Captain Mark Shaver, Assistant Director of the Bureau of Records and Identification, as well as Lieutenant Shandra Keeler, Director of the Bureau's Firearms Division.

## Important Note

This report was developed by Legislative Budget and Finance Committee staff, including project manager Jason R. Brehouse, Esq., staff attorney Rick K. Jones, and analysts Anne M. Witkonis and Amy C. Hockenberry. The release of this report should not be construed as indicating that the Committee's members endorse all the report's findings and recommendations.

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## SECTION II Pennsylvania's Instant Check System (PICS) Background and Statistical Information



### **Fast Facts...**

- ❖ *PICS was established in Pennsylvania statute after passage of the federal Brady Handgun Violence Prevention Act.*
- ❖ *PICS is administered by the Firearms Division within the Bureau of Records and Identification of the Pennsylvania State Police.*
- ❖ *There were 982,036 PICS transactions initiated in 2019; 97 percent received initial approval.*
- ❖ *PICS checks a variety of state and federal databases before issuing an approval or denial.*

The federal Brady Handgun Violence Prevention Act, Act of November 30, 1993, Pub. L. No. 103-159, 107 Stat. 1536 (Brady Act), 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. In response to the Brady Act, the Pennsylvania Instant Check System was implemented.

### **A. Legal Background**

The U.S. Department of Justice and Federal Bureau of Investigation (FBI), 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, 18 Pa.C.S.A. §§ 6101-6128, to require the development of an instantaneous firearms background check program. Subsequently, Pennsylvania was established as a full point-of-contact (POC) state. A full POC state has responsibility for conducting all firearms background checks, while other states rely partially or fully on the federal NICS system and are correspondingly known as partial POC and non-POC states.

Pursuant to Act 1995-17, (Special Session No. 1 of 1995) the Pennsylvania State Police (PSP) were required to establish, maintain, and operate an instantaneous records check system for firearm purchases. 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, to receive a firearm through a transfer from another individual, or apply for a license to carry a firearm. Among other provisions, the act required the PSP to:

- Establish a telephone number, which must be available daily from 8:00 AM to 10:00 PM to respond to background checks from licensed manufacturers, importers, and dealers.
- Distribute, at no charge, summaries of uniform firearms laws and firearms safety brochures.

- Conduct criminal history, fingerprint, juvenile delinquency, and mental health records checks on all available and applicable state and federal databases.
- Implement procedures for anyone denied by a PICS check to challenge the accuracy of the criminal history, juvenile delinquency, or mental health records.
- Maintain the confidentiality of all information provided by a person undergoing a PICS check.
- Inform the licensee making the inquiry either that the sale or transfer is denied, or provide the licensee with a unique approval number.

The PSP is also to report on PICS to the General Assembly on an annual basis. The report is to include the number and types of firearm sales, the number of applications denied and challenged, a summary of PSP instant check activities, and related statistics.

Enacted in 2007, in response to the Virginia Tech shootings, the NICS Improvement Amendments Act (NIAA),<sup>1</sup> of January 8, 2008, Pub. L. No. 110-180, 121 Stat. 2559, made improvements to NICS by:

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

Also, prior to the NICS Improvement Act, there 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".<sup>2</sup> 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

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<sup>1</sup> In December 2016 the Social Security Administration enacted a rule (published at 81 Fed. Reg. 91702, December 19, 2016) intended to implement provisions of the NIAA on reporting requirements for any federal agency holding records on persons prohibited from possessing firearms. In February 2017, through H.J. Resolution 40 (Public Law. No. 115-8, 131 Stat. 15), a joint resolution, Congress disapproved the rule and determined that such rule shall have no force or effect.

<sup>2</sup> 18 U.S.C. § 922(g)(4).

"deemed not to have occurred" for purposes of the federal firearm prohibition.

Pennsylvania did not have such a relief program, however, in July 2019, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) issued a ruling regarding Pennsylvania law, conceding that a grant of state relief in relation to a prior mental health commitment is sufficient to relieve the individual of any prohibition under federal law. With this recognition, if persons who had involuntary mental health commitments received an order issued by a court of common pleas judge restoring their firearm rights, they are now granted both state and federal relief from their firearm disability, meaning that they were again allowed to possess firearms. Prior to this approval by the ATF, the order by the common pleas judge would only restore the state firearm rights and there would still be federal prohibitions.

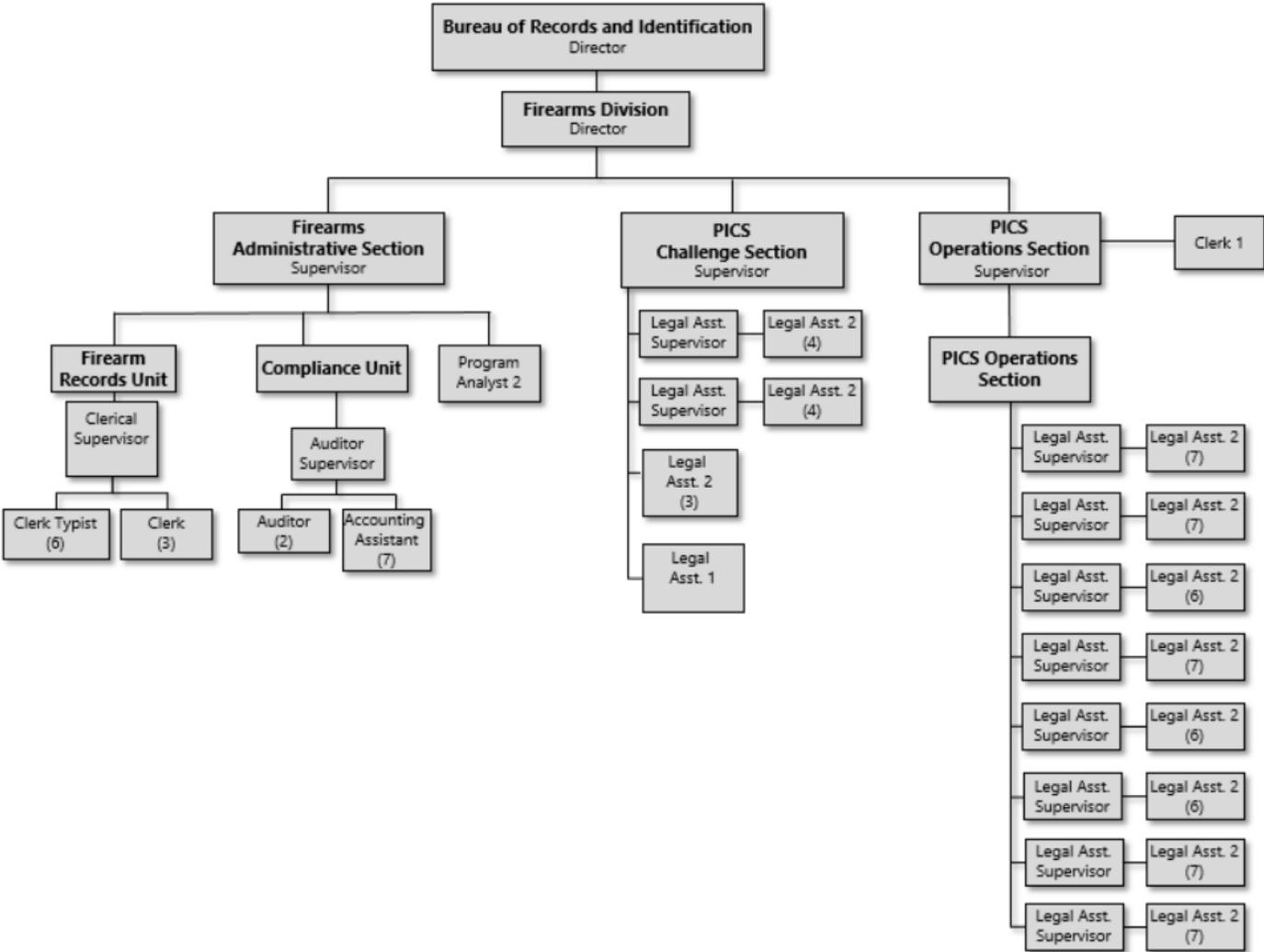
## **B. PICS Organization and Staffing**

The PSP is responsible for administering the provisions of the Pennsylvania Uniform Firearms Act. The Firearms Division, located within the Bureau of Records and Identification, has responsibility for PICS, including maintaining records related to firearm licensing and transfers. As shown in Exhibit 1, the Firearms Division is organized into three sections: Administrative Section, Operations Section, and, PICS Challenge Section.

As shown in Exhibit 2, the Firearms Division has an authorized staff complement of 107. As of April 2020, the division had 100 filled and seven vacant positions.

Exhibit 1

PSP Firearms Division Organization Chart



Source: Pennsylvania State Police.

Exhibit 2

**PSP Firearms Division Staff Complement**  
(As of April 2020)

	Total Authorized	Filled Positions	Vacant Positions
Division Director's Office	<u>1</u>	<u>1</u>	<u>0</u>
<i>Administrative Section</i>			
Section Supervisor	1	1	0
Program Analyst	<u>1</u>	<u>1</u>	<u>0</u>
Subtotal	2	2	0
<i>Firearm Records Unit</i>			
Clerical Supervisor	2	2	0
Clerk/Typist	8	8	0
Clerical	<u>2</u>	<u>2</u>	<u>0</u>
Unit Subtotal	12	12	0
<i>Firearm Compliance Unit</i>			
Auditor Supervisor	1	1	0
Auditor I	2	1	1
Accounting Assistant	<u>7</u>	<u>7</u>	<u>0</u>
Unit Subtotal	10	9	1
<i>Administrative Section Subtotal</i>	24	23	1
<i>Operations Section</i>			
Section Supervisor	1	1	0
Clerk/Typist	1	1	0
Legal Assistant Supervisor	8	8	0
Legal Assistant 2	<u>57</u>	<u>51</u>	<u>6</u>
<i>Operations Section Subtotal</i>	67	61	6
<i>PICS Challenge Section</i>			
Section Supervisor	1	1	0
Legal Assistant Supervisor	2	2	0
Legal Assistant 2	10	10	0
Legal Assistant 2, IC <sup>a/</sup>	1	1	0
Legal Assistant 1	<u>1</u>	<u>1</u>	<u>0</u>
<i>PICS Challenge Section Subtotal</i>	15	15	0
<b>Firearms Division Total</b>	<b>107</b>	<b>100</b>	<b>7</b>

<sup>a/</sup> Investigation Coordinator

Source: Pennsylvania State Police.

## **Administrative Section**

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The Administrative 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 computer systems, identifies procedural modification requirements, coordinates division staff training programs, and responds to many firearm-related questions.

Administrative Section Authorized Positions:

- Section Supervisor: 1
- Program Analyst: 1

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

Firearm Records Unit Authorized Positions:

- Clerical Supervisor: 2
- Clerk/Typist: 8
- Clerical: 2

***Firearm Compliance Unit.*** The Firearm Compliance Unit coordinates and controls all compliance and auditing functions of the division and is responsible for the review and processing of surcharge remittance forms submitted by firearm dealers. Staff 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 records 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<sup>3</sup> for dealers as requested.

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<sup>3</sup> A dealer review is when the PSP's Firearm Administrative Section (Firearm Compliance Unit) conducts a reconciliation of a firearm dealer's accounts. The unit compares the items which the dealer reported, according to the UFA Section 6111, and what PSPs system shows over the past year. In addition, the unit reviews these accounts to determine if there were any missed items in reporting and work with the dealer to correct any errors, thus bringing accounts back into compliance.

Firearm Compliance Unit Authorized Positions:

- Audit Supervisor: 1
- Auditor 1: 2
- Accounting Assistant: 7

## **Operations Section**

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The Operations Section conducts background check requests for the purchase/transfer of firearms or application for license to carry a concealed firearm. The Operations Section's responsibilities include: ensuring accurate identification of the subject of the background check, conducting evaluation and research of records, maintaining comprehensive documentation, and keeping ongoing communication with firearm dealers and sheriffs. This section 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.

Operations Section Authorized Positions:

- Section Supervisor: 1
- Clerk/Typist: 1
- Legal Assistant Supervisor: 8
- Legal Assistant 2: 57

## **Challenge Section**

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The Challenge Section handles all PICS denial challenges submitted to the PSP. All denied and undetermined status background check subjects have the right to challenge a PICS determination. If challenged, the PICS Challenge Section assumes research responsibilities and ultimately upholds or reverses the initial determination.

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

Challenge Section Authorized Positions:

- Section Supervisor: 1
- Legal Assistant Supervisor: 2
- Legal Assistant 2: 10
- Legal Assistant 2, Investigation Coordinator: 1
- Legal Assistant 1: 1

## C. System Overview and Procedures

PICS provides for immediate access to background checks 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 applicant.

As a full point-of-contact agency (POC), the PSP uses PICS to access the state and federal databases listed in Exhibit 3 to determine an individual's eligibility to acquire a firearm or license to carry a firearm.<sup>4</sup> In addition to the record check databases, PICS also accesses Pennsylvania Bureau of Motor Vehicle records to obtain the applicant's complete name, date of birth, and social security number prior to initiating the background check.

Over 2,700 active Pennsylvania licensed firearm dealers<sup>5</sup> 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 licenses to carry firearms. 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 outlined in Exhibit 4. The applicability of the background check requirements in the cases of private transfers and gun show transactions is also 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 an individual's eligibility to possess the firearm. 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.

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<sup>4</sup> It is legal under Pennsylvania law for the holder of a validly issued patient Medical Marijuana Card to possess approved forms of medical marijuana. However, as per the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE), the possession of medical marijuana remains a violation of federal law, and possession of a valid Medical Marijuana Card and/or the use of medical marijuana makes an individual an "unlawful user of or addicted to any controlled substance" who is prohibited by federal law from the purchase or acquisition, possession, or control of a firearm pursuant to 18 U.S.C. § 922(g)(3), and 27 C.F.R. § 478.32(a)(3).

<sup>5</sup> Pennsylvania law requires that a dealer be licensed by the state to sell or transfer firearms directly to the consumer. A licensed dealer in Pennsylvania 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 number of licensed firearm dealers does not include county sheriffs.

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.

**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, Exhibit 5 describes the process for approving or denying a gun purchase through the Flexcheck system.

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### Exhibit 3

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## State and Federal Databases Searched as Part of Pennsylvania's Instant Check Background Checks

### State Databases:<sup>a/</sup>

- 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).
- Pennsylvania Wanted/Missing Persons File.

### Federal Databases:<sup>b/</sup>

- *National Crime Information Center (NCIC)*: consists of 21 files. There are: a) seven property files containing records of stolen articles, boats, guns, license plates, parts, securities, and vehicles; b) 14 persons files, including: Supervised Release, National Sex Offender Registry, Foreign Fugitive, Immigration Violator, Missing Person, Protection Order, Unidentified Person, Protective Interest, Gang, Known or Appropriately Suspected Terrorist, Wanted Person, Identity Theft, Violent Person, and National Instant Criminal Background Check System (NICS) Denied Transaction. In addition, there are images that can be associated with NCIC records to help agencies identify people and property items. *NICS Indices*—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.
- *Interstate Identification Index (III)*: contains criminal history records submitted by states throughout the country as well as federal and military records. This Index, which contains automated criminal history record information, is accessible through the same network as NCIC.

### Exhibit 3 Continued

- *NICS Indices*: The NICS Indices contain information provided by local, state, tribal, and federal agencies of persons prohibited from receiving firearms under federal or state law. The NICS Indices also contain prohibiting information which may not be found in the NCIC or the III. Categories in the Indices include: felony, under indictment/information, fugitive from justice, adjudicated mental health, illegal/unlawful alien, dishonorable discharge from the armed forces, renounced US citizenship, protection/restraining order from domestic violence, misdemeanor crime of domestic violence, unlawful use of controlled substances, mental defectives/involuntary commitments, and state prohibitors, i.e., those who are prohibited based on state law only.
- Applicable databases in the Department of Homeland Security's United States Immigration and Customs Enforcement (ICE).<sup>c/</sup>

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<sup>a/</sup> 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.

<sup>b/</sup> As a POC state, PICS accesses federal databases through the National Instant Criminal Background Check System in performing its background checks.

<sup>c/</sup> 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.

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### Exhibit 4

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## 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 into the Flexcheck System (See Exhibit 5 for details on Flexcheck). 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 indication that the information is correct, the IVR system then initiates the background check query through Pennsylvania and federal databases.

#### **Exhibit 4 Continued**

**Step 5:** The IVR advises the dealer that it 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 issues an approval number.

**Step 9:** If the information is prohibiting, the dealer/sheriff is advised that the transaction must be denied. The dealer/sheriff provides the denied individual with a copy of the Pennsylvania State Police Denial Challenge form. If the individual feels that the denial was in error, the form may be completed and submitted to the PSP'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 be in contact as soon as possible, and at the latest within 15 days, with a determination.

Source: Pennsylvania State Police.

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#### Exhibit 5

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### **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 the account as needed to initiate PICS background check requests.

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

## Exhibit 5 Continued

**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.

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Act 1995-17 (Special Session No. 1 of 1995) which amended Title 18, specifies 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."<sup>6</sup> 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, regulations at 37 Pa. Code §33.111 specify the pre-sale check procedures required 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 PSP. 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.

## D. PICS Operational Statistics

As shown in Exhibit 6, there were 2,740 licensed firearm dealers in Pennsylvania in calendar year 2019, which accounted for total firearm sales and transfers of 742,251 weapons, including 421,543 handguns and 320,708 long guns. See Appendix A for a county-by-county breakdown of firearms sales and transfers. Additionally, 248,487 license to carry permits, which also require PICS background checks, were issued in 2019.

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<sup>6</sup> 18 Pa. C.S.A § 6113.

Exhibit 6

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

Calendar Year	Licensed Firearm Dealers <sup>a/</sup>	Firearm Sales and Transfers			License to Carry Permits
		Handguns	Long Guns	Total	
2015	2,661	421,811	333,953	755,764	237,344
2016	2,763	478,844	367,353	846,197	300,565
2017	2,750	442,465	338,377	780,842	290,958
2018	2,670	413,756	323,585	737,341	280,407
2019	2,740	421,543	320,708	742,251	248,487

<sup>a/</sup> See Appendix B for the number of licensed firearm dealers on a county-by-county basis.

Source: Pennsylvania State Police.

In its 2017 Firearms Annual Report, the PSP began to report on the number of sales of frames and receivers, reporting sales of 10,378, 19,209, and 23,953 in its 2017, 2018, and 2019 reports, respectively. Federal statute, 27 C.F.R. §478.11, defines a firearm frame or receiver as:

*That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.*

Because the PSP began receiving requests for frame/receiver statistical information, it decided to capture it by adding this information to that which is required on the surcharge remittance forms. By publishing it in the Firearms Annual Report, the PSP made the data available to the public.

In a letter to firearms dealers dated January 9, 2020, the PSP stated, in accordance with the Attorney General's opinion, issued in December 2019,<sup>7</sup> that a partially manufactured frame or receiver (PMFR) is considered a firearm under the Pennsylvania Uniform Firearms Act, 18 Pa C.S.A. §§ 6101-6128, in which the term firearm includes:

*Any weapons which are designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.*

<sup>7</sup> Attorney General opinion, December 16, 2019 to PSP Commissioner Robert Evanchick.

Accordingly, the letter informed dealers that PICS checks must be performed in order to legally sell such weapons and also outlined the process for performing these checks.

Since the Attorney General's opinion was issued, businesses that manufacture frames and receivers filed a law suit in Commonwealth Court in an attempt to prevent PICS checks for these purchases.<sup>8</sup> In January 2020, the court issued a preliminary injunction against the PSP prohibiting the PSP from implementing the new policy regarding PMFRs the PSP had outlined in its letter to the firearms dealers.<sup>9</sup> The PSP noted that the Commonwealth Court has enjoined it from performing PICS background checks for the purchase or transfer of a partially finished frame or receiver. The PSP also stated that:

*All firearms and firearm frames and receivers which required a background check to be completed prior to December 16, 2019 are still subject to all requirements found in the Uniform Firearms Act, including the requirement for a background check through the PICS system.*

### **PICS Operating Hours and System Downtime**<sup>10</sup>

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PICS is to be operational 365 days a year from 8:00 AM until 10:00 PM, which equates to 5,110 operating hours yearly. In 2019, of the 5,110 hours, the PICS system experienced 43.6 hours, 0.85 percent, of being out of service due to technical problems. Exhibit 7 provides a five-year breakdown of total operating time, system outages in hours, and the number of days affected.

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<sup>8</sup> The lawsuit was filed by Landmark Firearms LLC of Newville, Pennsylvania; US Rifle LLC of Dublin, New Hampshire; Polymer80 Inc. of Dayton, Nevada; and the Firearms Policy Coalition Inc., a membership organization based in Sacramento, California. They sued Colonel Robert Evanchick, Commissioner of the Pennsylvania State Police.

<sup>9</sup> The Commonwealth Court held there existed a substantial legal question as to whether the PSP's new policy set forth in its letter regarding partially manufactured receivers was impermissibly vague. Specifically, the court found that 1) PSP failed to explain how its new policy on partially manufactured frames or receivers differed from its prior policy and that of the ATF, such that those subject to the UFA had fair notice of PSP's change in policy; 2) PSP failed to tether its new policy to the text of the UFA, particularly the term "frame or receiver" in the relevant definition of firearm; 3) PSP introduced a new term, as opposed to simply defining what the UFA term as including what PSP seeks to capture; and 4) PSP deployed a new form for sales/transfers of a subclass of firearms, lacking any level of specificity, where PSP regulations provide for a specific form to be used in all firearms transactions under the UFA. The court held that this sowed confusion by the PSP within the industry and the public. The substantial legal claim that the PSP letter denied due process and was void for vagueness created per se irreparable harm warranting the court to issue a preliminary injunction preventing PSP from implementing its new policy. See Landmark Firearms, LLC, et al. v. Evanchick, (Memorandum opinion 694 M.D. 2019, issued January 21, 2020 (not reported)).

<sup>10</sup> In March 2020, during the initial closures due to COVID-19, PICS systems crashed twice on the 17<sup>th</sup>, once from 8 AM to 11:30 AM and again from 5 PM to 8:40 PM. According to the PSP, both technology challenges and a surge in request were responsible for the outages.

Exhibit 7

**PICS Operating Hours and System Downtime**

Calendar Year	Total Potential Operating Hours	Total System Downtime (Hours)	Percent of Total	Number of Days Affected
2015	5,110	40.2	0.80	19
2016	5,124	77.7	1.52	42
2017	5,110	54.4	1.06	33
2018	5,110	49.5	0.97	33
2019	<u>5,110</u>	<u>43.6</u>	<u>0.85</u>	<u>21</u>
Five -Year Totals	25,564	265.4	1.04	148

Source: Pennsylvania State Police.

**Reasons for PICS System Outages**

Reasons for PICS system outages include technical problems with federal databases, problems with PSP systems, downtime due to other unspecified technical difficulties, and technical difficulties in both state and federal systems. Outages can also be caused by, for example, problems with phone lines or power outages. Exhibit 8 illustrates outages for each of these reasons. The PSP notes in its report that instances occur when the IVR phone system is offline, yet the PICS web interface is still able to process background checks or vice versa, depending on the nature of the problem.

Exhibit 8

**Reasons for PICS System Outages**

	2015	2016	2017	2018	2019
Technical Difficulties – Federal Databases	69%	58%	38%	20%	29%
PSP System Problems	28	27	56	42	54
Downtime Due to Other Technical/System Difficulties	1	15	6	38	17
Technical Difficulties in both State and Federal Systems	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: Pennsylvania State Police.

## Outcomes of Initial Instant Check Inquiries to PICS

As shown on Exhibit 9, 66 percent of all calls to PICS were automatically approved by the IVR/Flexcheck system in 2019. The remaining calls were forwarded to a PICS operator for assistance and, of those calls, an additional 31 percent (of total calls) were also approved. Thus, 97 percent of the background check inquiries received approval during the first contact with PICS. The remainder of calls, 30,004, were either denied or placed into research, for which determinations were provided within 15 days.

### Exhibit 9

#### **Initial Disposition of Calls Requesting PICS Background Checks**

Calendar Year	Total PICS Calls <sup>a/</sup>	Number Approved on Initial Contact			
		By IVR/Flexcheck		By Operator	
		No.	%	No.	%
2015	989,298	612,549	62	349,796	35
2016	1,137,975	692,406	61	410,051	36
2017	1,055,451	590,964	56	431,853	41
2018	1,016,286	631,524	62	355,922	35
2019	982,036	645,839	66	306,193	31

<sup>a/</sup> Represents background checks requested by firearm dealers for firearm sales/transfers, sheriffs for license to carry permits, and firearm evidence returns.

Source: Pennsylvania State Police.

## Average PICS Approval Call Time

Exhibit 10 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.

### Exhibit 10

#### **Average PICS Call Times for IVR and Operator Approvals**

Calendar Year	Average Background Check Call Time (Minutes):			
	Automatically Approved - IVR Phone System	Operator-Assisted IVR Approvals	Automatically Approved - Web System	Operator-Assisted Web Approvals
2015	0.75	11.78	0.72	10.88
2016	0.78	9.88	1.07	6.80

**Exhibit 10 Continued**

2017	0.78	10.72	1.13	11.43
2018	0.80	11.38	0.83	12.63
2019	0.75	13.95	1.57	16.50

Source: Developed by LBFC staff using information obtained from the Pennsylvania State Police.

**PICS Initial Denials, Challenges, and Final Denials**

Exhibit 11 provides a summary of the total number of initial denials issued by PICS and the subsequent number of denials challenged.

Exhibit 11

**Initial PICS Denials and Challenges**

Calendar Year	Total Number of Initial Denials Issued by PICS	% of Initial Denials	Number of Denials Challenged	
			Number	% of Total Denials
2015	15,176	1.5%	4,590	30.3%
2016	16,964	1.5	5,619	33.1
2017	15,031	1.4	4,567	30.4
2018	13,981	1.4	4,038	28.9
2019	15,373	1.6	4,641	30.2

Source: Pennsylvania State Police.

In 2019, of the 4,641 denials challenged, 2,565 final denials were issued and 1,633 denials were reversed. The remaining 443 challenges 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 1.6 percent initial denial rate in 2019 is only slightly higher, by .04 percent, than the FBI-only denial rate of 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. Exhibit 12 provides a summary of the actions taken on appeals of PICS denials brought before the Office of Attorney General during calendar years 2015-2019.

### Exhibit 12

#### **Actions Taken by the Office of Attorney General on Appeals of PICS Denials 2015-2019**

	2015	2016	2017	2018	2019 <sup>a/</sup>
Total Number of Appeals	77	88	55	61	55
<i>Outcome:</i>					
Cases Approved Prior to Hearing Date	2	1	0	0	0
Denials Upheld	33	20	14	1	0
Denials Overturned	0	0	1	0	0
Appeals Withdrawn/Cancelled	24	37	28	10	3
Appeals Pending	18	30	12	45	51 <sup>b/</sup>
Appeals Heard	0	0	0	5	1

<sup>a/</sup> Seven of these cases resulted from a single court decision stemming from the same issue.

<sup>b/</sup> This number represents the number of appeals as of publication of the PSP Firearms Annual Report 2019.

Source: Pennsylvania State Police.

The first appeals to reach the Commonwealth Court level were in the year 2000. As shown in Exhibit 13, as of 2019, a total of 52 cases have been filed in Commonwealth Court, however, no appeals were filed in 2019.

### Exhibit 13

#### **Actions Taken by the Commonwealth Court on Appeals of PICS Denials 2000-2019**

Denials Upheld	25
Denials Overturned <sup>a/</sup>	18
Appeals Refused/Withdrawn/Cancelled/Re-manded	9
Appeals Pending	0

<sup>a/</sup> Seven of these cases resulted from a single court decision stemming from the same issue.

Source: Pennsylvania State Police.

The first appeals to reach the Pennsylvania Supreme Court occurred in 2001. The cumulative statistics for Supreme Court review of appealed PICS cases as of December 31, 2019 are shown in Exhibit 14. No appeals were filed with the Supreme Court in 2019.

#### Exhibit 14

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### **Actions Taken by the PA Supreme Court on Appeals of PICS Denials 2001-2019**

Denials Upheld <sup>a/</sup>	5
Denials Overturned	0
Appeals Refused/Withdrawn/Cancelled/ Remanded	13
Appeals Pending	0

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<sup>a/</sup> Five of these cases resulted from a single court decision stemming from the same issue.

Source: Pennsylvania State Police.

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### **PICS-Related Arrests**

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In 2019, through the PICS, law enforcement authorities apprehended 154 people with active warrants who were attempting to acquire a firearm. Law enforcement authorities are notified immediately when a fugitive is attempting to purchase a firearm and is identified through a PICS check. The PSP report that PICS has been responsible for the arrests of 2,591 individuals since its inception on July 1, 1998.

The PSP also shares information and coordinates investigative efforts with the ATF and municipal police departments in investigating and prosecuting individuals attempting to acquire firearms illegally. In 2019, the PSP Challenge Unit referred 4,368 files for investigation to:

- PSP Troops - 1,251
- ATF - 59
- Municipal police departments - 3,058.

A total of 1,017 arrests and 737 convictions were reported as a result of these referrals, including investigations initiated in prior years.

## **E. Improvements and Changes to PICS**

Since our 2015 report, the PSP has reported several other improvements and changes to the PICS system. They include:

- *Mental Health Verification Report*: This is a semi-monthly report generated by PSP and returned to mental-health submitting counties to ensure their submissions were accurate. Counties regularly submit information to the PSP regarding individuals who have been involuntarily committed or adjudicated incapacitated.
- *Stolen Firearm Query*: Added to PICS, this allows an FFL to run a query on a firearm before buying it from an individual. If stolen, law enforcement is notified.
- *iPad/Touchscreen Project*: Implemented January 2019, this project allows FFLs to complete sales using touchscreens on smart phones, tablets, and laptops.
- *Domestic Violence Indicators Project*: Implemented January 2020. This project improved the ability to document Relationship-to-Victim (RTV) for identifying misdemeanor crimes of domestic violence incidents to help restrict prohibited persons from obtaining firearms. Fingerprint cards and Livescan (fingerprint) machines were updated statewide.

## SECTION III PICS Funding and Expenditures



**Fast Facts...**

- ❖ *PICS is funded through three sources: dedicated state appropriation, GGO and the Firearms Record Check Fund.*
- ❖ *Ninety-five percent of PICS expenditures are for personnel costs.*
- ❖ *PICS surcharges are insufficient to fund the program, accounting for about 31 percent of PICS expenditures in the past two fiscal years.*

This section reviews sources and amounts of PICS funding, as well as expenditures for the program. We also review whether fees charged for PICS checks are sufficient to fund necessary expenditures.

### A. PICS Funding

PICS is funded through a combination of sources, including a dedicated state appropriation, the restricted Firearm Records Check Fund, and the PSP General Government Operations (GGO) appropriation. As Exhibit 15 shows, the amount of funding coming from these sources varies from year to year. From FY 2016-17 to FY 2018-19, there was no dedicated gun check appropriation. During those years, the majority of funding for PICS was from the Firearm Records Check Fund or GGO.

Exhibit 15

#### PICS Funding, by Source

Fiscal Year	Gun Checks Appropriation	Firearm Records Check Fund	PSP General Government Operations	Total
2015-16	\$1,658,000	\$1,053,757	\$4,792,030	\$7,503,788
2016-17	0	67,078	7,342,640	7,409,718
2017-18	0	7,676,929	90,449	7,767,378
2018-19	0	6,962,607	1,126,260	8,088,866
2019-20	4,400,000	2,623,764	1,057,870	8,081,634

Source: Pennsylvania State Police.

The combined \$5.00 instant check fee/firearm surcharge has remained unchanged since the program's inception. As established in the Pennsylvania Uniform Firearms Act (UFA),<sup>11</sup> the firearms dealer requesting the

<sup>11</sup> 18 Pa.C.S.A. § 6111(b)(3)

PICS check is 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, called the Firearms Sale Surcharge, is to be deposited into the Firearm Records Check Fund, also established by UFA.<sup>12</sup> As provided by the Act, funds are used to cover the costs of processing the sale or transfer of firearms, such as application/record requirements, conducting instant background checks, the PSP investigation of criminal and court records, and monitoring licensee adherence to statutory requirements.

However, as Exhibit 15 shows, the amount of PICS funding that comes from the Firearm Records Check Fund varies from year to year. According to the PSP, this amount varies mainly by how much funding is available from the PSP GGO. If there is enough available funding in GGO to cover PICS expenditures than what was anticipated, the PSP will charge less to the restricted fund in order to preserve it for use in future years when GGO funding may be more limited or not available at all.

## **B. PICS Expenditures**

As shown in Exhibit 16, PICS expenditures have recently been between about \$7.5 million and \$8.1 million annually, with about 95 percent of these expenditures used for personnel services in FY 2019-20.

Exhibit 16

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### **PICS Expenditures**

<b>Fiscal Year</b>	<b>Personnel Services</b>	<b>Operational Expenses</b>	<b>Total</b>
2015-16	\$7,445,074	\$58,714	\$7,503,788
2016-17	7,381,019	91,669	7,409,718
2017-18	7,504,023	263,354	7,767,378
2018-19	7,698,295	390,572	8,088,866
2019-20	7,834,301	247,333	8,081,634

Source: Pennsylvania State Police.

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Exhibit 17 provides a further breakdown of PICS expenditures, by personnel services and operational expenses, for the past five fiscal years.

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<sup>12</sup> 18 Pa.C.S.A. § 6111.3

Exhibit 17

**PICS Expenditures**

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
<b>Personnel Services</b>					
Salaries	\$3,761,091	\$3,705,841	\$3,3846,663	\$3,932,597	\$4,023,979
Shift Differential Pay	36,984	37,657	39,277	36,731	42,621
Higher Classification Pay	0	0	235	66	1,255
General Pay Increase - Cash Payment	2,386	0	1,252	1,291	1,330
Wages – Regular Hours	36,406	0	0	0	0
Wages – Shift Differential	564	0	0	0	0
Overtime	52,221	64,727	122,354	123,333	151,307
Hospitalization Insurance	1,004,925	850,501	585,151	693,781	546,686
Social Security Contributions	234,114	228,966	244,765	249,474	254,635
Medicare	54,752	53,549	57,244	58,345	59,552
Retirement Contributions	870,938	1,004,121	1,178,578	1,195,127	1,245,186
Workers' Compensation Payments	126,332	149,356	145,225	118,497	88,080
Life Insurance	10,424	10,105	9,352	9,373	9,619
Health Benefits	1,105,269	1,072,044	1,111,694	1,128,732	1,147,060
Unemployment Compensation	13,854	5,885	6,686	2,958	47,048
Leave Payout Assessment	134,555	135,267	155,546	160,641	203,292
Allowances	260	0	0	(12,651)	12,651
<b>Subtotal - Personnel Services</b>	<b>\$7,445,074</b>	<b>\$7,318,019</b>	<b>\$7,504,023</b>	<b>\$7,698,295</b>	<b>\$7,834,301</b>
<b>Operational Expenses:</b>					
Travel	\$2,217	\$1,624	\$747	\$254	453
Training	46	0	0	0	325
Telecommunications - Recurring	32,668	41,920	42,179	41,688	42,662
Telecommunications - Voice	0	0	1,957	0	0
Telecommunications – Data	0	1,404	0	0	0
Specialized Services	0	20,303	102,827	196,143	62,127
Other Specialized Services	3,653	6,925	10,951	22,979	38,231
Software License Maintenance	0	0	87,658	104,624	59,799
Hardware Peripheral Maintenance	0	155	118	118	223
Vehicles	0	0	0	220	0
Office Equipment	5,759	6,306	6,085	6,065	5,147
Office Supplies	5,894	11,722	10,808	14,135	28,458
Housekeeping Supplies	0	0	0	176	0
Hardware Peripheral	0	0	0	923	604
Furniture/Fixtures	0	436	0	430	0
Fuels	0	0	0	29	0
Purchasing Card Purchases	8,476	904	0	2,788	9304
Other Operating Expenses	0	0	24	0	0
<b>Subtotal - Operational Expenses</b>	<b>\$58,714</b>	<b>\$91,669</b>	<b>\$263,354</b>	<b>\$390,572</b>	<b>\$247,333</b>
<b>Total</b>	<b>\$7,503,788</b>	<b>\$7,409,718</b>	<b>\$7,767,378</b>	<b>\$8,088,866</b>	<b>\$8,081,634</b>

Source: Pennsylvania State Police.

### C. Adequacy of PICS Fees

As shown in Exhibit 18, funds from the Firearm Records Check Fund have almost completely funded PICS operations in FYs 2017-18 and 2018-19, 99 and 86 percent, respectively. However, in 2016-17, these funds covered only one percent of expenditures and almost all funding was from PSP GGO.

Exhibit 18

#### Instant Check/Surcharge Program Revenues From the Firearm Records Check Fund - As Percentage of PICS Expenditures

Fiscal Year	Program Revenues from Fund	PICS Expenditures	Revenues as % of Expenditures
2015-16	\$1,053,757	\$7,503,788	14%
2016-17	67,078	7,409,718	1 <sup>a/</sup>
2017-18	7,676,929	7,767,378	99
2018-19	6,962,607	8,088,866	86
2019-20	2,623,764	8,081,634	32

<sup>a/</sup> During the 2016-17 fiscal year, the PSP realized a significantly higher than anticipated attrition rate which in turn resulted in available GGO funding to cover expenses related to PICS, resulting in a minor need for funds necessary from the Firearm Records Check Fund.

Source: Pennsylvania State Police.

When we review the actual fees collected and deposited in the Firearm Records Check Fund, funding appears to be somewhat more stable. Exhibit 19 shows total instant check and surcharge revenues as a percentage of PICS spending. Total revenues, as a percentage of total expenditures, ranged from a low of 31 percent to a high of 49 percent.

Exhibit 19

**Instant Check/Surcharge Revenues to the Firearm Records Check Fund –  
 As a Percentage of PICS Expenditures**

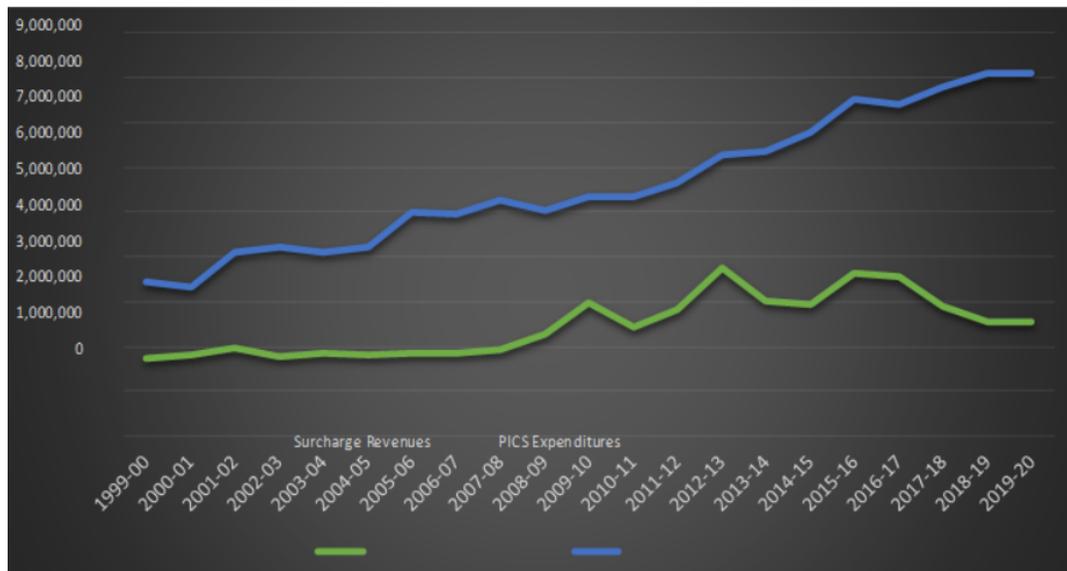
Fiscal Year	Instant Check/ Surcharge Revenues to Fund	PICS Expenditures	Revenues as % of Expenditures
2015-16	\$3,467,198	\$7,503,788	49%
2016-17	3,561,163	7,409,718	48
2017-18	2,910,030	7,767,378	37
2018-19	2,538,575	8,088,866	31
2019-20	2,538,831	8,081,634	31

Source: Pennsylvania State Police.

Exhibit 20 shows the fee/surcharge collections deposited into the Firearm Records Check Fund as compared to PICS expenditures from FY 1999-00 through FY 2019-20. Although the gap between the two has gotten slightly larger, the percent of expenditures that can be covered by fees/surcharges has remained relatively constant for the past three fiscal years, ranging from 31 to 37 percent (also shown in Exhibit 19 above).

Exhibit 20

**Instant Check Surcharge Fee Revenues Compared to PICS Expenditures**



Source: Pennsylvania State Police.

Finally, Exhibit 21 shows the beginning and ending balances of the Firearm Records Check Fund, the fund into which the fees/surcharges are deposited, as required by UFA.

Exhibit 21

**Firearm Records Check Fund Financial Statement**

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Beginning Balance	\$3,883,189	\$6,476,387	\$9,970,215	\$5,169,377	\$133,329
Revenues	3,647,198	3,561,163	2,910,030	2,538,575	2,538,831
Available Funds	7,530,387	10,037,550	12,880,245	7,707,952	2,672,160
Expenditures	1,054,000	67,335	7,710,869	7,574,623	2,336,634
<b>Ending Balance</b>	<b>\$6,476,387</b>	<b>\$9,970,215</b>	<b>\$5,169,376</b>	<b>\$133,329</b>	<b>\$335,526</b>

Source: Pennsylvania State Police

As shown in Exhibit 22, revenues from the instant check and firearm surcharge fees have not been sufficient to fully cover PICS program costs, with revenues generally meeting between 31 percent and 49 percent of PICS annual expenditures. To have fully funded the PICS program in FY 2018-19 and FY 2019-20, the \$5.00 combined instant check/surcharge fee would need to increase from \$5.00 to \$16.00. Exhibit \_\_ shows the fees necessary, in the past five fiscal years, to fully fund the PICS system using only instant check/firearms surcharges.

Exhibit 22

**Fee Increases Necessary to Fully Fund PICS**

Fiscal Year	Instant check/ Surcharge Revenues	PICS Expenditures	Fees as % of Expenditures	Current Fee	Fee Needed to Fund PICS
2015-16	\$3,647,198	\$7,503,788	49%	\$5	\$10
2016-17	3,561,163	7,409,718	48	5	10
2017-18	2,910,030	7,767,378	37	5	13
2018-19	2,538,575	8,088,866	31	5	16
2019-20	2,538,831	8,081,634	31	5	16

Source: Pennsylvania State Police.

## SECTION IV Instant Check Funding in Other States



### **Fast Facts...**

- ❖ *There are 13 states, including Pennsylvania, that are full point-of-contact states.*
- ❖ *Fees for gun checks range from \$5 in Pennsylvania, to over \$200 in Connecticut.*
- ❖ *Pennsylvania, being a full point-of-contact state, has several advantages over being a NICS-only state, as identified by the PSP.*

Each state is free to determine the nature and extent of its involvement in the NICS process. Based on the NICS involvement selected by the states, territories, and Washington D.C., they are classified as either full, partial, or non-point-of-contact (POC). In addition, 25 states have ATF Qualified Alternative Permits, which are state-issued conceal carry permits, permits to purchase, etc., that may be qualified by the ATF as permits that suffice in lieu of a NICS background check at the point of sale/transfer.

### **A. Forms of State Involvement**

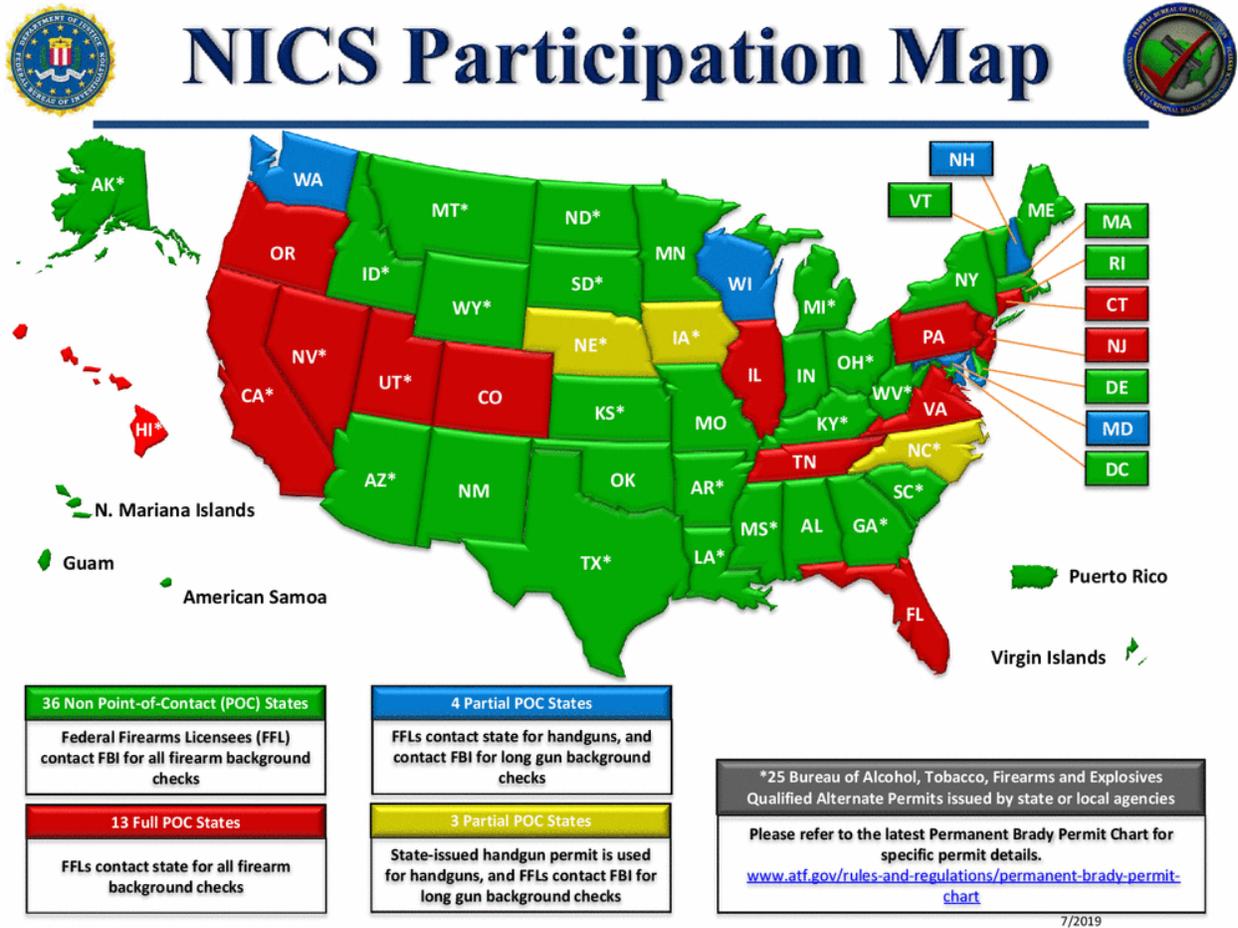
According to the Federal Bureau of Investigation (FBI), there are three types of state involvement as illustrated in Exhibit 23:

- *Full point-of-contact:* There are 13 states that have full POC status and perform all firearm and permit background checks for their states' Federal Firearms Licensees (FFLs).
- *Partial point-of-contact:* There are seven states that are partial POC states, meaning that they perform their own background checks for handgun purchases and permits, but use NICS for all long gun transactions.
- *Non-point-of-contact:* There are 30 states, five territories and Washington D.C. that use NICS exclusively for all background checks for firearm sales, transfers, and permits.

In addition, 25 states have ATF Qualified Alternative Permits (as designated by an asterisk next to the state name in Exhibit 23). Certain state-issued firearm permits, such as concealed carry permits and permits to purchase, may be qualified by the ATF as permits that suffice in lieu of a NICS background check at the point of sale/transfer. To qualify for an alternative permit, the applicant, in addition to meeting the conditions required by state law, must pass a NICS background check as part of the permit-issuing/renewal process. The state agency responsible for issuing the ATF-qualified alternative permit conducts the NICS background check and determines if the subject is eligible based on state and federal firearms laws. When attempting to obtain a firearm at an FFL, an individual's presentation of a valid alternative permit, issued within the past five years, precludes the need for the FFL to initiate the otherwise required NICS background check for the permit holder.

Exhibit 23

NICS Participation by State



Source: National Instant Criminal Background Check System 2019 Operations Report.

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

## B. Fees Charged in Full Point-of Contact States

As shown in Exhibit 24, instant check fees in full POC states range from \$5.00 to over \$200, with Pennsylvania having the lowest fee of all full POC states. 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.

## Exhibit 24

### Fees in Full Point-of-Contact States

State	Fees	Total Fees Charged
California	<ul style="list-style-type: none"> <li>• \$31.19 – Dealer’s Record of Sale Fee</li> <li>• \$1.00 – Firearm Safety Fee</li> <li>• \$5.00 – Firearm Safety Enforcement Fee</li> </ul>	\$37.19
Colorado	<ul style="list-style-type: none"> <li>• \$17.50 – CCIC Fingerprint Check</li> <li>• \$13.00 – Instacheck</li> <li>• \$22.00 – FBI Fingerprint Check</li> </ul>	52.50
Connecticut	<ul style="list-style-type: none"> <li>• \$70.00 – Temporary Permit Processing Fee</li> <li>• \$75.00 – Connecticut Fingerprint Check</li> <li>• \$13.25 – Federal Fingerprint Check</li> <li>• \$70.00 – State Permit Processing Fee</li> </ul>	228.25
Florida	<ul style="list-style-type: none"> <li>• \$42.00 – Fingerprint Processing Fee</li> <li>• \$55.00 – Initial License Fee</li> <li>• \$22.00 – Tax Collectors Convenience Fee (possible for new applications)</li> </ul>	97.00
Hawaii	<ul style="list-style-type: none"> <li>• \$43.25 – Fingerprint Check</li> </ul>	43.25
Illinois	<ul style="list-style-type: none"> <li>• \$10.00 – Firearm Owner’s Identification Card (FOID card)</li> <li>• Local governments may have additional fees</li> </ul>	10.00
Nevada	<ul style="list-style-type: none"> <li>• \$13.25 - FBI Fingerprint Check</li> <li>• \$27.00 – Nevada State Fingerprint Check</li> <li>• \$20.00 – Civil Name Check Fee</li> <li>• \$25.00 – Brady Firearm Background Check Fee</li> </ul>	85.25
New Jersey	<ul style="list-style-type: none"> <li>• \$5.00 – Application for Firearm Purchaser ID Card</li> <li>• \$2.00 – Application Permit to Purchase</li> <li>• \$15.00 (Additional \$1 for handgun purchase) – NICS Background Check</li> </ul>	22.00
Oregon	<ul style="list-style-type: none"> <li>• \$10.00 – Background Check</li> </ul>	10.00
<b>Pennsylvania</b>	<ul style="list-style-type: none"> <li>• <b>\$2.00 – Background Check</b></li> <li>• <b>\$3.00 – Sale or Transfer of Firearm</b></li> </ul>	<b>5.00</b>
Tennessee	<ul style="list-style-type: none"> <li>• 10.00 – Background Check</li> </ul>	10.00
Utah	<ul style="list-style-type: none"> <li>• Fee includes fingerprint background check processing fees</li> </ul>	53.25
Virginia	<ul style="list-style-type: none"> <li>• \$10.00 – Application Processing/Issuing</li> <li>• Not to exceed \$35.00 – Local Law Enforcement Agencies may charge a fee to cover the cost of conducting an investigation pursuant to Code.</li> <li>• Not to exceed \$5.00 – State Police may charge a fee to cover the cost associated with processing the application.</li> </ul>	Not to exceed 50.00

Source: Developed by LBFC staff with information located on respective state agency websites.

## **C. Advantages to Pennsylvania as a Full Point-of-Contact State**

The Pennsylvania State Police have identified the following as advantages to Pennsylvania continuing to operate as a full POC state rather than having gun checks performed only with NICS at the federal level:

Approval of Firearm: With PICS, no transactions are completed without a PICS approval number. If a background check hits on any record, it is transferred to a PICS operator. If the PICS operator cannot immediately approve the purchase, the application is put into "research" status. PICS then has up to 15 days to determine if the purchase can proceed. If after 15 days PICS staff cannot make a determination, the applicant's status becomes "undetermined" and the person is not allowed to purchase the firearm. With NICS, upon initiation of a NICS background check, a determination will be made within three business days to approve, delay, or deny the transaction. If a transaction remains in delayed status after three business days, the licensed dealer may proceed with the transaction.

License to Carry Permits: PICS provides a comprehensive service to Pennsylvania sheriffs regarding additional offenses of permitted persons between permit renewals. According to the PSP, it appears that NICS allows a permit process for sheriff access for a NICS check. However, with a NICS only check, NICS does not maintain the state-specific license to carry database, nor would it provide sheriffs with notifications of expirations or prohibitors during the five year term of the license. This information would still need to be funneled to the sheriffs from a database maintained at the state level.

Pennsylvania Application/Record of Sale: Within Pennsylvania, the Record of Sale, which precedes PICS, is used by law enforcement on a daily basis in the furtherance of investigations. The PSP considers this a significant investigative tool. If Pennsylvania relied on NICS alone, the federal government has no standing or authority in a state-regulated process. While PSP can attempt to keep some form of this in the Pennsylvania Uniform Firearms Act (UFA), any change in the law risks another court challenge and the requirement may be more difficult to defend without a comprehensive UFA in place. Any discussion of transition to NICS is generally accompanied by special interest in the abolishment of this record. The ATF's eTrace system provides only a fraction of the utility to Pennsylvania law enforcement.

Appeals Process: PICS provides a statutory review process with strict response deadlines and right-of-appeal to the courts, wherein PSP bears the burden of proof to justify its decision.

General Records:

- PICS captures all protection from abuse (PFA) orders despite lacking identifiers required by the National Crime and Information Center (NCIC), while NICS will not capture PFA orders that lack certain identifiers required by NCIC.
- PICS captures Pennsylvania juvenile records that are prohibiting, while NICS does not capture juvenile records, as they are not federally prohibiting. Pennsylvania juvenile records are now being submitted to the NICS Indices and will hit as long as the State of Residence or State of Purchase are flagged as PA.
- PICS accepts records despite being rejected by the FBI due to fingerprints not meeting federal quality threshold settings. NICS captures only those records with sufficient fingerprint quality and are thus loaded into the Interstate Identification Index (III).

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**SECTION V  
APPENDICES**



**Appendix A  
Reported Firearms Sales/Transfers in PA by County in 2019**

County	Handguns <sup>a/</sup>	Long Guns <sup>b/</sup>	County	Handguns <sup>a/</sup>	Long Guns <sup>b/</sup>
Adams	5,746	6,793	Lackawanna	9,232	5,768
Allegheny	32,779	14,804	Lancaster	21,663	16,154
Armstrong	2,243	1,914	Lawrence	3,657	2,471
Beaver	6,467	3,598	Lebanon	5,195	4,982
Bedford	2,533	4,652	Lehigh	10,753	6,272
Berks	16,902	13,854	Luzerne	13,666	9,035
Blair	6,034	4,873	Lycoming	8,145	7,051
Bradford	3,098	4,873	McKean	1,418	1,697
Bucks	28,342	14,440	Mercer	7,631	6,161
Butler	11,922	8,565	Mifflin	2,170	2,013
Cambria	7,821	6,122	Monroe	7,656	4,467
Cameron	58	58	Montgomery	12,039	6,642
Carbon	861	787	Montour	135	125
Centre	4,712	4,571	Northampton	8,343	5,000
Chester	9,185	5,722	Northumberland	2,033	2,276
Clarion	2,423	3,226	Perry	1,585	2,238
Clearfield	10,995	12,687	Philadelphia	11,487	2,263
Clinton	1,286	1,833	Pike	2,273	1,826
Columbia	4,464	3,440	Potter	452	717
Crawford	2,480	2,376	Schuylkill	6,956	6,197
Cumberland	10,209	7,796	Snyder	3,758	3,353
Dauphin	7,661	5,538	Somerset	2,252	3,317
Delaware	11,144	4,015	Sullivan	111	154
Elk	1,826	3,313	Susquehanna	1,439	1,854
Erie	8,154	8,043	Tioga	1,915	3,826
Fayette	8,148	5,454	Union	268	636
Forest	162	208	Venango	1,936	2,005
Franklin	5,765	6,363	Warren	1,907	2,897
Fulton	519	858	Washington	12,710	7,736
Greene	1,186	1,729	Wayne	5,008	5,058

**Appendix A Continued**

Huntingdon	613	1,078	Westmoreland	15,718	12,041
Indiana	3,077	2,945	Wyoming	2,167	3,194
Jefferson	2,385	3,060	York	<u>14,298</u>	<u>11,119</u>
Juniata	367	755	State Totals	421,543	320,708

**Total Firearm Sales/Transfers<sup>c/</sup> .      742,251**

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<sup>a/</sup> 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.

<sup>b/</sup> 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.

<sup>c/</sup> Totals include any taxed and non-taxed sales/transfers reported for the year 2019.

Source: Pennsylvania State Police.

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## Appendix B Number of PA Licensed Firearms Dealer by County in 2019

County	Number of Dealers	County	Number of Dealers
Adams.....	42	Lackawanna .....	50
Allegheny .....	140	Lancaster .....	60
Armstrong.....	29	Lawrence.....	28
Beaver.....	43	Lebanon.....	30
Bedford.....	27	Lehigh.....	49
Berks.....	90	Luzerne.....	66
Blair.....	45	Lycoming.....	57
Bradford.....	39	McKean .....	21
Bucks.....	116	Mercer .....	38
Butler.....	64	Mifflin.....	17
Cambria.....	40	Monroe .....	44
Cameron.....	4	Montgomery.....	90
Carbon.....	13	Montour.....	9
Centre.....	42	Northampton.....	57
Chester.....	92	Northumberland.....	31
Clarion.....	19	Perry .....	34
Clearfield.....	26	Philadelphia.....	12
Clinton.....	14	Pike .....	39
Columbia.....	34	Potter .....	14
Crawford.....	36	Schuylkill.....	40
Cumberland.....	52	Snyder.....	17
Dauphin.....	54	Somerset.....	38
Delaware.....	47	Sullivan .....	5
Elk.....	11	Susquehanna .....	28
Erie.....	54	Tioga .....	36
Fayette.....	40	Union .....	13
Forest.....	4	Venango .....	23
Franklin.....	58	Warren.....	24
Fulton.....	10	Washington.....	68
Greene.....	22	Wayne.....	33
Huntingdon.....	22	Westmoreland.....	121
Indiana.....	41	Wyoming.....	13
Jefferson.....	22	York.....	<u>128</u>
Juniata.....	13		
	<b>State Total .....</b>		<b>2,740</b>

Source: Pennsylvania State Police

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## Appendix C PSP Response



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

COLONEL ROBERT EVANCHICK  
COMMISSIONER

November 19, 2020

Patricia A. Berger  
Executive Director  
Legislative Budget & Finance Committee  
Room 400 A, Finance Building  
Harrisburg, Pennsylvania 17105-87379

Dear Director Berger:

The Pennsylvania State Police (PSP) has received and reviewed a copy of The Adequacy of Fees Charged for Pennsylvania's Instant Check System study conducted by the Legislative Budget and Finance Committee (LBFC). We sincerely appreciate the opportunity to review the study and provide information that may be beneficial to the Committee and other members of the General Assembly.

This study is the fifth review conducted pursuant to Act 1995-17. The recurrent study requirement offers us the privilege to work with you and your staff to provide the most accurate Pennsylvania Instant Check System (PICS) data in a comprehensive manner to ensure transparency. I commend the professionalism and thoroughness of the LBFC and staff in conducting all aspects of this study.

Overall, we find the study to be an accurate representation of PICS operation. It highlights internal and external challenges and identifies substantial advantages of the system. It also illustrates our commitment to providing exemplary service in the operation and experience of PICS while maintaining fiscal responsibility.

This year has been unprecedented in demand for PICS services, with a record-breaking 1,170,688 total transactions as of October 31, 2020. Even with this substantial increase in demand, we have been cognizant of the impact to stakeholders, including county Sheriffs and small business owners such as firearms dealers. Recent upgrades have been made to enhance the user experience with PICS and streamline internal processing. Sheriffs may now accept an active approval through the web for up to seven (7) days without operator intervention. Firearms dealers can now initiate a re-check of a transaction through the secure WebClient site instead of calling into the phone system.

Correspondence to Executive Director Berger  
November 19, 2020  
Page 2

Additionally, PICS internal processing now allows designated operators to be assigned incoming web transactions only, which helps maximize efficiencies during peak volume times. We are continuing to seek opportunities like this to enhance flexibility while providing high quality service.

To that end, I thank our staff for their unwavering dedication in carrying out this mandate, considering the record-breaking volume, and we embrace the opportunity to continue to administer the PICS and provide exemplary service to the citizens of this Commonwealth.

Once again, thank you for your efforts in evaluating PICS and we look forward to discussing the study with the Committee on December 2, 2020.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Evanchick".

Colonel Robert Evanchick  
Commissioner