

OHIO AUDITOR OF STATE KEITH FABER



From: Auditor of State's Center for Audit Excellence

To: All IPA Firms

Subject: NICS Frequently Asked Questions

Date: May 15, 2019

In April 2018 Governor Kasich signed executive order 2018-03K requesting the Auditor of State include procedures in the annual/biennial audits. The premise of the order, and the resulting procedures, is to test the timeliness and accuracy of data submitted to the National Instant Criminal Background Check System (NICS) due to the importance of the information in firearms purchases.

Section 3-19 of the Ohio Compliance Supplement (OCS) contains guidance and procedures related to the NICS testing. Attached are Frequently Asked Questions (FAQ) related to OCS section 3.19. There are several scenarios with standardized responses included and the FAQs will be updated as questions arise. The FAQs are also posted on the Auditor of State website at: <http://www.ohioauditor.gov/references.html>

Additionally, the following note is included in OCS section 3-19:

(Note: A more detailed list of offenses is being developed by the Supreme Court for auditees to refer to for reporting. Notice will be sent to auditors including the link when available.)

Unfortunately, a final version of this listing has still not yet been completed/provided by the Supreme Court and we will continue to work with them to make it available. As explained in the FAQ (Q&A #13), you may complete the testing with a selection of any 10 cases if the court submits all cases to the BCI. However, if the court has reporting requirements and does not submit all cases, you will need to wait for the Supreme Court to make this listing available before completing the testing.

Please contact Jesse Carroll at JMCarroll@ohioauditor.gov or Celena Yoxtheimer at CYoxtheimer@ohioauditor.gov with Center for Audit Excellence with any questions.

Glossary

Capias	A writ or court order, ordering the arrest of a named person. A capias is a warrant or order for arrest of a person, typically issued by the judge or magistrate in a case. A capias may be issued in different forms. A capias is commonly issued for a failure to appear in court. A capias may be based upon an affidavit alleging personal knowledge of the offense. (https://definitions.uslegal.com/c/capias/)
Civil Commitment	The jailing of a person for debt or nonpayment of alimony or the confinement of an insane person, alcoholic, or drug addict for treatment or protection or the commitment of a person under civil arrest. (https://definitions.uslegal.com/c/civil-commitment/)
Disposition	<p>A Court's final determination of a lawsuit or criminal charge. (https://legal-dictionary.thefreedictionary.com/disposition)</p> <p>When used in the context of litigation it refers to a court's final determination of a case or issue; when used in relation to property it refers to the act of transferring or relinquishing of that property to another's care or possession usually by deed or will. (https://definitions.uslegal.com/d/disposition/)</p>
Docket	A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings. (https://www.uscourts.gov/glossary)
Proceeding	Actions taken to settle an argument in a court of law. (Merriam-Webster)
Protection orders	<p>A court order, civil or criminal, that protects a victim from domestic abuse, sexual assault, dating violence and stalking. (Ohio Background Check Process.pdf)</p> <p>A court order directing a person to do or not do certain things. It's a piece of paper a judge signs stating the terms someone must follow or else risk legal consequences. In domestic violence situations, there may be both family law and criminal cases occurring at the same time as a result of the same violent act. You may want to pursue both civil and criminal actions for maximum protection. Both a civil (CPO) and criminal protection order (TPO) orders an abuser not to abuse or harass a victim of domestic violence. However, in Ohio, these orders are very different legal tools. (https://statelaws.findlaw.com/ohio-law/ohio-temporary-restraining-order-laws.html)</p> <p>They require a court decision/order. Rule 10 (A): "Upon issuance of a civil or criminal protection order by a court pursuant to section 2151.34, 2903.213, 2903.214, division (E)(2) of 2919.26, or 3113.31 of the Revised Code,..."</p>
Style	The formal title of the proceedings in a court of law, the name of the court and the full, formal and complete name(s) of the plaintiff(s) and that of all defendant(s). Example: The State vs John Doe. (www.Duhaime.org/dictionary)
Warrant	A writ permitted or directing someone to take some action. Frequently, the term refers to a writ from a judge, permitting law enforcement personnel to take some action, such as make an arrest, search a location, or seize some piece of property. (Ohio Background Check Process.pdf)

Acronyms

AFIS	Automated Fingerprint Identification System
BCI	Bureau of Criminal Investigations
CCH	Computerized Criminal History. A record of offenses for which a person has been found criminally liable and convicted. (Ohio Background Check Process.pdf)
CPO	Civil Protection Order
DVTPO	Domestic Violence Temporary Protection Orders
FFL	Federal Firearm Licensees
III	Interstate Identification Index. A national index of criminal histories in the United States, maintained by the FBI at the NCIC. Included in this index are individuals who have been arrested or indicted for a serious criminal offense. (Ohio Background Check Process.pdf)
IST	Incompetent to Stand Trial
ITN	Incident Tracking Number
LEADS	Law Enforcement Automated Data System. The LEADS interface serves as the connection between BCI and the Interstate Identification Index (III), National Crime Information Center (NCIC), and National Instant Background Check System (NICS) Index. (Ohio Background Check Process.pdf)
NCIC	National Crime Information Center. The central database for tracking crime-related information in the United States. NCIC is maintained by the Criminal Justice Information Services Division (CJIS) of the FBI and is interlinked with federal, tribal, state, and local agencies. (Ohio Background Check Process.pdf)
NGRI	Not Guilty by Reason of Insanity
NICS	National Instant Criminal Background Check System. A national system that checks available records on persons who may be disqualified from receiving firearms. The NICS is a computerized background check system designed to respond instantly on whether the transfer of a firearm would be in violation of Section 922(g) or (n) of Title 18, United States Code, or state law. (Ohio Background Check Process.pdf)
OCJS	Office of Criminal Justice Services
OCN	Ohio Court Network. A statewide information exchange system that enables Ohio courts and justice system partners to share information necessary to make critical decisions regarding public safety. (Ohio Background Check Process.pdf)
ODPS	Ohio Department of Public Safety
ORI	Originating Identifier. An agency can have more than one. Law Enforcement Agencies and Courts have ORIs.
PO	Protection Order

FAQ – Courts

Q1 - The clerk of courts files 100% of the fingerprint/disposition cards that come through their office. If the case file doesn't include a fingerprint/disposition card from the law enforcement agency, then no disposition is filed by the clerk (OCS 3-19 SAP #2). What is the appropriate audit reaction for this?

A1 – The court and the law enforcement agency are in non-compliance with Ohio Rev. Code §109.60, because it appears as though fingerprints were not taken/sent to BCI. Additionally, the clerk of courts is in non-compliance with Ohio Rev. Code §109.572 for failure to send disposition information to the BCI. The standard comment below should be modified as needed and included in the management letter.

Ohio Rev. Code §109.60, in part, states:

(1) The law enforcement agency, immediately upon arrest, shall take fingerprints, and immediately forward copies to the Bureau of Criminal Investigation (BCI) and the clerk of the court having jurisdiction.

(2) If a person has not been arrested and first appears before a court, or if a law enforcement agency has not taken fingerprints, the court shall order the person or child to appear before law enforcement within twenty-four hours to have the fingerprints taken. Law enforcement shall take fingerprints and, immediately forward copies to the BCI and the clerk of the court having jurisdiction.

(3) Every court with jurisdiction over a case shall inquire at the time of sentencing or adjudication whether or not the person or child has been fingerprinted and if not fingerprinted, the court shall take the fingerprints or shall order the person or child to appear before law enforcement within twenty-four hours to have the fingerprints taken. If ordered to appear, law enforcement shall take fingerprints and, immediately forward copies to the BCI and the clerk of the court having jurisdiction.

Additionally, **Ohio Rev. Code §109.57**, in part states, every clerk of a court shall send a weekly report to BCI containing a summary of each case involving a reportable offense.

[# of errors found] out of 10 items selected for testing did not include evidence to support compliance with requirements listed above, and therefore no information for these cases was included in the clerk of courts weekly report to the BCI. [modify wording if the issue is known, but was not found in the sampled items]

When there is non-compliance with these reporting requirements, it can create incomplete criminal history information which can negatively impact the quality of information shared for employment and licensing adjudications, firearms background checks, Rap Back continuous criminal monitoring services, criminal investigations, and sentencing decisions.

In order to prevent further issues, the court should implement a control procedure to require proof of fingerprints at the time of sentencing or adjudication. Additionally, the clerk of courts should not limit the weekly report to cases with fingerprints provided, because they are required to, and should, submit disposition information for all cases involving a reportable offense.

Q2 – The clerk of courts files dispositions manually on 2-71 forms. The only evidence they have of submission is a photocopy of the completed form including a date stamp. Is this sufficient and appropriate audit evidence for determining compliance?

A2 – Yes. A photocopy is sufficient for our testing purposes. However, auditors are encouraged to verbally recommend ways to improve the audit trail such as:

- Delivery confirmation or certified mail for manual filings,
- A cover letter with a detailed listing of items included with manual filing and paid postage or email contact information for BCI to sign/acknowledge and return upon receipt, and
- File Electronically via FTPS and request a detailed confirmation report from BCI.

Q3 – The clerk of courts files dispositions manually on 2-71 forms and mails them to the BCI via certified mail. Is this sufficient and appropriate audit evidence for determining compliance?

A3 – It depends. If they have a clearly documented process that provides reasonable assurance as to what was included in the certified mail submission, then yes this is sufficient. However, auditors should use judgment in determining whether there is sufficient organization/documentation in the process and issue comments as needed.

Q4 – The clerk of courts sends disposition information electronically to the BCI via File Transfer Protocol (FTP), however they receive a summary level confirmation only (they have not requested the detailed confirmation report OCS 3-19 indicates they can). The summary confirmation only provides assurance that something was filed, it does not indicate which cases were filed. Is this sufficient audit evidence to determine compliance?

A4 – No. Auditors cannot assume that a selected case disposition was included in a weekly/periodic electronic report without positive confirmation. Auditors should include the following comment (modified as needed) in the management letter:

Ohio Rev. Code §109.57, in part states, every clerk of a court shall send a weekly report to the Bureau of Criminal Investigation (BCI) containing a summary of each case involving a reportable offense. The report shall include additional information in the report and summary it sends to BCI for every case before the court of appeals that is served by that clerk. The additional information includes:

- (a) The incident tracking number;
- (b) The style and number of the case;
- (c) The date of arrest, offense, summons, or arraignment;
- (d) The date of arrest, offense, summons, or arraignment and/or the date of resolution of the case;
- (e) A statement of the original charge with the section of the Revised Code that was alleged to be violated;
- (f) If applicable, the sentence or terms of probation imposed or any other disposition

Supporting documentation for cases selected for testing included summary level confirmation reports. However, there is not sufficient appropriate audit evidence available to assure that all of the required information was submitted to or received by the BCI.

Non-compliance with these reporting requirements can create incomplete criminal history information, which can negatively impact the quality of information shared for employment and licensing adjudications, firearms background checks, Rap Back continuous criminal monitoring services, criminal investigations, and sentencing decisions.

In order to provide a sufficient audit trail documenting compliance with these statutes, the clerk of courts should consider implementing additional controls such as requesting a detailed confirmation report from BCI.

Q5 – The clerk of courts sends disposition information monthly to the BCI because the BCI informed the clerk that monthly filing was sufficient. How do we determine appropriate timeliness for testing compliance if this is the case?

A5 – If the clerk of courts has evidence of communication from the BCI authorizing a monthly filing, provide it to CFAE via spiceworks consult for further evaluation. Otherwise, timeliness in accordance with Ohio Rev. Code § 109.57(A)(2) is a weekly report. While the statute is not specific as to content of the weekly report, we interpret the requirement to be all dispositions processed within that week should be sent to BCI. Any instances of non-compliance should be reported with the following management letter comment:

Ohio Rev. Code §109.57, in part states, every clerk of a court shall send a weekly report to the Bureau of Criminal Investigation (BCI) containing a summary of each case involving a reportable offense.

Supporting documentation provided indicates the clerk of courts filed disposition information electronically with the BCI via FTPS. However, the transmissions were remitted monthly rather than weekly as required by statute.

When there are delays in compliance with these reporting requirements, it can create incomplete criminal history information, which can negatively impact the quality of information shared for employment and licensing adjudications, firearms background checks, Rap Back continuous criminal monitoring services, criminal investigations, and sentencing decisions.

In order to provide a sufficient audit trail documenting compliance with these statutes, the clerk of courts should consider implementing additional controls such as requesting a detailed confirmation report from BCI.

Q6 – The clerk of courts submits dispositions with local code sections rather than ORC references in their cases. How do we determine which cases are required to be filed when they do not include ORC references?

A6 – Ohio Rev. Code §109.57(A)(2)(e) indicates the court must include a statement of the original charge with the section of Revised Code that was alleged to be violated. Auditors should provide the listing of ORC reportable offenses to the auditee and ask them to provide the corresponding local code or provide another cross-walk between applicable ORC codes and local codes. Consultation with AOS legal may be required to verify these determinations, and the list/crosswalk should be maintained in the perm file for future use. Any deviation from what is required by ORC to be reported to BCI is non-compliance. The standard comment below should be modified as needed and included in the management letter:

Ohio Rev. Code §109.57, in part states, every clerk of a court shall send a weekly report to the Bureau of Criminal Investigation (BCI) containing a summary of each case involving a reportable offense. The report shall include additional information in the report and summary it sends to BCI for every case before the court of appeals that is served by that clerk. The additional information includes:

- (a) The incident tracking number;
- (b) The style and number of the case;

- (c) The date of arrest, offense, summons, or arraignment;
- (d) The date of arrest, offense, summons, or arraignment and/or the date of resolution of the case;
- (e) A statement of the original charge with the section of the Revised Code that was alleged to be violated;
- (f) If applicable, the sentence or terms of probation imposed or any other disposition

[# of errors found] out of 10 items selected for testing did not include all the required information that should be reported to BCI to support compliance with requirements listed above.

Non-compliance with these reporting requirements can create incomplete criminal history information which can negatively impact the quality of information shared for employment and licensing adjudications, firearms background checks, Rap Back continuous criminal monitoring services, criminal investigations, and sentencing decisions.

In order to prevent further issues, the court should implement a control procedure to include the Revised Code [or other missing element(s) listed in ORC § 109.57(A)(2)] that was violated in their reporting to BCI.

Q7 – The clerk of courts sends dispositions with as much of the required elements available. Occasionally the incident tracking number (ITN) (or some other elements described in Ohio Rev. Code § 109.57 (A)(2)(a-f)) is/are unknown. The clerk of courts has told the auditors the missing information is only obtainable by law enforcement, and the clerk does not have authority to either obtain it or instruct the agency to provide it. What is the appropriate audit reaction when this situation is identified?

A7 – Courts are required to inquire whether a person has been fingerprinted [ORC 109.60(A)(3)]. Auditors should also recommend the clerk of courts work with law enforcement to obtain any other necessary information for a complete filing. (See also Q&A #15 below for situations where the law enforcement agency is not part of the same reporting entity with the court)

Q8 – The clerk of courts files dispositions manually utilizing form 2-71. However, when reviewing the photocopies of the remitted forms, there are requirements from Ohio Rev. Code §109.572 addressed via an addendum stapled to form 2-71 rather than providing the information on the form itself. Does including the addendum satisfy the requirement or must all responses be included on the 2-71 card?

A8 – While standard and consistent use of the 2-71 forms for all manual filers is desired and encouraged, it is not a mandatory part of compliance. If the clerk is appropriately submitting all of the information to the BCI through alternative methods, it should not be considered to be non-compliance. Auditors should discuss the differences with the clerk and recommend any changes verbally, if deemed necessary.

Q9 – Some of the cases selected for testing include many initial charges, but some charges were dropped/dismissed. What is the appropriate method to include this information in the disposition report for manual filings on form 2-71?

A9 – The 2-71 form should include the original charges and the final conviction, if applicable (ex. If the individual was convicted of a lesser offense of disorderly conduct, the form should include the sentence for the disorderly conduct). In other words, the dispositions (the outcome of a case in criminal court) of all original charges should be reported, including non-convictions. See also [example form](#).

Q10 – Some of the cases selected for testing include many initial charges, but some charges were dropped/dismissed. What is the appropriate method to include this information in the electronic disposition report filed via FTPS?

A10 – Every charge should be included in the filing with an appropriate Court Provision Numeric (CPN) code. (A listing of the CPN codes is included in the [BCI Electronic Disposition Reporting Manual](#)). Codes are provided for dropped/abandoned charges (344), nolle (350), convicted of a lesser offense (311), dismissed (305), as well as various others.

Q11 - The clerk of courts submits dispositions to the BCI for every case, regardless of whether or not it is a required offense. If we identify some dispositions that were not required to be submitted and were not submitted, what is the appropriate audit reaction?

A11 – No non-compliance citation is required. The BCI does accept all dispositions, even if not required by law; however, for the testing purposes of the OCS, we will not issue citations for failure to follow a court policy that exceeds the ORC requirements. Auditors should communicate non-compliance with entity policy verbally.

Q12 – The suggested audit procedures include a selection of 10 cases from courts (common pleas, general division and juvenile, municipal, county) and a selection of 10 from the probate court. If a reporting entity has multiple courts, how should the selection be divided?

A12 – If all the courts in the reporting entity follow the same process with the same individuals (i.e. clerk of courts) responsible for the reporting compliance requirements, then a total of 20 is sufficient (10 common pleas/10 probate). However, if there are further separations within the common pleas courts, for example with different individuals responsible for the reporting requirements, a separate selection of 10 cases should be tested for each unique process.

Q13 – What if the court sends **all** dispositions to the BCI regardless of the case type?

A13 – Test a selection of **any** 10 dispositions from the audit period or (if confirmation reports are available) see if the court can reconcile the total number of dispositions sent to the total number of cases.

Q14 – What if the entity we are testing lacks the sophistication in their court system to identify a listing of cases that have reporting requirements? For instance, we have provided them the listing of Ohio Rev. Code sections, but they can't produce a list of related cases. How do we identify 10 cases with reporting requirements?

A14 – If the court indicates they send **all** dispositions to the BCI regardless of the case type, refer to Q&A#13 above. However, if they do not send all dispositions and they have no way of tracking which cases have reporting requirements, it is indicative of a control issue. Auditors should issue a comment describing the limitations of the system, and no further testing is needed.

Law Enforcement Agencies

Q15– When there are situations identified where it appears the law enforcement agency failed to comply with fingerprinting or other arresting agency requirements, and the law enforcement agency is not part of the same reporting entity as the court being tested, what is the appropriate audit reaction to this situation?

A15 – Each law enforcement agency will be subject to compliance testing during the audit of their respective reporting entity. If said audit identifies the law enforcement agency failed to have an appropriate process in place to fingerprint the individual and submit the information as required in Ohio Rev. Code § 109.60, a citation should be issued in the respective management letter.

Additionally, each court will be subject to compliance testing during the audit of their respective reporting entity. If said audit identifies the court failed to have an appropriate process in place to ensure the individual was properly fingerprinted under Ohio Rev. Code § 109.60(A)(2)-(3), a citation should be issued in the respective management letter.

The results of procedures performed during the audit of the court's reporting entity should not be used as a basis for comments in the audit of the law enforcement agency's reporting entity, and vice versa. Rather each will be subject to their own testing procedures (see Q&A #7 above).

Q16 – Court testing includes procedures to evaluate the court's process, as well as test 10 individual dispositions. Why are the testing procedures for law enforcement agencies limited to only evaluating their process?

A16 – As noted in Q&A15 above, Ohio Rev. Code § 109.60(A)(2)-(3) requires courts to ensure individuals are fingerprinted (whether the law enforcement agency obtained the fingerprints at the time of arrest or the court orders the fingerprints to be taken at the time of appearance, sentencing or adjudication). Furthermore, background check results will not display arrests (info from the law enforcement agency), without a court disposition. Therefore, the risk of incorrect reporting is largely controlled by the court, and it is of greater importance to test the courts.

Additionally, the vast majority of law enforcement agencies use systems which automatically provide information to the BCI (i.e. OHLEG/LEADS). Therefore, there is little risk of non-compliance for failure to submit the necessary information.

Q17 – The law enforcement agency makes arrests; however, booking and processing is handled by the county sheriff (or other agency). How should this impact our evaluation of the law enforcement agency's procedures?

A17 – For any compliance requirement, the responsible party can delegate authority but not responsibility. Since the arresting agency remains responsible, the best practice is to formalize the process through policies and/or agreements to ensure both parties fully understand their agency's responsibilities. If there is no such policy or agreement in place, auditors should verbally recommend a policy or agreement is created.