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NICS Hearing Statement

STATEMENT
OF
DAVID R. LOESCH
ASSISTANT DIRECTOR IN CHARGE
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION
FEDERAL BUREAU OF INVESTIGATION
ON
JUNE 21, 2000
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
WASHINGTON, D.C.

GOOD AFTERNOON MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE. I AM DAVID LOESCH, ASSISTANT DIRECTOR IN CHARGE OF THE FBI'S CRIMINAL JUSTICE INFORMATION SERVICES DIVISION, OTHERWISE KNOWN AS CJIS, LOCATED IN CLARKSBURG, WEST VIRGINIA. THANK YOU FOR THE OPPORTUNITY TO SPEAK TO YOU TODAY ABOUT THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM, OR NICS, WHICH THE FBI OPERATES UNDER THE 1993 BRADY HANDGUN VIOLENCE PROTECTION ACT.

THE BRADY ACT REQUIRES BACKGROUND CHECKS ON FIREARM PURCHASERS BEFORE A FEDERALLY LICENSED GUN DEALER CAN TRANSFER A GUN. BRADY ACT BACKGROUND CHECKS REPLACED WHAT USED TO BE AN HONOR SYSTEM UNDER THE GUN CONTROL ACT, WHERE GUN DEALERS GENERALLY ACCEPTED AT FACE VALUE BUYERS' REPRESENTATIONS THAT THEY WERE NOT PROHIBITED FROM POSSESSING A FIREARM. FOR THE FIRST FIVE YEARS AFTER THE ENACTMENT OF THE BRADY ACT, THE BACKGROUND CHECKS WERE LIMITED TO HANDGUN TRANSFERS AND WERE PERFORMED BY THE CHIEF LAW ENFORCEMENT OFFICER WHERE THE GUN DEALER WAS LOCATED. BEGINNING ON NOVEMBER 30, 1998, DEALERS WERE REQUIRED TO CONTACT THE NICS FOR BRADY BACKGROUND CHECKS.

WHAT IS THE NICS ?

THE NICS IS A SYSTEM ESTABLISHED BY THE ATTORNEY GENERAL TO PROVIDE INFORMATION TO GUN DEALERS ON WHETHER A TRANSFER TO A NON-LICENSEE OF ANY FIREARM, INCLUDING HANDGUNS AND LONG GUNS, WOULD VIOLATE FEDERAL OR STATE LAW. AT THE ATTORNEY GENERAL'S DIRECTION, THE FBI DEVELOPED THE NICS THROUGH A

COOPERATIVE EFFORT WITH THE ATF AND STATE AND LOCAL LAW ENFORCEMENT AGENCIES. THE NICS IS A COMPUTERIZED BACKGROUND CHECK SYSTEM DESIGNED TO RESPOND WITHIN 30 SECONDS ON MOST BACKGROUND CHECK INQUIRIES.

THE SYSTEM WAS DESIGNED SO THAT STATES CAN AGREE TO SERVE AS A POINT OF CONTACT, OR POC, FOR THE NICS. A POC STATE DESIGNATES A STATE OR LOCAL LAW ENFORCEMENT AGENCY TO RECEIVE AND PROCESS NICS CHECKS FOR THE DEALERS IN THAT STATE. THERE ARE 15 STATES THAT SERVE AS POCs FOR ALL FIREARM TRANSACTIONS. SOME STATES SERVE AS A POC FOR HANDGUNS ONLY. WE REFER TO THESE STATES AS PARTIAL-POCs; CURRENTLY, THERE ARE 11 STATES THAT SERVE AS PARTIAL POCs. IN STATES THAT DECLINE TO SERVE AS A POC FOR THE SYSTEM, OR FOR LONG GUN TRANSFERS IN STATES THAT ARE PARTIAL POCs, DEALERS REQUEST A NICS CHECK BY CALLING A TOLL-FREE NUMBER AND PROVIDING INFORMATION IDENTIFYING THE PURCHASER TO A CALL CENTER UNDER CONTRACT WITH THE FBI. THE CALL CENTER THEN FORWARDS THE INFORMATION ELECTRONICALLY TO THE FBI NICS OPERATION CENTER, OPERATED BY CJIS IN CLARKSBURG, WEST VIRGINIA, FOR THE PROCESSING OF THE BACKGROUND CHECK.

AS OF JUNE 5, 2000, AFTER 18 MONTHS OF OPERATION, A TOTAL OF 13,364,378 BACKGROUND CHECK REQUESTS HAVE BEEN PROCESSED THROUGH THE NICS. OF THESE, 6,748,795 HAVE BEEN PROCESSED THROUGH THE POC STATES, AND 6,615,583 HAVE BEEN PROCESSED THROUGH THE NICS OPERATIONS CENTER. WE ARE EXTREMELY GRATEFUL TO OUR STATE POC PARTNERS, NOT ONLY BECAUSE THEY CARRY APPROXIMATELY HALF OF THE NATIONWIDE WORKLOAD IN PROCESSING NICS CHECKS, BUT

ALSO BECAUSE THEY ENHANCE THE THOROUGHNESS OF NICS CHECKS BY CHECKING OTHERWISE UNAVAILABLE STATE DATABASES AND BY BRINGING TO THE CHECKS EXPERTISE IN THEIR OWN STATE LAWS REGARDING FIREARMS ELIGIBILITY.

HOW A NICS CHECK WORKS

A NICS CHECK BEGINS AFTER A PROSPECTIVE PURCHASER PROVIDES PHOTO IDENTIFICATION TO THE GUN DEALER AND FILLS OUT AN ATF FIREARMS TRANSACTION FORM, KNOWN AS A FORM 4473. THE DEALER THEN CALLS THE APPROPRIATE CONTACT POINT, EITHER THE STATE POC OR THE CALL CENTER THAT PROCESSES THE CALLS FOR THE FBI'S NICS OPERATIONS CENTER, AND PROVIDES CERTAIN IDENTIFYING INFORMATION FROM THE 4473 THAT IS USED TO SEARCH THE DATABASE FOR POSSIBLE MATCHING RECORDS. THE IDENTIFYING INFORMATION INCLUDES NAME, DATE OF BIRTH, SEX, RACE, AND STATE OF RESIDENCE, AND ANY OTHER IDENTIFYING INFORMATION, SUCH AS SOCIAL SECURITY NUMBER, THAT MAY HAVE BEEN VOLUNTARILY PROVIDED BY THE PROSPECTIVE PURCHASER. THIS IDENTIFYING INFORMATION IS USED BY THE NICS TO SEARCH THREE FBI-MANAGED INFORMATION SYSTEMS FOR MATCHING RECORDS. SEE CHART "DATABASES SEARCHED BY THE NICS." THE THREE DATABASES CONTAIN OVER 37 MILLION RECORDS AND INCLUDE:

(1) THE NATIONAL CRIME INFORMATION CENTER (NCIC) 2000 WHICH CONTAINS OVER 500,000 RECORDS ON WANTED PERSONS AND NEARLY 250,000 SUBJECTS OF PROTECTION/RESTRAINING ORDERS;

(2) THE INTERSTATE IDENTIFICATION INDEX, OR IIJ, WHICH CONTAINS APPROXIMATELY 36 MILLION ACTIVE CRIMINAL HISTORY RECORDS; AND

(3) THE NICS INDEX, WHICH CONTAINS OVER ONE MILLION RECORDS OF OTHER PERSONS PROHIBITED FROM POSSESSING A FIREARM, INCLUDING INDIVIDUALS INVOLUNTARILY COMMITTED TO A MENTAL INSTITUTION OR ADJUDICATED MENTALLY DEFECTIVE, ILLEGAL ALIENS, AND INDIVIDUAL DISHONORABLY DISCHARGED FROM THE ARMED FORCES. IN POC STATES, STATE DATABASES, IN ADDITION TO THE FBI DATABASES, ARE ALSO CHECKED FOR DISQUALIFYING INFORMATION. THESE STATE DATABASES INCLUDE THE STATE'S OWN CRIMINAL HISTORY RECORDS AND, IN SOME CASES, STATE RECORDS ON PERSONS WHO HAVE BEEN INVOLUNTARILY COMMITTED TO A MENTAL INSTITUTION OR ARE UNDER A DOMESTIC VIOLENCE RESTRAINING ORDER.

IF THE DATABASE CHECK DOES NOT YIELD A RECORD THAT POTENTIALLY MATCHES THE IDENTIFYING INFORMATION PROVIDED TO THE SYSTEM BY THE DEALER, THEN THE CALL CENTER RESPONDS IMMEDIATELY ADVISING THE DEALER THAT THE TRANSACTION MAY "PROCEED," MEANING THAT NO INFORMATION WAS DISCOVERED DEMONSTRATING THAT THE PERSON IS PROHIBITED FROM POSSESSING A FIREARM. IN ADDITION TO THE PROCEED RESPONSE, THE NICS PROVIDES THE DEALER WITH A UNIQUE NUMBER ASSOCIATED WITH THE CHECK, KNOWN AS A NICS TRANSACTION NUMBER (NTN), WHICH THE DEALER IS REQUIRED TO RECORD ON THE 4473. IT TAKES 30 SECONDS OR LESS TO PROVIDE AN IMMEDIATE PROCEED AFTER INFORMATION IS ENTERED INTO THE NICS. ABOUT 71 PERCENT OF ALL PROSPECTIVE GUN PURCHASERS ARE AUTHORIZED BY THE NICS TO MAKE

THEIR PURCHASE IMMEDIATELY. SEE CHART, "NICS OPERATIONS TRANSACTION BREAKDOWN."

IF THE CHECK HITS ON A RECORD THAT COULD MATCH THE INDIVIDUAL, THEN THE CALL CENTER ADVISES THE DEALER THAT THE TRANSACTION IS "DELAYED." THE CALL CENTER PROVIDES THE DEALER WITH AN NTN. THE TRANSACTION GOES INTO THE NICS "DELAY QUEUE," AND IS AUTOMATICALLY REFERRED TO A NICS EXAMINER. NICS EXAMINERS ARE SPECIALLY-TRAINED FBI PERSONNEL, WHO, UNLIKE THE CALL CENTER PERSONNEL, ARE ALLOWED TO ACCESS CRIMINAL HISTORY AND OTHER SENSITIVE INFORMATION. THE NICS EXAMINER WILL TAKE THE TRANSACTION OUT OF THE DELAY QUEUE, AND REVIEW THE RECORD TO DETERMINE WHETHER IT IS COMPLETE, WHETHER IT MATCHES THE PROSPECTIVE BUYER, AND WHETHER IT DEMONSTRATES THAT THE PERSON IS DISQUALIFIED FROM POSSESSING A GUN. IF THE RECORD DEMONSTRATES THAT THE PERSON IS DISQUALIFIED FROM POSSESSING A GUN, THE NICS EXAMINER WILL ADVISE THE DEALER THAT THE TRANSACTION IS "DENIED." IF THE RECORD IS INCOMPLETE, OR INCONCLUSIVE, THEN THE EXAMINER ATTEMPTS TO ACQUIRE COMPLETE INFORMATION TO MAKE THE DETERMINATION WHETHER THE PROSPECTIVE GUN BUYER IS LEGALLY ALLOWED TO ACQUIRE A FIREARM.

NICS PROVIDES A DEFINITIVE RESPONSE OF EITHER "PROCEED" OR "DENIED" TO 95 PERCENT OF ALL REQUESTS WITHIN TWO HOURS OF RECEIPT OF THE INFORMATION TO SEARCH THE NICS. ONLY FIVE PERCENT OF PROSPECTIVE PURCHASERS HAVE TO WAIT MORE THAN TWO HOURS FOR A NICS RESPONSE, AND THESE PERSONS ARE GIVEN THEIR RESPONSE AS SOON AS THE NICS OBTAINS THE NECESSARY INFORMATION. A PURCHASER WHOSE

NICS CHECK TAKES MORE THAN 24 HOURS TO COMPLETE IS ALMOST 20 TIMES MORE LIKELY TO BE A PROHIBITED PERSON THAN THE AVERAGE GUN BUYER.

THE RECORD OF NICS OPERATIONS

IN THE FIRST 18 MONTHS OF OPERATION OF THE NICS, THE NICS HAS PROVEN TO BE A HIGHLY EFFECTIVE SYSTEM, PROCESSING OVER 13 MILLION INQUIRIES. MOST IMPORTANTLY, THE FBI DENIED APPROXIMATELY 116,182 FELONS, FUGITIVES, DOMESTIC VIOLENCE ABUSERS, AND OTHER PROHIBITED PERSONS FROM BUYING GUNS FROM LICENSED DEALERS. THIS EQUATES TO A DENIAL RATE OF APPROXIMATELY TWO PERCENT. BASED ON THE INFORMATION RECEIVED FROM INDIVIDUAL STATES AND THE BUREAU OF JUSTICE STATISTICS, THE FBI ESTIMATES THAT A TOTAL OF APPROXIMATELY 290,000 DENIALS HAVE BEEN MADE BY THE FBI AND POC STATES UNDER THE PERMANENT PROVISIONS OF THE BRADY ACT. SEE CHART, "DENIALS BY CATEGORY."

IN ADDITION TO FULFILLING ITS PRIMARY MISSION OF STOPPING ILLEGAL GUN PURCHASES BEFORE THEY OCCUR, NICS ALSO ASSISTS LAW ENFORCEMENT IN APPREHENDING FUGITIVES. I WOULD LIKE TO SHARE WITH YOU TWO RECENT EXAMPLES, FROM THE 3,223 FUGITIVES DENIED THUS FAR, OF HOW NICS POSITIVELY AFFECTS OUR NATION'S PUBLIC SAFETY IN THIS AREA.

*** ON APRIL 5, 2000, A NICS EXAMINER PULLED A TRANSACTION OUT OF THE TEXAS DELAY QUEUE. THE EXAMINER DENIED THE TRANSACTION DUE TO A FELONY CONVICTION, AND ALSO QUESTIONED WHY THE SUBJECT, WHO HAD A FELONY CONVICTION IN NEW JERSEY, WAS

ATTEMPTING TO PURCHASE A HANDGUN IN TEXAS. THE EXAMINER CHECKED THE RECORD OF THE SUBJECT AND FOUND THAT THE INDIVIDUAL WAS STILL ON PROBATION IN NEW JERSEY FOR A 1999 ARREST. THE EXAMINER CONTACTED THE SUPERIOR COURT IN NEW JERSEY TO INFORM THEM ABOUT THE SUBJECT'S ATTEMPT TO PURCHASE A FIREARM IN TEXAS. ON THE NEXT DAY, THE EXAMINER RECEIVED A CALL FROM THE SUPERIOR COURT STATING THAT A WARRANT MESSAGE HAD BEEN SENT TO THE AUTHORITIES IN TEXAS TO HAVE THE SUBJECT APPREHENDED FOR VIOLATING PAROLE. THE EXAMINER RECEIVED A CALL FROM THE TEXAS AUTHORITIES INDICATING THAT THE SUBJECT HAD BEEN APPREHENDED. THE SUBJECT INFORMED THE POLICE THAT HIS INTENTIONS WERE TO KILL HIS FATHER IN TEXAS AND THEN GO BACK TO NEW JERSEY AND KILL HIS MOTHER AND STEPMOTHER. THE OFFICER THANKED THE EXAMINER FOR CALLING TO CHECK ON THE PROBATION VIOLATION.

*** ON APRIL 13, 2000, AN EXAMINER IDENTIFIED A WARRANT FOR A PROSPECTIVE FIREARM PURCHASER IN NORTH CAROLINA AND CONTACTED THE ISSUING AGENCY. THE AGENCY SAID THAT THE INDIVIDUAL TRYING TO PURCHASE THE GUN WAS THE SUBJECT OF A MURDER INVESTIGATION FOR SHOOTING A FAMILY MEMBER. THE INDIVIDUAL HAD PREVIOUSLY ASSAULTED A LAW ENFORCEMENT OFFICER, AND WAS CONSIDERED TO BE ARMED AND DANGEROUS. THE EXAMINER PROVIDED THE ADDRESS OF THE GUN DEALER, AS WELL AS THE ADDRESS OF THE SUBJECT, TO THE AUTHORITIES. OFFICERS WERE DISPATCHED AND ARRESTED THE FELON. THE CAPTAIN THANKED THE EXAMINER FOR HER PROMPT ATTENTION TO THE MATTER.

I WOULD ALSO LIKE TO SHARE WITH YOU AN EXAMPLE OF HOW THE WORK OF OUR EXAMINERS FURTHERS THE BRADY ACT'S GOAL OF PREVENTING GUN VIOLENCE IN THE CONTEXT OF DOMESTIC VIOLENCE.

*** ON APRIL 21, 2000, AN EXAMINER WAS INVESTIGATING A DISORDERLY CONDUCT CHARGE ON A PROSPECTIVE GUN BUYER TO SEE IF IT WAS RELATED TO DOMESTIC VIOLENCE, AND THEREFORE MEANT THAT THE PERSON WAS PROHIBITED FROM ACQUIRING A GUN. THE ILLINOIS AUTHORITIES INFORMED THE EXAMINER THAT THE CHARGE WAS BASED ON THE FOLLOWING FACTS: THE INDIVIDUAL HAD BEATEN HIS 21 YEAR OLD WIFE, WHO WAS SIX MONTHS PREGNANT AT THE TIME, DRAGGED HER FROM ROOM TO ROOM, PUSHED HER TO THE FLOOR AND SAT ON HER STOMACH. BASED ON THIS INFORMATION, THE INDIVIDUAL'S ATTEMPT TO PURCHASE A GUN WAS DENIED.

SYSTEM ACCURACY, SECURITY AND PRIVACY

THE FBI CONTINUES TO WORK TO BUILD THE VOLUME AND COMPLETENESS OF RECORDS IN THE NICS, BUT THE ACCURACY OF THE RECORDS CURRENTLY IN THE NICS APPEARS TO BE QUITE HIGH. THE NICS HAS A VERY EFFECTIVE APPEALS SYSTEM WHICH ALLOWS INDIVIDUALS WHO WISH TO CONTEST A DENIAL TO APPEAL THE DECISION. LESS THAN ONE PERCENT OF ALL CHECKS CONDUCTED BY THE NICS OPERATIONS CENTER HAVE RESULTED IN DENIALS THAT ARE SUBSEQUENTLY REVERSED. THESE REVERSALS EFFECT ONLY 3.3 PERCENT OF ALL DENIALS BY THE NICS OPERATIONS CENTER AND IN ABOUT HALF OF THESE REVERSALS, THE MISTAKE WAS THE RESULT OF INFORMATION MISSING FROM THE ORIGINAL RECORD, NOT A NICS ERROR.

THE FBI HAS TAKEN A NUMBER OF STEPS TO ENSURE THAT THE INFORMATION IN THE SYSTEM IS SECURE FROM ANY UNAUTHORIZED ACCESS. ONE OF THE PRIMARY WAYS THAT WE ARE ABLE TO ASSURE THAT THE SENSITIVE INFORMATION IN THE NICS IS NOT MISUSED (FOR EXAMPLE, BY FIREARMS DEALERS WHO MIGHT USE THE NICS TO DO UNAUTHORIZED BACKGROUND CHECKS ON PERSONS WHO ARE NOT ATTEMPTING TO BUY A FIREARM) IS BY CONDUCTING AUDITS. WE USE INFORMATION ABOUT CHECKS THAT HAVE BEEN CONDUCTED TO MAKE THOSE AUDITS. WE ALSO USE AUDITS TO ASSURE THAT UNSCRUPULOUS FIREARMS DEALERS DO NOT SUBMIT INACCURATE INFORMATION TO THE NICS IN ORDER TO AVOID THE EFFECT OF A BACKGROUND CHECK ON A DISQUALIFIED BUYER. CURRENTLY, ACCORDING TO THE REGULATIONS GOVERNING THE NICS, AFTER 180 DAYS, THE NICS AUTOMATICALLY PURGES ALL RECORDS RELATING TO A BACKGROUND CHECK WHICH RESULTS IN AN ALLOWED TRANSFER OF A FIREARM. THE RECORDS ARE RETAINED FOR THIS BRIEF PERIOD OF TIME TO GIVE US SOME ABILITY TO AUDIT THE USE AND PERFORMANCE OF THE NICS.

WAYS TO IMPROVE THE NICS

AS THE DISTINGUISHED MEMBERS OF THIS COMMITTEE ARE AWARE, THE NICS PROGRAM HAS RECEIVED MUCH PUBLICITY, INTEREST, AND OVERSIGHT DURING ITS DEVELOPMENT AND SINCE IT BECAME OPERATIONAL. AT THE FBI, WE ARE CONTINUOUSLY WORKING TO IMPROVE AND PERFECT THE NICS, SO THAT IT WILL BE AS EFFICIENT, THOROUGH, CONVENIENT AND RELIABLE AS POSSIBLE. TODAY I WOULD LIKE TO

ADDRESS A FEW KEY AREAS FOR IMPROVING THE NICS: THE ISSUE OF DEFAULT PROCEEDS, AND THE ISSUE OF SYSTEM AVAILABILITY.

THE ISSUE OF DEFAULT PROCEEDS

AS CURRENTLY WRITTEN, THE BRADY LAW SAYS THAT IF THE NICS DOES NOT PROVIDE A DEFINITIVE RESPONSE TO THE DEALER WITHIN THREE BUSINESS DAYS OF THE TIME THAT THE DEALER PROVIDES THE SYSTEM WITH THE INFORMATION NEEDED FOR A BACKGROUND CHECK, THE DEALER IS NOT PROHIBITED FROM TRANSFERRING THE FIREARM. WE REFER TO CASES WHERE THE BACKGROUND CHECK CANNOT BE COMPLETED WITHIN THE STATUTORILY-ALLOWED THREE BUSINESS DAYS AS "DEFAULT PROCEEDS." DEFAULT PROCEEDS OCCUR PRIMARILY DUE TO LACK OF ARREST DISPOSITIONS IN AUTOMATED STATE CRIMINAL HISTORY RECORDS.

A TYPICAL EXAMPLE OF A NICS TRANSACTION LEADING TO A DEFAULT PROCEED INVOLVES A RECORD SHOWING A FELONY-RELATED ARREST, WHICH IS NOT A BRADY DISQUALIFIER IN AND OF ITSELF, WITH NO INFORMATION TO INDICATE WHETHER THE CASE WAS PROSECUTED AND WHETHER IT RESULTED IN A CONVICTION. (INFORMATION DEMONSTRATING THAT THE PERSON WAS EITHER UNDER INDICTMENT, OR HAD BEEN CONVICTED WOULD CREATE A BRADY DISQUALIFIER.) IN THESE INSTANCES, ADDITIONAL RESEARCH IS NEEDED BEFORE THE TRANSACTION CAN BE APPROVED OR DENIED. THE ABILITY TO OBTAIN THE REQUIRED DISPOSITION INFORMATION IN A TIMELY MANNER IS DIRECTLY AFFECTED BY SEVERAL FACTORS, SUCH AS WHETHER THE COURT IS OPEN, THE WILLINGNESS OF THE COURT'S STAFF TO ASSIST THE FBI, AND THE ACCESSIBILITY OF THE DISPOSITION INFORMATION. THE FBI MUST RELY

ON THE COOPERATION OF STATE AND LOCAL AGENCIES TO OBTAIN INFORMATION NEEDED TO DETERMINE A PURCHASER'S ELIGIBILITY. MAKING THE RESOLUTION OF DELAYED TRANSACTIONS WITHIN THREE BUSINESS DAYS OFTEN BEYOND THE FBI'S CONTROL.

OVER THE PAST 18 MONTHS, THERE WERE OVER 180,000 DEFAULT PROCEED TRANSACTIONS IN WHICH THE FBI DID NOT GET INFORMATION ALLOWING AN AFFIRMATIVE "DENY" OR "PROCEED" RESPONSE WITHIN THE THREE BUSINESS DAYS ALLOWED BY THE BRADY LAW. OF THOSE 180,000 CASES, THE FBI IS AWARE OF 6,084 INDIVIDUALS WHO WERE SOLD FIREARMS AFTER THE THREE DAYS EXPIRED AND WERE LATER DETERMINED TO BE PROHIBITED PERSONS. (WE REFER TO THESE AS "DELAYED DENIALS.") WE HAVE NO WAY OF KNOWING HOW MANY MORE OF THE 180,000 CASES OF DEFAULT PROCEEDS RESULTED IN THE TRANSFER OF A GUN TO A PROHIBITED PERSON, SINCE IN MOST OF THE CASES THERE IS NEVER A DEFINITIVE RESOLUTION OF WHETHER OR NOT THE SUBJECT OF THE ARREST RECORD WAS IN FACT A PROHIBITED PERSON BEFORE THE RECORD OF THE DEFAULT PROCEED IS DESTROYED.

DELAYED DENIALS ARE A VERY SIGNIFICANT CAUSE FOR CONCERN BECAUSE THEY PRESENT PUBLIC SAFETY RISKS AND PLACE RESOURCE DEMANDS ON LAW ENFORCEMENT AGENCIES, WHO MUST THEN GO AND RETRIEVE THE FIREARMS. FORTUNATELY, WE DO NOT BELIEVE THAT ALL DEFAULT PROCEEDS RESULT IN PROHIBITED PEOPLE GETTING GUNS, BECAUSE SOME RESPONSIBLE GUN DEALERS HAVE ADOPTED CORPORATE POLICIES TO NEVER SELL A FIREARM WITHOUT A "PROCEED" RESPONSE FROM THE NICS, EVEN IF THAT RESPONSE TAKES LONGER THAN THREE DAYS.

THE PROBLEM OF DELAYED DENIALS AND DEFAULT PROCEEDS HAS BEEN DOCUMENTED FAIRLY THOROUGHLY BY THE GENERAL ACCOUNTING OFFICE (GAO) IN ONE OF THEIR REVIEWS OF THE NICS. IN THEIR REPORT, GUN CONTROL: OPTIONS FOR IMPROVING THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM, (GAO/GGD/00-56) DATED APRIL, 2000, GAO OUTLINED THREE INITIATIVES TO HELP ADDRESS THE PROBLEM OF DEFAULT PROCEEDS. FIRST, THEY DISCUSS FEDERAL GRANT FUNDING TO IMPROVE STATE CRIMINAL HISTORY RECORDS. SECOND, THEY DISCUSS ENCOURAGING STATE PARTICIPATION IN NICS. THIRD, THEY DISCUSS AMENDING THE BRADY ACT'S THREE-BUSINESS-DAY DEFAULT PROCEED REQUIREMENT. I WOULD LIKE TO ADDRESS EACH OF THESE -- ALL OF WHICH WOULD HELP RESOLVE THE PROBLEM OF DEFAULT PROCEEDS -- VERY BRIEFLY, INASMUCH AS OPTIONS TO IMPROVE NICS AND REDUCE THE NUMBER OF DEFAULT PROCEED TRANSACTIONS AND FIREARM RETRIEVALS MAY NEED TO FOCUS ON LEGISLATIVE, RATHER THAN ADMINISTRATIVE, EFFORTS.

CONTINUED FUNDING TO PROVIDE FEDERAL GRANTS TO STATES FOR IMPROVING THE QUALITY AND COMPLETENESS OF AUTOMATED CRIMINAL HISTORY RECORDS IS QUITE IMPORTANT. THE FUNDING PROVIDED TO STATES UNDER THE NATIONAL CRIMINAL HISTORY IMPROVEMENT PROGRAM (OR "NCHIP"), WHICH IS NOW FUNDED AS PART OF THE CRIME IDENTIFICATION TECHNOLOGY ACT, TOTALED \$273 MILLION DURING FISCAL YEARS 1995 THROUGH 1999. ACCORDING TO A RECENT ANALYSIS BY THE DEPARTMENT OF JUSTICE'S BUREAU OF JUSTICE STATISTICS, THESE FUNDS HAVE HAD A SUBSTANTIAL IMPACT: THE NUMBER OF RECORDS THAT INCLUDE DISPOSITIONS AND ARE ACCESSIBLE TO THE NICS THROUGH III INCREASED

BY ALMOST 80 PERCENT BETWEEN 1993 AND 1999. BECAUSE THERE IS A VERY LONG WAY TO GO IN ASSURING FULL AND COMPLETE AUTOMATION AND ACCESSIBILITY, HOWEVER, THIS OPTION, WHILE CRITICAL, WILL NOT RESOLVE THE PROBLEM OF DEFAULT PROCEEDS.

THE FBI HAS ALWAYS BEEN A STRONG PROPONENT OF ENCOURAGING STATE PARTICIPATION IN NICS, AND THE GAO REPORT IDENTIFIES FINANCIAL FACTORS DISCOURAGING STATE PARTICIPATION. THE GAO REPORT SUGGESTS THAT SOME FORM OF FEDERAL FINANCIAL ASSISTANCE WOULD ENCOURAGE STATE PARTICIPATION. BECAUSE STATES CAN HAVE ADVANTAGES OVER THE FBI IN CONDUCTING NICS BACKGROUND CHECKS -SUCH AS ACCESS TO ADDITIONAL DATA IN THEIR OWN STATE AND THE ABILITY TO BETTER INTERPRET THEIR OWN CRIMINAL HISTORY RECORDS AND FIREARM LAWS- INCREASING STATE PARTICIPATION IN NICS COULD HELP IMPROVE NICS' EFFECTIVENESS AND REDUCE DEFAULT PROCEED TRANSACTIONS. HOWEVER, STATE PARTICIPATION WOULD LIKELY NOT ELIMINATE THE PROBLEM OF DEFAULT PROCEEDS, BECAUSE THE LACK OF AVAILABLE DISPOSITION INFORMATION WOULD CONFRONT THE STATES AS WELL AS THE FBI.

AMENDING THE THREE BUSINESS-DAY DEFAULT PROCEED REQUIREMENT OF THE BRADY ACT TO TREAT DIFFERENTLY THOSE POTENTIAL PURCHASERS WITH DISQUALIFYING OFFENSE ARRESTS HAVING NO DISPOSITION INFORMATION WOULD PROVIDE IMMEDIATE RELIEF FOR LAW ENFORCEMENT FROM THE PROBLEM OF DEFAULT PROCEEDS. FOR EXAMPLE, THE STATE OF COLORADO PROVIDES BY STATE LAW THAT A FIREARM TRANSFER CAN BE DENIED ON THE BASIS OF A DISQUALIFYING OFFENSE ARREST ALONE, AND THE PROSPECTIVE PURCHASER IS GIVEN THE

OPPORTUNITY TO CHALLENGE THE DENIAL BY SHOWING THAT THE ARREST DID NOT LEAD TO A CONVICTION. THE STATE OF WASHINGTON DEALS WITH THE PROBLEM BY HAVING A STATE LAW THAT ALLOWS UP TO FIVE DAYS TO PERFORM A BACKGROUND CHECK. THIS LAW ALSO SAYS THAT IF AVAILABLE RECORDS INDICATE THAT THE PROSPECTIVE PURCHASER HAS AN ARREST FOR A POTENTIALLY DISQUALIFYING OFFENSE, A HOLD FOR UP TO 30 DAYS CAN BE PLACED ON THE TRANSACTION'S APPROVAL, PENDING THE RECEIPT OF DISPOSITION INFORMATION TO VERIFY THE PURCHASER'S ELIGIBILITY TO POSSESS A FIREARM. THE LAW ALSO PROVIDES THAT AN EXTENSION OF THE HOLD CAN BE OBTAINED IF AFTER 30 DAYS THE DISPOSITION OF THE ARREST STILL CANNOT BE VERIFIED.

SYSTEM AVAILABILITY AND EFFORTS TO MINIMIZE DOWNTIME

IN REGARDS TO THE SYSTEM OUTAGES EXPERIENCED DURING THE MONTH OF MAY, 2000, LET ME BEGIN BY SAYING THAT THE FBI'S GOAL IS TO MINIMIZE SYSTEM DOWN TIME. THE FBI RECOGNIZES THE DISRUPTIVE EFFECT DOWNTIME CAN HAVE ON THE BUSINESS OPERATIONS OF GUN DEALERS AND THE RESULTING INCONVENIENCE TO PROSPECTIVE GUN BUYERS. THE FBI IS WORKING TOWARD MAXIMIZING SYSTEM AVAILABILITY DURING THE NORMAL OPERATING HOURS OF THE NICS. HOWEVER, THE REALITY IS THAT HARDWARE AND SOFTWARE PROBLEMS WILL OCCUR DURING THE NORMAL OPERATION AND MAINTENANCE OF COMPLEX INFORMATION SYSTEMS.

THE OVERALL RECORD OF THE SYSTEM'S AVAILABILITY DURING ITS OPERATING HOURS THROUGH MAY 2000 IS JUST OVER 96 PERCENT. SEE CHARTS, "AVAILABILITY OF DATABASES COMPRISING NICS" AND "NICS AVAILABILITY." HISTORICALLY, SINCE THE NICS BEGAN OPERATION ON NOVEMBER 30, 1998, SYSTEM AVAILABILITY GENERALLY SHOWED STEADY IMPROVEMENT OVER THE FIRST SEVEN MONTHS. BY JUNE, 1999, THE NICS WAS AVAILABLE OVER 99 PERCENT OF SCHEDULED OPERATING HOURS. HOWEVER, BEGINNING JULY 11, 1999, THE FBI REPLACED TWO MAJOR COMPUTER SYSTEMS, BOTH OF WHICH INTERFACE WITH THE NICS. ONE OF THE NEW SYSTEMS, THE NCIC 2000, WAS IMPLEMENTED JULY 11, 1999. THE INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM (IAFIS) WAS INTERFACED WITH NCIC 2000 AND NICS ON JULY 28, 1999. OUTAGES FOR NICS OCCURRED DURING JULY AND AUGUST DUE TO THE IMPLEMENTATION OF THESE TWO SYSTEMS. BY DECEMBER, 1999, HOWEVER, SYSTEM AVAILABILITY WAS 95.32 PERCENT OF SCHEDULED OPERATING HOURS.

THE RECENT INTERSTATE IDENTIFICATION INDEX (III) OUTAGE OCCURRING ON MAY 11-14, 17, AND 22, 2000, RESULTED IN THE LOSS OF SERVICE TO NOT ONLY THE NICS SYSTEM, BUT TO IAFIS AND FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES AS WELL. COLLECTIVELY, IAFIS, III, AND NICS ARE REFERRED TO AS A SYSTEM OF SYSTEMS (SOS) AND PROVIDE FINGERPRINT IDENTIFICATION CAPABILITIES, CRIMINAL HISTORY SERVICES, STOLEN PROPERTY AND WANTED PERSON CHECKS, AND BACKGROUND CHECKS AS REQUIRED BY THE BRADY ACT. THE SOS SERVES THE PUBLIC BY FACILITATING POLICE WORK AND FOSTERING POLICE OFFICER SAFETY. IT ALSO ENSURES RETAIL FIREARMS DEALERS DO NOT

SELL GUNS TO PROHIBITED PERSONS. LAST MONTH, THE OUTAGES OF THE III DATABASE, WHICH CONTAINS 95 PERCENT OF THE RECORDS CHECKED BY THE NICS, ULTIMATELY CAUSED THE LOSS OF SERVICE TO NICS. THIS RESULTED IN THE INABILITY TO RESPOND TO INQUIRIES FROM FIREARMS DEALERS. THE OUTAGES ALSO PRECLUDED CJIS FROM MEETING ITS IAFIS FINGERPRINT CUSTOMER SERVICE GOALS.

UNTIL MAY 11, THE CJIS SOS EXPERIENCED AN OUTSTANDING RECORD OF RELIABILITY, WITH ONLY THOSE PROBLEMS TYPICAL OF NEW AND COMPLEX INFORMATION SYSTEMS. UNSCHEDULED DOWNTIME WAS VERY LOW, AND FROM SEPTEMBER, 1999 TO APRIL, 2000, THE III SEGMENT OF IAFIS HAD A SERVICE AVAILABILITY RATE OF 99.03 PERCENT, PROCESSING AN AVERAGE OF 263,432 TRANSACTIONS DAILY.

PRELIMINARY ROOT CAUSE ANALYSIS OF THE MAY OUTAGES HAS RULED OUT OPERATOR-INDUCED ERROR, HACKER-INDUCED ERROR, VIRUS-INDUCED ERROR OR A HARDWARE-INDUCED ERROR. WHILE THE CAUSE OF THE OUTAGES IS STILL UNDER REVIEW, ALL INDICATIONS POINT TO THE ROOT CAUSE AS A DEFECT IN THE PROPRIETARY DATABASE MANAGEMENT SOFTWARE WHICH CAUSED AN INCORRECT AND CORRUPTING CALCULATION OF TABLE SPACES WITHIN III. SHORT-TERM RISK REDUCTIONS STEPS HAVE BEEN TAKEN. RESEARCH AND ANALYSIS TO DATE HAS RESULTED IN A SHORT-TERM REPAIR THAT IS EXPECTED TO REDUCE THE LIKELIHOOD OF THIS PROBLEM RECURRING. THESE STEPS ARE EXPECTED TO REDUCE THE RISK OF FUTURE DATABASE CORRUPTION WHILE A LONG-TERM REPAIR IS EVALUATED AND IMPLEMENTED. STANDARD OPERATING PROTOCOLS EXIST TO ENSURE SERVICE IS RESTORED AS SOON AS POSSIBLE, IF AND WHEN AN

INCIDENT OCCURS. THESE PROTOCOLS WERE FOLLOWED DURING EACH OF THE OUTAGES.

ALL THESE SYSTEMS AND SEGMENTS FUNCTION WITH A HIGH DEGREE OF INTERDEPENDENCE, RELYING UPON COMPLEX INTERCONNECTED INDICES AND TABLES TO OPERATE PROPERLY AND TO ENSURE HIGH CONFIDENCE IN INFORMATION FURNISHED TO USERS. AN OUTAGE MAY OCCUR AS A RESULT OF A SYSTEM FAILURE WITHIN THE NICS OR WHEN NCIC 2000 OR IAFIS CANNOT SUPPLY THE SERVICES NEEDED TO PERFORM A COMPLETE NICS CHECK. THE NICS IS DESIGNED TO CHECK ALL THREE DATABASES: THE NCIC 2000, III, AND THE NICS INDEX. IF ONE OF THESE DATABASES IS OFF-LINE OR DOWN, THE NICS STILL SEARCHES THE REMAINING ACTIVE DATABASES FOR 100 PERCENT ACCURACY. ONCE THE PREVIOUSLY OFF-LINE DATABASE BECOMES AVAILABLE, THE SEARCH IS COMPLETED AND THE RESPONSE IS SENT TO THE REQUESTER. HOWEVER, THE NICS IS PLACED IN AN "OUT OF SERVICE" PERIOD WHEN ANY OF THESE SYSTEMS IS UNABLE TO SUPPORT A COMPLETE CHECK. THIS POLICY, SUPPORTED BY THE CJIS ADVISORY POLICY BOARD, SIGNIFICANTLY REDUCES THE NUMBER OF DELAY RESPONSES RETURNED TO GUN DEALERS.

WHENEVER AN UNSCHEDULED OUTAGE OCCURS, THE NICS PROGRAM OFFICE WORKS DILIGENTLY TO PROVIDE AMPLE NOTIFICATION TO POCs AND LICENSED GUN DEALERS. PER EXISTING NICS POLICY, GUN DEALERS ARE NOTIFIED OF AN UNSCHEDULED OUTAGE BY PLACING A MESSAGE ON THE CALL CENTERS' PHONE SYSTEM. WHEN AN UNSCHEDULED OUTAGE OCCURS, THE VOICE RECOGNITION UNIT INFORMS THE GUN DEALER THAT THE SYSTEM IS TEMPORARILY OUT OF SERVICE. POC STATES ARE NOTIFIED OF AN

UNSCHEDULED OUTAGE BY A MESSAGE SENT VIA NCIC 2000. HOWEVER, DUE TO THE EXTENT OF LAST MONTH'S OUTAGE, ADDITIONAL PLANNING AND PRO-ACTIVE MEASURES WERE TAKEN TO HELP ALLEVIATE ANY EFFECTS FELT. SOME OF THE ADDITIONAL STEPS TAKEN INCLUDE:

1. A NOTICE WAS RELEASED TO THE PUBLIC AND FAXED TO 76 DIFFERENT POC STATE CONTACTS INCLUDING CONTROL TERMINAL OFFICERS AND VARIOUS OTHER NICS CONTACTS TO ADVISE OF THE OUTAGE AND THE ANTICIPATED TIME OF RESUMED SERVICE;
2. PHONE CALLS WERE PLACED TO ALL POC AND PARTIAL-POC STATES TO ADVISE OF THE SAME;
3. PHONE CALLS WERE PLACED TO 1,364 GUN DEALERS THAT WERE STATISTICALLY SHOWN TO PROCESS LARGE NUMBERS OF TRANSACTIONS TO ADVISE OF THE OUTAGE AND ANTICIPATED TIME OF RESUMED SERVICE. THE NORMAL OUTAGE MESSAGE HEARD BY OTHER LICENSED GUN DEALERS ON THE CALL CENTER TELEPHONE SYSTEM WAS MODIFIED TO REFLECT PERTINENT INFORMATION PREVIOUSLY FAXED TO POC AND OTHER NICS CONTACTS.
4. LICENSED GUN DEALERS PARTICIPATING IN THE CALL CENTER PILOT PROJECT IN THE STATES OF RHODE ISLAND AND DELAWARE WERE CALLED AND ADVISED OF THE OUTAGE, ANTICIPATED RESUMED SERVICE, AND INFORMED THAT IT WAS A SYSTEM-WIDE ISSUE AND NOT PROJECT-SPECIFIC.

THE NICS PROGRAM OFFICE ALSO PREPARED MEASURES FOR THE QUICK COMPLETION OF BACKLOGGED TRANSACTIONS. ADDITIONALLY, NICS

EMPLOYEES WERE ON STANDBY AND USED AS NEEDED FOR THE INCREASED DELAY QUEUE TRANSACTIONS ONCE THE SYSTEM BECAME OPERATIONAL. THIS MEASURE PROVED EFFECTIVE BECAUSE THE WORK IN PROGRESS REMAINED AT A NORMAL OR BELOW NORMAL LEVEL THROUGHOUT THE FIRST OPERATIONAL DAY. THE CALL CENTERS ALSO PROVIDED EXTRA STAFFING AND OVERTIME TO THEIR PERSONNEL TO ASSIST IN THE MANAGEMENT OF HIGH VOLUME INCOMING CALLS. THE NICS PROGRAM OFFICE RECOGNIZED THE FACT THAT THE CALL CENTERS MAY HAVE BEEN DIFFICULT TO REACH AT TIMES, THEREFORE TRANSACTIONS WERE HANDLED IMMEDIATELY FOR ANY GUN DEALERS CALLING INTO THE NICS CUSTOMER SERVICE. WHENEVER NICS EXAMINERS WERE CALLING GUN DEALERS TO ADVISE OF A FINAL STATUS FOR DELAYED TRANSACTIONS, THEY ALSO INQUIRED OF THE DEALER IF THERE WERE ANY OTHER TRANSACTIONS THAT THEY COULD HANDLE IMMEDIATELY FOR THEM. FOLLOWING THE OUTAGE, POC STATES WERE PROVIDED ADDITIONAL PROCESSING TIME BEYOND THE NORMAL OPERATING HOURS TO FACILITATE THE PROCESSING OF BATCHES OF TRANSACTIONS THAT HAD BEEN HELD BY THE STATES. THIS ACTION PROVIDED THE ADDED BENEFIT OF REDUCING THE PROCESSING LOAD ON THE NICS SYSTEM WHEN THE CALL CENTERS AND FBI OPERATIONS WERE RESUMED.

MEASURES ARE BEING LOOKED INTO TO MINIMIZE THE RISK OF RECURRENCE. THE BEST ROUTE FOR IMMEDIATE CORRECTIVE ACTION DURING A SYSTEM OUTAGE IS THE DEFINITIVE IDENTIFICATION OF THE ROOT CAUSE AND SUBSEQUENT CORRECTION. THIS GREATLY REDUCES THE RISK OF A SIMILAR EVENT, BUT IS NO GUARANTEE THAT ANOTHER EVENT WITH A DIFFERENT CATALYST WILL NEVER OCCUR. SMALL-SCALE DATABASE FAILURES ARE MANAGED AND CORRECTED WITHIN THE CURRENT SYSTEM

DESIGN WITH LITTLE OR NO IMPACT TO USERS. THESE EVENTS WERE WITHIN THE DESIGN LIMITS FOR THE BACKUP AND RECOVERY OF THE III DATABASE.

THE LENGTHY RECOVERY PERIOD OF THE OUTAGE EXPERIENCED THIS PAST MAY MIGHT HAVE BEEN PREVENTED BY THE DEVELOPMENT AND INSTALLATION OF A FULLY-REDUNDANT, IDENTICAL III DATABASE. THIS REQUIRES THE ACQUISITION OF ADDITIONAL DATA STORAGE HARDWARE, COMMERCIAL SOFTWARE, AND DEVELOPMENT OF DATA MANAGEMENT SOFTWARE TO MAINTAIN A FULL-TIME MIRRORED VERSION OF THE III SEGMENT. THE COST FOR THIS EFFORT IS ESTIMATED AT \$7 MILLION WITH RECURRING MANAGEMENT COSTS EACH FISCAL YEAR ESTIMATED AT \$850 THOUSAND.

FURTHER MEASURES TO ENHANCE AVAILABILITY AND RECOVERY INCLUDE REDUNDANCY OF OTHER CJIS DATABASES AND SYSTEMS, SUCH AS NCIC 2000 AND NICS, WITH THE PHYSICAL LOCATION OF THESE REDUNDANT SYSTEMS AT ALTERNATE SITES. THE ACQUISITION JUST DESCRIBED, IN ADDITION TO THE PRUDENT MANAGEMENT OF RISK AS IT RELATES TO THE OPERATION OF LARGE INFORMATION SYSTEMS, WILL ENSURE MAXIMUM AVAILABILITY.

OTHER PLANNED UPGRADES AND IMPROVEMENTS

A TOTAL OF \$9 MILLION WAS ALLOCATED TO UPGRADE THE NICS IN FISCAL YEAR 2000. OF THIS AMOUNT, \$6.5 MILLION OF FISCAL YEAR 2000 FUNDING WAS DEDICATED FOR UPGRADES WHILE \$2.5 MILLION OF PRIOR YEAR CARRY FORWARD FUNDING IS BEING DEDICATED TO THE DEVELOPMENT OF A NICS IMPROVEMENT: ELECTRONIC ACCESS TO NICS FOR FIREARMS DEALERS. SOME OF THE PLANNED SYSTEM UPGRADES INCLUDE:

- ▶ THE PURCHASE AND INSTALLATION OF COMMERCIAL OFF-THE-SHELF SOFTWARE UPGRADES. THESE ARE KNOWN IN THE INDUSTRY AS "COTS" SOFTWARE UPGRADES AND ARE ROUTINE WITH ANY OPERATING SYSTEM. THIS IS AN ON-GOING ENHANCEMENT FOR FISCAL YEAR 2000 AND 2001.
- ▶ BECAUSE NCIC 2000 ACCESSES III VIA THE IAFIS WHEN CONDUCTING A SEARCH, A BYPASS IS UNDER DEVELOPMENT WHICH WILL ALLOW THE NICS TO CONTINUE RUNNING WHEN THE IDENTIFICATION TASKING AND NETWORKING (ITN) SEGMENT OF THE IAFIS IS DOWN OR EXPERIENCING DIFFICULTIES. EXPECTED COMPLETION DATE FOR THIS PROJECT IS FALL OF 2000.
- ▶ TWO ADDITIONAL PRODUCTION SERVERS WILL BE INSTALLED TO HANDLE THE EXPECTED 20 PERCENT INCREASE IN VOLUME DURING SEASONAL PEAK TIME -- SEPTEMBER THROUGH DECEMBER. INSTALLATION IS EXPECTED IN FISCAL YEAR 2000.
- ▶ THE DEVELOPMENT AND TESTING OF AN INTERFACE FOR THE NICS DIRECT ELECTRONIC ACCESS BY FIREARMS DEALERS TO INITIATE A NICS SEARCH. DEVELOPMENT FOR THIS INTERFACE WILL CONTINUE THROUGHOUT FISCAL YEAR 2000.
- ▶ THE IMPLEMENTATION OF NEW FILTERING RULES WHICH WILL ALLOW NICS TO ELIMINATE MANY OF THE FALSE POSITIVES RETURNED, CONSEQUENTLY PROVIDING MORE IMMEDIATE PROCEEDS, BEFORE PROVIDING THE SEARCH RESPONSE TO THE

FBI AND STATE USERS. TESTING AND IMPLEMENTATION ARE EXPECTED TO BE COMPLETED IN FISCAL YEAR 2000.

CURRENTLY, THERE ARE APPROXIMATELY 60 OTHER ENHANCEMENTS OR SOFTWARE CHANGES THAT HAVE BEEN IDENTIFIED AND PRIORITIZED BY THE NICS PROGRAM OFFICE AND ARE EXPECTED TO BE IMPLEMENTED IN FISCAL YEARS 2000 AND 2001. THE FBI'S DEPUTY ASSISTANT DIRECTOR FOR OPERATIONS IN THE CJIS DIVISION AND THE APPROPRIATE SYSTEM MANAGERS HAVE THE FINAL DECISION AS TO WHEN TO APPLY SYSTEM UPGRADES OR MODIFICATIONS. KEEPING GUN DEALERS AND OUR PARTNERS IN LAW ENFORCEMENT IN MIND, ROUTINE MAINTENANCE IS ALWAYS SCHEDULED DURING NON-OPERATIONAL HOURS - 1:00 AM UNTIL 8:00 AM EASTERN TIME.

AS I PREVIOUSLY STATED, NICS INTERFACES WITH BOTH NCIC 2000 AND THE IAFIS. UPGRADES AND ENHANCEMENTS FOR THESE SYSTEMS ARE ALWAYS SCHEDULED DURING PERIODS WHICH PROVIDE THE LEAST IMPACT TO LAW ENFORCEMENT AGENCIES NATIONWIDE. MOST OF THE UPGRADES AND ENHANCEMENTS ARE SCHEDULED DURING THE LEAST USED PERIODS, PRIMARILY EARLY SUNDAY MORNINGS, AND HAVE NO IMPACT UPON NICS' OPERATIONS. HOWEVER, THERE HAVE BEEN CASES WHEN ADDITIONAL TIME IS REQUIRED AND THE NICS CAN BE AFFECTED. NATURALLY, DURING SUCH NON-SCHEDULED INTERRUPTIONS IN SERVICE TO NCIC 2000 AND IAFIS, THE FBI'S PRIORITY IS TO RESTORE LAW ENFORCEMENT FUNCTIONS FIRST, PRIOR TO THE RESTORATION OF NICS SERVICES.

ELECTRONIC ACCESS IS ALLUDED TO IN BOTH THE BRADY ACT AND FEDERAL REGISTER, WHICH SAY THAT "THE NICS SHALL ALLOW

FEDERALLY LICENSED GUN DEALERS TO CONTACT THE SYSTEM BY TELEPHONE, OR OTHER ELECTRONIC MEANS IN ADDITION TO THE TELEPHONE, IN ORDER TO CONTACT THE SYSTEM." GUN DEALERS WITH ELECTRONIC DIAL-UP ACCESS WILL BE ABLE TO CONTACT THE NICS, EXCLUDING SCHEDULED AND UNSCHEDULED DOWNTIME. A SURVEY WAS USED TO DETERMINE WHICH METHOD OF ELECTRONIC ACCESS WOULD ACCOMMODATE MOST LICENSED GUN DEALERS IN THE MOST COST-EFFECTIVE MANNER. COST COMPARISONS WERE PERFORMED ON THE DEVELOPMENT AND LOGISTICS TO OPERATE AND MAINTAIN A PC-BASED SOFTWARE SOLUTION USING SECURE DEDICATED COMMUNICATIONS OR A SECURE INTERNET SOLUTION VIA COTS SOFTWARE.

A SECURE INTERNET SOLUTION SEEMED TO BE THE MOST TECHNICALLY FEASIBLE AND EFFECTIVE SOLUTION FOR DEVELOPMENTAL, OPERATION, AND MAINTENANCE COSTS AND FOR PROVIDING GUN DEALERS WITH THE NECESSARY FORM OF ELECTRONIC ACCESS. THE FBI, THEREFORE, PLANS TO ESTABLISH A NICS BACKGROUND CHECK SECURE WEB-SITE ON THE INTERNET. ACCESS TO THE WEB-SITE WILL BE LIMITED TO FEDERALLY LICENSED GUN DEALERS. THE DEVELOPMENT PROCESS REGARDING ELECTRONIC ACCESS STARTED IN FEBRUARY 2000, WITH AN IMPLEMENTATION DATE FOR THE INITIAL CAPABILITY SCHEDULED FOR JANUARY 2001.

THE FBI HAS CONTINUED TO SEEK AND ACT UPON THE ADVICE OF LOCAL AND STATE LAW ENFORCEMENT IN ITS OPERATION OF NICS. PROVEN MECHANISMS ARE IN PLACE FOR THE CONTINUAL IMPROVEMENT OF NICS OPERATIONS. FOR EXAMPLE, REGIONAL AND NATIONAL MEETINGS ARE HELD SEMI-ANNUALLY IN WHICH THE FBI PROVIDES STATUS REPORTS ON

THE NICS TO LOCAL, STATE, AND FEDERAL ADVISORY GROUPS AND RECEIVES RECOMMENDATIONS FOR NICS SYSTEM AND OPERATIONAL ENHANCEMENTS. IN ADDITION, THE FBI'S NICS PROGRAM OFFICE HAS HOSTED SEVERAL NICS STATE PARTICIPANT CONFERENCES, WITH THE MOST RECENT HELD ON MAY 31 - JUNE 1, 2000 IN PITTSBURGH, PENNSYLVANIA. ANOTHER CONFERENCE WILL BE HELD THIS SUMMER FOR ALL LICENSED GUN DEALERS. THE NICS PROGRAM OFFICE HAS ALSO INVITED TO THE SUMMER CONFERENCE MEMBERS OF THE CONGRESSIONAL STAFFS AND REPRESENTATIVES FROM THE GUN INDUSTRY. THE FBI WILL PRESENT INFORMATIVE BRIEFINGS AND HOPEFULLY RECEIVE CONSTRUCTIVE FEEDBACK ON THE NICS OPERATION TO DATE. FINALLY, THE FBI INCORPORATED NICS INFORMATION INTO ITS LAW ENFORCEMENT ONLINE, OR LEO PROGRAM, AND, IN CONJUNCTION WITH THE DEPARTMENT OF JUSTICE, ESTABLISHED THE NICS WEB SITE TO ENSURE THE RAPID, CONTINUAL DISSEMINATION OF IMPORTANT NEW INFORMATION ABOUT THE NICS.

CONCLUSION

AS I CONCLUDE MY OPENING STATEMENT, I AGAIN THANK THE CHAIRMAN AND THE MEMBERS OF THE SENATE JUDICIARY COMMITTEE FOR PROVIDING ME WITH THE OPPORTUNITY TO SPEAK TO YOU TODAY ABOUT THE NICS PROGRAM. AT THIS TIME, I AM AVAILABLE TO ANSWER ANY QUESTIONS THE COMMITTEE MAY HAVE.



NICS INDEX

Denied Person	15,010
Dishonorable	6,745
Discharge	
Citizen Renunciation	12,603
Mental Defective	89,653
Controlled Substance	107
Illegal/Unlawful Aliens	927,877

Total Records 1,051,995

**Databases
Searched
By The NIC**

III Inquiries

Subject Records

Approximately 36,000,000

Approximate
Total Records 36,000,000

NCIC Hot Files

Wanted Person	528,842
Protection Order	313,112
Deported Felon	33,466
U.S. Secret Service	26
Protective	
Foreign Fugitive	1,119
Sentry	2
Supervised Release	94
Sexual Offenders	85,811
Total Records	962,472

As of May 31, 2000

JUN-20-2000

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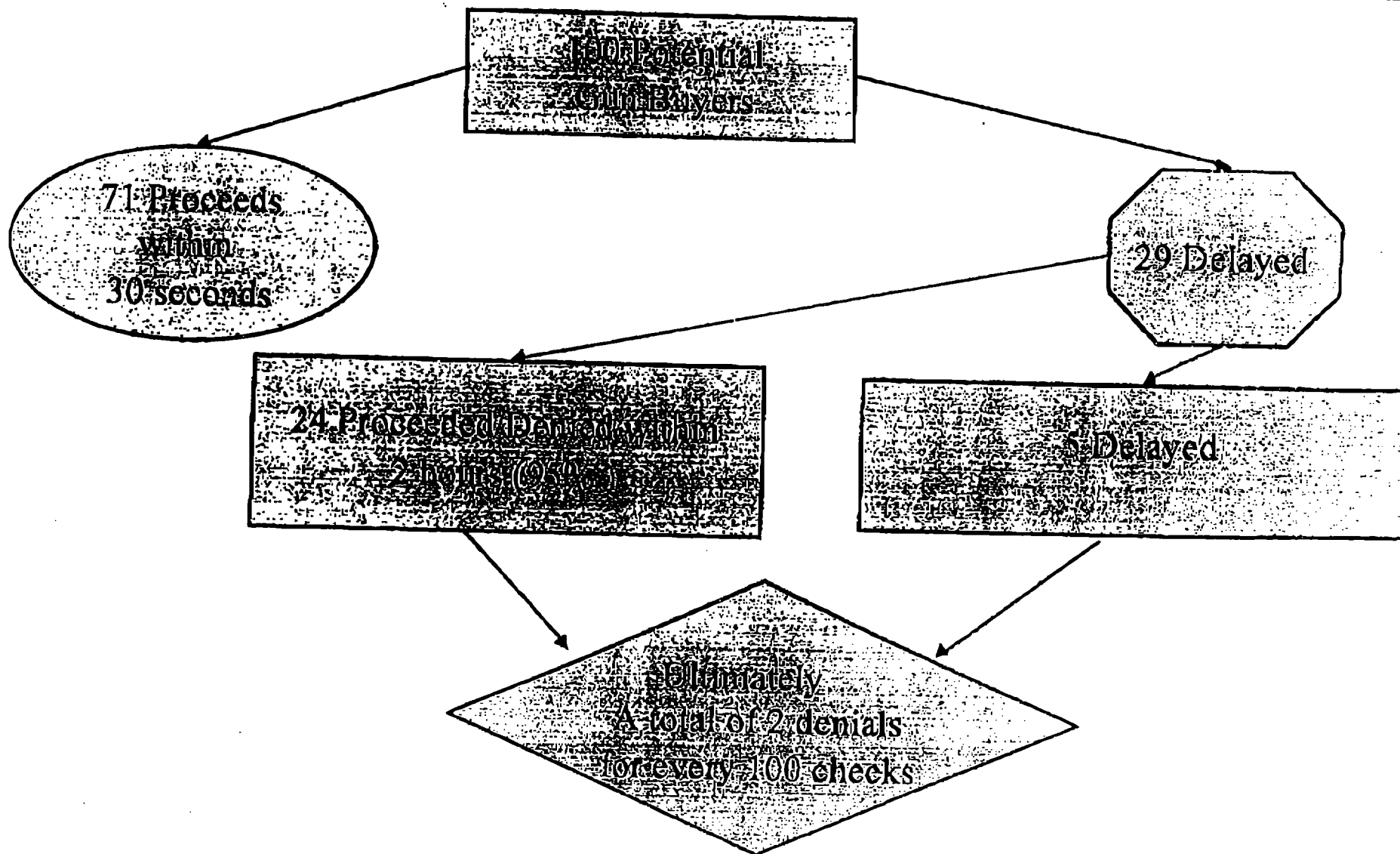


NICS Operations Transaction Breakdown



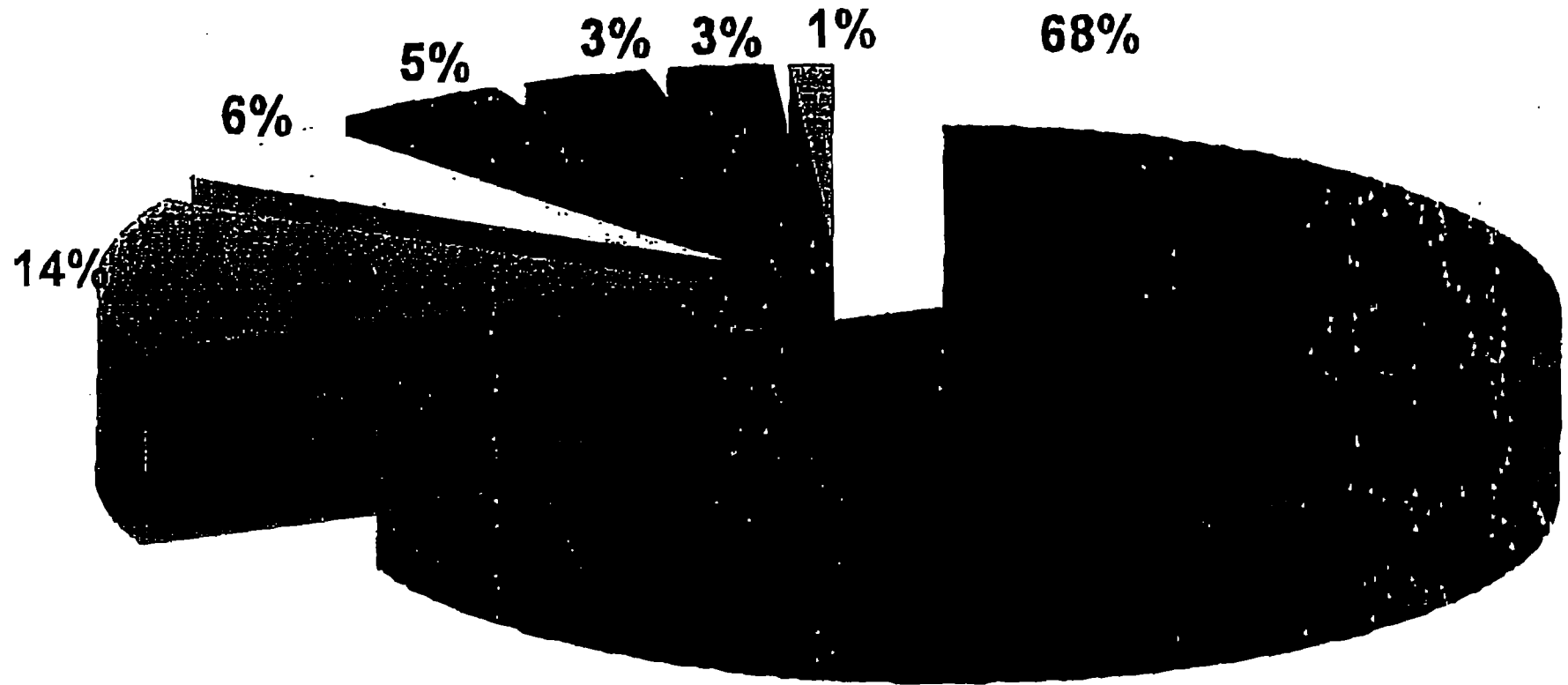
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Denials by Category



■ Criminal History for Felon (68%)

■ Criminal History for Domestic Violence (14%)

■ Criminal History for Other (Multiple DUIs, Non-NCIC Warrants, Flash Notices, etc.) (6%)

■ Criminal History for Drug Abuse (5%)

■ Domestic Violence Restraining Order (3%)

■ Fugitive from Justice (3%)

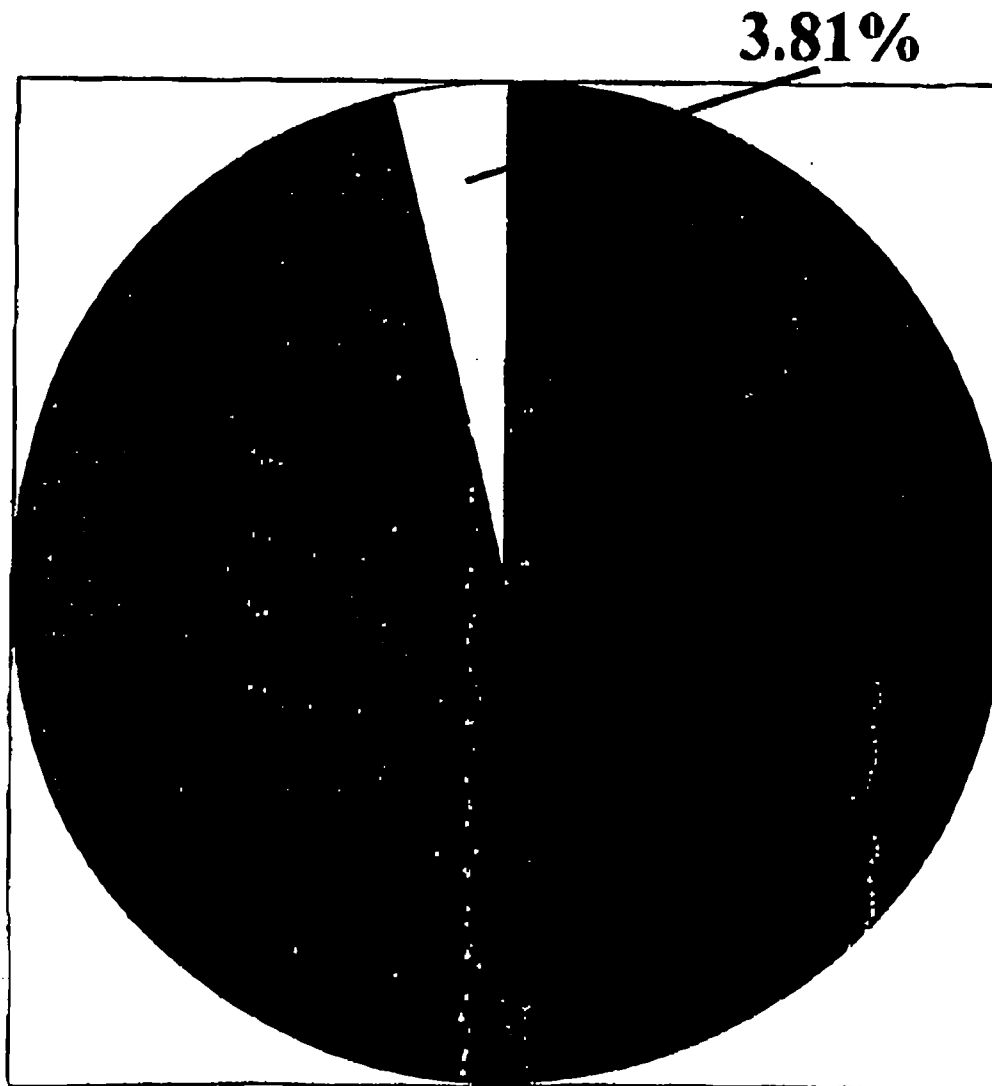
■ Illegal/Unlawful Aliens, Dishonorable Discharges, Denied Persons File, Mental Defectives (1%)



NICS AVAILABILITY



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■ Availability

□ Unavailability

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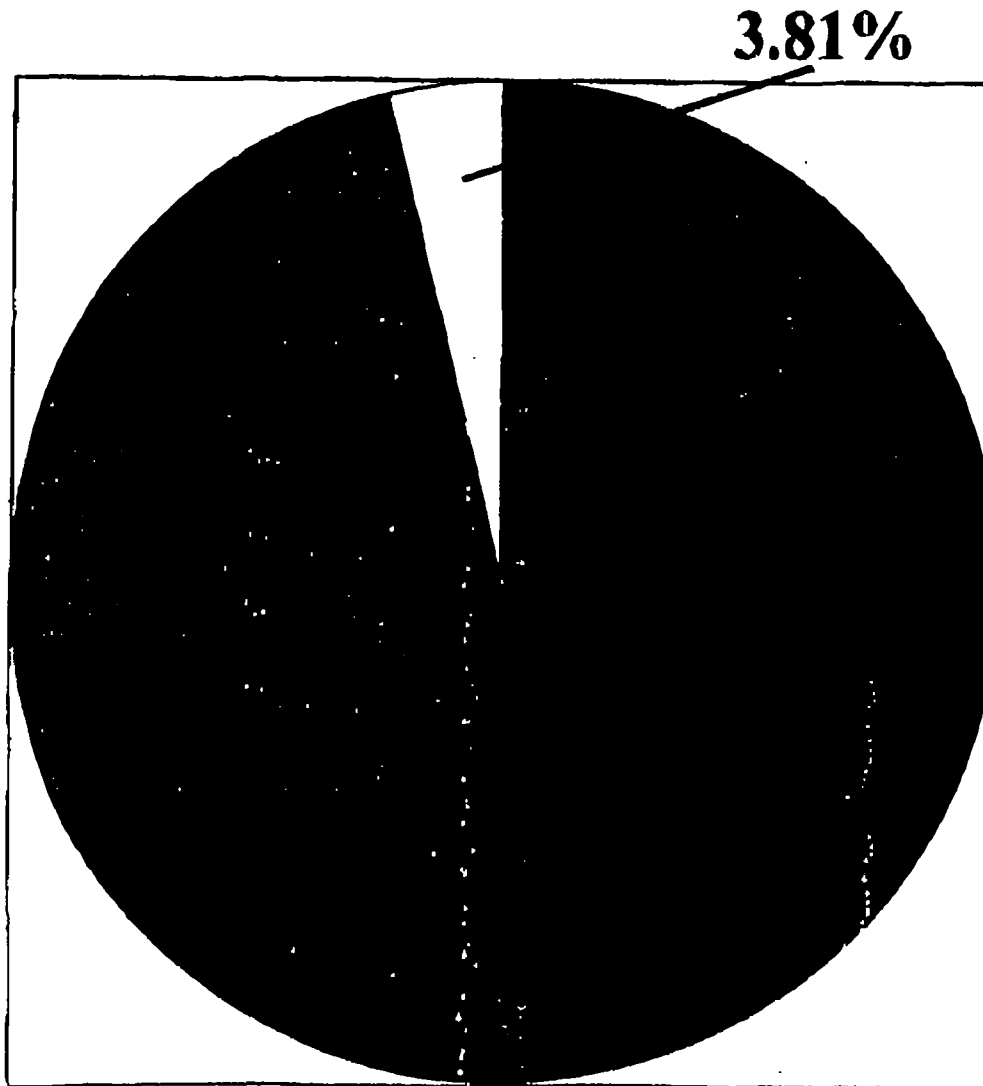


NICS AVAILABILITY



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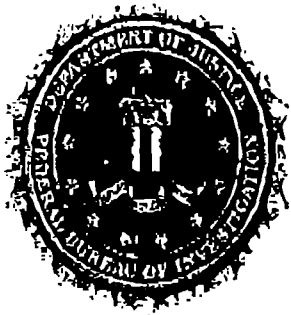
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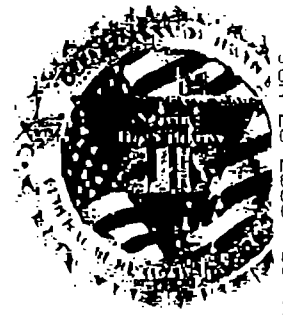
■ Availability

□ Unavailability

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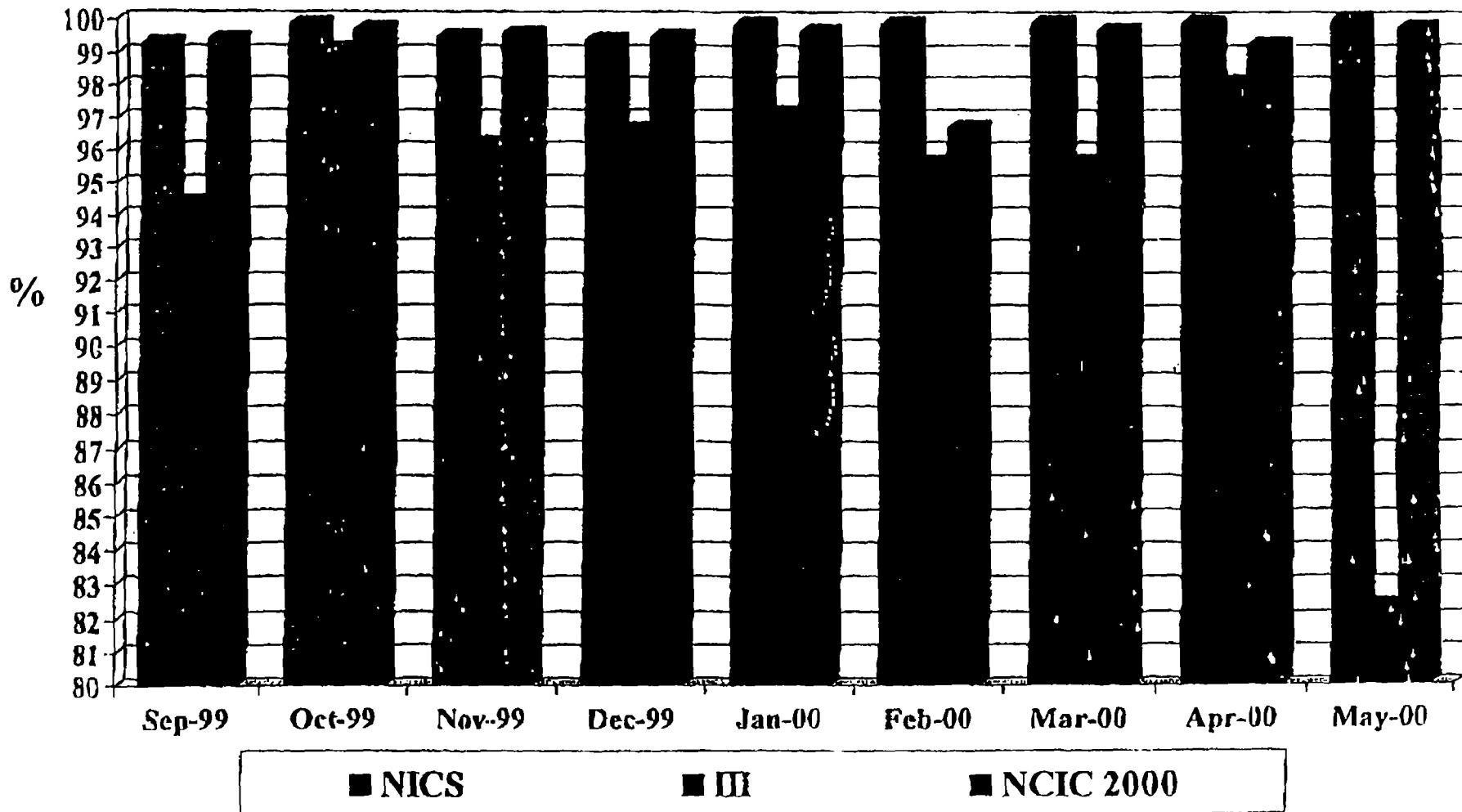
AVAILABILITY OF DATABASES COMPRISING NICS



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GAO

Testimony

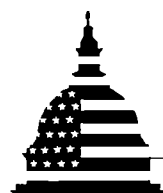
Before the Committee on the Judiciary
U.S. Senate

For Release on Delivery
Expected at
10:00 a.m. EDT
Wednesday
June 21, 2000

GUN CONTROL

Improving the National Instant Criminal Background Check System

Statement for the Record of Laurie E. Ekstrand
Director, Administration of Justice Issues
General Government Division



G A O

Accountability * Integrity * Reliability

Gun Control: Improving the National Instant Criminal Background Check System

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss selected topics from our two recently completed reviews¹ pertaining to the establishment and operation of the National Instant Criminal Background Check System (NICS). NICS was established in November 1998 as mandated by the Brady Handgun Violence Prevention Act.²

My testimony today will focus on four aspects of NICS: (1) system availability and responsiveness; (2) type of information available under NICS compared to that available to state and local law enforcement agencies prior to NICS; (3) advantages and disadvantages of NICS background checks being conducted by designated state agencies rather than the FBI; and (4) the extent to which transactions under NICS have resulted in firearms being sold to persons ineligible to possess a firearm.

In our February and April 2000 reports, we noted the following:

- NICS set a goal of being available 98 percent of its scheduled operating time. It met this goal 4 of the months and did not meet it 8 of the months between November 30, 1998, and November 30, 1999. During this time period, about 72 percent of callers received a proceed response within minutes; the other 28 percent were initially delayed. For about 80 percent of the delayed transactions, FBI examiners took 2 hours or less from the time they received the transaction information to provide a proceed or deny response.
- Establishment of the newly created NICS Index database provides centralized access to data that were not available to state and local agencies prior to NICS. However, the NICS Index does not contain all potentially disqualifying records.
- State agencies are generally better positioned to perform NICS background checks than the FBI because they may have access to additional data and be better able to interpret their own state records and laws. However, certain barriers have prevented most states from becoming full participants in NICS.
- During the first 10 months of NICS implementation, 2,519 persons who were sold guns were later determined by the FBI to be prohibited from owning them. These transactions resulted from NICS background checks

¹ Gun Control: Implementation of the National Instant Criminal Background Check System (GAO/GGD/AIMD-00-64, Feb. 29, 2000); and Gun Control: Options for Improving the National Instant Criminal Background Check System (GAO/GGD-00-56, Apr. 12, 2000).

² The Brady Act, Public Law 103-159 (1993).

that were not completed by the FBI within 3 business days and, according to the provisions of the Brady Act, the sales were then allowed to proceed by default.

Recognizing the potential public safety risks associated with prohibited persons being allowed to purchase firearms, we identified three options to improve NICS by minimizing the number of transactions involving prohibited persons that are allowed to proceed by default.

Background

Effective February 28, 1994, the interim provisions of the Brady Act required licensed firearms dealers to request a presale background check on handgun purchasers. These checks generally were to be conducted by the chief law enforcement officer (CLEO)³ in the purchaser's residence community to determine, on the basis of available records, if the individual was legally prohibited from buying the firearm under the provisions of federal, state, or local law. The sale was not to be completed for 5 business days unless the dealer received an approval from the CLEO before that time. If the CLEO did not contact the dealer by the end of the 5-day period, the dealer could make the sale unless the dealer had reason to believe the transaction would be unlawful.

NICS Implementation

Beginning on November 30, 1998, the permanent provisions of the Brady Act became effective with implementation of NICS. Managed by the Federal Bureau of Investigation (FBI), NICS is used to make presale background checks for purchases from licensed firearms dealers of all firearms, not just handguns.⁴

Unlike the decentralized background check process under interim Brady, NICS allows the FBI and states to check a person's eligibility to purchase firearms using a single, computerized search. The NICS background check provides centralized access to criminal history and other potentially disqualifying records by querying three national databases:

- National Crime Information Center 2000 (NCIC 2000). Predating NICS, NCIC 2000 is the nation's most extensive computerized criminal justice information system. Among other things, NCIC 2000 contains records on wanted persons and persons under protection or restraining orders.

³ Brady defined a CLEO as the "chief of police, sheriff, or an equivalent officer or the designee of any such individual." In some states—by agreement among the applicable law enforcement agencies—the state police department served as the CLEO.

⁴ NICS background checks are to be performed in connection with firearms transfers and are not to be limited to firearms sales (see 63 FR 58306). When we use the terms "buyer" or "purchaser," we are also referring to other firearms recipients, such as individuals redeeming pawned firearms.

Statement

Gun Control: Improving the National Instant Criminal Background Check System

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- Interstate Identification Index (III). Also pre-dating NICS, III is an index-pointer system for the interstate exchange of criminal history records. Among other things, III records include information on persons arrested or convicted of felony and/or misdemeanor criminal offenses.
 - NICS Index. A new database created specifically for NICS, the NICS Index contains information provided by federal and state agencies specifically identifying persons prohibited under federal law from receiving or possessing a firearm. The NICS Index includes records on unlawful drug users or addicts, illegal or unlawful aliens, persons who were dishonorably discharged from the military, persons who have renounced their U.S. citizenship, and persons who have been adjudicated or committed as a mental defective.

State Participation in NICS

To initiate background checks on persons attempting to purchase firearms, licensed firearms dealers contact either the FBI or designated state agencies (in those states willing to participate as NICS liaisons). Generally, depending upon the state in which the firearms dealer is conducting business and the type of firearm purchased, there are three methods of performing background checks:

- In the 24 so-called "nonparticipant" states, dealers are to contact the FBI for NICS background checks on all firearms transfers (permits or purchases). This category also includes the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.
- In the 15 "full-participant" states, dealers are to contact a designated state or local agency—for example, the state police—which then conducts the NICS background check.
- In the remaining 11 "partial-participant" states, dealers are to contact (1) the FBI for background checks on long gun purchases or permits or (2) a designated state agency for background checks on handgun purchases or permits.

In designing NICS, the FBI hoped that as many states as possible would be full participants. Although the number of full-participant states is 15, the group includes some of the most populous states, such as California, Florida, Illinois, New Jersey, Pennsylvania, and Virginia. According to FBI data for the first year of NICS operations (Nov. 30, 1998, through Nov. 30, 1999), about one-half of all NICS background checks were conducted by state agencies.

3 Days Allowed to Approve or Deny NICS Transactions

Under NICS, firearms are not to be transferred until a background check determines that the transfer will not violate applicable federal and state laws. However, the Brady Act allows law enforcement agencies up to 3

Statement**Gun Control: Improving the National Instant Criminal Background Check System**

business days to complete the background check. If the background check cannot be completed within 3 business days (e.g., if available records in the national databases are incomplete and the buyer's eligibility is not verified within 3 days), the purchase is then allowed to proceed—that is, to proceed by default.

During the first year of NICS operations, the FBI and designated state agencies conducted about 8.8 million background checks using NICS. FBI data indicated that 2 percent (about 81,000) of the FBI's 4.4 million background checks resulted in denials. That is, the potential buyer was found to be disqualified under federal or state law from purchasing or possessing a firearm because, for example, criminal history records showed a felony conviction.

**NICS System
Availability and
Responsiveness**

The NICS system is scheduled to be open for business 17 hours a day, 7 days a week. The FBI has specified a NICS availability requirement of 98 percent. That is, the FBI expects NICS to operate satisfactorily 98 percent of the scheduled operating time. During the 12-month period from November 30, 1998, to November 30, 1999, NICS met or exceeded its availability requirement of 98 percent during 4 months. During the other 8 months, availability ranged from 92 percent to 97.7 percent, for an average of 95.4 percent. July 1999 marked the lowest point in availability during this time period, which was immediately preceded by the 4 months in which the availability requirement was met. During this 12-month period, no clear pattern of availability emerged.

FBI data show that for about 72 percent of the background checks conducted by the FBI as of November 30, 1999, NICS provided approval responses within 30 seconds after the purchaser's identifying information was input into the system. An FBI analysis of a sample of the 28 percent that were delayed responses concluded that most of these responses (80 percent) were resolved within 2 hours or less, and that the remainder (20 percent) took several hours or days to resolve. After 3 business days without a resolution, the transaction is considered to be a default proceed, and the gun dealer can then legally transfer the firearm without an affirmative response from the FBI as to the purchaser's eligibility. We discuss default proceed transactions in more detail later in this testimony.

NICS Index Provides Centralized Access to More Data but Has Not Reached Its Full Potential

Prior to NICS, state and local CLEOs had centralized, automated access to federal and state criminal history records and wanted-persons files—the basis for most firearms purchase denials—through NCIC and III. In addition, many CLEOs also had access to state or locally maintained data on some of the other firearm disqualifying factors—e.g., mental illness, court restraining orders, and domestic violence misdemeanors—either through statewide databases or local databases (such as city or county criminal justice systems). However, CLEOs did not access specific data files or databases for other nonfelony, noncriminal firearm disqualifiers—such as illegal or unlawful aliens, dishonorable discharges, and citizenship renunciations.

With the implementation of NICS, all of the firearm disqualifying categories can now be checked in a single, computerized search—to the extent automated records are available. That is, NICS continues to provide centralized access to criminal history and other records (such as domestic violence misdemeanors and restraining orders) through NCIC 2000 and III. In addition, NICS also provides simultaneous access to additional nonfelony, noncriminal disqualifying records—records that were not centrally available to CLEOs under interim Brady—through the newly established NICS Index.

NICS Index Does Not Include All Disqualifying Records

Despite improving access to firearm disqualifying records with the establishment of the NICS Index, NICS has not yet reached its full potential for performing firearms background checks. For example, 1 year after the implementation of NICS, the NICS Index database had relatively few records for most of the categories. As of November 30, 1999, the total number of records in the NICS Index was just over 1 million. However, the vast majority of those records (about 90 percent) covered just one category (illegal or unlawful aliens) and were provided by one federal agency, the Immigration and Naturalization Service (INS). In addition, the total represents only about a 10-percent increase over the number of records the NICS Index contained when it became operational 1 year earlier. And, nearly all of the increase involved records from just two federal agencies—INS and the Department of Veterans Affairs. Very few disqualifying records were obtained from the states during this time.

Because of certain barriers, we recognize that not all existing records can or will be included in the NICS Index, even though these records could be useful in identifying persons attempting to purchase firearms who are disqualified by law from doing so. For example, according to FBI officials, some state and local agencies may be prohibited by state law from sharing substance abuse or mental health records with other agencies or providing

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Gun Control: Improving the National Instant Criminal Background Check System

them to the NICS Index. Some states have also expressed concern about whether the records would ever be used for other purposes, such as background checks for employment or professional licensing.

**FBI Continuing Its Efforts
to Populate the NICS Index
Database**

According to FBI officials, the identification of records that should be included in the NICS Index requires ongoing cooperation among numerous federal and state agencies. The officials told us that the FBI's role in this process is one of outreach—that is, to ensure that all federal and state agencies have been notified of (1) the availability of the NICS Index and the system interface requirements and (2) the necessity to provide accurate and valid records that can be supported in the event of an appeal. As of December 1999, FBI officials summarized their ongoing outreach efforts as follows:

- The FBI was continuing to contact federal agencies to identify and obtain any relevant federal records that could be incorporated into the NICS Index. Approximately half of the agencies had responded; the remaining agencies were being contacted by telephone.
- For state records, the FBI had drafted a letter to be sent to all states inquiring whether they possessed any records to submit to the NICS Index. This letter was still being reviewed internally.
- The FBI was also contacting the NICS points-of-contact in each state that participates in NICS to further inquire about records that might be available for submission to the NICS Index.
- Also, the FBI was preparing an FBI/state memorandum of understanding to address the issue of how state records would be used in the NICS Index and allow states to delete their records if NICS' purpose were ever expanded beyond firearms background checks.

According to FBI officials, once initial outreach efforts were completed, the FBI would decide the types of additional action that were needed to increase the number of federal and state records in the NICS Index. However, the officials noted that, since the FBI cannot compel federal and state agencies to identify records and submit them to the NICS Index, the FBI's outreach efforts must be viewed as a continuous and cooperative process.

Increased State Participation Could Improve NICS, but Barriers Exist

Under permanent Brady, states generally are better positioned than the FBI to conduct NICS background checks. States have access to all of the information available to the FBI through NICS, plus some state agencies can access additional information available only to their respective state. Further, state agencies may be better able to interpret their respective state's criminal records and applicable firearms laws.

States May Have Access to More Disqualifying Records

In some cases, state agencies participating in NICS have access to more databases and/or records than the FBI. Under NICS, when the FBI or a state agency performs a firearm purchase background check, disqualifying records are automatically checked using NCIC 2000, III, and the NICS Index. The FBI's initial automated NICS check is limited to records in these three databases.⁵ However, some states have automated access to additional databases or records available within their state, which cannot be accessed by or shared with other states or the FBI. As a result, this additional access to records may improve the states' ability to identify persons ineligible to purchase firearms. The following examples illustrate situations where state agencies conducting NICS background checks could access more firearm disqualifying data than the FBI:

- **Mental Disability.** Virginia, a full-participant state under NICS, has a state database that identifies individuals within the state who have mental health disabilities or have been adjudicated mentally incompetent. This state database is available only to the Virginia State Police for firearms background check purposes, and the database cannot be accessed by other states or the FBI either directly or through the NICS Index. According to Virginia State Police data for January through September 1999, Virginia's instant check system denied 51 firearms transactions based on information in the state's mental health database. If the FBI had been conducting Virginia's firearms background checks during this time, that information would not have been accessible to them.
- **Fugitives.** The wanted-persons file in NCIC 2000—which is queried during a NICS background check—may not contain records on every state arrest warrant issued. According to FBI officials, each individual agency that issues warrants is responsible for entering its warrants into NCIC 2000. Consequently, there is no way to tell how many outstanding warrants have been issued by state and local agencies but not entered into NCIC 2000. However, state officials have told us they are able to access their own state's outstanding warrants through state or local databases, regardless of whether the warrant had been entered into NCIC 2000.

⁵ For delayed transactions that require research beyond the initial automated inquiry, the FBI also accesses additional in-house automated databases.

- **Restraining Orders.** The restraining/protective order file in NCIC 2000—also queried during a NICS background check—may not contain records on every active state restraining order. According to FBI officials, the situation is similar to fugitive warrants in that each individual agency is responsible for entering restraining orders into NCIC 2000. Consequently, there is no way to tell how many orders have been issued by state and local agencies but not entered into NCIC 2000. Further, incompatibilities between state records and NCIC 2000 records requirements may prevent some states from entering their orders into NCIC 2000. However, state agencies that conduct background checks would generally have access to state or local databases where the restraining order information was originally recorded. In a well-publicized incident in Colorado last year, the FBI approved the transfer of a firearm to an individual who should have been prohibited from purchasing a firearm due to an active restraining order. The information regarding the restraining order was not available to the FBI through NICS, but, according to state officials, it would have been accessible to a Colorado law enforcement agency. The prohibited individual purchased the firearm and used it to kill three children.⁶ FBI officials acknowledged that compatibility problems exist in some states and noted that these states are working with NCIC 2000 officials to resolve the problems.

States May Be Better Able to Interpret State Laws

State agencies participating in NICS may be better able to interpret their own state's laws to determine a person's eligibility to purchase firearms than the FBI. Many states have enacted their own unique statutes regarding the sale and possession of firearms—including requirements for firearms purchase permits, mandatory waiting periods, and notification to state or local authorities. These state laws can have complex provisions, particularly regarding the restoration of an individual's rights to possess a firearm, once those rights have been revoked (e.g., because of criminal activity). As such, in performing firearms background checks, state agencies may be better able to understand how their own state's laws apply to an individual's eligibility to purchase a firearm in their state.

The FBI agreed that state agencies may be better able than the FBI to interpret their own applicable state laws. Also, this belief is consistent with analysis of appeals decisions regarding firearms-purchase denials made by the FBI under NICS. For example, during the first year of NICS operations:

⁶ Although currently a full-participant state in NICS, at the time of this incident, Colorado had discontinued its state-run instant check program—which had been in operation since 1994—due to financial considerations. Following the publicity surrounding the incident, funding for the program was reinstated by executive order and later permanently reauthorized by the state legislature.

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- About 22 percent (2,710) of the appeals (on which a final decision had been reached as of November 30, 1999) were successful—that is, the denials were reversed.
- About 42 percent of reversed denials (for which the reason for reversal was available) occurred because FBI examiners had misinterpreted state statutes or records in making the initial denials.

To help improve interpretation of state laws, the FBI contacted the states via mass mailing in June 1999 to request that the states validate their firearms laws. Subsequently, the FBI made state law information widely accessible electronically within the law enforcement community by include such information in the Law Enforcement On-Line Internet site.⁷

Barriers to Increased State Participation in NICS

The FBI acknowledges that states may have certain advantages in conducting NICS background checks, including access to additional data in their own state and the ability to better interpret their own criminal history records and firearms laws. Further, according to the FBI, the functioning of NICS would be more effective and efficient if more or all states were full participants (i.e., if each state had a designated agency for conducting background checks). However, at the time of our review, most states were either nonparticipants or partial participants in NICS. Despite the potential advantages of states conducting background checks, any consideration of ways to encourage states to be full participants in NICS would need to recognize the following mitigating factors:

- Fiscal Priorities. States may have competing fiscal priorities that prevent them from initiating or expanding their role in NICS. Because the FBI performs NICS checks without charging a fee, some states may consider performing this effort at the state level to be a waste of state resources. One state—South Carolina—recently dropped out as a full participant in NICS, and FBI officials noted that four other states may be at risk to drop out because they are currently operating under executive order rather than state statute. Federal funding proposals—including a NICS user fee and direct appropriations—have been developed that could increase state participation in NICS; however, these proposals have not been approved by Congress.
- Handguns vs. Long Guns. States that already conduct NICS background checks for handguns—such as Maryland and Washington—may not want to expand their responsibilities to long guns, which may be viewed as less

⁷ Law Enforcement On-Line is a secure law enforcement Internet site managed by the FBI, which provides communication and information services to the federal, state, and local law enforcement community.

of a public safety risk than handguns. And, as noted above, the FBI is already performing long-gun background checks in those states free of charge.

- States' Rights. Some states may be philosophically unwilling to participate in NICS, as demonstrated by the various state legal challenges to the local background check requirements of interim Brady.⁸ Because NICS was also established under the Brady Act, some states may consider NICS implementation to be a federal government responsibility.
- Resources/Expertise. States may encounter difficulties in conducting timely or complete background checks for a variety of administrative reasons, including a lack of resources or expertise. During early 1999, for example, the Maryland State Police encountered difficulties in processing NICS background checks in a timely manner, allowing a number of prohibited persons to purchase handguns.

Default Proceed Transactions Pose Public Safety and Other Concerns

During the first 10 months of NICS implementation—November 30, 1998, through September 30, 1999—2,519 individuals who were sold guns were later determined by the FBI to be prohibited persons. These were default proceed transactions resulting from NICS background checks were not completed by the FBI within the 3 business days allowed by statute under the Brady Act. After 3 days elapsed, these transactions were considered default proceeds, and the gun dealers were then legally able to transfer the firearm without an affirmative response from the FBI as to the purchaser's eligibility.⁹

According to FBI officials, default proceed transactions occur primarily due to lack of arrest dispositions in automated state criminal history records. A typical example of a delayed NICS transaction involves a record showing a felony-related arrest (not a federal disqualifier) but no information about whether the case was prosecuted and resulted in a conviction (which would be a federal disqualifier). In these instances, additional research is needed before the transaction can be approved or denied. FBI examiners typically must contact a state or local entity that has the needed information—often a local court—to determine the purchasers' eligibility. The ability to obtain the required disposition information in a timely manner depends on several factors, including whether the court is open, the willingness of the court clerk's staff to assist

⁸ In *Printz v. U.S.* (521 U.S. 898), the Supreme Court ruled that the Brady Act's interim (phase I) provision commanding the CLEO of each local jurisdiction to conduct background checks was unconstitutional in that it compelled state officers to execute federal law.

⁹ A small number of these—33—actually occurred within 3 business days. According to FBI officials, for these delayed NICS transactions the gun dealer transferred the firearm to a prohibited person before 3 business days had elapsed, without having received a proceed or deny response from NICS.

the FBI, and the availability and accessibility of the disposition information.

FBI data on the 2,519 default proceeds show that an average of 25 business days elapsed between the initial NICS inquiry and the date that the FBI initiated retrieval of the firearms. In addition:

- 5 percent (118) of the transactions were resolved in 5 business days or less, the amount of time previously allowed under interim Brady to conduct a background check;
- 77 percent (1,937) of the transactions were resolved in 30 business days or less; and
- 91 percent (2,288) of the transactions were resolved in 60 business days or less.

Further, the actual number of default proceed transactions involving prohibited persons might have been higher than the 2,519 already identified by the FBI. During the first year of NICS implementation, the FBI estimates that it was unable to resolve, within 21 days, about 75,000 background checks—roughly 1.7 percent of the 4.4 million checks that the FBI conducted. According to FBI officials, these delayed transactions could not be completed because the FBI was never able to obtain information on arrest dispositions in order to verify the purchaser's eligibility. Because, as reported by the FBI, background checks delayed more than 24 hours are more likely to involve prohibited persons than other NICS checks; some of these 75,000 transactions potentially represent firearms sold to prohibited persons. Given the potential increased risk to public safety, the additional demands on law enforcement resources, and the exposure of law enforcement agents to the risks associated with firearms retrievals, it is therefore important to explore options for reducing the number of these default proceed transactions.

Options for Improving NICS by Minimizing Default Proceed Transactions

To minimize the number of default proceeds involving prohibited persons, various options can be considered. One option is to continue providing grant funds to states to improve the quality and completeness of automated criminal history records. Another option is to provide financial incentives in order to increase the number of states that participate in NICS. Finally, another option would be to amend the 3 business-day default proceed requirement of the Brady Act to treat differently those potential purchasers with arrests for disqualifying offenses with no disposition information. These options should be considered complementary, rather than mutually exclusive.

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Federal Grants to Improve
State Criminal History
Records

Because, according to the FBI, most default proceeds occur due to a lack of automated or complete state criminal history records, one option for reducing or minimizing these delayed transactions is to help states upgrade the quality and completeness of these records. A relevant federal effort ongoing since 1995 is the National Criminal History Improvement Program (NCHIP), which provides grant funds to states. Administered by the Bureau of Justice Statistics, NCHIP has provided funding to assist states to improve the quality and accessibility of their criminal history records, in order to support the implementation of NICS and enhance the effectiveness of NICS background checks. Federal obligations under NCHIP totaled about \$293 million during fiscal years 1995 through 1999. Additionally, 5 percent of the funds awarded to states each year under the Byrne Formula Grants Program are to be used for improving criminal justice records.¹⁰ Justice officials said that they plan to address NICS implementation issues—such as automation and accessibility of records on arrest dispositions—in future years by seeking increased funding through NCHIP grants.

Financial Incentives to
Encourage State
Participation in NICS

Because states can have advantages over the FBI in conducting NICS background checks—including access to additional data in their own state and the ability to better interpret their own criminal history records and firearms laws—another option for improving NICS' effectiveness and reducing the number of default proceed transactions is to increase state participation in NICS. The following are several approaches that could encourage such participation:

- NICS User Fee. Establishing a NICS user fee could remove a disincentive for states to be NICS participants. Currently, states have little incentive to participate because the federal government performs the NICS check free of charge. The FBI has previously introduced budget proposals to fund NICS operations with a user fee. Congress, however, has acted to prohibit a NICS user fee by including prohibiting language in the Department of Justice's fiscal year 1999 and 2000 appropriations acts.¹¹
- Direct Appropriations. Through direct appropriations, states could be funded to establish and/or operate NICS units. The U.S. Senate passed a provision in its 1999 Juvenile Justice bill that would have authorized \$40 million in direct appropriations to states that participate in NICS.¹² The

¹⁰ Crime Technology: Federal Assistance to State and Local Law Enforcement (GAO/GGD-99-101, June 7, 1999), pp. 29 and 31.

¹¹ Public Law 105-277 (Oct. 21, 1998) and Public Law 106-113 (Nov. 29, 1999), respectively.

¹² Title VIII, section 861, S. 254, passed by the Senate on May 20, 1999.

House version of the bill differed markedly from the Senate version, so the legislation was sent to conference to resolve the differences. However, the 1999 legislative session ended without any further action being taken.

- Criminal Justice Grants. Although the Supreme Court has ruled that states cannot be required or mandated to conduct Brady background checks, the Court has recognized elsewhere that Congress, in general, may impose reasonable conditions on the receipt of federal funds by states.¹³ Incentive grants, perhaps associated with an existing criminal justice grant program, could be offered to states that agree to become NICS participants. One such example of an incentive grant is the Violent Crime Control and Law Enforcement Act of 1994,¹⁴ which authorized federal incentive grants to eligible states for building or expanding correctional facilities for violent offenders, if the states implemented measures ensuring stricter sentences for violent offenders. In addition to incentive grants, the NCHIP grant program already authorizes funding for, among other things, states to establish programs to participate in NICS. However, NCHIP grant requirements currently preclude such funds from being used to cover any ongoing operating costs of conducting the background checks.

Amend Brady Act to Minimize Default Proceed Transactions

Given the long-term nature of efforts to improve automated criminal history records and the possibility that not all states would agree to become NICS participants, another option involves amending the 3 business-day default proceed requirement of the Brady Act to treat differently those potential purchasers with arrests for disqualifying offenses with no disposition information.

State Processes that Minimize Default Proceed Transactions

To illustrate the impact that amending the Brady Act could have on the number of these default proceed transactions, we identified three different state background check processes—Washington, Colorado, and Georgia—that tend to minimize such default proceed transactions:

- Washington. In Washington, which is a partial participant in NICS (handguns only), state law allows up to 5 days to perform a background check. However, if available records indicate the prospective purchaser has an arrest for a potentially disqualifying offense, a hold for up to 30 days can be placed on the transaction's approval, pending receipt of disposition information to verify the purchaser's eligibility to possess a firearm. After 30 days, if the disposition of the arrest still cannot be verified, an extension

¹³ New York v. U.S., 505 U.S. 144, 165 (1992); South Dakota v. Dole, 483 U.S. 203, 206 (1987).

¹⁴ Public Law 103-322 (Sept. 13, 1994).

of the hold may be initiated by obtaining a judicial order showing good cause.¹⁵

- Colorado. Operating as a full-participant state under NICS, Colorado can deny a purchaser with an open disqualifying arrest (such as a felony), even if the disposition cannot be obtained within the 3 days allowed under permanent Brady, thus obviating the need for additional time to further research the transaction.
- Georgia. Also operating as a full-participant state under NICS, Georgia has issued regulations stating that, where a background check identifies the existence of a criminal record that is not immediately available so as to determine the eligibility of the purchaser (e.g., an arrest disposition), the gun dealer may not transfer the firearm until being advised by the state that the purchaser is not prohibited.

Potential Impact of Amending the Brady Act

Amending the 3-business-day default proceed requirement of the Brady Act could have a significant impact on reducing the number of default proceeds involving prohibited persons and mitigating public safety concerns. For example, either the Colorado or the Georgia approach would, for all intents and purposes, eliminate default proceed transactions, including those where a prohibited person obtains a firearm. The Colorado approach, however, would result in some purchasers being incorrectly denied based solely on arrest records, with the burden then being placed on the purchasers to appeal the decisions and correct the records. The Georgia approach should not result in incorrect denials; however, it places no limit on the amount of time allowed to research the transaction.

Under the Washington state approach, if a 30 business-day hold had been in effect during the first 10 months of NICS, the number of default proceed transactions would have been reduced by over 75 percent. Also, according to FBI data, such a hold on delayed transactions would have affected only about 88,000 (or 2 percent) of all NICS transactions—those that the FBI has reported to be 20 times more likely to involve a prohibited person than transactions involving the average gun buyer.¹⁶ Therefore, additional time to research such delayed transactions could play a significant role in preventing firearms sales to potentially prohibited persons.

¹⁵ Washington's 30-day hold rule also applies to firearms transactions where the background check indicates open criminal charges, pending criminal proceedings, pending commitment proceedings, or an outstanding warrant.

¹⁶ FBI, Criminal Justice Information Services Division, National Instant Criminal Background Check System: Operations Report (November 30, 1998 – December 31, 1999). More specifically, FBI data for the first 13 months of NICS implementation show that delayed background checks taking more than 24 hours accounted for about 38 percent of the total number of NICS denials, compared with the overall NICS denial rate of about 2 percent.

Matters for Congressional Consideration

In our April 12, 2000, report, we suggested that Congress may wish to consider one or more of the following options for improving NICS by minimizing the number of default proceed transactions involving the transfer of firearms to prohibited persons:

- Recognizing the importance of accurate criminal history records to NICS' effectiveness, continue providing federal grants to states for improving the quality and completeness of automated criminal history records.
- Recognizing that state agencies generally are better positioned than the FBI to conduct NICS background checks, provide financial assistance to states in order to increase the number of states that participate in NICS.
- Recognizing the public safety risks posed by NICS default proceed transactions, amend the 3 business-day default proceed requirement of the Brady Act to treat differently those potential purchasers with arrests for disqualifying offenses where arrest disposition information is not readily available.

The first two options could offer a positive, long-term impact on the overall efficiency and effectiveness of NICS. The third option could immediately reduce the number of prohibited persons receiving firearms under NICS by providing additional time to research incomplete criminal history records.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions that you or other Members of the Committee may have.

Contacts and Acknowledgment

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