

	<p style="text-align: center;">National Instant Criminal Search ("NICS") Database</p>	<p style="text-align: center;">Division of Criminal Justice Services ("DCJS") Database</p>
	<ul style="list-style-type: none"> • NICS Collects Data from other sources • Database summarizes post judicial disqualifications • Search of data collected for the purpose of approval of a firearm purchase for a <ul style="list-style-type: none"> ○ Convicted felon; ○ a fugitive of justice; ○ an unlawful user and/or an addict of any controlled substance; ○ a person adjudicated mental defective or involuntarily committed to a mental institution by an outside court ○ The subject of a protective order issued after a hearing in which the respondent had notice that restrains them from harassing, stalking, or threatening an intimate partner or child of such partner (excluding <i>ex parte</i> orders); • Used to clear or deny of purchase of new firearm. • No referral for seizure of all weapons owned or possessed. • Criminal act is in trying to purchase a firearm. 	<ul style="list-style-type: none"> • DCJS both collects data and makes its own findings of "ineligibility" • Data sources include many non- judicial sources and <i>ex parte sources</i> without notice to individual affected <ul style="list-style-type: none"> ○ Mental Health data from psychiatrists, physicians, registered nurses or social workers (Mental Hygiene Law § 9.46) ○ The" Director of Community Services" or his designee makes a report pursuant to § 9.46 of the Mental Hygiene Law, the Division of Criminal Justice Series shall convey such information, (Mental Health Law § 9.46) ○ Is the subject of an <i>ex parte</i> Temporary Order of Protection before a hearing. (Family Court Act § 842-a) ○ Failure to renew a pistol license or recertify registration (Penal Law § 400.00(10)(b)) ○ Being "ineligible for a pistol license" a any time (Penal Law § 400.00(11)) • DCJS then uses this Database to trigger a Penal Law Section 400 "removal" of all "weapons" in the home under Penal Law §400.02 (No warrant or Due Process) • "all weapons owned or possessed by such individual shall be removed consistent with the provisions" of Penal Law 400.00(11) (Penal Law § 400.02) • Police have no discretion (1) in the "ineligible" determination; or (2) decision to remove weapons. • Permits NYS Police to conduct the Penal Law § 400 removals if local police not willing.

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APPEALS PROCESS	<ul style="list-style-type: none"> • Individuals who are denied the purchase of a firearm may request that the NICS or the state that processed their transaction provide the reasons for the denial. • An appeal can be filed with the the NICS Transaction Number (NTN) assigned to their transaction via the NICS Appeal website, fax or mail. 	<ul style="list-style-type: none"> • No Appeal Process for DCJS ineligibility • No process to return rifles and shotguns • For ineligibility based upon MHL § 9.46 report, the record stays on the DCJS Database (Executive Law § 837(19)) • May seek a Certificate of Relief From Disabilities (Mental Hygiene Law § 7.09(j))
DESTRUCTION OF INFORMATION	<ul style="list-style-type: none"> • The privacy and security of the information in the NICS is of great importance.(See NICS Website) • Data stored in the NICS is documented federal data and access to that information is <i>restricted</i> to agencies authorized by the FBI.(See NICS Website) • The NICS is not to be used to establish a federal firearm registry; (See NICS Website) • NICS destroys all identifying information on approved transactions prior to the start of the next NICS operational day. (See NICS Website) 	<ul style="list-style-type: none"> ▪ HIPAA Rights Ignored (MHL § 33.13(c)) • FOIA protection must be requested (Penal Law § 400.00(5)(b)) • Includes ammunition sales (Penal Law § 400.03)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
RAZZANO V. STATE OF NEW YORK, ET AL. 14-CV-1864

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