

Troopers dropping gun check

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Troopers dropping gun check

Brady
B.T.

ERIN GIBSON
Arkansas Democrat-Gazette

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

system is completed in November 1998.

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

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

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

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

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

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

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

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

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

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

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This article was published on Wednesday, July 2, 1997

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**Attorney General
Betty D. Montgomery**

FOR IMMEDIATE RELEASE

June 27, 1997

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

To: Joe Sudbury

Statement from Ohio Attorney General Betty D. Montgomery

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

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

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

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

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**Attorney General
Betty D. Montgomery**

NEWS STATEMENT

from Ohio Attorney General Betty D. Montgomery

For More Information, Contact Deputy Attorney General Mark R. Weaver at (614) 466-3443

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

June 30, 1997

Big picture

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

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

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

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

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

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

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

(MORE)

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

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

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

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

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Gun-buyer checks become voluntary

Montgomery decides to restart program

The Columbus Dispatch
Tuesday
JULY 1, 1997 ■

By Alan Johnson
Dispatch Staffhouse Reporter

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

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

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

will take five days, she said.

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

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

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

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

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GUN CHECK from 1A

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

Montgomery immediately shut down the 8-year-old state program operated by the Bureau of Criminal Identification and Investigation in London, Ohio. She said that in view of the court's ruling, the state lacked authority to do the checks.

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

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

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

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

The federal government plans

to take over background checks by year-end 1998.

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

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

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

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

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

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

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

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

Ohio rethinks gun-law stance

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

The Beacon Journal
Tuesday, July 1, 1997

BY MARGARET NEWKIRK
Beacon Journal Columbus Bureau

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

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

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

background checks during the waiting period."

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

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

On Friday, the high court ruled
See GUNS, Page A10

GUNS

• Ohio has been unique in centralizing checks

Continued from Page A1

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

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

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

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

to be so tough on crime."

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

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

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

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

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

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

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

tell under the Brady Bill.

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

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

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

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

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

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

Ohio to continue checking on gun buyers 'voluntarily'

By JOE HALLETT
PLAIN DEALER BUREAU

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

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

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

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

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

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

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

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

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

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

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

THE PLAIN DEALER • TUESDAY, JULY 1, 1997

THE CINCINNATI ENQUIRER

METRO

TUESDAY • JULY 1, 1997

Ohio gun checks on again

Under fire, attorney general changes mind

BY MICHAEL HAWTHORNE
Enquirer Columbus Bureau

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

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

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

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

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



Betty
Montgomery

period of up to five days.

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

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

was one of 23 states that conducted the checks only because federal law required them to.

"No one should expect Ohio's chief legal officer to take it upon herself to pre-empt the state legislature and invade individual privacy," Ms. Montgomery said in defending her earlier decision to stop the checks.

The Brady law, which affects only licensed gun dealers, has kept pistols out of the hands of 1,206 felons and other prohibited handgun buyers in Ohio since 1994, according to the attorney general's office.

Ms. Montgomery said her office is drafting legislation that would make it a felony for a

convicted felon to attempt to acquire a handgun.

Gun-control advocates sharply criticized Ms. Montgomery for temporarily stopping the background checks, noting they continued in other states with no laws equivalent to the Brady law.

The state checks will be replaced with a federal system scheduled to go on line in 1998.

Democrats pounced on the potential political implications of Ms. Montgomery's decision.

"Keeping the background checks seemed like an easy call," said Columbus-area lawyer Richard A. Cordray, a Democrat who wants to challenge Ms. Montgomery in the 1998 elections.

Brady Law Follow Up Meeting
Agenda
August 1, 1997

Brady

I. Voluntary Background Checks -- Treasury

- A. Overall survey of CLEOs — Muzel wants areas all day
- B. Arkansas — Gov. & I. he Brady. No says there is authority. Request to do
- C. Ohio
↳ Ab. Ohio — by 9/13 — Joe continues — BCL's are

II. Insta-Check System -- Justice

III. Options:

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

IV. Law enforcement groups

Brady

BRADY LEGISLATION

- ☞ AUTHORIZATION TO CONDUCT CHECKS, INTERIM AND PERMANENT, UNLESS PROHIBITED BY STATE LAW
- ☞ AUTHORIZATION TO CHARGE FEES, INTERIM AND PERMANENT, UNLESS PROHIBITED BY STATE LAW
- ☞ NO LIABILITY FOR CONDUCTING CHECKS, INTERIM AND PERMANENT
- ☞ BACK-UP CLEO TO CLEO OF RESIDENCE OF BUYER (CLEO OF LOCATION OF SELLER, ANY OTHER CLEO IN THE STATE)

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