

WASHINGTON STATE  
**Statistical Analysis Center**  
Informing a data-driven justice system

Feasibility of a Single Point-of-Contact Firearm Background Check System  
As required by Chapter 35, Laws of 2019

November 20, 2019



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## Executive Summary

Washington's current firearm background check system is decentralized, requiring local law enforcement agencies to collectively conduct approximately 450,000 background checks each year. The Office of Financial Management (OFM) was directed by the Legislature to determine the feasibility of creating a single point-of-contact system in the state of Washington and identify potential impacts to public safety and a person's right to bear firearms. **After consulting with agencies and businesses involved in the firearm background check process, OFM concludes that creating a single point-of contact system is both feasible and an advisable course of action to pursue.**

A centralized, single point-of-contact background check system for Washington would improve public safety by:

- Bringing all state-level firearm background checks conducted in the state up to the same high level of thoroughness currently in place in the most-thorough jurisdictions.
- Introducing statewide checks for noncustodial arrests and some juvenile convictions that currently include, at best, checks of only a single local jurisdiction's databases.
- Leveraging economies of scale and the broader experience of centralized unit staff to enable more-thorough research of checks that do not return a clear result.
- Implementing more rapidly and efficiently future policy changes to improve public safety.

At the same time, the single point-of-contact system would streamline the firearm background check process by:

- Automating the state-level firearm background check and thus reducing the average wait time before a transfer is approved or denied.
- Reducing the increasing burden on local law enforcement agencies, allowing them to reassign staff duties, as needed.
- Simplifying the process for firearms dealers by establishing a single contact for all firearm background checks and related inquiries.
- Simplifying the process for other state agencies that currently receive firearm background check requests from hundreds of law enforcement agencies.

Based on an assessment of agency eligibility and current synergies, OFM recommends placing this centralized background check unit and the associated systems with the Washington State Patrol. The cost model created for these recommendations suggests that the system can be created for an approximate cost of \$3.4 million and maintained with ongoing annual costs of \$10.2 million. This annual cost could be offset by an \$18.63 per-check fee.

## Introduction and Background

Chapter 35, Laws of 2019 directs the Office of Financial Management (OFM) to conduct a feasibility study that assesses the potential for the state to create a single point of contact for firearm background checks in Washington. Along with this core question, the bill requires OFM to consider and provide recommendations in the following areas:

- (a) Whether public safety in Washington could be improved by implementing a single point of contact system in Washington;*
- (b) Whether a single point of contact system in Washington would more effectively keep prohibited persons from obtaining firearms while continuing to respect a person's right to bear arms consistent with Article 1, section 24 of the state Constitution and the Second Amendment of the Constitution of the United States;*
- (c) Whether a single point of contact system in Washington would simplify the background check process for those purchasing firearms and for firearms dealers and law enforcement agencies;*
- (d) The feasibility of creating a single point of contact system in the Washington State Patrol or the Washington Association of Sheriffs and Police Chiefs, creating a new agency for this purpose, or a combination of these options;*
- (e) What computer system improvements would need to be made to most effectively and efficiently administer a single point of contact system in Washington; and*
- (f) The approximate cost to establish a single point of contact system in Washington and the approximate annual cost to operate such a system.*

In addition, the statute provides OFM with room to offer recommendations on other subjects related to or affected by the creation of a centralized background check system. This report considers each of these areas and provides a framework through which Washington's firearm background check system might be centralized.

### Current System Function

The firearm background check system in Washington is a multi-jointed process. Federal law requires all licensed firearm dealers to perform a background check prior to any firearm transfers through use of the National Instant Criminal Background Check System (NICS). Washington law further requires these checks to take place during private sales and transfers by having citizens complete the transaction through a dealer with a federal firearms license (FFL). If the transfer in question is for a gun part, often termed as "other," or for a "long gun," a loose term that covers most rifles and shotguns, this NICS check is all that is required, and the background check can often be resolved within minutes. If the transfer is for a pistol or a "semiautomatic rifle" (SAR), additional laws apply that require a state-level background check.



Transfers for pistols and SARs require dealers to contact the local law enforcement agency (LEA) that has jurisdiction over the purchaser's place of residence, as listed on their state identification. Then LEA then has up to 10 days to complete a check of the NICS in addition to a number of other Washington databases, including the Washington State Identification System (WASIS), the Washington Crime Information Center (WACIC) and the Health Care Authority (HCA). Local agencies may also check with other databases and systems, as deemed appropriate, to ensure that the applicant is eligible to possess a firearm. In many cases, local agencies will reference local court records and arrests from their local record management systems (RMS) to ensure that no disqualifying information is contained therein. The extensiveness of background checks and the speed at which they are conducted may depend heavily on the number of staff that local agencies are able to dedicate to performing firearm background checks and the volume of checks being requested.

This model makes Washington a "partial point of contact" state, in that some checks are conducted by local law enforcement while others are performed solely by the Federal Bureau of Investigation's (FBI) NICS unit. It also means that some disqualifying factors will not be detected for long gun purchases, such as juvenile felonies and misdemeanor warrants that are not eligible for entry in the NICS systems. Recent estimates from Washington and the NICS unit indicate there were approximately 441,000 pistol transfers and 138,000 long gun transfers in Washington during 2017.

### Recent and Upcoming Changes

In July 2019, SARs were added to the firearm background checks performed by local law enforcement. Before a full year transpires, it will be difficult to quantify the additional burden, if any, this might create for the workload of local LEAs. Most agencies are aware of typical periods of high transfer volumes around the holidays and plan accordingly. With the addition of SARs, the number of checks performed by local LEAs may hit a high-water mark later this year. Additionally, the FBI has indicated that it will cease performing NICS checks for gun parts in 2020, which would, in turn, require those checks to be performed by local LEAs. While it is difficult to estimate the full impact of these additions, it is very probable they will disproportionately affect small agencies that lack the resources to devote full-time staff to performing firearm background checks.

The Department of Licensing (DOL) is developing recommendations for a system to perform annual rechecks of past pistol and SAR transfers, as required by RCW 9.41.139. At the time of this report, it is unknown what process will be recommended to accomplish this task. If this responsibility incorporates local LEAs in performing rechecks for the eligibility status of previous firearm transfers, it could potentially add hundreds of thousands of checks to the growing workload of local LEAs.

## Changes Inherent in Centralization

### Public Safety

#### Systems Accessible During Background Checks

Washington law specifies that state-level firearm background checks must reference WACIC, WASIS, NICS and HCA. In addition to these systems, many local LEAs check their local RMS or court systems for disqualifiers that might not be visible in other systems. Such disqualifying records could include cite-and-release arrests for felony or misdemeanor offenses, juvenile convictions that did not generate fingerprints or drug contacts. These local checks provide some of the rationale for a decentralized background check model, as only local LEAs have easy access to these systems. They also create a degree of inconsistency, as a cite-and-release arrest in one county often cannot be detected during a background check conducted in another.

A centralized unit would have the ability to access every database prescribed by law, but would require some changes to capture the same level of data as local jurisdictions. To capture convictions that are not fingerprint-based, OFM **recommends** building a link between the proposed centralized background check unit and the Administrative Office of the Courts (AOC).

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**Recommendation:** Build a link between the proposed centralized background check unit and the Administrative Office of the Courts.

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This would improve upon the completeness of this aspect of the firearm background check as it grants access to all state court records rather than those in a single jurisdiction. Similarly, OFM **recommends** the use of the FBI's National Data Exchange (N-DEX) database, or the creation of an equivalent statewide repository, to reference statewide RMS data during firearm background checks. Slightly more than 80% of Washington police departments and more than 90% of sheriffs' offices currently contribute to N-DEX. A statutory requirement requiring submission could enable N-DEX, or an alternative state-level database constructed for this purpose, to improve the completeness of firearm background checks.

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**Recommendation:** Use the FBI's National Data Exchange (N-DEX), or an equivalent statewide system, to reference statewide RMS data during firearm background checks.

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#### Background Check Standardization

The Washington State Patrol (WSP) provides regular training for the roughly 220 local LEAs conducting firearm background checks. Due to the strains created by staff turnover, the need to share duties and periods of high transfer volumes, not all firearm background checks are handled by staff with up-to-date training. These situations are further complicated during periods of legal or procedural change, when law enforcement agencies are often expected to adopt new regulations prior to receiving training or guidance from WSP. This creates significant risk to public safety as there is little oversight to ensure that these background checks meet the requirements of Washington law. Centralizing the firearm background check function would greatly simplify the task of training for WSP and reduce the likelihood of inadequately trained staff needing to process firearm background checks.

Resources vary widely among the many LEAs in Washington, and while some jurisdictions have entire units dedicated to processing firearm background checks, others assign this duty as one of many to a single administrative staff member. While each jurisdiction contacted for this study

was able to keep up with the firearm background checks required of them, there were variations among the databases they referenced during the check process. This means that despite each jurisdiction acting in good faith and in accordance with the law, Washington citizens are receiving varying levels of scrutiny depending on where they live and which agency is performing the check. Thus, certain prohibiting factors such as juvenile records and recent arrests might be overlooked in some areas of the state. A defined system backed by a steady number of background checking staff would provide consistency across the checks performed for firearm transfers and reduce the likelihood of prohibitors being missed.

## Access to Firearms

The considerations listed in the section above explain some ways in which a centralized system might more effectively detect those persons who are prohibited from possessing firearms. One possible impact to consumers, however, is in the amount of time the firearm background check process takes before the FFL dealer is notified whether to proceed or deny the transaction. Centralization of the firearm background check system is likely to facilitate a faster state-level check, but this is still a slower process than the NICS check alone.

## Considerations for the State-Level Check

Many of the centralized firearm background check units maintained in other states feature some degree of automation in their process. This allows a number of checks to run “lights-out,” or otherwise require minimal human intervention when no-name matches occur in any of the systems referenced. Those checks that require human intervention might enter a queue where they could then be assigned to staff specializing in the area that caused a delay in the background check. These features added to a centralized unit could allow a certain percentage of state checks to be completed within minutes. To achieve this, OFM **recommends** that any centralized unit be equipped with automated systems in addition to a well-trained staff specializing in firearm law. These recommendations are explored in greater detail during the discussion on system requirements.

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**Recommendation:** Equip the proposed centralized background check unit with automated systems and staff who specialize in firearms law.

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## Considerations for Long Guns

For the FBI to consider Washington a “single point-of-contact” state, the centralized unit would also need to perform background checks for long gun transfers. If no changes are made to the current requirements for long gun background checks, dealers and consumers would likely see little impact as the required NICS check would be conducted by the centralized unit rather than the FBI. If laws are changed to require long guns to undergo the same state-level check that pistols and SARs do, the associated background checks would join the category discussed above and may experience more delays than they do currently. Washington may also elect to remain a partial point-of-contact state, leaving long gun checks to FFL dealers and requiring the centralized unit to handle just pistols, SAR transfers and gun parts.



## Simplification

A large degree of the simplification inherent in a centralized unit stems from the reduction in the number of entities involved in the process. In a decentralized process, dealers must ascertain which LEA is local to the customer. This can create a degree of confusion when a person's address could reasonably fall under municipal or county jurisdictions. While some LEAs provide notification to dealers upon receipt of a transfer application, many do not, which leaves uncertainty as to whether the application was received by the correct agency and whether it is progressing. A single centralized unit would simplify this process for dealers and allow for a greater degree of familiarity with the review and response process provided by this single entity. Whether electronic submissions to the centralized unit are governed by a portal or via email, OFM **recommends** creating an automated electronic response to notify dealers that a transfer application has been received.

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Recommendation: Create an electronic response to let dealers know a transfer application has been successfully received.

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Shifting the responsibility of firearm background checks to a single entity also simplifies the review process for external entities and allows for potential automation. HCA currently receives requests from LEAs statewide. These are sent in once-a-day batches rather than instantaneously. In the process of running its own check for mental health prohibitors, HCA staff must disseminate the results of their checks to the hundreds of agencies contacting them. This same layer of complication would hold true for any entity added to the firearm background check process, including various courts and federal agencies. With a single entity managing firearm background checks, HCA might find the task of managing and responding to incoming background check requests vastly simplified. OFM further **recommends** establishing an automated query system for HCA to run incoming checks instantaneously and queue uncertain matches. This automation is made much more feasible when interfacing with a single entity rather than hundreds of separate LEA systems.

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Recommendation: Establish an automated query system for HCA to streamline the mental health check.

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## Placement of the Centralized Unit

### Agency Eligibility

Chapter 35, Laws of 2019 directs OFM to consider four principal options for the placement of a centralized unit in Washington: WSP; the Washington Association of Sheriffs and Police Chiefs (WASPC); creating a new agency for this purpose; or a combination of these options. Early in the process of reviewing these possibilities, OFM was alerted to concerns about the ability of agencies to access the NICS Indices, the Interstate Identification Index (III) and the National Crime Information Center (NCIC) to conduct firearm background checks. These entities are hosted by the FBI and governed by its Criminal Justice Information Services (CJIS) Security Policy.<sup>1</sup> WSP, WASPC and OFM collaborated on a letter to the FBI seeking guidance on the eligibility of each entity to access FBI systems to conduct firearm background checks. This letter is included in Appendix A, along with further communication and responses from the FBI.

The response from the FBI states unequivocally that any entity seeking access to the NICS Indices, III and NCIC for firearm background checks must meet the definition of a “criminal justice agency” as laid out in the CJIS Security Policy and defined by CFR 28 § 20.3. To access the NICS Indices, an entity must be a governmental agency that allocates a substantial part of its budget to performing tasks related to the administration of criminal justice. Examples of such roles are the detection, prosecution or correctional supervision of accused persons or criminal offenders. (The firearm background check process itself does not constitute a criminal justice function for the purposes of this definition.)

Because the NICS Indices are a federally mandated part of the firearm background check process and an integral component of the public safety benefits offered by such a check, its access is a core determinant of which options may be considered feasible for Washington. At the time of this report, WSP is considered a criminal justice agency by the FBI while WASPC does not meet this definition. For WASPC or any newly created agency to access the NICS Indices, Washington would need to first create a role in the administration of criminal justice for that entity and then direct a substantial amount of that agency’s budget to that task. For that reason, it is not possible to consider WASPC or a newly created agency as the sole entity responsible for conducting firearm background checks for the state.

With this knowledge, OFM also considered the potential for a combination of entities in running a single point-of-contact system. Specifically, OFM considered whether WSP might contract with WASPC to perform firearms background checks. The CJIS Security Policy allows a criminal justice agency to provide III and NCIC access to a private (nongovernmental) contractor by incorporating in the contract an addendum whose language is defined in the CJIS Security Policy. However, this approach provides access only to III and NCIC, not the NICS Indices. OFM sought further clarification on this point in a phone call with the FBI. Ultimately, the FBI concluded that the CJIS security addendum would not grant access to the NICS Indices, thus removing it as a feasible option for creating a single point-of-contact system for the state. OFM’s inquiry and the FBI’s response can be found in Appendix A.

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<sup>1</sup> <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>

Given the importance of accessing the NICS Indices and the limitations placed on those who are able to do so, the potential places capable of hosting the firearm background check function are limited. Of the options laid out in House Bill 1949, only WSP can access the NICS Indices and is thus the only feasible option for the placement of a centralized firearm background check unit.

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Recommendation: Place the centralized background check unit in the Washington State Patrol.

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Beyond this consideration, there are a number of other synergies to lead to the recommendation of WSP for this role. These are explored in further detail in the following sections.

### Placement with the Washington State Patrol

Any location conducting firearm background checks is required to adhere to the FBI's CJIS Security Policy. As Washington's CJIS systems agency, WSP houses the state's experts on this policy and is in compliance with its terms, as of its latest agency audit. OFM expects that this will save the state funds for contracting fees and additional agency costs that would otherwise be needed to establish compliance. WSP also maintains the bandwidth necessary to support the anticipated number of firearm transfers likely to be required of a centralized background check unit; this may save on costs associated with creating these networking capabilities.

Large numbers of firearm transfers are made during several periods throughout the year, which can strain background check staff and extend wait times for dealers and customers. During OFM's review of other states with centralized systems, it became evident that several of these states use flexible staffing models to accommodate periods of high volume. WSP currently conducts the state's general background check functions and may be able to designate some employees to split duties between systems when there are spikes in the number of firearm transfers. In this way, WSP might be uniquely positioned to keep trained staff on-hand and productive without needing to outsource firearm background checks or hire temporary employees.

## Systems

### Technology Supporting a Centralized Background Check

Full point-of-contact states consistently point to automation as an important element of a successful firearms background check function. Ideally, firearms dealers initiate a background check at the point of sale, either via a web portal provided by the centralized background check unit or by seamless integration in their retail point-of-sale software. (Only the small percentage of dealers without internet connectivity would need to submit their background checks via telephone to the centralized background check unit.) From this electronic submission of the background check, the necessary information about the prospective purchaser and the firearm(s) involved in the transaction would securely flow to a system that performs the necessary queries in the state and federal databases that identify prohibitors.

Because firearms background checks involve searching databases by a buyer's name, date of birth, sex and other nonbiometric attributes, it is inevitable that automated queries will frequently return nondeterministic matches. For example, searches for people with common names could result in multiple matches or false-positives, leading to a potential unwarranted denial of a purchase. It is also common for a person's criminal history record to contain an arrest but no final disposition; in these cases, research is typically required to determine if such a case prohibits the person from purchasing a firearm. For these reasons, the centralized background check will require a mechanism to queue and track background checks that cannot be completed in a "lights-out" fashion and thus require manual intervention and resolution by centralized background check unit staff.

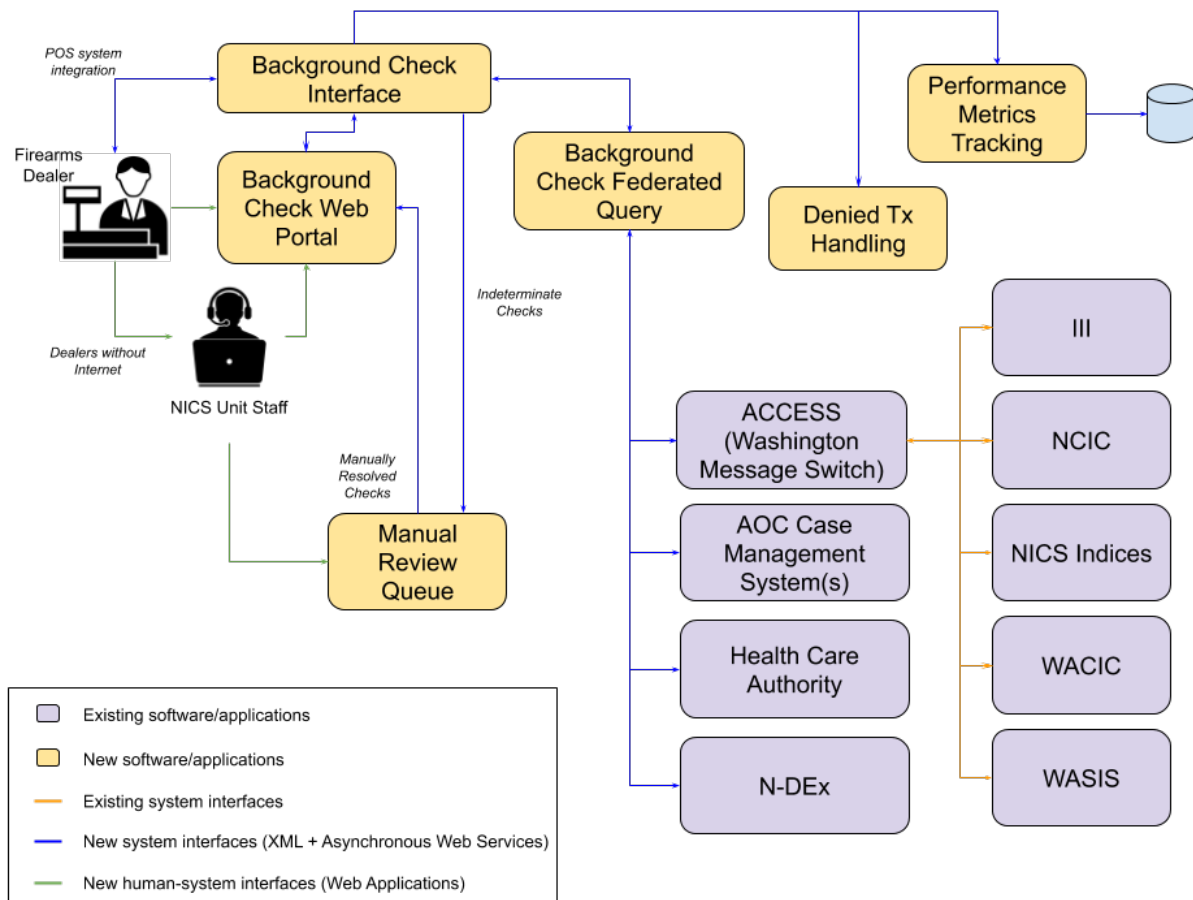
When a background check is completed, whether in "lights-out" fashion or via manual resolution, the result is transmitted back to the firearms dealer who then completes or cancels the purchase transaction accordingly. In addition, the result of the check is saved in a performance metrics tracking database. This database does not save any personally identifying information about the buyer but is used only to capture data concerning the types of firearm(s) involved in the check, the time required to complete the check, the result and the reason for denial, if denied. Finally, the centralization of background checks affords the state of Washington the opportunity to streamline the handling of denied transactions as currently required in RCW 9.41.114. If desired, the current requirement that dealers notify WASPC could be replaced with an automated report.

It is important to ensure that the technology used to automate firearms background checks meets or exceeds required availability and security thresholds. Citizens purchasing firearms and the firearms dealers facilitating their transactions will expect reliable, efficient service from the centralized background check process. Beyond good customer service, there are also statutory requirements limiting the period of time during which a background check should be completed. In addition, the sensitive criminal justice information sources consulted during a firearms background check are protected by policy, regulation and statute, and as such must be secured against unauthorized use and dissemination. Finally, the privacy of firearms purchasers must be protected by limiting the collection, dissemination and storage of personal information to what is legally required and necessary to complete background checks.

## Proposed Technology Architecture

The following diagram depicts a candidate technology architecture that fulfills the automation objectives outlined above.

Figure 1. Process Map for an Automated Firearm Background Check System



The automated process of performing a firearms background check proceeds through the architecture shown in the diagram as follows:

- A firearms dealer initiates the background check process via one of three mechanisms:
  - Most typically, the dealer accesses the Background Check Web Portal over the internet. The portal requires a Secure Access Washington (SAW) login, which dealers likely have already established to pay their business and occupation taxes with the Department of Revenue, file corporate documents with the Secretary of State and submit other state documents. Using their web browser, the dealer enters required information about the transaction and submits the check request. The portal informs the dealer that the request has been received and that the dealer will be notified when the check is complete.



- Some dealers may wish to integrate the submission of background checks in their point-of-sale (POS) system to make the process even more seamless for their staff and buyers. In this scenario, the salesperson enters information in the dealer's POS system, and at the appropriate point in the transaction, the background check request is automatically submitted to the centralized background check unit via the Background Check Interface.
- A few dealers might not have access to the internet or may experience local internet outages from time to time, so there should be an option for the dealer to contact the centralized background check unit by telephone and/or fax. In this scenario, the dealer provides the background check unit staff with the required information and the staff person initiates the check in the Background Check Portal on the dealer's behalf.
- The result of any of the three prior initiation methods is that the Background Check Interface software submits the buyer's information to the Background Check Federated Query software.
- The Background Check Federated Query spawns separate queries to all participating data sources, which are:
  - The ACCESS message switch, which currently provides access to the Interstate Identification Index (III) for national criminal history, the National Crime Information Center (NCIC), for national wants and warrants, the Washington Crime Information Center (WACIC) for Washington wants and warrants, the Washington State Identification System (WASIS) for Washington criminal history and the NICS Indices for national information on firearms purchase prohibitors entered voluntarily by justice agencies nationwide;
  - The AOC case management systems that contain information on arrests and convictions that are not in III or WASIS (nonfingerprint arrests and convictions, including juvenile convictions) and court orders (protective orders, orders for involuntary mental health treatment, etc.);
  - The HCA for mental health prohibitors, as required by RCW 9.41.090 (3)(a); and
  - The FBI National Data Exchange (N-DEX) system, for information on non-Washington arrests that is not available via III.
- The Background Check Federated Query waits for a specified, and configurable, period of time for the spawned queries to return results, then aggregates those results in a consolidated report. Based on a configurable set of rules, the report includes an overall transaction disposition with one of three values: proceed, deny or indeterminate. The Background Check Federated Query returns the report, including the disposition, to the Background Check Interface.

- For “indeterminate” dispositions, the Background Check Interface automatically creates a case or “ticket” in the background check unit’s queuing system and notifies the unit staff that a new case requires manual intervention. Staff in the unit take whatever steps are necessary to resolve the case, including conducting further research, resolving indeterminate query results, etc. Resolution of the case results in either a “proceed” or “deny” of the transaction. This result is transmitted back to the Background Check Interface.
- For “proceed” and “deny” dispositions, whether determined “lights-out” or following manual intervention of “intermediate” dispositions, the Background Check Interface returns the result of the check to the dealer, who either proceeds to transfer the firearm to the buyer or informs the buyer that the transaction has been denied.
- The Background Check Interface transmits pertinent information, which excludes personally identifiable information about the buyer, to the performance metrics tracking software. The performance metrics tracking software records the pertinent information in a database for use in unspecified analytics tools to inform staff in the centralized Background Check Unit and other stakeholders about the performance of the background check function.
- The Background Check Interface transmits pertinent information for transactions with a “deny” disposition to the denied transaction handling software.

## XML and Asynchronous Web Services

The national justice community has established a community standard for system-to-system information exchanges based upon Extensible Markup Language (XML) and web services (see <https://it.ojp.gov/initiatives/gra>). During the feasibility study, we confirmed that WSP currently leverages XML and web services for the current (2019) interface to the ACCESS message switch. In what follows, we assume that this approach would be used for the interfaces involved in the federated query for firearms background checks as well.

In this approach, the firearms background check federated query works by passing XML “messages” between systems. That is, the federated query forms a message representing the desired information from each source system, and the source system returns a message representing the result of the search for information.

Because the queries involved in firearms background checks could in many cases be long-running, and because of the requirement of manual intervention for indeterminate dispositions, the architecture requires that the entire automated background check process be *asynchronous*. This means that, from the Background Check Web Portal all the way through the Background Check Federated Query, each component does not wait for the next component’s step to complete. Rather, a background check is tagged with a unique identifier. When downstream steps in the process are completed, a return message is sent to the requesting component with this unique identifier included so the requesting component can associate the response with its original request. Ultimately, when a response message is received at the Background Check Web Portal, the unique identifier will allow the dealer to associate the result with a specific buyer and transaction.

## Public Key Cryptography

The web services messaging approach proposed in this architecture relies on public key cryptography to encrypt messages between systems (i.e., preclude the messages from being intercepted and read while traversing the network) and to authenticate messages with digital signatures.

Public key cryptography in turn relies on public key infrastructure (PKI), including the use of digital certificates (public-private key pairs) issued by a recognized certificate authority. It is assumed that the state of Washington has a standard government-wide approach to PKI and that this approach would fulfill the underlying needs expressed here. However, OFM was unable to verify this as part of the feasibility study.

## Data Integrity

This architecture involves software components that receive background check requests from firearms dealers, disseminate queries to various data source systems, aggregate the responses and return the aggregate response to the dealer. “Data integrity” in this context means that source systems are able to verify that each query has not been altered in transit, and likewise that the federated query software component is able to verify that the response received from each source system has not been altered after leaving that source system.

The **recommended** technology measure to achieve data integrity in the federated query system-to-system exchanges is XML Digital Signature within the context of Web Services Security (WS-Security). With this mechanism, each query and response message contains a cryptographic “signature” that “locks” the content of the message with the sender’s private, secret key. The receiving system can then “unlock” and verify the contents, using the sender’s public key. If the message contents have been altered in transit, the unlocking operation will fail, alerting the receiver to this fact.

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Recommendation: Use XML Digital Signature to achieve data integrity in the automated system used for firearm background checks.

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## System Availability

It is unclear at this time what expectations and requirements will be placed upon the new centralized firearms background check process in terms of availability. For example, because the vast majority of firearms background checks are initiated during normal retail business hours when firearms dealers are open for business, it may be reasonable to allow for overnight periods when systems are offline for maintenance, patches, etc. However, during retail business hours, it would be reasonable to expect that the automated systems are available.

As Washington transitions to centralized, single point-of-contact status, the state should define specific availability requirements and ensure appropriate combinations of technology

mechanisms are in place to meet these requirements. These **recommended** mechanisms commonly include:

- Using round-robin load balancing and automated failover technologies to provide very high availability of web applications, such as the envisioned dealer-facing portal;
- Implementing the federated query asynchronously with persistent messaging, enabling each component in the architecture to continue working if others are temporarily offline;
- Deploying redundant instances of all components at a disaster recovery site that is physically separate from the primary data center, enabling continuity of operations in the event of loss of network connectivity, natural disasters, etc.; and
- Implementing strong configuration management practices to understand precise versions of all deployed components, dependencies among them and the ability to “roll back” changes to known working versions if problems arise.

### Protection of Citizen Privacy

The very nature of background checks, which determine whether there are records for firearms purchasers in various government-managed databases, requires the collection of personally identifiable information (PII). However, except where explicitly required by law, the technology components in the proposed architecture should discard PII as soon as it is no longer required to perform the queries involved in the check.

In the proposed architecture, there are only two places where information is stored in a database:

- The manual review queue, which manages cases or “tickets” for indeterminate federated query results. This software must ensure that, once a case is resolved, the case information is permanently and securely removed from the queue and associated data storage.
- The performance metrics tracking system, which captures information about each check needed to tally checks by type of firearm, disposition and reason for denial, as well as the time required to complete each check. This software must ensure that no PII is stored in the underlying metrics database.

Note that RCW 43.43.823 requires that WSP retain records of denied firearms transactions. The proposed architecture enables WSP to receive notice of denied transactions automatically from the Denied Transaction Handling system. However, the Denied Transaction Handling system itself would not retain any PII.

### Security

Because the Background Check Federated Query component accesses III, NCIC and the NICS Indices, the component and the technology environment in which it is deployed must conform to all security requirements specified in the FBI’s Criminal Justice Information Services (CJIS) Security Policy. The CJIS Security Policy represents the de facto national standard for securing criminal justice information systems and governs Washington’s law enforcement

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**Recommendation:** Ensure all technology elements used in the course of adopting a centralized system adhere to the CJIS Security Policy.

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information-sharing infrastructure managed by WSP. As such, the **recommended** approach to security is for all software components in the proposed architecture, and the technology environment in which they are deployed, to conform to the requirements of the CJIS Security Policy.

As an application deployed on the public internet, the Background Check Web Portal must be secured to prevent unauthorized access and disclosure of information. Washington has adopted SAW as its standard architecture for deployment of secure applications over the Internet. SAW offers dealers the convenience of a single login to access multiple state and local government web applications. In fact, many firearms dealers in the state likely already possess a SAW account for transacting business with state agencies, such as the Department of Revenue and Secretary of State. As such, the **recommended** approach for dealer authentication to the Background Check Web Portal is to use SAW.

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Recommendation: Use Secure Access Washington to create an interface for dealers to submit firearm background checks to the centralized unit.

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## Costs

Chapter 35, Laws of 2019 directs OFM to provide the approximate cost of establishing a single point-of-contact system in Washington, along with its ongoing annual costs. With the understanding that many of the values used must be based on assumptions of current system volume and costs, OFM worked with WSP, HCA and other agencies to establish a model to estimate the start-up and annual costs for a single point-of-contact system. The following figures are based on the system and recommendations discussed above, but do not account for any of the additional recommendations included below. The largest potential cost that is unaccounted for is the requirement for annual rechecks cited in RCW 9.41.139. Depending on DOL's recommendations, there may be additional volume in firearm background checks performed annually.

Figure 2. Summary of Centralized Background Check Unit Costs

<b>Background Checks Performed Per Year</b>	<b>600,000</b>
<b>Total FTEs Required</b>	<b>78</b>
Start-up costs:	
Software	\$651,200
System integration	\$693,750
Networking	\$222,600
Computers/equipment	\$266,448
Office infrastructure	\$848,882
Indirect	\$730,280
<b>Total Start-up Costs</b>	<b>\$3,413,160</b>
Ongoing annual costs:	
Staffing	\$6,515,278
Technology costs	\$301,432
Infrastructure costs	\$1,172,968
Indirect costs	\$2,174,791
<b>Total Annual Operating Costs</b>	<b>\$10,164,469</b>
Per-check fee amount to cover annual costs	\$18.63
Annual revenue above costs for maintenance of infrastructure, etc.	\$1,016,447

Along with estimates for the start-up and annual operating costs, Figure 2 includes a calculation for the per-check fee that would be required to offset these costs for the state. This fee includes a 10% overhead calculation for a fund for infrastructure maintenance or support of associated system functions. Further detail on the calculation of start-up and annual costs can be found in Figure 3, Figure 4 and Figure 5 on the following pages.

Figure 3. Cost Model Assumptions/Base Variables

<b>Staffing Variables</b>	
Annual handgun/SAR checks	450,000
Annual long gun (non-SAR) checks	125,000
Annual "other" checks	25,000
Staff hours per year	1,600
Supervisor-staff ratio	0.125
Lead worker % of time spent doing checks	0.5
Supervisor % of time spent doing checks	0.2
<b>Time Requirements</b>	
Checks requiring simple research (10 mins.)	55%
Checks requiring medium research (15 mins.)	10%
Checks requiring enhanced research (40 mins.)	5%
Checks with NICS denial (from FBI) (no research)	10%
Lights-out proceeds (no research)	20%
Percentage of checks submitted via phone/fax (despite portal)	5%
Per-check time for manual entry of request	10
Additional per check time for manual check of JIS	3
Additional per check time for manual check of N-DEX	3
HCA checks per year per FTE	400,000
<b>System and Building Costs</b>	
Office space: cost per sq. ft.	\$32.10
Office space: sq. ft. per employee	215
Annual equipment cost per staff	\$625
Annual software maintenance percentage	20%
Annual integration maintenance percentage	10%
Annual supplies + non-cap equip cost per staff	\$5,829
Overhead included in fee	10%
Indirect rate	27.22%

Figure 4. Annual Costs for a Centralized Firearm Background Check Unit

<b>Staffing costs</b>	<b>FTE count</b>	<b>Loaded Cost<sup>2</sup></b>	<b>Total Cost</b>
Background check staff positions	54.18	\$77,400	\$4,193,508
Lead worker positions	7.42	\$84,000	\$623,438
Supervisor staff positions	7.42	\$92,000	\$682,813
Senior manager positions	2	\$160,500	\$321,000
Management analyst	1	\$95,520	\$95,520
Administrative assistant	1	\$71,000	\$71,000
Tech support positions	2	\$129,000	\$258,000
Paralegal/AG position	1	\$150,000	\$150,000
HCA staff to research nondeterministic matches	1.50	\$80,000	\$120,000
<b>Total staffing (head count)</b>	<b>77.52</b>		
<b>Total staffing costs</b>			<b>\$6,515,278</b>
<b>Technology costs</b>			
Annual cost for networking (ACCESS circuit plus office network)			\$36,000
DIS enterprise agreement			\$17,365
Total annual equipment costs			\$48,452
Total annual software maintenance costs			\$130,240
Total annual integration maintenance costs			\$69,375
<b>Total annual technology costs</b>			<b>\$301,432</b>
<b>Other costs</b>			
Annual in-state travel			\$93,028
Annual professional development			\$93,028
Annual office space			\$535,028
Annual supplies, etc.			\$451,884
<b>Total annual infrastructure costs</b>			<b>\$1,172,968</b>
<b>TOTAL ANNUAL DIRECT COSTS</b>			<b>\$7,989,679</b>
<b>Indirect costs</b>			<b>\$2,174,791</b>
<b>TOTAL ANNUAL COSTS</b>			<b>\$10,164,469</b>

<sup>2</sup> The loaded cost comprises the base cost of a unit plus any indirect costs such as service charges and overheads.

Figure 5. Start-up Costs for a Centralized Firearm Background Check Unit

<b>Software</b>	<b>Base Cost</b>	<b>Loaded Cost</b>
FFL dealer "e-check" interface	\$150,000	\$277,500
Ticketing/work queue app for NICS Unit staff	\$102,000	\$188,700
Federated query front-end for NICS Unit staff	\$100,000	\$185,000
<b>Total Up-front Software Costs</b>		<b>\$651,200</b>
<b>System Integration</b>		
Federated query to ACCESS, JCS, HCA, N-DEx	\$100,000	\$185,000
Implement query endpoint at JCS (AOC)	\$100,000	\$185,000 <sup>3</sup>
Implement query endpoint at HCA	\$125,000	\$231,250
Capture data for analytics	\$50,000	\$92,500
<b>Total Up-front System Integration Costs</b>		<b>\$693,750</b>
<b>Networking costs</b>		
ACCESS circuit and other networking setup		\$222,600
<b>Total Networking Costs</b>		<b>\$222,600</b>
<b>Computers/Equipment Costs</b>		
<b>DIS Enterprise One-time Costs</b>		<b>\$72,639</b>
<b>Office Equipment Costs</b>		
<b>Office Space Build-out Costs</b>		<b>\$500,026</b>
<b>Indirect Costs</b>		
<b>TOTAL START-UP COSTS</b>		<b>\$3,413,160</b>

<sup>3</sup> OFM requested cost estimates from AOC on this line item and received them prior to publishing this report. The estimates provided diverged significantly from OFM's projected cost for this item. Due to unresolved differences at the time of publication, the table currently reflects OFM's original estimate. AOC's estimates for costs associated with the creation of a data linkage are provided in Appendix B.

## Additional Recommendations

### Creation of a Firearm Endorsement System

Thirteen states and the District of Columbia have established some form of pre-approval process for obtaining a firearm. These systems typically follow the same process as a background check, are connected to licensing and in some cases allow for a greater speed of transfer at the time of purchase. During the course of the feasibility study, OFM began to consider how such a model might be best employed in the state of Washington to improve public safety and simplify the background check process without unduly affecting a person's right to bear arms.

Were this system to be implemented in Washington, it might be best employed as a firearm endorsement stored in DOL's firearms database and where the identity of person is verified by an individual's state ID or driver's license. In this system, a firearm endorsement would be required prior to the purchase of any pistol or SAR. An individual could obtain this endorsement from any licensed FFL in Washington by initiating a standard firearm background check and indicating that this check is for the purpose of obtaining a firearm endorsement. Assuming the results of this check return as a "proceed," DOL would create a record for this individual in a database similar to the system that currently houses concealed pistol license (CPL) records. Once this record is created, the same individual may initiate any number of pistol or SAR purchases allowed under standing Washington law. Each time, the FFL conducting the transaction can enter the individual's state ID or driver's license number to verify the individual's status in DOL's system before proceeding to the background check.

DOL currently receives notifications of new prohibitors from the AOC and WSP to check against its CPL database for the purposes of revoking licenses. The same system might be expanded to allow local jurisdictions to submit RMS data and other prohibitors that, in conjunction with AOC and WSP records, may result in a temporary hold or permanent revocation of a firearm endorsement. If this system is developed to the point that all relevant state data reaches it in a timely manner, any individual with a clear firearm endorsement can be assumed to pass any state-level check. Conversely, any new information that would cause a person to fail a state check would preempt the check entirely by causing a hold to be placed on their gun endorsement. In this case, it may be possible for firearm background check personnel to substitute confirmation of the firearm endorsement as the state-level check and require only the NICS check for purchasers. This scenario would greatly reduce the burden on the background check system and speed up the process for buyers and dealers.

Beyond the improved system functionality, the use of a firearm endorsement system may assist in addressing future concerns with DOL's mandate under RCW 9.41.139 to "develop a cost-effective and efficient process to verify, on an annual or more frequent basis that persons who acquired pistols or semiautomatic assault rifles ... remain eligible to possess a firearm under state and federal law." OFM has reviewed the FBI's standards, and at this time, rechecks of firearm purchases are not an authorized purpose for accessing the NICS Indices. Firearm purchase license and permit renewals, on the other hand, do meet the required standard for access. Therefore, without some form of licensing in place, no agency in Washington will be able to ensure that the persons identified in RCW 9.41.139 remain eligible to possess firearms



under federal law. With the gun endorsement system, however, updates on prohibitors might meet the definition of an “annual or more frequent basis,” and the centralized unit might need to conduct only annual renewal checks through the NICS, vastly reducing the cost of yearly rechecks.

OFM arrived at the model suggested above as a way to save on system costs by using existing infrastructure, address potential challenges facing the firearm background check system and streamline the background check process. Even so, the proposed firearm endorsement system is not integral to the overall implementation of a centralized background check system in the state.

### Perform an Audit of NICS Submissions Compared to HCA Data

During the course of the Feasibility Study, OFM attempted to determine areas of redundancy where the firearm background check process could be reduced or simplified. One such area concerns HCA, which is mandatory to reference during state-level background checks for pistols and SARs. HCA performs a name-based check for records of involuntary holds or commitments to mental health services that would be prohibitors in a firearm background check. These same involuntary holds and commitments are required submissions to the NICS Indices by staff at AOC. The NICS itself is also mandatory to reference in the course of a firearm background check. In this sense, checking both HCA and the NICS provides redundant information on mental health prohibitors and adds unnecessary steps to the firearm background check.

While inquiring about this redundancy, OFM was advised of a small internal study conducted by HCA and WSP to examine consistency between HCA records and the NICS Indices. That study looked at 100 records that had been used to make denials of firearm transfers and determined a 90% match rate, indicating that the NICS Index for mental health prohibitors was missing 10% of the prohibiting mental health disqualifiers that HCA found in its records. Furthermore, an additional seven cases had been added after the firearms denials took place, indicating that a NICS check alone might have allowed 17 of these 100 transactions to proceed when they should have been denied. While this sample is neither specific nor extensive, it does identify an information gap that creates a public safety issue for Washington.

Currently, long guns and gun parts sold in Washington receive only a NICS check at the time of purchase. The information provided by HCA suggests that a notable percentage of mental health records are not reaching the NICS Indices and therefore are unavailable to the FBI during these checks. Additionally, this discrepancy necessitates including HCA in the state-level check where it might otherwise be redundant. For that reason, OFM recommends performing a full audit to compare HCA’s records with submissions to the NICS Indices to discover the extent and origin of missing records. Resolution of this issue will serve to increase public safety and allow for potential reductions in the costs and wait times associated with the firearm background check system.

### Consolidate the Appeals Process

When a person receives a denial as the result of a firearm background check, they have the right to appeal this determination. Under current law, these appeals may be made to the FBI if the denial was based on a NICS check, or to local law enforcement if the denial was the result of the

state-level check. A notice of this appeal may also be sent to WSP to remove an individual's name from the state database for denied firearms transfers until the appeal is resolved. The creation of a centralized unit might allow for a consolidation of this process and simplify the process for purchasers.

If the centralized unit were to be placed in WSP, all appeals for state checks will be routed to WSP rather than local LEAs. If long gun checks are performed by the centralized unit, appeals for those checks could be directed to the centralized unit as well. There would be no further need to separately notify WSP of an individual's appeals status, and in-process appeals could be removed from the state database for denied firearms transfers on an automatic basis. The centralized unit might also be able to create a specialized division to handle appeals. While it would require additional funding, this division could potentially improve upon response time and processing appeals of denied firearms transfers.

### [Review the Placement of the Denied Firearms Database](#)

Recent changes in Washington state law have led to the creation of a database to track denied firearms purchases and inform WSP and local law enforcement of these occurrences. When a firearm transaction is denied, FFL dealers send a notification to WASPC along with some details about the denied transaction. WASPC then forwards this information to local law enforcement and to WSP, which enters it in a state file. If Washington were to create a centralized background check unit in WSP, as recommended by OFM, the placement of the denied firearms database with WASPC should be reviewed. In a centralized system, WSP would receive notification of all denied firearms transactions and would automatically be able to enter them in state systems. This would change the flow of information in a substantial way and could alter WASPC's role in the process.

### [Review the Wording of Background Check Law](#)

The language of RCW 9.41.090 specifies that the current background check conducted by law enforcement must contain three primary components:

- A check of the NICS
- A check of WSP's electronic database, including WASIS and WACIC
- A check with HCA

In addition, LEAs are directed to check with other agencies or resources "as appropriate" to determine a person's eligibility to possess a firearm. There are a number of best practices among law enforcement agencies, reinforced by WSP's annual trainings on which databases are available and proper to reference during a background check. Centralization will afford the opportunity to codify which of these external databases should be checked in every instance of a background check. To simplify the legal guidelines for this unit, OFM recommends creating a new section of Chapter 9.41 RCW to specify the databases to be referenced during the firearm background check process.

## Glossary of Terms

AOC: Administrative Office of the Courts

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CJIS: Criminal Justice Information Services

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DOL: Department of Licensing

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FBI: Federal Bureau of Investigation

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FFL: federal firearms license

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HCA: Health Care Authority

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III: Interstate Identification Index

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LEA: law enforcement agency

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NCIC: National Crime Information Center

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N-DEx: National Data Exchange

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NICS: National Instant Criminal Background Check System

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OFM: Office of Financial Management

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PII: personally identifiable information

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PKI: public key infrastructure

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POS: point of sale

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RMS: records management system

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SAR: semi-automatic rifle

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SAW: Secure Access Washington

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WACIC: Washington Crime Information Center

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WASIS: Washington State Identification System

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WASPC: Washington Association of Sheriffs and Police Chiefs

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WSP: Washington State Patrol

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XML: Extensible Markup Language

## Appendix A

The following pages contain three primary items of correspondence among OFM, WSP, WASPC and the FBI:

- A letter drafted through collaboration among WSP, WASPC and the Governor's Executive Policy Office requesting clarification on which agencies might be able to access the NICS during a firearm background check.
- A response from the FBI to this request for information.
- An email from the FBI reiterating a follow-up question posed by OFM and offering additional detail on the limitations of accessing the NICS.

JAY INSLEE  
Governor



STATE OF WASHINGTON  
Office of the Governor

August 26, 2019

Robin A. Stark-Nutter  
Section Chief  
National Instant Criminal Background Check System  
1000 Custer Hollow Road, Module A3  
Clarksburg, WV 26306

Re: NICS Background Checks

Dear Ms. Stark-Nutter,

In the 2019 session, the Washington State Legislature enacted HB 1949 (Chapter 35, Laws of 2019) directing the state Office of Financial Management (OFM) to conduct a feasibility study and make recommendations regarding the creation of a single point of contact, also known as full point of contact, system for firearm background checks. The bill requires OFM to include recommendations regarding the “feasibility of creating a single point of contact system within the Washington State Patrol or the Washington Association of Sheriffs and Police Chiefs, creating a new agency for this purpose, or a combination of these options”.

While the bill directs OFM to study the feasibility of a single point of contact system, there is also a possibility that Washington would remain a partial point of contact state. Currently, Washington is a decentralized, partial point of contact state. Under our current system, some firearm background checks are conducted by the FBI National Instant Criminal Background Check System (NICS) Section, and some are conducted by local law enforcement agencies. Under a full point of contact system all firearm background checks would be performed by local agencies or a newly created centralized unit. There is a possibility that the state will opt to continue to have background checks for long gun purchases continue to be conducted by the FBI NICS; however, all systems will likely be under consideration.

The report conducted by OFM will explore the alternative structures and provide recommendations. However, regardless of the structure, the report must contain recommendations on the feasibility of creating a single point of contact system within the Washington State Patrol (WSP) or the Washington Association of Sheriffs and Police Chiefs (WASPC), as well as other alternatives. In order to evaluate the possibility of utilizing either of these organizations, a critical question is the ability to access the FBI NICS database to conduct background checks. The purpose of this letter is to request guidance from the FBI regarding access to the FBI NICS system.

In order to provide additional background to assist in responding to our inquiry, the following is information about the WSP and WASPC to better understand their organization, roles and duties.

### **About the Washington State Patrol**

The WSP is a general authority Washington law enforcement agency under Washington State Law. The WSP is a criminal justice agency as defined by RCW 10.97.030 and 28 CFR Part 20.3. *See discussion of "criminal justice agency below".*

The WSP is the state designated CJIS Systems Agency (CSA). The CSA is responsible for establishing and administering an information technology security program through the CSA's user community to include the local levels. As the CSA, the WSP is the conduit by which all other criminal justice agencies in the State access Criminal Justice Information (CJI).

Additionally, as the CSA, the Washington State Patrol is the responsible Washington State agency for, amongst other things, ensuring compliance with FBI CJIS rules, determining state specific regulations for CJI making determinations for criminal justice agency application requests, and providing user training for FBI systems which include the use of NICS.

The WSP is the FBI NICS point of contact for the State of Washington. All federal and State changes to firearms based background checks flow through the WSP ACCESS Section for review, opinion, and action. The WSP ACCESS section also provides guidance to all local and State agencies for NICS questions.

### **About the Washington Association of Sheriffs and Police Chiefs**

The Washington Association of Sheriffs and Police Chiefs (WASPC) is a quasi-public agency. It is a 501(c)(3) Washington non-profit corporation, designated by the Washington Legislature a "combination of units of local government." It operates as a private entity in some of its operations, and it operates as a public agency in other operations. It is not currently designated as a Washington law enforcement agency and the WASPC staff do not have access to NICS.

WASPC administers a wide variety of state programs pursuant to RCW 38.28A and other state statutes, including, but not limited to:

- Washington's Uniform Crime Reports,
- the Jail Booking and Reporting System,
- the First Responder Building Mapping Information System,
- the Automated Victim Information and Notification System,
- Missing Persons Information website,
- the Washington Auto Theft Prevention Authority,
- the Gang Crime Enforcement Grant Program,
- the Graffiti and Tagging Abatement Grant Program,

- the Registered Sex Offender and Kidnapping Offender Address and Residency Verification Grant Program,
  - the Metal Theft Grant Program,
  - the 24/7 Sobriety Program,
  - the Denied Firearm Transaction Reporting System,
  - the Automated Protected Person Notification System, and
  - the Mental Health Field Response Grant Program, among other state programs.
- WASPC also develops a number of model policies pursuant to statutory directive and authority, including, but not limited to, firearms certificates for qualified retired law enforcement officers, access to private property during forest fires and wildfires, sex offender registration and community notification, vehicular pursuits, referrals to mental health agencies on reports of threatened or attempted suicide, racial profiling, among other state-directed model policies. See RCW 36.28A for more information on WASPC.

### Guidance Requested

With this understanding of the WSP and WASPC, we are requesting clarification of the following:

1. 28 CFR § 25.6 (d) states, in part, “In states where a POC is designated to process background checks for the NICS, FFLs will contact the POC to initiate a NICS background check. Both ATF and the POC will notify FFLs in the POC's state of the means by which FFLs can contact the POC. The NICS will provide POCs with electronic access to the system virtually 24 hours each day through the NCIC communication network.” Does the FBI NICS section interpret this CFR to mean that NICS will provide access to *whatever agency a state designates as its POC*, so long as the POC designated by the state meets the definition of POC or does the FBI NICS section have requirements that must be met in order to have access to NICS?
2. 28 CFR § 25.2 states, in part, “POC (Point of Contact) means a state or local law enforcement agency serving as an intermediary between an 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 a NICS 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.” Does the FBI NICS section interpret this CFR to require that a state POC be a law enforcement agency designated by the state as the point of contact? Are there additional CFRs that regulate who may be a POC?



3. 28 CFR §20.3 a criminal justice agency is defined as follows:

1) Courts; and

(2) A governmental agency or any subunit thereof that performs the [administration of criminal justice](#) pursuant to a [statute](#) or [executive order](#), and that allocates a substantial part of its annual budget to the [administration of criminal justice](#). State and federal Inspector General Offices are included.

The CFR defines the “administration of criminal justice” as follows:

Administration of criminal justice means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The [administration of criminal justice](#) shall include criminal identification activities and the collection, storage, and dissemination of [criminal history record information](#).

Under this CFR, and in consideration of the CFR’s referenced in questions 1 and 2 above, can you provide guidance as to the following:

- a. If Washington were to establish itself as a single/full point of contact, or otherwise create a centralized background check system, and designated the Washington State Patrol as the entity to operate the system and conduct the background checks, would the FBI NICS recognize it as such and authorize it to access CJIS information to conduct background checks for firearms purchases?
- b. If Washington were to establish itself as a single/full point of contact, or otherwise create a centralized background check system, and create a new state agency or division under the direction of the Washington State Patrol, designating that new entity as a law enforcement agency for this purpose, would the FBI NICS section allow it to access CJIS information to conduct background checks for firearms purchases?
  - i. If not, are there any statutory changes the state could make to allow the FBI- NICS to permit the new state entity to access CJIS information to conduct background checks for firearms purchases?
- c. If Washington were to establish itself as a single/full point of contact, or otherwise create a centralized background check system, and designate the Washington Association of Sheriffs and Police Chiefs as a law enforcement agency for this purpose, would the FBI NICS section recognize it as such and authorize it to access CJIS information to conduct background checks for

firearms purchases or does the FBI have additional requirements that must be met regardless of any designation given by the state?

- i. If not, are there statutory changes the legislature could make to Washington's law to allow the FBI NICS section to recognize the Washington Association of Sheriffs and Police Chiefs as Washington's POC and authorize it to access CJIS information to conduct background checks for firearms purchases.
- d. If Washington were to establish itself as a single/full point of contact, or otherwise create a centralized background check system, and create a new state entity under the direction of the Washington Association of Sheriffs and Police Chiefs, designating that new entity as a law enforcement agency for this purpose, would the FBI NICS section allow it to access CJIS information to conduct background checks for firearms purchases?
- i. If not, are there any statutory changes the state could make to allow the FBI- NICS to permit the new state entity to access CJIS information to conduct background checks for firearms purchases?
- e. If Washington were to establish itself as a single/full point of contact and create a new agency and designate that new agency as a law enforcement agency for this purpose, would the FBI-NICS recognize it as such and authorize it to access CJIS information to conduct background checks for firearms purchases?
- i. If not, are there any statutory changes the legislature could make to allow the FBI NICS section to recognize a newly created agency as Washington's POC and authorize it to access CJIS information to conduct background checks for firearms purchases?

Sincerely,



Sonja Hallum  
Senior Policy Advisor- Public Safety



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

September 17, 2019

RECEIVED

SEP 24 2019

LEGISLATIVE AND  
POLICY OFFICE

Ms. Sonja Hallum  
Senior Policy Advisor, Public Safety  
Washington State Office of the Governor  
Post Office Box 40002  
Olympia, Washington 98504-0002

Dear Ms. Hallum:

The FBI Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section is in receipt of your letter dated August 26, 2019. In your letter and legislative attachment, you indicate Substitute House Bill 1949 was signed by your Governor on April 17, 2019. Substitute House Bill 1949 authorized the Washington Office of Financial Management to conduct a feasibility study and make recommendations regarding the establishment of a full Point-of-Contact (POC) system for firearm background checks in your state. Further, your letter provides specific information regarding the dynamics of the Washington State Patrol (WSP) and the Washington Association of Sheriffs and Police Chiefs (WASPC). Your letter also seeks input from the NICS Section regarding how these agencies, acting alone, or in concert with one another, or a newly created agency, might effectively function in a full POC capacity on behalf of the Federal Firearms Licensees (FFL) and potential firearm transferees in Washington.

By way of background, when the Brady Handgun Violence Prevention Act of 1993 was signed into law, the U.S. Attorney General was given five years to develop the NICS, its processes, and regulations. As part of that process, the states were asked to determine how they would like to participate with the NICS.

States were provided the options below from which to select, along with a secondary option for the state to also have a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)-qualified permit. Accordingly, in November 1998, then Governor Gary Locke indicated Washington elected to function as a Partial POC state, processing background checks for mandated handgun-related transfers from an FFL to a non-licensed person.

- 1) **Full POC State**—A state agency (or agencies) designated to act as an intermediary between an FFL and the NICS prior to the proposed transfer of a firearm to a non-licensed person for all mandated types of firearms. This designation also includes the processing of corresponding appeals by the state.
- 2) **Partial POC State**—A state agency (or agencies) designated to act as an intermediary between an FFL and the NICS prior to the proposed transfer of a firearm to a

Ms. Sonja Hallum

non-licensed person for mandated handgun-related background checks. This designation also includes the processing of corresponding appeals by the state.

- 3) **Non POC State**—A state which elected to have the NICS Section handle all NICS background checks that were mandated under the Brady Act. This designation also includes the processing of corresponding appeals by the FBI.
- 4) **ATF-Qualified Permit State**—The permits are issued by state or local agencies and have been approved by the ATF that the permit, after having a thorough background check process to include searching the NICS, is valid for the duration of the permit without an additional background check.

Information provided in your letter demonstrates that the WSP does fall within the federal definition of a criminal justice agency as defined at Title 28, Code of Federal Regulations (C.F.R.), Section 20.3. Conversely, you have also indicated that WASPC does not satisfy the federal definition of a criminal justice agency as defined within 28 C.F.R. §20.3. Only agencies meeting the criminal justice agency definition are authorized to access the NICS. The CJIS Division's NCIC Operations and Policy Unit (NOPU) is designated to assess agencies to determine if the requirements in the C.F.R. are met and identify an agency as a criminal justice agency. The NOPU has advised the NICS Section that two separate reviews of the WASPC have resulted in findings that the association does not meet the criteria of a criminal justice agency per 28 C.F.R. §20.3. The NOPU has also confirmed that the WSP does meet the criminal justice agency criteria.

You have asked, "If Washington were to establish itself as a full POC, or otherwise create a centralized background check system, and designated the Washington State Patrol [WSP] as the entity to operate the system and conduct the background checks, would the FBI NICS [Section] recognize it as such and authorize it to access CJIS information to conduct background checks for firearms purchases?"

The NICS Section is unable to provide a definite "yes" or "no" response to this question without having more information on the structure of the WSP and which section would handle the full POC functions. The WSP, as a whole, is a criminal justice agency as defined within 28 C.F.R. §20.3. However, depending on which branch or office within the WSP your state would designate to function as the POC, the appropriateness of that office accessing the NICS would need reviewed. For example, if your state designated the Department of Motor Vehicle Licensing within an administrative, non-criminal justice branch of the WSP to serve as the POC, that office would be considered non-criminal justice and therefore, access to the NICS would not be permissible.


You also asked, "If Washington were to establish itself as a full POC, or otherwise create a centralized background check system, and designate the WASPC as a law enforcement agency for this purpose, would the FBI NICS Section recognize it as such and authorize it to access CJIS information to conduct background checks for firearm purposes or does the FBI have additional requirements that must be met regardless of any designation given by the state?"

In response, unless the WASPC (or any newly-created state agency or entity) satisfies the definition of a criminal justice agency, as defined within 28 C.F.R. §20.3, access to the NICS is not authorized.

Ms. Sonja Hallum

The NICS Section appreciates your questions as your state evaluates the feasibility of becoming a full POC state. We look forward to working with your state if you elect to transition to a full POC status. If successful in your transition, the FFL community will certainly benefit from the elimination of the bifurcated process that currently exists. If you have any questions regarding our response, please feel free to contact the NICS Business Relations Team at <NICSLiaison@fbi.gov> or 1-844-265-6716.

Sincerely yours,



Robin A. Stark-Nutter  
Section Chief  
NICS Section  
CJIS Division

Enclosure (1)

1 – Mr. Jim Anderson  
CJIS Systems Officer  
Washington State Patrol  
Post Office Box 42619  
Olympia, WA 98504-0002

## Landon, Matt (OFM)

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**From:** Tetrick, David B. (CJIS) (FBI) <dbtetrick@fbi.gov>  
**Sent:** Thursday, September 26, 2019 12:01 PM  
**To:** Landon, Matt (OFM)  
**Cc:** Henderson, Teresa S. (CJIS) (FBI); Davisson, Diana (01) (FBI); Tetrick, David B. (CJIS) (FBI)  
**Subject:** Today's conversation

Hi Matt –

I am e-mailing you because the answer is somewhat long-winded.

Your question was ... Can a FBI CJIS Security Addendum and executed Memorandum of Understanding be utilized between FBI CJIS/NICS + Washington State Patrol (WSP) + Washington Association of Sheriffs and Police Chiefs (WASPC) in order to allow WASPC to then be able to access the NICS and process firearm background checks (under WSP's umbrella and the addendum/MOU)?

State and Federal Criminal Justice Agencies have utilized contractors and other offices to perform various types of background checks or fingerprinting services, after executing these addendums/MOUs.

**However, with regard to the NICS ... WASPC would still not be permitted access to the data in the NICS, even if an CJIS Security Addendum/MOU was executed.**

If WASPC were to strategically become an actual component of WSP, it would need reviewed but would be more likely to be authorized – or – if a new WSP office were to be created specifically for the purpose your office is exploring.

I hope this helps.

Dave Tetrick

*NICS Management Advisory and Program Strategy Team*

(304) 625-7531

## Appendix B

Figure 6. AOC Cost Estimates for a Data Linkage

<b>Staffing costs</b>	<b>FTE count</b>	<b>Loaded Cost</b>	<b>Total Cost</b>
Lead worker position	1	\$152,000	\$152,000
Management analyst	1	\$141,000	\$141,000
Administrative assistant	1	\$86,000	\$86,000
Tech support positions	1	\$152,000	\$152,000
Paralegal/attorney general position	1	\$135,000	\$135,000
		<b>Base Cost</b>	<b>Loaded Cost</b>
Implement query endpoint at JIS <sup>4</sup>		\$502,000	\$502,000

<sup>4</sup> Costs intended to cover contractors: either one contractor for two years, or two contractors for one year.