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Brady Decision [3]

**Stack:**

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**Row:**

**98**

**Section:**

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**Position:**

**2**

## White House Brady Mtg. Agenda

(August 1, 1997)

### 1) Status of Voluntary Checks

- a) Arkansas
- b) Ohio
- c) Rhode Island
- d) Halbrook Letter
- e) Other
- f) List of CLEO's

### 2) Status of legislative options

- a) Police group views
- b) Need for legislation

### 3) Status of NICS

- a) Hardward/software infrastructure
- b) Federal record completeness
- c) State record completeness
- d) Recruiting of state POC's (& issues of authority and willingness)

# NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

REMARKS OF ELEANOR D. ACHESON  
ASSISTANT ATTORNEY GENERAL  
OFFICE OF POLICY DEVELOPMENT  
U.S. DEPARTMENT OF JUSTICE  
CONSULTATION WITH LAW ENFORCEMENT  
CONCERNING THE BRADY LAW  
U.S. DEPARTMENT OF THE TREASURY  
JULY 16, 1997

## **I. INTRODUCTION -- THE NICS IS ON SCHEDULE.**

- The Brady Act requires the National Instant Criminal Background Check System, known by the acronym "NICS" to be operative by November 30, 1998. The Justice Department, with the FBI at the forefront, has been working in close cooperation with the ATF to develop and implement the NICS system; and we are on schedule to meet the November 30, 1998 deadline. When it goes on-line, the NICS, which will draw principally on existing federal and state records systems, will have the capability to search state and federal files for information on persons prohibited from possessing a firearm -- within 30 seconds.

## **II. THE STATES WILL PLAY A VITAL ROLE IN THE NICS.**

- The NICS builds on the tradition of decentralized maintenance of criminal history records by state and local entities. The states, through the Brady Act Task Group, have played an important role in developing the design of the NICS, and the states will have a primary role in collecting, storing, and disseminating criminal history information.

### III. HOW THE NICS WORKS.

- The NICS will operate as follows: When a person goes to a licensed firearms dealer to buy a gun -- both handguns and long guns will be covered by the permit provisions of the Act -- the dealer will call a point of contact (POC), who in most cases will be a state law enforcement officer. The dealer will provide the POC with the prospective purchaser's identifying information, and the POC will check whether the prospective gun buyer is prohibited under state and local records from getting a gun either because the person has a criminal history or falls within another prohibited category.
- If the state and local check does not disclose any disqualifying information, the second step of the NICS check looks at national databases that are already in existence. The most important of these is the Interstate Identification Index (III), an ongoing federal/state initiative, which contains federal criminal records and provides leads to more than 25 million state and federal criminal history records. Additional databases are the National Criminal Information Center (NCIC) Hot Files, which include information on persons prohibited from obtaining a firearm because they are subject to a protective order, fugitives from justice, or felons under a deportation order. In addition to these databases, the NICS will also check the "NICS Index," which will contain records that are provided by federal agencies on the other categories of persons prohibited by the Gun Control Act from obtaining a firearm, such as persons who have renounced their citizenship, illegal aliens, or unlawful users of a controlled substance.

- Because the NICS will rely heavily on information maintained by the states and because state records on the categories of persons prohibited from possessing firearms are not complete, the automated system will not always provide definitive information within 30 seconds on whether a person is prohibited from purchasing a gun. In this case, further research by the POC will be required. For example, state criminal history records may indicate that the person has been convicted of a crime, but local information may be needed to determine whether the crime is a felony. In such cases, the POC typically will be able to determine a prospective purchaser's eligibility within a few hours. The Justice Department fully expects that the vast majority of NICS checks will be performed within 30 seconds.

#### **IV. UPDATED CRIMINAL HISTORY RECORDS ARE ESSENTIAL.**

- Ultimately, the NICS system will only be as good as the state criminal history records on which it depends. Therefore, it is essential to improve the accuracy, completeness, and automation of state criminal history records. To assist the states in accomplishing this goal, the Justice Department has already distributed \$112 million to the states to help them improve their criminal history records under the National Criminal History Improvement Program (NCHIP). At the national level, the Justice Department is working with the states to make the III even more comprehensive. Presently, thirty-two states participate in the III, and the majority of remaining states will be part of the III by the end of 1998.

**V. IT IS CRUCIAL FOR STATES TO DESIGNATE POCs.**

- State interests will best be served when the states designate state officials to serve as POCs for the NICS system, although the FBI will serve as POC for any state that declines to designate a state POC. When states provide POCs, NICS checks will be more up to date, accurate, and efficient. The state POCs will likely have access to state and local records that are unavailable to a federal POC, and the state POCs will have a greater familiarity with state and local records in their jurisdiction and can interpret these records more easily than a federal POC. Moreover, it is greatly to the states' advantage to designate a state POC, because the states will have greater control in determining who is barred from obtaining a firearm within the jurisdiction, and the state POCs will have the ability to enforce state laws that prohibit additional categories of individuals from obtaining a firearm.

**VI. CONCLUSION -- THE IMPORTANCE OF CONTINUED STATE PARTICIPATION.**

- The Justice Department, the FBI, ATF, and many other federal, state, and local law enforcement officials are engaged in extensive efforts to make the NICS as effective and efficient as possible when it goes on-line next year. The participation of state and local law enforcement in designing the NICS thus far has been essential and the continued input of state and local law enforcement is needed to make the NICS system live up to its potential. In particular, state and local enforcement should encourage state criminal justice agencies to designate state POCs and update criminal history records. The NICS will be more effective and less burdensome than the interim Brady

system, which already prevents approximately 6,600 felons and other prohibited persons from purchasing handguns each month. The Brady Act has already reduced crime and saved lives. With the continued valuable participation and support of the states, the NICS will be even more effective in preventing prohibited persons from obtaining firearms and, thus, reducing crime, saving lives of law enforcement and civilians alike and making our communities safer.

I. How the NICS Will Work

- A. Reliance on existing, primarily state, data bases
- B. Description of operation
  - 1. Point of contact
  - 2. Databases

II. Criminal History Records

- A. III participation (32 states)
- B. Final dispositions of arrest records
  - 1. Arrest records complete (since '74)
  - 2. Effect of incomplete conviction records (Final disposition unknown)

III. Points of Contact

- A. When needed -- permit states
- B. Advantages of state points of contact

↳ ≈ 40% of records in + 33% are accurate + through disp.

disposition are only for last 5 years

↳ Most people have multiple arrests + only takes one accurate record.

↳ 85% come clean right away ~~(no police party way)~~

↳ remaining - most ≈ 15% are clean to the officer (by SSN #, etc.)

↳ small % unclear.

↳ will have records on 33% +

↳ + local officers can usually w/ a few calls + couple hours get into - act gives you 3 days

→ non-criminal history records  
are much more ~~use~~ problematic.

↳ no records.

\* #s are only Felony convictions

↳ but 2 - and now almost 3 (juvie) -  
that are misdemeanors.

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BRADY LEGISLATION

☞ AUTHORIZATION TO CONDUCT CHECKS, INTERIM AND PERMANENT, UNLESS PROHIBITED BY STATE LAW

☞ AUTHORIZATION TO CHARGE FEES, INTERIM AND PERMANENT, UNLESS PROHIBITED BY STATE LAW

☞ NO LIABILITY FOR CONDUCTING CHECKS, INTERIM AND PERMANENT

☞ BACK-UP CLEO TO CLEO OF RESIDENCE OF BUYER (CLEO OF LOCATION OF SELLER, ANY OTHER CLEO IN THE STATE)

\*\*\*\*\*

☞ AUTHORIZATION OF ADDITIONAL \$ \_\_\_ HUNDRED MILLION FOR IMPROVEMENT OF CRIMINAL HISTORY, SEXUAL PREDATOR, NATIONAL CHILD PROTECTION ACT, AND OTHER RECORDS IMPROVEMENTS EFFORTS OF THE STATES



# Department of Justice

FOR IMMEDIATE RELEASE  
FRIDAY, JULY 25, 1997

AG  
(202) 616-2777  
TDD (202) 514-1888

**STATEMENT BY ATTORNEY GENERAL JANET RENO  
ON ARKANSAS' DECISION TO PERMIT LAW ENFORCEMENT OFFICERS  
TO CONTINUE CONDUCTING BACKGROUND CHECKS ON PURCHASERS OF GUNS**

WASHINGTON, D.C. -- Attorney General Janet Reno today hailed the state of Arkansas' decision to continue conducting background checks under the Brady Handgun Violence Protection Act. Arkansas Attorney General Winston Bryant ruled late yesterday that the Arkansas State Police have the authority to conduct checks, and that they can charge a fee for them.

Last month, Arkansas and Ohio halted the practice of checking the criminal records of gun purchasers after the Supreme Court ruled that the federal government could not require the states to conduct them.

Reno praised the decision:

"This ruling will mean safer streets for all Americans, since illicit guns travel nationwide.

"While the Supreme Court said the federal government cannot require states to conduct background checks, states can voluntarily conduct them on their own. President Clinton, Treasury Secretary Rubin and I have urged states to exercise good law enforcement judgement and keep doing background checks, and 49 states are now doing so.

(MORE)

- 2 -

"The Brady Act has prevented more than 250,000 fugitives, felons, and others from buying from buying guns over the counter. I commend Attorney General Bryant for this step forward in protecting the citizens of Arkansas. It was a pleasure to work with him, and I look forward to working with him in the future.

"Now that Arkansas will be conducting these common sense background checks, Ohio is the only state in the nation where the appropriate chief law enforcement officer is not conducting voluntary background checks. I continue to work with Ohio Attorney General Betty Montgomery, and hope to resolve any outstanding issues in the near future.

"All Americans--Arkansans in particular--are safer today for Attorney General Bryant's ruling."

# # #

97-308



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(MORE)

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# # #

97-308

**LIST OF CHIEF LAW ENFORCEMENT OFFICERS FOR PURPOSES OF THE BRADY LAW (Public Law 103-159, November 30, 1993)**

Beginning on February 28, 1994, the Brady law imposes a 5-day waiting period on the sale of a handgun by Federal firearms licensees to nonlicensees in States that do not already require a prior background check. In this regard, the law requires licensees to notify the Chief Law Enforcement Officer (CLEO) of the purchaser's residence upon the proposed sale of the handgun. The CLEO is required to make a reasonable effort to ascertain within 5 business days whether the buyer's receipt or possession of a handgun would be in violation of law.

The following list of CLEOs was developed from information provided by the law enforcement community.

**Alabama**

As of February 16, 1994, the Chief Law Enforcement Officer in Alabama is the County Sheriff. They will also receive the reporting on the multiple sale of handguns.

**Alaska**

As of February 16, 1994, the Chief Law Enforcement Officer in Alaska is the Chief of Police in areas having a Police Department or the Alaska State Troopers in areas without a Chief of Police. They will also receive the reporting on the multiple sale of handguns.

**Arizona**

As of February 16, 1994, the Chief Law Enforcement Officer in Arizona is the Chief of Police in incorporated areas and the County Sheriff in unincorporated areas. However, in Maricopa County, the Chief of Police, Phoenix Police Department, is the Chief Law Enforcement Officer for both the City of Phoenix and all other municipalities in the metropolitan Phoenix area, and the County Sheriff is the Chief Law Enforcement Officer for the unincorporated areas of the County. In the reporting of multiple sale of handguns the forms should be sent to the Chief of Police in incorporated areas or the County Sheriff in unincorporated areas. However, in the City of Phoenix and all other municipalities in the metropolitan areas, the forms should be sent to the Chief of Police, Phoenix Police Department.

**Arkansas**

As of February 16, 1994, the Chief Law Enforcement Officer in Arkansas is the Arkansas State Police. They will also receive the reporting on the multiple sale of handguns.

**Colorado**

As of February 16, 1994, the Colorado Bureau of Investigation will be the recipient of reporting on the multiple sale of handguns.

**Georgia**

As of February 16, 1994, the Chief Law Enforcement Officer in Georgia is the County Sheriff except as indicated. They will also receive the reporting on the multiple sale of handguns. (See attached letter)

**Idaho**

As of the February 18, 1994, the Chief Law Enforcement Officer in Idaho is the Idaho Department of Law Enforcement, Bureau of Criminal Identification. The Chief of Police in incorporated areas or the County Sheriff in unincorporated areas will receive the reporting on the multiple sale of handguns.

**Kansas**

As of February 17, 1994, the Chief Law Enforcement Officer in Kansas is the County Sheriff, except for the incorporated cities and towns in Johnson County where the Chiefs of Police are the Chief Law Enforcement Officers. The Kansas Bureau of Investigation will receive the reporting on the multiple sale of handguns.

**Kentucky**

As of February 18, 1994, the Chief Law Enforcement Officer can be either the Chief of Police in incorporated areas or the County Sheriff in unincorporated areas. They will also receive the reporting on the multiple sale of handguns.

**Louisiana**

As of February 16, 1994, the Chief Law Enforcement Officer in Louisiana is the Sheriff, except in Orleans Parish where the Chief Law Enforcement Officer is the Superintendent of Police for New Orleans. They will also receive the reporting on the multiple sale of handguns.

**Maine**

As of February 16, 1994, the Chief Law Enforcement Officer in Maine is the Chief of Police in areas having a municipal police department and the State Police in all other areas. They will also receive the reporting of the multiple sale of handguns.

**Minnesota**

As of February 16, 1994, the Chief Law Enforcement Officer in Minnesota is the Municipal Police Chief. However, where there is no local police agency, the County Sheriff will be the Chief Law Enforcement Officer. They will also receive the reporting of the multiple sale of handguns.

**Mississippi**

As of February 16, 1994, the Chief Law Enforcement Officer in Mississippi is the Chief of Police in incorporated areas and the County Sheriff in unincorporated areas. They will also receive the reporting of the multiple sale of handguns.

**Montana**

As of February 16, 1994, the Chief Law Enforcement Officer is either the Chief of Police in incorporated areas or the County Sheriff in unincorporated areas. They will also receive the reporting of the multiple sale of handguns.

**Nevada**

As of February 16, 1994, the Chief Law Enforcement Officer in Nevada is the Department of Motor Vehicles and Public Safety, Nevada Highway Patrol, Records and Identification Services. They will also receive the reporting of the multiple sale of handguns.

**New Hampshire**

As of February 16, 1994 the Chief Law Enforcement in New Hampshire is the Chief of Police or the County Sheriff in areas not covered by a Chief of Police. They will also receive the reporting on the multiple sale of handguns.

**New Mexico**

As of February 16, 1994, the Chief Law Enforcement Officer in New Mexico is the Chief of Police in incorporated areas and the County Sheriff in unincorporated areas. They will also receive the reporting of the multiple sale of handguns.

**North Carolina**

As of February 17, 1994, the Chief Law Enforcement Officer in North Carolina is the County Sheriff. They will also receive the reporting on the multiple sale of handguns.

**North Dakota**

As of February 16, 1994 the Chief Law Enforcement Officer in North Dakota is the County Sheriff. They will also receive the reporting on the multiple sale of handguns.

**Ohio**

As of February 18, 1994, the Chief Law Enforcement Officer in Ohio is the Attorney General whose designated representative is the Superintendent of the Bureau of Criminal Identification and Investigation. They will also receive the reporting on the multiple sale of handguns.

**Oklahoma**

As of February 16, 1994, the Chief Law Enforcement Officer in Oklahoma is the Chief of Police in incorporated cities and towns, except that the County Sheriff is the Chief Law Enforcement Officer in incorporated cities and towns having no police authority of their own. The Chief Law Enforcement Officer in unincorporated areas is the County Sheriff. They will also receive the reporting on the multiple sale of handguns.

**Pennsylvania**

As of February 18, 1994, the Chief Law Enforcement Officer in Pennsylvania is the County Sheriff except in Philadelphia County where the Chief Law Enforcement Officer shall be the Commissioner of the Philadelphia Police Department. They will also receive the reporting on the multiple sale of handguns.

**Puerto Rico**

As of February 17, 1994, the Chief Law Enforcement Officer in Puerto Rico is the Police Superintendent, Firearms Bureau Chief. The Superintendent will also receive the reporting on the multiple sale of handguns.

**Rhode Island**

As of February 16, 1994, the Chief Law Enforcement Officer in Rhode Island is the Chief of Police. The reporting on the multiple sale of handguns will be sent to the Rhode Island State Police Detective Division.

**South Carolina**

As of February 16, 1994, the Chief Law Enforcement Officer in South Carolina is the South Carolina Law Enforcement Division. South Carolina Law prohibits the sale of more than one handgun during any 30-day period to a nonlicensee.

**South Dakota**

As of February 17, 1994, the Chief Law Enforcement Officer in South Dakota is the County Sheriff. They will also receive the reporting on the multiple sale of handguns.

**Tennessee**

As of February 18, 1994, the Chief Law Enforcement Officer in Tennessee is the Chief of Police in municipalities or the County Sheriff in other areas. They will also receive the reporting on the multiple sale of handguns.

**Texas**

As of February 16, 1994, the Chief Law Enforcement Officer in Texas is the Chief of Police in incorporated cities and towns and the County Sheriff in unincorporated areas. They will also receive the reporting on the multiple sale of handguns.

**Utah**

As of February 16, 1994, the Chief Law Enforcement Officer is the Utah Department of Public Safety, Bureau of Criminal Identification. They will also receive the reporting on the multiple sale of handguns.

**Vermont**

As of February 17, 1994, the Chief Law Enforcement Officer in Vermont is the Chief of Police or the County Sheriff, or the State Police depending on the area. They will also receive the reporting on the multiple sale of handguns. (See attached letter)

**Washington**

As of February 16, 1994, the Chief Law Enforcement Officer in Washington is the Chief of Police in incorporated areas or the County Sheriff in unincorporated areas. They will also receive the reporting on the multiple sale of handguns.

**West Virginia**

As of February 17, 1994, the Chief Law Enforcement Officer in West Virginia is the West Virginia State Police. They will also receive the reporting on the multiple sale of handguns.

**Wyoming**

As of February 16, 1994, the Chief Law Enforcement in Wyoming is the Chief of Police or in other areas the County Sheriff. They will also receive the reporting on the multiple sale of handguns. (See attached letter)



## U. S. Department of Justice

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Washington, D.C. 20530

July 17, 1997

MEMORANDUM FOR: The Attorney General

FROM: Kent Markus  
Nicholas Gess  
Matthew Levine

SUBJECT: Current Status of Brady Enforcement

There are 23 states plus Puerto Rico which are governed by the Brady Handgun Control Act (Brady Act). The remaining states and territories have enacted alternate statutes and are not affected by either the Brady Act or the Printz decision. According to ATF, which has conducted a less than comprehensive survey of CLEOs in Brady states, as of the evening of July 16, 1997:

I. There are eight states with a statewide chief law enforcement officer (CLEO):

Arizona  
Arkansas  
Kentucky  
Nevada  
Ohio  
South Carolina  
West Virginia  
Vermont

II. Of these eight states, two: Ohio and Arkansas are problematic. The remaining six statewide CLEOs (Arizona, Kentucky, Nevada, South Carolina, West Virginia and Vermont) continue to do the Brady checks.

- Ohio - At the direction of Ohio Attorney General Betty Montgomery, her office, which is the statewide CLEO, has ceased doing Brady background checks unless the request for a background check is accompanied by a waiver from the prospective handgun purchaser. When a waiver does not accompany the Brady form, AG Montgomery forwards

the form to ATF.

● ~~Arkansas~~ - The Arkansas State Police is returning Brady forms to the FBI at the reported direction of the Attorney General. However, according to the Chief Deputy Attorney General (the Attorney General was out-of-town) this is the result of a decision by a staff attorney and has not been ratified at a supervisory level, let alone the Attorney General or Arkansas. We are in contact with the Attorney General's office and hope to work together to resolve the situation.

II. There are five other states in which one or more, but in any event, very few, local CLEOs have declined to conduct Brady background checks:

~~Kansas~~  
~~Mississippi~~  
Montana  
Oklahoma  
Wyoming

III. Congressman Charles D. Schumer (D-NY) has conducted his own "poll" of CLEOs. In a July 16, 1997, press release, he reports a list of CLEOs who are not conducting Brady background checks (TAB A).

IV. On July 16, 1997, Handgun Control, Inc. (HCI) released the results of a poll it conducted in Ohio which reflects that 90% of Ohio residents believe that the state should continue to conduct background checks (TAB B).

**TAB A**

# NEWS

## CHARLES E. SCHUMER

9th Congressional District, N.Y.

2211 Rayburn H.O.B.  
Washington, D.C. 20515  
(202) 225-6616

FOR RELEASE:  
CONTACT:

FOR IMMEDIATE RELEASE  
July 16, 1997

1628 Kings Highway  
Brooklyn, N.Y. 11229  
(718) 627-9700



CONTACT: Josh Cohen  
(202) 225-6616

Bill McGovern  
David Yasley

~~SCHUMER SURVEY SHOWS BACKGROUND CHECKS CONTINUE DESPITE SUPREME COURT RULING~~  
**OVER 94% OF POLICE SUPPORT BRADY LAW BY CONTINUING CHECKS**

- Holdouts Still Put States Like New York at Risk -

Rep. Charles E. Schumer (D-Brooklyn and Queens) today released the first survey of police chiefs and sheriffs showing that the overwhelming majority continue to conduct Brady background checks after the recent Supreme Court decision. Over 94% of law enforcement surveyed will continue conducting background checks. Schumer released the survey during a with debate Wayne LaPierre, the NRA's executive director at the National Press Club on Wednesday.

"The actions of law enforcement across the country speak loud and clear: Brady works," said Schumer. "The Supreme Court gave the police a choice and they decided to keep guns out of the hands of criminals by doing background checks. They know its easier to do a background check than to solve a murder."

The study released by Schumer involved the 23 so-called "Brady states" affected by the Court's decision. All other states have their own systems in place and will continue to perform checks. The study surveyed 1,450 Chief Law Enforcement Officials who are responsible for performing background checks under the Brady Law. 1,179 said they will continue background checks. Only 70 said they will not and 203 did not respond.

Almost all the jurisdictions that have stopped conducting checks are very small. However, in Ohio and Arkansas, the future of background checks remain in doubt due to a combination of state laws and political maneuvering. Without these two states in the survey, the 68 counties and towns not conducting checks cover just 0.6% of the U.S. population, with an average size of 24,928 people each. With Arkansas and Ohio included, only 5.8% of Americans live in places where background checks are suspended.

"While I'm pleased with the results of this study, unfortunately, a few bad apples can spoil the whole bunch," said Schumer. "You can be sure that gunrunners will be drawn to these 'Brady-free' states like bees to honey."

- MORE -

An earlier report by Rep. Schumer traced the flow of guns used in crimes. It showed that guns are sold in states with weak gun laws and then used by criminals in states with strong laws. Even before the Brady ruling, Ohio and Arkansas were key sources of guns due to weak state gun laws. Ohio supplied 823 crime guns to other states, 7th most in the country. Arkansas was a key supplier to surrounding states such as Illinois, Missouri and Tennessee.

"The NRA has fought gun control every step of the way," added Schumer. "But as this study shows, they're on the losing side of this battle. The NRA will never defeat a public -- and police -- united for gun control."

# # #

## FACT SHEET: SCHUMER SURVEY OF POLICE AGENCIES ON BRADY CHECKS

Last month, the Supreme Court overruled the section of the Brady Law which required state or local law enforcement to conduct background checks on gun buyers. Other provisions in Brady, such as the five-day waiting period, remained intact. Just as significant, state and local law enforcement agencies are free to continue conducting background checks voluntarily.

This survey offers the first snapshot showing how many state and local agencies will continue to conduct background checks. The picture that develops is very clear: all across America, most police are still following the Brady Law by choice.

### **Decision Has No Impact in 27 States**

By the time the Supreme Court ruled on the Brady Law, 27 states and several territories had established their own programs to check the backgrounds of gun purchasers (such as a telephone or computerized "Instant Check" or a required permit for all gun buyers) -- including 18 of the nation's 20 most populous states. In these states, the Court's decision will have **no impact at all**.

Only 24 states (including Puerto Rico) still used the federal system of a five day waiting period and a background check conducted by state or local law enforcement when the Court ruled. These are the only states in which the Court's decision had an impact. In some, county or city law enforcement conducts checks; in others, a state agency runs all checks:

Alabama	Mississippi	Puerto Rico
Alaska	Montana	Rhode Island
Arizona	Nevada	South Carolina
Arkansas	New Mexico	South Dakota
Kansas	North Dakota	Texas
Kentucky	Ohio	Vermont
Louisiana	Oklahoma	West Virginia
Maine	Pennsylvania	Wyoming

### **Most agencies continue to run checks**

All 1,450 designated state and local agencies in these 24 states were telephoned over the last week. Of the agencies responding, **94.4% said that they were still doing background checks after the Court's decision:**

- 1,179 said that background checks are continuing
- 70 said that background checks had stopped.
- 203 agencies did not respond or could not be reached.

## Most agencies that don't do checks are small

Putting aside two states that are special cases (see below), the 68 agencies that have stopped checks are very small (see attached list):

- The total population living in these jurisdictions is 1,695,090 (or 0.6% of the U.S population).
- Their average population is 24,928.
- Nearly half the jurisdictions have populations below 10,000.
- The three largest jurisdictions are Dona Ana County, New Mexico (pop 155,469). Quachita County, Louisiana (pop 146,447) and Shelby County, Alabama (pop 118,224). None of the others have populations above 100,000.
- The three smallest jurisdictions are three tiny towns in Montana: Darby (pop 625), Pinesdale (pop 855) and Harlem (pop 885).

## Ohio and Arkansas are the largest holdouts

Two states -- Ohio and Arkansas -- have announced that they will not conduct background checks for the time being, as they await further legal opinions on their authority under state law. It is unclear whether background checks will ultimately be authorized in these states.

In both states, many law enforcement authorities wish to continue the checks. State officials have simply suspended the checks to clarify their legal standing.

In Ohio, the state's Attorney General determined that she had no authority to require background checks under state law. Her agency is checking the background of anyone who consents to a check, and forwarding other names to ATF. According to a Peter Hart poll released by the Handgun Control Federation of Ohio this morning, 90% of Ohioans support continuing background checks, and 84% believe the Attorney General's interim plan is ineffective.

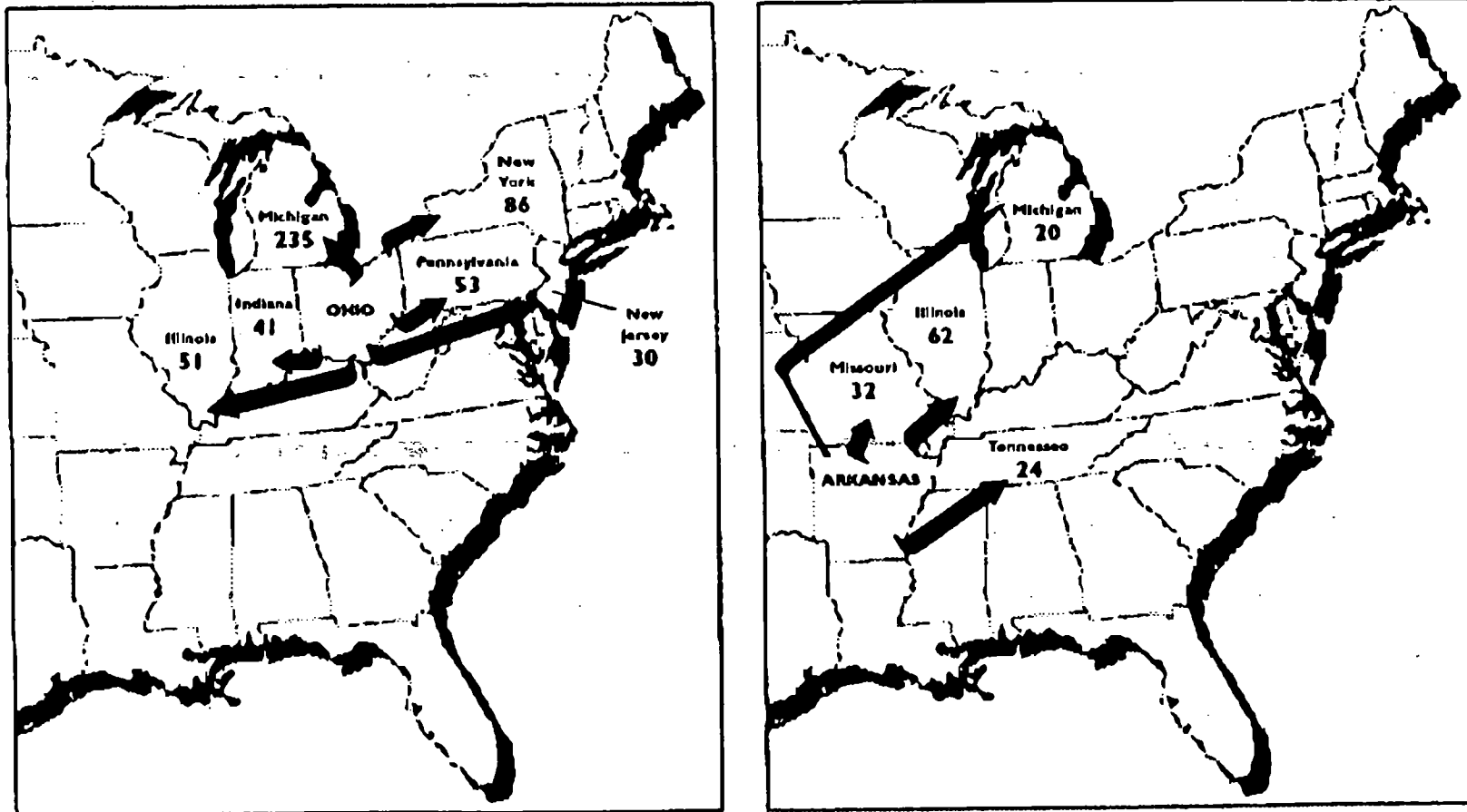
In Arkansas, the State Police have announced that checks are suspended while the agency awaits a legal opinion on their future from the state government.

Ohio and Arkansas, with a combined population of over 13 million, are much larger than all the other jurisdictions combined. Yet even with these two jurisdictions included, only 5.8% of Americans (15,250,018 people) live in places where Brady checks have ceased.

However, an earlier report by Rep. Schumer that traced the flow of guns used in crimes entitled the "War Between the States", showed that guns are sold in states with weak gun laws and then used by criminals in states with strong laws. Ohio and to a lesser extent Arkansas, were already key sources for gunrunners even before the Supreme Court ruling due to weak state gun laws.

Ohio was the 7th largest supplier of crime guns to other states in the country. It is also the biggest supplier in the Midwest sending guns to neighboring Michigan and throughout the Northeast. Arkansas, while not as large source of guns overall, was still a key supplier for surrounding states such as Illinois, Missouri, Tennessee and Michigan.

# OHIO and ARKANSAS: Already Major Sources of Guns for Criminals



**Guns purchased in Ohio and Arkansas and traced to crimes in selected states, 1996.**

SOURCE:ATF

Chief Law Enforcement Officers (CLEO's) that do not do background checks on gun purchasers

<u>Jurisdiction</u>	<u>State</u>	<u>Population</u>
Blount, County of	Alabama	41,438
De Kalb, County of	Alabama	57,488
Shelby, County of	Alabama	118,244
St. Clair, County of	Alabama	55,930
Kenai, City of	Alaska	45,216
Kotzebue, City of	Alaska	3,160
Butler, County of	Kansas	55,736
Decatur, County of	Kansas	3,586
McPherson, County of	Kansas	28,101
Stevens, County of	Kansas	5,177
Wichita, County of	Kansas	2,886
Jackson, County Parish	Louisiana	15,683
Quachita, County Parish	Louisiana	146,447
Union, County Parish	Louisiana	21,474
West Carroll, County Parish	Louisiana	11,999
Adams, County of	Mississippi	34,734
Benton, County of	Mississippi	7,924
Gulfport, City of	Mississippi	64,000
Rolling Fork, City of	Mississippi	2,444
Blaine, County of	Montana	7,054
Fergus, County of	Montana	12,588
Garfield, County of	Montana	1,433
Judith Basin, County of	Montana	2,246
Meagher, County of	Montana	1,830
Ravalli, County of	Montana	30,701
Sweet Grass, County of	Montana	3,269
Teton, County of	Montana	6,438
Wheatland, County of	Montana	2,355
Chinook, City of	Montana	1,525
Choteau, City of	Montana	1,700
Darby, City of	Montana	625
Hamilton, City of	Montana	4,000
Harlem, City of	Montana	885
Lewistown, City of	Montana	8,000

Pinesdale, City of	Montana	855
Dona Ana, County of	New Mexico	155,469
Otero, County of	New Mexico	54,307
Archer, County of	Texas	7,941
Cass, County of	Texas	30,393
Deaf Smith, County of	Texas	19,251
Hays, County of	Texas	74,222
Hood, County of	Texas	31,537
Houston, County of	Texas	21,669
Kaufman, County of	Texas	58,270
Knox, County of	Texas	4,630
Lamar, County of	Texas	44,953
Lee, County of	Texas	13,553
Lipscomb, County of	Texas	2,951
Madison, County of	Texas	11,352
Morris, County of	Texas	13,216
Parker, County of	Texas	71,305
Galena Park, County of	Texas	10,000
Hereford, County of	Texas	14,765
Poteet, County of	Texas	3,300
Hidalgo, County of	Texas	5,380
Rosebud, County of	Texas	2,000
Silsbee, County of	Texas	7,000
Terrell, County of	Texas	12,500
Littlefield, City of	Texas	7,000
Lockney, City of	Texas	2,300
Daingerfield, City of	Texas	2,500
Quanah, City of	Texas	4,000
Bristol, City of	Vermont	3,900
Laramie, County of	Wyoming	78,040
Niobrara, County of	Wyoming	2,554
Sublette, County of	Wyoming	5,375
Cheyenne, City of	Wyoming	52,000
Natrona, City of	Wyoming	<u>63,886</u>
		1,695,090

***TAB B***

**FOR IMMEDIATE RELEASE**  
Wednesday, July 16, 1997

**CONTACT: Eric Fingerhut**  
Handgun Control Federation of Ohio  
216/781-2944 x507

## **Ninety percent of Ohio Voters Want Ohio AG to Resume Conducting Background Checks on Gun Purchasers, New Poll Says**

(Cleveland, OH) – Ohio residents overwhelmingly support the Brady Law and its criminal background checks on handgun buyers, according to a new poll conducted by Peter Hart Research and commissioned by Handgun Control Federation of Ohio.

On June 27, 1997, the U.S. Supreme Court ruled that the federal government did not have the authority to require state and local governments to conduct background checks on handgun purchasers, though state and local governments could certainly conduct such checks if they wished. That same day, Ohio Attorney General Betty Montgomery announced that, "Today will be the last day that the Ohio Bureau of Criminal Identification and Investigation will accept Brady check calls from gun dealers." Ohio and Arkansas are the only two states in the nation to terminate the criminal background check policy.

The Peter Hart Research poll shows that 90% of Ohio residents believe that the state should continue to perform criminal background checks on potential handgun buyers. Additionally, 81% of those polled feel that any plan to make background checks "voluntary," like the one Ohio Attorney General Betty Montgomery has now put in place, will be less effective than requiring background checks for all potential handgun purchasers. Eighty percent of those polled say they oppose Attorney General Montgomery's decision.

Additionally, only 10% of those polled felt that Ohio's current gun control laws go too far, and 52% felt that they need to be strengthened.

The poll indicated that the policy of criminal background checks for potential handgun purchasers enjoys widespread support that cuts across political lines. Ohio Republicans support continued criminal background checks on potential handgun purchasers by a margin of 87% in favor, and just 11% opposed. Among individuals polled who identified themselves as generally having a "conservative" approach to issues, 87% support continued background checks. Handgun owners themselves overwhelmingly support the background checks, with 82% of gun owners in favor of the checks and only 16% opposed.

-more-

2

"Attorney General Montgomery's decision to stop conducting background checks on potential handgun purchasers is as unpopular as it was ill-conceived," said Eric Fingerhut, president of the Handgun Control Federation of Ohio. "This poll clearly shows that Ohioans continue to overwhelmingly support this common sense measure to keep guns out of the hands of criminals and children."

Peter Hart Research interviewed a random sampling of 603 Ohio voters from July 10-12, 1997. The margin of error is +/- 4.1 percentage points.

The Brady Law -- which, nationwide, stops 157 felons every day from purchasing handguns -- was implemented in February 1994 and requires a five-day waiting period for the purchase of a handgun. Although background checks are no longer mandatory under federal law since the recent U.S. Supreme Court decision, almost every state and local government continues to perform them either voluntarily or because of state law. Since the Brady Law was enacted more than 250,000 high-risk purchasers nationwide -- including more than 1,200 in Ohio -- have been prevented from purchasing a handgun.

-30-

PETER D. HART RESEARCH ASSOCIATES, INC.  
 1724 Connecticut Avenue, NW  
 Washington, DC 20009  
 (202) 234-5570

Interviewer: 603 voters  
 Dates: July 10-12, 1997

FINAL

Study #4945  
 Ohio Survey  
 July 1997

47 Male
53 Female
{5}

AREA		TYPE	SAMPLE POINT			FORM	DATE	1997
[6]	[7]	[8]	[9]	[10]	[11]	[12]	[13]	[14]

1. Are you registered to vote at this address?

Registered.....	100	CONTINUE	[15]
Not registered.....	-	TERMINATE AND DO NOT	
Not sure.....	-	COUNT TOWARD QUOTA	

2a. Thinking back over the past several years, do you think the problem of handgun violence here in Ohio has been getting better, getting worse, or staying about the same?

Getting better.....	7	[16]
Getting worse.....	42	
Staying about the same.....	43	
Not sure.....	8	

2b. Would you say that the current gun control laws here in Ohio that deal with the sale and possession of handguns (a) go too far and are more restrictive than they should be, (b) are about right, or (c) do not go far enough and need to be strengthened?

Go too far/more restrictive than they should be....	10	[17]
About right.....	27	
Don't go far enough/need to be strengthened.....	52	
Not sure.....	11	

3. As you may know, the U.S. Congress passed the Brady Law in 1993, which requires a five-day waiting period before a person can buy a handgun, and required law enforcement officials to perform a criminal background check during that period. What is your reaction to the Brady Law -- very favorable, somewhat favorable, somewhat unfavorable, or very unfavorable?

Very favorable.....	56	[18]
Somewhat favorable.....	25	
Somewhat unfavorable.....	8	
Very unfavorable.....	8	
Not sure.....	3	

4a. The U.S. Supreme Court recently ruled that the decision on whether to perform criminal background checks on potential handgun buyers cannot be required by the federal government, but instead should be left up to each state and locality. Before I just mentioned this, were you aware of this decision?

Yes, aware of Supreme Court decision.....	52	[19]
No, not aware of Supreme Court decision.....	47	
Not sure.....	1	

4b. Do you think the state of Ohio should or should not continue to perform criminal background checks on potential handgun buyers?

Ohio should continue to perform checks.....	90	[20]
Ohio should not continue to perform checks.....	8	
Not sure.....	2	

4c. Last week, Ohio's attorney general announced that Ohio would no longer require background checks on all handgun purchasers, and would conduct a background check only if the purchaser voluntarily agrees. Do you strongly favor, somewhat favor, somewhat oppose, or strongly oppose this decision to no longer require background checks on all handgun purchasers, and to only conduct background checks if the purchaser voluntarily agrees?

Strongly favor.....	9	[21]
Somewhat favor.....	8	
Somewhat oppose.....	12	
Strongly oppose.....	68	
Not sure.....	3	

5a. According to official state statistics, background checks in Ohio have stopped one thousand two hundred and six felons and other prohibited persons from purchasing a handgun since the Brady Law took effect in 1993. Given this fact, do you think Ohio should or should not continue to require background checks on all handgun purchasers?

Ohio should continue to perform checks.....	89	[22]
Ohio should not continue to perform checks.....	8	
Not sure.....	3	

5b. If Ohio changed its policies to conduct background checks only if the handgun purchaser voluntarily agrees, do you think this voluntary system would be much less effective, somewhat less effective, or no less effective in preventing criminals from purchasing handguns than the current system of requiring background checks for all handgun purchases?

Much less effective.....	66	[23]
Somewhat less effective.....	15	
No less effective.....	14	
More effective (VOL).....	1	
Not sure.....	4	

6. Under the Brady Law, state and local law enforcement officials currently can take up to five business days to complete background checks on handgun buyers. Some people say that the period for background checks should be reduced to two days, so legitimate gun purchasers are not inconvenienced by the waiting period. Other people say that law enforcement officials should continue to have five days, so they have the time they need to do a complete and thorough check.

Which way do you feel--that law enforcement officials should continue to be given up to five business days for conducting background checks, or that the period for background checks should be reduced to two days?

Continue with five days.....	81	[24]
Reduce to two days.....	12	
Other/neither (VOL).....	5	
Not sure.....	2	

- 7a. On a separate issue, would you favor or oppose changing the law in Ohio to make it easier for people to obtain permits to carry concealed handguns in public?

Favor .....	19	[25]
Oppose .....	75	
Not sure .....	6	

- 7b. If a candidate for major statewide office supported changing the law to make it easier for people to obtain permits to carry concealed handguns in public, would this make you more likely or less likely to support that candidate, or would it make little difference either way?

More likely to support .....	12	[26]
Less likely to support .....	55	
Makes little difference .....	27	
Not sure .....	6	

8. Leading public officials from surrounding states say that Ohio is becoming a center for gun purchases by out-of-state residents who want to take advantage of Ohio's weaker gun control laws; as a result, these officials have urged Ohio to strengthen its gun control laws. Do you think this is an important reason or not an important reason for strengthening Ohio's current gun control laws?

Important reason .....	76	[27]
Not important reason .....	19	
Not sure .....	5	

**FACTUALS:** These last few questions are for statistical purposes only.

- F1. In what age group are you--(READ LIST)?

18-24 .....	6	[28]
25-29 .....	9	
30-34 .....	7	
35-39 .....	11	
40-44 .....	11	
45-49 .....	12	
50-54 .....	8	
55-59 .....	8	
60-64 .....	6	
65 and over .....	20	
Refused .....	2	

- F2. How would you describe your overall point of view in terms of the political parties? Would you say you are mostly Democratic, leaning Democratic, completely independent, leaning Republican, or mostly Republican?

Mostly Democratic .....	26	[29]
Leaning Democratic .....	9	
Completely independent .....	25	
Leaning Republican .....	9	
Mostly Republican .....	26	
Not sure .....	5	

F3. Thinking about your general approach to issues, do you consider yourself to be liberal, moderate, or conservative?

Liberal.....	16	[30]
Moderate.....	42	
Conservative.....	38	
Not sure.....	6	

F4. For statistical purposes only, could you please tell me whether your total household income for last year was above \$35,000 or below \$35,000?

(IF "ABOVE \$35,000," ASK:) Would you say your household income was above \$50,000 or below \$50,000?

(IF "BELOW \$35,000," ASK:) Would you say your household income was above \$20,000 or below \$20,000?

Above \$50,000.....	26	[31]
\$35,000-\$50,000.....	22	
\$20,000-\$35,000.....	20	
Below \$20,000.....	13	
Not sure/refused.....	19	

F5a. Do you, or does anyone in this household, own a handgun?

Yes, own a handgun.....	27	[32]
No, do not own a handgun.....	70	
Not sure.....	3	

F5b. Are you, or is anyone in this household, a dues-paying member of the National Rifle Association?

Yes, NRA member.....	6	[33]
No, not an NRA member.....	92	
Not sure.....	2	

F6. What is your race -- are you white, black, Hispanic, or something else?

White.....	89	[34]
Black.....	9	
Hispanic.....	1	
Other.....	-	
Not sure.....	1	

PETER D. HART RESEARCH ASSOCIATES

Ohio Handgun Control Survey  
Study #6945  
July 10-12, 1997

Table 5

Sex of respondent

Banner 1

Sex	All Voters	Media Market				Area		Gun Control Laws (in Ohio)		Supreme Court Decision		Other	Party Identification			Ideology		
		Cincinnati	Dayton	Columbus	Toledo	Cuyahoga County	Go too far/ Not far about right	Aware of decision	Not aware of decision	Own handgun	Demo crats		Inde pendents	Repub licans	Lib erals	Mod erates	Conserv atives	
Total	603	216	87	69	104	51	77	228	310	313	202	161	208	153	214	95	254	219
Male	47%	47%	49%	48%	47%	48%	48%	65%	35%	58%	36%	58%	40%	51%	53%	44%	44%	52%
Female	53%	53%	51%	52%	53%	52%	52%	35%	65%	42%	64%	42%	60%	49%	47%	56%	56%	48%

07/18/97 WED 19:43 FAX 202 514 7864  
7-15-1997 9:53PM FROM CPHV 202 465 1351

DOJ OPLIA

020

Peter D. Hart Research Associates, Inc.

PETER O. HART RESEARCH ASSOCIATES

Ohio Handgun Control Survey  
 Study #4945  
 July 10-12, 1997

Table 5

Sex of respondent

Banner 2	Sex		Age				Sex: Age				Income			Race	
	Men	Women	18-34	35-49	50-64	65 and over	Men 18-49	Men 50 and over	Women 18-49	Women 50 and over	Below \$35,000	\$35,000-\$50,000	Above \$50,000	Whites	Blacks
All Voters	603	320	133	205	133	121	161	118	177	133	198	133	158	537	54
Total	603	320	133	205	133	121	161	118	177	133	198	133	158	537	54
Male	47%	100%	50%	46%	48%	46%	100%	100%			42%	52%	55%	46%	53%
Female	53%	100%	50%	54%	52%	54%		100%	100%	58%	48%	45%	54%	47%	

PETER O. HART RESEARCH ASSOCIATES

Ohio Handgun Control Survey  
 Study #4945  
 July 10-12, 1997

AREA

Banner 1

AREA	All Voters	Media Market					Area	Gun Control Laws in Ohio		Supreme Court Decision		Other		Party Identification			Ideology		
		Cleveland	Cincinnati	Dayton	Columbus	Toledo		Cuyahoga County	Go too far/about right	Not far enough	Aware of decision	Not aware of decision	Own handgun	Democrats	Independents	Republicans	Liberals	Mod-erals	Conservatives
Total	603	216	87	69	104	51	77	228	310	313	282	161	208	153	214	95	254	219	
Cuyahoga County	13%	36%					100%	10%	15%	14%	12%	12%	14%	15%	10%	12%	14%	12%	
Rest of Cleveland media	23%	64%						20%	23%	22%	24%	19%	26%	22%	22%	20%	25%	21%	
Youngstown media	5%							5%	6%	5%	6%	3%	10%	3%	3%	11%	5%	5%	
Wheeling, WV-Steubenville media	2%							1%	1%	1%	2%	3%	3%	1%	1%	3%	2%	1%	
Zanesville media	1%							2%		1%			1%	1%		1%		1%	
Columbus media	17%				100%			20%	18%	17%	18%	22%	14%	17%	22%	14%	17%	19%	
Toledo media	8%					100%		8%	8%	7%	10%	6%	10%	5%	6%	11%	9%	7%	
Lima media	1%							2%		1%	1%	2%	1%	1%		2%	1%		
Ft. Wayne, IN media								1%								2%	1%		
Dayton media	12%			100%				10%	14%	12%	11%	11%	8%	14%	12%	12%	11%	12%	
Cincinnati media	6%		64%					7%	5%	7%	6%	8%	3%	8%	9%	7%	5%	7%	
Charles-Huntington, WV media	6%							5%	2%	4%	3%	5%	4%	2%	4%	3%	3%	4%	
Hamilton County	8%		56%					9%	8%	9%	7%	8%	6%	1%	8%	4%	8%	11%	

Peter D. Hart Research Associates Inc.

PETER D. HART RESEARCH ASSOCIATES

Ohio Handgun Control Survey  
 Study #4946  
 July 10-17, 1997

AREA

Banner 2	Sex		Age				Sex: Age				Income			Race		
	All Voters		18-34	35-49	50-64	65 and over	Men 18-49	Men 50 and over	Women 18-49	Women 50 and over	Below \$35,000	\$35,000-50,000	Above \$50,000	Whites	Blacks	
	Men	Women														
Total	603	283	320	133	205	133	121	161	118	177	135	198	133	158	537	54
Cuyahoga County	13X	13X	13X	11X	16X	11X	13X	13X	11X	12X	14X	14X	11X	12X	10X	37X
Rest of Cleveland media	23X	22X	24X	26X	22X	20X	25X	22X	23X	25X	22X	24X	29X	17X	25X	12X
Youngstown media	5X	5X	6X	4X	5X	5X	8X	4X	7X	5X	6X	6X	4X	3X	6X	2X
Wheeling, WV-Steubenville media	2X	2X	1X		1X	3X	3X	1X	3X		3X	2X	2X		2X	1X
Zanesville media	1X	1X	1X	1X		1X		1X	1X	1X		1X	1X	1X	1X	
Columbus media	17X	17X	17X	21X	15X	16X	18X	17X	18X	18X	17X	15X	15X	19X	17X	16X
Toledo media	8X	9X	8X	10X	8X	8X	8X	11X	6X	7X	9X	9X	8X	7X	8X	12X
Lima media	1X	1X	1X	1X		2X	1X	1X	1X		2X	1X	1X	1X	1X	
Ft. Wayne, IN media					1X		1X		1X	1X			1X	1X		
Dayton media	12X	12X	11X	10X	12X	16X	9X	10X	15X	12X	10X	11X	7X	18X	11X	14X
Cincinnati media	6X	7X	6X	6X	8X	6X	4X	9X	4X	5X	6X	4X	9X	9X	7X	
Charles Huntington, WV media	4X	3X	4X	2X	5X	2X	4X	2X	3X	6X	3X	5X	2X	3X	4X	
Hamilton County	8X	8X	8X	8X	9X	10X	6X	9X	7X	8X	8X	8X	10X	9X	8X	6X

---

- Law Enf. asked  
for help →  
where they are  
not able to  
(to do checks).

---

- Critical to  
this effort  
more agents to  
investigate.  
Although some...  
I hope we will

- CRACK  
REPORT

---

**From:** Michael Froman  
**To:** EX.MAIL."cerda\_j@al.eop.gov", EX.MAIL."deich\_m@al....  
**Date:** 7/16/97 5:53pm  
**Subject:** kids and guns funding

We have reviewed DPC's proposal and analyzed our funding situation in light of the recent mark-up of our appropriations bill in the Senate. It might be useful to do a conference call or meeting tomorrow to settle any remaining issues, but here's where we are:

1. Contrary to Senator Campbell's comment, Treasury Enforcement was not funded above the President's request. In fact, it left out important infrastructure investments (e.g., ATF's new headquarters).
2. We have determined that the \$11 million from the Customs Forfeiture Fund can still be made available, although it cannot be used to hire FTE's.
3. We have looked at DPC's proposal for expanding the tracing center by 13 tracers and for placing 3 (vs. 6) agents in each city. We do not believe that the 13 tracers are sufficient to expand the tracing program to the additional 10 cities and to boost tracing beyond the 37% level. Also, ATF continues to maintain that these cases are labor intensive and, if pressed, would rather put 6 agents in half as many cities than to put 3 agents in all of the cities. Therefore, we have the following proposal to make:

-- We think the President in his radio address could announce the following: a) we will expand tracing to 10 additional cities (using the \$11 million from the Customs Forfeiture fund for equipment and contract employees), b) we will work with local and state law enforcement officials to strengthen their capacity to work with gun traces (assuming the \$3 million in Justice money is available), and 3) we will work with Congress to get further support for agents to investigate these gun cases.

4. That "support" could come in the following forms: a) permission to increase Treasury's carry-over authority from 50% to 100%, or 2) some other means that our appropriators might suggest. We also would need a commitment from OMB to approve the request for the necessary additional agents for the 25 cities in FY 99 and beyond.

5. We will not be able to promise agents in the 25 cities, and we should not raise expectations about numbers of cases, etc., but this announcement could help build support for further agent funding.

**CC:** EX.MAIL."serena\_c\_torrey@oa.eop.gov"

**Brady Law Follow Up Meeting  
Agenda  
August 1, 1997**

I. Voluntary Background Checks -- Treasury

- A. Overall survey of CLEOs
- B. Arkansas
- C. Ohio

II. Insta-Check System -- Justice

III. Options:

- A. Continue to work with CLEOs on voluntary checks
- B. Clarify state and local authority, immunity, fees
- C. Schumer/DOJ legislation
- D. Condition grants
- E. Authorize more NCHIP (National Criminal History Improvement Program) funding and require background checks

IV. Law enforcement groups



U.S. Department of Justice  
*Office of Intergovernmental Affairs*

---

Office of the Director

Washington, D.C. 20530

July 24, 1997

**TO:** Jose Cerda  
456-7028

**FROM:** Nicholas M. Gess, Director  
Office of Intergovernmental Affairs  
U.S. Department of Justice, Room 1340 Main  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001  
(202) 514-3465 (office)  
(202) 514-2504 (facsimile)  
gessni@justice.USDOJ.gov (EMAIL)

**SUBJECT:** Arkansas Brady Statement

**# PAGES:** (including cover sheet)

**REMARKS:** Jose - Attached is the Arkansas AG statement. Nick



# STATE OF ARKANSAS

Office of the Attorney General

Winston Bryant  
Attorney General

Telephone:  
(501) 682-2007

## Opinion No. 97-253

July 24, 1997

Colonel John R. Bailey, Director  
Arkansas State Police  
#1 State Police Plaza Drive  
Little Rock, Arkansas 72209

Dear Colonel Bailey:

This is in response to your request for an opinion concerning the performance of background checks on prospective purchasers of handguns in light of the recent decision by the United States Supreme Court in *Printz v. United States*, 521 U.S. \_\_\_\_ (decided June 27, 1997). More specifically, you have presented the following questions:

1. Does A.C.A. § 12-12-1009 give the Arkansas State Police sufficient authority to continue the Brady background checks in view of the *Printz* ruling?
2. If you find that the previous question is answered in the affirmative, does A.C.A. § 12-12-1012, or any other statute, allow the Arkansas State Police to charge a fee for conducting a federally mandated Brady check?
3. Is the Arkansas State Police likely to prevail on the merits in defending a case for illegal exaction if we resume the Brady background checks and collect a fee under the foregoing statutes?

Colonel John R. Bailey, Director  
Arkansas State Police  
Opinion No. 97-253  
Page 2

In *Printz*, the Court concluded that the federal government could not compel state and local law enforcement officers to conduct background checks under the Brady Handgun Violence Protection Act. It is my opinion, however, that independent statutory authority exists in Arkansas law authorizing the Arkansas State Police to perform background checks on individuals seeking to purchase handguns, and that the Arkansas State Police may provide conviction information to federally-licensed firearms dealers. It is also my opinion that the Arkansas State Police may charge a fee for conducting a background search and providing the results to firearms dealers.

*Question 1 -- Does A.C.A. § 12-12-1009 give the Arkansas State Police sufficient authority to continue the Brady background checks in view of the Printz ruling?*

Pursuant to the interim provisions of the Brady Handgun Violence Protection Act, 18 U.S.C. § 922(s), federally-licensed firearms dealers are generally required to obtain the name, address, and date of birth of each prospective buyer as well as a sworn statement containing certain personal information about the buyer. 18 U.S.C. § 922(s)(1)(A)(i); see also *Koog v. United States*, 79 F.3d 452 (5th Cir. 1996), *cert denied*, *Gonzales v. U.S. and U.S. v. Gonzales*, \_\_\_ S.Ct. \_\_\_ (June 27, 1997). The dealer is then required to forward this information to the chief law enforcement officer (CLEO) of the place of residence of the buyer or to the particular official who has been designated to receive such notice. *Id.* The dealer may sell the handgun to the prospective buyer if the CLEO notifies the dealer that he has no information that would disqualify the purchaser or if the five-day period expires without a response from the CLEO. 18 U.S.C. § 922(s)(1)(A)(ii); see also *Koog, supra*. The Arkansas State Police, of course, has complied with the federal act as the CLEO designated to receive notice from the dealers. See Op. Att'y Gen. No. 94-174.

In *Printz*, however, the Supreme Court held that the mandatory obligation imposed by the Brady Act on chief law enforcement officers to perform background checks on prospective handgun purchasers is unconstitutional. Thus, the Arkansas State Police are not required, as formerly believed, to perform background checks as a matter of federal law. *Printz*, however, did not end the requirement that federally-licensed firearms dealers must meet certain obligations under the Brady Act nor did it suggest that the states could not or should not continue to perform the checks. See *Koog, supra* (duties imposed upon federally-licensed firearms dealers

Colonel John R. Bailey, Director  
Arkansas State Police  
Opinion No. 97-253  
Page 3

are severable from requirement that local law enforcement officers conduct background checks).

Arkansas Code Annotated §§ 12-12-1009 and 12-12-1011 grant the Arkansas State Police the authority to disseminate conviction information to any nongovernmental entity authorized by federal law to receive such information. Under the Brady Act, a federally-licensed firearms dealer is authorized to receive information concerning whether the receipt or possession of the handgun by the prospective purchaser would be in violation of federal, state, or local law. 18 U.S.C. § 922(s)(1)(A)(ii), (s)(4) and (s)(5). Accordingly, the State Police may provide conviction information to federally-licensed firearms dealers.

Without question, the Arkansas Crime Information Center is authorized to collect and maintain criminal history information. See generally A.C.A. §§ 12-12-1001 and 1003. The General Assembly has specifically addressed the release of information (dissemination) for criminal justice purposes, noncriminal justice purposes, and other purposes. See A.C.A. §§ 12-12-1008 - 1010. Arkansas Code Annotated § 12-12-1009(a) provides in part that "Conviction information shall be made available for the following noncriminal justice purposes: . . . (2) To any nongovernmental entity authorized either by the record subject in writing or by state or federal law to receive such information."<sup>1</sup> Conviction information is defined in A.C.A. § 12-12-1001(3) as "criminal history information disclosing that a person has pleaded guilty or nolo contendere to, or was found guilty of, a criminal offense in a court of law, together with sentencing information." Because conviction information pursuant to a Brady request is being disseminated to a federally-licensed firearms dealer rather than to a criminal justice agency, the information is necessarily being made available for one of the enumerated noncriminal justice purposes.

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<sup>1</sup> The clause "or federal" was not included in the original act, Act 1109 of 1993, but was inserted by Acts 37 and 38 of 1994 (2nd Ex. Sess.). It should also be noted that the use of the term "shall" in a statute generally means the legislature intended mandatory compliance; therefore, it would appear that either the Department of Arkansas State Police Identification Bureau or the Arkansas Crime Information Center must make the information available. See A.C.A. § 12-12-1011 (Criminal history information for noncriminal justice purposes may only be released by the Department of Arkansas State Police Identification Bureau or the Arkansas Crime Information Center pursuant to the limitations contained in A.C.A. § 12-12-1009).

Colonel John R. Bailey, Director  
Arkansas State Police  
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*Question 2 -- If you find that the previous question is answered in the affirmative, does A.C.A. § 12-12-1012, or any other statute, allow the Arkansas State Police to charge a fee for conducting a federally mandated Brady check?*

It is my opinion that the Department of Arkansas State Police Identification Bureau (Identification Bureau) is authorized to charge a fee for providing criminal history information for noncriminal justice purposes. See A.C.A. § 12-12-1012. The amount of such fee is to be determined jointly by the Identification Bureau and the Arkansas Crime Information Center, but it may not exceed twenty dollars. Id.

*Question 3 -- Is the Arkansas State Police likely to prevail on the merits in defending a case for illegal exaction if we resume the Brady background checks and collect a fee under the foregoing statutes?*

I must note initially that because the outcome of any litigation will turn largely upon the evidence that is presented to the court, and upon the court's acceptance or rejection of such evidence, I am not in a position to predict the likelihood of any party's success in such litigation. It is, nevertheless, my opinion that the collection of the fee that is authorized under A.C.A. § 12-12-1012 does not constitute an "illegal exaction."

The prohibition against "illegal exactions" is set forth in Article 16, § 13 of the Arkansas Constitution, which states: "Any citizen of any county, city or town may institute suit in behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever." The Arkansas Supreme Court has recognized that an "illegal exaction" can take two forms: (1) a misapplication of public funds and (2) an illegal tax. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992), *cert. denied*, 506 U.S. 826, 113 S.Ct. 82, 121 L.Ed.2d 46 (1992). The situation about which you have inquired clearly does not involve the misapplication of public funds. Accordingly, the question is whether the charge under consideration constitutes an "illegal tax."

It is my opinion that it does not. More specifically, it is my opinion that the charge that is authorized under A.C.A. § 12-12-1012 constitutes a "fee" rather than a "tax" and that therefore the "illegal exaction" clause of the Arkansas Constitution (Article 16, § 13) is not implicated.

Colonel John R. Bailey, Director  
Arkansas State Police  
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The Arkansas Supreme Court has recognized a distinction between a "tax" and a "fee." In *City of Marion v. Baioni*, 312 Ark. 423, 850 S.W.2d 1 (1993), the court succinctly explained the distinction as follows:

The distinction between a tax and a fee is that government imposes a tax for general revenue purposes, but a fee is imposed in the government's exercise of its police powers. *City of North Little Rock v. Graham*, 278 Ark. 547, 647 S.W.2d 452 (1983).

See also *Barnhart v. City of Fayetteville*, 321 Ark. 197, 900 S.W.2d 539 (1995).

The above-quoted language from *City of Marion v. Baioni*, as well as the authorities cited by the court therein, indicates that if a charge is imposed for the purpose of providing specific services in the exercise of governmental police power, the charge constitutes a "fee" rather than a "tax." Under these authorities, the "illegal exaction" clause will not be implicated if the charge is a "fee" rather than a "tax."

The charge that is authorized by the provisions of A.C.A. § 12-12-1012 is, in my opinion, a "fee" rather than a "tax," and, therefore, the imposition of the charge cannot constitute an "illegal exaction."

My conclusion regarding this matter is based upon the fact that the provisions of A.C.A. § 12-12-1012 designate specific uses for the charge, as follows:

(b)(1) All fees shall be deposited immediately in the State Treasury as special revenue to the credit of the State Police Equipment Fund, which is hereby created on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State, there to be used for the acquisition of an automated fingerprint identification system.

(2) Effective July 1, 1997, such fees shall then be credited fifty percent (50%) to the Crime Information

Colonel John R. Bailey, Director  
Arkansas State Police  
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System Fund and fifty percent (50%) to the State Police Equipment Fund, there to be used for the continued operation and expansion of the automated criminal history system and for the operation and expansion of the automated fingerprint identification [sic] system, subject to legislative appropriations. Any balance in the State Police Equipment Fund on June 30, 1997, may also be used for the operation and expansion of the automated fingerprint identification system.

(3) Special revenues deposited in the Crime Information System Fund and the State Police Equipment Fund may be used for personal services and operating expenses as provided by law, for conducting criminal background checks for noncriminal justice purposes, and such special revenues unused at the end of any fiscal year shall be carried forward.

A.C.A. § 12-12-1012(b), as amended by Acts 447 and 1102 of 1997.

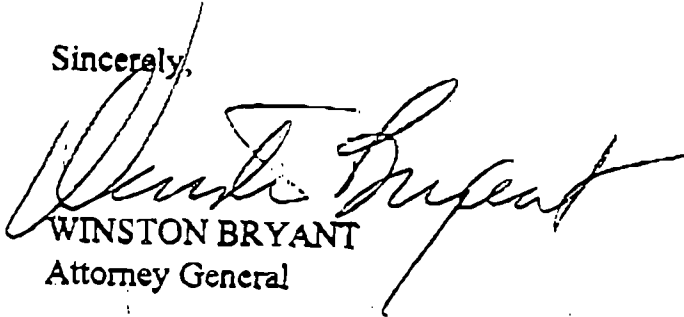
Because, as indicated by the above-quoted statutory language, the proceeds of the charge authorized by A.C.A. § 12-12-1012 are to be used for the purpose of providing specific services in the exercise of governmental police power, rather than being used for general governmental purposes, I must conclude that the charge constitutes a "fee" rather than a "tax." Accordingly, it is my opinion that the imposition of the charge cannot implicate the "illegal exaction" clause of the Arkansas Constitution.

After *Printz*, although the State Police has no federal obligation to comply with the Brady Act, it has the state statutory authority to provide federally-licensed firearms dealers information consistent with their federal obligation under the Brady Act. In addition, it has the state statutory authority to charge a fee for providing such information.

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Arkansas State Police  
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The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Warren T. Readnour.

Sincerely,



WINSTON BRYANT  
Attorney General

WB:WTR/cyh



U.S. Department of Justice  
Office of Intergovernmental Affairs

Director

Washington, D.C. 20530

July 24, 1997

MEMORANDUM FOR:

Rahm Emanuel  
Assistant to the President


Bruce Reed  
Assistant to the President and  
Director, Domestic Policy Council

Mickey Ibarra  
Assistant to the President and  
Director of Intergovernmental Affairs

Maria Echaveste  
Assistant to the President and  
Director of Public Liaison

Jose Cerda  
Senior Policy Advisor  
Domestic Policy Council

FROM:

  
Nicholas M. Gess  
Director of Intergovernmental Affairs  
Department of Justice

SUBJECT:

National Insta Check (NICS) System

Attached please find copies of materials regarding the Brady Handgun Control Act and the National Insta Check (NICS) system which we have sent to all Governors, state attorneys general and appropriate advocacy groups.

Please do not hesitate to call me on 514-3465 if you have any questions.

Enclosures



U.S. Department of Justice  
Office of Intergovernmental Affairs

Office of the Director

Washington, D.C. 20530

July 24, 1997

MEMORANDUM FOR: All State Attorneys General  
All Chief Prosecutors

FROM: Nicholas M. Gess *NMG*  
Director  
Office of Intergovernmental Affairs

SUBJECT: Implementation of the National Insta-Check  
System

Last week, representatives of state, county and local law enforcement met with Attorney General Janet Reno and Secretary of the Treasury Robert E. Rubin to discuss the continued implementation of the Brady Handgun Control Act (Brady Act) in light of a recent decision of the United States Supreme Court, Printz v. United States.

As most of you are aware, effective December 1, 1998, the Federal Bureau of Investigation will operate a National Insta Check System (NICS) which will replace the current system in which state and local law enforcement conduct the background checks. This system will also be a boon to the criminal justice system inasmuch as it will protect law enforcement officers by allowing better criminal history checks in connection with routine law enforcement contacts such as traffic stops and the public because judges will have better information available when setting bail and imposing sentence.

However, the quality of the criminal records will only be as good as the quality of the records submitted by state criminal history systems. At the meeting, Assistant Attorney General Eleanor D. Acheson spoke on the issue of NICS and the important role which state and local officials will play. We have received a number of requests for copies of her remarks and thought that they might be of interest to you. A copy is enclosed. We hope that these materials are of assistance to you.

If you have any questions, please contact Deputy Director Matthew L. Levine on (202) 514-3465.

Enclosure



U.S. Department of Justice  
Office of Intergovernmental Affairs

Office of the Director

Washington, D.C. 20530

July 24, 1997

MEMORANDUM FOR: All Governors

FROM: Nicholas M. Gess *NMG*  
Director  
Office of Intergovernmental Affairs

SUBJECT: Implementation of the National Insta-Check System

Last week, representatives of state, county and local law enforcement met with Attorney General Janet Reno and Secretary of the Treasury Robert E. Rubin to discuss the continued implementation of the Brady Handgun Control Act (Brady Act) in light of a recent decision of the United States Supreme Court, Printz v. United States.

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Enclosure



U.S. Department of Justice  
Office of Intergovernmental Affairs

Office of the Director

Washington, D.C. 20530

July 24, 1997

MEMORANDUM FOR: All Interested Groups

FROM: Nicholas M. Gess *NMG*  
Director  
Office of Intergovernmental Affairs

SUBJECT: Implementation of the National Insta-Check System

Last week, representatives of state, county and local law enforcement met with Attorney General Janet Reno and Secretary of the Treasury Robert E. Rubin to discuss the continued implementation of the Brady Handgun Control Act (Brady Act) in light of a recent decision of the United States Supreme Court, Printz v. United States.

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If you have any questions, please contact Deputy Director Matthew L. Levine on (202) 514-3465.

Enclosure

## NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

REMARKS OF ELEANOR D. ACHESON  
ASSISTANT ATTORNEY GENERAL  
OFFICE OF POLICY DEVELOPMENT  
U.S. DEPARTMENT OF JUSTICE  
CONSULTATION WITH LAW ENFORCEMENT  
CONCERNING THE BRADY LAW  
U.S. DEPARTMENT OF THE TREASURY  
JULY 16, 1997

### I. INTRODUCTION -- THE NICS IS ON SCHEDULE.

- The Brady Act requires the National Instant Criminal Background Check System, known by the acronym "NICS" to be operative by November 30, 1998. The Justice Department, with the FBI at the forefront, has been working in close cooperation with the ATF to develop and implement the NICS system; and we are on schedule to meet the November 30, 1998 deadline. When it goes on-line, the NICS, which will draw principally on existing federal and state records systems, will have the capability to search state and federal files for information on persons prohibited from possessing a firearm -- within 30 seconds.

### II. THE STATES WILL PLAY A VITAL ROLE IN THE NICS.

- The NICS builds on the tradition of decentralized maintenance of criminal history records by state and local entities. The states, through the Brady Act Task Group, have played an important role in developing the design of the NICS, and the states will have a primary role in collecting, storing, and disseminating criminal history information.

### III. HOW THE NICS WORKS.

- The NICS will operate as follows: When a person goes to a licensed firearms dealer to buy a gun -- both handguns and long guns will be covered by the permit provisions of the Act -- the dealer will call a point of contact (POC), who in most cases will be a state law enforcement officer. The dealer will provide the POC with the prospective purchaser's identifying information, and the POC will check whether the prospective gun buyer is prohibited under state and local records from getting a gun either because the person has a criminal history or falls within another prohibited category.
- If the state and local check does not disclose any disqualifying information, the second step of the NICS check looks at national databases that are already in existence. The most important of these is the Interstate Identification Index (III), an ongoing federal/state initiative, which contains federal criminal records and provides leads to more than 25 million state and federal criminal history records. Additional databases are the National Criminal Information Center (NCIC) Hot Files, which include information on persons prohibited from obtaining a firearm because they are subject to a protective order, fugitives from justice, or felons under a deportation order. In addition to these databases, the NICS will also check the "NICS Index," which will contain records that are provided by federal agencies on the other categories of persons prohibited by the Gun Control Act from obtaining a firearm, such as persons who have renounced their citizenship, illegal aliens, or unlawful users of a controlled substance.

- Because the NICS will rely heavily on information maintained by the states and because state records on the categories of persons prohibited from possessing firearms are not complete, the automated system will not always provide definitive information within 30 seconds on whether a person is prohibited from purchasing a gun. In this case, further research by the POC will be required. For example, state criminal history records may indicate that the person has been convicted of a crime, but local information may be needed to determine whether the crime is a felony. In such cases, the POC typically will be able to determine a prospective purchaser's eligibility within a few hours. The Justice Department fully expects that the vast majority of NICS checks will be performed within 30 seconds.

#### IV. **UPDATED CRIMINAL HISTORY RECORDS ARE ESSENTIAL.**

- Ultimately, the NICS system will only be as good as the state criminal history records on which it depends. Therefore, it is essential to improve the accuracy, completeness, and automation of state criminal history records. To assist the states in accomplishing this goal, the Justice Department has already distributed \$112 million to the states to help them improve their criminal history records under the National Criminal History Improvement Program (NCHIP). At the national level, the Justice Department is working with the states to make the III even more comprehensive. Presently, thirty-two states participate in the III, and the majority of remaining states will be part of the III by the end of 1998.

**V. IT IS CRUCIAL FOR STATES TO DESIGNATE POCs.**

- State interests will best be served when the states designate state officials to serve as POCs for the NICS system, although the FBI will serve as POC for any state that declines to designate a state POC. When states provide POCs, NICS checks will be more up to date, accurate, and efficient. The state POCs will likely have access to state and local records that are unavailable to a federal POC, and the state POCs will have a greater familiarity with state and local records in their jurisdiction and can interpret these records more easily than a federal POC. Moreover, it is greatly to the states' advantage to designate a state POC, because the states will have greater control in determining who is barred from obtaining a firearm within the jurisdiction, and the state POCs will have the ability to enforce state laws that prohibit additional categories of individuals from obtaining a firearm.

**VI. CONCLUSION -- THE IMPORTANCE OF CONTINUED STATE PARTICIPATION.**

- The Justice Department, the FBI, ATF, and many other federal, state, and local law enforcement officials are engaged in extensive efforts to make the NICS as effective and efficient as possible when it goes on-line next year. The participation of state and local law enforcement in designing the NICS thus far has been essential and the continued input of state and local law enforcement is needed to make the NICS system live up to its potential. In particular, state and local enforcement should encourage state criminal justice agencies to designate state POCs and update criminal history records. The NICS will be more effective and less burdensome than the interim Brady

system, which already prevents approximately 6,600 felons and other prohibited persons from purchasing handguns each month. The Brady Act has already reduced crime and saved lives. With the continued valuable participation and support of the states, the NICS will be even more effective in preventing prohibited persons from obtaining firearms and, thus, reducing crime, saving lives of law enforcement and civilians alike and making our communities safer.