GAO
United States
General Accounting Office
Washington, D.C. 20548

General Government Division

October 10, 1995

The Honorable Robert E. Rubin
The Secretary of the Treasury

Dear Mr. Secretary:

Enclosed is a draft of our report to the Congress entitled Gun Control: Implementation of the Brady Handgun Violence Prevention Act (GAO/GGD-96-22) for your review and comment prior to its release.

Please note that the draft is subject to revision and should be safeguarded to prevent its premature release.

We would like to meet with you or your designated representative to obtain the Department of the Treasury's comments within 2 weeks, if possible. In the meantime, should you wish to contact us or have any questions, please contact Danny Burton on (214) 777-5741.

Sincerely yours,

Norman Rabkin

Norman J. Rabkin
Director, Administration of
Justice Issues

Enclosure

United States General Accounting Office

GAO

# Draft Report

to the Congress

December 1995

GUN CONTROL

Implementation of the Brady Handgun Violence Prevention Act

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GAO/GGD-96-22

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Comptroller General
of the United States

Washington, D.C. 20548

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The President of the Senate and the
Speaker of the House of Representatives

This report presents an evaluation of the implementation of phase I of the Brady Handgun Violence Prevention Act (P.L. 103-159), which went into effect February 28, 1994. During phase I, the Brady Act requires a 5-day waiting period for handgun purchases to allow law enforcement officers time to conduct presale background checks for evidence of felony convictions or other disqualifying information.

This report is part of our continuing efforts to provide Congress with information on the effectiveness of violence prevention legislation. It focuses on the number of and reasons for handgun purchase denials in selected jurisdictions. In addition, the report addresses the extent of federal agency follow-up enforcement action regarding convicted felons and others who falsify their status on handgun purchase application forms. Finally, the report also discusses effects of court cases challenging the constitutionality of the act.

The Departments of Justice and the Treasury provided written comments on a draft of this report. Their views have been incorporated where appropriate.

We are sending copies of this report to appropriate congressional committees; the Secretary of the Treasury; the Attorney General; the Director of the Bureau of Alcohol, Tobacco and Firearms; and other interested parties. Copies will also be made available to others upon request.

This report was prepared under the direction of Norman J. Rabkin, Director, Administration of Justice Issues, who may be reached at (202) 512-8777 if you or your staff have any questions. Other major contributors are listed in appendix IV.

Charles A. Bowsher
Comptroller General
of the United States

## EXECUTIVE SUMMARY

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### PURPOSE

Since 1968, convicted felons, illegal drug users, and fugitives from justice have been barred by federal law from purchasing guns from federally licensed firearms dealers.[1] Even so, until Congress enacted the Brady Handgun Violence Prevention Act, there were no national procedures for dealers to verify whether any of their customers were ineligible purchasers.[2] Beginning February 28, 1994, Brady imposed a 5-day waiting period to allow state or local law enforcement officers time to conduct presale background checks on purchasers of handguns. The checks are to determine, on the basis of criminal history and other available records, if the prospective purchasers are prohibited by federal, state, or local laws from buying handguns.

In reviewing the first full year of Brady implementation, GAO's objectives were to determine (1) how frequently the 5-day waiting period and background checks were resulting in denying criminals and other ineligible individuals the opportunity to purchase

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[1]Under the Gun Control Act of 1968, other ineligible purchasers include anyone adjudicated a "mental defective" or committed to a mental institution, dishonorably discharged veterans of the Armed Forces, persons who have renounced their U.S. citizenship, and aliens illegally or unlawfully in the United States. In this report, we will refer to these aliens as "illegal aliens."

[2]The act is named for former White House press secretary James Brady, who was permanently disabled by a gunshot wound sustained during an attempted assassination of President Reagan.

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handguns from federally licensed dealers; (2) the extent to which such denials have resulted in follow-up enforcement actions (e.g., arrests and prosecutions) against convicted felons and other ineligible purchasers who falsely complete the handgun purchase application form; and (3) the implications of the various legal challenges to Brady.

## BACKGROUND

Enacted after several years of extensive public debate, Brady continues to be controversial. 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 purchases from dealers. Proponents acknowledge that criminal records checks alone will not prevent felons from obtaining firearms but say the checks could reduce dealer sales to disqualified persons and complement other crime control measures, such as stiffer mandatory sentences for firearms offenses.

At the time of GAO's review, Brady's provisions were applicable to 26 states ("Brady states"). The other 24 states screen handgun purchasers through a permit system or other procedures that, according to the Bureau of Alcohol, Tobacco and Firearms (ATF), meet or exceed Brady's requirements. ATF, within the Department of

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the Treasury, licenses gun dealers and is responsible for overseeing their compliance with Brady.[3]

Generally, the law enforcement community has strongly supported Brady, as evidenced by public endorsements from the International Association of Chiefs of Police and other organizations. Nonetheless, some sheriffs have filed federal lawsuits essentially contending, among other things, that the background check provision of Brady is beyond the scope of Congress' Commerce Clause powers and, therefore, is inconsistent with the Tenth Amendment. Eight of the nine court cases are separate filings by individual sheriffs--each having jurisdictional responsibility for one county or parish in his respective state--whereas the ninth and most recent case was filed by the Wyoming Sheriff's Association. By December 1994, federal district courts had ruled in favor of the respective sheriff in five of the six cases decided. All six cases were appealed to U.S. circuit courts. In September 1995, the U.S. Court of Appeals for the Ninth Circuit reversed two of the federal district courts' decisions, saying the federal government can require state and local law enforcement agencies to check records of prospective handgun buyers. As of October 1995, the four remaining federal district court cases were still under appeal.

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[3]According to ATF data, there was a total of about 92,000 federal firearms licenses held by gun dealers in the 26 Brady states, as of March 31, 1995.

Brady does not impose any reporting requirements on gun dealers or law enforcement officials. In fact, there are various statutory provisions that restrict the use of firearms-related information and prohibit the establishment of systems to register firearms, firearms owners, or firearms transactions. Thus, except for estimates, no comprehensive or national data on handgun purchase applications and denials are available. As reported by the Treasury Department, limited surveys by ATF found denial rates of 4.7 percent (<u>The Brady Law: The First 100 Days</u>) and 3.5 percent (<u>One-Year Progress Report: Brady Handgun Violence Prevention Act</u>) in selected jurisdictions.

## RESULTS IN BRIEF

The legislative history of Brady gives no indication of what policymakers expected or considered to be a reasonable denial rate. In the 20 judgmentally selected jurisdictions (7 statewide and 13 local) GAO surveyed, it found that the law enforcement agencies designated to conduct background checks of prospective handgun purchasers cumulatively denied 19,740 (4.3 percent) of the 457,020 applications processed during the first year of Brady's implementation. In 15 of the jurisdictions with more detailed records, GAO found that the denial rate varied from jurisdiction to jurisdiction, in part, because law enforcement officials did not use common or standard criteria in making denials. For instance, regarding criminal history disqualifiers, some jurisdictions made denials only if the records showed a felony conviction or pending indictment, but other jurisdictions also denied on the basis of outstanding misdemeanor warrants, including warrants for unpaid traffic tickets. Also, in three jurisdictions in Texas, application forms being sent to wrong law enforcement agencies was a primary factor causing denial rates of 14.5, 18.5, and 26.8 percent.

Only 4 of the 15 jurisdictions had sufficiently detailed records to permit GAO to quantify denials based on violent crimes. GAO found that denials of applicants who had been convicted of or indicted for aggravated assault, murder, rape, or robbery totalled 371 and represented 0.2 percent of the applications and 4.9 percent of the denials in these 4 jurisdictions.

With limited exceptions, law enforcement officers in the 15 jurisdictions told GAO they relied solely on criminal history records in conducting background checks because no databases were available for searching the other prohibited categories, such as illegal aliens and dishonorably discharged veterans. The exceptions involve four jurisdictions in which law enforcement officials also routinely checked for mental history disqualification by using records from local courts and/or from state- or county-operated mental health facilities.

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Due to the way cases are coded in the Department of Justice's databases, the number of Brady-related prosecutions was not readily quantifiable. Available information indicated, however, that the number of prosecutions was relatively small and that such follow-up enforcement action was not a priority of Justice or U.S. Attorneys. On the other hand, Justice and ATF officials emphasized that the primary goal of Brady is being achieved; that is, felons are being prevented from buying handguns from federally licensed gun dealers.

The full effects of the court challenges to Brady will not be known until all appeals are decided. In the meantime, indications are that background checks are still being conducted in seven of the nine jurisdictions involved in the lawsuits, while no checks have been conducted at all in the other two jurisdictions. The Justice Department has determined that it lacks authority to impose penalties or otherwise prosecute chief law enforcement officers who choose not to conduct background checks. Moreover, Brady provides neither Justice nor Treasury the authority to redesignate chief law enforcement officers in situations where the initially designated officers do not perform the background checks.

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GAO'S ANALYSIS

Brady Results: Handgun Purchase Denials and Follow-up Enforcement Actions

In analyzing denial statistics and reasons in 15 jurisdictions, GAO found that almost half (48.7 percent) of the denials were because the prospective handgun purchasers had felony or misdemeanor criminal histories, 4.1 percent were based on other Brady ineligible categories, 0.8 percent involved restraining orders, 7.6 percent involved traffic offenses, and the remaining 38.9 percent were based on administrative or other reasons.

Of the denials based on criminal histories, the vast majority (91.8 percent) were for felony-related reasons, although some differences existed among the jurisdictions regarding the course of action taken in response to records showing a felony arrest but not showing a disposition. The other denials in the criminal history category involved prospective handgun purchasers with outstanding misdemeanor warrants. Law enforcement officials in the respective jurisdictions told GAO that any individual with an outstanding misdemeanor warrant is considered to be a fugitive from justice.

Given the absence of pertinent databases, denials based upon the other Brady ineligible categories were relatively few. GAO found that most of these denials resulted coincidentally from searches of

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criminal history records. For example, in some instances, the records showed arrests or convictions for violations of immigration laws or absences without leave from the military.

Among the 15 jurisdictions, 2 cities in Texas (Fort Worth and Houston) accounted for all denials (1,413 total) specifically identified as involving unpaid parking tickets or other traffic offenses. However, four other jurisdictions also made denials based on outstanding misdemeanor warrants, of which an indeterminable number were for traffic offenses.

With 38.9 percent of the total denials in the 15 jurisdictions, administrative or other reasons represented the second highest category of denials. Within this category, 97.2 percent of the denials were due to gun dealers transmitting handgun purchase application forms to the wrong law enforcement agency. All of the denials involving missent forms were made by three jurisdictions in Texas--the cities of Fort Worth and Houston and Harris County. Denials based on missent forms represented 61.0 percent of the total denials within these three jurisdictions. This volume largely explains why Fort Worth, Houston, and Harris County had the highest overall denial rates--14.5, 18.5, and 26.8 percent, respectively--among the 15 jurisdictions GAO analyzed.

On the basis of queries to the agency's field offices, ATF headquarters staff told GAO that as of July 1995, a total of at

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least seven persons (nationally) had been successfully prosecuted for making false statements on the Brady handgun purchase form. Three of the cases involved individuals who lied about drug-related convictions. The subsequent prosecutions of these individuals resulted in prison or custody sentences of 12 to 24 months. The other four cases (related gun-trafficking cases) involved individuals who had falsified state identification cards and the Brady handgun purchase form to portray themselves as residents of West Virginia when, in fact, they resided in New York. All four defendants pled guilty. Three defendants were sentenced to 2 years probation, and the fourth was sentenced to 6 months home confinement and 3 years probation.

Effects of Court Challenges to Brady

In five of the six cases decided as of July 1995, the federal district courts have held Brady's background check provision to be unconstitutional as a violation of the Tenth Amendment. However, the courts left intact the 5-day waiting period and other core elements of Brady. In the sixth case, the court held that the Brady background check provision was consistent with the Tenth Amendment. In September 1995, the U.S. Court of Appeals for the Ninth Circuit reversed two of the rulings of unconstitutionality. The appeals court held that the federal government can impose the minimal burden of requiring state and local agencies to check the records of prospective handgun buyers.

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Despite the federal district court rulings, indications were that background checks were still being conducted in seven of the nine jurisdictions in which lawsuits had been filed. On the other hand, even though Brady has been in effect since February 28, 1994, indications were that no background checks on handgun purchasers had been conducted in the other two jurisdictions--Iberia Parish, Louisiana, and Ravalli County, Montana.

## RECOMMENDATIONS

GAO is making no recommendations in this report.

## AGENCY COMMENTS

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FIGURES



ABBREVIATIONS

| | |
|---|---|
| ATF | Bureau of Alcohol, Tobacco and Firearms |
| BJS | Bureau of Justice Statistics |
| CLEO | chief law enforcement officer |
| DOJ | Department of Justice |
| FBI | Federal Bureau of Investigation |
| REJIS | Regional Justice Information Service |

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CHAPTER 1

INTRODUCTION

Effective February 28, 1994, the Brady Handgun Violence Prevention Act (Brady)[4] requires firearms licensees, such as licensed firearms dealers, to, among other things, request a presale background check on handgun purchasers. The checks are to be conducted by the chief law enforcement officer (CLEO) in the purchaser's residence community to determine, on the basis of available records, if the individual is legally prohibited from buying the firearm under the provisions of federal, state, or local law.[5] Brady calls for implementation in two phases. Under phase I, or the interim provisions, the sale may not be completed for 5 days unless the dealer receives an approval from the CLEO before that time. Under the phase II permanent provisions effective November 30, 1998, the 5-day waiting period requirement terminates and presale inquiries for all firearms sales will be made only to a national background check system that will be operated by the Federal Bureau of Investigation (FBI).

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[4]P.L. 103-159, 107 Stat. 1536 (1993).

[5]Brady defines a CLEO as the "chief of police, sheriff, or an equivalent officer or the designee of any such individual." In some states--by agreement among the applicable law enforcement agencies--the state police department serves as the CLEO.

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BRADY CALLS FOR BACKGROUND CHECKS OF PROSPECTIVE HANDGUN PURCHASERS

Since early 1987, Congress has considered various versions of legislation restricting access to handguns. These legislative efforts were labeled "Brady" bills--referring to James Brady, the Reagan Administration Press Secretary who was permanently disabled by a gunshot wound sustained during an attempted assassination of the President. Many of the early legislative efforts called for a waiting period for handgun purchases. The waiting period was designed, in most instances, to allow for the "opportunity" to conduct background checks, not the imposition of a mandatory background check requirement. Often, this opportunity meant that a copy of the application form was to be sent to the applicable local law enforcement agency. In addition, the waiting period was described as providing a cooling-off period to deter impulse purchases. Brady opponents objected to the waiting period and offered amendments or substitute legislation typically calling for systems that would allow point-of-sale background checks to screen out criminals and not delay or otherwise interfere with the rights of law-abiding citizens to buy and own guns.

The current two-phased approach, first introduced in 1991 and described by its original sponsors as a compromise, (1) includes a waiting period that allows CLEOs time to conduct the background

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check required of them[6] and (2) provides for the eventual point-of-sale background check system. To do this, Brady amends the Gun Control Act of 1968,[7] which contains the principal federal restrictions on commerce in small arms and ammunition.

Since passage of the 1968 act, the Bureau of Alcohol, Tobacco and Firearms (ATF) has licensed and regulated manufacturers, importers, dealers, and pawnbrokers in firearms. Under the 1968 act, as amended, those licensees (hereinafter referred to as gun dealers) are prohibited from selling firearms or ammunition to anyone they know or have reasonable cause to believe (1) has been convicted of (or is under indictment for), in any court, a crime punishable by more than 1 year in prison; (2) is a fugitive; (3) is an unlawful user of a controlled substance; (4) has been adjudicated as a mental defective or has been committed to a mental institution; (5) is an illegal alien; (6) is a dishonorably discharged veteran of the Armed Forces; or (7) is a person who has renounced U.S. citizenship. Under the 1968 act, persons purchasing a firearm from a licensed dealer were required to certify their eligibility, but no background checks or other verification of the information supplied was required. In contrast, while including the 1968 prohibitions and also requiring buyers to certify their

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[6]Brady provides that a CLEO "shall make a reasonable effort" in conducting a background check.

[7]P.L. 90-618, 82 stat. 1213 (1968).

eligibility, Brady is the first federal legislation providing for presale background checks to verify such eligibility.

An eighth prohibited category of purchasers was added by the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322, 108 stat. 1796 (1994)). Generally, the 1994 Crime Act provides that it is unlawful for any person to possess or receive any firearm if that person is subject to a court order that

> "restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child."

Under Brady requirements, a prospective handgun purchaser must complete a form--generally referred to as the Brady form (see app. I)--giving his or her name, date of birth, and residence address and certifying that he or she is not a member of various categories prohibited from buying a firearm.[8] Then, within 1 business day, the gun dealer must provide notice of the form's contents to the CLEO of the area in which the buyer's residence is located. The CLEO must then "make a reasonable effort" to ascertain within 5 business days whether the sale would violate federal, state, or

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[8]As discussed further in chapter 2, as of the time of our review, the Brady form had not been updated to include the "restraining order" category of prohibited purchasers.

local law, including research in whatever state and local record-keeping systems are available and the FBI-operated National Crime Information Center files (see fig. 1.1).

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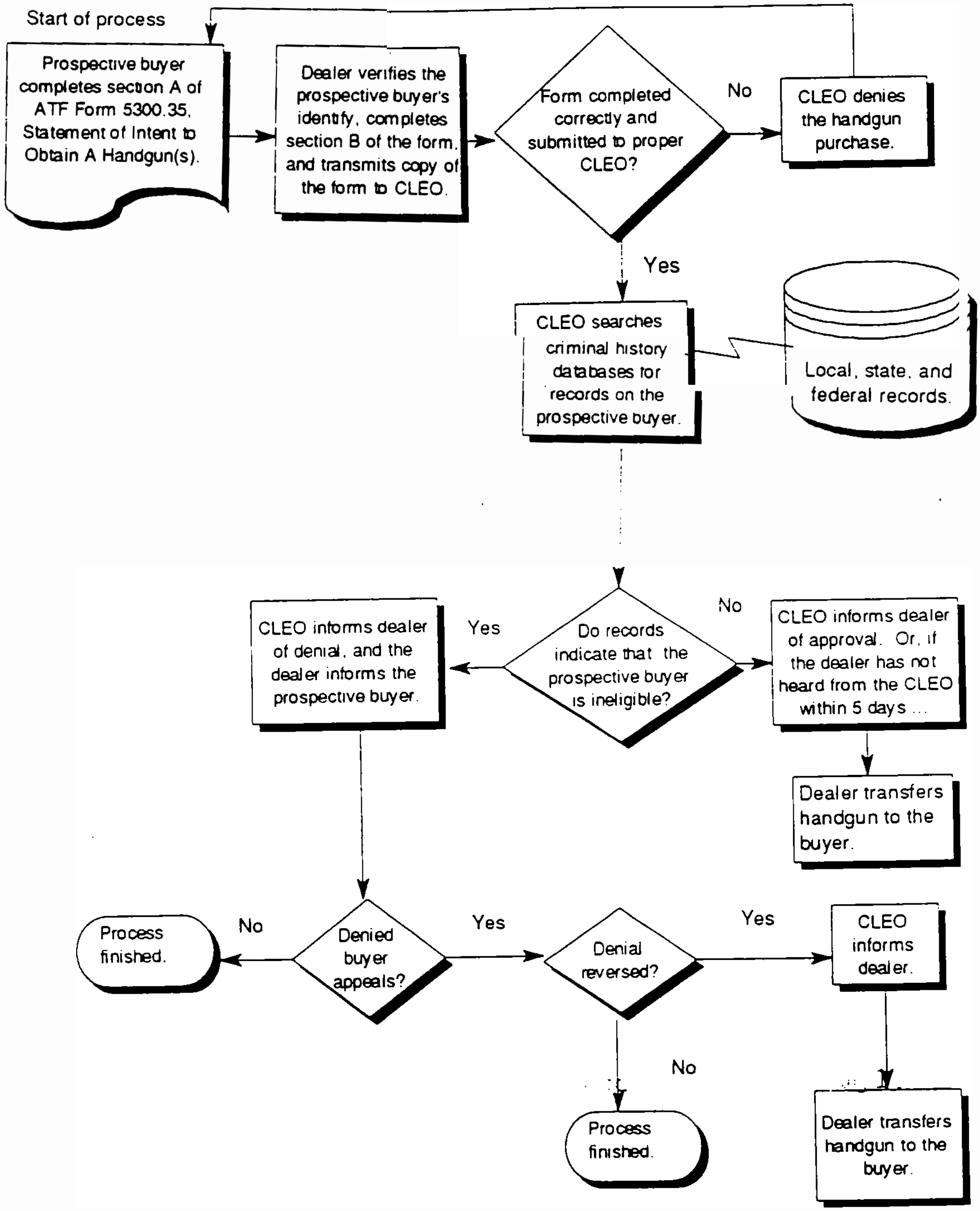
Figure 1.1: Flowchart of Handgun Purchase Application and Background Check Procedures Under Phase I of Brady




Source: Developed by GAO on the basis of discussions with ATF officials and reviews of Brady.

The CLEO may allow the sale to proceed at any time during the waiting period by advising the gun dealer that the applicant has not been determined to be a prohibited person. Alternatively, if not notified to the contrary, the gun dealer may assume that the purchaser is not disqualified and complete the sale upon expiration of the 5-day period. However, if the search reveals that the applicant is ineligible to receive a handgun, the CLEO is to (1) notify the dealer (without providing the reason) that the sale is denied and (2) instruct the dealer to refer the buyer to the CLEO if the buyer has questions or otherwise challenges the denial. Generally, such questions or challenges are sometimes referred to as "administrative appeals," even though practices are somewhat less formal than this term implies. For instance, by providing the law enforcement officer additional documentation, a buyer may be able to reverse a denial that initially resulted from inaccurate or incomplete information in the databases searched. Brady also provided a remedy for erroneous denial of a firearm. Generally, any person denied a firearm (1) due to the provision of erroneous information or (2) who was not prohibited from receipt of a firearm may bring action to direct the correction of the erroneous information or that the transfer be approved. In any such action, the court may allow the prevailing party a reasonable attorney's fee as part of the costs.

Finally, under Brady, states that screen handgun purchasers--e.g., through a permit system or some other procedure for conducting

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criminal background checks--are exempt from the law. As of February 28, 1995, 24 states had systems in place that ATF determined were acceptable alternatives to Brady. Residents, dealers, and law enforcement officials in the other 26 states--the so-called "Brady states"--are subject to Brady's waiting period requirements (see app. II).

## EFFECTIVE IMPLEMENTATION LARGELY DEPENDS UPON THE COOPERATION OF LOCAL LAW ENFORCEMENT OFFICIALS AND GUN DEALERS

To be implemented effectively, Brady depends on the cooperation of local law enforcement officials and gun dealers. However, Brady provides no federal funds to local law enforcement agencies to conduct the background checks, and, according to the Department of Justice (DOJ), these agencies cannot be penalized for refusing to conduct them.[9] In addition, several local law enforcement officials have challenged in court the background check requirement. Gun dealers are heavily relied on to stop prohibited persons from buying guns, but ATF lacks the resources to inspect all gun dealers to ensure compliance with Brady. For instance, at

[9]On the other hand, millions of dollars in federal grants have been awarded to states to improve their criminal history record systems. For example, the Crime Control Act of 1990 required states to devote a portion of grant funds provided to them under the Omnibus Crime Control and Safe Streets Act of 1968 to improvement of their criminal justice records. More recently, additional grant funds for improving criminal history record systems were made available to meet the goals of Brady and the National Child Protection Act of 1993.

a January 1994 congressional hearing, the ATF Director testified that:

> "With 285,000 licensees and only 240 ATF inspectors to check their premises and the records that they keep to ensure compliance, it would take approximately 10 years for us to inspect all the gun dealers."[10]

More recently, the number of licensed dealers has begun to decline--to about 220,000[11] by the end of March 1995--partly as a result of the increase in the license fee required by the Federal Firearms License Reform Act of 1993.[12] Another contributing factor is the 1994 Crime Act, which required that gun dealers certify compliance with state and local law as a condition for a license. On the other hand, even if ATF had more resources to inspect gun dealers, there are legislated limits on the frequency of compliance inspections. For instance, under 18 U.S.C. 923, absent reasonable cause or a warrant, ATF can inspect or examine a licensed dealer "not more than once during any 12-month period" to ensure compliance with record-keeping requirements.[13]

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[10]Gun Violence: Problems and Solutions: Hearings Before the Committee on the Judiciary, 103d Congress, 2d Sess. 30 (1994).

[11]According to ATF data, about 92,000 federal firearms licenses were held by gun dealers in the 26 Brady states, as of March 31, 1995.

[12]P.L. 103-159, 107 Stat. 1545 (1993).

[13]Section 923 of title 18 also provides for inspections or examinations without such reasonable cause or warrant in other specified situations in connection with a criminal investigation.

Finally, while gun dealers are required to maintain a copy of completed Brady forms for at least 5 years, the dealers are not required to report information from the forms to federal authorities. Brady allows CLEOs to retain forms for individuals denied a purchase but requires that all other forms be destroyed within 20 days. CLEOs also are not required to maintain or report data. In fact, there are various statutory provisions that restrict the use of firearms-related information and prohibit the establishment of systems to register firearms, firearms owners, or firearms transactions. Thus, there are no readily available data that would allow for monitoring trends in handgun purchases and denials or otherwise judge the impact of Brady.

POLICYMAKERS RECOGNIZE THAT BRADY WILL NOT KEEP ALL CRIMINALS FROM OBTAINING HANDGUNS

In July 1995, the Department of Justice issued a report on guns and crime in the United States.[14] Among other information, the report noted that:

-- Over 40 million handguns have been produced in the United States since 1973. Most guns are not used to commit crimes. Further, most crime is not committed with guns. However, most gun crime is committed with handguns.

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[14]Department of Justice, Office of Justice Programs, Marianne W. Zawitz, "Guns Used in Crime", Bureau of Justice Statistics Selected Findings Number 5 (July 1995, NCJ-148201).

-- During 1993, there were 4.4 million murders, rapes, robberies, and aggravated assaults in the United States, and more than one-fourth of these violent crimes involved the use of a gun.

-- From 1985 through 1994, the FBI received an annual average of over 274,000 reports of stolen guns. By definition, all stolen guns are available to criminals.

-- At the request of police agencies, ATF's National Tracing Center will trace firearms back to their original point of sale. More than three-quarters of the 83,000 guns used in crime that ATF traced for law enforcement agencies in 1994 were handguns.

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. For example, neither the Gun Control Act of 1968 nor Brady apply to transactions between nonlicensed individuals. Tens of millions of handguns are already in private hands. 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. In fact, the purpose of Brady is to prevent convicted felons and other ineligible persons from purchasing firearms from licensed dealers.

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Opponents of Brady point to a 1991 survey of state prison inmates, which showed that 73 percent of those who had ever possessed a handgun did not purchase it from a gun dealer.[15] Generally, opponents contend that it is a mistake to claim Brady prevents criminals from obtaining handguns since anyone denied a purchase from a licensed dealer can easily obtain a gun from another source and will almost certainly do so. Also, denied applicants may have friends or spouses without a criminal record make the purchases from dealers for them.

On the other hand, Brady proponents use the same study to counter that 27 percent of those inmates surveyed obtained their firearms from licensed gun dealers and argue that no criminals should be able to buy guns from licensed dealers. Proponents acknowledge that criminal records checks alone will not prevent felons from obtaining firearms but could reduce dealer sales to disqualified persons; complement other crime control measures, such as stiffer mandatory sentences for firearms offenses; and clamp down on illegal gun trafficking.[16]

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[15]U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Survey of State Prison Inmates, 1991, NCJ-136949 (Washington, D.C.: Government Printing Office, March 1993).

[16]For a more detailed discussion of firearms regulation issues, see Office of Technology Assessment, Automated Record Checks of Firearm Purchasers: Issues and Options, OTA-TCT-497 (Washington, D.C.: U.S. Government Printing Office, July 1991).

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OBJECTIVES, SCOPE, AND METHODOLOGY

As part of our continuing efforts to provide Congress with information on the effectiveness of violence prevention legislation, we initiated this review of the implementation of phase I of Brady. Our overall objectives were to determine

-- how frequently the 5-day waiting period and background checks were resulting in criminals and other ineligible individuals being denied the opportunity to purchase handguns from federally licensed dealers. (See ch. 2.)

-- the extent to which handgun purchase denials had resulted in federal follow-up enforcement actions (e.g., arrests and prosecutions) against convicted felons and other ineligible purchasers who falsely complete the Brady form. (See ch. 2.)

-- the effects of the various legal challenges to Brady. For instance, we were particularly interested in whether background checks of handgun purchasers were being conducted in those jurisdictions represented by CLEOs who had filed lawsuits challenging the constitutionality of Brady. If no background checks were being conducted in certain jurisdictions, we wanted to determine why and what alternative arrangements were permissible or practical. (See ch. 3.)

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To obtain a broad understanding of these phase I implementation issues, we contacted a number of relevant governmental and private organizations. For example, we interviewed ATF headquarters and district officials responsible for promulgating Brady regulations and providing training and guidance to CLEOs and federally licensed gun dealers. We obtained additional national perspectives by contacting the following industry and special interest organizations: Americans for Effective Law Enforcement; the Citizens Committee for the Right to Keep and Bear Arms; the Coalition to Stop Gun Violence; Gun Owners of America; Handgun Control, Inc.; the International Association of Chiefs of Police; the Law Enforcement Alliance of America; the National Rifle Association; and the National Sheriffs' Association.

To determine how frequently the 5-day waiting period and background checks were resulting in denials, we judgmentally selected and contacted 20 state and local law enforcement agencies in 12 (46 percent) of the Brady states. In seven of the Brady states we contacted, a state agency conducted background checks for all jurisdictions within the state. In the other 5 Brady states (13 jurisdictions), local agencies were responsible for the background checks. Also, as noted in table 1.1, 14 of the 20 agencies we contacted were surveyed earlier by ATF for Treasury's interim report on Brady's impact.

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Table 1.1: State and Local Law Enforcement Agencies Contacted by GAO

| State | Jurisdiction (state, county, parish, or city) | Law enforcement agency |
|---|---|---|
| Arizona | State | Department of Public Safety |
| Arkansas | State | State Police |
| Georgia | Clayton County[a] | Sheriff's Office |
| | Cobb County[a] | Sheriff's Office |
| | Dekalb County[a] | Department of Public Safety |
| | Fulton County[a] | Sheriff's Department |
| Kentucky | State[a] | State Police |
| Louisiana | Bossier Parish[a] | Sheriff's Department |
| | Caddo Parish[a] | Sheriff's Office |
| Nevada | State | Department of Motor Vehicles and Public Safety |
| Ohio | State[a] | Bureau of Criminal Identification and Investigation |
| Pennsylvania | Allegheny County[a] | Sheriff's Office |
| South Carolina | State | State Law Enforcement Division |
| Texas | City of Abilene[a] | Police Department |
| | City of Fort Worth | Police Department |
| | Harris County[a] | Sheriff's Department |
| | City of Houston[a] | Police Department |
| | City of Pasadena[a] | Police Department |
| Washington | City of Seattle[a] | Police Department |
| West Virginia | State | State Police |

[a]ATF surveyed these 14 jurisdictions and 2 others (Gwinnett County, Georgia, and Providence, Rhode Island) as a basis for the Treasury Department's report, The Brady Law: The First 100 Days (July 27, 1994). We did not include Gwinnett County and Providence in our survey because those jurisdictions do not maintain cumulative data.

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Brady does not require any reports from CLEOs or gun dealers. In fact, there are various statutory provisions that restrict the use of firearms-related information and prohibit the establishment of systems to register firearms, firearms owners, or firearms transactions. Thus, there were no readily available data for monitoring national trends in handgun purchases and denials. Consequently, we relied on the voluntary cooperation of selected state and local law enforcement officials to provide data on the number and results of Brady background checks performed in their respective jurisdictions. For its initial Brady report, ATF had already developed cooperative working relationships with 16 CLEOs in 8 states.[17] Thus, after first checking with ATF officials, we selected 14 of those 16 jurisdictions to build upon the already established relationships.[18] We did not select Gwinnett County, Georgia, and Providence, Rhode Island, because those jurisdictions do not maintain cumulative data. Two of the 16 CLEOs selected by ATF have statewide (Kentucky and Ohio) responsibilities for performing background checks of prospective handgun buyers. To provide broader coverage, we selected all the other Brady states that have a centralized agency with statewide responsibility for

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[17]Department of the Treasury, The Brady Law: The First 100 Days, July 27, 1994.

[18]At the time we made these selections, ATF officials told us that they had no further survey or reporting plans with respect to Brady Act results in these or other jurisdictions. Subsequently, however, in response to the Clinton administration's request for a 1-year anniversary assessment of the act, the Treasury Department issued another report, One-Year Progress Report: Brady Handgun Violence Prevention Act (February 28, 1995). We discuss that report further in chapter 2.

performing background checks--Arizona, Arkansas, Nevada, South Carolina, and West Virginia. Finally, because press accounts listed the Fort Worth, Texas, Police Department as having one of the highest handgun denial rates in the nation, we included that jurisdiction in our review, which resulted in a total of 20 jurisdictions.

Then, from each of the 20 applicable law enforcement agencies, we obtained available statistics on the number of Brady handgun purchase forms processed and the number denied during the first year of Brady implementation, February 28, 1994, through February 28, 1995. We used this information to calculate jurisdiction-specific denial rates, as well as an overall denial rate for the 20 jurisdictions. Although we did not verify the accuracy of the data obtained, during our on-site visits to three jurisdictions--Arkansas; South Carolina; and Fort Worth, Texas--and in numerous follow-up telephone calls with the other 17 jurisdictions, we discussed the procedures for gathering and compiling the data and have no reason to believe the data are unreliable. However, the denial rates we calculated are not projectable beyond the jurisdictions covered.

In contacting the law enforcement officials in these jurisdictions, we also inquired about the availability and completeness of databases to conduct background checks. Our inquiries included questions covering criminal history databases, as well as possible data sources covering drug users, illegal aliens, and other

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categories of ineligible purchasers. Regarding criminal history databases, for example, we were interested in what course of action was taken if the background search found incomplete records--particularly records showing a felony arrest but not showing a disposition.

Also, besides quantifying, we were interested in categorizing and analyzing the various reasons used by law enforcement officials in the 20 jurisdictions to deny handgun purchases. However, we found that only 15 of the jurisdictions maintained records (some more detailed than others) showing reasons for denials. Thus, our categorization and analysis of denial reasons is limited to these 15 jurisdictions--6 states, 3 counties, 2 parishes, and 4 cities. Moreover, only four of these jurisdictions--two states, a county, and a city--had sufficiently detailed information to allow us to quantify the number of felony-related denials involving violent crime convictions or indictments.

Regarding follow-up enforcement actions on convicted felons and others who falsely complete Brady handgun purchase forms, we interviewed DOJ officials and reviewed documents prepared by DOJ officials responsible for establishing law enforcement policy guidance. From DOJ officials, as well as from ATF headquarters officials, we obtained available information on the number of cases referred by ATF field offices, the number declined for prosecution by U.S. Attorney Offices, and the number actually prosecuted. We analyzed summary information provided by ATF on the prosecuted cases. The summary information covered the nature of the charges, the individuals' past criminal histories, and any resulting convictions and sentences. For example, we were interested in whether the defendants were charged only with lying on the Brady form, or whether form falsification was an ancillary charge added in with other charges. Similarly, we were interested in whether the defendants had criminal histories showing convictions for violent felonies. Finally, we were interested in the types of sentences received by convicted defendants.

In studying implications of the various legal challenges to Brady, we first reviewed the applicable federal district court decisions. Then, to determine the Department of Justice's position on the legal challenges, we interviewed the Acting Assistant Attorney General, as well as his Special Counsel.

Also, we interviewed staff from ATF's Office of Chief Counsel and other relevant officials at the agency's headquarters, as well as ATF officials in field offices encompassing jurisdictions involved in court challenges to Brady. In so doing, we obtained information and views on (1) whether background checks have been or are being performed in those jurisdictions in which CLEOs have challenged Brady; (2) what ATF's statutory and/or operational responsibility is with respect to CLEOs and their performance of Brady background checks; (3) ATF's role with respect to the designation of alternate CLEOs to perform the Brady background checks; and (4) what actions, if any, ATF has taken regarding Brady background checks on prospective handgun buyers in the jurisdictions involved in the lawsuits.

We conducted our review in Arkansas; Georgia; South Carolina; Texas; and Washington, D.C., from July 1994 through August 1995 in accordance with generally accepted government auditing standards.

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## CHAPTER 2

## BRADY RESULTS: HANDGUN PURCHASE DENIALS AND FOLLOW-UP ENFORCEMENT ACTIONS

We calculated handgun purchase denial rates and tried to determine if follow-up enforcement actions were being taken. We and ATF surveyed jurisdictions to determine denial rates. ATF calculated an average denial rate of 4.7 percent in 16 jurisdictions for the first 3 months of Brady implementation and 3.5 percent in 30 jurisdictions for the first year of Brady. We calculated an average denial rate of 4.3 percent in 20 jurisdictions for the first year of Brady. In following up on reasons for denials, we determined that (1) most of the jurisdictions in our survey relied only on criminal history records and (2) comprehensive data on background check results were not available. We were not able to quantify follow-up enforcement actions due to the way cases were coded in DOJ's databases, but we were able to determine that, as of July 1995, at least seven Brady-related cases were successfully prosecuted.

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<u>COMPREHENSIVE DATA ON</u>

<u>BACKGROUND CHECK RESULTS</u>

<u>WERE NOT AVAILABLE</u>

Comprehensive data on the number of handgun purchase applications and denials under Brady were not available. Brady contains no reporting requirements, so neither gun dealers nor law enforcement officers are required to accumulate and report statistics on the number of handgun purchase applications processed or denied. In fact, with respect to the protection of individual privacy rights, Brady contains certain prohibitions on the use of Brady-related background information as well as prohibiting the establishment of a registry of firearms, firearms owners, or firearms transactions.

Under Brady, after <u>approving</u> a handgun sale, the CLEO who conducted the background check must destroy all purchaser-related information, including the copy of the handgun purchase application form, ATF Form 5300.35 (see app. I for a copy of the form). Moreover, Brady does not require either CLEOs or gun dealers to record and report Brady-related statistics. As a result, the accumulation of data on the volume of and the reasons for handgun purchase denials is left to the discretion of the applicable CLEOs. Consequently, attempts to study the results or impact of Brady are largely dependent upon the voluntary cooperation of the CLEOs responsible for conducting the background checks.

To develop a systematic approach for monitoring Brady's impact on the acquisition and use of firearms, in September 1994 the Justice Department's Bureau of Justice Statistics (BJS) entered into an agreement with the Regional Justice Information Service (REJIS).[19] Under the terms of the agreement, REJIS is designing an information system, called the Firearms Inquiries Statistical System, to routinely collect data from volunteer samples of the estimated 22,000 local law enforcement officers and from state criminal history repositories, the FBI, and ATF. The primary objectives of this information system are to (1) identify, describe, and categorize the procedures used to implement Brady; (2) measure results of Brady in terms of the number of applications accepted and denied, the reasons for the denials, and the actions taken as a result of the denials; and (3) create a database to permit analyses of the use of firearms in the commission of crimes. BJS officials anticipate that initial output under the system will be available around December 1995.

In the interim, ATF has conducted two limited-scope surveys in selected Brady states. The results of these surveys, as well as the results of our similarly limited-scope survey, are discussed in the following sections.

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[19]REJIS, located in St. Louis, Missouri, is a quasi-governmental organization that provides data processing services to criminal justice agencies.

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## RESULTS OF TWO ATF SURVEYS OF SELECTED JURISDICTIONS

ATF's initial survey of Brady's results covered approximately the first 3 months of implementation.[20] In conducting the survey, ATF contacted state and local law enforcement officers representing 16 jurisdictions--2 states, 7 counties, 2 parishes, and 5 cities.[21] For handgun purchase applications processed by the respective law enforcement officers within these 16 jurisdictions, ATF found that the overall denial rate was 4.7 percent.

The report on ATF's second survey of Brady's results was issued on the first anniversary of the act's effective date.[22] In conducting this survey, which provided data covering the period March 1994 through January 1995, ATF contacted law enforcement officers representing 30 jurisdictions--7 states, 9 counties, 1 parish, 12 cities, and Puerto Rico. As table 2.1 shows, for handgun purchase applications processed by the respective law enforcement officers within these 30 jurisdictions, ATF found that the overall denial rate was 3.5 percent.

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[20] Department of the Treasury, The Brady Law: The First 100 Days, July 27, 1994.

[21] See table 1.1 in chapter 1 for a listing of the 16 jurisdictions surveyed by ATF.

[22] Department of the Treasury, One-Year Progress Report: Brady Handgun Violence Prevention Act, February 28, 1995.

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Table 2.1: Statistics on Handgun Purchase Applications Processed and Denied in 30 Jurisdictions Contacted by ATF, March 1994-January 1995

| State | Jurisdiction | Law enforcement agency | Number of Brady handgun applications | | Denial rate (percent) |
|---|---|---|---|---|---|
| | | | Processed | Denied | |
| Alabama | Jefferson County | Sheriff's Department | 19,646 | 964 | 4.9 |
| Alaska | City of Anchorage | Police Department | 6,960 | 111 | 1.6 |
| Arizona[a] | City of Phoenix | Police Department | 28,708 | 1,718 | 6.0 |
| | State | Department of Public Safety | 32,374 | 776 | 2.4 |
| Arkansas | State | State Police | 25,434 | 472 | 1.9 |
| Georgia | Dekalb County[b] | Department of Public Safety | 4,685 | 680 | 14.5 |
| Kansas | Elk County | Sheriff's Department | 15 | 0 | 0.0 |
| Kentucky | State | State Police | 58,474 | 2,030 | 3.5 |
| Louisiana | New Orleans Parish | Superintendent of Police | 5,337 | 607 | 11.4 |
| Maine | City of Lewiston | Police Department | 190 | 6 | 3.2 |
| Mississippi | Rankin County | Sheriff's Department | 1,150 | 24 | 2.1 |
| Montana | Yellowstone County | Sheriff's Department | 698 | 12 | 1.7 |
| | City of Billings | Police Department | 1,519 | 11 | 0.7 |
| Nevada | State | Department of Motor Vehicles and Public Safety | 33,550 | 522 | 1.6 |
| New Mexico | City of Albuquerque | Police Department | 5,338 | 192 | 3.6 |
| North Carolina[c] | Rowan County | Sheriff's Department | --- | --- | --- |
| North Dakota | Cass County | Sheriff's Department | 735 | 9 | 1.2 |
| Ohio | State | Bureau of Criminal Identification and Investigation | 61,074 | 447 | 0.7 |
| Oklahoma | City of Oklahoma City | Police Department | 9,197 | 165 | 1.8 |
| Pennsylvania | City of Philadelphia | Police Department | 10,238 | 487 | 4.8 |
| Puerto Rico | Puerto Rico | Superintendent of Police | 5,390 | 150 | 2.8 |

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| State | Jurisdiction | Law enforcement agency | Number of Brady handgun applications: Processed | Number of Brady handgun applications: Denied | Denial rate (percent) |
|---|---|---|---|---|---|
| Rhode Island | City of Providence[d] | Police Department | 175 | 10 | 5.7 |
| South Carolina | State | State Law Enforcement Division | 55,171 | 2,199 | 4.0 |
| South Dakota | Minnehaha County | Sheriff's Department | 236 | 6 | 2.5 |
| Texas | Harris County[e] | Sheriff's Department | 10,139 | 1,117 | 11.0 |
| | City of Houston[e] | Police Department | 32,137 | 2,442 | 7.6 |
| Vermont | City of Montpelier | Police Department | 38 | 2 | 5.3 |
| Washington | City of Seattle | Police Department | 6,213 | 154 | 2.5 |
| West Virginia | State | State Police | 25,712 | 182 | 0.7 |
| Wyoming | City of Cheyenne | Police Department | 1,012 | 11 | 1.1 |
| Totals | | | 441,545 | 15,506 | 3.5 |

Note: These denial rates are jurisdiction-specific and are not projectable to other jurisdictions.

[a]The data presented are for 4 months only. From February 28, 1994, through September 30, 1994, Brady background checks in Arizona were performed by local law enforcement officers. Effective October 1, 1994, the Arizona Department of Public Safety took over responsibility for performing background checks on all prospective handgun buyers who reside in Arizona.

[b]The data ATF obtained from the Dekalb County Department of Public Safety come from only one of the Department's three divisions that process Brady forms.

[c]No data were available for Rowan County, North Carolina.

[d]The Providence Police Department does not maintain cumulative data on results of Brady background checks. The data presented are for the month of January 1995 only.

[e]The number of denials for Harris County and the City of Houston (Texas) do not include handgun purchase applications that were missent to these jurisdictions.

Source: Department of the Treasury, One-Year Progress Report: Brady Handgun Violence Prevention Act, February 28, 1995, pages

4-6. Notes "a" through "e" are GAO's clarifications of ATF's data.

The rates presented in Treasury's One-Year Progress Report do not reflect the fact that some of the initially denied applications were subsequently approved, following administrative or other appeal procedures.[23] For example, the following information about the number of appealed denials was presented in June 1995 correspondence from DOJ in response to congressional requesters:

> "In its survey, ATF identified 15,506 handgun denials pursuant to the Brady Law. Of this number, 2,048 rejections were administratively appealed.[24] Of these, 1,620 were resolved administratively, but ATF does not have information

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[23]In its One-Year Progress Report, the Treasury Department used other data and assumptions to arrive at an estimate of total handgun purchase denials for all Brady states. The report noted that historical data--from certain states that have their own laws requiring screening of prospective purchasers of handguns--show that an overall denial rate of 2.5 percent would be a conservative figure. Treasury applied this percentage to the total number of firearms-related queries (1,638,838) made to the FBI's criminal history database, that is, queries made by state and local law enforcement authorities during the period March 1994 through January 1995. Thus, for this 11-month period, Treasury estimated that potential denials in the Brady states totalled 40,971.

[24]If all 2,048 appeals are successful, the overall denial rate for the 30 jurisdictions surveyed by ATF would be 3.0 percent rather than the 3.5-percent rate shown in the Treasury's One-Year Progress Report.

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concerning the dispositions. ATF reports that two of the 15,506 denials were successfully appealed in court.

"ATF does not have any information concerning the basis for the denials or the reasons for any reversals of initial denials. As you are no doubt aware, under the Brady Law, the responsibility for determining whether an applicant seeking to purchase a pistol is eligible to do so rests with local Chief Law Enforcement Officers (CLEOs). ATF informs us that many CLEOs maintain no statistical data concerning the specific basis for a Brady denial and lack the resources for doing so. Accordingly, ATF has never requested the submission of such information and, in fact, lacks the authority to require its collection."[25]

RESULTS OF GAO SURVEY OF
20 SELECTED JURISDICTIONS

In conducting our survey to obtain data covering the first full year of Brady Act implementation, we contacted state and local law enforcement officers representing 20 jurisdictions--the 7

[25]Separately addressed letters (both dated June 21, 1995) to Senator Phil Gramm and Senator Jon Kyl from DOJ's Office of Legislative Affairs.

Brady states that have centralized background check procedures, 6 counties, 2 parishes, and 5 cities. As table 2.2 shows, for handgun purchase applications processed by the respective law enforcement officers within these 20 jurisdictions, we found that the overall denial rate was 4.3 percent.

Our survey of 20 jurisdictions and ATF's survey of 30 jurisdictions (see table 2.1) include 11 jurisdictions covered in both surveys--the 7 Brady states that have centralized background check procedures; 2 counties (Dekalb County, Georgia, and Harris County, Texas); and 2 cities (Houston, Texas, and Seattle, Washington). Our data differ from ATF data, in part, because we surveyed a longer time period--see, for example, the differences reported for Arizona and Kentucky. However, for Harris County and the City of Houston, we also include numerous denials for applications sent to the wrong law enforcement agency; these were not reported by ATF. Finally, the numbers of denials we report for Arkansas; Dekalb County, Georgia; and Ohio are lower than ATF's numbers, in part, because our denial data were adjusted for successful appeals.

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Table 2.2: Statistics on Handgun Purchase Applications Processed and Denied in 20 Jurisdictions Contacted by GAO, February 28, 1994-February 28, 1995

| State | Jurisdiction | Law enforcement agency | Number of Brady handgun applications: Processed | Denied | Denial rate (percentage) |
|---|---|---|---|---|---|
| Arizona | State | Department of Public Safety[a] | 40,185 | 928 | 2.3 |
| Arkansas | State | State Police | 27,933 | 377 | 1.3 |
| Georgia | Clayton County | Sheriff's Office | 2,484 | 146 | 5.9 |
| | Cobb County[b] | Sheriff's Office | 4,298 | 151 | 3.5 |
| | Dekalb County[b] | Department of Public Safety | 4,791 | 409 | 8.5 |
| | Fulton County | Sheriff's Department | 5,369 | 256 | 4.8 |
| Kentucky | State | State Police[c] | 69,420 | 2,045 | 2.9 |
| Louisiana | Bossier Parish | Sheriff's Department | 1,983 | 49 | 2.5 |
| | Caddo Parish | Sheriff's Office | 5,727 | 220 | 3.8 |
| Nevada | State | Department of Motor Vehicles and Public Safety | 38,719 | 531 | 1.4 |
| Ohio | State | Bureau of Criminal Identification & Investigation | 67,101 | 406 | 0.6 |
| Pennsylvania | Allegheny County[b] | Sheriff's Office | 26,005 | 288 | 1.1 |
| South Carolina | State | State Law Enforcement Division | 62,812 | 1,980 | 3.2 |
| Texas | City of Abilene | Police Department | 1,876 | 18 | 1.0 |
| | City of Fort Worth | Police Department[d] | 8,904 | 1,288 | 14.5 |
| | Harris County | Sheriff's Department | 14,514 | 3,892 | 26.8 |
| | City of Houston | Police Department | 34,203 | 6,322 | 18.5 |
| | City of Pasadena | Police Department | 3,071 | 112 | 3.6 |
| Washington | City of Seattle[b] | Police Department | 7,048 | 103 | 1.5 |
| West Virginia | State[b] | State Police | 30,577 | 219 | 0.7 |
| Totals | | | 457,020 | 19,740 | 4.3 |

[a]Arizona data cover the period October 1994 through February 1995.

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[b]These jurisdictions do not maintain detailed information on the reasons for handgun purchase denials.

[c]Kentucky data cover the period February 28, 1994, through February 25, 1995.

[d]Fort Worth Police Department data cover the period February 28, 1994, through March 3, 1995.

Source: Data provided to GAO by the law enforcement agencies.

Only 15 of the 20 jurisdictions we surveyed maintained records (some more detailed than others) showing reasons for denials. During the period covered by our survey (February 28, 1994, through February 28, 1995), the respective law enforcement officers within these 15 jurisdictions conducted background checks involving a total of 384,301 handgun purchase applications and denied 18,570, a denial rate of 4.8 percent. Figure 2.1 shows the variance of denial rates across the jurisdictions we contacted. As table 2.3 shows, for each of these 15 jurisdictions, we analyzed the reasons for the denials and arrayed the relevant statistics among five categories, each of which is discussed separately.

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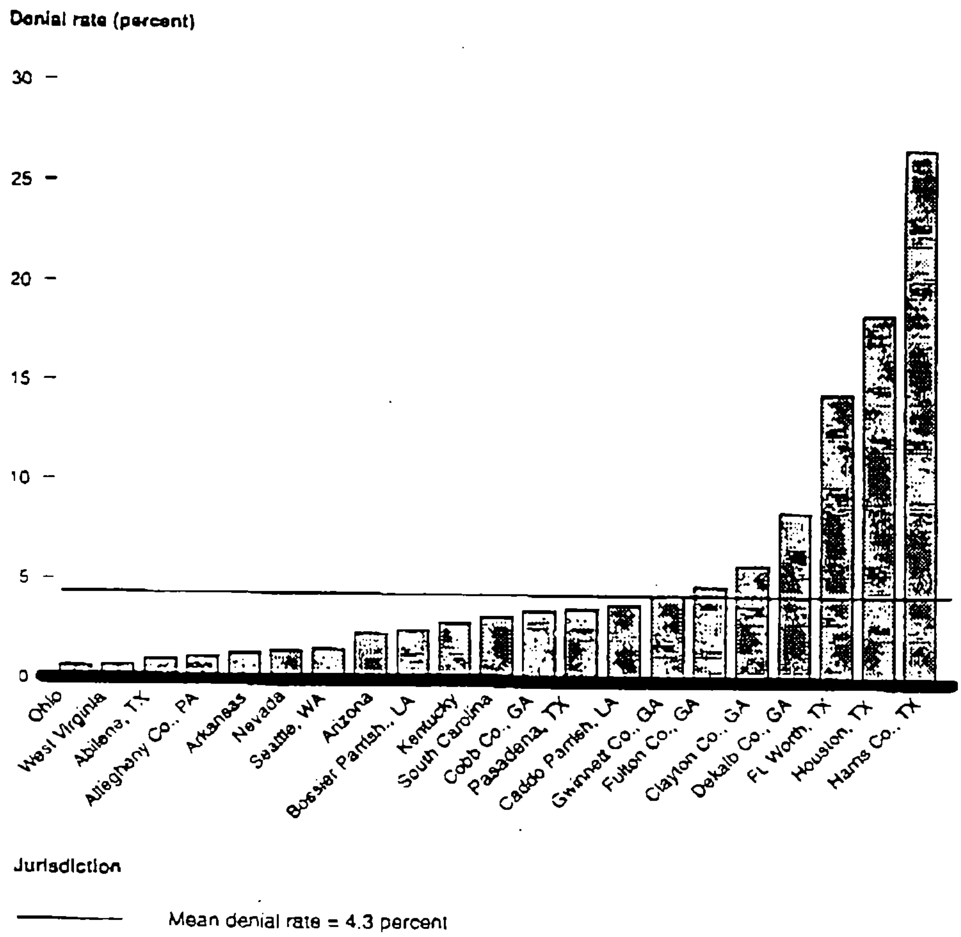
Figure 2.1: Denial Rates in the 20 Jurisdictions GAO Contacted, February 28, 1994-February 28, 1995




Source: Data provided to GAO by the law enforcement agencies.

Table 2.3: Summary of Handgun Purchase Denial Statistics for 15 Jurisdictions Contacted by GAO, February 28, 1994-February 28, 1995

| State | Jurisdiction (state, county, parish, or city) | Number of denials arrayed by reason categories: Criminal history records | Other Brady Act ineligible categories | 1994 Crime Act (restraining orders) | Traffic offenses | Administrative or other | Total denials in jurisdictions |
|---|---|---|---|---|---|---|---|
| Arizona | State | 928 | 0 | 0 | 0 | 0 | 928 |
| Arkansas | State | 374 | 3 | 0 | 0 | 0 | 377 |
| Georgia | Clayton County | 106 | 36 | 1 | 0 | 3 | 146 |
| | Fulton County | 256 | 0 | 0 | 0 | 0 | 256 |
| Kentucky | State | 1,903 | 0 | 142 | 0 | 0 | 2,045 |
| Louisiana | Bossier Parish | 47 | 0 | 0 | 0 | 2 | 49 |
| | Caddo Parish | 220 | 0 | 0 | 0 | 0 | 220 |
| Nevada | State | 467 | 62 | 2 | 0 | 0 | 531 |
| Ohio | State | 376 | 27 | 0 | 0 | 3 | 406 |
| South Carolina | State | 1,904 | 43 | 0 | 0 | 33 | 1,980 |
| Texas | City of Abilene | 11 | 6 | 0 | 0 | 1 | 18 |
| | City of Fort Worth | 197 | 9 | 0 | 505 | 577 | 1,288 |
| | Harris County | 1,238 | 27 | 0 | 0 | 2,627 | 3,892 |
| | City of Houston | 905 | 539 | 0 | 908 | 3,970 | 6,322 |
| | City of Pasadena | 111 | 1 | 0 | 0 | 0 | 112 |
| Total number by category of denials | | 9,043 | 753 | 145 | 1,413 | 7,216 | 18,570 |
| Category totals as a percentage of jurisdiction totals | | 48.7 | 4.1 | 0.8 | 7.6 | 38.9 | 100.1[a] |

[a]Percentage does not total 100.0 due to rounding.

Source: Summary of data presented in tables III.2 through III.16.

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Denials Based on Criminal History Records

Our review of total denials (18,570) for the 15 jurisdictions showed that 9,043, or 48.7 percent, were based on criminal history records (see table 2.3). Of the 9,043 criminal history denials, 8,299 (91.8 percent) were for either a felony indictment; a felony arrest (with no final disposition shown, e.g., dismissal, acquittal, or conviction); a felony conviction; or an outstanding felony warrant (see table III.1).

Next, we attempted to determine how many of the felony-related denials involved violent crimes--aggravated assault, murder, rape, and robbery--as defined by the FBI. However, only 4 of the 15 jurisdictions had sufficiently detailed information for this analysis. For those four jurisdictions, denials based on violent crimes averaged 10.8 percent of the felony-related denials, 4.9 percent of total denials, and 0.2 percent of total applications (see table 2.4).

Table 2.4: Violent Crime-Related Denials in Four Jurisdictions

| | Violent crimes as a percent of | | |
|---|---|---|---|
| Jurisdiction | Felony-related denials | Total denials | Total applications |
| Fort Worth, Texas | 21.0 | 2.3 | 0.3 |
| Harris County, Texas | 13.1 | 3.4 | 0.9 |
| Ohio | 16.5 | 15.3 | 0.1 |
| South Carolina | 7.7 | 7.4 | 0.2 |
| Weighted average | 10.8 | 4.9 | 0.2 |

Source: Developed by GAO on the basis of information provided by the law enforcement agencies.

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Among the 15 jurisdictions, we found differences regarding actions taken in response to records showing a felony arrest but not showing a disposition. Law enforcement officers in 4 jurisdictions denied a total of 365 handgun purchase applications based on records showing a felony arrest but not showing a disposition (see summary table III.1). The four jurisdictions are Arkansas (table III.3); Clayton County, Georgia (table III.4); Nevada (table III.9); and Abilene, Texas (table III.12). Generally, in such situations, the law enforcement officials told us it was incumbent upon the applicants to contact the appropriate law enforcement agency and provide evidence of a purchase-qualifying resolution of the arrest.

Some of the other jurisdictions do not follow the practice of making denials on the basis of felony arrest records alone. For example, an official with the South Carolina State Law Enforcement Division told us that if a purchase-disqualifying disposition cannot be determined within 5 business days, the handgun sale is allowed to proceed. The official added that as of the end of March 1995, the Division has had only one case in which the disposition of a felony charge against a prospective handgun buyer could not be determined within 5 business days. In that case, the applicant was allowed to purchase a handgun; subsequently, however, case disposition information showed that the purchase should have been denied. Law enforcement officials from the Division reportedly retrieved the handgun from the purchaser.

Misdemeanor warrants accounted for 452 (2.4 percent) of the 18,570 denials (see table III.1). These 452 denials represent 5.0 percent of the 9,043 criminal history denials. Of the 15 jurisdictions providing data on reasons for handgun purchase denials, 7 denied handgun purchases on the basis of outstanding misdemeanor warrants--4 states (Arizona, Arkansas,[26] Kentucky, and South Carolina); 1 parish (Bossier Parish, Louisiana); and 2 cities (Fort Worth and Pasadena, Texas). Three of these 7 jurisdictions accounted for 380 (84.1 percent) of the denials--Arizona (table III.2), the City of Fort Worth (table III.13), and the City of Pasadena (table III.16). In each of these jurisdictions, law enforcement officers told us that while neither state nor local laws prohibit misdemeanants from purchasing handguns, these persons are considered fugitives from justice, a prohibited category under Brady.

Denials Based on Other Brady Ineligible Categories

Our review of total denials (18,570) for the 15 jurisdictions showed that 753, or 4.1 percent, were based on the other ineligible categories under Brady--fugitives from justice, unlawful drug users or addicts, individuals adjudicated mentally defective or committed, persons dishonorably discharged from the armed services,

[26]Effective January 1, 1995, the Arkansas State Police stopped using misdemeanor warrants as a basis for denying handgun purchases.

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illegal aliens, and individuals who have renounced their U.S. citizenship (see tables 2.3 and III.1).

These ineligible purchasers, sometimes referred to as the "other-than-felons" categories, are particularly difficult for CLEOs to identify. In 1990, for instance, a study sponsored by DOJ reported that few databases contain information on these categories of individuals.[27]

The lack of databases containing information on the other-than-felons categories restricts the ability of law enforcement officers to identify prospective handgun buyers who fall into one of these categories. For instance, law enforcement officers in 11 of the 15 jurisdictions told us that they rely solely on the national and/or state criminal history databases to obtain information on the other-than-felons categories. According to several officers, information concerning the other-than-felons categories is only coincidentally included in the criminal history databases. For example, Arkansas officials made a "mental defective" denial because criminal history records showed that an individual charged with battery and criminal property damage had been adjudicated "not guilty by reason of insanity." Thus, while Brady specifies a number of other-than-felons ineligibility categories, most law

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[27]U.S. Department of Justice, Bureau of Justice Statistics, Identifying Persons, Other Than Felons, Ineligible to Purchase Firearms: A Feasibility Study, ENFORTH Corporation (Cambridge, Massachusetts: May 1990).

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enforcement officers have no way to check purchasers' backgrounds with respect to these disqualifiers. In a few instances, information on these categories may be found in criminal history records. The following sections present more specifics on these disqualifying categories in the 15 jurisdictions we analyzed.

### Fugitives From Justice

Nonfelon fugitives from justice accounted for 160 (21.2 percent) of the 753 total denials in the other-than-felons categories (see table III.1). The 160 denials were made in 5 jurisdictions; however, the City of Houston (Texas) with 57 denials accounted for 35.6 percent of these denials (see table III.15). According to a Houston Police Department official, when background checks identify a fugitive, the information is passed on to the Department's Fugitive Division to first verify that the warrant is still active and, if so, to serve the warrant. In the other four jurisdictions, officers told us that it is their respective agency's policy to first confirm that the warrant is still active and, if it is, either serve it or inform the originating agency, which is then responsible for any enforcement action.

### Unlawful Drug Users or Addicts

Applicants classified as unlawful drug users or addicts accounted for 357 (47.4 percent) of the 753 other-than-felons denials (see table III.1). All 357 denials were in the Texas jurisdictions of Abilene (table III.12) and Houston (table III.15). According to law enforcement officers in these jurisdictions, the denials for unlawful drug use were based on criminal history records showing that the prospective buyers had arrests for minor drug offenses.

### Adjudicated Mentally Defective or Committed to a Mental Facility

Prospective handgun buyers classified as having been adjudicated mentally defective or committed accounted for 38 (5.0 percent) of the 753 other-than-felons denials (see table III.1). These 38 denials were made in 8 jurisdictions. The states of Arkansas and Nevada and the City of Houston, Texas, cumulatively denied 10 handgun purchases solely on the basis of mental problems noted in the prospective buyers' criminal history records. Two counties (Clayton County, Georgia, and Harris County, Texas) denied a total of 10 handgun purchases on the basis of local court records. The state of Ohio and the city of Fort Worth, Texas, denied a total of 13 handgun purchases on the basis of state or county mental health records. For example, six handgun purchases were denied in Ohio on the basis of state mental hospital records checks (see table III.10, note b); and seven purchases were denied by the Fort Worth, Texas, Police Department on the basis of county mental health center records (see table III.13, note d). In the remaining jurisdiction, South Carolina, five denials were the result of relatives of the prospective handgun buyers contacting the state police and submitting physicians' statements confirming that the prospective buyers previously had been committed to a mental institution (see table III.11, note e).

### Dishonorable Discharges From the Armed Forces

Prospective handgun buyers classified as having been dishonorably discharged from the U.S. Armed Forces accounted for 49 (6.5 percent) of the 753 denials in the other-than-felons category (see table III.1). These 49 denials were made in 6 jurisdictions--3 states (Nevada, Ohio, and South Carolina); 1 county (Harris County, Texas); and 2 cities (Houston and Pasadena, Texas). In each of these jurisdictions, law enforcement officers told us that these denials were based on criminal history records showing arrests for being absent without leave from the military.

### Illegal Aliens

Illegal aliens accounted for 149 (19.8 percent) of the 753 other-than-felons denials (see table III.1). The 149 denials were made in 6 jurisdictions--2 states (Nevada and South Carolina); 1 Texas county (Harris County); and 3 Texas cities (Abilene, Fort Worth, and Houston)--on the basis of searches of criminal history records. The Houston Police Department accounted for 112 (75.2 percent) of the 149 denials (see table III.15). Beyond denying the handgun

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sales to the illegal aliens, the Houston Police Department took no other follow-up enforcement or referral action. The other three Texas jurisdictions followed this same procedure. In only the two state jurisdictions did law enforcement officers tell us that they notify the Immigration and Naturalization Service when illegal aliens are identified.

Renounced U.S. Citizenship

In the 15 jurisdictions we analyzed, we found no denials based on renounced U.S. citizenship (see table III.1).

Denials Based on the 1994 Crime Act

The Violent Crime Control and Law Enforcement Act of 1994 amended 18 U.S.C. Section 922(g) to add another prohibited category to those already listed in federal firearms statutes. Generally, the 1994 act states that it is unlawful for any person to possess or receive any firearm if that person is subject to a court order that

> "restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child."

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As discussed in chapter 1, Brady requires prospective handgun purchasers to certify that they are not a member of various categories prohibited from possessing or receiving a firearm. The categories contained in Brady reflect but do not reference those categories found at section 922(g) as they existed before the 1994 Crime Act. Thus, according to ATF's Associate Chief Counsel (Firearms and Explosives), even though the 1994 Crime Act amended section 922(g), Brady itself was not amended to add the court order prohibition. The official told us that ATF had provided the Department of the Treasury a list of legislative proposals, including a proposed technical amendment to Brady.[28] Further, the Associate Chief Counsel told us that as a practical matter, ATF has been educating law enforcement officers about the "restraining order" disqualifying category and that applicants can be denied on this basis, even though ATF Form 5300.35 (see app. I) is awaiting modification pending passage of the technical amendment.

In the 15 jurisdictions we analyzed, 145 (0.8 percent) of the 18,570 handgun purchase denials were based on the 1994 Crime Act (see table 2.3 and table III.1). The 145 denials were made in 3 jurisdictions--1 denial in Clayton County, Georgia (table III.4); 142 denials in Kentucky (table III.6); and 2 denials in Nevada (table III.9). According to an official with the Kentucky State Police--representing the jurisdiction with 97.9 percent of the

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[28]As of July 1995, Brady had not been amended to include the court order prohibition.

denials in this category--the 142 denials in Kentucky were based on domestic violence orders, which are similar to restraining orders but expire (under Kentucky law) after 1 year.

Denials Based on Traffic Offenses

Traffic offenses accounted for 1,413 (7.6 percent) of the 18,570 denials (see tables 2.3 and III.1). Of the 15 jurisdictions we analyzed, 2 (both in Texas) accounted for all of the 1,413 traffic-related denials. The Houston Police Department accounted for 908 (64.3 percent) of the denials (see table III.15); and the Fort Worth Police Department accounted for the remaining 505 denials, or 35.7 percent (see table III.13). In addition to the 1,413 denials in Houston and Fort Worth, 4 other jurisdictions denied handgun purchases to prospective handgun buyers who had outstanding misdemeanor warrants, of which an indeterminable number were for traffic offenses, according to officials from these jurisdictions.[29]

Denials Based on Administrative or Other Reasons

Denials based on administrative or other reasons accounted for 7,216 (38.9 percent) of the 18,570 handgun purchase denials in the 15 jurisdictions we analyzed (see table 2.3). These 7,216 denials were based on a variety of reasons, as table III.1 shows, but the

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[29]These four jurisdictions are Arizona (table III.2, note c); Arkansas (table III.3, note b); Kentucky (table III.6, note b); and Bossier Parish, Louisiana (table III.7, note a).

large majority involved application forms sent to the wrong law enforcement agency. It is worth noting that these denials are not based on arbitrary reasons. With respect to application forms sent to the wrong agency, Brady authorizes only the CLEO of the place of residence of the purchaser to approve the sale. Incomplete forms are also to be denied.

Of the 7,216 administrative or other denials, 7,012 (97.2 percent) were the result of gun dealers sending handgun purchase applications to the wrong law enforcement agency. Three Texas jurisdictions accounted for all the denials in this category--the city of Fort Worth had 434 denials (table III.13); Harris County had 2,608 denials (table III.14); and the city of Houston had 3,970 denials (table III.15).

Our review of denial records at the Fort Worth Police Department indicated that many of the misdirected applications may have resulted from jurisdictional confusion.[30] For example, we found that the vast majority of the Fort Worth Police Department's 434 denials in this category involved individuals with addresses near but not within the incorporated limits of the city. Although the number of missent Brady forms might suggest something more than confusion or carelessness, our analyses did not show any clear

[30]In Texas, the responsibility for performing Brady background checks on prospective handgun buyers falls on chiefs of police for residents of incorporated cities or towns and on county sheriffs for residents of unincorporated areas.

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patterns, except that the levels of missent forms remained relatively constant throughout the year. In June 1995, we shared our Fort Worth analyses with ATF headquarters and applicable field office officials who told us that ATF's response to jurisdictional confusion is to disseminate clarifying information to licensed gun dealers.

## ATF AND DOJ OFFICIALS VIEW BRADY PRIMARILY AS A MEANS TO DENY PURCHASES TO CRIMINALS

On February 28, 1994--the effective date of Brady--the Assistant Attorney General (Criminal Division) sent all U.S. Attorneys a memorandum emphasizing the "new prosecutorial opportunities" created by the act. Among other matters, this memorandum stated that:

> "When a person falsely completes a Brady form and a timely check determines that the person is ineligible to purchase a handgun, in the discretion of the prosecutor and police, an effort may be made to arrest and prosecute the person. This may involve inviting the person to pick up the handgun and arresting the person as s/he picks it up or even staking out the dealership at which the gun is scheduled to be picked up in the case of a dangerous fugitive. In the case where the handgun is actually transferred to a prohibited person because

the criminal history data check is untimely, seeking a search and/or arrest warrant and prosecuting the individual should be considered.

> "Federal prosecutors ought to pay particular attention to intelligence information known to state and local law enforcement agencies in this regard. When individuals suspected of other violent and/or drug trafficking conduct are attempting to purchase handguns and are ineligible to do so, the investigation and prosecution of such individuals ought to be regarded as a priority."

In September 1994, at a congressional hearing on the prosecution of federal gun crimes, the Assistant Attorney General (Criminal Division) testified that:

> "[Before the Brady Act] ... there was no means by which ... falsification [of handgun purchase forms] would routinely be brought to the attention of at least the U.S. Attorneys. The Brady bill, now, puts into place, with the help of the ATF working with their local police officers and law enforcement, a means by which I think we will start getting more referrals with respect to false statements on gun applications."[31]

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[31]Prosecution of Federal Gun Crimes: Hearings Before the Subcommittee on Crime and Criminal Justice of the House Committee on the Judiciary, 103d Cong., 2d Sess. 51 (1994).

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In June 1995, DOJ correspondence to congressional requesters pointed out that reliable statistics on referrals and prosecutions with respect to such false statements generally were not available and, indeed, perhaps would not be meaningful even if they were available:

> "[S]tatistics maintained by the Department's Executive Office of United States' Attorneys reflect that, since enactment of the Brady Law, a total of 162 prosecutions have been initiated in which the making of a false statement in connection with the acquisition or attempted acquisition of a firearm (18 U.S.C. Section 922(a)(6)) was the principal charge. It is not possible to determine readily the number of these prosecutions that were initiated as the result of the falsification of statements on Brady forms, as opposed to the falsification of statements on other federal firearms acquisition forms.[32] ... In addition, this number does not reflect cases in which charges may have been brought under Section 922(a)(6) as part of a larger prosecution involving other, possibly more serious charges, since some of the computer systems in operation in U.S. Attorneys' offices are able to track only the lead charge. More detailed information would require a review of the case file in each of the Section 922(a)(6) prosecutions

[32]According to an ATF official we contacted, besides the Brady form (see app. I), the only other federal firearms acquisition form is ATF Form 4473 ("Firearms Transaction Record"), which has been in use since the Gun Control Act of 1968.

reported by the United States Attorneys, a task that would be unduly burdensome to undertake.

> "Such statistics are not a meaningful measure of the effectiveness of the Brady Law. ... [T]he statute was not primarily intended as a prosecutive mechanism but rather as a means of keeping handguns out of the hands of convicted felons, fugitives, and other prohibited persons. From an enforcement perspective, the Brady Law fully serves its purpose when it succeeds in thwarting the acquisition of a firearm by such individuals. By that standard, the success of the Brady Law is reflected by the fact that, since its enactment, approximately 41,000[33] applications for the purchase of handguns have been denied."[34]

In response to our inquiries about referrals and prosecutions issues, the Acting Assistant Attorney General--who is a senior DOJ official responsible for monitoring Brady implementation--reinforced the view that the act was intended primarily to deter or prevent unauthorized individuals from obtaining handguns from federally licensed firearms dealers. In regard to the prospect of prosecuting Brady-generated cases, the Special Counsel to the

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[33]This figure represents a rounding up of 40,971, which is the number of potential denials that the Treasury Department estimated in its One-Year Progress Report (see footnote 7 in this chapter).

[34]Separately addressed letters (both dated June 21, 1995) to Senator Phil Gramm and Senator Jon Kyl from DOJ's Office of Legislative Affairs.

Acting Assistant Attorney General stated that no new resources were provided to U.S. Attorney Offices, which already must make resource allocation decisions to address competing demands, including the emphasis in recent years on prosecuting drug kingpins and pursuing other complex, significant cases.

Similar views were expressed by ATF officials in response to our inquiries. For instance, the Special Agent in Charge of the Firearms Enforcement Branch (ATF headquarters) told us that Brady is achieving its primary purpose of preventing felons from being able to purchase handguns from gun dealers. However, most U.S. Attorneys do not view the act as being a prosecutorial tool to use frequently, irrespective of the volume of referrals and potential cases involving falsified Brady forms.

In April 1995, ATF headquarters staff queried the agency's field offices to obtain an estimate of the total number of Brady-related cases referred by ATF to U.S. Attorneys Offices. The resulting cumulative estimate was that as of February 1995, a total of 250 such cases had been referred. Of the 250 referrals, 217 had been declined for prosecution, according to a DOJ Special Counsel. The DOJ official added that as of April 1995, the other referrals were still being evaluated with respect to whether fuller investigations were merited.

Later, we inquired again about the prosecutive status of the open referrals. The Special Agent in Charge of ATF's Firearms Enforcement Branch told us that as of July 1995, at least seven persons nationally had been successfully prosecuted for making false statements on the Brady handgun purchase form. This official provided us the supporting details for these prosecutions, which are presented in table 2.5.

Table 2.5: Profile of Brady Cases Prosecuted by U.S. Attorneys, as of July 1995

| Federal judicial district | Previous felony conviction(s) or other disqualifying basis falsely certified on the Brady form | Brady Act prosecution charges and results | |
|---|---|---|---|
| | | Charge/statute | Disposition |
| Louisiana Eastern District | Possession of crack cocaine | 18 U.S.C. section 922(a)(6) and 922(n) | Pled guilty; 18 months in prison and, upon release, 3 years supervision |
| Louisiana Middle District | Possession of a controlled substance | 18 U.S.C. 922(a)(6) | Pled guilty; 12 months custody |
| Rhode Island | Delivery of cocaine | Two counts of falsifying the Brady handgun purchase application form. 18 U.S.C. 922(a)(6) | Found guilty at trial; 2 years in prison, 3 years of supervised release |
| West Virginia Southern District | Assisted New York residents in obtaining false West Virginia identification | 18 U.S.C. 922(a)(6), section 2 | Pled guilty; 2 years probation |
| | Resident of New York state falsely certified West Virginia residence | 18 U.S.C. 922(a)(6), section 2 | Pled guilty; 6 months home confinement; 3 years probation |
| | Resident of New York state falsely certified West Virginia residence | 18 U.S.C. 922(a)(6), section 2 | Pled guilty; 2 years probation |
| | Resident of New York state falsely certified West Virginia residence | 18 U.S.C. 922(a)(6), section 2 | Pled guilty; 2 years probation |

Note: According to ATF's Special Agent in Charge, Firearms Enforcement Branch, U.S. Attorneys were prosecuting (as of July 1995) several additional cases referred by ATF, but no details were publicly available because judicial action was still pending.

Source: ATF's Firearms Enforcement Branch.

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As table 2.5 shows, four federal judicial districts account for the seven Brady-related prosecutions. None of the prosecutions involved prospective gun purchasers with previous convictions for violent offenses. However, three of the cases did involve individuals who lied on the Brady handgun purchase form about drug-related felony convictions. Table 2.5 also shows that the subsequent Brady prosecutions of these individuals resulted in prison or custody sentences of 12 to 24 months.

The other four cases--related gun-trafficking cases prosecuted within the Southern District of West Virginia--involved individuals who had falsified state identification cards and the Brady handgun purchase form to portray themselves as residents of West Virginia when, in fact, they were residents of New York. In all four cases, the defendants pled guilty. Three of the four defendants were sentenced to 2 years probation, and the fourth was sentenced to 6 months home confinement and 3 years probation.

## CONCLUSIONS

No comprehensive, national data existed on handgun purchase applications and denials for the first year of Brady; however, limited data from ATF's and our surveys suggested that the denial rates were around 4 percent in selected jurisdictions analyzed. In the 15 jurisdictions we analyzed, about half of the denials were to individuals with felony or misdemeanor criminal histories. Denials based on the other Brady ineligible categories were relatively few, representing only 4.1 percent of the total denials in the 15 jurisdictions.

Almost 40 percent of the total denials were because the gun dealers sent the Brady forms to the wrong CLEOs. This relatively high proportion skews the overall statistics because all of these denials occurred in 3 of the 15 jurisdictions. Further, it is not appropriate to assume that all of these purchases would have been denied if the forms had been sent to the proper CLEOs.

Although we were not able to quantify the number of Brady-related prosecutions, available information suggested that the number is relatively small nationally. DOJ views Brady as more of a deterrent than a prosecutive mechanism, and ATF estimated that most cases referred by ATF field offices to U.S. Attorneys have been declined.

CHAPTER 3

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# CHALLENGES TO BRADY: COURT CASES AND RELATED LEGAL ISSUES

Although there is widespread support for Brady in the law enforcement community, several legal challenges and the status of federal authority to penalize or redesignate nonperforming CLEOs have hampered enforcement of the act in some jurisdictions. Several sheriffs and a sheriff's association have challenged the constitutionality of the background check requirement, and most won their cases at the federal district court level. However, one of the three federal appeals courts considering the constitutionality of Brady has held that the act is constitutional.

DOJ has determined that it lacks the authority to penalize or redesignate CLEOs who choose not to check backgrounds of handgun purchasers. ATF's National Tracing Center data did not show any crime-related handgun purchases from licensed dealers in two jurisdictions where no presale background checks had been conducted.

## FEDERAL COURT DECISIONS ARE MIXED

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## Several Federal District Courts Have Ruled Against the Background Check Provision

Generally, the law enforcement community has strongly supported Brady. For example, a leading proponent of the act's provisions is the International Association of Chiefs of Police. During the extended debate leading to eventual passage of Brady, the Association expressed support for a 5-day waiting period to allow law enforcement officers an opportunity to conduct background checks on all prospective handgun purchasers.

Despite the generally widespread support of the law enforcement community, sheriffs and one sheriff's association in nine jurisdictions across the country have initiated court cases challenging the constitutionality of Brady,[35] particularly the provision directing state or local law enforcement officers to make a reasonable effort to conduct background checks.[36] The first eight

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[35]Generally, the sheriffs alleged, among other things, that the background check provision of Brady is beyond the scope of Congress' Commerce Clause powers (U.S. Const. Art. I Section 8. cl. 3) and, therefore, is inconsistent with the Tenth Amendment to the U.S. Constitution. The Commerce Clause gives Congress the exclusive authority to regulate interstate commerce. The Tenth Amendment provides that powers not delegated to the federal government are reserved to the states and to the people.

[36]Although not a party to any of the litigation, the International Association of Chiefs of Police filed briefs in many of the cases supporting the Brady Act's provision. Joining the Association in this support were various other law enforcement groups--the Major Cities Chiefs of Police, the National Association of Police Organizations, the Fraternal Order of Police, the Police Foundation, the Federal Law Enforcement Officers Association, the Police Executive Research Forum, the National Troopers Coalition,

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cases are separate filings by individual sheriffs--each having jurisdictional responsibility for one county or parish in his respective state--and the ninth and most recent case was filed by the Wyoming Sheriff's Association.[37]

As of July 1995, federal district courts had rendered decisions in six of the nine cases, and all six cases were on appeal to federal circuit courts. In five of the six decided cases, the courts have held Brady's background check provision to be unconstitutional as a violation of the Tenth Amendment. The first decision in the several challenges to Brady was Printz v. United States.[38] In that May 1994 decision, for example, the Federal District Court for Montana ruled that the background check provision substantially commandeers state executive officers and indirectly commandeers the legislative processes of the states to administer an unfunded federal program. The court observed that the CLEOs are indirectly required to allocate their resources to implement Brady instead of using those resources to address problems important to their constituents. In so ruling, the court rejected the federal government's argument that the background check provision was discretionary.

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the National Organization of Black Law Enforcement Executives, and the International Brotherhood of Police Organizations.

[37]The Wyoming Sheriff's Association has 23 member sheriffs, 1 for each of the state's 23 counties.

[38]Printz v. United States, 854 F. Supp. 1503 (D. Mont. 1994).

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The only federal district court ruling to date to hold that the Brady background check provision is consistent with the Tenth Amendment involves the case filed by a county sheriff in Texas (Koog v. United States).[39] In that case, also decided in May 1994, the Federal District Court for the Western District of Texas reasoned that Brady confers great discretion on the CLEO to determine what is a reasonable background search and that no search may be required if the circumstances dictate. The court concluded that Brady imposes only minimal duties on CLEOs.

From the government's perspective, five of the six district court decisions were adverse rulings in that the background check provision was deemed unconstitutional; therefore, DOJ has appealed the decisions. Even in these decisions, however, the courts generally left intact the other core elements of Brady, including the 5-day waiting period, and the Vermont court, for example, noted that CLEOs could perform background checks if they voluntarily chose to do so.

## Initial Federal Appeals Court Decision Upholds Brady's Background Check Provision

In September 1995, the U.S. Court of Appeals for the Ninth Circuit upheld the constitutionality of Brady, saying the federal government can require state and local law enforcement agencies to

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[39] Koog v. United States, 852 F. Supp. 1376 (W.D. Tex. 1994).

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check the records of prospective handgun buyers.[40] The court reasoned that Brady's provision that law enforcement agencies "make a reasonable effort to ascertain" the legality of a handgun purchase is a minimal burden that the federal government can impose on state and local law enforcement agencies. The court accordingly reversed the judgments of the Arizona and Montana district courts, which had held Brady unconstitutional as a violation of the Tenth Amendment (see table 3.1).[41]

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[40] Mack v. United States, 1995 U.S. App. LEXIS 25263 (Ninth Cir. Sept. 8, 1995).

[41] This ruling applies to the Brady states in the Ninth Circuit. These states are Alaska, Arizona, Montana, Nevada, and Washington.

Table 3.1: Overview of Court Cases Filed by Sheriffs Challenging the Constitutionality of Brady, as of September 1995

| State | Jurisdiction of sheriff | Federal district court information | | | Appeals status |
|---|---|---|---|---|---|
| | | Case citation or file number | Date decided | Decision for[a] | |
| Arizona | Graham County | Mack v. United States, 856 F. Supp. 1372 (D. Ariz. 1994 ) | 6-28-94 | Sheriff | District court decision reversed by the U.S. Court of Appeals for the Ninth Circuit (9-8-95). |
| Louisiana | Iberia Parish | Romero v. United States, 883 F. Supp. 1076 (W.D. La. 1994) | 12-8-94 (judgment altered 2-6-95) | Sheriff | On appeal to the U.S. Court of Appeals for the Fifth Circuit; staid pending the Koog and McGee decisions. |
| Mississippi | Forrest County | McGee v. United States, 863 F. Supp. 321 (S.D. Miss. 1994) | 6-3-94 | Sheriff | Consolidated with Koog and is on appeal to the U.S. Court of Appeals for the Fifth Circuit. |
| Montana | Ravalli County | Printz v. United States, 854 F. Supp. 1503 (D. Mont. 1994) | 5-16-94 | Sheriff | District court decision reversed by the U.S. Court of Appeals for the Ninth Circuit (9-8-95). |
| New Mexico | Otero County | Lee v. United States, (CIV. 94-1132 LH) (D. NM 1994) | Pending | | |
| North Carolina | Alamance County | Frye v. United States, (2:95CV00034) (M.D. NC 1995) | Pending | | |

| | | Federal district court information | | | |
|---|---|---|---|---|---|
| State | Jurisdiction of sheriff | Case citation or file number | Date decided | Decision for[a] | Appeals status |
| Texas | Val Verde County | <u>Koog v. United States</u>, 852 F. Supp. 1376 (W.D. Tex. 1994) | 5-31-94 | U.S. | Consolidated with <u>McGee</u> and is on appeal to the U.S. Court of Appeals for the Fifth Circuit. |
| Vermont | Orange County | <u>Frank v. United States</u>, 860 F. Supp. 1030 (D. Vt. 1994) | 8-2-94 | Sheriff | On appeal to the U.S. Court of Appeals for the Second Circuit. |
| Wyoming | Statewide | <u>Wyoming Sheriff's Association v. United States</u>, Case No. 95 CV 066 (D. Wy. 1995) | Pending | | |

[a]This refers specifically to court rulings on the Tenth Amendment constitutional challenge issue regarding the Brady background check provision.

Source: Data obtained from ATF Office of Chief Counsel and from documentation of the court decisions.

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NO BACKGROUND CHECKS HAD BEEN CONDUCTED IN TWO JURISDICTIONS

At the time of our review, no background checks were being conducted in two of the nine jurisdictions involving court challenges. However, indications were that background checks were being conducted in the other seven jurisdictions. The situation regarding each of these seven jurisdictions is as follows:

-- While district court decisions were pending in three of the cases, Brady requirements were still being implemented by the plaintiff sheriffs in the respective jurisdictions--Otero County, New Mexico; Alamance County, North Carolina; and the counties in Wyoming.

-- Although the sheriff of Forrest County, Mississippi, was relieved of the requirement to conduct the Brady background checks by the district court's ruling, he said he continues to perform the background checks so that eligible purchasers do not have to wait 5 days.

-- Also, as noted above, the sheriff of Val Verde County, Texas, lost his case in district court and, thus, is still conducting background checks.

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-- For Graham County, Arizona, and Orange County, Vermont, state-level agencies had assumed responsibility for conducting background checks. Effective October 1, 1994, the Arizona Department of Public Safety assumed a centralized role in conducting background checks for all residents of that state. In Vermont, when the Orange County sheriff refused to conduct background checks, the Vermont Department of Public Safety voluntarily assumed this responsibility in July 1994.

On the other hand, even though Brady has been in effect since February 28, 1994, indications are that no background checks on handgun purchasers have been conducted in the other two jurisdictions--Iberia Parish, Louisiana, and Ravalli County, Montana. The following sections provide more details about the situations in these two jurisdictions.

Iberia Parish, Louisiana

In March 1995, we contacted a Group Supervisor in ATF's New Orleans Area Office, whose geographic operating responsibilities include Iberia Parish, Louisiana. According to the ATF Group Supervisor:

-- After passage of Brady in November 1993, officials from the Louisiana Attorney General's Office and the Louisiana State

Police met to determine which law enforcement agency or agencies would be designated to perform background checks of prospective purchasers of handguns. The Louisiana State Police officials said their agency was not interested in serving as the CLEO for implementing Brady Act background checks. Thus, the Attorney General's Office and the State Police officials agreed that the sheriff of each parish should serve as CLEO.

-- Shortly thereafter, the Iberia Parish sheriff told dealers and ATF that he would not be performing background checks because he had insufficient resources to do so.

-- In February or March 1994, ATF staff visited the sheriff to discuss his decision not to perform Brady background checks, but the sheriff still insisted that he had insufficient resources and would not be performing background checks.

The ATF Group Supervisor told us that ATF had no authority to designate or require another law enforcement agency to perform the background checks in Iberia Parish and that as of March 1995, no agency had volunteered to take on the added responsibility. Later that month, we spoke with the sheriff of Iberia Parish. He told us that his office had never conducted any Brady background checks and that he did not know how many, if any, Brady forms had been received by his office.

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Ravalli County, Montana

In February 1995, we contacted an inspector in ATF's Portland Area Office, whose geographic responsibilities include Ravalli County, Montana. According to the ATF inspector:

-- ATF's Portland Area Office is staffed with only eight inspectors but is responsible for four states, one of which is Montana. Generally, inspectors spend most of their time on higher priority efforts and have no time for inspections related to Brady Act implementation.

-- Thus, ATF staff do not know whether the Ravalli County sheriff is conducting (or has ever conducted) any Brady background checks. ATF staff have not attempted to arrange alternative means for ensuring that background checks are conducted of Ravalli County residents who purchase handguns.

In August 1995, we contacted the Sheriff of Ravalli County, and he told us he had never conducted Brady background checks and had no plans to do so.

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## FEDERAL AGENCY AUTHORITY TO PENALIZE OR REDESIGNATE CLEOs

DOJ's Office of Legal Counsel has interpreted Brady's criminal penalty provisions to be inapplicable to state or local law enforcement officers in performance of their duties under the act and that the government, therefore, lacks the authority to prosecute such officials for violations of the act. A majority of the district courts considering the issue have either recognized or endorsed such interpretation. Moreover, responsible ATF and DOJ officials told us that neither Treasury nor DOJ has authority to redesignate CLEOs in situations where the initially designated CLEOs fail to perform their expected duties.

### Applicability of Criminal Penalties to CLEOs

Section 102(c) of Brady amends 18 U.S.C. Section 924(a) by providing that whoever knowingly violates the act's requirements for presale background checks shall be fined not more than $1,000, imprisoned for not more than 1 year, or both. In March 1994, after analyzing the application of these penalties to state and local law enforcement officials, DOJ's Office of Legal Counsel concluded that:

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"The history of the Act indicates that Congress did not envision its criminal sanctions applying to CLEOs.

"This reasoning is reinforced by the great solicitude paid to law enforcement officials in other provisions of the Act. It would be incongruous to insulate the CLEO against liability for damages . . . for providing erroneous information that prevents a sale and then turn around and subject him or her to criminal fine or imprisonment for failure to perform ministerial acts. Our conclusion is further supported by the impracticality, if not impossibility, of prosecuting a chief law enforcement officer for failing to make a 'reasonable effort.' The use of the term 'reasonable effort' reflects Congress' apparent intent to vest discretion in CLEOs by providing a flexible statutory requirement. This elasticity, though common in civil statutes, is unusual in criminal laws because it does not clearly define a punishable act. It would be difficult to prosecute a CLEO for failing to make a 'reasonable effort', and such prosecution could be subject to a Fifth Amendment due process challenge. In light of the fact that applying criminal penalties to the 'reasonable effort' requirement would be both unusual and arguably unconstitutional, we find it difficult to believe that

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Congress intended the 'reasonable effort' to be criminally enforceable."[42]

In summary, DOJ's Office of Legal Counsel concluded that 18 U.S.C. Section 924(a)(5) does not apply to state officials, and the U.S. government, therefore, lacks the authority to prosecute state or local law enforcement officials for not conducting Brady background checks. This position has been recognized and endorsed by several of the district court decisions discussed above. For example, in determining the Forrest County, Mississippi, sheriff's standing to sue, the federal district court noted that it believed the Department of Justice "is correct in its interpretation" of Brady's penalty provisions.[43]

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[42]Memorandum (dated March 16, 1994) from DOJ's Office of Legal Counsel to Attorney General Janet Reno, subject: "Application of the Criminal Penalties in the Brady Act to State or Local Law Enforcement Officers."

[43]McGee v. United States, 863 F. Supp. 321 at 324 (S.D. Miss. 1994). More recently, the U.S. Court of Appeals for the Ninth Circuit vacated, as unripe for judicial review, both the District Court of Arizona ruling that the criminal provisions apply to CLEOs and are void for vagueness, as well as the District Court of Montana ruling that the criminal provisions do not apply to CLEOs. The Court of Appeals noted that the plaintiffs in both cases had not been charged under Brady and that such charges against them were unlikely in view of DOJ's official position that the criminal sanctions of Brady do not apply to CLEOs. Mack v. United States, 1995 U.S. App. LEXIS 25263 at 9-10 (Ninth Cir. Sept. 8, 1995).

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No Specific Authority to Redesignate CLEOs

Under Brady, ATF has no specific authority to designate alternate CLEOs for conducting background checks. In our follow-up inquiries at ATF and DOJ headquarters, responsible officials told us that neither Treasury nor DOJ have authority to redesignate CLEOs when the initially designated CLEOs choose not to perform background checks.

Moreover, even regarding the initial designations of CLEOs for purposes of Brady, federal agencies had no statutory authority and also played no substantive role in the process, except for disseminating guidance and encouraging cooperation in implementing the new law. Rather, state and local officials were expected to agree among themselves who would be designated as CLEOs for purposes of conducting presale background checks.

THE EFFECTS OF NOT CONDUCTING
BACKGROUND CHECKS ARE UNKNOWN

We tried to determine whether there have been any negative effects resulting from the absence of presale background checks of handgun purchasers residing in the two jurisdictions discussed above--Iberia Parish, Louisiana, and Ravalli County, Montana. We wanted to determine, for example, whether any gun-related crimes had been committed--with a handgun purchased on or after February

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28, 1994 (the effective date of Brady)--by any resident of these jurisdictions and, if so, whether the purchaser had a criminal history or other disqualifier identifiable by a routine background check.

In response to our suggestion, ATF's National Tracing Center performed a computerized search of tracing requests received from law enforcement agencies. The search was designed to determine if any of the tracing requests involved crime scene handguns that had been purchased in either of the two jurisdictions after Brady's effective date. In structuring the computerized search, the National Tracing Center focused on all federally licensed dealers with postal address ZIP codes applicable to the two jurisdictions.

As of July 25, 1995, the Center's search revealed that a total of seven crime-tainted handguns had been purchased from dealers within the two jurisdictions. Six of the handguns had been purchased in Iberia Parish and one in Ravalli County. However, all seven purchases were made before Brady went into effect on February 28, 1994. Thus, this search of tracing requests did not specifically identify any crime-related effects stemming from the lack of background checks in the two jurisdictions.

On the other hand, since no background checks had been conducted in these two jurisdictions there is no assurance that ineligible

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persons did not purchase handguns from licensed dealers. Moreover, the Tracing Center's search covered only one jurisdiction in each state. Thus, the search did not cover the possibility that residents of one county or parish may have purchased handguns in another county or parish in their state.

## CONCLUSIONS

The effects of the legal challenges to Brady are not entirely clear because the cases are being appealed. The federal district courts have ruled in five of six cases decided as of July 1995 that CLEOs cannot be required to perform background checks. However, the decisions found the remainder of Brady's provisions severable and that they, therefore, remained operative.

In September 1995, the U.S. Court of Appeals for the Ninth Circuit upheld the constitutionality of Brady, reversing the judgments of the Arizona and Montana district courts. The appeals court reasoned that the background check provision is a minimal burden that the federal government can impose on state and local law enforcement agencies

Background checks were being conducted in seven of the nine jurisdictions where CLEOs had challenged Brady. In the other two jurisdictions, no checks were being conducted. We did not determine whether this lack of background checks resulted in

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handgun purchases by ineligible individuals.

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BRADY HANDGUN PURCHASE FORM

Form Approved: OMB No. 1512-0520 (1/31/95)

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

## STATEMENT OF INTENT TO OBTAIN A HANDGUN(S)

*Prepare in duplicate. All entries must be in ink. Before completing, please see notices and instructions on the back of this form.*

**SECTION A - TO BE COMPLETED PERSONALLY BY THE TRANSFEREE (BUYER). THE BUYER MUST PRINT ITEMS 1, 2, 3, 4, AND 5 OF THIS SECTION.**

1. TRANSFEREE'S (BUYER'S) NAME (Last, (*and maiden, if applicable*), first, middle)

2. DATE OF BIRTH (Month, day, year)

3. RESIDENCE ADDRESS (No., street, county, city, State, and ZIP code)

4. OPTIONAL INFORMATION - THE INFORMATION REQUESTED IN THIS ITEM (4) IS OPTIONAL BUT WILL HELP AVOID THE POSSIBILITY OF BEING MISIDENTIFIED AS A FELON OR OTHER PROHIBITED PERSON.

| SOCIAL SECURITY NUMBER | HEIGHT | WEIGHT | SEX |
|---|---|---|---|
| | | | |

PLACE OF BIRTH

5. STATEMENT OF TRANSFEREE (BUYER). EACH QUESTION MUST BE ANSWERED WITH "YES" OR "NO" CHECKED IN THE APPROPRIATE BOX FOR EACH QUESTION.

| | YES | NO | | YES | NO |
|---|---|---|---|---|---|
| a. Are you under indictment or information* in any court for a crime punishable by imprisonment for a term exceeding one year? *A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury. | | | c. Are you a fugitive from justice? | | |
| | | | d. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance? | | |
| b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: A "YES" answer is necessary if the judge could have given a sentence of more than one year. A "YES" answer is not required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored, and under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm.) | | | e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution? | | |
| | | | f. Have you been discharged from the Armed Forces under dishonorable conditions? | | |
| | | | g. Are you illegally in the United States? | | |
| | | | h. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship? | | |

**I hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.**

TRANSFEREE'S (BUYER'S) SIGNATURE | DATE

SECTION B - TO BE COMPLETED BY THE TRANSFEROR (SELLER) (SEE NOTICES AND INSTRUCTIONS ON REVERSE.)

6. TRADE/CORPORATE NAME, ADDRESS, AND TELEPHONE NUMBER OF TRANSFEROR (SELLER) | FEDERAL FIREARMS LICENSE NUMBER

7. THE TRANSFEREE (BUYER) HAS IDENTIFIED HIMSELF/HERSELF TO ME BY USING A DRIVER'S LICENSE OR OTHER IDENTIFICATION THAT CONTAINS THE TRANSFEREE'S (BUYER'S) NAME, DATE OF BIRTH, RESIDENCE ADDRESS AND PHOTOGRAPH.

TYPE OF IDENTIFICATION
☐ DRIVER'S LICENSE ☐ OTHER (Specify) ____________ | NUMBER ON IDENTIFICATION

8. CONTENTS OF THE STATEMENT IN SECTION A OF THIS FORM WERE RECEIVED BY
____________ OF ____________ ON ____________ BY
(Chief Law Enforcement Officer) (Law Enforcement Agency) (Date)
(Check the appropriate answer.)
☐ TELEPHONE ☐ TELEFAX ☐ IN PERSON ☐ OTHER (Specify) ____________

9. A COPY OF THE STATEMENT IN SECTION A OF THIS FORM WAS TRANSMITTED TO THE CHIEF LAW ENFORCEMENT OFFICER ON ____________ BY
(Date) (Check the appropriate answer.)
☐ MAIL ☐ TELEFAX ☐ IN PERSON ☐ OTHER (Specify) ____________

10. ON ____________ THE CHIEF LAW ENFORCEMENT OFFICER PROVIDED REASON TO BELIEVE THAT THIS TRANSFER
(Date)
☐ WOULD ☐ WOULD NOT VIOLATE FEDERAL, STATE, OR LOCAL LAWS. AGENCY IDENTIFIER ____________

11. TRANSFEROR'S (SELLER'S) SIGNATURE | TRANSFEROR'S TITLE | DATE

ATF F 5300.35 (1-94) (INTERIM)

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APPENDIX I

## INSTRUCTIONS FOR ATF F 5300.35

### NOTICE

The Brady Handgun Violence Prevention Act is effective on February 28, 1994, and imposes a 5-day waiting period on the transfer of a handgun(s).

### PRIVACY ACT

Disclosure of the individual's social security number is voluntary. Under 18 U.S.C. 923(a), ATF has the authority to solicit this information. The number may be used to verify the individual's identity.

### WARNING

Any seller who knowingly transfers a handgun(s) to any person prohibited from receiving or possessing any firearm violates the law even though the seller has met the waiting period requirements.

### INSTRUCTIONS TO TRANSFEREE (BUYER)

1. The buyer must personally complete Section A of the form and certify (sign) that the answers are true and correct.

   If the buyer is unable to read and/or write, the answers may be written by other persons, excluding the licensee. Two persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.

2. The buyer shall print the responses to Section A, Items 1, 2, 3, 4, and 5.

3. The buyer must provide a valid government-issued photo identification to the seller that contains the buyer's name, date of birth, and residence address.

### INSTRUCTIONS TO TRANSFEROR (SELLER)

NOTE: This form need not be completed if the proposed transfer of a handgun(s) is subject to any of the exceptions contained in 27 CFR 178.

1. You may use Forms 5300.35 supplied by ATF or use photocopies of such forms. If photocopies are used, the photocopies must include the instructions.

2. The Federal 5-day waiting period is inapplicable and this form need not be completed if the transfer if subject to any of the alternatives in 27 CFR 178.102(b). Generally, these include transfers (a) pursuant to an official's written statement of the buyer's need for a handgun based upon a threat to life; (b) to buyers having a State permit whose records have been checked and an official has verified eligibility to possess firearms; (c) of National Firearms Act weapons approved by ATF; and (d) certified by ATF as exempt because compliance with the waiting period is impractical. See section 178.102(b) for a detailed explanation of these alternatives.

   If the transfer is subject to an alternative, the seller must obtain the supporting documentation required by section 178.131. A handgun(s) must not be transferred to any buyer who fails to provide such information.'

3. If the proposed transfer of a handgun(s) is subject to the 5-day waiting period, the buyer must complete Section A, and the seller must complete Section B.

4. The seller must:

   (a) ensure that the buyer completes Section A and signs and dates the statement;

   (b) if the buyer's name is illegible, print the buyer's name above the name of the buyer; and

   (c) establish the identity of the buyer by requiring the buyer to provide a valid government-issued photo identification bearing the buyer's name, date of birth, and residence address.

5. Within 1 day after the buyer furnishes the statement, the seller to provide actual notice of the contents of this statement to the Chief Law Enforcement Officer of the place of residence of the buyer. (See Item 8 on the form.)

6. Within 1 day after the buyer furnishes the statement, the seller shall sign and date the form in Item 11 and transmit a copy of this form, including its instructions to the Chief Law Enforcement Officer of the place of residence of the buyer. See Item 9 on the form.)

7. The seller shall delay delivery of the handgun(s) until 5 business days (meaning days on which State Offices are open) have elapsed from the actual date the seller has furnished notice of the contents of the statement to the Chief Law Enforcement Officer. (Unless, within the 5-day period, the seller has received notice from the Chief Law Enforcement Officer of the place of residence of the buyer that the buyer's receipt or possession of the handgun(s) would not violate the law.)

8. After the seller has provided actual notice of the contents of the buyer's intent to obtain a handgun(s) to the Chief Law Enforcement Officer, this form must be maintained as part of the seller's permanent records, regardless of whether the transfer occurs.

9. If prior to the expiration of the 5-day waiting period or prior to actual delivery of the handgun(s) to the buyer, the seller receives notification from the Chief Law Enforcement Officer that the officer has reason to believe that the possession or receipt of a handgun by the buyer would violate the law, the seller is prohibited from transferring the handgun(s) to the buyer. Include in Item 10 any agency number or other identifier assigned by the Chief Law Enforcement Officer to the transaction.

10. Any seller, who after the transfer of a handgun(s) receives a report from a Chief Law Enforcement Officer containing information that the receipt or possession of the handgun(s) by the buyer would violate the law, shall within 1 business day communicate all information that the seller has about the transfer and the buyer to a) the Chief Law Enforcement Officer of the place of business of the seller and b) the Chief Law Enforcement Officer of the place of residence of the buyer. The seller may also provide this information to the local ATF office.

11. After the seller has provided a copy of this form to the Chief Law Enforcement Officer, any subsequent proposal(s) made by the same buyer to obtain a handgun(s) require the execution of a new ATF Form 5300.35.

12. After the seller has completed the handgun(s) transaction, the original ATF Form 5300.35 becomes part of the seller's permanent records. ATF Form 5300.35 must be attached to the ATF Form 4473 that reflects the handgun transfer.

### INSTRUCTIONS TO CHIEF LAW ENFORCEMENT OFFICIALS

1. This form contains the statement of intent to obtain a handgun(s) by the person identified in Section A. The seller may not lawfully deliver the handgun(s) to the buyer until 5 business days have elapsed from the date the seller furnished actual notice of the contents of this statement to you, or you have notified the seller within the 5-day period that you have no information that the buyer's receipt or possession of the handgun(s) would violate Federal, State, or local law.

2. You are required to make a reasonable effort to ascertain within the 5-day period whether the buyer's receipt or possession of a handgun(s) would violate the law, including research in whatever State and local recordkeeping systems are available to you, and in the National Crime Information Center, to include a wanted person check and the Interstate Identification Index. For your information, the receipt or possession of a handgun by a person who falls within any category of persons listed in Section A, item 5, would violate Federal law.

3. At the earliest possible time, you should advise the seller you have reason to believe that if the buyer's receipt or possession of the handgun(s) would violate the law. Unless you notify the seller that the buyer's receipt or possession of a handgun(s) would violate the law, the seller may deliver the handgun(s) to the buyer. Notification either during or after the 5-day

(Continued on reverse)

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APPENDIX I

waiting period may prevent the unlawful receipt of a handgun(s). You are not required to notify the seller of the circumstances upon which your advice was based.

4. Unless you determine that the buyer's receipt or possession of the handgun(s) may violate the law, you shall, within 20 business days from the date of the buyer's statement, destroy this form, any record containing information derived from this form, and any record created as a result of the notice of the contents of this form.

5. If you determine that the buyer is ineligible to receive or possess a handgun(s), you should maintain this form. The buyer may request that you provide the reason(s) for such determination, and you must provide such reason(s) to the buyer within 20 business days after the receipt of the request. Your retention of this form may assist you in responding to such inquiries.

DEFINITIONS

1. The term "Chief Law Enforcement Officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

2. The term "handgun" means (a) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and (b) any combination of parts from which a firearm described by (a) can be assembled.

Paperwork Reduction Act Notice

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the transferee (buyer) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. sections 922 and 923.

The estimated average burden associated with this collection is 6 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Reports Management Officer, Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, and the Office of Management and Budget, Paperwork Reduction Project (1512-0520), Washington, DC 20503.

U.S. Government Printing Office: 1994 — 384-225

DESIGNATION OF "BRADY" AND "BRADY-ALTERNATIVE" STATES

Essentially, Brady requires that federally licensed dealers who sell handguns must comply with either

-- a 5-day waiting period to facilitate background checks or

-- an applicable state's system that meets requisite standards for screening backgrounds and denying ineligible purchasers.

States in which gun dealers must comply with the 5-day waiting period have been designated by ATF as "Brady" states. States that operate an alternative system that meets certain standards have been designated "Brady-alternative" states by ATF. As of February 28, 1995, 26 states were categorized as Brady states, and the other 24 states were categorized as Brady-alternative states (see fig. II.1).

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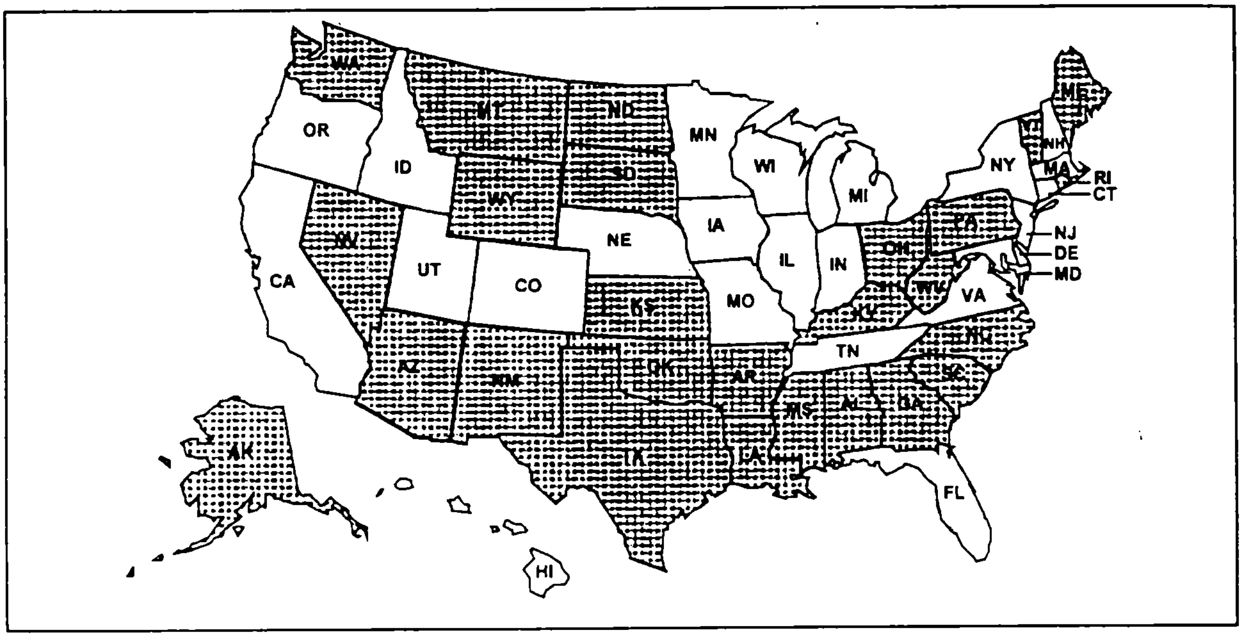
Figure II.1: Brady and Brady-Alternative States, as of February 28, 1995




States that must comply with the federal 5-day waiting period ("Brady" states). The total population (101.86 million) of these 26 states represents about 39.5 percent of the U.S. total. The state of Washington is presently considering legislation that would qualify it as a "Brady-alternative" state.

States that meet one of the alternatives to the federal 5-day waiting period ("Brady-alternative" states). The total population (156 million) of these 24 states represents about 60.5 percent of the U.S. total. Eight of these states (Colorado, Delaware, Florida, Idaho, New Hampshire, Utah, Virginia, and Wisconsin) already have an "instant check" system in place. The total population of these 8 states (39.1 million) represents about 15 percent of the U.S. total.

Source: ATF.

Each Brady-alternative state is so designated by ATF because the state has an "alternative" system to the federal 5-day waiting period.[1] Generally, the alternative system is either (1) a permit or other preapproval system or (2) a point-of-sale or instant check system. Under either alternative, state law must require that an authorized official verify that the "information available" to such official does not indicate that possession of the handgun would violate the law.

According to ATF officials, the same minimum standard for background checks applies to both Brady and Brady-alternative states. That is, at a minimum, a check of criminal history records is required to screen out all convicted felons. In applying this minimum standard, ATF recognizes that:

> "Certain State laws may enumerate the records to be searched, or require that the State official conduct 'such investigation' as is deemed necessary to determine the person's eligibility to possess a handgun. In some cases, this may encompass a check of State criminal histories only. ... [A]t a minimum, the States must be able to conduct a criminal records check of those systems of records available

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[1]At the time of the effective date (February 28, 1994) of Brady, 32 states were categorized as Brady states, and the other 18 states were categorized as Brady-alternative states.

> to the State. Thus, if these systems only contain information indicating felony convictions, such a check would be sufficient to fall within the permit or instant check exception."[2]

The presence of an alternative background check system is a necessary but not a singly sufficient criterion for a state being designated a Brady-alternative state. Regardless of the "permit" or the "instant check" labels, if a state's statutory scheme does not disqualify <u>all convicted felons</u>, ATF will not designate the jurisdiction as being a Brady-alternative state. An example is South Carolina, which has an instant check system but is still categorized as a Brady state because <u>only violent felons</u> are precluded (under South Carolina law) from possessing handguns.

Nonetheless, as of May 1995, no state had contested ATF's decisions on Brady and Brady-alternative designations, according to agency officials. Moreover, during our review, we saw indications that ATF has demonstrated a willingness to work with officials in those Brady states interested in making the legislative changes needed to achieve Brady-alternative status. At applicable times, for example, ATF Assistant Chief Counsels have worked with officials

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[2]ATF document (undated), "Rationale under the Brady Law for Categorization of States as Subject to the Federal 5-Day Waiting Period Requirement for Handgun Sales or Having Alternative Systems to the Waiting Period Requirements."

from requesting states to review whether the respective state's proposed legislative changes would meet Brady-alternative criteria. In fact, six states originally categorized as Brady states have subsequently met alternative requirements--Colorado, Idaho, Minnesota, New Hampshire, Tennessee, and Utah.

## GAO ANALYSIS OF HANDGUN PURCHASE DENIAL STATISTICS IN SELECTED JURISDICTIONS

As discussed in chapter 1, we judgmentally selected 21 jurisdictions (see table 1.1) to contact for the purpose of developing and analyzing handgun purchase application and denial statistics covering approximately the first year of Brady Act implementation--February 28, 1994, through February 28, 1995. We found that the availability and specificity of records with respect to reasons for denials varied by jurisdiction.

Moreover, we found that only 15 of the jurisdictions maintained records (some more detailed than others) showing reasons for denials (see table 2.3). For each of these 15 jurisdictions, table III.1 presents a summary of the statistics for denials, and tables III.2 through III.16 provide supporting details.

It should be emphasized that the state and local law enforcement officers have no statutory obligation to maintain or report denial statistics and, accordingly, there is no standardized format mandated for accumulating such data. Nonetheless, to the extent possible, we tried to use a common format to present the data tables in this appendix. In doing so, however, we did not substantively recategorize or otherwise "second guess" the denial

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APPENDIX III

reasons recorded in the respective state or local agency's files, even though some files (the usual case) gave only broad generic reasons (e.g., felony conviction) and other files were much more specific, with dozens of separately categorized reasons.

Table III.1: Summary Statistics of Handgun Purchase Denials for 15 Jurisdictions

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reason | Number | Percent |
| Criminal history records | Felony indictments | 103 | 0.6 |
| | Felony arrests (no disposition shown) | 365 | 2.0 |
| | Felony convictions | 1,663 | 9.0 |
| | Felony warrants | 77 | 0.4 |
| | Other felony-related denials | 6,091[a] | 32.8 |
| | Total felonies | 8,299 | 44.7 |
| | Misdemeanor warrants | 452 | 2.4 |
| | Other criminal offenses | 292 | 1.6 |
| | Total criminal offense denials | 9,043 | 48.7 |
| Other Brady ineligible categories | Fugitives from justice | 160 | 0.9 |
| | Unlawful drug users or addicts | 357 | 1.9 |
| | Adjudicated mentally defective or committed | 38 | 0.2 |
| | Dishonorable discharge from Armed Forces | 49 | 0.3 |
| | Illegal aliens | 149 | 0.8 |
| | Renounced U.S. citizenship | 0 | 0.0 |
| | Total other Brady Act denials | 753 | 4.1 |
| 1994 Crime Act | Restraining order (harassing, stalking, or threatening) | 145 | 0.8 |

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reason | Number | Percent |
| Traffic offenses | Traffic offense warrants | 1,413 | 7.6 |
| Administrative or other | Dealer transmitted form to wrong law enforcement agency | 7,012 | 37.8 |
| | Part A of Brady form incomplete/inaccurate | 36 | 0.2 |
| | Part B of Brady form incomplete/inaccurate | 88 | 0.5 |
| | Brady form incomplete (part not specified) or illegible | 14 | 0.1 |
| | Violation of state law | 33 | 0.2 |
| | Applicant presented questionable or invalid identification | 21 | 0.1 |
| | Form delivered by regular instead of registered mail | 9 | 0.0 |
| | Applicant under legal age to purchase handgun | 2 | 0.0 |
| | Copy of Brady form not transmitted to law enforcement agency within 1 day | 1 | 0.0 |
| | Total administrative or other denials | 7,216 | 38.9 |
| Grand total | | 18,570[b] | 100.1[c] |

[a]Denial of these 6,091 applications was for felony-related reasons and involved 5 of the 15 jurisdictions we analyzed--Kentucky; Ohio; South Carolina; Harris County, Texas; and Houston, Texas. In these jurisdictions, the records available for our review did not specify the status (e.g., indictment, arrest, or conviction) of the felony offenses.

[b]The total number of denials (18,570) represents 4.8 percent of the total (384,301) handgun purchase applications processed by the 15 jurisdictions through February 28, 1995.

[c]This percentage does not add to 100 percent because of rounding.

Source: GAO analysis of data from the 15 jurisdictions.

Table III.2: Handgun Purchase Denial Statistics for the State of Arizona, October 1, 1994-February 28, 1995

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reasons | Number | Percent |
| Criminal history records | Felony indictments | 0 | 0 |
| | Felony arrests (no disposition shown) | 0 | 0 |
| | Felony convictions | 619 | 66.7 |
| | Felony warrants | 37[b] | 4.0 |
| | Total felonies | 656 | 70.7 |
| | Misdemeanor warrants | 272[c] | 29.3 |
| | Other criminal offenses | 0 | 0 |
| | Total criminal offense denials | 928 | 100.0 |
| Other Brady Act ineligible categories | Fugitives from justice | 0 | 0 |
| | Unlawful drug users or addicts | 0 | 0 |
| | Adjudicated mentally defective or committed | 0 | 0 |
| | Dishonorable discharge from Armed Forces | 0 | 0 |
| | Illegal aliens | 0 | 0 |
| | Renounced U.S. citizenship | 0 | 0 |
| | Total other Brady Act ineligible category denials | 0 | 0 |
| 1994 Crime Act | Restraining order (harassing, stalking, or threatening) | 0 | 0 |
| Traffic offenses | Traffic offense warrants | 0 | 0 |
| Administrative or other | | 0 | 0 |
| Grand total | | 928[d] | 100.0 |

Note: The Arizona Department of Public Safety began performing Brady background checks on October 1, 1994. Prior to that time, background checks were performed by local law enforcement officers.

[a]When an applicant's criminal history record includes an outstanding felony warrant, the Department's policy is to confirm the active status of the warrant, and if it is still active, to forward it to the Department's Fugitive Detail Unit, which is responsible for serving the warrant.

[b]Denial of these 272 applications was based on the existence of outstanding misdemeanor warrants. According to a Department spokesperson, these misdemeanor warrants were issued for offenses ranging from bad checks and theft to fraud and

traffic violations. The spokesperson told us that there is no state or local handgun law prohibiting persons from purchasing a handgun if they have been found guilty of a misdemeanor offense; however, the Department considers such individuals to be fugitives from justice if their criminal history records include any outstanding warrants.

[c]The number of denials (928) represents 2.3 percent of the total (40,185) handgun purchase applications processed by the Arizona Department of Public Safety through February 28, 1995.

Source: Arizona Department of Public Safety.

Table III.3: Handgun Purchase Denial Statistics for the State of Arkansas, February 28, 1994-February 28, 1995

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reasons | Number | Percent |
| Criminal history records | Felony indictments | 0 | 0 |
| | Felony arrests (no disposition shown) | 143 | 37.9 |
| | Felony convictions | 180 | 47.7 |
| | Felony warrants | 9[a] | 2.4 |
| | Total felonies | 332 | 88.1 |
| | Misdemeanor warrants | 42[b] | 11.1 |
| | Other criminal offenses | 0 | 0 |
| | Total criminal offense denials | 374 | 99.2 |
| Other Brady Act ineligible categories | Fugitives from justice | 0 | 0 |
| | Unlawful drug users or addicts | 0 | 0 |
| | Adjudicated mentally defective or committed | 3[c] | 0.8 |
| | Dishonorable discharge from Armed Forces | 0 | 0 |
| | Illegal aliens | 0 | 0 |
| | Renounced U.S. citizenship | 0 | 0 |
| | Total other Brady Act ineligible category denials | 3 | 0.8 |
| 1994 Crime Act | Restraining order (harassing, stalking, or threatening) | 0 | 0 |
| Traffic offenses | Traffic offense warrants | 0 | 0 |
| Administrative or other | | 0 | 0 |
| Grand total | | 377[d] | 100.0 |

[a]When an applicant's criminal history record includes an outstanding felony warrant, the Arkansas State Police's policy is to contact and provide the originating agency with the pertinent information.

[b]Denial of these 42 applications was based on the existence of outstanding misdemeanor warrants. According to a State Police spokesperson, these misdemeanor warrants were issued for offenses ranging from hot checks to theft to traffic violations. As of January 1, 1995, however, the State Police no longer denies handgun purchases based on outstanding misdemeanor warrants. Reportedly, the State Police made this change after consulting ATF officials, who opined that such denials were contrary to the intent of Brady.

[c]The State Police spokesperson told us that denial of these three applications was based upon criminal history records showing (1) a verdict of not guilty by reason of insanity or (2) a commitment to a mental institution.

[d]The number of denials (377) represents 1.3 percent of the total (27,933) handgun purchase applications processed by the Arkansas State Police through February 28, 1995.

Source: Arkansas State Police.

Table III.4: Handgun Purchase Denial Statistics for Clayton County, Georgia, February 28, 1994-February 28, 1995

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reasons | Number | Percent |
| Criminal history records | Felony indictments | 0 | 0 |
| | Felony arrests (no disposition shown) | 65 | 44.5 |
| | Felony convictions | 41 | 28.1 |
| | Felony warrants | 0 | 0 |
| | Total felonies | 106 | 72.6 |
| | Misdemeanor warrants | 0 | 0 |
| | Other criminal offenses | 0 | 0 |
| | Total criminal offense denials | 106 | 72.6 |
| Other Brady Act ineligible categories | Fugitives from justice | 27[a] | 18.5 |
| | Unlawful drug users or addicts | 0 | 0 |
| | Adjudicated mentally defective or committed | 9[b] | 6.2 |
| | Dishonorable discharge from Armed Forces[a] | 0 | 0 |
| | Illegal aliens | 0 | 0 |
| | Renounced U.S. citizenship | 0 | 0 |
| | Total other Brady Act ineligible category denials | 36 | 24.7 |
| 1994 Crime Act | Restraining order (harassing, stalking, or threatening) | 1 | 0.7 |
| Traffic offenses | Traffic offense warrants | 0 | 0 |
| Administrative or other | Applicant presented questionable identification | 3 | 2.1 |
| Grand total | | 146[c] | 100.0 |

[a]When an applicant's criminal history record shows the applicant is a fugitive from justice and the applicant resides in Clayton County, the Sheriff's policy is to arrest the individual. However, if an applicant's criminal history record shows the applicant is a fugitive from justice but the applicant does not reside in Clayton County, the Office's policy is to contact and provide the originating agency with the pertinent information.

[b]According to a spokesperson for the Sheriff, denial of these nine applications was based on probate court records or other official records involving the commitment of individuals to a mental institution.

[c]The number of denials (146) represents 5.9 percent of the total (2,484) handgun purchase applications processed by the Clayton County Sheriff's Office through February 28, 1995.

Source: Clayton County, Georgia, Sheriff's Office.

Table III.5: Handgun Purchase Denial Statistics for Fulton County, Georgia, February 28, 1994-February 28, 1995

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reasons | Number | Percent |
| Criminal history records | Felony indictments | 0 | 0 |
| | Felony arrests (no disposition shown) | 0 | 0 |
| | Felony convictions | 230 | 89.8 |
| | Felony warrants | 26[a] | 10.2 |
| | Total felonies | 256 | 100.0 |
| | Misdemeanor warrants | 0 | 0 |
| | Other criminal offenses | 0 | 0 |
| | Total criminal offense denials | 256 | 100.0 |
| Other Brady Act ineligible categories | Fugitives from justice | 0 | 0 |
| | Unlawful drug users or addicts | 0 | 0 |
| | Adjudicated mentally defective or committed | 0 | 0 |
| | Dishonorable discharge from Armed Forces[a] | 0 | 0 |
| | Illegal aliens | 0 | 0 |
| | Renounced U.S. citizenship | 0 | 0 |
| | Total other Brady Act ineligible category denials | 0 | 0 |
| 1994 Crime Act | Restraining order (harassing, talking, or threatening) | 0 | 0 |
| Traffic offenses | Traffic offense warrants | 0 | 0 |
| Administrative or other | | 0 | 0 |
| Grand total | | 256[b] | 100.0 |

[a]When an applicant's criminal history record includes an outstanding felony warrant, the Fulton County Sheriff's policy is to arrest the applicant if (1) the individual is a resident of the state of Georgia or (2) the individual is not a Georgia resident but the originating agency is willing to extradite the individual for trial. However, if the applicant is a not a Georgia resident and the originating agency is unwilling to extradite the individual for trial, the Sheriff's Department will deny the handgun but take no further enforcement action.

[b]The number of denials (256) represents 4.8 percent of the total (5,369) handgun purchase applications processed by the Fulton County Sheriff's Department through February 28, 1995.

Source: Fulton County, Georgia, Sheriff's Department.

Table III.6: Handgun Purchase Denial Statistics for the State of Kentucky, February 28, 1994-February 25, 1995

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reasons | Number | Percent |
| Criminal history records | Felony indictments | 0 | 0 |
| | Felony arrests (no disposition shown) | 0 | 0 |
| | Felony convictions | 0 | 0 |
| | Felony warrants | 0 | 0 |
| | Total felonies | 1,895[a] | 92.7 |
| | Misdemeanor warrants | 8[b] | 0.4 |
| | Other criminal offenses | 0 | 0 |
| | Total criminal offense denials | 1,903 | 93.1 |
| Other Brady Act ineligible categories | Fugitives from justice | 0 | 0 |
| | Unlawful drug users or addicts | 0 | 0 |
| | Adjudicated mentally defective or committed | 0 | 0 |
| | Dishonorable discharge from Armed Forces | 0 | 0 |
| | Illegal aliens | 0 | 0 |
| | Renounced U.S. citizenship | 0 | 0 |
| | Total other Brady Act ineligible category denials | 0 | 0 |
| 1994 Crime Act | Restraining order (harassing, stalking, or threatening) | 142[c] | 6.9 |
| Traffic offenses | Traffic offense warrants | 0 | 0 |
| Administrative or other | | 0 | 0 |
| Grand total | | 2,045[d] | 100.0 |

[a]Of these 1,895 denials, 13 were based on outstanding felony warrants. When an applicant's criminal history record includes an outstanding felony warrant, the Kentucky State Police's policy is to contact and provide the originating agency with the pertinent information. Denial of the other 1,882 applications was also for felony-related reasons; however, the State Police's records available for our review did not specify the status (e.g., indictment, arrest, or conviction) of the offenses.

[b]Denial of these eight applications was based on the existence of outstanding misdemeanor warrants. According to a State Police spokesperson, these misdemeanor warrants were issued for offenses ranging from making threats to

disorderly conduct to traffic violations. The spokesperson told us that there is no state or local law prohibiting persons from purchasing a handgun if they have been found guilty of a misdemeanor offense; however, the State Police considers such individuals to be fugitives from justice if their criminal history records include any outstanding warrants.

[c]The State Police spokesperson also told us that denial of these 142 applications was based on the existence of domestic violence orders, which are similar to restraining orders but expire (under Kentucky law) after 1 year.

[d]The number of denials (2,045) represents 2.9 percent of the total (69,420) handgun purchase applications processed by the Kentucky State Police through February 25, 1995.

Source: Kentucky State Police.

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Table III.7: Handgun Purchase Denial Statistics for Bossier Parish, Louisiana, February 28, 1994-February 28, 1995

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reasons | Number | Percent |
| Criminal history records | Felony indictments | 0 | 0 |
| | Felony arrests (no disposition shown) | 0 | 0 |
| | Felony convictions | 26 | 53.1 |
| | Felony warrants | 0 | 0 |
| | Total felonies | 26 | 53.1 |
| | Misdemeanor warrants | 21[a] | 42.9 |
| | Other criminal offenses | 0 | 0 |
| | Total criminal offense denials | 47 | 95.9 |
| Other Brady Act ineligible categories | Fugitives from justice | 0 | 0 |
| | Unlawful drug users or addicts | 0 | 0 |
| | Adjudicated mentally defective or committed | 0 | 0 |
| | Dishonorable discharge from Armed Forces | 0 | 0 |
| | Illegal aliens | 0 | 0 |
| | Renounced U.S. citizenship | 0 | 0 |
| | Total other Brady Act ineligible category denials | 0 | 0 |
| 1994 Crime Act | Restraining order (harassing, stalking, or threatening) | 0 | 0 |
| Traffic offenses | Traffic offense warrants | 0 | 0 |
| Administrative or other | Applicants under legal age to purchase handgun | 2 | 4.1 |
| Grand total | | 49[b] | 100.0 |

[a]Denial of these 21 applications was based upon the existence of outstanding misdemeanor warrants. According to a Bossier Parish Sheriff's spokesperson, the misdemeanor offenses for which these warrants were issued ranged from disturbing the peace to traffic tickets. The Department spokesperson told us that there is no state or local law prohibiting persons from purchasing a handgun if they have been found guilty of a misdemeanor offense; however, the Department considers such individuals to be fugitives from justice if their criminal history records include any outstanding warrants.

[b]The number of denials (49) represents 2.5 percent of the total (1,983) handgun purchase applications processed by the Bossier Parish Sheriff's Department through February 28, 1995.

Source: Bossier Parish, Louisiana, Sheriff's Department.

Table III.8: Handgun Purchase Denial Statistics for Caddo Parish, Louisiana, February 28, 1994-February 28, 1995

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reasons | Number | Percent |
| Criminal history records | Felony indictments | 0 | 0 |
| | Felony arrests (no disposition shown) | 0 | 0 |
| | Felony convictions | 155 | 70.5 |
| | Felony warrants | 0 | 0 |
| | Total felonies | 155 | 70.5 |
| | Misdemeanor warrants | 0 | 0 |
| | Other criminal offenses | 65[a] | 29.5 |
| | Total criminal offense denials | 220 | 100.0 |
| Other Brady Act ineligible categories | Fugitives from justice | 0 | 0 |
| | Unlawful drug users or addicts | 0 | 0 |
| | Adjudicated mentally defective or committed | 0 | 0 |
| | Dishonorable discharge from Armed Forces | 0 | 0 |
| | Illegal aliens | 0 | 0 |
| | Renounced U.S. citizenship | 0 | 0 |
| | Total other Brady Act ineligible category denials | 0 | 0 |
| 1994 Crime Act | Restraining order (harassing, stalking, or threatening) | 0 | 0 |
| Traffic offenses | Traffic offense warrants | 0 | 0 |
| Administrative or other | | 0 | 0 |
| Grand total | | 220[b] | 100.0 |

[a]Denial of these 65 applications was based on the existence of outstanding warrants; however, the Caddo Parish Sheriff's records available for our review did not specify the type (e.g., felony or misdemeanor) of criminal offense involved. According to a spokesperson for the Sheriff, there is no state or local law prohibiting persons from purchasing a handgun if they have been found guilty of a misdemeanor offense; however, the Sheriff's Office considers such individuals to be fugitives from justice if their criminal history records include any outstanding warrants.

[b]The number of denials (220) represents 3.8 percent of the total (5,727) handgun purchase applications processed by the Caddo Parish Sheriff's Office through February 28, 1995.

Source: Caddo Parish, Louisiana, Sheriff's Office.

Table III.9: Handgun Purchase Denial Statistics for the State of Nevada, February 28, 1994-February 28, 1995

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reasons | Number | Percent |
| Criminal history records | Felony indictments | 80 | 15.1 |
| | Felony arrests (no disposition shown) | 155 | 29.2 |
| | Felony convictions | 232 | 43.7 |
| | Felony warrants | 0 | 0 |
| | Total felonies | 467 | 87.9 |
| | Misdemeanor warrants | 0 | 0 |
| | Other criminal offenses | 0 | 0 |
| | Total criminal offense denials | 467 | 87.9 |
| Other Brady Act ineligible categories | Fugitives from justice | 47[a] | 8.9 |
| | Unlawful drug users or addicts | 0 | 0 |
| | Adjudicated mentally defective or committed | 1[b] | 0.2 |
| | Dishonorable discharge from Armed Forces | 4[c] | 0.8 |
| | Illegal aliens | 10[d] | 1.9 |
| | Renounced U.S. citizenship | 0 | 0 |
| | Total other Brady Act ineligible category denials | 62 | 11.7 |
| 1994 Crime Act | Restraining order (harassing, stalking, or threatening) | 2 | 0.4 |
| Traffic offenses | Traffic offense warrants | 0 | 0 |
| Administrative or other | | 0 | 0 |
| Grand total | | 531[e] | 100.0 |

[a]When an applicant's criminal history record shows the applicant is a fugitive from justice, the Nevada Department of Motor Vehicles and Public Safety's policy is to contact and provide the originating agency the pertinent information.

[b]According to a Department spokesperson, denial of this one application was based on a criminal record showing the results of a mental competency adjudication.

[c]The Department spokesperson told us that denial of these four applications was based on criminal history records showing arrests for being absent without leave from the military.

[d]The Department spokesperson also told us that the denial of these 10 applications was based on criminal history records showing arrest and deportation hearings, which show the applicants were not legally residing in the United States. In such cases, the Department contacts and provides the Immigration and Naturalization Service with the pertinent information.

[e]The number of denials (531) represents 1.4 percent of the total (38,719) handgun purchase applications processed by the Nevada Department of Motor Vehicles and Public Safety through February 28, 1995.

Source: Nevada Department of Motor Vehicles and Public Safety.

Table III.10: Handgun Purchase Denial Statistics for the State of Ohio, February 28, 1994-February 28, 1995

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reasons | Number | Percent |
| Criminal history records | Felony indictments | 0 | 0 |
| | Felony arrests (no disposition shown) | 0 | 0 |
| | Felony convictions | 0 | 0 |
| | Felony warrants | 0 | 0 |
| | Total felonies | 376[a] | 92.6 |
| | Misdemeanor warrants | 0 | 0 |
| | Other criminal offenses | 0 | 0 |
| | Total criminal offense denials | 376 | 92.6 |
| Other Brady Act ineligible categories | Fugitives from justice | 0 | 0 |
| | Unlawful drug users or addicts | 0 | 0 |
| | Adjudicated mentally defective or committed | 6[b] | 1.5 |
| | Dishonorable discharge from Armed Forces | 21[c] | 5.2 |
| | Illegal aliens | 0 | 0 |
| | Renounced U.S. citizenship | 0 | 0 |
| | Total other Brady Act ineligible category denials | 27 | 6.7 |
| 1994 Crime Act | Restraining order (harassing, stalking, or threatening) | 0 | 0 |
| Traffic offenses | Traffic offense warrants | 0 | 0 |
| Administrative or other | Brady form incomplete/inaccurate | 3 | 0.7 |
| Grand total | | 406[d] | 100.0 |

[a]Denial of these 376 applications was for felony-related reasons; however, the Ohio Bureau of Criminal Identification and Investigations' records available for our review did not specify the status (e.g., indictment, arrest, or conviction) of the offense.

[b]According to a Bureau spokesperson, the denial of these six applications was based upon state mental hospital records.

[c]The spokesperson told us that the denial of these 21 applications was based upon criminal history records showing that the applicants had been arrested for being absent without leave from the military.

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[d]The number of denials (406) represents 0.6 percent of the total (67,101) handgun purchase applications processed by the Ohio Bureau of Criminal Identification and Investigation through February 28, 1995.

Source: Ohio Bureau of Criminal Identification and Investigation.

Table III.11: Handgun Purchase Denial Statistics for the State of South Carolina, February 28, 1994-February 28, 1995

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reasons | Number | Percent |
| Criminal history records | Felony indictments | 0 | 0 |
| | Felony arrests (no disposition shown) | 0 | 0 |
| | Felony convictions | 0 | 0 |
| | Felony warrants | 0 | 0 |
| | Total felonies | 1,903[a] | 96.1 |
| | Misdemeanor warrants | 1 | 0.1 |
| | Other criminal offenses | 0 | 0 |
| | Total criminal offense denials | 1,904 | 96.2 |
| Other Brady Act ineligible categories | Fugitives from justice | 27[b] | 1.4 |
| | Unlawful drug users or addicts | 0 | 0 |
| | Adjudicated mentally defective or committed | 5[c] | 0.3 |
| | Dishonorable discharge from Armed Forces | 8[d] | 0.4 |
| | Illegal aliens | 3[e] | 0.2 |
| | Renounced U.S. citizenship | 0 | 0 |
| | Total other Brady Act ineligible category denials | 43 | 2.2 |
| 1994 Crime Act | Restraining order (harassing, stalking, or threatening) | 0 | 0 |
| Traffic offenses | Traffic offense warrants | 0 | 0 |
| Administrative or other | Violation of state law | 33[f] | 1.7 |
| Grand total | | 1,980[g] | 100.0 |

[a]Denial of these 1,903 applications was based on criminal history records involving felonies and/or misdemeanors. According to a South Carolina State Law Enforcement Division spokesperson, all of the misdemeanor-related denials (an indeterminable number) involved offenses that, under South Carolina law, could have resulted in sentences of more than 2 years. Regarding the felony-related denials, the Division's records available for our review did not specify the status (e.g., indictment, arrest, or conviction) of the offense.

[b]When an applicant's criminal history record shows the applicant is a fugitive from justice, the Division's policy is to confirm the active status of the warrant, and, if it is still active, to contact the local (city or county) law enforcement agency within the jurisdiction where the applicant resides. The Division also contacts and provides the originating agency with the pertinent information.

[c]The Division spokesperson told us that these five applications were initially approved and the applicants purchased handguns; however, after relatives of the applicants contacted the Division and submitted physicians' statements confirming the applicants had previously been committed to a mental institution, the Division reversed the approvals and retrieved the handguns.

[d]The Division spokesperson also told us that the denial of these eight applications was based on criminal history records and subsequent contacts with the originating agency and military officials to confirm the applicants' dishonorable discharges from the Armed Forces.

[e]The Division spokesperson told us that denial of these three applications was based upon criminal history records and contacts with the arresting or originating agency officials, who confirmed the applicants had no valid identification. In such cases, the Division contacts and provides the Immigration and Naturalization Service with the pertinent information.

[f]Denial of these 33 applications was based on South Carolina law, which prohibits the purchase of more than 1 handgun within a 30-day period.

[g]The number of denials (1,980) represents 3.2 percent of the total (62,812) handgun purchase applications processed by the South Carolina State Law Enforcement Division through February 28, 1995.

Source: South Carolina State Law Enforcement Division.

Table III.12: Handgun Purchase Denial Statistics for Abilene, Texas, February 28, 1994-February 28, 1995

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reasons | Number | Percent |
| Criminal history records | Felony indictments | 0 | 0 |
| | Felony arrests (no disposition shown) | 2 | 11.1 |
| | Felony convictions | 9[a] | 50.0 |
| | Felony warrants | 0 | 0 |
| | Total felonies | 11 | 61.1 |
| | Misdemeanor warrants | 0 | 0 |
| | Other criminal offenses | 0 | 0 |
| | Total criminal offense denials | 11 | 61.1 |
| Other Brady Act ineligible categories | Fugitives from justice | 2[b] | 11.1 |
| | Unlawful drug users or addicts | 2[c] | 11.1 |
| | Adjudicated mentally defective or committed | 0 | 0 |
| | Dishonorable discharge from Armed Forces | 0 | 0 |
| | Illegal aliens | 2[d] | 11.1 |
| | Renounced U.S. citizenship | 0 | 0 |
| | Total other Brady Act ineligible category denials | 6 | 33.3 |
| 1994 Crime Act | Restraining order (harassing, stalking, or threatening) | 0 | 0 |
| Traffic offenses | Traffic offense warrants | 0 | 0 |
| Administrative or other | Applicant presented questionable identification | 1 | 5.6 |
| Grand total | | 18[e] | 100.0 |

[a]According to the Abilene Police Department's records, denial of one of these nine applications was based on the applicant answering "yes" to the question, "Have you ever been convicted in any court of a crime punishable by imprisonment for a term exceeding one year?"

[b]When an applicant's criminal history record shows the applicant is a fugitive from justice, the Department's policy is to confirm that the warrant is active, and if so, to arrest the applicant.

[c]According to a Department spokesperson, denial of these two applications was based on the applicants' criminal history records involving arrests for drug offenses by local law enforcement officials.

[d]The Department spokesperson told us that denial of these two applications was based on the applicants answering "yes" to the question, "Are you illegally in the United States?" In such cases, the Department denies the handgun application but takes no further enforcement action.

[e]The number of denials (18) represents 1 percent of the total (1,876) handgun purchase applications processed by the Abilene Police Department through February 28, 1995.

Source: Abilene, Texas, Police Department.

Table III.13: Handgun Purchase Denial Statistics for Fort Worth, Texas, February 28, 1994-March 3, 1995

| Category | Reasons | Denied applications: Number | Denied applications: Percent |
|---|---|---|---|
| Criminal history records | Felony indictments | 23 | 1.8 |
| | Felony arrests (no disposition shown) | 0 | 0 |
| | Felony convictions | 112 | 8.7 |
| | Felony warrants | 3[a] | 0.2 |
| | Total felonies | 138 | 10.7 |
| | Misdemeanor warrants | 58[b] | 4.5 |
| | Other criminal offenses | 1[c] | 0.1 |
| | Total criminal offense denials | 197 | 15.3 |
| Other Brady Act ineligible categories | Fugitives from justice | 0 | 0 |
| | Unlawful drug users or addicts | 0 | 0 |
| | Adjudicated mentally defective or committed | 7[d] | 0.5 |
| | Dishonorable discharge from Armed Forces | 0 | 0 |
| | Illegal aliens | 2[e] | 0.2 |
| | Renounced U.S. citizenship | 0 | 0 |
| | Total other Brady Act ineligible category denials | 9 | 0.7 |
| 1994 Crime Act | Restraining order (harassing, stalking, or threatening) | 0 | 0 |
| Traffic offenses | Traffic offense warrants | 505 | 39.2 |
| Administrative or other | Dealer transmitted form to wrong law enforcement agency | 434 | 33.7 |
| | Brady form incomplete/inaccurate | 127[f] | 9.9 |
| | Brady form illegible | 5[g] | 0.4 |
| | Form delivered by regular versus registered mail | 9 | 0.7 |
| | Copy of Brady form not transmitted to law enforcement agency within 1 day | 1 | 0.1 |
| | Applicant presented invalid identification | 1 | 0.1 |
| | Total administrative denials | 577 | 44.8 |
| Grand total | | 1,288[h] | 100.0 |

[a]When an applicant's criminal history record includes an outstanding felony warrant, the Fort Worth Police Department's policy is to confirm the active status of the warrant, and if it is still active, to forward it to the Department's Fugitive Section, which is responsible for the service of the warrant.

[b]Denial of these 58 applications was based on the existence of outstanding misdemeanor warrants. The misdemeanor warrants were issued for offenses ranging from assault and criminal mischief to hot checks and theft. According to a Department spokesperson, there is no state or local law prohibiting persons from purchasing a handgun if they have been found guilty of a misdemeanor offense; however, the Department considers such individuals to be fugitives from justice if their criminal history records include any outstanding warrants.

[c]Denial of this application was based on a criminal history record; however, the Department's records available for our review did not specify the type (e.g., felony or misdemeanor) of offense.

[d]Denial of these seven applications was based on records maintained by the Tarrant County Mental Health Center.

[e]The Department spokesperson told us that denial of these two applications was based upon criminal history records showing that the applicants were not legally residing in the United States. In such cases, the Department denies the handgun application but takes no further enforcement action.

[f]Of these 127 applications, 33 were denied because Part A of the Brady form was incomplete or inaccurate, 88 were denied because Part B was incomplete or inaccurate, and 6 others were denied because an unspecified part of the Brady form was incomplete or inaccurate.

[g]These five applications were denied because a facsimile of the Brady form that was provided by gun dealers was illegible.

[h]The number of denials (1,288) represents 14.5 percent of the total (8,904) handgun purchase applications processed by the Fort Worth Police Department through March 3, 1995.

Source: Fort Worth, Texas, Police Department.

Table III.14: Handgun Purchase Denial Statistics for Harris County, Texas, February 28, 1994-February 28, 1995

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reasons | Number | Percent |
| Criminal history records | Felony indictments | 0 | 0 |
| | Felony arrests (no disposition shown) | 0 | 0 |
| | Felony convictions | 0 | 0 |
| | Felony warrants | 0 | 0 |
| | Total felonies | 1,012[a] | 26.0 |
| | Misdemeanor warrants | 0 | 0 |
| | Other criminal offenses | 226[b] | 5.8 |
| | Total criminal offense denials | 1,238 | 31.8 |
| Other Brady Act ineligible categories | Fugitives from justice | 0 | 0 |
| | Unlawful drug users or addicts | 0 | 0 |
| | Adjudicated mentally defective or committed | 1[c] | 0.0 |
| | Dishonorable discharge from Armed Forces | 6[d] | 0.2 |
| | Illegal aliens | 20[e] | 0.5 |
| | Renounced U.S. citizenship | 0 | 0 |
| | Total other Brady Act ineligible category denials | 27 | 0.7 |
| 1994 Crime Act | Restraining order (harassing, stalking, or threatening) | 0 | 0 |
| Traffic offenses | Traffic offense warrants | 0 | 0 |
| Administrative or other | Dealer transmitted form to wrong law enforcement agency | 2,608 | 67.0 |
| | Applicant presented questionable identification | 16 | 0.4 |
| | Brady form incomplete/inaccurate | 3 | 0.1 |
| | Total administrative denials | 2,627 | 67.5 |
| Grand total | | 3,892[f] | 100.0 |

[a]Denial of 129 these 1,012 applications was for felony arrests, but the final disposition was not shown in the criminal history records. Denial of the

remaining 883 applications was also for felony-related reasons; however, the Harris County Sheriff's records available for our review did not specify the status (e.g., indictment, arrest, or conviction) of the offense.

[b]Denial of these 226 applications was based on outstanding warrants; however, the Department's records available for our review did not specify the type (e.g., felony or misdemeanor) of criminal offense involved.

[c]According to a Department spokesperson, denial of this application was based on a probate court record or a criminal history record involving the commitment of the individual to a mental institution.

[d]The Department spokesperson told us that denial of these five applications was based on criminal history records involving a dishonorable discharge from the Armed Forces.

[e]The Department spokesperson also told us that denial of these 20 applications was based on criminal history records showing that the applicants were not legal residents of the United States.

[f]The number of denials (3,892) represents 26.8 percent of the total (14,514) handgun purchase applications processed by the Harris County Sheriff's Department through February 28, 1995. An indeterminable portion of these denied applications were later approved based on information subsequently provided by the applicant.

Source: Harris County, Texas, Sheriff's Department.

Table III.15: Handgun Purchase Denial Statistics for Houston, Texas, February 28, 1994-February 28, 1995

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reasons | Number | Percent |
| Criminal history records | Felony indictments | 0 | 0 |
| | Felony arrests (no disposition shown) | 0 | 0 |
| | Felony convictions | 0 | 0 |
| | Felony warrants | 0 | 0 |
| | Total felonies | 905[a] | 14.3 |
| | Misdemeanor warrants | 0 | 0 |
| | Other criminal offenses | 0 | 0 |
| | Total criminal offense denials | 905 | 14.3 |
| Other Brady Act ineligible categories | Fugitives from justice | 57[b] | 0.9 |
| | Unlawful drug users or addicts | 355[c] | 5.6 |
| | Adjudicated mentally defective or committed | 6[d] | 0.1 |
| | Dishonorable discharge from Armed Forces | 9[e] | 0.1 |
| | Illegal aliens | 112[f] | 1.8 |
| | Renounced U.S. citizenship | 0 | 0 |
| | Total other Brady Act ineligible category denials | 539 | 8.5 |
| 1994 Crime Act | Restraining order (harassing, stalking, or threatening) | 0 | 0 |
| Traffic offenses | Traffic offense warrants | 908 | 14.4 |
| Administrative or other | Dealer transmitted form to wrong law enforcement agency | 3,970 | 62.8 |
| Grand total | | 6,322[g] | 100.0 |

[a]Denial of these 905 applications was for felony-related reasons; however, the Houston Police Department's records available for our review did not specify the status (e.g., indictment, arrest, or conviction) of the offense.

[b]When an applicant's criminal history record shows the applicant is a fugitive from justice, the Department's policy is to provide the pertinent information to the Department's Fugitive Detail Division, which is responsible for the service of the warrant.

[c]According to a Department spokesperson, denial of these 355 applications was based on criminal history records showing that felony drug offenses had been committed or a misdemeanor drug conviction received within 5 years of the date of application; however, the Department's records available for our review did not specify the type (e.g., felony or misdemeanor) of criminal offense involved.

[d]The Department spokesperson told us that denial of these six applications was based on criminal history records showing the results of mental competency adjudications.

[e]The Department spokesperson also told us that denial of these nine applications was based on criminal history records showing arrests for being absent without leave from the military.

[f]The Department spokesperson told us that denial of these 112 applications was based on criminal history records involving the violation of immigration laws. An indeterminable portion of the denials was because the applicants were not legally residing in the United States. Similarly, an indeterminable portion of the denials involve the violation of other immigration laws such as the transportation of illegal aliens. In either case, the Department takes no follow-up enforcement or referral action.

[g]The number of denials (6,322) represents 18.5 percent of the total (34,203) handgun purchase applications processed by the Houston Police Department through February 28, 1995.

Source: Houston, Texas, Police Department.

Table III.16: Handgun Purchase Denial Statistics for Pasadena, Texas, February 28, 1994-February 28, 1995

| Reasons for denials | | Denied applications | |
|---|---|---|---|
| Category | Reasons | Number | Percent |
| Criminal history records | Felony indictments | 0 | 0 |
| | Felony arrests (no disposition shown) | 0 | 0 |
| | Felony convictions | 59 | 52.7 |
| | Felony warrants | 2[a] | 1.8 |
| | Total felonies | 61 | 54.5 |
| | Misdemeanor warrants | 50[b] | 44.6 |
| | Other criminal offenses | 0 | 0 |
| | Total criminal offense denials | 111 | 99.1 |
| Other Brady Act ineligible categories | Fugitives from justice | 0 | 0 |
| | Unlawful drug users or addicts | 0 | 0 |
| | Adjudicated mentally defective or committed | 0 | 0 |
| | Dishonorable discharge from Armed Forces | 1[c] | 0.9 |
| | Illegal aliens | 0 | 0 |
| | Renounced U.S. citizenship | 0 | 0 |
| | Total other Brady Act ineligible category denials | 1 | 0.9 |
| 1994 Crime Act | Restraining order (harassing, stalking, or threatening) | 0 | 0 |
| Traffic offenses | Traffic offense warrants | 0 | 0 |
| Administrative or other | | 0 | 0 |
| Grand total | | 112[d] | 100.0 |

[a]When an applicant's criminal history record includes an outstanding felony warrant, the Pasadena Police Department's policy is to serve the warrant. However, if the Department is unable to serve the warrant, it contacts and provides the originating agency with the pertinent information.

[b]Denial of these 50 applications was based on the existence of outstanding misdemeanor warrants. According to a Department spokesperson, there is no state or local law prohibiting persons from purchasing a handgun if they have been found guilty of a misdemeanor offense; however, the Department considers

such individuals to be fugitives from justice if their criminal history records include any outstanding warrants.

[c]Denial of this one application was based on criminal history records showing an arrest for being absent without leave from the military.

[d]The number of denials (112) represents 3.6 percent of the total (3,071) handgun purchase applications processed by the Pasadena Police Department through February 28, 1995.

Source: Pasadena, Texas, Police Department.

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# Why the Brady Act doesn't work

By Tanya K. Metaksa

One night you work late and return home, only to find police cars surrounding your house. Your heart pounds as you approach the police officer at your front door. "A stranger tried to break in," he explains, "but your neighbor called 911. We caught the criminal in the act and cuffed him." You breathe a sigh of relief, but the relief soon vanishes. Incredibly, the officer walks the criminal down the street and releases him.

In the past three years, the officer explains, authorities have detected as many as 100,000 criminals in the act of breaking the law — only to free virtually every one of them. In fact, in the past three years, only three have been imprisoned. "I don't like it either," the officer shrugs, "but it's the system."

If you think that sort of "system" warrants another look, you ought to take another look at the Brady Act. Because purporting to detect 100,000 criminals breaking the law — only to imprison a grand total of three — is exactly what the Clinton administration is getting away with — even boasting about.

The Bureau of Alcohol, Tobacco and Firearms tells us that the vast majority of criminals don't buy guns in stores anyway. They steal them or get them on the black market. With the Brady Act failing to arrest, prosecute and ultimately incarcerate that rare prohibited person who attempts a purchase, it's no wonder academics give the law the cold shoulder.

"It is hard to see the Brady law, heralded by many politicians, the media, and Handgun Control, Inc. as an important step toward keeping handguns out of the hands of dangerous and irresponsible persons, as anything more than a sop to the widespread fear of crime," concluded New York University researchers Kimberly Potter and James Jacobs, the latter the Director of the Center for Research in Crime and Justice.

The General Accounting Office (GAO) doesn't give the law passing marks either. After a 15-month review, GAO could find only three felons incarcerated under the law for attempting illegal gun purchases. That's a mighty small number for a mighty big crime. A felon who even attempts to get a gun can be put away for five years. That's federal law. Rather than support that law, the Brady Act essentially ignores it — the very regulation on which all Americans can agree, namely, that criminals who try to get guns belong behind bars.

GAO concluded, "Brady may not result in measurable reductions of gun-related crimes." Clinton's former deputy attorney general, put an even finer point on it; Phillip Heymann wrote recently in the Washington Post "None of [the current reductions in crime] is the result of the president's temporary new cops, nor the Brady Act . . ."

There is a better way. It's even built into the Brady Act. Many of the lawmakers who voted for Brady did so only because it contained a requirement to upgrade criminal records even further, and to evolve into that better way. In 1998, if not sooner, the Brady wait expires, and the National Instant Check and Arrest takes its place. Gun ban advocates are sure to push for an extension — even a permanent waiting period — but that just postpones the onset of a system that has proven to be fast, fair and effective in more than a dozen states.

In those states, the police know exactly who the prohibited person is — and where he is — when they're alerted that he's attempting an illegal gun purchase. Instead of merely denying the purchase and letting him go — which is all the Brady Act does — Instant Check states can dispatch officers and effect an instant arrest.

Since 1987, when Virginia became the first state to adopt the system, the State Police have arrested 2,479 criminals, including 304 wanted persons. Since then, wherever it's implemented, Instant Check and Arrest works. In Delaware, a resounding 67 percent of those wanted by authorities in the last 5 years who attempted a commercial gun purchase were apprehended on the spot. Not denied. Not turned away. Not given five days to criss-cross the U.S. — but apprehended. No wonder the Oregon state police association lobbied last year to replace the state's 15-day waiting period with Instant Check and Arrest.

It's time to stop waiting and start acting. Indeed, the Supreme Court may well declare the Brady Act unconstitutional any time now. Last December, the Supreme Court heard oral arguments on whether or not the Brady Act violated the Constitution by commandeering local and state law enforcement officers and ordering them to implement a federal regulatory program.

So it's time to implement the better way. In the Brady Act Congress wrote the Clinton Administration a check for $200 million to further upgrade and automate criminal history records and bring that better system on line. All the federal government has to do is follow the leadership of the states. Delaware implemented the system in six months. So did Florida. Virginia, the first with the system, implemented it in 8 months for $500,000. The Virginia State Police make it easy; they even make the software available to other jurisdictions free of charge.

So there's no reason to wait for the better system. And there's absolutely no reason to excuse criminals from prison terms they so richly deserve.

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Today's debate: FIGHTING DRUGS

# No way to hide Mexico's connection to drug lords

**OUR VIEW** **How can U.S. certify Mexico's cooperation when top officials are routinely tied to drugs?**

AP photos

**Arrested:** Jose de Jesus Gutierrez Rebollo, left, former drug czar, and Raul Salinas de Gortari.

Mexico is a rat's nest of drug trafficking. That's a simple fact. The corruption reaches so high that last week the head of Mexico's anti-drug campaign was himself arrested for collaborating with drug cartels.

Yet Mexican leaders insist President Clinton certify that Mexico is cooperating fully against the drug trade. They say decertification, which can carry economic punishments, will sour relations.

Sour the relationship? More so than Mexico's role as the vector for 75% of the cocaine smuggled into the United States? Hard to imagine. But in any case, certification is simply not reasonable. The White House decision expected today — to decertify Mexico but waive economic punishment — is the least it can do given the evidence of the drug trade's Mexican roots:

▶ Gen. Jose de Jesus Gutierrez Rebollo, chief of Mexico's anti-drug program, arrested on drug-conspiracy charges.

▶ Raul Salinas de Gortari, brother of former president Carlos Salinas de Gortari, awaiting trial for murder in Mexico; alleged to have received millions in drug payoffs.

▶ Carlos Enrique Cervantes de Gortari, a cousin of the former president, convicted in U.S. court on drug-conspiracy charges.

▶ Mario Ruiz Massieu, a former deputy attorney general, facing civil trial in Texas, where U.S. prosecutors want to confiscate $9 million in alleged drug bribes.

The list goes on, including other members of Mexico's long-dominant Institutional Revolutionary Party. No wonder Mexico's anti-drug program is widely viewed to be in disarray. President Ernesto Zedillo admits that "narcotics crime has reached extremely serious levels."

There are a few countervailing realities. Mexico is indeed struggling to clean itself up. And the truth is Mexico wouldn't be in such bad shape if the United States weren't such a huge market for drugs. That fact is not lost on our neighbors in South and Central America, who suffer badly from the drug cartels that U.S. users finance.

Ultimately, the best solution is to scrap the certification process, which has become a nightmare of blame-laying and did too/did not rhetoric. Worse, its economic penalties target innocent and impoverished citizens, not fat-cat drug lords. But if certification is the law, Mexico plainly fails it.

Perhaps by waiving economic penalties and applying more pressure, Washington can split the difference. But don't kid yourself about what is happening in Mexico. Drugs are.

**U.S. Department of Justice**
Office of Justice Programs
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A copy of the announcement
mailed to each governor
on Friday, December 2, 1994.

# Clinton Presidential Records
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## Bureau of Justice Statistics

# National Criminal History Improvement Program

## *Program Announcement*

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