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Subseries:

OA/ID Number: 18935

FolderID:

Folder Title:

Crime: Brady Lady/Post Decision [1]

Stack:

S

Row:

98

Section:

4

Shelf:

10

Position:

2

FOR IMMEDIATE RELEASE
January 14, 1998

Contact: Beth Weaver, Treasury (202) 622-2960
Gregory King, Justice (202) 514-2008
Royce Griffin, Arkansas AG (501) 682-2007

BRADY BACKGROUND CHECKS RESUMED NATIONWIDE

Treasury Secretary Robert E. Rubin and Attorney General Janet Reno announced today that once again Brady background checks on prospective handgun purchasers will be conducted in every state in the nation.

Arkansas Attorney General Winston Bryant announced that the State of Arkansas re-joins today the vast majority of jurisdictions across the country in voluntarily conducting background checks, which the State had discontinued following the U.S. Supreme Court's ruling on Brady Law. The Court ruled that state and local law enforcement officials could not be required to conduct such checks.

"I am very pleased that Arkansas has reinstated background checks on handgun purchasers," said Secretary Rubin. "This public safety measure is absolutely critical to saving lives and preventing crime."

"Background checks save lives, and that's why, once again, they are being done in every state" said Attorney General Reno. "The overwhelming majority of affected law enforcement agencies have responded to the President's request to continue doing background checks voluntarily," said Reno.

Arkansas is one of 23 states affected by the Supreme Court's decision last June that struck down the Brady Act's requirement that state or local officials conduct background checks on prospective handgun purchasers. It is also 1 of 7 states for which the responsibility for background checks lies at the state rather than local level.

In July, 1997 in wake of the Court's ruling, Rubin and Reno met with national law enforcement leaders, to urge state and local police to continue to conduct background checks on prospective handgun purchasers.

Because of the Court's ruling, the Arkansas State Police immediately discontinued background checks on handgun buyers. However, virtually all of the law enforcement agencies in the other 22 states that had been conducting checks prior to the Court's decision continued to do them voluntarily.

The only other exception was Ohio, which initially responded to the Court's decision by continuing background checks only on purchasers who consented to one. Last month, Rubin and Reno entered into a voluntary arrangement with the Ohio Attorney General that resulted in full reinstatement of background checks on every prospective Ohio handgun purchaser.

To facilitate the resumption of background checks in Arkansas, the Bureau of Alcohol, Tobacco and Firearms (ATF) has designated the Arkansas Attorney General as a "Chief Law Enforcement Officer" under the Brady Act. Although the Brady Act provides for a pre-purchase waiting period of up to 5 days to allow a background to be conducted, Arkansas Attorney General Winston Bryant's office expects that, in most cases, the check will be completed within 1 business day of the time the office receives notice of the proposed gun sale. No fee will be charged for the background check.

"I am responsible for protecting the people of Arkansas, and that's why I've requested authority to conduct background checks" said Arkansas Attorney General Bryant. "Under our procedure, law abiding citizens should be less inconvenienced than before, so that convicted felons and other prohibited persons are prevented from purchasing handguns."

In the event the background check yields information indicating that a prospective handgun purchaser may be disqualified by law from receiving or possessing a firearms, the Arkansas Attorney General will notify local law enforcement officials and prosecutors about the possibility that criminal conduct may be involved.

"An ATF review indicates that with Arkansas on board, nearly 100 percent of the United States population now live in a jurisdiction where law enforcement performs background checks on handgun purchasers," Rubin said.

According to Department of Justice surveys, background checks of the kind provided for in the Brady Act have prevented firearm sales to over 300,000 felons, fugitives and others prohibited from receiving or possessing them. While in effect, background checks in Arkansas blocked over 1,500 criminals and other prohibited persons from illegally obtaining handguns from firearms dealers.

BRADY LAW SURVEY

THIS REPORT IS INTENDED FOR INTERNAL USE ONLY.

BRADY LAW SURVEY SUMMARY

On August 4, 1997, we requested that all Special Agents in Charge whose geographic area of enforcement responsibility encompasses what is known as a Brady State, conduct a complete survey of **all** Chief Law Enforcement Officers (CLEO's) in those States (as defined by Federal Regulation and published in the Federal Register) to determine which ones will continue to accept the Brady Form; which ones will not accept it; which ones will conduct the Brady background check; which ones will not; and which ones are undecided as to either accepting the form and/or conducting the check. A copy of our request to the Special Agents in Charge which contains the rationale for the survey, a form designed for standardized responses, and a copy of the published legal definitions of CLEO are attached.

Of the 1,625 CLEO respondents, 1,513 were continuing to accept the Brady Form (93.1%); 68 would no longer accept the Brady Form (4.1%); and 44 were undecided as to accepting the form and/or conducting the check (2.7%). Of the 1,513 continuing to accept the form, 1,477 were continuing to conduct the check (97.6%). There were 104 CLEO's who were not conducting the check (6.4%). The 1,477 CLEO's conducting the checks represent 90.8% of all CLEO's responding.

In those States where one department has been designated as the CLEO for the entire State, the data was only counted as one (1) rather than the total number of police or sheriff's departments for which the single agency CLEO is representing.

ATF's Audit Services Division was requested to audit the survey. The Audit Services Division, which completed its work on September 17, 1997, verified the mathematical accuracy of the raw input data from the Brady Survey Forms submitted by the ATF field divisions against the computer generated totals found under tabs in this report. The audit also reconciled responding CLEO's to that which is printed in the Federal Register and defines by State, the term CLEO.

All data gleaned from the survey is presented under tabs following this summary.

Brady State Totals	Accept	Reject	Check	No Check	Undecided
Alabama	63	2	61	4	0
Alaska	26	1	26	1	3
Arizona	1	0	1	0	0
Arkansas	0	1	0	1	0
Kansas	116	1	113	4	2
Kentucky	5	0	5	0	0
Louisiana	64	0	63	1	0
Maine	14	0	14	0	0
Mississippi	47	2	46	3	0
Montana	50	5	49	6	0
Nevada	1	0	1	0	0
New Mexico	60	3	55	8	0
North Dakota	53	0	53	0	0
Ohio	0	1	0	1	0
Oklahoma	234	8	226	16	8
Pennsylvania	68	0	68	0	0
Puerto Rico	1	0	1	0	0
Rhode Island	29	0	29	0	0
South Carolina	1	0	1	0	0
South Dakota	64	1	64	1	0
Texas	571	38	557	52	21
Vermont	26	0	26	0	0
West Virginia	1	0	1	0	0
Wyoming	18	5	17	6	10
	1513	68	1477	104	44

TREASURY



NEWS

OFFICE OF PUBLIC AFFAIRS • 1500 PENNSYLVANIA AVENUE, N.W. • WASHINGTON, D.C. • 20220 • (202) 622-2960

FOR IMMEDIATE RELEASE
January 14, 1998

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RR-2157

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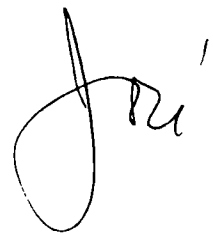
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THE WHITE HOUSE
WASHINGTON

To: BRUCE REED
ELENA KAGAN
RAHM EMANUEL
BRUCE LINDSEY

Fr: JOSE' CERDA

FYI— ARTICLE ON AR
BRADY BACKGROUND
CHECKS-



CC: LEANNE



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RETURN to Arkansas Section

Pasts figure again in bid to buy a gun

RACHEL O'NEAL
ARKANSAS DEMOCRAT-GAZETTE

After a seven-month hiatus, the state will resume criminal background checks for handgun buyers. Attorney General Winston Bryant's office is taking over the checks that Gov. Mike Huckabee's administration declined to make.

The development ends Arkansas' distinction as the only state not looking into the backgrounds of potential handgun buyers.

Before Wednesday, Bryant had not announced that he was taking steps to get gun-buyer background checks reinstituted in Arkansas. On Dec. 29, he asked the federal Bureau of Alcohol, Tobacco and Firearms for permission to conduct the checks. It gave its approval Jan. 5. Starting Jan. 22, Bryant's office will do the checks.

"Arkansas needs to join the rest of the nation and ensure that felons don't purchase handguns," Bryant said Wednesday. "We need to have procedures in place to prevent felons from illegally purchasing handguns in Arkansas."

In June 1997, Col. John Bailey, commander of the Arkansas State Police, decided to stop the state police background checks, and Huckabee supported his decision.

The checks were being done under a mandate imposed on the states by a federal statute known as the Brady Law. Bailey stopped them after the U.S. Supreme Court ruled the mandate unconstitutional.

The high court did not prohibit states from voluntarily doing the checks.

Bryant said his office will be responsible for the checks until a national instant background check system is in place. That system, called for by the Brady Law, is to be complete in November.

Saying the background checks would subject his agency to "unwarranted and expensive litigation," Bailey had defended his decision.

State police spokesman Bill Sadler said Wednesday that Bailey "has never been opposed to the concept" of background checks but had concern about the legality of doing them.

Sadler also said there were questions about whether the state police could continue to charge \$15 for processing the background checks before the federal mandate was struck down.

"It's not an issue of us being last in anything," Sadler said. "It's an issue of whether Arkansas was placing itself in legal jeopardy ... in the arena of conducting [background] checks and charging a fee for that check."

Bryant said his office will do the checks without charging a processing fee. He will not hire any more employees to run the program. Instead, he is reshuffling duties among his existing staff.

T.J. Farley, an investigator with the attorney general's Medicaid Fraud Control Unit, will direct the work, with two assistants, who have been reassigned from within the office.

In his request to the federal bureau Bryant asked to be designated the state's chief law enforcement officer for the purposes of supervising the

checks. He based his request on a 1945 case where the state Supreme Court found that the "common law duties of the attorney general, as chief law officer of the state, when not restricted or limited by statute, are very numerous and varied."

Bryant also wrote that his office has statewide jurisdiction and has "the ability, desire, and responsibility to protect the public's safety."

John Magaw, director of the federal bureau, said in a Jan. 5 letter that the bureau had recognized the Arkansas State Police in 1994 as the appropriate chief law enforcement officer.

"However, we understand that there is some question about the authority of the State Police to conduct background checks under the Brady Law," Magaw wrote.

He also wrote that it has been his agency's policy to "allow the law enforcement community in each state to determine who should serve" as chief law enforcement officer. Therefore, Magaw agreed to recognize Bryant as Arkansas' chief law enforcement officer.

Federal law prohibits gun purchases by people convicted of or indicted on felony charges; people with mental illnesses; people dishonorably discharged from the military; fugitives; and illegal aliens. The U.S. Supreme Court left intact the Brady Law's five-day waiting period for gun purchases.

Huckabee has called the Brady Law's background checks and waiting period "basically an imposition upon law-abiding citizens."

When asked Wednesday if he supports Bryant's decision to take over the checks, Huckabee said "if he wants to do it, that's his prerogative."

Huckabee spokesman Rex Nelson said Huckabee supports the national instant background check system. He said Huckabee has concerns about whether the national system will be ready by November.

"It's not a secret that he's not a fan of the waiting period," Nelson said. "We are pushing for the speedy implementation of a instant check system."

Bryant said he believes his office will be able to accept or reject an application within one business day. Under the new process, gun dealers will fax the applications to the attorney general's office, which will review the information and run a check with the National Crime Information Center, a database containing criminal records.

Before the state police discontinued the checks, more than 400 handgun applications were rejected, Bryant said.

Using those figures, Bryant said that up to 200 people who should have been rejected may have been allowed to purchase handguns during the period that the state did not have a background check system.

"I am very pleased that Arkansas has reinstated background checks on handgun purchasers," said Treasury Secretary Robert E. Rubin. "This public safety measure is absolutely critical to saving lives and preventing crimes."

Sarah Brady, chairman of Handgun Control Inc., also applauded Bryant's decision. The group is a gun control lobbying organization.

The law is named after her husband, who was wounded in an attempt to assassinate President Reagan.

"We hope Arkansas will never again allow criminals to slip through a common-sense safety net because of political or ideological considerations," Brady said.

Last year, Bryant's office initially advised the state police that continuing the checks could lead to lawsuits over illegal exaction if the state charged the \$15 after the U.S. Supreme Court ruling.

asts figure again in bid to buy a gun

In an attorney general's opinion issued later, Bryant found that state law allowed the background checks.

Bryant said Wednesday that Rick Hogan, a staff attorney assigned to the state police, had initially advised Bailey that the background checks could lead to legal problems. But Bryant said after exploring the issue, he found that Hogan's initial assessment was wrong.

Hogan now works for the state Department of Health.

Information for this article was contributed by The Associated Press.

This article was published on Thursday, January 15, 1998

RETURN to Arkansas Section

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File

Crime

Brady Law /

Supreme Ct.

Post-Decision

|

Record Type: Record

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

cc:

Subject: Statement by the President

THE WHITE HOUSE

**Office of the Press Secretary
(Palo Alto, CA)**

For Immediate Release

September 19, 1997

STATEMENT BY THE PRESIDENT

Today's study released by the Center to Prevent Handgun Violence confirms what we have known all along: that the Brady Law is helping to keep guns out of the hands of criminals. The study also gives us more good news about the Brady Law-- that it has worked to help disrupt illegal gun trafficking patterns, making it more difficult for gun traffickers to do business.

While states are no longer required to conduct Brady background checks in light of the Supreme Court's recent decision, I am pleased that state and local law enforcement agencies around the country are overwhelmingly continuing to do these checks on a voluntary basis. Our goal remains unchanged: no background check, no handgun purchase.

I have pledged to do everything in my power to make sure that we continue to keep handguns out of the hands of criminals-- including extending Brady background checks to violent juveniles who should not be able to buy a gun on their 21st birthday. Today's study further makes the case that for the safety of our communities and of all Americans, Brady background checks must continue.

- 30-30-30-

Message Sent To: _____

Rahm / Jose

Andy

Brady

Sept 12

Man Schumer's staff informs that Chuck plans to introduce Brady corrective legislation - the one we developed - next week with support from HCI. He sounded dug in on doing it but flexible on timing if we had views.

Please advise on your views how to proceed: let him go ahead?, try to dissuade?, reclaim our bill?, endorse?

[Handwritten note in a circle]

Bruce / ELENA / LEANNE

FYI - LET'S
TALK ABOUT AT
TOMORROW'S STAFF
MEETING.

[Signature]

[Star symbol]

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

I. Voluntary Background Checks -- Treasury

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

II. Insta-Check System -- Justice

III. Options:

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

IV. Law enforcement groups

Dennis K. Burke
02/28/97 03:46:59 PM

Record Type: Record

To: Leanne A. Shimabukuro/OPD/EOP

cc:

Subject: STATEMENT RE:BRADY ACT

----- Forwarded by Dennis K. Burke/OPD/EOP on 02/28/97 03:46 PM -----



STOTT D @ A1
02/28/97 03:23:00 PM

Record Type: Record

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

cc:

Subject: STATEMENT RE:BRADY ACT

THE WHITE HOUSE

Office of the Press Secretary

23
12/28
24
2/28/96

For Immediate Release

February 28, 1997

STATEMENT BY THE PRESIDENT

Today marks the third anniversary of the implementation of the Brady Act -- one of the most effective public safety measures ever.

The facts speak for themselves. Earlier this week, I announced that during its first 28 months, the Brady Act prevented more than 186,000 felons, fugitives, and stalkers from buying a handgun. Every month the Brady Act blocks an average of 6,600 illegal over-the-counter gun sales, with indicted or convicted felons constituting more than 70 percent of the

rejections.

These statistics should end any remaining doubt that might exist. The Brady Act is working.

This important public safety measure is the result of the tireless efforts of two courageous Americans, Jim and Sarah Brady. The Bradys have waged a moral and political battle to save lives and to keep handguns out of the hands of criminals. Their dedication to ending gun violence and making our streets safer is an inspiration to law enforcement and all Americans. Last year, I was deeply honored to bestow upon Jim the Presidential Medal of Freedom, the highest honor our nation can bestow on a citizen.

I look forward to working with the Bradys to pass my Anti-Gang and Youth Violence legislation, which will require child safety locks for all handguns and apply the Brady Act to anyone who has committed a violent juvenile offense.

-30-30-30-

Message Sent To: _____

I. How the NICS Will Work

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

II. Criminal History Records

- A. III participation
- B. Final dispositions of arrest records
 - 1. Arrest records complete
 - 2. Effect of incomplete conviction records

III. Points of Contact

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

BRADY LEGISLATION

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

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

☒ NO LIABILITY FOR CONDUCTING CHECKS, INTERIM AND PERMANENT

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

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

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File - Crime - Brady -
Legislative fix.

U.S. Department of Justice

Office of Policy Development

Deputy Assistant Attorney General

Washington, D.C. 20530

June 12, 1997

Don/Leanne -

MEMORANDUM

Have you seen this? Should

it be ignored?

TO: Attached list

Where are the AG + Rubing going

FROM: Mark Greenberg

to have their meeting w/ law enforcement
officers? How are we going to resolve

SUBJECT: Brady Act legislative fix

differences in a leg. fix? Please
let me know how we should proceed.

Steve

On June 2, I circulated an OPD draft of the proposed legislative fix to be used in case of an adverse Supreme Court decision in the Brady Act case. I have received very few comments on it and thought it might be useful to provide the following analysis of the major differences between the OPD draft and the Schumer bill. (The analysis is based on the revised version of the Schumer bill received on June 2, and on a June 12 version of the OPD bill. I attach copies of the two bills.)

There are two major issues to be resolved in drafting the legislative fix. The first is how cooperating CLEOS are to be designated. There are a range of possibilities that differ in the burdens they would place on federal agencies (most likely the Secretary of the Treasury, i.e., BATF) and on CLEOS. We obviously want to minimize the burdens placed on federal agencies. At the same time, the success of the regime will depend on the voluntary participation of CLEOS, so we do not want to place obstacles in their way.

The second issue concerns which CLEOS the statute should allow to conduct the background checks. Possible options include the CLEO of the prospective purchaser's place of residence, the CLEO of the gun dealer's place of business, the CLEO of the state itself, and any CLEO in the state. (Only one state would ever be involved because, under 18 U.S.C. § 922(b)(3), a dealer is not permitted to sell a handgun to a purchaser who the dealer has reasonable cause

to believe does not reside in the state of the dealer's place of business.)

With respect to the first issue, the Schumer bill requires the Secretary of the Treasury (the Secretary) to compile and distribute to gun dealers a list of CLEOS that have asked to be certified as cooperating CLEOS. The bill also authorizes but does not require the Secretary to distribute lists of previously certified CLEOS who are determined no longer to be cooperating. The bill thus places the major burden on CLEOS to request certification. By requiring the Secretary to list only those CLEOS who have requested certification, as a de jure matter, the bill does not require much action by the federal government. In practice, however, if many CLEOS fail to take the initiative to request certification, the burden may fall on BATF and the FBI actively to solicit such requests.

The OPD bill takes the different approach of requiring the Secretary to compile and distribute to gun dealers only a list of CLEOS that the Secretary has determined are not cooperating. The intent is that the Secretary will not be required to investigate whether each CLEO is cooperating. Rather, the Secretary's duty will be limited to placing CLEOS on the list when it comes to BATF's attention that a CLEO is not cooperating. (The draft does not provide that the Secretary shall determine which CLEOS are cooperating, but that the Secretary shall maintain a list of CLEOS determined not to be cooperating.) When particular CLEOS are not conducting background checks, it will typically come to the attention of BATF's local offices, especially since many of the CLEOS who do not wish to cooperate are likely attempting to make a political statement.

With respect to the second issue, the Schumer bill would allow a gun dealer to contact any of three CLEOS -- the CLEO of the purchaser's place of residence, of the dealer's place of business, and the CLEO of the state itself -- who is cooperating. It would be left to the dealer which of these to choose. In contrast, the OPD bill would make the CLEO of the purchaser's place of residence the preferred CLEO: the dealer would be required to contact that CLEO if the CLEO is not on the non-cooperating list. In the event that the CLEO is on the list, the bill would require the second-choice CLEO to be the CLEO of the dealer's place of business, if that CLEO is not on the list. As a back-up, the bill would allow the dealer to contact any CLEO in the state who is not on the list. The advantage of requiring the dealer to use the CLEO of the purchaser's place of residence when possible is that this CLEO has the best chance of finding relevant information concerning the purchaser. When the CLEOs of the purchaser's place of residence and the dealer's place of business are not cooperating CLEOs, the OPD bill makes it more likely than the Schumer bill that there will still be a cooperating CLEO because it opens the field to any CLEO in the state. Disadvantages of this option are that it would

increase the possibility of a gun dealer's manipulating the system by selecting specific CLEOS and would make it possible for a sale to be approved based on a background check conducted by a CLEO from a distant part of the state wholly unrelated to the seller or purchaser. Another option would be to leave the back-up CLEO to be specified by regulation.

A final difference between the two bills is that the OPD bill makes entirely clear that if there is no cooperating CLEO, the dealer may not transfer the handgun. (This is unlikely to occur because the OPD bill, as explained above, allows any CLEO in the state to be the back-up CLEO.) The Schumer bill does not address the issue as explicitly, but probably would be interpreted to have the same result. If that is the intent of the Schumer bill, it could easily be changed to make the point clear (e.g., by adding after (s)(1)(A)(ii): "(iii) there is a designated chief law enforcement officer;").

A BILL

To ensure that background checks are conducted before the transfer of a handgun by a firearms dealer.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Brady Law Revitalization Act".

SEC. 2. REFERRAL TO BE SENT TO CHIEF LAW ENFORCEMENT OFFICERS WHO ARE COOPERATING IN CONDUCTING BACKGROUND CHECKS.

Section 922(s) of title 18, United States Code, is amended --

(1) in paragraph (1)(A)(i), by amending subclauses (III) and (IV) to read as follows:

"(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to a cooperating chief law enforcement officer; and

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

(2) in paragraph (1)(A)(ii)(II), by inserting "and" after the semicolon; and

(3) by inserting after paragraph (1)(A)(ii)(II) the following new clause:

"(iii) there is a cooperating chief law enforcement officer;" and

(4) by striking paragraph (2); and

(5) by redesignating paragraphs (3) through (8) as

paragraphs (2) through (7) respectively; and

(6) by adding the following new paragraph (8):

"(8) For purposes of this subsection, the term 'cooperating chief law enforcement officer' means --

(A) the chief law enforcement officer of the transferee's place of residence, if the chief law enforcement officer of the transferee's place of residence is not listed in the most recent list of non-cooperating chief law enforcement officers compiled under paragraph (9); or

(B) the chief law enforcement officer of the licensee's place of business, if the chief law enforcement officer of the transferee's place of residence is listed in the most recent list of non-cooperating chief law enforcement officers compiled under paragraph (9) and the chief law enforcement officer of the licensee's place of business is not listed in the most recent list; or

(C) any chief law enforcement officer in the State in which the transferee's place of residence is located who is not listed in the most recent list of non-cooperating chief law enforcement officers compiled under paragraph (9), if the chief law enforcement officers of the transferee's place of residence and of the licensee's place of business are on the most recent list."

(7) by redesignating paragraph (9) as paragraph (10).

(8) by adding after new paragraph (8), added by paragraph

(6) above, the following:

"(9) (A) The Secretary shall maintain a list of the chief law enforcement officers of law enforcement agencies that the Secretary

determines do not maintain the practice of conducting background checks described in subparagraph (B).

(B) For purposes of this subsection, a law enforcement agency maintains a practice of conducting background checks if it maintains a practice, upon receipt of a notice provided pursuant to paragraph (1)(A)(i)(III) with respect to a transfer of a handgun, of making a reasonable effort to ascertain within 5 business days whether receipt or possession of the handgun would be in violation of Federal, State, or local law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

(C) The Secretary shall provide to each licensed dealer, on an annual basis, a copy of the list described in subparagraph (A).".

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H.L.C.

Original signature of Member105TH CONGRESS
1ST SESSION**H. R.** _____

IN THE HOUSE OF REPRESENTATIVES

Mr. SCHUMER introduced the following bill; which was referred to the
Committee on _____

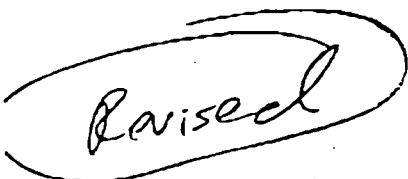
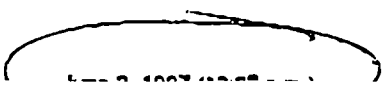
A BILL

To ensure that background checks are conducted before the
transfer of a handgun by a firearms dealer.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Brady Law Restora-
5 tion Act".

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H.L.C.

2

1 SEC. 2. BACKGROUND CHECK REQUESTS REQUIRED TO BE
2 SENT TO CHIEF LAW ENFORCEMENT OFFI-
3 CERS WHOSE POLICE DEPARTMENTS ARE CO-
4 OPERATING IN CONDUCTING THE CHECKS.

5 Section 922(s) of title 18, United States Code, is
6 amended—

7 (1) in each of subclauses (III) and (IV) of para-
8 graph (1)(A)(i), by striking “the chief law enforce-
9 ment officer of the place of residence of the trans-
10 feree” and inserting “a designated chief law enforce-
11 ment officer with respect to the transfer”;

12 (2) by striking paragraph (2) and inserting the
13 following:

14 “(2)(A) Upon request of a chief law enforcement offi-
15 cer of a cooperating law enforcement agency, the Sec-
16 retary shall certify the chief law enforcement officer as
17 the head of a cooperating law enforcement agency.

18 “(B) For purposes of subparagraph (A) of this para-
19 graph, a law enforcement agency is a cooperating law en-
20 forcement agency if the agency maintains a practice, upon
21 receipt of a notice provided pursuant to paragraph
22 (1)(A)(i)(III) with respect to the transfer of a handgun,
23 of making a reasonable effort to ascertain within 5 busi-
24 ness days whether receipt or possession of the handgun
25 by the transferee would be in violation of Federal, State,
26 or local law, including research in whatever State and local

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H.L.C.

3

1 record keeping systems are available and in a national sys-
2 tem designated by the Attorney General.

3 "(C)(i) Not later than 90 days after the date of the
4 enactment of this paragraph and periodically thereafter,
5 the Secretary shall provide to each licensed dealer a list
6 of the chief law enforcement officers certified under sub-
7 paragraph (A).

8 "(ii) From time to time, the Secretary may provide
9 to each licensed dealer, or to each licensed dealer within
10 a State, a list of chief law enforcement officers previously
11 certified under subparagraph (A) who the Secretary deter-
12 mines are no longer the head of a cooperating law enforce-
13 ment agency."; and

14 (3) in paragraph (8)—

15 (A) by inserting "(A)" after "(8)"; and

16 (B) by adding at the end the following:

17 "(B) For purposes of this subsection, the term 'des-
18 ignated chief law enforcement officer' means, with respect
19 to a handgun transfer, any of the following who is a listed
20 chief law enforcement officer:

21 "(i) The chief law enforcement officer of the
22 place of residence of the transferee.

23 "(ii) The chief law enforcement officer of the
24 place of business of the transferor at which the
25 handgun transfer is to be made.

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H.L.C.

4

1 “(iii) The chief law enforcement officer of the
2 State in which the place of business described in
3 clause (ii) is located.

4 “(C) For purposes of this subsection, the term ‘listed
5 chief law enforcement officer’ means, with respect to a
6 handgun transferor, a chief law enforcement officer who—

7 “(i) has been identified, in the list of chief law
8 enforcement officers most recently distributed to the
9 transferor under paragraph (2)(C)(i), as the head of
10 a cooperating law enforcement agency; and

11 “(ii) has not been identified, in a list of chief
12 law enforcement officers subsequently distributed to
13 the transferor under paragraph (2)(C)(ii), as the
14 head of a law enforcement agency that has ceased
15 to be a cooperating law enforcement agency.”.

STEPHEN P. HALBROOK, PH.D.

ATTORNEY AT LAW

SUITE 404

10560 MAIN STREET

FAIRFAX, VIRGINIA 22030

TELEPHONE (703) 352-7276

FAX (703) 359-0938

JUL 8 1997

June 30, 1997

President Bill Clinton
The White House
Washington, D.C. 20500

Attorney General Janet Reno
U.S. Department of Justice
10th & Constitution Ave., N.W.
Washington, D.C. 20530

Re: "Voluntary" Background Checks Under Brady Act

Dear President Clinton and Attorney General Reno:

I am writing as counsel for Sheriff Jay Printz. As you know, on June 27, 1997, the Supreme Court in *Printz v. United States* declared the Brady Act's required background checks by chief law enforcement officers (CLEOs) unconstitutional. President Clinton responded in the news media that he would urge all law enforcement departments in the States where the Brady Act applied to do the background checks voluntarily.

I would respectfully draw your attention to the fact that, under the laws of most if not all of these States, CLEO involvement in firearms transactions is contrary to law or not authorized by law. As stated in *Printz*, Slip Opinion at 36 n. 18:

Both CLEOs before us here assert that they are prohibited from taking on these federal responsibilities under state law. That assertion is clearly correct with regard to Montana law, which expressly enjoins any "county . . . or other local government unit" from "prohibit[ing] . . . or regulat[ing] the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, [or] possession . . . of any . . . handgun," Mont. Code §45-8-351(1) (1995).

The Court added that "it is arguably correct with regard to Arizona law as well," citing Ariz. Rev. Stat. §13-3108(B) (1989). Similar preemption laws exist in most of the other States where the Brady Act applied. (See attached addendum.)

In addition to the preemption statutes, the general laws of

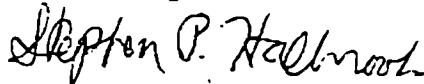
the states governing the duties of law enforcement do not encompass voluntary execution of federal law, and law enforcement departments are not authorized to expend funds on volunteer activities not sanctioned by State law. See, e.g., Mont. Code §7-32-2121 (duties of sheriff under State law), §§7-4-2110, 7-4-2203 (board of county commissioners supervise officials charged with the disbursement of public revenues and prosecute delinquencies). All of the other States also define law enforcement duties and prohibit use of funds for purposes unauthorized by State law.

The above limitations apply as much to departments of State police and Attorneys General as to local sheriffs and police chiefs. State officials are not authorized to expend funds for activities not sanctioned by State law any more than are local officials.

Certainly the Supreme Court's decision does not create a problem so urgent as would justify encouraging local law enforcement officials to violate the laws of their own States. In 1994, federal district courts in Montana, Mississippi, Arizona, Vermont, and Louisiana declared the Brady Act unconstitutional. The Brady Act has been inoperative in Texas, Mississippi, and Louisiana since March 1996, when it was declared unconstitutional in *Koog v. United States*, 79 F.3d 452 (5th Cir. 1996). Yet no one has suggested since then that a crisis was forthcoming in those States such as warranted acting outside of and in conflict with State law.

The above points to the necessity of putting on line the permanent provision of the Brady Act, the federal instant check. This task should be accomplished with all deliberate speed. Meanwhile, in urging CLEOs to execute the Brady law voluntarily, we urge you to inform them that you do not warrant that they may lawfully do so under the laws of their respective States, and that you warn them that expenditure of funds for unauthorized execution of federal law may be contrary to State law.

Sincerely,



Stephen P. Halbrook

cc: Honorable Walter Dellinger
Acting Solicitor General
Department of Justice
10th St. and Constitution Ave., N.W.
Washington, D.C. 20530

ADDENDUM

<u>State</u>	<u>Statute</u>
Alabama	Ala. Code § 11-45-1.1
Arizona	Ariz. Rev. Stat. Ann. § 13-3108(B)
Arkansas	Ark. Code Ann. § 14-54-1410
Kentucky	Ky. Rev. Stat. Ann. § 65.870
Maine	Me. Rev. Stat. Ann., tit. 25, Chap. 252-A, § 2011
Mississippi	Miss. Code Ann. § 45-9-51
Montana	Mont. Code Ann. § 45-8-351(1)
Nevada	Nev. Rev. Stat., Chaps. 244, 268, 269
New Mexico	Const. of N.M. Art. II, § 6
North Dakota	N.D. Cent. Code § 62.1-01-03
Oklahoma	Okla. Stat., tit. 21, § 1289.24
Pennsylvania	18 Pa. Cons. Stat. § 6120
Rhode Island	R.I. Gen. Laws § 11-47-58
South Carolina	S.C. Code Ann. § 23-31-510
South Dakota	S.D. Codified Laws Ann. § 7-18A-36; § 8-5-13; § 9-19-20
Texas	Local Gov't Code § 215.001
Vermont	Vt. Stat. Ann. tit. _____, § 2295
West Virginia	W.Va. Code § 8-12-5a
Wyoming	Wyo. Stat. § 6-8-401

Troopers dropping gun check

<http://www.ardemga.../today/wchek2.html>

Back to Index

Troopers dropping gun check

ERIN GIBSON
Arkansas Democrat-Gazette

Despite a plea from President Clinton, Arkansas State Police will stop conducting background checks on prospective handgun buyers today, state police director Col. John Bailey said.

"Based on conversations with the state police legal staff and attorney general's representative, we have no recourse but to stop the background checks and comply with this change in the Brady law as interpreted by the Supreme Court," Bailey said in a statement released Tuesday.

The background checks were required under the federal Brady law until Friday, when the U.S. Supreme Court ruled that the federal government could not force state and local law enforcement agencies to conduct the checks.

While 27 states have passed their own version of the Brady law -- which includes both the background check and a five-day waiting period for a handgun buyers -- Arkansas never did. Under the federal statute, Arkansas State Police began conducting background checks in February 1994.

But Arkansas officials re-evaluated the state's background check program after the court's ruling on a Brady law challenge filed by sheriffs from Arizona and Montana.

"It was a matter of sitting down and looking at the laws as they pertain to the state of Arkansas," state police spokesman Bill Sadler said Tuesday.

In a series of meetings that began Monday, Bailey, Sgt. Darrell Stayton (an attorney in the state police director's office) and representatives of the state attorney general's office discussed laws on whether the state should continue performing the checks.

Gov. Mike Huckabee was not involved in the decision to halt the checks in Arkansas, said Grant Tennille, a spokesman for the governor's office.

"In light of the court's decision, this office believes that the state police have made the right call, and we stand behind their decision," Tennille said.

Bailey's decision to stop the background checks clashed with requests from the president and several national police organizations to voluntarily continue them but excited some gun advocates in the state.

John Wallis, president of the Arkansas Pistol and Rifle Association, said Tuesday that he expected the state to discontinue the background checks after the Supreme Court decision but said he was still "extremely pleased."

"You can't force it if there's no state law," Wallis said.

Wallis said his organization and about 6,500 other members of gun clubs around Arkansas hoped the state Legislature would refuse any attempt to reinstate the background checks by rejecting any Brady-type bills during the next legislative session.

The absence of any state law left state police with no legal authority to continue conducting the Brady background checks after the Supreme Court decision, Sadler said. Before today, Arkansas conducted about 2,000 checks each month and charged potential gun buyers \$15 for each check, he said.

In the court's majority opinion released Friday, Justice Antonin Scalia wrote that the federal requirement for states to do the background check is "fundamentally incompatible with our constitutional system of dual sovereignty."

However, the court left the Brady law's five-day waiting period intact and ruled that states could continue to voluntarily conduct the checks until a national instant background-check

system is completed in November 1998.

Upon hearing the Supreme Court's decision, Clinton requested that law enforcement officials nationwide continue voluntary background checks. The president said he felt confident that "state and local law enforcement officials who asked us to pass the law will continue to do the background checks."

Bailey said state law requires police to continue background checks for those applying for a concealed weapons permit.

Federal law bans nine categories of people from buying handguns: those convicted or indicted on felony charges, those with mental illness, those dishonorably discharged from the military, fugitives from justice, those convicted of domestic abuse or under domestic violence restraining orders, illegal drug users, those who have renounced U.S. citizenship and illegal aliens.

When making the decision, state police did not consider the demand for the background checks or the percentage of people who apply for background checks but fail, Sadler said. Those statistics were not immediately available to police, he said.

The possible loss in revenue from halting background checks also was never discussed, Sadler said. State police raise an estimated \$380,000 annually from the background checks and completed 21,524 checks from August 1996 through May 1997.

Darren Taylor, owner of Midsouth Guns and Ammo, said only 10 of his customers have been turned down since the Brady law background checks began. Of those, nine were turned down by mistake and later allowed to buy the weapon, he said.

"I can't think of a single customer who would not be ecstatic about it," he said. "The people who come into the stores and buy the guns aren't the criminals anyway."

But national police organization officials, including International Association of Chiefs of Police President Darrell Sanders, said the background checks are an important tool to keep guns out of the hands of criminals.

In a statement released last Friday, Sanders said police "have known for decades that requiring handgun purchasers to undergo background checks and waiting periods is good policing and good crime prevention."

Sanders, chief of police in Frankfort, Ill., added, "I know that police chiefs around the country will continue to conduct these checks in large numbers, wherever and whenever they can."

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This article was published on Wednesday, July 2, 1997

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**Attorney General
Betty D. Montgomery**

FOR IMMEDIATE RELEASE

June 27, 1997

**CONTACT: Mark R. Weaver
Deputy Attorney General
at 614/466-3840**

To: Joe Sudbury

Statement from Ohio Attorney General Betty D. Montgomery

Over the last two years, the United States Supreme Court has continued a trend of striking down examples of the federal government over-reaching into traditional areas of state authority. Today, the Supreme Court struck down a portion of the federal Brady law that required local governments to conduct background checks on people who wish to purchase a handgun.

This decision leaves the Brady handgun check still in place, but effectively ends Ohio's involvement as the means to carry out that background check. That responsibility will now be taken back by the federal government. The federal government continues to work toward the 1998 nationwide Brady check system, when the purchase of all guns will require a background check.

As a result, today will be the last day that the Ohio Bureau of Criminal Identification and Investigation will accept Brady check calls from gun dealers. All checks received through today will be completed.

Over the last two years, the Ohio General Assembly has taken many steps to toughen penalties for gun-related crimes and as a former prosecutor, I will continue to support those measures.

####

-25-01 01:26A

JUN-30-97 14:41 From:OH ATTORNEY GENERAL'S OFFICE

6147525089

T-150 P.01/02 Job-027



**Attorney General
Betty D. Montgomery**

NEWS STATEMENT

from Ohio Attorney General Betty D. Montgomery
For more information, contact Deputy Attorney General Mark R. Weaver at (614) 466-3843

TOPIC: THE U.S. SUPREME COURT'S ACTION IN STRIKING PORTIONS OF THE BRADY ACT

June 30, 1997

Diggs Sullivan

Prior to last week's U.S. Supreme Court's decision about the Brady Act, there were two different categories of states that conducted background checks on handgun purchasers. More than half of all states already had background checks in place -- by order of their respective state legislatures. The remaining states (including Ohio) were states whose legislatures had not mandated a background check for handgun purchases.

When the Brady Act became effective in 1994, it intended that (in Ohio) county sheriffs would carry out the required background checks. Through an agreement between then-Attorney General Lee Fisher and sheriffs, it was decided that Ohio's Bureau of Criminal Identification and Investigation (BCI) would do the actual work. Without the mandate of the Brady Act, BCI would not have the authority to conduct these background checks and provide otherwise-confidential information to gun dealers.

Last Friday, the Supreme Court removed the portions of the Brady Act that ordered local law enforcement officials to conduct these checks. The court preserved the waiting period and confirmed that the federal government could conduct a background check during the waiting period. Because the Ohio state legislature has never authorized BCI or any sheriff to conduct a handgun purchase background check, at the moment the Supreme Court ruling was handed down, our state lost the legal authority to conduct these checks.

A few zealous gun control advocates have pointed to Ohio Revised Code Section 109.54 as creating the authority to do background checks on individuals without their permission. The statute actually only allows BCI to "aid and assist" a sheriff or police officer "in the investigation or solution of any crime or the control of any criminal activity." Handgun background checks have already been categorized by the U.S. Justice Department as a non-law enforcement check. Even if that weren't the case, a simple background check does not indicate any probable cause to believe that a crime or criminal activity has occurred. Therefore, checks done without authority could expose the state to significant legal liability. As a result, BCI was instructed to stop the checks the day the Supreme Court made its decision.

In 1996, 60,037 people went to licensed gun dealers to purchase handguns. Of that figure, 327 -- less than one half of one percent -- were denied handguns because of a disqualifying factor. Although I'm pleased that those 327 people didn't receive a handgun from a licensed gun dealer, we have no guarantee that each of these people didn't proceed to a pawn shop, a gun show, flea market, or the black market to purchase a handgun the very same day. Nearly a million dollars was spent in 1996 on this program, yet while we were able to keep 327 people from getting a handgun at point A -- each of them was able to purchase a rifle or handgun the very same day at point B.

To our knowledge, under the Brady Act, not a single one of the 327 people who falsified the form and tried to purchase a handgun illegally have been prosecuted by the U.S. Justice Department.

All of this is an interim concern. That's because, in 1998, the Brady Act calls for local governments to end the waiting period and background checks for handguns in favor of a nationwide "instant check" program for handguns and long guns. These instant background checks will be done at the point of purchase and will be conducted by federal employees.

(MORE)

State Office Tower / 30 East Broad Street / Columbus, Ohio 43265-3428
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JUN-30-97 14:41 From: OH ATTORNEY GENERAL'S OFFICE

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T-188 P. 02/02 Job-027

PAGE TWO

Friday afternoon, officials from my office spoke with the U.S. Justice Department to explore options. Over the past weekend, several attorneys on my staff conducted research and discussed possibilities. On Saturday, I spoke personally with U.S. Attorney General Janet Reno and explained Ohio's concerns. President Clinton and Attorney General Reno hoped that Ohio and other states would continue to do background checks voluntarily. I explained that our state's voluntary inclusion in the federal program is a decision only the legislature can make. As an executive agency with limited authority, the Ohio Attorney General's Office carries out laws - we are not able to make up laws.

Unless a law properly directs us, we simply can't conduct background checks on private citizens and then provide that confidential and otherwise-protected information to another person. No one should expect Ohio's chief legal officer to take it upon herself to pre-empt the state legislature and invade individual privacy. Absent a criminal investigation prompted by probable cause, an individual would have to give his or her consent before such a background check could be done.

As a former prosecutor, I want to take all legal and reasonable steps to keep guns out of the hands of criminals. To that end we have taken the following steps:

- ① Beginning in the next few days, we will provide every licensed gun dealer in Ohio with a waiver form that each potential handgun purchaser will be asked to sign. That waiver will ask the buyer to voluntarily allow BCI to conduct a background check and forward any disqualifying information to the gun dealer during the waiting period. We expect that the majority of handgun purchasers will agree to this waiver. Obtaining individual permission resolves the problem of our lack of legal authority to conduct a check.
- ② If a potential handgun purchaser refuses to sign a form that allows BCI to conduct a background check, BCI will forward all the pertinent information to the federal Bureau of Alcohol, Tobacco, and Firearms with that person's name and individual information. The federal government may then conduct the necessary background check during the waiting period. The Supreme Court has already said that this is an appropriate federal activity -- even without an individual's permission.
- ③ To encourage handgun purchasers to voluntarily allow BCI to conduct the necessary background check, Ohio will complete the check in two days -- a Quick-Check' system. In 1998 the federal government will start an Instant Check system which will occur immediately at each point of purchase. Recent updates in our system and technology have allowed this to be possible. Legally this is possible because the Brady Act waiting period requirement is "up to five days" If there are no disqualifying offenses, a handgun purchaser will be able to receive his or her gun after 48 hours -- less than half the time the federal check will likely take.
- ④ We are also drafting legislation which would make it a felony offense for someone who has already been convicted of certain felonies to attempt to acquire a handgun. This will allow local law enforcement to prosecute those people who seek to violate the Brady Act by seeking to obtain weapons when they are not legally able to own them.

MAY

Gun-buyer checks become voluntary

Montgomery decides to restart program

The Columbus Dispatch
Tuesday
JULY 1, 1997 ■

By Alan Johnson
Dispatch Staffhouse Reporter

Background checks for Ohio handgun buyers will resume on a voluntary basis, Attorney General Betty Montgomery decided yesterday, four days after halting the program following a U.S. Supreme Court ruling.

"We expect that the majority of handgun purchasers will agree to this waiver," Montgomery said. "Obtaining individual permission resolves the problem of our lack of legal authority to conduct a check."

State "quick-check" voluntary background checks are expected to take two days, Montgomery said. If the gun buyer refuses, the check will be done by the federal Bureau of Alcohol, Tobacco and Firearms and

will take five days, she said.

Paperwork is expected to go out today to 3,500 gun dealers across the states.

Montgomery reversed her position on the Brady law checks after a weekend of research by her staff and a call from U.S. Attorney General Janet Reno.

But Kent Markus, counselor to Reno, said Montgomery's revised procedure has not been agreed to by federal officials "and may be deeply flawed." Markus said no arrangement had been worked out with ATF officials to do the checks.

The U.S. Supreme Court, by a 5-4 decision Friday, invalidated a critical section of the Brady law,

Please see GUN CHECK Page 2A

GUN CHECK from 1A

ruling the federal government cannot require states to do criminal background checks on would-be handgun purchasers as dictated by the 1994 federal law.

Montgomery immediately shut down the 2-year-old state program operated by the Bureau of Criminal Identification and Investigation in London, Ohio. She said that in view of the court's ruling, the state lacked authority to do the checks.

From Feb. 28, 1994, through June 9, the bureau conducted 206,905 background checks on would-be gun purchasers, rejecting 1,206 — about 0.5 percent. Her office said criminals bypass the system and get guns elsewhere.

After Friday's decision, Montgomery's staff talked with Justice Department staffers, Reno called Montgomery Saturday at home, and Montgomery's staff researched the issue over the weekend.

Ohio was among a handful of states that had decided not to perform Brady checks.

About half the states have their own Brady laws, and most of the others decided to continue on their own, which the Supreme Court said they could do.

The federal government plans

to take over background checks by year-end 1998.

Montgomery said her office is preparing legislation that would make it a felony for someone convicted of certain crimes to attempt to buy a handgun.

That would allow local prosecution of Brady law violators, which is not done at the federal level, Montgomery said.

None of the 827 people denied a handgun in Ohio in 1996 was prosecuted under the federal law, Montgomery said.

Montgomery's change of heart drew immediate fire from a Democrat who plans to run against her in 1998.

Richard Cordray, former state solicitor general under former Attorney General Lee Fisher, criticized Montgomery's "knee-jerk, shut-the-system-down" decision.

"It's hard to understand how Ohio's chief law enforcement officer would not be interested in keeping guns out of the hands of convicted felons," Cordray said.

Mark R. Weaver, deputy attorney general, dismissed those criticisms.

"We found a way to do the right thing, but to do it legally," he said.

Ohio rethinks gun-law stance

• Attorney general retreats a bit, says state will research firearm buyers who approve, won't those who object

The Beacon Journal
Tuesday, July 1, 1997

BY MARGARET NEWKIRK
Beacon Journal Columbus Bureau

COLUMBUS: Just days after announcing that the state would end background checks for handgun buyers in the wake of a U.S. Supreme Court decision, Ohio Attorney General Betty Montgomery backed off somewhat yesterday.

Her office will continue to do checks - but only for gun buyers who agree to them.

Buyers who don't agree, Montgomery said, will have their Brady law information forms turned over to the federal Bureau of Alcohol, Tobacco and Firearms, which "may then conduct the necessary

background checks during the waiting period."

The statement drew outrage from gun control advocates, derision from Democrats and laughter from the Ohio spokesman for the Bureau of Alcohol, Tobacco and Firearms, who said it was the first he'd heard of it.

ATF spokesman Pat Berarducci said he could not comment on Montgomery's plan until he speaks to the bureau's chief legal counsel to "determine whether this is legal."

On Friday, the high court ruled

See GUNS, Page A10

GUNS

• Ohio has been unique in centralizing checks

Continued from Page A1

4-3 that the federal government cannot compel state and local agencies to conduct background checks - prompting Montgomery to say the state's Bureau of Criminal Identification and Investigation would immediately stop accepting background check requests from gun dealers.

Deputy Attorney General Mark R. Weaver said Montgomery believed the state would be legally exposed if it ran checks on private citizens without a law specifically allowing them.

The decision attracted instant criticism from across the country. Montgomery was the only law enforcement official in the nation who immediately shut down the background check program.

"We expected maybe some small-town sheriff in Texas to do away with the checks," said Joe Sudbay, legislative director of Handgun Control Inc. in Washington. "We certainly didn't expect it from the whole state of Ohio. And we especially didn't expect it from an attorney general who purports

to be so tough on crime."

Montgomery's about-face followed a letter from U.S. Attorney General Janet Reno that urged law enforcement officials to continue background checks.

"We expect and hope that the vast majority of law enforcement agencies in America will continue to run these checks voluntarily," the Reno letter said. "We recognize that some chief law enforcement officers may still use the court's decision as an excuse not to conduct Brady background checks."

"It is just common sense that we all keep doing whatever we can to keep guns from criminals," Reno wrote.

Ohio's attorney general's office has been conducting background checks under the federal Brady handgun control law since 1994. Since then, the bureau has run checks on 306,868 handgun buyers, denying permits to 1,206 of them.

In her statement yesterday, Montgomery said she was pleased that disqualified people did not receive guns "from a licensed gun dealer."

But, she said, "We have no guarantee that those people didn't proceed to a pawnshop, a gun show, a flea market or the black market to purchase a handgun the very same day."

The Ohio attorney general's role in running the checks is unique among those states that

fell under the Brady Bill.

In most states, city police departments and county sheriffs are responsible for running the background checks. Ohio's system, with checking centralized under Montgomery's office, was set up at the request of former Ohio Attorney General Lee Fisher.

Bob Walker, the president of Handgun Control Inc., said the changes announced yesterday did little to alleviate his organization's worries about Montgomery's action, and said her proposal to turn nonvolunteers over to the Alcohol, Tobacco and Firearms bureau was both illegal and unworkable.

Both the state Democratic Party and Richard Cordray, Montgomery's only Democratic opponent in next year's attorney general's race so far, said Montgomery does have authority to continue background checks under current state law.

Cordray, who was solicitor general under Fisher, said state law allows the attorney general to assist local law enforcement agencies in investigating possible criminal conduct.

Weaver, the deputy attorney general, said the revised policy doesn't represent a flip-flop.

"She didn't change her mind," Weaver said. "We are still of the position that Ohio does not have the authority to require background checks."

Ohio to continue checking on gun buyers 'voluntarily'

By JOE HALLETT
PLAIN DEALER BUREAU

COLUMBUS — Stripped of its legal authority to conduct criminal background checks on gun buyers, Ohio this week will begin asking handgun buyers to voluntarily permit the state to conduct such checks.

Information on potential handgun buyers who refuse to sign an Ohio waiver will be forwarded to the federal Bureau of Alcohol, To-

bacco, and Firearms, which still has authority to conduct criminal background checks without a gun buyer's consent.

Ohio Attorney General Betty D. Montgomery, who outlined the new Ohio waiver system yesterday, said it should provide the necessary safeguards to keep guns out of the hands of criminals.

On Friday, the U.S. Supreme Court wiped out a section of the Brady law, ruling that the federal government could not force state and local police agencies to conduct criminal background checks on handgun buyers. The court, however, left intact the federal government's authority to conduct background checks.

In Ohio last year, 60,037 people attempted to buy handguns and 327 were denied after state-conducted background checks turned up records of felonies or other disqualifying information, according to Deputy Attorney General Mark R. Weaver.

After the Brady law became effective in 1994, the Ohio Bureau of Criminal Identification and Investigation, working with county sheriffs, provided criminal background checks on handgun buyers during a five-day cooling-off period mandated by the law.

Montgomery, who oversees the BCI, had said in the wake of the Supreme Court decision that the state's gun-check system would be shut down immediately. But after speaking with U.S. Attorney General Janet Reno over the weekend, Montgomery decided to continue voluntary checks.

Montgomery stressed that system would last only until the federal government next year begins computerized criminal background checks that can occur immediately at each point of handgun purchase.

Columbus attorney Richard Cordray, former state solicitor who had argued in support of the Brady law, contended that the state still had legal authority to do handgun background checks despite the court ruling.

Cordray, a possible Democratic opponent against Montgomery in 1998, also called the voluntary waiver system "useless," adding, "The law-abiding citizen will agree to sign, but the criminal will not."

THE PLAIN DEALER • TUESDAY, JULY 1, 1997

THE CINCINNATI ENQUIRER

METRO

TUESDAY • JULY 1, 1997

Ohio gun checks on again

**Under fire,
attorney general
changes mind**

BY MICHAEL HAWTHORNE
Columbus Bureau

COLUMBUS — Attorney General Betty Montgomery, in an abrupt about-face, announced Monday that Ohio will resume criminal background checks on prospective gun buyers.

Ms. Montgomery faced a torrent of criticism after cutting off the gun checks Friday following a U.S. Supreme Court decision

that struck down a key part of the Brady gun-control law.

Following discussions during the weekend that included a telephone conversation between Ms. Montgomery and U.S. Attorney General Janet Reno, Ms. Montgomery's office unveiled a new method that allows the background checks to continue.

Potential gun buyers now will be asked to sign a waiver allowing the state Bureau of Criminal Identification and Investigation to conduct a background check. If they refuse to sign the waiver, the buyer's personal information will be forwarded to the federal Bureau of Alcohol, Tobacco and Firearms.



Betty
Montgomery

period of up to five days.

The changes were prompted by a U.S. Supreme Court ruling that the federal government cannot require local law enforcement to determine whether buyers are fit to own handguns. Ohio

To encourage people to volunteer for the state check, Ms. Montgomery's office is guaranteeing the results will be back within two days. The Brady law imposes a waiting

period of up to five days. The Brady law imposes a waiting

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Background Checks: How Instant, Accurate?

Handgun System Is Set for '98 but Local Data May Have to Catch Up

By Michael J. Sniffen
Associated Press

Justice Department officials are confident a national computer system will be ready by November 1998 to check backgrounds of handgun buyers. Even so, they concede state criminal records hooked to the system will be woefully incomplete and inaccurate.

Half an hour before the Supreme Court struck down the Brady act's requirement that local law enforcement officials check the background of would-be purchasers, Attorney General Janet Reno assured reporters Friday:

"The system will be operational at that point. But what we all must strive to do is to make sure that the states' histories are as accurate as possible, and we're working with the states in that regard."

Kent Markus, counselor to Reno, put the problem in focus: "Will we be at 100 percent when the computer system starts up in November 1998? No way. Will we be at 80 percent? No. Will we be at 50 percent? We hope so."

In 1992, only 18 percent of state criminal records were accessible by computer, accurate and complete with the disposition of arrests and trials, a Justice Department survey found. By 1995, the most recent Justice survey found 33 percent of the 50 million state criminal history records were accessible, accurate and complete.

The 1995 survey was completed as states began to get federal money for improving records. By now, more than \$150 million of an anticipated \$200 million has been passed out, and all 50 states have computerized some records.

"Traditionally, states have been pretty good about gathering arrest data," Markus said. "But it is not uncommon to find a murder arrest record that doesn't show what happened—whether the guy was convicted or the charge was dropped. Cops all over the country have to place phone calls to court clerks to find out those dispositions."

Although controversy over gun control swirls around the Brady act, every state wants the accurate criminal databases it mandates, Markus said. "Judges want to know past records before sentencing. Cops want to know whether the guy they are about to arrest has a history of violence."

What is being constructed?

The Brady act requires a computerized federal background check to replace local law enforcement



FILE PHOTO

WAYNE LAPIERRE JR.

... NRA will "do whatever it takes"



FILE PHOTO

SARAH BRADY

... it will be "a top-notch tool"

checks by the end of November 1998. Gun dealers will be able to call a number, identify the would-be handgun buyer and get an instantaneous response.

State officials will answer most of those calls, because "states want to be the ones at the other end of the phone... want to know who is trying to buy guns who should be denied," Markus said. Federal officials will field calls wherever state officials choose not to.

Senate Majority Leader Trent Lott (R-Miss.) charged, and Markus denied, that "the Justice Department has delayed implementing an instant check system."

On Sunday, Wayne LaPierre Jr. of the National Rifle Association said he talked with Lott and House Speaker

Newt Gingrich (R-Ga.) and said they are ready to meet with President Clinton and "do whatever it takes to get the national instant check on line."

The NRA opposes the Brady law provision that allows local police five days to conduct background checks but it supports instantaneous checks. LaPierre said on ABC's "This Week" that a national computer system is the "only way under the Supreme Court decision there will be a check."

The FBI is building a computerized index with the names of people banned from buying handguns and state or federal records supporting disqualification. The index will be linked to state and federal computers so checkers can look up the underlying record.

Although the FBI once fell 18 months behind in the \$640 million computerization of its fingerprint file, that has not been a problem for the \$36 million national instant check system. Doug Domin, FBI supervisor of the system's technical development, said, "We're actually just a little bit ahead of schedule."

"This deadline is written into law, and everybody is watching closely," Markus explained.

But other questions must be resolved. The new system is called an instant check, but the Brady act allows three days for the computerized checks.

"Our objective is to design it so as much as possible it will be instantaneous," Markus said.

Federal officials assume that if a person's name does not appear on the FBI index, that will constitute approval to buy a handgun. They are working on rules to spell out who will make additional checks, if any, should the buyer's name appear on the index but the underlying state file shows only an arrest and not whether the person was convicted, acquitted or charges were dropped.

It will be "a top-notch tool for law enforcement," Sarah Brady, chairwoman of Handgun Control Inc., said Sunday on ABC. But she said it will lack medical records or records of mental patients and "is not going to be sufficient to run a really good comprehensive background check."

Nine categories of people are banned from handgun purchases by federal law: those convicted or under indictment on felony charges; fugitives; those judged mentally ill; those with dishonorable military discharges; those who have renounced U.S. citizenship; illegal aliens; illegal drug users; those convicted of domestic violence misdemeanors or under domestic violence restraining orders.

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p. 1
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EXECUTIVE DIRECTOR



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TELECOPIER INFORMATION SHEET

TIME: _____ A.M. / P.M.

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TO: Liane Shimbukuro

Agency/Organization: White House - Domestic Policy
456-7028

FROM: Martha Plotkin 202-466-7820

COMMENTS:

FYI. Please share with your media staff working on the Brady

decision for possible referral to us on police chief responses.

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EXECUTIVE DIRECTOR

FOR IMMEDIATE RELEASE

DATE: June 27, 1997

CONTACT: Martha Plotkin 202/466-7820 ext. 232 or Ellen Painter 202/466-7820 ext. 248

**POLICE CHIEFS WILL VOLUNTARILY CONDUCT BRADY
BACKGROUND CHECKS AFTER SUPREME COURT RULING**

Washington, DC—The Police Executive Research Forum (PERF) in response to today's Supreme Court decision on the Brady law announced that it will continue to support voluntary background checks of prospective gun purchasers. While the Court ruled that the federal government could not mandate police chiefs to make reasonable efforts to conduct background checks on people who buy handguns from federally licensed dealers, many law enforcement leaders in affected states are already organizing to do the background checks voluntarily.

According to PERF Executive Director Chuck Wexler, 22 PERF member police agencies in eight of the 22 affected states have already voiced their commitment to voluntarily continue background checks so long as the immunity provisions of the Brady law still apply to their conducting these checks, they maintain access to the national criminal record system, and no other state or federal prohibitions apply. In some states such as Arkansas, Arizona, South Carolina, Kentucky and Ohio, a state agency conducts the Brady background checks for local police agencies, which means police chiefs will be waiting to see how those state agencies decide to act, except in the few instances in which local police departments have existing ordinances to conduct the checks on their own. Chiefs are, of course, counting on the fact that the federal government still mandates federally licensed firearms dealers to submit background requests to their police agencies.

"Compared with the resource investment required to conduct a gun-related homicide investigation—not to mention the immeasurable human costs of gun violence—the

investment that police agencies must make to conduct background checks is very reasonable," remarked Chief Ellen Hanson of Lenexa, Kansas. Hanson is a member of PERF's board of directors and one of the 22 PERF member chiefs who have committed to continuing background checks even though they are no longer required to do so.

PERF joined several other national law enforcement groups in an amicus brief to the Court in support of the Brady law because they know the decision has national impact beyond the 22 "Brady states." Police chiefs know that the Brady background checks provide the kind of national approach needed to address a gun violence problem that is exacerbated by uneven responses among the states.

Evidence shows the Brady law's extraordinary success. According to the Justice Department's Bureau of Justice Statistics, in the first 28 months after Brady was enacted, more than 186,000 illegal gun sales were blocked by background checks, and it is estimated that more than 70 percent of blocked purchase attempts each month involve indicted or convicted felons.

"Police know that it makes no sense to allow felons and purchasers ineligible because of mental illness, domestic violence convictions or other gun possession prohibitions to walk into a gun shop and get a gun—no background check required," said PERF Executive Director Chuck Wexler. "Brady checks may not be a panacea for the nation's gun violence problem, but it is a tremendous step in the right direction—a step police are unwilling to abandon."

PERF is a DC-based think tank and membership organization of progressive police chiefs and criminal justice professionals who serve more than 40 percent of the nation's population. The organization is committed to improving police practices through research, national leadership and debate.

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RESEARCH FORUM**TELECOPIER INFORMATION SHEET**

TIME: _____ A.M. / P.M.

DATE: 6-27-97This transmission is 3 pages (including cover sheet).TO: Liane ShimbukuroAgency/Organization: White House - Domestic Policy
456-7028FROM: Martha Plotkin 202-466-7820**COMMENTS:**FYI. Please share with your media staff working on the Bradydecision for possible referral to us on police chief responses.If you do not receive all pages, please call PERF at (202) 466-7820

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**Police Executive Research Forum Chiefs
Committed to Voluntarily Conducting Brady Background Checks**

Alaska

Chief Duane Udland/Anchorage PD

Kansas

Chief Ellen Hanson/ Lenexa PD

Chief John Douglass/ Overland Park PD

Chief Philip Major/ Olathe PD

Chief Stephen Cox/ Leawood PD

*Chief xxxxxxxxxxxx/ xxxxxxxx PD

Chief James Hill/ Salina PD

Maine

Chief Michael Chitwood/Portland PD

Mississippi

Chief Robert Johnson/Jackson PD

New Mexico

Chief Joseph Polisar/Albuquerque PD

Ohio

Chief Michael Snowden/Cincinnati PD

Chief Gerald Galvin/Toledo PD

Oklahoma

Chief Earl Shirley/Yukon PD

Texas

Chief Bruce Glasscock/Plano PD

Chief Richard Czech/ Midland PD

Chief Felipe Garza/Kingsville PD

Chief Al Philippus/ San Antonio PD

Chief Kenneth Yarbrough/Richardson PD

Chief Melvin Martin/ Abilene PD

*Chief xxxxxxxxxxxxxxxxxxxx PD

*Chief xxxxxxxxxxxx/ xxxxxxxxxxx PD

Chief Ken Walker/ Lubbock PD

***Chief is willing to conduct the checks voluntarily, but does not want to have press calls referred.**

Please call Martha Plotkin, director of communications, at 202/466-7820 x232 if you need phone numbers for the chiefs, their public information officers or Brady background check staff.

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