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**Report of the
Task Force to Develop Strategies for Enhancing
Maine's Contribution to the NICS System**



Prepared by:

**Maine Department of Public Safety
Pursuant to Executive Order 02 FY 08/09**

December 5, 2007



John Elias Baldacci
Governor

STATE OF MAINE
Department of Public Safety
104 State House Station
Augusta, Maine
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Anne Jordan
Commissioner

December 5, 2007

Governor John E. Baldacci
Office of the Governor
State House Station One
Augusta, Maine 04333

RE: Report of the Committee to Enhance the State's Reporting of Information to the NICS System Pursuant to Executive Order Number 02 FY 08/09

Dear Governor Baldacci,

Pursuant to Executive Order Number 02 FY 08/09, enclosed please find the report of the Committee to Enhance the State's Reporting of Information to the NICS System. This report is the unanimous agreement of the committee members following a series of meetings over the course of the late summer and fall of 2007. It includes both an overview of the current situation, the changes that will be needed to be made in order to ensure compliance with State and Federal law, proposed changes to LD 1902 and the appropriate fiscal note.

The committee worked very hard to comprehensively analyze the situation, the various statutes that needed to be reviewed and addressed and reached what we felt was a complete response to the concerns raised by LD 1902. The goals of the committee were to ensure the safety of Maine people, to ensure compliance with the law and to protect the confidentiality of medical records of persons involved.

Sincerely yours,

Anne H. Jordan
Commissioner of the Department of Public Safety

CC: Joint Standing Committee on Criminal
Justice and Public Safety

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FEB 25 2015

Sharing Mental Health Data with the National Instant Check System

I. HISTORY

Pursuant to the Governor's Executive Order 02 FY 08/09, the Task Force to Develop Strategies for Enhancing Maine's Contribution to the National Instant Check System, began meeting in the Summer of 2007. The order required the members:

- A. To evaluate the current status of State records systems as they relate to the timely transmission to the appropriate federal officials of: (1) criminal convictions; (2) findings of "not guilty by reason of insanity" and "not competent to stand trial" on criminal matters; and (3) final adjudications concerning involuntary mental health commitments;
- B. To monitor potential changes in federal law impacting the NICS and to gauge Maine's level of compliance; and
- C. If necessary, to design and propose an improved system to transmit such records to the appropriate federal officials and to any other public entities that are charged with firearms licensing issues.

The Task Force was composed of the following individuals:

Anne H. Jordan, Commissioner
Maine Department of Public Safety

Dr. Steven Sherrets, Ph.D.
Department of Health and Human Services

Mr. Greg McNeal
Office of Information Technology

Ms. Margaret Groban Esq.
U.S. Attorney's Office

Ms. Laura Yustak Smith, Esq.
Office of the Attorney General

Mr. John Pelletier Esq.
Maine Judicial Center

Judge Ann Murray
Maine Judicial Center

Mr. William Harwood
Maine Coalition to End Handgun Violence

Ms. Carol Carothers
National Alliance for the Mentally Ill

Senator Bill Diamond
Maine State Senate

Representative Stan Gerzofsky
Maine House of Representatives

Representative Richard Sykes
Maine House of Representatives

Dr. Paul Tisher
Acadia Hospital

The Task Force received additional technical assistance from Matthew Ruel, Director, State Bureau of Identification; Mr. Jack Parkin, Office of information Systems, Sgt. William Gomane, Maine State Police, US Attorney Paula Silsby, and the office of the Chief Justice of Maine's Courts.

A copy of the Governor's Executive Order is attached as Exhibit A.

II. CURRENT STATUS OF RECORDS SYSTEMS

The FBI's Criminal Justice Information System (CJIS) is a national criminal justice computer system, which has six major components:

- (1) The National Crime Information Center (NCIC), a database used nationally by the criminal justice community containing 17 different files (stolen property, wanted and missing persons, etc.);
- (2) The Interstate Identification Index System (III), a national database for the indexing of Criminal History Record Information. This index is available nationally to all criminal justice agencies and contains data for 48 states;
- (3) The Uniformed Crime Reporting System (UCR), a national database containing crime reporting statistics. All states participate by inputting detailed data elements on their crimes;
- (4) The Automated Fingerprint Identification System (AFIS), a national repository of fingerprints, which all states provide data and run queries;

- (5) The Information Security Officer Program (ISO), a national program comprised to ensure the integrity of the CJIS system; and
- (6) The National Instant Check System (NICS), a national database and program to ensure disqualified persons are prohibited from purchasing or receiving firearms. This system is available to criminal justice agencies and federally licensed firearms dealers for the sole purpose of determining eligibility to purchase and or possess firearms. Under Federal law, a disqualified person includes, among other things, persons convicted of felony offenses, persons found not guilty by reason of insanity or found not mentally competent to stand trial and persons who have been dishonorably discharged from the United States Military.

The Administrative Office of Courts (AOC), located in Augusta, has a statewide records management system called MeJIS, which is used by all courts in Maine. This system currently houses, among other things, charging documents and information, bail files, judgment and commitment forms, etc. Interfaces also currently exist to transmit final criminal case dispositions (guilty, not guilty, not guilty by reason of insanity, not competent to stand trial, or pleas of nolo contendere and sentences imposed) to the State Bureau of Identification. Interfaces between MeJIS and the Maine State Police are also used to share Protection Order and Bail Condition information.

MeJIS today does not contain electronic data on mentally unstable persons (Involuntary Commitments). The Courts do not currently maintain a data base of all matters filed seeking Involuntary Commitment orders. However, the AOC is currently in the first year of a three-year project constructing a new records management system called MeJIS2. MeJIS2 does contain a module, called Mental Health, which will allow for the collection of and transmission of Involuntary Commitment rulings to the State Bureau of Identification. Currently, due to planning issues and financial restraints, this module is not due for production for another few years.

The State Bureau of Identification, which is part of the Department of Public Safety, is the officially designated agency in Maine for transmission of criminal records to the Federal Bureau of Investigation. SBI maintains a secure data base of criminal history records and is charged with ensuring that all matters transmitted are done so in compliance with State and Federal law.

Currently, SBI does transmit all final criminal conviction records and results and records where a Court has found a Defendant not guilty by reason of insanity or not criminally competent to stand trial to the Triple I (III) FBI system. However, the current Triple I system is not electronically connected to the NICS system and Federal law, security and firewall considerations

prohibit the Triple I system from transmitting not guilty by reason of insanity, and not mentally competent to stand trial rulings, to NICS.

The FBI will not accept transmission of records, including mental health involuntary commitment orders, via any means except electronic transmission. As such, the faxing or mailing of these records to NICS is not an option available to Maine.

Current State law prohibits the release of any records contained in Mental Health Adjudication hearings including, but not limited to exhibits, transcripts notes and other evidence, as well as the Court's rulings on involuntary commitment, to the public or the press. 34-B M.R.S.A. Section 3864.

Finally, it should be noted that the United States Supreme Court has ruled that participation in the NICS system is voluntary in nature. This is because the Federal Government does not currently provide funding or assistance for participation in the program. See Printz v United States, 521 US 898, 117 S. Ct. 2365 (1997).

III. PROPOSED NEW FEDERAL LEGISLATION

There is currently pending in Congress a major bill to make substantial changes to 18 USC Section 921, et. seq. (The Brady Bill). Changes proposed include a restoration of rights provision to persons previously permanently prohibited from owning firearms, a requirement that states that choose not to participate in NICS be penalized 10% of their Byrne/Jag grant funds each year they are not in compliance and funding to the states to provide for implementation of the program. A version of this bill passed in the House of Representatives in early June 2007 and the matter is still working its way through the federal legislative system. It has been reported to the Task Force that the bill, in some form, is expected to pass both houses of Congress.

IV. THE PROPOSED SOLUTION

After due consideration of all the issues, the Task Force drafted proposed statutory language changes that will:

1. Permit the lawful development and implementation of a data system to transmit records of involuntary commitment rulings, after a judicial hearing, at which the patient has been represented by counsel;
2. Permit the Court to transmit the final ruling of involuntary commitment, (without transmitting the record, mental health records or notes or testimony) to the SBI for the sole purposes of transmitting the finding to NICS and to duly authorized law enforcement agencies pursuant to 34-B M.R.S.A. Section 3864;
3. Permit authorized criminal justice agencies to use the data transmitted for lawful law enforcement purposes including the issuance of concealed weapons permits, enforcement of bail conditions and Protection Orders and for enforcement of State and Federal laws concerning the prohibition against possession of firearms by prohibited persons;
4. Provide accurate and timely information to the NICS system which will assist Federally licensed firearms dealers here in Maine and across the country to properly carry out their duties and obligations under Federal Firearms laws; and
5. Using our current web services, interface with the AOC to exchange and share mental health adjudication data which will provide for the safety of the people of the State of Maine.

A copy of the proposed language revisions to LD 1902 is attached as Appendix B. This appendix also includes the fiscal note that we believe will be necessary to carry out this assignment and provides for the financial consideration and costs that will be incurred by both the SBI and the Courts.

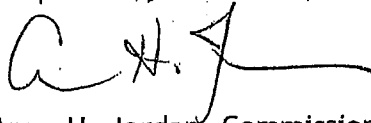
A copy of the proposal, which describes the technical method needed to accomplish this goal, is attached as Appendix C.

VI. Costs

Based on estimates provided by CPI Company to DPS, we estimate that the cost for implementation of this process to be \$48,000 for initial installation of the equipment and the systems, an additional \$3,800 per year for annual maintenance and the estimated cost of a FTE position for the SBI's role in maintaining the system, ensuring the accuracy of the data as transmitted and answering questions from law enforcement, FBI and the public relative to this project. Total DPS projected costs after start up are approximately \$53,800 per year.

Costs for the Courts are included in the initial implementation figure set out above. It is uncertain as to what their additional personnel costs may be once the system is up and automated. This is due, in part, to the upgrades that will be occurring with MeJis 2 and any resulting time savings that may or may not occur with the implementation of the system.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A.H.J.', with a long horizontal stroke extending to the right.

Anne H. Jordan, Commissioner
Maine Department of Public Safety

Appendix A



OFFICE OF
THE GOVERNOR

NO. 02 FY 08/09
DATE July 3, 2007

**AN ORDER TO ENHANCE THE STATE'S REPORTING OF INFORMATION TO THE
NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM**

WHEREAS, persons who have been found by a court to be not criminally responsible by reason of insanity or not competent to stand trial with respect to a criminal charge are barred under federal law from possessing a firearm; and

WHEREAS, the National Instant Criminal Background Check System within the Federal Bureau of Investigation (hereinafter the "NICS") is a database accessible by licensed firearms sellers, and contains the names of individuals who are barred under federal law from possessing a firearm; and

WHEREAS, it is vitally important toward ensuring the safety of the citizens of Maine and of other states that the identities of individuals deemed by Maine courts to be not criminally responsible by reason of insanity or not competent to stand trial, and thus barred from possessing a firearm, be timely reported to the NICS; and

WHEREAS, it is vitally important toward ensuring the safety of the citizens of Maine and of other states that the State develop a long-term strategy for reporting to the NICS the identities of other individuals disqualified from possessing a firearm, including those who have been involuntarily committed to a psychiatric hospital by the Maine District Court.

NOW, THEREFORE, I, John E. Baldacci, Governor of the State of Maine, do hereby order the following:

1. The Maine Department of Public Safety shall work cooperatively with the Judicial Branch to collect the identities of individuals who, beginning on the effective date of this Executive Order, are determined by a court to be not guilty by reason of insanity or not competent to stand trial in a criminal matter. The Department shall then work with the FBI to transmit this information into the NICS. The Department should make all reasonable efforts to report the aforementioned information in the manner most acceptable to the FBI, but shall not forego reporting due to an inability to present the information in the FBI's requested format.

2. The Task Force to Develop Strategies for Enhancing Maine's Contribution to the NICS is hereby created.

Membership

Membership on the Task Force shall include:

- The Commissioner of the Maine Department of Public Safety, or her designee;
- The Commissioner of the Maine Department of Health and Human Services, or her designee;
- The Attorney General of Maine, or his designee;
- The Chief Information Officer of the State of Maine, or his designee;
- One representative of a statewide alliance for the mentally ill;
- One representative of Maine hospitals that serve the mentally ill;
- One representative of federal law enforcement; and
- One public member.

The Chief Justice of the Maine Supreme Judicial Court is invited to designate up to two representatives of the Judicial Branch to serve.

In addition, the President of the Senate may appoint one member of the Senate, and the Speaker of the House may appoint up to two members of the House of Representatives to serve.

From among this membership, the Governor shall appoint the Chair who will preside at, set the agenda for, and schedule meetings of the Task Force.

The members of the Task Force shall serve without compensation.

Purpose

The purposes of the Task Force shall be:

- A. To evaluate the current status of State records systems as they relate to the timely transmission to the appropriate federal officials of: (1) criminal convictions; (2) findings of "not guilty by reason of insanity," and "not competent to stand trial" on criminal matters; and (3) final adjudication rulings concerning involuntary mental health commitments;
- B. To monitor potential changes in federal law impacting the NICS and to gauge Maine's level of compliance; and
- C. If necessary, to design and propose an improved system to transmit such records to the appropriate federal officials and to any other public entities that are charged with firearms licensing issues.

Staff

The Maine Department of Public Safety shall provide staff from existing resources. Government agencies may be called upon by the Task Force to provide information or staff, in very limited capacities, who have a specific expertise related to an issue under consideration by the Task Force.

Meetings

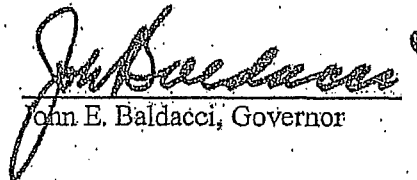
The Task Force shall meet as often as necessary to complete the assigned duties. All meetings shall be open to the public and held in locations determined by the Task Force.

Report

The Task Force shall report the status of its findings and recommendations to the Legislature's Joint Standing Committee on Criminal Justice and Public Safety, and to the Governor, not later than September 1, 2007. The Task Force's final report shall be submitted to the Committee and the Governor not later than December 1, 2007. The Task Force shall dissolve at that time.

Effective Date

The effective date of this Executive Order is July 3, 2007.


John E. Baldacci, Governor

Appendix B

1 **An Act Requiring the State of Maine To Report Persons Found To Be**
2 **a Danger to Themselves or to Others to the National Instant Criminal**
3 **Background Check System**

4 Amend the bill by striking out everything after the enacting clause and before the summary and
5 inserting the following:

6 **Sec. 1. 15 MRSA §393, sub-§1, ¶C**, as amended by PL 2001, c. 549, §2, is further amended to
7 read:

8
9 C. Has been adjudicated in this State or under the laws of the United States or any other state to have
10 engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying
11 conviction:

12
13 (1) Under paragraph A-1, subparagraphs (1) to (4) and bodily injury to another person was
14 threatened or resulted; or

15 (3) Under paragraph A-1, subparagraph (5); or

16 **Sec. 2. 15 MRSA §393, sub-§1, ¶D**, as enacted by PL 1997, c. 334, §2, is amended to read:

17
18 D. Is subject to an order of a court of the United States or a state, territory, commonwealth or tribe
19 that restrains that person from harassing, stalking or threatening an intimate partner, as defined in 18
20 United States Code, Section 921(a), of that person or a child of the intimate partner of that person, or
21 from engaging in other conduct that would place the intimate partner in reasonable fear of bodily
22 injury to the intimate partner or the child, except that this paragraph applies only to a court order that
23 was issued after a hearing for which that person received actual notice and at which that person had
24 the opportunity to participate and that:

25
26 (1) Includes a finding that the person represents a credible threat to the physical safety of an
27 intimate partner or a child; or

28 (2) By its terms, explicitly prohibits the use, attempted use or threatened use of physical force
29 against an intimate partner or a child that would reasonably be expected to cause bodily
30 injury; or

31 **Sec. 3. 15 MRSA §393, sub-§1, ¶E** is enacted to read:

32
33 **E. Has been:**

34
35 (1) Committed involuntarily to a hospital pursuant to an order of the District Court under Title
36 34-B, section 3864 because the person was found to present a likelihood of serious harm, as
37 defined under Title 34-B, section 3801, subsection 4, paragraphs A through D;

38
39 (2) Found not criminally responsible by reason of insanity with respect to a criminal charge; or

40
41 (3) Found not competent to stand trial with respect to a criminal charge.

42
43 **Sec. 4. 15 MRSA §393, sub-§2**, as amended by PL 2007, c. 194, §3, is further amended to read:

44
45 **2. Application after 5 years.** A person subject to the provisions of subsection 1 may, after the
46 expiration of 5 years from the date that the person is finally discharged from the sentences or commitment
47 imposed as a result of the conviction or adjudication, apply to the Commissioner of Public Safety for a
48 permit to carry a firearm. That person may not be issued a permit to carry a concealed firearm pursuant to
49 Title 25, chapter 252. A permit issued pursuant to this subsection is valid for 4 years from the date of
50 issue unless sooner revoked for cause by the Commissioner of Public Safety. For purposes of this
51 subsection, "firearm" does not include a firearm defined under 18 United States Code, Section 921(3).

52
53 **Sec. 5. 15 MRSA §393, sub-§4**, as enacted by PL 1977, c. 225, §2, is amended to read:

54
55 **4. Notification, objection and hearing decision.** Upon receipt of an application, the Commissioner
56 of Public Safety shall determine if it is in proper form. If the application is proper, ~~the commissioner~~
57 shall within 30 days notify in writing the sentencing or presiding judge, the Attorney General, the district
58 attorney for the county where the applicant resides, the district attorney for the county where the
59 conviction, alleged criminal conduct, commitment or action under subsection 1, paragraph E occurred, the
60 law enforcement agency ~~which that~~ investigated the crime, the chief of police and sheriff in the
61 municipality and county where the crime, alleged criminal conduct, commitment or action under
62 subsection 1, paragraph E occurred and the chief of police and sheriff in the municipality where the
63 applicant resides as of the filing of the application. The commissioner may direct any appropriate
64 investigation to be carried out. If, within 30 days of the sending of notice, any person so notified objects
65 in writing to the issuance of a permit, ~~none shall a permit may not~~ be issued. The commissioner may deny
66 an application if no objection is filed.

67
68 **Sec. 6. 15 MRSA §393, sub-§8**, as amended by PL 2005, c. 527, §5, is further amended to read:

69
70 **8. Penalty.** A violation of subsection 1, paragraph A-1 or C is a Class C crime. A violation of
71 subsection 1, paragraph D or E is a Class D crime. A violation of subsection 1-A by a person at least 18
72 years of age is a Class C crime.

73
74 **Sec. 7. 15 MRSA §393, sub-§8-A** is enacted to read:

75 **8-A. Prima facie evidence.** Notwithstanding any other law or rule of evidence, a copy of a court
76 abstract provided by a court to the State Bureau of Identification pursuant to Title 34-B, section 3864,
77 subsection 12, if certified by the custodian of the records of that Bureau, or the custodian's designee, is
78 admissible in a criminal prosecution brought pursuant to this section as prima facie evidence that the
79 person identified in the abstract has been involuntarily committed by the court issuing the abstract and has
80 been provided the notice required in Title 34-B, section 3864, subsection 13.

81
82 **Sec. 8. 25 MRSA §1541, sub-§3, ¶C** is enacted to read:

83
84 **C. Upon receipt of an abstract from a court that a person has been:**

85
86 **(1) Committed involuntarily to a hospital pursuant to an order of the District Court under Title**
87 **34-B, section 3864 because the person was found to present a likelihood of serious harm, as**

88 defined under Title 34-B, section 3801, subsection 4, paragraphs A through D,

89
90 (2) Found not criminally responsible by reason of insanity with respect to a criminal charge, or

91
92 (3) Found not competent to stand trial with respect to a criminal charge,

93
94 the commanding officer shall report to the National Instant Criminal Background Check System the
95 court's finding.

96
97 The commanding officer may adopt routine technical rules, as defined in Title 5, chapter 375,
98 subchapter 2-A, as necessary to implement the requirements of this paragraph.

99
100 **Sec. 9. 34-B MRSA §3864, sub-§12 is enacted to read:**

101
102 **12. Transmission of abstract of court ruling to the State Bureau of Identification.**
103 Notwithstanding any other provision of this section or section 1207, a court shall transmit to the
104 Department of Public Safety, State Bureau of Identification, an abstract of any order for involuntary
105 commitment issued by the court pursuant to this section. The abstract must include:

106 A. The name and date of birth of the individual who is the subject of the order for involuntary
107 commitment;

108 B. The court's ruling that the individual has been involuntarily committed; and

109 C. A notation that the individual has been notified by the court in accordance with subsection 13 of
110 this section.

111 The abstract required in this subsection is confidential, and not a "public record" as defined in Title 1,
112 Chapter 13; however, a copy of the abstract may be provided by the State Bureau of Identification to a
113 criminal justice agency for legitimate law enforcement purposes or to an issuing authority for the purpose
114 of processing concealed firearm permit applications.

115
116 For the purposes of this subsection, "criminal justice agency" means a federal, state, tribal, district, county
117 or local government agency or any subunit thereof that performs the administration of criminal justice
118 under a statute or executive order, and that allocates a substantial part of its annual budget to the
119 administration of criminal justice. Courts and the Department of the Attorney General are considered
120 criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of
121 Canadian government.

122
123 **Sec. 10. 34-B MRSA §3864, sub-§13 is enacted to read:**

124
125 **13. Firearms possession prohibition notification.** A court that orders a person to be committed
126 involuntarily pursuant to this section shall inform the person that possession, ownership or control of a
127 firearm by that person is prohibited pursuant to Title 15, section 393, subsection 1. As used in this
128 subsection, "firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

129
130 Ω

ANTICIPATED FISCAL IMPACT

132

133 A one-time cost of approximately \$48,400 and ongoing maintenance costs of approximately
134 \$3,800, per year are anticipated. Additionally, the Department of Public Safety estimates that it
135 will take one FTE position (\$50,000 totally burdened costs) to properly manage this program.

136

Appendix C

This will be accomplished by utilizing XML transaction schemas and the latest Global Justice XML Data Model (GJXDM) standards. Upon receiving this transaction, MSP would cause the data to be stored in a State Database (Hot Files), allowing access to Maine law enforcement agencies, and then the forwarding and synchronization of this data with the NICS.

This option assumes the AOC is willing and able to share the data electronically with MSP sooner, rather than later. Several advantages exist with this option: Real time entry, modification and removal of data being sent to the State Database and NICS; no duplications of efforts with different agencies or offices keying data information into systems; and the State Database component allows Maine criminal justice agencies to use this data when issuing concealed weapons permits, dealing with protection order restrictions, issuing bail bond conditions, etc. This option would also allow the sharing of involuntary committal data between the AOC and MSP if we desired, without the sharing to NICS until such time as Maine law allowed it.