

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Domestic Policy Council

Series/Staff Member: Jose Cerda

Subseries:

OA/ID Number: 18931

FolderID:

Folder Title:

Brady Trafficking [2]

Stack:

S

Row:

98

Section:

2

Shelf:

4

Position:

2

CENTER TO PREVENT HANDGUN VIOLENCE

TRAFFIC STOP:

How the Brady Act Disrupts Interstate Gun Trafficking



Douglas S. Weil, Sc.D.
September 19, 1997

© The Center to Prevent Handgun Violence

1225 Eye Street, NW, Suite 1100, Washington, DC 20005 • (202) 289-7319 • FAX (202) 408-1851
10951 W. Pico Blvd., Suite 100, Los Angeles, CA 90064 • (310) 475-6714 • FAX (310) 475-3147
11 South LaSalle, Suite 2302, Chicago, IL 60603 • (312) 920-0504 • FAX (312) 726-7448

**Traffic Stop:
How the Brady Act Disrupts Interstate Gun Trafficking**

Executive Summary

Interstate gun trafficking occurs, in part, because of the disparity in state laws governing the sale of firearms. As a result, the illegal market price of firearms in localities with restrictive laws is significantly greater than the retail price for the same guns purchased in states in which the laws are less stringent. A change in the relative disparity in laws can, therefore, have an impact on gun trafficking patterns. The notion here is that the lack of control over the retail sale of handguns in some states makes it possible for individuals, who are willing to engage in interstate gun trafficking, to profit from the price differences for guns across state lines.

Prior to implementation of the Brady Handgun Violence Prevention Act (PL 103-159) ("Brady" or "Brady Act") in February 1994, there were 32 states – many of which had been identified as important source states for gun traffickers – that did not require, by statute, that a background check be conducted prior to the completion of the sale of a handgun to determine whether receipt or possession of a handgun by the purchaser would be in violation of law. Consequently, there was a disparity in state gun laws between the 32 states that did not require background checks and the 28 that did which could enable gun trafficking to occur.

The interim provisions of the Brady Act required that licensed gun dealers notify the designated Chief Law Enforcement Officer (CLEO) for the purchaser's residence of the proposed sale of a handgun, and that the CLEO make a "reasonable effort" to ascertain within five business days whether the buyer's receipt or possession of a handgun would be in violation of law. The purpose of this study was to test the hypothesis that implementation of the Brady Act would have an impact on gun trafficking patterns. Specifically, that states which did not require background checks for handgun purchases prior to Brady (that is, Brady states) would become less important as sources of illegally trafficked firearms after the Act took effect.

Data utilized in the analysis come from the firearms trace database compiled by the Bureau of Alcohol, Tobacco and Firearms (ATF). The focus on gun trafficking between four source states (Ohio, Kentucky, Mississippi and Georgia) – each of which was a Brady state – and seven recipient states (Michigan, Illinois, New York, Pennsylvania, Missouri, Maryland, and New Jersey) – all of which required background checks prior to implementation of the law except for Pennsylvania which had a two day waiting period in place. We analyzed the data to determine if the percentage of recovered crime guns recovered in each of the recipient states that were traced back to the four source states was smaller for the subset of guns purchased after Brady took effect than it was for guns purchased prior to implementation of the law.

In all cases, the finding was the same: *the percentage of recovered crime guns that were traced to dealers in the four Brady states was greater for guns purchased before the Act took effect when compared to guns purchased after the Act took effect.* In other words, implementation of the Brady Act disrupted established flow of guns across state lines, resulting in Brady states becoming less important as source states for gun traffickers.

On June 27, 1997, the United States Supreme Court invalidated the background check requirement of the interim provisions of Brady while leaving the waiting period intact. Conclusions drawn from this study suggest that policy makers should push for voluntary compliance with the background check requirement of Brady in every jurisdiction in the country as a way to help control illegal interstate gun trafficking.

Introduction

On June 27, 1997, the United States Supreme Court invalidated the background check requirement of the interim provisions of the Brady Handgun Violence Prevention Act (PL 103-159) ("Brady" or "Brady Act").¹ The interim provisions of the law imposed a five-day waiting period on the sale of handguns by federally licensed firearms dealers (FFL) in any state that did not require, by statute, a background check before the sale of a handgun could be completed.² The law further required that licensed gun dealers notify the designated Chief Law Enforcement Officer (CLEO)³ for the purchaser's residence of the proposed transfer. The CLEO was required to make a "reasonable effort" to ascertain within five business days whether the buyer's receipt or possession of a handgun would be in violation of law. If the background check could not be completed within five days, the sale was allowed to go forward.

The Court ruled that the federal government does not have the power to require local police to conduct background checks of handgun buyers. The Justices did indicate, however, that police could use the five day waiting period to voluntarily check criminal history records. Previous research has shown that the Brady background check has been an important tool in preventing easy access to handguns.⁴ This study focuses on the impact of the Brady Act on interstate gun trafficking.

Brady was designed to make the acquisition of a firearm by convicted felons and other prohibited purchasers (e.g., individuals adjudicated mentally defective or subject to a restraining order) more difficult, more costly and more dangerous by cutting off access to handguns sold in gun stores. The law worked. From March 1, 1994 through June 30, 1996, an estimated 102,822 attempts by prohibited purchasers to buy a handgun in the 32 original Brady states⁵ (including 72,325 transactions because of an outstanding felon warrant or conviction) were stopped by the background check.⁶ More recently, the Bureau of Justice Statistics estimated that in all 50 states, 173,000 transactions were not completed because background checks revealed that the buyers were not allowed to take possession of a handgun.⁷ Because there is no way to measure the number of people who

¹ *Printz v. United States*, 1997 WL 351180, _S. Ct._ (1997).

² Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms. *Brady Law Implementation: State by State Summary*. Final Report. February 1994. (Section 2).

³ In each state, responsibility for conducting background checks was assigned to one or more law enforcement agencies designated as the Chief Law Enforcement Officer (CLEO).

⁴ Weil, Douglas. Denying Handguns to Prohibited Purchasers: Quantifying the Impact of the Brady Law. Center to Prevent Handgun Violence. 26 August 1996. See also: Manson D, Gilliard D. *Presale Handgun Checks, 1996*. Washington, DC: US Dept of Justice, Bureau of Justice Statistics; September 1997.

⁵ Only states that did not, by statute, require a background check be completed as a condition of the sale of a handgun were subject to Brady Law requirements. When Brady went took effect, 32 states had to comply with Brady. Those states were AL, AK, AR, AZ, CO, GA, ID, KS, KY, LA, ME, MN, MS, MT, NE, NH, NM, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, WA, WV, WY.

⁶ *Ibid* #4.

⁷ Manson D, Gilliard D. *Presale Handgun Checks, 1996*. Washington, DC: US Dept of Justice, Bureau of Justice Statistics; September 1997. Note: the Bureau of Justice Statistics estimated that the total number of

have simply not attempted to buy a gun from a retail dealer because of the background check, the number of denials is probably an underestimate of the true effect of Brady.

Interstate gun trafficking occurs, in part, because of the disparity in state laws governing the sale of firearms. As a result, the illegal market price of firearms in localities with restrictive gun laws is significantly greater than the retail price for the same guns purchased in states in which the laws are less stringent.⁸ A change in the relative disparity in gun laws can, therefore, have an impact on gun trafficking patterns. The notion here is that the "price" differences for guns across state lines make it profitable to buy guns in one state and transport them to other states; if Brady increases the effective price of acquiring guns in low-price states, the result will be to reduce the profitability of interstate gun transfers and, in turn, reduce the total quantity of such transfers by some amount. An example of this phenomenon was observed when Virginia's role as a primary source of crime guns recovered in the northeastern United States was greatly reduced relative to the other southeastern states after Virginia restricted handgun purchases to one-handgun-per-month.⁹

Prior to implementation of the Brady Act, 32 states did not require a background check as a condition of the purchase of a handgun – and many of those states (including Ohio, Kentucky, Mississippi and Georgia) have been identified as important sources for guns illegally shipped across state lines.¹⁰ By requiring that background checks be conducted in all states before the sale of a handgun by an FFL could be completed, Brady reduced the disparity that existed between gun laws from one state to another. Consequently, once the Brady Act took effect, the importance of states such as Ohio as a source of illegally trafficked firearms should have diminished relative to states that were conducting background checks before Brady. This study tests this hypothesis.

Shortly after the Supreme Court invalidated the background check provision of the Brady Act, the Attorney General for the state of Ohio ordered the state's Bureau of Criminal Investigation (BCI) to stop accepting requests to conduct background checks.¹¹ The Attorney General argued that her office lacked the necessary authority to continue to conduct the background checks on a voluntarily basis. As a practical matter, the Attorney General's decision establishes Ohio as virtually the only state in the United States in which a felon can walk into a gun store to buy a handgun without having to submit to a

gun transfers stopped (including rifles and other long guns in addition to handguns) as a result of background checks. Brady Act background checks prevent 173,000 illegal handgun purchases since February 1994 implementation. Handgun figure is subset of more than 250,000 firearm sales blocked since February 1994. DOJ Press Release: September 4, 1997.

⁸ Cook PJ, Molliconi S, Cole T. Regulating Gun Markets. *The Journal of Criminal Law and Criminology*. 86; Fall 1996. 59-91. See footnote 56, p72.

⁹ Weil, D, Knox, B. Effects of limiting handgun purchases on interstate transfer of firearms. *JAMA*. 1996; 275:1759-1761.

¹⁰ War between the States: How gunrunners smuggle weapons across America. An analysis of firearms trace data by the office of Congressman Charles Schumer. April 9, 1997.

¹¹ News Statement from Ohio Attorney General Betty D. Montgomery. The U.S. Supreme Court's Action in Striking Portions of the Brady Act. June 30, 1997.

background check.¹² If the policy of not conducting background checks is left in place, Ohio may become the principal source of firearms for interstate gun traffickers. For this reason, much of the analysis focuses on the impact of Brady on Ohio as a source of guns illegally trafficked across state lines.

Methods

The data used in this analysis come from the firearms trace database compiled by the Bureau of Alcohol, Tobacco and Firearms (ATF) and were obtained by the Center to Prevent Handgun Violence through the Freedom of Information Act (FOIA). Law enforcement agencies can request that ATF trace a gun that has been recovered as part of a criminal investigation. ATF staff at the National Tracing Center (NTC) contact the manufacturer of the firearm to identify the wholesaler or retail dealer who received the gun. Staff at the NTC then contact each consecutive dealer who acquired the firearm until the gun is either traced to the most recent owner or until the gun can be traced no further. There is no requirement that records of gun transfers be maintained by individuals who are not licensed gun dealers. Consequently, the tracing process often ends with the first retail sale of the gun.

As part of the tracing process, information is collected on several variables, including the location of the gun dealer who acquired and then sold the gun (by state and region); when the gun was purchased; and, when and where (state) a trace was initiated. ATF maintains computerized records on firearms traces dating back to September 1989. Through the 17th of January, 1997, ATF had traced approximately a half million guns.

The principal hypothesis tested was that the institution of a nationwide requirement that criminal history checks be conducted by all states as a prior condition for the purchase of a handgun would have an impact on gun trafficking patterns among states. Specifically, that states required by the Brady Act to begin conducting background checks would become relatively less important as a source of crime guns which are illegally shipped across state lines. To test the hypothesis, a comparison was made between the percentage of guns that were traced to Ohio gun dealers from outside the state ("out-of-state" guns), stratifying for when the firearms were purchased (before or after the Brady Act took effect). It was expected that the percentage of all recovered guns in any given state that were traced back to Ohio gun dealers would be less for the subset of guns acquired after the law took effect compared to the percentage traced to Ohio for the subset of guns acquired prior to the law. For example, we compare the before- and after-Brady proportions of traced guns in Michigan that were originally purchased in Ohio; a decrease in this proportion over time is consistent with the idea that Brady reduces the profitability of interstate gun transfers between Ohio and Michigan (that is, reduces gun running).

¹² The Attorney General for the state of Arkansas initially believed that the Supreme Court's ruling also precluded voluntary compliance with Brady. However, further analysis of the State's laws has led the AG to conclude otherwise.

The statistical importance of the findings was established by estimating the associated odds ratio (OR) and 95% confidence interval (CI).

To conduct the analysis, the records from ATF's trace database were sorted to identify all states in which law enforcement recovered firearms that had been purchased from gun dealers in Ohio. Four states – Michigan, Illinois, New York and Pennsylvania – which recovered in excess of half of all out-of-state guns traced back to Ohio gun dealers, became the principal focus of the investigation. The impact of Brady on gun trafficking from Ohio to three additional states – Maryland, Missouri and New Jersey – which account for an additional 10% of all out-of-state traces to Ohio gun dealers, was also studied. The analysis of data from all recipient states studied is reported – and, in all cases, the basic finding is the same: *the percentage of recovered guns traced to gun dealers in Ohio fell after implementation of the Brady background check.*

In order to eliminate the possibility that an unidentified factor unique to Ohio was responsible for the findings, the analysis was replicated to determine if gun trafficking from Kentucky, Mississippi and Georgia to Illinois, Michigan, New York, Pennsylvania, Maryland, Missouri and New Jersey was affected by implementation of the Brady Act. Kentucky, Mississippi, and Georgia were included in the analysis because each was one of the original Brady states and each was identified as an important supplier of guns to Illinois and Michigan, and, to a lesser extent, to New York and Pennsylvania. In all cases, the basic findings were the same as in the principal analysis: *the percentage of traced guns acquired after the law took effect that were purchased from a gun dealer in one of the three Brady states was smaller than the percentage that were acquired in those states prior to implementation of the law.* In other words, guns flowed from states with relatively lax guns laws to those states with stricter laws until the discrepancy in the laws was reduced with implementation of Brady.

Results – Changes in Interstate Gun Trafficking Patterns are Associated with Implementation of the Brady Background Check

Through January 1997, records pertaining to 493,914 firearms were entered into ATF's firearms trace database. Both the state in which a trace was initiated and where a firearm was acquired could be determined for 39.5% (194,942) of the traced guns. For these guns, 42.4% (82,698) of the records also included information on the date of purchase.

Investigation of the data suggests that crime guns are often purchased in one state and then transferred to and used in another state. Half of all firearms ATF successfully traced to gun dealers (98,278/194,942) were found to have been purchased outside the state in which they were recovered. Guns recovered in New York and New Jersey, states with relatively strict gun laws, represent one extreme end of the spectrum. In New York and New Jersey, more than 80% of firearms traced to a gun dealer were acquired from FFLs in other states. By comparison, only 28% of traced guns recovered in Arizona had been acquired in a state other than Arizona.

Brady Act is Associated with a Reduction in Interstate Gun Trafficking from Ohio

From September 1989 to January 1997, ATF traced 14,691 firearms to gun dealers located in Ohio. At least 39% (5769) of the traces were requested by law enforcement agencies from outside the state, while 28% (4077) were initiated within Ohio. Recovery state data was unavailable for the remaining 4845 records. While guns purchased in Ohio were recovered by law enforcement agencies in virtually every state, trace requests originating in four states – Illinois, Michigan, New York and Pennsylvania – account for 52.0% (3000) of out-of-state guns traced to Ohio gun dealers. Traced guns recovered in Maryland, Missouri and New Jersey accounted for an additional 9.7% (561) of all firearms traced to Ohio dealers.

- **After Implementation of the Brady Act, Ohio Guns Less Likely to be Traced as Part of a Criminal Investigation in Michigan**

ATF successfully traced 10,701 firearms recovered in Michigan to gun dealers: 41% (4368/10,701) were traced to MI FFLs; 59% (6333) to dealers outside the state. The date of purchase could be determined for 43% (4602) of the guns traced to dealers; 20% (921) of which were traced to dealers in Ohio. Ohio's share of guns recovered in Michigan and traced as part of a criminal investigation fell by 66%, from 22.1% of guns purchased prior to implementation of Brady to 7.5% of guns acquired after the law took effect (OR=0.29; 95% CI=0.25 to 0.34) (Table 1) (Figure 1). Similar results were observed in every state studied.

- **After Implementation of the Brady Act, Ohio Guns Less Likely to be Traced as Part of a Criminal Investigation in Illinois**

ATF successfully traced 17,867 firearms recovered in Illinois to gun dealers: approximately half (9188/17,867) were traced to IL FFLs; and half (8679 guns) to dealers outside the state. The date of purchase could be determined for 54% (9642) of guns traced to dealers; 1.9% (185) of which were traced to Ohio gun dealers. Ohio's share of guns recovered in Illinois and traced as part of a criminal investigation fell by 87.5%, from 2.4% of guns purchased prior to Brady to 0.3% of guns acquired after the law took effect (OR=0.14; 95% CI=0.10 to 0.20) (Figure 2).

- **After Implementation of the Brady Act, Ohio Guns Less Likely to be Traced as Part of a Criminal Investigation in New York**

ATF successfully traced 13,690 firearms recovered in New York to gun dealers: 16.7% (2284/13,690) were traced to NY FFLs; 83.3% (11,406 guns) to dealers located outside

the state. The date of purchase could be determined for 54% (7382) of guns traced to dealers; 5.9% (432) of which were traced to Ohio gun dealers. Ohio's share of guns recovered in New York fell by 78.5%, from 6.5% of guns acquired prior to Brady to 1.4% of guns purchased after the implementation of the law (OR=0.21; 95% CI=0.12 to 0.37) (Figure 3).

Table 1: The Percentage of Out-of-State Guns Traced to Ohio Gun Dealers and the Estimated Odds Ratio That a Firearm Purchased After Implementation of the Brady Law Would Be Traced to an Ohio Gun Dealer Relative to a Dealer in Another State Compared with Firearms Purchased Before the Law Took Effect

State Firearms Recovered In	% Traced to Ohio Dealer	% Change in Ohio's Share	Odds Ratio (95% Confidence Interval)
Michigan			
Purchased before Brady (n=3936)	22.1	-66.1	0.29 (0.25-0.34)
After Brady (n=666)	7.5		
Illinois			
Purchased before Brady (n=7298)	2.4	-87.5	0.14 (0.10-0.20)
After Brady (n=2344)	0.3		
New York			
Purchased before Brady (n=6457)	6.5	-78.5	0.21 (0.12-0.37)
After Brady (n=925)	1.4		
Pennsylvania			
Purchased before Brady (n=2571)	6.3	-36.5	0.62 (0.39-0.78)
After Brady (n=546)	4.0		
Missouri			
Purchased before Brady (n=3234)	1.5	-86.6	0.16 (0.07-0.33)
After Brady (n=805)	0.2		
Maryland			
Purchased before Brady (n=2948)	2.4	-83.3	0.17 (0.09-0.30)
After Brady (n=736)	0.4		
New Jersey			
Purchased before Brady (n=3192)	3.2	-34.4	0.65 (0.48-0.88)
After Brady (n=565)	2.1		

- **After Implementation of the Brady Act, Ohio Guns Less Likely to be Traced as Part of a Criminal Investigation in Pennsylvania**

ATF successfully traced 8204 firearms recovered in Pennsylvania to gun dealers: 59% (4821/8204) were traced to PA FFLs; 41% (3383 guns) to dealers located outside the

state. The date of purchase could be determined for 38% (3117) of guns traced to dealers; 5.9% (184) of which were traced to Ohio gun dealers. Ohio's share of guns recovered in PA fell by 37%, from 6.3% of guns acquired prior to implementation Brady to 4.0% of guns acquired after the law took effect (OR=0.62; 95% CI=0.39 to 0.78) (Figure 4).

- **After Implementation of the Brady Act, Ohio Guns Less Likely to be Traced as Part of a Criminal Investigation in Missouri, Maryland and New Jersey**

Implementation of the Brady Act also to be associated with a reduction in gun trafficking from Ohio to Missouri, Maryland and New Jersey. In each state, a smaller percentage of recovered guns that had been acquired after Brady took effect were traced back to Ohio than for guns acquired prior to Brady. The percentage of guns recovered in Missouri, Maryland, and New Jersey traced back to Ohio fell by 87%, 83% and 34% respectively (Figure 5-7). In each instance, the findings were found to be statistically important.

Brady Act is Associated with a Reduction in Interstate Gun Trafficking from Kentucky, Mississippi and Georgia

In addition to Ohio, 31 other states, including Kentucky, Mississippi, and Georgia became subject to the requirements of Brady when the law took effect. Analysis of the data shows that gun traffickers were less likely to acquire guns from those three states after they began conducting background checks. Specifically, a smaller percentage of out-of-state guns purchased after implementation of Brady that were recovered in either Illinois, Michigan, New York, Pennsylvania, Maryland, Missouri or New Jersey were traced back to gun dealers in Kentucky, Georgia and Mississippi respectively, compared to the percentage of out-of-state guns acquired prior to implementation of the Act that were traced back to the any of the three source states (Tables 2-4).

Brady Act is Associated with a Reduction in Gun Trafficking from Kentucky

For guns recovered in Michigan, the percentage of firearms traced to Kentucky gun dealers as part of a criminal investigation fell by 77% from 7.9% of guns purchased prior to Brady to 1.8% of guns acquired after the law took effect (OR=0.22; 95% CI=0.16-0.29) (Table 2) (Figure 8). For guns recovered in Illinois, New York and Pennsylvania, the percentage of traced firearms traced to Kentucky gun dealers fell by 63%, 32% and 36% respectively (Figures 9-11). After Brady took effect, gun traffickers in Kentucky also supplied a smaller percentage of crime guns recovered in Maryland, Missouri and New Jersey, when compared to guns acquired prior to implementation of the law (Figures 12-14). In the entire analysis, the only finding which cannot be considered statistically important at the 95% level of confidence is the 36% reduction in guns traced to Kentucky from Pennsylvania.

Table 2: The Percentage of Out-of-State Guns Traced to Kentucky Gun Dealers and the Estimated Odds Ratio That a Firearm Purchased After Implementation of the Brady Law Would Be Traced to a Kentucky Gun Dealer Relative to a Dealer in Another State Compared with Firearms Purchased Before the Law Took Effect

State Firearms Recovered In	% Traced to KY Dealer	% Change in KY's Share	Odds Ratio (95% Confidence Interval)
Michigan			
Purchased before Brady (n=3936)	7.9	-77.2	0.22 (0.16-0.29)
After Brady (n=666)	1.8		
Illinois			
Purchased before Brady (n=7298)	3.0	-63.3	0.35 (0.28-0.43)
After Brady (n=2344)	1.1		
New York			
Purchased before Brady (n=6457)	1.9	-31.6	0.68 (0.50-0.92)
After Brady (n=925)	1.3		
Pennsylvania			
Purchased before Brady (n=2571)	1.1	-36.4	0.70 (0.41-1.19)
After Brady (n=546)	0.7		
Missouri			
Purchased before Brady (n=3234)	2.3	-39.1	0.58 (0.42-0.80)
After Brady (n=805)	1.4		
Maryland			
Purchased before Brady (n=2948)	1.4	-92.9	0.10 (0.04-0.27)
After Brady (n=736)	0.1		
New Jersey			
Purchased before Brady (n=3192)	3.0	-70.0	0.28 (0.18-0.44)
After Brady (n=565)	0.9		

Brady Act is Associated with a Reduction in Gun Trafficking from Mississippi

For guns recovered in Michigan, the percentage of firearms traced to Mississippi gun dealers as part of a criminal investigation fell by 63% from 4.9% for guns purchased prior to Brady to 1.8% for guns acquired after the law took effect (OR=0.35; 95% CI=0.26-0.48) (Table 3) (Figure 15). For guns recovered in Illinois, New York and Pennsylvania, the percentage of traced firearms traced to Mississippi gun dealers fell by 64%, 64% and 71% respectively (Figures 16-18). After Brady took effect, gun traffickers in Mississippi also supplied a smaller percentage of crime guns recovered in Maryland, Missouri and

New Jersey, when compared to guns acquired prior to implementation of the law (Figures 19-21).

Table 3: The Percentage of Out-of-State Guns Traced to Mississippi Gun Dealers and the Estimated Odds Ratio That a Firearm Purchased After Implementation of the Brady Law Would Be Traced to a Mississippi Gun Dealer Relative to a Dealer in Another State Compared with Firearms Purchased Before the Law Took Effect

State Firearms Recovered In	% Traced to MS Dealer	% Change in MS's Share	Odds Ratio (95% Confidence Interval)
Michigan			
Purchased before Brady (n=3936)	4.9	-63.3	0.35 (0.26-0.48)
After Brady (n=666)	1.8		
Illinois			
Purchased before Brady (n=7298)	13.7	-63.5	0.30 (0.27-0.34)
After Brady (n=2344)	5.0		
New York			
Purchased before Brady (n=6457)	1.1	-63.6	0.41 (0.24-0.69)
After Brady (n=925)	0.4		
Pennsylvania			
Purchased before Brady (n=2571)	0.7	-71.4	0.26 (0.09-0.73)
After Brady (n=546)	0.2		
Missouri			
Purchased before Brady (n=3234)	4.3	-72.1	0.28 (0.20-0.39)
After Brady (n=805)	1.2		
Maryland			
Purchased before Brady (n=2948)	0.5	-99.9	0.02 (0.01-0.03)
After Brady (n=736)	0.0		
New Jersey			
Purchased before Brady (n=3192)	1.5	-40.0	0.60 (0.37-0.96)
After Brady (n=565)	0.9		

Brady Act is Associated with a Reduction in Gun Trafficking from Georgia

For guns recovered in Michigan, the percentage of firearms traced to Georgia gun dealers as part of a criminal investigation fell by 71% from 5.9% of guns purchased prior to Brady to 1.7% of guns acquired after the law took effect (OR=0.27; 95% CI=0.20-0.37) (Table 4) (Figure 22). For guns recovered in Illinois, New York and Pennsylvania, the percentage of traced firearms traced to Georgia gun dealers fell by 70%, 32% and 66% respectively (Figures 23-25). After Brady took effect, gun traffickers in Georgia also

supplied a smaller percentage of crime guns recovered in Maryland, Missouri and New Jersey, when compared to guns acquired prior to implementation of the law (Figures 26-28).

Table 4: The Percentage of Out-of-State Guns Traced to Georgia Gun Dealers and the Estimated Odds Ratio That a Firearm Purchased After Implementation of the Brady Law Would Be Traced to a Georgia Gun Dealer Relative to a Dealer in Another State Compared with Firearms Purchased Before the Law Took Effect

State Firearms Recovered In	% Traced to Georgia Dealer	% Change in Georgia's Share	Odds Ratio (95% Confidence Interval)
Michigan			
Purchased before Brady (n=3936)	5.9	-71.1	0.27 (0.20-0.37)
After Brady (n=666)	1.7		
Illinois			
Purchased before Brady (n=7298)	2.0	-70.0	0.28 (0.21-0.37)
After Brady (n=2344)	0.6		
New York			
Purchased before Brady (n=6457)	9.0	-32.2	0.65 (0.56-0.75)
After Brady (n=925)	6.1		
Pennsylvania			
Purchased before Brady (n=2571)	5.3	-66.0	0.33 (0.24-0.46)
After Brady (n=546)	1.8		
Missouri			
Purchased before Brady (n=3234)	1.9	-78.9	0.19 (0.11-0.34)
After Brady (n=805)	0.4		
Maryland			
Purchased before Brady (n=2948)	3.9	-48.7	0.51 (0.39-0.67)
After Brady (n=736)	2.0		
New Jersey			
Purchased before Brady (n=3192)	7.9	-19.0	0.79 (0.66-0.95)
After Brady (n=565)	6.4		

Discussion

Calling the passage of the Brady Act of "largely symbolic significance," two legal commentators wrote in 1995 that "there is no reason to be optimistic that Brady will

successfully keep firearms away from dangerous persons.”¹³ They continued by suggesting that the “underlying federal gun control policy – strong gun laws keep guns out of the wrong hands – has little, if any effect, in disarming ex-felons and other ineligible.” Policies like Brady, which regulate access to handguns but not long guns, have further been criticized for creating a dynamic which could lead “some prospective gun abusers to substitute the more lethal long guns” for handguns, potentially leading to “a net increase in mortality.”¹⁴ A growing body of evidence suggests that these criticisms are wrong.

In 1993, 1.1 million violent crimes were committed with handguns¹⁵ yet, after a long term, steady increase in the percentage of all violent crime committed with a firearm, the use of guns in the commission of crime is on the decline. Since enactment of Brady, the percentage of aggravated assaults which involved a firearm has declined by 8.8%.¹⁶ The involvement of firearms in robbery (3.3%) and murder (2.0%) has also fallen along with both the violent crime and homicide rates.¹⁷ Though it would be inappropriate to attribute all of the reduction in gun use to Brady, these statistics provide no evidence that imposing background checks as a condition on the sale of a handgun has lead to a substitution of unregulated long guns for regulated handguns by violent criminals, or of an instrumentality effect, but do suggest that requiring background checks in every jurisdiction for the purchase of a handgun can be an effective tool in an effort to reduce gun-related violence.

This study provides additional evidence that federal gun control laws can be an effective tool in combating illegal gun-related activity. Passage of the Brady Act meant that, for the first time, the transfer of a handgun by licensed gun dealers to non-licensed individuals could not go forward anywhere in the country until law enforcement had been given the opportunity to conduct a background check on the prospective purchasers. Four states, Ohio, Kentucky, Mississippi and Georgia, which had not mandated that background checks be conducted prior to enactment of Brady, were important source states for guns that were used in connection with crime in Michigan, Illinois, New York, Pennsylvania, Missouri, Maryland and New Jersey. This analysis of ATF trace data reveals that the percentage of recovered guns acquired after the states began conducting background checks that had been purchased from FFLs in any of the four Brady states was smaller than the percentage of recovered guns bought prior to enactment of the law that were traced to dealers in those states.

¹³ Jacobs J, Potter K. Keeping guns out of the “wrong” hands: the Brady Law and the limits of regulation. *The Journal of Criminal Law and Criminology*. 1995; 86: 93-120.

¹⁴ Kleck G. Point Blank: Guns and Violence in America 407-408 (1991).

¹⁵ Zawitz M. *Firearms, Crime, and Criminal Justice: Guns Used in Crime: Bureau of Justice Statistics: Selected Findings*. Washington, DC: US Dept of Justice, Bureau of Justice Statistics; July 1995:1.

¹⁶ *Crimes with guns down faster than violent crimes overall*. An analysis of data from the FBI Uniform Crime Report (1991-1995) by the Center to Prevent Handgun Violence. Washington, DC; October 1996.

¹⁷ Ibid #16

The magnitude of the findings was both statistically important and important from a practical standpoint. Policy makers should recognize that any jurisdiction that does not continue to conduct background checks on prospective handgun purchasers faces the threat that it will become a safe haven for gun traffickers.

This is not the first study to demonstrate that government policies can effectively disrupt established interstate gun trafficking patterns. In 1993, the state of Virginia restricted handgun purchases to one handgun per person per month. An evaluation of the law's impact on interstate gun trafficking revealed that Virginia supplied a significantly smaller percentage of crime guns recovered in the northeastern corridor of the United States that had been purchased after the law took effect when compared to the percentage of recovered guns traced back to Virginia gun dealers that had been purchased prior to implementation of the law.¹⁸

While it appears that conducting criminal background checks on prospective handgun buyers has helped to prevent prohibited purchasers from acquiring firearms from gun dealers and has led to a disruption in established interstate gun trafficking patterns, to assure that the benefits will endure requires that a comprehensive set of well-tailored gun laws directed at keeping guns out of the illegal market is implemented.

The illegal gun market exists for a variety of reasons. Would-be criminals may be unable to buy handguns from the legal market because a prior criminal record disqualifies them from legally obtaining a gun. Nationally, hundreds of thousands of prohibited purchasers have been denied access to a handgun that they attempted to buy from a licensed dealer. Others may go to the illegal market because they want to make it difficult for law enforcement to trace a gun back to them. The ability to acquire guns from the illegal market points to one of the most troubling aspects of society's attempts to prevent gun violence – the ease with which the link between a gun and the individual who uses it can be broken, removing an important impediment to the criminal use of firearms.

In many jurisdictions, identification requirements for the purchase of a firearm in the primary retail market are minimal and easily falsified, while private or secondary market sales are largely unregulated. A prohibited purchaser or individual who does not want to be identified as the owner of a particular gun can obtain a firearm directly from the secondary market with little risk of being stopped or identified. Alternatively, the same individual can recruit a third party (known as a "straw purchaser") to buy the gun in his place. If a gun bought by a straw purchaser turns up as part of a criminal investigation, the straw purchaser can, with little risk of criminal culpability, claim that he sold the firearm to an unidentified third party. For these reasons, Brady's role in reducing interstate gun trafficking or lowering the prevalence of gun use in violent crime may erode over time.

¹⁸ Ibid #9

To ensure that the benefits of Brady continue into the future, it is important to make it more difficult to break the link between a gun and the individual who uses it – and therefore reduce the supply of guns available to criminals. Several steps can be taken:

- individuals should be required to obtain a license (or “permit-to-purchase”) before being allowed to buy a handgun – applicants should be required to submit to a background check as a condition of receiving the license;
- all handgun transfers should be registered;
- laws that regulate the purchase of a handgun from a licensed gun dealer should be extended to cover currently unregulated private, secondary market sales; and,
- handgun purchases should be limited to one handgun per month.

The United States Department of the Treasury recently released a report on the government’s Youth Crime Gun Initiative that was based on an analysis of the firearms trace data.¹⁹ The Treasury Department used the trace data for a variety of purposes including: identifying the types of firearms that law enforcement agencies recover as well as the types of crimes most often associated with the recovered weapons; documenting the time it takes for recovered guns to move from the first retail sale by a federally licensed gun dealer until they are recovered as part of a criminal investigation; and, to identify differences between the adult, juvenile and youth illegal firearms activity.

Our analysis of the firearms trace data provides strong evidence that a national background check requirement in combination with a five-day waiting period is an effective tool available to the federal government for combating interstate gun trafficking. It was not, however, possible to independently estimate the impact of the background check versus the waiting period – though both components of Brady probably contributed to the observed reduction in gun trafficking from Ohio, Kentucky, Mississippi and Georgia. The waiting period provides both the opportunity for a thorough background check to be conducted and is disruptive for gun traffickers who rely on straw purchasers to supply them with guns.

Because ATF is not asked to trace all firearms recovered by law enforcement, questions have been raised about how well the subset of traced firearms represents the entire pool of recovered guns. For the purposes of this study, it does not matter. The date of purchase and the origin of traced guns (the two key variables in this study) are not known by requesting agencies until the traces have been completed making it unlikely that the sample of guns traced will differ significantly from the larger pool of recovered guns with respect to these two variables.

Conclusion

¹⁹ Crime gun trace analysis report: the illegal youth firearms market: 17 communities. Bureau of Alcohol, Tobacco and Firearms. US Department of the Treasury. Washington, DC. July, 1997.

During a recent debate at the National Press Club, NRA Executive Vice President Wayne LaPierre said that criminals rarely acquire guns from gun dealers. Mr. LaPierre should have prefaced his remark by saying, "because of the Brady background check."

On April 12, 1997, the *Houston Chronicle* disclosed that the Houston Police Department had, during the previous 12 months, quietly suspended all Brady background checks after the Federal 5th Circuit Court of Appeals ruled that local police departments were not required to conduct background checks on handgun purchasers. Five days later, Houston's Mayor and Police Chief announced that the city would resume conducting background checks on handgun purchasers. In the days between the disclosure by the newspaper and the decision by city officials, the results of a survey of 400 registered voters in Houston were revealed that: (1) 79% of respondents disapproved of the suspension of background checks; and that (2) 90% of respondents believed that the police should conduct background checks on handgun purchasers *whether or not required by federal law*.²⁰

The results of an identical survey of 603 randomly selected voters in Ohio reveal similar support for the background check requirements of Brady.²¹ Specifically, 90% of respondents (including 82% of gun owners included in the survey) report that they believe that the state authority should continue to perform background checks on individuals who are purchasing handguns.

The findings from Houston and Ohio are not surprising. Polls have consistently provided evidence of broad based public support for gun control. Two-thirds of respondents who took part in a recent, nationally representative telephone survey agreed that "the government should protect its citizens by controlling the availability of handguns."²² Moreover, support for affirmative government action to keep handguns from criminals was undiminished "even if it means that it will be harder for law-abiding citizens to purchase handguns." In fact, researchers reported strong support for 10 of 13 specific measures identified on the survey to regulate firearms. For example, the researchers found that:

- 80% of respondents support mandatory registration of handguns, limiting handgun sales to one handgun per month, and childproofing all newly manufactured handguns;
- 70-80% of respondents expressed support for extending background check requirements to transactions that do not involve a licensed gun dealer, and for allowing government to regulate the design of firearms;
- 60-70% of individuals surveyed feel that long guns should be registered, that new handguns should be personalized so that only an authorized adult can fire the gun, and

²⁰ Peter D. Hart Research Associates, Inc. *A survey of attitudes toward handgun control among registered voters in Houston*. 1997.

²¹ Peter D. Hart Research Associates, Inc. *A survey of attitudes toward handgun control among Ohioans*. July 1997.

²² Smith T. *1996 National Gun Policy Survey: Research Findings*. Chicago, Illinois: National Opinion Research Center & The Johns Hopkins University Center for Gun Policy and Research; February 1997.

that private gun sellers should be liable for crimes committed with guns that they sold if they failed to do a required background check.

Earlier research demonstrated that even gun owners – including those who identify themselves as members of the National Rifle Association (NRA) – are generally supportive of gun control. For example, in a 1989 survey of gun owners, self-identified members of the NRA expressed support for mandatory safety training (83%), a waiting period for the purchase of a handgun (77%), a ban on the manufacture and sale of Saturday Night Specials (66%), and registration of handguns (59%).

The results of this study make it clear that gun laws, including background checks and waiting periods, are not just popular, but are also in the interest of public safety. With proper design and implementation, gun laws – such as those that require that law enforcement to confirm through a check of criminal history records that individuals attempting to purchase handguns are eligible to take possession of weapons before the transfer of the gun is completed – can effectively reduce illegal gun trafficking and the access criminals have to firearms. Based on the results of this analysis, policy makers can feel justified in pushing for voluntary compliance with the background check requirement of Brady in every jurisdiction in the country as a way to help control the illegal interstate trafficking of firearms.

Acknowledgments

This work was supported in part by the Overbrook Foundation.

I gratefully acknowledge Eric Rimm, Sc.D., David Hemenway, Ph.D., Jens Ludwig, Ph.D., Tim Baum, Dennis Henigan, Bob Walker and Matt Newton – each of whom made important contributions to the development of this report – for their assistance. Cover art by Andy Krakowski.

The Author

Douglas Weil, Sc.D. is Director of Research for the Center to Prevent Handgun Violence.

FACSIMILE COVER SHEET
DEPARTMENT OF THE TREASURY
OFFICE OF POLICY DEVELOPMENT
(ENFORCEMENT)

Phone: (202) 622-0300

Fax: (202) 622-7301

Date:

9/18/97

Page 1 of _

TO:

Jose Cenda - WH
456-7028 KY

FAX:

FROM:

Susan Ginsburg

SUBJECT:

Center to Prevent Handgun
Violence Study

MESSAGE:

Here are the talking
points. Please page me
if you need anything
further. Susan

Center to Prevent Handgun Violence Study
Traffic Stop: How the Brady Act Disrupts Interstate Gun Trafficking
Embargoed for release until Friday, Sept. 19 at 9:30 AM

TALKING POINTS

- We agree that the Brady law not only blocks purchases by criminals who may intend violence, but is also an important barrier to felons and others that may want to resell handguns illegally. Traffickers with criminal records now must face Brady checks in trying to acquire guns from federally licensed firearms dealers.
- The report is encouraging preliminary information that pre-sale background checks not only block illegal handgun purchases, but also may have an impact on illegal firearms trafficking.

Center to Prevention Handgun Violence Study
Traffic Stop: How the Brady Act Disrupts Interstate Gun Trafficking

SUMMARY

The report asserts that the percentage of crime guns that ATF traced to federally licensed gun dealers in Brady states (states that initiated pre-sale background checks because of the Brady law) decreased after passage of the Brady law.

The report finds that in seven states that account for a high percentage of crime guns that ATF traced to federally licensed firearms dealers in Ohio, the percentage of Ohio-origin traces drops after Brady checks began in Ohio.

The report finds that in those same seven states, the percentage of crime guns that ATF traced to federally licensed firearms dealers in three other Brady states -- Kentucky, Mississippi, and Georgia -- also dropped after the Brady law took effect in those states.

The report concludes that the Brady law reduces interstate illegal gun trafficking, reenforcing the need for Ohio Brady checks. It suggests that the Brady law be buttressed by new laws to reduce the illegal interstate supply of guns to criminals, such as extending handgun purchase laws to private, secondary market sales, and limiting handgun purchases to one per month.

ANALYSIS

Two aspects of the study's methodology might be targeted by Brady law opponents:

(1) **Statistical validity.** States are not tracing *all* recovered crime guns, and the traces analyzed are not a random sample, therefore the sample may not be statistically valid. Anticipating such criticism the Center responds that the sample is not intentionally biased (p.13). While law enforcement agencies could not deliberately bias the sample, inadvertent biases could nevertheless be present. (The study cites the ATF Youth Crime Gun Interdiction Trace Analysis Reports, without noting that ATF's analyses are based on comprehensive tracing from those jurisdictions (p.13)). Other factors not taken into account include the massive reductions in the number of firearms dealers since 1994, fluctuations in percentages of crime guns traced by ATF, and the short time span covered. Notwithstanding these concerns, the decreases shown in crime guns traced to the four Brady states are so substantial that the study is at least encouraging preliminary information.

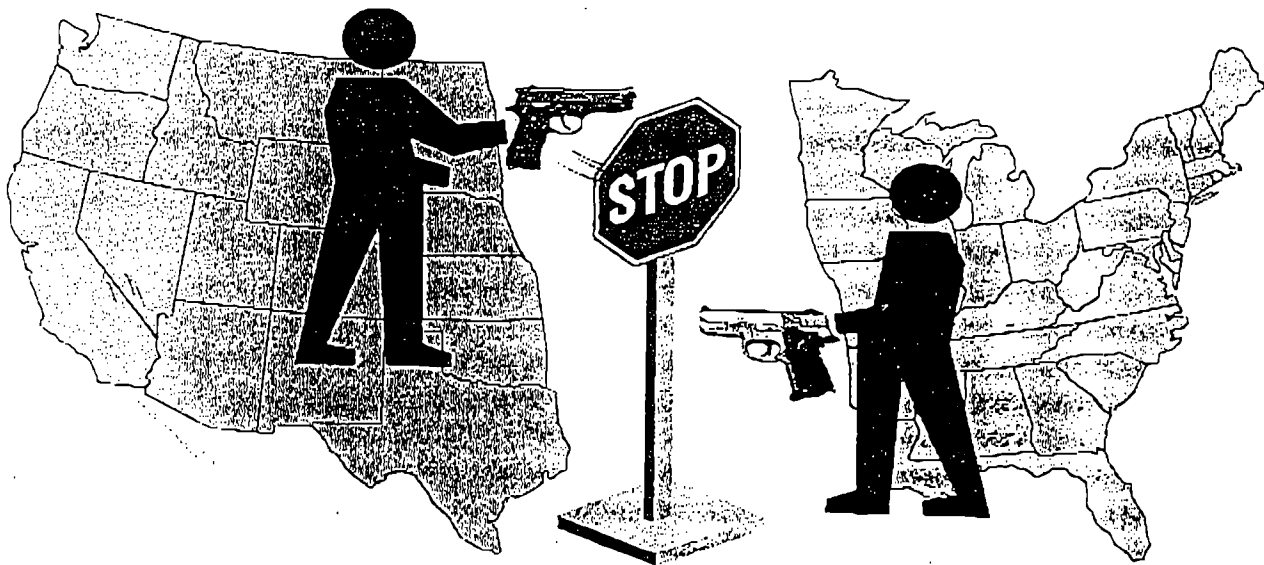
(2) **In-state guns.** The study looks at percentage changes in crime guns recovered in seven states that originate with dealers in four Brady states, but does not look at percentage changes -- up or down -- of crime guns recovered in those seven states that are from in-state sources. Without looking at whether substitution occurs, the impact of Brady background checks on the overall availability of illegally trafficked firearms is unknown. This is important since the Youth Crime Gun Interdiction Initiative Trace Analyses Reports show that in almost all the cities either a majority or plurality of the crime guns traced were first sold at retail in-state. Economics suggest, though, that if before Brady traffickers were buying crime guns out-of-state because it was lower risk to do so, and after Brady the percentage of out of state sources decreases, then the cost of illegally supplied handguns, from whatever source, should rise. Absent price data this too remains speculative.

CENTER TO PREVENT HANDGUN VIOLENCE

EMBARGOED Until
9/19/97
9:30 AM

TRAFFIC STOP:

How the Brady Act Disrupts Interstate Gun Trafficking



Douglas S. Weil, Sc.D.
September 19, 1997

© The Center to Prevent Handgun Violence

1225 Eye Street, NW, Suite 1100, Washington, DC 20005 • (202) 269-7319 • FAX (202) 408-1851
10951 W. Pico Blvd., Suite 100, Los Angeles, CA 90064 • (310) 475-6714 • FAX (310) 475-3147
11 South LaSalle, Suite 2302, Chicago, IL 60603 • (312) 920 0504 • FAX (312) 725-7418

Traffic Stop: How the Brady Act Disrupts Interstate Gun Trafficking

Executive Summary

Interstate gun trafficking occurs, in part, because of the disparity in state laws governing the sale of firearms. As a result, the illegal market price of firearms in localities with restrictive laws is significantly greater than the retail price for the same guns purchased in states in which the laws are less stringent. A change in the relative disparity in laws can, therefore, have an impact on gun trafficking patterns. The notion here is that the lack of control over the retail sale of handguns in some states makes it possible for individuals, who are willing to engage in interstate gun trafficking, to profit from the price differences for guns across state lines.

Prior to implementation of the Brady Handgun Violence Prevention Act (PL 103-159) ("Brady" or "Brady Act") in February 1994, there were 32 states – many of which had been identified as important source states for gun traffickers – that did not require, by statute, that a background check be conducted prior to the completion of the sale of a handgun to determine whether receipt or possession of a handgun by the purchaser would be in violation of law. Consequently, there was a disparity in state gun laws between the 32 states that did not require background checks and the 28 that did which could enable gun trafficking to occur.

The interim provisions of the Brady Act required that licensed gun dealers notify the designated Chief Law Enforcement Officer (CLEO) for the purchaser's residence of the proposed sale of a handgun, and that the CLEO make a "reasonable effort" to ascertain within five business days whether the buyer's receipt or possession of a handgun would be in violation of law. The purpose of this study was to test the hypothesis that implementation of the Brady Act would have an impact on gun trafficking patterns. Specifically, that states which did not require background checks for handgun purchases prior to Brady (that is, Brady states) would become less important as sources of illegally trafficked firearms after the Act took effect.

Data utilized in the analysis come from the firearms trace database compiled by the Bureau of Alcohol, Tobacco and Firearms (ATF). The focus on gun trafficking between four source states (Ohio, Kentucky, Mississippi and Georgia) – each of which was a Brady state – and seven recipient states (Michigan, Illinois, New York, Pennsylvania, Missouri, Maryland, and New Jersey) – all of which required background checks prior to implementation of the law except for Pennsylvania which had a two day waiting period in place. We analyzed the data to determine if the percentage of recovered crime guns recovered in each of the recipient states that were traced back to the four source states was smaller for the subset of guns purchased after Brady took effect than it was for guns purchased prior to implementation of the law.

In all cases, the finding was the same: *the percentage of recovered crime guns that were traced to dealers in the four Brady states was greater for guns purchased before the Act took effect when compared to guns purchased after the Act took effect.* In other words, implementation of the Brady Act disrupted established flow of guns across state lines, resulting in Brady states becoming less important as source states for gun traffickers.

On June 27, 1997, the United States Supreme Court invalidated the background check requirement of the interim provisions of Brady while leaving the waiting period intact. Conclusions drawn from this study suggest that policy makers should push for voluntary compliance with the background check requirement of Brady in every jurisdiction in the country as a way to help control illegal interstate gun trafficking.



U.S. Department of Justice
Office of Intergovernmental Affairs

Office of the Director

Washington, D.C. 20530

September 18, 1997

TO: Jose Cerda
456-7028

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

SUBJECT: Brady / Handgun

PAGES: (including cover sheet)

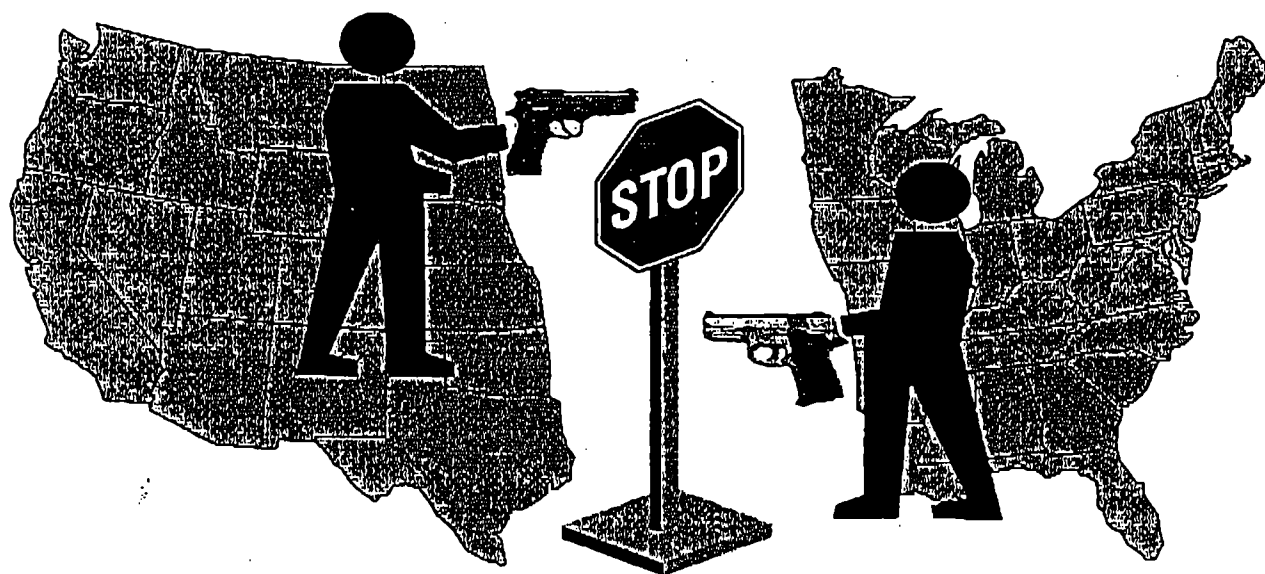
REMARKS: Jose -- Attached are some tps for the POTUS. The Ohio finding is particularly significant. Nick

A handwritten signature, likely "Nick", is written in the bottom right corner of the page. The signature is written in a cursive, stylized font with a long, sweeping underline.

- This new report demonstrates once again that Americans are safer for the Brady Act.
- Since its enactment in February 1994, over a quarter-million felons, fugitives, military deserters and others who should never, ever possess a firearm have been prevented from obtaining one.
- Today we have learned that when the Brady Act is enforced, trafficking in illegal guns across state lines is reduced.
- I am particularly disturbed because the study points to the progress against crime made in Ohio because of the Brady Act, but Ohio is now one of only two states in which those background checks are not being done voluntarily.
- This study points to the very real dangers faced by the citizens of Ohio and I want to take this opportunity to call on Ohio Attorney General Betty Montgomery to start those checks back up again.

TRAFFIC STOP:

How the Brady Act Disrupts Interstate Gun Trafficking



Douglas S. Weil, Sc.D.
September 19, 1997

© The Center to Prevent Handgun Violence

1225 Eye Street, NW, Suite 1100, Washington, DC 20005 • (202) 289-7319 • FAX (202) 408-1851
10951 W. Pico Blvd., Suite 100, Los Angeles, CA 90064 • (310) 475-6714 • FAX (310) 475-3147
11 South LaSalle, Suite 2302, Chicago, IL 60603 • (312) 920-0504 • FAX (312) 726-7448

**Traffic Stop:
How the Brady Act Disrupts Interstate Gun Trafficking**

Executive Summary

Interstate gun trafficking occurs, in part, because of the disparity in state laws governing the sale of firearms. As a result, the illegal market price of firearms in localities with restrictive laws is significantly greater than the retail price for the same guns purchased in states in which the laws are less stringent. A change in the relative disparity in laws can, therefore, have an impact on gun trafficking patterns. The notion here is that the lack of control over the retail sale of handguns in some states makes it possible for individuals, who are willing to engage in interstate gun trafficking, to profit from the price differences for guns across state lines.

Prior to implementation of the Brady Handgun Violence Prevention Act (PL 103-159) ("Brady" or "Brady Act") in February 1994, there were 32 states – many of which had been identified as important source states for gun traffickers – that did not require, by statute, that a background check be conducted prior to the completion of the sale of a handgun to determine whether receipt or possession of a handgun by the purchaser would be in violation of law. Consequently, there was a disparity in state gun laws between the 32 states that did not require background checks and the 28 that did which could enable gun trafficking to occur.

The interim provisions of the Brady Act required that licensed gun dealers notify the designated Chief Law Enforcement Officer (CLEO) for the purchaser's residence of the proposed sale of a handgun, and that the CLEO make a "reasonable effort" to ascertain within five business days whether the buyer's receipt or possession of a handgun would be in violation of law. The purpose of this study was to test the hypothesis that implementation of the Brady Act would have an impact on gun trafficking patterns. Specifically, that states which did not require background checks for handgun purchases prior to Brady (that is, Brady states) would become less important as sources of illegally trafficked firearms after the Act took effect.

Data utilized in the analysis come from the firearms trace database compiled by the Bureau of Alcohol, Tobacco and Firearms (ATF). The focus on gun trafficking between four source states (Ohio, Kentucky, Mississippi and Georgia) – each of which was a Brady state – and seven recipient states (Michigan, Illinois, New York, Pennsylvania, Missouri, Maryland, and New Jersey) – all of which required background checks prior to implementation of the law except for Pennsylvania which had a two day waiting period in place. We analyzed the data to determine if the percentage of recovered crime guns recovered in each of the recipient states that were traced back to the four source states was smaller for the subset of guns purchased after Brady took effect than it was for guns purchased prior to implementation of the law.

In all cases, the finding was the same: *the percentage of recovered crime guns that were traced to dealers in the four Brady states was greater for guns purchased before the Act took effect when compared to guns purchased after the Act took effect.* In other words, implementation of the Brady Act disrupted established flow of guns across state lines, resulting in Brady states becoming less important as source states for gun traffickers.

On June 27, 1997, the United States Supreme Court invalidated the background check requirement of the interim provisions of Brady while leaving the waiting period intact. Conclusions drawn from this study suggest that policy makers should push for voluntary compliance with the background check requirement of Brady in every jurisdiction in the country as a way to help control illegal interstate gun trafficking.

Introduction

On June 27, 1997, the United States Supreme Court invalidated the background check requirement of the interim provisions of the Brady Handgun Violence Prevention Act (PL 103-159) ("Brady" or "Brady Act").¹ The interim provisions of the law imposed a five-day waiting period on the sale of handguns by federally licensed firearms dealers (FFL) in any state that did not require, by statute, a background check before the sale of a handgun could be completed.² The law further required that licensed gun dealers notify the designated Chief Law Enforcement Officer (CLEO)³ for the purchaser's residence of the proposed transfer. The CLEO was required to make a "reasonable effort" to ascertain within five business days whether the buyer's receipt or possession of a handgun would be in violation of law. If the background check could not be completed within five days, the sale was allowed to go forward.

The Court ruled that the federal government does not have the power to require local police to conduct background checks of handgun buyers. The Justices did indicate, however, that police could use the five day waiting period to voluntarily check criminal history records. Previous research has shown that the Brady background check has been an important tool in preventing easy access to handguns.⁴ This study focuses on the impact of the Brady Act on interstate gun trafficking.

Brady was designed to make the acquisition of a firearm by convicted felons and other prohibited purchasers (e.g., individuals adjudicated mentally defective or subject to a restraining order) more difficult, more costly and more dangerous by cutting off access to handguns sold in gun stores. The law worked. From March 1, 1994 through June 30, 1996, an estimated 102,822 attempts by prohibited purchasers to buy a handgun in the 32 original Brady states⁵ (including 72,325 transactions because of an outstanding felon warrant or conviction) were stopped by the background check.⁶ More recently, the Bureau of Justice Statistics estimated that in all 50 states, 173,000 transactions were not completed because background checks revealed that the buyers were not allowed to take possession of a handgun.⁷ Because there is no way to measure the number of people who

¹ *Printz v. United States*, 1997 WL 351180, _S. Ct._ (1997).

² Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms. *Brady Law Implementation: State by State Summary*. Final Report. February 1994. (Section 2).

³ In each state, responsibility for conducting background checks was assigned to one or more law enforcement agencies designated as the Chief Law Enforcement Officer (CLEO).

⁴ Weil, Douglas. *Denying Handguns to Prohibited Purchasers: Quantifying the Impact of the Brady Law*. Center to Prevent Handgun Violence. 26 August 1996. See also: Manson D, Gilliard D. *Presale Handgun Checks, 1996*. Washington, DC: US Dept of Justice, Bureau of Justice Statistics; September 1997.

⁵ Only states that did not, by statute, require a background check be completed as a condition of the sale of a handgun were subject to Brady Law requirements. When Brady went took effect, 32 states had to comply with Brady. Those states were AL, AK, AR, AZ, CO, GA, ID, KS, KY, LA, ME, MN, MS, MT, NE, NH, NM, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, WA, WV, WY.

⁶ *Ibid* #4.

⁷ Manson D, Gilliard D. *Presale Handgun Checks, 1996*. Washington, DC: US Dept of Justice, Bureau of Justice Statistics; September 1997. Note: the Bureau of Justice Statistics estimated that the total number of

have simply not attempted to buy a gun from a retail dealer because of the background check, the number of denials is probably an underestimate of the true effect of Brady.

Interstate gun trafficking occurs, in part, because of the disparity in state laws governing the sale of firearms. As a result, the illegal market price of firearms in localities with restrictive gun laws is significantly greater than the retail price for the same guns purchased in states in which the laws are less stringent.⁸ A change in the relative disparity in gun laws can, therefore, have an impact on gun trafficking patterns. The notion here is that the "price" differences for guns across state lines make it profitable to buy guns in one state and transport them to other states; if Brady increases the effective price of acquiring guns in low-price states, the result will be to reduce the profitability of interstate gun transfers and, in turn, reduce the total quantity of such transfers by some amount. An example of this phenomenon was observed when Virginia's role as a primary source of crime guns recovered in the northeastern United States was greatly reduced relative to the other southeastern states after Virginia restricted handgun purchases to one-handgun-per-month.⁹

Prior to implementation of the Brady Act, 32 states did not require a background check as a condition of the purchase of a handgun – and many of those states (including Ohio, Kentucky, Mississippi and Georgia) have been identified as important sources for guns illegally shipped across state lines.¹⁰ By requiring that background checks be conducted in all states before the sale of a handgun by an FFL could be completed, Brady reduced the disparity that existed between gun laws from one state to another. Consequently, once the Brady Act took effect, the importance of states such as Ohio as a source of illegally trafficked firearms should have diminished relative to states that were conducting background checks before Brady. This study tests this hypothesis.

Shortly after the Supreme Court invalidated the background check provision of the Brady Act, the Attorney General for the state of Ohio ordered the state's Bureau of Criminal Investigation (BCI) to stop accepting requests to conduct background checks.¹¹ The Attorney General argued that her office lacked the necessary authority to continue to conduct the background checks on a voluntarily basis. As a practical matter, the Attorney General's decision establishes Ohio as virtually the only state in the United States in which a felon can walk into a gun store to buy a handgun without having to submit to a

gun transfers stopped (including rifles and other long guns in addition to handguns) as a result of background checks. Brady Act background checks prevent 173,000 illegal handgun purchases since February 1994 implementation. Handgun figure is subset of more than 250,000 firearm sales blocked since February 1994. DOJ Press Release: September 4, 1997.

⁸ Cook PJ, Molliconi S, Cole T. Regulating Gun Markets. *The Journal of Criminal Law and Criminology*. 86; Fall 1996. 59-91. See footnote 56, p72.

⁹ Weil, D, Knox, B. Effects of limiting handgun purchases on interstate transfer of firearms. *JAMA*. 1996; 275:1759-1761.

¹⁰ War between the States: How gunrunners smuggle weapons across America. An analysis of firearms trace data by the office of Congressman Charles Schumer. April 9, 1997.

¹¹ News Statement from Ohio Attorney General Betty D. Montgomery. The U.S. Supreme Court's Action in Striking Portions of the Brady Act. June 30, 1997.

background check.¹² If the policy of not conducting background checks is left in place, Ohio may become the principal source of firearms for interstate gun traffickers. For this reason, much of the analysis focuses on the impact of Brady on Ohio as a source of guns illegally trafficked across state lines.

Methods

The data used in this analysis come from the firearms trace database compiled by the Bureau of Alcohol, Tobacco and Firearms (ATF) and were obtained by the Center to Prevent Handgun Violence through the Freedom of Information Act (FOIA). Law enforcement agencies can request that ATF trace a gun that has been recovered as part of a criminal investigation. ATF staff at the National Tracing Center (NTC) contact the manufacturer of the firearm to identify the wholesaler or retail dealer who received the gun. Staff at the NTC then contact each consecutive dealer who acquired the firearm until the gun is either traced to the most recent owner or until the gun can be traced no further. There is no requirement that records of gun transfers be maintained by individuals who are not licensed gun dealers. Consequently, the tracing process often ends with the first retail sale of the gun.

As part of the tracing process, information is collected on several variables, including the location of the gun dealer who acquired and then sold the gun (by state and region); when the gun was purchased; and, when and where (state) a trace was initiated. ATF maintains computerized records on firearms traces dating back to September 1989. Through the 17th of January, 1997, ATF had traced approximately a half million guns.

The principal hypothesis tested was that the institution of a nationwide requirement that criminal history checks be conducted by all states as a prior condition for the purchase of a handgun would have an impact on gun trafficking patterns among states. Specifically, that states required by the Brady Act to begin conducting background checks would become relatively less important as a source of crime guns which are illegally shipped across state lines. To test the hypothesis, a comparison was made between the percentage of guns that were traced to Ohio gun dealers from outside the state ("out-of-state" guns), stratifying for when the firearms were purchased (before or after the Brady Act took effect). It was expected that the percentage of all recovered guns in any given state that were traced back to Ohio gun dealers would be less for the subset of guns acquired after the law took effect compared to the percentage traced to Ohio for the subset of guns acquired prior to the law. For example, we compare the before- and after-Brady proportions of traced guns in Michigan that were originally purchased in Ohio; a decrease in this proportion over time is consistent with the idea that Brady reduces the profitability of interstate gun transfers between Ohio and Michigan (that is, reduces gun running).

¹² The Attorney General for the state of Arkansas initially believed that the Supreme Court's ruling also precluded voluntary compliance with Brady. However, further analysis of the State's laws has led the AG to conclude otherwise.

The statistical importance of the findings was established by estimating the associated odds ratio (OR) and 95% confidence interval (CI).

To conduct the analysis, the records from ATF's trace database were sorted to identify all states in which law enforcement recovered firearms that had been purchased from gun dealers in Ohio. Four states – Michigan, Illinois, New York and Pennsylvania – which recovered in excess of half of all out-of-state guns traced back to Ohio gun dealers, became the principal focus of the investigation. The impact of Brady on gun trafficking from Ohio to three additional states – Maryland, Missouri and New Jersey – which account for an additional 10% of all out-of-state traces to Ohio gun dealers, was also studied. The analysis of data from all recipient states studied is reported – and, in all cases, the basic finding is the same: *the percentage of recovered guns traced to gun dealers in Ohio fell after implementation of the Brady background check.*

In order to eliminate the possibility that an unidentified factor unique to Ohio was responsible for the findings, the analysis was replicated to determine if gun trafficking from Kentucky, Mississippi and Georgia to Illinois, Michigan, New York, Pennsylvania, Maryland, Missouri and New Jersey was affected by implementation of the Brady Act. Kentucky, Mississippi, and Georgia were included in the analysis because each was one of the original Brady states and each was identified as an important supplier of guns to Illinois and Michigan, and, to a lesser extent, to New York and Pennsylvania. In all cases, the basic findings were the same as in the principal analysis: *the percentage of traced guns acquired after the law took effect that were purchased from a gun dealer in one of the three Brady states was smaller than the percentage that were acquired in those states prior to implementation of the law.* In other words, guns flowed from states with relatively lax guns laws to those states with stricter laws until the discrepancy in the laws was reduced with implementation of Brady.

Results – Changes in Interstate Gun Trafficking Patterns are Associated with Implementation of the Brady Background Check

Through January 1997, records pertaining to 493,914 firearms were entered into ATF's firearms trace database. Both the state in which a trace was initiated and where a firearm was acquired could be determined for 39.5% (194,942) of the traced guns. For these guns, 42.4% (82,698) of the records also included information on the date of purchase.

Investigation of the data suggests that crime guns are often purchased in one state and then transferred to and used in another state. Half of all firearms ATF successfully traced to gun dealers (98,278/194,942) were found to have been purchased outside the state in which they were recovered. Guns recovered in New York and New Jersey, states with relatively strict gun laws, represent one extreme end of the spectrum. In New York and New Jersey, more than 80% of firearms traced to a gun dealer were acquired from FFLs in other states. By comparison, only 28% of traced guns recovered in Arizona had been acquired in a state other than Arizona.

Brady Act is Associated with a Reduction in Interstate Gun Trafficking from Ohio

From September 1989 to January 1997, ATF traced 14,691 firearms to gun dealers located in Ohio. At least 39% (5769) of the traces were requested by law enforcement agencies from outside the state, while 28% (4077) were initiated within Ohio. Recovery state data was unavailable for the remaining 4845 records. While guns purchased in Ohio were recovered by law enforcement agencies in virtually every state, trace requests originating in four states – Illinois, Michigan, New York and Pennsylvania – account for 52.0% (3000) of out-of-state guns traced to Ohio gun dealers. Traced guns recovered in Maryland, Missouri and New Jersey accounted for an additional 9.7% (561) of all firearms traced to Ohio dealers.

- **After Implementation of the Brady Act, Ohio Guns Less Likely to be Traced as Part of a Criminal Investigation in Michigan**

ATF successfully traced 10,701 firearms recovered in Michigan to gun dealers: 41% (4368/10,701) were traced to MI FFLs; 59% (6333) to dealers outside the state. The date of purchase could be determined for 43% (4602) of the guns traced to dealers; 20% (921) of which were traced to dealers in Ohio. Ohio's share of guns recovered in Michigan and traced as part of a criminal investigation fell by 66%, from 22.1% of guns purchased prior to implementation of Brady to 7.5% of guns acquired after the law took effect (OR=0.29; 95% CI=0.25 to 0.34) (Table 1) (Figure 1). Similar results were observed in every state studied.

- **After Implementation of the Brady Act, Ohio Guns Less Likely to be Traced as Part of a Criminal Investigation in Illinois**

ATF successfully traced 17,867 firearms recovered in Illinois to gun dealers: approximately half (9188/17,867) were traced to IL FFLs; and half (8679 guns) to dealers outside the state. The date of purchase could be determined for 54% (9642) of guns traced to dealers; 1.9% (185) of which were traced to Ohio gun dealers. Ohio's share of guns recovered in Illinois and traced as part of a criminal investigation fell by 87.5%, from 2.4% of guns purchased prior to Brady to 0.3% of guns acquired after the law took effect (OR=0.14; 95% CI=0.10 to 0.20) (Figure 2).

- **After Implementation of the Brady Act, Ohio Guns Less Likely to be Traced as Part of a Criminal Investigation in New York**

ATF successfully traced 13,690 firearms recovered in New York to gun dealers: 16.7% (2284/13,690) were traced to NY FFLs; 83.3% (11,406 guns) to dealers located outside

the state. The date of purchase could be determined for 54% (7382) of guns traced to dealers; 5.9% (432) of which were traced to Ohio gun dealers. Ohio's share of guns recovered in New York fell by 78.5%, from 6.5% of guns acquired prior to Brady to 1.4% of guns purchased after the implementation of the law (OR=0.21; 95% CI=0.12 to 0.37) (Figure 3).

Table 1: The Percentage of Out-of-State Guns Traced to Ohio Gun Dealers and the Estimated Odds Ratio That a Firearm Purchased After Implementation of the Brady Law Would Be Traced to an Ohio Gun Dealer Relative to a Dealer in Another State Compared with Firearms Purchased Before the Law Took Effect

State Firearms Recovered In	% Traced to Ohio Dealer	% Change in Ohio's Share	Odds Ratio (95% Confidence Interval)
Michigan			
Purchased before Brady (n=3936)	22.1	-66.1	0.29 (0.25-0.34)
After Brady (n=666)	7.5		
Illinois			
Purchased before Brady (n=7298)	2.4	-87.5	0.14 (0.10-0.20)
After Brady (n=2344)	0.3		
New York			
Purchased before Brady (n=6457)	6.5	-78.5	0.21 (0.12-0.37)
After Brady (n=925)	1.4		
Pennsylvania			
Purchased before Brady (n=2571)	6.3	-36.5	0.62 (0.39-0.78)
After Brady (n=546)	4.0		
Missouri			
Purchased before Brady (n=3234)	1.5	-86.6	0.16 (0.07-0.33)
After Brady (n=805)	0.2		
Maryland			
Purchased before Brady (n=2948)	2.4	-83.3	0.17 (0.09-0.30)
After Brady (n=736)	0.4		
New Jersey			
Purchased before Brady (n=3192)	3.2	-34.4	0.65 (0.48-0.88)
After Brady (n=565)	2.1		

- **After Implementation of the Brady Act, Ohio Guns Less Likely to be Traced as Part of a Criminal Investigation in Pennsylvania**

ATF successfully traced 8204 firearms recovered in Pennsylvania to gun dealers: 59% (4821/8204) were traced to PA FFLs; 41% (3383 guns) to dealers located outside the

state. The date of purchase could be determined for 38% (3117) of guns traced to dealers; 5.9% (184) of which were traced to Ohio gun dealers. Ohio's share of guns recovered in PA fell by 37%, from 6.3% of guns acquired prior to implementation Brady to 4.0% of guns acquired after the law took effect (OR=0.62; 95% CI=0.39 to 0.78) (Figure 4).

- **After Implementation of the Brady Act, Ohio Guns Less Likely to be Traced as Part of a Criminal Investigation in Missouri, Maryland and New Jersey**

Implementation of the Brady Act also to be associated with a reduction in gun trafficking from Ohio to Missouri, Maryland and New Jersey. In each state, a smaller percentage of recovered guns that had been acquired after Brady took effect were traced back to Ohio than for guns acquired prior to Brady. The percentage of guns recovered in Missouri, Maryland, and New Jersey traced back to Ohio fell by 87%, 83% and 34% respectively (Figure 5-7). In each instance, the findings were found to be statistically important.

Brady Act is Associated with a Reduction in Interstate Gun Trafficking from Kentucky, Mississippi and Georgia

In addition to Ohio, 31 other states, including Kentucky, Mississippi, and Georgia became subject to the requirements of Brady when the law took effect. Analysis of the data shows that gun traffickers were less likely to acquire guns from those three states after they began conducting background checks. Specifically, a smaller percentage of out-of-state guns purchased after implementation of Brady that were recovered in either Illinois, Michigan, New York, Pennsylvania, Maryland, Missouri or New Jersey were traced back to gun dealers in Kentucky, Georgia and Mississippi respectively, compared to the percentage of out-of-state guns acquired prior to implementation of the Act that were traced back to the any of the three source states (Tables 2-4).

Brady Act is Associated with a Reduction in Gun Trafficking from Kentucky

For guns recovered in Michigan, the percentage of firearms traced to Kentucky gun dealers as part of a criminal investigation fell by 77% from 7.9% of guns purchased prior to Brady to 1.8% of guns acquired after the law took effect (OR=0.22; 95% CI=0.16-0.29) (Table 2) (Figure 8). For guns recovered in Illinois, New York and Pennsylvania, the percentage of traced firearms traced to Kentucky gun dealers fell by 63%, 32% and 36% respectively (Figures 9-11). After Brady took effect, gun traffickers in Kentucky also supplied a smaller percentage of crime guns recovered in Maryland, Missouri and New Jersey, when compared to guns acquired prior to implementation of the law (Figures 12-14). In the entire analysis, the only finding which cannot be considered statistically important at the 95% level of confidence is the 36% reduction in guns traced to Kentucky from Pennsylvania.

Table 2: The Percentage of Out-of-State Guns Traced to Kentucky Gun Dealers and the Estimated Odds Ratio That a Firearm Purchased After Implementation of the Brady Law Would Be Traced to a Kentucky Gun Dealer Relative to a Dealer in Another State Compared with Firearms Purchased Before the Law Took Effect

State Firearms Recovered In	% Traced to KY Dealer	% Change in KY's Share	Odds Ratio (95% Confidence Interval)
Michigan			
Purchased before Brady (n=3936)	7.9	-77.2	0.22 (0.16-0.29)
After Brady (n=666)	1.8		
Illinois			
Purchased before Brady (n=7298)	3.0	-63.3	0.35 (0.28-0.43)
After Brady (n=2344)	1.1		
New York			
Purchased before Brady (n=6457)	1.9	-31.6	0.68 (0.50-0.92)
After Brady (n=925)	1.3		
Pennsylvania			
Purchased before Brady (n=2571)	1.1	-36.4	0.70 (0.41-1.19)
After Brady (n=546)	0.7		
Missouri			
Purchased before Brady (n=3234)	2.3	-39.1	0.58 (0.42-0.80)
After Brady (n=805)	1.4		
Maryland			
Purchased before Brady (n=2948)	1.4	-92.9	0.10 (0.04-0.27)
After Brady (n=736)	0.1		
New Jersey			
Purchased before Brady (n=3192)	3.0	-70.0	0.28 (0.18-0.44)
After Brady (n=565)	0.9		

Brady Act is Associated with a Reduction in Gun Trafficking from Mississippi

For guns recovered in Michigan, the percentage of firearms traced to Mississippi gun dealers as part of a criminal investigation fell by 63% from 4.9% for guns purchased prior to Brady to 1.8% for guns acquired after the law took effect (OR=0.35; 95% CI=0.26-0.48) (Table 3) (Figure 15). For guns recovered in Illinois, New York and Pennsylvania, the percentage of traced firearms traced to Mississippi gun dealers fell by 64%, 64% and 71% respectively (Figures 16-18). After Brady took effect, gun traffickers in Mississippi also supplied a smaller percentage of crime guns recovered in Maryland, Missouri and

New Jersey, when compared to guns acquired prior to implementation of the law (Figures 19-21).

Table 3: The Percentage of Out-of-State Guns Traced to Mississippi Gun Dealers and the Estimated Odds Ratio That a Firearm Purchased After Implementation of the Brady Law Would Be Traced to a Mississippi Gun Dealer Relative to a Dealer in Another State Compared with Firearms Purchased Before the Law Took Effect

State Firearms Recovered In	% Traced to MS Dealer	% Change in MS's Share	Odds Ratio (95% Confidence Interval)
Michigan			
Purchased before Brady (n=3936)	4.9	-63.3	0.35 (0.26-0.48)
After Brady (n=666)	1.8		
Illinois			
Purchased before Brady (n=7298)	13.7	-63.5	0.30 (0.27-0.34)
After Brady (n=2344)	5.0		
New York			
Purchased before Brady (n=6457)	1.1	-63.6	0.41 (0.24-0.69)
After Brady (n=925)	0.4		
Pennsylvania			
Purchased before Brady (n=2571)	0.7	-71.4	0.26 (0.09-0.73)
After Brady (n=546)	0.2		
Missouri			
Purchased before Brady (n=3234)	4.3	-72.1	0.28 (0.20-0.39)
After Brady (n=805)	1.2		
Maryland			
Purchased before Brady (n=2948)	0.5	-99.9	0.02 (0.01-0.03)
After Brady (n=736)	0.0		
New Jersey			
Purchased before Brady (n=3192)	1.5	-40.0	0.60 (0.37-0.96)
After Brady (n=565)	0.9		

Brady Act is Associated with a Reduction in Gun Trafficking from Georgia

For guns recovered in Michigan, the percentage of firearms traced to Georgia gun dealers as part of a criminal investigation fell by 71% from 5.9% of guns purchased prior to Brady to 1.7% of guns acquired after the law took effect (OR=0.27; 95% CI=0.20-0.37) (Table 4) (Figure 22). For guns recovered in Illinois, New York and Pennsylvania, the percentage of traced firearms traced to Georgia gun dealers fell by 70%, 32% and 66% respectively (Figures 23-25). After Brady took effect, gun traffickers in Georgia also

supplied a smaller percentage of crime guns recovered in Maryland, Missouri and New Jersey, when compared to guns acquired prior to implementation of the law (Figures 26-28).

Table 4: The Percentage of Out-of-State Guns Traced to Georgia Gun Dealers and the Estimated Odds Ratio That a Firearm Purchased After Implementation of the Brady Law Would Be Traced to a Georgia Gun Dealer Relative to a Dealer in Another State Compared with Firearms Purchased Before the Law Took Effect

State Firearms Recovered In	% Traced to Georgia Dealer	% Change in Georgia's Share	Odds Ratio (95% Confidence Interval)
Michigan			
Purchased before Brady (n=3936)	5.9	-71.1	0.27 (0.20-0.37)
After Brady (n=666)	1.7		
Illinois			
Purchased before Brady (n=7298)	2.0	-70.0	0.28 (0.21-0.37)
After Brady (n=2344)	0.6		
New York			
Purchased before Brady (n=6457)	9.0	-32.2	0.65 (0.56-0.75)
After Brady (n=925)	6.1		
Pennsylvania			
Purchased before Brady (n=2571)	5.3	-66.0	0.33 (0.24-0.46)
After Brady (n=546)	1.8		
Missouri			
Purchased before Brady (n=3234)	1.9	-78.9	0.19 (0.11-0.34)
After Brady (n=805)	0.4		
Maryland			
Purchased before Brady (n=2948)	3.9	-48.7	0.51 (0.39-0.67)
After Brady (n=736)	2.0		
New Jersey			
Purchased before Brady (n=3192)	7.9	-19.0	0.79 (0.66-0.95)
After Brady (n=565)	6.4		

Discussion

Calling the passage of the Brady Act of "largely symbolic significance," two legal commentators wrote in 1995 that "there is no reason to be optimistic that Brady will

successfully keep firearms away from dangerous persons.”¹³ They continued by suggesting that the “underlying federal gun control policy – strong gun laws keep guns out of the wrong hands – has little, if any effect, in disarming ex-felons and other ineligible.” Policies like Brady, which regulate access to handguns but not long guns, have further been criticized for creating a dynamic which could lead “some prospective gun abusers to substitute the more lethal long guns” for handguns, potentially leading to “a net increase in mortality.”¹⁴ A growing body of evidence suggests that these criticisms are wrong.

In 1993, 1.1 million violent crimes were committed with handguns¹⁵ yet, after a long term, steady increase in the percentage of all violent crime committed with a firearm, the use of guns in the commission of crime is on the decline. Since enactment of Brady, the percentage of aggravated assaults which involved a firearm has declined by 8.8%.¹⁶ The involvement of firearms in robbery (3.3%) and murder (2.0%) has also fallen along with both the violent crime and homicide rates.¹⁷ Though it would be inappropriate to attribute all of the reduction in gun use to Brady, these statistics provide no evidence that imposing background checks as a condition on the sale of a handgun has lead to a substitution of unregulated long guns for regulated handguns by violent criminals, or of an instrumentality effect, but do suggest that requiring background checks in every jurisdiction for the purchase of a handgun can be an effective tool in an effort to reduce gun-related violence.

This study provides additional evidence that federal gun control laws can be an effective tool in combating illegal gun-related activity. Passage of the Brady Act meant that, for the first time, the transfer of a handgun by licensed gun dealers to non-licensed individuals could not go forward anywhere in the country until law enforcement had been given the opportunity to conduct a background check on the prospective purchasers. Four states, Ohio, Kentucky, Mississippi and Georgia, which had not mandated that background checks be conducted prior to enactment of Brady, were important source states for guns that were used in connection with crime in Michigan, Illinois, New York, Pennsylvania, Missouri, Maryland and New Jersey. This analysis of ATF trace data reveals that the percentage of recovered guns acquired after the states began conducting background checks that had been purchased from FFLs in any of the four Brady states was smaller than the percentage of recovered guns bought prior to enactment of the law that were traced to dealers in those states.

¹³ Jacobs J, Potter K. Keeping guns out of the “wrong” hands: the Brady Law and the limits of regulation. *The Journal of Criminal Law and Criminology*. 1995; 86: 93-120.

¹⁴ Kleck G. Point Blank: Guns and Violence in America 407-408 (1991).

¹⁵ Zawitz M. *Firearms, Crime, and Criminal Justice: Guns Used in Crime: Bureau of Justice Statistics: Selected Findings*. Washington, DC: US Dept of Justice, Bureau of Justice Statistics; July 1995:1.

¹⁶ *Crimes with guns down faster than violent crimes overall*. An analysis of data from the FBI Uniform Crime Report (1991-1995) by the Center to Prevent Handgun Violence. Washington, DC; October 1996.

¹⁷ Ibid #16

The magnitude of the findings was both statistically important and important from a practical standpoint. Policy makers should recognize that any jurisdiction that does not continue to conduct background checks on prospective handgun purchasers faces the threat that it will become a safe haven for gun traffickers.

This is not the first study to demonstrate that government policies can effectively disrupt established interstate gun trafficking patterns. In 1993, the state of Virginia restricted handgun purchases to one handgun per person per month. An evaluation of the law's impact on interstate gun trafficking revealed that Virginia supplied a significantly smaller percentage of crime guns recovered in the northeastern corridor of the United States that had been purchased after the law took effect when compared to the percentage of recovered guns traced back to Virginia gun dealers that had been purchased prior to implementation of the law.¹⁸

While it appears that conducting criminal background checks on prospective handgun buyers has helped to prevent prohibited purchasers from acquiring firearms from gun dealers and has led to a disruption in established interstate gun trafficking patterns, to assure that the benefits will endure requires that a comprehensive set of well-tailored gun laws directed at keeping guns out of the illegal market is implemented.

The illegal gun market exists for a variety of reasons. Would-be criminals may be unable to buy handguns from the legal market because a prior criminal record disqualifies them from legally obtaining a gun. Nationally, hundreds of thousands of prohibited purchasers have been denied access to a handgun that they attempted to buy from a licensed dealer. Others may go to the illegal market because they want to make it difficult for law enforcement to trace a gun back to them. The ability to acquire guns from the illegal market points to one of the most troubling aspects of society's attempts to prevent gun violence – the ease with which the link between a gun and the individual who uses it can be broken, removing an important impediment to the criminal use of firearms.

In many jurisdictions, identification requirements for the purchase of a firearm in the primary retail market are minimal and easily falsified, while private or secondary market sales are largely unregulated. A prohibited purchaser or individual who does not want to be identified as the owner of a particular gun can obtain a firearm directly from the secondary market with little risk of being stopped or identified. Alternatively, the same individual can recruit a third party (known as a "straw purchaser") to buy the gun in his place. If a gun bought by a straw purchaser turns up as part of a criminal investigation, the straw purchaser can, with little risk of criminal culpability, claim that he sold the firearm to an unidentified third party. For these reasons, Brady's role in reducing interstate gun trafficking or lowering the prevalence of gun use in violent crime may erode over time.

¹⁸ Ibid #9

To ensure that the benefits of Brady continue into the future, it is important to make it more difficult to break the link between a gun and the individual who uses it – and therefore reduce the supply of guns available to criminals. Several steps can be taken:

- individuals should be required to obtain a license (or “permit-to-purchase”) before being allowed to buy a handgun – applicants should be required to submit to a background check as a condition of receiving the license;
- all handgun transfers should be registered;
- laws that regulate the purchase of a handgun from a licensed gun dealer should be extended to cover currently unregulated private, secondary market sales; and,
- handgun purchases should be limited to one handgun per month.

The United States Department of the Treasury recently released a report on the government’s Youth Crime Gun Initiative that was based on an analysis of the firearms trace data.¹⁹ The Treasury Department used the trace data for a variety of purposes including: identifying the types of firearms that law enforcement agencies recover as well as the types of crimes most often associated with the recovered weapons; documenting the time it takes for recovered guns to move from the first retail sale by a federally licensed gun dealer until they are recovered as part of a criminal investigation; and, to identify differences between the adult, juvenile and youth illegal firearms activity.

Our analysis of the firearms trace data provides strong evidence that a national background check requirement in combination with a five-day waiting period is an effective tool available to the federal government for combating interstate gun trafficking. It was not, however, possible to independently estimate the impact of the background check versus the waiting period – though both components of Brady probably contributed to the observed reduction in gun trafficking from Ohio, Kentucky, Mississippi and Georgia. The waiting period provides both the opportunity for a thorough background check to be conducted and is disruptive for gun traffickers who rely on straw purchasers to supply them with guns.

Because ATF is not asked to trace all firearms recovered by law enforcement, questions have been raised about how well the subset of traced firearms represents the entire pool of recovered guns. For the purposes of this study, it does not matter. The date of purchase and the origin of traced guns (the two key variables in this study) are not known by requesting agencies until the traces have been completed making it unlikely that the sample of guns traced will differ significantly from the larger pool of recovered guns with respect to these two variables.

Conclusion

¹⁹ Crime gun trace analysis report: the illegal youth firearms market: 17 communities. Bureau of Alcohol, Tobacco and Firearms. US Department of the Treasury. Washington, DC. July, 1997.

During a recent debate at the National Press Club, NRA Executive Vice President Wayne LaPierre said that criminals rarely acquire guns from gun dealers. Mr. LaPierre should have prefaced his remark by saying, "because of the Brady background check."

On April 12, 1997, the *Houston Chronicle* disclosed that the Houston Police Department had, during the previous 12 months, quietly suspended all Brady background checks after the Federal 5th Circuit Court of Appeals ruled that local police departments were not required to conduct background checks on handgun purchasers. Five days later, Houston's Mayor and Police Chief announced that the city would resume conducting background checks on handgun purchasers. In the days between the disclosure by the newspaper and the decision by city officials, the results of a survey of 400 registered voters in Houston were revealed that: (1) 79% of respondents disapproved of the suspension of background checks; and that (2) 90% of respondents believed that the police should conduct background checks on handgun purchasers *whether or not required by federal law*.²⁰

The results of an identical survey of 603 randomly selected voters in Ohio reveal similar support for the background check requirements of Brady.²¹ Specifically, 90% of respondents (including 82% of gun owners included in the survey) report that they believe that the state authority should continue to perform background checks on individuals who are purchasing handguns.

The findings from Houston and Ohio are not surprising. Polls have consistently provided evidence of broad based public support for gun control. Two-thirds of respondents who took part in a recent, nationally representative telephone survey agreed that "the government should protect its citizens by controlling the availability of handguns."²² Moreover, support for affirmative government action to keep handguns from criminals was undiminished "even if it means that it will be harder for law-abiding citizens to purchase handguns." In fact, researchers reported strong support for 10 of 13 specific measures identified on the survey to regulate firearms. For example, the researchers found that:

- 80% of respondents support mandatory registration of handguns, limiting handgun sales to one handgun per month, and childproofing all newly manufactured handguns;
- 70-80% of respondents expressed support for extending background check requirements to transactions that do not involve a licensed gun dealer, and for allowing government to regulate the design of firearms;
- 60-70% of individuals surveyed feel that long guns should be registered, that new handguns should be personalized so that only an authorized adult can fire the gun, and

²⁰ Peter D. Hart Research Associates, Inc. *A survey of attitudes toward handgun control among registered voters in Houston*. 1997.

²¹ Peter D. Hart Research Associates, Inc. *A survey of attitudes toward handgun control among Ohioans*. July 1997.

²² Smith T. *1996 National Gun Policy Survey: Research Findings*. Chicago, Illinois: National Opinion Research Center & The Johns Hopkins University Center for Gun Policy and Research; February 1997.

that private gun sellers should be liable for crimes committed with guns that they sold if they failed to do a required background check.

Earlier research demonstrated that even gun owners – including those who identify themselves as members of the National Rifle Association (NRA) – are generally supportive of gun control. For example, in a 1989 survey of gun owners, self-identified members of the NRA expressed support for mandatory safety training (83%), a waiting period for the purchase of a handgun (77%), a ban on the manufacture and sale of Saturday Night Specials (66%), and registration of handguns (59%).

The results of this study make it clear that gun laws, including background checks and waiting periods, are not just popular, but are also in the interest of public safety. With proper design and implementation, gun laws – such as those that require that law enforcement to confirm through a check of criminal history records that individuals attempting to purchase handguns are eligible to take possession of weapons before the transfer of the gun is completed – can effectively reduce illegal gun trafficking and the access criminals have to firearms. Based on the results of this analysis, policy makers can feel justified in pushing for voluntary compliance with the background check requirement of Brady in every jurisdiction in the country as a way to help control the illegal interstate trafficking of firearms.

Acknowledgments

This work was supported in part by the Overbrook Foundation.

I gratefully acknowledge Eric Rimm, Sc.D., David Hemenway, Ph.D., Jens Ludwig, Ph.D., Tim Baum, Dennis Henigan, Bob Walker and Matt Newton – each of whom made important contributions to the development of this report – for their assistance. Cover art by Andy Krakowski.

The Author

Douglas Weil, Sc.D. is Director of Research for the Center to Prevent Handgun Violence.

Center to Prevention Handgun Violence Study
Traffic Stop: How the Brady Act Disrupts Interstate Gun Trafficking

SUMMARY

The report asserts that the percentage of crime guns that ATF traced to federally licensed gun dealers in Brady states (states that initiated pre-sale background checks because of the Brady law) decreased after passage of the Brady law.

The report finds that in seven states that account for a high percentage of crime guns that ATF traced to federally licensed firearms dealers in Ohio, the percentage of Ohio-origin traces drops after Brady checks began in Ohio.

The report finds that in those same seven states, the percentage of crime guns that ATF traced to federally licensed firearms dealers in three other Brady states -- Kentucky, Mississippi, and Georgia -- also dropped after the Brady law took effect in those states.

The report concludes that the Brady law reduces interstate illegal gun trafficking, reenforcing the need for Ohio Brady checks. It suggests that the Brady law be buttressed by new laws to reduce the illegal interstate supply of guns to criminals, such as extending handgun purchase laws to private, secondary market sales, and limiting handgun purchases to one per month.

ANALYSIS

Two aspects of the study's methodology might be targeted by Brady law opponents:

(1) Statistical validity. States are not tracing *all* recovered crime guns, and the traces analyzed are not a random sample, therefore the sample may not be statistically valid. Anticipating such criticism the Center responds that the sample is not intentionally biased (p.13). While law enforcement agencies could not deliberately bias the sample, inadvertent biases could nevertheless be present. (The study cites the ATF Youth Crime Gun Interdiction Trace Analysis Reports, without noting that ATF's analyses are based on comprehensive tracing from those jurisdictions (p.13)). Other factors not taken into account include the massive reductions in the number of firearms dealers since 1994, fluctuations in percentages of crime guns traced by ATF, and the short time span covered. Notwithstanding these concerns, the decreases shown in crime guns traced to the four Brady states are so substantial that the study is at least encouraging preliminary information.

(2) In-state guns. The study looks at percentage changes in crime guns recovered in seven states that originate with dealers in four Brady states, but does not look at percentage changes -- up or down -- of crime guns recovered in those seven states

that are from in-state sources. Without looking at whether substitution occurs, the impact of Brady background checks on the overall availability of illegally trafficked firearms is unknown. This is important since the Youth Crime Gun Interdiction Initiative Trace Analyses Reports show that in almost all the cities either a majority or plurality of the crime guns traced were first sold at retail in-state. Economics suggest, though, that if before Brady traffickers were buying crime guns out-of-state because it was lower risk to do so, and after Brady the percentage of out of state sources decreases, then the cost of illegally supplied handguns, from whatever source, should rise. Absent price data this too remains speculative.

Center to Prevent Handgun Violence Study
Traffic Stop: How the Brady Act Disrupts Interstate Gun Trafficking
Embargoed for release until Friday, Sept. 19 at 9:30 AM

TALKING POINTS

- We agree that the Brady law not only blocks purchases by criminals who may intend violence, but is also an important barrier to felons and others that may want to resell handguns illegally. Traffickers with criminal records now must face Brady checks in trying to acquire guns from federally licensed firearms dealers.
- The report is encouraging preliminary information that pre-sale background checks not only block illegal handgun purchases, but also may have an impact on illegal firearms trafficking.