DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: BAUCUS, SENATOR MAX
To: AG. ODD: 11-03-94
Date Received: 10-18-94 Date Due: 11-03-94 Control #: X94101928535
Subject & Date
10-14-94 LETTER ENLISTING THE AG's SUPPORT FOR A PROPOSAL DEVELOPED BY THE MONTANA BRADY ACT WORKING GROUP FOR A CENTRALIZED BACKGROUND CHECK SYSTEM WHICH ALLOWS GUN DEALERS THROUGHOUT MONTANA TO CALL A TOLL-FREE NUMBER FOR INFORMATION ON HANDGUN PURCHASERS. THE SENATOR SUPPORTS A CENTRALIZED SYSTEM FOR MONTANA AND BELIEVES THAT IT CAN SERVE AS A NATIONAL MODEL FOR MAKING THE BRADY ACT WORK. HE PROVIDES THE ESTIMATED COST FOR SUCH A SYSTEM AND ASKS **

	Referred To:	Date:		Referred To:	Date:	
(1)	ASG;MARKUS	10-19-94	(5)			SPEC:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			1
	INTERIM BY:			DATE:		OPR:
	Sig. For: OLA			Date Released:		MLH

Remarks
** THAT THE AG ACT IMMEDIATELY TO MAKE FUNDS AVAILABLE THROUGH THE BRADY ACT IMPLEMENTATION PROGRAM OR THE DISCRETIONARY GRANT PROGRAM MONIES MADE AVAILABLE UNDER THE VIOLENT CRIME CONTROL ACT OF 1994.
(SEE E.S. 94101928494 - COPY OF CONTROL SHEET ATTACHED)
INFO CC: OAG (RENO, HOGAN), ASG, OASG (SILVERSTEIN), OPL, OJP (ROBINSON, KAPLAN), JMD, OLA. ORIGINAL TO AG FILES.

Other Remarks:
(1) PREPARE RESPONSE FOR AAG/OLA SIG. & RETURN TO EXEC. SEC. ROOM 4400-AA, WITH COPY OF INCOMING, FOR TRANSMITTAL TO OLA.

FILE:

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
****

MAX BAUCUS
MONTANA

WASHINGTON DC
(202) 224-2651

MONTANA TOLL FREE NUMBER
1-800-332-6106

United States Senate

WASHINGTON, DC 20510-2602

October 14, 1994

The Honorable Janet Reno
Attorney General
Department of Justice
Tenth and Constitution N.W.
Room 5111
Washington, D.C. 20530

Dear Madam Attorney General:

The purpose of this letter is to enlist your support in a matter of great importance to Montana. Since its passage, law enforcement offices throughout Montana have been grappling with how to implement the Brady Act. Many communities have found the Act's current mandate that local law enforcement conduct background checks to be inefficient, inconvenient to gun purchasers, and unevenly administered from jurisdiction-to-jurisdiction.

In Montana, a working group of private individuals, local government officials and the Montana Attorney General has organized to develop recommendations for ways to improve the administration of the Brady Act. They concluded that the best approach is a centralized background check system allowing gun dealers throughout Montana to call a toll-free number for information on handgun purchasers. This program would be administered by the Montana Department of Justice. A centralized system has many advantages: it is streamlined, cost efficient, and user friendly. Such a system can be applied equally to all potential firearm purchasers without penalizing legitimate purchasers with a waiting period based on where they may live.

As a supporter of the Brady Act, I strongly support a centralized system for Montana. I believe this can serve as a national model for making the Brady Act work. The Montana Brady Act Working Group estimates that such a system will cost $173,000 to implement and another $150,000 a year to manage. I ask that you act immediately to make funds available through Brady Act Implementation Program or the discretionary grant program monies made available under the Violent Crime Control Act of 1994.

Thank you for your personal attention to this very important matter.

With best personal regards, I am

Sincerely,

Max Baucus

BILLINGS (406) 657-6790 | BOZEMAN (406) 586-6104 | BUTTE (406) 782-8700 | GREAT FALLS (406) 761-1574 | HELENA (406) 449-5480 | KALISPELL (406) 756-1150 | MISSOULA (406) 329-3123

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: BURNS, CONG. CONRAD
To: AG. ODD: 11-03-94
Date Received: 10-18-94 Date Due: 11-03-94 Control #: X94101928494
Subject & Date
10-13-94 "DEAR JANET" LETTER ADVISING THE AG OF DISCUSSIONS IN MONTANA REGARDING THE EXPENSE OF THE BRADY LAW. AS A MEMBER OF THE APPROPRIATIONS COMTE, THE CONG. ASKS WHAT THE ADMINISTRATION PLANS TO DO TO ENSURE THAT LOCAL COMMUNITIES ARE NOT MADE RESPONSIBLE FOR THIS EXPENSE. HE ADDS THAT HE EXPECTS DOJ TO INCLUDE FEDERAL FUNDING ITS FISCAL YEAR 1996 BUDGET TO ASSIST STATE AND LOCAL GOVERNMENTS AS THEY ATTEMPT TO CARRY OUT THE BRADY LAW.**

	Referred To:	Date:		Referred To:	Date:	
(1)	ASG;MARKUS	10-19-94	(5)			SPEC:
(2)			(6)			
(3)			(7)			PRTY:
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	INTERIM BY:			DATE:		OPR:
	Sig. For:	OLA		Date Released:		MLH

Remarks
** SEE E.S. 94101928535 - COPY OF CONTROL SHEET ATTACHED.
INFO CC: OAG (RENO, HOGAN), ASG, OASG (SILVERSTEIN), OPL, OJP (ROBINSON, KAPLAN), JMD, OLA. ORIGINAL TO AG FILES.
(1) PREPARE RESPONSE FOR AAG/OLA SIG. & RETURN TO EXEC. SEC. ROOM 4400-AA, WITH COPY OF INCOMING, FOR TRANSMITTAL TO OLA.

Other Remarks:

FILE:

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY
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November 7, 1994
carol\wp\brady\announce

PROGRAM ANNOUNCEMENT

NATIONAL CRIMINAL HISTORY IMPROVEMENT PROGRAM ("NCHIP")

Summary: The Bureau of Justice Statistics (BJS) is publishing this notice to announce the initiation of the National Criminal History Improvement Program (NCHIP) in Fiscal Year 1995. The grant program implements the grant provisions of the Brady Handgun Violence Prevention Act and the National Child Protection Act of 1993, and those provisions of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and Violent Crime Control and Law Enforcement Act of 1994 which pertain to the establishment, maintenance, or use of criminal history records and criminal record systems.

This program announcement describes procedures applicable to awards to be made under the NCHIP program during FY 1995. A program announcement applicable to funding after FY 1995 will be published before the end of FY 1995 and will reflect comments received during the intervening time. Guidelines governing use of Byrne Formula funds pursuant to the 5% set-aside established under Section 509 of the Omnibus Crime Control And Safe Streets Act of 1968, as amended, will be issued shortly by BJS and the Bureau of Justice Assistance (BJA). The Byrne Guidelines should be considered together with this program announcement in developing a state's program to meet the goals of the Brady Act and the Child Protection Act.

SUPPLEMENTARY INFORMATION:

PROGRAM GOALS: The goal of the NCHIP grant program is to improve the nation's public safety by: facilitating the accurate and timely identification of persons who are ineligible to purchase a firearm; ensuring that persons with responsibility for child care, elder care, or care of the disabled do not have disqualifying criminal records; and enhancing the quality, completeness and accessibility of the nation's criminal history record systems.

More specifically, NCHIP is designed to assist states:
- to meet timetables for record completeness and participation in the FBI's Interstate Identification Index (III) established for each state by the Attorney General,
- to improve the level of criminal history record automation, accuracy, completeness and flagging,
- to expand and enhance participation in the FBI's Interstate Identification Index (III) and the National Instant Criminal Background Check System (NICS),

- to develop model procedures for accessing records of persons other than felons (including persons subject to civil protective orders based on domestic abuse) who are ineligible to purchase firearms,
- to identify (through interface with NIBRS, where necessary) records of crimes involving use of a handgun and/or abuse of children, elderly or disabled persons, and
- to ensure that states develop the capability to monitor and assess state progress in meeting legislative and programmatic goals.

To ensure that all NCHIP funded efforts support the development of the national criminal record system, the program will be closely coordinated with the FBI, the Bureau of Justice Assistance (BJA) and the Bureau of Alcohol, Tobacco and Firearms (BATF).

Funding under the NCHIP program is available to both those states which are subject to the 5 day waiting period ("Brady states") and those states which are operating under an alternative system pursuant to approval of the Bureau of Alcohol, Tobacco and Firearms (BATF) ("non-Brady states").

LEGISLATIVE BACKGROUND:

The provisions of 18 USC 922 (g) and (n), as amended by the Violent Crime Control Act of 1994, prohibit the sale of firearms to an individual who: (1) is under indictment for, or has been convicted in any court, of a crime punishable by imprisonment for a term exceeding one year; (2) is a fugitive from justice; (3) is an unlawful user of, or addicted to, any controlled substance; (4) has been adjudicated as a mental defective or been committed to a mental institution; (5) is an alien who is illegally or unlawfully in the United States; (6) was discharged from the Armed Forces under dishonorable conditions; (7) has renounced his United States citizenship; or (8) is subject to a civil protective order arising out of domestic abuse. The latter category was added as part of the Violent Crime Control Act of 1994.

The Brady Handgun Violence Prevention Act, enacted in November 1993 and effective in 1994, requires that licensed firearm dealers request a presale check on all potential handgun purchasers by the chief law enforcement officer in the purchaser's residence community to determine, based on available records, if the individual is legally prohibited from purchase of the firearm under the provisions of 18 USC 922 or state law. The sale may not be completed for 5 days unless the dealer receives an approval before that time. The 5 day waiting period requirement terminates in 1998, at which time presale inquiries for all firearms will be made only to the National Instant Criminal Background Check System (NICS) which will include reference to all prohibited categories. Section 106 (b) of the Brady Act establishes a grant program to assist states in upgrading criminal record systems and in improving access to and, interface with, the NICS system.

In addition, Section 106 (a) of the Brady Act amended Section 509 (d) of the Omnibus Crime Control and Safe Streets Act to specifically provide that funds from the 5% set-aside under the Byrne Formula grant program may be spent for "the improvement of State record systems and the sharing ...of records ...for the purposes of implementing...(the Brady Act)."

The National Child Protection Act of 1993, as amended by the Violent Crime Control Act, requires that records of abuse against children, elderly and the disabled be transmitted to the FBI's national record system. The Act also encourages states to adopt legislation requiring background checks on individuals prior to assuming responsibility for care of children, the elderly or the disabled. Section 4 of the Act establishes a grant program to assist states in upgrading records to meet the requirements of the Act. Under the definition set forth in Section 5 (3) of the Act, "child (or elderly or disabled) abuse crimes" include crimes under any law of the state and are not limited to felonies.

Both the Brady and Child Protection Acts required that the Attorney General survey the status of state criminal history records and develop timetables for states to achieve complete and automated records. The survey was conducted during March 1994, and Governors were advised of timetables by the Attorney General in letters of May and June 1994. The letters indicated that compliance with timetable goals assumed availability of grant funds under each Act.

The NCHIP program implements the requirements of the grant programs established under both the Brady and Child Protection Acts.

In addition to the amendments noted above, Section 40602 of the Violent Crime Act authorized a program to assist states in entering data on stalking and domestic violence into local, state, and national data bases. Although funding was deferred, the Act emphasizes the importance of ensuring that data on convictions for these crimes are included in data bases being developed with Federal funds.

APPROPRIATION:

Section 106 (b) of the Brady Act authorized $200 million for the grant program; the Child Protection Act authorized $20 million. An appropriation of $100 million was made under the Brady Act for FY 1995, to be available until expended. Of this amount, $6 million is being made available to the FBI for NICS, $1 million is available for Federal agency administration, and $5 million will, consistent with the legislative history, be used to provide technical assistance to states, program coordination, and to undertake a program evaluation. To implement the requirement that preference be given to lesser developed states, a reserve fund of $5 million will also be established. In light of the overlap between Brady and Child Protection Act goals, funds from this appropriation may be used to meet related goals of the Child Protection Act.

PROGRAM DESIGN:

General: To achieve the goals of the NCHIP program, at least one grant will be made to each state with funds appropriated under the Brady Act. Technical assistance will also be provided under a BJS grant award to assist states in identifying areas of weakness, auditing record status, long term planning, and developing and implementing technical and administrative programs. The minimum to be provided to any state will be $150,000.

Funds under the Byrne Formula 5% set-aside program will also be available to support the improvement of record systems and to meet the goals of the Brady Act.

The NCHIP program includes three components: Core Activities; Permitted Activities in Selected States ("extended core activities"), and Least-advanced State Activities.

Core Activities: Core activities focus on establishing and enhancing computerized criminal history (CCH) records and on improving access to and interface between such systems and the national instant criminal background check (NICS) system. The Brady Act does not define the term criminal history record. As defined in 28 CFR part 20, and used in the BJS Criminal History Record Improvement (CHRI) program, however, the term is defined as: "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any dispositions arising therefrom, sentencing, correctional supervision, and release...".

Specifically, core activities include efforts to improve the quality of criminal history records (with emphasis on automation and disposition capture), to increase participation in the FBI's Interstate Identification Index (III), and to upgrade the accessibility of records for presale and preemployment checks (primarily through record flagging). In addition, core activities include:

<u>Non Felony records</u>-- Consistent with the Child Protection Act which defines a "child abuse crime " as "a crime committed under any law of a state", NCHIP core activities include efforts to increase system access to nonfelony records, particularly in areas relating to child or domestic abuse or crimes against the elderly or disabled.

<u>Interface with NIBRS</u>-- In order to permit states to identify persons with records involving child, elderly, or disabled abuse,

NCHIP core activities include efforts to establish an interface between criminal history record systems and the National Incident Based Reporting System (NIBRS) or any state data system which is compatible with NIBRS.

Information on stalking and domestic violence-- Consistent with Section ....of the Violent Crime Act, core activities include the development of procedures to ensure that information on convictions relating to stalking and domestic abuse are included in, and accessible though, the criminal history data base.

Research, evaluation, monitoring and audit-- In order to maximize the utility of information collected as part of the NCHIP program, core activities include continuing efforts to evaluate or monitor progress in meeting legislative or program goals though statistical or other related means, and specific research studies relating to use of handguns.

Permitted Activities in Selected States ("extended core activities"):

In addition to funding core improvements to criminal history records, BJS will provide a limited amount of NCHIP funds (not to exceed $5 million in total) to selected states to assist in the identification of persons other than felons who are prohibited from purchasing firearms under 18 USC 922 (g) and (n), as amended. The purpose of this effort will be to support the long-term goal of the permanent system established under Section 102(b) of the Brady Act by enhancing the effectiveness of the NICS.

In addition to previously identified non-computerized criminal history (CCH) categories, the Violent Crime Control Act amended the Brady Act to prohibit firearm purchase by persons subject to a protective order for domestic abuse. Such orders, although not technically criminal, are enforced by the criminal justice system, which depends on the availability of data records on such persons for implementation.

Under the NCHIP expanded core program, funds can be used to evaluate the feasibility of accessing such records and to develop protocols for interfacing with non-CCH systems for purposes of background checks.

BJS will identify those states which are eligible to apply for funds to conduct such activities based on level of CCH development, participation in III, extent of automation and technical development, current efforts to interface with other categories of prohibited firearm purchasers (either within the state or interstate), and experience under the BJS CHRI program. States determined to be eligible will be notified by the end of December 1994. Funds will be in addition to funds provided for core activities, which will be required to be the major focus of the state's NCHIP program.

States which wish to apply for funding under this category should include a separate component in their grant application describing such activities and proposing a budget to cover the proposed efforts. Since the goal of the expanded core activities is to ensure that data on all categories of prohibited persons are accessible to the system being contacted for a background check, responsibility for projects under this program will be required to be maintained by the agency with responsibility for maintenance of records for criminal background checks.

States applying for funds under this section should understand that the goal of these efforts is to demonstrate the feasibility of multi-database interface for background check purposes and that the projects are intended to provide guidance to, and serve as models for, future implementation by other jurisdictions. In particular, it is envisioned that states will use Byrne 5% set-aside funds to develop system access to non-CCH data and that the programs developed with NCHIP funds will serve as models for these efforts. For this reason, applications for funds under this section should include a description of proposed efforts to evaluate the success of activities undertaken and to prepare materials describing the project for exchange with other states. States should also realize that BJS will be documenting these efforts and that the applicant will be expected to provide input as requested by BJS for these materials.

In light of the importance of these efforts to the overall BJS NCHIP program, BJS will provide additional technical assistance to the selected states to ensure that, together, the activities being funded will advance the development of the NICS at both the state and Federal level.

Least-advanced State Activities:

Section 106(b) of the Brady Act requires that BJS give "preference to States that, as of the date of enactment... have the lowest currency of case dispositions in computerized criminal history files...". To implement this requirement, a separate set-aside of funds will be reserved for states in this category. Designated states will also be eligible for priority technical assistance at no cost. The determination of states qualifying under this special provision will be made after release of the 1993 Survey of State CHRI systems. A notice will be published by the end of 1994 designating the states, indicating the level of set-aside funds, and describing procedures for applying to receive such additional funds. States designated under this category may only use NCHIP funds to support the basic system development components of the core funding activity.

APPLICATION PROCEDURES:

Designation of agency to administer NCHIP program: To participate in NCHIP, each state must designate an agency to submit an application and to administer the program. The agency should be the agency with primary responsibility for implementing the major activity to be funded with NCHIP funds or a parent agency with programmatic oversight over, and legislative authority to transfer funds to, such agency. Since the NCHIP program focusses on improvement of criminal records and interface with the NICS, BJS anticipates that, in a large number of cases, the NCHIP agency will have responsibility for maintenance of criminal records and liaison with the FBI and/or other record sources including NIBRS, if existing. As noted below, NCHIP procedures envision that strong state coordination will exist between the NCHIP and Byrne 5% set-aside programs to avoid overlap and maximize funding effectiveness. BJS does not, however, anticipate that the NCHIP agency will necessarily be the same as the agency with administrative authority over Byrne 5% set-aside funds. The application should indicate the basis for the selection of the NCHIP agency, justified in terms of the organizational posture of the selected agency and its role in meeting the goals of the Brady and Child Protection Acts.

Only one application will be accepted from each state for any period of funding. It is the responsibility of the state to select the applicant agency. A state may, however, choose to submit its application as part of a multi-state consortia or other entity. In such case, the application should indicate specific responsibilities, and include a separate budget for, each state. States may receive successive awards over time, assuming availability of funds.

The application:

The NCHIP application includes the following four parts.

Part I: This part should include a discussion of current and previous efforts relating to criminal history record improvement funded under the BJS CHRI program, the BJA Byrne 5% set-aside or with state funds over the past 5 years. The discussion should specify the amount of funds received under the BJS and Byrne programs over the past three years and the funds remaining at the time of application. The section should also describe accomplishments with previous funding and the relationship to proposed NCHIP activities.

Part II: This part should discuss audit or other evaluative efforts undertaken to identify the key areas of weakness in the state's criminal record system and in its ability to identify ineligible firearm purchasers or persons ineligible to hold positions involving children , the elderly, or the disabled. Specific reference should be made to relevant studies and to the findings of any internal or external independent audits which have been completed in the past five years.

Part III: This part should discuss in detail the activities to be undertaken with NCHIP funds over the coming 12 month period. Specifically, each application should indicate the core activities to be undertaken to improve its criminal history system, to initiate or enhance participation in III, to support the state's interface with the NICS, and to meet the timetable established by the Attorney General. The section should also discuss proposed efforts, if any, to identify particular offender types (either through interface with NIBRS or other means); to ensure that criminal records pertaining to stalking or domestic abuse are included in criminal record data bases; and, to access data on persons subject to civil protective orders arising out of domestic violence. Discussions of proposed efforts to upgrade record completeness should indicate whether, and how, the courts or other record providers have been involved in preparation of the application and how funds will be made available to such entities.

Part III of the application should also describe the efforts to be supported to monitor state compliance with legislative or programmatic goals through ongoing audits or other means such as statistical analysis, comparison between CCH records and NIBRS or UCR data. Studies relating to handgun use or sales approval, if proposed, should be described in this section. Where considered appropriate,the state Statistical Analysis Center should be consulted in connection with the development of such projects.

BJS is currently supporting the Firearm Inquiry STatistical ("FIST") program to develop national level data on Brady implementation. BJS will advise states by December 1994 of the scope of this project. In support of the basic elements of this project, however, the application should describe procedures to collect data on the number of Brady inquiries, "hits", and captures (including the total number of queries against data bases other than the criminal history record). The application should also indicate procedures for collection of data on the number of background checks on persons seeking positions involving children, the elderly, or the disabled and the number of records with action in the past 5 years which are complete and automated. States will be required to participate in the FIST effort and to submit other information for evaluation programs instituted under the Brady effort. The data described above will be required to be submitted with applications in future years.

Permitted activities in selected states ("expanded core activities"): States which are providing substantial records through the III system, and which can demonstrate a high level of criminal record completeness and technical advancement, are eligible to apply for additional funds to develop, and/or implement procedures to access information on persons other than felons/fugitives who are Federally prohibited from purchasing a firearm. In addition to describing proposed activities, interested states should justify their eligibility for such funding in terms of current CCH development, and indicate whether the state has already established any interface between the criminal record system and other relevant data bases. (See "allowable costs" for covered expenses in this area)

In order to permit assessment of state progress in meeting grant goals, Part III of all applications should set forth measurable benchmarks or goals for each proposed activity.

Part IV: This Part should.describe activity to be undertaken with Byrne 5% set-aside funds during FY 1995. A key part of this submission is a description of the relationship between these activities and the activities to be supported under the NCHIP program. At the option of the state, this submission may serve as the state's submission supporting FY 1995 expenditure of Byrne 5% setaside funds. In such cases, the state may opt to have this section prepared by the agency with responsibility for administering the Byrne funds, rather than the agency designated to administer the NCHIP program. The relationship between the Byren 5% set-aside and the NCHIP program is discussed more fully below.

Coordination between NCHIP and the Byrne 5% setaside program:

The Bureau of Justice Statistics and the Bureau of Justice Assistance have jointly agreed that close and continuing coordination between the NCHIP and Byrne 5% setaside program is critical to meeting the goals of the Brady Act and the National Child Protection Act of 1993. Such coordinated efforts are also necessary to ensure the development of an effective interstate criminal history record system to meet the needs of law enforcement, the criminal justice community and the increasing number of non criminal justice users of criminal history record information. To achieve this goal, BJS and BJA will, consistent with the legislative requirements, be jointly preparing guidelines governing use of the Byrne 5% setaside funds. Copies of the guidelines, which will be finalized by December 1994, will be sent to each state and should be considered in connection with preparation of the NCHIP application.

BJS expects that program plans for projects to be funded under NCHIP and the Byrne 5% setaside will be coordinated by the state agencies responsible for these programs. Where costs of a proposed activity exceed NCHIP available funds or are unallowable under NCHIP, for example, BJS anticipates that the state will use Byrne funds to fill remaining needs. This joint effort, we believe, will maximize the effectiveness of both of these programs.

Application procedure:

The application should cover a three-year period with specific information provided primarily for the first year. The budget should focus on first-year expenses with projections for years two and three. Awards will be made for the first year, with future funding dependant on progress in meeting program goals. The application should identify those agencies to receive direct funding and indicate the fiscal arrangements to accomplish fund transfer.

Review and approval of applications:

Since the goal of the NCHIP program is to ensure that all states receive funding support, no deadline for submission of applications will be established. Applications may be submitted at any time after publication of this announcement. Absent special circumstances, applications should be received by August 1995 to be eligible for funding in FY 1995. Applications will be reviewed and approved as received. To the extent possible, applications submitted by the end of February 1995 will be awarded by the end of May 1995. As noted above, states eligible to apply for "least advanced state" funding or funding for "permitted activities in selected states" will be notified by the end of December 1994. If a selected state has already submitted its application for core activity, the application for additional funds can be submitted as a supplement to the original application.

Allocation of funds:

The appropriation for the NCHIP program remains available until expended. In order to encourage rapid development of systems in support of the NICS system, $25 Million will be allocated for award in FY 1995 to cover core program activity. In addition, $5 Million will be reserved to provide additional funding for "least-advanced" states. Another $5 Million will be reserved to cover the cost of expanded core activities in the states selected to undertake such projects. States may receive funding from the core allocation as well as either the fund for "least-advanced" states or the fund established for extended core activity. The $5 Million reserved for "least-advanced" states and the $5 Million reserved for extended core activities represent the total funding for these purposes over the life of the program and will remain available until expended by the designated states. This may result in an additional award being made to some states after the expenditure of all other remaining NCHIP appropriated funds.

To the extent possible, awards will be made to cover all allowable costs. States receiving funds from the reserve for "least-advanced" states, however, will be required to limit expenditures to purposes directly related to establishment of the basic elements of the criminal history record system and steps necessary to permit participation in III. Among the remaining states, use of funds for non-CCH purposes will be approved only to the extent that the state is making progress toward meeting timetable goals established by the Attorney General.

States should understand that full funding may not be possible in

FY 1995. In addition to the foregoing, allocation of funds will be based on the amount requested and the following factors:

(1) the legislatively mandated "preference to states which ...have the lowest percent currency of dispositions in computerized criminal history files" as of 1993;

2) the extent to which improvements in the state system, by virtue of record numbers, levels of technical development, or operating procedures, will have a major impact on availability of records throughout the national system;

(3) the proposed use or enhancement of innovative procedures which may be of value to other jurisdictions;

(4) the technical feasibility of the proposal and the extent to which the proposal appears reasonable in light of the state's current level of system development and statutory framework;

(5) prior activity of the state with funds under the Byrne and CHRI programs;

(6) state commitment to the national record system as evidenced by membership in III, and participation in the FBI's National Fingerprint File (NFF), Felon Identification in Firearms Sales (FIFS) programs, etc., and the current status of development of its CCH;

(7) reasonableness of the budget;

(8) evidence of state progress in meeting record improvement and background check goals as measured in terms of audits, and data collections relating to presale firearm checks, and background checks on persons seeking positions involving children, the aged and the disabled;

(9) nature of the proposed expenditures;

(10) the extent to which the plan reflects constructive interface between relevant components of the state organization and/or multi state systems; and

(11) the reasonableness of the relationship between the proposed activities and the current state of the state system, in terms of technical development, legislation, current fiscal demands, and future operating costs.

The program does not require either "hard" or "soft" match. Indications of state support, however, may be interpreted as expressions of commitment by the state to the program.

All applicants must agree to participate in evaluations sponsored by the federal government. Applicants must also agree to provide data relating to Brady Act activity to the Firearm Inquiry Statistics (FIST) program in the format designated by the FIST program.

Types of Assistance:

Assistance will be provided under a cooperative agreement with each state.

Allowable Costs:

Allowable expenses are detailed below. All expenses are allowable only to the extent that they relate to programs described in the application's program narrative.

CORE ACTIVITIES:

(1) Participation in the Interstate Identification Index (III): This is a key goal, and costs should be related to achieving full participation. Covered costs include, but are not limited to, costs associated with automation of the database (see limitations in (4) below), synchronization of records between state and FBI, and development of necessary software including software relating to telecommunications enabling electronic access on an intra or interstate basis.

(2) Data base enhancement: Improving the quality, completeness and accuracy of criminal history records is a key goal of the NCHIP effort. Allowable costs include the costs associated with implementing improved record capture procedures, establishing more effective accuracy controls, and ensuring that records of all criminal events that start with an arrest or indictment are included in the data base. In addition to felony records, limited funds may be used to capture data on serious misdemeanors, and to ensure that data on persons convicted of stalking and/or domestic abuse are included in the data base. Costs associated with capture of data on persons under civil protective order arising out of domestic violence are also allowable. Use of funds for capture of data on misdemeanors, persons convicted of stalking and persons under civil protective orders will only be approved where the state has, or is actively undertaking efforts to upgrade, the basic elements of the criminal history record system.

(3) Improved disposition capture: Automated interface between the repository and the courts, prosecutor, and/or corrections agencies is encouraged. Funds provided to courts or prosecutors for these purposes are allowable only to the extent that the function to be supported is related to the capture of disposition or other data relating to the offender record. (eg. full costs associated with establishment of court MIS systems are not allowable under the NCHIP program).

(4) Record Automation: These are allowable costs only with respect to records with an arrest or indictment occurring within 5 years of the date of automation. As appropriate, allowable costs also include cots associated with system design in states with nonautomated systems or in states proposing to enhance system operation to include access to non CCH data bases.

(5) Flagging of Records: This is an important activity. Allowable costs include costs of flagging felony records and records of persons with convictions for crimes involving children, the elderly and/or the disabled. Costs may include the cost of technical record flagging as well as the costs associated with identification of records to be flagged. (see (7) below re: interface with NIBRS)

(6) AFIS/Livescan: AFIS/livescan equipment for local law enforcement agencies is allowable to improve the level of arrest and disposition reporting, but only where: (1) the state repository system was automated, participating or looking toward participation in III, and had in place the technical capability to accept AFIS transmissions, and (2) sufficient traffic could be demonstrated to justify the cost, possibly through the use of regional systems.

AFIS in squad cars is not allowable since field inquiries are not a factor in checks under either the Brady Act or the Child Protection Act. Additionally, since data is not input to the system by the field unit, AFIS in the squad car would not support record improvement or completeness.

Livescan for use in courts is allowable to support disposition completeness. The same conditions regarding repository capability and levels of traffic are also applicable to costs in this category.

Costs associated with AFIS communication from the repository to the FBI national system (IAFIS) are allowable but only where the state can demonstrate adequate levels of record completeness (both arrest and disposition) and current membership in III.

States should understand that Byrne 5% set-aside funds are specifically available for AFIS, and that, accordingly, use of NCHIP funds for AFIS will only be allowable when justified as appropriate given the overall status of the state system, its participation in the national system and its planned use of Byren 5% set-aside funds. This is particularly relevant as respects state proposals to use NCHIP funds to cover costs of local live scan equipment.

(7) Interface with NIBRS: Funds may be used to interface with NIBRS (or any state data system which is compatible with NIBRS) for purposes of identifying persons convicted of crimes against children, the elderly, or the disabled, or/or identification of records involving firearm crimes for operational or research purposes. NCHIP funds are not available, however, to develop the

NIBRS database.

(8) Research, Evaluation, Monitoring and Audits: Costs associated with research or evaluation efforts are allowable to the extent that they are directly associated with a project approved in the application. Costs associated with monitoring state compliance with legislative or programmatic goals, through ongoing or periodic audits or other procedures, are allowable.

(9) Conversion of juvenile records to the adult system: The FBI has recently amended its NCIC policy to accept juvenile records if submitted by the state developing the record. Expenditures to interface juvenile and adult records are allowable if consistent with relevant state law and undertaken to further the goals of the NCHIP program.

(10) Missing Dispositions Backlog Reduction: These costs are allowable to improve the level of disposition reporting but only where limited to records with arrests within the past 5 years. States must also propose a strategy to prevent future backlogs from developing

(11) Equipment Upgrades: Upgrade costs are allowable where related to improving availability of data and where appropriate given the level of data completeness, participation in III, etc. Replacement costs will be considered but states are be encouraged to contribute some portion of the total costs.

(12) Training, participation in seminars and meetings: Limited funds may be used to cover costs of training and participation in state, regional or national seminars or conferences (including travel,where necessary). BJS approval must be obtained before such expenditures.

(13) Expenditures related to Brady Checks: Funds are allowable to cover costs of equipment required to conduct presale background checks required under the Brady Act, provided that the equipment is maintained in a governmental agency. This limitation may be waived in a very limited number of cases where the state has implemented a functioning Brady check system and can demonstrate that the vast preponderance of inquiries are made by a limited number of dealers, that technical and procedural safeguards have been established to protect the privacy of potential purchasers, and, that the equipment to be provided to dealers would be of use for operation under the permanent system. Waivers will only be considered in states which are participants in III and which have achieved high levels of automation and record completeness. NCHIP funds may not be used to cover costs of conducting Brady presale background checks.

NON CORE EXPENDITURES:

(1) Interface with non-CCH databases: Costs associated with developing access to, and interface between, data bases on persons other than felons who are ineligible to purchase a firearm are allowed. Such costs include, but are not limited to, costs of investigating the existence and completeness of other data bases, identifying problems in accessing and interfacing with such data bases, and developing and implementing protocols for accessing these categories of data, and, where appropriate, incorporating such data into criminal history record data systems. Costs of documenting these projects and presenting results thereof are also allowable. Costs in this category are allowable only for those selected states that receive a grant to conduct non core activities.

November 1, 1994

National Criminal History Improvement Program (NCHIP)

Background and Publication Schedule: Summary

(1) The National Criminal History Improvement Program (NCHIP) implements the grant provisions of the Brady Act (Section 106 (b)) and the Child Protection Act (Section 4).

(2) One hundred million dollars was appropriated to the Bureau of Justice Statistics for this purpose in FY 1995. Of this amount, $6 million is being transferred to the FBI for implementation of the National Instant Criminal Background Check System (NICS) and $1 million is available for Federal administration. Consistent with the legislative history, BJS is also reserving $5 million to cover costs of technical assistance, coordination, and evaluation.

(3) The NCHIP program will be announced in a Program Announcement to be published in the Federal Register. Copies will also be printed under separate cover and sent directly from BJS to the Governor, the agency with responsibility for the criminal history record system (the state repository), the agency administering the Byrne formula grant program funds in the state, and the state statistical analysis center.

(4) The Program Announcement will describe all requirements for submission of an application and will serve as the "application kit".

(5) As required under the Brady Act, every state will receive at least one award (provided that they submit an application).

(6) To implement the Brady mandate that preference be given to states with lowest levels of dispositions in automated records, $5 Million is being reserved for additional awards to states in this category ("least-advanced" states).

(7) Applications may be submitted at any time after publication of the announcement. All efforts will be made to ensure that awards are made no later than 90 days after submission of the application. For funding in FY 1995, applications should be submitted by August 1995.

(8) The program allows the state to designate the agency to submit the application and administer the program. Only one application will be accepted from each state but states may opt to apply as part of a multi-state consortium.

(9) The NCHIP program is being closely coordinated with the Byrne Formula program's setaside of at least 5% for criminal history

records improvement. To achieve this goal, BJS will be working jointly with the Bureau of Justice Assistance (BJA) to develop Guidelines governing use of Byrne 5% setaside funds. Additionally, the NCHIP application must describe previous activities funded under the Byrne program and describe proposed uses of Byrne funds during the coming year. A state may opt to have the section of the NCHIP application which describes Byrne activity serve as its submission for a given year.

(10) The NCHIP program permits funding in three categories: Core activities; Permitted activities for selected states (extended core activities); and "Least advanced" state activities. All states will receive funds for core activities. Core activities focus primarily on enhancing the completeness and automation of criminal history records and improving the interface with the FBI's National Instant Criminal Background Check system (NICS). Core funds can also be used to interface with state systems which permit identification of crimes against children, the elderly and disabled, to ensure that conviction data on stalking and domestic violence are included in the data base, and to support audits and related research efforts.
"Extended core" activities include efforts to develop an interface between the criminal history record system and other data bases which include information on persons other than felons who are prohibited from purchasing a firearm under the Brady Act. Only selected states which have already achieved high levels of data completeness and participate in III may apply for these funds which will be in addition to funding under the core program. A total of 5% Million will be reserved for this purpose for the life of the program.

A $5 million reserve will also be established to provide extra funding for the "least advanced" states. States will be designated for this category based on results of the BJS Survey of State CHRI Systems to be released in November. (States will be advised no later than December. If the state has already submitted its application for core funds, a request for the additional funding may be submitted as a supplement to the original application and will get priority processing). "Least advanced" states will also receive priority technical assistance.

(11) The goals and design of the NCHIP program noted above were described in a memorandum from Jan Chaiken, Director, BJS, that was approved by John Schmidt, Associate Attorney General on October 26. The memo indicated that BJS would finalize the program announcement by October 31, 1994. BJS has indicated in DOJ briefing material that the final Program Announcement would be released by mid-November.

(12) By letter dated October 13, 1994, Jan Chaiken, advised the Governor of each state about the NCHIP program and indicated that the state would be required to designate the agency to administer the program as part of its application. The letters included personalized references to the agencies in the state which had dealt with BJS previously and referred specifically to the SEARCH representative in the state. To date we have received only one designation (Anne Richards, Texas), and received several telephone inquiries concerning the program (Utah, Illinois, New Mexico, DC, West Virginia). There have been no complaints. BJS also described the program in Conferences sponsored by SEARCH and the Justice Research and Statistics Association (JRSA).

(13) The BJS finalized Program Announcement was sent today (November 1) for review by OJP Office of General Counsel. A copy was also sent to SEARCH Group, Inc. and to the Justice Research and Statistical Association. Jan Chaiken provided the draft Announcement to Nancy Gist, Director, BJA on October 31, 1994. Jan Chaiken also spoke extensively with Gail Hoffman on October 31, discussing the Announcement.

(14) Since Associate Attorney General Schmidt approved the program as described in the memorandum, we do not anticipate any major problems with the Announcement.

(15) Assuming approvals, it takes 5 working days to publish in the Federal Register. We are advised by our publications unit that it will take approximately 5 working days to print the copies which we plan to send directly to the Governors et al. If a document is fully approved by the end of next week (November 10), it can be ready for distribution by the promised mid-November deadline.

U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Statistics

Office of the Director

Washington, D.C. 20531

EXECUTIVE SUMMARY

TO: THE ASSOCIATE ATTORNEY GENERAL

THROUGH: Laurie K. Robinson
Assistant Attorney General

FROM: Jan M. Chaiken, Ph.D.
Director

SUBJECT: Permitted uses of Brady grant funds

PURPOSE: To obtain approval from the AAG re allowed grant expenditures.

TIMETABLE: By Tuesday, October 28, 1994.

DISCUSSION: BJS is drafting a program announcement for grants to states under Brady and Child Protection Acts. The program is summarized in the attached memorandum.

RECOMMENDATION: To approve BJS proposed expenditures of Brady grant funds.

APPROVE JKS 10/26/94

DISAPPROVE__________

October 25, 1994

MEMORANDUM TO: John Schmidt
Associate Attorney General

THROUGH: Laurie Robinson
Assistant Attorney General

FROM: Jan M. Chaiken, Ph.D.
Director

Subject: Permitted uses of Brady grant funds

BJS is presently preparing the program announcement for the National Criminal History Improvement Program (NCHIP) -- our name for the grant program that will implement Section 106(b) of the Brady Act and Section 4(b) of the National Child Protection Act. As you know, when I wrote to you on September 28, 1994, I suggested a high-visibility grant program. After consulting with the OJP Office of General Counsel, I have decided to sharpen and limit the nature of the planned program.

Core expenditures for criminal history record improvements

The clear language of both statutes permits establishing and enhancing computerized criminal history (CCH) record systems and improving access to, and interface between, such systems and the national instant criminal background check system (NICS). Although there is no definition of "criminal history records" in either of these statutes (or in any statute, as far as we know), we are interpreting the term in the context of 28 CFR Part 20 and the past history of DOJ's Criminal History Record Improvement (CHRI) grants to refer to fingerprint-based records of individuals which contain information about one or more arrests of that person and any or all subsequent events in criminal justice processing, such as fingerprinting, court disposition, incarceration, parole, etc.

Included under this authority, states will be authorized to expend funds to improve the quality of criminal history records (with emphasis on automation and disposition capture), to increase participation in the FBI's Interstate Identification Index (III), and to upgrade the accessibility of records for presale and preemployment checks (primarily through record flagging).

Although the Brady Act appears to focus on felony arrests (Section (a)(3)(B)(i) provides that an applicant for a handgun must state that he or she "is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year") it does not state any limitation on the kinds of criminal histories that are to be improved through the grant funding, and the Child Protection Act includes language that clearly extends beyond record reviews of felony convictions (Section 5(3) defines a "child abuse crime" as "a crime committed under any law of a State ..."). Accordingly, NCHIP funds will be available to increase system access to nonfelony records, particularly in areas relating to child or domestic abuse or crimes against the elderly or disabled. (The extension to elderly and disabled arises from the amendment to the Child Protection Act in Section 320928 of the Crime Act.)

Additionally, in order to permit states to identify persons with records involving child, elderly, or disabled abuse, funds will also be allowed to be used to establish an interface between criminal history record systems and state incident-based reporting systems which include data describing victim characteristics. Also consistent with Section 40602 of the Crime Act, states will be encouraged to develop procedures to ensure that information on convictions relating to stalking and domestic abuse are included in the criminal history data base.

Additional planned permitted categories of expenditures

In addition to funding core improvements to criminal history records, BJS will provide a limited amount of NCHIP funds (not to exceed $4-5 million) to selected states to assist in the identification of persons other than felons who are prohibited from purchasing firearms under 18 USC 922 (g) and (n). The purpose of this effort will be to support the long term goal of the permanent system established under Section 102(b) of the Brady Act by enhancing the effectiveness of the NICS.

Since the scope of the NICS as presently being implemented by the FBI extends to all categories of records which may make a person ineligible to purchase firearms, a limited number of states will be invited to apply for an additional award to cover costs associated with development of procedures to access data on non-CCH categories of prohibited firearm purchasers. Since the key to this effort is the extent to which such records can be made accessible to the system being contacted for the background check, responsibility for these projects will be required to be maintained by the agency with responsibility for maintenance of records for criminal background checks.

In addition, the Crime Act amended the Brady Act to prohibit firearm purchase by persons subject to a protective order for domestic abuse. Such orders, although not technically criminal, are enforced by the criminal justice system, which depends on the availability of data records on such persons for implementation. Accordingly, BJS will permit grant funds to be expended to develop and/or access such records. BJS will permit states to make such expenditures, provided that such expenses are incidental to the overall activity to be supported under the grant and that the agency with responsibility for maintenance of the criminal record database is also the agency with responsibility for acquisition of such records.

Coordination with the Byrne five-percent setaside grant program

The Byrne formula grant program, as amended by Section 106 (a)(4) of the Brady Act, includes a set-aside of at least five percent which is to be used for improving "criminal justice" records and "improving state record system ...for the purpose of implementing the Brady Act", a category that includes information about persons other than felons ineligible to purchase firearms and also those who are subject to a protective order for domestic abuse. The guidelines for the set-aside portion of the Byrne program are, according to Section 509(c) of the Omnibus Crime Control Act, to be prepared by "the Director, BJA, in consultation with the Director of the Bureau of Justice Statistics." In fulfilling this legislative authority, BJS plans to help BJA draft guidelines that will encourage states to develop and improve record systems that will constructively supplement the state's NCHIP funding and will help meet overall legislative purposes of the Brady Act and the Crime Protection Act.

Funding priorities

Under the NCHIP program as presently proposed, all states will receive an award to upgrade their criminal record system. This fulfills the mandate set forth in Section 106(b) of the Brady Act which requires that "the Attorney General, through the Bureau of Justice Statistics, ... *make a grant to each state*...(emphasis supplied)". In order to implement the requirement that "preference...(be given)...to states...(with)...the lowest percent currency of case *dispositions in computerized criminal history files* (emphasis supplied)", states with automation/disposition levels below a designated level, to be determined after BJS has the results of its 1993 survey of state CHRI systems (to be available in November 1994), will be eligible to apply for additional funds from a pool set aside for this purpose. Such states will only be permitted to expend funds for the core purposes (improvement of criminal history records only).

In the remaining states, the majority of which are either recent or partial participants in III, use of funds will nonetheless be primarily limited to criminal history record improvement as described above, but applications for acquiring and automating records of protective orders for domestic abuse will also be entertained.

Only a few states (demonstration states) will receive NCHIP funds to identify existing (or nonexistent) state data bases for identifying persons other than felons ineligible to purchase handguns and to analyze problems in accessing non-CCH data. We expect that these funds will be used to develop model protocols for data access which can later be implemented by other states with Byrne funds. States will be eligible for this category of funding only if they have already surpassed specified thresholds of automation of criminal history records and completeness of dispositions in such records.

Programmatically, we feel this is a desirable approach since, given the high costs expected to be involved in accessing data other than criminal history records, the development of models with NCHIP funds should maximize the effectiveness of Byrne funds used for similar purposes. To achieve this result, BJS plans to evaluate the model programs and to make the results of such evaluations available to states through technical assistance or BJS documents. Additionally, BJS anticipates that the Byrne Guidelines, to be issued this Fall, will require that states planning to use funds for systems to access data other than felony indictments or convictions for background checks must demonstrate that the proposed efforts have been coordinated with the model activity supported under the NCHIP program.

Status of current activity

Consistent with my letter of September 18, BJS is still aiming to finalize the program announcement for the NCHIP program by October 31.

Decision Issue: Funds appropriated to implement Section 106(b) of the Brady Act may be used for the purposes described in this memorandum.

______________________ Concur

______________________ Non-concur

Attachments: Text of relevant grant portions of Brady and CPA.

and the Federal Bureau of Investigation may not exceed the actual cost of the background check conducted with fingerprints. The States shall establish fee systems that insure that fees to non-profit entities for background checks do not discourage volunteers from participating in child care programs.

SEC. 4. FUNDING FOR IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION. 42 USC 5119b.

(a) USE OF FORMULA GRANTS FOR IMPROVEMENTS IN STATE RECORDS AND SYSTEMS.—Section 509(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

(1) in paragraph (2) by striking "and" after the semicolon;

(2) in paragraph (3) by striking the period and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(4) the improvement of State record systems and the sharing of all of the records described in paragraphs (1), (2), and (3) and the child abuse crime records required under the National Child Protection Act of 1993 with the Attorney General for the purpose of implementing the National Child Protection Act of 1993.".

(b) ADDITIONAL FUNDING GRANTS FOR THE IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.—(1) The Attorney General shall, subject to appropriations and with preference to States that, as of the date of enactment of this Act, have in computerized criminal history files the lowest percentages of charges and dispositions of identifiable child abuse cases, make a grant to each State to be used—

(A) for the computerization of criminal history files for the purposes of this Act;

(B) for the improvement of existing computerized criminal history files for the purposes of this Act;

(C) to improve accessibility to the national criminal history background check system for the purposes of this Act; and

(D) to assist the State in the transmittal of criminal records to, or the indexing of criminal history record in, the national criminal history background check system for the purposes of this Act.

(2) There are authorized to be appropriated for grants under paragraph (1) a total of $20,000,000 for fiscal years 1994, 1995, 1996, and 1997. Appropriation authorization.

(c) WITHHOLDING STATE FUNDS.—Effective 1 year after the date of enactment of this Act, the Attorney General may reduce, by up to 10 percent, the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 that is not in compliance with the requirements of this Act.

SEC. 5. DEFINITIONS. 42 USC 5119c.

For the purposes of this Act—

(1) the term "authorized agency" means a division or office of a State designated by a State to report, receive, or disseminate information under this Act;

(2) the term "child" means a person who is a child for purposes of the criminal child abuse law of a State;

(3) the term "child abuse crime" means a crime committed under any law of a State that involves the physical or mental

required by the Attorney General under section 103 of the Brady Handgun Violence Prevention Act, for the purpose of implementing that Act.".

18 USC 922 note.

(b) ADDITIONAL FUNDING.—

(1) GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS.—The Attorney General, through the Bureau of Justice Statistics, shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used—

(A) for the creation of a computerized criminal history record system or improvement of an existing system;

(B) to improve accessibility to the national instant criminal background system; and

(C) upon establishment of the national system, to assist the State in the transmittal of criminal records to the national system.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under paragraph (1), which may be appropriated from the Violent Crime Reduction Trust Fund established by section 1115 of title 31, United States Code, a total of $200,000,000 for fiscal year 1994 and all fiscal years thereafter.

TITLE II—MULTIPLE FIREARM PURCHASES TO STATE AND LOCAL POLICE

SEC. 201. REPORTING REQUIREMENT.

Section 923(g)(3) of title 18, United States Code, is amended—

(1) in the second sentence by inserting after "thereon," the following: "and to the department of State police or State law enforcement agency of the State or local law enforcement agency of the local jurisdiction in which the sale or other disposition took place,";

(2) by inserting "(A)" after "(3)"; and

(3) by adding at the end thereof the following:

Records.

"(B) Except in the case of forms and contents thereof regarding a purchaser who is prohibited by subsection (g) or (n) of section 922 of this title from receipt of a firearm, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall not disclose any such form or the contents thereof to any person or entity, and shall destroy each such form and any record of the contents thereof no more than 20 days from the date such form is received. No later than the date that is 6 months after the effective date of this subparagraph, and at the end of each 6-month period thereafter, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall certify to the Attorney General of the United States that no disclosure contrary to this subparagraph has been made and that all forms and any record of the contents thereof have been destroyed as provided in this subparagraph.".

Certification.

U.S. Department of Justice

Office of Justice Programps

Bureau of Justice Statistics

Office of the Director

Washington, D.C. 20531

Sample

October 13, 1994

The Honorable Jim Folsom
Governor of Alabama
Alabama State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130

Dear Governor Folsom:

I am pleased to announce the initiation of the National Criminal History Improvement Program (NCHIP). The program will provide financial and technical assistance to all states to improve their ability to identify criminal histories of felons and other persons ineligible to purchase firearms or to hold positions involving children, the elderly, and the disabled.

The grant program was established under the Brady Handgun Violence Prevention Act and the National Child Protection Act of 1993 with a total authorized funding level of $220 million. Beginning October 1, 1994, Congress made $100 million available to support the program. Of this amount, Congress directed that $6 million be used by the Federal Bureau of Investigation (FBI) to implement the National Instant Criminal Background Check System.

The long-term goals of the NCHIP grant program, to be administered by the U.S. Department of Justice through its Bureau of Justice Statistics (BJS), are to improve national public safety by helping to prevent illegal firearm purchases and to ensure that persons with responsibility for child care, elder care, or care of the disabled do not have disqualifying criminal records. In support of these goals, the program encourages states, through financial assistance, to enhance the quality of and accessibility to criminal history records, the key component of the system. States will also be encouraged to develop procedures for compliance with record-related requirements of the Violent Crime Control Act by indexing data on persons convicted of stalking or domestic violence, and persons under civil restraining orders, and by developing record keeping capabilities for monitoring progress toward goals that they establish.

The NCHIP grant program, as one component of a bipartisan Federal assistance effort to address the nation's overall crime control strategy, offers assistance to extend your state's earlier efforts to improve criminal records. The advances made by all states in recent years to upgrade the quality and utility of criminal records are substantial, and we believe the current program willenable states to make even further strides in this important effort.

The NCHIP program is designed to focus funding on those areas of weakness which your state identifies as currently limiting the effectiveness of criminal histories for use in background checks. For example, these could be previously identified weaknesses such as incomplete recording of court dispositions or inability to transmit fingerprints electronically, or they could be weaknesses related to new requirements of law, such as identifying persons indicted for a felony but not yet convicted or persons convicted of domestic violence, stalking, or crimes against children, the elderly, or disabled persons.

By letters dated May 27 and June 20, 1994, Attorney General Reno advised each state of a timetable for achieving compliance with the Brady Act and the Child Protection Act of 1993. This timetable was based on a survey of state criminal record systems conducted for BJS by SEARCH, The National Consortium for Justice Information and Statistics. On behalf of myself and BJS, we wish to thank Major Jerry Shoemaker, Chief, Bureau of Investigation, Department of Public Safety, the SEARCH member in your state, for full cooperation and assistance in connection with this survey and in providing general support for record improvement. As noted in Attorney General Reno's letters, the NCHIP funding is intended to assist states in meeting the timetable goals.

The Bureau of Justice Statistics is closely coordinating the NCHIP program with the Byrne formula grant program administered by the Bureau of Justice Assistance (BJA) in order to eliminate duplication and to simplify your state's application process. The Byrne grant program includes a set-aside of at least five percent dedicated to improvement of criminal justice records. Under this program, states may choose to address various aspects of record improvement that will help achieve the purpose of the Brady Act and the Violent Crime Prevention Act, such as identification of persons other than felons who are ineligible to purchase handguns, enhancing linkage with victim characteristics recorded in the FBI's National Incident-Based Reporting System (NIBRS), or providing linkages to records of protective orders related to domestic violence. Federal guidelines will be issued to clarify priorities for expending these funds and the relationships between Byrne and NCHIP grants.

The application process for the NCHIP program will require that your state designate the agency to submit the application and administer the award. Because the program may encompass a broad range of activities, we anticipate that a variety of agencies may be involved. Over recent years, the Office of Justice Programs (OJP) has developed close working relationships with numerous state agencies involved in the maintenance and analysis of criminal records. These include the Alabama Criminal Justice Information Center (the agency that administered the BJS Criminal History Record Improvement [CHRI] program, maintains the state's incident-based crime reporting system, and operates the State Statistical Analysis Center which is partly funded by BJS) and the Law Enforcement Planning Agency (the agency responsible for administering the BJA Byrne formula grant 5% set-aside funds).

We are presently preparing the program announcement governing the administration of the NCHIP program. Since our goal is to award program funds to the states as soon as possible, the program announcement governing awards during Fiscal 1995 will be finalized by October 31, 1994.

We welcome comments suggesting priorities that might be addressed under the program or other related matters. Because of the time constraints, we may not be able to address your comments and concerns in the October 31 announcement. However, comments are most welcome now or after the program announcement is published and will be considered carefully in any future BJS actions or announcements related to awards under this program. BJS will also be pleased to respond to any inquiries concerning designation of an appropriate state agency to apply for and administer funds awarded under this program.

I believe the NCHIP funds will help make important strides in countering violent crime. We look forward to working closely together with your state to achieve a safer society. If you have any questions concerning these matters, please contact Carol Kaplan, Assistant Deputy Director (202) 307-0759.

Sincerely,

Jan M. Chaiken, Ph.D.
Director

or *85 felons per day*) **were stopped from buying a handgun from a retail** dealer because of the Brady Law.

To Dennis Burke: Updated and Corrected

Comments

Insta-check is better than assault weapon ban.
We've only spent $3 million of $200 million appropriated for instant check.

Responses

- Insta-check and the assault weapons ban are like apples and oranges.
- Insta-check is about how quickly the background check will be done on gun purchases.
- Assault weapon ban says that assault weapons should not be available to the general public -- background is irrelevant. There is no good reason for civilians to own these military type weapons. Instantaneous background checks, or more accurate checks that take a few days, have nothing to do with whether anyone should be allowed to own an assault weapon.
- Until the states are able to get their records fully computerized, we can not have an accurate, reliable instant background check system.
- Moving to instant background checks before the states are ready will mean that murders, rapists, and other violent criminals are able to sneak through the background check system and get guns they're not supposed to have.
- States are moving as quickly as they can to get criminal history records completely up to date, but that effort will still take a number of years.
- The federal government has committed substantial funding to helping states get their records in shape so that we can move to an instant check systems as soon as the states are ready.
- ✓ Of the $112 million appropriated in FY'95 & FY'96 for the states to improve criminal history records, all $112 million has been disbursed to the states.
- $50 million was appropriated earlier this week for FY'97. Many states have not yet spent the money already sent to them because they are already going as fast as they can in updating their criminal history records. More disbursements from the $50 million appropriated this week will be made as soon as the states indicate they are able to make use of it.

Correct

10/6/96

- Brady is about denying handguns to convicted felons, fugitives, military deserters and others such as wife beaters.

- It has already resulted in the denial of handguns to over 60,000 of these people.

- Brady is not about criminal prosecution, although it is theoretically possible to prosecute under the Brady Bill.

- In fact, the Justice Department has prosecuted 15 people for making false statements about their criminal record or residence on a Brady form.

    - In Kansas, Michael F. Moorhead was sentenced to 70 months in prison, without parole, for possession with intent to distribute 951 marijuana plants and for making a false statement on a Brady form (he failed to disclose that he was under indictment)

    - In Georgia, Edward Johnson, who was sentenced to die in Georgia state courts in 1971, but who later had his sentence commuted by Georgia authorities when that state's death penalty was declared unconstitutional, tried to purchase a handgun. He was arrested by Federal and local officers who had been alerted by Johnson's filing a Brady form.

- The Justice Department has also identified cases (11) in which an individual who was actually wanted on an arrest warrant (underlying charges ranging from drug trafficking to sexual assaults), filled out a Brady form and was caught when police checked the records. (BACKUP MATERIALS ATTACHED)

U.S. Department of Justice
Office of Justice Programs

Bureau of Justice Statistics

National Criminal History Improvement Program

Program Announcement

NCHIP

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

National Criminal History Improvement Program

Program Announcement

November 1994, NCJ-151173

U.S. Department of Justice
Bureau of Justice Statistics

Jan M. Chaiken, Ph.D.
Director

Contents

Foreword

This program announcement demonstrates the Justice Department's continuing commitment to building an accurate and useful national system of criminal records. The Federal Bureau of Investigation began this effort in 1924, with the establishment of its Identification Division which stores fingerprint-based information about both Federal offenders and arrests and dispositions under State laws. The FBI's latest developments related to this system include the Interstate Identification Index, which routes electronic search inquiries from criminal justice agencies nationwide to the appropriate State or Federal database containing the criminal history record.

Later, in 1972, the Bureau of Justice Statistics' predecessor agency began to help States manage and use their criminal history records. By providing grant awards and technical assistance to States under the Criminal History Improvement Program and by sponsoring task forces, research studies, and evaluations, BJS has stimulated the ongoing nationwide effort that is increasing the extent of computerization and completeness of criminal history records. Then, beginning in 1991, the Bureau of Justice Assistance has also been involved in improving criminal history records though its administration of grants to States for criminal justice record systems which are part of the Byrne formula grant program.

The importance of improving criminal history records cannot be overstated. While fingerprint-based "rap" sheets have long been vital for criminal investigations, in recent years criminal history records have been playing increasing roles in identifying serious offenders under various State and federal statutes, for making bail and pretrial release decisions, for sentencing determinations, and for correctional supervision and release decisions. The volume of non-criminal uses has been growing rapidly; these include background checks for licensing, pre-employment screening, and security clearances.

Availability of accurate and complete criminal records is especially critical to the task of identifying persons who are ineligible to purchase firearms. The National Criminal History Improvement Program announced in this booklet will not only strengthen the nation's capabilities to identify felons who attempt to purchase firearms but will also begin the process of building a national system (the National Instant Criminal Background Check system) which will also permit identifying persons other than felons who are ineligible to purchase firearms. At the same time, recent legislation expands the role of criminal history records in protecting children, the elderly, and the disabled from abuse, and the NCHIP program will also help advance these efforts.

Jan M. Chaiken, Ph.D.
Director, Bureau of Justice Statistics

Program Announcement

National Criminal History Improvement Program (NCHIP)

Summary

The Bureau of Justice Statistics (BJS) is publishing this notice to announce the initiation of the National Criminal History Improvement Program (NCHIP) in Fiscal Year 1995. The grant program implements the grant provisions of the Brady Handgun Violence Prevention Act and the National Child Protection Act of 1993, and those provisions of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and Violent Crime Control and Law Enforcement Act of 1994 which pertain to the establishment, maintenance, or use of criminal history records and criminal record systems.

This program announcement describes procedures applicable to awards to be made under the NCHIP program during FY 1995. A program announcement applicable to funding appropriated for years after FY 1995 will reflect comments received during the intervening time. Updated guidelines governing use of Byrne Formula funds pursuant to the 5% set-aside established under Section 509 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, will be issued shortly by the Bureau of Justice Assistance (BJA), in consultation with BJS. The Byrne Guidelines should be considered together with this program announcement in developing a state's program to meet the goals of the Brady Act and the Child Protection Act.

Program goals

The goal of the NCHIP grant program is to improve the nation's public safety by:

- facilitating the accurate and timely identification of persons who are ineligible to purchase a firearm;

- ensuring that persons with responsibility for child care, elder care, or care of the disabled do not have disqualifying criminal records; and

- enhancing the quality, completeness and accessibility of the nation's criminal history record systems.

More specifically, NCHIP is designed to assist states:

- to meet timetables for criminal history record completeness and participation in the FBI's Interstate Identification Index (III) established for each state by the Attorney General;

- to improve the level of criminal history record automation, accuracy, completeness and flagging;

- to expand and enhance participation in the FBI's Interstate Identification Index (III) and the National Instant Criminal Background Check System (NICS);

- to develop model procedures for accessing records of persons other than felons (including persons subject to civil restraining orders arising out of domestic or child abuse) who are ineligible to purchase firearms;

• to identify (through interface with the National Incident-Based Reporting System (NIBRS) where necessary) records of crimes involving use of a handgun and/or abuse of children, elderly or disabled persons; and

• to ensure that states develop the capability to monitor and assess state progress in meeting legislative and programmatic goals.

To ensure that all NCHIP-funded efforts support the development of the national criminal record system, the program will be closely coordinated with the FBI, the Bureau of Justice Assistance (BJA) and the Bureau of Alcohol, Tobacco and Firearms (BATF).

Funding under the NCHIP program is available to both those states which are subject to the 5-day waiting period ("Brady states") and those states which are operating under an alternative system pursuant to approval of BATF ("non-Brady states").

Legislative background

The NCHIP program is authorized under Section 106 (b) of the Brady Act, which provides that:

> The Attorney General, through the Bureau of Justice Statistics, shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used (A) for the creation of a computerized criminal history record system or improvement of an existing system; (B) to improve accessibility to the national instant criminal background system; and (C) upon establishment of the national system, to assist the State in the transmittal of criminal records to the national system.

The provisions of 18 USC 922 (g) and (n), as amended by the Violent Crime Control Act of 1994, prohibit the sale of firearms to an individual who —
(1) is under indictment for, or has been convicted in any court, of a crime punishable by imprisonment for a term exceeding one year;
(2) is a fugitive from justice;
(3) is an unlawful user of, or addicted to, any controlled substance;
(4) has been adjudicated as a mental defective or been committed to a mental institution;
(5) is an alien who is illegally or unlawfully in the United States;
(6) was discharged from the Armed Forces under dishonorable conditions;
(7) has renounced his United States citizenship; or
(8) is subject to a civil restraining order arising out of domestic or child abuse.
The latter category was added as part of the Violent Crime Control Act of 1994.

The Brady Handgun Violence Prevention Act, enacted in November 1993 and effective in February 1994, requires that licensed firearm dealers request a presale check on all potential handgun purchasers by the chief law enforcement officer in the purchaser's residence community to determine, based on available records, if the individual is legally prohibited from purchase of the firearm under the provisions of 18 USC 922 or state law. The sale may not be completed for 5 days unless the dealer receives an approval before that time. The 5 day waiting period requirement terminates by 1998, at which time presale inquiries for all firearms will be made only to the National Instant Criminal Background Check System (NICS). Section 103 of the Brady Act provides that NICS will supply information on "whether receipt of a firearm . . . would violate

(18 USC 922) or state law." As noted above, Section 106 (b) of the Brady Act establishes a grant program to assist states in upgrading criminal record systems and in improving access to, and, interface with, the NICS system.

In addition, Section 106 (a) of the Brady Act amended Section 509 (d) of the Omnibus Crime Control and Safe Streets Act to specifically provide that funds from the 5% set-aside under the Byrne Formula grant program may be spent for "the improvement of State record systems and the sharing . . . of records . . . for the purposes of implementing . . . (the Brady Act)."

The National Child Protection Act of 1993, as amended by the Violent Crime Control Act, requires that records of abuse against children be transmitted to the FBI's national record system. The Act also encourages states to adopt legislation requiring background checks on individuals prior to assuming responsibility for care of children, the elderly, or the disabled. Section 4 of the Act establishes a grant program to assist states in upgrading records to meet the requirements of the Act. Under the definition set forth in Section 5 (3) of the Act, "child abuse crimes" include crimes under any law of the state and are not limited to felonies.

Both the Brady and Child Protection Acts required that the Attorney General survey the status of state criminal history records and develop timetables for states to achieve complete and automated records. The survey was conducted during March 1994, and Governors were advised of timetables by the Attorney General in letters of May and June 1994. The letters indicated that compliance with timetable goals assumed availability of grant funds under each Act.

The NCHIP program implements the requirements of the grant programs established under both the Brady and Child Protection Acts.

In addition to the amendments noted above, Section 40602 of the Violent Crime Control Act authorized a program to assist states in entering data on stalking and domestic violence into local, state, and national databases. Although funding was deferred, the Act emphasizes the importance of ensuring that data on convictions for these crimes are included in databases being developed with Federal funds.

Appropriation

Section 106 (b) of the Brady Act authorized $200 million for the grant program; the Child Protection Act authorized $20 million. An appropriation of $100 million was made to implement Section 106 (b) of the Brady Act for FY 1995, to be available until expended. Of this amount, $6 million is being made available to the FBI for NICS, $1 million is available for Federal agency administration, and $5 million will, consistent with the legislative history, be used to provide technical assistance to states, program coordination, and to undertake a program evaluation. The remaining $88 million will be made available directly to the states. Of this amount, not less than $5 million will be allocated to implement the requirement that preference be given to states with the lowest levels of dispositions in automated records. In light of the overlap between Brady and Child Protection Act goals, funds from this appropriation may be used to meet related goals of the Child Protection Act.

Program strategy

General

To achieve the goals of the NCHIP program, at least one grant will be made to each state with funds appropriated under the Brady Act. Technical assistance will also be provided under BJS grant awards to assist states in identifying areas of weakness, auditing record status, long term planning, and developing and implementing technical and administrative programs.

Funds under the Byrne Formula 5% set-aside program will also be available to support the improvement of record systems and to meet the goals of the Brady Act.

The NCHIP program includes three components:
- Core activities,
- Permitted activities in selected states ("extended core activities"), and
- Least-advanced "priority" state activities.

Core activities

Basic system development

Core activities focus on establishing and enhancing computerized criminal history (CCH) records and on improving access to and interface between such systems and the national instant criminal background check (NICS) system. The Brady Act does not define the term criminal history record. As defined in 28 CFR part 20, and used in the BJS Criminal History Record Improvement (CHRI) program, however, the term is defined as: "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges, and any dispositions arising therefrom, sentencing, correctional supervision, and release. . . ."

Specifically, core activities relating to basic system development include efforts to
- improve the quality of criminal history records (with emphasis on automation and disposition capture),
- increase participation in the FBI's Interstate Identification Index (III), and
- upgrade the accessibility of records for presale and preemployment checks (primarily through record flagging).

In addition to the above activities relating to basic system development, core activities include the following:

Non-felony records

Consistent with the Child Protection Act which defines a "child abuse crime" within the context of "a crime committed under any law of a state," NCHIP core activities include efforts to increase system access to non-felony records, particularly in areas relating to child or domestic abuse or crimes against the elderly or disabled.

Interface with NIBRS

In order to permit states to identify persons with records involving child, elderly, or disabled abuse, NCHIP core activities include efforts to establish an interface between criminal history record systems and any state data system which is compatible with NIBRS.

Information on stalking and domestic violence

Consistent with Section 40602 of the Violent Crime Control Act, core activities include development of procedures to ensure that information on convictions relating to stalking and domestic abuse are included in, and accessible through, the criminal history database.

Research, evaluation, monitoring and audit

In order to maximize the utility of information collected as part of the NCHIP program, core activities include continuing efforts to evaluate, audit, or monitor progress in meeting legislative or program goals through statistical or other related means, and specific research studies relating to use of handguns.

To ensure program continuity and emphasize criminal history record improvement in support of the NICS, the major portion of funds to be expended for core activities should be retained by the agency with responsibility for CCH records (if that is the agency designated to administer the program) or transferred directly to the agency with such responsibility. The application should indicate clearly the level of funds which will be made available to this agency for this purpose. The application should also indicate the level of funds which will be made directly available to the courts where the courts are the appropriate source for data on dispositions or other record data.

Permitted activities in selected states ("extended core activities")

In addition to funding core improvements to criminal history records, BJS will provide a limited amount of NCHIP funds (not to exceed $5 million in total) to selected states to assist in the identification of persons other than felons who are prohibited from purchasing firearms under 18 USC 922 (g) and (n), as amended. The purpose of this effort will be to support the long-term goal of the permanent system established under Section 102(b) of the Brady Act by enhancing the effectiveness of the NICS.

In addition to previously identified non-computerized criminal history (CCH) categories, the Violent Crime Control Act amended the Brady Act to prohibit firearm purchase by persons subject to a civil restraining order arising out of domestic or child abuse. Such orders, although not technically criminal, are enforced by the criminal justice system, which depends on the availability of data on such persons for implementation.

Under the NCHIP "extended core" program, funds can be used to evaluate the feasibility of accessing such records and to develop protocols for interfacing with non-CCH systems for purposes of background checks.

BJS will identify those states which are eligible to apply for funds to conduct such activities based on level of CCH development, participation in III, extent of automation and technical development, current efforts to interface with other categories of prohibited firearm purchasers (either within the state or interstate), and experience under the BJS CHRI program. States determined to be eligible will be notified by the end of January 1995. Funds will be in addition to funds provided for core activities, which will be required to be the major focus of the state's NCHIP program.

Selected states which wish to apply for funding under this category should include a separate component in their grant application describing such activities and proposing a budget to cover the proposed efforts. This request may be submitted as a supplement or amendment to the basic application.

States applying for funds under this section should understand that the goal of these efforts is to demonstrate the feasibility of multi-database interface for background check purposes and that the projects are intended to provide guidance to, and serve as models for, future implementation by other jurisdictions. In particular, it is envisioned that the programs developed with NCHIP funds will serve as models for these efforts and that additional states will subsequently use Byrne 5% set-aside funds to develop system access to non-CCH data. For this reason, applications for funds under this section should include a description of proposed efforts to evaluate the success of activities undertaken and to prepare materials describing the project for exchange with other states. States should also realize that BJS will be documenting these efforts and that the applicant will be expected to provide input as requested by BJS for these materials.

In light of the importance of these demonstration programs to the overall BJS NCHIP program, BJS will provide additional technical assistance to the selected states to ensure that, together, the activities being funded will advance the development of the NICS at both the state and Federal level.

Least-advanced priority state activities ("priority state activities")

Section 106(b) of the Brady Act requires that BJS give "preference to States that, as of the date of enactment . . . have the lowest currency of case dispositions in computerized criminal history files . . . ." To implement this requirement, at least $5 million will be allocated to states in this category. Designated states will also be eligible for priority technical assistance at no cost. The determination of states qualifying under this special provision will be made after release of the 1993 Survey of State CHRI Systems. States will be notified by December 31, 1994. States designated under this category may only use NCHIP funds to support the basic system development components of the core funding activity.

Application and award process

Eligibility requirements

Designation of agency to administer NCHIP program

To participate in NCHIP, each state must designate an agency to submit an application and to administer the program. The agency should be the agency with primary responsibility for implementing the major activity to be funded with NCHIP funds or a parent agency with programmatic oversight over, and legislative authority to transfer funds to, such agency. Since the NCHIP program focuses on improvement of criminal records and interface with the NICS, BJS anticipates that, in a large number of cases, the NCHIP agency will have responsibility for maintenance of criminal records and liaison with the FBI and/or other record sources including NIBRS, if existing. As noted below, NCHIP procedures envision that strong state coordination will exist between the NCHIP and Byrne 5% set-aside programs to avoid overlap and maximize funding effectiveness. It is not necessary that the NCHIP agency be the same as the agency with administrative authority over Byrne 5% set-aside funds. The application should indicate the basis for the selection of the NCHIP agency, justified in terms of the organizational posture of the selected agency and its role in meeting the goals of the Brady and Child Protection Acts.

Only one application will be accepted from each state for any period of funding. It is the responsibility of the Governor to select the applicant agency. A state may, however, choose to submit its application as part of a multi-state consortium or other entity. In such case, the application should include a statement of commitment from each state and be signed by an individual designated by the Governor of each participating state. The application should also indicate specific responsibilities, and include a separate budget for, each state. States may receive successive awards over time, assuming availability of funds.

Program narrative

In addition to the requirements set forth in *Appendix A*, the NCHIP application should include the following four parts:

Part I. Background

This part should include a discussion of current and previous efforts relating to criminal history record improvement funded under the BJS CHRI program, the BJA Byrne 5% set-aside or with state funds over the past 3 years. The discussion should specify the amount of funds received under the BJS and Byrne programs and the funds remaining at the time of application. The section should also describe accomplishments with previous funding and the relationship to proposed NCHIP activities. A copy of the State plan and the most current update on the use of Byrne 5% set-aside funds, as submitted to BJA, should be appended, along with a copy of any other long term state plans for criminal history record improvement.

Part II. Identification of needs

This part should discuss audit or other evaluative efforts undertaken to identify the key areas of weakness in the state's criminal record system and in its ability to identify ineligible firearm purchasers or persons ineligible to hold positions involving children, the elderly, or the disabled. Specific reference should be made to relevant studies and to the findings of any internal or external independent audits which have been completed in the past 5 years.

Part III. NCHIP effort

This part should describe the activities to be undertaken with NCHIP funds over the coming 36 month period. Specifically, each application should indicate the core activities to be undertaken to improve its criminal history system, to initiate or enhance participation in III, to support the state's interface with the NICS, and to meet the timetable established by the Attorney General. The section should also discuss proposed efforts, if any, to identify particular offender types (either through interface with NIBRS or other means); and to ensure that criminal records pertaining to stalking or domestic abuse are included in criminal record databases. Discussions of proposed efforts to upgrade record completeness should indicate whether, and how, the courts or other record providers have been involved in preparation of the application and how funds will be made available to such entities.

Part III of the application should also describe the efforts to be supported to monitor state compliance with legislative or programmatic goals through ongoing audits or other means such as statistical analysis, comparison between CCH records and NIBRS or UCR data. Studies relating to handgun use or sales approval, if proposed, should be described in this section. The application should include evidence that, where appropriate, the state Statistical Analysis Center was consulted in connection with the development of such projects.

BJS is currently supporting the Firearm Inquiry STatistical ("FIST") program to develop national level data on Brady implementation. BJS will advise states by the end of December 1994 of the scope of this project. In support of the basic elements of this project, however, the application should describe procedures to collect data on the number of Brady inquiries, "hits," and captures (including the total number of queries against databases other than the criminal history record). The application should also indicate procedures for collection of data on the number of background checks on persons seeking positions involving children, the elderly, or the disabled and the number of records with action in the past 5 years which are complete and automated. States receiving NCHIP funds will be required to participate in the FIST effort and to submit other information for evaluation programs instituted under the NCHIP program.

Permitted activities in selected states ("extended core activities"): States selected to apply for "extended core" funds, may apply for additional funds to develop, and/or implement procedures to access information on persons other than felons/fugitives who are Federally prohibited from purchasing a firearm. In addition to describing proposed activities, interested states should justify their request for such funding in terms of current CCH development and participation in III, and describe state procedures, if any, for interface between the criminal record system and other relevant databases. (See "allowable costs" for covered expenses in this area.)

In order to permit assessment of state progress in meeting grant goals, *Part III* of all applications should set forth measurable benchmarks or goals for each proposed activity.

Part IV. Relationship to Byrne 5% set-aside program

This Part should describe activity to be undertaken with Byrne 5% set-aside funds during FY 1995 and 1996. A key part of this submission is a description of the relationship between these activities and the activities to be supported under the NCHIP program. Where the state has previously submitted a 1995 update to BJA, a copy of the submission should be included in this Part to meet this requirement. Alternatively, a copy of the material developed for this Part, may be submitted to BJA as the state's 1995 update, consistent with any other requirements as set forth in the Byrne 5% set-aside Guidelines to be issued. In the latter case, the state should have this section prepared by the agency with responsibility for administering the Byrne funds, rather than the agency designated to administer the NCHIP program. The relationship between the Byrne 5% set-aside and the NCHIP program is discussed more fully below.

Coordination between NCHIP and the Byrne 5% set-aside program

The Bureau of Justice Statistics and the Bureau of Justice Assistance have jointly agreed that close and continuing coordination between the NCHIP and Byrne 5% set-aside program is critical to meeting the goals of the Brady Act and the National Child Protection Act of 1993. Such coordinated efforts are also necessary to ensure the development of an effective interstate criminal history record system to meet the needs of law enforcement, the criminal justice community and the increasing number of non-criminal justice users of criminal history record information. To achieve this goal, BJS and BJA will, consistent with the legislative requirements, work together to prepare Guidelines governing use of the Byrne 5% set-aside funds. The Guidelines are expected to be finalized by the end of December 1994.

BJS expects that program plans for projects to be funded under NCHIP and the Byrne 5% set-aside will be coordinated by the state agencies responsible for these programs. Where costs of a proposed activity exceed

NCHIP available funds or are unallowable under NCHIP, the state might, for example, use Byrne funds to fill remaining needs. This joint effort, we believe, will maximize the effectiveness of both of these programs.

Award period

The application should cover a 3-year period with specific information provided primarily for the first year. The budget should provide details for first-year expenses and should contain data in required categories for years two and three if applicable (see *Appendix A, Application content*). The application should identify those agencies to receive direct funding and indicate the fiscal arrangements to accomplish fund transfer.

Application submission and due dates

The goal of the NCHIP program is to ensure that all states receive funding support. Absent special circumstances, applications should be received by July 1, 1995, to be eligible for FY 1995 funding. Applications may be submitted at any time after publication of this announcement and will be reviewed as received. Based on applications received by January 31, 1995, up to $25 million of funds available for core activities will be awarded by April 15, 1995. This does not include additional awards which may be made from set-asides for "priority" states or states undertaking "extended core" activities. Initial awards may be for partial funding for some states. Partially funded applications will be reconsidered for additional funding at a later date. Since approval of funding under the NCHIP program will be based on proposed activities and the overall availability of appropriations, states submitting applications after the January 31 deadline will not be disadvantaged in overall level of award.

If a state which is eligible to apply for "priority state" funding or funding for "extended core activities" has already submitted its application for core activity, the application for additional funds can be submitted as an amendment or a supplement to the original application.

Allocation of funds

To implement the "preference" requirement of the Brady Act, not less than $5 million will be allocated to provide supplemental funding for the least-advanced "priority" states: $5 million will be set aside to cover the cost of "extended core" activities in the states receiving an award to undertake such projects. $5 million will also be used to cover costs of technical assistance, evaluation and coordination. The remainder of available funds will be allocated to cover the cost of core activities.

States may receive funding from the core allocation as well as either the fund for "priority" states or the fund established for "extended core" activity. Including both core funding and supplemental awards from the set-asides, the least advanced "priority" states will receive an aggregate of at least $10 million.

Review criteria

States should understand that full funding may not be possible for all proposed activities. Allocation of funds will be based on the amount requested and the following factors:

(1) the legislatively mandated "preference to states which . . . have the lowest percent currency of dispositions in computerized criminal history files" as of 1993;

(2) the extent to which the proposed activities will enable the state to meet the timetables established for the state by the Attorney General;

(3) the extent to which improvements in the state system, by virtue of record numbers, levels of technical development, or operating procedures, will have a major impact on availability of records throughout the national system;

(4) the proposed use or enhancement of innovative procedures which may be of value to other jurisdictions;

(5) the technical feasibility of the proposal and the extent to which the proposal appears reasonable in light of the state's current level of system development and statutory framework;

(6) prior activity of the state with funds under the Byrne and CHRI programs;

(7) state commitment to the national record system as evidenced by membership in III, and participation in the FBI's National Fingerprint File (NFF), Felon Identification in Firearms Sales (FIFS) programs, etc., and the current status of development of its CCH;

(8) reasonableness of the budget;

(9) evidence of state progress in meeting record improvement and background check goals as measured in terms of audits, and data collection relating to presale firearm checks and background checks on persons seeking positions involving children, the aged and the disabled;

(10) nature of the proposed expenditures;

(11) the extent to which the plan reflects constructive interface between relevant components of the state organization and/or multi state systems; and

(12) the reasonableness of the relationship between the proposed activities and the current status of the state system, in terms of technical development, legislation, current fiscal demands, and future operating costs.

The program does not require either "hard" (cash) or "soft" (in-kind) match. Indications of state support, however, may be interpreted as expressions of commitment by the state to the program.

All applicants must agree to participate in evaluations sponsored by the federal government. Applicants must also agree to provide data relating to Brady Act activity to the Firearm Inquiry STatistics (FIST) program in the format designated by the FIST program.

Allowable costs

To the extent possible, awards will be made to cover all allowable costs. States receiving funds from the allocation for "priority" states, however, will be required to limit expenditures to purposes directly related to establishment of the basic elements of the criminal history record system and steps necessary to permit participation in III. Among the remaining states, use of funds for non-CCH purposes will be approved only to the extent that the state is making progress toward the improvement of the criminal history record system and interface with the III.

Allowable expenses are detailed below. All expenses are allowable only to the extent that they directly relate to programs described in the application's program narrative.

Core activities

(1) Participation in the Interstate Identification Index (III): This is a key goal, and costs should be related to achieving full participation. Covered costs include, but are not limited to, costs associated with automation of the database (see limitations in (4) below), synchronization of records between state and FBI, and development of necessary software and hardware enabling electronic access on an intrastate or interstate basis.

(2) Database enhancement: Improving the quality, completeness and accuracy of criminal history records is a key goal of the NCHIP effort. Allowable costs include the costs associated with implementing improved record capture procedures, establishing more effective accuracy controls, and ensuring that records of all criminal events that start with an arrest or indictment are included in the database. In addition to felony records, limited funds may be used to capture data on serious misdemeanors, and to ensure that data on persons convicted of stalking and/or domestic abuse are included in the database. Use of funds for capture of data on misdemeanors and persons convicted of stalking will only be approved where the state has, or is actively undertaking efforts to upgrade, the basic elements of the criminal history record system.

(3) Improved disposition capture: Automated interface between the criminal history repository and the courts, prosecutors, and/or corrections agencies is encouraged. Funds provided to courts or prosecutors for these purposes are allowable only to the extent that the function to be supported is related to the capture of disposition or other data relating to the offender record (for example, full costs associated with establishment of court MIS systems are not allowable under the NCHIP program).

(4) Record automation: These are allowable costs only with respect to records where the subject has been arrested, indicted, convicted, or released from confinement within 5 years of the date of automation. As appropriate, allowable costs also include costs associated with system design in states with non-automated systems or in states proposing to enhance system operation to include access to non-CCH databases.

(5) Flagging of records: This is an important activity. Allowable costs include costs of flagging, or algorithms used for flagging, felony records and records of persons with convictions for crimes involving children, the elderly and/or the disabled. Costs may include the cost of technical record flagging as well as the costs associated with identification of records to be flagged (see (7) below regarding interface with NIBRS).

(6) AFIS/livescan: Automated Fingerprint Identification System (AFIS)/livescan equipment for local law enforcement agencies is allowable to improve the level of arrest and disposition reporting, but only where —
(1) the state repository system is automated, participating or looking toward participation in III, and has in place the technical capability to accept AFIS transmissions, and
(2) sufficient traffic can be demonstrated to justify the cost, possibly through the use of regional systems.

AFIS/livescan in squad cars is not allowable since field inquiries are not a factor in checks under either the Brady Act or the Child Protection Act. Additionally, since data are not generally input to the system by the field unit, AFIS in the squad car would not support record improvement or completeness.

AFIS/livescan for use in courts is allowable to support record completeness. The same conditions regarding repository capability and levels of traffic are also applicable to costs in this category.

Costs associated with AFIS/livescan communication from the repository to the FBI national system (IAFIS) are allowable but only where the state can demonstrate adequate levels of record completeness (both arrest and disposition) and current membership in III.

States should understand that Byrne 5% set-aside funds are available for AFIS/livescan, and that, accordingly, use of NCHIP funds for AFIS or livescan will only be allowable when justified as appropriate given the overall status of the state system, its participation in the national system and its planned use of Byrne 5% set-aside funds. This is particularly relevant as respects state proposals to use NCHIP funds to cover costs of local livescan equipment.

(7) Interface with NIBRS: Funds may be used to interface with any state data system which is compatible with NIBRS for purposes of identifying persons convicted of crimes against children, the elderly, or the disabled, and/or identification of records involving firearm crimes for operational or research purposes. NCHIP funds are not available, however, to develop the NIBRS database.

(8) Research, evaluation, monitoring and audits: Costs associated with research or evaluation efforts are allowable to the extent that they are directly associated with a project approved in the application. Costs associated with monitoring state compliance with legislative or programmatic goals, through ongoing or periodic audits or other procedures, are allowable and encouraged. The purchase of equipment such as modems and the necessary communications and data software for storing and transmitting evaluative data between states and to BJS or other designated federal agencies is an allowable expense.

(9) Conversion of juvenile records to the adult system: The Attorney General has recently amended Federal Regulations to allow the FBI to accept juvenile records if submitted by the state or local arresting agency. Expenditures to interface juvenile and adult records are allowable if consistent with relevant state law and undertaken to further the goals of the NCHIP program.

(10) Missing dispositions backlog reduction: These costs are allowable to improve the level of disposition reporting but only where limited to records with arrests within the past 5 years. States must also propose a strategy to prevent future backlogs from developing.

(11) Equipment upgrades: Upgrade costs are allowable where related to improving availability of data and where appropriate given the level of data completeness, participation in III, etc. Replacement costs will be considered but states are encouraged to contribute some portion of the total costs.

(12) Training, participation in seminars and meetings: Limited funds may be used to cover costs of training and participation in state, regional, or national seminars or conferences (including travel, where necessary).

(13) Expenditures related to presale handgun background checks: Funds are allowable to cover costs incurred by a governmental agency for equipment or development of capability required to conduct presale background checks. This "governmental agency" limitation may be waived in a very limited number of cases where the state has implemented a functioning background check system and can demonstrate that the vast preponderance of inquiries are made by a limited number of dealers, that technical and procedural safeguards have been established to protect the privacy of potential purchasers, and that the equipment to be provided to dealers would be of use for operation under the permanent system. Waivers will only be considered in states which are participants in III and which have achieved high levels of automation and record completeness. NCHIP funds may not be used to cover costs of conducting presale background checks.

"Extended core" expenditures

Interface with non-CCH databases: Costs associated with developing access to, and interface between, databases on persons other than felons who are ineligible to purchase a firearm are allowed. Such costs include, but are not limited to, costs of investigating the existence and completeness of other databases, identifying problems in accessing and interfacing with such databases, and developing and implementing protocols for accessing these categories of data, and, where appropriate, incorporating such data into criminal history record data systems. Costs of documenting these projects and presenting results thereof are also allowable. Costs in this category are allowable only for those selected states that receive a grant to conduct "extended core" activities.

Appendix A

Application and administrative requirements

Application and administrative requirements

Application content

All applicants must submit:

- Standard Form 424, Application for Federal Assistance Standard Form 424A, Budget Information
- OJP Form 4000/3 (Rev. 1-93), Program Narrative and Assurances
- OJP Form 4061/6 Certifications
- OJP Form 7120/1 (Rev. 1-93), Accounting System and Financial Capability Questionnaire (to be submitted by applicants who have not previously received Federal funds).

Copies of these forms are provided in Appendix B.

Applicants are requested to submit an original and two copies of the application and certifications to the following address:

Application Coordinator
Bureau of Justice Statistics
633 Indiana Avenue, NW
Washington, DC 20531
Phone: (202) 616-3500

Standard Form 424 (SF-424). The SF-424, a one page sheet with 18 items, serves as a cover sheet for the entire application. This form is required for every application for Federal assistance. **No application can be accepted without a completed, signed original SF-424.** Directions to complete each item are included on the back of the form.

Standard Form 424A (SF-424A). All applications must include SF- 424A, Budget Information for all years of project activity. Applicants should ensure that all appropriate columns and rows balance. Directions to complete this form are found on page 3 of SF-424A.

Detailed budget. Applicants must provide a detailed justification for all costs during year one and for any additional project years, as appropriate, including the basis for computation of these costs. For example, the detailed budget would include the salaries of staff involved in the project and the portion of those salaries to be paid from the award; fringe benefits paid to each staff person; travel costs related to the project; equipment to be purchased with the award funds; and supplies required to complete the project.

Budget narrative. The budget narrative closely follows the content of the detailed budget. The narrative should relate the items budgeted to project activities and allowable cost categories and should provide a justification and explanation for the budgeted items including the criteria and data used to arrive at the estimates for each budget category. Please note applications that include noncompetitive contracts for the provision of specific services must contain a sole source justification for any procurement in excess of $25,000.

The budget narrative should indicate amounts to be made available to agencies identified in the program strategy (e.g., the agency with responsibility for CCH, the courts, local agencies).

Program narrative. All applications must include a program narrative which fully describes the expected design and implementation of the proposed program. In developing the narrative, refer to the program design (permitted core and noncore activities) as described in the program announcement. OJP Form 4000/3 (Rev. 1-93) provides additional detailed instructions for preparing the program narrative.

The narrative should include a timeline of activities indicating, for each proposed activity, the projected duration of the activity, expected completion date, and any products expected.

The application should include an explanation of the placement of the applicant agency within the State organization structure; a description of the roles and responsibilities of key organizational and/or functional components involved in project activities; and a list of key personnel responsible for managing and implementing the major elements of the program.

Assurances. OJP Form 4000/3 (Rev 1-93) must be included in the application submission. If submitting this form separate from the SF-424, the applicant must sign and date the form to certify compliance with the Federal statutes, regulations, and requirements as cited.

Certification regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace. Applicants should refer to the regulations cited in OJP Form, 4061/6 to determine the certification to which they are required to attest. A copy of OJP Form 4061/6 is provided in the Appendix B. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying," and 28 CFR Part 67, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the U.S. Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

Financial and administrative requirements

Discretionary grants are governed by the provisions of OMB Circulars applicable to financial assistance. The circulars, with additional information and guidance, are contained in the "Financial and Administrative Guide for Grants," Office of Justice Programs, Guideline Manual, M7100, available from the Office of Justice Programs. This guideline manual, provided upon request, is intended to assist grantees in the administration of funds and includes information on allowable costs, methods of payment, Federal rights of access to records, audit requirements, accounting systems, and financial records.

Complete and accurate information is required relative to the application, expenditure of funds, and program performance. The consequences of failure to comply with program guidelines and requirements will be determined at the discretion of the Department.

Civil rights obligations

All applicants for Federal financial assistance must sign Certified Assurances that they are in compliance with the Federal laws and regulations which prohibit discrimination in any program or activity that receives such Federal funds. Section 809(c), Omnibus Crime Control & Safe Streets Act of 1968, 42 U.S.C. 3789d, provides that:

No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under this title.

Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans With Disabilities Act prohibit discrimination on the basis of disability.

The applicant agency must discuss how it will ensure nondiscriminatory practices as they relate to:

(1) Delivery of services or benefits — to ensure that individuals will not be denied access to services or benefits under the program or activity on the basis of race, color, religion, national origin, gender, age, or disability;

(2) Employment practices — to ensure that its personnel in the program or activity are selected for employment without regard to race, color, religion, national origin, gender, age, or disability; and

(3) Program participation — to ensure members of any planning, steering or advisory board, which is an integral part of the program or activity, are not excluded from participation on the basis of race, color, religion, national origin, gender, age or disability; and to encourage the selection of such members who are reflective of the diversity in the community to be served.

Audit requirement

In October 1984, Congress passed the Single Audit Act of 1984. On April 12, 1985, the Office of Management and Budget issued Circular A-128, "Audits of State and Local Governments" which establishes regulations to implement the Act. OMB Circular A-128, "Audits of State and Local Governments," outlines the requirements for organizational audits which apply to BJS grantees.

Disclosure of Federal participation

Section 8136 of the Department of Defense Appropriations Act (Stevens Amendment), enacted in October 1988, requires that, "when issuing statements, press releases for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program."

Intergovernmental review of Federal programs

Federal Executive Order 12372, "Intergovernmental Review of Federal Programs," allows States to establish a process for reviewing Federal programs in the State, to choose which programs they wish to review, to conduct such reviews, and to make their views known to the funding Federal agency through a State "single point of contact."

If the State has established a "single point of contact," and if the State has selected this program to be included in its review process, the applicant must send a copy of its letter or application to the State "single point of contact" at the same time that it is submitted to BJS. The letter or application submitted to BJS must indicate that this has been done. The State must complete its review within 60 days. The review period will begin on the date that the letter or application is officially received by BJS. If BJS does not receive comments from the State's "single point of contact" by the end of the review period, this will be interpreted as a "no comment" response.

If the State has not established a "single point of contact," or if it has not selected the BJS statistics development or criminal history improvement programs in its review process, this must be stated in the letter or application.

Appendix B

Application forms

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application
- ☐ Construction
- ☐ Non-Construction

Preapplication
- ☐ Construction
- ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, state, and zip code)*:

Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify): ________

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D. Decrease Duration Other *(specify)*:

____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE ________________

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: —"New" means a new assistance award. —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item:	Entry:
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amount of the change in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
		$	$	$	$	$
TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
Program Income	$	$	$	$	$

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
	$	$	$	$
TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Federal	$	$	$	$	$
NonFederal					
TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
	$	$	$	$
).				
). TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

1. Direct Charges:	22. Indirect Charges:

3. Remarks

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

SPECIAL INSTRUCTIONS

Applicants must provide on a separate sheet a budget narrative which will detail by budget category, the Federal and non-Federal (in-kind and cash) share. The grantee cash contribution should be identified as to its source, i.e., funds appropriated by a State or local government or donation from a private source. The narrative should relate the items budgeted to project activities and should provide a justification and explanation for the budgeted items including the criteria and data used to arrive at the estimates for each budget category.

OMB APPROVAL NO. 1121-0140
EXPIRES: 1-31-96

INSTRUCTIONS

PROGRAM NARRATIVE

Prepare the program narrative statement in accordance with the following instructions for all new grant programs. Requests for continuation or refunding and changes on an approved project should respond to item 5b only. Requests for supplemental assistance should respond to question 5c only.

1. OBJECTIVES AND NEED FOR THIS ASSISTANCE.

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

2. RESULTS OR BENEFITS EXPECTED.

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood health center provide a description of who will occupy the facility, how the facility will be used, and how the facility will benefit the general public.

3. APPROACH.

a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity, provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

b. Provide for each grant program, function or activity, quantitative monthly or quarterly projections of the accomplishments to be achieved in such terms as the number of jobs created; the number of people served; and the number of patients treated. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

c. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in item 2 are being achieved.

d. List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

4. GEOGRAPHIC LOCATION.

Give a precise location of the project or area to be served by the proposed project. Maps or other graphic aids may be attached.

5. IF APPLICABLE, PROVIDE THE FOLLOWING INFORMATION:

a. For research or demonstration assistance requests, present a biographical sketch of the program director with the following information; name, address, phone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project.

b. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location approach, or time delays, explain and justify. For other requests for changes or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget items have changed more than the prescribed limits contained in the Uniform Administrative Requirements for Grants and Cooperative Agreements - 28 CFR, part 66, Common Rule (or Attachment J to OMB Circular A-110, as applicable), explain and justify the change and its effect on the project.

c. For supplemental assistance requests, explain the reason for the request and justify the need for additional funding.

OMB APPROVAL NO. 1121-0140
EXPIRES: 1/31/96

ASSURANCES

The Applicant hereby assures and certifies compliance with all Federal statutes, regulations, policies, guidelines and requirements, including OMB Circulars No. A-21, A-110, A-122, A-128, A-87; E.O. 12372 and Uniform Administrative Requirements for Grants and Cooperative Agreements – 28 CFR, Part 66, Common Rule, that govern the application, acceptance and use of Federal funds for this federally-assisted project. Also the Applicant assures and certifies that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information may be required.

2. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

3. It will comply with provisions of Federal law which limit certain political activities of employees of a State or local unit of government whose principal employment is in connection with an activity financed in whole or in part by Federal grants. (5 USC 1501, et seq.)

4. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act if applicable.

5. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

6. It will give the sponsoring agency or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.

7. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

8. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

9. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

10. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 569a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

11. It will comply, and assure the compliance of all its subgrantees and contractors, with the applicable provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act, as appropriate; the provisions of the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M7100.1; and all other applicable Federal laws, orders, circulars, or regulations.

12. It will comply with the provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Systems Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Nondiscrimination/Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures; and Federal laws or regulations applicable to Federal Assistance Programs.

13. It will comply, and all its contractors will comply, with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), or Victims of Crime Act (as appropriate); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39.

14. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

15. It will provide an Equal Employment Opportunity Program if required to maintain one, where the application is for $500,000 or more.

16. It will comply with the provisions of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 USC 3501 et seq.) which prohibits the expenditure of most new Federal funds within the units of the Coastal Barrier Resources System.

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
OFFICE OF THE COMPTROLLER

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over $100,000, as defined at 28 CFR Part 69, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Part 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not indentified here.

Section 67, 630 of the regulations provides that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for Department of Justice funding. States and State agencies may elect to use OJP Form 4061/7.

Check ☐ if the State has elected to complete OJP Form 4061/7.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67; Sections 67.615 and 67.620—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

1. Grantee Name and Address:

2. Application Number and/or Project Name

3. Grantee IRS/Vendor Number

4. Typed Name and Title of Authorized Representative

5. Signature

6. Date

OMB APPROVAL NO. 1121-0021, EXPIRES: 7/31/94

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

ACCOUNTING SYSTEM AND FINANCIAL CAPABILITY QUESTIONNAIRE

SECTION A: PURPOSE

The financial responsibility of grantees must be such that the grantee can properly discharge the public trust which accompanies the authority to expend public funds. Adequate accounting systems should meet the following criteria as outlined in the OJP guideline manual entitled, "Financial and Administrative Guide for Grants."

(1) Accounting records should provide information needed to adequately identify the receipt of funds under each grant awarded and the expenditure of funds for each grant, for each action program covered by a State's grants and for each subgrant awarded by the State.

(2) Entries in accounting records should refer to subsidiary records and/or documentation which support the entry and which can be readily located.

(3) The accounting system should provide accurate and current financial reporting information.

(4) The accounting system should be integrated with an adequate system of internal controls to safeguard the funds and assets covered, check the accuracy and reliability of accounting data, promote operational efficiency, and encourage adherence to prescribed management policies.

SECTION B: GENERAL

1. Name of Organization:

2. Type of Organization: For-Profit ☐ Not-for-Profit ☐ Other ☐ Explain: ______

3. If your firm publishes a general information pamphlet setting forth the history, purpose and organizational structure of your business, please provide this office with a copy; otherwise, complete the following items:

a. When was the organization founded/incorporated? *(month, day, year)*

b. Principal Officers — Titles

c. Employer Identification Number:

d. Number of Employees
Full Time: Part Time:

4. Is the firm affiliated with any other firm? ☐ Yes ☐ No
If "yes", provide details:

5. Total Sales/Revenues in most recent accounting period. *(12 months)* $

SECTION C: ACCOUNTING SYSTEM

1. Has any Government Agency rendered an official written opinion concerning the adequacy of the accounting system for the collection, identification and allocation of costs under Federal contracts/grants? ☐ YES ☐ NO

a. If yes, provide name and address of Agency performing review:

b. Attach a copy of the latest review and any subsequent correspondence, clearance documents, etc.

Note: If review occurred within the past three years, omit questions 2-9 of this Section and Section D.

2. Which of the following best describes the accounting system? ☐ Manual ☐ Automated ☐ Combination

3. Does the organization use a double-entry system in accounting for program funds? ☐ Yes ☐ No ☐ Not Sure

4. Does the accounting system identify the receipt and expenditures of program funds separately for each contract/grant? ☐ Yes ☐ No ☐ Not Sure

5. Does the accounting system provide for the recording of expenditures for each grant/contract by the component project and budget cost categories shown in the approved budget? ☐ Yes ☐ No ☐ Not Sure

6. Are time distribution records maintained for an employee when his/her effort can be specifically identified to a particular cost objective? ☐ Yes ☐ No ☐ Not Sure

7. If the organization proposes an overhead rate, does the accounting system provide for the segregation of direct and indirect expenses? ☐ Yes ☐ No ☐ Not Sure

8. Does the accounting/financial system include budgetary controls to preclude incurring obligations in excess of:
a. Total funds available for a grant? ☐ Yes ☐ No ☐ Not Sure
b. Total funds available for a budget cost category (e.g. Personnel, Travel, etc.)? ☐ Yes ☐ No ☐ Not Sure

9. Is the firm generally familiar with the existing regulations and guidelines containing the cost principles and procedures for the determination and allowance of costs in connection with Federal contracts/grants? ☐ Yes ☐ No ☐ Not Sure

(continued on ...)

SECTION D: FUND CONTROL

1. Is a separate bank account maintained for grant/contract funds? ☐ Yes ☐ No ☐ Not Sure

2. If Federal grant/contract funds are commingled with organization funds, can the Federal grant funds and related costs and expenses be readily identified? ☐ Yes ☐ No ☐ Not Sure

3. Are the officials of the firm bonded? ☐ Yes ☐ No ☐ Not Sure

SECTION E: FINANCIAL STATEMENTS

1. Did an independent certified public accountant (CPA) ever examine the financial statements? ☐ Yes ☐ No

2. If an independent CPA review was performed please provide this office with a copy of their latest report and any management letters issued. ☐ Enclosed ☐ N/A

3. If an independent CPA was engaged to perform a review and no report was issued, please provide details and an explanation below:

4. If an independent CPA has never examined your financial statements, please develop and provide this office with a copy of the following financial statements:
   a. A detailed "Balance Sheet" for the most current and previous year; and
   b. A detailed "Income Statement" for the most current and previous year.

SECTION F: ADDITIONAL INFORMATION

1. Use this space for any additional information *(indicate section and item numbers if a continuation)*

SECTION G: APPLICANT CERTIFICATION

I certify that the above information is complete and correct to the best of my knowledge.

1. Signature and Date	b. Firm Name, Address, and Telephone Number
a. Title	c. Application Identifier Number

SECTION H: CPA CERTIFICATION

The purpose of the CPA certification is to assure the Federal agency that the recipient can establish fiscal controls and accounting procedures which assure that Federal and State/local funds available for the conduct of the grant programs and projects are disbursed and accounted for properly.

1. Signature and Date	b. Firm Name, Address, and Telephone Number
a. Title	

The New York Times DATE: 12/14/96
PAGE: 8

Maine Case Shows Both Sides of '94 Gun Law

By FOX BUTTERFIELD

BANGOR, Me. — When David A. Godfrey walked into the Wise Trading Company in Bangor last September to buy a 9-millimeter semiautomatic pistol, he filled out the forms required to run a background check under the Brady gun control law. When nothing conclusive turned up after the five-day waiting period, he was permitted to buy the gun.

But a few weeks later, officials in Charleston, S.C., notified the Maine state police that Mr. Godfrey was wanted there on charges of murdering his first wife in 1974.

Mr. Godfrey, a 42-year-old long-distance truck driver, was quickly lured to a Burger King restaurant in Bangor and arrested by a state police officer and an agent of the Federal Bureau of Alcohol, Tobacco and Firearms. He has since been extradited to South Carolina, where he awaits trial in Charleston.

Mr. Godfrey's case illustrates both the strengths and weaknesses of the two-year-old Brady law, which is alternately portrayed as an important new tool for law enforcement and a burdensome infringement on would-be gun purchasers and the local authorities, who are required to conduct the background checks.

On the one hand, since the law went into effect in February 1994, the authorities doing background checks on people trying to buy guns have identified more than 103,000 individuals with questionable backgrounds, including 72,000 convicted felons as well as illegal aliens, drug abusers and people found to be mentally ill. The checks have also turned up more than 11,000 fugitives like Mr. Godfrey, according to statistics gathered by the Center to Prevent Handgun Violence.

But the background checks are only as reliable as the records kept by the Federal and state authorities. And the Federal computerized criminal information and retrieval system, as well of state and local criminal records, have huge gaps. Because of this flaw, Mr. Godfrey, after the five-day waiting period, was able to buy a gun even though he was wanted for murder.

"People think from television and the movies that the police have these incredible databases, but there are a lot of holes in the system," said Police Commissioner Gil Kerlikowske of Buffalo, the president of the Police Executive Research Forum, an organization of police officials that does research on policing.

The Brady law is named for James S. Brady, the former White House press secretary who was gravely wounded in the assassination attempt on President Ronald Reagan in 1981. Under the Brady law, law-enforcement officials have five days to search the background of a potential gun buyer. The sale cannot go forward if the prospective gun owner is a convicted felon, a fugitive from justice, an illegal alien, a drug abuser, or has been dishonorably discharged from the military or found mentally incompetent.

Many felons are found, but records themselves are often unreliable.

But police officers across the country have found it difficult to conduct a thorough background check because no state has computerized all its criminal records. Indeed, the main computerized source that law-enforcement officials rely on in their Brady searches — the National Crime Information Center, a series of data bases kept by the Federal Bureau of Investigation — contains only a fraction of criminal histories from the 50 states. Local police departments cannot even be sure that the criminal histories they do find in the F.B.I.'s system are complete.

Two states — Maine and New Mexico — have none of their own records computerized. As a result, the Maine State Bureau of Identification, a branch of the state police, "still sorts records by hand, the same way we did it in the 1930's," said Stephen McCausland, a spokesman for the Maine state police.

Lenny Wescott, a retired Maine state police officer who is now an investigator for the Penobscot County District Attorney, said that often when he does a record search in the F.B.I. computer system, he finds only partial or confusing data from other states.

"The information may alert you a guy had a problem, some prior arrests," Mr. Wescott said. "But it doesn't tell you whether he was convicted," he added, "and then you've got to use a little ingenuity" to contact the state authorities where the arrests took place.

"Sometimes, because I am a retired state police officer, I can get them to give it to me informally," Mr. Wescott said. But one state never answered his request, he said, and some states make it so difficult to obtain a reply that "it is just a waste of time."

Congress recognized this problem when it passed the Brady bill in November 1993 and granted money to the states to improve their computerized systems. Much improvement has been made since the Brady law went into effect, when only 18 percent of all criminal records in the country were computerized and accurate, said Kent Marcus, a Justice Department spokesman. Now all states except Maine and New Mexico are on line with the F.B.I. with at least part of their files, he said.

Among the most improved states are Indiana, North Dakota, Virginia and Washington, Mr. Marcus said, with New York also progressing.

Still, the gaps in computerization mean that there are gaps in the criminal records available. And this may become more of a problem on Dec. 1, 1998, when the Brady law provides that the five-day waiting period be replaced by what is supposed to be an instant national check through the Federal criminal computer system.

"The result is that when we put the instant check up in 1998, we know that some states will not be complete and accurate," Mr. Marcus said. "We may be in the position that we are less able to catch people than we are now."

He called the five-day waiting period "a critical piece of being able to deal with incomplete records," allowing the local police to get in touch with the authorities in other states where they suspect a person may

Contd

have a criminal record.

In Mr. Godfrey's case, even the five-day waiting period was not long enough. When the Maine state police tapped his name into the Federal computer system, they noticed on the Interstate Identification Index, an F.B.I. databases, that there was an old warrant for his arrest from South Carolina. But the information about the warrant was fragmentary, and not enough to deny him to right to buy a gun. It took several weeks for South Carolina prosecutors to find his complete record.

Charles Cox, Mr. Godfrey's lawyer in Maine, said: "The problem I have with this case is that it was politically motivated. It was a way to show that Brady works, statistically."

"If anybody really wanted to find him, all they needed to do was run a credit report," Mr. Cox added, because Mr. Godfrey was living openly under his own name and using his own Social Security number in filing his income tax returns.

But Ken Roper, the assistant solicitor, or district attorney, for Charleston County, said that even though there had been a warrant for Mr. Godfrey's arrest, "We just didn't have the money to conduct a nationwide manhunt."

Bonnie Godfrey, Mr. Godfrey's current wife, said she believes that the law trampled on her husband's civil rights.

"The Brady bill is way out of whack," Mrs. Godfrey said at her home in Plymouth, a small town about 25 miles southwest of Bangor. Her husband's big Freightliner truck has sat unused in the driveway of their home since his arrest. She said her husband thought the murder charge against him had been dropped long ago.

The Brady law is also under attack from others. On Dec. 3, the Supreme Court heard arguments from lawyers representing two county sheriffs in Montana and Arizona who have challenged the law as a burdensome incursion into the workings of state government.

Dave Hardy, a lawyer for one of the plaintiffs, Sheriff Richard Mark of Graham County, Ariz., said the background checks are estimated to cost 807,000 man-hours a year. "To the extent the checks produce any benefits, this is highly ineffective," said Mr. Hardy, who also is a lawyer for the National Rifle Association, a staunch opponent of the Brady law and other gun-control measures.

Alfred Skolfield, chief of the Maine state police, acknowledged that the checks are time-consuming. But he said: "It is worth the time and effort. It is in the best interests of law enforcement to continue the Brady checks."

Another problem is that records of illegal aliens, drug users and people found mentally incompetent are often not on any police database and hard to obtain. The authorities have found people with these backgrounds, but, they say, not as many as they would if records were more complete and easier to obtain.

Most of the people who have found ineligible to buy a handgun under the Brady law have committed lesser crimes than the one Mr. Godfrey is accused of committing. The last five people who have been denied a gun in Maine, for example, include a 71-year-old man who was convicted of forgery for cashing a phony $3 check in 1943 and a man who was given a suspended sentence for breaking and entering in 1974.

Despite the problems with the information systems that the Brady law relies on, many law-enforcement officials say the law is basically working.

"It is nice to see the Brady bill work and turn up somebody of this magnitude, flushing him out," said Christopher Almy, the Penobscot County District Attorney in Bangor, referring to Mr. Godfrey. "If it wasn't for the Brady bill, he'd still be a fugitive."

Department of Justice

FOR IMMEDIATE RELEASE
JULY 12, 1995

BJS
202-307-0703

JUSTICE DEPARTMENT MAKES FIRST AWARDS UNDER $88 MILLION PROGRAM TO IMPROVE STATE CRIMINAL HISTORY RECORD SYSTEMS

WASHINGTON, D.C. -- Twelve states will receive a total of more than $20 million to improve their criminal history records systems as part of the first awards made under the $88 million National Criminal History Improvement Program (NCHIP), the Justice Department announced today.

"These grants will help make the Brady Bill work, but they do so much more," said Attorney General Janet Reno. "Complete, accessible records can help law enforcement prevent crimes before they occur. We are a long way from a national system, but today's grants help us get there."

NCHIP is designed to implement the grant provisions of the Brady Handgun Violence Prevention Act and the National Child Protection Act, which was enacted in 1993.

The NCHIP grants will help states speed up their participation in the FBI's National Instant Criminal Background

(MORE)

Check System (NICS), which will enable all states to have immediate access to full interstate records. The planning and implementation of NICS, which should be fully operational in 1998, is consistent with the legislatively established timetable.

The states receiving awards and the amounts are:

Arkansas	$ 659,390	New York	$4,792,375
California	$3,405,542	North Dakota	$ 556,365
Georgia	$1,500,000	Pennsylvania	$2,632,984
Iowa	$ 792,036	South Carolina	$1,145,955
Missouri	$1,619,570	Utah	$ 642,653
Nebraska	$ 830,330	Vermont	$1,975,279

Washington, D.C., is also receiving $50,000 in technical assistance.

"These awards will make it easier to keep felons from illegally purchasing firearms, identify repeat criminal offenders subject to 'three strikes' laws, prevent sex offenders from working with children and the elderly, and avoid the pretrial release of offenders who pose a danger to the community," said Dr. Jan Chaiken, Director of the Bureau of Justice Statistics (BJS), the Justice Department agency that administers NCHIP.

The states receiving awards announced today collectively hold over one-third (34 percent) of all criminal history records in the nation. Criminal history records are fingerprint cards or their electronic counterparts, linked with information about arrests, convictions and sentences, when available.

(MORE)

Of the 50 million criminal history records in the United States, half are accessible nationally. But only a quarter (28 percent) are both accessible and include dispositions. Records are inaccessible electronically to other states if they are not automated or if a state does not participate in the national system (Interstate Identification Index, III.) Records without dispositions delay inquiries or handicap law enforcement in the identification of those with a prior conviction.

The states receiving awards today were among the first to apply. Every state that applies will receive an NCHIP award this year. Vermont was one of five states designated in December 1994 as a "priority" state because it currently has no automated criminal history records. Each of the priority states will receive $1 million supplemental assistance as part of its award to accelerate their automation process.

A total of $100 million was appropriated for NCHIP in Fiscal Year 1995. Of this amount:

- $88 million will be awarded directly to states to automate their criminal history record systems and improve the accuracy, completeness, timeliness and accessibility of criminal history records;
- $5 million is being used to provide direct technical assistance to the states and to evaluate the program;

(MORE)

U. S. Department of Justice
Resource Requests and Expenditures, 1990–1995

	1990	1991	1992	1993	1994	1995
Criminal Division						
Budget Request ($000)	64,434	61,784	74,599	74,644	75,709	77,243
Appropriation ($000)	63,569	66,421	68,940	73,292	77,944	78,343
End of Year FTE						
Permament	531	602	708	723	710	n/a
Other–than–perm	41	76	72	36	33	n/a
Positions On–board – EOY						
Permament	534	656	722	720	674	n/a
Other–than–perm	76	102	62	24	50	n/a
Attorneys	353	417	393	401	374	n/a
Environment Division						
Budget Request ($000)	37,721	43,724	54,567	54,930	53,364	61,580
Appropriation ($000)	34,713	43,683	49,177	51,445	53,364	58,070
End of Year FTE						
Permament	332	357	459	512	563	n/a
Other–than–perm	196	234	166	141	106	n/a
Positions On–board – EOY						
Permament	341	392	484	535	575	n/a
Other–than–perm	222	221	154	104	108	n/a
Attorneys	207	229	229	225	221	n/a
Civil Rights Division						
Budget Request ($000)	32,180	39,324	49,829	54,143	54,536	71,895 1/
Appropriation ($000)	32,513	44,217	47,581	52,700	55,567	62,702 1/
End of Year FTE						
Permament	366	374	401	440	473	n/a
Other–than–perm	44	63	80	63	69	n/a
Positions On–board – EOY						
Permament	369	380	422	449	488	n/a
Other–than–perm	53	81	83	53	68	n/a
Attorneys	171	197	217	227	249	n/a
Antitrust Division						
Budget Request ($000)	47,222	53,730	58,894	64,127	62,092	75,382
Appropriation ($000)	54,317	53,730	58,494	61,526	66,817	80,445
End of Year FTE						
Permament	472	504	549	559	570	n/a
Other–than–perm	41	40	40	32	64	n/a
Positions On–board – EOY						
Permament	484	523	558	555	582	n/a
Other–than–perm	52	57	41	37	100	n/a
Attorneys	228	267	277	282	293	n/a
U. S. Attorneys						
Budget Request ($000)	525,561	628,095	779,256	813,510	808,797	833,232 2/
Appropriation ($000)	518,864	674,969	720,737	796,962	818,757	857,369 3/
End of Year FTE						
Permament	6,579	7,441	8,328	8,629	8,484	n/a
Other–than–perm	558	733	662	474	506	n/a
Positions On–board – EOY						
Permament	7,019	7,951	8,583	8,588	8,479	n/a
Other–than–perm	805	853	667	418	768	n/a
Assistant U.S. Attorneys 4/	3,561	4,097	4,199	4,058	4,063	n/a

1/ In 1995, includes resources for the Office of Special Counsel.
2/ FY 1995 President's Budget, as amended, plus Violent Crime Reduction Trust Fund (VCRTF) resources.
3/ Includes High Intensity Drug Enforcement Area funding and VCRTF funding.
4/ Including Organized Crime Drug Enforcement Task Force positions; excluding 93 U. S. Attorneys and all attorney positions assigned to the Executive Office for U.S. Attorneys.

1/25/96

-draft-

STATEMENT BY
ATTORNEY GENERAL JANET RENO
TREASURY SECRETARY ROBERT RUBIN

Use these two paragraphs

A recent (1/25/96) report

~~We are pleased that the report released today by~~ the General Accounting Office confirms what we have known all along: that the Brady Law works. It helps to keep handguns out of the hands of violent criminals and convicted felons.

As the President noted in his State of the Union address, the Brady Law has resulted in the denial of handgun purchases to over 44,000 criminal offenders. And the GAO report shows that the vast majority of gun purchases blocked because of prior criminal records -- 91.8 percent -- are for felony related reasons. The GAO report also shows that the Brady Law is denying illegal drug users the ability to obtain handguns.

We will, of course, closely examine the GAO's findings on administrative matters, and will work with local and state law enforcement to correct any problems.

Violent criminals, convicted felons, and drug addicts should not be allowed to purchase a handgun. The Brady Law helps keep handguns out of the wrong hands without preventing law-abiding citizens from buying guns.

In short, as noted by the President and as reaffirmed today by the GAO, the Brady Law is working to help prevent the worst elements in our society from getting handguns, and thereby working to make our communities safer.

-30-

"Police Commissioner William Bratton set out to prove that cops really can cut crime. The experts scoffed -- but felony rates have dropped so far, so fast, that no other explanation makes sense." Source: Time Magazine; January 15, 1996 (p 54)

Also: "Total felonies in New York City are down 27% in just two years, to levels not seen since the early 1970's." Time Magazine (p. 54)

The Washington Post

DATE: 2-2
PAGE: A-3

Judge Draws a Powerful Weapon

Special Rhode Island 'Gun Court' Takes Aim at Firearms-Related Crime

By Christopher B. Daly
Special to The Washington Post

PROVIDENCE, R.I.—Judge John Bourcier is on the front line of the war against urban crime. A steady stream of rapists, murderers, armed robbers and mafiosi flows through his wood-paneled courtroom—the kind of trigger-happy toughs who make cities such as Providence dangerous places.

But unlike most judges these days, Bourcier is not overwhelmed. His docket is not clogged with trials, delays and no-shows. In fact, Bourcier—known locally as "Maximum John"—has only a handful of cases still pending from 1994, and all of those are holdovers from one attorney who requested extra time.

Bourcier presides over "Gun Court," the first special-jurisdiction firearms court in the nation. It has a single judge, a single calendar and a singular mission: provide swift, serious punishment for all crimes involving guns. For those arrested for committing a crime involving a gun, this special division of state Superior Court is often the last stop before a long stretch in prison.

According to its architect, the irrepressible mayor of Providence, Vincent A. "Buddy" Cianci Jr., the court is a sure-fire success. "The word is out: If you use a gun in my city, you're going to jail," he said in a recent interview.

As evidence of the plan's success, Cianci pointed to the growing number of prisoners serving time for gun crimes and to the growing number of inquiries he is receiving from politicians around the country who want to imitate Gun Court. The next step is likely to come in neighboring Massachusetts, where lawyers in the office of Gov. William F. Weld (R) are drafting legislation to institute a similar court. Texas, Florida and other states also have expressed interest.

Politicians are not the only ones who like it. Police and prosecutors praise it as well because, they say, they finally see some immediate results from their work. "I got the idea right from the police," said Cianci. "They said, 'You know, we arrest the same guys over and over.' "

The legislation he helped design works simply. It directs Joseph F. Rodgers Jr., the presiding justice of state Superior Court, to create a special "gun calendar" within the court system and to direct all firearms-related cases to it. Cianci first proposed the idea about a year ago. Soon after, Providence patrolman Steven Shaw was gunned down, and the proposal sailed through the Rhode Island Assembly with only one vote against it.

The plan won support from an unusual coalition: the National Rifle Association and local gun-control advocates. NRA leaders said they welcomed the Gun Court because it targeted criminals rather firearms.

Rodgers named Bourcier, a 21-year veteran of the bench, to hear the cases. Almost immediately, defendants began plea-bargaining and going to jail.

Legally, the court, which began operations last Sept. 1, is a hybrid. The legislature created it, the judiciary operates it and the city of Providence provides the money—$300,000 a year. Says the wise-cracking Cianci:

"It's the first judge I ever bought."

Defense attorneys and civil libertarians are critical of Gun Court's swift brand of justice. "It emphasizes guns and makes every defendant who comes before that court some kind of special villain, who gets the maximum," said John F. Cicilline, who serves on the board of the Rhode Island Criminal Defenders Association. "We've discussed this ad nauseam. We're stuck with it."

Michael DiLauro, a public defender, insists that Gun Court is unconstitutional. He calls it the result of meddling by politicians into the affairs of the judiciary, a violation of the separation-of-powers principle.

"The legislature is a political body, and it should be. But the court is not a political body. Our judges are appointed, and appointed for life," said DiLauro. He filed a legal challenge to the court, but its first stop was Bourcier, who rejected it out of hand. DiLauro's office has not yet decided whether to appeal.

One day last week, Bourcier gave a classic performance at a sentencing hearing for Greg and Chris Moran, brothers from Central Falls who had been convicted of waging a two-man crime spree involving assaults, robbery and threatening elderly victims with guns. The black-robed judge sat with a look of forced patience while one brother read a statement insisting that someone else committed the crimes. When the defendant sat down, Bourcier sat up.

"Let it be crystal clear: This court agrees with the jury finding of guilty on all charges," he said. "I have also taken into account the arrogant claims of continued innocence and . . . a total lack of any remorse."

Fixing his eyes on the accused, the judge said it was time to think about the victims and their anguish. "These cases could have been murder cases very easily," Bourcier said.

Then came the sentences: 103 years in prison for Greg Moran and 68 years for brother Chris. And Bourcier denied bail pending appeal and ordered the bailiffs to lead the two handcuffed men off to prison.

"I do it my way," Bourcier said a few minutes later in his chambers. "When I was a defense counsel, I was the greatest one for delays, because I knew it benefited the defendant.

"The public has lost confidence in the system. That's what draws people into the theaters to see Clint Eastwood movies. What they see is someone bypassing the criminal justice system and getting instant justice. They want to see the bad guy get punished."

In Gun Court, justice isn't instant but it is often swift. Beginning with a backlog of 70 cases last September, Bourcier said he had disposed of 64 of them as of Feb. 9, and 80 percent of those went to jail.

Bourcier insists that despite his nickname, he does not always give the maximum sentence. Usually, he says, he gives about half. But he insists that defendants convicted of multiple crimes serve their prison terms consecutively rather than concurrently. That way, he says, serious criminals are taken off the

Cont'd

The Washington Post

DATE: 2/24/95
PAGE: A2

Brady Law Halts Gun Buys, But Prosecutions Are Lagging

40,000 Transactions Blocked; Fewer Than 10 Arrested

By Pierre Thomas
Washington Post Staff Writer

The year-old federal Brady law, which requires a background check and waiting period for handgun purchases, has blocked thousands of prohibited persons from buying pistols and revolvers, but federal authorities have prosecuted fewer than 10 people for lying to get firearms.

Next week, the Clinton administration is scheduled to announce that an estimated 40,000 handgun transactions have been blocked in the 28 states and territories since the law took effect. United States attorneys, meanwhile, have prosecuted four cases and declined to prosecute four others, Justice Department officials said yesterday. Twenty-seven cases are under investigation.

The number of individuals, including fugitives and convicted felons, barred from buying guns indicates the law is having an effect, officials said. But the small number of federal prosecutions has caused some officials to ask whether the federal government is aggressively pursuing criminals who have broken the handgun law named for former White House press secretary James Brady, who was wounded during the 1981 assassination attempt on President Ronald Reagan.

Attorney General Janet Reno has asked if the reported number of prosecutions is accurate and, if so, what the reasons are. "I think it's very important that that be pursued," Reno said yesterday in her weekly news briefing.

"Obviously we are disappointed with the low figures," said Susan Whitmore, speaking for Handgun Control Inc., the gun-control group. "But the primary purpose of the law is stop over-the-counter sales to criminals. That has been very successful."

National Rifle Association chief lobbyist Tanya Metaksa said the number of prosecutions indicates that the Brady law is useless. "This is an example of the Clinton administration boasting about something that doesn't work."

Under the Brady law, federally licensed gun dealers are required to notify the chief law enforcement officer in the potential buyer's community, and the law officer is to determine if the buyer is a convicted felon, a fugitive, under indictment, mentally unstable or otherwise prohibited from buying a handgun.

Lying on the federal firearms form can result in a felony conviction punishable by up to 10 years in prison. Such infractions can also be pursued as misdemeanors.

Officials from the Treasury Department's Bureau of Alcohol, Tobacco and Firearms (ATF) and from the Justice Department say the Brady law's main goal is prevention of illegal handgun sales. They also say local officials are not required to notify ATF about the results of their checks. Most of the local police probably are arresting suspected dangerous violators immediately on state charges, they say. Federal officials then can prosecute as needed or when requested by local officials.

"This is not a scheme to commit hundreds of prosecutors to prosecute tens of thousands of people," said Justice Department spokesman Carl Stern. He said some of the persons who were denied permission to buy handguns did not lie when they filled out the form but told the truth about their criminal records and were barred on that account.

About 70,000 gun purchases were denied, including in states that were exempt from the Brady law because they already had similar or more stringent measures. Maryland had a similar provision. Virginia had a computerized check.

Comparison of potential State awards under current Crime Act prison grants, S.3, and Nov. 28 Conference Bill at $500 million- -DRAFT AND PRELIMINARY
(Grant amounts in thousands of dollars)

State	Current law grants	S.3 grants	Truth in sentencing grants under the conference bill including est. INA awards *	Percent change, comparing awards under the Conference bill to current law awards
Total for formula grants	$495,000	$495,000	$493,500	-0%
Total awarded	495,000	$367,060	$393,707	-20%
Alabama	$5,671	$0	***	- -
Alaska [1] [2]	$1,495	$1,892	$0	-100%
Arizona	$8,617	$7,617	$13,186	53%
Arkansas	$2,954	$2,769	***	- -
California	$94,034	$74,780	$139,511	48%
Colorado [3]	$3,822	$0	$0	-100%
Connecticut	$3,038	$2,819	$5,102	68%
Delaware [2]	$1,532	$1,914	$0	-100%
Dist. of Columbia	$3,326	$2,962	***	- -
Florida	$46,535	$37,432	$29,428	-37%
Georgia	$14,680	$5,950	***	- -
Hawaii [3]	$1,273	$1,758	$0	-100%
Idaho [3]	$1,279	$1,761	$0	-100%
Illinois	$31,927	$25,946	$20,097	-37%
Indiana	$8,561	$7,573	$6,170	-28%
Iowa	$2,179	$0	***	- -
Kansas	$4,300	$4,223	$4,906	14%
Kentucky [3]	$3,422	$0	$0	-100%
Louisiana	$13,455	$11,421	$7,621	-43%
Maine [1] [2]	$1,050	$1,624	$0	-100%
Maryland [3]	$8,175	$5,907	$0	-100%
Massachusetts [3]	$8,004	$5,805	$0	-100%
Michigan	$11,958	$8,182	$12,038	1%
Minnesota	$3,013	$2,804	$5,088	69%
Mississippi	$3,996	$3,984	$4,816	21%
Missouri	$11,616	$9,975	$3,874	-67%
Montana [3]	$1,040	$1,618	$0	-100%
Nebraska	$2,329	$0	***	- -
Nevada	$4,188	$1,564	$4,873	16%
New Hampshire	$1,248	$0	***	- -
New Jersey	$8,152	$5,894	$10,732	32%
New Mexico	$3,050	$2,826	***	- -
New York	$54,953	$44,051	$34,924	-36%
North Carolina	$13,892	$11,765	$7,750	-44%
North Dakota[1]	$963	$1,599	$3,917	307%
Ohio	$16,313	$13,668	$8,468	-48%
Oklahoma	$3,864	$0	***	- -
Oregon [2]	$5,046	$2,847	$0	-100%
Pennsylvania	$14,756	$5,975	$8,006	-46%
Rhode Island	$1,415	$0	$4,204	197%
South Carolina	$11,150	$9,608	$6,937	-38%
South Dakota	$1,040	$0	***	- -
Tennessee	$6,617	$4,971	***	- -
Texas	$21,224	$13,752	***	- -
Utah [3]	$1,650	$1,985	$0	-100%
Vermont	$1,001	$1,544	***	- -
Virginia	$7,514	$6,749	$5,859	-22%
Washington	$8,312	$7,377	***	- -
West Virginia	$1,382	$0	***	- -
Wisconsin [3]	$2,797	$0	$0	-100%
Wyoming	$1,191	$173	***	- -

- - No grant is made under S.3, hence percent difference is meaningless; or it is unknown if the State is eligible for a general grant under the conference bill.

* Totals include projected 1996 award funds based on estimated 1995 distributions for Truth in Sentencing and the Immigration and Nationality Act (TIS/INA) diverted from prison grants under Section 20110 (b) and does not reflect direct SCAAP appropriations.

Dollar amounts listed indicate the estimated award for truth in sentencing grants. Zeroes indicate that the state failed to meet the necessary requirements as stated in the conference bill for both general grant awards and truth in sentencing grant awards.

*** State is ineligible for truth-in-sentencing grant awards under the provisions of the conference bill. Sufficient data are not available to determine eligibility for conference bill general grant awards at this time. However, for Alabama, Colorado, Iowa and Vermont, data were unavailable to determine eligibility for conference bill truth in sentencing grant awards.

See next page for assumptions and notes.

ASSUMPTIONS

Under all scenarios, total appropriation is $500,000,000.

CURRENT LAW (Column 1): Current law assumes all formula grant funds are awarded because of "reverter clause." One percent for administrative costs has been taken off the top, but none for technical assistance or discretionary funding.

S.3 GRANTS (Column 2): Under S.3, 1% is taken off the top for administrative costs.

TRUTH IN SENTENCING GRANTS UNDER THE CONFERENCE BILL (Column 3):

1. The Attorney General uses no program funds for housing Federal prisoners in non-Federal institutions.

2. From the initial $500 million appropriated for truth in sentencing and general grants, Section 20109 (a) (1) allocates 0.3% ($1.5 million) for payments for the incarceration of offenders under Indian tribe jurisdiction. Administrative costs are set at one percent ($5 million) to be comparable with other formulas.

Direct SCAAP appropriations comprise $300,000,000. The conference bill requires that the difference between the initial authorization for prison grants ($500 million) and direct SCAAP appropriations ($300 million) be diverted from prison grants to awards under the Immigration and Nationality Act.

FOOTNOTES FROM THE TABLE

[1] These states are expected to be ineligible for both types of prison grants under the conference bill - general grants and truth in sentencing grants. The states are not eligible for general grants because they fail to meet the parameters established by Section 20103 (a) (2), which requires that states "increase[d] the average prison time actually to be served in prison" since 1993 for part 1 violent crimes. According to the 1995 Bureau of Justice Statistics report, "Violent Offenders in State Prison: Sentences and Time Served," (p.4) the average minimum time for violent offenders to serve before release has not increased since 1993 for the indicated states.

[2] These states are expected to be ineligible for both types of prison grants under the conference bill - general grants and truth in sentencing grants. The states are not eligible for general grants because they fail to meet the parameters established by Section 20103 (a) (3), which requires that states "increase[d] the average percentage of time of the sentence to be actually served in prison" since 1993 for part 1 violent crimes. The above BJS report indicates that the percent of the average maximum sentence to be served for violent offenses has not increased since 1993 for these states.

[3] These states are expected to be ineligible for both types of prison grants under the conference bill - general grants and truth in sentencing grants. The states are not eligible for general grants because they fail to meet the parameters established by Section 20103 (b) (2) (B), which requires that states "increase[d] the average time served in the state for the offenses of murder, rape, and robbery" since 1993. The above BJS report indicates that the average time served for violent offenses has not increased above 1993 levels for the indicated states.

Comparison of potential State awards under current Crime Act prison grants, S.3, and Nov. 28 Conference Bill at $500 million- -DRAFT AND PRELIMINARY
(Grant amounts in thousands of dollars)

					Percent difference*			Percent difference excluding TIS/INA grants	
					Compared to current law		Conference bill + TIS/INA vs. S.3		
State	Current law grants	S.3 grants	Truth in sentencing grants under the conference bill *	TIS/INA awards** (1996 projection)	S.3 grants	Conference bill + TIS/INA		Conference bill vs. current law	Conference bill vs. S.3
Total for formula grants	$495,000	$495,000	$293,500	$200,000	0%	-0%	-0%	-41%	-41%
Total awarded	495,000	$367,060	$193,707	$200,000	-26%	-20%	7%	-61%	-47%
Alabama	$5,671	$0	***		- -	- -	- -	- -	- -
Alaska [1 2]	$1,495	$1,892	$0		27%	-100%	-100%	-100%	-100%
Arizona	$8,617	$7,617	$6,186	$7,000	-12%	53%	73%	-28%	-19%
Arkansas	$2,954	$2,769	***		-6%	- -	- -	- -	- -
California	$94,034	$74,780	$31,511	$108,000	-20%	48%	87%	-66%	-58%
Colorado [3]	$3,822	$0	$0		-100%	-100%	0%	-100%	0%
Connecticut	$3,038	$2,819	$5,102		-7%	68%	81%	68%	81%
Delaware [2]	$1,532	$1,914	$0		25%	-100%	-100%	-100%	-100%
Dist. of Columbia	$3,326	$2,962	***		-11%	- -	- -	- -	- -
Florida	$46,535	$37,432	$17,428	$12,000	-20%	-37%	-21%	-63%	-53%
Georgia	$14,680	$5,950	***		-59%	- -	- -	- -	- -
Hawaii [3]	$1,273	$1,758	$0		38%	-100%	-100%	-100%	-100%
Idaho [3]	$1,279	$1,761	$0		38%	-100%	-100%	-100%	-100%
Illinois	$31,927	$25,946	$13,097	$7,000	-19%	-37%	-23%	-59%	-50%
Indiana	$8,561	$7,573	$6,170		-12%	-28%	-19%	-28%	-19%
Iowa	$2,179	$0	***		-100%	- -	- -	- -	- -
Kansas	$4,300	$4,223	$4,906		-2%	14%	16%	14%	16%
Kentucky [3]	$3,422	$0	$0		-100%	-100%	0%	-100%	0%
Louisiana	$13,455	$11,421	$7,621		-15%	-43%	-33%	-43%	-33%
Maine [1 2]	$1,050	$1,624	$0		55%	-100%	-100%	-100%	-100%
Maryland [3]	$8,175	$5,907	$0		-28%	-100%	-100%	-100%	-100%
Massachusetts [3]	$8,004	$5,805	$0		-27%	-100%	-100%	-100%	-100%
Michigan	$11,958	$8,182	$10,038	$2,000	-32%	1%	47%	-16%	23%
Minnesota	$3,013	$2,804	$5,088		-7%	69%	81%	69%	81%
Mississippi	$3,996	$3,984	$4,816		-0%	21%	21%	21%	21%
Missouri	$11,616	$9,975	$3,874		-14%	-67%	-61%	-67%	-61%
Montana [3]	$1,040	$1,618	$0		56%	-100%	-100%	-100%	-100%
Nebraska	$2,329	$0	***		-100%	- -	- -	- -	- -
Nevada	$4,188	$1,564	$4,873		-63%	16%	212%	16%	212%
New Hampshire	$1,248	$0	***		-100%	- -	- -	- -	- -
New Jersey	$8,152	$5,894	$7,932	$2,800	-28%	32%	82%	-3%	35%
New Mexico	$3,050	$2,826	***		-7%	- -	- -	- -	- -
New York	$54,953	$44,051	$19,924	$15,000	-20%	-36%	-21%	-64%	-55%
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Utah [3]	$1,650	$1,985	$0		20%	-100%	-100%	-100%	-100%
Vermont	$1,001	$1,544	***		54%	- -	- -	- -	- -
Virginia	$7,514	$6,749	$5,859		-10%	-22%	-13%	-22%	-13%
Washington	$8,312	$7,377	***		-11%	- -	- -	- -	- -
West Virginia	$1,382	$0	***		-100%	- -	- -	- -	- -
Wisconsin [3]	$2,797	$0	$0		-100%	-100%	0%	-100%	0%
Wyoming	$1,191	$173	***		-85%	- -	- -	- -	- -

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See next page for assumptions and notes.

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Under all scenarios, total appropriation is $500,000,000.

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1. The Attorney General uses no program funds for housing Federal prisoners in non-Federal institutions.

2. From the intial $500 million appropriated for truth in sentencing and general grants, Section 20109 (a) (1) allocates 0.3% ($1.5 million) for payments for the incarceration of offenders under Indian tribe jurisdiction. Administrative costs are set at one percent ($5 million) to be comparable with other formulas.

Direct SCAAP appropriations comprise $300,000,000. The conference bill requires that the difference between the initial authorization for prison grants ($500 million) and direct SCAAP appropriations ($300 million) be diverted from prison grants to awards under the Immigration and Nationality Act.

TRUTH IN SENTENCING/IMMIGRATION AND NATIONALITY ACT AWARDS (Column 4):

These states fulfill truth in sentencing provisions and are therefore eligible to receive additional funds under the Immigration and Nationality Act.

FOOTNOTES FROM THE TABLE

[1] These states are expected to be ineligible for both types of prison grants under the conference bill - general grants and truth in sentencing grants. The states are not eligible for general grants because they fail to meet the parameters established by Section 20103 (a) (2), which requires that states "increase[d] the average prison time actually to be served in prison" since 1993 for part 1 violent crimes. According to the 1995 Bureau of Justice Statistics report, "Violent Offenders in State Prison: Sentences and Time Served," (p.4) the average minimum time for violent offenders to serve before release has not increased since 1993 for the indicated states.

[2] These states are expected to be ineligible for both types of prison grants under the conference bill - general grants and truth in sentencing grants. The states are not eligible for general grants because they fail to meet the parameters established by Section 20103 (a) (3), which requires that states "increase[d] the average percentage of time of the sentence to be actually served in prison" since 1993 for part 1 violent crimes. The above BJS report indicates that the percent of the average maximum sentence to be served for violent offenses has not increased since 1993 for these states.

[3] These states are expected to be ineligible for both types of prison grants under the conference bill - general grants and truth in sentencing grants. The states are not eligible for general grants because they fail to meet the parameters established by Section 20103 (b) (2) (B), which requires that states "increase[d] the average time served in the state for the offenses of murder, rape, and robbery" since 1993. The above BJS report indicates that the average time served for violent offenses has not increased above 1993 levels for the indicated states.

ATTORNEY GENERAL PHONE CALL TO SENATOR HOLLINGS

BACKGROUND MEMO

The House passed H.R. 4603, the Commerce, Justice, State and Judiciary Appropriations Bill, on Tuesday June 28th by a vote of 286 to 112. Senator Hollings plans to have a subcommittee markup of the House passed bill on July 12th.

Basically, the Department did well in the House Bill and our funding requests were followed as well as could be expected. However, there are some points that need to be made to Senator Hollings regarding the funding in the House bill and language in the House Committee Report. Furthermore, it is important to note that because of the allocations made by Senator Byrd, Senator Hollings will have more money than Representative Mollohan had to appropriate to the Department, specifically $793 million more in budget authority and $282 million more in outlays.

1. Police Funding

The Administration requested $1,720,000 for community policing and the House passed version appropriated $1,332,000. To complicate matters, in the actual language of the House Bill (not just the Report), the community policing funding is placed in the Office of Justice Programs account. This is in contrast to the Biden/Brooks Crime Bill Conference Mark, which gives the Attorney General the authority to disperse these funds.

The Committee Report language also instructs the Department to set aside 30% of this money for Police Supplemental Hiring (PHS) applicants who did not receive funding from that program as long as they have an "innovative concept," show extraordinary need, and they are in an geographic area that did not receive a PHS.

2. Brady Bill Funding issue

The Administration budget request for the State Criminal Records Upgrade Program (Brady Law implementation) was $100,000,000. In the House bill, this funding is located in a newly created State and Local Law Enforcement Assistance formula grant account containing 3 programs:

1) Byrne Formula Grants (for its authorized purposes);

2) Brady Act implementation grants; and

3) State Criminal Alien Assistance Program (SCAAP) grants.

The House appropriated a total of $804,280,000 for this account. The problem is that the bill further provides discretion with State Governors to decide among the three program areas as to how to divide up the total grant money allocated to a State. Thus, under this formula funding scheme, a Governor could decide to provide no funding for Brady Act implementation in a State and instead apply the State's full formula share to one or both of the other program areas.

QUESTION PRESENTED

The Brady Handgun Violence Prevention Act (Brady Act) provides that, within five business days of a firearms dealer's proposal to transfer a handgun, the "chief law enforcement officer" (CLEO) of the transferee's residence shall make a "reasonable effort" to determine whether the transferee's receipt or possession of the handgun would be illegal. 18 U.S.C. 922(s)(2). If the CLEO determines that the transferee's receipt or possession of the handgun would not be illegal, the CLEO shall destroy the records relating to the transfer. 18 U.S.C. 922(s)(6)(B)(i). If the CLEO determines that the receipt or possession of the gun would be illegal, he shall, upon request by the transferee, provide in writing the reason for his determination. 18 U.S.C. 922(s)(6)(C).

The question presented is whether those provisions of the Brady Act exceed Congress's power under the Commerce Clause or contravene constitutional principles of federalism embodied in the Tenth Amendment.

TABLE OF CONTENTS

Table of Contents—Continued:

TABLE OF AUTHORITIES

Cases:

Cases—Continued:

In the Supreme Court of the United States

OCTOBER TERM, 1996

No. 95-1478

JAY PRINTZ, SHERIFF/CORONER,
RAVALLI COUNTY, MONTANA, PETITIONER

v.

UNITED STATES OF AMERICA

No. 95-1503

RICHARD MACK, SHERIFF, GRAHAM COUNTY,
PETITIONER

v.

UNITED STATES OF AMERICA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-25a)[1] is reported at 66 F.3d 1025. The opinion of the district court in *Printz* v. *United States* (Pet. App. 30a-66a) is reported at 854 F. Supp. 1503. The opinion of the district court in *Mack* v. *United States* (95-1503 Pet. App. 26-50) is reported at 856 F. Supp. 1372.

[1] Unless otherwise noted, "Pet. App." refers to the appendix to the petition in No. 95-1478. "U.S. Resp. App." refers to the appendix to the United States' response to that petition.

JURISDICTION

The judgment of the court of appeals was entered on September 8, 1995. Petitions for rehearing were denied on December 19, 1995. Pet. App. 28a-29a. Petitions for a writ of certiorari were filed on March 15, 1996 (No. 95-1478) and March 18, 1996 (No. 95-1503), and were granted on June 17, 1996. 116 S. Ct. 2521. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Commerce Clause (Art. I, § 8, Cl. 3) and the Tenth Amendment of the United States Constitution are reproduced at Pet. App. 75a. The Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, Tit. I, 107 Stat. 1536, is reproduced at Pet. App. 75a-93a.

Section 928 of Title 18, United States Code, provides: "If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby."

STATEMENT

1. a. The Gun Control Act of 1968 (GCA), 18 U.S.C. 921 *et seq.*, establishes a comprehensive federal scheme governing the manufacture, importation, and distribution of firearms in interstate commerce. Under the GCA, no person without a federal license may make or sell firearms, 18 U.S.C. 922(a)(1)(A), and the conditions under which firearms may be made and sold are subject to detailed regulation.

The GCA makes it unlawful for certain persons, such as convicted felons, to receive or possess firearms in or affecting interstate commerce. 18 U.S.C. 922(g). It is also unlawful for any person to transfer a firearm to another, knowing that the transferee is prohibited by Section 922(g) from receiving or possessing a firearm. 18 U.S.C. 922(d). The GCA further prohibits federally licensed firearms dealers from transferring a firearm to anyone who is less than 18 years old, who does not reside in the dealer's State, or who would be prohibited by state or local law from purchasing or possessing a firearm. 18 U.S.C. 922(b)(1)-(3).[2]

In the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, Tit. I, 107 Stat. 1536 (1993) (Brady Act or Act), Congress amended the GCA to address the national "epidemic of gun violence" by enhancing enforcement of existing federal regulation of gun dealers. See H.R. Rep. No. 344, 103d Cong., 1st Sess. 7-8 (1993) (House Report); *id.* at 9 (noting that, despite existing federal prohibitions on gun transfers by firearms dealers, a "major source of criminals' guns are gun shops"). The Act requires the Attorney General to establish a national instant criminal background check system by November 30, 1998. 18 U.S.C. 922 note. Once that system is in place, firearms dealers will be required (with certain exceptions) to contact it to determine whether any legal impediment exists to the sale

[2] Since petitioners' opening briefs were filed, an amendment to the GCA has added, to the categories of persons not permitted by federal law to receive guns, those convicted of certain misdemeanor offenses, having as an element the use or attempted use of physical force or threatened use of a deadly weapon, committed by the spouse, domestic partner, parent, or guardian of the victim. Department of Defense Appropriations Act, 1997, Pub. L. No. 104-208, Div. A, § 101(f), Tit. VI, § 658 (110 Stat. 3009) (Sept. 30, 1996); see 142 Cong. Rec. H11,743 (daily ed. Sept. 28, 1996).

of a firearm. 18 U.S.C. 922(t)(1)(A). Under the national instant check system, the transfer may go forward only if the system verifies that the transferee's receipt of the gun would not be illegal, or if three business days elapse after the dealer contacts the system. 18 U.S.C. 922(t)(1)(B) and (t)(2).

Because the national instant check system may not be fully operative until late 1998, Congress also enacted interim provisions to enhance enforcement of the GCA's transfer restrictions. See House Report 10. The interim provisions, which are the subject of this case, operate in relation to proposed transfers of handguns by federally licensed firearms dealers. Under the interim provisions, a firearms dealer who proposes to transfer a handgun must provide the "chief law enforcement officer" (CLEO) of the transferee's residence with information about the proposed transfer. 18 U.S.C. 922(s)(1)(A). The dealer may not make the transfer until five business days have elapsed after providing such notice to the CLEO, unless, within that five-day period, the CLEO informs the dealer that the CLEO has no information that the transferee's receipt of a handgun would be illegal. See 18 U.S.C. 922(s)(1)(A)(ii)(II). The transfer may go forward after five business days if the dealer receives no information from the CLEO at all. See 18 U.S.C. 922(s)(1)(A)(ii)(I).[3]

To enable CLEOs to determine whether transfer of a handgun would be illegal, prospective handgun purchasers must provide firearms dealers with their name, address,

[3] The Brady Act defines the "chief law enforcement officer" as "the chief of police, the sheriff, or an equivalent officer or the designee of any such individual." 18 U.S.C. 922(s)(8). The Brady Act's interim provisions do not apply in States and Territories that have their own background check requirements. 18 U.S.C. 922(s)(1)(C) and (D); see 59 Fed. Reg. 37,532, 37,534 (1994) (Bureau of Alcohol, Tobacco, and Firearms (ATF) identification of exempt jurisdictions).

and date of birth. 18 U.S.C. 922(s)(1)(A)(i)(I) and (s)(3)(A). The dealer must then give that information to the CLEO. 18 U.S.C. 922(s)(1)(A)(i)(III) and (IV).[4] During the ensuing five-day waiting period, the CLEO "shall make a reasonable effort" to determine whether a legal impediment exists to the proposed sale:

> A chief law enforcement officer to whom a transferor has provided notice * * * shall make a reasonable effort to ascertain within 5 business days whether receipt or possession [of the handgun] would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

18 U.S.C. 922(s)(2). It is that provision for a "reasonable effort to ascertain" whether receipt or possession of the handgun would be illegal to which petitioners principally object.

The Act imposes two further administrative obligations on CLEOs who undertake record checks pursuant to Section 922(s)(2). If the CLEO determines that the receipt of the handgun by the transferee would be illegal, he must, upon request, provide the would-be purchaser with his reasons for that conclusion in writing. 18 U.S.C. 922(s)(6)(C). If, on the other hand, the CLEO does not conclude that the transfer would be illegal, he must destroy the records relating to the transfer. 18 U.S.C. 922(s)(6)(B)(i). The Act does not, however, require that a CLEO notify the dealer (or otherwise act to prevent the transfer of a handgun)

[4] ATF has also provided, by regulation, that dealers may request additional, optional information of the transferee (such as the transferee's height, weight, place of birth, and social security number) to reduce the chances of an erroneous identification of the transferee. See 59 Fed. Reg. 7110 (1994); 27 C.F.R. 178.130(a)(2).

even if the CLEO concludes that the purchaser's receipt of the gun would be illegal.

The Act provides CLEOs with immunity from damages actions for failing to prevent an unlawful handgun sale, or for mistakenly concluding that a transfer would be contrary to law. 18 U.S.C. 922(s)(7). In addition, although the Brady Act establishes criminal penalties for knowing violations of the Act, see 18 U.S.C. 924(a)(5), the Department of Justice has concluded that those criminal sanctions do not apply to CLEOs who fail to abide by Section 922(s)(2). See Pet. App. 18a-19a.

b. Shortly after enactment of the Brady Act, the Bureau of Alcohol, Tobacco and Firearms (ATF), which is charged with interpretation and implementation of the GCA (see 18 U.S.C. 926; 37 Fed. Reg. 11,696-11,697 (1972)), issued an open letter providing guidance to CLEOs on the "reasonable effort" provision of the Brady Act. See U.S. Resp. App. 13a-17a. ATF made clear that, while the Brady Act generally "anticipates some minimal effort to check commonly available records," CLEOs are not obliged to check "every conceivable record system that may contain information relating to categories of prohibited persons." *Id.* at 13a-14a. ATF further stated that, since the "vast majority of [disqualified] persons * * * are prohibited by virtue of some criminal background," a CLEO's reasonable effort should normally focus on "[c]riminal record systems." *Id.* at 14a. ATF also suggested that, in States with centralized mental health records, those records "could also be searched if accessible." *Ibid.*

ATF explained that, since CLEOs themselves are in the "best position to determine" what constitutes a "reasonable effort," "[e]ach * * * CLEO will have to set it[s] own standards based on its own circumstances, *i.e.*, the availability of resources, access to records, and taking into account the law enforcement priorities of the jurisdiction."

U.S. Resp. App. 14a-15a. ATF noted finally that, in some circumstances, as when a CLEO has personal knowledge of a gun purchaser, a CLEO may legitimately decide that it is "reasonable" to do no research at all. *Id.* at 14a.

2. a. Petitioner Printz is the Sheriff of Ravalli County, Montana. Pet. App. 4a. He brought suit in district court, contending that several of the Brady Act's interim requirements, including the requirement that he make a "reasonable effort" to ascertain if there is a legal impediment to a handgun sale, violate the Tenth Amendment. *Id.* at 32a. The district court held that the "reasonable effort" requirement violates the Tenth Amendment. *Id.* at 66a. It also concluded, however, that CLEOs' other obligations under the Act do not contravene the Tenth Amendment. *Id.* at 61a-63a. The court held further that the "reasonable effort" provision is severable from the remainder of the Brady Act, including the Act's five-day waiting period for handgun sales. *Id.* at 66a.

b. Petitioner Mack is the Sheriff of Graham County, Arizona. 95-1503 Pet. App. 3. He also brought suit in district court, contending, as did Sheriff Printz, that the Brady Act's interim requirements for CLEOs contravene the Tenth Amendment. *Id.* at 3, 47-48 n.11. The district court held that the "reasonable effort" requirement contravenes the Tenth Amendment. *Id.* at 43. It also ruled, however, that the record check provision is severable from the remainder of the Act, including the five-day waiting period. *Id.* at 49.[5]

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[5] Both petitioners also contended that the Brady Act's provision for criminal penalties for knowing violations of Section 922(s) (see 18 U.S.C. 924(a)(5)), violates the Due Process Clause of the Fifth Amendment as applied to them. Pet. App. 18a. The court of appeals held (*id.* at 19a) that petitioners' due process claim was not ripe for review because, in light of the Department of Justice's official conclusion that Section 924(a)(5) does not apply to CLEOs (see p. 6,

c. A divided panel of the court of appeals upheld all the challenged provisions. Pet. App. 1a-25a. The court concluded that the Brady Act does not transgress any "implied limitation on federal power" (*id.* at 8a), and that there is "nothing unusually jarring to our system of federalism" in the challenged provisions (*id.* at 9a). The court noted that this Court has rejected the argument that "Congress has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it," as "not representative of the law today." *Ibid.* (quoting *FERC* v. *Mississippi*, 456 U.S. 742, 761 (1982)).

The court of appeals rejected in particular petitioners' contention that, under *New York* v. *United States*, 505 U.S. 144 (1992), "the federal government is now flatly precluded from commanding state officers to assist in carrying out a federal program." Pet. App. 10a. The court explained that "[t]he constitutional evil that *New York* addressed" was that "the federal government was attempting to direct the States to enact their own legislation or regulations according to a federal formula." *Ibid.* That Tenth Amendment concern, the court explained, is focused on "federal coercion of a State's enactment of legislation or regulations or creation of an administrative program," because such coercion infringes the States' sovereign authority to set policy and undermines political accountability. *Id.* at 13a. "When the federal government requires the States to enact legislation, the enacted legislation is *state* legislation. Thus, it will likely 'be state officials who will bear the brunt of public disapproval, while the federal officials who devised the regulatory program may remain insulated from the electoral ramifications of their decision.'" *Ibid.* (quoting *New York*, 505 U.S. at 169).

supra), petitioners do not face a credible threat of prosecution. Petitioners have not renewed their due process claim in this Court.

The court concluded that the Brady Act "is not the kind of a federal mandate condemned by *New York*." Pet. App. 14a. It stressed that CLEOs "are not being commanded to engage in the central sovereign processes of enacting legislation or regulations" and "are not even being asked to produce a state policy, for which the state must bear political accountability." *Ibid.* Moreover, it stated, CLEOs' duties under the Act "represent a minimal interference with state functions. In that sense, their duties are not different from other minor obligations that Congress has imposed on state officials." *Ibid.*

Although the court assumed that "there is likely to be some point at which a federal statute that enlists the aid of state employees can become so burdensome to the State that it violates the Tenth Amendment," it nonetheless concluded that "the Brady Act does not approach that point." Pet. App. 15a. The court observed that petitioners have not been subjected to any requirement to do more "than check computer records" (*id.* at 15a-16a), and it stated that, on the record before it, it "[could not] conclude that 'a reasonable effort' inevitably requires more than [a] minimum for [petitioners]. To perform such computer checks * * * has not been shown to constitute the kind of interference with state functions that would raise Tenth Amendment concerns." *Id.* at 16a.[6]

SUMMARY OF ARGUMENT

I. A. In the Brady Act, Congress responded to a national epidemic of handgun violence by enhancing federal regulation of firearms dealers and federal restrictions on transfers of firearms. The policies of the Brady Act under challenge here involve simple record checks to determine

[6] Judge Fernandez dissented in part. Pet. App. 22a-25a. He would have held unconstitutional the Brady Act's interim provisions challenged in this case. See *ibid.*

whether a transfer of a handgun would be unlawful, and a waiting period during which those checks can take place. The federal government is clearly responsible for the policy choices made in the Brady Act, as it was responsible for establishing, in the Gun Control Act of 1968, the categories of persons to whom firearms may not be transferred.

The Brady Act does not require the States to add anything in the way of policy to those choices made by the federal government, or otherwise to devise a solution to the problem of gun violence. Rather, the Brady Act calls on local officials, with the most ready access to the most relevant records, to give modest assistance in the implementation of the federal regulation of gun transfers between private parties by conducting the needed record checks. That assistance is temporary; by 1999, the federal government is required to have in place its own machinery for conducting the necessary checks.

The interim, limited, and nonpolicymaking participation by local officials in the Brady Act contravenes no constitutional principle of federalism. The interim provisions challenged here do not alter the fundamentally federal character of the approach devised by Congress and do not contravene the Commerce Clause or the Tenth Amendment. The Court has never held that Congress is absolutely barred from requiring local officials to assist in the application of federal law to private parties. In *Testa* v. *Katt*, 330 U.S. 386 (1947), and *FERC* v. *Mississippi*, 456 U.S. 742 (1982), this Court made clear that state officeholders may be required to apply federal law to private persons.

New York v. *United States*, 505 U.S. 144 (1992), did not alter those established principles. In the statute under review in *New York*, Congress identified a national problem, the disposal of radioactive waste, but failed to enact a

federal solution. Rather, Congress required that the States devise solutions to that national problem, either by legislating their own solutions to the problem of radioactive waste, or by taking title to the waste and then devising an administrative system for its proper disposition. In that case, Congress commandeered the legislative and administrative policymaking apparatus of the States. That commandeering, the Court held, contravened the constitutional values of federalism by blurring the political accountability of elected officials to the people.

Although, under *New York*, Congress may not identify a national problem and then require the States to devise solutions, there is no constitutional rule preventing Congress from devising a national solution and then requiring limited local assistance in what is otherwise a comprehensive federal implementation of that solution. The Framers of the Constitution contemplated that the national government would make use of state officers to carry out some federal laws regulating private parties, including the collection of federal taxes. The early Congresses acted on that understanding when they required state officials to conduct administrative tasks involving registration of aliens. Later Congresses also imposed administrative obligations on state officials in other contexts, including immigration and draft registration. In the present day, several federal statutes require state and local participation in the administration of federal law, especially in the collection, reporting, and dissemination of information. These examples demonstrate that Congress may, from time to time, find it necessary and proper to enlist local officials in limited, nonpolicymaking aspects of the implementation of federal law. There is no historical evidence for any suggestion that this authority is likely to be abused by Congress as a means to undermine the functioning of the States.

B. The Brady Act does not contravene any other limit on the exercise of federal power that might be found in the structure of federalism. The text of the Brady Act requires only that CLEOs make a "reasonable effort" to conduct the record check, and the Act affords CLEOs broad discretion to determine the scope of that "reasonable effort," in light of their own resources and law enforcement priorities. The Bureau of Alcohol, Tobacco and Firearms, which administers the Brady Act, has made clear in its guidance interpreting the Act that it is generally "reasonable" for CLEOs to choose to fulfill their duties by consulting readily accessible criminal records. Thus, in light of their limited resources and competing obligations, CLEOs can and do meet their obligations by having clerical personnel perform checks of criminal records to the extent possible given the circumstances. The other requirements imposed on CLEOs under the Act are even more clearly *de minimis*.

C. The Commerce Clause provides no independent basis for a constitutional challenge to the Brady Act. The inquiries under the Commerce Clause and the Tenth Amendment are mirror images of each other. The commercial transfer of handguns and the possession of handguns in and affecting commerce are both within Congress's power to regulate, and the Brady Act addresses those matters. Record checks by CLEOs are reasonable means developed by Congress to regulate those aspects of commerce.

II. If this Court holds any of the challenged Brady Act provisions unconstitutional, it should not also invalidate the five-day waiting period imposed on firearms dealers, the dealers' obligation to provide information about transferees to the CLEOs, or the CLEOs' obligation to inform transferees of their reasons for preventing a transfer. The severability of the first two provisions is not before

the Court, because petitioners lack standing to challenge them.

In any event, all the challenged provisions of the Brady Act are severable from the rest of the Act. Without the provisions under constitutional challenge in this case, the remainder of the Brady Act would be fully operative as a law, and severing invalid parts of the Brady Act would be consistent with Congress's purpose of addressing gun violence by enhancing restrictions on gun transfers through record checks. Even if this Court invalidates the requirement that CLEOs conduct record checks, retaining the five-day waiting period and firearms dealers' obligation to inform CLEOs about proposed gun transfers will ensure that local officials will be informed about pending handgun transfers, and will have the time and information to conduct record checks if they choose to do so. The CLEO's duty to inform transferees, upon request, why a proposed transfer has been found to be illegal, would in effect be voluntary, because it would be undertaken only if the CLEO chose to conduct the record check.

ARGUMENT

I. THE INTERIM DUTIES OF CHIEF LAW ENFORCEMENT OFFICERS UNDER THE BRADY ACT ARE CONSISTENT WITH CONSTITUTIONAL PRINCIPLES OF FEDERALISM

A. Congress May Require Local Officials To Give Non-Policymaking Assistance In The Application Of Federal Laws To Private Persons

The Brady Act amends the Gun Control Act to enhance already existing federal restrictions on the transfer of handguns between private persons. Enacted by Congress and signed by the President after years of highly publicized debate, the Brady Act sets forth a federal solution to a national problem, accompanied by federal funding and administered by the federal Bureau of Alcohol, Tobacco and Firearms (ATF). The principal policies of the Brady Act challenged in this case—staying the transfer of a handgun in or affecting commerce pending a limited record check—are readily identifiable as the policies of the national government.

The interim provisions challenged here require temporary, limited, non-policymaking assistance by CLEOs in giving effect to the federal scheme pending the establishment of a national instant background check system. The primary requirement under challenge requires that, during the interim period, CLEOs make a "reasonable effort" to ascertain, by consulting "available" records, whether a legal impediment exists to a proposed handgun sale. 18 U.S.C. 922(s)(2). The CLEOs are not required to establish any new legal restrictions on handgun transfers, but only to ascertain whether an already existing restriction is applicable to a particular case.

Petitioners characterize the burden imposed by this provision in various ways, but, at bottom, their contention does not turn on the nature of the duty created by the Brady Act, the degree of its supposed intrusion onto the functioning of their offices, or the extent to which it requires them to expend resources. Rather, their position is that Congress may not, under any circumstances and to any degree, require local officials to assist in the application of federal law to private persons, unless that requirement is imposed as a condition on the receipt of federal funds. That absolutist position finds no basis in this Court's jurisprudence of federalism or in the constitutional tradition that it reflects.

1. This Court's Decisions Establish That State And Local Officials May Be Required To Apply Federal Law To Private Persons

a. It is clear beyond dispute that constitutional principles of federalism are not violated merely because Congress requires state and local officials to perform a function under federal law. "[T]here are instances where the Court has upheld federal statutory structures that in effect directed state decisionmakers to take or to refrain from taking certain actions." *FERC* v. *Mississippi*, 456 U.S. 742, 761-762 (1982); see *South Carolina* v. *Baker*, 485 U.S. 505, 513-515 (1988). Article VI of the Constitution establishes that state and local executive officials may be required to carry out federal obligations, as well as duties imposed by the laws of their own jurisdiction. See *South Carolina* v. *Baker*, 485 U.S. at 514-515; Evan H. Caminker, *State Sovereignty and Subordinacy: May Congress Commandeer State Officers To Implement Federal Law?*, 95 Colum. L. Rev. 1001, 1028-1030 (1995). And that is true even if the congressional mandate imposes significant financial burdens on the local governmental entity. See, *e.g.*, *Garcia* v. *San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985).

To the extent that federalism cabins Congress's ability to impose duties under federal law on local officials, the limits must therefore be found in the particular interest recognized in the Tenth Amendment, the protection of liberty through political accountability of public officials to the people. See *New York* v. *United States*, 505 U.S. 144, 181-183 (1992). Further, the nature of the specific obligation imposed by Congress must be closely examined to determine whether the federal obligation impairs that interest in a serious and substantial way. Cf. *South Carolina* v. *Baker*, 485 U.S. at 529 (Rehnquist, C.J., concurring in the judgment) (noting that principles of federalism are violated only if congressional action "operate[s] to directly displace the States' freedom to structure integral operations").

A constitutional problem exists when Congress, although identifying a national problem, chooses not to enact any federal solution but compels the States to devise their own regulatory approaches. In that situation, Congress literally "command[s] state legislatures to legislate" into existence a regulatory regime, *New York*, 505 U.S. at 179, and also encourages federal and state officials "to avoid being held accountable to the voters" for their decisions, *id.* at 182. See also *United States* v. *Lopez*, 115 S. Ct. 1624, 1642 (1995) (Kennedy, *J.*, concurring) (principles of federalism are violated by "a formal command from the National Government directing the State to enact a certain policy").

No such constitutional difficulty is presented, however, when Congress itself devises a clear legislative solution that regulates private conduct, and calls upon local officials for limited, non-policymaking help in enforcing that law. In that situation, Congress does not force the States to make policy, and does not impair the constitutional value of federalism in preserving the accountability of public officials to the people. Put differently, the constitutional line is crossed only when Congress compels the States to make law in their sovereign capacities—but not when Congress requires the assistance of state or local officials in carrying out a broadly applicable federal law.[7]

[7] To employ an analogy, Congress, acting within its enumerated powers, may preempt state law and require state courts to apply federal law exclusively as a rule of decision to a controversy. But it would be doubtful that Congress could require state legislatures to change their own state law, at federal command, and then compel state courts to apply that new state law. Thus, for example, Congress might, without giving rise to any constitutional difficulty, enact a federal products liability law that preempted state law, and might thereby require state courts to apply the federal law to the exclusion of state law. A constitutional problem would be encountered only if Congress directed the state legislatures (or state courts) to change their own *state* products liability law, and apply it *as such*. Only the latter situation encroaches on the States' sovereign capacity to make their own law, and only the latter diminishes state officials' accountability to the people, by promoting the appearance that the States, not the national government, were responsible for the change in the law.

Cf. *FERC*, 456 U.S. at 785 (O'Connor, J., concurring in part and dissenting in part) (describing the crucial interest protected by state sovereignty as "the power to choose subjects for legislation[,] * * * a fundamental attribute of legislative power").

b. The distinction discussed above is illustrated by the opposite results reached, on the one hand, in *Testa* v. *Katt*, 330 U.S. 386 (1947), and *FERC* v. *Mississippi*, 456 U.S. 742 (1982), and, on the other hand, in *New York* v. *United States*, 505 U.S. 144 (1992). In *Testa*, the Court held that state courts must follow a federal statutory requirement that they hear federal claims arising under federal law.[8] As the Court explained in *New York*, an important aspect of the requirement at issue in *Testa* was that it "involve[d] congressional regulation of individuals, not congressional requirements that States regulate." *New York*, 505 U.S. at 178. The Court also noted, however, that "[f]ederal statutes enforceable in state courts do, in a sense, direct state judges to enforce them." *Ibid.*; see also *FERC*, 456 U.S. at 762 (noting that *Testa* "reveals that the Federal Government has some power to enlist a branch of state

[8] *Testa* did not itself involve a Tenth Amendment challenge, but its relevance to the jurisprudence of federalism is made clear by the decisions in *New York* (505 U.S. at 178) and *FERC* (456 U.S. at 760-762).

government—there the judiciary—to further federal ends").

Similarly, in *FERC*, the Court—in a ruling joined by all nine Justices—sustained a federal statutory requirement, imposed by Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), that state utility commissions "implement" FERC rules designed to encourage power production at small plants. 456 U.S. at 759. That statutory mandate in practice required state executive branch officials to apply federal law to disputes involving private parties. *Id.* at 759-760; *id.* at 775-776 & n.1 (O'Connor, J., concurring in part and dissenting in part).[9]

[9] Petitioners minimize the relevance of *FERC* and *Testa* as limited to the functions of state judges, but that argument is based on a misunderstanding of the Supremacy Clause. It is not only judges, but all state officials, who must adhere to federal law. See U.S. Const. Art. VI ("all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution"); *Ex parte Siebold*, 100 U.S. 371, 392 (1880) ("The Constitution and laws of the United States are the supreme law of the land, and to these every citizen of every State owes obedience, whether in his individual or official capacity."); see also *Voinovich* v. *Quilter*, 507 U.S. 146, 159 (1993) (noting that state non-judicial official who followed dictates of federal law in drafting apportionment plan "demonstrate[d] obedience to the Supremacy Clause"); Caminker, 95 Colum. L. Rev. at 1093 (explaining that "[t]he Supremacy Clause makes all federal laws the supreme law of the land for all individuals and institutions of state government").

Thus, the *FERC* Court upheld the requirement in PURPA that state *executive* officials enforce federal law. While the Court also noted that the administrative officials served as part of the State's "adjudicatory machinery" (456 U.S. at 761), its holding did not rest on that characterization. Although the state officials required to perform the challenged functions in *FERC* could execute them through a quasi-adjudicatory mechanism of dispute resolution (*id.* at 760), the Court did not hold that PURPA was constitutional as applied to them because they were "judicial Officers" within the meaning of Article VI.

In contrast to the unanimous rejection of the challenge to Section 210 of PURPA, the Court in *FERC* divided sharply with respect to the validity of other challenged provisions, which required that the States "consider" adopting certain energy standards as a matter of state law. *FERC*, 456 U.S. at 761-766. The Court recognized that those requirements—unlike Section 210—implicated significant interests of state sovereignty, *id.* at 761, but it emphasized that PURPA required only that the States "*consider* the suggested federal standards," *id.* at 765. The Court found nothing in PURPA "'directly compelling' the States to enact a legislative program." *Ibid.*[10]

The provision invalidated in *New York* presented States with two alternatives, as pertinent here: a State could either legislate a regulatory scheme to provide for the disposal of all low-level radioactive waste generated within the State by 1996, or it could take title to the waste at that time. See 505 U.S. at 153-154. The first alternative, the Court emphasized, was a "command [to] state government to enact *state* regulation." *Id.* at 178 (emphasis in original). That directive therefore clashed with the constitutional rule that Congress may not "conscript" the States to legislate a regulatory regime. *Ibid.* The second alternative, the Court found, was fatally flawed for the same

[10] In rejecting the challenge to PURPA's mandate that state utility commissioners consider federal energy standards, the Court also stated that, theoretically, the States could avoid the federal requirements by ceasing to regulate in the utilities field altogether. 456 U.S. at 764. But, contrary to the suggestion of petitioner Mack (Br. 18 n.8), that reasoning played no part in the Court's analysis of the separate requirement that state administrative agencies "implement" FERC rules by enforcing them against private parties. See 456 U.S. at 759-761. The Court also observed that it was highly "unlikely that the States will or easily can abandon regulation of public utilities to avoid PURPA's requirements." *Id.* at 767.

reason, because it effectively required each State to devise a *state* solution to a federally identified problem. See *id.* at 176. Accordingly, the Court held that both statutory alternatives were unconstitutional because both "commandeer[ed]" the States' political processes "by directly compelling them to *enact and enforce* a federal regulatory program." 505 U.S. at 176 (emphasis added). As Justice Kennedy later explained, the portions of the statute that were invalidated in *New York* were held unconstitutional because Congress had required the States "to enact a certain policy." *Lopez*, 115 S. Ct. at 1642 (concurring opinion).[11]

In *New York*, the Court stressed that, when Congress declines to enact a federal legislative solution and instead commands that States "enact and enforce" their own regulatory schemes to address a federal problem, Congress allows officials to avoid responsibility for controversial policy decisions: "Accountability is * * * diminished when, due to federal coercion, elected state officials cannot regulate in accordance with the views of the local electorate in matters not pre-empted by federal regulation." 505 U.S. at 169. And since the "power to make decisions and to set policy is what gives the State its sovereign nature" (*FERC*, 456 U.S. at 761), federal statutes mandating that state executive officials *make policy* at federal command

[11] The decision in *New York* also upheld significant portions of the statute under challenge. The Court held that Congress could, pursuant to its power under the Spending Clause, require the States to achieve certain milestones in the regulation of radioactive waste as a condition to receipt of funds collected from federal taxes and placed in an escrow account. 505 U.S. at 171-173. The Court also held that Congress could, pursuant to its commerce power, authorize States to restrict and deny access to radioactive waste generated in other States that did not meet federal deadlines for addressing the disposal of such waste. *Id.* at 173-174.

also implicate the accountability concerns central to constitutional principles of federalism. See *ibid.* ("the ability of a state legislative (or, as here, administrative) body—which makes decisions and sets policy for the State as a whole—to consider and promulgate regulations of its choosing must be central to a State's role in the federal system").

Those problems do not exist here. In the GCA and the Brady Act, Congress itself has identified national problems (gun violence and ineffective restrictions on handgun sales) and has devised clear legislative solutions to those problems—specific categories of persons to whom handguns may not be transferred, limited record checks before handgun transfers take place, and waiting periods to permit those checks to occur. Congress has not required the States to make any substantive policy decisions about who should or should not be eligible to own handguns, nor has it instructed the States to devise solutions to the problem of gun violence. Rather, it has merely called on local officials to assist in the implementation of the federal regulation governing gun transfers, on the reasoning that those officials have the best access to the most relevant records, such as state felony convictions. Accordingly, the Brady Act does not contravene constitutional principles of federalism, for this case is controlled by *Testa* and *FERC*, rather than *New York*.

c. The Court in *New York* stated that the "Federal Government may not compel the States to enact or *administer* a federal regulatory program." 505 U.S. at 188 (emphasis added). Petitioners divorce that particular sentence from its context, and interpret it as establishing an absolute bar to any federal requirement that state and local officials assist in the implementation of national policy. See Printz Br. 15; Mack Br. 28. As the preceding discussion demonstrates, however, that sentence must be understood in relation to the Court's expressed concern in *New York* that Congress had diminished the political accountability of public officials to the people (and had thereby encroached on liberty) by commandeering the machinery of state policymaking in *both* the legislative and administrative spheres. That concern for political accountability in administrative *policymaking* was fundamental to the decision in *New York*. If a State declined to legislate a radioactive waste regulatory regime and was therefore required by the federal statute to take title to such waste, it would have had to resolve administratively the same policy issues that would have confronted the state legislature. In effect, the State's administrators would have been compelled to create a state-law mechanism to address the national problem foisted on the States by Congress. See 505 U.S. at 175-176.

The Brady Act provisions at issue here stand in marked contrast to those struck down in *New York*. The law invalidated in *New York* was a "command [to] state government to enact *state* regulation" (either by legislation or administrative initiative) to deal with the problems of radioactive waste. *New York*, 505 U.S. at 178 (emphasis in original). In distinction, the Brady Act represents a clearly articulated congressional solution to the problems posed by handgun violence, especially insufficiently effective regulation of handgun transfers between private parties. The Brady Act does not require CLEOs to make policy; rather, like the statute upheld in *FERC*, the Act only requires state officials to assist in the application of federal law to private parties in the course of their ordinary duties. The Brady Act is therefore not an impermissible command to the States to promulgate laws or regulations, but an unobjectionable requirement that officials assist in "congressional regulation of individuals." *New York*, 505 U.S. at 178.

The critical distinction drawn in *New York* is, therefore, between Acts of Congress that require States "to enact a certain policy," see *Lopez*, 115 S. Ct. at 1642 (Kennedy, J., concurring), and those that do not. Petitioners, however, reject that distinction, based on this Court's observation in *New York* that the statute then before it did not involve Congress's "subject[ing] a State to the same legislation applicable to private parties." 505 U.S. at 160. From that sentence, they infer that *any* federal statutory obligation falling particularly on state or local officials is unconstitutional. That argument, however, misapprehends the Court's concerns in *New York*, and it does not explain *why* constitutional principles of federalism are not implicated when the States are subjected to generally applicable federal legislation.

What is significant for constitutional purposes about a statute of general application is that such an enactment, by its nature, *cannot* constitute a directive to the States to formulate state policy in response to a federal command. Rather, by such a provision, the States (along with private parties) are required to adhere to a clearly articulated federal policy. The central question addressed in *New York* need not be considered with respect to statutes of general applicability, for it does not arise.

When, however, Congress enacts a statutory obligation falling particularly on individuals who are state or local officials, it is necessary to examine the statute to determine whether Congress has impermissibly "require[d] the States to regulate," *New York*, 505 U.S. at 178, or whether it has merely enlisted the assistance of state or local officials in implementing federal law with regard to private conduct. The fact that the challenged provisions of the Brady Act are not generally applicable only *raises* the further question whether Congress has impermissibly intruded on state sovereignty by requiring the States to make policy. In this case, the answer to that question is that Congress has not done so. See pp. 21-23, *supra*.

2. The Framing And Ratification Of The Constitution, As Well As Subsequent History, Demonstrate That Congress May Require State Officials To Assist In The Implementation Of Federal Law

a. The validity of the limited requirement of assistance by state and local officials in the implementation of federal law, as in the Brady Act, is underscored by the understanding of the Framers, actions of the early Congresses, and other historical evidence. Both proponents and opponents of the Constitution understood that, under our system of federalism, the national government could lawfully call upon state officials to provide assistance in implementing national policy governing private parties. To be sure, the Framers did not want the national government to be dependent on state legislation for the implementation of its laws (as had been the case under the Articles of Confederation and under the New Jersey Plan proposed at the Convention), and so they empowered Congress to legislate directly for the people of the Nation. See *New York*, 505 U.S. at 163-164. The Framers rejected the New Jersey Plan because they thought it would be ineffective in ensuring the faithful execution of national law, and also because it carried the potential for serious friction between the national government and the States; Alexander Hamilton ventured that, if the national government had no power to implement its laws directly, it might eventually be required to resort to armed force against the States in order to enforce its will. See *id.* at 165-166; *The Federalist* No. 15, at 95-96, No. 16, at 99-101 (J. Cooke ed. 1961).

The Framers therefore rejected a plan that would have required the national government to coerce the States to act *in their sovereign capacity* in order to implement the

law. See *The Federalist* No. 15, at 95-96 (Hamilton) (cussing flaws of confederacies requiring coercion agai "bodies politic, or communities or States"). The Cou decision in *New York* reflects that specific concern, the State of New York there was coerced by the fede government to exercise its sovereign power of legislat in order to implement federal will. This case, howev does not involve coercion of sovereign States, but t obligation of local officials to perform a modest duty in of the enforcement of federal law.[12] And in the Plan the Convention—including the Constitution's Suprema Clause—the national government was not prohibited fr requiring local officials to assist in implementing fede law. Cf. *Ex parte Siebold*, 100 U.S. 371, 392 (1880) ("T Constitution and laws of the United States are t supreme law of the land, and to these every citizen of eve State owes obedience, whether in his individual or offic capacity.") In fact, the Framers thought that the exec tion of federal requirements by state and local officia could serve federalism well, for it would avoid the dange of a remote and unresponsive federal bureaucracy. Se *The Federalist* No. 45, at 312-313 (Madison).

The issue was discussed to a considerable extent durin the ratification of the Constitution, when opponents of th Constitution argued against empowering Congress to lev direct taxes. The Anti-Federalists stressed that a dua system of direct taxation, based on both state and fed

[12] Compare *Seminole Tribe of Florida* v. *Florida*, 116 S. Ct. 1114 1124-1125 (1996) (emphasizing limits on Congress's power to abrogat States' sovereign immunity, and the "indignity of subjecting a State to the coercive process of judicial tribunals") with *Ex parte Young*, 209 U.S. 123, 155-156 (1908) (holding that "individuals, who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State * * * may be enjoined by a Federal court of equity from such action").

eral authority, would have the pernicious effect of subjecting citizens to two sets of intrusive revenue officers.[13] Supporters of the Constitution responded that Congress

[13] Patrick Henry anticipated that sheriffs would be required to assist in federal tax collection: "The sheriff comes to-day as a state collector. Next day he is federal." 3 *The Debates In The Several State Conventions On The Adoption Of The Federal Constitution* 168 (J. Elliot ed. 1987). See also 1 *The Debate on the Constitution* 217 (Bernard Bailyn ed. 1993) (hereafter Bailyn) ("Cato," arguing that "the necessity to enforce the execution of revenue laws (a fruitful source of oppression)" would ultimately require a federal standing army); 1 Bailyn 502 ("Brutus," arguing that direct federal taxation "opens a door to the appointment of a swarm of revenue and excise officers to prey upon the honest and industrious part of the community"); *id.* at 506 ("Brutus," noting that direct taxes "will introduce such an infinite number of laws and ordinances, fines and penalties, courts, and judges, collectors, and excisemen, that when a man can number them, he may enumerate the stars of Heaven"); 1 Bailyn 613-616 ("Brutus," discussing generally dangers of double systems of taxation); 1 Bailyn 697 ("Brutus," arguing that national government should only have authority to raise revenue "of such a nature, that the tax should be raised * * * with few officers"); 1 Bailyn 939 (Nathaniel Barrell, at Massachusetts Convention, stating that "a continental collector will not be so likely to do us justice in collecting the taxes, as collectors of our own"); 2 Bailyn 119 ("Letter from John Williams to His Constituents," stating that "direct taxation, and to be collected by officers of Congress, are powers which cannot be granted agreeable to our present constitution, nor will it be very convenient for Congress officers, and our state collectors, to be collecting both at one time"); 2 Bailyn 633 (Patrick Henry, at Virginia Convention, warning that "the salaries and fees of the swarm of officers and dependents on the Government will cost this Continent immense sums," and specifically that "[d]ouble sets of collectors will double the expence"); *id.* at 635 (Patrick Henry, opposing Federalists' solution that "one collector may collect the Federal and State taxes," because, "if the Sheriff is to collect for both, * * * his collections will go to Congress"); 2 Bailyn 817 (Melancton Smith, at New York Convention, warning that there would be "two lists of all kinds of officers—supervisors, assessors, constables," and that the two sets of taxing officers "will be hostile to each other").

would likely "make use of the State officers and S regulations, for collecting" federal taxes, thus rende "double sets of officers" unnecessary, and the threat f them illusory. See *The Federalist* No. 36 at 227 (Ha ton); see also *id.* at 226 (in assessing and collecting ta "[t]he national Legislature can make use of the *system each State within that State*"). James Madison argue particular that, although the federal government wo theoretically have the power under the Constitution collect taxes itself, "it is probable that this power will be resorted to," and "the eventual collection under immediate authority of the Union, will generally be m by the officers, and according to the rules, appointed by several States"). *The Federalist* No. 45, at 312-31 More generally, the Federalists argued that the Cons tution would "enable the [national] government to empl the ordinary magistracy of each [State] in the execution its laws," *The Federalist* No. 27, at 174 (Hamilton),[15] a

[14] See also 2 Bailyn 655 (Madison, at Virginia Convention, noti that Congress "may even refer to the State systems of taxation").

[15] In using the term "magistracy," Hamilton plainly includ executive officials. See *The Federalist* No. 27, at 175 (Hamilton) (n ing that, by virtue of the Supremacy Clause, "the Legislatures, Cou and Magistrates of the respective [States] will be incorporated into t operations of the national government, as far as its just and co stitutional authority extends, and will be rendered auxiliary to t enforcement of its laws") (emphasis omitted); see also *The Federal* No. 44 (Madison) (referring generally to "State magistracy"); *The Fe eralist* No. 47, at 325-331 (Madison) (discussing role of "executi magistrate"); 2 Bailyn 618 (Madison replying to Patrick Henry, Virginia Convention, referring to States' election of their "first Magi trate"). See generally *Black's Law Dictionary* 951 (6th ed. 1990) (" its widest sense [magistracy] includes the whole body of publi functionaries[.] * * * In a more restricted (and more usual) meaning it denotes the class of officers who are charged with the applicatio and execution of the laws.").

that it was "extremely probable that in other instances, particularly in the organisation of the judicial power, the officers of the States will be cloathed with the correspondent authority of the Union." *The Federalist* No. 45, at 313 (Madison). See also Samuel H. Beer, *To Make A Nation: The Rediscovery of American Federalism* 252 (1993) ("Madison himself expected the new federal government to govern through the state governments"); Caminker, 95 Colum. L. Rev. at 1043.

b. Consistent with the understanding of the Framers, the earliest Congresses enacted statutes that required the participation of state officials in the implementation of federal laws.[16] The First Congress required the clerk of "any common law court of record, in any one of the states," to record the application of a person seeking citizenship under federal naturalization laws. Act of Mar. 26, 1790, ch. 3, § 1, 1 Stat. 103. Congress enacted no provision at that time directing the clerks of federal courts to record such naturalization applications. In 1798, the Fifth Congress required clerks of courts—including state courts[17]—who had received declarations of intent by aliens seeking to

[16] Legislation enacted by the early Congresses provides an important guide to understanding the Framers' constitutional plan. *E.g.*, *Myers* v. *United States*, 272 U.S. 52, 175 (1926); *Burrow-Giles Lithographic Co.* v. *Sarony*, 111 U.S. 53, 57 (1884); see also *Mistretta* v. *United States*, 488 U.S. 361, 398-401 (1989); *Marsh* v. *Chambers*, 463 U.S. 783, 786-792 (1983).

[17] Naturalization acts subsequent to 1790 made clear that the clerks receiving such declarations included state court clerks. See Act of Jan. 29, 1795, ch. 20, § 1, 1 Stat. 414 (1795) (requiring alien to declare "on oath or affirmation, before the supreme, superior, district or circuit court of some one of the states"). A subsequent law passed by the Seventh Congress also reflects that understanding. See Act of Apr. 14, 1802, ch. 28, § 1, 2 Stat. 153 (1802) (alien "shall have declared, on oath or affirmation, before the supreme, superior, district or circuit court of some one of the states").

become citizens, "to certify and transmit * * * an abstract of such declaration" to the United States Secretary of State; the law also provided that clerks would be penalized $10 for failing to comply. Act of June 18, 1798, ch. 54, § 2, 1 Stat. 567. In 1802, the Seventh Congress directed court clerks to participate in the creation of a national registry of aliens, and required the clerks to issue certificates to aliens seeking naturalization. Act of Apr. 14, 1802, ch. 28, § 2, 2 Stat. 154-155. These early enactments were related to other early Acts of Congress, such as that passed by the First Congress, providing that aliens seeking naturalization could be admitted to citizenship by any state common law court of record. See Act of Mar. 26, 1790, ch. 3, § 1, 1 Stat. 103.[18]

Nor are such Acts of Congress limited to the Framers' era; Congress has, from time to time, found it necessary and proper to impose obligations on state officials to assist in the execution of federal policy. In the 1880s, when the federal government faced problems arising from mass unrestricted immigration, but lacked the administrative machinery to screen immigrants for the suitability of their entry into the United States, Congress established an interim scheme under which state officials examined immigrants arriving at ports to determine whether they should be excluded on the basis of a criminal conviction, a mental impairment, or poverty. See Act of Aug. 3, 1882, ch. 376, § 2, 22 Stat. 214. State officials were also required to send convicts back to their country of origin, and Congress expressly stated that that task should be undertaken under the direction of the Secretary of the Treasury, and without compensation. § 4, 22 Stat. 214. Once the federal government developed its own enforcement

[18] Federal courts were not authorized to naturalize aliens until 1795. Act of Jan. 29, 1795, ch. 20, § 1, 1 Stat. 414.

apparatus to screen immigrants, Congress relieved state officials of that obligation. See Act of Mar. 3, 1891, ch. 551, 26 Stat. 1084.

Perhaps the salient example of the federal government's enlistment of state officials to assist in implementation of federal law is the mass registration of young adult men for the draft on June 5, 1917. When Congress enacted a selective draft law on May 18, 1917, there was no federal administrative machinery in place to provide for the registration of those eligible for the draft. Accordingly, Congress authorized the President "to utilize the service * * * of the several States * * * in the execution of this Act," and also provided that any state official designated by the President to perform a function who refused to do so would be guilty of a misdemeanor. Act of May 18, 1917, ch. 15, § 6, 40 Stat. (Part 1) 80-81. President Wilson issued a proclamation and regulations directing that state and local officials conduct a one-time mass registration.[19] The actual registration was carried out by local officials, principally county clerks and sheriffs. After the registration was completed, the local officials turned over the registration cards to federally appointed local draft boards, which were still being created while the registration was taking place.[20]

[19] See Proclamation of May 18, 1917, 40 Stat. (Part 2) 20; Registration Regulations Prescribed by the President Under Authority of the Act of Congress Approved May 18, 1917 (Regulations). See especially Regulations ¶ 9: "As far as possible, the execution of the law in each State will be accomplished by State, county, and municipal officers and agencies." Because those Regulations were not printed in the regular serial set of government documents, we have lodged a copy with the Clerk of this Court and provided petitioners with a copy.

[20] See generally John Whiteclay Chambers II, *To Raise An Army: The Draft Comes to Modern America* 181-182 (1987); *Report of the*

Today as well, several federal statutes require participation by state and local officials in implementing federal regulatory schemes.[21] Under petitioners' theory, however, those Acts of Congress would all be unconstitutional. But as the examples we have given demonstrate, there simply is no flat rule prohibiting Congress from enlisting assistance from state officials in carrying out a federal program. In particular (as the immigration and draft registration examples noted above demonstrate), Congress may call on local assistance to implement a law during an interim period, while the federal government is devising its own permanent administrative machinery. The Brady Act falls securely into that paradigm.[22]

Provost Marshal General to the Secretary of War on the First Draft Under the Selective Service Act, 1917, at 7 (1918).

[21] *E.g.*, 42 U.S.C. 5779(a) (requires state and local law enforcement agencies to report cases of missing children); 23 U.S.C. 402(a) (requires state officials to implement highway safety programs and to report traffic fatalities); 42 U.S.C. 11001, 11003 (requires comprehensive data collection and reporting, as well as the creation of state emergency response commissions, with respect to the release of hazardous substances); 15 U.S.C. 2645 (requires governors to conduct certain reporting and approval activities with respect to local educational agencies); 20 U.S.C. 4013 (requires governors to submit plans for asbestos abatement and follow certain reporting procedures); 42 U.S.C. 6933 (requires inventories of state hazardous waste sites); 42 U.S.C. 6991a (requires governors to inventory underground storage tanks).

[22] Of course, it is possible to imagine hypothetical situations in which Congress might impose intolerable burdens on state and local governments in the execution of federal law. But as Justice Frankfurter noted of a similar issue in *New York* v. *United States*, 326 U.S. 572, 583 (1946), "[t]he process of Constitutional adjudication does not thrive on conjuring up horrible possibilities that never happen in the real world and devising doctrines sufficiently comprehensive in detail to cover the remotest contingency." And as Alexander Hamilton observed 150 years earlier about the Anti-Federalists' speculations of federal destruction of state autonomy, "[t]he moment we launch into

B. The Brady Act Imposes No Substantial Burden On The Functions Of Chief Law Enforcement Officers

Petitioners suggest that the Brady Act is unconstitutional because it imposes a burden, in terms of finances, effort, and time, on the functioning of their offices. This Court has made clear, however, that no constitutional problem exists simply because state officials must devote "substantial effort[s]" to implementing a federal requirement. See *South Carolina* v. *Baker*, 485 U.S. at 514-515. And the Court has established that federal mandates that cause States and local governments to spend money are not unconstitutional for that reason alone. See *FERC*, 456 U.S. at 770 n.33 (State's argument based on financial burdens was "unconvinc[ing]").

A constitutional problem might arise if the burden imposed by the federal legislation were so severe as to threaten the States' "separate and independent existence." *EEOC* v. *Wyoming*, 460 U.S. 226, 239 (1983); see *Garcia*, 469 U.S. at 556 (reserving question whether "the constitutional structure" might impose "affirmative limits" on

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conjectures about the usurpations of the foederal Government, we get into an unfathomable abyss, and fairly put ourselves out of the reach of all reasoning. Imagination may range at pleasure till it gets bewildered amidst the labyrinths of an enchanted castle, and knows not on which side to turn to extricate itself from the perplexities into which it has so rashly adventured." *The Federalist* No. 31, at 197. In fact, while Congress has the authority, in the exercise of its enumerated powers, to require the assistance of state and local officials in carrying out federal law, it has not exercised that authority routinely—which suggests that the fundamentally political safeguards in the Plan of the Convention that "preserv[e] the States' interests" have operated with success, and will continue to protect the States from undue intrusions by Congress. Cf. *Garcia*, 469 U.S. at 552-554; *id.* at 556 ("The political process ensures that laws that unduly burden the States will not be promulgated.").

federal action affecting the States). Such threats, however, are little more than academic hypotheticals, for "the built-in restraints that our system provides through state participation in federal governmental action * * * ensures that laws that unduly burden the States will not be promulgated." *Ibid.* Furthermore, it is unnecessary here to identify the precise boundaries of any "affirmative limits" that the constitutional structure might impose on federal action, for whatever those outer limits might be, they are not tested by the modest obligations that the Brady Act imposes on CLEOs.

A close examination of the Brady Act demonstrates that it does not have any substantial effect on the workings of state and local government. The Act imposes only temporary and minimal duties on local officeholders and grants them great discretion in determining how to meet those responsibilities. Moreover, the Act requires the assistance of CLEOs in implementing federal handgun control policy only because of the considered judgment of Congress that, in the short run, CLEOs are uniquely positioned to assist in the prevention of the illegal transfer of handguns. Further, Congress has provided significant financial assistance to the States in connection with criminal history records. In short, the Brady Act could be found unconstitutional only if this Court were to resurrect the long-repudiated view that "Congress 'has no power to impose on a State officer, as such, any duty whatever.'" *FERC*, 456 U.S. at 761 (quoting *Kentucky* v. *Dennison*, 24 How. (65 U.S.) 66, 107 (1861)); see *Monell* v. *New York City Dep't of Social Servs.*, 436 U.S. 658, 676-678 (1978) (noting that the constitutional theory of *Dennison* and similar decisions "has not survived").

1. a. The CLEOs' primary responsibility under the Brady Act is to make a "reasonable effort" to ascertain, by consulting "available" records, whether a legal impedi-

ment exists to a proposed handgun sale. 18 U.S.C. 922(s)(2). By 1999, however, the federal government must establish a national instant background check system, and CLEOs' obligations under the Act will terminate when such a system is in place. See 18 U.S.C. 922(s)(1) and 922 note. Firearms dealers will then be required to use the federal system to determine whether any legal impediment exists to the sale. 18 U.S.C. 922(t)(1). The temporary nature of the requirement, enacted in response to a national crisis of handgun violence, diminishes constitutional concerns. See pp. 30-31, *supra* (discussing use of state and local officials in draft registration during World War I); *Fry* v. *United States*, 421 U.S. 542, 548 (1975) (emphasizing, in sustaining the application of wage and salary freezes to state employees, that statute was an emergency measure); *National League of Cities* v. *Ursery*, 426 U.S. 833, 853 (1976) (stressing that *Fry* involved a statute of temporary applicability); cf. *Wayte* v. *United States*, 470 U.S. 598, 613 (1985) (noting, in rejecting a First Amendment challenge, that the challenged scheme was the "only effective interim solution" to a significant national problem).

Congress's decision to require assistance of CLEOs in the interim period was based on the judgment that CLEOs' access to relevant records and their personal knowledge of their communities would make them "best able to determine if the individual is disqualified to own a gun." H.R. Rep. No. 691, 101st Cong., 2d Sess. 11 (1990); see also *id.* at 10 (knowledge of CLEOs is a "[c]entral" benefit of the Act).[23] That decision to involve CLEOs in record checks

[23] Accord *Brady Handgun Violence Prevention Act: Hearings on H.R. 1025 Before the Subcomm. on Crime and Criminal Justice of the House Comm. on the Judiciary*, 103d Cong., 1st Sess. 90 (1993) (*Hearings on H.R. 1025*) (statement of Rep. Schumer); *id.* at 89 (testi-

reflected the recommendation of state and local enforcement officials. As the Superintendent of the N Jersey State Police testified before Congress, a CLEC best situated to perform a record check because he "kno the people in his community. He knows where the c plaints come from."[24]

Assistance by the CLEOs in enforcing the Brady A also accords with our country's longstanding tradition grounded largely in principles of federalism—against national police force. See *Garcia* v. *United States*, 4 U.S. 70, 89 (1984) (Stevens, J., dissenting). Unless Co gress relied on CLEOs for assistance (or decided to ta no action to address the pressing problem of gun violence it would have had to require federal law enforceme officers to perform background checks. Such a syste would have diminished the historic role of local govern ment in law enforcement, a result directly contrary to th principles of federalism on which petitioners rely.

At the same time, Congress carefully crafted the stat ute to limit its burden on CLEOs' available resources Congress thus required only that a CLEO make a "rea sonable effort" to determine the legality of a propose handgun transfer. 18 U.S.C. 922(s)(2). As the court of ap peals observed, the Brady Act's "reasonable effort" re quirement represents "a minimal interference with state functions." Pet. App. 14a. That was also Congress's understanding when it established the interim requirements.

mony of Ass't Attorney General Acheson); *Brady Handgun Violence Prevention Act: Hearings on H.R. 7 Before the Subcomm. on Crime and Criminal Justice of the House Comm. on the Judiciary*, 102d Cong., 1st Sess. 15 (1991) (statement of Rep. Sangmeister).

[24] *Waiting Period Before the Sale, Delivery, or Transfer of a Handgun: Hearings on H.R. 975 and H.R. 155 Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 100th Cong., 1st, 2d Sess. 243 (1987 and 1988) (*Hearings on H.R. 975 and H.R. 155*).

See House Report, *supra*, at 23 (reprinting Congressional Budget Office statement that Brady Act's financial "impact on any given jurisdiction is likely to be small").

b. Petitioners contend that the Brady Act places a substantial burden on them, but they disregard the crucial language of the Act requiring only a "reasonable effort." Congress did not require CLEOs to insure the legality of every, or indeed any, handgun transfer. Rather, Congress asked CLEOs to do only what is "reasonable" in their own circumstances, and in their own judgment. Put differently, the Brady Act's "reasonable effort" provision, by its terms, cannot place an "unreasonable" burden on any CLEO. The statutory language requiring only a "reasonable effort" was adopted precisely to avoid onerous burdens on CLEOs. See 139 Cong. Rec. S2001 (daily ed. Feb. 24, 1993) (statement of Sen. Kohl) (CLEOs will "use available resources"); 139 Cong. Rec. H9118 (daily ed. Nov. 10, 1993) (statement of Rep. Nadler) (checks will occur "within the constraints of existing information systems").[25]

Petitioners also fail to come to terms with ATF's definitive interpretative guidance on the meaning of the "reasonable effort" provision. ATF has stressed that the CLEOs themselves are "in the best position" to determine

[25] As one law enforcement leader explained, the Act gives "[t]he law enforcement executive * * * discretion to determine what procedure best suits his or her agency." *Hearings on H.R. 1025, supra*, at 254 (testimony of Exec. Director of Police Executive Research Forum). Even before passage of the Brady Act, local law enforcement officials undertook similar record checks for a variety of purposes. A local official testified before Congress that, prior to the Brady Act, he would "run probably two or three checks a day in some cases on people who have been stopped for various things." *Hearings on H.R. 975 and H.R. 155, supra*, at 124 (testimony of Vice Pres. of Ohio Union of Patrolmen's Ass'n).

what measures are "reasonable" in any given instance. U.S. Resp. App. 15a. ATF has further noted that "[e]ach * * * CLEO will have to set it[s] own standards based on its own circumstances, *i.e.*, the availability of resources, access to records, and taking into account the law enforcement priorities of the jurisdiction." *Id.* at 14a-15a.

In addition, ATF explained that the statute requires no more than "some *minimal effort* to check commonly available records" and does not necessitate research into "every conceivable record system that may contain information relating to categories of prohibited persons." U.S. Resp. App. 13a-14a (emphasis added). Moreover, as ATF has made clear, because the "vast majority of persons who are prohibited from possessing a handgun are prohibited by virtue of some criminal background," a CLEO's reasonable effort may usually be limited to readily available criminal history records. *Id.* at 14a; see also 18 U.S.C. 922 note (permanent Brady system to be based on criminal history records). Indeed, in some circumstances, a CLEO may properly determine that it is reasonable not to engage in any research at all, as when purchasers are known personally to local officials, or when an emergency counsels against diversion of resources away from other law enforcement priorities of the jurisdiction to Brady Act background checks. See U.S. Br. App. 14a-15a.[26]

[26] Petitioners' testimony in the district courts in these cases is difficult to reconcile with the account they now propose of the Brady Act's impact on their offices. Petitioner Mack testified that he generally relied on a computer check to meet his Brady Act responsibilities; his office performed an average of one check per day, conducted by a dispatcher in his office and then reviewed by the sheriff or his undersheriff. 5/31/94 Tr. 6-7. Petitioner Printz offered no testimony about the burdens actually imposed on his office by the Act. He identified a series of records that might be relevant to an extensive background check of a person seeking to purchase a handgun, 95-1478

In sum, as the court of appeals concluded, petitioners "have not been subjected to any interpretation of the Act, or any attempt to enforce it against them, that requires them to do more than check computer records." Pet. App. 16a. Because that "minimal effort" (U.S. Br. App. 13a) presents no substantial threat to the independent functioning of local government, the record-check requirement passes constitutional muster.[27]

J.A. 10a-13a, and stated that "whether a failure to examine them would be 'reasonable' or 'unreasonable' within the meaning of the law I cannot guess." *Id.* at 10a. He also stated that, depending on the search required under the law, a check of the records "might require anywhere from a man-hour to several man-days," and declared that "[i]f I am now compelled to perform background checks of our residents, it will have to be done by pulling deputies off patrol and investigation duties." *Id.* at 14a. Those speculations, however, fail to take into account ATF's definitive construction of the "reasonable effort" requirement to refer to a "minimal effort" to check computer records and readily available criminal-history records. Moreover, petitioner Printz testified that his office frequently checked computerized criminal-history records even before enactment of the Brady Act. *Id.* at 33a-34a.

[27] Cf. *South Carolina* v. *Baker*, 485 U.S. at 529 (Rehnquist, C.J., concurring in the judgment) (concluding that requirements at issue had no "substantive effect" on significant state functions). In analogous areas of separation of powers, the Court has emphasized that minimal intrusions do not raise issues of constitutional magnitude. See *Morrison* v. *Olson*, 487 U.S. 654, 691 (1988) (upholding limitation on President's power to remove special prosecutor because it does not "unduly trammel[] on executive authority"); *Helvering* v. *Gerhardt*, 304 U.S. 405, 421 (1938) (to establish tax immunity, State would have to show that "the burden upon the state function is actual and substantial, not conjectural"); *Department of Taxation & Finance* v. *Milhelm Attea & Bros.*, 114 S. Ct. 2028, 2035-2036 (1994) (reconciliation of state and tribal powers is not governed by a "rigid rule" based on "mechanical or absolute conceptions of state or tribal sovereignty," and the general rule that a State may not regulate Indian traders is not contravened by a state law imposing "minimal burdens" on reservation retailers).

2. The two additional obligations of CLEOs under the Brady Act are even less onerous. The requirement that a CLEO destroy the records pertaining to a record check if that check does not reveal that the transferee is prohibited from possessing firearms (18 U.S.C. 922(s)(6)(B)(i)) is clearly *de minimis* and therefore without constitutional significance. Sheriff Mack explained that he fulfills that obligation by reminding his secretary "from time to time" to destroy the documents. 5/31/94 Tr. 9.

Similarly, the requirement that a CLEO, on request, inform the transferee of the reason that he has found a legal impediment to a proposed handgun transfer (18 U.S.C. 922(s)(6)(C)) is not burdensome. That provision requires only that the CLEO note the legal bar to the sale by stating, for example, that records indicate that a prospective purchaser is a convicted felon. That obligation could be met by checking a box on a form. Neither petitioner testified in the district court proceedings about any burden in connection with that requirement.

3. Finally, in enacting the Brady Act, "Congress has not simply placed a financial burden on the shoulders of States and localities * * * but has provided substantial countervailing financial assistance as well," see *Garcia*, 469 U.S. at 555, a factor that further diminishes constitutional concerns. See *FERC*, 456 U.S. at 751-752 n.14, 770 n.33. Congress has made a "huge" financial commitment to assisting the States with implementation of the Brady Act. *Hearings on H.R. 1025*, note 23, *supra*, at 104 (testimony of Ass't Att'y Gen. Acheson). Specifically, the Brady Act authorizes $200 million in funds for grants to States for the "creation of a computerized criminal history record system or improvement of an existing system," improvement of their "access[] to the national instant criminal background system," and (once the national system is in place), "assist[ance to] the State[s] in the

transmittal of criminal records" to that system. 18 U.S.C. 922 note. Congress has already appropriated $100 million of those funds for disbursement to the States. Violent Crime Control Appropriations Act, 1995, Pub. L. No. 103-317, Tit. VIII, 108 Stat. 1777 (1994). The interim statutory requirements are thus emphatically "not an unfunded mandate." 139 Cong. Rec. S16,304 (daily ed. Nov. 19, 1993) (statement of Sen. Mitchell).[28]

C. Petitioners' Commerce Clause Argument Adds Nothing To Their Tenth Amendment Argument.

Petitioners argue that, in addition to violating the Tenth Amendment, the Brady Act exceeds Congress's authority under the Commerce Clause. See Printz Br. 26-28; Mack Br. 35-40. As this Court explained in *New York*, however, when it is argued that the Commerce Clause is violated because Congress has regulated organs of state government, the inquiries under the Commerce Clause and the Tenth Amendment are merely "mirror images of each other." 505 U.S. at 156. "[I]f a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress." *Ibid.* Accordingly, the Commerce Clause adds nothing to petitioners' argument based on the Tenth Amendment.[29]

[28] That funding augments the significant pre-existing federal commitment in the area of criminal history records. Under the formula grant program established by the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, the United States provided nearly $850 million to States in fiscal years 1992 and 1993. See 95-1503 J.A. 12, 16. Five percent of the grant money (over $40 million in 1992 and 1993) must be used for improving state criminal history records. *Id.* at 23-24; 42 U.S.C. 3759(a).

[29] In *FERC*, the State of Mississippi made a similar argument, that PURPA violated the Commerce Clause in addition to the Tenth Amendment, because the Commerce Clause did not empower Congress to direct States to regulate. 456 U.S. at 754-755. The Court concluded that the Commerce Clause supported Congress's exercise of regulatory authority. *Id.* at 755-758.

Congress clearly has authority under the Commerce Clause to make laws governing the transfer of firearms in and affecting commerce. *E.g.*, *United States* v. *Haddad*, 558 F.2d 968, 972-974 (9th Cir. 1977). Indeed, petitioners do not even suggest that the transfers of firearms do not "substantially affect[]" interstate commerce. Cf. *Lopez*, 115 S. Ct. at 1630. The Brady Act reinforces preexisting restrictions under the GCA against transfers to disqualified persons of guns in or affecting commerce, see 18 U.S.C. 922(b) and (g), and the Brady Act operates only in conjunction with proposed commercial transfers of handguns by federally licensed firearms importers, manufacturers, and dealers, see 18 U.S.C. 922(s)(1). Thus, unlike the statute invalidated in *Lopez*, the Brady Act is a "regulation of an activity that substantially affects interstate commerce." 115 S. Ct. at 1630. Indeed, the Brady Act is a regulation of commerce itself, or at the least is an "essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut" without the Act. *Id.* at 1631.

Since the regulated activity, the transfer of firearms, is legitimately subject to federal regulation under the commerce power, "the only remaining question for judicial inquiry is whether the means chosen" by Congress are "reasonably adapted to the end permitted by the Constitution." *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 276 (1981) (internal quotation marks omitted). "The judicial task is at an end once the court determines that Congress acted rationally in adopting a particular regulatory scheme." *Ibid.* Petitioners have offered no basis for a conclusion that the Act is an irrational means of advancing the end of regulating the sale of firearms to persons not lawfully entitled to receive them.

* * * * *

In sum, the Brady Act is a reasonable congressional response to a national problem that does not impinge on values of federalism or any aspect of power reserved to the States under the Tenth Amendment. The federal government has not compelled the States to enact into law a regulatory regime, nor has it foisted onto the States the obligation to solve a controversial policy issue. The policies of the Brady Act are clearly those of the federal government, and Congress and the President are directly accountable for their highly publicized actions in passing and signing the Brady Act. Indeed, the Brady Act advances values of federalism by temporarily placing the record-check function in the hands of local officials, who are most likely to know the community where the proposed firearm transfer is to occur. The obligations of local officeholders under the Brady Act are reasonable, indeed minimal, and the "reasonable effort" provision of the Brady Act was enacted (by Congress) and interpreted (by ATF) to provide CLEOs with the discretion needed to allocate their resources as they see fit while undertaking the review of readily available records. No interest of federalism would be advanced by invalidating the Act.

II. EVEN IF ANY OF THE CHALLENGED PROVISIONS OF THE BRADY ACT CONTRAVENES THE TENTH AMENDMENT, NO OTHER PROVISION OF THE ACT SHOULD BE INVALIDATED

A. The Validity Of The Five-Day Waiting Period And Notification Requirements Imposed On Firearms Dealers Is Not Properly Before The Court

Petitioners have argued that, if the Brady Act's record-check and destruction-of-records requirements imposed on CLEOs are held unconstitutional, three other provisions of the Act must fall with them: the five-day waiting period imposed on firearms dealers under Section 922(s)(1)(A)(ii)(I); the duty imposed on firearms dealers, under Section 922(s)(1)(A)(i)(III), to notify CLEOs of an impending firearm transfer and provide identifying information about the transferee; and the duty imposed on CLEOs, under Section 922(s)(6)(C), to explain to transferees why the CLEO has found a legal impediment to the transfer. See Mack Br. 40-45; Printz Br. 33-45.

This Court should not reach the question of the continuing validity of the duties imposed only on firearms dealers, namely the five-day waiting period and the requirement that dealers provide notice to CLEOs of impending transfers. Petitioners lack Article III standing to challenge those provisions of the Act, which have no impact on them. The irreducible constitutional minimum of standing requires "that the party seeking review be himself among [those] injured" by the provision under challenge, *Sierra Club* v. *Morton*, 405 U.S. 727, 735 (1972). "[A] party seeking review must allege facts showing that he is himself adversely affected." *Id.* at 740.

A firearms dealer might conceivably bring a lawsuit contending that the notification and five-day waiting period requirements are inseverable from invalid portions of the Brady Act, and are therefore no longer valid law. No such party is presently before the Court, however. Accordingly, petitioners have asked this Court to decide what is, at this point, a purely academic question of severability. Petitioners plainly have a sincere interest in that question, but "a mere 'interest in a problem'" is insufficient to confer standing. *Sierra Club*, 405 U.S. at 739; cf. *United States* v. *National Treasury Employees Union*, 115 S. Ct. 1003, 1018 (1995) (holding that relief should not be provided to nonparties "when a narrower remedy will fully protect the litigants").

Moreover, neither petitioner presented any question of severability in his petition for a writ of certiorari. See 95-1478 Pet. i; 95-1503 Pet. i. Petitioners presented for review only the question of the constitutionality of particular provisions of the Brady Act directly affecting them. Accordingly, insofar as petitioners are asking this Court to strike down provisions of the Brady Act not affecting them, to which no Tenth Amendment challenge has been made, those contentions are not properly before the Court. See Sup. Ct. R. 14.1(a); *Yee* v. *City of Escondido*, 503 U.S. 519, 535-538 (1992).[30]

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[30] By contrast, the continuing validity of the requirement that CLEOs provide notice to transferees of their reasons for concluding that a proposed transfer would be illegal is properly before the Court. Petitioners presented a Tenth Amendment challenge to that provision. This Court has, under similar circumstances, considered the continuing validity of statutory provisions that were upheld against constitutional challenge but were related to other parts of the statute that were successfully challenged. See *New York* v. *United States*, 505 U.S. at 186-187. Petitioners also have Article III standing to challenge that provision, because it directly affects them.

B. Each Of The Challenged Provisions Is Se From The Remainder Of the Brady Act

1. As every lower court that has addressed th has concluded, the provisions of the Brady Act challenge here are fully severable from the rest Act.[31] Those unanimous rulings are the correct re the stringent test that this Court has established severability decisions for invalidation of an entire tory scheme on the basis of a holding that ind provisions are unconstitutional. This Court has ex on numerous occasions: "[A] court should refrain fr validating more of the statute than is necessary. 'Whenever an act of Congress contains unobjecti provisions separable from those found to be stitutional, it is the duty of this court to so declare, maintain the act in so far as it is valid.'" *Alaska Ai* v. *Brock*, 480 U.S. 678, 684 (1987); see *Regan* v. *Time* 468 U.S. 641, 652 (1984) (plurality opinion).

Accordingly, "[u]nless it is evident that [Con would not have enacted those provisions which are its power, independently of that which is not, the i part may be dropped if what is left is fully operative law." *New York*, 505 U.S. at 186; see also *United Sta* *Jackson*, 390 U.S. 570, 585 (1968). "[T]he unconstitu provision *must be severed* unless the statute created absence is legislation that Congress would not

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[31] In addition to the district court decisions in these cases (se App. 61a-66a; 95-1503 Pet. App. 46-49), see *McGee* v. *United State* F. Supp. 321, 327 (S.D. Miss. 1995), aff'd *sub nom. Koog* v. *States*, 79 F.3d 452, 462-463 (5th Cir. 1996), petition for cert. pe No. 95-2052; *Frank* v. *United States*, 860 F. Supp. 1030, 1044 (I 1994), aff'd in part, rev'd in part, 78 F.3d 815 (2d Cir. 1996), petiti cert. pending, No. 95-2006; *Romero* v. *United States*, 883 F. Supp. 1088-1089 (W.D. La. 1994), appeal pending, No. 95-30355 (5th Cir.).

enacted." *Alaska Airlines*, 480 U.S. at 685 (emphasis added). Petitioners' burden of demonstrating inseverability is especially heavy here, because the Gun Control Act, of which the Brady Act is a part, contains an express severability provision. See 18 U.S.C. 928; p. 2, *supra*. That provision creates a presumption of severability that may be overcome only by "strong evidence" of a contrary congressional intent. *Alaska Airlines*, 480 U.S. at 686.[32]

2. Without the "reasonable effort" requirement of Section 922(s)(2), the remainder of the interim scheme would be fully operative as a law. Gun dealers could readily inform CLEOs of proposed gun transfers, as required by Section 922(s)(1)(A)(i), and CLEOs who would conduct background checks voluntarily (even on an occasional basis) would find the information provided by the dealer

[32] Petitioner Printz erroneously relies on *Alaska Airlines* (Br. 47-48) for the proposition that the general severability provision of the GCA does not apply to the Brady Act because the Brady Act added a "new program." In *Alaska Airlines*, the Court expressed doubt about the applicability of the preexisting severability clause of the Federal Aviation Act of 1958 (FAA) to the challenged provisions of the Airline Deregulation Act of 1978 (ADA), because, although other parts of the ADA did amend the FAA, the challenged provisions did not do so. See 480 U.S. at 686-687 n.8. The Brady Act, by contrast, was enacted as an amendment to the Gun Control Act, and became an integral part of it. Section 102(a)(1) of the Brady Act begins, "Section 922 of title 18, United States Code, is amended by adding the following:", after which it enacts into law a new Subsection 922(s) of Title 18. See Pet. App. 76a; 107 Stat. 1536. The GCA comprises Sections 921 through 928 of Title 18. Section 922, before passage of the Brady Act, included a lengthy list of prohibited acts. The Brady Act made the firearms dealer's failure to wait five days or the result of a CLEO's record check before transferring a handgun one of those prohibited acts. See 18 U.S.C. 922(s)(1). Cf. *Leavitt* v. *Jane L.*, 116 S. Ct. 2068, 2070 (1996) (noting that the severability provision of the Utah abortion code predated the provisions invalidated by the Tenth Circuit, which were enacted as amendments to that code, and held severable by this Court).

useful in conducting the check. The five-day waiting period imposed on dealers by Section 922(s)(1)(a)(ii)(I) would provide the CLEO with a reasonable time in which to conduct the check, and the dealer would be allowed to transfer the weapon after five business days had passed, as is the case with the mandatory record check enacted by Congress. Moreover, a CLEO would have to provide written reasons for rejecting a handgun transfer, under Section 922(s)(6)(C), only if the CLEO voluntarily chose to conduct a record check.

Such a regime would further one of Congress's leading purposes in enacting the Brady Act—ensuring, through record checks, more effective enforcement of the Gun Control Act's prohibitions on transfers of firearms to felons and others. With the waiting period and background information supplied by the dealers, CLEOs would have the time and information necessary to perform those record checks if they chose to do so. CLEOs might well conduct such checks voluntarily to prevent unlawful transfers. See House Report 13, 14 (noting support of the Fraternal Order of Police, the International Association of Chiefs of Police, and other law enforcement groups for record). Thus, the situation here is analogous to that in *New York*, where the Court found the invalid parts of the statute severable because Congress's "overall intent" would not have been frustrated by leaving the valid provisions in force. 505 U.S. at 186.[33]

[33] Severance of the invalid parts of the Act would also further Congress's intent to provide a cooling-off period for gun sales to reduce crimes of passion. Brady Act supporters saw the cooling-off period as a significant benefit of the legislation. See, *e.g.*, 139 Cong. Rec. S16,323 (daily ed. Nov. 19, 1993) (statement of Sen. Kohl); *id.* at S16,319 (statement of Sen. Murray); *id.* at S16,324 (statement of Sen. Lautenberg); *id.* at H9089 (daily ed. Nov. 10, 1993) (statement of Rep. Derrick); *id.* at H9106 (Rep. Roukema); *id.* at H9110 (statement of Rep. Schenk).

Petitioners rely primarily on the self-evident fact that Congress preferred a mandatory record check to an optional check. The question here, however, is not whether Congress wanted the mandatory check that it enacted into law; plainly it did. Rather, the issue is whether it is clear that Congress would have preferred no law at all to a voluntary record-check provision and the five-day waiting period needed for those checks to be conducted. See *New York*, 505 U.S. at 186; *Alaska Airlines*, 480 U.S. at 684. It is hardly "evident" that Congress, deeply concerned about the national "epidemic of handgun violence," would have rejected a voluntary record check had it been clear that such was the only option available to it.[34]

Petitioners note that the 102d Congress considered, but did not enact, a version of the Brady bill that did not contain a mandatory record check provision. The failure of a different Congress to enact different legislation does not provide the strong evidence needed to defeat the

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Congress also expressed its support for cooling-off periods by defeating amendments intended to preempt state waiting periods enacted for that purpose. See 139 Cong. Rec. S16,307-S16,321 (daily ed. Nov. 19, 1993); *id.* at H9141 (daily ed. Nov. 10, 1993).

[34] Petitioner Printz's reliance (Br. 48-50) on *Leavitt* v. *Jane L.*, 116 S. Ct. 2068 (1996), is misplaced. First, the *Leavitt* decision applied Utah severability law. *Id.* at 2069. Second, to the extent that *Leavitt* is relevant, it supports a holding that the challenged provisions of the Brady Act are severable. In reversing the Tenth Circuit, which had refused to sever provisions of a Utah statute, this Court explained:

> Every legislature that adopts, in a single enactment, provision A plus provision B intends (A + B)[.] * * * The relevant question * * * is not whether the legislature would prefer (A + B) to B, because by reason of the invalidation of A that choice is no longer available. The relevant question is whether the legislature would prefer not to have B if it could not have A as well.

Id. at 2071.

presumption of severability. See *Alaska Airlines*, 480 U.S. at 686. Petitioners speculate that, of the numerous possible reasons that the earlier bill did not pass, one—the failure to include a mandatory check—was decisive. Such speculation is precarious at best; indeed, the 102d Congress failed to approve the Brady Bill even after the mandatory record check provision was inserted. See H.R. Conf. Rep. No. 405, 102d Cong., 1st Sess. 24 (1991). In the end, Congress's failure to enact a prior version into law reveals nothing about its intent with respect to severability, and certainly nothing so relevant as its *express* severability provision.[35]

3. There is also no reason to conclude that the *de minimis* record destruction requirement of Section 922(s)(6)(B)(i) cannot be severed from the separate requirement that firearms dealers provide CLEOs with information about prospective purchasers. Petitioner Printz suggests (Br. 39-42) that the latter requirement, without the former, would be contrary to Congress's

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[35] Cf. *Schneidewind* v. *ANR Pipeline Co.*, 485 U.S. 293, 306 (1988) ("This Court generally is reluctant to draw inferences from Congress' failure to act."); *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 382 n.11 (1969) ("unsuccessful attempts at legislation are not the best of guides to legislative intent"). Petitioners seek to draw support from the fact that a handful of legislators stated that the mandatory check was decisive in their support of the bill. That evidence, however, does not override the more persuasive point that, even without a mandatory record check, the rest of the Brady Act would further Congress's objectives. See *EEOC* v. *Hernando Bank, Inc.*, 724 F.2d 1188, 1191-1192 (5th Cir. 1984) (act severable even though a legislator opined both that unconstitutional provision was "integral" to the act and that the act's lack of severability clause was intentional). Moreover, since Congress did enact the mandatory provision, it is unsurprising that legislators who would have also supported a waiting period and voluntary record check as a second-best preference did not speak to that point.

refusal to establish a national system of gun registration. Congress's intent with respect to *federal* gun registration is irrelevant, however, for under the Brady Act, the dealer sends the background information to the CLEO, not to a federal official. The CLEO would remain free to use that information in a voluntary record check. Moreover, the Brady Act separately restricts CLEOs' authority to use the information for any purpose other than conducting a record check. See 18 U.S.C. 922(s)(6)(B)(iii).

Petitioners' severability argument also fails with respect to the requirement that CLEOs provide reasons on request if the background check reveals disqualifying information about the transferee. If the Court were to find the "reasonable effort" provision unconstitutional, a CLEO would only be called upon to explain the results of a record check if the CLEO first voluntarily decided to conduct such a check. Thus, if the "reasonable effort" provision is removed, the written reasons requirement effectively becomes optional. Second, Congress might well have believed that, even if a CLEO voluntarily conducted a record check and found disqualifying information about the transferee, the transferee would be entitled to an explanation of that information as a matter of fairness.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

WALTER DELLINGER
Acting Solicitor General

FRANK W. HUNGER
Assistant Attorney General

EDWIN S. KNEEDLER
Deputy Solicitor General

PAUL R.Q. WOLFSON
Assistant to the Solicitor General

MARK B. STERN
STEPHANIE R. MARCUS
Attorneys

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BRADY

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Introduction

On 28 February 1994 PL 103-159, the Brady Law Handgun Violence Prevention Act (Brady, or the Brady Law) took effect. The law imposes a 5-day waiting period on the sale of a handgun by individuals who hold a federal firearms license (FFL) to a nonlicensee in any State that, prior to implementation of the law, did not require, by statute, a background check before the sale of a handgun could be completed.[1]

The law requires the licensee to notify the designated Chief Law Enforcement Officer (CLEO) for the purchaser's residence upon the proposed sale of a handgun. The CLEO is required to make a reasonable effort to ascertain within 5 business days whether the buyer's receipt or possession of a handgun would be in violation of law. Transfer of the gun is allowed to go forward in fewer than five days if the CLEO has completed the background check and determined that the purchaser is not prohibited by law from obtaining a handgun.

States are exempt from Brady Law requirements (Brady-alternate states) if they enact and implement legislation mandating a background check as a condition of the purchase of a handgun (e.g., an instant check system or a requirement that individuals to obtain a time bounded State "permit to purchase" before buying a handgun).[2] Brady does not specify what background information must be checked before notifying the FFL that a handgun sale may proceed. At the time Brady took effect, thirty-two states had not passed legislation requiring a background check for the purchase of a handgun and, therefore, had to comply with the federal waiting period.[3]

Brady was designed to prevent convicted felons or other prohibited purchasers (e.g., individuals adjudicated mentally defective or subject to a restraining order) to acquire handguns as part of an over-the-counter transaction from a retail gun dealer. The law has been criticized because it does not cut off to prohibited purchasers all avenues to handguns.[4] The criticism misses the point of Brady. The law was designed to cut prohibited purchasers from the easiest, most direct route to the broadest selection of

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[1] Department of the Treasury. Bureau of Alcohol, Tobacco and Firearms. *Brady Law Implementation: State by State Summary.* Final Report. February 1994. (Section 2).
[2] Department of the Treasury. Bureau of Alcohol, Tobacco and Firearms. *Brady Law Implementation: State by State Summary.* Final Report. February 1994. (Section 7).
[3] The 32 original Brady states are AL, AK, AZ, AR, CO, GA, ID, KS, KN, LA, ME, MN, MS, MT, NE, NH, NM, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, WA, WV, WY. In five states (Georgia, Mississippi, North Dakota, Pennsylvania and South Dakota) the Federal five-day waiting period did not apply to transfers of handguns to persons holding valid permits/licenses to carry handguns issued within 5 years of the proposed purchase.
[4] *See generally* Jacobs J and Potter K. Keeping guns out of the "wrong" hands. *Journal of Criminal Law and Criminology.* Fall 1995;86(1):93-120.

handguns -- that is, the retail market. Though Brady does not make it impossible for a prohibited purchaser to obtain a handgun -- an individual can, for example, attempt to steal a gun or recruit a straw purchaser to make the buy -- the law does make the transaction more costly, more difficult and more dangerous.

The purpose of this study is to estimate the impact of the Brady law as measured by the number of individuals denied an over-the-counter purchase of a handgun due to a federal or state disability in the thirty-two states which implemented a background check as a result of the passage of Brady.

Previous attempts to measure the impact of Brady have excluded from the analysis each of the thirty-two original Brady states which, subsequent to implementation of the law, passed legislation that exempts them from Brady law requirements.[5] This practice results in an underestimate of Brady's effectiveness because these states would not be conducting background checks had Brady not become law.

The number times a criminal or otherwise prohibited purchaser is stopped from purchasing a handgun because of information obtained as part of a background check is an important, but somewhat limited measure of the effectiveness of the Brady law. While many criminals are stopped from acquiring a handgun because of the background check, the background check itself deters many others from ever attempting to purchase a firearm.

Methods

For the purpose of this study, the impact of the Brady law was measured by the number of handgun purchases which were stopped because a background check uncovered information that disqualified a prospective purchaser from taking possession of a handgun. The percentage of denials due to a felony disposition is also estimated. The overall number of denials is calculated for all thirty-two original Brady states.

The number of transfers denied was calculated by applying a denial rate[6] for handgun purchases to the number of background checks conducted by Brady state CLEOs. Because the number of background checks conducted and the number of purchases denied were not available from all CLEOs or maintained by all states, the number of denials was estimated from available data.

State level statistics on implementation of Brady law were available from nine of the original Brady states. Data from the nine states were used to estimate the percentage of

[5] *One-Year Progress Report: Brady Handgun Violence Prevention Act.* Department of the Treasury. Bureau of Alcohol, Tobacco and Firearms. February 28, 1995.

[6] The denial rate is defined as the percentage of prospective retail handgun sales which are not allowed to be completed by a CLEO.

all retail transfers that were stopped because a state or federal disability was uncovered by a background check. The nine states from which the data were collected are: Arkansas, Arizona, Colorado, Idaho, Kentucky, Nevada, South Carolina, Utah and West Virginia. Through the end of June 1996, these states were responsible for approximately 20% of all handgun background checks initiated in the original Brady states.

Brady statistics were also collected from states that did not designate a single, centralized CLEO to be responsible for conducting all firearm background checks (106 CLEOs in 18 states responsible for 202,892 background checks in 1994; 13 CLEOs in 6 states responsible for 69,651 background checks in 1995) and compared to the data from the nine states on which the estimated denial rates were based. Incorporating data from these CLEOs into the analysis would raise the overall denial rate and the estimate of the number of handgun purchases denied.[7] The higher denial rate reported by local agencies may suggest that background checks initiated at the local level may be more thorough than those conducted at the state level -- effectively identifying a greater percentage of prohibited purchasers attempting to buy a handgun.

The Brady denial rate was estimated for three specific time periods (1 March 1994--31 December 1994; 1 January 1995--31 December 1995; and, 1 January 1996--30 April 1996) and applied to the number of background checks conducted in all thirty-two states for each of the same time periods. The FBI, through Interstate Identification Index (III), maintains a record of the number of criminal history background checks made in connection with a prospective handgun purchase. The number of Brady background checks are assumed to be equal to the number of firearms inquiries made through the III index minus the number of III queries conducted for issuance of a concealed carry permit or the purchase of a long gun.

FBI reporting on firearm-related inquiries does not distinguish between a background check conducted in connection with a prospective handgun purchase and an application for a concealed carry permit. However, by comparing state data on the number of Brady background checks initiated with the total number of III checks initiated in these states, it is possible to estimate the percentage of III checks generally associated with handgun purchases. [None of the states from which data were collected conducted background checks on long guns.][8]

CLEOs were asked to quantify how many handgun purchases were prohibited because of a felony disposition and how many were prohibited for reasons other than a felony. This information was available on a limited basis, but the results were comparable to statistics compiled by the Department of the Treasury. This data was used to estimate the

[7] Incorporating the additional data would have raised the denial rate from 3.24% to 3.34% in 1994, and from 2.89% to 3.17% in 1995.

[8] Of the 32 original Brady states only Pennsylvania, which began the practice this year, is conducting background in connection with the purchase of a long gun.

percentage of all denials due to a felony disposition and then applied to the total number of handgun purchase denials in order to estimate the number of felony denials.

Results

Denial rate

In 1994, FFLs were denied permission to complete the retail sale of a handgun for 3.24% of all transactions which were initiated (11,948/369,332) in states which maintained statistics on all proposed handgun transactions.(Table 1) The denial rate fell by 11% the following year to 2.89%; rising to 3.37% during the first four months of 1996. Denial based on a felony disposition accounted for 70.34% (4653/6615) of all denials in which the reason could be ascertained.[9]

Table 1: Handgun Purchase Denial Rate, by Year, for the 9 Original Brady States that Maintain Centralized, Statewide Statistics.

	YEAR					
	1994 (Feb-Dec)		1995		1996 (Jan-April)	
STATE	All Sales	Denials	All Sales	Denials	All Sales	Denials
Arkansas	25,429	370	28,298	537	10,369	207
Arizona	37,703	869	88,668	2,229	28,147	809
Colorado	60,870	4,265	52,894	3,373	17,718	1,243
Kentucky	68,077	2,001	59,500	1,129	27,997	470
Idaho	29,694	1,078	28,633	883	9,201	250
Nevada	33,370	429	28,767	499	10,452	139
South Carolina	55,171	2,199	53,157	2,106	19,420	1,100
Utah	31,370	544	33,314	560	12,709	183
West Virginia	27,648	193	25,288	187	6,852	70
Total	369,332	11,948	398,519	11,503	132,865	4,471
Denial Rate (%)		3.24		2.89		3.37

[9] The reason a handgun purchase was stopped could be ascertained on a statewide basis in Arkansas, Colorado, Kentucky and Utah, and on a local level from one CLEO in New Mexico (Albuquerque), three in Texas (Amarillo, Corpus Cristi, and San Antonio), one in Oklahoma (Oklahoma City) and one in Montana (Yellowstone County).

III queries

The III Index was queried by CLEOs 195,497 times between January 1, 1996 and the end of April that same year in the nine original Brady states which maintain Brady statistics on a statewide level. Approximately sixty-eight percent (132,865) of the queries were made in connection with the proposed purchase of a handgun. Given the assumption that the nine states are representative of all Brady states, the number of law enforcement queries to III triggered by a prospective handgun purchase was: 1,146,058 in 1994; 1,266,635 in 1995; and, 677,383 through the first six months of 1996. (Table 2)

TABLE 2: ***** Title ********

Year	III Queries	% all Queries for Handgun Purchase	Total Queries for Handgun Purchase
1994[1]	1,686,372	0.6796	1,146,058
1995[2]	1,863,796	0.6796	1,266,635
1996[3]	994,738	0.6796	677,383

[1]March 1 – December 31
[2]Full Year
[3]January 1 -- June 30

Total denials

From March 1, 1994 through June 30, 1996, individuals have initiated an estimated 3,090,076 retail transactions involving the purchase of one or more handguns. Of these transactions, 96,566 (including 67,925 felons, *or 80 felons per day*) have been stopped because a state or federal disability was uncovered as part of a criminal background check which disqualified prospective purchasers from taking possession of the handguns they were attempting to buy. (Table 3)

TABLE 3: Total Number of Handgun Purchases Denied in the 32 Original Brady States (February 1994 -- June 1996).

Year	Handgun Checks Through III Index	Denial Rate	Total Handgun Purchases Denied

1994	1,146,058	0.0324	37,132
1995	1,266,635	0.0289	36,606
1996	667,383	0.0336	22,828
Totals Denials			96,566

Comment

States are not required to maintain records of the number of firearms background checks conducted -- approved or denied -- and they may establish a centralized system with a single CLEO or a decentralized system with any number of CLEOs. A few states or CLEOs which do maintain records categorize denials according to the reason a prospective purchase was denied (e.g., a felony conviction, drug offense or restraining order); though most do not.

The Treasury Department/ATF estimates that 37,246 handgun purchases were denied in 1994 (including 26,556 for felony convictions) as a result of Brady background checks. The Department's estimate for 1995 is 24,851 denials (including 17,718 felons). For several reasons (e.g., data from some of the orignial Brady states is not included in the analysis and, the estimates are bases on arbitrarily selected denial rates), these figures understate the true impact of Brady.

The Treasury Department did not estimate the total number of handgun purchase denials in all original Brady states. The Department excluded from its analysis any state which, by the end of each calendar year, had become a Brady-alternative state. In 1994, five original Brady states (CO, ID, MN, NH, TN) had passed legislation exempting them from the law's requirements -- though not from the obligation to conduct a background check before allowing a handgun transfer to be completed. In 1995, North Carolina and Georgia, were also excluded from Treasury's estimate even though their Brady status did not change until the last month of the year.

To calculate an estimate of the total number of handgun purchases denied, the Treasury Department assumed that 2.5 percent of firearm queries to III made in Brady states in 1994, and 1.5 percent of queries made in 1995, would result in disabling hits. The Department based the first year denial rate on "actual experience of states that had recently implemented firearms background screening programs," and noted that the denial rate fell to 1 to 2 percent after the programs "had been in place for some period of time."[10]

The denial rates used by ATF to calculate the national results are exceedingly conservative.
~~The decision to use~~ the ~~2.5 and 1.5 percent denial~~ rates ~~is difficult to understand~~. ATF itself had conducted a non-random survey of 30 law enforcement agencies from 26 Brady states which were responsible for approximately one of every four firearms background checks conducted in all Brady states in 1994. The survey provided strong evidence that the actual denial rate in 1994 was 40 percent higher than the 2.5% rate the Treasury/ATF applied in evaluating the law. Based on the survey results, ATF conclud~~ing~~ed that "3.5 percent of persons who applied to purchase handguns had their applications denied because they were convicted felons, fugitives from justice, persons subject to a restraining order for alleged domestic violence, or other prohibited persons."

The results of the ATF survey were corroborated by research conducted by the International Association of Chiefs of Police (IACP) in conjunction with Handgun Control, Inc. (HCI). Together, the two organizations conducted a survey of 115 law enforcement agencies (including 8 state agencies) at the one year anniversary of the Brady law.[11] Based on the data collected, IACP/HCI concluded that 3.34% of prospective handgun purchases were denied as a result of a Brady background check. Like the ATF survey, data for the IACP/HCI survey was not gathered from a random selection of CLEOs. However, respondent agencies did account for roughly one third of all firearm inquiries made to III in the first twelve months Brady was in effect.

If, in evaluating the impact of Brady, the Treasury Department\ATF had relied on its own survey research, it would have concluded that more than 110,000 prohibited purchasers were stopped from acquiring a handgun through an over-the-counter retail sale during the first 22 months the law was in effect -- even excluding those states which had become Brady-alternative states.

The Bureau of Justice Statistics (BJS) commissioned the Regional Justice Information Service (REJIS) to "provide an overview of how the firearm check procedures work in various states to help in measuring the impact of the 'Brady Act.'" The on-going evaluation of Brady by REJIS has been refered to as the FIST[12] study. Data utilized in the evaluation is provided to REJIS on a voluntary basis. REJIS has issued a preliminary report in February 1996 based on data from only 7 states. It is clear from the report that any interpretation of its findings will have to be qualified.[13] Similar to the work by the

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[10] *Felons denied access to handguns by Brady law: March 1994 -- December 1995.* Bureau of Alcohol, Tobacco and Firearms. January 18, 1996.

[11] *The Brady Law: One Year Proves Effectiveness.* Handgun Control, Inc. and The International Association of Chiefs of Police. February 28, 1995.

[12] The FIST acronym actually applies to each part of a three part survey including the: Firearms Inquiry Statistical Tally, Firearms Inquiry Statistical Technique, and Firearms Inquiry Survey Tracking.

[13] A careful reading of the preliminary report issued by REJIS also reveals additional challenges which are inherent in evaluating the importance of conducting criminal background checks as a means of preventing prohibited purchasers from easily acquiring a handgun. Some local jurisdictions in Brady states require

Treasury Department/ATF, handgun purchase in any of the states which, subsequent to enactment of the law, became Brady-alternative states are not attributed to the law -- even if they occured prior to the change in Brady status. Also, because reporting is so sporatic, estimates of the Brady denial rate are likely to be dominated by one or two very large states.

The purpose of this study was to determine how many over-the-counter handgun sales to prohibited purchasers were stopped due to implementation of the Brady law. The methodology eliminates problems from previous attempts to evaluate Brady. The data suggest that through the first 2.5 years that Brady has been in effect, the percent of individuals who are prohibited from acquiring a firearm and who are identified by the criminal record background check has remained consistently in excess of 3%.

More research needs to be conducted to determine if the denial rate will fall over time, and to what extent. Research should also be conducted to determine the full extent to which locally initiated checks produce higher denial rates. The data appear to show that background checks which do not rely on a single centralized record keeping system, which may include an instant check, identify a greater percentage of prohibited purchasers.

Conclusion

Prior to enactment of the Brady Law Handgun Violence Prevention Act, thirty-two states did not require that a criminal background check be conducted as a condition for the retail sale of a handgun. There is no national reporting requirement, but this study provides strong evidence that the law is working to prevent easy access to handguns by criminals and other prohibited purchasers. From the laws inception in March 1994, through the end of June 1996, an estimated 96,566 prohibited individuals (including 67,925 felons -- or, 80 felons per day) were stopped from buying a handgun from a retail dealer because of the Brady law.

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that an individual obtain a "permit to purchase" from local law enforcement before being allowed to buy a handgun. The process of obtaining the permit generally involves a background check similar to what is required by Brady. Where both the "permit to purchase" procedure and Brady are in effect, individuals who would otherwise be stopped from purchasing a firearm because of Brady are prescreened by the permit process.

The Brady Law exempts states that already have backgrounds checks

Handgun Control's Study on Effectiveness of the Brady Law

- On February 28, 1994, the Brady Law Handgun Violence Prevention Act took effect. This law imposes a 5-day waiting period on the sale of handgun in order to conduct a background check on the individual who wishes to purchase the firearm.

- M~~any states were exempt from the Brady Law if they already passed a state~~ la~~w that requires a background check of~~ as the condition of ~~the purchase of~~ a handgun. When Brady took effect, 32 new states had to comply with the federal waiting period. purchase

- A study by Handgun control looks further into the effectiveness of the Brady law. This study calculated the denial rate after background checks in nine of the original Brady states including Arkansas, Arizona, Colorado, Kentucky, Idaho, Nevada, South Carolina, Utah and West Virginia. Data from these states was used to determine the denial rate in all other states. Data shows that the denial rate was 3.24% in 1994, 2.89% in 1995, and 3.37% in 1996.

that will be released on Monday

- This study estimates that between March 1, 1994 and June 30, 1996, there have been **96,566 retail transactions that have been stopped**. This includes 67,925 felons, **preventing around 80 felons per day** from purchasing guns. #

- The Treasury Department/ATF study has different estimates claiming that 37,246 handgun purchases were denied in 1994 and 24,851 denials in 1995.

- These estimates were based on the Treasury Department's assumption that 2.5% of the background checks in 1994 and 1.5% of the queries in 1995 resulted in retail denial. For several reasons, Handgun Control believes that the Treasury Department/ATF denials rates used to estimate national rates are extremely conservative. Handgun Control found that the actual denial rate in 1994 was 40% higher than the 2.5% rate the Treasury/ATF applied in evaluating Brady.

- The International Association of Chiefs of Police (IACP) and Handgun Control (HCI) collaborated on a study of 115 law enforcement agencies and concluded that 3.34% of prospective handgun purchases were denied as a result of the Brady background check.

— Date —

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

January 11, 1996

TO: Dennis Burke
White House Office of Domestic Policy

Jeremy Travis
Department of Justice

FROM: Susan Ginsburg

SUBJECT: Brady GAO Report

Attached are:

-- the report.

-- ATF comments to GAO.

-- comments by an outside group. Not provided to GAO.

What more ought we to be doing?

ISE 951011012
ES 95-150971

NOV 6 1995

Mr. Norman J. Rabkin
Director, Administration of
Justice Issues
General Accounting Office
Washington, DC 20548

Dear Mr. Rabkin:

Thank you for the opportunity to comment on your draft report on implementation of the Brady Handgun Violence Prevention Act (Brady) prior to its release.

We have reviewed the report and believe that generally the report fairly and accurately portrays the facts relating to the implementation of this statute. However, we offer the following comments for your consideration before the final report is released.

The report states that sheriffs filed lawsuits challenging Brady on the grounds that it is beyond the scope of Congress' Commerce Clause powers and, therefore, it is inconsistent with the Tenth Amendment (pp. 4, 70). The plaintiffs' arguments based upon the Commerce Clause and the Tenth Amendment were separate and distinct. A finding by the courts that Brady violated the Tenth Amendment was not contingent upon a finding that Brady lacked support in the Commerce Clause.

The report refers to the Department of Justice (DOJ) and the Bureau of Alcohol, Tobacco and Firearms (ATF) (pp. 7, 31). It would be more consistent if the report referred to DOJ and the Department of the Treasury.

The report treats proposed handgun purchases with respect to which firearms dealers forwarded Brady forms to the wrong chief law enforcement official (CLEO) as having been denied (pp. 8, 9, 59, 68). The report refers to these as "administrative" denials. The report does not contain facts supporting this conclusion. Simply because the notice was sent to the wrong CLEO does not mean that the purchaser did not receive the handgun.

If the CLEO did not inform the licensee of the error, the licensee may have assumed that notice was sent to the proper CLEO and delivered the firearm after the 5-day waiting period. If the CLEO did inform the licensee of the error, the licensee may have sent the notice to the proper CLEO and delivered the handgun after the waiting period. Therefore, it is erroneous to assume that a Brady form sent to the wrong CLEO automatically results in the denial of a handgun purchase. It would also be erroneous to assume that all of these purchases would have been approved had they been sent to the proper CLEO.

The report also states that denials for applications sent to the wrong law enforcement agency were not reported by ATF (p. 44). As this statement is worded, it might be construed as suggesting that ATF intentionally did not report these denials. The survey sheets completed by the CLEOs and submitted to ATF did not reflect notices of intent to purchase forwarded to the wrong CLEO as denials.

The report states that law enforcement officials told the General Accounting Office (GAO) that any individual with an outstanding misdemeanor warrant is considered to be a fugitive from justice (p. 8). In order to clarify this statement, we would recommend that the following sentence be added. "Because a person may be a fugitive from justice with respect to a misdemeanor warrant, it could not be concluded that the person was erroneously denied a handgun without checking the facts of his or her case."

The report states that under Brady's interim provisions, a firearm sale may not be completed for 5 days unless the dealer receives an approval from the CLEO before that time (p. 50). We recommend that the following sentence be added for clarification. "If the CLEO does not contact the dealer within the 5-day period, the dealer may make the sale unless the dealer has reason to believe the transaction would be unlawful."

For the same reason, we believe that the second sentence of the second paragraph of page 16 should be amended to read "For example, an official with the South Carolina State Law Enforcement Division told us that unless it finds a record within 5 business days that the purchaser was actually convicted of a disabling crime, the handgun sale is allowed to proceed."

The report states that the Gun Control Act of 1968 contains the principal Federal restrictions on commerce in "small arms and ammunition" (p. 18). The Act's restrictions apply to firearms of any size as defined by 18 U.S.C. § 921(a)(3). Therefore, the word "firearms" should be substituted for "small arms."

The report states that if a record check reveals that a prospective handgun purchaser is ineligible to receive a handgun, the CLEO is to instruct the dealer to refer the buyer to the CLEO if the buyer has questions or challenges the denial (p. 22). As the statement is worded, the instruction appears to be legally required. While we would recommend these actions, they are not mandated by Brady.

The report states that "neither the Gun Control Act of 1968 nor Brady apply to transactions between nonlicensed individuals" (p. 26). The Gun Control Act does apply to certain transactions between nonlicensees, e.g., the prohibitions against the transfer of firearms to felons, and the receipt of firearms by felons, the transfer of firearms to a nonresident, and the receipt of a firearm interstate. This error could be corrected by deleting the reference to the Gun Control Act.

The statement "Policymakers recognize that even a perfect felon identification system will not keep most felons from obtaining firearms and that Brady may not directly result in measurable reductions of gun-related crimes." (p. 26) is too conclusory. In our opinion, the words "may not" should be substituted for the words "will not."

Additionally on page 26, the report states: "Thus, the apparently sizable numbers of handgun transactions that take place between private individuals, such as at gun shows and even 'on the street,' are not subject to Brady's requirements." A sentence should be added stating: "However, supporters of Brady would likely argue that blocking the illegal purchase of handguns through commercial channels is one of the first steps in reducing illegal transfers to private individuals."

Mr. Norman J. Rabkin

The report attributes certain positions to proponents of Brady (p. 27). An additional position which might be included is that Brady is intended to choke off criminals' access to illegal firearms through legal sources before they get to the grey or black market.

We recommend making clear that the 40 percent denial rate referred to in the report reflects GAO's survey and not the survey done by Treasury (p. 68).

We also would recommend that the report clarify that the number of jurisdictions affected by the legal challenges to Brady is very small compared to the overall enforcement of Brady (p. 69). In addition, it should be pointed out that the Federal appeals court decision holding that the Act is constitutional overturned two of the five lower court decisions against Brady and that appeals are pending in the remaining three cases.

We suggest adding a sentence to the second paragraph on page 72 indicating that the court decisions were limited only to the plaintiff sheriffs and that other CLEOs in surrounding jurisdictions were still subject to the Brady background check provision.

The example of the Statement of Intent to Purchase a Handgun(s) in Appendix I is not the most current version. There was a modification of this form in February, 1995, which added a section wherein the prospective handgun purchaser supplies his/her alien registration number. This section was added at the request of the Immigration and Naturalization Service.

Again, we appreciate the opportunity to offer our comments. The comments in this response are the combined comments of ATF and the Treasury Department. If we may be of any further assistance, please do not hesitate to contact us.

Sincerely yours,

(Signed) DANIEL R. BLACK
RM

John W. Magaw
Director

DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: ucf DATE: 05/30/17

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THE GAO'S REPORT ON THE BRADY LAW

The Methodology is Flawed

In evaluating the Brady Law, the GAO uses what it describes as a "judgmentally selected" sample, but the report never explains what criteria was using in selecting the sample. The sampling technique, in fact, is fundamentally flawed:

The sample is not representative Five of the 15 jurisdictions studied were from Texas. More than half--55%--of the "denials,"studied by GAO came from just two adjoining jurisdictions: Harris County and Houston.

The sample is not random or scientifically selected The GAO, included Fort Worth, Texas, in the sample simply because "press accounts list the Fort Worth, Texas, Police Department as having one of the highest denial rates in the nation." Also, the survey selected five states with "a centralized agency with statewide responsibility for performing background checks," but excluded Colorado, which also has a statewide system (and the highest denial rate of those six states).

The sample size is too small The GAO reports looks at 15 jurisdictions. Two earlier reports on the Brady Law surveyed a larger number of CLEO's. ATF's 1-year report on Brady included 30 jurisdictions. The 1-year report put together by the International Association of Chiefs of Police (IACP) and Handgun Control, Inc. (HCI) surveyed 115 jurisdictions. In assessing how many of the denials are to criminals with violent felony records, the sample is only four jurisdictions. And, in determining whether--in jurisdictions that have not done background checks--there is a problem with felons buying handguns and then using them in crime, the GAO relies upon tracing data from just two counties.

There are too many "outliers" in the survey In selecting a small sample for study, researchers generally exclude anomalous results or "outliers." The GAO study includes several outliers. In addition to Fort Worth, which had the highest reported denial rate in the country, the survey also includes Harris County, Texas, which had the third highest denial rate--11%--of the 115 CLEOs included in the IACP/HCI study. At the same time, the GAO report selectively included Ohio, whose denial rate--0.7%--was tied for second lowest in ATF's 1-year survey of 30 jurisdictions.

The Methodology Has Skewed the Results of the Survey

Fort Worth, Texas The decision to include Fort Worth, Texas, in the survey dramatically skews the results. Fort Worth routinely denied applicants who had outstanding traffic warrants: only one of the other 14 jurisdictions--Houston--reported issuing denials on such a basis. In fact, 39 percent of the Fort Worth denials were due to traffic warrants. If Fort Worth is excluded from the sample, the percentage of denials accounted for by traffic warrants drops sharply.

Harris County, Texas The inclusion of Harris County, Texas, one of the "outliers" in the sample, greatly increases the percentage of denials for traffic offenses and "administrative denials." Harris County accounted for 64% of the traffic offense denials and 55% of the "administrative denials."

The State of Ohio GAO surveys just four jurisdictions in determining that "denials based on violent crimes averaged 10.8 percent, 4.9 percent of total denials, and 0.2 percent of total applications." The inclusion of Ohio, one of the "outliers," in that sample greatly skews the results. Ohio is bigger than the other three jurisdictions--Fort Worth, Harris County and South Carolina--combined.

Of the four jurisdictions surveyed, Ohio reported a much lower rate of "violent crimes as a percentage of total applications" than the other jurisdictions: South Carolina's rate was twice as high, Fort Worth's was three times higher, and Harris County's was nine times higher. The reason for Ohio's low denial rate is simple: Ohio relies upon a computerized "instant check" to screen for felons, but its computer data base contains only a fraction of all felony dispositions. Ohio is not representative of most jurisdictions and it's inclusion in this small sample greatly skews the results of the GAO's survey.

The Analysis is Flawed

"Administrative Denials" The GAO study reports, based on its sample survey, that 38.9 percent of the denials are for "administrative" reasons. GAO acknowledges that 97.2 percent of the denials resulted from "gun dealers sending handgun purchase applications to the wrong agency," and that "three Texas jurisdictions accounted for all the denials in this category." But GAO's analysis stops there and overlooks two other important issues:

Denials for "Administrative" Reasons Are Not True Denials GAO admits that 97.2 of "administrative" denials resulted from "gun dealers sending handgun purchase applications to the wrong agency." But that's a delay, not a "denial." The gun dealer, in this instance, simply redirects the background check to the proper CLEO.

The Problem of "Administrative Denials" Was a Short-term Problem. GAO overlooks compelling evidence suggesting that the problem with "administrative" denials was corrected after the first 100 days of the Brady law. Houston, which accounted for 55% of the administrative denials, appears to have corrected the problem of handgun purchases being sent to the wrong agency. According to ATF's 100 day survey of CLEO's, Houston denied 1,220 out of 12,832 applications in the first 100 days for a denial rate of 9.5%. In its 1-year report, ATF reported that Houston denied 2,442 out of 32,137 applications in the first year for a 1-year denial rate of 7.6 percent. Subtract the 100-day total from the annual total and the denial rate for the remainder of the year drops to 6.3%, a figure much closer to the national average.

Statistical Conclusions At one point in its report, GAO admits that "the denial rates we calculated are not projectable beyond the jurisdictions covered." Why then does GAO create a sample and aggregate the data? The whole purpose of creating a sample and aggregating data is to draw conclusions. While GAO may not seek to draw any conclusions from the sampling data, others will. And given the flaws in the samples, only the wrong conclusions will be drawn.

The Report is Not Properly Focused

"Brady is controversial" The report states that "Brady is controversial," but there is no real controversy regarding the need for background checks on handgun purchases. No organization of any size--including the NRA--opposes background checks. The "controversy" over Brady centers on the manner in which the check is conducted: a local or state background check using computerized and non-computerized bases vs. a national "instant check" relying exclusively on computerized data. But this report does not address that issue at all.

Focus on Denial Rates The "denial rate," the focus of the GAO's inquiry, is one indicator of the Brady Law's effectiveness. But the GAO's report ignores the broader question: how many criminals are deterring from even attempting to buy a handgun because of the background check? The answer to that question may be difficult to quantify, but it should--at the very least--be acknowledged in the report.

In assessing the effectiveness of the Brady law, the real focus of the GAO's inquiry should be on which jurisdictions are doing the best job of stopping criminals from buying handguns in gun stores (i.e. how many criminals are obtaining handguns from a gun store despite the background check), rather than trying to determine how many applications were sent to the wrong CLEO.

The Report is Biased

Brady Effectiveness The bias of the report is evidenced in the background section of the report:

> Opponents of gun control note that criminals can easily circumvent the law by purchasing handguns on the secondary market or by having friends or spouses without a criminal record make the purchase from dealers. Proponents acknowledge that criminal records checks alone will not prevent felons from obtaining firearms...

This is a subtle, but important misstatement of the "proponent's position." Proponents acknowledge that criminal records checks alone with not prevent all felons from obtaining firearms. Some will obtain a handgun from the black market...some will not.

The Report Will be Outdated

Bureau of Justice Statistics Report BJS is presently conducting a much broader study of the Brady Law and its implementation by CLEO's. In June of this year, BJS began collecting data from CLEO's using a "Firearms Inquiry Statistics (FIST) system and a report based on this recent reporting data is expected out early next year. There is nothing in the GAO study that will not be reviewed more comprehensively by the BJS study.