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STATEMENT OF THE PRESIDENT
November 30, 1999

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Today, on the sixth anniversary of the historic Brady Law, I am pleased to announce new figures that demonstrate the profound impact this legislation has had on public safety. Data released today by the Department of Justice show that the Brady Law, since its passage in 1993, has helped block over 470,000 sales by licensed gun dealers to felons, fugitives, stalkers and others prohibited from purchasing firearms. In the last year alone, the National Instant Criminal Background Check System created under the Brady Law has blocked sales to over 160,000 of these restricted buyers.

These numbers, of course, are not just numbers. They represent lives saved, injuries avoided, tragedies averted. They are a measure of what we can do to reduce gun violence -- and a measure of what still needs to be done.

In addition to our success with the Brady Law, this Administration has taken important actions to crack down on the illegal market that supplies juveniles and criminals with firearms. Today, Treasury Secretary Lawrence Summers will launch the newest tool to ~~clamp down on~~ illegal gun dealing -- "Online LEAD," a new technology to help law enforcement across the country use crime gun tracing to catch more illegal gun traffickers.

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As a result of these efforts, and those of communities across the country, violent gun crime is down by over 35 percent since 1992 and the murder rate is at its lowest level in over three decades. But while we are more effective than ever before at keeping guns out of the wrong hands, our work is by no means finished. Over 32,000 Americans still lose their lives in gunfire every year, including 12 children every day. That is why I pledge to make passage of common sense gun legislation my top public safety priority next year. And I challenge Congress to make a New Year's resolution to do the same.

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Arthur Kent Blackman

**PRESIDENT CLINTON HIGHLIGHTS SUCCESS OF
THE BRADY LAW, CALLS FOR PASSAGE OF FURTHER GUN MEASURES
November 30, 1999**

Today, President Clinton will commemorate the sixth anniversary of the successful Brady Law by announcing new Justice Department figures that demonstrate its continuing effectiveness. Today's new figures show that Brady background checks have prevented over 470,000 felons, fugitives, stalkers and other prohibited buyers from purchasing firearms since the President signed the historic legislation into law in 1993. In addition, Treasury Secretary Lawrence Summers will today launch "Online LEAD," a new crime-fighting technology that will enhance law enforcement efforts to trace crime guns and crack down on illegal gun traffickers.

Noting that the success of Brady background checks and crime gun tracing have helped reduce violent gun crimes by over 35 percent since he took office, the President today will also urge Congress to make passage of common sense gun legislation a top priority next year.

KEEPING GUNS OUT OF THE WRONG HANDS. The Department of Justice will release new data from the FBI reporting that Brady background checks have prevented over 470,000 felons, fugitives, stalkers and others prohibited from purchasing firearms since the historic law took effect. The Justice Department will also provide information on the successful first year of operation of the National Instant Criminal Background Check System (NICS), which processed over 8.7 million background checks and stopped over 160,000 gun sales to restricted individuals since its implementation last year. Among sales denied by the FBI under NICS this year, 72 percent, were based on a felony conviction, 15 percent were for domestic violence or restraining orders, four percent were for illegal drug abusers and three percent were for fugitives from justice.

CRACKING DOWN ON ILLEGAL GUN TRAFFICKERS. The President will also point out today that Treasury Secretary Summers is unveiling "Online LEAD," a new crime-fighting technology that will enhance the ability of law enforcement to detect and deter the illegal traffickers who supply weapons to criminals, juveniles and other prohibited persons. The "Online LEAD" program will provide every Bureau of Alcohol, Tobacco & Firearms field office in the nation with instant access to information on over one million crime gun traces. The program will also enhance investigations under the Youth Crime Gun Interdiction Initiative (YCGII), an Administration effort to trace crime guns and crack down on illegal gun traffickers. The President recently secured over \$51 million to expand YCGII from 27 to 38 cities.

MAKING PASSAGE OF COMMON SENSE GUN LAWS A TOP PRIORITY. The President today will also call on the Congress to build on the success of the Brady Law and federal gun tracing initiatives by making passage of sensible gun safety legislation the first order of business when it returns next year. The Congress failed this session to pass common sense measures to extend background checks and tracing records to all transactions at gun shows, ban violent juvenile offenders from possessing guns when they turn 21, mandate child safety locks to be sold with every handgun, and ban the importation of high capacity ammunition clips.

Draft 11/29/99 12:30 pm
Sam Afridi

PRESIDENT WILLIAM J. CLINTON
REMARKS TO THE CENTER TO PREVENT HANDGUN VIOLENCE BENEFIT
LOS ANGELES, CA
November 30, 1999

Acknowledge: Whoopi Goldberg; Stephen Sposato; Governor Davis; Senator Boxer; Senator Feinstein; congratulate award winner Gregory Peck for sharing your gift with the world.

Many of us will always remember you as Atticus Finch in To Kill a Mockingbird. There's a moment in that classic book when Atticus sits down with his children to talk about courage. I want you to know, he says, that real courage isn't "a man with a gun. It's when (the odds are against you)...but you begin anyway and you see it through no matter what."

That is real courage—and that is Jim and Sarah Brady. America is a safer, stronger, saner place because of your courage to stand up to the special interests and see it through no matter what.

The main reason I wanted to be here is to say thank you. Thank you for what you're doing tonight to support the Center to Prevent Handgun Violence—and its work in research, public education, coalition building and making sure the victims of gun violence can have their day in court.

But I'm also here to thank you for all you've done year after year to help our Administration build safer streets and stronger communities. Thank you for *championing* the Brady Bill which I signed into law six years ago today; *and supporting* the assault weapons ban; 100,000 community police officers on our streets; and programs to help our kids stay out of trouble.

It's working. We're turning the tide on crime. The overall crime rate is at a 25 year low. The murder rate is at a *31* year low. *Violent gun crime has dropped over 35 percent since 1992.* We have the longest continual decline in the national crime rate ever recorded.

And on this sixth anniversary of the Brady Bill, the Justice Department *earlier today* released more good news. The latest figures are in and I'm proud to announce that the Brady Bill has stopped 4XX,000 felons, fugitives and stalkers from buying a handgun. In its first *full* year of operation, the National Instant *Criminal Background* Check system has stopped over 1XX,000 gun sales to restricted individuals.

Yesterday, I signed a budget that builds on our success. I want to thank the Members of Congress here who stood with us to make sure this budget will begin putting up to 50,000 more police on our streets and invests in 21st century crime fighting technologies to make our communities even safer for the new century.

So I want to express my gratitude to you for all we have accomplished together. But I didn't just come here to thank you. Because we still have work to do.

Back when the Brady Bill passed Congress someone asked Sarah Brady: "What are you going to do now?" Without missing a beat, she said: "I'm going to keep on fighting."

We have to keep on fighting. America is safer. But from Columbine High School to the Jewish Community Center in Los Angeles to the Wedgwood Baptist Church in Fort Worth to every community in between, no one believes America is as safe as it can be.

America is not as safe as it can be when twelve children die from gun violence every day. The **rate** of children **under 15** killed accidentally by **guns** in the United States is nine times higher than the **rate** of **25 other industrialized countries** combined. More American children die from handguns each week than the total number of people murdered by handguns in Great Britain each year.

We have to keep on fighting for what we believe in and what we know works. Seven years ago, a lot of people thought the crime rate would go up forever. They said the Brady Bill wouldn't make a difference. They said we'd never **fund** 100,000 police **officers for our streets**. Things don't happen unless you believe they can happen and go out and make them happen.

We have shown that we can get the crime rate down. Now it's time to set a new goal. America is the freest big country on earth. Let's make America the safest big country on earth.

And the way to start is by passing common sense gun safety **legislation that the Congress failed to enact before it adjourned for the year. We must build on the success of the Brady Law by closing** the gun show loophole—because people shouldn't be able to buy weapons at gun shows and flea markets without a background check. We must require child safety locks. We must bar the importation of large capacity ammunition clips. **But Congress could do even more and pass my proposals to limit handgun sales to one per month and once again require a Brady waiting period to allow a cooling off before handguns can be sold.**

Once again, the special interests are lined up. But you and I know this isn't about interfering with constitutional rights—it's about saving children. It's about taking the sensible steps law enforcement officials tell us we need to take. It's about bringing the law of the land into line with the values of our people.

Over the last seven years, we have made progress and we're turning the tide. Now we have a once in a lifetime opportunity and we have to keep on fighting—to make our streets safer—to protect children—to make America the biggest safe country in the world.

With your help, we will see it through.

Thank you and God bless you.

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Department of Justice

FOR IMMEDIATE RELEASE
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NATIONAL INSTANT CHECK SYSTEM KEEPS GUNS AWAY FROM MORE THAN 160,000 PROHIBITED PERSONS IN ITS FIRST YEAR

More Than 470,000 Sales Blocked Under 1993 Brady Law

WASHINGTON, D.C. -- More than 160,000 prohibited people have been prevented from purchasing a firearm under the Brady Law's National Instant Criminal Background Check System (NICS), which went into effect one year ago today. NICS is the first national system for checking the backgrounds of prospective gun buyers.

Attorney General Janet Reno established NICS on November 30, 1998, under the Brady Handgun Violence Prevention Act (the Brady Law). The Brady Law requires federal firearms licensees to request NICS background checks on individuals attempting to purchase a firearm.

Prior to NICS, state and local authorities conducted background checks under the interim provisions of the Brady Law, which were in effect from February 28, 1994 until November 30, 1998. The Justice Department estimates that under the interim Brady Law, 312,000 prohibited persons were denied access to firearms. Together with the NICS denials, the Brady Law has thus prevented more than 470,000 prohibited people from acquiring firearms since February 28, 1994.

"The system has proven to be highly effective, performing more than 8.7 million checks in its first 12 months," said Reno. "Keeping guns out of the wrong hands has been critical to the success of our strategy for reducing gun violence and protecting our communities. The Brady Law and NICS have contributed to the unprecedented 7 1/2 year decline in crime in this country. We must continue to build on the Brady Law's successes by passing common-sense legislation to close the loopholes in our current gun laws."

Approximately half of the NICS checks were handled by the FBI (4.37 million) and half (4.34 million) were handled by states acting as points of contact (POCs) for the FBI. The inquiries handled by the FBI resulted in more than 80,000 denials of guns to criminals, fugitives, and others prohibited by law from possessing guns. Based on data from individual states, the FBI estimates that the state POCs also denied more than 80,000, for a total in excess of 160,000 denials.

Of the prospective gun buyers denied firearms by the FBI, 72% were known felons, 12% had been convicted of domestic violence, 4% were abusers of illegal drugs, 3% were subject to domestic violence restraining orders, and 3% were fugitives from justice.

More than 71% of checks handled by the FBI resulted in an immediate "proceed" determination to the firearms dealer, indicating that no records regarding the prospective buyer have been located by the NICS, and that the Brady Law does not prohibit transfer of the gun.

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(Once all relevant descriptive information is entered into the system, the average transaction is completed in less than 30 seconds.) The FBI's experience indicates that about 82% of the remaining checks are completed within two hours. This results in 95 percent of all NICS checks being completed within two hours. (71 out of every 100 people get an immediate "proceed," and 82% of the remaining 29 people, or 24 people, have their checks completed in 2 hours.)

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National Instant Criminal Background Check System (NICS)



The First Seven Months
(November 30, 1998 - June 30, 1999)

Federal Bureau of Investigation
Criminal Justice Information Services Division

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EXECUTIVE SUMMARY

In November 1993, the Brady Handgun Violence Prevention Act of 1994 (Brady Act) was signed into law requiring Federal Firearms Licensees (FFLs) to request background checks on individuals attempting to purchase a firearm. The permanent provisions of the Brady Act, which went into effect on November 30, 1998, required the Attorney General to establish a National Instant Criminal Background Check System (NICS) that any FFL may contact by telephone, or other electronic means in addition to the telephone, for information to be supplied immediately, on whether the receipt of a firearm by a prospective transferee would violate Federal or state law.

In its first seven months of operation, the NICS has proven to be a highly effective system in processing over 4.7 million inquiries. Each NICS background check includes automated searches of approximately 34.7 million criminal records, 700,000 records on wanted persons, and 940,000 records on other prohibited persons. Since its establishment, the NICS has ensured the timely transfer of firearms to individuals who are not specifically prohibited under Federal law, while denying transfers to more than 100,000 felons, fugitives, and other prohibited persons.

In many ways, the NICS represents a partnership among the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco, and Firearms (ATF), and state, local, and other Federal agencies. For example, the FBI worked together with state and local law enforcement to design the NICS. Federal and state agencies contribute records on disqualified persons for inclusion in the NICS. States may serve as points of contacts (POCs) to support their Federal Firearms Licensees (FFLs) in conducting NICS checks. Among the most significant examples of this partnership is that in addition to preventing more than one thousand wanted persons from purchasing firearms, the FBI's NICS examiners have actively contacted Federal, state and local law enforcement agencies to provide information which resulted in the apprehension of many of these fugitives from justice.

This report contains a synopsis regarding the background of NICS, how a background check works, statistics for the first seven months of operation, privacy and security issues, success stories and commendations received from various entities.

BACKGROUND OF THE NICS

Situation Before the Brady Handgun Violence Prevention Act

Since the passage of the Gun Control Act in 1968, certain individuals, such as convicted felons, have been prohibited from possessing firearms under Federal law. Until the passage of the Brady Act in 1993, however, there was no mechanism to prevent these individuals from obtaining firearms. Firearms were sold, even by FFLs, on the "honor system." Virtually the only recourse that federal law enforcement had against felons and other prohibited people who sought to purchase firearms was to prosecute them *after* they gained illegal possession of the firearm.

Brady Act Requires Background Checks

The Brady Act put an end to the "honor system" by requiring background checks on firearms purchasers buying firearms from FFLs. The Brady Act called for implementation in two phases: from February 28, 1994 until November 30, 1998, the rules of "Interim Brady" applied; since November 30, 1998, the provisions of "Permanent Brady" have been in place. During Interim Brady, the Brady Act applied only to handgun sales, and background checks were conducted by state and local law enforcement for these sales. During this time, there was no centralized mechanism for firearms background checks, and the Brady Act relied on the willingness of local sheriffs and other state law enforcement officials to do the background checks. Under Interim Brady, law enforcement officials had up to a maximum of five business days to complete background checks. The Interim Brady system was extremely effective, preventing over 310,000 felons, fugitives, and other prohibited people from getting handguns.

Brady Act Requires a National System for Conducting Instant Background Checks

The Brady Act also required the Attorney General to develop within five years a national system for conducting criminal background checks instantly. The Brady Act requires that the national system, the NICS, be utilized by any FFL to determine whether a prospective firearms transfer would violate Federal or state laws.

State and Local Officials Assist the FBI in Designing the NICS

To ensure that the national system required by the Brady Act would meet the needs of state and local law enforcement, the FBI created the Brady Act Task Group. This group was composed of representatives from the ATF and state and local officials who assisted the FBI in identifying the requirements for the NICS and in designing the system. Between 1994 and 1998, the Brady Act Task Group held formal meetings to provide detailed comments and recommendations to the FBI's NICS system developers. This task group was instrumental in preparing the NICS concept of operations. The concept called for firearms background checks to include a check of databases at the state and national levels. In this regard, when an FFL

conducts a NICS check, a name search is conducted for any matching records in three different databases at the national level, which are managed by the FBI. These include:

- The National Crime Information Center (NCIC) which contains approximately 700,000 records on wanted persons and subjects of protective/restraining orders;
- The Interstate Identification Index (III) which contains approximately 34.7 million criminal history records; and
- The NICS Index which contains about 940,000 records of prohibited persons, as outlined in the Brady Act, such as individuals who have received dishonorable discharges from the Armed Services, individuals who have renounced their citizenship, mental defectives, illegal/unlawful aliens and others.

Establishment of the NICS Program Office

On August 1, 1998, the FBI's Criminal Justice Information Services Division established the NICS Program Office. This entity had the responsibility to closely coordinate the final stages of the development of NICS and the transition to an operational program. This included coordinating a multitude of functions and projects including: staffing; development of a training manual; training of employees; developing work procedure manuals; documenting state statutes regarding prohibitive NICS categories; enrollment of FFLs; acquiring space, desks, phones and computers; testing computer applications; setting up a management structure; creating reports on operations; preparing budget estimates; preparing workload projections; creating and modifying work schedules, etc. In addition, coordination of employee input resulted in the creation of the following NICS mission statement:

To enforce the provisions of the Brady Handgun Violence Prevention Act by utilizing an effective system to ensure the timely transfer of firearms to individuals who are not specifically prohibited under Federal law and denying the transfer to those who are prohibited from possessing or receiving such firearms through:

- 1) Effective leadership in the management and operation of NICS;
- 2) Timely, accurate and complete responses to NICS background checks; and
- 3) Timely and effective customer service to other Federal, State, and local law enforcement agencies, Federal Firearms Licensees, and other users of NICS.

FBI's Continuing Partnership with the States

The FBI has continued to seek and act upon the advice of state and local law enforcement in its operation of the NICS. Proven mechanisms are in place for the continuous improvement of

NICS operations. For example, regional and national meetings are held twice each year in which the FBI provides status reports on the NICS to state, local and Federal advisory groups and receives recommendations for NICS system and operational enhancements. In addition, the FBI's NICS Program Office has hosted two NICS State Participant Conferences—one was held while under the provisions of interim Brady and the other took place after permanent Brady was implemented. The second conference was held on June 23-24, 1999, during which the FBI presented briefings and received supportive feedback on its NICS operation to date. Finally, the FBI has incorporated NICS information into its Law Enforcement Online (LEO) program, and, in conjunction with the Department of Justice, has established the NICS Web Site (www.fbi.gov/programs/nics/index.htm) to ensure the rapid, continual dissemination of important new information about the NICS.

WHAT IS A NICS CHECK AND HOW DOES IT WORK?

Legal Requirements for the NICS Background Check

Permanent Brady prohibits a FFL from transferring a firearm until the FFL has contacted the NICS and *either* the transfer has been allowed *or* three business days have passed without an indication from the NICS that the prospective purchaser is prohibited from possessing a firearm. Once contacted, the NICS is expected to provide information regarding whether the prospective firearm purchaser is prohibited from possessing a firearm under Federal or state law.

Prohibited categories include:

- (1) convicted felons and people under indictment for a felony;
- (2) fugitives from justice;
- (3) unlawful drug users or drug addicts;
- (4) individuals who have been involuntarily committed to a mental institution or determined to be mentally incompetent;
- (5) illegal aliens and legal aliens admitted under a non-immigrant visa;
- (6) individuals who have been dishonorably discharged from the military;
- (7) persons who have renounced their citizenship;
- (8) persons subject to certain domestic violence restraining orders; and
- (9) persons convicted of misdemeanor crimes of domestic violence.

Actions Involved in a NICS Check

Applicant Completes Bureau of Alcohol, Tobacco and Firearms (ATF) Form 4473

To illustrate how the NICS works, consider a person who seeks to buy a handgun from an FFL at a gun store or a gun show. Currently, there are 48,837 type one (gun dealer) and type two (pawn broker) license holders in the United States and U.S. territories enrolled with the NICS Operations Center. It has been determined that approximately 15 percent of the licensed dealers

account for 80 percent of the NICS transactions. The purchaser must provide photo identification to the FFL. The purchaser and the FFL then complete their respective parts of the ATF Form 4473, the "Firearms Transaction Record." The completed ATF Form 4473 will contain information such as name, address, and date of birth, and certification from the purchaser that they are not prohibited under Federal or state law from purchasing or possessing a firearm.

FFLs Contact the State Law Enforcement Agency Serving as a POC for NICS Checks

In states that agree to conduct Brady background checks, once the ATF's Form 4473 is completed, the FFL contacts the state POC for a NICS check. A state POC is a state agency that agrees to conduct Brady background checks, including NICS checks, on prospective gun purchasers. In states that have agreed to serve as POCs, FFLs contact the state POC for a Brady background check, rather than contacting the FBI. Currently, 16 states serve as a full POC for NICS (checks on handguns and long guns) and 11 states serve as partial POC for NICS (states perform checks for handgun purchases, FBI processes checks for long gun purchases). (See **Appendix A.**)

A state POC will access the state's independent criminal history database as well as the NICS. The NICS provides access to millions of criminal history records from all 50 states and the District of Columbia. A state's database typically contains references not only to those of the state's records which are part of the NICS databases, but also to the state's records and manual records—including many final dispositions—which are not part of the NICS. Many states also have access to records about people in the other prohibited categories, such as people who have been involuntarily committed to a mental institution or are under a domestic violence restraining order.

By contrast, where the FFL contacts the FBI directly, the FBI will access only those state records available through the NICS databases. Records which are maintained exclusively by states will not be available through the NICS. Although some of these records can be provided to the FBI and be included in the NICS database, many are not available to the FBI when it performs the NICS check. This is perhaps the most important reason for states to serve as POCs.

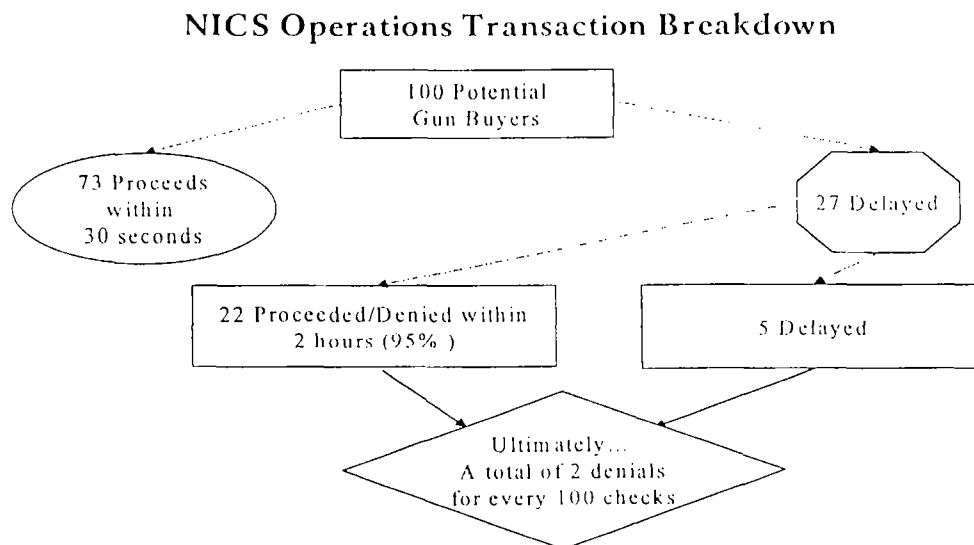
In Other States, FFLs Contact the FBI for NICS Checks

In states that have not agreed to serve as state POCs, once the ATF Form 4473 is completed, the FFL contacts the NICS at the FBI, by telephone through a toll free number, to request a background check. (Refer to NICS Operation Workflow Diagram—**Appendix B**—for overview of activities described on next several pages.) NICS is available for background checks 17 hours a day, seven days a week, including holidays (except Thanksgiving and Christmas). The call is received at one of two call centers located in Moundsville, West Virginia and Uniontown, Pennsylvania.

A call center customer service representative (CSR) enters the buyer's descriptive information into the NICS computer to initiate a search of the NICS databases. Once this information is entered and sent to NICS, one of two responses will be returned from NICS—proceed or delay—along with a NICS Transaction Number (NTN) for that particular transaction. The call center CSR does not have access to or receive any other information in NICS relative to criminal history information, wanted persons information or any other NICS index protected information. Most of the time, the NICS responds immediately with a "proceed" response, because there is no disqualifying or potentially disqualifying information in the system. In these instances, the FFL can complete the sale, and the purchaser can leave the gun store or gun show with the firearm. Sometimes, of course, the NICS identifies disqualifying or potentially disqualifying information in the system and a delay response is generated. In these cases, the NICS will forward the information to the FBI Operations Center where an FBI employee, known as a NICS examiner, must take additional time to review the record to determine whether it is complete, whether it matches the prospective buyer, and whether it contains disqualifying arrest and disposition information.

NICS Responses to Requests for Background Checks Must be Timely and Accurate

Under Permanent Brady, as soon as the NICS is able to determine accurately that there is no information demonstrating that the buyer is a prohibited person, the gun transfer is allowed to proceed. This means that there is no federal waiting period. As described in greater detail below, 73 percent of all prospective gun purchasers are authorized by the NICS to make their purchase *immediately* (within approximately 30 seconds on average after information is entered into NICS). The NICS provides a definitive response ("proceed" or "deny") to 95 percent of all requests within two hours of receipt of information to search 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 checks takes more than 24 hours to complete is almost 20 times more likely to be a prohibited person than the average gun buyer. This process is further illustrated as follows:



RESULTS FROM THE FIRST SEVEN MONTHS OF NICS OPERATIONS

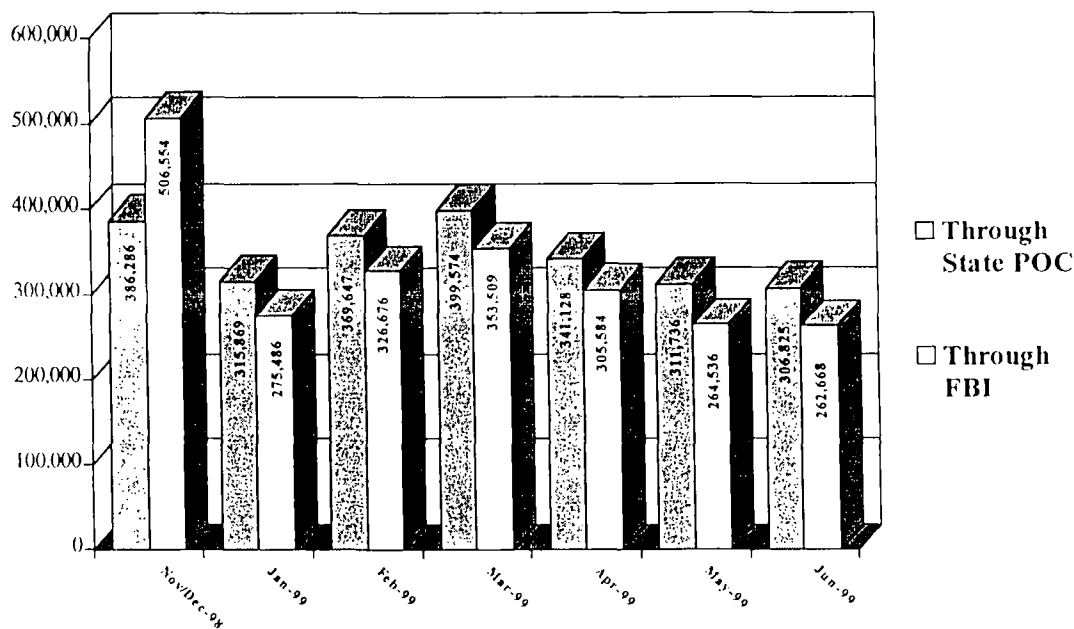
Number of NICS Checks

In the first seven months of operation, through June 30, 1999, there were 4,726,078 checks run through the NICS. Of these, 2,295,013 were handled by the FBI, while 2,431,065 were handled by state POCs. The chart below shows queries by month, divided between FBI and state POCs.

MONTH(S)	STATE	FBI	TOTAL
November/December '98	386,286	506,554	892,840
January '99	315,869	275,486	591,355
February '99	369,647	326,676	696,323
March '99	399,574	353,509	753,083
April '99	341,128	305,584	646,712
May '99	311,736	264,536	576,272
June '99	306,825	262,668	569,493
6 Month Total (Jan - June)	2,044,779	1,788,459	3,833,238
7 Month Total (Nov/Dec - June)	2,431,065	2,295,013	4,726,078

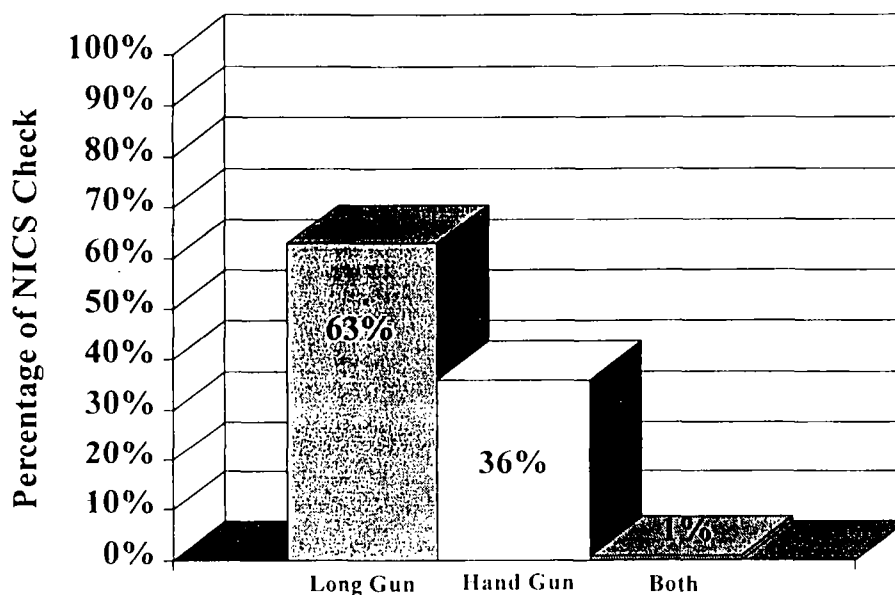
The state and FBI monthly transaction totals are graphically illustrated as follows:

Monthly Breakdown of NICS Queries



With the establishment of the NICS, background checks were required for the first time in connection with the purchase of long guns. Experience has shown that there are significantly more NICS inquiries for long gun purchases than for handgun purchases, as illustrated below.

Handgun and Long Gun Breakdown



Note: NICS inquiries require information as to whether the purchase is for a long gun, handgun or both. NICS does not include information pertaining to make, model or serial number of firearms being purchased.

"Immediate Proceeds "-There is No Disqualifying Information in the NICS

Of the total 2,295,013 NICS checks handled by the FBI, 1,665,232 (73 percent) resulted in an immediate "proceed" determination to the FFL (indicating that no records regarding the prospective buyer have been located by the NICS, and that the gun can be transferred under the Brady Act). The average amount of time that it takes for NICS to provide an immediate proceed after information is entered into NICS is within 30 seconds.

"Delays "-There is Potentially Disqualifying Information in the NICS

The other **27 percent** of NICS checks are delayed, because additional time is required to determine whether a firearms purchaser is prohibited from possessing a firearm. If information needed to finish the background check is available electronically, the background check is

completed within two hours. Of the **27 percent** of NICS checks for which additional information is required, most (**80 percent**) are completed **within two hours** by performing additional electronic checks. In other words, **95 percent** of all NICS checks are completed within two hours.

The remaining five percent of checks cannot be completed electronically and require more time to finish. The FBI must contact the state or local entity that has the information (usually the disposition) to complete the record. For example, the check of criminal history records, comprised primarily of state submissions, is a critical element of a NICS check. Usually, these records contain information to show that an individual was arrested, the crime charged, and whether or not the person was found guilty of the crime. Sometimes, however, the criminal history record will only show that the person was arrested, without showing the disposition of that arrest (that is, whether the arrest resulted in a conviction). Under Department of Justice interpretation of current Federal law, an arrest alone is insufficient to disqualify a prospective purchaser from obtaining a firearm. Final disposition information from the states is therefore critical to the NICS.

The first seven months of NICS operation demonstrate the connection between the lack of state arrest disposition information and the delays in NICS responses. Where the NICS shows a potentially disqualifying criminal history record for a prospective purchaser, *but* does not have electronic access to final disposition information, a NICS examiner must take steps to obtain that information from non-electronic sources. Often, this will require direct contact with the local court where the information is held. The ability to obtain the required disposition information depends on several factors, including whether the court is open (courts are typically closed on weekends), the availability of the court clerk to assist, and accessibility of the disposition information. For these reasons, the Brady Act allows the NICS three business days to complete a check.

The Brady Act allows the NICS three "business" days to complete a check, rather than three days or 72 hours. (A "72 hour" rule would mean that, if a purchase were initiated on a Saturday morning and arrest disposition information was needed, the FBI would have only approximately eight business hours - on Monday - to obtain this information in order to complete the check.) Of the 49,160 NICS denials issued by the FBI during the first seven months of NICS operation, over 11,000 (22%) would not have been issued if the law allowed only 72 hours to complete a check, instead of three business days.

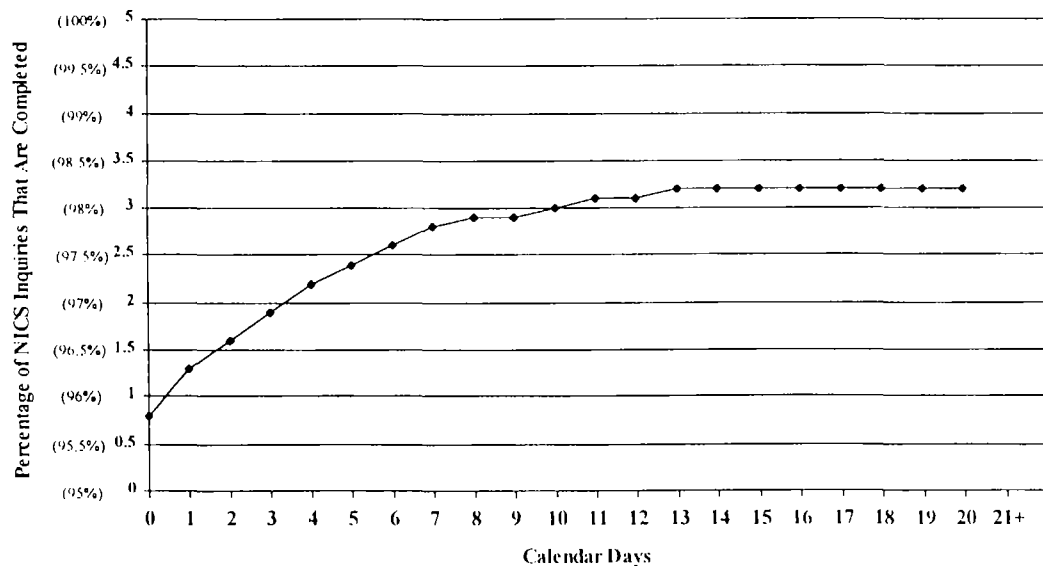
Some examples illustrate the impact of a 72 hour rule. The following denied persons, who tried to buy a gun on Saturday in past months, would not have been stopped from purchasing a firearm: a person convicted of rape in Virginia who tried to buy a gun on Saturday, May 15, 1999; a person convicted in Texas of Aggravated Kidnaping with Attempt to Rape a Child who tried to buy a gun on Saturday, February 27, 1999; a person convicted of domestic violence in Kansas who tried to buy a gun on Saturday, January 30, 1999.

Reducing the time limit for checks from three business days to lesser periods, such as 48 hours or 24 hours, would mean correspondingly greater decreases in the ability of the NICS to prevent unlawful purchases. Of the FBI NICS denials during the first seven months, approximately 15,000 (31%) would not have been stopped if a 48-hour limit had been in place, and approximately 20,000 (41%) would not have been stopped if a 24-hour limit had been in place.

"Default Proceeds"—Although There is Potentially Disqualifying Information in the NICS, Three Business Days have Passed Since the NICS Check was Initiated

A portion of the five percent of NICS checks that require more than two hours to complete cannot be completed within the three-business day time period currently provided under the Brady Act. As illustrated in the graph which follows, approximately 60 percent (three) of the remaining five percent are resolved within ten calendar days. There is relatively little activity depicting receipt of disposition information after 13 calendar days.

Allocation of the Five Percent of NICS Inquiries That Are Not Completed in Two Hours



Note - 95% of all inquiries are completed within two hours. This chart represents the five percent of inquiries not completed within two hours

As soon as the NICS examiner receives information to complete the check—such as the disposition of an arrest—contact is immediately made with the relevant FFL to provide the result of the NICS check whether or not within the statutory three business day period. However, the Brady Act allows FFLs to transfer firearms after three business days, even if the check is incomplete.

These situations can be called "default proceeds," because the FBI does not actually issue a "proceed" for the firearms transfer. Rather, the FBI provides the FFL with information that efforts are continuing to obtain data to complete the background check. When a final disposition is unable to be retrieved within the three business days, the NICS Operations Center contacts and advises the FFL verbally through a prepared script that the NICS is still in the process of reviewing the matter and cannot give either a 'PROCEED' or a 'DENIAL' response for this sale. The FFL is also advised that if they are not contacted by the NICS by the close of business that day, the Brady Act does not prohibit the transfer of the firearm the following day or at any time within 30 days. Additionally, the FFL is advised that the NICS will be continuing to review the matter for two more weeks and will contact the FFL within that time if NICS discovers definitive information regarding the transaction. Sometimes, the FBI will receive information (usually a disposition of an arrest) after the three business days which indicates the purchaser is prohibited from purchasing or possessing a firearm. The FBI will contact the FFL to determine whether or not the firearm has been transferred.

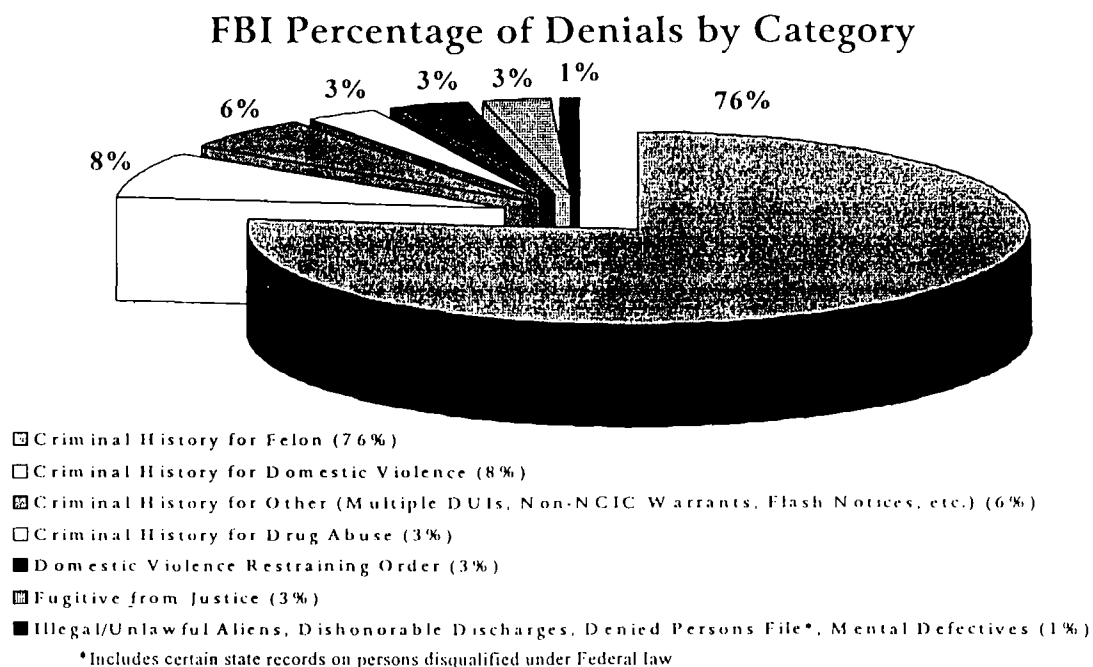
Retrievals

When the FBI determines that an FFL has already transferred the firearm to an individual determined by the NICS to be a prohibited person, the FBI notifies local law enforcement where the firearm was sold or where the purchaser lives, if different, and the ATF that a prohibited person received a firearm. During the first seven months of NICS operations, there were 1,786 occasions where information demonstrating a purchaser was prohibited was received after three business days, and it was determined that the firearm had been transferred to the purchaser, thus necessitating local law enforcement or ATF having to retrieve the firearm(s) from the prohibited person.

Denials

Since November 30, 1998, the FBI and the state POCs each have performed approximately one-half of the NICS checks. While the FBI tracks the number of denials that it issues, the FBI does not routinely receive information about denials from the state POCs. In the first seven months of NICS operation, the FBI blocked 49,160 illegal gun sales, a denial rate of 2.13 percent. Based on the information received from individual states, the FBI estimates that a

comparable number of denials have been issued by the state POCs, for an estimated total of 100,000 denials under Permanent Brady. The FBI denials by prohibited category are illustrated as follows:



As reflected by the preceding chart, the overwhelming majority of NICS denials by the FBI are for people with criminal convictions. This includes individuals who have been convicted of a felony, a misdemeanor crime of domestic violence, or drug crimes which establish illegal drug use or drug addiction.

Detailed information on each denial transaction is referred to ATF for investigation.

Dispositions

To try to prevent as many prohibited people as possible from obtaining firearms, the FBI is continuing to work with the states on improving NICS' direct access to state final disposition information, and to assist states in improving the accuracy and completeness of the records that are available to the NICS system for background checks. In addition, FBI representatives have been attending state court clerk conferences to encourage states to provide the needed disposition information on an expeditious basis. Finally, because states that serve as POCs have access to more records that will contain dispositions, the FBI is working to encourage more states to serve as POCs for the NICS.

Additional time beyond the current three business days would improve the ability of NICS to obtain information on prohibited persons before a transfer of a firearm takes place.

Appeals

When an individual is denied a firearms transfer on the basis of a NICS check, that person may appeal this decision directly to the FBI. An important measure of the accuracy of NICS background checks is the number of appeals that have been generated, and more importantly, the number of decisions that have been overturned on appeal. Regarding the 49,160 denials issued from November 30, 1998 through June 30, 1999, the FBI has received only 6,896 appeals which represent less than 15 percent of these denials. Of the 5,169 appeals on which a decision has been reached, 3,823 (74 percent) have sustained the denial, while 1,346 (26 percent) have overturned the denial. Of those overturned upon appeal, approximately 30 percent were the result of information missing from the original record, such as an expungement or restoration of rights.

PRIVACY AND SECURITY ISSUES

Because the NICS contains an extensive amount of sensitive personal information about individual criminal histories and other disqualifying information, there is the potential that the system will be used improperly. Congress recognized this possibility and required the Attorney General to ensure the privacy and security of the system. To fulfill this responsibility, instances of fraud and abuse must be identified. Only by conducting audits of those entities and individuals who have access to the system can fraud and abuse be detected and punished. To perform audits, the FBI must have access not only to the records of prospective firearms purchasers who are denied, it must also have access—at least for a limited period of time—to records of firearms purchasers who are approved.

Basic security audits are essential to preventing the invasions of privacy that would result from misuse of the system. Audits allow the FBI to detect both persons who misuse the system to perform unauthorized background checks as well as felons who assume the identity of a qualified person to buy firearms illegally. Audits also enable the FBI to determine whether false names are submitted to the NICS by FFLs to evade the name check system. For instance, a corrupt FFL may send in one name (known to have no disqualifying record) for a NICS check, but record a different name on the firearms transaction record. If the record of the name sent to the system were destroyed immediately, there would be no way of proving that the dealer had deliberately evaded the background check system by sending it a false name. The audit log contains information relating to each NICS background check requested by FFLs and allows the FBI to audit use of the system by FFLs and POCs. The audit log also allows the FBI to perform quality control checks on the system's operation by a review of the accuracy of the responses given by the NICS record examiners to FFLs.

Thus far, NICS audits conducted by the FBI based on the current NICS rule (the interim audit system) have uncovered multiple instances involving improper use of the system. For example, the audit log has helped the FBI to identify an FFL who was transferring firearms without doing background checks and has aided in identifying several possible "straw purchases" that were forwarded to the ATF for investigation. The audits have also been used to identify

FFLs who have been conducting NICS inquiries on persons outside of the context of a gun transfer. The Federal firearms laws require that the individual completing the ATF Form 4473 must be buying the firearm for himself or herself or as a gift. Any individual who is not buying the firearm for himself or herself or as a gift, but who completes this form, violates the law. Another example would be if an individual knowingly and willingly purchases a firearm for a person who has been previously denied the purchase of a gun. These incidents are referred to as "straw purchases."

A Department of Justice, NICS Regulation, "Final Rule," was published in the *Federal Register* on October 30, 1998. This final rule provides that the FBI may retain records of all NICS transactions for six months, and that the FBI will work to reduce the retention period to the shortest practicable period of time (less than six months) that would allow basic security audits of the NICS. The final rule also provides that records be retained for a longer period if necessary to pursue identified cases of misuse of the system. In addition, the final rule mandates that the information in the Audit Log be used only for the purpose of conducting audits of the use and performance of the system or pursuing cases of misuse of the system.

Pursuant to the final rule, on March 1, 1999, the Department of Justice issued a notice of proposed rulemaking in the *Federal Register* to further reduce the retention period to 90 days. The proposed regulation will also establish a system for conducting audits. With this system, the FBI will provide information from the audit log to the ATF in connection with specific ATF inspections of FFLs, so the ATF inspectors can compare the information in the audit log to the information kept by the FFLs. ATF inspectors will be subject to the same strict requirements regarding the use and destruction of information from the audit log as the FBI. However, giving ATF the ability to use information in the audit log in the course of an on-site inspection will significantly improve the effectiveness of the audits. The FBI is currently finalizing this regulation.

SUCCESS STORIES

NICS has thus far fulfilled its mission. As a result of the concerted efforts of NICS personnel, firearms transfers to non-prohibited purchasers have been accomplished with minimal inconvenience to both the FFL and purchaser. There, of course, have been individuals who have been denied the ability to purchase a firearm. Following are some examples of instances, within different prohibitive categories, where NICS has been successful in obtaining relevant information to deny a firearms transfer.

The NICS Has Assisted in Capturing Wanted Persons

Not only has the NICS prevented more than a thousand wanted persons from purchasing firearms, but the FBI's NICS Examiners also have actively contacted Federal, state, and local law enforcement agencies to provide information which resulted in their apprehension. The following examples illustrate the success of the NICS in helping capture wanted persons:

- On 3/24/99, the NICS identified a person wanted for burglary in Arkansas. The Van Buren, Arkansas, Police Department, was preparing to put this subject on its Ten Most Wanted List. The subject was apprehended.
- On 3/12/99, the NICS identified a person wanted in connection with a major marijuana and cocaine drug ring. The subject was at the top of Colorado's Wanted Persons list. The subject was picked up by the U.S. Marshals' Service in McAllen, Texas.
- On 3/11/99, the NICS identified a person wanted in Oscoda, Michigan, for eight years, for Aggravated Assault with a deadly weapon against a family member. The Texas Highway Patrol picked him up and held him in Texas awaiting extradition to Michigan.
- On 3/1/99, the NICS identified a person wanted for theft and violating a \$5,000 bond. The subject is now in the custody of the Gallup, Texas Police Department.
- On 2/28/99, the NICS identified a person wanted in California for obstructing a court order. He had violated his probation and his whereabouts were unknown. A NICS Examiner informed California that the subject was in Washington State attempting to purchase a firearm. With assistance from another NICS Examiner, all authorities were contacted and the subject was apprehended and extradited to California.
- The Logan Detachment of the West Virginia State Police notified the NICS that, based upon a NICS check, a person wanted for aggravated assault with a gun in Indiana, was arrested on 2/11/99 while still in the gun store by the West Virginia State Police.
- Other examples of wanted persons taken into custody by local law enforcement agencies when identified by the NICS include:
 - An individual from Missouri wanted for fraud was arrested on 2/3/99 by the sheriff's office.
 - A military deserter from New York was arrested by the New York State Police on 1/30/99.
 - An individual from Wisconsin wanted for perjury was arrested on 1/26/99 by the Wisconsin State Patrol.
 - A fugitive from New Mexico wanted for fraud was arrested on 1/13/99.
 - An individual from Louisiana wanted for theft was arrested on 1/12/99 by the New Orleans Police Department.

- A fugitive from Texas wanted for assault was arrested on 1/10/99 by the State police. This individual had two outstanding warrants from the county and eight traffic warrants.
- A person wanted in Cleveland, Ohio, for carrying a concealed weapon was arrested by the State Police in Wheeling, West Virginia.

Mental Defectives Prevented from Purchasing a Firearm

- A man who has been committed to a State hospital on three occasions for threats against elected officials in the State of Washington was denied.

Individuals Who Had Controlled Substance Related Charges Prevented from Purchasing a Firearm

- A man wanted for felony marijuana and cocaine drug ring involvements in Texas was arrested.
- An individual in Louisiana with multiple drug charges was apprehended.
- A man from Louisiana with a drug conviction within the past year and on probation was denied and information of his attempt to purchase a firearm was turned over to his probation officer.

Individuals With Domestic Violence Charges Prevented From Purchasing a Firearm

- A man in Florida with an outstanding warrant for domestic battery and controlled dangerous substance/cocaine was arrested.
- A man in Louisiana charged with domestic violence was apprehended.
- Two individuals charged with domestic battery in West Virginia were arrested.
- An individual charged with menacing-domestic violence was identified.

Dishonorably Discharged Individuals Prevented From Purchasing a Firearm

- An individual who was charged with rape/sodomy of a child and dishonorably discharged from the military.
- An individual in the military who was convicted of stealing by force and violence and dishonorably discharged.

Illegal Aliens Prevented From Purchasing a Firearm

- An illegal/unlawful alien who had been arrested on three separate occasions by United States Immigration and Naturalization Service (INS) in Laredo, Texas, was apprehended.
- An illegal alien who attempted to purchase a gun in Texas was identified.

INS Deported Felons Prevented From Purchasing a Firearm

- An arrest was made of a deportable alien by the Portland, Oregon, INS and returned to Mexico.
- An individual with an immigration violation was voluntarily returned to Mexico.

Other Individuals Prevented from Purchasing a Firearm

- An individual from West Virginia, who was under indictment and had charges of malicious wounding, night time burglary and battery on a correctional officer, was arrested.
- An individual in Kansas, who was previously convicted of felony attempted terroristic threats.

COMMENDATIONS

The NICS Program has received many commendations for denying firearms to ineligible persons as well as other NICS initiatives.

- Dallas County, Texas, DIVERT Court Program, illustrates this appreciation and points to the long-term impact of a single denial. On 4/29/99, the Program Manager of DIVERT wrote to a NICS Supervisor:

"...DIVERT is a judicially-supervised pre-indictment diversion court that provides substance abuse treatment to offenders charged with a State jail felony of possession. The program lasts for one year and includes substance abuse counseling in the community, random urinalysis testing, substance abuse education, and scheduled court attendance. Graduation from the program results in dismissal of the charge. The goal of the program is to return sober, law abiding citizens to the community.

Under the terms and conditions of DIVERT, it is the order of this court that participants 'do not possess a firearm during the term of diversion.' Following your inquiry, the community treatment provider was notified

that a 24-year-old ... participating in her group had attempted to purchase a firearm at a local gun show. That evening during group session, the counselor asked the young man to share with the group his motivation and/or desire to purchase or own a gun. He reported to the case manager the next day that the group had 'processed him,' asking him questions and providing him an opportunity to express his feeling and views. He said he no longer had a desire to purchase a gun, and felt that the group was instrumental in helping him make a better decision about owning a gun at this time in his life.

This letter is to thank you for doing your job—for allowing us this 'therapeutic opportunity' to make a difference in this young man's life. Keep up the good work!"

- During a proceed call with a Federal firearm licensee, the Rio Grande Training Company, Las Cruces, New Mexico, commented on the professionalism of the NICS staff.
- Bexar County, Texas, Sheriff's Office sent a facsimile to a NICS Examiner expressing appreciation for the information she provided.
- A representative from Gander Mountain, Bloomington, Minnesota, expressed: "Thanks to everyone for taking a hard job that was a hornet's nest and making it work. Keep up the good work."
- Holt and Associates, Auctioneers from Colorado Springs, Colorado, stated: "We have had the opportunity to use your NICS Program Services. I am prompted to advise you that the reception was outstanding and that the personnel who assisted were most helpful, courteous, and did make your job much easier. We were conducting an estate auction that included a collection of firearms, and our buyers were from several states. This could have caused a great deal of difficulty for the buyers. I want you to know you have a great staff. In this busy world, too many people don't stop to say -- thanks, good job."
- A licensed gun dealer in Kansas wrote to commend the NICS on its performance running checks for him at a recent gun show: "First of all, I would compliment you for the professionalism that your people extend to us...This past weekend I attended a gun show in Wichita, Kansas. During that period, I ran 40-50 checks with several delays. I was quite surprised at how fast these delays were investigated. The customers also made comments as to how fast the delays were taken care of...Again, thanks for a job well done."

- A famous entertainer attempting to purchase gold-plated pistols which were used in the television series *Have Gun Will Travel* at a cost of \$22,500 whose transaction was delayed but later proceeded because of a "hit" in one of the databases. The FFL commented, "Keep up the good work. I intend to spread the word that NICS is doing a good job."
- The Chief Information Officer from the Administrative Office of Courts in Montgomery, Alabama wrote a letter dated 7/11/99 to the NICS Program Office complimenting two members of the NICS staff who attended the Alabama Court Clerks Conference regarding the receipt of dispositions. An excerpt from this letter follows:

"...(the two representatives*) were there to give a presentation on NICS and to answer questions from the clerks. As you probably know, the NICS program in Alabama has been received with a lack of enthusiasm and the reception given to (the two representatives*) when they arrived on Thursday was cool. Despite this start, your two representatives worked diligently to change the situation and in just a day and a half they had made remarkable progress. Our clerks were sorry to see them leave so soon and they were invited back. The problems of dispositions for NICS in the State of Alabama are not over. However, the attitude has definitely changed and I anticipate that increased cooperation will be seen by your staff. Thank you for devoting some personal attention to this problem.

(The two representatives*) were as confident as any program representatives I have seen. They simply could not be flustered even by the most pointed question or comment. They did not let a potential negative situation overwhelm them but, rather, handled it with tenacity and style... I would like to extend the compliments of the Alabama Judicial System to them."

(*The names of these representatives have been omitted.)

CONCLUSION

The NICS has been working successfully for more than seven months to ensure the timely transfer of firearms to individuals who are not specifically prohibited by Federal law from possessing a firearm. In addition, the NICS has prevented the acquisition of firearms by an estimated 100,000 criminals, fugitives, and others who should not have firearms. The NICS staff has provided timely and effective customer service to other Federal, state and local law enforcement agencies, FFLs, and other users of NICS.

Partnership with the states has been successful through the transition from design and development to the operation of the NICS. The cooperation with the states continues via conferences, seminars, and telephonic communications for future enhancements to the NICS.

An excellent, detailed baseline of statistical data has been collected which will help the NICS Program Office in evaluating and improving performance of the NICS, based on analysis of patterns and trends (e.g., workloads, response times, etc.). By assuring that effective audits of the system are conducted and by assuring that adequate time and resources are provided to complete thorough checks, the NICS will be able to perform even more effectively in the future.

**NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM
POINT OF CONTACT (POC) STATES AND TERRITORIES**

- **Full Participants (16):** States which conduct NICS checks for all firearms purchases and for permits for handguns and long guns:

Arizona	Nevada
California	New Jersey
Colorado	Pennsylvania
Connecticut	South Carolina
Florida	Tennessee
Georgia	Utah
Hawaii	Vermont
Illinois	Virginia

(NICS performs pre-pawn checks for Florida.)

- **Partial Participants (11):** States which perform checks for handgun permits, while the FBI performs NICS checks for long gun purchases:

Iowa	New York
Michigan	North Carolina
Nebraska	

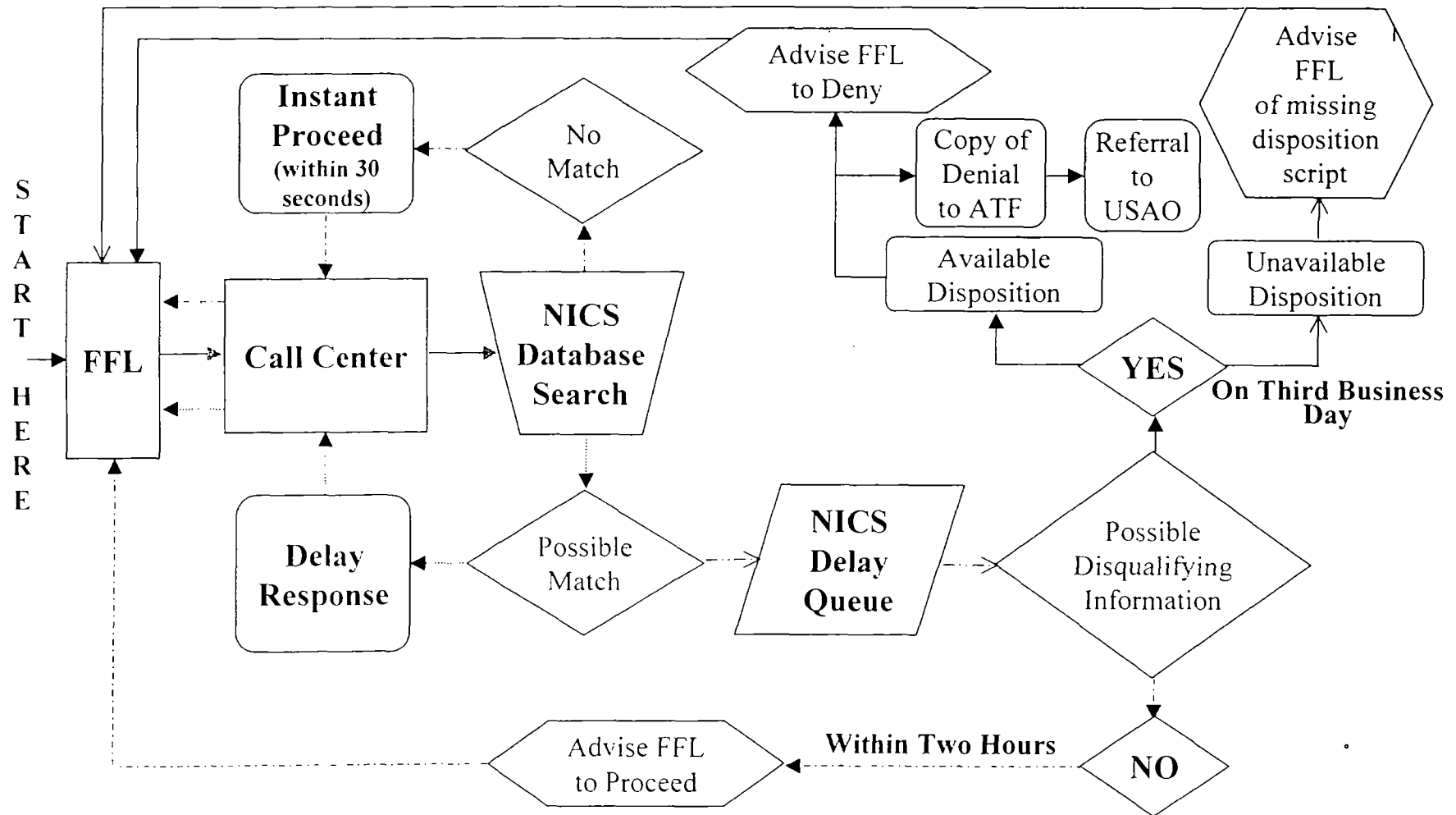
States which perform NICS checks for handgun purchases, while the FBI performs NICS checks for long gun purchases:

Indiana	Oregon
Maryland	Washington
New Hampshire	Wisconsin

- **Non-Participants (26):** The FBI performs NICS checks on both handguns and long guns for:

Alabama	Montana
Alaska	New Mexico
Arkansas	North Dakota
Delaware	Ohio
Idaho	Oklahoma
Kansas	Puerto Rico
Kentucky	Rhode Island
Louisiana	South Dakota
Maine	Texas
Massachusetts	U.S. Virgin Islands
Minnesota	West Virginia
Mississippi	Wyoming
Missouri	Washington, D.C.

NICS Operations Work Flow Diagram



APPENDIX B