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Brady Fee/NICS [National Instant Criminal Background Check System] [2]

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The Real Story Regarding Current Brady Attacks

They're Trying to Kill the Brady Law

- Despite its proven effectiveness, the gun lobby has launched a full scale effort to sabotage the Brady Law when the FBI takes responsibility for Brady background checks in November of this year. Two changes have been proposed which, if adopted, would effectively kill the Brady Law.

Not Permitting The FBI To Charge A Fee Would Help Kill The Brady Law

- While they lack the votes to directly repeal the Brady Law, the gun lobby has convinced some members of Congress to deny the FBI the money it needs to conduct background checks on gun buyers.

- Starting in November, the Brady Law will require the FBI to take over from state and local law enforcement agencies the processing of around 7 million requests for gun purchaser background checks annually. This new responsibility will require the FBI to deploy over 800 people conducting tens of thousands of gun purchaser background checks each day of the year at an annual cost of around $100 million. Without the funds to cover these costs, the FBI will be unable to conduct the checks which keep guns out of the hand of felons, fugitives and other dangerous persons.

- School districts, day care centers, charities and other organizations that seek background checks on prospective teachers, child care workers, school bus drivers and other employees all pay the FBI a fee to cover the costs of those checks. Background check fees have been the primary funding source for Brady background checks conducted by state and local law enforcement officials over the last four years. Now, just four months before the FBI takes over responsibility for Brady background checks, the gun lobby wants to change the rules to give gun purchasers a special exemption from background check fees. A special exemption for background checks fee for gun purchasers would deny the FBI the money necessary to conduct gun purchaser background checks.

- Some have suggested that the Congress could provide the FBI the funds necessary to cover its costs in this area, *but no funds have been identified to meet this need.* In addition, because of the way the Brady law works, if its costs are covered by a direct appropriation rather than a fee, the FBI will have to handle background checks which would otherwise have been done by the states, and its personnel and other costs will increase accordingly. ***There is no indication that the Congress is really going to cover the FBI's operating costs with a direct appropriation, so if the fee is killed, Brady background checks have effectively been killed.***

Not Permitting The FBI To Keep Certain Records Would Help Kill The Brady Law

- The gun lobby also wants to sabotage the effectiveness of the computer system which will handle Brady background checks by making it impossible to prevent fraudulent submissions to the system from being caught.

- The gun lobby wants to force the FBI to immediately destroy records of those background checks which come back clean. Such a requirement would substantially undercut the reliability of the background check process. If the FBI is forced to immediately destroy records of the name the gun dealer sends in for a check, there will be no way for the FBI to audit its records to determine if false names are being submitted by a gun dealer. Furthermore, there will be no way to check whether gun dealers are running background checks for legitimate or illegitimate reasons.

- Forcing the FBI to destroy records necessary to the effective operation of the background check system (and necessary to preserving the privacy of those in the system) is merely another thinly veiled attempt to gut the Brady Law.

The answer to gun violence is not to weaken the gun laws that we already have in place, whether it's the Brady law or whether it's restrictions on the carrying of concealed weapons. Jim and I were very disappointed when the House Judiciary Committee earlier this week voted to allow millions of Americans to cross state lines and carry concealed weapons in other states. That would be wrong and dangerous.

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FILE h1025.enr
--H.R.1025--
H.R.1025
One Hundred Third Congress
of the
United States of America
AT THE FIRST SESSION
Begun and held at the City of Washington on Tuesday,
the fifth day of January, one thousand nine hundred and ninety-three
An Act
To provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be contacted by firearms dealers before the transfer of any firearm.

[Italic->] Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [<-Italic]

TITLE I--BRADY HANDGUN CONTROL

SEC. 101. SHORT TITLE.

This title may be cited as the `Brady Handgun Violence Prevention Act'.

(a) INTERIM PROVISION-

(1) IN GENERAL- Section 922 of title 18, United States Code, is amended by adding at the end the following:

`(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless--

`(A) after the most recent proposal of such transfer by the transferee--

`(i) the transferor has--

`(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

`(II) verified the identity of the transferee by examining the identification document presented;

`(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

`(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

`(ii)(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

`(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

`(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

`(C)(i) the transferee has presented to the transferor a permit that--

`(I) allows the transferee to possess or acquire a handgun; and

`(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

`(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

`(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

`(E) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

`(F) on application of the transferor, the Secretary has certified that compliance with subparagraph (A)(i)(III) is impracticable because--

`(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

`(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

`(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

`(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

`(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only--

`(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

`(B) a statement that the transferee--

`(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

`(ii) is not a fugitive from justice;

`(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

`(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

`(v) is not an alien who is illegally or unlawfully in the United States;

`(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

`(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

`(C) the date the statement is made; and

`(D) notice that the transferee intends to obtain a handgun from the transferor.

`(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to--

`(A) the chief law enforcement officer of the place of business of the transferor; and

`(B) the chief law enforcement officer of the place of residence of the transferee.

`(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

`(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

`(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law--

`(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

`(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

`(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

`(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

`(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages--

`(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

`(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

`(8) For purposes of this subsection, the term `chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

`(9) The Secretary shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.'.

(2) HANDGUN DEFINED- Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

`(29) The term `handgun' means--

`(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

`(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.'.

(b) PERMANENT PROVISION- Section 922 of title 18, United States Code, as amended by subsection (a)(1), is amended by adding at the end the following:

`(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless--

`(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

`(B)(i) the system provides the licensee with a unique identification number; or

`(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

`(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d)(1) of this title) of the transferee containing a photograph of the transferee.

`(2) If receipt of a firearm would not violate section 922 (g) or (n) or State law, the system shall--

`(A) assign a unique identification number to the transfer;

`(B) provide the licensee with the number; and

`(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

`(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if--

`(A)(i) such other person has presented to the licensee a permit that--

`(I) allows such other person to possess or acquire a firearm; and

`(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

`(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

`(B) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

`(C) on application of the transferor, the Secretary has certified that compliance with paragraph (1)(A) is impracticable because--

`(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

`(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

`(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

`(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

`(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Secretary may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than $5,000.

`(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages--

`(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

`(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.'.

(c) PENALTY- Section 924(a) of title 18, United States Code, is amended--

(1) in paragraph (1), by striking `paragraph (2) or (3) of'; and

(2) by adding at the end the following:

`(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined not more than $1,000, imprisoned for not more than 1 year, or both.'.

(a) DETERMINATION OF TIMETABLES- Not later than 6 months after the date of enactment of this Act, the Attorney General shall--

(1) determine the type of computer hardware and software that will be used to operate the national instant criminal background check system and the means by which State criminal records systems and the telephone or electronic device of licensees will communicate with the national system;

(2) investigate the criminal records system of each State and determine for each State a timetable by which the State should be able to provide criminal records on an on-line capacity basis to the national system; and

(3) notify each State of the determinations made pursuant to paragraphs (1) and (2).

(b) ESTABLISHMENT OF SYSTEM- Not later than 60 months after the date of the enactment of this Act, the Attorney General shall establish a national instant criminal background check system that any licensee may contact, by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 of title 18, United States Code, or State law.

(c) EXPEDITED ACTION BY THE ATTORNEY GENERAL- The Attorney General shall expedite--

(1) the upgrading and indexing of State criminal history records in the Federal criminal records system maintained by the Federal Bureau of Investigation;

(2) the development of hardware and software systems to link State criminal history check systems into the national instant criminal background check system established by the Attorney General pursuant to this section; and

(3) the current revitalization initiatives by the Federal Bureau of Investigation for technologically advanced fingerprint and criminal records identification.

(d) NOTIFICATION OF LICENSEES- On establishment of the system under this section, the Attorney General shall notify each licensee and the chief law enforcement officer of each State of the existence and purpose of the system and the means to be used to contact the system.

(e) ADMINISTRATIVE PROVISIONS-

(1) AUTHORITY TO OBTAIN OFFICIAL INFORMATION- Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate subsection (g) or (n) of section 922 of title 18, United States Code or State law, as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system.

(2) OTHER AUTHORITY- The Attorney General shall develop such computer software, design and obtain such telecommunications and computer hardware, and employ such personnel, as are necessary to establish and operate the system in accordance with this section.

(f) WRITTEN REASONS PROVIDED ON REQUEST- If the national instant criminal background check system determines that an individual is ineligible to receive a firearm and the individual requests the system to provide the reasons for the determination, the system shall provide such reasons to the individual, in writing, within 5 business days after the date of the request.

(g) CORRECTION OF ERRONEOUS SYSTEM INFORMATION- If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate subsection (g) or (n) of section 922 of title 18, United States Code or State law, the prospective transferee may request the Attorney General to provide the prospective transferee with the reasons therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The prospective transferee may submit to the Attorney General information to correct, clarify, or supplement records of the system with respect to the prospective transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to the prospective transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

(h) REGULATIONS- After 90 days' notice to the public and an opportunity for hearing by interested parties, the Attorney General shall prescribe regulations to ensure the privacy and security of the information of the system established under this section.

(i) PROHIBITION RELATING TO ESTABLISHMENT OF REGISTRATION SYSTEMS WITH RESPECT TO FIREARMS- No department, agency, officer, or employee of the United States may--

(1) require that any record or portion thereof generated by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons, prohibited by section 922 (g) or (n) of title 18, United States Code or State law, from receiving a firearm.

(j) DEFINITIONS- As used in this section:

(1) LICENSEE- The term `licensee' means a licensed importer (as defined in section 921(a)(9) of title 18, United States Code), a licensed manufacturer (as defined in section 921(a)(10) of that title), or a licensed dealer (as defined in section 921(a)(11) of that title).

(2) OTHER TERMS- The terms `firearm', `handgun', `licensed importer', `licensed manufacturer', and `licensed dealer' have the meanings stated in section 921(a) of title 18, United

States Code, as amended by subsection (a)(2).

(k) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated, which may be appropriated from the Violent Crime Reduction Trust Fund established by section 1115 of title 31, United States Code, such sums as are necessary to enable the Attorney General to carry out this section.

SEC. 104. REMEDY FOR ERRONEOUS DENIAL OF FIREARM.

(a) IN GENERAL- Chapter 44 of title 18, United States Code, is amended by inserting after section 925 the following new section:

`Sec. 925A. Remedy for erroneous denial of firearm

`Any person denied a firearm pursuant to subsection (s) or (t) of section 922--

`(1) due to the provision of erroneous information relating to the person by any State or political subdivision thereof, or by the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act; or

`(2) who was not prohibited from receipt of a firearm pursuant to subsection (g) or (n) of section 922,

may bring an action against the State or political subdivision responsible for providing the erroneous information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the erroneous information be corrected or that the transfer be approved, as the case may be. In any action under this section, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs.'.

(b) TECHNICAL AMENDMENT- The chapter analysis for chapter 44 of title 18, United States Code, is amended by inserting after the item relating to section 925 the following new item:

`925A. Remedy for erroneous denial of firearm.'.

SEC. 105. RULE OF CONSTRUCTION.

This Act and the amendments made by this Act shall not be construed to alter or impair any right or remedy under section 552a of title 5, United States Code.

SEC. 106. FUNDING FOR IMPROVEMENT OF CRIMINAL RECORDS.

(a) USE OF FORMULA GRANTS- Section 509(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended--

(1) in paragraph (2) by striking `and' after the semicolon;

(2) in paragraph (3) by striking the period and inserting `; and'; and

(3) by adding at the end the following new paragraph:

`(4) the improvement of State record systems and the sharing with the Attorney General of all of the records described in paragraphs (1), (2), and (3) of this subsection and the records required by the Attorney General under section 103 of the Brady Handgun Violence Prevention Act, for the purpose of implementing that Act.'.

(b) Additional Funding-

(1) GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS- The Attorney General, through the Bureau of Justice Statistics, shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used--

(A) for the creation of a computerized criminal history record system or improvement of an existing system;

(B) to improve accessibility to the national instant criminal background system; and

(C) upon establishment of the national system, to assist the State in the transmittal of criminal records to the national system.

(2) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated for grants under paragraph (1), which may be

appropriated from the Violent Crime Reduction Trust Fund established by section 1115 of title 31, United States Code, a total of $200,000,000 for fiscal year 1994 and all fiscal years thereafter.

TITLE II--MULTIPLE FIREARM PURCHASES TO STATE AND LOCAL POLICE

SEC. 201. REPORTING REQUIREMENT.

Section 923(g)(3) of title 18, United States Code, is amended--

(1) in the second sentence by inserting after `thereon,' the following: `and to the department of State police or State law enforcement agency of the State or local law enforcement agency of the local jurisdiction in which the sale or other disposition took place,';

(2) by inserting `(A)' after `(3)'; and

(3) by adding at the end thereof the following:

`(B) Except in the case of forms and contents thereof regarding a purchaser who is prohibited by subsection (g) or (n) of section 922 of this title from receipt of a firearm, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall not disclose any such form or the contents thereof to any person or entity, and shall destroy each such form and any record of the contents thereof no more than 20 days from the date such form is received. No later than the date that is 6 months after the effective date of this subparagraph, and at the end of each 6-month period thereafter, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall certify to the Attorney General of the United States that no disclosure contrary to this subparagraph has been made and that all forms and any record of the contents thereof have been destroyed as provided in this subparagraph.'.

TITLE III--FEDERAL FIREARMS LICENSE REFORM

SEC. 301. SHORT TITLE.

This title may be cited as the `Federal Firearms License Reform Act of 1993'.

SEC. 302. PREVENTION OF THEFT OF FIREARMS.

(a) COMMON CARRIERS- Section 922(e) of title 18, United States Code, is amended by adding at the end the following: `No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.'.

(b) RECEIPT REQUIREMENT- Section 922(f) of title 18, United States Code, is amended--

(1) by inserting `(1)' after `(f)'; and

(2) by adding at the end the following new paragraph:

`(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.'.

(c) UNLAWFUL ACTS- Section 922 of title 18, United States Code, as amended by section 102, is amended by adding at the end the following new subsection:

`(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.'.

(d) PENALTIES- Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

`(i)(1) A person who knowingly violates section 922(u) shall be fined not more than $10,000, imprisoned not more than 10 years, or both.

`(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.'.

SEC. 303. LICENSE APPLICATION FEES FOR DEALERS IN FIREARMS.

Section 923(a)(3) of title 18, United States Code, is amended--

(1) in subparagraph (A), by adding `or' at the end;

(2) in subparagraph (B) by striking `a pawnbroker dealing in firearms other than' and inserting `not a dealer in';

(3) in subparagraph (B) by striking `$25 per year; or' and inserting `$200 for 3 years, except that the fee for renewal of a valid license shall be $90 for 3 years.'; and

(4) by striking subparagraph (C).

Speaker of the House of Representatives.

Vice President of the United States and
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Bureau of Justice Statistics
Bulletin

A National Estimate

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Presale Handgun Checks, 1997

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During 1997 about 2,574,000 background checks of potential handgun buyers prevented an estimated 69,000 purchases. The inquiries revealed purchasers' ineligibility to buy a handgun under State or Federal laws, particularly the Brady Handgun Violence Prevention Act (Pub. L. No. 103-159, 107 Stat. 1536 (1993)), which became effective on February 28, 1994. Sixty-two percent of those rejected had been convicted of a felony or were under felony indictment.

From March 1, 1994, through the end of 1997, handgun sellers submitted an estimated 10.4 million inquiries about potential handgun buyers of whom about 242,000 were rejected. These estimates include about 62,000 rejections of handgun purchase applications in the last 10 months of 1994, 41,000 for all of 1995, and 70,000 for all of 1996.

The Firearm Inquiry Statistics (FIST) program administered by the Bureau of Justice Statistics (BJS) collected the data. FIST was initiated in 1994 to describe presale background checks of applicants to buy a handgun from a Federal firearm licensee. Chief law enforcement officers made the checks in accordance with the Brady Act or comparable State legislation.

Highlights

Presale handgun checks: Estimates of inquiries and rejections, 1997

	Presale checks for handguns, 1/1/97-12/31/97		
	All States	Original Brady States*	Brady States during 1997
Inquiries and rejections			
Inquiries/applications	2,574,000	1,197,000	803,000
Rejected	69,000	42,000	24,000
Rejection rate	2.7%	3.5%	3.0%
Reasons for rejection			
Felony indictment/conviction	43,000	30,000	12,000
Other	26,000	12,000	12,000

Note: All estimated counts are rounded. Percentages were calculated from unrounded data. Detail may not add to total because of rounding.

*Original Brady States are the 32 States required to follow presale review procedures set out in the Brady Act when it became effective on February 28, 1994. At the end of 1997, 23 of the 32 were still Brady States. (See table 2.)

- During 1997 about 69,000 out of an estimated 2,574,000 applications for the purchase of a handgun were rejected due to presale background checks of the potential purchasers.

- About 62% of the rejections were for a prior felony conviction or a current felony indictment. Domestic violence misdemeanor convictions accounted for over 9% of rejections; domestic violence restraining orders, 2%.

- In the 46 months from the inception of the Brady Handgun Violence Prevention Act to yearend 1997, an estimated 10,356,000 applications for handgun purchases resulted in 242,000 rejections through background checks.

- At the beginning of the Brady Act, March 1, 1994, 32 States and Puerto Rico were required to follow the procedures set forth in the act (Brady States). Currently there are 23 Brady States.

- After November 1998 —

  — presale background checks will be required for sales of all firearms, not just handguns

  — background checks will be made to the FBI's National Instant Criminal Background Check System (NICS), either directly or through the State Point of Contact (POC), unless the State operates under an approved firearm permit system.

- During 1997 the FBI received 3,930,000 inquiries to its National Crime Information Center about persons applying to carry or purchase a firearm.

Table 1. Reasons for rejection of handgun purchase applications, national estimates, 1997

Reason for rejection	All States	Original Brady States	Brady States during 1997
Total	100.0%	100.0%	100.0%
Felony (indictment/ conviction/no disposition)	61.7	69.9	50.3
Fugitive	5.9	7.5	12.8
Domestic violence			
Misdemeanor convictions	9.1	9.6	14.6
Restraining order	2.1	2.2	0.4
State law prohibition	6.1	3.0	5.7
Mental illness or disability	0.9	0.1	0.2
Drug addiction	1.6	2.2	5.2
Local law prohibition	0.9	0.1	0.1
Other*	11.7	5.4	10.7

*Includes illegal aliens, juveniles, persons discharged from the armed services dishonorably, persons who have renounced their U.S. citizenship, and other unspecified persons. At the end of 1997, 23 of the 32 original Brady States were still under the Brady Act.

The estimates of applications and rejections for handgun purchases include States operating under the Brady Act (Brady States) and States with comparable statutes preventing handgun sales to prohibited persons (Brady-alternative States). The original 32 Brady States started following the Brady Act review procedures on February 28, 1994. There were 18 original Brady-alternative States. At the end of 1996, because of changed statutes, there were fewer Brady States (23) and more Brady-alternative States (27) than originally; there was no change to this status in 1997.

Rates of rejection of potential handgun purchases in 1997 can be compared for these sets of States — the original or current grouping of Brady and Brady-alternative States.

In 1997 the original Brady States processed 1,197,000 applications and rejected about 42,000, a rejection rate of 3.5%. The original Brady-alternative States processed 1,378,000 applications and rejected 27,000 — 1.9%, which differed significantly from the rate for the original Brady States. In 1996 the original Brady States processed an estimated 1,213,000 applications and rejected about 44,000, a 3.6% rejection rate (*Presale Handgun Checks, 1996*, BJS Bulletin, NCJ 165704, September 1997).

The original Brady-alternative States processed 1,380,000 applications and rejected 26,000 — 1.9%.

The current Brady States in 1997 processed 803,000 applications, of which they rejected 24,000, a rejection rate of 3.0%. The current Brady-alternative States processed 1,771,000 and rejected 45,000 — 2.5%, a rate lower than the rejection rate of current Brady States. For 1996, the current Brady States processed 816,000 applications and rejected 25,000, a 3.1% rate, and the current Brady-alternative States processed 1,778,000 applications and rejected 45,000 — 2.5%.

For all States in both 1996 and 1997, the most prevalent reason for rejection was that the applicant either was under felony indictment or had a felony conviction (67.8% in 1996 and 61.7% in 1997).

In 1997 a misdemeanor conviction for domestic violence (9.1%) or being a violator of a State law prohibition (6.1%) were the next most prevalent reasons for rejection of a handgun purchase, followed by being a fugitive from justice (5.9%). In 1996 rejection for being a fugitive was 6%, and State law prohibition was 5.5%. Misdemeanor conviction for domestic violence was not added as a prohibited category until October 1996.

Almost all States are able to check computer databases to determine past criminal convictions (table 2). Some States are able to refer to other databases to check additional characteristics that may make a person ineligible to purchase a handgun — fugitive status, court restraining orders, and mental illness.

In the 44 States that reported rejections for fugitive status, 6.7% of handgun application rejections were for such a status. In the 36 States checking for a disqualifying domestic-violence related restraining order, potential purchasers accounted for 5.5% of application rejections. Fifteen States reported rejections for applicants with mental illness; in these States mental illness accounted for 1.9% of the handgun application rejections. In States that reported rejections based on misdemeanor convictions for domestic violence, 10.9% of handgun application rejections were due to a prior misdemeanor conviction.

Nonfelony reasons	Percent of rejections in States that search records for specific nonfelony reasons
Fugitive	7%
Mental illness	2
Domestic violence	
Misdemeanor convictions	11
Restraining orders	6

Note: Percentages cannot be added because a different set of States is included in each category of reasons.

Statewide reporting of handgun applications and rejections

State governments, the Federal Bureau of Investigation (FBI), and the Bureau of Alcohol, Tobacco and Firearms (BATF) have cooperated to identify about 5,400 law enforcement agencies and their heads as chief law enforcement officers (CLEOs) nationwide. Data for 1997 were collected from 268 CLEOs out of a sample of 600. 311 CLEOs provided data in 1996. The decline is due in part to the U.S. Supreme Court decision in June 1996 that CLEOs were no longer required to make a mandatory background check (see *Background* for further details).

Among the responding CLEOs, 21 served as the only CLEO for the State and provided statewide totals (table 3). These States, which represented 50% of U.S. resident population and over half of the total applications for handgun purchases during 1997, processed 1,440,963 applications and rejected 35,382 — a rejection rate of 2.5%. Sixty percent of rejections were for a past felony conviction or felony indictment.

Reason for rejection by 21 statewide CLEOs	
Felony (indictment/ conviction/no disposition)	64%
Domestic violence	
Misdemeanor conviction	10
Restraining order	2
Fugitive	6
State law prohibition	5
Mental illness or disability	1
Drug addiction	1
Other*	11

*Includes illegal aliens, juveniles, persons discharged from the armed services dishonorably, persons who have renounced their U.S. citizenship, and other unspecified reasons.

Table 2. Background checks for handgun purchases, by State, 1997

	Brady status		Number of law enforcement agencies responsible for record checks	State databases being accessed				
State[a]	Original 3/1/94	Current 12/31/97		Criminal histories	Wanted fugitives	Re-strain-ing orders	Mental health	Domes-tic violence misde-meanor
Alabama	■	■	67	■	■	■		
Alaska	■	■	35	■	■	■		■
Arizona	■	■	1	■	■			
Arkansas	■	■	1	■	■	■		■
California[b]			1	■	■	■	■	■
Colorado	■		1	■	■	■		■
Connecticut[b]			1	■	■	■		■
Delaware[b]			1	■	■	■	■	■
Florida[b]			1	■	■	■	■	■
Georgia	■		1	■	■		■	■
Hawaii[b]			4	■			■	■
Idaho	■		1	■	■	■		■
Illinois[b]			1	■	■	■	■	■
Indiana			1	■				
Iowa			100	■	■	■		■
Kansas	■	■	123	■				■
Kentucky	■	■	5	■	■	■		
Louisiana	■	■	64	■	■			
Maine	■	■	128	■	■	■		
Maryland			1	■	■	■		■
Massachusetts			270	■	■	■	■	■
Michigan			595	■	■	■	■	■
Minnesota	■		568	■	■	■	■	
Mississippi	■	■	263					
Missouri			115	■	■	■		■
Montana	■	■	56	■	■			
Nebraska			95	■	■			
Nevada	■	■	1	■	■			■
New Hampshire	■		1	■	■	■		■
New Jersey[b]			505	■	■	■		■
New Mexico	■	■	113	■				■
New York			58	■	■	■	■	■
North Carolina	■		100	■	■	■		■
North Dakota	■	■	53	■	■	■		
Ohio	■	■	1	■	■	■		■
Oklahoma	■	■	440	■				
Oregon			1	■	■	■	■	
Pennsylvania	■	■	67	■	■			
Rhode Island[b]	■	■	39	■	■	■	■	■
South Carolina	■	■	1	■	■	■		■
South Dakota	■	■	66	■	■	■		
Tennessee	■		96	■	■	■		■
Texas	■	■	991	■	■	■		■
Utah	■		1	■	■	■		■
Vermont	■	■	22	■	■	■		■
Virginia[b]			1	■	■	■	■	■
Washington[b]	■		291	■	■	■	■	■
West Virginia	■	■	1	■	■	■		■
Wisconsin			1	■	■	■	■	■
Wyoming	■	■	40	■	■			
Total	32	23	5,390	49	44	36	15	34

Note: Not all States that reported having a database reported reasons for rejections.
[a]In the Brady States contacts are the chief law enforcement officers; in Brady-alternative States these contacts are identified according to criteria of each State.
[b]Background checks are required for handguns and long guns.

Background

Thirty-two States and Puerto Rico were required to follow the review proce-

Table 3. Number of applications to buy handguns received or rejected in 21 States reporting complete data, 1997

State	Number of applications: Received	Number of applications: Rejected	Rejection rate
Total	1,440,963	35,382	2.5%
Arizona	62,266	2,277	3.7%
Arkansas	14,556	202	1.4
California	204,409	1,839	0.9
Colorado	46,853	2,476	5.3
Delaware*	11,369	491	4.3
Florida	198,922	7,348	3.7
Georgia	83,673	7,136	8.5
Idaho	22,761	790	3.5%
Illinois*	171,865	1,943	1.1
Indiana	110,999	1,085	1.0
Maryland	31,599	275	0.9
Nevada	24,765	686	2.8
New Hampshire	12,557	232	1.8
New Jersey	25,386	214	0.8
Ohio	55,074	473	0.9%
Oregon	48,597	1,370	2.8
South Carolina	50,789	2,650	5.2
Utah	32,389	792	2.4
Virginia*	180,527	2,364	1.3
West Virginia	20,577	295	1.4
Wisconsin	31,030	444	1.4

Note: Each State had 1 CLEO that reported complete statewide data for applications and rejections for 1997. Kentucky reported 79,574 applications and 1,973 rejections, but excluded data from 4 counties.
*Counts include handguns and long guns.

Bureau of Alcohol, Tobacco and Firearms estimates of inquiries and rejections, March 1, 1994, to December 31, 1995

	Bureau of Alcohol, Tobacco and Firearms estimates — may include handguns, long guns, and carry permits[a]			
	3/1/94 to 12/31/94		1/1/95 to 12/31/95	
	All States	Original Brady States[b]	All States	Original Brady States[b]
Inquiries and rejections				
Inquiries/applications	3,679,000	1,696,000	4,009,000	1,884,000
Rejected	92,000	42,000	60,000	28,000
Rejection rate	2.5%	2.5%	1.5%	1.5%
Reasons for rejection				
Felony indictment/conviction	65,000	30,000	43,000	20,000
Other	26,000	12,000	17,000	8,000

Note: All estimated counts are rounded. Percentages were calculated from unrounded data. Detail may not add to total because of rounding.
[a]Data for 1994 and 1995 from the Bureau of Alcohol, Tobacco and Firearms are based on inquiries to the FBI's National Crime Information Center.
[b]Original Brady States are the 32 States required to follow presale review procedures set out in the Brady Act when it became effective on February 28, 1994.

The Bureau of Alcohol, Tobacco and Firearms (BATF) calculated the number of applications for firearm purchases from March of 1994 to the end of 1995. (See *Presale Firearm Checks,* BJS Bulletin, NCJ-162787, February 1997.) The BATF estimates were calculated using the number of firearm-coded inquiries to the FBI's National Crime Information Center (NCIC). The percentage of denials used for these estimates was based on the experiences of jurisdictions that had implemented presale firearms check procedures prior to the Brady Act.

After the first 10 months of implementation of the Brady Act, the number of NCIC firearm-coded inquiries per 100,000 adult U.S. residents remained relatively consistent:

1994*	2,262
1995	2,083
1996	1,957
1997	1,984

*January and February numbers were imputed, using the average of those months, 1995-97.

On average during 1997 the FBI receives every month nearly 328,000 inquiries to the NCIC to qualify a person to purchase or carry a firearm. (See figure 1, page 5.)

The FIST data, also stable across the 4-year period, describe only applications for handgun purchases, a fraction of the larger number of potential firearm purchases. (The interim provisions of the Brady Act also cover only applications for a handgun purchase.)

Data collection for FIST began in January 1996. The estimated number of inquiries for handgun purchases during the year was 67% of the total number of firearm inquiries to the NCIC (3,842,000). To estimate the number of inquiries for handgun purchase applications before 1996, the BATF estimates were multiplied by 67%.

Estimated number of handgun inquiries (applications to purchase) and rejections, from March 1, 1994, to December 31, 1997

Estimate	3/1/94 - 12/31/94	1/1/95 - 12/31/95	1/1/96 - 12/31/96	1/1/97 - 12/31/97
Number of handgun inquiries	2,483,000	2,706,000	2,593,000	2,574,000
Number of rejections	62,000	41,000	70,000	69,000
Rejection rate	2.5%	1.5%	2.7%	2.7%

dures set forth in the Brady Act when it became effective (identified in this Bulletin as original Brady States). By the end of 1996 and through 1997, the number of States following the Brady Act review procedures rather than alternative State statutes had dropped to 23 (identified as current Brady States; see table 2 for each State's Brady status.)

Pursuant to the Federal Gun Control Act of 1968, as codified at 18 U.S.C. § 922, the sale of firearms is prohibited if the prospective purchaser —

- is a juvenile
- is a fugitive from justice
- is under indictment for, or has been convicted of, a crime punishable by imprisonment for more than 1 year
- is an unlawful user of a controlled substance
- has been adjudicated as a mental defective or committed to a mental institution
- is an alien unlawfully in the United States
- was discharged from the armed forces under dishonorable conditions
- has renounced U.S. citizenship
- is subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child or
- is a person convicted of domestic violence.

The Brady Act was enacted in November 1993 and became effective in February 1994. The interim provisions of the Act require that federally licensed firearm dealers request a presale check on all potential handgun purchasers. The requests are made to CLEOs in the jurisdictions where the prospective purchasers reside.

The Federal firearms licensee must wait 5 business days before transferring the handgun to the buyer, unless earlier approval is received from the CLEO. These interim procedures will terminate no later than November 30, 1998.

The "interim provision" also permits States to follow a variety of alternative State procedures. (See *Survey of State Procedures Related to Firearm Sales, 1996*, BJS report, NCJ-163918, September 1997.) To qualify under these alternatives, State law must require that before any licensee completes the transfer of a handgun to a nonlicensee, a government official must verify that possession of a handgun by the transferee would not be a violation of law. Examples of Brady-alternative States include California ("point-of-sale check"), Virginia ("instant check"), and Missouri (permit).

After November 1998 a Federal firearms licensee will be required to obtain background checks on potential purchasers of all firearms. These inquiries will be made through the National Instant Criminal Background Check System (NICS) that the FBI will operate and maintain.

Under the permanent NICS configuration, firearm dealers can make NICS presale firearm inquiries either through the State, which will serve as a Point of Contact (POC) to the FBI, or directly to the FBI. The Brady Act also enables States to meet the requirements of the permanent system through an ATF-approved permit system. Felony and other criminal record data will be accessed by means of the Interstate Identification Index. In addition, the FBI NICS Index will provide States with access to Federal data on nonfelony prohibiting categories, such as illegal aliens. States serving as POCs will also have access to State data on nonfelony prohibiting categories.

On June 27, 1997, the U.S. Supreme Court overturned the provision requiring mandatory background checks by CLEOs in Brady States (see *Printz* [95-1478] and *Mack* [95-1503] v. *United States*). Since then, CLEOs in the Brady States continuing to do background checks do so on a voluntary basis. In Brady-alternative States (including States operating under a permit system) checks are made in accordance with State law. The impact of this decision on making a national estimate of presale handgun checks is addressed in *Methodology*.

Number of inquiries to the FBI's National Crime Information Center for potential firearm purchases or carry permits

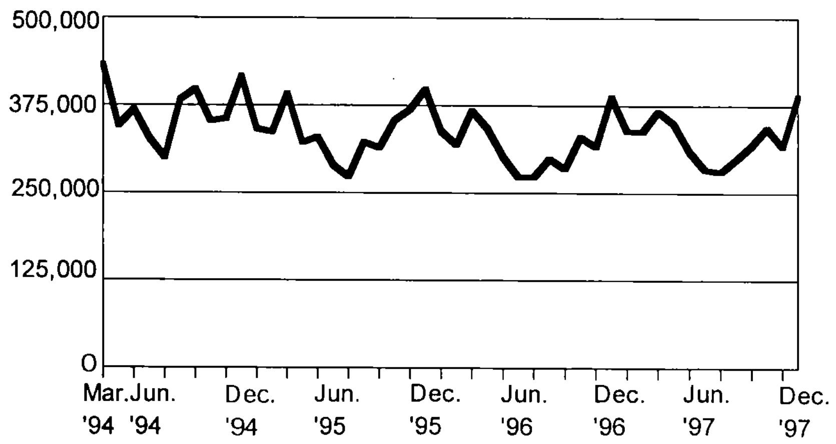

Figure 1

The National Criminal History Improvement Program (NCHIP)

To ensure immediate availability of complete and accurate State records, the Brady Act established a grant program authorized at $200 million. An additional authorization of $20 million was made available through the National Child Protection Act of 1993 (Pub. L. No. 103-209, 107 Stat. 2490 (1993)), and $6 million were authorized under the Violence Against Women Act (42 USC 13701 et seq.). The NCHIP program under which these funds are awarded is designed to assist States to develop or improve existing criminal history records systems and to establish an interface with the NICS.

Under NCHIP over $162 million was given in direct awards to the States during fiscal years 1995, 1996, and 1997. The appropriation for 1998 is $47.75 million. NCHIP funds have supported direct technical assistance to States, evaluation, and research related to improving criminal and other nonfelony records within the States.

The FIST program was established under NCHIP. Information requested from CLEOs does not include data traceable to an applicant and none of the FIST information provided from agencies to BJS contains or reveals the identity of individual applicants. The computer program that was subsequently developed and used by some agencies for both operational purposes and to collect FIST data transmits only the appropriately aggregated or categorized responses. Moreover, the computer program assists agencies to purge records after the delay times specified by law.

Methodology

The following presents the approach used to derive the 1997 estimates from a sample of chief law enforcement officers charged with determining eligibility to purchase a handgun. The data were stratified by size of the population served. Information collected included the following:

• handgun applications made to the CLEO;
• handgun applications rejected by the CLEO; and
• the reasons for rejection.

The sample for the survey was selected from a population of 5,400 CLEOs. These CLEOs ranged from State agencies which served an entire State population (category X); local CLEOs which served a population greater than 100,000 (category C); local CLEOs which served a population between 10,000 and 100,000 (category B); and local CLEOs which served a population of less than 10,000 (category A). Population size was based on 1990 Census information.

The population categories were chosen to be consistent with those commonly used by the FBI when conducting similar studies. A total of 600 CLEOs were randomly selected for inclusion in the study.

Since the start of this study two States have implemented operation of statewide CLEOs, and one State has begun reporting data for local jurisdictions. These changes have reduced the total number of CLEOs selected to 579.

The sample universe includes all 25 statewide CLEOs (category X), all 118 CLEOs who service populations in excess of 100,000 persons (category C), 189 CLEOs from category B, and 247 from category A. For each State 4% or a minimum of five CLEOs were selected in their respective A and B categories.

Overall, 268 CLEOs provided data for a response rate of 46%. Respondents included 23 statewide CLEOs, 41 local CLEOs in category C, 95 local CLEOs in category B, and 109 local CLEOs in category A. The 268 agencies that submitted data serviced 158,815,381 people or 64% of the 248,102,973 people who were identified in the 1990 Census.

Based on data provided by these CLEOs, national estimates were developed using weighting factors derived from the original stratification. When a CLEO did not provide data for all months, a simple linear extrapolation or interpolation was used to generate a 12-month total.

Information for one State required further analysis. New Jersey provided data on the number of applications and the number of rejections for the whole State, but did not provide reasons for rejections. Local CLEOs that had been sampled in New Jersey provided data on the reasons for rejection.

For purposes of applications, rejections and rejection rates, information from the statewide CLEO was used. The descriptive information about reasons for rejections used the data from both the local and State CLEOs.

Maine is one of several States that use both local CLEOs and the State police in areas not serviced by a local CLEO. In the other States, data from the State police were classified as category A data because of the rural area that is normally being served. However, Maine, because of the large portion of the State that the State police service (40%) and the wide range of population classifications they serve, State police data were classified as category X data.

Three agencies with a rejection rate over four standard deviations above the average standard rejection rate were classified as outliers and their data were not used for projection of estimates. In addition, one agency was classified as an outlier because its final rejection rate could not be determined with sufficient accuracy. The data provided by the outliers were added to the total estimated counts to get the final national totals.

To compensate for the June 1997 Supreme Court decision, the CLEOs from Brady States that had been selected for this study were surveyed to determine if they stopped performing background checks. For each size category, a percentage of the population which had stopped participating was computed. These percentages were then applied to the estimated number of rejections for that size category and subtracted from the total estimated number of rejections.

The accuracy of the estimates presented in this report depends on two types of errors: nonsampling and sampling. In this study, nonsampling error may occur from the following: nonresponse; differences in the ways CLEOs process, code, store and retrieve their information; differences in interpretation of the survey questions; and even activities which delay personnel from doing paperwork.

Also, the process of a researcher receiving data and storing it in the computer for analysis can introduce nonsampling error. In any sample survey, the full extent of nonsampling error is never fully known. However, steps were taken to minimize the potential for error. Extensive telephone follow-ups were made to encourage responses, answer questions about misunderstood requests, and generally help CLEOs in assembling the information in a form useable by FIST. Extensive verification of the data ensured the accuracy of the numbers.

Because of the sampling design, State comparisons cannot be made. The estimates are only for the 50 States and do not include U.S. territories or the District of Columbia. Sales of all firearms are prohibited in the District of Columbia except to law enforcement officers.

Data collection procedures

The Regional Justice Information Service (REJIS), through a cooperative agreement with BJS under the Firearm Inquiry Statistics program (FIST), collected the data.

The CLEOs supplied data on either paper or diskette. Several different forms were provided to meet the varying office procedures of the CLEOs. In addition REJIS wrote and provided special software that was distributed free of charge to requesting CLEOs. This software was designed to simplify the record tabulating functions of the CLEO. It also helped to reduce the burden of keeping the statistical data since one of the capabilities of the software was to automatically collect the data needed for the study. In all cases the data that the CLEO sent to REJIS contained only statistical information and would not allow the identification of an individual.

Determining populations

For local CLEOs, a State may choose to have county officials (usually the sheriff) as the CLEO or municipal officials (police departments) or a combination of the two. To evaluate properly the application and rejection rates for purchasing handguns within a given area, the appropriate CLEO population was needed and was determined as follows:

- The stratification classification of the county was based on the size of the largest city within the county.

- If cities within a participating county CLEO were acting as their own CLEOs, their populations were subtracted from the county population.

- If a municipal CLEO was discovered to be providing services for other selected municipalities, then populations for those municipalities were added to the populations of the city having the CLEO.

- Those CLEOs selected to participate in the study but found to be relying on other jurisdictions to conduct background checks were replaced by those other jurisdictions (for example, a town being replaced by a county).

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jan M. Chaiken, Ph.D., is Director.

BJS Bulletins present the first release of findings from permanent data collection programs such as the Firearm Inquiries Statistics program. State and local officials have cooperated in reporting the data presented.

Don Manson, BJS Program Manager, and Darrell K. Gilliard, BJS Statistician, wrote this Bulletin under the supervision of Carol Kaplan, Chief, Criminal History Improvement Programs, BJS. Gene Lauver, manager of the Firearm Inquiry Statistics program, Regional Justice Information Service (REJIS of St.Louis, MO), collected and analyzed the FIST data presented. Terry Tomazic, Ph.D., professor of research methodology at St. Louis University, provided statistical consultation. Priscilla Middleton and Tom Hester produced and edited the report. Marilyn Marbrook, assisted by Yvonne Boston and Jayne Robinson, administered final report production.

Further information on the FIST program may be obtained from:

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This report and others from the Bureau of Justice Statistics are available through the Internet —

http://www.ojp.usdoj.gov/bjs/

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August 5, 1998

The Honorable William J. Clinton
President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

On behalf of the International Association of Chiefs of Police, I am writing to express our concern over two issues related to the implementation of the National Instant Check Background (NICS) System. Specifically, IACP is concerned over recent developments regarding fees for use of the system and the retention of records that are generated as a result of queries to the system.

The IACP has long held that the cost of any background check system for firearm purchasers should be born by the gun purchaser. To require law enforcement agencies, local, state or federal government to bear the cost of operating this vital and necessary system will deprive law enforcement agencies of resources that can be put to greater use. As the transition to the National Instant Check Background System is completed, IACP believes it is vital that the FBI or those states who serve as points of contacts for the NICS system be allowed to assess a reasonable fee for background checks.

The IACP also strongly believes that the FBI must be allowed to retain the records of background checks performed for a reasonable and uniform length of time. Among other benefits this will provide to law enforcement, the retention of these records will allow the FBI to perform audits of the requests being made and thereby safeguard the integrity of the NICS system and protect the privacy of the American public.

The experience of the last five years has clearly demonstrated the value of performing background checks in keeping guns out the hands of those who should not have them. As the transition to the NICS system is completed, it is imperative that we ensure that no factor be allowed to interfere with its efficient and effective operation.

Please let me know if I can be of further assistance to you.

Thank you for your support in this matter.

Sincerely,

Bobby D. Moody
President

The Gun Violence Prevention Act--Brady II Questions and Answers

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What is Brady II?

Brady II is a comprehensive approach to reducing gun violence. It will regulate the way guns are manufactured and sold in this country, and stress the need for responsible gun ownership.

Like cars, guns are dangerous. Cars are not designed to kill, and yet are heavily regulated: You must be of a minimum age, take a training course, pass a proficiency test; get a license; obtain insurance; and the car must be registered. And automobile manufacturers are subject to stringent safety regulations. Guns carry none of these restrictions. In the interest of saving lives, Brady II would require gun owners and manufacturers to adopt safety measures similar to those required of car owners and manufacturers.

Why do we need Brady II?

Gun violence is on the rise. In 1991, more than 38,000 Americans were killed by firearms--in homicides, suicides and accidents. Since 1987, the rate for non-handgun murders has declined by 11%, while the rate of handgun homicides increased by 52%. The National Center for Health Statistics predicts that in less than ten years, firearm fatalities will exceed motor vehicle fatalities nationwide. This is already true for six states and the District of Columbia. And the Department of Justice reports that crimes committed with handguns have reached nearly 1 million per year.

Yet, the illegal gun market flourishes; adults are allowing children access to guns--which are then brought to school, or used to settle disputes; gun manufacturers are not held to the same level of accountability and safety that governs all other consumer products. A problem of such proportions demands more than piecemeal solutions that leave gaping loopholes through which illegal guns continue to move.

How will Brady II combat this epidemic?

Brady II will stem the flow of guns and ammunition to the illegal market by:

- requiring the licensing of handgun owners and the registration of all handgun transfers, including private sales;
- limiting handgun purchases to one per month;
- strengthening the dealer licensing system so that "kitchen table" dealers will be put out of business;
- requiring that ammunition be sold only through licensed dealers, and that it only be sold to license holders; and
- requiring that licensed dealers sell only at their place of business--thereby

reducing the number of guns sold at gun shows.

Brady II will deter possession of guns by high-risk persons by:

- adding new categories of prohibited buyers--convicted spouse and child abusers;
- prohibiting transfer of handguns to and possession by minors under the age of 21;
- imposing criminal penalties on gun owners who leave guns accessible to children under the age of 16;
- making it more difficult for convicted felons to legally own a gun; and
- requiring an arsenal license for those who are stockpiling guns and ammunition.

Brady II will prevent unintentional shootings by:

- requiring safety training as a condition of receiving a license;
- holding parents responsible for proper storage of their weapons--and holding them liable when they do not; and
- requiring gun manufacturers to install certain safety features in every gun--including load indicators and magazine safeties.

Brady II will restrict the distribution of guns and ammunition designed for crime by:

- prohibiting the low-quality, easily concealable handguns known as Saturday Night Specials, the gun most often used in crime; and
- halting the sale and manufacture of non-sporting ammunition, like the "Dragon's breath" bullet, and large caliber bullets.

Brady II will strengthen enforcement of existing federal laws by:

- allowing gun violence victims to sue gun law violators in federal court for damages caused by gun dealers selling guns to prohibited buyers;
- requiring registration of handgun transfers so that traces of guns used in crime will no longer result in dead ends;
- closing the loophole that allows the unregulated sale of firearm parts; and
- requiring common carriers to check a dealer's license before delivery.

What is the advantage of licensing handgun purchasers?

Licensing allows for a more thorough background check, including fingerprint identification, which stops felons from acquiring guns through the use of false identification; and residency verification, which stops buyers and gunrunners from going interstate to take advantage of weaker gun laws in other states. Eleven states currently have some form of licensing.

Licensing also makes it possible to regulate private or secondary transfers of handguns or firearms. Under current law--the Brady law--only persons buying handguns through licensed dealers are subject to background checks. Subsequent buyers are not. The licensing requirement of Brady II ensures that all purchasers will be subject to a background check, and that those who sell handguns to unlicensed individuals are breaking federal law.

Isn't registration just the first step towards confiscation?

Today, eleven states provide for the registration of handguns or firearms:

- Hawaii
- North Carolina
- Maryland
- Oregon
- Michigan
- Pennsylvania
- Mississippi
- South Carolina
- New Hampshire
- Washington
- New York

These laws have clearly not prevented law-abiding citizens from having access to guns--nor has there been any attempt to disarm residents in those states.

How will registering handgun transfers reduce crime?

The required registration of all handgun transfers, together with licensing, will make it possible to identify and prosecute those who illegally sell or transfer guns to criminals, youth and other prohibited purchasers.

Currently, local law enforcement must go to the Bureau of Alcohol, Tobacco and Firearms for assistance in tracing guns linked to crime. ATF contacts the manufacturer of the gun, who in turn, identifies the licensed gun dealer to whom the gun was sold. ATF must then contact the gun dealer to determine who bought the gun at the store.

Gun owners, however, are not required in most states to record any subsequent sale of the gun. Many traces, as a consequence, are unsuccessful and criminal prosecutions do not result.

Under Brady II, any person selling a handgun without recording the sale will be subject to prosecution.

Requiring the registration of secondary transfers allows for faster tracing of weapons used in crimes and puts "straw purchasers" and illegal gun dealers at risk of criminal prosecution and civil lawsuits for selling guns to prohibited purchasers.

What other measures in Brady II address illegal gun sales?

Brady II includes a provision to limit handgun purchases to one per month. Similar legislation was passed in 1993 in Virginia, when legislators in that state became concerned about their growing reputation as the gun running source for the Northeast. Virginia's instant background check was not enough of a deterrent--but limiting purchases to one per person per month made Virginia an inefficient destination for gun traffickers. Because who, other then a gun trafficker, needs more than one handgun a month?

What's the purpose of requiring handgun buyers to pass a safety course?

Safety training will help to reduce unintentional shootings and handgun suicides. Handgun buyers need to be trained in the proper handling of a handgun so that the weapon is not accidentally discharged. Handgun owners should also know how to store their weapon, so that unauthorized users, including young children and teens, do not gain access to it.

Finally, handgun owners should be familiar with their legal responsibilities as gun owners.

How does Brady II address the dangers of guns in the home?

In addition to requiring handgun buyers to pass a safety course, Brady II requires parents to keep a loaded handgun out of the reach of children under the age of 16. It also requires manufacturers to design and produce guns that reduce the chances of tragic accidents. Magazine safeties and load indicators will prevent the mistaken belief that the gun is not loaded or will not fire.

How does Brady II affect the manufacture of handguns?

Manufacturers would be required to make much-needed improvements in gun safety. All firearms would have to come equipped with load indicators. Handguns would be required to have child-proof safeties, so that a child under the age of seven would be unable to release it. Finally, pistols would have to be designed so that they are rendered incapable of firing the bullet in the chamber once the magazine has been removed. Manufacturers of handguns would also be forbidden from producing handguns that are defined as Saturday Night Specials.

How does Brady II tighten the regulation of licensed gun dealers?

Brady II raises the fee (presently $200 for 3 years) for Federal Firearms Licenses (FFLs) to $1,000 per year--an increase that would reduce substantially the number of FFLs while giving the Bureau of Alcohol, Tobacco and Firearms (ATF) the additional resources needed to adequately regulate gun dealers. Today there are only 240 ATF inspectors to monitor the activities of more than 280,000 federally-licensed gun dealers.

Brady II also imposes stricter requirements on gun dealers. Dealers would be required to: 1) make all sales from their licensed business premise, stopping the sales from car trunks and "kitchen tables;" and 2) carry liability insurance to cover damages resulting from the wrongful or negligent transfer of a handgun.

How does Brady II affect gun owners?

Brady II will not stop any law abiding citizen from buying or possessing a firearm. It does require the buyer of a handgun to get a license, pass a safety test, and record any subsequent sale, but that's no different or burdensome than what we ask of those who want to drive a car.

Brady II is a gun-grabbing, gun-banning bill that will take guns away from law-abiding citizens, right?

Wrong. This bill does not stop anyone from buying a gun for sport or self-protection; it simply requires that people who buy handguns know how to handle them, know how to store them, and know their responsibilities as gun owners. This bill does not stop manufacturers from making handguns; it simply requires that they make guns that meet minimal safety standards. And this bill does not take guns out of the hands of law-abiding adults. It keeps guns out of the hands of children, convicted felons and those who have a history of domestic violence.

Will Brady II save lives?

Absolutely. Look at what we have done over the past twenty-five years to reduce automobile deaths. We tightened up the licensing requirements for drivers. We built safer cars and safer highways. And we prosecuted drunk drivers. As a result, the auto fatality rate dropped by 36 percent. And we can do the same thing with firearms. We can license gun purchasers, we can build safer guns, and we can vigorously prosecute those who illegally sell guns to children and criminals. And that will save lives.

PRESIDENT CLINTON:
EXPANDING THE BRADY LAW

August 6, 1998

"The real measure of our progress, of course, is more than the decline in crime. It is whether families feel secure in their homes and their neighborhoods; whether a child feels safe in the classroom and the schoolyard; whether the American people, in big cities or small towns, feel the full measure of their freedom. That, at heart, is what the Brady Law has helped accomplish, and that is the vision to which we must all remain true if we are to build a safer, stronger America for the 21st century."

President Bill Clinton
August 6, 1998

Today, at a Rose Garden event, President Clinton will challenge Congress to make permanent the Brady Law's waiting period of up to 5 days before the purchase of a handgun and announce his opposition to Congressional efforts to undermine final implementation of the Brady Law.

Making The Brady Waiting Period Permanent For Handgun Sales. One of the essential features of the Brady Law is the waiting period of up to five days before a handgun can be purchased and taken home. President Clinton firmly believes in:

- Preserving the Brady Law As A Law Enforcement Tool. The Brady Law gives local law enforcement 5 days to block the sale of a handgun to an ineligible purchaser, but this provision will be replaced when the National Instant Criminal Background Check System (NICS) takes effect on November 30, 1998. While NICS will allow access to even more important records --and stop even more ineligible purchasers from buying firearms --a permanent waiting period will preserve local law enforcement's ability to be the last, best line of defense against illegal handgun purchases.

Calling on Congress To Beat The Deadline. President Clinton is challenging Congress to extend the Brady waiting period for handguns before it expires on November 30th. He supports legislation introduced by Representative Schumer and Senator Durbin that, in states without permit or background check systems, will: (1) require a minimum 3-day waiting period for all handgun purchases; (2) add up to an additional two days to the waiting period if law enforcement officers need more time to clarify arrest records; and (3) require gun dealers to notify local law enforcement officials of all proposed handgun purchases, as they must now do, but under current law need not once the NICS goes into effect.

Defending The Brady Law. Since its inception, the Brady Law has been an invaluable tool in preventing handguns from getting into the hands of people who should not have them. Since taking effect in 1994, the Brady Law has prevented an estimated 242,000 felons, fugitives, and other prohibited purchasers from buying handguns. In 1997 alone, 69,000 prohibited handgun purchases were blocked as a result of Brady background checks. The President will continue his efforts to:

- **Expand the Brady Law's Reach**. Under the Brady Law, the NICS will take effect on November 30, 1998, and will require the FBI and designated state law enforcement officials to conduct computerized checks of all prospective gun purchasers --not just handguns --and make even more important records available to law enforcement. After nearly 5 years of working with law enforcement to develop the NICS, the Justice Department plans to propose a regulation to finalize its implementation next week;
- **Fight Efforts To Undermine Brady**. A recent amendment to the Senate Commerce-Justice-State appropriations bill would undermine implementation of the NICS. Among other things, the amendment would prohibit the FBI from charging gun dealers a fee for background checks, even though the FBI currently charges school districts, day care providers, and many others for similar background checks. Without the resources generated by such a user fee, the FBI will either have to forego processing millions of background checks, or will have to transfer resources from other crime fighting efforts. The Administration strongly opposes this anti-Brady amendment.

August 5, 1998

BRADY LAW EVENT

DATE:	August 6, 1998
LOCATION:	Rose Garden
BRIEFING TIME:	10:00 am
EVENT TIME:	10:30 am
FROM:	Bruce Reed

I. PURPOSE

To demonstrate your commitment to defend and strengthen the Brady Law by: (1) challenging Congress to make permanent the Brady waiting period of up to 5 days before handguns can be purchased; and (2) opposing recent Congressional efforts to undermine final implementation of the Brady Law.

II. BACKGROUND

The Brady Law gives local law enforcement up to 5 days to block the sale of a handgun to an ineligible purchaser, but this provision sunsets when the National Instant Criminal Background Check System (NICS) takes effect on November 30, 1998. While NICS will allow access to even more important records -- and stop even more ineligible purchasers from buying firearms -- a permanent waiting period will preserve local law enforcement's ability to be the last, best line of defense against illegal handgun purchases.

At this event you will:

<u>Challenge to Congress to make permanent the Brady waiting period for handgun sales.</u>
You will challenge Congress to extend the Brady waiting period for handguns <u>before</u> it expires on November 30th and announce your support for legislation introduced by Representative Schumer and Senator Durbin. In states without permit or background check systems, the Schumer-Durbin bill would: (1) require a minimum 3-day waiting period for all handgun purchases; (2) allow a maximum 5-day wait for law enforcement to clarify arrest records; and (3) continue to require gun dealers to notify local law enforcement officials of all proposed handgun purchases.

<u>Commit to fight Congressional efforts to undermine Brady</u>.
You will also announce the Administration's strong opposition to an anti-Brady amendment

that Senator Smith (NH) attached to the Senate Commerce, Justice, State appropriations bill. If passed, this amendment would significantly undermine implementation of the NICS by: (1) prohibiting the FBI from charging gun dealers a user fee, as it does for similar background checks requested by school districts, day care providers and others; (2) mandating the immediate destruction of records required to audit and ensure integrity of the NICS; and (3) creating a federal cause of action for parties aggrieved under these provisions. Most importantly, however, without the ability to collect a user fee of about $15 -- or a separate appropriation of about $80 million annually -- the FBI will either not be able to process millions of background checks, or it will have to redeploy hundreds of personnel from other crime fighting efforts.

III. PARTICIPANTS

Briefing Participants:
Secretary Rubin
Attorney General Reno
Rahm Emanuel
Bruce Reed
Jose Cerda

Participants:
The Vice President
Secretary Rubin
Attorney General Reno
Police Officer Jerry Flynn, National Vice President for the International Brotherhood of Police Officers, Lowell, Massachusetts.
Sarah and Jim Brady

IV. PRESS PLAN

Open Press.

Lowell, MASS

V. SEQUENCE OF EVENTS

- **YOU** will be announced onto the stage accompanied by Secretary Rubin, Attorney General Reno, Police Officer Jerry Flynn, Sarah and Jim Brady.
- Secretary Rubin will make welcoming remarks.
- Attorney General Reno will make remarks.
- Officer Jerry Flynn will make remarks and introduce the Vice President.
- The Vice President will make remarks and introduce Sarah Brady.
- Sarah Brady will make remarks and introduce **YOU**.
- **YOU** will make remarks.
- **YOU** will then give Jim Brady to option to make informal remarks.
- Jim Brady will make a brief statement.
- **YOU** will thank Jim Brady for his remarks and then depart.

VI. REMARKS

Remarks provided by Jeff Shesol in Speechwriting.

Revised Final 08/06/98 9:00am
Jeff Shesol

PRESIDENT WILLIAM J. CLINTON

REMARKS ON THE BRADY LAW

THE ROSE GARDEN

August 6, 1998

Acknowledgments: VP; Sec. Rubin; AG Reno; Sarah and Jim Brady; Officer Gerald Flynn, Internat'l Brotherhood of Police Officers; Police Chief Bobby Moody, Pres. of Internat'l Assoc. of Chiefs of Police; Sheriff Pat Sullivan, Nat'l Sheriff's Assoc.; and all the law enforcement officials here today.

I want to thank Sarah and Jim Brady for all their hard work. For years, police, families, and the victims of violence waged the fight on their own for safe streets, safe homes, and safe schools. Washington sat on the sidelines. In 1993, we moved to the frontlines -- joining people like Sarah and Jim and the law enforcement officials we have here today.

Today I want to talk about the progress we've made in our country's fight against crime and the steps we must take to build on that progress. More than five years ago, we made a commitment as an administration to recover our nation's streets from crime and violence, to provide security for America's families. It required a new, comprehensive strategy of law enforcement, based simply on what works: on community policing, strong anti-gang efforts, and targeted deterrence; on tougher penalties and smarter prevention.

Our strategy -- from the Brady Bill to the Crime Bill, from the assault weapons ban to the Violence Against Women Act -- is showing remarkable results. We are well on our way to putting 100,000 new police officers on the streets, ahead of schedule.

All across America, violent crime is down, property crime is down, murder is down dramatically. Crime rates overall have dropped to a 25-year low. Americans should take pride and comfort in our steady progress.

The Brady Law, in particular, shows the progress America can make when we take responsibility for the safety of our families and our communities. Since the Brady Law took effect, gun trafficking and gun-related crime are on the wane. It is no wonder: according to a recent report by the Justice Department, background checks have put a stop to nearly <u>a quarter of a million</u> handgun purchases since the law took effect. Last year, 62 percent of those rejections were based on felony convictions or indictments.

That's 118 felons a day turned away, thanks to the Brady Law. That's 118 felons a day going home empty-handed instead of well armed.

As we near the fifth anniversary of the Brady Law and celebrate its progress, we must continue to press ahead in the fight against crime and violence. We've begun to win the battle; what we must not do is retreat. Yet that is what the gun lobby and its allies on Capitol Hill would have us do -- retreat from a law that is keeping guns out of the hands of criminals, retreat from the national interest and surrender our safety to the special interests.

Now, before the Brady Law even goes fully into effect, the gun lobby and its friends in Congress are trying to undermine it. They claim to support the National Insta-Check System -- but would deny the FBI the funds it needs to make the system work. They claim to support background checks -- but would have the FBI immediately destroy records that are vital to the process. In their official literature, the gun lobby is proudly calling this measure what it is -- and I quote -- an "anti-Brady" amendment. From its anti-Brady efforts to its attempts to undermine the assault weapons ban, Congress has tried to turn back the clock on common sense crime control. But let me be clear: I will oppose any legislation that would gut the Brady Law and put guns back into the hands of felons and fugitives.

When we passed the Brady Law, we did so with bipartisan support. Now, Congress should again put progress above partisanship, step up to its responsibility, and stop playing politics with public safety.

Years of experience show that the Brady Law works, and now we must do everything in our power to make it even more effective. I have urged Congress to extend Brady background checks to violent juveniles who should not be able to buy a gun on their 21st birthday. **Congress should also extend -- permanently -- the ~~5-day~~ BRADY waiting period before it expires in November.** Too many crimes are committed within hours of a handgun purchase. The waiting period gives tempers time to cool.

It gives potential criminals time to consider the consequences, and gives local law enforcement officials time to check <u>all</u> relevant records, even those that are not computerized, and stop every last prohibited person from walking home with a gun in hand and violence in mind.

The 5-day waiting period is good law enforcement, it's smart, and it works. That's why Officer <u>Flynn</u> and others like him support a permanent extension. They know from experience that a waiting period is our last, best line of defense to keep guns out of criminals' hands.

The real measure of our progress, of course, is more than the decline in crime. It is whether families feel secure in their homes and their neighborhoods; whether a child feels safe in the classroom and the schoolyard; whether the American people, in big cities or small towns, feel the full measure of their freedom. That, at heart, is what the Brady Law has helped accomplish; and that is the vision to which we must all remain true if we are to build a safer, stronger America for the 21st century.

President Clinton: Defending and Strengthening the Brady Law
August 6, 1998

At a Rose Garden event today, President Clinton will: (1) challenge Congress to make permanent the Brady waiting period of up to five days before the purchase of a handgun; and (2) oppose Congressional efforts to undermine final implementation of the Brady Law.

Making Permanent the Brady Waiting Period for Handgun Sales

- Preserving a critical law enforcement tool. The Brady Law establishes a five-day waiting period before a handgun can be sold, but this provision sunsets when the National Instant Criminal Background Check System (NICS) takes effect on November 30, 1998. While NICS will allow access to a fuller set of records than is now available -- and stop even more ineligible purchasers from buying firearms -- a permanent waiting period will enhance local law enforcement's ability to be the last, best line of defense against illegal handgun purchases. This waiting period will allow law enforcement officers to check additional, non-computerized records, and will provide cooling-off time for handgun purchases.

- Calling on Congress to beat the deadline. President Clinton will challenge Congress to extend the Brady waiting period for handguns before it expires on November 30th. He will support legislation introduced by Representative Schumer and Senator Durbin and applying to all states to which the Brady Law now applies that will: (1) require a minimum 3-day waiting period for all handgun purchases; (2) add up to an additional two days to the waiting period if law enforcement officers need more time to clarify arrest records; and (3) require gun dealers to notify local law enforcement officials of all proposed handgun purchases, as they must now but under current law need not once the NICS goes into effect.

Defending the Brady Law

- Proof positive that Brady works. Since taking effect in 1994, the Brady Law has prevented an estimated 242,000 felons, fugitives, mentally unstable persons, and other prohibited purchasers from buying handguns. In 1997 alone, 69,000 handgun purchases were blocked as a result of Brady background checks.

- Expanding Brady's reach. Under the Brady Law, the National Instant Criminal Background Check System (NICS) will take effect on November 30, 1998. NICS will allow access to a fuller set of records than is now available, and law enforcement officials will use it to conduct checks of all prospective gun purchases -- not just handgun purchasers. After nearly 5 years of working with law enforcement to develop the NICS, the Justice and Treasury Departments plan to propose a regulation to finalize its implementation next week.

- Fighting efforts to undermine Brady. A recent amendment to the Senate Commerce- Justice-State appropriations bill would undermine implementation of the NICS. Among other things, the amendment would prohibit the FBI from charging gun dealers a fee for background checks, even though the FBI currently charges school districts, day care providers, and many others for similar background checks. Without the resources generated by such a user fee, the FBI either will have to forego processing millions of background checks, or will have to transfer resources from other crime fighting efforts. The Administration strongly opposes this anti-Brady amendment.

Jeffrey A. Shesol
08/06/98 09:15:30 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Brady revised final -- Rahm's edits in bold

Revised Final 08/06/98 9:00am
Jeff Shesol

PRESIDENT WILLIAM J. CLINTON
REMARKS ON THE BRADY LAW
THE ROSE GARDEN
August 6, 1998

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The Brady Law, in particular, shows the progress America can make when we take responsibility for the safety of our families and our communities. Since the Brady Law took effect, gun trafficking and gun-related crime are on the wane. It is no wonder: according to a recent report by the Justice Department, background checks have put a stop to nearly a quarter of a million handgun purchases since the law took effect. Last year, 62 percent of those rejections were based on felony convictions or indictments. That's 118 felons a day turned away, thanks to the Brady Law. That's 118 felons a day going home empty-handed instead of well armed.

As we near the fifth anniversary of the Brady Law and celebrate its progress, we must continue to press ahead in the fight against crime and violence. We've begun to win the battle; what we must not do is retreat. Yet that is what the gun lobby and its allies on Capitol Hill would have us do -- retreat from a law that is keeping guns out of the hands of criminals, retreat from the national interest and surrender our safety to the special interests.

Now, before the Brady Law even goes fully into effect, the gun lobby and its friends in Congress are trying to **undermine** it. They claim to support the National Insta-Check System -- but would deny the FBI the funds it needs to make the system work. They claim to support background checks -- but would have the FBI immediately destroy records that are vital to the process. In their official literature, the gun lobby is proudly calling this measure what it is -- and I quote -- an "anti-Brady" amendment. **From its anti-Brady efforts to its attempts to undermine the assault weapons ban, this Congress is trying to turn back the clock on common sense crime control.** But let me be clear: I will oppose any legislation that would gut the Brady Law and put guns back into the hands of felons and fugitives. **When we passed the Brady Law, we did so with bipartisan support. Now, Congress should again put progress above partisanship, step up to its responsibility, and stop playing politics with public safety.**

Years of experience show that the Brady Law works, and now we must do everything in our power to make it even more effective. I have urged Congress to extend Brady background checks to violent juveniles who should not be able to buy a gun on their 21st birthday. Congress should also extend -- permanently -- the 5-day waiting period before it expires in November. Too many crimes are committed within hours of a handgun purchase. The waiting period gives tempers time to cool. It gives potential criminals time to consider the consequences, and gives local law enforcement officials time to check all relevant records, even those that are not computerized, and stop every last prohibited person from walking home with a gun in hand and violence in mind.

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The real measure of our progress, of course, is more than the decline in crime. **It is whether families feel secure in their homes and their neighborhoods; whether a child feels safe in the classroom and the schoolyard; whether the American people, in big cities or small towns, feel the full measure of their freedom.** That, at heart, is what the Brady Law has helped accomplish; and that is the vision to which we must all remain true if we are to build a safer, stronger America for the 21st century.

Message Sent To:

Michelle Crisci/WHO/EOP
Michael Waldman/WHO/EOP
Jose Cerda III/OPD/EOP
Elena Kagan/OPD/EOP
Laura Emmett/WHO/EOP

National Instant Criminal Background Check System Fact Sheet

[Brady Act Requirements] [NICS Operations Center] [POC States]

[NICS Background Checks] [Privacy and Security of NICS Information] [NICS Appeals]

[Additional Information]

Brady Act Requirements

The Brady Act, Public Law 103-159, requires that a National Instant Criminal Background Check System (NICS) be established by November 30, 1998. In accordance with the Brady Act, the NICS shall allow Federal Firearms Licensees (FFLs) to contact the system by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 (g) or (n) of title 18, United States Code, or State law.

The NICS will be a national system that will check available records on persons who are disqualified from receiving firearms. The FBI developed the system through a cooperative effort with the ATF and state and local law enforcement agencies. The NICS is a computerized background check system designed to respond within 30 seconds on most background check inquiries so FFLs will have an almost immediate answer. Depending on the willingness of their state governments to act as a liaison for the NICS, FFLs will contact either the FBI or a designated state point of contact (POC) to initiate background checks on individuals purchasing firearms. The background check process, as performed by the FBI and by state POCs, is described below.

The NICS Operations Center

The FBI will operate a national center to perform NICS background checks for gun dealers in the states that decline to serve as POCs for the system. Gun dealers will contact the Center either by telephone, or by means of an electronic device such as a personal computer. Either means of contact will result in a NICS check with an almost instant response to the gun dealer. The NICS response will consist of a notice to the FFL that the transfer may proceed, may not proceed, or is delayed pending further review of a matching record(s). If no disqualifying record is found in the NICS, the FFL will be advised that the transfer may proceed and will be given a NICS Transaction Number (NTN). The FFL must record the NTN on the ATF Form 4473 and retain the form for auditing purposes.

If the FBI determines that disqualifying information exists on the prospective purchaser, the FFL will be advised that the transfer may not proceed and will be given an NTN to record on the ATF Form 4473 and retain the form for auditing purposes.

If the FBI determines that more information is required in order to make a determination, the FFL will be advised that the transfer is delayed and will receive an NTN. The FFL must record the NTN on the ATF Form 4473 and retain the form for auditing purposes. If subsequent research indicates the transfer would not violate state or federal law, the FBI will notify the FFL that the transfer may proceed. If no further information is received by the FBI within three business days, and there is reason to believe that receipt of the firearm by the prospective purchaser would violate federal or state law, the FBI will notify the FFL that the transfer may not proceed.

FFLs will be charged a user fee by the FBI for checks performed by the NICS Operations Center.

POC States

In states that agree to serve as POCs for the NICS, the functions performed by the NICS Operations Center will be performed by a state or local law enforcement agency which will service the FFLs. The FFLs will call these state or local agencies, which will perform the check, make the decision whether the check shows that an individual is disqualified from possessing a firearm, and notify the FFL of the results of the check. All other aspects of the background check process will remain the same -- the difference will be that the state, instead of the FBI, will be processing the check.

FFLs in POC states will not be charged the FBI user fee.

NICS Background Checks

As shown above, FFLs will have the following three methods of performing background checks depending upon the state in which the FFL is conducting business:

> 1) In states where the state government has agreed to serve as a point of contact for the system, FFLs will contact the NICS through the state POC for all firearm transfers. The state POC will make the NICS check and determine whether the transfer would violate state or federal law.
>
> 2) In states where the state government has declined to serve as a POC, FFLs will initiate a NICS background check by contacting the FBI s NICS Operations Center in West Virginia for all firearm transfers. The FBI will make the NICS check and determine whether or not the transfer would violate state or federal law. The FBI will charge FFLs a fee for each background check.
>
> 3) Finally, in states where the state government has agreed to serve as a POC for handgun purchases but not for long gun purchases, FFLs will contact the NICS through the designated state point of contact for handgun transfers. The FFLs will have to contact the NICS Operations Center for long gun transfers. The FBI will charge FFLs a fee for the long gun checks.

Each state government will decide whether the FFLs in its state will call a state point of contact or the FBI to find out whether a firearm transfer will be allowed by the NICS.

Privacy and Security of NICS Information

The privacy and security of the information in the NICS is of great importance. Before the end of March 1998, the Attorney General will publish proposed regulations on the privacy and security of NICS information, including the proper and official use of this information. Copies may be requested from the FBI s West Virginia facility. Data stored in the NICS are documented federal data, and access to that information is restricted to agencies authorized by the FBI. Extensive measures are taken to ensure the security and integrity of the system s information and agency use. The NICS will not be used to establish a federal firearm registry; information about an inquiry resulting in an allowed transfer will be destroyed.

NICS Appeals

Individuals who are denied the purchase of a firearm may request that the NICS provide the reasons for the denial. The regulations will address the process for filing an appeal. The NICS shall provide such reasons to the individual, in writing, within five (5) business days after receipt of the request.

Additional Information

For an FFL to initiate NICS background checks with the FBI s NICS Operations Center beginning on November 30, 1998, the FFL MUST BE ENROLLED WITH THE FBI BEFORE NOVEMBER 30, 1998. The FBI will be contacting each FFL in states that do not designate POCs for all firearm transfers for enrollment information.

Persons holding firearms permits which qualify as alternatives under the permanent provision of the Brady Act will not be required to undergo a NICS check.

The current pawn shop exemption for background checks on individuals who are redeeming firearms will cease to exist on

November 30, 1998. NICS background checks will be required for the transfer of redeemed firearms, including both handguns and long guns.

The FBI will be attending ATF regional firearms seminars in selected states around the country beginning in March, 1998 to provide a NICS overview, answer questions and discuss enrollment procedures for those FFLs who will be using the NICS Operations Center.

Return to top

Return to NICS Information Page

draft 8/3 1:00 pm; 3 minutes
Remarks Prepared for Delivery
Brady law event
Secretary Robert E. Rubin
August ~~4~~ 6, 1998

Mr. President, Mr. Vice President, Madame Attorney General, Mrs. Brady, Officer Flynn, members of Congress, distinguished guests and visitors, I am pleased to be here today to discuss steps the Administration is taking to build on the success of the Brady law in keeping guns out of the hands of criminals and in reducing gun violence.

Reducing gun violence is one of this Administration's highest priorities and one of the Treasury Department's most important law enforcement missions. Over the past several years we have worked diligently with other agencies in this effort. We have reformed the system of licensing gun dealers so that only valid commercial dealers obtain licenses. We have implemented the assault weapons ban. We have recently determined that rifles that accept large capacity military magazines do not meet the sporting purposes test of the Gun Control Act. We have increased our efforts against illegal firearms trafficking to criminals and have established a new initiative aimed at reducing the illegal supply of firearms to juveniles and youth, which is now being implemented in 27 cities.

All of these efforts are critically important, but the Brady law is the cornerstone of our efforts to deny criminals access to firearms. Without background checks on purchasers, felons, domestic violence offenders, and other prohibited persons can obtain guns far too easily.

Now, we will build on these efforts with Phase two of the Brady law, which will require background checks on so-called long guns such as rifles as well as handguns. Long guns are frequently used in crime. Since 1996, law enforcement officials have submitted over 100,000 trace requests for long guns. In fact, two of the top ten most frequently traced crime guns in 1997 were long guns.

Phase two of the Brady law is also critical because it will require background checks for pawnshop customers who redeem their own firearms. We are learning that persons prohibited from possessing firearms redeem their own firearms from pawnbrokers much more often than prohibited persons attempt to purchase new handguns from gun dealers. When the FBI's background check system becomes operational it will prevent felons from redeeming firearms from pawnbrokers.

We must move forward and continue to work together -- federal, state and local law enforcement agencies -- to build an increasingly effective background check system and work to prevent the destruction and the tragedies inflicted by gun violence. Now it is my pleasure to introduce the person who has done so much to make our streets and nation safer, and with whom we at Treasury are working closely to implement the Brady law, the Attorney General of the United States.

The White House
August 6, 1998

Remarks by
Sarah Brady

Mr. President, Mr. Vice President, General Reno, Secretary Rubin, it is my great pleasure to join with you in expressing continued support for the Brady law.

Five years ago, when Congress passed the Brady bill and the President signed it into law, we all knew that it would stop criminals from walking into a gun store, lying on a federal form and walking out with a handgun. We wanted to put an end to the practice of what we called "lying and buying." And we have.

Since the Brady law went into effect backgrounds checks have stopped 250,000 felons,

fugitives and other prohibited purchasers from buying a handgun. That, in itself, is a great story.

But it's not the whole story. Because the background check was there, many criminals did not even attempt to buy a handgun from a store. Because the background check was there, hundreds of fugitives have been arrested on outstanding arrest warrants.

Because the waiting period was there, many crimes of passion and anger may have been stopped. And because the waiting period was there, some people who wanted to buy a gun in a moment of despair, were stopped from committing suicide with a gun.

About two months after the Brady law went into effect, I received a letter from a school official who said, "Sarah, you saved my life." In a moment of dark despair she had gone into a gun

store and attempted to buy a handgun and take it home to kill herself. The clerk behind the counter, said, "Sorry lady, haven't you heard about the Brady law. You have to wait seven days."

As I go through life, I have learned that little things can make a big difference. A little thing like a background check can prevent a murder. And a little thing like a waiting period can save a life.

The Brady law has not stopped all forms of gun violence. And we never said it would. But the Brady law *has* contributed to a major decline in gun-related crimes. The Brady law *is* working.

But five years ago, when Congress passed the Brady law, it decided to "sunset" the Brady waiting period after five years in favor of a "National Instant Criminal Background System."

Today, I want to commend General Reno and Secretary Rubin for the work they have done in designing and implementing this new computer system and the files that go with it. They have done a great job.

But even as we take advantage of this new computer capability, let us not abandon the benefits that we still get from a waiting period. Let's maintain a "cooling off" period on handgun purchases. And let's make sure that the background check is as thorough as humanly possible. Speed is not he real test of a background check. It's efficiency and accuracy.

I want to thank our friends in law enforcement for their continued support of the Brady law. And I want to commend Senator Durbin and Congressman Schumer for the work

they have done in seeking to preserve the benefits of a waiting period.

Now, it is my distinct honor and pleasure to introduce the man who made the Brady bill the law of the land. Please welcome the President of the United States.

The White House
August 6, 1998

Remarks by
Jim Brady

Thank you, Mr. President. As a former White House Press Secretary, I always want the last word. And the word for today is "success."

The Brady law has done a great job of stopping guns from being sold to felons and fugitives. The Brady law works. So my advice to Congress is simple: don't mess with success. Keep the waiting period in place.

And thank you, Mr. President, for your continued leadership in the fight against gun violence.

<u>Concealed Weapons Legislation</u>

Q: **What is the Administration's position on the concealed weapons legislation that passed out of the House Judiciary Committee this week?**

A: There may be good reasons to allow retired and current police officers to carry their weapons on an interstate basis, and we intend to consult the law enforcement organizations and others on this issue. However, as we understand it, the bill's current language also allows the increasing number of persons with state permits to carry concealed weapon to similarly carry these weapons into other states. Frankly, we do not think that it is a good idea -- before the Brady Law is made permanent, and before the NICS system is implemented -- to allow millions of persons to carry <u>concealed</u> weapons throughout the country.

White House Briefing for Brady Extension Event
August 6, 1998

- At today's event with Jim and Sarah Brady and representatives from law enforcement, the President made two key announcements: (1) he urged Congress to extend the Brady waiting period <u>before</u> it expires on November 30, 1998; and (2) he strongly opposed efforts by certain members of Congress -- with the strong support of the gun lobby -- to sabotage final implementation of Brady's National Instant Background Check System. But before I touch on these two issues, let me first provide you with some background.

<u>Brady Background</u>

- **Just the Facts.** As you know, since the Brady Law went into effect on February 28, 1994, designated Chief Law Enforcement Officials from so-called Brady states have had up to 5 days to conduct background checks on all prospective handgun purchasers. During these 5 days, if law enforcement officials turned up any disqualifying information under state, local or federal laws, the transfer of a handgun could be stopped. Federal law (U.S.C. Title 18, Section 922 (g) or (n)) generally prohibits anyone from owning a firearms if they are: (1) convicted felons; (2) fugitives from justice; (3) unlawful drug users; (4) adjudicated "mental defectives"; (5) illegal aliens; (6) military dishonorable discharges; (7) persons who have renounced their citizenship; (8) person subject to domestic violence restraining orders; and (9) persons convicted of misdemeanor crimes of domestic violence.

- **Brady vs. Non-Brady States.** Initially, 32 states were subject to the Brady waiting period and background check. Since then, 9 additional states have implemented permit or background check systems that exempt them from Brady's requirements. Thus, 23 states continue to be subject to the Brady Law today.

- **Brady Sunset.** As of November 30, 1998, however, the 5-day waiting period will expire, and will be replaced by the National Instant Criminal Background Check System -- or the NICS, as it is commonly referred to. Additionally, at this time, **all** firearms -- not just handguns -- will be subject to background checks under the NICS. This will require 18 of the 27 non-Brady states to either do state background checks on long guns or refer these checks to the NICS.

- **The National Instant Criminal Background Check System (NICS).** Developed by the Justice and Treasury Departments over the past 5 years, the NICS is a computerized background check system designed to respond within a matter of seconds to most background check inquiries. Three main databases will be accessed by NICS for background check information: (1) the National Crime Information Center (or NCIC), which contains records on all fugitives, the Secret Service's Protective File, and the Deported Felons file; (2) the Interstate Identification Index (or Triple I), which contains automated criminal history records; and (3) a newly created NICS index, which contains information on drug users, mentally unstable persons, illegal aliens and others.

Here is how the system will generally work:

1. **Initial Check.** Federal gun dealers will be required to submit the name, date of birth, state of residence and other identifying information to the FBI's NICS Operation Center or an FBI-appointed point of contact. The FBI or state point of contact will make the NICS check and determines whether any matching record indicates that the purchaser is disqualified from possessing a firearm under state or federal law. Where a state point of contact initiates the check, state and local records will also be consulted.

2. **Initial Response.** If a matching record is found by the NICS, the gun dealer will be notified that the application is "denied." If no match is found, the gun dealer will be instructed to "proceed." And if additional record analysis is required, the gun dealer will be told that the application is "delayed. " In these circumstances, law enforcement can take up to 3 days to determine whether or not the prospective purchaser can legally purchase a firearm.

3. **Fee-based System.** To operate this system of checks, the Justice Department intends to charge gun dealers a user fee of about $15 -- as it currently does with chid care providers, school districts and others for whom it conducts checks.

- **Improved Access to Records.** One final and important note: since 1993, we have spent $200 million to help states improve the accessibility of criminal history records and to maximize the effectiveness of the NICS. As a result, 9 million of the most current and most important criminal history records required for the NICS have been automated during this period. In fact, the Bureau of Justice Statistics estimates that, on average, 42 million of the 57 million state and federal criminal history records in the U.S. -- or about 73% -- would be accessible if a handgun purchase background check were performed today. Nonetheless, we are continuing to work to automate even more records, to improve information sharing with states, and to include additional records of persons in other prohibited categories -- such as drugs users, stalkers, and the mentally unstable.

Making the Waiting Period Permanent

- With respect to the President's calling for an extension of the waiting period today, there are 2 important reasons for this: (1) to preserve a critical law enforcement tool; (2) to provide for a "cooling off" period prior to the sale of a handgun.

- **State and Local Law Enforcement Knows Best.** First and foremost, the President wants to preserve the ability of local law enforcement officials to check their records -- including those that have not been computerized -- before a handgun purchase goes through. While NICS will improve access to many records and shorten the time required to do a background check -- to mere seconds in most cases -- it will no longer require gun dealers to notify designated local law enforcement officials of proposed handgun purchases in their jurisdiction. New legislation is required to keep local law enforcement in the loop and to give them the time they need to act. This is especially important since certain records -- such as information on restraining orders for stalking or domestic violence misdemeanors -- will take more time to have included in the NICS and may be readily available locally.

- **"Cooling Off" for Handguns.** Additionally, the expiration of the current waiting period precludes the "cooling off" impact of the Brady Law. While current law only provides for a waiting period of "up to 5 days," the decentralized nature of the current system -- with background checks being conducted by some 5,400 law enforcement agencies -- ensures that prospective handgun purchasers can not necessarily expect to receive their handguns right away. Under NICS, however, the vast majority of handgun purchasers can expect to be approved or denied almost immediately. Thus, new legislation is required to provide for any type of waiting period after November 30th.

- **The Schumer-Durbin Bill.** The Brady extension bill recently introduced by Representative Schumer and Senator Durbin addresses both of these issues and is supported by the President. In brief, the Schumer-Durbin bill would:

  (1) Require a minimum 3-day waiting period for all handgun purchases, even if the NICS background check is completed well beforehand. This will give local law enforcement additional time to review other local records that may not be found in the NICS, as well as restore Brady's "cooling off" effect..

  (2) Add up to an additional two days to the waiting period if law enforcement officers need more time to clarify arrest records. Under the NICS, law enforcement will be allowed up to 3 days to complete a background check if more time is necessary to determine whether an arrest resulted in a conviction that disqualifies the prospective purchaser from owning a gun. The Schumer-Durbin bill extends this period to 5 days, giving law enforcement even more time to get the information it needs to make an accurate decision.

  (3) Require gun dealers to notify the local law enforcement official in the purchaser's place of residence prior to selling the gun. When the NICS takes effect, gun dealers will no longer have to forward the names and addresses of prospective gun purchasers to the existing network of 5,400 law enforcement officials that have already stopped tens of thousands of prohibited handgun purchases each year. The Schumer-Durbin bill requires gun dealers to keep these local law enforcement officials informed about local handgun purchases.

<u>**Defending Brady from the Gun Lobby**</u>

- Finally, the President expressed his strong opposition to an amendment that Senator Smith of New Hampshire has attached to the Justice Department's appropriations bill. This amendment -- inspired and promoted by the gun lobby -- would fundamentally undermine implementation of the NICS system that was originally promoted by the NRA.

In brief, the amendment would:

(1) <u>Prohibit the FBI from charging gun dealers a fee for background checks</u> even though the FBI currently charges school districts, day care providers, and many others for similar background checks. States and local law enforcement agencies also generally charge dealers for the costs of background checks they complete. Without these resources -- or about $15 per check and $80 million overall -- the FBI will either have to forego processing millions of background checks, or transfer resources from other crime fighting efforts.

(2) <u>Require the FBI to immediately destroy certain records obtained from clean background checks</u>, substantially undercutting the reliability of the background check process by making it impossible to catch fraudulent submissions. The FBI <u>does</u> intend to destroy such records, but after a reasonable period that allows them to audit their records to protect against fraud.

(3) <u>Establish a federal right to sue if records are not immediately destroyed</u>. Creating a federal cause of action with punitive damages for person aggrieved by the provisions of this amendment are -- pure and simple -- just another attempt to undermine the operation of the NICS.