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Total Pages (including this cover): 5

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Questions and Answers re BJS Reports – For Release June 4, 2000

Regarding the Report on Federal Firearms Offenders

Q: The report just released by BJS indicates that the number of defendants charged with a federal firearm offense decreased from a peak in 1992. Does this confirm the accusations of the NRA that the Clinton Administration has failed to enforce the federal firearms laws?

A: Absolutely not. Overall, prosecutions are up. Since 1992, combined state and federal weapons prosecutions have increased more than 22%. And according to data from the Executive Office of the U.S. Attorneys, the number of federal criminal cases in which charges were brought under the two primary provisions of the Gun Control Act was nearly 16% greater in 1999 than in 1992.

Under our strategy, federal law enforcement authorities have worked together to ensure that the most serious criminals are treated most severely. By targeting the worst offenders, the average sentence for federal gun defendants has increased by almost two years, and a greater percentage of federal gun defendants are now serving prison terms. The BJS report confirms what we already knew: there was a dip in federal firearms prosecutions in the mid-1990s, primarily due to our strategy of targeting the most serious offenders, and the United States Supreme Court decision that limited federal prosecutors' ability to use one of most powerful charges under the Gun Control Act. The report statistically demonstrates that without the limitations imposed by the Supreme Court's decision, 2,500 more defendants would have been charged by federal prosecutors.

Q: Even after the Bailey decision, there were plenty of federal firearms offenses committed in the mid-1990s. Why didn't federal prosecutors go after those cases?

A: They did. Despite the fact that the Bailey decision required U.S. Attorneys to devote considerable time and resources to defending convictions they obtained under the prior interpretation of the Gun Control Act, federal prosecutors still pursued violent gun criminals and drug traffickers who use guns. As documented in the BJS report, between 1995 and 1998, the number of federal defendants charged with a violent or drug offense increased 25%. Even though federal prosecutors were not able to charge the same Gun Control Act violations they would have been able to if the Supreme Court had decided Bailey differently, they still went after these defendants and compensated for the Supreme Court's decision by increasing the use of sentencing guideline enhancements. The use of this guidelines weapon enhancement increased 31% for offenders in such cases. This added, on average, 16 more months to each criminal's sentence.

Q: According to the BJS report, there was not a significant increase in the number of charged defendants from 1998 to 1999, as previously stated by the Justice Department. How you explain the difference?

A: As the report states, the BJS data for 1999 is preliminary. There will be more defendants added to the 1999 count as BJS receives more data. BJS's experience with this kind of counting suggests that the additional data could show as many as 1,000 more defendants. In other words, we know that the numbers for 1999 will go up. Based on the overall consistency between the BJS data and the data used by the Executive Office for U.S. Attorneys -- which was the data we released in January -- we would expect that the number of defendants charged in 1999 will show a trend consistent with the trend outlined in the January data.

Q: The BJS report documents that half the total decrease in federal firearms prosecutions can be attributed to fewer prosecutions of state level firearm offenses in federal courts pursuant to the Assimilated Crimes Act. Why did federal prosecutors stop charging these cases?

A. BJS did not analyze the reason for this decline. However, in many of those cases, the state also had the ability to charge the defendants with a state level offense, and it is likely that the decrease could be attributed to increased state prosecutions of these offenders. The 22% increase in combined federal and state prosecutions between 1992 and 1996 (we do not have data more recent than 1996) supports this reasoning.

Q: The BJS report documents that while the average prison term increased for defendants convicted of possession and transfer offenses, prison terms declined for those convicted of regulatory offenses. What accounts for this disparity?

A: The United States Sentencing Commission is responsible for the study and implementation of the Federal Sentencing Guidelines. The Guidelines, as they currently exist, expose a convicted felon or other illegal firearm possessor to a much heavier sentence than a trafficker. While many traffickers are also violent offenders, other gunrunners or their accomplices do not have extensive criminal records, thereby limited their exposure to the Sentencing Guidelines.

Q: How do you explain the 62% decline in unregistered firearm cases under 18 U.S.C. section 5861(d)?

A: We think this is largely a matter of prosecutorial charging strategy. As you can see from the BJS report, there was increase in 922(o) prosecutions during the period of this decline. Prosecutors appear to have been using other statutes, like 922(o), to handle this kind of offense.

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A: The ATF caseload dropped for a number of reasons, including a decline in the number of

Special Agents, a drop in the overall crime rate, shifts in investigative focus, and the number of serious bombings and church arsons. As the lead bombing, explosives and arson investigation agency in the country, ATF is often called upon to move resources into bombing and arson investigations, which are extremely resource- intensive and often call for the most experienced Special Agents.

Q: The BJS reports states that the Attorney General issued a memorandum that allowed federal prosecutors to plea bargain in a way that allowed defendants to avoid the heavy penalty of 924(c). Doesn't that memorandum show that the Department does not treat gun offenses as seriously as it could?

A: No. The Attorney General's memorandum was designed to clarify the guidelines that have been set down for federal prosecutors when they make decisions about what crimes to charge, and what plea bargains to make. Plea bargains can be used to assure prosecutors of an appropriate conviction, and are a necessary part of our criminal justice system. As the BJS report documents, the rate of conviction for the relevant gun offenders after the Attorney General's memorandum was ***higher*** than the rate of conviction prior to it, suggesting that the Attorney General's memorandum has assured swift and effective justice for more gun criminals.

Q: One of the things that the Administration has previously said to explain the decrease in gun prosecutions is that there was a shift made to try to get at gun traffickers. The report suggests that regulatory and transfer offenses have actually decreased. How do you explain that?

A: Under the Gun Control Act's current provisions, the charges that are often the most effective charges for punishing gun traffickers are charges characterized in the BJS report as "possession" offenses. (The BJS report was created by DOJ statisticians, who classified the charges against gun defendants into 3 categories, and the statisticians chose how to characterize a gun offense as possession versus transfer, for example.)

Q: The reports show that over 536,000 criminals and others tried unlawfully to buy guns since the Brady Law was passed, but it looks like only at most 300 people were prosecuted under the applicable statute for lying on their Brady form. Doesn't that show that you are not enforcing the law?

A: The primary purpose of the Brady Law was to keep criminals and others who are not allowed to have guns from getting guns. As these reports show, it has been very effective. Since the National Instant Check System came on line at the end of 1998, federal law enforcement officials now do have information about people who appear to have lied on their forms in an attempt to buy a gun. Federal authorities use that information, sharing it with state and local authorities as appropriate, to commence investigations against dangerous offenders. Obviously, given the large volume denials, it would not be possible for the federal criminal system to charge all of these persons. The limits on ATF resources, the limits on U.S. Attorney resources, and the limits on the federal judiciary and its resources would not permit us to prosecute all offenders, so law enforcement authorities – as they do with all types of crimes – try to target the most serious or dangerous offenders for the most severe punishment, like federal prosecution.

Report on Background Checks

Q: Why are the numbers for the State denials -- and State checks -- in this report different from the numbers issued by the FBI?

A: The FBI report about the number of State-issued denials was a conservative estimate, based on the FBI's denial rate, and some State denial information that the FBI had. The BJS report was based on a study – like the studies done by BJS under the interim Brady provisions – designed to count the number of State checks and denials. As we expected, the state denial numbers were in fact higher than the FBI estimate.

Q: The report shows that the States deny guns at a higher rate than the FBI. Why is that?

A: We believe that the main reason for that is that the States have access to more information to check the prospective gun buyer against than the FBI does. In fact, this report reinforces what we have been saying: we believe strongly that having the States participate as partners with the FBI in conducting Brady background checks is good for public safety. Because the States can access more records, they can perform a more thorough check. That is why we have been encouraging States to participate in the system, and why the States that do participate deserve special recognition.

Q: Why don't more States participate in the NICS?

A: Probably the biggest reason is that right now if they participate, they have to fund the costs of participation themselves. We have asked Congress to allow the FBI to charge a fee for NICS checks -- putting the costs of running the background checks on the persons buying the guns -- which would likely encourage more States to participate, and which would certainly help the States that already participate.

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Department of Justice

STATEMENT

OF

THE DEPARTMENT OF JUSTICE

INCLUDING THE STATEMENTS OF

UNITED STATES ATTORNEY HELEN F. FAHEY
(Eastern District of Virginia)

UNITED STATES ATTORNEY DONALD K. STERN
(District of Massachusetts)

BEFORE THE

SUBCOMMITTEES ON

CRIMINAL JUSTICE OVERSIGHT

AND

YOUTH VIOLENCE

CONCERNING

FIREARMS PROSECUTIONS

PRESENTED ON

MARCH 22, 1999

The Department of Justice (DOJ) appreciates this opportunity to present testimony on firearms prosecutions for consideration by the Judiciary Committee's Youth Violence and Criminal Justice Oversight Subcommittees. We are pleased to report on the Department's work in the area of firearms violence; our strategic approach to violent crime and our emphasis on strong partnerships among federal, state and local law enforcement are paying sizable dividends for public safety.

The Historic Reduction in Violent Crime

Over the past six years, we have developed and implemented several effective national strategies to reduce crime. These have included helping fund more new local law enforcement officers, preventing illegal gun sales through Brady background checks, and targeting violent crime through strategic initiatives.

Since 1992, the nation's crime rate has dropped by more than 20 percent. In certain communities, the integrated efforts of federal, state, and local law enforcement and other community leaders have produced even more dramatic drops in the violent crime rate. In Boston, Massachusetts, for example, collaboration among law enforcement and community leaders through Operation Ceasefire reduced violence by youth gangs and brought down the number of homicides 64 percent in three years. In Minneapolis, Minnesota, effective law enforcement and prevention efforts conducted by public-private partnerships have reduced homicides by 30 percent and summertime homicides by 75 percent. And in Richmond, Virginia, effective and coordinated law enforcement, including stepped-up enforcement of gun crimes through the program known as "Project Exile," has reduced the homicide rate by more than 30 percent in the last year. Nationally, homicide rates have declined to levels last seen in the 1960s.

The Reduction in Violent Crimes Committed with Firearms

There has also been a sharp decline in the number of violent crimes committed with firearms nationwide. Between 1992 and 1997, there was an overall decrease of 27 percent in the estimated total violent crimes committed with firearms reported by state and local law enforcement agencies to the Federal Bureau of Investigation (FBI). This decrease is depicted in Graph 1. See Attachment A. During this same period, homicide with firearms dropped 24 percent; robbery with firearms, 27 percent; and aggravated assault with firearms, 26 percent. The decline in the rate of aggravated assaults committed with firearms is depicted in Graph 2. See Attachment B.

Despite what we regard as very good news with respect to firearms violence, the Justice Department views the continued reduction of violent crime – including violent crime committed with firearms – as a top priority. The number of people killed with firearms remains unacceptably high, as more than 14,000 people were murdered with guns in our nation in 1997.

We will continue to work with the Department of the Treasury and other federal, state and local agencies to reduce gun violence, and will be developing a coordinated firearms violence reduction strategy as outlined in the President's directive signed this past Saturday. Our strategy will draw on the proven measures and other innovative approaches being demonstrated by communities throughout the country. Through the continued leadership of the United States Attorneys and the Bureau of Alcohol, Tobacco and Firearms (ATF), we will assure that federally licensed firearms dealers comply with all applicable laws; that crime gun information developed through comprehensive tracing, mapping and analysis is used strategically to identify illegal gun markets, gun hot spots and illegal gun traffickers; and that illegal possessors, users and traffickers of guns receive appropriate sanctions. Many of the tough and effective crime-fighting strategies focusing on gun violence that have been put in place are highlighted in a new DOJ Report, entitled "Promising Strategies to Reduce Gun Violence," which was released by the President on March 20. The report, which is described in the attached fact sheet, see Attachment C, summarizes and analyzes 60 such local strategies, including those to which we refer in this statement.

We believe that the most effective strategies will be *coordinated* efforts in which federal prosecutors and investigators team up with state and local prosecutors and investigators, as well as other community leaders, to determine what prevention and intervention methods will work best, and which available sanctions are most appropriate. Among the programs that we are asking communities to consider as they develop their own strategies are the programs featuring coordinated aggressive prosecution of gun cases that is called "Project Exile" in Richmond, Virginia, and "Operation Ceasefire" in Boston, Massachusetts. We are pleased that you will be hearing directly from the two United States Attorneys who are leading these programs. The statements of Donald K. Stern, United States Attorney for the District of Massachusetts, and Helen F. Fahey, United States Attorney for the Eastern District of Virginia, are attached hereto. See Attachments D & E.

Increased Collaboration on Firearms and Violent Crime

Given the uniquely federal system of government in the United States, no crime reduction strategy can ignore the fact that the vast majority of the violent crime in our country falls within the jurisdiction of state and local agencies or that the vast majority of resources to fight crime are provided by state and local governments.

In some areas, of course, such as multi-district trafficking in drugs, weapons, or aliens, crime must be attacked primarily at the federal level. In most other areas, including where state and local governments have primary responsibility, the federal government is most helpful to the extent it provides support, leadership, statutory tools, and coordination.

In the past few years, federal, state and local law enforcement have collaborated in numerous violent crime task forces and specially targeted initiatives. These collaborative efforts, as exemplified by the Department's Anti-Violent Crime Initiative (AVCI), provide for greater flexibility at the district level to develop firearms and violent crime prosecution strategies in coordination with state and local prosecutors.

DOJ introduced the AVCI in 1994, broadening the national violent crime focus from one emphasizing firearms violations alone ("Triggerlock") to one that strategically targets violent crime as manifested in local communities. AVCI relies on collaboration among law enforcement, which has resulted in more prosecutions being handled in the jurisdiction best suited to a particular case.[1] AVCI has generated an increased focus on gangs and other violent crime enterprises that frequently involve firearms violations. This expanded focus has yielded cases that are more difficult to develop but which can have a greater impact on community safety than individual firearms prosecutions. For example, successful prosecutions have been brought

[1] Under the AVCI, the Attorney General asked each United States Attorney to meet with all pertinent federal, state and local law enforcement agencies in the district to form a new, or strengthen an existing, violent crime working group. Each office was asked to identify the district's most critical violent crime problems susceptible to a coordinated federal/state/local attack, the relative priority of these problems, the law enforcement programs and resources currently dedicated to the investigation and prosecution of these problems, the results achieved to date from these efforts, and any multi-district or multi-jurisdictional aspects of these problems. After they had collected the appropriate information, each office was asked to develop a single district plan to implement an appropriate prosecutive strategy for the district. The goal of that initiative was to complement, not supplant, the efforts of state and local prosecutors. The key was to develop a strong partnership in the effort against violent crime with state and local officials in the way that would be most productive.

against major gangs such as the Latin Kings in the East and the Gangster Disciples in the Midwest.

The Justice Department expects to build on these successes by helping more communities develop strategies and solutions that take into account the specific elements of the gun violence problem as experienced by those communities. Our United States Attorneys should be permitted to rigorously analyze their local crime problems and then to determine the most sensible and efficient allocation of their resources based on those problems. Because no single formula for combating gun violence works in all, or even most, settings, it would be a mistake for DOJ to mandate the use of any particular formula across the country, and such an attempt might significantly hamper the ability of the United States Attorneys to combat all types of federal crime.

The Increase in Overall Firearms Prosecutions

As you know, the number of federal firearms prosecutions has decreased between 1992 and 1998.[2] The decrease in federal cases does not, however, mean that criminals are avoiding prosecution or receiving substantially shorter sentences. The federal, state and local law enforcement systems are coordinating more closely, and federal prosecutors appear to be focusing greater attention on higher-level firearms offenders. At the same time, many states have

[2] We understand that the chart prepared by the Subcommittee entitled "Project Triggerlock Prosecutions FY 1992-1998" is based on data from the United States Attorneys Annual Statistical Report. As you know, we also maintain a separate hand count on Triggerlock cases which we believe is more inclusive than the count derived from the Annual Statistical Report. (We are in the process of merging the two systems.) Accordingly, we have prepared a chart to reflect the same data that the Subcommittee apparently wanted reflected, but using the Triggerlock data which also accounts for these cases. See Graph 3, Attachment F. You will note that the total Triggerlock prosecution numbers for 1996, 1997, and 1998 reflected on this graph are identical to those we sent in our letter of March 10, 1999 in response to a request for data from Senator Sessions.

increased enforcement efforts and/or penalties for firearms offenders.

Data from the Administrative Office of the U.S. Courts suggests that much of the decline in federal firearms prosecutions between 1992 and 1997 occurred among lower-level offenders who received sentences of probation up to imprisonment for less than 3 years, while the number of higher-level federal firearms offenders — those who received prison sentences of 5 years or more — has increased more than 25 percent. See Graph 4, Attachment G.

Between 1992 and 1996 — when most of the decline in federal firearms prosecutions occurred — state prosecutions of weapons offenders increased sharply, more than offsetting the federal decline. See Graph 5, Attachment H. Moreover, most of the additional state weapons offenders received prison or jail sentences. See Graph 6, Attachment I.

Some of the decrease in federal firearms charges is the result of decisions by federal prosecutors to use federal sentencing guideline enhancements for gun use (for example, seeking a stiffer sentence when a drug trafficker uses a gun), instead of bringing separate gun charges in the case. This was particularly the case after the United States Supreme Court's Bailey decision in 1995 that affected the government's ability to obtain convictions under 18 U.S.C. 924(c), also causing a decrease in the number of federal firearms charges.

Conclusion

Working together, we have made significant progress in the fight against violent crime -- especially that involving firearms. It would be a profound mistake to rest on our laurels, however. We have an historic opportunity and responsibility to press our advantage. America remains one of the most violent of the industrialized countries, and we can – and must – redouble our efforts to uproot the culture of violence in our nation. Our efforts in the last six years are clearly a prescription for success, and we look forward to furthering that success to make

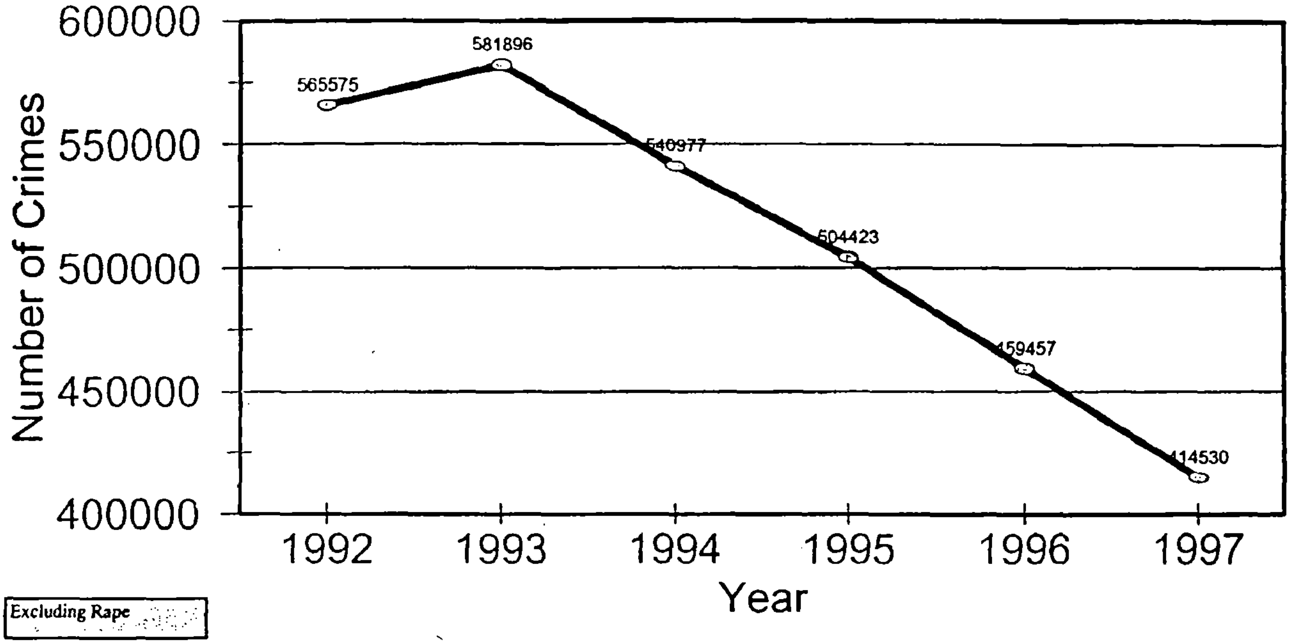
American even more secure against violent crime.

Attachments

Attachment A

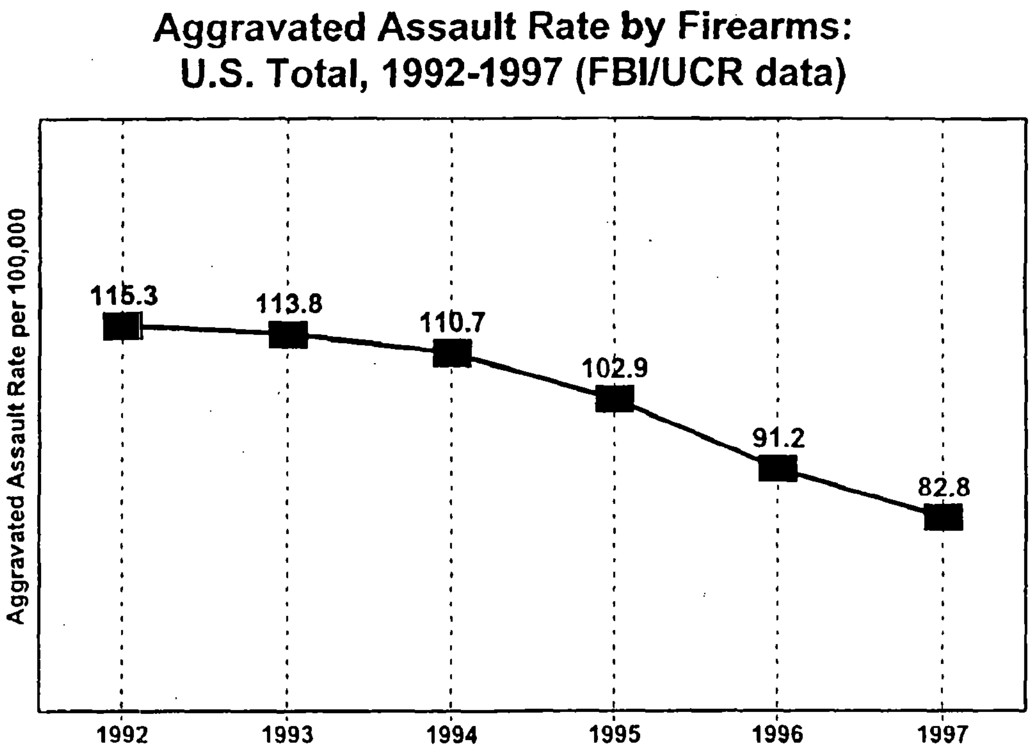
Violent Crimes With Firearms

FBI / UCR Data



Attachment B

Graph 2



*Data are national totals for all agencies reporting aggravated assault by weapon type.

FACSIMILE TRANSMISSION COVER SHEET

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U.S. Department of Justice
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Washington, D.C. 20530
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DATE: 6-2-00

PLEASE DELIVER TO: Susan Ginsburg - 622-7301
Leanne Shimbakuro - 456-7028

SUBJECT: **Talking Points Re BJS Bulletin**

SENDER: **Bea Witzleben**
Associate Deputy Attorney General

REMARKS/COMMENTS:

TOTAL NUMBER OF PAGES (INCLUDING THIS COVER SHEET): 5

U.S. Department of Justice
Office of Justice Programs

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Bureau of Justice Statistics Special Report

With Preliminary Data for 1999

June 2000, NCJ 180795

Federal Firearm Offenders, 1992-98

By John Scalia
BJS Statistician

Between 1992 and 1999, an annual average of 6,700 defendants were charged with a firearm offense in U.S. district courts. The Federal criminal code regulates who may lawfully receive or possess firearms, regulates the manufacture and distribution of firearms, and penalizes the criminal use of firearms. A person may be disqualified from lawfully purchasing or possessing a firearm if, among other reasons, the person has been convicted of a felony, is an unlawful user of controlled substances, or is subject to a domestic violence restraining order.

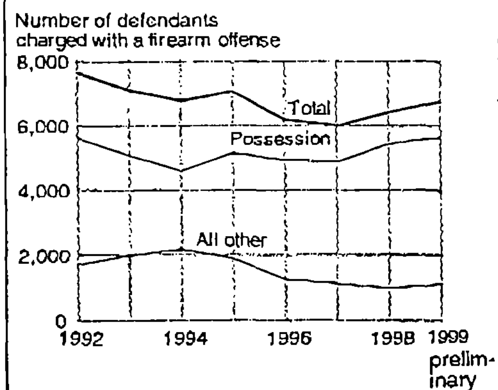
While data describing defendants charged were incomplete prior to 1992, available data suggest that firearm investigations and prosecutions by U.S. attorneys peaked during 1992.

After 1992 the number of defendants charged with a firearm offense in U.S. district courts – either alone or with another offense – decreased. During 1994, 11% fewer defendants were charged with a firearm offense than during 1992. Despite an increase during 1995, the number of defendants charged continued to decrease through 1997. During 1998 and 1999 the number charged increased to 6,728.

Most defendants (85%) charged with a firearm offense during 1998 were charged with unlawful possession.

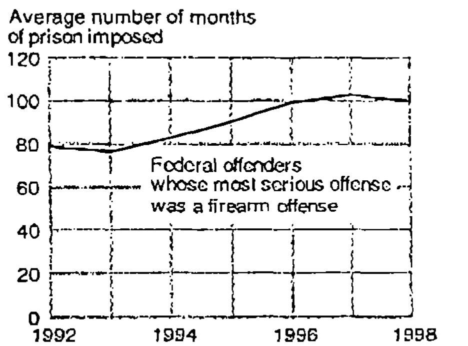
Highlights

The number of defendants charged with a firearm offense decreased, 1992-97, and increased, 1997-99



- A reason for the decline in firearm prosecutions was the Supreme Court's *Bailey* decision that limited prosecutors' ability to charge defendants with using a firearm during a violent or drug offense.
- Following *Bailey*, the number of defendants receiving a guideline enhancement for weapon use increased 31%.
- 41% of defendants charged with a firearm offense were prosecuted in the 20 most populous Federal judicial districts; these districts accounted for about half of all State or local arrests for violent and drug offenses.

Imposed sentences for a Federal firearm offense increased from 79 months, on average, to 100 months



- 85% of firearm defendants were charged during 1998 with unlawful possession. Seven percent were charged with unlawfully receiving or transferring a firearm.
- 8% of defendants were convicted of a transfer offense during 1998. Of these, 47% were prohibited from possessing a firearm; 19% were straw purchasers; 6%, retail dealers; and 28%, others unlawfully selling firearms.
- Defendants convicted of using a firearm during a crime were sentenced to serve 92 months, on average, in addition to the 111 months imposed for the predicate offense.

Number of suspects investigated for a firearm offense and number U.S. attorneys declined to prosecute

Number of suspects investigated for a firearm offense, when that offense was the most serious one investigated

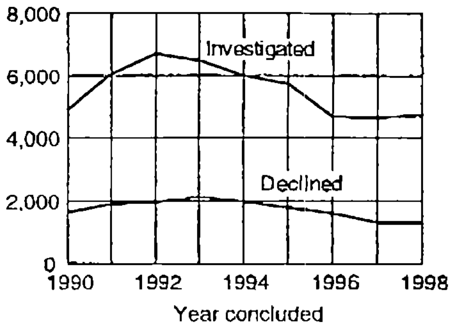


Figure 1

Of these defendants, 61% were also charged with a substantive offense such as drug trafficking or bank robbery; 39% were charged with only the firearm offense. About 40% of those charged with a possession offense were disqualified from possessing a firearm based on their status as a prohibited person.

Seven percent of those charged with a firearm offense during 1998 were charged with unlawfully receiving or transferring a firearm. Of the 341 defendants convicted of a transfer offense during 1998, 135 were identified as prohibited persons attempting to acquire a firearm, and 56 were identified as "straw purchasers." Straw purchasers are persons who buy firearms on behalf of others without disclosing that fact on the forms required by the Bureau of Alcohol, Tobacco and Firearms.

This report includes trends from fiscal year 1992 through 1999. Statistics for 1999 are preliminary, as complete data for 1999 were not provided in time for inclusion; final 1999 data are expected to include additional firearm prosecutions. Detailed analyses are based on fiscal year 1998 data.

Prosecutorial decisions by U.S. attorneys

Declinations

Not all suspects in matters reviewed by U.S. attorneys are prosecuted in Federal courts. Between 1990 and 1998 U.S. attorneys declined to prosecute about 31% of those initially investigated for a firearm offense (figure 1).

Table 1. Firearm suspects declined for prosecution by U.S. attorneys, by reason for declination, 1998

Reason for declination	Percent
Total	100.0%
No crime	18.1%
Referred or handled in other prosecution	36.1%
Prosecuted –	
By other authorities	29.5
On other charges/plea bargain	6.6
Alternative resolution	2.1%
Suspect-related reason	3.5%
Other reasons	40.3%
Minimal Federal interest	4.6
DOJ/U.S. attorney policy	4.1
Agency request	6.5
Lack of resources	3.1
Weak evidence	17.3
Other	4.7
Number of suspects	1,279

Data source: Executive Office for U.S. Attorneys, central system data file, FY 1998

Suspects whom the U.S. attorneys did not prosecute, however, may have been prosecuted by State authorities or on other charges. During 1998 approximately 30% of those declined for prosecution were referred to other authorities for prosecution, and 2% entered a pretrial diversion program (table 1). For an additional 35%, the U.S. attorneys determined that either no crime had been committed (18.1%) or the evidence was too weak to support a conviction (17.3%).

Prosecutions by U.S. attorneys

Types of firearm offenses charged

Based on statutes (appendix table 3, page 13), Federal firearm offenses can be grouped into three broad categories:
(1) unlawful possession,
(2) receipt and transfer, and
(3) regulatory offenses.

Between 1992 and 1999 approximately 77% of Federal firearm defendants were charged with unlawfully possessing a firearm; 8% were charged with unlawfully receiving or transferring a firearm; and 1% were charged with regulatory offenses associated with the distribution of firearms (table 2). In addition, 12% of defendants were charged with other firearms-related offenses — primarily State-level offenses adopted pursuant to the Assimilated Crimes Act (18 U.S.C. § 13) and prosecuted in Federal courts.

Unlawful possession of firearms

The Federal criminal code includes more than a dozen statutory provisions that regulate the lawful possession or use of firearms (appendix table 3). A person is prohibited from purchasing or possessing a firearm if the person –

- is under indictment for, or has been convicted of, a crime punishable by imprisonment for more than 1 year
- is a fugitive from justice

Table 2. Defendants charged in U.S. district courts with a firearm offense, by type of offense, 1992-99

		Type of firearm offense			
	Total	Possession	Transfer	Regulatory	Other[a]
1992	7,621	5,911	488	54	1,168
1993	7,086	5,093	639	83	1,271
1994	6,756	4,585	743	81	1,347
1995	7,044	5,157	746	82	1,059
1996	6,191	4,943	467	62	719
1997	5,993	4,872	475	67	579
1998	6,397	5,419	453	64	461
1999[b]	6,728	5,626	461	51	590

Note: Statistics represent any offense charged. In other BJS reports, some of these defendants may have been categorized differently based on the most serious offense charged, as determined by potential sentence length.
[a]"Other" violations are primarily State offenses prosecuted in U.S. district courts pursuant to the Assimilated Crimes Act (18 U.S.C. §13). Court records contain no information describing the nature of these offenses.
[b]Statistics for 1999 are preliminary only. See *Methodology*.

Data source: Administrative Office of the U.S. Courts, criminal master file, fiscal years 1992-99

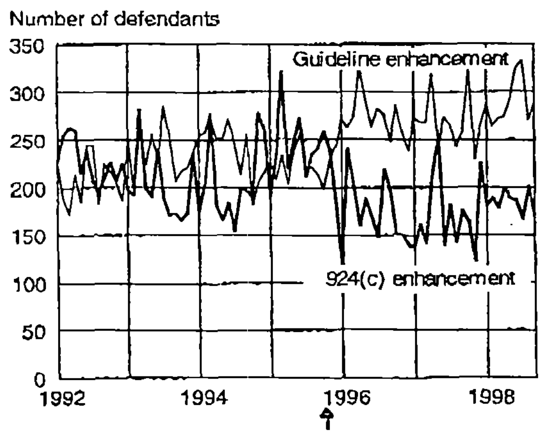
Bailey v. _United States:_ Supreme Court standards for charging a firearm offense in relation to an underlying offense

The decrease in prosecutions for using a firearm in relation to a violent or drug trafficking offense (18 U.S.C. § 924(c)) primarily resulted from the Supreme Court's decision in *Bailey* v. *United States* (516 U.S. 137, 116 S.Ct. 501). In December 1995 the Supreme Court ruled that to support a conviction, prosecutors must establish that the defendant actively used the firearm during the offense. The standard set forth required that the defendant have fired, attempted to fire, brandished, displayed, or otherwise used the firearm during the underlying offense. The court concluded that mere possession of a firearm during the commission of the offense was not sufficient for conviction.*

Because *Bailey* originated in the U.S. Court of Appeals for the District of Columbia, the case had little impact on charging practices in the other 11 judicial circuits until the Supreme Court issued its decision. Consequently, the effect of *Bailey* throughout the Federal system was immediate.

During January 1996, 50% fewer defendants were charged with a § 924(c) offense than during November 1995, the month preceding the decision (figure). The decreased use of § 924(c) continued at a generally lower level through the end of the study period (September 1998). Between 1995 and 1998 the number annually charged with a § 924(c) offense decreased from 2,958 to 2,385 (not shown in a table).

*Responding to *Bailey*, Congress in 1998 amended 18 U.S.C. § 924(c) to apply to defendants *possessing*, as well as actively using, a firearm in furtherance of a violent crime or a drug trafficking offense. See, P.L. 105-386, 112 Stat. 3469 (1998).



The *Bailey* decision came when U.S. attorneys were prosecuting more defendants in U.S. district court for violent and drug offenses than during previous years. Between 1995 and 1998 the number of defendants charged with a violent or drug offense in U.S. district courts increased 25% – from 23,979 to 30,081 (*Compendium of Federal Justice Statistics*, BJS report, annual, table 3.1). Without the limitations imposed by *Bailey*, the number of defendants charged with a § 924(c) offense should have increased rather than have decreased. Allowing for a 25% increase in the number of defendants charged with predicate offenses, an estimated 2,500 more defendants would have been charged with § 924(c) during the 33 months following the decision, had the Supreme Court ruled otherwise in *Bailey*. (For the source of the estimate, see page 11, *Methodology*.)

Federal sentencing guidelines provide for sentence enhancements when the defendant used *or* possessed a weapon during the commission of the offense. Application of the guideline enhancement is not dependent on charging decisions by the prosecutor and is not limited by the Supreme Court's ruling in *Bailey*. The enhancement applies when a weapon is present unless it is clearly improbable that the weapon was connected to the offense (U.S.S.G. § 2D1.1, comment (n.3)). However, when a defendant is convicted of a § 924(c) offense, to avoid imposition of a double penalty, the guideline enhancement is not applied (U.S.S.G. § 2K2.4, comment (n.2)).

Following *Bailey*, the number of defendants receiving a guideline enhancement for weapon use or possession increased. During January 1996, 17% more defendants received a guideline enhancement for weapon use than during November 1995. Between 1995 and 1998 the number of defendants annually receiving a guideline enhancement for weapon use increased 31% – from 2,598 to 3,393 (table 8).

Because prosecutors often dismiss the § 924(c) charge in exchange for a guilty plea, the increased use of the sentencing guideline enhancement offsets the decreased use of § 924(c) (table 8). However, penalties applicable following a § 924(c) conviction differ substantially from those applicable under the sentencing guidelines. (See page 9.)

- is an unlawful user of, or is addicted to, any controlled substance
- has been adjudicated as a mental defective or has been committed to a mental institution
- is an illegal alien or has been admitted to the United States under a nonimmigrant visa
- has been discharged from the U.S. Armed Forces under dishonorable conditions
- has renounced U.S. citizenship
- is subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child
- has been convicted in any court of a misdemeanor crime of domestic violence.

Additionally, juveniles – persons under age 18 – are prohibited from possessing handguns (18 U.S.C. § 922(x)). Federal firearm licensees are prohibited from transferring a handgun to a person younger than 21 or a long gun to a person younger than 18 (18 U.S.C. § 922(b)(1)).

A detailed description of disqualifying characteristics and of Federal and State procedures relating to firearm sales is provided in *Survey of State Procedures Related to Firearm Sales, Midyear 1999* (BJS report, NCJ 179022).

From the inception of the Brady Act on February 29, 1994, to December 31, 1999, more than 536,000 (2.4%) of the 22 million applications for firearm purchase or pawn transactions were rejected because the applicant was prohibited by Federal, State, or local law from possessing a firearm (*Background Checks for Firearm Transfers, 1999,* BJS Bulletin, NCJ 180882, June 2000). Nearly three-quarters of the rejections were due to the finding of a felony conviction or indictment.

Other statutory provisions prohibit the possession of certain types of firearms, stolen firearms, firearms with obliterated or altered serial numbers, and possession of firearms in certain places. In addition, 26 U.S.C. § 5861(d) prohibits the possession of certain firearms not registered on the *National Firearms Registration and Transfer Record.* Firearms required to be registered include machine guns, short-barreled shotguns and rifles, and silencers.

Trend in firearm prosecutions

In 1991 the Department of Justice initiated *Project Triggerlock,* a policy to use Federal firearm statutes to prosecute violent offenders in U.S. district courts. Between 1990 and 1992 the number of suspects investigated for a firearm offense increased 36% (figure 1).

After a period of increased firearm prosecutions, prosecutions generally declined through 1997 before increasing again in 1998 and 1999. More than half the total decrease can be attributed to fewer prosecutions of State-level firearm offenses in Federal courts pursuant to the Assimilated Crimes Act (18 U.S.C. § 13). The number of defendants charged with a State-level offense fell from 1,168 to 590.

An additional 30% of the total decrease can be attributed to fewer prosecutions of Federal possession offenses. The number of defendants charged with a Federal firearm possession offense decreased from 5,911 (during 1992) to 5,626 (during 1999).

Between 1992 and 1998 the decrease in the prosecution of possession offenses primarily resulted from decreases in the charging of two offenses —

- using a firearm in relation to a violent or drug trafficking offense (18 U.S.C. § 924(c)), down 23%, from 2,884 to 2,222
- possession of an unregistered firearm (26 U.S.C. § 5861(d)), down 62%, from 714 to 271.

The number of defendants prosecuted for being a felon in possession a firearm, 1992-99, increased 13% nationally, compared to a 12% decrease in all firearm offenses. In 35 judicial districts, U.S. attorneys prosecuted more defendants for a § 922(g) offense (prohibited person) during 1998 than 1992 (not shown in a table).

Almost half the defendants charged with a possession offense between 1992 and 1999 were charged with using a firearm during the commission of a violent or drug trafficking offense (18 U.S.C. § 924(c)). Of those charged with a possession offense between 1992 and 1999 –

- 44% were charged with unlawfully possessing a firearm based on their status as a *prohibited person* (18 U.S.C. § 922(g))
- 8%, receiving or possessing an unregistered firearm (26 U.S.C. § 5861(d))
- 3%, possessing firearms with altered or obliterated serial numbers (18 U.S.C. § 922(k) and 26 U.S.C. § 5861(h))
- 3%, possessing stolen firearms (18 U.S.C. § 922(j)) (appendix table 3).

Table 3. Defendants charged in U.S. district courts with a firearm possession offense, 1998

	Percent of defendants charged with a firearm possession offense	
	Possession offense only	Plus substantive offense
Firearm offense*		
Possession of a firearm by a prohibited person	71.4%	30.3%
Possession of stolen firearms	7.4	2.0
Transportation, shipment, or receipt of firearms with obliterated or altered serial numbers	4.0	1.9
Shipment, transportation, or receipt of a firearm by a person under indictment for a felony offense	8.3	3.2
Possession of a machine gun	4.3	1.6
Possession of a firearm in a school zone	2.7	0.7
Use or possession of a firearm during the commission of a violent or drug trafficking offense	4.2	69.5
Receipt or possession of an unregistered firearm	9.6	3.0
Substantive offense		
Drug trafficking	--	53.6%
Bank robbery	--	20.8
Racketeering	--	8.8
Other	--	16.8
Number of defendants	2,117	3,302

--Not applicable.
*Includes only the most frequently charged offenses. Because defendants may have been charged with more than one firearm offense, percentages add to more than 100%.
Data source: Administrative Office of the U.S. Courts, criminal master file, fiscal year.

Federal prosecutors often charge statutes pertaining to the lawful possession of firearms in conjunction with a substantive offense such as drug trafficking or bank robbery. During 1998, 61% of defendants charged with firearm possession offenses were also charged with another offense: 54% were charged with drug trafficking; 21%, bank robbery; and 25%, other offenses including racketeering (9%) (table 3).

For more than two-thirds of defendants charged with both a substantive offense and a firearm possession offense, the defendant was charged with 18 U.S.C. § 924(c) -- use during a violent or drug trafficking offense. A third of those charged with both a firearm and substantive offense were charged as prohibited persons unlawfully possessing a firearm pursuant to 18 U.S.C. § 922(g) or (n).

For 39% of defendants charged with a Federal firearm offense, the firearm possession offense was the only offense charged. More than three-quarters of these defendants were charged with unlawfully possessing a firearm based on their status as a prohibited person: 71% pursuant to 18 U.S.C. § 922(g) and 8% pursuant to 18 U.S.C. § 922(n). Other offenses for which these defendants were charged included receipt of an unregistered firearm (10%) pursuant to 26 U.S.C. § 5861(d), possession of stolen firearms (7%) pursuant to 18 U.S.C. § 922(j), and using a firearm in relation to a violent or drug trafficking offense (4%) pursuant to 18 U.S.C. § 924(c).

Unlawful receipt or transfer of firearms

During 1998, 341 defendants were convicted of a firearm receipt or transfer offense. Detailed information was collected on 85% (288) of those convicted. (See *Methodology*.) Of these 288 defendants, 47% were not permitted to lawfully possess or receive a firearm because of their status as a prohibited person; 19% were identified as straw purchasers; 28% involved other individuals unlawfully receiving or transferring firearms; and 6% involved retail dealers unlawfully transferring firearms (table 4).

Table 4. Defendants convicted in U.S. district court of firearm receipt and transfer offenses, 1998

		Type of defendant			
		Private individual			
Characteristic	Total	Prohibited person	Straw purchaser	Other	Retail dealer[a]
Type of transaction					
Retail sale	114	55	40	7	12
Nonretail sale	127	48	15	61	3
Other transaction	47	32	1	10	1
Location of transaction					
Retail store	109	58	34	7	10
Pawnshop	22	11	8	0	3
Gun show	13	2	2	8	1
Private transaction	102	35	10	55	2
Other	2	0	1	1	0
Type of firearms involved[b]					
Handgun	197	84	42	57	14
Shotgun/rifle	100	59	10	26	5
Assault weapon	38	13	6	18	1
Number of firearms involved					
Mean	24	18	34	28	23
Median	4	3	12	6	14
Number of defendants	288	135	56	81	16

[a]Represents Federally licensed individuals who operated retail stores, including pawnshops.
[b]Because multiple types of firearms may have been involved in the commission of the offense, percentages add to more than 100%.

Data source: Special data collection from Federal presentence investigation reports of defendants convicted during fiscal year 1998. See *Methodology*.

A "straw purchase" occurs when the actual buyer uses another person to make the purchase from a licensed dealer. While buying a firearm for someone else is not itself illegal, Federal forms require that this information be disclosed at the time of the purchase. (See *ATF Form 4473*.) Knowingly making false or fictitious statements — including false statements relating to prior felony convictions — on the required application form is an offense prosecutable under 18 U.S.C. § 922(a)(6).

Other transfer violations include knowingly distributing or transferring firearms to prohibited persons, distributing firearms to persons not present in a business establishment, distributing handguns to persons under the age of 21 and long guns to persons under the age of 18, and unlawfully shipping firearms (appendix table 3).

Almost half of the transfer offenses involved nonretail sales — sales through private transactions. In about two-thirds of the cases, the firearm transferred was a handgun. About 30% of the cases involved shotguns or rifles, and 13% involved assault weapons. (Defendants may have purchased or attempted to purchase several types of firearms, so that percentages add to more than 100%.) On average, each transfer offense involved 24 firearms; however, half the cases involved 4 or fewer.

Prohibited persons

In 41% of the 135 cases in which the defendant was identified as a prohibited person, the defendant purchased or attempted to purchase a firearm from a licensed firearm dealer and in 36%, from sources other than dealers. In 24% of these cases the defendant participated in other unlawful activities.

While half of all transfer cases involving prohibited persons concerned 3 or fewer firearms, prohibited persons acquired, or attempted to acquire, an average of 18 firearms each. Sixty-two percent of these cases involved handguns; 44%, shotguns or rifles; and 10%, assault weapons.

For most (84%), the disqualifying characteristic that prevented lawful possession was a prior felony conviction (not shown in a table).
In addition —

• 10% purchased the firearm with the intent to commit a felony offense
• 9% had a history of drug abuse
• 4% were illegal aliens
• 3% were subject to a domestic restraining order. (Because a person may be disqualified for multiple reasons, percentages sum to more than 100%.)

Straw purchasers

In more than two-thirds of the 56 cases where the defendant was identified as a straw purchaser, the firearm was purchased from a licensed firearm dealer. In 62% of the cases, the firearm was purchased from a retail store; in 15% from a pawnshop; and in 4% from a gun show. An additional 18% of the cases involved private transactions.

While half of the straw purchasers purchased 12 or fewer firearms, this type of case involved an average of 34 firearms. (Available data do not indicate the time frame during which the purchases were made.) Seventy-two percent of the cases involved handguns; 18% involved shotguns or rifles; and 11% involved assault weapons.

Persons dealing without a license or transferring a firearm unlawfully

Two-thirds of the 81 receipt and transfer offenses involving individuals other than prohibited persons and straw purchasers were private sales of firearms. Of these 81 defendants, 49% were charged with dealing in firearms without the required Federal license (18 U.S.C. § 922(a)(1)(A)), and 19% were charged with unlawfully transferring a firearm (26 U.S.C. § 5861(e)) (not shown in a table). In 10% of cases, the transaction underlying the Federal offense occurred at a gun show.

On average, these cases involved 28 firearms; half involved 6 or fewer. While more than two-thirds of the cases concerned the transfer of handguns, these cases were more likely than those with prohibited persons or straw purchasers to involve shotguns or rifles (32%) and assault weapons (22%).

Regulatory offenses

Between 1992 and 1998 an average of 70 defendants were charged each year with a regulatory offense associated with the sale or distribution of firearms (table 2). Regulatory offenses include transportation by a common carrier; record keeping violations; and offenses relating to the licensing, taxation, and registration of firearms (appendix table 3).

Charge bargaining by U.S. attorneys

The *Principles of Federal Prosecution* state that Federal prosecutors "should charge . . . the most serious offense that is consistent with the nature of the defendant's conduct that is likely to result in a sustainable conviction (U.S. Department of Justice, *U.S. Attorneys Manual*, Title 9, § 27.300(A))." (See **http://www.usdoj.gov/usao/eousa/foia_reading_room/usam**) According to the *Principles*, prosecutors are not, absent mitigating circumstances, to bargain away or drop charges.

An October 1993 memorandum by Attorney General Janet Reno clarified the *Principles*, seemingly to provide prosecutors with more flexibility to select charges or enter into plea agreements when the charges selected "fit the specific circumstances of the case, are consistent with the purposes of the Federal criminal code, and maximize the impact of Federal resources on crime . . . [and the] sentencing range (or potential mandatory minimum charge, if applicable) is proportional to the seriousness of the defendant's conduct and whether the charge achieves [the purposes of sentencing set forth by 18 U.S.C. § 3553]." (See "Memorandum from Attorney General Janet Reno to United States Attorneys and Department of Justice Litigating Divisions," October 12, 1993.)

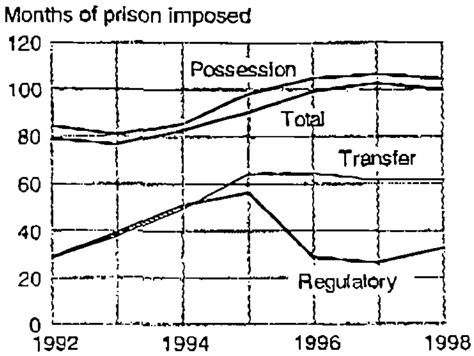
Prior to the Attorney General's memorandum, 76% of defendants who were originally charged with a § 924(c) offense and who were convicted pleaded guilty to one of the offenses charged (table 5). Following the Attorney General's memorandum, U.S. attorneys appeared more likely to accept guilty pleas to substantive offenses such as drug trafficking and bank robbery in exchange for dismissing the § 924(c) counts. For example, during 1994-95 guilty pleas in cases where the defendant was charged with § 924(c) increased to 79% of convictions. The increase coincided with an increase in the percentage of cases in which U.S. attorneys dismissed the § 924(c) charge. During 1992-93 prosecutors dismissed the § 924(c) charge in less than a quarter of the cases in

Table 5. Defendants in cases concluded in U.S. district courts who were charged with using a firearm in relation to a violent or drug trafficking offense (18 U.S.C. § 924(c)), 1992-98

		Convicted[b]		Pleaded guilty	
Year	Number charged[a]	Number	Percent	Percent of convictions	Proportion with § 924(c) dismissed
1992	2,356	2,051	87.1%	74.4%	24.4%
1993	2,545	2,222	87.3	76.9	25.9
1994	2,409	2,162	89.7	77.6	37.5
1995	2,247	1,972	87.8	80.8	50.3
1996	2,558	2,336	91.3	82.1	65.7
1997	2,110	1,916	90.8	82.3	56.1
1998	2,132	1,926	90.3	83.1	54.3

[a]Statistics identify whether the defendant was charged with a firearm offense regardless of whether it was the primary or a secondary offense.
[b]Convicted of any offense.
Data source: Administrative Office of the U.S. Courts, criminal master file, fiscal year.

Average prison term imposed for Federal firearm offenses, 1992-98



Note: Includes only convictions in which the firearm offense was the most serious offense.

Data source: Administrative Office of the U.S. Courts, criminal master file, fiscal year.

Figure 2

Table 6. Sentence imposed on defendants convicted of a firearm offense in U.S. district courts, by type of firearm offense, 1998

Type of violation	Number convicted	Sentenced to prison: Percent	Sentenced to prison: Average term of imprisonment*
Total	2,959	90.9%	99.9 mo
Possession	2,547	94.0	104.5
Transfer	233	74.7	61.5
Regulatory	42	61.9	32.5
Other	137	69.3	72.8

Note: Represents only those observations in which the firearm offense was the most serious offense of conviction.
*Does not include sentences of community confinement imposed in conjunction with a term of imprisonment; excludes sentences of life imprisonment.

Data source: Administrative Office of the U.S. Courts, criminal master file fiscal year.

which the defendant pleaded guilty to a substantive charge. During 1994-95 dismissals rose to 37.5% and 50.3% of the cases.

While § 924(c) counts were dismissed at greater rates from 1996 through 1998, these increases were at least partially attributable to evidentiary factors resulting from the Supreme Court's *Bailey* decision. For instance, during 1996, the first year following *Bailey*, in nearly two-thirds of the cases involving guilty pleas, the § 924(c) count was dismissed.

Defendants convicted of Federal firearm offenses

During 1998, 91% of defendants convicted of a firearm offense were sentenced to prison. The average prison term imposed was 100 months. Half of those convicted received a prison term of 60 months or more. Defendants convicted of a possession offense were sentenced to prison at the highest rate (94%) and received the longest sentences (105 months), on average. By contrast, about 75% of defendants convicted of receipt or transfer and regulatory offenses were sentenced to prison; the average term imposed was 62 months.

Between 1992 and 1998 an increasing proportion of defendants convicted of a firearm offense was sentenced to prison. During 1992, 85% of those convicted were sentenced to prison compared to 91% during 1998 (not shown in a table). Prison sentences have also increased — increasing from 79 months, on average, during 1992 to 100 months during 1998 (figure 2).

The increase in prison sentences can be attributed to an increase in the proportion of defendants receiving sentences of 3 years or more. Between 1992 and 1998 the number of defendants sentenced to a prison term of 3 years or more increased from 51% to 71% of those sentenced to prison (not shown in a table). The proportion sentenced to 5 years or more increased from 41% to 53% of those sentenced to prison.

Sentences imposed for firearm transfer offenses more than doubled during this period from an average of 28.4 months to 61.5 months. Sentences for possession offenses increased from 84.2 months to 104.5 months.

Armed career offenders

The Firearms Owners' Protection Act of 1986 increased penalties for recidivist violent and drug offenders who unlawfully possess firearms (P.L. No. 99-308, 100 Stat. 449 (1986)).

Table 7. Defendants sentenced as armed career offenders in U.S. district courts, 1992-98

Year sentenced	Number	Sentenced to prison: Percent	Sentenced to prison: Average term of imprisonment*
Total	1,897	99.8%	216.4 mo
1992	229	100.0	217.7
1993	305	100.0	221.5
1995	329	99.7	213.9
1995	281	99.6	217.9
1996	289	99.7	218.4
1997	266	100.0	209.6
1998	198	100.0	214.6

*Does not include sentences of community confinement imposed in conjunction with a term of imprisonment.

Data source: U.S. Sentencing Commission, monitoring data file, fiscal year.

Pursuant to 18 U.S.C. § 924(e), a person convicted of unlawfully possessing a firearm based on his or her status as a prohibited person and who has three prior convictions for violent felonies or serious drug offenses is subject to a mandatory prison term of at least 15 years. Between 1992 and 1998, 1,897 defendants were sentenced in U.S. district courts as armed career offenders (table 7). Almost all these defendants were sentenced to a term of imprisonment; the average prison term imposed was 216 months.

Receipt and transfer offenses

During 1998, 75% of defendants convicted of a receipt or transfer offense were sentenced to a term of imprisonment. The average prison

Defendants charged with firearm offenses in U.S. district courts in the 20 most populous districts, 1997

District	Population	Defendants prosecuted in U.S. district courts: Total	Firearms	Part 1 violent crimes: Reported	Per 1000 population	Arrests reported by police: Part 1 violent crimes	Drug trafficking
National	270,273,805	76,746	5,849	1,508,203	5.6	649,668	367,337
20 most populous districts	132,759,357	33,496	2,393	880,534	6.6	357,296	244,325
California, Central	16,405,141	2,198	153	145,667	8.9	77,280	26,086
Illinois, Northern	8,589,431	764	69	65,029	7.6	12,712	61,654
Florida, Middle	8,172,381	1,844	161	75,008	9.2	**	**
New Jersey	8,115,011	1,306	60	39,676	4.9	19,132	17,369
New York, Eastern	7,347,407	1,646	123	63,514	8.6	32,414	30,188
California, Northern	7,141,154	910	78	48,072	6.7	29,135	14,263
Michigan, Eastern	6,598,853	949	168	45,683	6.9	17,183	12,962
Texas, Southern	6,575,965	4,047	90	46,264	7.0	10,779	1,159
California, Eastern	6,195,612	1,240	85	44,827	7.2	34,447	9,300
Massachusetts	6,147,132	610	67	38,908	6.3	18,565	7,715
Ohio, Northern	5,857,785	933	72	18,606	3.2	10,679	3,456
Texas, Northern	5,559,469	1,401	117	36,322	6.5	11,758	2,695
Ohio, Southern	5,351,708	778	26	16,668	3.1	12,847	3,020
Florida, Southern	5,270,309	2,234	204	25,220	4.8	**	**
Pennsylvania, Eastern	5,226,882	994	138	30,430	5.8	15,151	10,319
Maryland	5,134,808	728	146	43,106	8.4	13,381	12,657
Texas, Western	4,897,586	4,737	110	22,566	4.6	7,913	3,648
Virginia, Eastern	4,764,792	3,467	278	18,415	3.9	8,754	4,045
Minnesota	4,725,419	505	59	15,825	3.3	4,098	6,037
New York, Southern	4,682,512	2,205	189	40,728	8.7	21,068	17,752
All other districts	137,514,448	43,250	3,456	627,669	4.6	292,372	123,012

Note: Statistics represent actual counts reported to the FBI by State and local law enforcement agencies. Excluded from this analysis are the Federal judicial districts comprising the outlying U.S. Territories or Commonwealths of Guam, Northern Marianas Islands, Puerto Rico, and the Virgin Islands. These areas are not included in the FBI's Uniform Crime Reports Program.
**Arrest statistics were not reported to the FBI by law enforcement agencies within the judicial districts of the District of Columbia, Florida (Middle, Northern, and Southern), Indiana (Northern), Kansas, and Vermont.

Data sources: Administrative Office of the U.S. Courts, criminal master file, FBI Uniform Crime Reports, U.S. Census Bureau.

Firearms prosecutions in the 20 most populous districts

The number of defendants charged with Federal firearm offenses varies substantially across Federal judicial districts. Generally U.S. attorneys in the most populous districts prosecuted the greatest number of defendants in U.S. district courts. For example, during 1997 U.S. attorneys in the 20 most populous judicial districts prosecuted 44% of all defendants charged with a Federal offense (table above). Similarly, 41% of all defendants charged with a Federal firearm offense were prosecuted in these 20 districts.

Higher crimes rates in heavily populated districts

These larger judicial districts accounted for a disproportionate amount of violent crime reported to local law enforcement during 1997. While these 20 districts account for about 49% of the U.S. population, approximately 58% of all violent crime, or 6.6 violent crimes for every 1,000 residents, occurred in these districts. By contrast, the violent crime rate in the other 70 judicial districts included in this analysis was approximately 30% lower — 4.6 violent crimes for every 1,000 residents.

Targeted prosecutions

Project Triggerlock and subsequent district-level initiatives such as *Operation Ceasefire* in the District of Massachusetts and *Project Exile* in the Eastern District of Virginia have targeted violent offenders for Federal prosecution. Consistent with the goals of those efforts, the number of defendants charged with a Federal firearm offense correlated with arrests made by local law enforcement agencies for violent and drug offenses. In districts where local law enforcement agencies made more arrests for violent crime or drug trafficking, U.S. attorneys generally charged more defendants with a Federal firearm offense.

For example in the 20 most populous judicial districts, local law enforcement agencies reported making approximately 33,000 arrests on average for violent crimes and drug trafficking offenses during 1997. U.S. attorneys in these districts charged 119 defendants on average with a Federal firearm offense. By contrast, local agencies in the 70 other judicial districts reported making approximately 6,400 arrests on average. U.S. attorneys in these districts charged 49 defendants on average.

term imposed for these offenses was 62 months. Ninety percent of prohibited persons who unlawfully acquired or attempted to acquire a firearm were sentenced to prison; the average prison term imposed was 65 months (not shown in a table).

Almost three-quarters of straw purchasers and others unlawfully receiving or transferring firearms were sentenced to a term of imprisonment. For straw purchasers, the average prison term imposed was 26 months; for other individuals, the average prison term imposed was 35 months.

Table 8. Defendants receiving a sentence enhancement for possessing or using a firearm and additional prison term imposed, by type of enhancement, 1992-98

		Type of enhancement			
		Statutory[a]		Sentencing guideline	
Year	Total number of defendants	Number of defendants	Average enhancement (in months)[b]	Number of defendants	Average enhancement (in months)[c]
1992	4,316	1,323	82.5 mo	2,993	--
1993	5,119	2,350	81.0	2,769	17.4 mo
1994	4,932	1,985	86.8	2,947	16.9
1995	4,311	1,685	89.5	2,626	17.5
1996	4,560	1,392	101.9	3,168	16.0
1997	4,425	1,231	94.2	3,194	18.1
1998	4,730	1,337	109.7	3,393	12.7

[a]Pursuant to 18 U.S.C. § 924(c).
[b]Represents the mandatory sentence to be imposed pursuant to 18 U.S.C. § 924(c); excludes sentences to life imprisonment.
[c]Estimated. See *Methodology*.

Data source: U.S. Sentencing Commission, monitoring data file, fiscal year.

Sentence enhancements for using or possessing a firearm

Although the Supreme Court limited the applicability of 18 U.S.C. § 924(c) to offenders actively using a firearm during an offense, the Federal sentencing guidelines retained enhancements for simple possession or active use during certain crimes such as bank robbery and drug trafficking. Consequently, while prosecutors could no longer obtain sentence enhancements pursuant to § 924(c) for simple possession, enhancements could still be applied under the Federal sentencing guidelines.

Prior to *Bailey*, approximately 60% of defendants who received an enhanced sentence for using a weapon, received the enhancement provided for by the Federal sentencing guidelines; 40% received the enhancement provided for by 18 U.S.C. 924(c) (table 8). Following *Bailey*, the proportion receiving the guideline enhancement increased to 70%.

The enhancements from the Federal sentencing guidelines are not equivalent to those through § 924(c). Pursuant to the sentencing guidelines, defendants may receive a 2-to-7 offense level enhancement – equivalent to a 25%-120% increase in the sentence imposed – for using or possessing a weapon. This estimation of the potential increase assumes a 12% increase in the imposed sentence for each additional guideline offense level.

The actual amount of the increase varies according to other conduct relating to the underlying offense and how the defendant used the firearm. Greater enhancements are applicable under the guidelines if the defendant discharged the firearm than if he or she brandished or merely possessed it. (See, for example, U.S.S.G. §§ 2D1.1 and 2B3.1.)

For example, a defendant convicted of bank robbery receives a sentence of 41 to 51 months under the sentencing guidelines if no weapon was present; a sentence of 57 to 71 months if a weapon was brandished, displayed, or possessed; and a sentence of 87 to 108 months if he or she discharged a firearm. By contrast, a defendant convicted of using a firearm during a drug trafficking offense would receive the same 2-level enhancement for brandishing a firearm as for discharging it.

Between 1993 and 1998 the average guidelines enhancement for weapon use or possession was approximately 16 months (table 8). The average sentence imposed for the underlying offense was 103 months (not shown in a table). The total prison term imposed on these defendants was 119 months, on average.

By contrast, 18 U.S.C. § 924(c) provides for a sentence of 5 years to be served consecutive to any sentence imposed for the underlying offense. Higher enhancements may be applicable if the defendant has previously been convicted of such an offense or if the defendant used an assault weapon, short-barreled shotgun, or a machine gun.*

Between 1993 and 1998 defendants convicted of a § 924(c) offense had their sentences enhanced by approximately 92 months, on average (table 8). The average prison sentence imposed for the underlying offense was 111 months (not shown in a table). (This average excludes sentences to life imprisonment and prison sentences in excess of 989 months.) The total prison term imposed on these defendants was 203 months, on average.

*P.L. 105-386, 112 Stat. 3469 (1998) amended § 924(c) to provide higher enhancements if the defendant brandished the firearm (7 years) or if the defendant discharged the firearm (10 years).

Firearm use reported by Federal prison inmates

During 1997, 14%, or 12,619, of the Federal prison population reported that they used, carried, or possessed a firearm while committing the offense for which they were imprisoned (not shown in a table). Most of these inmates (86%) reported using a handgun.

Of those who possessed a firearm during the offense, 52% reported that they did not actively use the firearm; 46% reported that they displayed or brandished the firearm to intimidate someone (29%), in self-defense (25%), or to "get away" (12%); and 13% reported that they discharged the firearm.

The majority of firearms used by Federal prison inmates were not purchased directly from Federal firearm licensees: 68% of inmates reported obtaining the firearm either from a source like a burglary, a drug dealer, a fence, or the black market (33%) or from a friend or family member (35%). About a quarter (23%) reported that they purchased or traded for the firearm directly from a retail store (15%), pawnshop (4%), flea market (2%), or gun show (2%). An additional 9% reported obtaining the firearm through all other means.

Available data suggest that the majority (83%) of Federal inmates who reported possessing a firearm may have been disqualified from lawfully possessing or purchasing a firearm for at least one statutory reason:

- About half indicated that they had a prior sentence to incarceration; a third were on probation or parole at the time of their current offense; about half indicated illicit drug use within a month of the current offense.

- Some inmates reported being treated overnight in a mental health facility (7%), being dishonorably discharged from the U.S. Armed Forces (1%), or being a noncitizen (7%).

Extent of firearm use by Federal prison inmates, 1997

Use of firearm during offense	Percent of Federal inmates using firearm	95%-confidence interval
Discharged	12.8%	+/- 3.8%
Killed victim	3.0	2.0
Injured victim	3.5	2.1
Other	7.7	3.1
Brandished/displayed	45.8%	+/- 5.7%
To scare someone	29.3	5.2
To defend self	24.8	5.0
To "get away"	11.6	3.7
To injure	0.9*	1.1
Other	2.1	1.6
Did not actively use	51.2%	+/- 5.7%
Number of prison inmates reporting firearm use	11,250	

Source of firearms possessed by Federal prison inmates, 1997

Characteristic	Percent of Federal inmates who had possessed firearm	
Theft or burglary	9.1	+/- 3.3%
Drug dealer	15.0	4.5
Fence/black market	8.7	3.2
Purchased or traded –	22.5%	+/- 4.7%
Retail store	15.0	4.0
Pawnshop	4.2	2.3
Flea market	1.7*	1.5
Gun show	1.7*	1.5
Family or friend	35.4%	+/- 5.4%
Borrowed or given	3.4%	+/- 2.1%
Other	5.9%	+/- 2.7%
Number of prison inmates reporting firearm source	11,604	

Selected characteristics of Federal inmates reporting firearm possession during current offense, 1997

Any potentially disqualifying characteristic	82.8%	+/- 4.1%
Prior jail/prison sentence	55.4	5.4
On probation/parole	32.0	5.1
Fugitive/escapee	0.6*	0.8
Illicit drug use within 1 month before offense or at time of offense	55.6	5.4
Overnight treatment in mental health facility	6.8	2.7
Not a U.S. citizen	6.9	2.0
Dishonorably discharged from U.S. military	0.7*	0.9

Note: Inmates may have used the firearm for more than one purpose. No information is available on the legality of the transfers. An inmate may have reported more than one disqualifying characteristic.
*Based on 10 or fewer sample cases.

Data source: BJS, Survey of Inmates in Federal Correctional Facilities, 1997

Methodology

Data sources

The primary source of the data for tables in this report is the BJS Federal Justice Statistics Program (FJSP) database. The FJSP is presently constructed from source files provided by the Executive Office for United States Attorneys (EOUSA), the Administrative Office of the United States Courts (AOUSC), the United States Sentencing Commission (USSC), and the Federal Bureau of Prisons (BOP). The EOUSA provides data on suspects investigated by U.S. attorneys for violations of Federal law and the U.S. attorney's decision to prosecute; the AOUSC provides data on the statutory offenses charged by the U.S. attorney, the outcome of the criminal proceeding, and the sentence imposed; the USSC provides detailed data describing the sentence imposed on convicted defendants; and the BOP provides data on defendants under its jurisdictions. Data are reported for the Federal fiscal years beginning October 1.

Beginning in 1992 both the EOUSA and the AOUSC began collecting data on multiple offenses: the U.S. attorneys collect data on every statutory offense charged, while the courts collect data on up to five statutory offenses for which the defendant was charged and adjudicated. Consequently, because this report examines charging practices and is not limited to an analysis of the most serious offense charged, the data series begins with 1992.

Statistics describing defendants processed during 1999 reflect data obtained from the AOUSC during December 1999. (Other agencies providing data were unable to supply 1999 data at the time of report preparation.) BJS has observed that information for fewer than 1,000 defendants is not recorded in the AOUSC database during the fiscal year reporting period. BJS uses data describing subsequent reporting periods to augment and update the AOUSC fiscal year database. Because the 1999 statistics contained in this report are subject to change, these statistics are identified as *preliminary*.

When multiple types of firearm offenses were charged, the offense reported was determined by rank ordering the various offenses charged. Possession offenses took precedence over transfer offenses and transfer offenses took precedence over regulatory offenses. In addition to data routinely compiled as part of the FJSP, data describing defendants convicted of firearm receipt and transfer violations were specially collected by BJS staff from presentence investigation reports archived by the USSC. Data elements collected include the following: (1) the number of firearms involved in the offense conduct, (2) the types of firearms, (3) the type of transaction, (4) the location of the transaction, (5) whether the purchaser was a "straw purchaser," and (6) whether the defendant was a prohibited person and the basis for the disqualification.

Statistics describing the use and source of firearms used by Federal prison inmates were derived from BJS's 1997 Survey of Inmates in Federal Correctional Facilities (ICPSR 2598). Inmates were interviewed about the current offense and sentence, criminal history, social background, weapon use, drug use and treatment, and other issues. Data were collected from a sample of 4,041 Federal inmates selected from 135 Federal prisons to be representative of the 89,072 sentenced inmates held in BOP owned and operated facilities on June 30, 1997.

The accuracy of estimates derived from the survey depends on sample and nonsampling error. While the extent of nonsampling error in any survey is unknown, estimates of the sampling error associated with the 1997 survey of inmates can be obtained by using the formula —

$$S_{x,p}=\sqrt{\frac{38.776}{x}p(100-p)}$$

where: p is the percentage of inmates with a particular characteristic
x is the estimated population corresponding to p

Appendix table 1. ARIMA parameter estimates: Defendants charged with 18 U.S.C. § 924(c), 1992-98

	$Y_t = \mu + \omega_1 Bailey_t + \omega_2 Violent_t + \omega_3 Drug_t + (\phi_1(Y_t - Y_{t-1}))$		
Parameter	Estimate	Standard error	t-value
μ	0.314	2.68	0.12
$\omega_1 Bailey_t$	-73.771	31.43	-2.35*
$\omega_2 Violent_t$	0.120	0.09	1.30
$\omega_3 Drug_t$	0.104	0.02	5.75*
ϕ_1	-0.425	0.10	-4.08*

*Intervention significant at 0.05 or less.
Data source: Administrative Office of the U.S. Courts, criminal master file, fiscal year.

Statistics describing arrests made by local law enforcement agencies were obtained from the FBI's Uniform Crime Reports data series for 1992 through 1997 (ICPSR 6316, 6545, 6669, 6850, 2389, 2764).

Defendants

A defendant, offender, or suspect is a person or organization against whom specific action has been taken by Federal law enforcement, U.S. attorneys, or the Federal judiciary. Defendants identified in multiple proceedings or cases are counted multiple times. A defendant charged with multiple firearm offenses was counted only once unless the defendant was charged in separate cases. For more information on general data analysis procedures, see *Reconciling Federal Criminal Case Processing Statistics,* BJS report, September 1999, NCJ 171680.

Offense selection

For Federal offenders, the firearm offense, unless otherwise indicated, was selected from all offenses investigated by U.S. attorneys, charged by U.S. attorneys in U.S. district courts, or for which the defendant was convicted. In other BJS reports describing Federal offenses and offenders, such as the *Compendium of Federal Justice Statistics,* the offense selected was the most serious offense. Seriousness is based on the applicable statutory penalties.

Time-series models

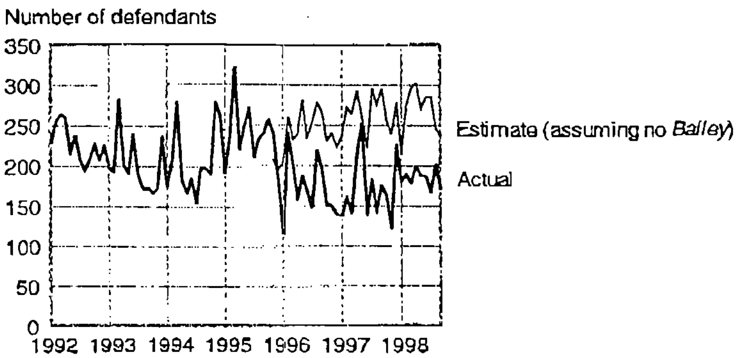
Estimates of the impact of *Bailey* v. *United States* on the number of defendants charged with 18 U.S.C. § 924(c) were derived using ARIMA models. ARIMA models are built empirically from available data and test for changes in the underlying process of a time series due to some intervention such a policy change, new legislation, or a court decision. (See Richard McCleary and Richard A. Hay, Jr., *Applied Time Series Analysis for the Social Sciences* (1980).) For other applications of ARIMA describing the impact of changes in Federal criminal justice policy on case processing events, see United States Sentencing Commission, *Federal Sentencing Guidelines: A Report on the Operation of the Guidelines System and Short-erm Impacts on Disparity in Sentencing, use of Incarceration, and Prosecutorial Discretion and Plea Bargaining* (December 1991).

As part of the time series analysis, data describing the number of defendants charged with a § 924(c) offense are aggregated into monthly observations and plotted over time — both before and after the relevant policy change. In the context of ARIMA, the *Bailey* decision is an intervention, or "shock," that causes a change in the number of defendants charged with a § 924(c) offense.

Other factors incorporated into the ARIMA model that could affect the number of defendants charged with a § 924(c) include the number of defendants charged with violent or drug trafficking offenses — offenses that predicate a § 924(c) charge.

After declining from a peak of 25,033 defendants charged during 1992 to 21,905 during 1994, the number of defendants charged with a drug

Impact of *Bailey* v. *United States* on the number of defendants charged with using a firearm during the commission of an offense, persuant to 18 U.S.C. § 924(c), 1992-98



Note: Counts are monthly. The Supreme Court announced its decision in *Bailey* v. *United States* on December 5, 1995. The estimate reflects the number of defendants who would have been charged with § 924(c) absent the *Bailey* decision but other factors remaining the same.

Data source: Administrative Office of the U.S. Courts, criminal master file.

Appendix figure 1

offense increased from 22,929 to 29,472 between 1995 and 1998. The number charged with violent offenses, particularly robbery, while lower than the 1992 level, remained stable between 1994 and 1998 (Administrative Office of the U.S. Courts, *Judicial Business of the United States Courts*, annual.)

The ARIMA model derived suggests that the *Bailey* decision had a statistically significant impact on the number of defendants charged with a § 924(c) offense (appendix table 1). The number of defendants charged with a drug trafficking offense was also a statistically significant determinant.

The estimate of the number of defendants that ought to have been charged with a § 924(c) offense absent the *Bailey* decision was derived by applying the parameters estimated from the ARIMA model (appendix figure 1 and appendix table 1). The estimate was derived by excluding the $\omega_{01} Bailey_t$ parameter from the model. During the observation period, 16,028 defendants were actually charged with a § 924(c) offense. The total number of defendants that would have been charged with a § 924(c) offense during this period — absent *Bailey* — was estimated at 18,554, or 2,526 more than the actual number.

Estimating the impact of guideline sentence enhancements

The impact of guideline sentence enhancements for weapon use or possession (table 8) was estimated using the methodology originally developed for estimating the impact of amendments to the Federal sentencing guidelines on the Federal prison population. As part of the U.S. Sentencing Commission's prison impact methodology, defendants are theoretically "re-sentenced," assuming changes in the application of relevant sections of the Federal sentencing guidelines. For instance, in this exercise actual sentences imposed were compared to sentences that would have been imposed had the defendant not received the guideline enhancement for weapons use. Twelve sections of the Federal sentencing guideline include enhancements for weapons use: U.S.S.G. §§ 2A2.2, 2A2.3, 2A2.4, 2B2.4, 2B2.3, 2B3.1, 2B3.2, 2B5.1, 2D1.1, 2D1.11, 2E2.1, 2L1.1. The weapons enhancement for §2B5.1 became effective November 1, 1994; the weapons enhancement for §2L1.1 became effective November 1, 1996.

Appendix table 2. Base populations for table and figures, 1998

Table or figure	Description of base		Number of suspects or defendants with firearm offense as — Any offense	Most serious offense
Highlights	Defendants charged with a firearm offense	Total	**6,397**	4,315
		Possession	**5,419**	3,758
		All other	**978**	555
Table 1	Defendants for whom U.S. attorneys declined to prosecute a firearm offense prior to charging the suspect in U.S. district court		1,319	**1,279**
Table 2	Defendants charged with a firearm offense		**6,397**	4,313
Table 3	Defendants charged with a firearm possession offense		**5,419**	3,758
Table 4	Defendants convictd of a receipt of transfer offense		**341**	262
Table 5	Defendants charged with an 18 U.S.C. § 924(c) offense		**2,132**	not applicable
Table 6	Defendants convicted of a firearm offense		4,180	**2,959**
Table 7	Defendants receiving a sentencing guideline enhancement pursuant to U.S.S.G. § 4B1.4 for being an "armed career offender"		**198**	not applicable
Table 8	Defendants receiving a sentence enhancement pursuant to 18 U.S.C. § 924(c) or the Federal sentencing guidelines for firearm use	924(c)	**1,337**	not applicable
		Guideline	**3,393**	not applicable
Figure 1	Defendants investigated by U.S. attorneys for a firearm violation	Investigated	7,721	**4,742**
		Declined	1,319	**1,279**
Figure 2	Defendants sentenced to Federal prison for a firearm offense		3,856	**2,689**
Bailey figure	Defendants charged with 18 U.S.C. § 924(c) or who received a sentence enhancement for firearm use pursuant to the Federal sentencing guidelines	924(c)	**2,385**	not applicable
		Guideline	**3,393**	not applicable
Appendix table 3	Defendants charged with a firearm offense		**6,397**	4,313

Note: The bold font indicates the base population for the table or figure in the report; the other counts are provided for informational purposes.

Once a guideline parameter has been adjusted, the defendant is generally re-sentenced in the new guideline range at the same relative position as the actual sentence in the actual guideline range. Exceptions exist when the defendant was sentenced outside of the guideline range, when the defendant is moving in or out of a range that does not prescribe a sentence of imprisonment, or when the defendant is moving in or out of a range that includes or prescribes a sentence of life imprisonment. For example, in the general re-sentencing model, if a defendant actually received a sentence at the midpoint of the guideline sentencing range, he would be re-sentenced to the midpoint of the new guideline range.

Appendix table 3. Charges of Federal firearm offenses against defendants, by type of violation, 1992-99

Statutory provision	Type of violation	Number of defendants charged with a firearm offense in the year the offense was charged (multiple counts against a defendant for a single statute counting as a single charge)							
		1992	1993	1994	1995	1996	1997	1998	Preliminary 1999
Total of defendants charged with a firearm offense (Defendants receiving multiple charges for different, specific statutory offenses are counted once in the total but are represented multiple times in the detail.)		7,621	7,086	6,756	7,044	6,191	5,993	6,397	6,728
18 U.S.C. § 922									
(a), Unlawful importation, manufacture, distribution, shipment, or receipt of firearms, including making false statement to obtain firearms	Transfer	604	633	580	545	314	279	300	391
(b), Distribution of firearms to underage persons, nonresidents, or in violation of State law	Transfer	88	157	175	229	86	54	54	56
(c), Distribution of firearms to a person not present in business establishment	Transfer	12	18	19	15	60	101	73	61
(d), Distribution of firearms to prohibited persons	Transfer	91	122	190	164	100	89	103	97
(e), Unlawful shipment of firearms	Transfer	24	29	22	24	42	31	33	27
(f), Unlawful transportation by common carrier	Regulatory	7	8	11	8	3	1	5	4
(g), Possession of a firearm by a prohibited person	Possession	2,603	2,211	1,880	2,018	2,068	2,208	2,513	2,950
(h), Receipt of firearms by a person employed by a prohibited person	Possession	7	5	5	8	9	10	1	1
(i), Shipment of stolen firearms	Possession	36	14	10	30	54	57	31	40
(j), Possession of stolen firearms	Possession	121	122	112	126	241	233	222	219
(k), Transportation, shipment, or receipt of firearms with obliterated or altered serial numbers	Possession	165	193	164	160	158	157	148	127
(l), Unlawful importation of firearms	Regulatory	5	10	2	1	16	7	6	8
(m), Record keeping violation	Regulatory	41	49	49	26	26	21	27	23
(n), Shipment, transportation, or receipt of firearms by a person under indictment for a felony offense	Possession	47	54	89	73	161	169	280	276
(o), Possession of a machine gun	Possession	70	66	70	135	145	146	144	138
(p) Manufacture, transfer, possess any firearm not detectable by walk-through metal detectors or x-ray machines	Possession	0	0	0	0	0	0	0	0
(q), Possession of a firearm in a school zone	Possession	55	28	4	9	59	64	80	105
(r), Assembly of a firearm identical to a banned firearm	Possession	0	0	0	0	0	0	0	0
(s), Distribution of firearms by retailer in violation of 5-day waiting period	Regulatory	0	0	0	0	0	0	0	0
(t), Failure to comply with Brady Handgun Prevention Act	Regulatory	Effective following the implementation of the National Instant Check System on November 30, 1998							
(u), Theft of firearm from retailer	Possession	0	0	0	0	0	0	0	7
(v), Unlawful manufacture, transfer, or possession of a semi-automatic weapon	Possession	0	0	0	0	0	0	0	0
(w), Unlawful transfer or possession of a large capacity feeding device	Possession	0	0	0	0	0	0	0	0
(x), Unlawful transfer to, or possession of a handgun by a juvenile	Transfer	0	0	0	0	0	0	3	9
18 U.S.C. § 923, Licensing for firearm sales	Regulatory	1	0	1	10	3	3	2	0
18 U.S.C. § 924									
(a), False statements relating to the importation, manufacture, distribution, shipment or receipt of firearms	Penalty provision only								
(b), Shipment, transportation, or receipt of a firearm with the intent to commit a felony or with reasonable knowledge that a felony will be committed	Transfer	74	74	98	70	105	104	97	90
(c), Use or possession of a firearm during the commission of a violent or drug trafficking offense	Possession	2,884	2,541	2,450	2,958	2,313	2,136	2,385	2,222

Continued on page 14

Appendix table 3. Continued

Statutory provision	Type of violation	Number of defendants charged with a firearm offense in the year the offense was charged (multiple counts against a defendant for a single statute counting as a single charge)							
		1992	1993	1994	1995	1996	1997	1998	Prelimi-nary 1999
18 U.S.C. § 924 continued									
(d), Seizure and forfeiture of firearms involved or used in knowing firearm violations	Not applicable								
(e), Possession of a firearm by a person with three prior convictions for a violent felony or serious drug trafficking offense	Penalty provision only, substantive offense 18 U.S.C. § 922(g)								
(f), Possession of a gun not detectable by walk-through metal detectors or airport x-ray machines	Possession	0	0	1	26	60	34	22	39
(g), Interstate or foreign acquisition of a firearm by a prohibited person	Possession	5	2	1	24	39	17	13	21
(h), Transfer of a firearm with reasonable knowledge that the firearm will be used to commit a crime of violence or drug trafficking offense	Transfer	0	0	0	25	54	71	60	34
(i), Use of a firearm during the commission of a felony offense resulting in death	Penalty provision only, substantive offense 18 U.S.C. §§ 922(u) and 924(c)								
(j), Smuggling firearms with the intent to commit a violent crime or a controlled substance offense	Possession	0	0	0	0	0	0	0	5
(k), Theft of a firearm moved in interstate or foreign commerce	Possession	0	0	0	0	0	0	0	0
(l), Theft of a firearm from a licensed importer, manufacturer, dealer, or collector	Possession	0	0	0	0	0	0	0	0
(m), Interstate or foreign travel to obtain firearms	Possession	0	0	0	0	0	0	0	0
(n), Conspiracy to commit 18 U.S.C. § 924(c)	Possession	0	0	0	0	0	0	0	0
18 U.S.C. § 929, Use of restricted ammunition during the commission of a violent or drug trafficking offense	Possession	2	2	1	7	1	0	0	0
18 U.S.C. § 930, Possession of a firearm or dangerous weapons in Federal facilities	Possession	82	51	34	17	24	22	31	34
26 U.S.C. § 5812, Transfer of firearms (registration and taxation)	Regulatory	12	28	24	14	3	5	8	3
26 U.S.C. § 5822, Manufacture of firearms (registration and taxation)	Regulatory	13	10	13	13	44	17	15	9
26 U.S.C. § 5841, Registration of Firearms	Regulatory	46	75	70	91	79	83	72	62
26 U.S.C. § 5842, Identification of Firearms	Regulatory	6	13	8	7	7	8	7	4
26 U.S.C. § 5861,									
(a), Engage in a firearm business without registering or paying occupancy tax	Regulatory	13	11	6	24	10	13	4	6
(b), Receive or possess a firearm unlawfully transferred	Possession	14	21	18	1	0	2	0	0
(c), Receipt or possession of an unlawfully manufactured firearm	Possession	28	30	19	20	40	40	25	25
(d), Receipt or possession of certain firearms for which registration is required	Possession	714	501	377	402	378	330	302	271
(e), Unlawful transfer	Transfer	71	60	61	56	40	20	19	20
(f), Making firearms	Possession	56	40	36	35	48	21	25	33
(g), Obliterating, removing, or changing the serial number on a firearm	Possession	0	2	1	2	0	5	0	0
(h), Receiving or possessing a firearm with an obliterated serial number	Possession	27	13	11	9	18	15	10	11
(i), Receiving or possessing a firearm without a serial number	Possession	79	37	39	29	41	30	19	14
(j), Delivering or receiving an unregistered firearm	Transfer	8	4	0	12	11	16	2	2
(k), Receiving or possessing a firearm unlawfully imported into the U.S.	Possession	12	8	22	16	4	3	2	2
(l), Making a false entry on any required application	Regulatory	0	0	1	1	1	0	1	0

Note: The type of violation category is for statistical reporting purposes and implies no legal basis. The available data preclude the reporting of statistics below the first major subsection level. Data for 1999 are preliminary. See *Methodology*, page 10.

Data source: Administrative Office of the U.S. Courts, criminal master file, fiscal year.

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

BJS Special Reports address a specific topic in depth from one or more data sets that cover many topics.

John Scalia, BJS Statistician, wrote the report. Urban Institute staff, under the supervision of William J. Sabol, and Greg Steadman of BJS provided a statistical review. David Rauma of the Federal Judicial Center provided methodological guidance. Caroline Wolf Harlow, BJS, provided tables describing data from the Survey of Federal Inmates. Dr. Harlow, David Levin of BJS, and Pierre St. Hilaire, DOJ Criminal Division, assisted in the collection of data from presentence reports. The staff of the Administrative Office of the U.S. Courts, under the supervision of Steven Schlesinger, Ph.D., provided a substantive review, as did Steve Shandy of the DOJ Criminal Division. U.S. Sentencing Commission staff, under the supervision of Louis Reedt, selected presentence investigation reports for review by BJS and provided substantive comments. Tom Hester produced and edited the report. Jayne Robinson prepared the report for final publication.

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http://fjsrc.urban.org

The resource center, as well as the report and supporting documentation, are also accessible through the BJS website:

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Data from the FBI's Uniform Crime Report program can be obtained from the National Archive of Criminal Justice Data at the University of Michigan. The National Archive is accessible through the BJS web site. Recent editions of the FBI's annual report *Crime in the United States* are accessible through the FBI's website:

http://www.fbi.gov/ucr.htm

U.S. Department of Justice
Office of Justice Programs

Neither this report nor its contents should be distributed to the public until Sunday, June 4, 4:30 EDT

Bureau of Justice Statistics Bulletin

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Background Checks for Firearm Transfers, 1999

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On November 30, 1998, the permanent provisions of the Brady Handgun Violence Prevention Act (P.L. 103-159, 1993) became effective. The interim system had lasted from February 29, 1994, through November 29, 1998, and applied to handgun purchases from licensed firearm dealers.

The permanent provisions of the Brady Act require background checks of applicants for transfer of both handguns and long guns from a Federal firearms licensee (FFL). Transfers requiring checks now include pawnshop transactions as well as purchases from retail gun shops. The minimum check required by the permanent provisions is the FBI's National Instant Criminal Background Check System (NICS).

This Bulletin presents findings from the Firearm Inquiry Statistics (FIST) program. Included are background checks conducted by State and local points of contact (POCs), by other checking agencies (such as those that check backgrounds of permit applicants), and by the FBI. Also provided are estimates of rejection rates and the bases for rejections under the Brady Act and State laws.

Highlights

Background checks of applications for firearm transfers since implementation of the Brady Act

	1994[a]-99	1998	1999		
	National total	National total	National total	State and local checks	Federal/ NICS checks[b]
Applications and rejections					
Applications received	22,254,000	3,277,000	8,621,000	4,083,000	4,538,000
Applications rejected	536,000	90,000	204,000	123,000	81,000
Rejection rate	2.4%	2.7%	2.4%	3.0%	1.8%

Note: All counts are rounded.
[a]The Brady Act became effective on February 29, 1994, and data collection began on March 1, 1994. Data through November 29, 1998, are primarily for handguns.
[b]Applications are from the FBI's *National Instant Criminal Background Check System (NICS) Operations Report (November 30, 1998 - December 31, 1999)*, published March 1, 2000. Rejections are an estimate based on 12 out of the 13 months reported in the *NICS Operations Report*.

- From the inception of the Brady Act on March 1, 1994, to December 31, 1999, about 22 million applications for firearm purchase or pawn transaction were subject to background checks of applicants. About 536,000 were rejected.

- In 1999 alone, 204,000 (2.4%) of approximately 8,621,000 applications for firearm transfer were rejected by the FBI or State and local agencies.

- Over half of the applications for firearm transfers were checked directly by the FBI, while the remainder of applications were checked by State or local agencies.

- The rejection rate was lower in States where background checks were conducted only by the FBI (1.8%) as opposed to States where points of contact were responsible for background investigations (3.0%).

- Two-thirds (68%) of the Nation's population lived in the 26 States that served as POCs for handgun checks.

- Among State and local agencies, about 73% of the rejections were for a felony conviction or indictment, 11% for a disqualifying domestic violence conviction or restraining order, and about 4% for State or local law prohibitions. The FBI's rejections included a slightly higher percentage based on the finding of a domestic violence conviction or restraining order (15%).

National estimates

Information in this Bulletin is based on a survey of 19 single State POCs and over 500 local checking agencies in 15 States. Statistics are also included from FBI data on the inquiries passing through the NICS operations center.[1]

When a background check finds evidence of disqualifying factors, an application is rejected. (See *Definitions* in *Methodology* on page 9 for more detail.) The estimates of rejection rates and reasons for rejection of purchase applications for firearms by State POCs or local checking agencies were derived from FIST data. These can be compared to the reasons for rejection by the FBI.

In addition, FIST collected statistics about applications for both purchase permits and ATF-exempt carry permits.

The FBI processed over 4.5 million applications for firearm transfers in 1999, while State and local checking agencies processed an additional 4 million (*Highlights* table). (See *Appendix A* for details of State participation.)

More than twice as many applications were filed in 1999 as in 1998 (table 1). This increase can be attributed in large part to the permanent Brady requirements that background checks be conducted for the transfer of long guns as well as handguns, and at pawn shops in addition to retail stores.

As reported by the FBI, the number of NICS transactions conducted during December 1998, the first month of the permanent provisions, was higher than the monthly average for January through November of 1999 (figure 1). Similarly, the over 1.2 million NICS transactions conducted in December 1999 was the highest monthly number for 1999.

[1]The number of background checks handled by State POCs as reported in the FBI's *National Instant Criminal Background Check System (NICS) Operations Report (November 30, 1998-December 31, 1999)*, published March 1, 2000, are higher than the estimates reported here because multiple inquiries for the same application (which may be done at the discretion of the agency) are deleted from BJS' FIST data.

Table 1. Number of applications and estimates of rejections for firearm transfer, 1994-99

	Number of applications: Received	Rejected	Rejection rate
Total	22,254,000	536,000	2.4%
Interim period	12,740,000	312,000	2.5%
1994[a]	2,483,000	62,000	2.5
1995	2,706,000	41,000	1.5
1996	2,593,000	70,000	2.7
1997	2,574,000	69,000	2.7
1998[b]	2,384,000	70,000	2.9
Permanent Brady	9,514,000	224,000	2.4%
Dec. 1998[c]	893,000	20,000	2.2
1999[d]	8,621,000	204,000	2.4

Note: Counts are rounded. In 1994 and 1995 the estimate of firearm applications was based on 67% of "F" counts, and the rejection rate was that of previously implemented State check systems. The NICS replaced "F" code inquiries. Counts prior to November 30, 1998, and after December 31, 1998, are FIST estimates.
[a]March 1-December 31, 1994.
[b]January 1-November 29, 1998.
[c]November 30-December 31, 1998. Counts are from the *National Instant Criminal Background Check System (NICS) Operations Report (November 30, 1998 - December 31, 1999)*, and may include multiple transactions for the same application.
[d]Applications are the sum of State and local FIST estimates and Federal inquiries in the *NICS Operations Report*. Rejections are the sum of State and local rejections plus an estimate based on 12 of the 13 months reported in the *NICS Operations Report*.

Rejection rates

The rate of rejection in the first year of permanent Brady (2.4%) was similar to the rejection rate during the interim Brady period (2.5%) (table 1). The overall rate of rejection of potential firearm transfers takes into account the FBI and the aggregate of State and local agencies that retain responsibility for running background checks on firearm applications.

In 1999 the FBI rejected 81,000 applications, a 1.8% rejection rate, while State and local agencies rejected 123,000, a rate of 3.0% (*Highlights* table). Together, approximately 204,000 applications for firearm transfer were rejected in 1999, a rate of 2.4%.

States conducting background checks may have the ability to access State and local files not available to the FBI.

Applications for firearm transfers peak in December

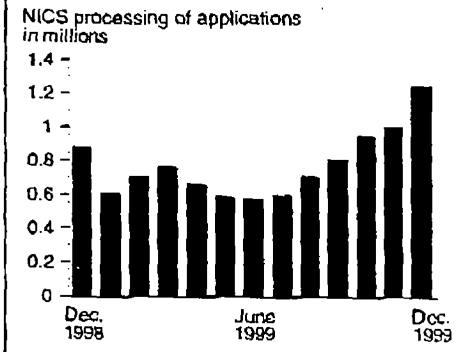

Figure 1

In 1999 all State POCs accessed computer databases that record past felony convictions, and many accessed databases with other disqualifying information such as fugitive status, court restraining orders, mental illness, and domestic violence misdemeanor convictions (*Appendix B*).

Some States retained data that pertained to their own prohibitions and that the FBI did not access. In some States, courts or other local agencies

Table 2. Estimates of applications and rejections, by type of approval system among State and local agencies, 1999

	Number of applications: Received	Rejected	Rejection rate
State/local total	4,083,315	123,455	3.0%
State instant approvals[a]	2,446,524	93,762	3.6
Purchase permits	599,953	14,468	2.4
Exempt carry permits[b]	143,815	3,085	2.1
Other approvals[c]	596,023	5,612	0.9
Parallel State systems[d]	297,000	6,528	2.2

[a]Includes the instant checks in table 5 plus an estimate of South Carolina.
[b]Includes only the POC States from table 3. The remaining States in table 3 are included in the Federal/NICS Inquiries.
[c]"Other approval" systems usually require sellers to transmit applications to a State agency, with transfers delayed until a waiting period expires or the agency completes a check; used in California, Maryland, Rhode Island, and Washington.
[d]These applications and rejections for permits in non-POC States are made at the State or local level and are not included in the number of Federal/NICS inquiries or rejections. See page 6 for description and list of parallel State systems.

maintained automated databases that the FBI may not access.

Approval systems

State approval systems can be classified as "instant approval," "permit," or "other approval" systems. Permit systems surveyed by the FIST program include all permits required for purchase and certain "exempt carry permits" that can be used to make a purchase without a background check. (See *Definitions* in *Methodology*, page 9, and *Survey of State Procedures Related to Firearm Sales, Midyear 1999*, BJS report, NCJ 179022.)

In States operating under an instant approval system (an instant check on State data as well as a NICS check were conducted), the rejection rate was 3.6% (table 2). Of the 4 million applications checked by State and local agencies, almost 2.5 million applications were for instant approvals to transfer a firearm. About 600,000 were checked by agencies in States with other types of approval systems.

Table 3. Applications and rejections for ATF-exempt firearm carry permits, 1999

Agency	Number of applications: Received	Rejected	Rejection rate
Total	310,280	6,680	2.2%
Arizona*	20,114	460	2.3%
Indiana*	81,048	2,193	2.7
Mississippi	4,785	40	0.8
North Carolina	9,349	103	1.1
South Carolina	5,070	103	2.0
Texas	30,349	400	1.3
Utah*	7,960	114	1.4
Wyoming	1,185	20	1.7
Multiple local agencies	150,420	3,247	2.2%

Note: Of the 17 States in which ATF-exempt carry permits are issued, the 8 States listed reported complete statewide data in 1999. Local agencies are estimates of the 7 States in which there are multiple agencies conducting permit applications. Alaska issues exempt carry permits but did not report data for 1999. Iowa Department of Public Safety is a statewide agency but conducts checks only on nonresidents and State employees (394 applications in 1999, 0 rejections).
*Arizona, Indiana, and Utah require a permit to carry (but not to purchase) a firearm; however possession of a carry permit confers the right to purchase a firearm without an additional background check at the time of transfer. Applications checked at the time of firearm transfer for applicants who do not have an ATF-exempt carry permit are listed in table 5.

Twelve States required some form of a State or local permit to purchase a firearm. The FIST program collects data from permit States to identify characteristics of these different approval systems. Applications for purchase permits comprised about 600,000 background checks, and applications for ATF-exempt carry permits comprised 144,000 applications processed by State or local agencies.

The rejection rate of applications for purchase permits (2.4%) was similar to the rejection rate for all applications for firearm transfers (2.4%), but lower than that of State instant checks (3.6%). "Other approval" systems that allow up to 10 days to conduct a background check had the lowest rejection rate (less than 1%). However, California dominates this category, and the low rate reflects that State's overall rejection rate.

Permit exemptions

Federal law does not mandate a permit to purchase firearms. However, State permits for purchase, carrying, or other activities can be used to exempt the holder from another background check at the time of purchase, provided the applicable permit meets certain requirements of the Brady Act. (See "Overview of NICS" on page 6.)

In 1999, 17 States issued carry permits that could exempt a holder from a purchase check under an ATF ruling or State law. Approximately 310,000 applications for exempt carry permits were subject to background checks, among the agencies reporting data (table 3).

The rejection rate of exempt carry permit applications among statewide agencies that issue exemptions ranged from less than 1% in Mississippi to nearly 3% in Indiana. The rejection rate of exempt carry permit applications was 2.2% in all State and local agencies in which data were available.

Table 4. Reasons for rejection of firearm transfer applications, 1999

Reason for rejection	State and local agencies	FBI[a]
Total	100%	100%
Felony indictment or conviction	72.5	71
Fugitive	5.0	3
Domestic violence		
Misdemeanor conviction	9.0	12
Restraining order	2.1	3
State law prohibition	3.5	--
Mental illness or disability	0.5	--
Drug addiction	1.0	4
Local law prohibition	0.2	--
Other[b]	6.2	6

– Not available.
[a]The FBI reports rounded percentages for reasons of rejection.
[b]Includes illegal aliens, juveniles, persons dishonorably discharged from the armed services, persons who have renounced their U.S. citizenship, and other unspecified persons. For the FBI, this also includes criminal history of multiple DUIs, non-NCIC warrants, flash notices, and other categories.

Reasons for rejection

Nearly 3 out of 4 rejections for firearm transfer (about 150,000 applications in 1999) occurred because the applicant either had a felony conviction or was under felony indictment (table 4). The second most common reason for rejection was a domestic violence misdemeanor conviction or restraining order (about 13% of rejections or approximately 27,000 applications).

The FBI and the POCs rejected applications in roughly equal percentages due to the finding of a felony indictment or conviction.

However, POCs were able to report rejections in the additional categories of State and local law prohibitions (4% of rejections) and mental illness (less than 1%). These other categories may have lowered the relative percentages for the other reasons listed, as compared to the FBI. For example, the FBI rejected a greater percentage of applications based on drug involvement (4% of FBI rejections) than did State and local checking agencies (1%).

The FBI had a slightly higher percentage of their rejections for domestic violence convictions or restraining order (15%) than did the State POCs (11%). This is due in part to an effort by the FBI to investigate all convictions for the presence of domestic violence. Both the FBI and POCs had about 6% of rejections for other factors such as juvenile or alien-status, dishonorable discharge from the armed services, and citizenship renunciation.

Statewide reporting of applications

Among State and local agencies responding to the FIST survey, 19 had a single NICS point of contact for their State and provided statewide totals for 1999 (table 5). These States processed over 3 million applications for firearm transfers and rejected 91,300 (2.9%). An estimated 7,983 (2.0%) applications were rejected by local agencies serving as points of contact.

Table 5. Number of firearm transfer applications received and rejected by State and local agencies, 1999

Agency	Number of applications Received	Rejected	Rejection rate
Statewide agencies	3,124,715	91,303	2.9%
Arizona[d]	145,832	4,228	2.9%
California	513,418	4,779	0.9
Colorado[a]	100,126	6,668	6.7
Connecticut	49,285	255	0.5
Florida	239,876	6,083	2.5
Georgia	252,808	14,477	5.7%
Illinois[b]	419,904	8,173	2.0
Indiana[c,d]	26,190	402	1.5
Maryland[c]	33,038	592	1.8
Nevada	58,666	1,870	3.2
New Hampshire[c]	13,616	247	1.8%
New Jersey[b]	76,340	792	1.0
Oregon[c]	58,324	1,296	2.2
Pennsylvania	557,992	18,875	3.4
Tennessee	246,430	16,325	6.6
Utah[d]	73,746	2,155	2.9%
Vermont	20,777	572	2.8
Virginia	201,596	2,987	1.5
Wisconsin[c]	36,751	527	1.4
Local agencies	393,961	7,983	2.0%

Note: Each of the 19 listed States had a single point of contact that reported complete statewide data for applications and rejections in 1999. Local agencies are estimates of the 7 States in which there are multiple agencies serving as points of contact. South Carolina had a single point of contact until 10/1/99 but did not provide complete statewide data and therefore was not included in this table.
[a]Colorado had a point of contact from 1/1/99 through 3/31/99 and again from 8/1/99 through 12/31/99; therefore, April through July are included in the Federal/NICS counts.
[b]Illinois and New Jersey conduct checks on permits or identification cards and again at the time of firearm transfer, which will effect the overall rejection rate.
[c]Counts in this table include handguns only for these States.
[d]Applications for carry permits are listed separately in table 3.

The 19 Statewide agencies served 50.6% of the resident population of the United States (Census Bureau, 1998) but received about 36% of the total number of applications for firearm transfer during 1999.

State and local agencies run handgun checks for 68% of the Nation's population. By contrast, long gun checks are run by State and local agencies for 43% of the population.

Total population of States where —

State/local agencies check applications for —

Handguns	183.6 million people
Long guns	117.1 million people

FBI checks applications for —

Handguns	86.6 million people
Long guns	153.1 million people

Type of firearm

It is unknown how much of the approximately 160% increase in background checks — from less than 3.3 million in 1998 to about 8.6 million in 1999 — was due to the requirement that long gun transfers be included. Because disqualifiers under the Brady Act are similar for handguns and long guns, most States do not identify for statistical purposes which type of firearm is being transferred.

Since the FBI checks the majority of applications for long gun transfer, the NICS system offers the most comprehensive information about long gun applications. The firearms transaction record (*ATF Form 4473*), which must be completed at the time of transfer, asks whether the weapon is a handgun, long gun, or both, and the make, model, and type of every firearm being transferred.

The FBI reports that about two-thirds of NICS inquiries are for long guns. The authors spoke to officials of five State agencies keeping separate counts of transfer applications for handguns and long guns. Those officials suggested that long guns account for about half of the applications in their States.

Applications for firearm transfers per 1,000 residents in 19 States

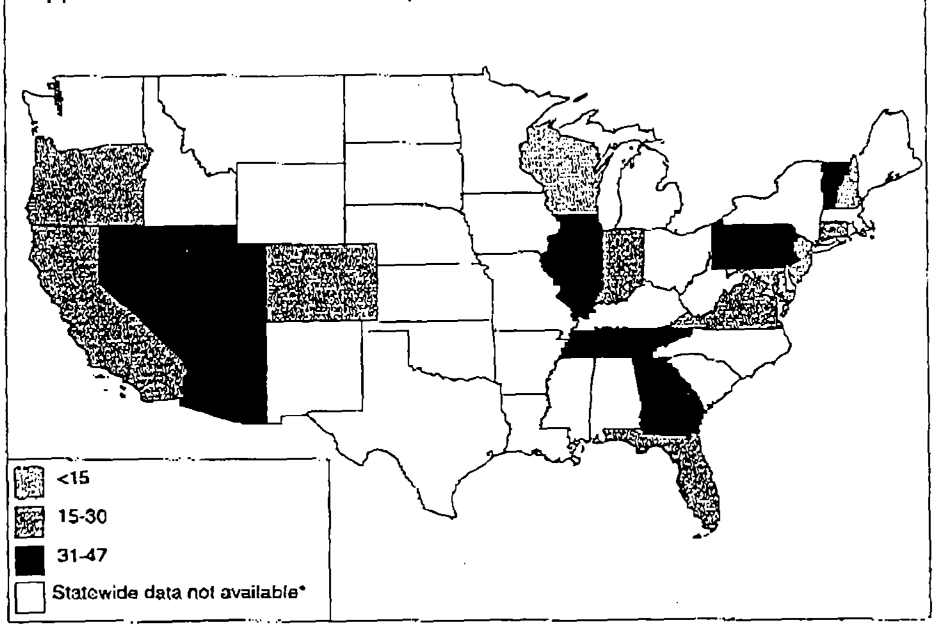

Figure 2
Note: Based on 1998 population data from the Census Bureau. Counts in the map include only handguns for Indiana, Maryland, New Hampshire, Oregon, and Wisconsin. Counts for Colorado included January through March and August through December of 1999. Counts for Illinois, Indiana, and New Jersey include permits or identification cards firearm transfer applications.
*See *Appendix A* for details of State participation.

Background

Prohibited persons

The Federal Gun Control Act, 18 U.S.C. 922, prohibits transfer of a firearm to a person who —

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

In addition, the Gun Control Act makes it unlawful for any licensed importer, manufacturer, dealer, or collector to transfer a long gun to a person younger than age 18 or any other type of firearm to a person less than 21 years of age.

The Federal act's categories of prohibited persons are the prevailing minimum for all States. Many States have enacted similar or additional prohibitions. For example, 19 States prohibit firearm possession by persons who are addicted to alcohol or have been convicted of alcohol-related offenses; 24 States restrict persons who were adjudicated delinquent or who had committed serious offenses as juveniles. (See *Survey of State Procedures Related to Firearm Sales, Midyear 1999*, BJS report, NCJ 179022.)

Interim Brady Act provisions

The Brady Act amended the Gun Control Act and included interim provisions, 18 U.S.C. 922(s), in effect from February 28, 1994, until November 29, 1998. The interim provisions prohibited sale of a handgun by a licensed dealer (called a Federal Firearms Licensee) for 5 days or until the licensee had been advised that, based on a background check, a prospective purchaser was not prohibited under Federal or State law. Checks were conducted by the Chief Law Enforcement Officer of the jurisdiction where the licensee operated.

The interim provisions allowed States with prohibitory statutes comparable to Federal law to follow a variety of alternative procedures. State laws that qualified under these alternatives required that before any licensee completed the transfer of a handgun to a non-licensee, a government official verified that possession of a handgun by the transferee would not be a violation of law. The "Brady-alternative States" generally employed either an "instant check" or a "permit or other approval type" system, as designated by the Bureau of Alcohol, Tobacco and Firearms.

Permanent Brady Act provisions

Establishment of the National Instant Criminal Background Check System (NICS) was authorized by the permanent provisions of the Brady Act, 18 U.S.C. 922(t). The U.S. Department of Justice, with the States, developed the system during the 57-month interim period. Since November 29, 1998, the NICS has allowed a licensee to contact the system by telephone or other electronic means for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate Federal or State law.

Under the NICS configuration States are encouraged to serve as a point of contact, receiving inquiries from firearm dealers and accessing the FBI's national record system. (See *Components of National Firearm Check System* on page 6 for further details on checks under the NICS or State laws.)

In addition to regulation of handgun sales, the permanent provisions mandate that licensees request background checks on long gun purchasers and persons who redeem a pawned firearm. Licensees have the option of requesting a NICS check on persons who attempt to pawn a firearm.

National Criminal History Improvement Program (NCHIP)

The Brady Act established a grant program (NCHIP) to ensure immediate availability of complete and accurate State records. The Firearm Inquiry Statistics Program (FIST), which collects statistics on background checks, is one of many NCHIP programs.

NCHIP is designed to assist States to develop or improve existing criminal history records systems and to establish an interface with the NICS. Grant funds have also supported direct technical assistance, evaluation, and research related to improving nonfelony records within the States.

To date, over $270 million has been awarded directly to States to assist them in establishing and enhancing criminal records which support the FBI's record system.

Components of the National Firearm Check System

Over 3,000 Federal, State, and local agencies conduct background checks on persons who apply to purchase a firearm or for a permit that can be used to make a purchase. Variations in Federal and State procedures for determining firearm possession eligibility are described below.

Overview of National Instant Criminal Background Check System

Prospective firearm transferees undergo a NICS check requested by a dealer or present a State permit that ATF has qualified as an alternative to the point-of-transfer check. Qualifying permits are those which —
(1) allow a transferee to possess, acquire or carry a firearm, and
(2) were issued not more than 5 years earlier by the State in which the transfer is to take place, after verification by an authorized government official that possession of a firearm by the transferee would not be a violation of law. A permit issued after November 29, 1998, qualifies as an alternative only if the information available to the State authority includes the NICS Index maintained by the FBI.

A licensee initiates a NICS check by contacting either the FBI or a point of contact (POC) agency designated by the State government. The FBI or POC checks the available Federal, State, and/or local databases and responds with a notice to the licensee that the transfer may proceed, may not proceed, or is delayed pending further review of the transferee's record. (See the FBI, *National Instant Criminal Background Check System (NICS) Operations Report (November 30, 1998-December 31, 1999)*, March 1, 2000.)

Prior to transferring a firearm subject to permanent Brady requirements, a licensee must receive a completed Firearm Transaction Record (ATF F 4473) For more information, see *Commerce in Firearms in the United States, February 2000* (www.atf.treas.gov/pub/fire-explo_pub/020400report.pdf).

State and local participation in the NICS

Each State government determines the extent of its involvement in the NICS process. Three forms of State involvement currently exist:

- A POC requests a NICS check on all firearm transfers originating in the State.
- A POC requests a NICS check on all handgun transfers; licensees in the State are required to contact the FBI for approval of long gun transfers.
- The State does not maintain a point of contact; licensees are required to contact the FBI for NICS checks on all firearm transfers originating in the State.

Handgun checks are conducted by the FBI for 24 States and by POC agencies for 26 States; long gun checks are conducted by the FBI for 35 States and by POC agencies for 15 States (*Appendix A*).

Participation in the NICS by POC agencies includes initiating checks on persons who apply for State permits. In a few States with full or partial participation, the FBI conducts the NICS check on certain pawn transactions instead of the POC.

Procedures for determining the eligibility of prospective firearm purchasers are generally classified by ATF as "instant check" or "permit or other type of approval" systems. Seventeen States utilize instant check systems; 12 require purchase permits; and 4 maintain other type of approval systems (Illinois and New Jersey are each counted twice because they operate separate purchase permit and instant check systems). In addition to the Brady Act's regulation of sales by federally licensed dealers, some States require background checks for firearm transfers that occur between unlicensed persons at gun shows or other locations.

A few States require a mandatory waiting period after a purchaser applies and before a firearm transfer can be completed, regardless of when the instant check is completed.

The NICS process does not automatically supplant State firearm sales regulations. State background check and permit statutes that existed before the effective date of the NICS remain in force unless repealed by legislative action or allowed to expire.

The POC agencies conduct any checks and issue any permits required by State law in addition to following procedures mandated under the NICS. Generally, instant check agencies conduct a single background check that incorporates Federal and State requirements for each transaction.

Except for Delaware all States with instant check systems are points of contact for the NICS. Most States have designated a single agency with statewide jurisdiction as their NICS point of contact; some States have multiple points of contact, which are usually county sheriffs or local police departments. (For agencies conducting firearm checks, see *Appendix C*.)

Parallel State systems

If agencies that conduct checks under State law are unable to access the NICS Index, licensees in that State are required to contact the FBI for the NICS check. Thus, prospective transferees in some States are required to undergo a permit or point-of-transfer check by a State or local agency and a NICS check by the FBI. Six States (Delaware, Massachusetts, Minnesota, Missouri, New Jersey, and Rhode Island) maintain firearm check systems that can be described as parallel to the NICS process.

For more information on background check systems in specific States, see *Survey of State Procedures Related to Firearm Sales, Midyear 1999*, NCJ 179022.

Appendix A. National Instant Criminal Background Check System: Checking agencies — FBI or State point of contact — for transfers of handguns and long guns, December 1999

	Handguns		Long guns	
	FBI	POC	FBI	POC
Alabama	■		■	
Alaska	■		■	
Arizona		■		■
Arkansas	■		■	
California		■		■
Colorado		■		■
Connecticut		■		■
Delaware	■		■	
Florida		■		■
Georgia		■		■
Hawaii*		■		■
Idaho	■		■	
Illinois		■		■
Indiana		■	■	
Iowa*		■	■	
Kansas	■		■	
Kentucky	■		■	
Louisiana	■		■	
Maine	■		■	
Maryland		■	■	
Massachusetts	■		■	
Michigan*		■	■	
Minnesota	■		■	
Mississippi	■		■	
Missouri	■		■	
Montana	■		■	
Nebraska*		■	■	
Nevada		■		■
New Hampshire		■	■	
New Jersey		■		■
New Mexico	■		■	
New York*		■	■	
North Carolina*		■	■	
North Dakota	■		■	
Ohio	■		■	
Oklahoma	■		■	
Oregon		■	■	
Pennsylvania		■		■
Rhode Island	■		■	
South Carolina	■		■	
South Dakota	■		■	
Tennessee		■		■
Texas	■		■	
Utah		■		■
Vermont		■		■
Virginia		■		■
Washington*		■	■	
West Virginia	■		■	
Wisconsin		■	■	
Wyoming	■		■	
Total	24	26	35	15

Note: Includes checks on purchases or permits required for purchase. The District of Columbia no longer allows the purchase of handguns except by law enforcement officers, retired district police officers, military personnel, licensed dealers, and organizations that employ special police.
*States have multiple points of contact.

Appendix B. Databases accessed for background checks for firearm transfers, 1999

			Domestic violence		
	Criminal histories	Wanted (fugitives)	Restraining orders	Misdemeanor convictions	Mental health
Alabama	■	■	■		
Alaska	■	■	■	■	
Arizona	■	■			
Arkansas	■	■	■	■	
California	■	■	■	■	■
Colorado	■	■	■	■	
Connecticut	■	■	■	■	■
Delaware	■	■	■	■	■
Florida	■	■	■	■	
Georgia	■	■		■	■
Hawaii	■			■	■
Idaho	■	■	■	■	
Illinois	■	■	■	■	■
Indiana	■				
Iowa	■	■	■	■	
Kansas	■			■	
Kentucky	■	■	■		
Louisiana	■	■			
Maine	■	■	■		
Maryland	■	■	■	■	
Massachusetts	■	■	■	■	■
Michigan	■	■	■	■	■
Minnesota	■	■	■		■
Mississippi	■				
Missouri	■	■	■	■	
Montana	■	■			
Nebraska	■	■			
Nevada	■	■		■	
New Hampshire	■	■	■	■	
New Jersey	■	■	■	■	
New Mexico	■			■	
New York	■	■	■	■	■
North Carolina	■	■	■	■	
North Dakota	■	■	■		
Ohio	■	■	■	■	
Oklahoma	■				
Oregon	■	■	■		■
Pennsylvania	■	■			
Rhode Island	■	■	■	■	■
South Carolina	■	■	■	■	
South Dakota	■	■	■		
Tennessee	■	■	■	■	
Texas	■	■	■	■	
Utah	■	■	■	■	
Vermont	■	■	■	■	
Virginia	■	■	■	■	■
Washington	■	■	■	■	■
West Virginia	■	■	■	■	
Wisconsin	■	■	■	■	■
Wyoming	■	■			
State totals	50	44	36	34	15

Note: Includes checks on purchases or permits required for purchase. The District of Columbia no longer allows the purchase of handguns except by law enforcement officers, retired district police officers, military personnel, licensed dealers, and organizations that employ special police.

Appendix C. State and local agencies conducting background checks for firearm transfers, 1999

	Type of firearm check		Number of agencies	Type of agencies
	Purchase[a]	Carry[b]		
Alaska		■	1	Department of Public Safety
Arizona	■	■	1	Department of Public Safety
California	■		1	Department of Justice
Colorado	■		1	Bureau of Investigation
Connecticut	■		1	State Police
Delaware	■		1	State Police
		■	3	County Superior Courts
Florida	■		1	Department of Law Enforcement
Georgia	■		1	Bureau of Investigation
		■	159	County Probate Courts
Hawaii	■		4	Police Departments
Idaho		■	44	County Sheriffs
Illinois	■		1	State Police
Indiana	■	■	1	State Police
Iowa	■	■	100	Department of Public Safety/County Sheriffs
Maryland	■		1	State Police
Massachusetts	■	■	351	Police Departments
Michigan	■		595	Sheriffs and Police Departments
Minnesota	■	■	568	Sheriffs and Police Departments
Mississippi		■	1	Department of Public Safety
Missouri	■		115	Sheriffs and Police Departments
Montana		■	61	County Sheriffs
Nebraska	■		95	Sheriffs and Police Departments
Nevada	■		1	Highway Patrol
		■	17	County Sheriffs
New Hampshire	■		1	Department of Safety
New Jersey	■		506	State and local Police
New York	■		58	County Judges
North Carolina	■	■	100	County Sheriffs
Oregon	■		1	State Police
Pennsylvania	■		1	State Police
Rhode Island	■		39	Police Departments
South Carolina	■	■	1	Law Enforcement Division
Tennessee	■		1	Bureau of Investigation
Texas		■	1	Department of Public Safety
Utah	■	■	1	Bureau of Criminal Identification
Vermont	■		1	Chittenden County Sheriff's Office
Virginia	■		1	State Police
Washington	■		291	Sheriffs and Police Departments
Wisconsin	■		1	Department of Justice
Wyoming		■	40	County Sheriffs
Total			3,169	

Notes: Includes checks on purchases or permits required for purchase.
[a]Applications for purchases or permits required for purchases.
[b]Applications for carry permits that can be used to waive a purchase check.

Methodology

Definitions

State instant approval (instant check) systems require a seller to transmit a purchaser's application to a checking agency by telephone or computer; the agency is required to respond immediately or as soon as possible without delay.

Purchase permit systems require a prospective firearm purchaser to obtain, after background check, a government-issued document (called a permit, license, identification card, etc.) that must be presented to a seller to receive a firearm.

Exempt carry permit is a State carry permit (issued after a background check) that exempts the holder from a check at the time of purchase under an ATF ruling or State law.

Other type of approval systems require a seller to transmit a purchaser's application to a checking agency by mail, telephone, or computer; the agency is not required to respond immediately but must respond before the end of the statutory time limit.

Application for firearm transfer is information submitted by a person to a State or local checking agency to purchase a firearm or obtain a permit that can be used for a purchase; includes information submitted directly to a checking agency or forwarded by a prospective seller.

Transactions are inquiries to the Federal NICS system and may include more than one inquiry per application.

Rejection occurs when an applicant is prohibited from receiving a firearm or a permit that can be used to receive a firearm, due to the finding of a disqualifying factor during a background check.

Data collection procedures

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

The agencies supplied data on either paper or diskette. Several different forms were provided to meet the varying office procedures of the agencies. In addition REJIS wrote special software distributed free of charge to requesting agencies. This software was designed to simplify the record tabulating functions of the agency. It also helped to reduce the burden of keeping the statistical data because a capability of the software was to automatically report the data needed for the study. In all cases the data that the agency sent to REJIS contained only statistical information and would not allow the identification of an individual. The software also assists agencies in purging records after the delay time specified by law.

FIST data are collected directly from State agencies conducting background checks. Two approaches were used for the collection of data from local checking agencies. The first involved continuation of an ongoing survey. The ongoing survey included agencies that have provided information consistently for the FIST survey since 1995. The second consisted of telephone and mail contact to obtain data from all other local checking agencies that collected and would share information on firearm applications.

The following presents the approach used to supplement the ongoing survey among checking agencies. Telephone and mail contact was attempted in 1999 with all local checking agencies not previously invited to participate in the ongoing survey.

Information collected included the following: firearm applications made to the agency, firearm applications rejected by the agency, and the reasons for rejection. Information on appeals of rejected applications was not included since local checking agencies may not handle appeals through the entire process and may have only limited information on outcomes from such appeals.

Determining populations

To estimate the application and rejection rates within a given area, the appropriate agency population was needed and was determined as follows:

- The stratification classification of the county was based on the size of the largest city within the county.
- If cities within a county were conducting their own background checks, their populations were subtracted from the county population.
- If a municipal agency provided services for other selected municipalities, then populations for those municipalities were added to the populations of the reporting municipality.
- If an agency participating in the study relied upon other jurisdictions to conduct background checks, they were replaced by those other jurisdictions (for example, a town being replaced by a county).

State and local checking agencies were stratified by size of the population served: State agencies that served an entire State population; local agencies that served a population greater than 100,000; local agencies that served a population between 10,000 and 100,000; and local agencies that served a population of less than 10,000. Population size was based on 1998 Census Bureau information. The population categories were chosen to be consistent with those commonly used by the FBI when conducting similar studies.

All agencies serving a population greater than 100,000 were asked to contribute data in 1999, either by continuing to report in the ongoing survey or by providing a report in the supplemental survey. The number of agencies in both the ongoing survey and the supplemental survey are shown by population category in the table below.

	Number of agencies
Population served	
Under 10,000	262
10,000 to 100,000	211
Over 100,000	37
Statewide agencies (POCs and those issuing permits)	25
Total agencies	535

These agencies together served 192,394,762 people, or 71.18% of the more than 270 million people estimated to live in the U.S. in 1998. The addition of agencies did not skew the distribution of agencies toward any particular State or region.

In some States one statewide agency conducts background checks for purchase and another agency (or division within an agency) issues ATF-approved permits. Although both agencies conducted background checks, care was taken not to count State populations twice in the estimation process. This situation of dual agencies conducting background checks did not occur among local agencies.

Estimation procedures

Based on data provided by both sets of agencies, National estimates were developed using population weighting factors. When an agency did not provide data for all months, a simple linear extrapolation or interpolation was used to generate a 12-month total.

It is important to emphasize that the mix of State and local agencies conducting background checks changed during the transition from the interim to the permanent provisions of the Brady Act. Consequently, while data collection procedures remained similar to those used in 1998, the agencies providing data changed.

For example, when the permanent provisions of the Brady Act became effective, six agencies that had previously conducted statewide checks turned their background checks over to the FBI. However, three States (Pennsylvania, Tennessee, and Vermont) that had not performed their background checks during the interim period began statewide systems.

The distribution of local checking agencies also changed after the permanent provisions of the Brady Act became effective. Many States delegated their responsibilities to the FBI, so local agencies in those States no longer conducted background checks. Further, it was deemed necessary to collect data from local agencies (and some statewide agencies) that issue certain carry permits approved by ATF or State law as an alternative to a presale background check.

In 11 States local agencies still conducted checks required by State law. Local agencies that had been reporting these data to FIST were asked to continue. However, not enough local agencies remained in the ongoing survey to calculate a sufficiently accurate national estimate. Additional local checking agencies conducting background checks for permits had to be included in the estimation process. For these reasons, FIST supplemented participants in the ongoing survey with data from other checking agencies.

Agencies with a rejection rate over four standard deviations above the average standard rejection rate were classified as outliers and their data were not used for projection of estimates. In addition, rejection rates that could not be determined with sufficient accuracy were not used.

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

Also, the process of a researcher receiving data and storing it in the computer for analysis can introduce nonsampling error.

In any sample survey, the full extent of nonsampling error is never known. However, steps were taken to minimize the potential for error. Extensive telephone follow-ups were made to encourage responses, answer questions about misunderstood requests, and generally assist in assembling the information in a form useable by FIST. Extensive verification of the data ensured the accuracy of the numbers. Agencies providing data were asked to review and revise their reports, and various quality checks were performed in receiving and processing the data.

Because of the sampling design, State comparisons cannot be made. The estimates are only for the 50 States and do not include U.S. Territories or the District of Columbia.

Sources of additional information

Additional information on State firearm laws is available from BJS in the *Survey of State Procedures Related to Firearm Sales, Midyear 1999,* NCJ 179022. Further information on Federal law and BJS-related publications is available from the following Internet sites:

BATF - *http://www.atf.treas.gov/core/firearms/firearms.htm*
BJS - *http://www.ojp.usdoj.gov/bjs/guns.htm*
FBI - *http://www.fbi.gov/programs/nicsfact.htm*

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

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

Lea S. Gifford and Devon B. Adams of BJS and Michael Bowling and Gene Lauver of REJIS wrote this Bulletin. Terry Tomazic, Ph.D., professor of research methodology at St. Louis University, provided statistical consultation. Carol G. Kaplan supervised the project. REJIS collected and analyzed the FIST data presented. Matthew Durose of BJS prepared figure 2. Tom Hester produced and edited the Bulletin.

Further information on the FIST program can be obtained from —

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This Bulletin, as well as other reports and statistics, can be found at the Bureau of Justice Statistics World Wide Web site:

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

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STATEMENT BY THE DEPUTY ATTORNEY GENERAL ERIC HOLDER

WASHINGTON, DC – The Bureau of Justice Statistics (BJS) released two reports today on Federal Firearms Offenders and Background Checks for Firearm Transfers. The Deputy Attorney General issued the following statement:

"Over the past seven years this Administration has implemented a national strategy to reduce crime and gun violence in this country. This strategy has proven effective and has made our streets and communities safer.

"Our strategy includes increased coordination between federal, state and local law enforcement, a focus on the most serious violent offenders, a steady increase in total firearms prosecutions and sentences, and effective measures to prevent gun violence before it occurs. The BJS reports provide data on parts of our strategy which further document its effectiveness.

"The number of violent crimes committed with firearms in the United States is 35 percent lower today than it was in 1992. Our goal of increased punishment for gun offenders is being realized. Since 1992, the total number of state and federal weapons prosecutions has increased more than 22 percent. The number of federal criminal cases brought under the two primary provisions of the Gun Control Act was nearly 16 percent greater in 1999 than in 1992.

"Consistent with the statistics we released in January of this year, the BJS report shows that the number of defendants charged with all types of federal gun crimes is on the rise. Despite a drop in the mid-1990's, preliminary data for 1999 indicates that the number of people charged with federal gun crimes in 1999 should be equal to the number of people charged in 1992, even though there has been a dramatic drop in gun crimes during that same period.

"Under our strategy, law enforcement authorities have worked together to ensure that the most serious criminals are treated most severely. The number of firearm offenders sent to federal prison for more than 5 years is up more than 41 percent. The average sentence for federal firearms offenders increased nearly 2 years between 1992 and 1998. When the United States Supreme Court issued a decision in 1995 limiting their ability to use one of the most powerful charges under the Gun Control Act, federal prosecutors compensated by increasing the use of sentencing guideline enhancements against violent offenders. The use of this enhancement increased 31 percent between 1995 and 1998.

-more-

"Of course, our strategy does not rely merely on punishing offenders after crimes have been committed. We are also working to implement measures to prevent gun crimes before they occur. New data released by BJS today shows that by the end of 1999, federal and state authorities working together to implement the Brady Law had stopped 536,000 felons, fugitives, domestic abusers, and other persons not legally allowed to have a gun from getting a gun.

"Despite our success, we must not become complacent. There are still 89 Americans -- including 12 young people – dying every day from gunshot wounds. We must continue our efforts to prevent crime and gun violence and our tough enforcement strategies at the federal, state and local level."

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Talking Points Re
BJS Bulletin: Background Checks for Firearms Transfers, 1999
The BJS Special Report: Federal Firearms Offenders, 1992-98

- The BJS Reports demonstrate the success of the Administration's national gun policy. The reports show that:

  - Since the Brady Law became effective in 1994, federal, state, and local law enforcement authorities, working together, kept guns out of the hands of over 536,000 felons, fugitives, and other persons not legally allowed to have guns;

  - In the first full year of the Brady Law's National Instant Criminal Background Check System alone, federal, state and local law enforcement authorities, working together, kept guns out of the hands of over 204,000 felons, fugitives, and other persons not legally allowed to have guns;

  - Despite a dip in the number of defendants charged with federal firearms prosecutions in the mid-1990s, and despite the 35% reduction in gun crimes committed since 1992, the number of gun offenders who are being charged with federal gun crimes is on the rise;

  - The dip in the number of defendants charged with federal gun crimes in the mid-90s was due primarily to the Supreme Court's decision in Bailey v. United States, which limited the ability of federal prosecutors to use one of the most powerful charges of the Gun Control Act;

    - Without the limitations imposed by Bailey, the number of defendants charged with a 924(c) offense should have increased rather than have decreased (from 2958 to 2385). BJS estimates that 2,500 more defendants would have been charged with 924(c) during the 33 months following the decision if the Supreme Court had decided Bailey differently.

  - Federal prosecutors compensated for the Bailey decision by increasing the number of sentencing enhancements sought for use of a gun. In this way, federal prosecutors assured that gun criminals who used firearms in the commission of a crime obtained longer sentences;

    - Following Bailey, the number of defendants receiving a guideline enhancement for weapon use or possession increased. Before Bailey, a 924(c) conviction obviated their use, given the bar on double penalties. Post-Bailey, in January 1996, 17 % more defendants received a guideline enhancement for weapon use than during November 1995. Between 1995-

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98, the number of defendants annually receiving a guideline enhancement for weapon use increased 31% -- from 2598 to 3393.

- Federal law enforcement have targeted federal resources to the most serious violent offenders. The average sentence for a federal gun offender increased from 79 months (about 6.5 years) to 100 months (over 8 years) between 1992 and 1998.

  - Between 1992 and 1998, the number of federal gun defendants sentenced to a prison term of 3 years or more increased from 51% to 71% of those sentenced to prison. The proportion sentenced to 5 years or more increased from 41% to 53%.

- Federal prosecutors have worked to bring effective prosecutions. From 1992 to 1998, there was an increase in the percentage of convictions obtained for firearms charges. Almost 10% more guilty pleas were obtained. In 1992, 85% of those convicted were sentenced to prison, while in 1998, 91% did prison time.

- **Crime is down.** This success has been attained during a period in which the overall number of violent crimes committed with firearms in the United States has dropped significantly. While violent crime committed with guns has fallen by more than 35% from 1992 to 1998, firearms enforcement is at an all time high. We have achieved increased coordination, more prosecutions, and greater sentences. The streets of America are safer than they have been in over a generation.

- **We're keeping guns out of the wrong hands.** Our gun violence reduction strategy includes not only vigorous enforcement of the gun laws and punishment of gun criminals, but also effective prevention measures to stop gun crimes before they occur. Over the last five years, the Brady Law has stopped more than 536,000 felons, fugitives, and other prohibited people from getting guns, preventing an untold number of crimes. In 1999 alone, BJS estimates that over 204,000 criminals and other persons not legally allowed to have guns were stopped by the Brady Law from getting guns. BJS data shows that over 70% of those individuals were convicted felons or under felony indictments.

- **Firearms prosecutions are up.** Since 1993, funding for state and local law enforcement has increased by nearly 300% – due in large part to the resources provided in the 1994 Crime Bill. Federal, state and local law enforcement authorities are now working more closely than ever to combat gun violence through comprehensive strategies.

  - Nationally, firearms convictions are up dramatically. Since 1992, combined federal and local gun cases have increased by more than 22%.

  - According to data from the Executive Office for United States Attorneys,

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the number of federal criminal cases in which charges were brought under the two primary provisions of the Gun Control Act was nearly 16% greater in 1999 than in 1992. The 1999 data indicate a 25% increase in the number of federal firearms cases compared to 1998.

- BJS data released today show the same trends as the data released in January of this year from the Executive Office for United States Attorneys. The 1999 data in the BJS report are preliminary, and, as noted in the report, the 1999 numbers cited in that report will rise as additional data are received. Based on the overall consistency of the BJS data and the EOUSA data, we would expect the final 1999 numbers from each data set to be consistent.

- The BJS report is derived from an in-depth look at data from the Administrative Office of the U.S. Courts, and includes a review charges in addition to those released in the data from the Executive Office for United States Attorneys in January of this year. For each year in which we have final numbers, the Administrative Office of the U.S. Courts numbers have been higher than the figures from the Executive Office for United States Attorneys.

  - The data used by BJS also differs from the data used by the Executive Office for United States Attorneys in that each data set records the dates of the relevant court filings differently.

- **Sentences for the worst offenders are longer.** Federal prosecutors have targeted our limited resources and focused on the most serious offenders. According to the Administrative Office of the U.S. Courts, the number of high-level firearms offenders (those sentenced to 5 or more years) is up by more than 41% since 1992. The average sentence for firearms offenders in federal court increased by more than 2 years between 1992 and 1999. The BJS figures released today confirm that sentences for federal firearms offenders are up significantly.

- **Despite the good news, reducing gun violence remains a top priority.** Although violent crime is down, tragedies like the shootings in recent months, and the fact that 12 young people in America die every day from gunshot wounds – remind us that we must do more to reduce firearms violence even further. We must build upon our success in reducing crime to provide greater protection for our children and all of our citizens. This requires keeping guns out of the hands of criminals and children, and enforcing the law effectively when gun crimes are committed.

- **We're working together.** The Clinton Administration's firearms enforcement strategy is committed to a partnership between federal and state authorities. Substantial federal resources are allocated to both prevent access to firearms by prohibited persons and incarcerate violent gun offenders. We have also forged partnerships with state and local

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authorities, who make the vast majority of arrests and undertake the vast majority of prosecutions.

- These partnerships are effective and make sense. They allow each community to identify their unique firearm and other violent crime problems and implement the strategies that are most likely to have a positive impact on these local problems.

- They also build on the reality that state and local law enforcement have responsibility for combating the vast majority of violent crime in our country, and have the lion's share of the resources to do so.

- Efforts not based on this coordination -- like efforts to require wholesale federalization of firearms offenses by bringing all cases into the federal system -- will shift cases that can be handled effectively at the local and state level to the federal level. This will prevent federal law enforcement officials from targeting their resources effectively to investigate and prosecute uniquely federal crimes such as interstate gun trafficking and gang violence.

- It has long been recognized that federal violent crime resources need to be used against those offenders who do the most damage. As the Bush Administration's Project Triggerlock said it, federal firearms enforcement should not be used to "compete with or supplant" local efforts, but should "target the most dangerous violent criminals in the community."

- **Results speak for themselves.** The increased collaboration among federal, state, and local law enforcement has resulted in: (1) a more efficient distribution of prosecutorial responsibilities, (2) a steady <u>increase</u> in total firearms prosecutions and, most importantly, (3) a sharp decline in the number of violent crimes committed with guns.

  - By closely cooperating with state and local law enforcement, ATF has been able to trace 200,000 crime guns annually, and provide information about potential traffickers to state and local police and prosecutors.

  - Coordinated law enforcement efforts in Boston, Massachusetts, Richmond, Virginia, and elsewhere, involving all levels of law enforcement and community leaders, have produced very dramatic drops in the cities' violent crime rates. Strategies such as "Project Exile" in Richmond, VA, "Operation Ceasefire" in Boston, MA, "Project I.C.E." in Birmingham, AL, "Project SAFETY ON" in Minneapolis, MN and "Project Impact" in Omaha, NE are making a difference in reducing gun violence. Called by many names, these strategies are founded on one principle: these local partnerships know best about what works to reduce gun violence in their communities.

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UNITED STATES DEPARTMENT OF JUSTICE

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REMARKS:

Fed. crime stats story is running well. AP not even mention the one "bad" # on overall sentences.

— Nick —

Feds: 87 Percent Conviction Rate

Updated 6:17 PM ET May 31, 2000

By MICHAEL J. SNIFFEN, Associated Press Writer

WASHINGTON (AP) - Eighty-seven percent of defendants charged with federal crimes were convicted in fiscal 1998 and almost three out of four people convicted were sentenced to prison, the Justice Department reported Wednesday.

Nearly half of the 106,139 federal arrests during the 12 months that ended Sept. 30, 1998, charged drug or immigration violations, according to the first comprehensive study of federal arrest data by the Bureau of Justice Statistics. Drug violations accounted for 29 percent of the arrests, and immigration offenses for 20 percent.

Seventy-one percent of those convicted were sentenced to prison, up from 60 percent of those convicted in 1990. Offenders convicted of violent felonies were sentenced to an average of 84.2 months in prison during 1998; felony drug offenders to 78.8 months; immigration offenders to 26.4 months and property offenders to 25.4 months.

In 1998, the time actually served reached 87 percent of the sentence, up from 65 percent in 1990.

The number of defendants prosecuted rose to 78,172 in 1998, up 12.7 percent from the 1997 total. Drug cases accounted for 38 percent of the increase; immigration cases for 29 percent of it. Eighty-three percent of federal defendants were charged with felonies. More serious than misdemeanors, felonies carry a maximum penalty for more than one year in prison.

Pretrial release also showed a decline - to 43 percent of those charged in 1998, down from 62 percent in 1990. Those least likely to be released were charged with immigration offenses, violent crimes, drug or weapons violations.

Of those released awaiting trial, 84 percent completed their release without incident, but 3 percent committed new crimes, 2 percent failed to make scheduled court appearances and 14.5 percent committed technical violations of release conditions, like failure to participate in substance abuse treatment. The total exceeds 100 percent because some

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substance abuse treatment. The total exceeds 100 percent because some defendants fit more than one category.

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Appeals to U.S. Courts of Appeals remained constant at 10,000 to 11,000 a year between 1990 and 1998. Of the 10,105 appeals completed in 1998, 82 percent upheld the district court ruling, at least in part.

The federal prison population topped 100,000 in 1998 for the first time, up 9,670 from 1997 to 108,925.

Of the 106,139 federal arrests during 1998, 73 percent were made by Justice Department agencies - the FBI, Immigration and Naturalization Service, Drug Enforcement Administration, and Marshals Service. Treasury Department agencies, including the Bureau of Alcohol, Tobacco and Firearms, Customs Service and Secret Service, made 11 percent of the arrests. The remainder were by other agencies, including the Postal Service, Defense, Interior and Agriculture Departments.

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