Crime—NICS Report

U.S. Department of Justice
Federal Bureau of Investigation
Criminal Justice Information Services Division

National Instant Criminal Background Check System (NICS)

Operations Report (November 30, 1998 - December 31, 1999)

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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 the National Instant Criminal Background Check System (NICS) that any FFL may contact for information to be supplied immediately as to whether the receipt of a firearm by a prospective transferee would violate federal or state law.

In its first 13 months of operation,[1] November 30, 1998, through December 31, 1999, the NICS has proven to be a highly effective system processing over 10 million inquiries. Each NICS background check includes automated searches of approximately 35 million criminal records, over 500,000 records on wanted persons, over 200,000 subjects of protective/restraining orders, and over one million 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 an estimated 179,000 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 local, state, and other federal agencies. For example, the FBI worked together with ATF and local and state law enforcement to design the NICS. State and federal agencies contribute records on disqualified persons for inclusion in the NICS. States may serve as points of contact (POCs) to support their FFLs in conducting NICS checks. Among the most significant examples of this partnership is that in addition to preventing more than 2,400 wanted persons from purchasing firearms, the FBI's NICS examiners have actively contacted local, state, and federal law enforcement agencies to provide information that has resulted in the apprehension of many of these fugitives from justice.

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[1]Note: This NICS operations report covers the period of November 30, 1998, through December 31, 1999, and updates the statistical information in the seven month report released on September 9, 1999. Future reports will be published annually and will encompass transactions on a calendar year (January-December) basis.

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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 an 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 the Interim Brady phase, the Brady Act applied only to handgun sales, and background checks were conducted by local and state law enforcement. 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 persons 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.

Local and State Officials Assist the FBI in Designing the NICS

To ensure that the national system required by the Brady Act would meet the needs of local and state 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. When an FFL conducts a NICS check, a name search is conducted for any matching records in three different databases, managed by the FBI. These include:

- The National Crime Information Center (NCIC), which contains over 500,000 records on wanted persons and over 200,000 subjects of protective/restraining orders;

- The Interstate Identification Index (III), which contains approximately 35 million criminal history records; and

- The NICS Index, which contains over one million records of other prohibited persons, as outlined in the Gun Control Act, such as individuals who have received dishonorable discharges from the armed services, individuals who have renounced their citizenship, mental defectives, and illegal/unlawful aliens.[2]

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 such as: 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; and creating and modifying work schedules.

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[2]During the first year of the NICS operations, records in the NICS Index rose from approximately 900,000 to over one million. The FBI continues to work to increase records in this database.

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 the NICS:
>
> 2. timely, accurate, and complete responses to NICS background checks; and
>
> 3. timely and effective customer service to other local, state, and federal 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 local and state law enforcement in its operation of the 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 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 the NICS operation to date. Finally, the FBI incorporated NICS information into its Law Enforcement Online (LEO) program, and, in conjunction with the Department of Justice (DOJ), 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

The Brady Act 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 persons 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

It has been determined that approximately 15 percent of the licensed dealers account for 80 percent of the NICS transactions. Currently, there are 49,844 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. The purchaser must provide photo identification to the FFL. The purchaser and the FFL then complete their respective parts of the ATF Form 4473, known as the Firearms Transaction Record. The completed ATF Form 4473 contains information such as name, address, and date of birth, and a certification from the purchaser that he or she is not prohibited under state or federal 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, 15 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; and 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 system. 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. Through programs such as the National Criminal History Improvement Program (NCHIP), federal authorities are working to improve NICS access to such records, but the availability of these records to the states is a very important benefit of state participation in the system.

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, via a toll free telephone number,[3] 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

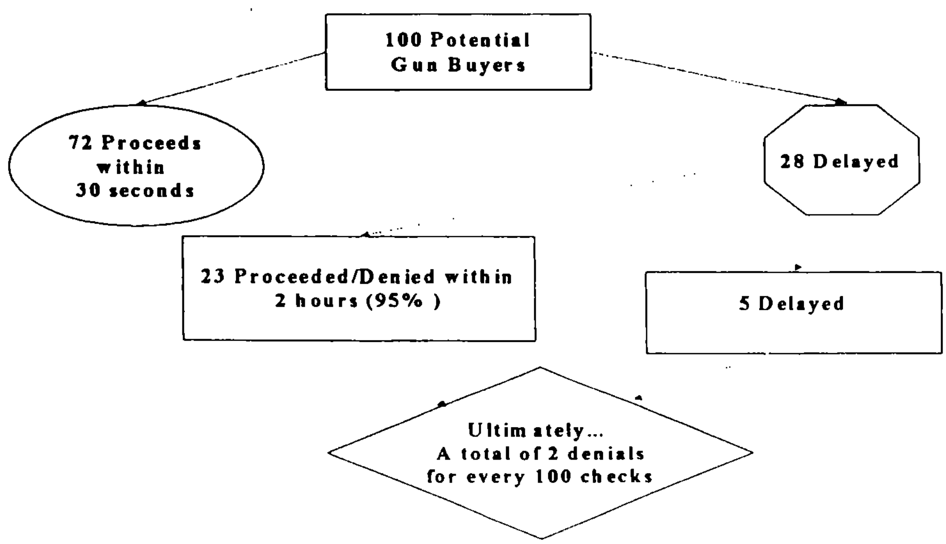
[3]The NICS Operation Center is currently working to develop an alternative electronic means by which FFLs might contact the NICS in addition to the telephone.

NICS–proceed or delay–along with a NICS Transaction Number (NTN) for that particular transaction.

The call center CSR does not have access to and cannot receive any other information in the 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, the NICS identifies disqualifying or potentially disqualifying information in the system and generates a delay response. In these cases, the NICS will forward the information to the FBI Operations Center where an FBI employee known as a NICS examiner will review the record to determine whether it is complete, whether it matches the prospective buyer, and whether it contains disqualifying arrest or disposition information.

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

Under the Brady Act, 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, 72 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). Experience shows that 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 check 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 YEAR OF NICS OPERATIONS

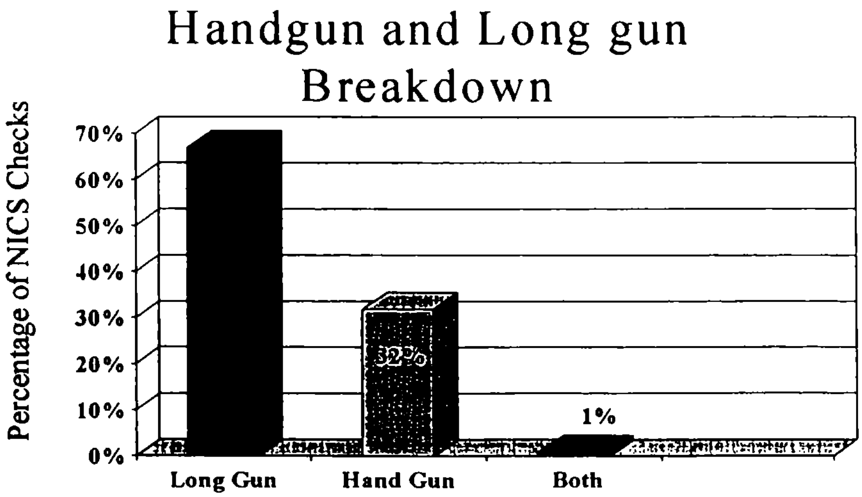
Number of NICS Checks

In the first 13 months of operation, the NICS completed 10,030,963 background checks. Of these, 5,044,574 were handled by the FBI, while 4,986,389 were handled by state POCs. The chart below shows queries by month, divided between FBI and state POCs.

NICS TRANSACTIONS

	State	*Federal*
November 98 (one day only)	6,626	14,570
December 98	379,660	491,984
1998 Totals	386,286	506,554
January 99	315,869	275,486
February 99	369,647	326,676
March 99	399,574	353,509
April 99	341,128	305,584
May 99	311,736	264,536
June 99	306,825	262,668
July 99	303,485	285,991
August 99	363,503	339,891
September 99	382,779	425,848
October 99	435,325	510,376
November 99	459,161	545,172
December 99	611,071	642,283
1999 Totals	4,600,103	4,538,020
Project to Date	4,986,389	5,044,574

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.



Note: NICS inquiries require information as to whether the purchase is for a long gun, handgun or both. NICS <u>does</u> <u>not</u> include information pertaining to the number, make, model or serial number of the firearm(s) being purchased.

<u>**Immediate Proceeds -There is No Disqualifying Information in the NICS**</u>

Of the total 5,044,574 NICS checks handled at the federal level, 4,890,399 were processed through the Call Center, where 3,494,311 (72 percent) resulted in an immediate proceed determination to the FFL.[4] This indicates that no records regarding the prospective buyer have been located by the NICS, and that the Brady Act does not prohibit transfer of the gun. It takes 30 seconds or less to provide an immediate proceed after information is entered into NICS.

[4]The remaining 154,175 NICS checks were processed through the FBI's Operations Center. These include overflow calls from the Call Center, processing of permit checks, and initial searches from FFLs in POC states that experience difficulty with their state system.

Delays–There is Potentially Disqualifying Information in the NICS

The other 28 percent of NICS checks are delayed because additional time is required to determine whether a firearm 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 NICS checks for which additional information is required, 80 percent are completed within two hours after performing additional electronic checks. In other words, approximately 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 local or state entity that has the information usually disposition information about an arrest, to complete the record. For example, the check of criminal history records, which are comprised primarily of state submissions, is a critical element of a NICS check. Usually, these records contain information about an arrest, the crime charged, and whether or not the person was found guilty of the crime. Sometimes, however, the criminal history record will only show an arrest without showing the disposition of that arrest (that is, whether the arrest resulted in a conviction). Under current federal law, an arrest alone is insufficient to disqualify a prospective purchaser from obtaining a firearm. Therefore, final disposition information from the states is critical to the NICS.

The first year of NICS operation demonstrated the connection between the lack of state arrest disposition information and the delays in NICS responses. When 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 nonelectronic sources often requiring 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.

It is significant that 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 approximately eight business hours–on Monday–to obtain this information in order to complete the check. Of the 89,836 NICS denials issued by the FBI during the first year of NICS operation, over 13,000 or 15 percent would not have been issued if the law allowed only 72 hours to complete a check instead of three business days.

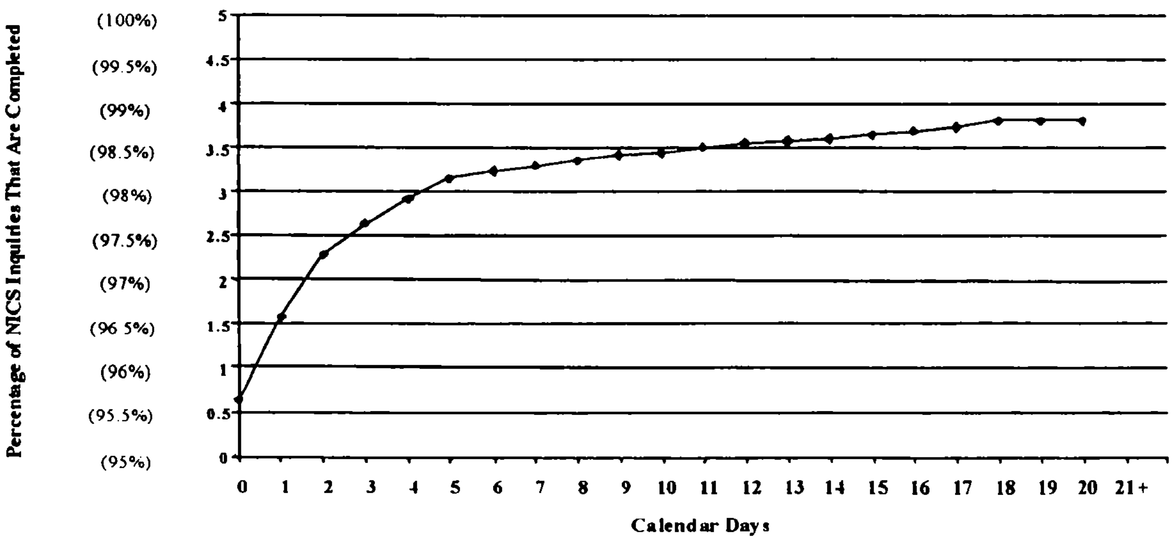
Some examples illustrate the impact of a 72-hour rule. The following denied persons, who tried to buy a gun on Saturday in past months, would not have been stopped from purchasing a firearm: a person convicted of rape in Virginia who tried to buy a gun on Saturday, May 15,1999; a person convicted in Texas of Aggravated Kidnaping with Attempt to Rape a Child who tried to buy a gun on Saturday, February 27,1999; and 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 a corresponding decrease in the ability of the NICS to prevent unlawful purchases. Of the FBI NICS denials during the first year, 21,354 or 24 percent would not have been stopped if a 48-hour limit had been in place and 33,992 or 38 percent would not have been stopped if a 24-hour limit had been in place.

<u>Default Proceeds–Although There is Potentially Disqualifying Information in the NICS, Three Business Days have Passed Since the NICS Check was Initiated</u>

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. The data regarding the time where checks cannot be completed in two hours is illustrated in the graph below:

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 does not prohibit FFLs from transferring firearms after three business days even if the check is incomplete.

These situations are 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 unretrievable 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 the 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 on the following day or at any time within 30 days. Additionally, the FFL is advised that the NICS will continue to review the matter for two more weeks and will contact the FFL within that time if the NICS discovers definitive information regarding the transaction. Sometimes, the FBI will receive information such as a disposition of an arrest after the three business days 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.

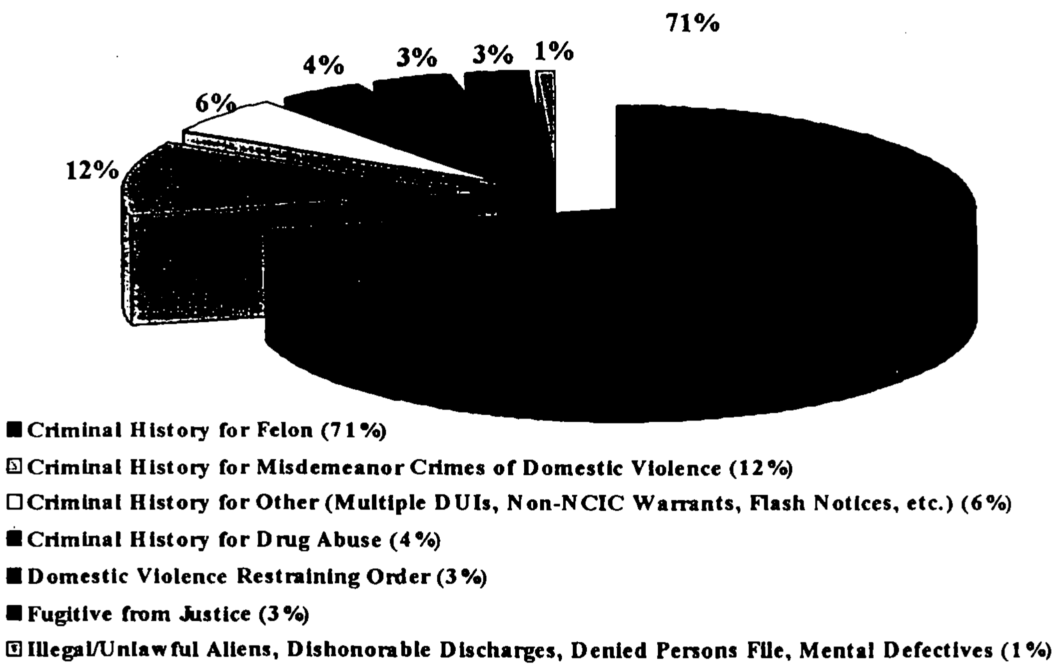
Retrievals

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 both the ATF and local law enforcement where the firearm was sold (or where the purchaser lives, if different), that a prohibited person received a firearm. During the first year of NICS operations, there were 3,849 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. Even though 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 year of NICS operation, the FBI blocked 89,836 illegal gun sales, a denial rate of about two 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 179,000 denials under the permanent provisions of the Brady Act.[5] The FBI denials by prohibited category are illustrated as follows:

FBI Percentage of Denials by Category



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[5]The denial calculation basis now used by the NICS eliminates a software flaw that, in limited circumstances, previously counted an original denial and a subsequent entry in the same record as two separate denials.

As reflected by the preceding chart, the overwhelming majority of NICS denials by the FBI are for people with criminal convictions. These includes individuals who have been convicted of a felony, a misdemeanor crime of domestic violence, or drug crimes that establish illegal drug use or drug addiction. Detailed information on each denial transaction is referred to ATF for investigation.

Dispositions

In trying to prevent as many prohibited people with disqualifying information 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 expeditiously provide the needed disposition information.[6] Finally, because POC states have access to more records containing dispositions, the FBI is working to encourage more states to serve as POCs.

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 the decision directly to the FBI. A critical 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 89,836 denials issued by the FBI from November 30, 1998 through December 31, 1999, the FBI has received 15,505 appeals, representing 17 percent of the denials. Denials have been sustained on 10,895 appeals while 2,913 appeals have resulted in the denial being overturned. Of those overturned upon appeal, approximately 46 percent were the result of information missing from the original record, such as an expungement or restoration of rights. As of December 31, 1999, 1,697 appeals were in various stages of the review process.

[6]Some state court systems have expressed significant difficulties in responding to NICS requests for information. Some courts are seeking reimbursement from the NICS for the costs of locating disposition information. Unfortunately, this is not an expense for which the NICS can currently provide reimbursement.

NICS SYSTEM AVAILABILITY AND DEVELOPMENT

During July 1999, the FBI replaced two computer systems that are integral to the NICS operation and that interface with the NICS. One of the new systems, the National Crime Information Center (NCIC) 2000, which includes information on wanted persons, persons under protective orders, and others, was implemented on July 11, 1999. Because NCIC 2000 provides enhanced name search capabilities, it is very beneficial to the NICS process.

The second new system, the Integrated Automated Fingerprint Identification System (IAFIS) was interfaced with the NCIC 2000 and NICS on July 28, 1999. The IAFIS was developed to support the electronic capture, submission, processing, matching, and storage of fingerprints received by the FBI. The IAFIS will enhance system capabilities and reliability, provide rapid response time, provide electronic submission and transfer of fingerprint and criminal history information, conduct remote searches of FBI criminal and fingerprint database information, and enhance latent fingerprint search capabilities.

Implementation of these two new systems will significantly enhance law enforcement's ability to identify the perpetrators of criminal activity. Bringing these two systems on-line however, did have some adverse effect on NICS availability.

System Availability

NICS system availability generally improved from the date of first operation through June 1999. As previously discussed, in July 1999, the FBI replaced two major computer systems; both of which interface with the NICS. Implementation of these two new systems created some periods of system unavailability. The FBI is continuing to refine these systems and to eliminate all periods of unavailability. The table below summarizes the availability for NICS during its first 13 months of operation.

MONTH	TOTAL CALL CENTER AVAILABILITY[7]	TOTAL POINT OF CONTACT STATE AVAILABILITY[8]
December '98	97.24%	97.74%
January '99	94.82%	95.58%
February '99	97.48%	96.71%
March '99	98.41%	98.63%
April '99	98.89%	98.94%
May '99	98.50%	98.54%
June '99	99.54%	99.62%
July '99	92.04%	92.67%
August '99	95.20%	95.56%
September '99	95.81%	95.97%
October '99	97.71%	97.94%
November '99	94.37%	94.54%
December '99	95.32%	95.47%
Average	**96.56%**	**96.76%**

[7]Availability through the NICS system at the FBI's call center in Moundsville, West Virginia, and Uniontown, Pennsylvania.

[8]Availability recorded through the NICS system in the states that serve as POCs.

System Development

A future enhancement to the processing of the NICS background checks includes the utilization of electronic access or unassisted search, whereby FFLs will query the NICS through a direct electronic line. It is anticipated that a pilot system could be in place as early as at the beginning of year 2001.

The NICS system was Y2K tested and found to be compliant, which was demonstrated with the successful rollover into the new millennium. Continual efforts are being made to ensure that the NICS is operating to its full capacity.

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. Audits of those entities and individuals who have access to the system are conducted to detect and punish fraud. To perform audits, the FBI must have access not only to the records of prospective firearms purchasers who are denied, but also 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, working in conjunction with the ATF, to detect both persons who misuse the system to perform unauthorized background checks and felons who assume the identity of a qualified person to buy firearms illegally. Audits also enable the FBI to determine whether FFL submit false names 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 the NICS 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 and ATF 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 forwarded to the ATF for investigation.[9] 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.

[9]A straw purchase includes the situation in which the person acquiring the firearm purchases it on behalf of a person who has previously been denied a purchase.

The DOJ 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 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.

SUCCESS STORIES

As a result of the concerted efforts of NICS personnel and law enforcement officials at all levels of government, firearms transfers to non-prohibited purchasers have been accomplished with minimal inconvenience to both the FFL and purchaser. At the same time, numerous persons prohibited by law from possessing a firearm have been denied a firearm. The following are some examples of instances within different prohibited categories, where NICS has been successful in obtaining relevant information to deny a firearms transfer.

The NICS Has Assisted in Capturing Wanted Persons

The NICS has prevented more than 2,400 fugitives from purchasing firearms. In addition, the FBI's NICS examiners have contacted local, state, and federal law enforcement agencies to provide information which often resulted in the fugitives' apprehension. The following recent examples illustrate the success of the NICS in helping capture fugitives:

- In December 1999, an individual in Texas who was attempting to redeem a firearm, was found to be under indictment and had an outstanding warrant for a felony charge of indecency with a child involving sexual contact. NICS notified the Wichita Fall Sheriff's Office which would extradite the individual to the Big Lake Sheriff's who had issued the warrant.

- On November 30, 1999, an individual tried to purchase a firearm in Corinth, Mississippi. NICS identified the individual was wanted for escaping from a prison in Georgia. In obtaining the individual's address from the FFL, the NICS notified the Georgia Department of Corrections which contacted Mississippi law enforcement and the individual was captured.

- On November 30, 1999, an individual with an active warrant for several offenses in Maryland attempted to purchase a firearm in Kentucky. The subject was apprehended and is awaiting extradition to Maryland.

- On November 30, 1999, through a NICS transaction it was found that an employee of an FFL in Missouri was attempting to purchase a firearm. The employee had an active warrant in Jefferson County, Missouri. Since the FFL was out of jurisdiction for the Jefferson County Sheriff's Office, the Joplin Police Department was notified and the subject was taken into custody.

- On November 26, 1999, an individual with two active warrants for a probation violation on charges of controlled substance, drug trafficking and unlawful use of a weapon attempted to purchase a firearm. Within ten minutes of NICS initiating the transaction, the Clarksburg, West Virginia, Police Department obtained the individual's address and apprehended the subject.

- On November 23, 1999, an individual with an active warrant for a probation violation attempted to purchase a firearm. The NICS obtained the subject's address from the FFL and notified the Umatilla County, Oregon, Sheriff's Office. The individual was apprehended in a sting operation at the FFL within an hour of the NICS processing the transaction.

- On November 20, 1999, Oklahoma law enforcement agency confirmed an active warrant on an individual attempting to purchase a firearm. Authorities immediately responded and the individual was apprehended within 20 minutes.

- On October 11, 1999, the NICS notified El Reno, Oklahoma, law enforcement of an individual with an active warrant. The individual was apprehended. The Oklahoma law enforcement agency who worked with the NICS in apprehending the individual informed the examiner that law enforcement officers have apprehended several individuals due to the NICS program.

- On August 21, 1999, an individual wanted for military desertion from the United States Navy was apprehended by the Minnesota State Police the same day.

- On August 21, 1999, an individual with an active warrant was attempting to purchase a firearm. Law enforcement confirmed the warrant. Within one hour NICS was advised that the subject was apprehended while trying to purchase a firearm at another FFL.

- On August 21, 1999, a fugitive from justice was apprehended within an hour of NICS contacting the Minnesota state police as a result of an attempted gun purchase. This individual had a valid warrant with the United States Navy and was later extradited to the United States Naval Authorities.

- An individual with an active warrant attempted to purchase a firearm. The originating agency of the warrant was notified. NICS notified the originating agency and later received a call from the arresting agency thanking the FBI for their efforts. The subject had been apprehended and was being extradited back to Florida.

Mental Defectives Prevented from Purchasing a Firearm

- As a result of a NICS transaction, an escapee from a mental health facility, involuntarily committed for suicidal attempts, was apprehended by local authorities.

- An individual who had been involuntarily committed to a state hospital on three occasions for threats against elected officials in the state of Washington was denied the purchase of a firearm.

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

- An individual wanted for felony marijuana and cocaine drug ring involvements in Texas was arrested.

- An individual from Louisiana with a drug conviction within the past year and on probation was denied from buying a firearm. Information on his attempt to purchase a firearm was turned over to his probation officer.

Individuals With Criminal Domestic Violence History Prevented From Purchasing a Firearm

- On December 31, 1999, an individual attempted to purchase a firearm in Mississippi and was discovered to be using a false name. In researching the case, the NICS discovered the individual was under a domestic violence indictment in California. NICS notified the District Attorney's Office.

- An individual in Florida with an outstanding warrant for domestic battery and controlled dangerous substance (cocaine) was arrested.

Dishonorably Discharged Individuals Prevented From Purchasing a Firearm

- An individual who was charged with rape/sodomy of a child and was dishonorably discharged from the military was denied a firearm.

- An individual in the military was convicted of stealing by force and violence and dishonorably discharged was prevented from purchasing a gun.

Illegal Aliens Prevented From Purchasing a Firearm

- An individual who had been arrested on three separate occasions by United States Immigration and Naturalization Service (USINS) in Laredo, Texas, was apprehended.

USINS Deported Felons Prevented From Purchasing Firearms

- An arrest was made of a deportable individual by the Portland, Oregon, USINS and returned to Mexico.

Other Individuals Prevented from Purchasing a Firearm

- On July 16, 1999, NICS received a call from a department store in Jacksonville, Texas, regarding some juveniles looking to purchase explosive devices. The local authorities were notified and the youths were questioned. NICS received thanks for helping to prevent a potentially dangerous situation.

- An individual in Alaska was using a deceased brother's identification to attempt to purchase a firearm. The individual was apprehended for various charges and questioned regarding the death of his brother.

COMMENDATIONS

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

- 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 our 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."

- The Chief Information Officer from the Administrative Office of Courts in Montgomery, Alabama, wrote a letter dated July 11, 1999 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."

RECOMMENDATIONS

Based on the first year of operation, it is clear that the ability of the NICS to stop prohibited persons from acquiring firearms would be improved by:

- more time to complete checks when records are not electronically available;
- a means to help states with the cost of performing as a POC state;
- a means to assist state courts with the costs of seeking disposition information;
- additional funds for NCHIP to improve NICS access to records; and
- longer retention of records period to enable the NICS Program Office to review examiner accuracy, assure system privacy, and detect fraud and misuse of the system. Currently, the retention period is 180 days. A notice of proposed rulemaking is being finalized that reduces the retention period to 90 days. The Advisory Policy Board concurs with the FBI to have a one-year retention of records.

CONCLUSION

The NICS has been working successfully for more than a year to ensure that prohibited persons do not acquire firearms from licensed gun dealers. It has prevented the acquisition of firearms by an estimated 179,000 criminals, fugitives, and others who should not have firearms. The NICS staff has provided timely and effective customer service to other local, state and federal law enforcement agencies, FFLs, and other users of NICS, and has ensured the timely transfer of firearms to individuals who are not prohibited by law from possessing a firearm.

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. 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 more effectively in the future.

APPENDIX A: POINT OF CONTACT (POC) STATES AND TERRITORIES

- **Full Participants (15):** 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	Tennessee
Florida	Utah
Georgia	Vermont
Hawaii	Virginia
Illinois	

(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	

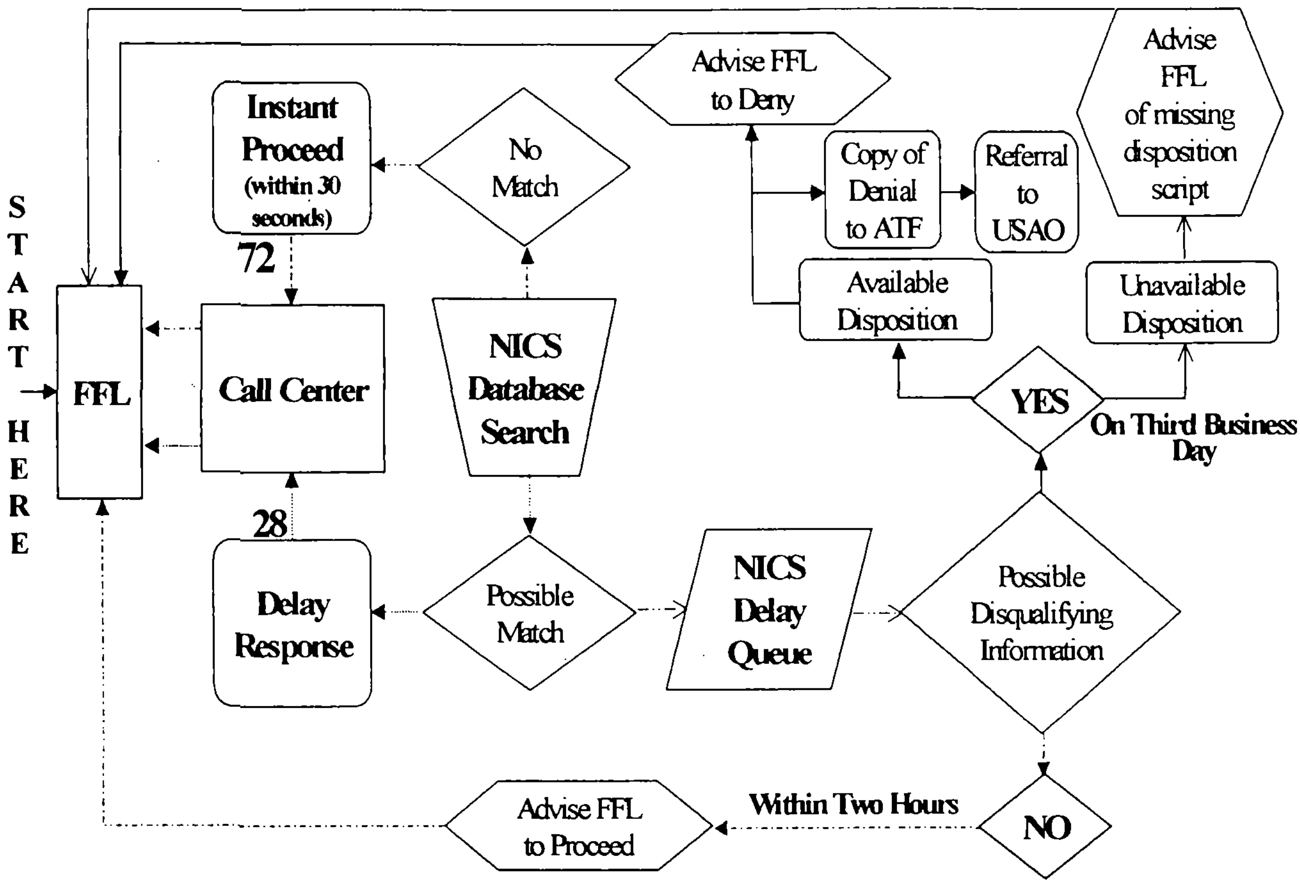
States which perform NICS checks for handgun purchases, while the FBI performs NICS checks for long gun purchases:

Indiana	Oregon
Maryland	Washington
New Hampshire	Wisconsin

- **Non-Participants (27):** The FBI performs NICS checks on both handguns and long guns for:

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

APPENDIX B: NICS Transaction Flow



Update on FBI/ATF Brady reports

BR/EL:

As of late this evening, Bea could not confirm whether FBI had signed the NICS report. I know she will be talking to them first thing tomorrow morning. I'm still optimistic that we will get it tomorrow (Wed) but they've really tried my patience with how long they've strung this along!

Attached is a draft of the joint AG/Summers cover letter that has been prepared in anticipation of the Thursday release and an early draft of the ATF report I received this evening. The bad news is that the ATF report is not so good -- there is a pretty strong focus on the 2,000 delayed denials -- and it notes that ATF referred only 200 cases of illegal Brady purchases for federal prosecution in the first seven months of NICS. The good news is that the 5 page joint cover letter does a good job of putting the ATF piece into context, with good anecdotes, and it has findings from the NICS report that put forward a solid justification for legislation.

Please DO NOT distribute the ATF report draft -- we should getting a cleaned up version by noon. Let me know if you have any concerns about the cover letter or ATF report.

Leanne

CRIME – NICS report

→ · we leak letter? NICS

· ($30m of COPS for Chicago cops for VP)

→ $146M COPS for 1600 officers, of which 750 are school resource officers

→ · Gunbuybacks.

· ~~[illegible]~~ · USA Today: are a 1 pg ad on law enforcement orgs [illegible] (L.E. Alliance) → NRA seed $

Extend · Pres Memo

· SS/HS – $130M $100 + $30 rel. COPS

· NIJ report on school resource [illegible]

OJJDP [illegible]

D R A F T – September 7, 1999 (11:27PM)

President William J. Clinton
The White House
Washington, D.C. 20500

Dear Mr. President:

On November 30, 1998, the Brady law's National Instant Criminal Background Check System (NICS) became operational. NICS is the first nationwide system created to enable law enforcement to conduct pre-sale background checks on gun purchasers and determine whether a purchaser is prohibited from possessing a gun under federal or state law *before* the sale takes place. In its first seven months of operation, NICS stopped an estimated 100,000 felons, fugitives, and other prohibited persons from getting guns, adding to the more than 310,000 people who were prevented from getting guns during the first five years of the Brady law.

To provide you with further details about the performance of the NICS, we are forwarding reports submitted by Louis Freeh, Director of the Federal Bureau of Investigation (FBI), and John Magaw, Director of the Bureau of Alcohol, Tobacco and Firearms (ATF), addressing the implementation and enforcement of the Brady law under NICS. The FBI had the responsibility to develop NICS and is charged with operating the system on a day-to-day basis. ATF regulates the federally-licensed firearms dealers who access NICS and has authority to investigate violations of the Brady law and enforce violations of the Gun Control Act of 1968. The two agencies work together and in partnership with their state and local counterparts to make the system operate effectively.

These reports demonstrate that NICS has been the most powerful tool ever provided to law enforcement to conduct background checks on prospective gun purchasers. As the cornerstone of national law enforcement efforts to keep guns out of the hands of criminals and others barred from possessing them, NICS has helped to reduce armed crime.

Moreover, the success of NICS provides strong support for the legislation pending in Congress to make the Brady law even more effective by extending the background check requirement to all gun sales at gun shows and flea markets. This common-sense measure is needed in order to close a significant loophole in the law that lets criminals and other prohibited people get guns at gun shows.

These reports also demonstrate that legislation to weaken the Brady law by shortening the time that law enforcement has to do background checks from the maximum three business days that are currently allowed would be a grave mistake.

When a gun buyer's record shows an arrest for a serious charge and court records must be checked to see if the buyer was convicted of the crime, law enforcement needs more time, not less time, to complete a background check. Although the number of instances in which three business days are insufficient is small (indeed, most gun buyers get their guns within minutes), the threat to public safety from potentially dangerous felons receiving guns – because their court records could not be located within three business days – is quite real.

We want to highlight several aspects of these reports that illustrate the various aspects of NICS operations and describe the system's effectiveness at keeping guns out of the hands of criminals and other prohibited persons.

- NICS has completed more than 4.7 million checks. Of these, 2.4 million checks were performed by state law enforcement officials in states that have agreed to serve as points of contact for NICS, and 2.3 million checks were performed by the FBI in states where the licensed firearms dealer contacts the FBI directly to request background checks.

- Twenty-seven states performed NICS checks as points of contact for NICS. The FBI has encouraged states to become points of contact, because states have access to information in their own state databases that is not available to the FBI. States also possess expertise regarding their own state laws regarding firearm possession.

- NICS provided the basis for denying firearms transfers to more than 100,000 felons, fugitives, and other prohibited persons. Of these, 49,160 NICS denials were issued by the FBI, while the rest were issued by state points of contact.

In its first seven months of operation, NICS worked to prevent violent criminals and other dangerous persons from obtaining firearms while imposing only a minimal inconvenience on lawful purchasers of guns.

- The FBI's NICS Center operates 17 hours a day, seven days a week, and 73% of Brady checks on would-be gun buyers resulted in an immediate response by the FBI that the sale may proceed. On average, NICS provided these immediate proceed responses within 30 seconds.

- The other 27% of Brady checks required additional time to determine whether the gun buyer was legally allowed to have a gun. The need for this additional time usually meant there was something in the buyer's record to suggest that the buyer was prohibited from getting a gun.

- In 80% of the cases in which more than a few minutes were needed, the NICS Operations Center resolved the issue, and either allowed or denied the sale, within two hours. This means that out of every 100 would-be gun buyers, 95 had their Brady check completed within two hours.

- However, when the background check turned up information that was potentially disqualifying but incomplete, such as an arrest record without a disposition, additional time to finish the check by tracking down the disposition was required. If this disposition cannot be obtained within three business days, the gun dealer legally can transfer the firearm even though the available but incomplete information suggests that the purchaser may be prohibited.

The reports demonstrate the importance of giving law enforcement three business days to complete background checks in those cases for which the record information is incomplete as well as the impact that less time would have had during the first seven months of NICS operations.

- If the FBI only had 72 hours – as opposed to three business days – to complete a background check, *over 11,000 criminals and other prohibited persons* – 22% of the total FBI denials – would have received guns.

- If the FBI only had 48 hours to complete a background check, *approximately 15,000 criminals and other prohibited persons* – 31% of the total FBI denials – would have received guns.

- If the FBI only had 24 hours to complete a background check, *approximately 20,000 criminals and other prohibited persons* – 41% of the total FBI denials – would have received guns.

- Some of the individuals who were stopped from buying guns because the FBI had up to three business days to complete background checks – but whom the FBI would not have been able to stop if less than three business days were allowed – include a person convicted of rape in Virginia, a person convicted in Texas of Aggravated Kidnaping with Attempt to Rape a Child, and a person convicted of domestic violence in Kansas.

The reports discuss what has happened when three business days were not long enough for the FBI to complete background checks. Because the Brady law allows federal firearms licensees to transfer a firearm if they have not gotten a response from NICS after three business days, some dealers will transfer the gun when they are no longer prevented by law from doing so, before receiving a final response from the FBI. As discussed in the ATF report, the names of approximately 2,000 prohibited purchasers, who received firearms because their background checks could not be completed within three business days, have been referred to ATF by the FBI. The Department of the Treasury has made retrieval of firearms transferred to prohibited persons its top priority for Brady-related investigations. Sixty agents from other Treasury law enforcement bureaus have been assigned to assist ATF in retrieving firearms.

When criminals and other prohibited people try to buy guns in violation of the Brady law, ATF and U.S. Attorneys cooperated under guidelines that resulted in the referral of 200 cases for prosecution during the first seven months of NICS. In addition, Brady referral information can lead to broader firearms-related charges. Information is not available concerning the number of corresponding state prosecutions that have occurred.

Although criminals still may steal firearms or try to buy them at gun shows, flea markets or elsewhere in the unregulated market, NICS has made it much more difficult for violent criminals and other dangerous persons to get guns. In its first seven months of operation, NICS provided an effective means to alert law enforcement authorities to attempts by felons and fugitives to purchase firearms from licensed dealers. The following examples show vividly why the Brady law is so important:

- An individual who had been convicted of threatening former President George Bush attempted to purchase a firearm from a pawnshop while still on probation in June 1999. ATF cooperated with the U.S. Secret Service to investigate the case. A Federal arrest warrant was issued, and the individual was apprehended for violating the Gun Control Act.

- NICS identified a person who tried to buy a gun in Texas and who had been wanted in Michigan for eight years for aggravated assault with a deadly weapon against a family member. The Texas Highway Patrol apprehended him.

- When a person wanted for aggravated assault with a gun by Indiana authorities tried to buy a gun in West Virginia, the West Virginia State Police arrested him while he was still in the gun store.

- NICS identified a person wanted in connection with a major marijuana and cocaine drug ring. Upon being discovered, the person, who was at the top of Colorado's Wanted Persons List, was apprehended by the U.S. Marshals Service in McAllen, Texas.

Both reports demonstrate the importance of safeguards to protect the privacy and security of the sensitive information that is contained in the NICS databases and to prevent dealers and others from misusing the system for unauthorized purposes. The FBI and ATF have been working together to develop a coordinated approach to auditing the use of NICS by licensed dealers. Meaningful audits only can be performed if the FBI is allowed to retain – for a limited period of time – information about gun transfers that are approved by NICS. Currently, the FBI retains this information for six months, solely for the purpose of performing audits.

Even as the FBI and ATF are working to finalize audit procedures, the agencies already have identified violations of the Brady law through compliance inspections of dealers. Many of these violations would not have been detected without the benefit of information about gun transfers that were approved by NICS.

- An audit revealed that one licensed dealer transferred guns without first performing a NICS check, under the mistaken belief that no background checks were required in connection with transfers of long guns.

- The results of a pilot project for audits in New Orleans, Louisiana, demonstrated discrepancies at 12 out of 17 dealers who were inspected, including one dealer who did not retain required paperwork about transactions; one dealer who charged $15 for NICS checks on persons not intending to purchase a firearm; and one dealer who performed a NICS check on a family member who had been arrested to see if the person would be approved.

While the two reports demonstrate that NICS performed extremely well during its first seven months of operation, and the system has been made even more effective through the close cooperation of the Departments of Justice and the Treasury, as well as the FBI, ATF, and the states, we are committed to strengthening the Brady background check system further. We will continue to make improvements to NICS operations, encourage more states to serve as points of contact for NICS, and vigorously enforce the federal firearms violations identified through NICS.

We will also provide additional assistance to the states to build complete and accessible criminal records systems. Already, in order to increase the amount of disposition information that is available to NICS immediately, the Department of Justice, through the National Criminal History Improvement Program (NCHIP), has awarded more than $273 million to assist states in upgrading criminal history records and interfacing with the FBI's national systems. All states have received funds under the program.

NICS provides an effective means to prevent felons, fugitives, and other prohibited persons from acquiring guns, while having a minimal impact on the ease with which law-abiding citizens can purchase firearms. At the same time, the performance of NICS as described in the FBI and ATF reports also underscores the importance of securing new legislation that will extend the requirement of Brady background checks to guns shows and flea markets. We are committed to achieving these goals as we strengthen and expand the Brady law to protect our communities and our children from gun violence in the new millennium.

Sincerely,

Lawrence H. Summers
Secretary of the Treasury

Janet Reno
Attorney General

Enclosures

IMPLEMENTATION OF THE BRADY LAW

DRAFT

EXECUTIVE SUMMARY

This report discusses the actions taken by the Bureau of Alcohol, Tobacco and Firearms ("ATF") in the implementation of the permanent provisions of the Brady law that became effective on November 30, 1998. The Brady law requires Federal firearms licensees ("FFLs"), including pawnbrokers, to initiate a criminal background check through the National Instant Criminal Background Check System ("NICS") prior to selling a firearm to an unlicensed individual.

ATF implements the Brady law jointly with the Federal Bureau of Investigation ("FBI").[1] ATF's two primary responsibilities with regard to Brady law implementation are as follows:

- ATF regulates and inspects FFLs to ensure that they comply with the Brady law.
- ATF enforces the Brady law by investigating both FFLs and firearms purchasers for criminal violations of the Brady law and other Federal firearms laws.

As discussed below, the Brady law has proven effective both in the goal of preventing FFLs from selling firearms to potentially dangerous individuals, and in providing law enforcement with valuable intelligence about persons who unlawfully attempt to acquire firearms.

ATF Regulation of FFLs

To implement the permanent provisions of the Brady law, ATF issued regulations on October 29, 1998, governing FFL participation in NICS. The most important of these regulations requires FFLs to contact NICS prior to transferring any firearm to an unlicensed individual, though the method of contact will vary depending on the State in which the FFL is located. The regulations further provide for penalties – including civil fines and license suspension or revocation – for FFLs who knowingly fail to comply with their Brady obligations and unlawfully transfer firearms. FFLs who fail to comply with the requirements of the Brady law are also subject to criminal penalties under the GCA.

In order to educate FFLs about the new Brady law requirements, ATF and the FBI conducted an extensive education and outreach effort through seminars, open letters, newsletters, and the Internet. ATF also conducted a training course for the FBI on aspects of Brady law enforcement that are especially within ATF's expertise.

[1] The FBI administers the NICS system and conducts the background checks required under the Brady law.

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The preliminary results of ATF's efforts with regard to FFLs is encouraging. Based on initial regulatory compliance activities, ATF believes that most FFLs are complying with the Brady law by making NICS inquiries on all purchases and keeping required records, resulting in thousands of prohibited persons being denied the opportunity to purchase a firearm from a licensed dealer. ATF has discovered compliance problems with a small number of FFLs and has taken steps to address these problems.

<u>ATF Enforcement Efforts</u>

As the lead agency for the enforcement of Federal firearms laws, it is ATF's responsibility to investigate criminal attempts to evade the Brady law's requirements and to ensure that firearms remain out of the hands of prohibited persons. In the Brady law context, ATF's enforcement efforts have focused on the following two areas:

1. <u>Efforts aimed at prohibited persons who have obtained firearms from FFLs despite a NICS check.</u>

During the first several months of NICS operation, it has become clear that although most NICS checks can be completed within the statutory period of three business days - indeed, the vast majority are completed within a few hours - there are a number of instances in which law enforcement authorities are unable to complete the NICS check within three business days. This usually occurs when information is needed to complete the check, and that information is not provided within the statutory period of three business days. If three business days lapse without the NICS being able to complete the check, the Brady law does not prevent the firearms dealer from transferring the firearm. For this reason, the FBI refers to checks that cannot be completed in three business days as "default proceeds."

The NICS does not stop working on incomplete checks merely because the statutory period has passed, and often the information needed to complete the check is acquired after the expiration of the three business day period. As soon as the information is acquired, NICS contacts the FFL who initiated the check, and issues a "proceed" or a "denied" response for the transaction. In those cases where the transaction is "denied," NICS asks the licensee whether the firearm has already been transferred to the prohibited person. ATF refers to these situations as "delayed denials," since they indicate that a prohibited person may be in possession of a firearm.

To respond to delayed denials, the FBI and ATF have jointly established an "instant referral" system, so that ATF will learn immediately of firearms transferred to prohibited persons. Moreover, the Treasury Department has directed that ATF make investigations of delayed denials ATF's highest NICS investigative priority, and prepare a plan for the quickest possible recovery of firearms known to be transferred to prohibited persons. This effort has been enhanced by the U.S. Customs Service, the Internal Revenue Service Criminal Investigative Division, and the U.S. Secret Service, which have each provided 20 special agents to assist ATF in investigating delayed denial cases and recovering weapons transferred to prohibited persons.

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2. Efforts related to attempted firearms purchases by prohibited persons.

By centralizing background check information at the FBI, NICS has created a new source of criminal investigative intelligence about persons who unlawfully attempt to purchase firearms. To deal with the FBI referrals based on this information, ATF has developed a screening system to refer the most significant cases to the field for further investigation. The screening system places the highest priority on cases involving potential and active violent offenders. Criminal investigations are opened on individuals who pose the greatest threat to public safety. ATF also worked closely with United States Attorneys throughout the country in developing prosecution guidelines for GCA violations arising out of NICS referrals.

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BACKGROUND

The Gun Control Act

The Gun Control Act (GCA), enacted in 1968, requires individuals who are engaged in the business of dealing in firearms to obtain a Federal license. These Federal firearms licensees, or "FFLs," are regulated by ATF and are required to maintain records of all acquisitions and dispositions of firearms.

The GCA also makes it unlawful for certain persons to possess firearms. These individuals are referred to as "prohibited persons," and it is a felony for any person, including an FFL, to transfer a firearm to a person knowing or having reasonable cause to believe that the transferee is prohibited from receiving a firearm. There are nine categories of the "prohibited persons".

- Persons under indictment for, or convicted of, a crime punishable by imprisonment for a term exceeding one year;
- Fugitives from justice;
- Persons who are unlawful users of, or addicted to, any controlled substance;
- Persons who have been adjudicated as mental defectives or have been committed to a mental institution;
- Illegal aliens, or aliens who were admitted to the United States under a nonimmigrant visa;
- Persons who have been dishonorably discharged from the Armed Forces;
- Persons who have renounced their United States citizenship;
- Persons subject to certain types of restraining orders; and
- Persons who have been convicted of a misdemeanor crime of domestic violence.

With limited exceptions, juveniles under eighteen years of age are also prohibited from possessing handguns under Federal law.[2]

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[2] It is unlawful for an FFL to transfer a handgun to anyone under the age of 21, or a long gun to anyone under the age of 18.

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Pre-Brady Enforcement of the GCA Against Prohibited Persons

Between the enactment of the GCA and the enactment of the Brady law, Federal firearms law operated under the "honor system." Prior to purchasing a firearm from an FFL, an unlicensed gun buyer was required simply to complete an ATF Form 4473. Form 4473 required gun purchasers to provide their name, address, and date of birth, and answer a series of questions designed to ensure that they were not prohibited from receiving a firearm under Federal law. Gun purchasers were required to certify, under penalty of perjury, that the answers to these questions were correct. No system existed for confirming the truthfulness of information on the Form 4473. Consequently, a convicted felon could purchase a firearm from an FFL simply by lying on the Form 4473 about prior felony convictions. This scenario was referred to as a "lie and buy" violation, and law enforcement had little ability to combat it. Prior to the Brady law, thousands of firearms were obtained in this manner each year.

Interim Brady: The First Phase of Brady Law Implementation

The Brady law was enacted on November 30, 1993, and was implemented in two stages: an interim stage and a permanent stage. The interim provisions of the Brady law went into effect on February 28, 1994. Under interim Brady, FFLs were generally required to submit a "Brady form" to a chief law enforcement officer for a background check on every prospective purchaser of a handgun. If no response was received within 5 business days, the FFL could proceed with the transfer. However, the requirements of interim Brady applied only to handgun transfers.

The Department of Justice's Bureau of Justice Statistics estimates that with the cooperation of approximately 5,400 chief law enforcement officers, 312,000 prohibited persons were prevented from purchasing firearms from FFLs during interim Brady.
Examples of persons being stopped revealed how easy it was for felons to avoid detection when purchasing a firearm under the pre-Brady "honor system." For example, in June of 1994, a person who had been convicted of reckless homicide was prevented from purchasing a handgun in Lexington, Kentucky pursuant to an interim Brady background check. Prior to the enactment of the Brady law, that same convicted felon had purchased two handguns without detection by law enforcement officials.

The Establishment of Permanent Brady

The permanent provisions of the Brady law went into effect on November 30, 1998. The permanent Brady law charges the Attorney General with establishing a National Instant Criminal Background Check System (NICS). Pursuant to this requirement, the FBI's Criminal Justice Information Services (CJIS) Division has established a NICS Operations Center in Clarksburg, West Virginia.

Unlike interim Brady, permanent Brady applies to all firearms, not simply handguns.

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FFLs are required to contact NICS before transferring any firearm to an unlicensed individual. NICS may then take up to three business days to notify the FFL whether receipt of a firearm by the prospective purchaser would be in violation of law. If the FFL does not get a "denied" response from NICS within 3 business days, the firearm may be transferred after the end of the 3 business days.

Procedurally, NICS operates one of two ways, depending on the State in which the FFL is located. In twenty-three States, FFLs contact NICS directly through the FBI. However, many States have agreed to act as "point of contact" (POC) States. FFLs in POC States contact the State authorities for NICS checks, rather than the FBI. In States that have their own independent background check requirements, this permits State and Federal checks to be conducted simultaneously. Twenty-seven States serve as partial POCs (handgun checks only) or full POCs (handgun and long gun checks).

THE IMPLEMENTATION OF PERMANENT BRADY

ATF Regulation and Inspection of FFLs[3]

The New ATF Brady Regulations

On October 29, 1998, ATF issued regulations to implement the requirements of permanent Brady. The major provisions of these regulations are as follows:

- NICS Checks: The new regulations generally require FFLs to contact NICS prior to transferring any firearm to an unlicensed individual. FFLs may contact NICS through the FBI or a State POC.

- Revised Form 4473: The new regulations eliminate interim Brady's "Brady form" However, purchasers of firearms from FFLs are still required to complete a revised Form 4473. The revised Form 4473 incorporates a new section for FFLs to record information received from NICS. Additionally, it solicits, on an optional basis, the social security number of the purchaser to help minimize the misidentification of firearms purchasers.

- Timing of NICS Checks: The regulations provide that the purchaser must complete and execute the Form 4473 prior to the licensee initiating a NICS check. A NICS check may be relied upon by a licensee only for use in a single transaction and for a period not to exceed 30 days.

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[3] The FBI issued regulations establishing the methods of operation for NICS, including policies and procedures for ensuring the privacy and security of the system, and appeal procedures for individuals who are determined by NICS to be prohibited persons.

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ATF personnel also conducted a training course for analysts at the FBI's NICS Operations Center in Clarksburg, West Virginia. In determining whether a person is "convicted" within its meaning in the GCA, it is necessary to evaluate State law.[4] ATF has had years of experience in interpreting State laws in making these determinations. Accordingly, the purpose of the course was to educate the FBI personnel about this process, and how to determine whether a person has Federal firearms disabilities. The FBI was advised that ATF personnel were always available to assist in making determinations as to whether an individual was prohibited from receiving a firearm under Federal law.

In large part due to the coordinated efforts of ATF and the FBI to prepare FFLs for their new responsibilities under permanent Brady, the transition from interim Brady to permanent Brady was smooth. On November 30, 1998, FFLs across the country began contacting NICS or their State POC for background checks for all firearms transfers.

<u>Ensuring complete enrollment</u>

The FBI and ATF have coordinated efforts to ensure the registration of FFLs with NICS in States where licensees must contact the FBI for a NICS check prior to transferring a firearm to an unlicensed individual. As of November 30, 1998, there were 105,297 FFLs, including 85,296 licensed dealers and pawnbrokers.[5] At that time, there were approximately 36,147 FFLs enrolled with the FBI.[6] This number did not include FFLs in POC States, who contact their States rather than the FBI for NICS checks.

The FBI compared its list of registered FFLs with ATF's list of active FFLs in those States, and provided ATF with a list of over 14,000 FFLs who had not registered with NICS. On June 20, 1999, ATF mailed a survey to these FFLs to determine the reasons why they have failed to register. Of the results analyzed so far, the following responses have been provided:

- 28% report they have subsequently enrolled. Only .6% stated they were not enrolled due

[4] The GCA, as amended by the Firearms Owner Protection Act of 1986, provides that what constitutes a conviction shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of the GCA, unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

[5] The remaining FFLs are manufacturers and importers of firearms; manufacturers and importers of ammunition, and licensed collectors of curios and relics.

[6]Currently, there are 48,028 dealers enrolled with the FBI.

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to being uninformed;

- 28% report they do not transfer firearms to nonlicensees;

- 12% report they only transfer firearms to nonlicensees with valid permits that constitute alternatives to the requirement for a NICS check at the time of transfer;

- 21% report they only do gunsmithing operations exempt from the requirement to initiate a NICS check, and

- 1% report they have gone out of business.

In some cases, the survey responses may indicate that an FFL is not in compliance with the requirements of permanent Brady; in such cases, the survey information is referred to the field. For instance, one response indicated that the FFL did not initiate NICS checks when transferring firearms to persons that he knew. ATF conducted an inspection, and learned that the FFL had transferred only two long guns since the inception of permanent Brady. The FFL had not initiated NICS checks on either of those transfers; however, neither of the transferees were found to be prohibited. The FFL was educated as to the NICS requirements.

Ensuring FFL compliance with NICS rules

To ensure that FFLs are complying with the Brady law, and not evading the NICS check requirement, ATF is including a review of NICS information in its audits of FFLs. The precise method of encompassing NICS information reviews in the audits is continuing to develop, as constraints on the methodology are imposed by FBI regulations regarding the retention and use of NICS information

Based on the inspections conducted so far, it is ATF's belief that the vast majority of FFLs are complying with the requirements of the Brady law. However, some violations have been uncovered in the course of compliance inspections. For example:

- One FFL was transferring long guns without first initiating a NICS check as required by law. The licensee was under the incorrect assumption that permanent Brady, like interim Brady, applied only to handguns.

- An FFL apparently allowed a prohibited individual to redeem a pawned firearm after receiving a "denied" response from NICS. The FFL falsely recorded that he had received an "approval" from NICS in his records. This information has been referred back out to the field for additional investigation.

Recently, ATF and the FBI began a pilot project to improve the efficiency and quality of the audit's review of NICS information. Under this project, ATF is in direct contact with the FBI during the course of the inspection. This allows the ATF inspector to compare the dealer's recorded information directly with the FBI's NICS audit log.

ATF generally attempts to focus resources and inspection efforts towards those FFLs associated with indicators of significant potential to impact violent crime. Crime gun trace data, local law enforcement intelligence information, and licensees' previous compliance histories are used to select licensees for inspection. Consistent with this general approach, the New Orleans greater metropolitan area was randomly selected for an intensive inspection effort, and these methods were used to select particular licensees for inspection, to include verification of NICS compliance, during a two-week period.

ATF has completed inspections of 17 FFLs. 12 of the inspections revealed that the FFL had some type of discrepancies related to NICS. These violations were as follows:

- Three of the FFLs conducted <u>some</u> transfers without a NICS check, but none of the purchasers were found to be prohibited.

- One FFL had conducted two transfers to prohibited persons on delayed denials, that is, denials that were communicated to the FFL by the FBI after the three day period to conduct a check had expired. The FFL had indicated receipt of a proceed instruction in the records and did not delay the transfer. The FBI was unaware the firearms had been transferred.

- There were a number of instances in which there were FBI transaction numbers for which the FFL lacked records documenting the transactions. This discrepancy was associated with several explanations, some involving potential violations:

  - ✓ The FFL did not retain the Form 4473 records;
  - ✓ The FFL ran NICS checks on persons not intending to purchase a firearm;
  - ✓ The FFL initiated multiple NICS checks on one transaction, especially if there was a delay in obtaining a response;
  - ✓ The FFL was conducting a pre-approved NICS check for a $15 fee, even though the person may not have been intending to purchase a firearm;
  - ✓ The FFL's son had previously been arrested and wanted to see if he could clear a NICS check.

Based on the results of this compliance effort, ATF plans to expand this approach to additional areas of the country. This regulatory enforcement project is continuing through investigative efforts by ATF and the FBI. Appropriate administrative and/or criminal action will

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be initiated upon completion. ATF will take appropriate action on all GCA violations, and information regarding NICS misuse will be referred to the FBI.

<u>Exchange of information with the FBI</u>

In addition to focused inspection efforts, ATF relies on an ongoing exchange of information with the FBI to identify FFLs who may not be conducting NICS checks.

For example, one exchange between ATF and the FBI disclosed a FFL who indicated that he had transferred firearms to prohibited persons due to the fact that he did not believe in the reliability of the NICS. The FBI referred this information to ATF, and ATF initiated a criminal investigation of the FFL. During the course of the investigation, the FFL surrendered its license to ATF and went out of business. The surrender of the FFL license does not eliminate the possibility of criminal prosecution.

To facilitate information exchange that results in enforcement action, ATF will assign an inspector to the FBI NICS Operation Center. This inspector will also provide expert advice on GCA issues and answer general GCA questions from FFLs and the public.

<u>ATF Enforcement Efforts Aimed at Prohibited Persons Who Have Obtained Firearms Despite a NICS check - "Delayed Denials"</u>

The most significant law enforcement issue related to the Brady law is the location and apprehension of prohibited persons known to have received firearms. As noted above, an FFL must wait up to three business days for a response from NICS prior to transferring a firearm. In the vast majority of cases, this period is sufficient for the FBI to complete the required background check. However, in a small percentage of cases, three business days is insufficient for NICS to respond with either a "proceed" or "denied" response.

For example, the FBI may be unable to determine within three business days whether an individual who was arrested on felony charges has actually been convicted of a felony. Usually, this delay occurs because it is not possible to get the disposition records from the State or local government within three business days. In these situations, the NICS Operations Center will advise the FFL that it is still in the process of reviewing this matter, and it cannot provide either a "proceed" or "denied" response for this transaction. NICS will advise the licensee that the Brady law allows the licensee to transfer the firearm after three business days have elapsed; however, NICS will continue its review of the matter for an additional two weeks, and will contact the licensee within that time if it discovers definitive information regarding the transaction.

If NICS discovers, after three business days have clapsed, that the purchaser is prohibited, the FBI will contact the FFL to determine whether or not the firearm has been transferred. If the firearm has been transferred, the case is referred to as a "delayed denial," and it results in an immediate FBI referral to ATF. ATF verifies that the person is indeed prohibited, and then takes

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- State Permit Exception: As required by the Brady law, the new regulations allow, under certain strict circumstances, for a firearms purchaser with a State issued permit to qualify for an exemption from the requirement for a NICS check at the time of sale. The regulations require that State permit will only qualify as exemptions under permanent Brady if the State conducts NICS checks on all permit applicants. Furthermore, a State permit would not constitute an exception under permanent Brady if State law allowed the issuance of permits to persons who had Federal firearms disabilities. In this way, the regulations ensured that individuals who acquired firearms pursuant to the permit alternative would be subject to the same type of background check as those individuals without permits.

- Recordkeeping Requirements: FFLs were already required to retain Forms 4473 on completed transfers for a period of at least 20 years. The new regulations specify that in situations where an FFL contacts NICS, but the transfer never occurs, the FFL must retain the Form 4473 for at least 5 years. This provides an "audit trail" to determine whether licensees have been misusing NICS.

- Penalties: The regulations implement the statute by providing that a firearms licensee who transfers a firearm and knowingly fails to comply with the requirements of the law, in a case where compliance would have revealed that the transfer was unlawful, is subject to license suspension or revocation, and a civil fine of not more than $5,000. Licensees who violate the provisions of the Brady law are also subject to criminal penalties under the GCA.

ATF Education and Outreach for FFLs

ATF coordinated with the FBI to ensure that FFLs were prepared to meet their obligations under permanent Brady on the date of its implementation. This effort had many components.

- **FFL Seminars.** ATF conducted over a hundred FFL seminars to discuss the new requirements of permanent Brady. The FBI participated in many of these seminars. In this way, ATF and the FBI were able to respond to the questions and concerns of FFLs, while educating them as to the requirements of the new law.

- **Open Letters to FFLs.** ATF sent letters to FFLs in all 50 States, the District of Columbia, and 5 territories, explaining how to comply with the permanent provisions of the Brady law.

- **Educating FFLs.** ATF devoted space in its "FFL Newsletters" to various issues under the Brady law. It also drafted 68 "Questions and Answers" about the permanent provisions of the Brady law, which were posted on the ATF website for the benefit of Federal firearms licensees and the public.

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appropriate action. ATF gives "delayed denial" referrals priority over the investigations of routine NICS denials. ATF is committed to retrieving all such firearms from prohibited persons.

As of August 31, 1999, over 2,000 "delayed denials" have been referred to ATF for investigation. Due to the public safety considerations, the FBI has implemented a system whereby immediate notification is made by facsimile transmission to both ATF and local police officials outside of the normal referral process.

All of these delayed transactions must be investigated. The FBI's referral is generally based on a computerized records check. ATF generally does not take any enforcement action (such as seizing a firearm) based solely on a computerized records check, without taking additional steps to confirm the person's prohibited status. This usually involves obtaining an authenticated copy of court records, as well as investigating to ensure that the person's civil rights were not restored under State law.

Once prohibited status is confirmed, special agents take appropriate action. In some cases, where it is determined that prosecution is not appropriate, a special agent will interview the prohibited person, determine whether he or she is still in possession of the firearm, and offer the individual the opportunity to either abandon the firearm to a law enforcement agency or transfer it to a person who is not prohibited from possessing firearms. In other cases, seizure of the firearm may be appropriate. Often the individual's possession of the firearm is in violation of State law but not Federal law. In such cases, ATF will refer the case to a State or local law enforcement agency for investigation. Finally, in those cases where ATF believes that criminal prosecution is warranted, ATF will take appropriate steps to build a case against the prohibited person.

To deal with the backlog of delayed denial referrals, the Department of the Treasury requested and recently approved an ATF plan to temporarily assign 60 special agents from other Treasury law enforcement bureaus (20 each from the Secret Service, Customs Service and Internal Revenue Service) to ATF for at least 60 days. The agents have received training in the law, regulations and ATF policies concerning firearms retrievals.

A review of initial data from delayed denial investigations shows that in a number of these cases, the individual may not be prohibited under Federal law. There are a variety of reasons why a person with no Federal firearms disabilities has received a "denied" response from NICS. In some cases, the person is prohibited under State law, and thus NICS correctly denied the transaction. In other cases, the computerized records check accurately revealed that an individual was convicted of a felony; however, the database does not reveal that the individual subsequently received a restoration of civil rights under State law.[7] Thus, many of these

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[7] Federal law looks to the law of the convicting jurisdiction to determine if an individual is considered to have been "convicted." Certain pardons, expungements of records, and

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situations are unavoidable, given the fact that no computerized database will contain all the information necessary in order to make the complex determination as to whether an individual has Federal firearms disabilities.

As of August 31, 1999, ATF has ensured that firearms were retrieved (through seizure, abandonment or transfer of the firearm) from 300 prohibited persons. In 47 cases, ATF referred subjects to a local law enforcement agency for investigation. ATF has opened up 34 criminal investigations arising out of "delayed denials" with the intention of referring them for prosecution. The following are examples of important Federal criminal investigations resulting from "delayed denial" referrals to ATF:

- Crips Gang Member Straw Purchase. ATF agents in Ohio investigated a prohibited person who obtained a firearm as a result of a "delayed denial." ATF determined that the purchaser of the firearm was a member of a faction of the "Crips" gang who made this acquisition as a straw purchase for other gang members. The other gang members were also prohibited. The firearm was used *less than 24 hours* after its acquisition by the gang members to commit an armed robbery of a local restaurant. The purchaser and other gang members are being investigated for violations of Federal and/or State laws.

- Pawnshop redemption. An individual in Maryland who had been convicted of second degree robbery and attempted rape placed a firearm in pawn with an FFL. He then returned to redeem the firearm, falsified the Form 4473, and obtained the firearm when NICS could not make a determination within three business days as to whether he was prohibited. This individual was also the subject of a protective order. The subject was subsequently arrested; a shotgun and ammunition, pistol magazines and numerous fictitious identifications were seized.

ATF Enforcement Efforts Related to Attempted Firearms Purchases By Prohibited Purchasers

Federal law enforcement efforts do not end with a "denied" response from NICS. Federal law authorizes ATF to investigate individuals who receive a "denied" response in order to determine if those individuals have violated Federal firearms laws. Such individuals could be involved in a variety of illegal activities, including lying on a Form 4473, which constitutes a felony even if the person does not successfully acquire a firearm.[8] Therefore, information on all

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restorations of civil rights may result in the restoration of an individual's firearms rights under Federal law. When an individual is denied a firearm pursuant to a NICS check, and seeks to prove that the denial is erroneous, the NICS allows an appeal.

[8] Pursuant to 18 U.S.C. § 922(a)(6), it is unlawful for any person to knowingly make a false or fictitious oral or written statement in connection with the acquisition or attempted

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NICS denials is referred to ATF, which carefully screens this information to determine which cases merit Federal investigation.

It is important to note that not everyone who receives a "denial" from NICS has violated Federal law. As noted above, in some cases further investigation establishes that the individual was not actually prohibited under Federal law. Certain pardons, expungements of records, and restorations of civil rights may result in the restoration of an individual's firearms rights under Federal law. Currently, the best way for improperly denied individuals to establish their status is to go through the FBI's NICS appeal process.

Indeed, time is necessary to establish each element of a criminal case under 18 U.S.C. 922(a)(6). The following elements must be established prior to referring a case to the United States Attorney:

- That the accused *knowingly* made a false or fictitious oral or written statement;
  - ✓ For example, if the person answered "no" to the question on the Form 4473 about prior felony convictions, it must be established that the person is indeed a convicted felon, and knew that his answer was false.
  - ✓ It must also be established that the person documented in the court records is in fact the same person who attempted to purchase the firearm.[9]
- That the statement regarded the acquisition or attempted acquisition of a firearm or ammunition; and
- That the statement was intended or likely to deceive the licensee with respect to a fact that was material to the lawfulness of the sale or other disposition of the firearm.

Between November 30, 1998 and July 31, 1999, the referral of "denied" transactions from the

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acquisition of a firearm. However, the statement must be intended or likely to deceive the licensee with respect to any fact material to the lawfulness of the sale of the firearm under the GCA. Under section 924(a)(1)(A), it is unlawful to knowingly make any false statement or representation with respect to information kept in an FFL's required records.

[9] There are a number of ways to do this, including obtaining the individual's fingerprints, photographs or handwriting and comparing them to the physical evidence from the instant offense. This may involve having the handwriting on the Form 4473 compared to the handwriting from probation or parole records; having a photo line-up done if it is believed that the FFL can make a positive identification; or doing a fingerprint comparison.

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FBI has led ATF to open over 1,000 criminal investigations. Over 200 of these cases have been formally referred to United States Attorney Offices for prosecution. ATF believes that by investigating and making cases using criminal intelligence derived from NICS checks, serious violent offenders will be incarcerated and some will be deterred from further efforts to purchase firearms illegally in the unregulated market in firearms.

The following are examples of cases that were made as a result of NICS denial referrals to ATF:

- Probation violator. An individual who had been convicted of threatening a former United States President attempted to purchase a firearm from a pawnshop while still on probation in June of 1999. ATF cooperated with the United States Secret Service in investigating this case. A Federal arrest warrant was issued and the individual was apprehended for violation of 18 U.S.C. § 922(a)(6).

- Prior threat to the President. Based upon a NICS referral, ATF and United States Secret Service agents arrested a prohibited individual for violation of Federal firearms laws. The individual had been convicted of felony fraud. In 1992, he was arrested for making threats to the President of the United States.

- Domestic violence: multiple guns. ATF special agents in Maryland initiated a criminal investigation of a prohibited individual who had received a "denied" response from NICS. The individual had been convicted of a misdemeanor crime of domestic violence. ATF agents, assisted by State and local officers, executed a Federal search warrant at the residence of the prohibited person. The agents seized 36 firearms, including at least two machineguns.

- Two time convicted felon: multiple guns (delayed denial). ATF special agents in Maryland received an investigative lead as a result of a referral from the FBI of a prohibited individual who received a "denied" response from NICS. The individual had two prior convictions: one for assault and the second for battery. The agents seized 30 firearms and hundreds of rounds of ammunition.

- Pawnshop redemption. An individual with a felony conviction for multiple counts of aggravated assault attempted to retrieve a firearm he had placed in pawn with an FFL. The FFL required the individual to execute the Form 4473. Upon receiving a "denied" response from NICS, the FFL advised the individual that he could not return the firearm. The individual became abusive with the FFL and threatened him with bodily harm. The subject was arrested without incident by ATF special agents for violation of Federal firearms laws.

- Multiple prior convictions. In a coordinated effort in Florida between the Office of the United States Attorney and ATF special agents, 17 prohibited individuals were indicted for various violations of Federal firearms laws. All the indictments were based upon NICS referrals where the prohibited individuals had falsified the Form 4473 in purchasing firearms from a licensee. The list of prior convictions for these individuals is as follows: attempted homicide of a police officer, resisting an officer and carrying a concealed weapon, homicide, aggravated trafficking in cocaine, assault with intent to commit rape, assault with a dangerous weapon, attempted manslaughter with a handgun, burglary, assault and battery, attempted sexual assault, vehicular homicide, resisting an officer with violence, armed robbery, domestic violence, rape, fraud, dealing in stolen property, larceny, vehicular theft, weapons offenses, escape, possession of a firearm by a convicted felon, and murder. This does not include multiple convictions by each of the defendants.

CONCLUSION

The preliminary implementation of the permanent Brady law has shown that NICS is an effective tool for preventing the sale of firearms by FFLs to prohibited persons. FFLs have generally been in compliance with the requirements of the law, and have prevented tens of thousands of prohibited persons from buying and/or redeeming firearms at gun stores and pawnbrokers. This includes some of the most dangerous criminals in our country -- violent felons, persons threatening the life of the President, gang members, as well as domestic violence offenders who may represent a threat to particular individuals.

While not every "denied" response from NICS results in a case that merits Federal prosecution, the Brady law has also proved to be a valuable source in ATF's investigation of armed career criminals, felons in possession of firearms, and others who violate Federal firearms laws. In cooperation with other Federal, State and local law enforcement agencies, ATF has been able to use this new tool in an effective manner to apprehend and prosecute those who violate Federal firearms laws.