U.S. Department of Justice
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Bureau of Justice Statistics

National Conference on Criminal History Records: Brady and Beyond

Proceedings of a BJS/SEARCH Group conference

Papers presented by

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U.S. Department of Justice
Bureau of Justice Statistics

Jan M. Chaiken, Ph.D.
Director

This report was prepared by SEARCH, The National Consortium for Justice Information and Statistics, Francis J. Carney Jr., Chairman, and Gary R. Cooper, Executive Director. The project director was Sheila J. Barton, Director, Law and Policy Program. Twyla R. Cunningham, Manager, Corporate Communications, edited the proceedings. Jane L. Bassett, Publishing Assistant, provided layout and design assistance. The federal project monitor was Carol G. Kaplan, Assistant Deputy Director, Bureau of Justice Statistics.

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Foreword

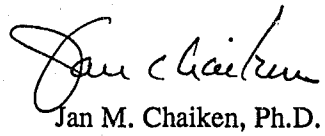
Two important pieces of 1993 Federal legislation affect the management of criminal history record information at the Federal, State and local levels. The Brady Handgun Violence Prevention Act and the National Child Protection Act of 1993 increased the importance of conducting national criminal history record checks on potential firearms purchasers and applicants for child care employment (later amended by the Violent Crime Control and Law Enforcement Act of 1994 to include applicants for care of elderly or the disabled).

The Brady Act established a national instant criminal background check system (NICS) to be contacted by firearms dealers before the transfer of a firearm. By November 30, 1998, this national system must be able to supply information immediately regarding whether receipt of a firearm by a prospective firearm purchaser would violate State or Federal law. In the interim, the Brady Act requires either a 5-day waiting period on handgun purchases, during which time a criminal records check must be conducted, or an alternative State system which is at least equally restrictive.

To assist States in establishing automated record systems that have adequate levels of disposition reporting to permit implementing the NICS, the Brady Act authorized $200 million for a multi-year program of Federal grants to States, to be administered by the Bureau of Justice Statistics. The National Child Protection Act authorized a related $20 million grant program to improve the content and accessibility of criminal records for checking applicants for care of children, elderly, and the disabled. In fiscal year 1995, Congress appropriated $100 million of these funds, and the Bureau of Justice Statistics published an announcement of the details of the grant program, which is called the National Criminal History Improvement Program (NCHIP).

The two laws and the associated grant programs impose a great deal of responsibility on the States. In many cases states will need to upgrade their criminal history record systems in order to comply with them. To discuss the implementation of these two major Acts from the Federal and State perspectives, the Bureau of Justice Statistics, along with SEARCH, The National Consortium for Justice Information and Statistics, cosponsored the "National Conference on Criminal History Records: Brady and Beyond" in Washington, D.C., on February 8-9, 1994. This publication presents the proceedings of that conference.

I believe these proceedings will provide readers with a distinct understanding of the components of these two important laws, as well as the requirements they impose on States; the status of background check systems in the States in early 1994; and a clear picture of the initial Federal efforts to implement these two laws. To be effective, the Brady Act and the National Child Protection Act of 1993 require the cooperation and involvement of the States in their implementation and continued operation. This conference was an important first step toward sharing information, providing guidance and obtaining input that is vital to those processes.



Jan M. Chaiken, Ph.D.
Director

Introduction

In November 1993, the U.S. Congress passed two significant pieces of crime legislation: the Brady Handgun Violence Prevention Act and the National Child Protection Act of 1993. Both laws require nationwide background checks: the Brady Act to check the criminal records of individuals seeking to purchase firearms and the National Child Protection Act to check the background of individuals seeking employment in the child care field. The laws authorized $200 million and $20 million, respectively, to assist the States in establishing and improving their automated record systems to enable them to comply with the new laws, and to prepare for a national instant criminal background check system, which the Brady Law requires to be operational by November 30, 1998.

The implementation of these two major laws at the national level rests with the U.S. Departments of Justice and Treasury, primarily in the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco and Firearms. More importantly, the successful implementation of the laws also requires the cooperation, involvement and input of the States.

As part of its effort to provide information and guidance to the States on these two major Acts, the Bureau of Justice Statistics, U.S. Department of Justice and SEARCH cosponsored the "National Conference on Criminal History Records: Brady and Beyond" on February 8-9, 1994, in Washington, D.C. The conference brought together officials from the Federal agencies which have responsibility for the implementation of these Acts, as well as officials from States and national organizations which are equally as interested and involved in the implementation of these background check laws. This document presents the proceedings of that conference.

The first day of the conference, "Criminal history records: Where we are," provided information on specific aspects of the Acts, such as requirements the Acts impose on States, and successful implementation and operation of similar statewide programs. The second day of the conference, "Current decisionmaking and future policies," highlighted Federal policy- and decisionmaking relating to the implementation of the Acts.

Mr. Lawrence A. Greenfeld, who at the time of the conference was serving as Acting Director of the Bureau of Justice Statistics (BJS), U.S. Department of Justice, provides the "Welcome" address. He stresses that an important side benefit of both Acts is that they focus attention on the adequacy of criminal records systems, mainly their accuracy, completeness and shareability. He says improving criminal records systems is the single most important national criminal justice reform, particularly at the present time, when new expectations are emerging for criminal record information. He predicts that Federal resources will be targeted to improving the criminal justice information infrastructure with a higher priority then ever before.

The next three speakers help to set the stage for a discussion of the Brady Law from the Federal agency perspective. Mr. Kent Markus, Counsel to the Deputy Attorney General, U.S. Department of Justice, discusses the activity being undertaken by the Departments of Justice and Treasury to implement the Brady Act, including providing guidance, information, resources and funds to assist the States in implementing the Act. He also reviews the steps the Federal government is taking toward improving criminal history records, as required by the Act. Ms. Rebecca L. Hedlund, Legislative Policy Advisor to the Assistant Secretary, Enforcement, U.S. Department of the Treasury, briefly discusses that department's activities in preparing for Brady Act implementation. She introduces the next speaker, Mr. Robert J. Creighton, serving at that time as the Brady Law Coordinator for the department's Bureau of Alcohol, Tobacco and Firearms (ATF). Mr. Creighton provides an in-depth overview of the information-sharing process undertaken by the Bureau to educate the 280,000 licensed Federal firearms dealers in the United States, as well as the thousands of law enforcement officials, who are affected by the Brady Law and who are primarily responsible for its implementation. This information effort includes Treasury regulations, letters and flyers, site visits from ATF field counsels, and a coordinated dissemination plan. He also reviews the process the ATF undertook to gather input and advice from State and local law enforcement officials, attorneys general and others regarding the Brady Law implementation.

Mr. Robert R. Belair, SEARCH General Counsel, serves as moderator of a panel on "Requirements, regulations and procedures of the Brady Act." In his moderator's remarks, he touches on the legislative effort that culminated in the Brady Law, discusses the national instant criminal background check system (NICS), and provides an overview of the panel presentations.

"Brady Act regulations and requirements" is the subject of the presentation by the first panelist, Mr. Stephen R. Rubenstein, Senior Counsel, Firearms and Explosives Unit, Office of the Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury. He provides an overview of how the Brady Law fits into existing Federal firearms laws; discusses the regulations being issued by ATF to implement the law; discusses the ATF's development of Brady forms and procedures; reviews requirements that the law imposes on States and Federal firearms licensees, in particular the 5-day waiting period that is in effect until the NICS is operational in late 1998; discusses exceptions to the waiting period; and describes a typical Brady firearm transaction.

The next panelist is Mr. Virgil L. Young Jr., former Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation. In his presentation, "FBI operational status report and Felon Identification in Firearms Sales Program," Mr. Young focuses on a discussion of the system requirements for NICS, which must be operational within 5 years of the passage of the Brady law (November 30, 1998). He also reviews the activities the FBI is undertaking to develop a system design by the June 1, 1994, deadline imposed by the law, and discusses the current status of the Interstate Identification Index (III), a national index maintained by the FBI that allows for the interstate and Federal-State exchange of criminal history record information, and which will be the foundation for the NICS. Finally, he reviews the Felon Identification in Firearms Sales Program, an ongoing effort to flag convicted felons in the III.

The final panelist, Mr. Thomas F. Rich, Senior Analyst, Queues Enforth Development, Inc., reviews the results of a report done for the Department of Justice to determine what databases can be accessed to immediately and accurately identify persons, other than felons, who attempt to purchase firearms but who are ineligible to do so (such as illegal aliens, dishonorable dischargees, citizenship renunciates, etc.). He notes that while information on some of these persons is easily obtained, existing databases may not be complete enough to provide information on every person who comes under one of the disabling categories. In addition, State privacy laws protect information on other major categories, such as certain commitments to mental health facilities.

The next section of the conference was a discussion of existing State systems which conduct presale records checks of firearms purchasers. The first speaker, Mr. Gary D. McAlvey, Inspector, Division of Administration, Illinois State Police, describes his State's 25-year experience in controlling the purchase and possession of firearms and firearm ammunition. Illinois requires persons who wish to acquire or possess firearms or ammunition to obtain a Firearm Owners Identification Card, which requires that the card applicant undergo a complete screening of State and Federal criminal history records, as well as of State mental health records. In addition, before card holders can purchase a firearm in Illinois, they must undergo a criminal history records check at the place of purchase; these checks are conducted through the Illinois State Police with the use of "900" phone lines. Purchase approvals are to be given instantly, while purchase denials can be given within the waiting periods of 24 to 72 hours. Mr. McAlvey reports that Illinois' system is very successful, and has many benefits, such as the identification and apprehension of persons wanted on warrants.

The next three speakers served as panelists, discussing "Current presale firearms checks" in their States. Capt. R. Lewis Vass, Records Management Officer, Records Management Division, Virginia State Police, describes the operation of the Virginia Firearms Transaction Program, which provides an instant point-of-sale criminal history records check of prospective firearms purchasers. Like the NICS being planned at the Federal level, the Virginia system eliminates waiting periods by electronically accessing State and Federal criminal history and wanted persons databases. Capt. Vass reports that one of the most significant problems experienced in operating the instant point-of-sale program is interpreting the varied methods of recording and reporting arrest and court disposition information by other States or foreign countries. However, Virginia works with Interpol to help query and interpret foreign criminal history records and has determined dispositions of felony charges reported in many foreign countries. Capt. Vass also discusses Virginia's Firearms Investigative Unit, which seeks to curtail illegal firearms activity, and reviews the successes of Virginia's 5-year-old program, including the apprehension of wanted fugitives and the solving of previously unsolved crimes.

Oregon's presale firearms check system involves processing a purchase application accompanied by the applicant's thumbprints, and a 15-day waiting period. As described by Lt. Clifford W. Daimler, Director, Identification Services Division, Oregon Department of State Police, local law enforcement agencies in Oregon have 15 days to check a purchaser's background, which includes 10 days for the State Police to run a fingerprint check through its automated fingerprint identification system. He also reviews the few exceptions to the waiting period, as well as penalties for violating the law, and purchase disqualifications under the Oregon statute. Finally, he reviews the impact that enactment of the Oregon firearms sales check law has had on workload levels at his agency.

Mr. Jack Scheidegger reviews California's system for completing presale firearms checks of gun purchasers. Mr. Scheidegger, Chief, Bureau of Criminal Identification and Information, California Department of Justice, reports that his agency conducts name-based record checks of State and national criminal history and wanted persons, restraining order and mental health files; requires a 15-day waiting period; and enters purchaser data into an automated firearms system. The firearms check statute also covers private transactions, as well as sales by gun dealers and at gun shows. He reports that the 15-day waiting period is a firm "cooling off" period — no handgun may be transferred before the period has elapsed.

The next two speakers were panelists who address the "Role of the courts"; their presentations wrapped up Day One of the conference. Dr. Sally T. Hillsman, Vice President of Research for the National Center for State Courts (NCSC), gave a presentation on "Disposition reporting: The perspective from the courts." She stresses that while improving the quality of criminal history record information is crucial, so also is the timeliness of the information and of

understanding that courts are important users of this information, particularly with respect to case dispositions. She reports that the judicial branch is a key partner in successful change, but their participation and input has been too often overlooked. An exception to this, she notes, was the convening in 1990 of the National Task Force on Criminal History Record Disposition Reporting by SEARCH, BJS and NCSC.

"Collecting and accessing court disposition information for the criminal history record" was the presentation given by Mr. James F. Shea, Assistant Director, Integrated Systems Development, New York State Division of Criminal Justice Services. He discusses New York's efforts to improve and expand the level of automated disposition reporting by the courts to the State's central repository of criminal history record information. He reviews the procedures used to transmit this information, discusses the impact of the reporting, and also reports on how New York is working to improve its technical infrastructure of automation and communications capabilities.

Ms. Laurie O. Robinson, Acting Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice, provides the "Day two opening address," in which she introduces the keynote speaker, the Honorable Janet Reno, United States Attorney General. In her "Keynote address," Ms. Reno reiterates the importance of timely, accurate and complete criminal history records to all branches of the criminal justice system, as well as to other legitimate, noncriminal justice users. While she acknowledges there have been improvements in recent years, she says our current ability to conduct reliable background checks is abysmal. She notes that conducting instant background checks, as required under the Brady Law by late 1998, will be a substantial challenge. However, she adds, the Justice Department will work jointly with the States to set priorities for Federal monies to improve the quality and accessibility of criminal history records in State systems. She also says that the success of the Brady Law implementation, as well as reaching the goal of complete, accurate and timely criminal history record information, will depend on a close partnership between the Federal government and the States.

The next four speakers comprised a panel which discussed requirements and systems of the National Child Protection Act. The first panelist, Mr. James X. Dempsey, Assistant Counsel of the Judiciary Subcommittee on Civil and Constitutional Rights, U.S. House of Representatives, discusses the growing Federal mandates which require criminal history record checks at the State level. He says that the pressure for use of criminal history records as a screening device for noncriminal justice purposes is unlikely to abate any time soon. He then reviews in-depth the main elements of the National Child Protection Act, the way it conforms to current practices and the ways in which it imposes new mandates on the States.

Ms. Noy S. Davis, Project Manager/Attorney, and Ms. Kimberly Dennis, Research Associate, American Bar Association (ABA) Center on Children and the Law, spoke next. Ms. Davis reviews the extent to which state statutes currently authorize record checks for the screening of child care and youth service workers. Ms. Dennis discusses some of the major issues raised in literature regarding criminal record checks and reviews preliminary findings from a national ABA survey which sought to determine the extent to which record checks are currently used by organizations and agencies that provide care and other services to children.

The final panelist was Mr. David Eberdt, Director, Arkansas Crime Information Center, who provides an overview of an Arkansas law that requires fingerprint-based background checks for licensed child care facilities, their owners, operators and employees. In addition to the legislative history and requirements of the law, he reviews other issues and problems that arose with its interpretation and implementation.

The closing speaker of the conference was Mr. Lawrence A. Greenfeld, then-Acting Director of BJS. He gave the "Grant agency perspective on implementation of the Brady and National Child Protection Acts." He said both Acts focus attention on the most important challenge facing the infrastructure of the criminal justice system: keeping accurate and timely records and making them readily available for criminal justice and noncriminal justice purposes. He reviews recent BJS efforts to improve criminal history records and also discusses a survey being done to estimate the time required by each State to fully implement the NICS and to meet the record quality expectations of the National Child Protection Act. He also discusses the grant programs accompanying each Act, including a description of eligible funding activities.

Finally, mention and thanks are given here to Maj. James V. Martin, who ably served as the conference moderator. Maj. Martin is Director of the Criminal Justice Information and Communications System, South Carolina Law Enforcement Division, and is a member of the SEARCH Board of Directors.

I. Criminal history records: Where we are

Welcome

Lawrence A. Greenfeld

Welcome

LAWRENCE A. GREENFELD
Acting Director, Bureau of Justice Statistics
U.S. Department of Justice

Welcome to the sixth national conference on criminal history records which the Bureau of Justice Statistics (BJS) has sponsored over the years. We are very excited about this get-together where we will hear from, among others, the Attorney General of the United States. One of the truly important side benefits of both the Brady Handgun Violence Prevention Act and the National Child Protection Act is that they focus our attention on the adequacy of our criminal records systems — their accuracy, completeness and shareability across jurisdictions.[1]

Up-to-date, accurate and accessible records are important for decisionmakers in the justice system who often must make very difficult decisions which affect the lives of alleged offenders, convicted offenders, and past and future victims. There are many important decisions which are shaped by the offender's current offense and which necessitate knowledge of the offender's criminal history: judgments regarding release pending trial, the setting of bail amounts, sentencing and release decisions, and determinations regarding the appropriate level of community supervision and offender monitoring. From my perspective, there may be no single criminal justice reform in our Nation which is as important as improving our criminal records systems — virtually all of the decisions rendered by justice system officials are based upon the gravity of the offense and the extensiveness and seriousness of the criminal history.

The reason the criminal record is so important to us is because study after study have shown that the single best predictor of *future* criminal conduct is *past* criminal conduct. A 3-year BJS follow-up study of a sample representing 109,000 released prisoners in 11 States revealed that among those who had one prior arrest, 5 percent were rearrested within 3 months of prison release. Those who left prison with a record of 11 or more prior arrests were *five times as likely* to be rearrested within the first 3 months after release.

I am certain everyone has seen variations of the criminal justice flowchart which first appeared in the report of the 1967 President's Commission on the Administration of Justice.[2] There are literally dozens of decision points in the criminal justice system where the probability of proceeding in one direction or another at a particular branching point is largely determined by the information that is available. Similarly, decisions about whether someone may purchase a handgun or may obtain employment in certain occupations will also be a

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1 Brady Handgun Violence Prevention Act, Pub. L. No. 103-159 (November 30, 1993); National Child Protection Act of 1993, Pub. L. No. 103-209 (December 20, 1993). The text of these acts are included in this report as Appendixes 1 and 10, respectively.

2 The flowchart was published in *The challenge of crime in a free society*, President's Commission on Law Enforcement and Administration of Justice, 1967. An adaptation of this flowchart can be seen in *Use and Management of Criminal History Record Information: A Comprehensive Report*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, by Robert R. Belair and Paul L. Woodard, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, November 1993) pp. 8-9.

function of the quality and accessibility of our records.

The criminal record has now become more than a simple list of fingerprint-based transactions and occasional dispositions — we are asking that record to describe a criminal career and the communal harm associated with that career. It is an exciting and challenging time to be in our business as new expectations are emerging for criminal history record information management. After the full amount of appropriations are decided for both the Brady and National Child Protection Acts, Federal financial resources will be targeted to improving the information infrastructure with a higher priority then ever before.

As this conference gets underway, I want to thank Gary Cooper and Sheila Barton of SEARCH for their outstanding work in putting this conference together, as well as the many other SEARCH staff who have done so much to prepare for this meeting and whose long-term work has helped to cement the Federal-State-local partnership to improve criminal history records nationwide. I want to also thank BJS staffers Paul White, Don Manson, Linda Ruder and Helen Graziadei who have managed the 81 grants given to the States under BJS' $27 million Criminal History Records Improvement Program which is now in its concluding stages and which is the precursor to the grant assistance programs that will be made available under the Brady and National Child Protection Acts. I want to especially thank Carol Kaplan, BJS Assistant Deputy Director, who has done a lot of groundwork on the Brady and National Child Protection Acts to help us prepare for this meeting, as well as to prepare us for what likely will be the largest Federal initiative ever undertaken to improve criminal history records nationwide.

I. Criminal history records: Where we are

Setting the stage

Brady Act: The Federal perspective
Kent Markus

Brady Act: The Department of Treasury perspective
Rebecca L. Hedlund

Brady Act: The Bureau of Alcohol, Tobacco and Firearms perspective
Robert J. Creighton

Brady Act: The Federal perspective

KENT MARKUS
Counsel to the Deputy Attorney General
U.S. Department of Justice

The agenda suggests that I am supposed to talk about "the Federal perspective" of the Brady Handgun Violence Prevention Act. That title sounds curiously like the old adage, "I'm from Washington and I'm here to *help* you." Yet we hope that that suspicious sentence can be one which works in a positive way with efforts to implement the Brady Act.[1]

My assignment from Attorney General Reno is to coordinate all activity of the U.S. Department of Justice with respect to implementing the Brady Act. Part of that task is to prod the Federal government to provide guidance, information, resources and funds — whatever it is we have to assist the States in implementing the Brady Act.

Brady mission

To express a sense of what my mission is like, I would like to describe the Justice Department "alphabet soup" that I have been dealing with. In an effort to figure out how to implement the Brady legislation and to give guidance, assistance and advice, I have dealt with the following:

- OLC, the Office of Legal Counsel, to obtain formal legal opinions about the interpretation of the Act.
- BJS, the Bureau of Justice Statistics, to obtain the statistical information which will help us plan and prepare for an upcoming survey of the States intended to assess the status of criminal history records nationwide.
- FBI, the Federal Bureau of Information, which I deal with almost daily to develop systems for the practical implementation of the interim provisions of the Act and to begin planning for the technology and systems decisions central to the national instant criminal background check system required by the Act.[2]
- OLA, the Office of Legislative Affairs, to try to obtain funding for this effort.
- INS, the Immigration and Naturalization Service, to get access to databases concerning illegal aliens.
- EOUSA, the Executive Office of the United States Attorneys, which I talk to about planning a training program for U.S. attorneys all over the country that will train them on how to bring forth Brady prosecution actions and prepare them for wrongful denial and record correction litigation that is authorized under the Act.
- OPD, the Office of Policy Development, which handles much of the intergovernmental and interorganizational efforts of the Justice Department.
- Finally, I work with OPA, the Office of Pardon Attorney, on issues associated with how civil rights restorations will impact Brady background checks.

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1 Brady Handgun Violence Prevention Act, Pub. L. No. 103-159 (November 30, 1993). The text of the Brady Act is included in this report as Appendix 1.

2 The interim provisions of the Brady Act require that a 5-day waiting period for handgun purchases be instituted nationwide on February 28, 1994, to allow for background checks of prospective purchasers by the chief law enforcement officer of the purchaser's place of residence. The Act also specifies that by November 30, 1998, an automated system be in place whereby national criminal background checks of firearms purchasers can be completed instantaneously.

All of that is just a *sense* of what is going on in the Justice Department.

The other part of my charge is to be the liaison with the other Federal government agencies and with the State governments on issues associated with Brady Act implementation. Again, on almost a daily basis (and sometimes more frequently), I deal with my friends at the Treasury Department and the Bureau of Alcohol, Tobacco and Firearms (ATF). They have done absolutely yeoman's work in making sure that everything is in place for the implementation of the interim provisions of the Brady Act. They deserve to be recognized for having gone above and beyond the call of duty within the short time frames they faced.

I also deal with the State Department regarding their databases which contain information on "citizenship renunciates" (people who have renounced their United States citizenship). Believe it or not, one of the categories in the Brady Law prohibits these people from purchasing handguns.

I also deal with the Defense Department regarding persons who have been dishonorably discharged from the military. I expect to be dealing soon with other Federal agencies, and even some State agencies, about other categories of persons prohibited from purchasing handguns under provisions of the Brady Law.

That provides a sense of the many types of activities that are going on at the Federal level. Between the efforts of the Justice and Treasury Departments, the ATF and the FBI, there is a fair amount of activity going on within the Federal government to get ready for the interim provision implementation on February 28, 1994.

I recognize that all of this pales in comparison to the work that is going on out in the world beyond the Beltway. We all recognize that the State and local criminal justice agencies have the real work to be done, in terms of making the Brady Act and the National Child Protection Act work. We recognize that we need you a lot more than you need us. Our pledge is to do everything we possibly can to make your jobs easier.

Brady implementation

Let me explain where things stand with regard to the upcoming Brady Act deadline.

On February 28, 1994, gun dealers in those States which do not have an existing State law which requires a background check for handgun purchases — that is, a background check at the time the gun license or permit is granted, or some other kind of background check as described in the Brady Law — will, for the very first time, be obligated to wait for background checks prior to the sale of a handgun. The Treasury Department has been working steadily with the States to determine which States have statutes that are acceptable alternatives to the Brady-mandated procedures and which States will be guided by the Brady Act provisions. So that proper categorizations can be absolutely finalized before February 28, the ATF has placed each State in preliminary categories, and discussions between the various States and ATF are ongoing. We recognize, of course, that even those categorizations will change over time as States pass new laws and as procedures change. But as far as February 28 is concerned, we should know exactly where every State stands when the Brady Law goes into effect.[3]

In order to provide guidance to the regulated community — the gun dealers— ATF has promulgated Treasury Regulations, which will be published in the *Federal Register* and widely distributed within the next few weeks.[4] In addition, ATF has been conducting planning meetings at the local level and providing practical information about how Brady is intended to work, in an effort to resolve State-by-State questions regarding the officials who will fulfill the Chief Law Enforcement Officer function within each State.

The FBI has been working hard to make sure that they are ready to conduct competent Brady checks through the National Crime Information Center (NCIC) system. The FBI is currently preparing relevant updates of the NCIC user manual and is conducting training sessions for law enforcement personnel focusing on the technology involved in implementing the Brady Act.

Finally, leading up to the February 28, 1994, deadline, the Justice Department, the FBI, the Treasury Department and the ATF have been working to ensure that we are in sync in terms of the advice we provide to the law enforcement agencies throughout the country. Some mailings have gone out, and there are more to come. The Justice Department will soon be able to provide some kind of manual or written guidelines to ease the implementation crunch, which we know is coming to the States for which background checks are new. We remain confident, however, that on February 28, gun dealers will know their obligations and the law, as will law enforcement agencies.

We recognize that it is all of you and your colleagues who will actually implement this law. We also recognize that February 28 is only the beginning. While background checks will become the national rule for handgun purchases on that date, we all know that the records needed to support the computerized instant record check system — which must be in place by November 30, 1998 — are woefully inaccurate and incomplete.

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[3] A preliminary list was prepared by ATF which categorizes all 50 States (1) as subject to the Brady Law's 5-day waiting period, or (2) as having alternative systems which meet the Brady Law requirements, or (3) as not falling fully within either category. This list, dated January 19, 1994, is included in this report as Appendix 2.

[4] U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Implementation of Public Law 103-159, Including the Brady Handgun Violence Prevention Act," *Federal Register* (14 February 1994) vol. 59, no. 30, pp. 7110-7115. (To be codified at 27 C.F.R. §178.)

Record improvements

Our commitment at the Justice Department is to do everything we can to assist the States in improving the quality of, and the access to, their criminal history records. There are a number of steps being followed in the Brady Law which will result in improved records. To those who are skeptical about the value of the Brady Law as a crime-fighting tool, I encourage them to remain open-minded and enthusiastic about the opportunities it provides for myriad criminal history record improvements.

Through this legislation, $100 million has been included in the President's budget for fiscal 1995 for criminal history record improvements. I recognize that the President's budget, which was released this week, did not include good news for everybody. The budget did not include the Bureau of Justice Assistance Byrne formula grant money that, in previous years, had required a 5 percent set-aside for criminal history record improvements. So although these funds were not included in the President's budget, the budget *does* include dramatically more funds than ever before targeted for such improvements. Thus, for those who considered this issue a priority, criminal history record improvements were a winner in the President's budget. It is our expectation that those funds will be used for improvements which will advance the goals of the Brady Act, advance the goals of the National Child Protection Act, and advance all the other purposes for which criminal histories are used.

What are the steps the Federal government is taking toward improving criminal history records?

(1) BJS, the Justice Department and SEARCH will be conducting a needs assessment survey — finding out where the States are and what needs to be done. The survey will help us gather information so we can ascertain the status of State records systems in order to appropriately move forward.

(2) Once the survey is completed, we will work with the States to establish the timetables for records improvement which the Brady Law requires the Attorney General to establish for each State.

(3) Then, we will begin planning the dispersal of Brady Act grant funds in accordance with the timetables. It is our clear intention to ensure that those timetables are developed through discussion and negotiation with the States, and that they are not just dropped down on the States as a *mandate* from the Justice Department.

(4) In addition and simultaneously to these tasks, the effort has begun to determine the technology and the systems protocols that will be used for the national instant criminal background check system (NICS). By the mandates of the Brady Act, by June 1, 1994, the Attorney General must make a declaration of the system and the technology that will used.[5]

(5) Finally, we will continue to work toward gaining access to other databases that will provide more specific information about persons prohibited from purchasing handguns. We want those databases to be checked in the most simple of ways; we do not want to worry about calling multiple sources in order to check multiple databases.

Making Brady work

This is what is happening on the Federal front, while operational criminal justice agencies are trying to make all of this work out as a reality at the State level. *You* will be conducting background checks and updating criminal records; *you* will be tracking down dispositions when a computer shows an arrest but nothing more; and *you* will be gathering statistics and data to respond to surveys and support your grant requests. I also believe that you will be keeping guns out of the hands of those who should not have them, and guaranteeing more reliable criminal history information to those who need it. You will be actively helping to prevent crime in your community, making it a safer place to live.

We have a lot of work to do here at the Federal level to make the Brady Act work, to make the National Child Protection Act work, and to improve the quality of criminal history records across this country. At the same time, we understand that the work we have to do does not compare to what the States face. So, as February 28 and June 1 come and go, please do not hesitate to ask for help — to *demand* help — when you think there is something we can do to make your jobs easier.

Thank you for your interest and your commitment to this effort.

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[5] The Attorney General issued the NICS declaration in the *Federal Register*. U.S. Department of Justice, Office of the Attorney General, "National Instant Criminal Background Check System," CAG Order No. 1382-94), *Federal Register* (1 June 1994) vol. 59, no. 104, p. 28423.

Brady Act: The Department of Treasury perspective

REBECCA L. HEDLUND
Legislative Policy Advisor to the Assistant Secretary, Enforcement U.S. Department of the Treasury

At the U.S. Treasury Department, we have been very active and concerned about the implementation of the Brady Act.[1] We have been working very hard and closely with our Bureau of Alcohol, Tobacco and Firearms (ATF) and with the Department of Justice. We have been reaching out to State and local governments, law enforcement agencies, a number of interest groups and trade associations. The Secretary of Treasury and the Assistant Secretary for Enforcement have both spoken a number of times about the importance of the Brady Act implementation. They fought very hard to get it enacted, as did many of you, no doubt, and they are now anxious for us to move forward toward February 28, 1994, with a good system in place.[2]

Key to this effort, of course, are the criminal history records that the States must have in place. I think the Justice Department and the States have a rough 5 years ahead of them as they work toward development of a national instant check system.

ATF, of course, has the authority and responsibility to actually implement the 5-day waiting period. A number of notices have been sent to agencies, to law enforcement officials, and to other interested parties concerning what will be involved and what they are going to have to do on February 28.

Treasury Secretary Lloyd Bentsen has stated that he wants to have the regulations available before the February 28 deadline. ATF has been working diligently to meet that deadline, and I think the regulations will be available next week — 2 weeks ahead of schedule.[3] Given the very tight time frame, we are very pleased and very proud of ATF for doing such a terrific job.

In any event, I am going to keep my presentation short and turn it over to Bob Creighton. He is the Special Agent in Charge of ATF's Florida Field Division, and was recently appointed to serve as the National Brady Law Coordinator for ATF. He has a lot of background in terms of State and local government cooperation, in management and in field firearms enforcement work. We are extremely pleased to have had him head up the effort at ATF for the last few months.

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1 Brady Handgun Violence Prevention Act, Pub. L. No. 103-159 (November 30, 1993). The text of the Brady Act is included in this report as Appendix 1.

2 Beginning February 28, 1994, the Brady Act requires all States to begin conducting pre-sale criminal history background checks of handgun purchasers and imposes a 5-day waiting period to enable those checks to be completed.

3 U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Implementation of Public Law 103-159, Including the Brady Handgun Violence Prevention Act," *Federal Register* (14 February 1994) vol. 59, no. 30, pp. 7110-7115. (To be codified at 27 C.F.R. §178.)

Brady Act: The Bureau of Alcohol, Tobacco and Firearms perspective

ROBERT J. CREIGHTON
ATF Brady Law Coordinator
Bureau of Alcohol, Tobacco and Firearms
U.S. Department of the Treasury

In looking at the tasks facing us after the Brady Law was passed, we realized that the Bureau of Alcohol, Tobacco and Firearms (ATF) would have a tremendous education process to go through — and, as such, a tremendous information-sharing process. Of course, any time a law is passed, one of the first things that must be done is for regulations to be developed and produced. I must say, the Treasury Counsel who works on a daily basis with ATF has done an outstanding job in writing them. Certainly these regulations, which have just been written, will probably set a new regulations completion deadline record in the Federal government.

After the regulations were written, they had to go through a full review at the U.S. Treasury Department. We also have asked the Justice Department to give us comments. They were able to give us some excellent feedback which we were able to include in the regulations. I am happy to report that, as we speak, the regulations are being delivered to the *Federal Register*, and we have a commitment that they will be published by February 14.[1]

Upon issuance of the regulations, we felt there were many more things that had to be done. We had to look at just *who* was affected by these regulations. We now realize that the group which is affected — that is, the group which must actually implement the regulations — is huge: about 280,000 licensed Federal firearms dealers in the United States. In addition, about 22,000 law enforcement officials nationwide are affected as well.[2]

Information process

As the regulations were being developed, we felt we had to go forward and start the information analysis process. One of the first things everyone wanted to know was: "Where do I fall in Brady? How will Brady affect my State?" To help with this, ATF has developed a number of forms, instructions and letters.

To begin this process, we issued a one-page list titled "Preliminary list of States subject to the Federal five day waiting period or States having alternative systems as defined in the law."[3] This is just a *preliminary* list; this list is likely to change, and it may very well continue to change right up through 1998, when the Brady-mandated national instant check system must be ready.

To develop this list, we asked our Field Counsel to visit all the States and obtain copies of whatever regulations they found for instant check or permit approval systems. After reviewing those regulations with the various legal counsel and our staff, we compiled this list. The States are actually divided into three categories:

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1 U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Implementation of Public Law 103-159, Including the Brady Handgun Violence Prevention Act," *Federal Register* (14 February 1994) vol. 59, no. 30, pp. 7110-7115. (To be codified at 27 C.F.R. §178.)

2 These figures were obtained from the Uniform Crime Reporting lists provided by the FBI.

3 This list, dated January 19, 1994, is included in this report as Appendix 2.

(1) "States Which Must Comply With the Federal 5-day Waiting Period." We define those as the "Brady States."
(2) "States Which Meet One of the Alternatives to the Federal 5-day Waiting Period." We define those as the "Alternative States."
(3) "States Which May Not Fall Fully Within Either Category." For these few States, there are some areas in their State law which we do not view as an acceptable "full alternative" to the Brady Act. For instance, a State's handgun permit law may not cover all felony convictions; it may only cover felonies involving violence. Of course, since the Brady Law addresses all felonies, the list stands as it is.

After the State list was finalized, we worked on disseminating the information quickly. Keep in mind, with a group size of 280,000 recipients, we felt we *had* to get something into the hands of the licensed firearms dealers as soon as possible. The only way to accomplish this major task was through the use of mass mailings.

For that purpose, we developed two separate informational letters to send out. We decided it was necessary to break our communication into these two categories:

(1) Brady States were sent an "Open letter to all Federal firearms licensees subject to the waiting period provisions of the Brady Law,"[4] and
(2) Alternative States were sent an "Open letter to all Federal firearms licensees not subject to the waiting period provisions of the Brady Law."[5]

ATF then developed a form titled "Statement of intent to obtain a handgun(s)."[6] Most people refer to this as the "Brady Form." It collects all the information from the purchaser which is required by the Brady Law. However, after we developed the original form, we talked to officials at the FBI National Crime Information Center (NCIC) and with terminal managers throughout the country. They convinced us that still *more* information was needed. So we included certain "optional information" boxes on the form: Social Security Number, height, weight, sex and place of birth. Not only is it advantageous to have this additional information on the Brady Form for those law enforcement officials who will conduct the criminal records checks, but it is also beneficial for the sale of the gun because it can clear up any questions of identity. At the very least, it will speed up the process to completion.

Disseminating Brady information

— *Licensed firearms dealers*

With the development of the Brady Form and the two informational letters, we have been able to disseminate Brady information to licensed firearms dealers in both Brady States and Alternative States. In the Brady States, the licensed firearms dealers were sent an informational package containing the letter and a list of States subject to the Brady Law provisions. This put them on immediate notice as to where they fall within Brady Law requirements. The packet also included Brady Form instructions, and information on how to obtain more forms. The licensed firearms dealers in the Alternative States — those which already require background checks of handgun purchasers — were sent the letter regarding the requirements imposed on them by the Brady Law.

Multiple sales of firearms now have to be reported to the State and local police and to the Chief Law Enforcement Officer (CLEO) in the purchaser's place of residence. For years, ATF has been receiving the "Multiple Sales" form and has found it to be quite an interesting document. As a law enforcement tool, it gives us a good indication as to who is trafficking in firearms. For instance, if someone is going from gun dealer to gun dealer to gun dealer, buying five, six or 10 firearms in a short period of time, you can almost be certain that the person is involved in a trafficking scheme. This tracking tactic has been a strategy for us in enforcing the Gun Control Act of 1968 for many years, and it certainly is going to be of value to State and local law enforcement as they join us in eliminating firearms trafficking.

— *State and local law enforcement*

Also, we realized that not only do we want to get immediate information out to the licensees — the dealers — but we also had to get information out quickly to the law enforcement community as well. In January 1994, we sent out an "Open letter to State and local law enforcement officials," which provides an overview of the Brady Act, and walks through the particulars of the Act in finer detail, noting what is going to be required of State and local law enforcement by February 28, 1994.[7]

Generally, up until now, a handgun transaction in most States was between the *purchaser* and the *dealer*. Then, if the person committed a horrendous crime or a series of violent crimes, the role of the law enforcement officials, at that point, was reactive. Law enforcement would deal with the situation *after* it occurred.

But after February 28, 1994, that will change with respect to handguns. The law enforcement community is going to be involved proactively. Before the handgun is even sold, there will be an up-front involvement by the law enforcement community through the conduct of a criminal records check. Because of the many differing circumstances covered by the Brady Law, the new compliance information needs to be conveyed. Again, in the case of 22,000 State and local law enforcement officials, we had to do that quickly.

Input from the States

The key part of ATF's information strategy was not simply a mass mailing. We held meetings with State and local

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[4] This letter is included in this report as Appendix 3.
[5] This letter is included in this report as Appendix 4.
[6] This form is included in this report as Appendix 5
[7] This letter is included in this report as Appendix 6.

law enforcement agencies and officials throughout the United States. Early in the development process, we were making contact with the ATF Special Agents who were in charge of our law enforcement field divisions, our Regional Directors of Compliance Operations (whose job it is to regulate the industry and assist law enforcement in firearms matters), and the Legal Counsel we are fortunate to have in the various regions. We asked them to join together and form a team; to familiarize themselves with the Brady Law; and to read both the Law and all the information we had prepared and distributed to date. From there, they made contacts with the State and local law enforcement community.

In conjunction with that strategy, ATF sent a letter to all State Attorneys General explaining the Brady Law and asking them to get involved in this process at the State level. I am very pleased to report that in the past 2 weeks, we have had hundreds of worthwhile meetings throughout the United States — good meetings where we have been able to discuss the Brady Law, talk about what it means, discuss what an excellent tool it can and will be for law enforcement, discuss the needs out there, and, finally, recognize that it is out there doing good and that checks should be done.

When discussing the area of criminal record checks, we must realize that the *only* check that is universal right now — that is, the only check that can be done in every State — is the check for a criminal record. At the same time, however, we must also recognize that there are some States which can conduct a check in other areas, such as mental health records, to see if the individual has been committed, adjudicated or declared mentally defective. If States can conduct checks that extend beyond criminal history records, we encourage them to do so.

There are a couple of issues we are exploring and trying to resolve in those meetings. One is that there is still much to be done to educate the States about the requirements of the Brady Law. Most importantly, before February 28, we need to identify those officials in each State who will serve as Chief Law Enforcement Officers (CLEO) and who will be responsible for conducting the Brady handgun sale checks.

As mentioned, we have been requiring ATF field personnel to report in concerning the results of our Brady Law information effort. From information we have received thus far, it appears nine of the Brady States (those which must comply with the Federal 5-day waiting period) have already made a decision as to how they will work.

The next step will be to produce another informational letter. This time, we plan to send the letter to the CLEOs and to all the firearms dealers, advising the dealers (1) who the CLEO is in their area, and (2) where they should go after February 28, 1994, to request the Brady background check. Meanwhile, the dealers in the Alternative States, such as Florida, Delaware, Maryland and Wisconsin, will continue to do business as usual, using the records check or permit systems already in place in their particular State.

Final preparations

As the next 2 weeks unfold, we hope to be issuing letters on a daily basis to each State in order to assist them in ascertaining whether they are functioning correctly. Because we want to be absolutely certain these letters are correct in content, we will send the letters back out to our field entities and ask them to verify the following: "Is this the result of the meetings, conversations and discussions which you had in your particular State?" Once the letter is confirmed, we will then be able to send it to the firearms dealers. When February 28 comes, we feel confident that the dealers in a Brady State will have a supply of Brady Forms on hand with instructions on where it should be sent.

By way of our contact with law enforcement, we also intend to use aids like the National Law Enforcement Telecommunications System and other means of communicating messages to every State and the law enforcement community about what our current situation is and what they can expect. We believe that when the law goes into effect on February 28, there will be good compliance in virtually every State.

As the date draws nearer, we are asking our Compliance Operations personnel to continue to hold meetings. We plan to start conducting firearms seminars which we will invite all the licensed firearms dealers to attend. This is the process we have used for many years. These meetings will explain the Brady Law process even more fully and will answer any questions individuals may have.[8]

We also have instructed our field personnel to be as prepared as possible. If we must employ several thousand people to go out into the field, make these contacts and solve problems (that is, answer telephones, give advice to a firearms dealer or help a law enforcement official), we are going to do it. And, as time goes on, if we see that a particular State is not resolving its particular issues or problems, we plan to visit that State, hold additional information meetings, and make the Brady process work.

We are committed to a process which we believe, on February 28, 1994, will ensure that a good quality criminal history record check will be done on every handgun sale in the United States. Further, as new systems are developed and technological advances are made, we are committed to support State- or national-level use of any other record check which may be possible.

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[8] ATF also developed, continually updated and distributed a "Questions and Answers" sheet on the Brady Act. A copy of this, dated March 18, 1994, is included in this report as Appendix 7.

I. Criminal history records: Where we are

Setting the stage

Requirements, regulations and procedures of the Brady Act: Panel
Moderator's remarks
Robert R. Belair

Brady Act regulations and requirements
Stephen R. Rubenstein

FBI operational status report and
Felon Identification in Firearms Sales Program
Virgil L. Young Jr.

Report of study on identifying persons,
other than felons, ineligible to purchase firearms
Thomas F. Rich

Panel on requirements, regulations and procedures of the Brady Act: Moderator's remarks

ROBERT R. BELAIR
General Counsel
SEARCH

First, let me say a brief word about this panel. They are experts and excellent speakers, and each has worked hard to prepare informative material and illustrations to enhance his presentation. We plan to talk about what the Congress did *not* do in terms of the Brady Act.[1] And that is not so much a criticism of the Congress as it is an expression of the *extremely difficult* issues the Congress faced — difficult from a policy standpoint and difficult from a political standpoint. As you know, it took the Congress 7 years, and the instant check system provision was really an afterthought. The Brady Bill started out being a "waiting-period" bill. So, right from the beginning of the introduction of the background check discussions, there was significant confusion and misinformation, a great deal of debate about timetables, architecture and Federal help. Yet with the bill now in place, many if not most of those questions still remain unresolved.

Today we will talk about (1) what is a *reasonable* effort in a pre-instant check environment; (2) what should the national instant check *design* look like; and (3) what about *other* Brady-type databases? It seems to me the reason the Congress left so much unresolved is that the Brady Act is truly ambitious. I think that most proponents and opponents would say it may not be ambitious from the standpoint of *curing* the problems of gun violence. However, the notion that there could be a national point-of-sale system, with checks on a name basis and which could be initiated by noncriminal justice, is unprecedented.

Many of you know that in 1988, the Congress directed the Attorney General to "develop a system for the immediate and accurate identification of felons who attempt to purchase" firearms.[2] The Brady Bill is really a follow-up to that legislation. Now, 6 years later, we are still a long way from having a system (at least on a national basis) for the immediate and accurate identification of felons who attempt to purchase firearms. From an information standpoint, the reason for that is that the implementation of such a mandate requires extensive automation, telecommunications, a felony flagging or identification capability, adequate disposition reporting, on-line identification capability, and strategies for sharing this information on a national basis. For some States, this is a tremendously ambitious undertaking.

There is also controversy associated with a national system. For instance, once the system is in place, how long will it be before other potential users come along with compelling needs to say, "We *have* to get into an instant national background check system." We already see shades of that possibility with the National Child Protection Act.

At the same time, there has been a significant learning curve for the Congress. This has turned out, however, to be a benefit, in that Congress is far more educated today about criminal record systems, about problems which arise in these record systems and about the importance of these record systems. We see real evidence of that benefit in what happened with the Brady Act: the

[1] Brady Handgun Violence Prevention Act, Pub. L. No. 103-159 (November 30, 1993).

[2] Anti-Drug Abuse Act of 1988, §6213, Pub. L. No. 100-690, 102 Stat. 4181.

Brady Act originally had a $100 million authorization, but the Senate changed that, and now the law has a $200 million authorization.

Let me close by providing an overview of the panel presentations: Stephen Rubenstein from the Treasury Department will discuss checks that are done in a pre-national instant check environment, as well as the draft Brady regulations being developed by the Bureau of Alcohol, Tobacco and Firearms. Virgil Young from the FBI will focus on Federal capabilities for a national instant check system. And Thomas Rich from QED is going to look ahead at the databases that would be tapped if you were to do a *complete* check (under the 1968 Gun Control Act) to identify all the individuals who, under Federal law, are disabled from purchasing firearms (such as illegal aliens, those who are dishonorably discharged from the military, drug users and mental-defectives).

Brady Act regulations and requirements

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Office of the Chief Counsel
Bureau of Alcohol, Tobacco and Firearms
U.S. Department of the Treasury

Before I discuss the Brady Law regulations which will be published in the *Federal Register* on February 14, 1994, I want to talk briefly about how the Brady Law generally fits in terms of the Federal firearms laws.[1] Many of you are aware that the Brady Law amended the Gun Control Act.[2] Perhaps for some of you, the Brady Law is your first contact with the Federal firearms laws.

The Gun Control and Brady Acts

Since 1968 and the passage of the Gun Control Act, the Bureau of Alcohol, Tobacco and Firearms (ATF) has licensed manufacturers, importers and dealers in firearms. Under the Gun Control Act, these persons generally can sell firearms to residents of their own States. They must abide by State and local laws in making these sales. They also must keep detailed records of all their firearms transactions. Lastly, these required records and forms inventories are subject to inspection by ATF. In addition, Federal firearms licensees are prohibited from selling firearms to any person they know (or have reasonable cause to believe) might fit into one of seven enumerated categories. (These are the same categories which are now applicable under the Brady Law.)

Since 1968, it has been unlawful for licensees to sell firearms to persons who:

- Are under indictment for, or who have been convicted of, a crime punishable by more than a year in jail;
- Are fugitives from justice;
- Are unlawful users of, or addicted to, a controlled substance;
- Have been adjudicated as a mental defective, or committed to a mental institution;
- Are aliens who are illegally or unlawfully in the United States;
- Were dishonorably discharged from the military; and
- Have renounced their United States citizenship.

Despite the existence of these "prohibited" categories, there was only *one* Federal requirement aimed at preventing persons who fit in these categories from purchasing a firearm: the buyer had to complete the ATF Form 4473 (what is known as the "Firearms Transaction Form"). On this form, buyers certified their name and residence, and stated that they did not fall within any of those "prohibiting" categories. In those States that have no instant background check system, permit procedure or waiting period for firearms purchases, the licensee examined this form and made a determination as to whether the buyer had filled it out correctly. If so, the licensee then made an over-the-counter transfer of the handgun or other firearm.

The Brady Law has now added an additional means of screening out prohibited purchasers by imposing a waiting period of 5 business days. During that time, the dealer is required to notify the Chief Law Enforcement Officer (CLEO) of the purchaser's

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[1] Brady Handgun Violence Prevention Act, Pub. L. No. 103-159 (November 30, 1993). The text of the Brady Act is included in this report as Appendix 1.

[2] Gun Control Act of 1968, 18 U.S.C. §§ 921-930.

residence of the proposed sale of a handgun.

As mentioned, the Brady Handgun Violence Prevention Act amended the Gun Control Act of 1968. Thus, because the ATF has authority to enforce the Gun Control Act, it enforces the Brady Act as well.

Since the Federal firearms licensees have been working with the Gun Control Act for many years, I believe they have somewhat of an advantage over State and local law enforcement agencies. They are aware of the requirements of the Gun Control Act and who they can and cannot sell firearms to. They are aware of all the recordkeeping provisions of the law, plus the form requirements. To law enforcement agencies, however, this is all very new. Like others affected by Brady, law enforcement agencies want to (1) know what is required of them, and (2) be sure they do all that is required of them.

Brady regulations

In order to implement the Brady Law, ATF has issued regulations which serve to advise the firearms industry of what the law requires them to do.[3] These regulations contain the nitty-gritty specifics of what the law will require of them. (In that regard, like other Federal agencies, ATF issues regulations for the regulated industry and the law stipulates what is required.) Normally when we issue regulations, we issue what is called a "Notice of Proposed Regulation." This tells everyone involved that the ATF intends to issue regulations to implement a particular statute. The Gun Control Act requires that we give at least a 90-day period for "Notice and Comment" on these regulations before we issue what are called the "Final Regulations." After receiving the comments and input, we evaluate whether the proposed regulations should be modified in any way to reflect that input.

Unfortunately, the regulations that will be published on February 14, 1994, could not go through the typical "Notice and Comment" process because of the tight time frame that was involved. Thus, they will be issued as "Temporary Regulations," effective on February 28, 1994. At the same time, ATF will also issue a "Notice of Proposed Rulemaking," which will serve to advise the public that these regulations have been issued, but to also indicate that we are still requesting comments. There will be a 90-day period during which those comments can be received, and we will solicit comments on these regulations from criminal justice officials, firearms licensees and the public at large. After the comment period closes, the comments will be evaluated and, at some point, final regulations will be issued to implement the Brady Law.

The regulations are directed primarily at Federal firearms licensees. They are the persons who must be licensed by ATF in order to do firearms business. The regulations present, in some detail, what is required and imposed upon the licensees under the new Brady Law.

Brady State requirements

The Brady Act itself is relatively straightforward in stating what is required of a licensee when a person comes in to purchase a handgun after February 28, 1994. Let us talk primarily about the requirements imposed on the "Brady States" (States in which firearms licensees must comply with the Federal 5-day waiting period).

The Federal firearms licensee must obtain a Statement of Intent to Obtain a Handgun(s), the so-called Brady Form, from the buyer.[4] The Brady Form has the buyer's name, address and date of birth on it. (This information must also appear on a valid photo identification.) The buyer must certify that he does not fall within any of the categories which prohibit him from purchasing the handgun. The dealer (or other type of licensee) must then verify the buyer's identity by examining the photo identification presented, and must note on the form what valid form of identification is used.

At that point, two things have to occur *within 1 day* after the buyer furnishes the Brady Form to the dealer:

(1) The dealer must *provide notice* of the information on the form to the Chief Law Enforcement Officer (CLEO) of the buyer's place of residence.

(2) The dealer must *transmit a copy* of the form to that particular CLEO.

These two requirements might be done at the same time. For instance, the licensee may fax a copy of the form to the CLEO. This would provide not only *notice* of the form being filed, but also would provide the *copy* of the form. Or a licensee might walk down to the local Police Chief and hand-deliver the form within the 1-day period. That would also qualify as providing the actual notice along with a copy of the form. On the other hand, the dealer may do business a long distance from the CLEO, so the Brady Act contemplates that dealers can provide notice of the Brady Form contents to the CLEO via *telephone*. The dealer must then note on the form that the CLEO was notified via telephone, and then the dealer also must send a copy of the form to the CLEO.

Next, the dealer must wait 5 business days (from the date the CLEO received notice of the sale) before transferring the handgun to the buyer. If the dealer receives notice from the CLEO that there is no information that indicates the buyer would be violating the law by obtaining the handgun, then the transaction can be completed before the 5 days have elapsed. Once that information is relayed back to the dealer, the dealer can complete the sale. If the dealer hears *nothing at all* from the CLEO, the dealer may complete the sale after the end of the fifth business day.

Brady exceptions

There are certain exceptions or alternatives to the 5-day waiting period

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[3] U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Implementation of Public Law 103-159, Including the Brady Handgun Violence Prevention Act," *Federal Register* (14 February 1994) vol. 59, no. 30, pp. 7110-7115. (To be codified at 27 C.F.R. §178.)

[4] The Brady Form is included in this report as Appendix 5.

required by the Brady Law. In fact, many States have permit, approval-type or instant check systems in place which are acceptable alternatives to the 5-day waiting period.

— Permits

The first is the permit exception. In those States that issue permits to persons obtaining handguns, a records check of the individual is conducted *before* the permit is issued. And if a permit has been issued to the buyer within the past 5 years, dealers in those States will not have to fill out a Brady Form. However, those dealers *will* have to keep a record of the fact a permit was issued. (This allows ATF to ascertain whether the dealer has complied with the provisions of the Brady Law.)

— Pre-sale background checks

The second alternative is systems which conduct background checks at the time of sale. This varies in different States. In some States, like Virginia and Florida, the system involves an instantaneous criminal history record check of the handgun purchaser. Other States have systems in place in which background checks are conducted at the time of sale. That is, the buyer fills out an application at the time of the firearm purchase; the application is sent to authorized government officials; and the buyer faces a waiting period of a certain number of days (typically five or seven) so that a record check can be done.

— Threat to life

The third alternative involves a "threat to life." The buyer provides the dealer with a written statement obtained from the buyer's CLEO, stating that the buyer requires a handgun because of a threat to the buyer's life or any member of the buyer's household. This written statement must be dated within the 10-day period of the buyer's most recent proposal to acquire a handgun.

— Firearms "class"

The fourth alternative pertains to a certain class of firearms which fall under the National Firearms Act (which controls certain types of weapons such as machine guns, short-barrelled shotguns, short-barrelled rifles and destructive devices).[5] A small class of handguns falls within the purview of this Act. In order to purchase one of those firearms, the buyer must submit an application, pay a tax and undergo a complete criminal history record check. When that application is approved by ATF, the buyer can pick up the firearm from the dealer. Buyers of these types of firearms do not have to comply with the Brady check.

— Geographic alternative

Finally, certain purchases fall within what is known as the "geographical alternative" to the waiting period. The Brady Law anticipated that there may be some areas of the Nation where, because of the area's remoteness, it would be impractical to notify the CLEO of the buyer's intent to obtain a handgun. The law says the ATF has to look at the ratio of the number of law enforcement officers in the State in relationship to the number of square miles of land in the State (not to exceed .0025); whether the licensee's business premises are extremely remote relative to the location of the CLEO; and whether there is an absence of telecommunication facilities.

Dealers who believe they fall within this "geographical alternative" have to submit two things: a request to ATF stating that they believe they fall within the alternative, and relevant supporting information. Should the dealers be certified by ATF as meeting the requirements of this alternative, they would then be exempt from the 5-day waiting period requirements.

Brady transactions

Typical Brady transactions will go like this: the dealer will call or send the Brady form to the CLEO. In many cases, the dealer will not hear back from the CLEO, and at the end of the fifth business day, the handgun can be transferred. It will be business as usual. The dealer is still required to keep both the Firearms Transaction Form (ATF Form 4473) and a copy of the Brady Form indicating that the dealer has complied with the requirements of the Brady Law.

We anticipate that, in most situations, this type of transaction will occur on a daily basis. Of course, on February 28, 1994, we hope to have copies of the regulations, the forms, and the list of the CLEOs within each respective jurisdiction in the hands of all licensees. We understand what can happen when a new law is implemented. Obviously, ATF stands ready, along with the Treasury Department, the Justice Department and, most importantly, the local police organizations, to help ensure that the law is implemented in as smooth a manner as possible.

We all recognize there will be unique situations in which a dealer simply will not know who to call. He or she will believe the correct contact has been made with the right CLEO. But that person might say, "I'm not the right CLEO" or "You need to talk to someone else." We recognize these inconveniences will probably happen during the first part of the implementation of the Brady Law. We also recognize, however, that a vast majority of Federal firearms licensees want to make sure that they comply with the law. Like law enforcement agencies, the dealers want to ensure that people who should not obtain handguns, do not obtain them. They have as big a stake in this as those of us who work for the Federal government and those of you who work for State and local government.

Thus, on February 28, 1994, and the days that follow, we stand ready to assist the licensees and law enforcement officers within the country, to ensure that the Brady Law can be implemented as smoothly as possible. We want to work together to meet the goal of the Brady Law: to ensure that those persons who are not entitled to handguns do not get them, and yet those persons who are entitled to handguns can receive them.

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5 26 U.S.C. §5801-5849.

FBI operational status report and Felon Identification in Firearms Sales Program

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Criminal Justice Information Services Division
Federal Bureau of Investigation

First, I would like to comment on the remarks made previously by my learned colleague, Kent Markus. Kent said he thinks the Bureau of Alcohol, Tobacco and Firearms (ATF) has done a tremendous job in completing their assigned tasks in a very short period of time. I, too, have dealt on almost a daily basis with ATF since the Brady Law was passed, and I can say they have done a tremendous job.

The FBI has been a bit more fortunate than ATF, in that we have not been given the assignment to do things in such an expeditious manner. But I think that what the FBI will have to do is going to be just as important in the long run, as what ATF has to do is important in the short-term.

Of course, one of the things we must do is to develop a design for the national instant criminal background check system (NICS) which must be in place within 5 years of the passage of the Brady Law.[1] Unfortunately, we have to come up with a design for that system by June 1, 1994. We also have to be able to tell the gun dealers how they are going to contact the national system, and we have to tell law enforcement what the system is going to look like. So we do have a big task ahead of us in the next few months as well.

My discussion today covers the following:

- The system requirements of the NICS;
- Activities the FBI will undertake in the next few months to develop a design for the system;
- The current status of the Interstate Identification Index (III), which is going to be the foundation for the instant check system; and
- The Felon Identification in Firearms Sales (FIFS) Program, an ongoing effort to try to flag convicted felons in III.

NICS requirements

Let me begin with a discussion of what the system requirements are for NICS. First, the Brady Law requires that the Attorney General establish a national instant criminal background check system by November 30, 1998. It requires each dealer and Chief Law Enforcement Officer (CLEO) to know about the system and how to contact it. Keep in mind, we are not just talking about handguns at that point but *all* firearms transactions. The most recent figures that I am aware of indicate that there are approximately 7.5 million firearms transactions in this country every year. This means that by 1998, the system will have to be able to handle a tremendous number of contacts.

One of our problems in designing this instant check system is going to be to figure out how we are going to take the current State systems — systems that the States are very pleased with — and retro-fit those into a national system. At this time, it is our belief that we probably will not have a completely uniform system throughout the country. By that, I mean

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[1] The Brady Handgun Violence Prevention Act, Pub. L. 103-159, was passed November 30, 1993. The text of the Brady Act is included in this report as Appendix 1.

that the way the system is *contacted* may vary from one State to another.

The FBI held a planning conference yesterday with over 150 people from all the States. We talked briefly about some of the requirements of the system, including things like response times, security, how to ensure that only approved gun dealers have access to this system, how we can give them only the information they need to know, and whether or not someone is approved to make the firearms purchase. We also discussed the timetable the FBI has established for developing and implementing a design for the NICS.

System design timetable

As mentioned, by June 1, 1994, the Attorney General must determine the type of computer hardware and software that will be used to operate the national instant criminal background check system mandated by the Brady Law, and the means by which State records systems and Federal firearms licensees will communicate with the national system.[2] We have established the following timetable for the next few months that will help us meet this deadline.

- During February 1994, we are going to issue a Request For Information to industry so they can tell us what hardware and software has been developed which might be used by the dealers to contact this national system. We are going to take the information we collect, review it, and try to determine appropriate hardware and software for the instant check system.
- In March 1994, we are going to run a topic paper by our regional working groups for the National Crime Information Center Advisory Policy Board (NCIC APB). This will help us collect ideas from the control terminal officers and the State identification bureau chiefs regarding what elements they believe should be part of the NICS design.
- In the second week of April 1994, we are going to host a get-together of State identification bureau chiefs and others who are experts in these systems to help us try to assess our needs and capabilities, and to develop a design for the overall system.
- During the second week in May 1994, we will present the results of all our efforts at a meeting of the NCIC APB, and then make our recommendations to the Attorney General so that she can publish the design of this system by the deadline of June 1, 1994.

That is our intended schedule. It is an ambitious one, I can assure you. I hope that we can do as well in meeting that schedule as I believe ATF is doing in meeting their more immediate schedules here.

III status

I am going to address the status of the Interstate Identification Index (III), which is going to be the basis for the instant check system required by the Brady Law.[3] I believe that we are doing very well with the III, and I am very pleased with the passage of the Brady Law because it is going to focus attention on the III. More importantly, for the States, it is going to focus funds on improving existing criminal history records in State systems.

Why do we need the Interstate Identification Index? This chart (Figure 1) shows that two-thirds of the persons who are arrested have a prior criminal history. At every stage of contact, the criminal justice community must know what the prior arrest record is, what the conviction record is, and so forth, for that person who is arrested.

Why do we need something like III on the national level? Because 20 to 30 percent of persons with a prior record have been arrested in more than one State. There has been a lot of talk in the last few months about the fact that the States hold over 50 million records on people who have been arrested. The problem is this: just because information is available in one State does not mean it is available to other States. One particular State could have a tremendous automated system available to people within the State, but unless that system

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2 The Attorney General issued the NICS declaration in the *Federal Register*. U.S. Department of Justice, Office of the Attorney General, "National Instant Criminal Background Check System," CAG Order No. 1882-94), *Federal Register* (1 June 1994) vol. 59, no. 104, p. 28423.

3 The Interstate Identification Index (III) is a national index that draws upon the combined criminal history record databases of the State repositories, allowing for the interstate and Federal-State exchange of criminal history record information. Under III, the FBI maintains an identification index to persons arrested for felonies or serious misdemeanors under State or Federal law. The complete records, meanwhile, remain in each State's criminal record repository or in the criminal files of the FBI. The index — which contains only identification information, FBI numbers and State identification numbers (SIDs) — serves as a "pointer" to refer inquiries to the State or Federal files where the complete records are maintained.

Search inquiries from criminal justice agencies nationwide are transmitted to III automatically via State telecommunications networks and the FBI's NCIC telecommunications lines. Searches are made on the basis of name and other identifiers. The process is entirely automated and takes approximately 5 seconds to complete. If a hit is made against the Index, record requests are made using SIDs or FBI numbers and data are automatically retrieved from each State repository holding records on the individual and forwarded to the requesting agency. (Responses are provided from FBI files where the State originating the record is not a participant in III.)

III ensures high-quality criminal justice responses because, in most cases, data are supplied directly by the State from which the record originates. At present, the system operates for criminal justice inquiries only. Participation in III requires that a State maintain an automated criminal history record system capable of responding automatically to all interstate and Federal/State record requests.

For more complete information about the III and national criminal history record checks, see *Use and Management of Criminal History Record Information: A Comprehensive Report*, U.S. Department of Justice, Bureau of Justice Statistics, Criminal History Information Policy Series, by Robert R. Belair and Paul L. Woodard, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, 1993) pp. 49-63.

can be accessed by an agency in another State, it is literally worthless for doing a national check. That is where III comes in.

Twenty-six States currently participate in the III (Figure 2). Nevada joined III in December 1993, and we anticipate that additional States are going to join in the next several months.

The III States have coordinated — or, if you will, "linked" — our computers so that the records can be updated by the State computer systems or by the III system. Thus, information that comes out of the State systems is the same information that comes out of the Federal system.

Almost 19 million individuals have records in III. Some of those people, obviously, have records in more than one State. But we think that is a tremendous number, since this system only became operational in 1983. We have been slowly progressing to make sure that our computers are linked with the States. Although we are very pleased with III, we recognize we have a long way to go.

FIFS Program

The Justice Department was mandated by the Anti-Drug Abuse Act of 1988 to develop and report to Congress on a system for the immediate and accurate identification of felons who attempt to purchase firearms.[4] To comply with that mandate, the Felon Identification in Firearms Sales (FIFS) Program was implemented. This program carries over State record flags into the III for flagging criminal records. In those States that use III to conduct firearms-related checks, and if proper programming has been completed, operators conducting records checks of individuals can immediately see from the Index whether that person has a felony conviction. They do not have to look at the detailed criminal history record. At that point, the State operator knows he or she can deny the sale because that person is disqualified from purchasing a firearm under Federal law.

We began a pilot project with the Virginia State Police in December 1992, and it is currently being accessed by police agencies all over the country. There are three separate flags in the system:

(1) The first is the "F" flag, which is used when the subject's record contains one or more felony convictions. Again, that means that the operator conducting the check does not have to look at the details of the criminal history record. At one glance, the operator can immediately determine that the person is prohibited from purchasing the firearm.

(2) The "M" flag is used when the subject's record contains only a misdemeanor conviction, and there are no pending open charges. This means that at that point, the operator also would not have to peruse the details of the subject's record. Rather, the operator can immediately ascertain that the subject is qualified to purchase a firearm, even though the subject does have a record in the system.

(3) The "X" flag covers the majority of the records. Those are the records in which (a) no flag has been established (because no one has reviewed the record yet to see if there is a disqualifying felony conviction) or (b) there is an open charge, but no disposition is shown. In these cases, the operator has to pull up the details of that subject's criminal history record to see if it contains a disqualifying conviction.

After we reviewed the results of the pilot project with Virginia, we found that it was working very well. At this point, we have expanded the project so that two other States (Illinois and Missouri) are also providing their felony conviction flags on-line to the system.

In late 1993, we conducted a survey asking the other States when they would be able to begin giving us their felony conviction flags as well. Figure 3 shows those States that have indicated that they may be participating in FIFS by 1995 or after. Figure 3 also shows those States which have indicated that they have no plans to participate in FIFS. (I believe the one State which cannot participate is New Jersey because a State law prohibits disseminating some of that information.) Finally, Figure 3 shows those States which did not respond to our survey or whose response was indeterminate. Still, we are going to pursue this effort.

Figure 4 shows an example of the type of record that law enforcement will get back from a FIFS request. Basically, the record provides the subject's name, some descriptive data, fingerprint classifications, identifying information, and so forth. It also says, "The following criminal history record is maintained and available from the FBI," and includes the FBI number. This particular record says, "Court disposition is pending; conviction status unknown." It then lists "Minnesota," along with an SID and a felony conviction flag, and "Delaware," along with an SID and an indication of no felony convictions in that State. When the operator accesses that information from the Index, there is no need to call Minnesota's computer and go into the details of the record. Rather, the operator can deny that sale immediately based upon the existence of a felony conviction in Minnesota.

That is basically what we are doing with the Felon Identification in Firearms Sales Program.

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[4] Anti-Drug Abuse Act of 1988, §6213, Pub. L. No. 100-690, 102 Stat. 4181.

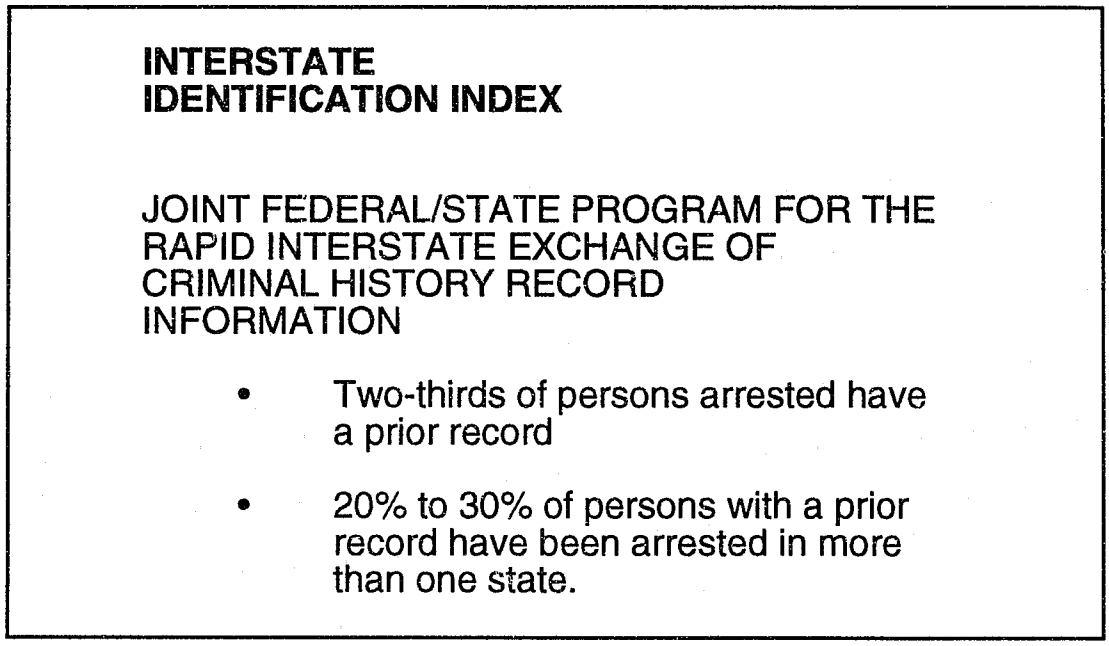

Figure 1: Statistics which support need for the Interstate Identification Index

PARTICIPANTS

Interstate Identification Index Program

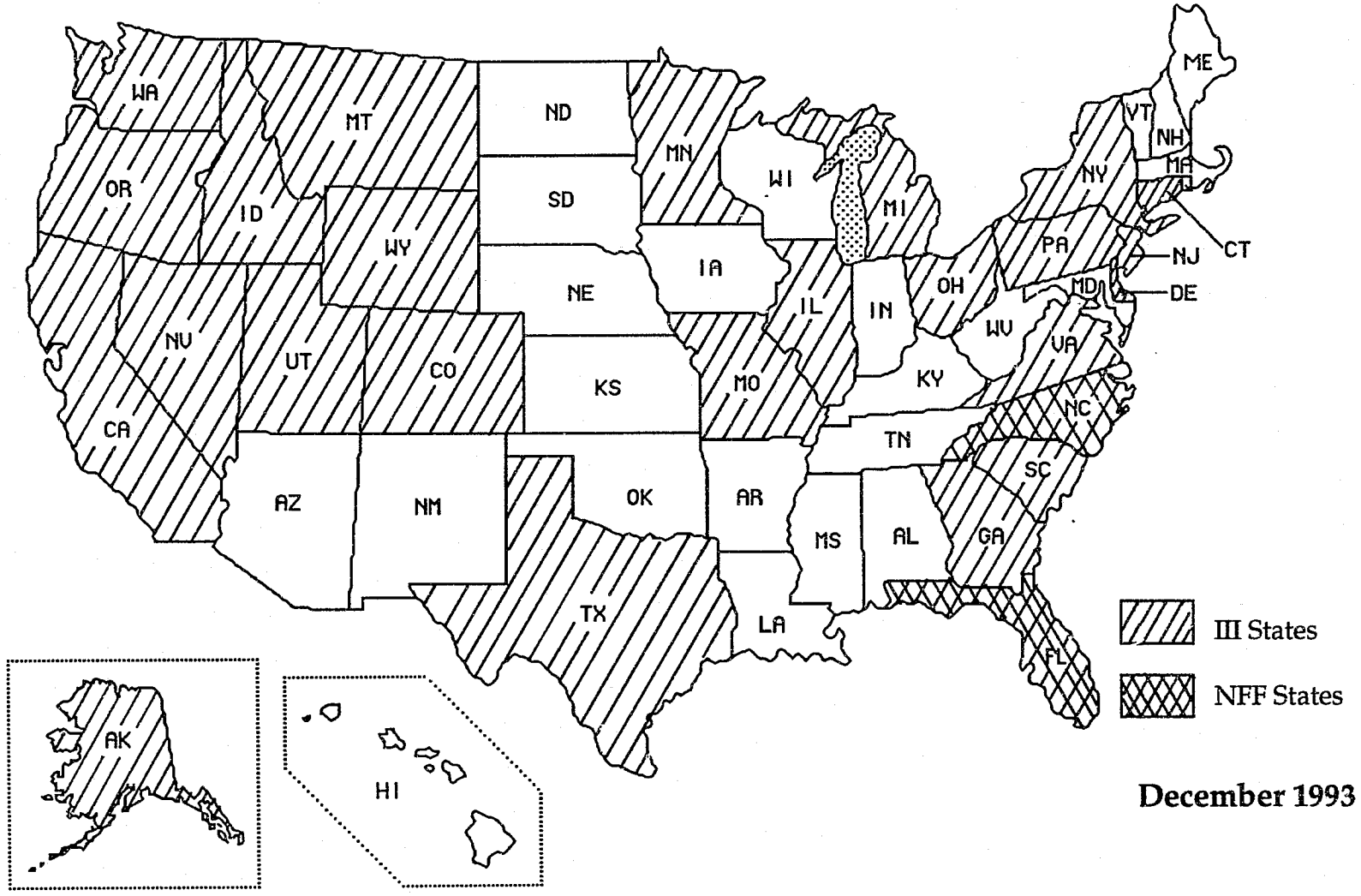

Figure 2: State participants in the Interstate Identification Index program

States Future FIFS Participation

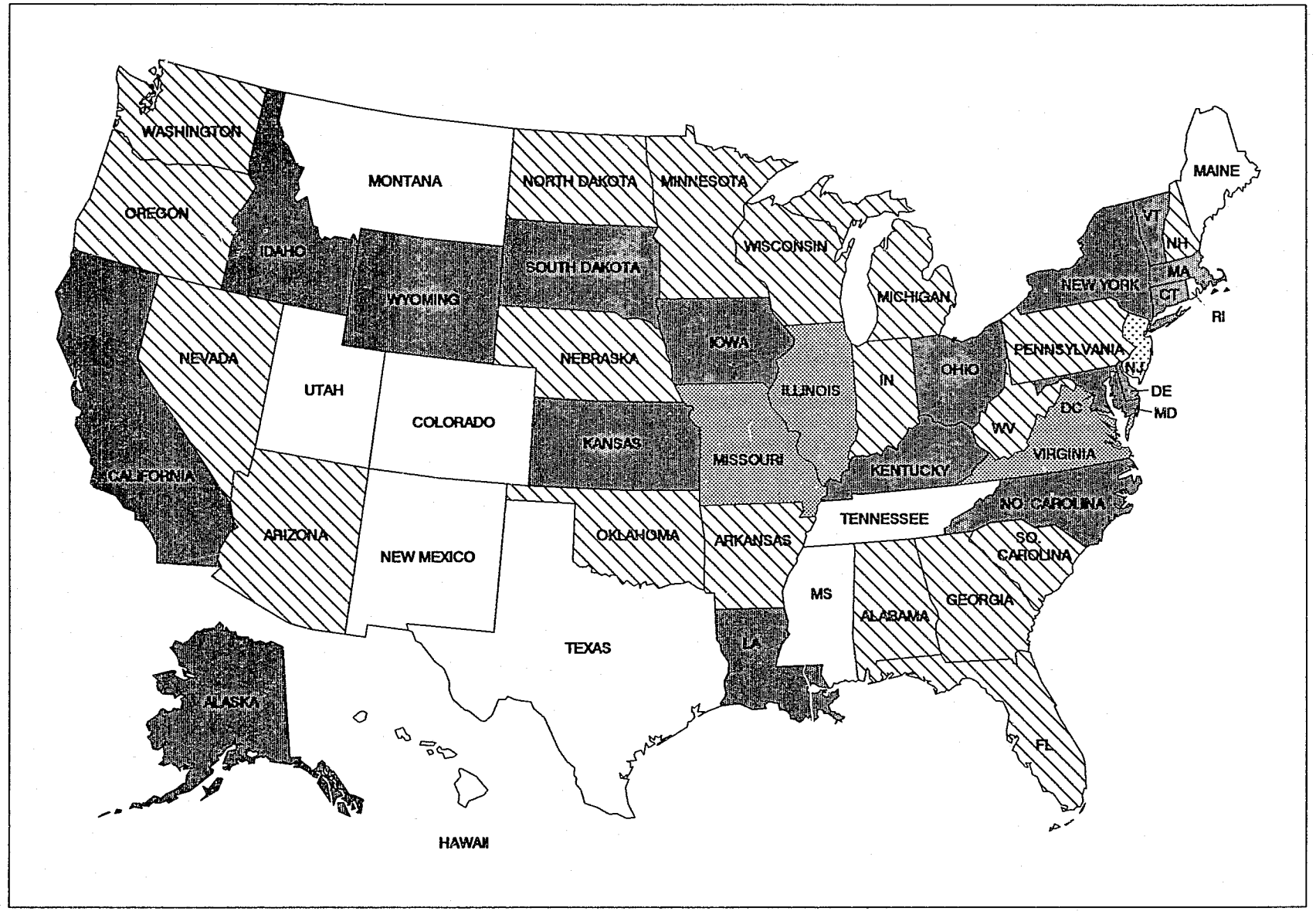

Figure 3: Future State participation in the Felon Identification in Firearms Sales Program

RESPONSE TO QH INQUIRY

DL0119139LRR
DCFBIWAA2
THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR INQUIRY ON NAM/DOE,JOHN SEX/M RAC/W DOB/010354 PUR/F

NAME	FBI NO.	INQUIRY DATE
DOE,JOHN	123456X11	07/12/91

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	BIRTH PLACE
M	B	01/03/54	602	180	BRO	BLK	COLORADO

FINGERPRINT CLASS
TT TT 12 13 14
15 16 17 18 19

SCARS-MARKS-TATTOOS
CATA L EYE
GLASSES

SOCIAL SECURITY
238-50-2296

IDENTIFICATION DATA UPDATED 11/14/89

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE FOLLOWING:

FBI	- FBI/123456X11	COURT DISPOSITION PENDING/ CONVICTION STATUS UNKNOWN
MINNESOTA	- STATE ID/MN82009700	FELONY CONVICTION
DELAWARE	- STATE ID/DEJ0999977	NO CONVICTIONS/MISDEMEANOR CONVICTIONS ONLY

THE RECORD (S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.
END

Figure 4: Sample record response to FIFS inquiry

Report of study on identifying persons, other than felons, ineligible to purchase firearms

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In July 1989, the Bureau of Justice Statistics selected Queues Enforth Development, Inc. (QED) to conduct a study to determine if an effective method exists for the immediate and accurate identification of persons, other than felons, who attempt to purchase firearms but who are ineligible to do so under Federal law.[1] I am going to provide an overview of the persons who are in these categories, established pursuant to the Gun Control Act of 1968.[2]

These are the key issues we looked into when we were doing our study:

- Who is and who is not covered under these categories;
- What are the current sources of data on persons in each of these categories;
- What is the category population; and
- What are the current legal restrictions in accessing information on these persons.

Ineligibility categories

There are five categories of persons, other than felons, who are ineligible to purchase firearms under Federal law. The first two of these categories are fairly straightforward, while the other three present unique problems.

— *Dishonorable discharges*

The first category is persons who have been dishonorably discharged from the armed forces. The Defense Department has an office in California that maintains an automated database of all dishonorably discharged persons. It is estimated that since 1941, about 20,000 people have been dishonorably discharged. It is a pretty small category. In terms of accessing this information, we were told that these records are governed by the Federal Privacy Act, which prohibits access to this information, without the individual's permission, for any purpose for which it was not intended.[3]

— *Citizenship renunciates*

The second category is persons who have renounced their U.S. citizenship. In this case, the State Department maintains an automated database that lists all persons in this category. Again, it is a small population — about 10,000 people have renounced their citizenship since 1941 or so. About 200 people are added to this category each year. In terms of accessing this information, the Federal Privacy Act applies here as well, limiting access to this information.

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1 A document providing the highlights and executive summary of this study was prepared by QED and distributed at the conference. It is included in this report as Appendix 8.

2 Section 922(g) of Title 18, U.S. Code, stipulates the categories of persons, other than felons, ineligible to purchase firearms: (1) a person who is an unlawful user of, or addicted to, any controlled substance; (2) a person who has been adjudicated as a mental defective or who has been committed to a mental institution; (3) an alien who is illegally or unlawfully in the United States; (4) a person who has been dishonorably discharged from the U.S. Armed Forces; and (5) a person who has renounced U.S. citizenship. These eligibility categories also apply to the Brady Act for purposes of handgun purchase denials.

3 Federal Privacy Act, 5 U.S.C. § 522a.

— Drug users

A third category concerns unlawful users of controlled substances. The one problem with this category is that the statute indicates that these persons should be *current* users, as opposed to *former* users. Unfortunately, when we did the study, there were no interpretations from different courts on what this actually means. The Bureau of Alcohol, Tobacco and Firearms (ATF) has indicated that there has to be evidence of some *current* use. One possible way to obtain information on current users is to access drug treatment databases, which are actually protected by some State confidentiality laws. One point to make about this category, however, is that there is some overlap between persons in this category and persons who are ineligible to purchase firearms because they are convicted felons. For example, the National Institute of Justice's Drug Use Forecasting program has demonstrated that a high percentage of arrestees test positive for drug use. Thus, Federal and State criminal history databases contain many persons who are not only convicted felons, but who are also undoubtedly current drug users who are not included in any of the drug treatment or other drug-related databases.

— Illegal aliens

A fourth category is illegal aliens. Not surprisingly, there is no single centralized list of all the persons who are in this country illegally. However, the Immigration and Naturalization Service does maintain an automated database of all persons entering legally which could be used to obtain information on those aliens who have overstayed their visa. However, these "overstayers," as we might call them, probably constitute a very small percentage of all illegal aliens. Again, as with some of the other categories, there is some overlap with other persons whose records are already in the State criminal history repositories.

— Mental health commitments

The fifth category is probably the one of most interest. Here, the Gun Control Act indicates that persons committed to mental institutions cannot purchase firearms. The ATF, along with a number of different courts, has interpreted this to be a commitment by courts, authorities, commissions and boards with jurisdiction over mental health matters. It does *not* cover what are called "voluntary commitments." The reason this is important to understand is shown in Figure 1.

Periodically, the U.S. Department of Health and Human Services surveys mental institutions regarding the status of different persons who were admitted. At the time we did this survey, this was the most recent information they had. As Figure 1 shows, out of the 1.5 million persons admitted to mental institutions in 1986, about 75 percent came under the category of voluntary commitments. These persons, then, would not be affected by the Gun Control Act.

Figure 1 also shows what are called the "noncriminal commitments," which constitute a little under 25 percent of all commitments. As it turns out, only about half of these persons would be covered by the Gun Control Act. Remember, the commitment *has* to be by a court in order for the person to be ineligible to purchase firearms.

Finally, only about 2 percent of all admissions to mental institutions are "criminal commitments." Almost all of these persons are, in fact, covered by the statute. It is important to understand the bottom line: Only about 1 out of every 10 persons entering mental institutions in 1986 would actually be covered under the Gun Control Act provisions.

If we are interested in accessing this mental institution information, where do we go? There are two different approaches. One is to go through the courts. It turns out that almost all persons in this category went through the court system. The State criminal history repositories probably have information on a lot of the criminal commitments. In terms of the other kinds of noncriminal commitments, there is an obstacle to overcome: strong State confidentiality statutes which apply to these records. The other possible source of information is the State mental health departments. Unfortunately, at the time we did this survey, almost all State databases only contain data on those persons who are admitted to *State* facilities (which leaves out admissions to private psychiatric facilities and veterans' hospitals, for example), and that constitutes about half of all of the persons covered under this statute. Again, in almost all States, there are strict confidentiality statutes protecting this information. Obviously, there are a lot of obstacles one would have to overcome to access this information.

Q.E.D.

Admissions to Mental Health Facilities in 1986

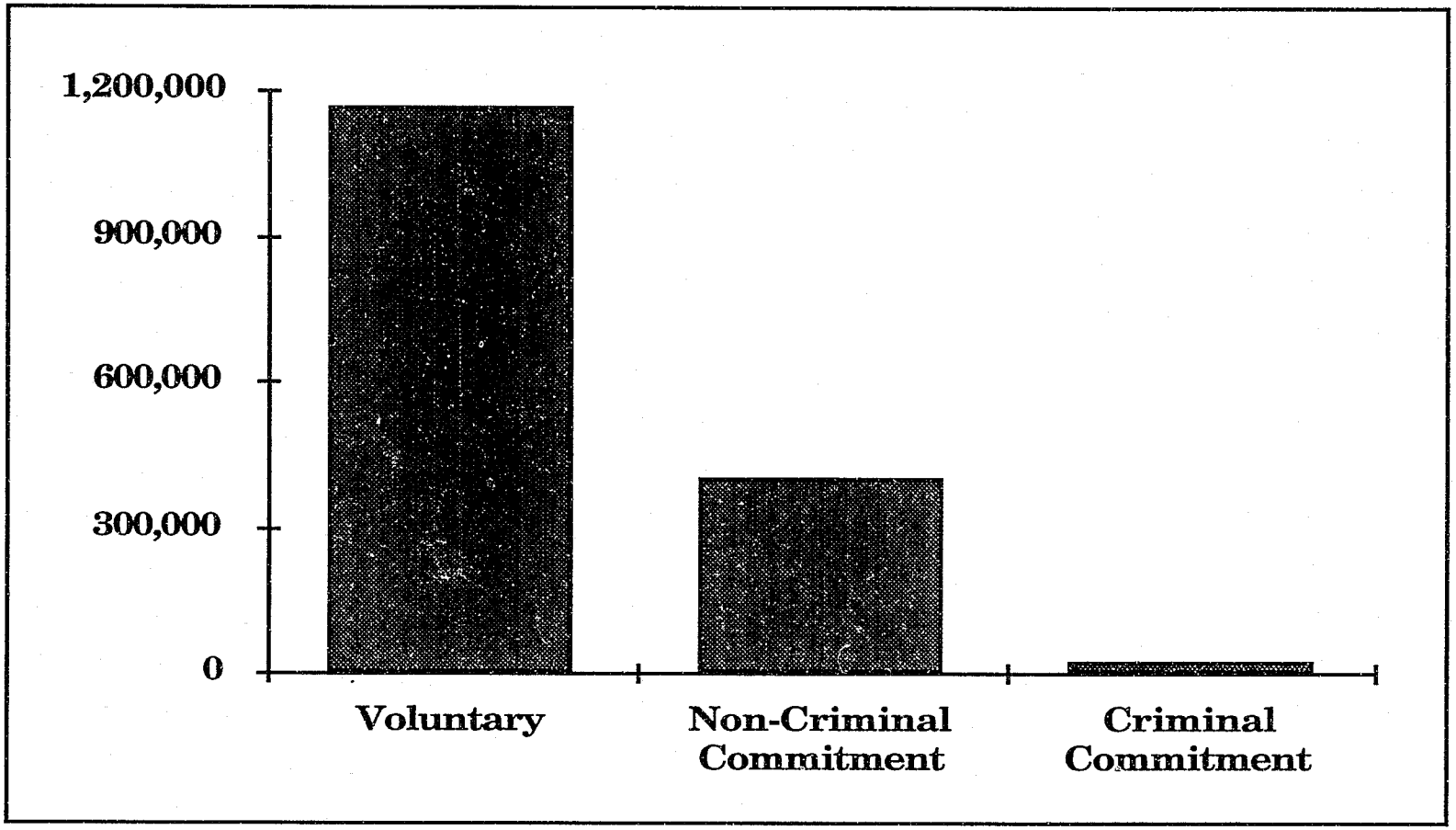

Figure 1: Admissions to mental health facilities in 1986

I. Criminal history records: Where we are

Existing systems

The Illinois experience: 25 years of firearms control through comprehensive background checks

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Illinois State Police

During the past 25 years, Illinois has attempted to control the purchase and possession of firearms and firearm ammunition through legislation. The Firearm Owners Identification Card Act and the Firearm Transfer Inquiry Program have combined to provide an effective firearms control program.

The Firearm Owners Identification Card Act

The Firearm Owners Identification (FOID) Card Act was enacted by the Illinois General Assembly, effective July 1, 1968.[1]

The FOID Card Act, the first and only of its kind in the country, provides a means to identify persons who are not qualified to acquire or possess firearms and firearm ammunition. It provides for the issuance by the Illinois State Police (ISP) of a Firearm Owners Identification card to all qualified persons. The card has a term of 5 years.

The FOID Card Act requires a person to have in their possession a currently valid FOID card to acquire or possess firearms (both long guns and handguns) and firearm ammunition in the State of Illinois.

— Exclusions and exemptions

The FOID Card Act defines a firearm as "any device that is designed to expel a projectile(s) by means of an explosion, or an expansion or escape of gas." Excluded from the Act are the following:

1. Air guns, spring guns and BB guns which expel a single globular projectile which is not greater than .18-inch in diameter and whose muzzle velocity is less than 700 feet per second. Paint ball guns which fire breakable paint balls are also exempt from the Act. Thus, .22-caliber pellet guns and those air and pellet guns whose muzzle velocity exceeds 700 feet per second are firearms covered by the FOID Card Act in the State of Illinois.
2. Signaling devices used on watercraft and their cartridges.
3. Stud guns and their cartridges.
4. Antique firearms and ammunition manufactured prior to 1898.

The FOID Card Act exempts numerous individuals and groups from its provisions. Included in the exemptions are:

- Peace officers;
- Veterans groups during parades and ceremonies as long as blank ammunition is used;
- Members of the military while engaged in official duties;
- Nonresident hunters;
- Nonresidents at a firing range or firearms show recognized by ISP;
- Nonresidents whose weapons are unloaded and cased;
- Nonresidents who are licensed to possess a firearm in their resident State;
- Unemancipated minors in the custody of a parent or legal guardian; and
- Hunters exempted by the State Department of Conservation.

The FOID Card Act provides reciprocity for the purpose of obtaining, possessing or using a rifle, shotgun and ammunition in the contiguous States (Wisconsin, Iowa, Missouri, Kentucky and Indiana) and for residents of those States 18 or older who obtain, possess or use a rifle, shotgun and ammunition in Illinois.

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1 ILL. REV. STAT. ch. 430, para. 65 (1968).

— FOID application process

A person acquires a FOID card by submitting a notarized application which includes the applicant's name, sex, race, date of birth, address, photograph and signature, and which certifies that the applicant (and his parent or guardian, if the card-seeker is a minor) is not prohibited by law from acquiring a card. Persons are prohibited from obtaining a FOID card if they:

- Have a felony conviction;
- Are a minor convicted of a nontraffic misdemeanor;
- Are a minor adjudicated delinquent;
- Are addicted to narcotics;
- Were a patient in a mental institution in the past 5 years;
- Are determined to be a clear and present danger to themselves or others; or
- Are mentally retarded.

A FOID card application must be accompanied by a $5 fee, which is allocated as follows: $3 to the Wildlife and Fish Fund, $1 to the General Revenue Fund, and $1 to the FOID Notification Fund.

The information contained on a FOID application is entered into the FOID automated system. This information is then used to initiate inquiries into the Law Enforcement Agencies Data System (LEADS) and the National Crime Information Center (NCIC). The LEADS inquiry queries the Illinois Computerized Criminal History (CCH) file and Illinois wanted persons files. The NCIC inquiry queries the Interstate Identification Index (III) and national wanted persons files. Additionally, the data from the FOID application are entered to a file which is compared each day against a file of all persons who have been a patient in a mental hospital within the past 5 years. All matches are verified and if confirmed, result in a denial of the application.

The Illinois State Police has 30 days to approve or deny an application, and must provide written notice of the reason for denial.

— FOID revocation process

The revocation process is an ongoing series of checks against files containing information which would disqualify a person from possessing a FOID card and from possessing firearms and ammunition. The entire FOID file is run each day against the statewide mental patient file maintained by the Illinois Department of Mental Health and Developmental Disabilities. All verified matches against current FOID card-holders result in revocation. The ISP must provide written notice of the reason for revocation of a FOID card, and also has authority under the Act to seize a revoked FOID card.

In the late 1980s, Illinois encountered a situation which had not been anticipated by the authors of the FOID Card Act. The Laurie Dann incident, in which a mentally ill young woman obtained firearms and used them to kill and maim a number of children in an elementary school, led to a reevaluation of the FOID Card Act. Ms. Dann had not been hospitalized in Illinois, was eligible to obtain a FOID card, and could legally purchase firearms and firearm ammunition. This incident led to the "clear and present danger" amendment of the Act. The amendment allows ISP to deny the application or revoke the FOID card of "A person whose mental condition is of such a nature that it poses a clear and present danger to the applicant, any other person or persons in the community." Mental condition is defined as "a state of mind manifested by violent, suicidal, threatening or assaultive behavior." Reports on individuals thought to be a clear and present danger are reported to ISP by police officers, family members, the clergy, psychiatrists, psychologists and members of the community.

A person whose application is denied or whose card is revoked may request relief from ISP. However, persons convicted of forcible felonies as defined in the Illinois Criminal Code may not apply for relief until 20 years after conviction or at least 20 years have passed since the end of any period of imprisonment imposed in relation to that conviction. The first step in the relief procedure is a fact-finding conference conducted by ISP. Following that, the person may request an administrative appeal hearing before an administrative law judge. Finally, if the administrative appeal hearing results in a denial, the person may appeal that decision directly to the Circuit Court pursuant to the Administrative Review Law.

— Other facts

- The FOID Card Act requires ISP to provide written notice of expiration at least 30 days prior to the card's expiration date.
- There is no preemption provision in the FOID Card Act and local units of government may and have imposed greater restrictions on the possession and acquisition of firearms and firearm ammunition.
- The FOID file is available for access by peace officers through the LEADS system. This allows a peace officer to immediately verify the status of a FOID card encountered in the line of duty.
- Violations of the FOID Card Act are Class A misdemeanors.

The Firearm Transfer Inquiry Program

Although the FOID Card Act was pioneering and effective in the control of firearms and firearm ammunition, it was not without its weaknesses. One of the major weaknesses was the inability to conduct a daily criminal history check of all legal card-holders to determine their continued eligibility. The FOID file is run monthly against the CCH files maintained by ISP. This still creates a 30-day window during which a convicted felon can still acquire firearms and firearm ammunition without being detected. Likewise, there is no provision to allow Illinois to run a tape of the automated FOID files against the III files. Individuals convicted in other States or by the Federal courts go undetected until they reapply for a FOID card at the end of 5 years.

— FTIP amendment

During the 1991 legislative session, the Illinois General Assembly amended the FOID Card Act to create the Firearm Transfer Inquiry Program (FTIP). This Act was signed into law on September 19, 1991, and became effective on January 1, 1992.[2] The legislation provided that "the Department of State Police shall provide a dial-up telephone system which shall be used by any federally licensed firearms dealer who is to transfer a firearm under the provisions of the Act (the FOID Card Act)." It further provided that "the Department shall utilize existing technology which allows the caller to be charged a fee equivalent to the cost of providing this service but shall not exceed $2." The bill also provided that the fees shall be deposited in the State Police Services Fund and used to operate the program. Further, ISP is to provide an immediate response or notify the dealer of a disqualifying objection within the waiting periods found in the Deadly Weapons Act — 24 hours for long guns and 72 hours for handguns.

The legislation defined the FTIP inquiry as an "automated search of the ISP computerized criminal history files, those of the Federal Bureau of Investigation Interstate Identification Index and the files of the Department of Mental Health and Developmental Disabilities." The purpose of the inquiries is to identify any felony convictions or patient hospitalizations which would disqualify a person and require the revocation of a currently valid FOID card.

— FTIP process

The ISP allows any federally licensed firearms dealer to register and be enrolled in the FTIP program. Each enrolled dealer is provided a unique enrollment number.

FTIP is unique in that it uses a "900 number" telephone system connected to an automated call director which manages the calls as they are received and routes them to the next available operator. Dealers may also inquire using their touch-tone telephone to access a voice response unit (VRU) and complete a fully automated FTIP inquiry.

An FTIP inquiry requires the dealer to initiate the call, provide the unique Federal Firearm License number, the ISP enrollment number and the FOID card number of the transferee. Upon initiation of the inquiry, the FOID card number is used to verify the validity of the FOID card and to obtain the necessary data elements from the FOID file to allow inquiries to be launched to criminal history and wanted persons files. These inquiries include the NCIC III and wanted persons files, and the Illinois CCH and wanted persons files.

The FTIP system receives all responses, evaluates the response information and formulates a response message which is sent to the operator's terminal or the dealer connected to the VRU. Three responses are possible: (1) an approval, (2) a denial, or (3) a "not at this time" message. Each response message also includes a response number which is provided to the dealer for future audit and inquiry purposes. Felony arrests without dispositions or hits on wanted persons both result in "not at this time" responses and start the clock of the statutory waiting period within which ISP has to respond to the inquiry. The system has a 30-second timer and although most inquiries are completed within this time period, those which are not result in a "not at this time" message. Dealers are contacted and provided an approval or denial of "not at this time" inquiries as soon as the necessary data are obtained. In the event the response is not provided to the dealer within the statutory waiting period, the dealer may legally complete the transaction at the end of the applicable time period.

— FTIP benefits

One of the major benefits of the FTIP program is the identification of persons wanted on warrants. The local law enforcement agency having jurisdiction over the location of the firearms dealer is immediately notified of the warrant information. It is then left to the local law enforcement agency to carry out the apprehension of the subject if the warrant is verified as valid.

Firearms dealers are allowed to use either method of accessing the FTIP system. The use of the "900" telephone system requires a new call for each FTIP inquiry. The use of the "900" telephone number significantly increases the effectiveness of the program as it eliminates the need for ISP to account for calls and then bill and receive funds from enrolled dealers. Instead, a check and a detailed printout are received from the "900" service provider each month.

The legislation which created the FTIP amendment to the FOID Card Act has a sunset provision which repeals the FTIP language on September 1, 1994.

— Firearms control committee

The ultimate future of firearms control in Illinois rests with a committee created by the amendment. The amendment contains a requirement for the Governor to appoint a nine-member committee to "study and make recommendations to the Governor and the General Assembly regarding the continuation or abolition of the 'dial up system' or the 'Firearm Owners Identification Card Act' or any combination thereof ... ."

Membership on the committee is comprised of "the Mayor of Chicago, or his representative; a State's Attorney; an individual representing a private organization that opposes strict regulation of firearms; an individual representing a private organization that supports strict regulation of firearms; and four members of the General Assembly, one each nominated by the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives."

Felon Identification in Firearm Sales

Illinois is a participant in the NCIC III Felon Identification in Firearm Sales (FIFS) Program. All persons entered into the III by the Illinois State Police who are felons have a "felon" flag entered in

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2 ILL. REV. STAT. ch. 430, para. 65/3.1 (1991).

their record. Additionally, the Illinois CCH files also flag the records of all felons. The felon-flagging process expedites inquiries made into both III and CCH as part of the FOID application screening process and the FTIP screening process. The III felon-flagging is also available to all criminal justice users to assist in expediting firearms-related inquiries.

Facts and Figures

— *FOID*

The total number of active FOID records as of December 31, 1993, was 1,234,621. Each year the FOID section processes approximately 250,000 applications, including those of both new and renewal applicants. For the first 24 years of the program, the size of the FOID active file stayed at approximately 1 million. However, since the inception of FTIP on January 2, 1992, the number of active FOID records has increased each year.

During 1992, 2,896 applications for a FOID card were denied for failure to meet the requirements of the Act. Included in these denials were 2,019 for felony convictions, 235 for minors with misdemeanor convictions, 598 for mental hospitalization, 18 for a "yes" answer to disqualifying questions on the application, and 2 as a result of perjury on the application.

During 1992, a total of 3,001 FOID cards were revoked. Included in these card revocations were 772 for felony convictions, 92 for misdemeanor convictions by minors, 2,074 for mental hospitalization, and 17 as a result of perjury on the application.

The total number of applications denied for 1993 was 4,409. Included in these denials were 3,382 for felony convictions, 715 for mental hospitalization, 274 for minors with misdemeanor convictions, 18 for a "yes" answer to disqualifying questions on the application, and 9 as a result of perjury on the application.

During 1993, a total of 3,311 FOID cards were revoked. Included in these card revocations were 1,442 for felony convictions, 120 for misdemeanor convictions by minors, 1,689 for mental hospitalization, and 17 as a result of perjury on the application.

— *FTIP*

At the end of 1993, there were approximately 10,500 federally licensed firearms dealers in the State of Illinois. Of this number, 6,653 dealers were enrolled in the FTIP program. The difference between the total number of dealers and those enrolled in FTIP is the difference between those dealers operating as a business and those dealers who deal for their own collection and those of friends. If dealers deal for anyone other than themselves, they are required to be enrolled in the FTIP program. The Bureau of Alcohol, Tobacco and Firearms (ATF) indicates that since January 1, 1994, there has been a dramatic increase in the number of firearms licenses being surrendered. The FTIP program was notified by ATF of 10 license cancellations during the first week of January 1994.

During 1992, FTIP processed 171,940 inquiries from firearms dealers, which resulted in 1,234 denials. Of the total denials, 46 were for persons whose FOID card had been revoked for a felony conviction and the card had not been returned; 45 were persons whose FOID card had been revoked as a result of mental hospitalization and the card had not been returned; and 23 were convicted felons identified by FTIP.

The 1992 FTIP inquiries also identified 367 persons as being wanted on warrants. The majority of these warrant hits were for traffic- and motor vehicle-related offenses. However, 66 were individuals wanted for criminal offenses. ISP was advised that 34 individuals were apprehended as a result of local law enforcement officials being notified of the FTIP contact.

During 1993, the total FTIP inquiries increased to 203,936, which resulted in 1,160 denials. Of the total 1993 denials, 63 were for persons whose FOID card had been revoked for a felony conviction and the card had not been returned; 94 were persons whose FOID card had been revoked as a result of mental hospitalization and the card had not been returned; and 63 were convicted felons identified by FTIP.

The 1993 FTIP inquiries identified 437 persons as being wanted on warrants. Of these, 96 were wanted for criminal offenses. Local authorities apprehended 94 individuals as a result of the FTIP warrant notices.

A comparison between 1992 and 1993 FTIP activity shows a 19 percent increase in the total number of inquiries, and a six percent decrease in the total number of denials. The denial rate during 1992 was .72 percent, which decreased in 1993 to .57 percent. Forty more convicted felons were identified and denied during 1993, an increase over 1992 of 174 percent. The number of persons identified as wanted on warrants increased 19 percent, and the total warrant apprehensions increased by 176 percent.

The Virginia point-of-sale Firearms Transaction Program

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The Virginia Firearms Transaction Program, which became operational on November 1, 1989, provides for a timely, point-of-sale, approval/disapproval decision regarding the sale of certain firearms, based upon the results of a criminal history record information check concerning the prospective purchaser.

This program authorizes properly licensed and registered gun dealers to request criminal history record information checks on prospective purchasers by calling the Department of State Police via a toll-free number, between the hours of 8 a.m. and 10 p.m., 7 days a week, including all holidays. The purchaser's name and certain personal descriptive data are immediately entered into a computer system while the dealer remains on the telephone.

Our clientele consists of the firearms dealers and prospective firearms purchasers in Virginia and other States. The program currently serves 6,487 firearms dealers and an unknown number of individuals who purchase firearms in Virginia.

Initially, the weapons requiring pre-sale approval in Virginia were:

(1) Any handgun or pistol having a barrel length of less than five inches; or

(2) Any semiautomatic center-fire rifle or pistol that is
   (a) provided by the manufacturer with a magazine which will hold more than 20 rounds of ammunition, or
   (b) designed by the manufacturer to accommodate a silencer or bayonet, or
   (c) equipped with a bipod, flash suppressor or folding stock.

Effective July 1, 1991, the pre-sale approval was extended to include all guns sold in Virginia, except antique firearms as defined in the *Code of Virginia* Section 18.2-308.2:2. Approximately 1,000 new dealer registrations were processed for the Firearms Transaction Program due to this legislation and the annual volume of firearms transactions increased about 250 percent.

The 1993 General Assembly amended and reenacted Section 18.2-308.2:2 to require firearms dealers to report to the Virginia State Police the number of firearms by category intended to be sold, rented, traded or transferred and to prohibit any person who is not a licensed firearms dealer from purchasing more than one handgun within any 30-day period without approval from the State Police.

Statistics captured by category during the firearms transactions from July 1, 1993, through December 31, 1993, support the following totals of firearms sold or transferred during that period:

- Rifles — 52,262;
- Shotguns — 29,906;
- Pistols — 35,293;
- Revolvers — 14,139.

The Virginia State Police is responsible for accepting and processing Multiple Handgun Purchase Applications and approving Multiple Handgun Purchase Certificates, when purchases in excess of one handgun within a 30-day period can be justified. As of December 31, 1993, 155 applications had been processed supporting the issuance of 123 Multiple Handgun Purchase Certificates.

Instantaneous checks

The design of the Virginia program eliminates the traditional waiting periods associated with other programs of this type by electronically accessing criminal history records and "wanted" databases at the National Crime Information Center (NCIC) and the Virginia Central Criminal Records Exchange (CCRE) and providing an almost instantaneous approval/disapproval decision to firearms dealers concerning the firearms sale.

The computer simultaneously accesses five national and/or State databases. Three of the databases are maintained by the Virginia State Police, two of which are accessed through the Virginia Criminal Information Network: Virginia's wanted persons files and criminal history record files. The third Virginia State Police database accessed is a calendar file of handgun purchases required to monitor and enforce lawful handgun limitations. The fourth database accessed during this background check is the NCIC, which contains the national wanted persons files. The fifth database accessed is the Interstate Identification Index (III), which contains the national criminal history record files maintained by the Federal Bureau of Investigation.

If an identification is not made in one or more of these files, the computer responds "YES," the sale is approved and a unique computer-generated approval number is provided to the firearms dealer for that transaction. If an identification is made, however, the computer responds "NO, THE SALE IS NOT APPROVED AT THIS TIME," and review of criminal history information is required to determine lawful eligibility of the prospective firearms purchaser to possess or purchase a firearm. Since the program began in 1989, there has been a daily average of 4.03 denials.

This program was the first of its type in the Nation. On the average, it takes 2 minutes to provide a firearms dealer with an approval/disapproval decision. With the exception of replicated programs in other States, all other programs require waiting periods varying from 3 to 15 days or longer before an approval/disapproval decision is made.

Virginia was able to implement this program because the CCRE maintained by the Virginia State Police is one of the most complete records repositories in the Nation and provides the database for the Firearms Transaction Program.

As of January 1, 1994, the CCRE had 919,000 individual records in the criminal history record files. All records are flagged as felony or misdemeanor records and are contained in the computerized name file. Over 90 percent of these records contain court dispositions. Virginia is a participating State in III and has contributed over 286,000 records in this file.

Firearms transaction checks

Virginia's approach to firearms records checks does not infringe on an individual's ability to purchase or possess a firearm, while those individuals who are prohibited by State or Federal law are denied legal access to firearms. One of the most significant problems experienced in operating the instant point-of-sale program is interpreting the varied methods of recording and reporting arrest and court disposition information by other States or foreign countries.

The State Police Bureau of Criminal Investigation Virginia-Interpol Liaison Network has been instrumental in helping to query and interpret foreign criminal history records accessed during the Firearms Transaction Program's criminal history record check process. Recently, Virginia-Interpol assisted in determining dispositions of felony charges reported in Canada, England, France, Spain and Guam.

Since its inception on November 1, 1989, through December 31, 1993, 603,324 firearms transactions have been processed through the Firearms Transaction Program. Of this amount, 6,135 were disapproved because the prospective purchaser was prohibited by State or Federal law from purchasing or possessing a firearm. A total of 343 fugitives have been identified. with 143 (approximately 42 percent) apprehended as a result of this program.

Firearms Investigative Unit

As an aggressive initiative to curtail illegal firearms activity and to prosecute individuals who violate firearms laws, effective August 1, 1992, the Virginia State Police implemented a Firearms Investigative Unit (FIU) to supplement the Firearms Transaction Program. The FIU is a centralized, statewide program to enforce firearms legislation and investigate alleged illegal firearms transactions. It works in cooperation with local, State and Federal authorities to:

(1) Reduce the number of guns illegally purchased in Virginia and transferred to other States where stricter gun control laws are in effect;
(2) Track cases where felons have attempted to purchase weapons;
(3) Contact registered gun dealers to monitor compliance with Section 18.2-308.2:2 of the *Code of Virginia* to ensure that this statute is being enforced; and
(4) Enforce firearms laws at gun shows throughout Virginia.

Since its inception, the FIU has been involved in task forces, in conjunction with the Bureau of Alcohol, Tobacco and Firearms, that oversee investigations and prosecutions involving intrastate and interstate gun-running activities. In addition, beginning July 1, 1993, the Virginia State Police found it necessary to become the leading agency for all investigations of illegal attempts to purchase firearms. As of that date, all illegal attempts to purchase a firearm based on State and/or Federal prohibitions are assigned to a sworn officer of the Virginia State Police for investigative purposes. Since the program's inception in November 1989, the State Police has confirmed 718 arrests for falsifying documents related to the sale of firearms; 154 of these arrests have been made since July 1, 1993.

Costs and funding

Legislation requires that the $2 and $5 fees collected by firearms dealers be used to offset the cost of the Firearms Transaction Program. Start-up costs of the program in fiscal 1990-91 were projected as follows: $314,600 in salaries and benefits, $18,800 for postage, and $123,500 for telecommunications, totaling $456,900.

The Firearms Transaction Program has been expanded to include databases for processes required by 1993 legislation:

- A central repository, known as the Criminal Firearms Clearinghouse, of information regarding all firearms seized, forfeited, found or otherwise coming into the possession of any law enforcement officer which are believed to have been used in the commission of a crime;
- A repository of concealed weapons permits issued by all Virginia Circuit Courts; and
- A calendar file of handgun purchases to monitor and enforce lawful purchase limitations and Multiple Handgun Purchase Applications and Certificates.

This expansion increased staffing of the Firearms Transaction Program from 15 to 28 employees, and also increased the current expenditure to $696,341 annually (see Figure 1). The fee mandated by statute falls short of covering expenditures of this program.

Total personnel services	$425,147
Total contractual services	133,665
Total supplies and materials	2,700
Total continuous charges	11,225
Total equipment	876
[Total subprogram	$573,613]
Additional full-time positions and fringe/related costs	$122,728
Adjusted projected costs	**$696,341**

Figure 1: 1993-94 expenditure projections

Conclusion

The Virginia Firearms Transaction Program has begun its fifth year of operation in Virginia and significant success has been noted:

- Virginia no longer has the street or media reputation of being the chief East Coast gun supplier for crimes committed elsewhere.
- The General Assembly has repaired weaknesses to strengthen and support its intent to fight crime.
- 143 fugitives have been apprehended who might not have been otherwise.
- Citizens who have the right to own a gun are not inconvenienced with delays because of the criminal element.
- Over 6,000 individuals, prohibited by law from owning, possessing or transporting firearms, have been denied access to firearms.
- Aid has been provided in solving previously unsolved crimes.

Virginia is the acknowledged Nation's leader in point-of-purchase firearms sales record checks. Virginia's system is what lies beyond the Brady Bill.

The Oregon system: Fingerprint checks and the waiting period

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Oregon Department of State Police

My intent is to briefly describe the Oregon presale firearms check system to provide an overview of what we are doing.

The Oregon law went into effect January 1, 1990, and is enforced in addition to the current Federal statutes.[1] The Federal firearms licensee (FFL, also known as the firearms dealer) has to comply with the Oregon statute, as well as the paperwork requirements imposed by the Federal firearms statutes.

Firearms sales checks

Oregon designed a new triplicate form that the firearms dealers must use.[2] Similar to other pre-sale check systems, the prospective firearms purchaser must present two pieces of identification, and one piece must have a photograph on it. This is normally accomplished by the purchaser presenting a driver's license or identification card obtained through the Oregon Department of Motor Vehicles.

The dealer must fill out the form so that everything is completed correctly, and then the dealer and the purchaser must sign on three parts of the form. Then, what is somewhat unique for Oregon, the law requires that the purchaser's thumbprints be imprinted on the third part of the form. The firearms dealer retains the original part of the form and keeps this on file, as is also required by Federal law. The duplicate is either hand-delivered or mailed on the day of the sale to the local law enforcement agency in the jurisdiction where the sale occurred. So if a dealer from the southern part of the State travels to a gun show in Portland (the northern part of the State) and sells a handgun, the duplicate has to be delivered to either the Multnomah County Sheriff's Office or the Portland Police Bureau, depending on which jurisdiction the dealer is in. The triplicate part of the form — which contains the applicant's thumbprints — has to be mailed or hand-delivered to the Oregon State Police Identification Services Section on the day of the sale.

Local law enforcement has 15 calendar days to check to see if the purchaser is disqualified from purchasing a handgun. The Oregon State Police has 10 working days to run a fingerprint check, using only the thumbprints, through the Automated Fingerprint Identification System (AFIS). Sometimes the 10-day deadline is pretty tight. We are a 5-day-a-week operation, 8 hours a day, and we are closed Saturdays, Sundays and most holidays. Thus, if a handgun sale occurred on a Thursday and there is a holiday on Friday, we lose several working days for accomplishing that check. So far, we have been able to stay in compliance with the law.

After the 10 days, or whenever we finish processing the fingerprints at the State level, we send the triplicate part of the form to the local law enforcement agency (which had received the duplicate part of the form from the dealer). During the time the local authorities have had the duplicate form, they will have made all the appropriate checks into the "hot" files to see if the applicant is wanted, and into their local files or the files of the applicant's residence to see if there are any court indictments. They also check the mental health records in Oregon. The only check done at the State level is the fingerprint check inquiry; local law enforcement does the actual criminal

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1 ORS 166.420.

2 Oregon's "Dealer's Record of Sale of Handgun" is included in this report as Appendix 9.

history and hot file inquiries, based on all the data given to them, as well as on what we may find at the State level. For most applicants, we do not find a criminal history record.

Waiting period exceptions

There are very few exceptions to the 15-day waiting period. In Oregon, people can obtain a concealed handgun license, which allows them to carry any type of lawful handguns in the State of Oregon — the same as any police officer, with very few exceptions. A concealed handgun license-holder cannot, of course, carry that firearm onto Federal property or into an Oregon courthouse that has been restricted by a judge. Thus, the person who holds that valid Oregon Concealed Handgun License can go into an FFL dealer and purchase a handgun without undergoing the waiting period. The paperwork must still be filled out and processed as previously described, including thumbprints from the purchaser. However, the handgun dealer can give that concealed handgun license-holder the firearm at the time of the sale, and the 15-day waiting period does not apply.

Obviously, Oregon is going to have to shift gears here and comply with the Brady Law. At the very least, concealed handgun license-holders in Oregon may have to wait the 5 days, as mandated by the Federal law. On the other hand, Oregon may possibly fall within that part of the Brady Bill that exempts permit-holders from the waiting period. In that case, we may still be able to continue as we have.

Penalties, disqualifications

Oregon's penalty for violating the firearms waiting period law is very similar to penalties under the Brady Law: We classify it as a "C" felony, which has a penalty of 5 years and/or a $100,000 fine.

Regarding purchase disqualifications, persons under age 18 are not allowed to purchase firearms in Oregon. Obviously, Federal law sets it at age 21. We do comply with Federal law requiring the firearm *seller* to be age 21. Handgun dealers in Oregon are put in a bad position, in that Oregon law allows them to sell handguns to persons 18 and older, while the Federal law restricts the sale to persons aged 21 and over.

Other obvious disqualifications are if the person has been convicted of a felony; found guilty (except for insanity) of a felony; has any outstanding felony arrest warrants; and is free on any form of pre-trial release from a felony, and so forth. (These disqualifications include a *felony citation*. That is important because felony citations are issued quite often in Oregon, to the point where a lot of people are not taken into full-custody arrest for the lower-grade felonies.)

If a person was committed to the Mental Health and Developmental Disabilities Services Division and was found to be mentally ill and subject to an order by a court, the person is prohibited from purchasing or possessing a firearm as a result of that mental illness. And, when these court orders are issued, they are sent to the Department of State Police Law Enforcement Data System, and we put those orders into the computer system so we can track them.

Other disqualifiers under the Oregon firearm statute are if a person has been convicted of a misdemeanor involving violence, or found guilty (except for insanity) of a misdemeanor involving violence within the previous 4 years. Oregon law describes those violent misdemeanors as follows: assault in the fourth degree (normally domestic situations where people are beating up each other); menacing (where the perpetrator threatens physical force); recklessly endangering another person; assaulting a public safety officer; or intimidation in the second degree (based upon a person's race, color, religion, national origin or sexual orientation).

As mentioned, Oregon uses a triplicate form to record handgun sales. Oregon uses many of the same questions used by the Federal government, although we put an "Oregon" twist on them. For example, we allow multiple handgun sales (that is, we do not restrict how many handguns can be purchased in any given period of time).

On the back side of the triplicate form that is sent to the State Police, there is an area for the thumbprints and for the plain impressions. Oregon State law requires only the thumbprints on the handgun sales form; it does not require all 10 impressions. However, we do encourage the gun dealers to put the simultaneous or plain impressions on the handgun sales form anyway. It does help us be more efficient. This reduces the number of rejects that we will get in. If we get in the triplicate, and a thumbprint is of such a poor quality that we cannot make an AFIS search, then we reject the handgun sales form, notify the law enforcement agency getting the duplicate, and nullify the handgun sale. Then, the applicant has to start the process all over again. If this happens on the 14th day of the waiting period, it really upsets the gun dealers. Thus, it is very important that the thumbprint quality is high. To their credit, the gun dealers in Oregon are doing a pretty good job of getting good quality thumbprints and fingerprints on the form.

Workload levels

Figure 1 is a bar chart that depicts our monthly workload since the Oregon firearms sales check law was enacted over 4 years ago. We averaged about 3,500 inquiries up until January 1993, when the Brady Bill was discussed very actively. By looking at this chart, I wonder if anyone can tell when the Brady Bill was enacted into law. The growth in January 1994 is the same as that of December 1993. We are hoping this is just a "feeding-frenzy" situation and that people will relax soon. We cannot sustain this level of service and hope to survive using our current technology.

Figure 2 is another chart that demonstrates our workload. The handgun sales just keep climbing year by year, as well as the issuance of concealed handgun licenses. In 1990, the Oregon law affecting concealed handgun licenses was changed. The licenses were good for 2 years, after which they were renewable. That is why there is a dip in 1991. One would expect the license

issuance level to be high again in 1992, and to dip down again in 1993. However, the level of issuing concealed handgun licenses has not decreased, and so the law was once again amended to make the licenses good for 4 years. Despite this, the level of license issuances continues to go up. This is very similar to what Illinois has experienced. Even though there is a concealed handgun license, the person is checked out quite thoroughly at both the State and national level before being issued this license.

The chart in Figure 3 shows the impact of the workload. This only speaks to the total *gross* number of fingerprint cards the Oregon State Police receives. Handgun sales are 28 percent of our workload, the concealed handgun license issuances are nearly 12 percent, and the criminal work is 56.4 percent. Our workload previously was much greater in the criminal area; however, it is shifting more toward regulatory work quite rapidly.

The chart in Figure 4 depicts only those fingerprint cards that have gone through the name and date of birth search and that actually make it to the AFIS for a search. This is where our workload dramatically changes. Because of the recidivism rate of criminals, most of their records are found with a simple name/DOB check, with a quick confirmation on the prints. But with the handgun sales, the majority of the applicants need to be searched all the way through to the AFIS because they have no prior record. The same applies with the concealed handgun licenses. Now the workload shifts to where 34 percent of the AFIS workload is allocated to handgun sales and almost 21 percent to concealed handgun licensing.

During the 1993 legislative session, Oregon passed a law that gives the State and private child care facilities the authority to make criminal history record inquiries at both the State and national levels. We project that the regulatory impact of what we call the "Teachers' and Children's Bill" (House Bill 1078) is going to take 33 percent of our resources (Figure 5). Combined with the handgun sales at 22.8 percent, the criminal work percentage is lowered to 23 percent. This gives an idea of who our customers will be in the future, and what the impact is on the Oregon State Police.

In Oregon, we are trying to firmly remind our policymakers that without the criminal segment of our workload, without the appropriate dispositions being recorded, the concealed handgun licensing and other regulatory work is of no value. Right now, in fact, I am being impacted by being required to do the *regulatory* work in a mandated time frame, while we do not have similar requirements for the *criminal* work. It is very easy to build criminal history record information backlogs while your agency is trying to address other problems.

STATE OF OREGON
Handgun Sales
AFIS Workload by Month

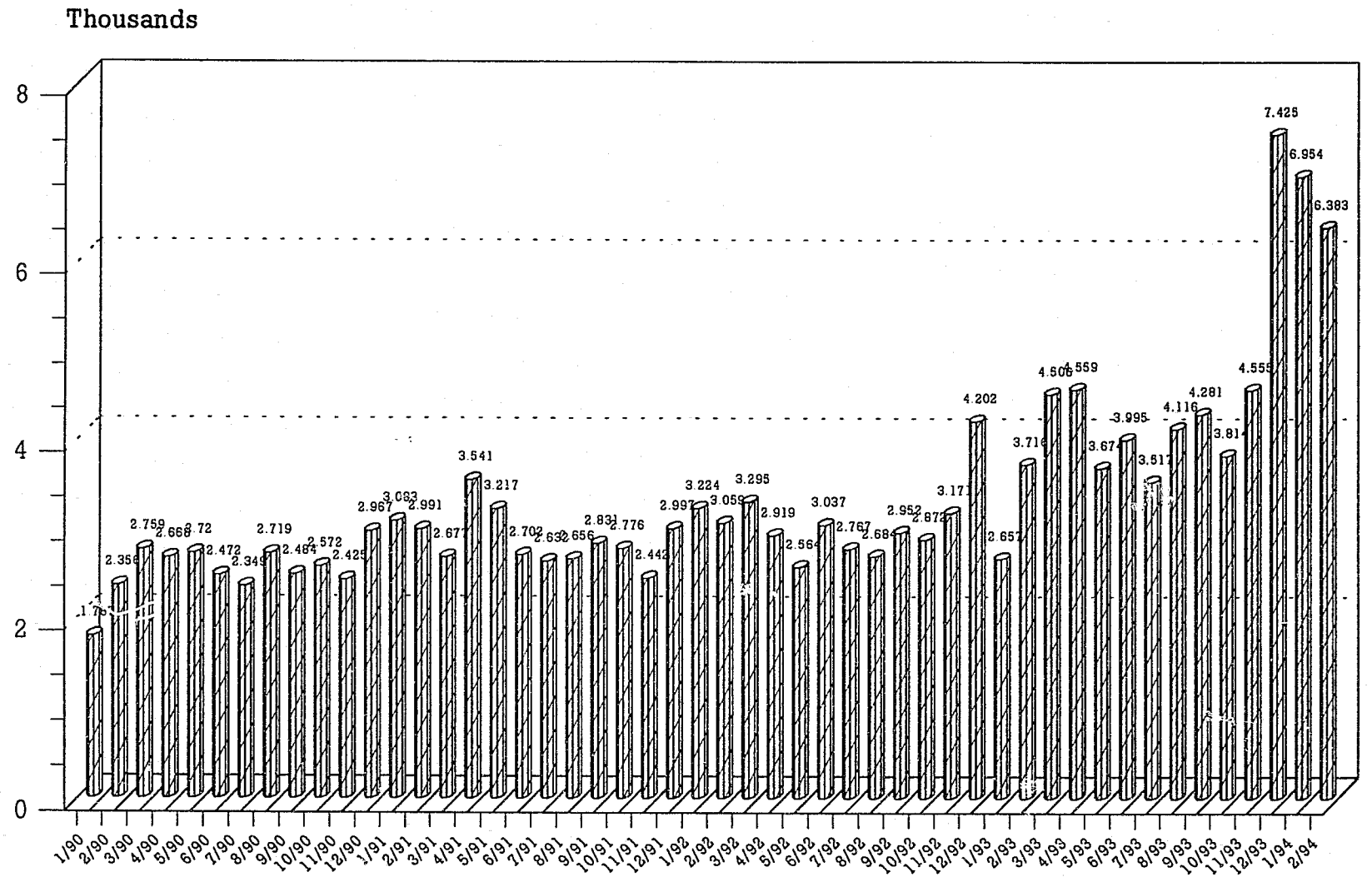


Figure 1: Oregon handgun sales — AFIS workload by month

STATE OF OREGON
Concealed Handgun License
AFIS Workload by Month

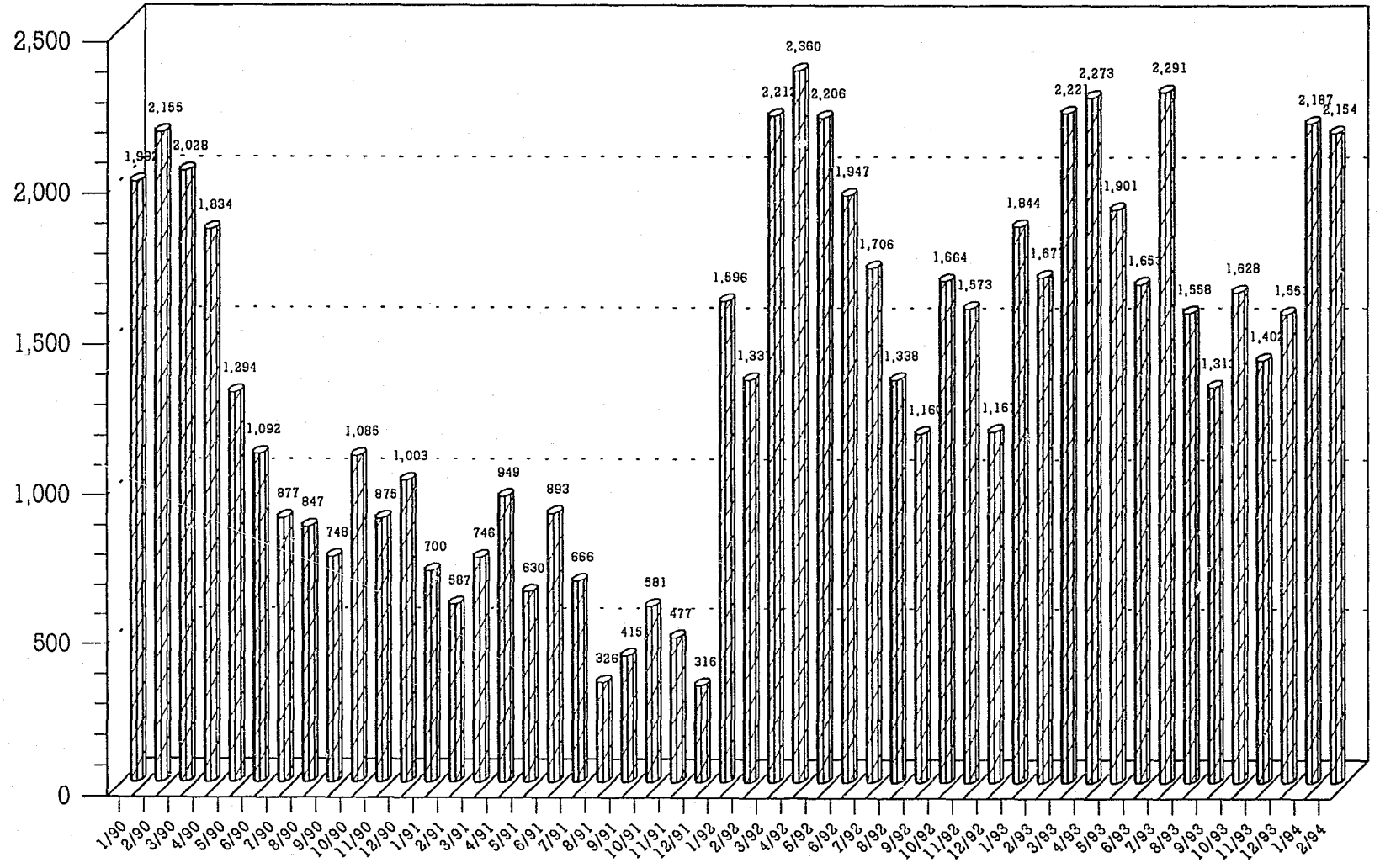
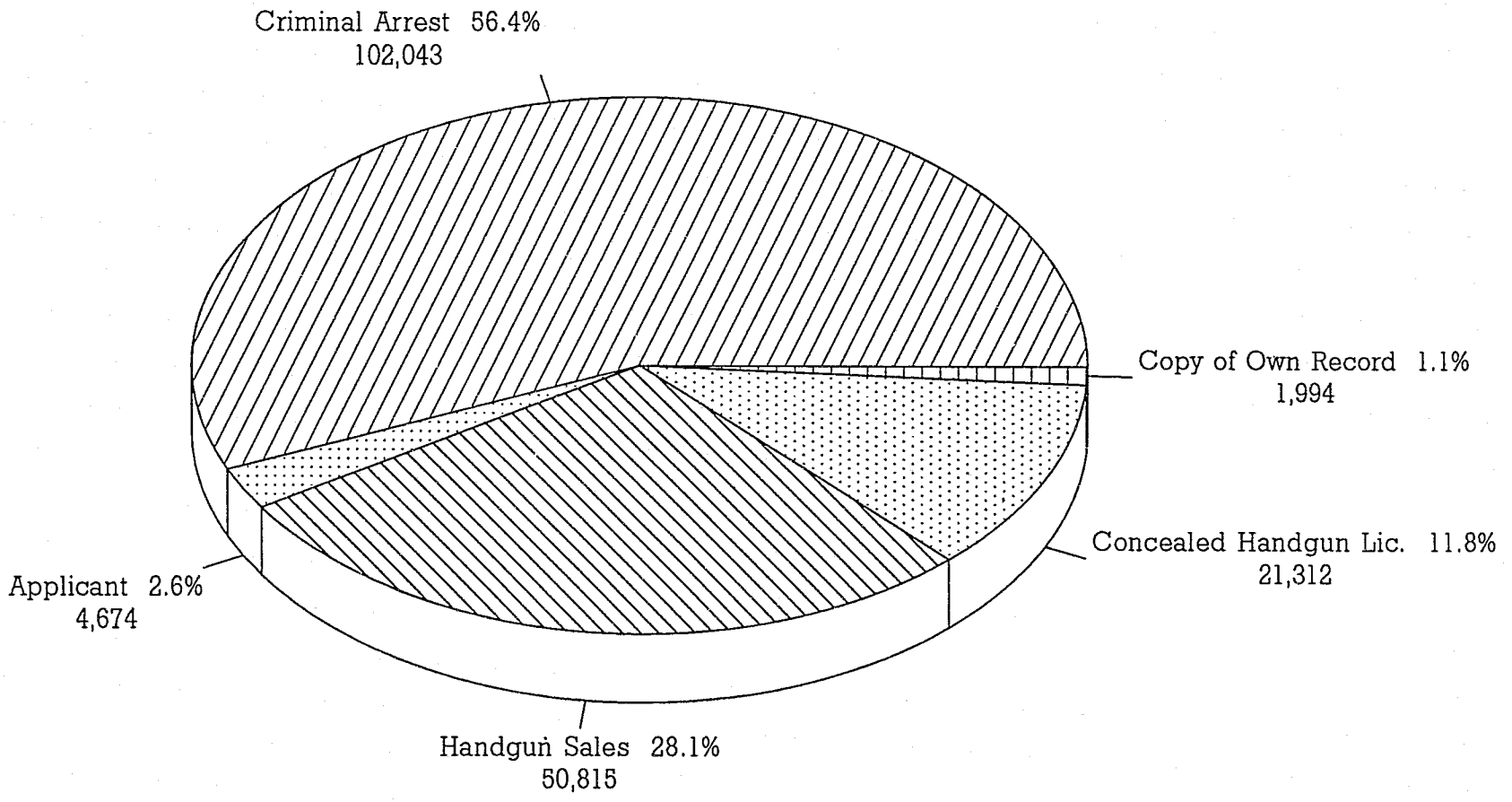


Figure 2: Oregon concealed handgun license — AFIS workload by month

OREGON STATE POLICE
IDENTIFICATION SERVICES SECTION



FINGERPRINT CARD WORKLOAD COMPARISON - 1993

Figure 3: Fingerprint card workload comparison, 1993

OREGON STATE POLICE
IDENTIFICATION SERVICES SECTION

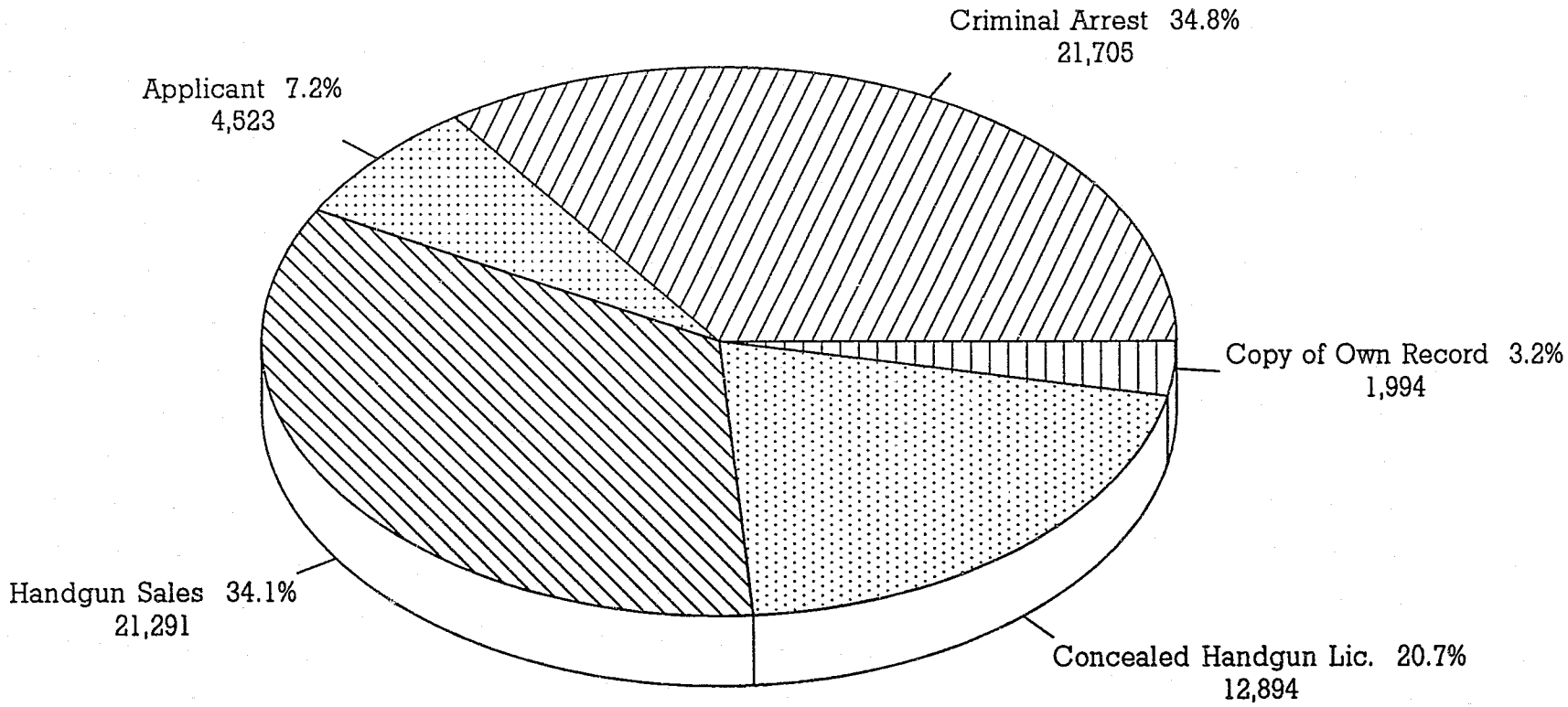
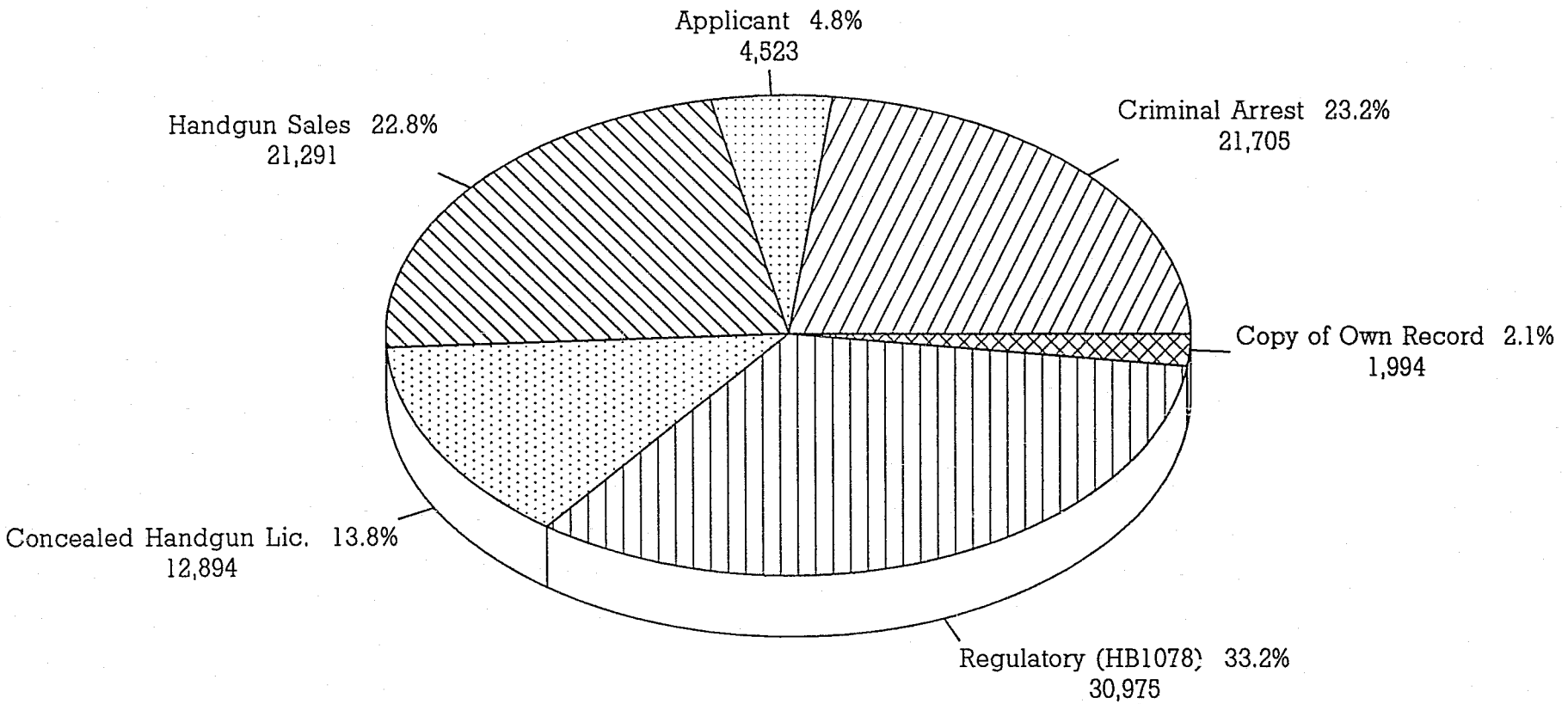


Figure 4: AFIS shared resources, 1993

OREGON STATE POLICE
IDENTIFICATION SERVICES SECTION

Based On 1993 Statistics



AFIS Shared Resources
Projected for 1993/95 Biennium

Figure 5: AFIS shared resources, projected for 1993-1995 biennium

The California system: Access to other databases, name searches and the waiting period

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Chief, Bureau of Criminal Identification and Information
California Department of Justice

To provide some perspective of what the California Department of Justice (DOJ) is dealing with in terms of its firearms transactions, last year we processed about 642,000 Dealers' Record of Sale transactions in our State.[1] One of the interesting statistics we have from the Federal Bureau of Alcohol, Tobacco and Firearms is that California is in the reverse position of the rest of the Nation: we process about two-thirds handgun purchases and one-third long gun and shotgun purchases. This is exactly the reverse of the rest of the States.

We experienced about a 19 percent increase in our transactions from 1992 to 1993, and 1992 had about a 31 percent increase over 1991. So like my friend in Oregon, our business is booming.

Firearms transactions

Basically, our firearms transaction process starts with a form. We have two different forms: one for revolver and pistol transactions, the other for long gun and shotgun transactions. Each form consists of four parts, and we sell supplies of these forms to firearms dealers in the State.

Following a revolver or pistol transaction, the firearms dealer sends one copy of the form to the local law enforcement agency, sends two copies to the California DOJ, and keeps one. In addition, the dealer sends in a $14 processing fee for each form. This process is also required for private transactions. If I want to sell a weapon to a friend, I have to go to a dealer, surrender the weapon, and go through the records check process.

When the California DOJ receives these firearms forms, it conducts the records check process; microfiches the information; and enters the information into an Automated Firearms System. Our turn-around time to complete these records checks is statutorily required to be 15 days.

In 1991, the California Legislature added long guns and shotguns to our processing requirements. Following the transaction, one copy of the sales form is sent to the local law enforcement agency, two to the California DOJ, and the dealer keeps one. These transactions also require a $14 processing fee. Unlike the pistol/revolver form, however, State statute requires that we destroy these forms within 5 days after the request to purchase is processed. The form is destroyed, and the registration information is not recorded into any system.

Name checks, other databases

California's records check process is all name-based. We start with a check of our State and national criminal history files and our wanted-persons system, and we also check restraining order and mental health files.

Performing checks in these other areas, specifically the restraining order file, started in 1993. It is predicated upon a victim securing a restraining order from a court. (For example, it could be a restraining order someone gets based upon domestic violence.) After the subject secures a restraining order, the subject must place a request with a local law enforcement agency that the restraining order information be entered

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[1] California's firearms transaction statute is P.C. 12071.

into California's wanted-persons system. Then, when we do an inquiry into our wanted-persons system as part of the name-check process, we can find out not only if the prospective firearms purchaser is a fugitive but also if a restraining order has been issued against the individual.

In 1993, in the first year of operating the restraining order file, we entered about 34,000 orders. These are retained for 3 years. There is an interesting side benefit that occurs here. Because the restraining order is in our wanted-persons system, if an officer in the field should conduct an inquiry, that information is available immediately. That is a good tool for a police officer who may be responding to a domestic violence call.

On the mental health side, we have had about 410 denials based on mental health reasons. This is about two-thirds of the mental health denials noted for the State of Illinois. In any event, mental health information is reported to us by certified California Department of Mental Health facilities. The criteria are as follows: (1) the individual must be evaluated by either a certified psychiatric technician or a physician; (2) the individual must be judged a "5150," a danger to themselves or others, or have told a psychiatrist that he or she is contemplating killing someone; and (3) the individual must be admitted into a mental health facility. If these criteria are met, the Department of Mental Health facilities are required by law to report that information to the California DOJ. This information is placed in a separate file which is not accessible to anyone else but us. Interestingly enough, we then pay the facilities $5 for each report they give us. Right now, there are about 300,000 notations in this file, which are purged after 5 years.

Waiting period

If there is no hit on any of our name-based checks, the California DOJ does not provide any notice to the dealer. That is it. If you purchase a firearm in California, you fill out the form, the form is submitted, the 15 days elapse, and then you return to pick up the firearm. However, you are not allowed to pick up the weapon *before* the 15-day waiting period has elapsed. It is a joint "cooling off" period, as well as time for us to process the background checks. Even if the California DOJ manages to clear the purchase in 2 days, the buyer cannot pick up the weapon from the dealer until after the 15 days have passed.

Handgun purchase information is entered into the Automated Firearms System. This has a tremendous value to law enforcement agencies. The serialized information on the weapons is logged in there, so if a crime is committed using a particular weapon, we are able to track the registration of that weapon. If a cache of stolen property including weapons is discovered, we are able to link the weapons to the original owner, and it helps in solving crimes. Interestingly enough, this does a lot of good for our investigators in terms of the "person orientation." In other words, if you are assigned to investigate an individual in California, one of the first things you might do is run a fingerprint check, and determine if the individual has any registered weapons. (If it is a long gun, none of that occurs. As I mentioned earlier, the information is destroyed immediately, or within 5 days, whichever comes first.)

Purchase denials

A record hit occurs in about 1 percent to 1.5 percent of the cases. Last year we had a little over 6,500 denials in the State. We do our best to determine that the hit is actually on the applicant without having to resort to fingerprint identification. Many times, of course, doing this plus securing additional disposition information is labor-intensive. We then notify the dealer, via telephone, that we have a hit, and he has a prohibited status on that purchase and may not release that weapon. That telephone conversation is tape-recorded. We then follow that up by notifying the dealer, the local law enforcement agency and the Bureau of Alcohol, Tobacco and Firearms in writing of the purchase denial.

In some cases, we discover that someone who was sold a firearm after the 15-day waiting period had elapsed is actually in a precluded class. In that case, we notify the local law enforcement agency and ask them to have the joyful experience of finding the firearm owner and securing the weapon.

There is an interesting point that coincides with this. Prior to the passage of the Brady Law, California's Legislature determined that we should speed up our firearms-check process. By 1996, our turn-around time on rifle and shotgun inquiries will be 10 days. Of course, we are looking at possibly implementing various models — such as an instant-check system — as well as designing a positive identification imaging process, which I hope we will be doing within the next couple of years.

I. Criminal history records: Where we are

Existing systems

Role of the courts: Panel
Disposition reporting:
The perspective from the courts
Sally T. Hillsman, Ph.D.

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James F. Shea

Disposition reporting: The perspective from the courts

SALLY T. HILLSMAN, Ph.D.
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National Center for State Courts

Complete and accurate criminal history records have long been an important issue for the criminal justice system. Increasingly, however, the focus has expanded to include an emphasis on both the timeliness of their delivery (that is, real time access) and an expansion of our understanding of who key users of this information are and should be. Clearly, both the Brady Law and the National Child Protection Act reflect this expanded focus, and provide both a further impetus to and opportunity for realizing these criminal history record objectives. The courts have also long been a key user of criminal history records and, like the newer users targeted by Brady and the Child Protection Act, they need the information rapidly, especially for the tens of thousands of pretrial release decisions that courts across the country make daily with their significant implications for public safety.

Achieving data quality goals

Since the 1970s we have made considerable progress in realizing the goals of complete, accurate and timely criminal history records. As the research by SEARCH and the Bureau of Justice Statistics (BJS) indicates, however, our efforts have been uneven, and this is a serious issue for meeting the needs of State law enforcement and court users, as well as for realizing a national instant criminal background check system. There is great disparity across and within States with regard to disposition reporting. In the past, there have been significant technical barriers to improvement. Yet in the last decade, the remarkable progress in the development of information and telecommunications technologies has reduced the number and scope of these technical issues. The greater impediments to progress have been — and remain — organizational and structural ones that are deeply rooted in the decentralized nature of our governmental structure, not just State/Federal and State/local, but also interbranch and interagency.

I was reminded of this forcefully yesterday when a leading State court administrator reminded me that his State had long had a fully integrated criminal justice information system from which they obtained very little useful information. Why? Because although there were four or five pockets of very good quality, up-to-date information, there were no effective linkages among them because the key parties had never sat down at the same table to make it happen.

Partly because the issue of criminal history records has too long been viewed as primarily a law enforcement effort, we have tended to overlook the fundamental need for serious cross-branch, cross-organization collaboration in planning, resource allocation and implementation as a tool (much as technology is a tool) to achieve our goals. This lack of equal partnership has not only significantly impeded progress in the last 25 years, but it will also continue to do so in the future if it remains unaddressed as we seek to improve criminal history records in the context of implementing the mandates of Brady and the Child Protection Act.

Criminal history data principles

There are two principles that I would like to focus on today. These principles have not changed much over the last 25 years and, if taken seriously, they will significantly enhance our efforts over the next 5 years to improve criminal history records and disposition reporting.

The first is that, with respect to complete and accurate criminal history records, the judicial branch is the sole, direct provider of a key source document: the case disposition. As a result, any serious effort to improve disposition reporting, and to make criminal history records electronically available real time, must include the judicial branch as an equal partner in development, problem-solving and maintenance.

To realize this partnership, however, the second principle must also be acknowledged: the courts *want* to collaborate because they are, and need to be, a major user of an electronic, real time criminal history record communication system. The courts want the repositories to succeed, but to accomplish this, the repositories must recognize the courts as a central client for their criminal history record services.

Let me go back to the first principle for a moment — the patently obvious, yet often overlooked, notion that the judicial branch is a key partner in successful change because the courts hold essential information. While this observation is not only obvious but also simple, it has not often been acted upon. While some States have taken this collaborative approach, it was not until 1990 that, at the national level, the courts came together with the other key actors from State and local law enforcement, the State repositories and others in a highly productive effort at common dialogue.

Common dialogue on disposition reporting

Under the auspices of SEARCH, BJS and the National Center for State Courts, and chaired by the Honorable Robert C. Murphy, Chief Judge of the Maryland Court of Appeals, the National Task Force on Criminal History Record Disposition Reporting began meeting in 1990. It placed on the table, clearly and in great detail, the positions, needs and operating realities of *all* the institutional parties at the State and local level.

As singular as it was, what was particularly remarkable was not the meetings themselves, but how surprised the parties were at what they learned about the real facts of life for the other parties in the disposition reporting and dissemination process. Clearly, for most, this cross-branch, cross-agency dialogue to improve criminal history records had not been going on (or at least not effectively) at the State and local levels in many, although not all, jurisdictions.

One of the surprising realities for some members of the Disposition Reporting Task Force was that, for the courts, the relationship between police arrests (that is, individual fingerprint documents) and dispositions (that is, court case records) is very complex, and that this can make the matching process very difficult for courts. For example:

- Some arrests (with fingerprint records) never result in a court case;
- Other fingerprint records do not arrive at a court until after the defendant's case has been bound over to another court's jurisdiction;
- Still other court cases have no arrest (or fingerprints), or at least not until mid-case or until its end; and
- Some court cases have multiple arrests, and some none at all.

A second reality that was surprising to some Task Force participants is that few court cases follow the rather straightforward, linear model of case processing upon which much criminal history disposition reporting is built. Instead of sequential processes, courts are organized on multiple subprocessing routines that can happen many times, in any order, or not at all. Equally as important is the fact that courts deal with many other case types besides criminal and, for both criminal and noncriminal cases, the court must communicate — like the hub on a wheel — with many official partners in the public and private sectors, at the local, State and Federal levels. Criminal history reporting is only *one* of many important, often mandatory, communications that courts must carry out and, therefore, the court's key communications functions must be built to accommodate all the official demands for information.

Courts as major users of criminal history records

That said, we should return to the equally important reality mentioned earlier, one that was even more surprising to many of the members of the Disposition Reporting Task Force: The courts are, need to be, and want to be treated as a major *user* of electronic real time transmissions of criminal history record data. This reality, while not always easy to achieve, is a significant benefit for collaborative efforts to improve criminal history records. This is because a key principle in automation is that when the *provider* of data wants and needs to use it, there is a strong incentive to produce accurate and timely information. In many States, however, courts have not been viewed as a major client or user of the system, and the content, format and timeliness of criminal history records is rarely designed to be adequate for the court's purposes.

To make all the decisions Larry Greenfeld identified this morning, courts, as criminal history users, need historical data on all dispositions, not just felonies and gross misdemeanors, and they need information on failures to appear, violent behavior and other incidents. For pretrial release decisions, the courts need this information within 24 hours of arrest.

As the criminal history reporting systems of States begin to expand their roles to serve the courts better and to respond to the interstate needs of the Brady Law and the National Child Protection Act, a full partnership with the judicial branch is not only necessary and possible, it will also be effective.

The Disposition Reporting Task Force report is well worth studying because it outlines what a productive equal partnership at the State level can and should be built upon.[1] Brady and the

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1 U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. *Report of the National Task Force on Criminal History Record Disposition Reporting*, Criminal Justice Information Policy series, by SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, June 1992).

Child Protection Act make this collaboration imperative. The report recommends first that the highest level court and executive branch officials in each State establish a high-level task force representing all components of the criminal justice system. This interbranch State task force should identify all users of the criminal history record information, and address the issue of how best to link the State repository database to the data maintained by the courts, as well as how to provide timely and effective access to criminal history record information by the courts.

The report also recommends that funding improvements in disposition reporting must be a priority, and it emphasizes that funding must be apportioned in a manner that is commensurate with the responsibilities that each component of the criminal justice system assumes in establishing and maintaining complete and accurate data. The Task Force report recognizes that in most States the central repository will receive a substantial percentage of available funds, but that such a collaborative approach will also mean that courts will receive significant resource support. As the Task Force report notes, "The courts' problems are the repositories' problems, and the repositories' problems are the courts' problems."

I would also like to add that we should consider the wisdom of reserving at least a small slice of Federal dollars available under Brady to experiment with technologies that could revolutionize the criminal history reporting process for the 21st century, focusing on technologies that can begin to do so within the next 5 years. For example:

- What if a court equipped with a scanner could send electronic prints and/or mug shots to the repository along with the disposition? This would mean no more matching!
- What if the justice system adopted universal standards for communication (that is, for transmission)? This is not fantasy — the beginnings of an electronic data and document interchange project for the courts is on the launch pad as we speak, and we will be ready shortly for liftoff.

Our criminal history reporting system is not good enough yet, but with collaboration, a focus on all its users and transformational technology, it can be — and sooner than we think.

Collecting and accessing court disposition information for the criminal history record

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With the passage of the Brady Bill, attention has turned to the availability and quality of criminal justice records to be used as part of the background check required before a person can purchase a handgun. Of particular interest is the automation of these records for use in a national instant criminal background check system.

Improving automated court disposition reporting

Over the past 8 years, New York State has dedicated considerable resources to improve and expand the level of automated disposition reporting by the courts to the central criminal history repository at the New York State Division of Criminal Justice Services (DCJS). The largest effort to date is the development and implementation of the Criminal Records Information Management System (CRIMS) by the Office of Court Administration (OCA).

— *CRIMS*

CRIMS is an automated case management system used by courts with high case volumes and by select courts of criminal jurisdiction. CRIMS is more than a simple mechanism for automated disposition reporting. It handles all stages of case-related recordkeeping, from case initiation through final disposition and appeal, as well as court calendaring.

CRIMS is a mainframe-based system that has been operational since July 1989. It was initially installed in the five criminal courts of New York City and later expanded to include a total of 21 sites. (Figure 1 illustrates the data transmission between CRIMS, various courts, DCJS and OCA.) CRIMS currently processes approximately 60 percent of all dispositions in the State.

CRIMS was designed to provide additional and more specific disposition information than the automated Offender-Based Tracking System (OBTS) that it replaced. It was also intended to provide disposition data to the criminal history system in a more timely manner. Within OBTS, transmission was limited to the reporting of docket numbers, warrants issued and returned, and final charges and dispositions. The transmission of disposition data occurred only *after* a case was completed in court and all court paperwork was finished. This approach resulted in the lapse of weeks, and in some cases many months, before dispositions were updated in a batch mode to the criminal history system.

A wider range of data (as seen in Figure 2) was made available to the criminal history system through CRIMS. Unlike OBTS, CRIMS transmits information to the criminal history repository on-line, in real time. Data transmission occurs at intermediate processing stages at the same time that it is entered into the court's own database. For example, the disposition related to the most serious charge will be transmitted to the criminal history system before more detailed records are available. This preliminary transmission of the most significant case-related information has resulted in timely access to partial disposition data for hundreds of thousands of cases.

CRIMS also supports the OCA's paper-based criminal disposition reporting process. Under this system, the remaining courts in the State submit disposition reporting forms to data entry units for posting to CRIMS and the automated criminal history file. These forms, which are generated by 119 upstate city and county courts from a PC-based case tracking system, are shipped to a data entry unit within OCA. Approximately 25 percent of the State's dispositions are processed through these courts. Over 2,000 town and village courts submit the same forms to DCJS for data entry. Although a handful of these courts possess PC-based systems capable of generating the disposition reporting form, most of them submit manually prepared forms.

— Impact of automated reporting

I believe that the positive impact of automated disposition reporting, in terms of more timely and complete dispositions, is quite clear. (Figure 3 illustrates a distribution of disposition delivery times in days for the upper courts that process felony cases and report to CRIMS. The disposition delivery time is the period between the date when the disposition occurred and when it was posted to the criminal history file at DCJS.) In New York City, two of the five counties transmit over 90 percent of disposition cases within a day. None of the counties transmits less than 92 percent of their cases within 5 days. Within the upper courts of upstate New York, five of the eight courts transmit better than 90 percent of felony dispositions within the 6- to 10-day range.

By contrast, the nonautomated criminal disposition reporting system is experiencing data entry backlogs. There is an approximately 1-month backlog at DCJS where the data entry of dispositions for town and village courts are performed. Likewise, the unit at OCA, which is responsible for the data entry of the upstate city and county courts, is experiencing a 2-month data entry backlog. Furthermore, these backlogs do not factor in the time period required to generate the paper disposition reporting form or mail the form to the data entry site.

In terms of missing dispositions, automated reporting sites handily outstrip the performance of nonautomated courts. Statistics for the past 15 years indicate that on-line, automated sites report a missing disposition level of approximately 8 percent. For the same period, the level of missing dispositions for city and county courts — those that are automated but which report computer-generated disposition reporting forms to the OCA — stands at 17 percent. For town and village courts, where little automation exists, the level of missing dispositions hovers around 26 percent.

— Additional automation benefits

Given the benefits of automated disposition reporting, the New York State strategy calls for more automation. The OCA is considering the distribution of a scaled-down version of CRIMS to other city and county courts in the State. The system would operate in a personal computer environment and probably have dial-up capability to the CRIMS mainframe system.

At the town and village court level, OCA is working with private software vendors that have developed court case management and tracking systems for small courts. The OCA has recently published a Request For Proposal inviting vendors that meet specifications defined by both DCJS and OCA staff to demonstrate their systems. Those systems that are capable of meeting data standard requirements, and generating disposition information that passes CRIMS edits, will be recommended by OCA to town and village courts.

To further support this effort, New York State expects to award $230,000 to approximately 50 town and village justice courts for personal computers and software using Bureau of Justice Assistance (BJA) funds earmarked for the improvement of criminal justice records.

In addition to CRIMS, there are other automated efforts to improve disposition completeness using Federal funds from BJA and the Bureau of Justice Statistics. DCJS is creating an automated PC-based system to enable remote updating of the criminal history file. The first phase of this project provides disposition contributors in the field with a method to update missing dispositions. This system will provide probation departments with the capability to transmit missing dispositions, collected during the pre-sentence process, to the criminal history system. It will also provide town and village courts without vendor systems a mechanism to report dispositions on-line to the criminal history system.

Another initiative designed to improve disposition reporting is the on-line transmission of decline-to-prosecute information from prosecutors to the criminal history repository. Using BJA funds, DCJS is negotiating a plan to implement this project with the New York County and Kings County District Attorney's Offices. This effort is expected to result in the capture of several thousand declinations to prosecute each year, accelerate the receipt of this information by the criminal history system, and improve the quality of the data by eliminating a layer of data entry. If these pilot projects prove successful, the initiative may be exported to other prosecution offices.

Reporting dispositions to the FBI

Thus far I have described the current and future automated processes for receipt of dispositions at New York's criminal history repository. The second part of the disposition reporting equation is the means by which we remit this information to the FBI. This mechanism is of particular interest to those States that do not participate in the Interstate Identification Index (III) and which access disposition information directly from the FBI system rather than from the contributing State. For nearly 3 years we have been sending tapes of dispositions to the FBI on a weekly basis. On average, each tape includes roughly 4,000 dispositions.

The revamping of this process is a good example of the efficiencies realized

through automation. (See Figure 4 for an illustration of this process.) Under the previous process, DCJS mailed criminal history rap sheets to the FBI which they then used to manually key disposition information into their system. At the time that the new tape process was initiated, the FBI had an approximate 3-year backlog of dispositions to enter. The new process has eliminated the need for data entry at the FBI and the backlog of disposition information no longer exists.

Process and practice infrastructure

For even more significant improvement in the area of disposition reporting, New York State needs to harness its existing technical infrastructure of automation and communications capabilities with an infrastructure of "standard processes and practices" capable of coordinating the flow and linkage of criminal justice information reported to the State criminal history repository.

This infrastructure development issue poses a major challenge to a State like New York, which operates in a highly decentralized criminal justice system. Past studies of the New York State criminal justice system have underscored the poor fit between the process and structure of criminal justice as a key obstacle to system coordination and integration. While criminal justice is a single process that begins with an arrest and ends with release from custody or supervision, the system's administrative structure is very decentralized. Over 3,000 criminal justice agencies operating at the State, county, city, town and village levels of government in New York are responsible for the administration of justice. Within this type of administrative landscape, it is inevitable that variations in processes, practices and mechanisms for reporting dispositions will evolve.

Over the past year, DCJS staff, funded by a BJA grant to improve criminal justice records, have visited criminal justice agencies in five counties to examine how those agencies collect, transfer and report criminal history information.

— Practices which interfere with disposition reporting

Here are a few examples of what we found to provide an idea of the varied practices that interfere with disposition processing.

For example, variations in agency data collection procedures can lead to incomplete or inaccurate disposition information. (One scenario is illustrated in Figure 5.) During our study, two law enforcement agencies interviewed indicated that they typically issued appearance tickets for fingerprintable crimes. In these jurisdictions, the arrested party is not fingerprinted until *after* the first court appearance. The agencies follow this practice, which is permissible under New York State law, to save police officers the time of taking these individuals into custody and transporting them to the station house for fingerprinting. However, as those agencies admitted, this practice makes it more likely that individuals will not be fingerprinted if they do not return for the first court appearance. Without an arrest fingerprint card, a subsequently reported disposition cannot be effectively reported on the criminal history system.

Another scenario is illustrated in Figure 6. Often, police agencies with authority in multiple court jurisdictions arrest persons who have committed offenses in several of these jurisdictions. Sometimes all of the offenses are posted to a single fingerprint card. Under this scenario, only *one* of the courts will receive the single fingerprint stub, which includes the court control number, which is used to link the disposition with the arrest event posted on the criminal history system.

Our field work also found examples of how inadequate communications among criminal justice agencies contributed to incomplete or inaccurate disposition reporting. This scenario is illustrated in Figure 7. This problem occurred most often in reporting dispositions where multiple arrests or multiple incidents spanning several courts were involved. The district attorney's office was frequently involved in closing out these cases by presenting a plea bargain in one court to cover outstanding charges in other courts. In at least one county visited, the district attorney did not notify the other courts involved when multiple incidents were closed out in a single court. Thus, these courts were unable to report a disposition for that case, leaving the appearance of a missing disposition on the criminal history record.

— Solving weaknesses in the infrastructure

The data quality problems that I have mentioned reflect weaknesses in the criminal history information infrastructure. While additional automation may increase reporting and reduce the amount of inaccurate or incomplete disposition information, the full potential of this technology will not be realized unless an infrastructure of standard processes and practices is developed. To that end, a major BJA-funded project for New York State is the development of a Standard Practices manual. Working with State and local criminal justice agencies, DCJS plans to promulgate a manual organized by type of criminal justice agency. For each agency, the manual would specify the types of criminal history processing functions performed. For each function, the manual would provide:

(1) An overview of the significance and importance of the function to criminal history processing and to the operations of that agency and other criminal justice agencies.
(2) The answers to what, when and how information, required by an agency to carry out its processing and reporting functions, should be received.
(3) Answers to when and how an agency should collect information for which it is the original source.
(4) What steps the agency should take to process criminal history information in order to address timeliness, completeness, accuracy and quality control concerns.

(5) How, what and when the agency should transfer information to local criminal justice agencies.
(6) How, what and when the agency should report criminal history information to the repository and other State criminal justice agencies.

The manual will include examples to illustrate how processing should occur. I see the manual's development as an opportunity to review and revise, or overhaul, existing practices though a dialogue between the repository and reporting criminal justice agencies. This exercise should allow us to re-engineer some aspects of the process and make substantial improvements in criminal history availability and quality.

System cost

I would like to briefly touch upon two of the big questions raised by the Brady Act — how long will it take and how much will it cost to automate criminal history records?

On a State-by-State basis, the answers obviously will vary according to the State size and the technical level on which it currently operates. In New York State, the development and implementation of the CRIMS automated disposition reporting system and the on-line interface to the automated criminal history file at DCJS has taken 8 years to date and other system features are still in development. In terms of cost, here are some ballpark figures. The OCA estimates that the development of CRIMS to date has cost approximately $10 million, which includes the cost of equipment and programming. They estimate the annual maintenance budget to run in the area of $1.6 million. In terms of developing the CRIMS interface with the criminal history system, DCJS estimates its manpower costs at approximately $1 million for development and an annual maintenance cost of approximately $125,000.

So as not to overstate costs, I should reiterate that CRIMS is much more than a disposition reporting system. It is a comprehensive case-tracking and court calendaring system as well. On the other hand, to avoid understating costs, these figures only reflect the cost of reporting dispositions for 60 percent of the States' cases and do not factor in the cost of developing and maintaining the criminal history system and existing communications infrastructure or the cost of an existing knowledge base.

In closing, I hope that I have imparted a sense of the magnitude of current and future effort, as well as the cost, of improving disposition reporting in New York State.

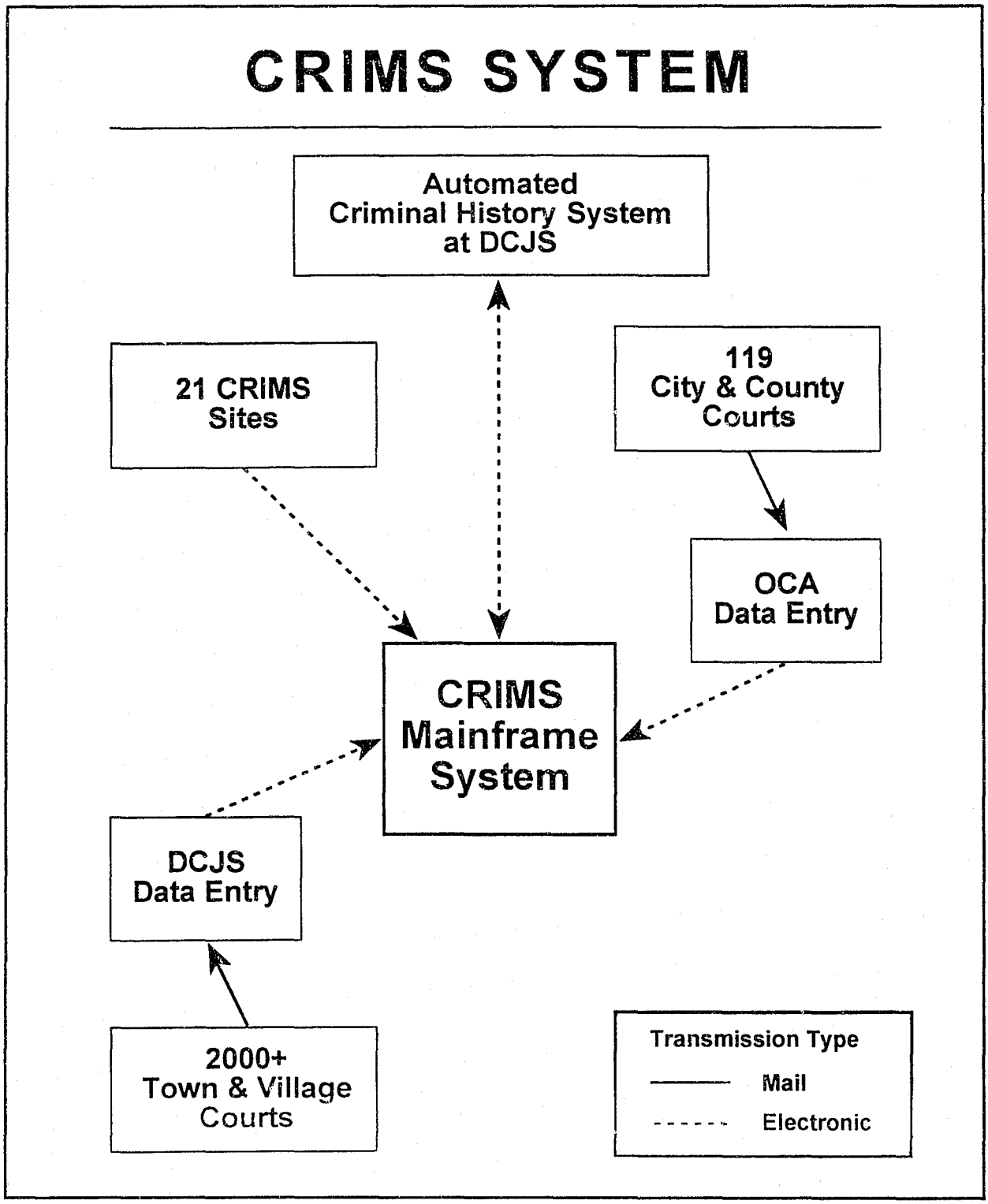


Figure 1: Data transmission in CRIMS

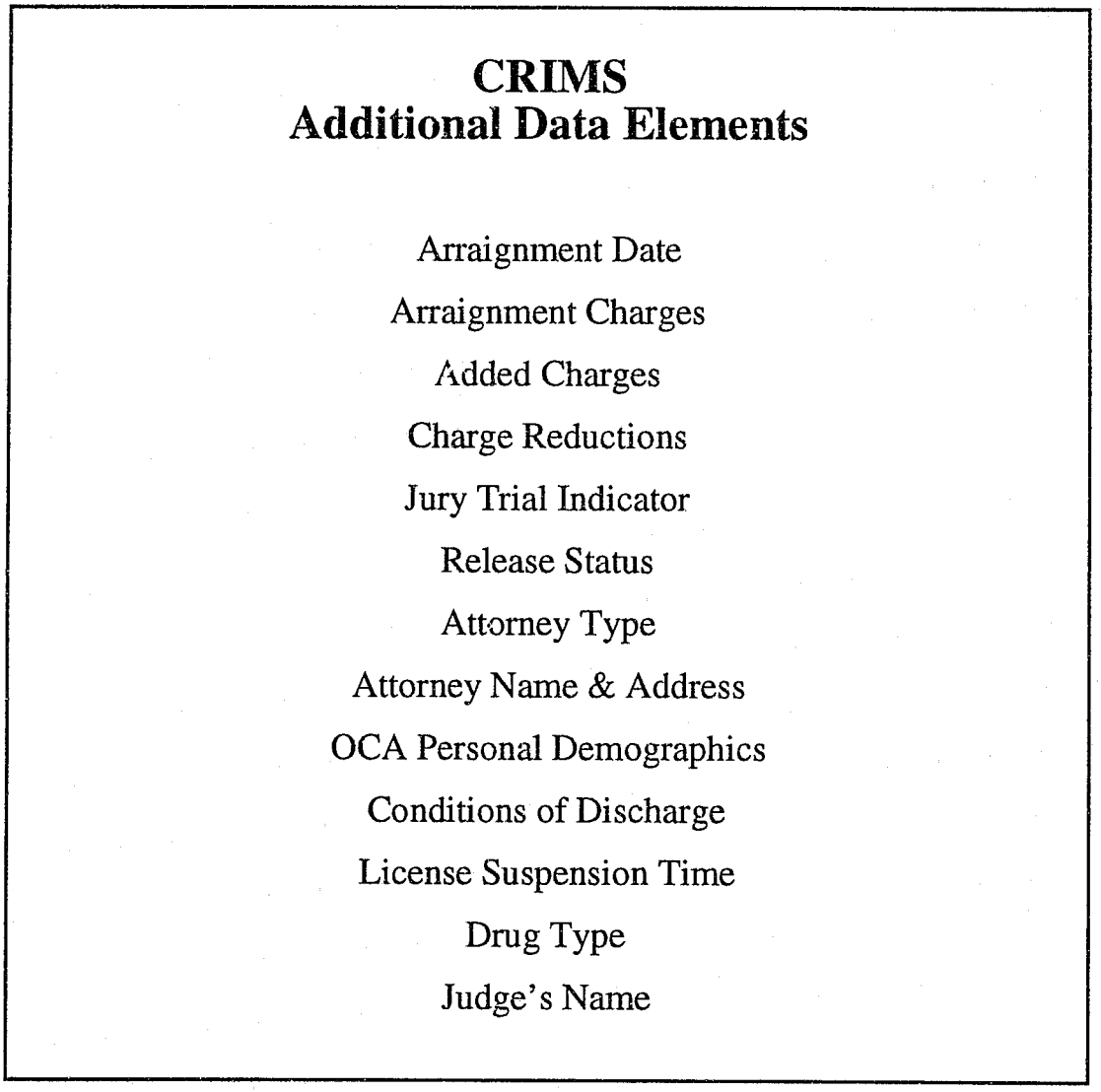
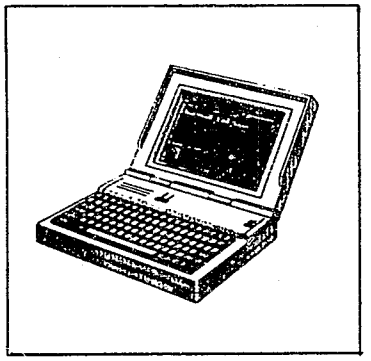


Figure 2: Additional data elements in CRIMS

Upper Court Automated Disposition Delivery Times

New York City Sites

	NY County	Bronx	Kings	Queens	Richmond
0-1	93%	90%	89%	82%	88%
2-5	3%	4%	3%	10%	8%
6-10	1%	0%	4%	1%	0%
11-30	2%	0%	2%	3%	0%
31-60	0%	1%	2%	1%	4%
60-100	1%	3%	1%	1%	0%
101-366	0%	3%	0%	3%	0%
over 366	1%	0%	0%	0%	0%



Upstate Sites

	Suffolk	Nassau	Westchester	Rockland	Orange	Putnam	Dutchess	Erie
0-1	67%	82%	94%	89%	89%	100%	95%	80%
2-5	0%	0%	6%	0%	11%	0%	5%	7%
6-10	0%	0%	0%	0%	0%	0%	0%	3%
11-30	13%	0%	0%	0%	0%	0%	0%	0%
31-60	10%	0%	0%	0%	0%	0%	0%	3%
61-100	5%	0%	0%	0%	0%	0%	0%	0%
101-366	5%	18%	0%	0%	0%	0%	0%	3%
over 366	0%	0%	0%	11%	0%	0%	0%	3%

Figure 3: Upper court automated disposition delivery times

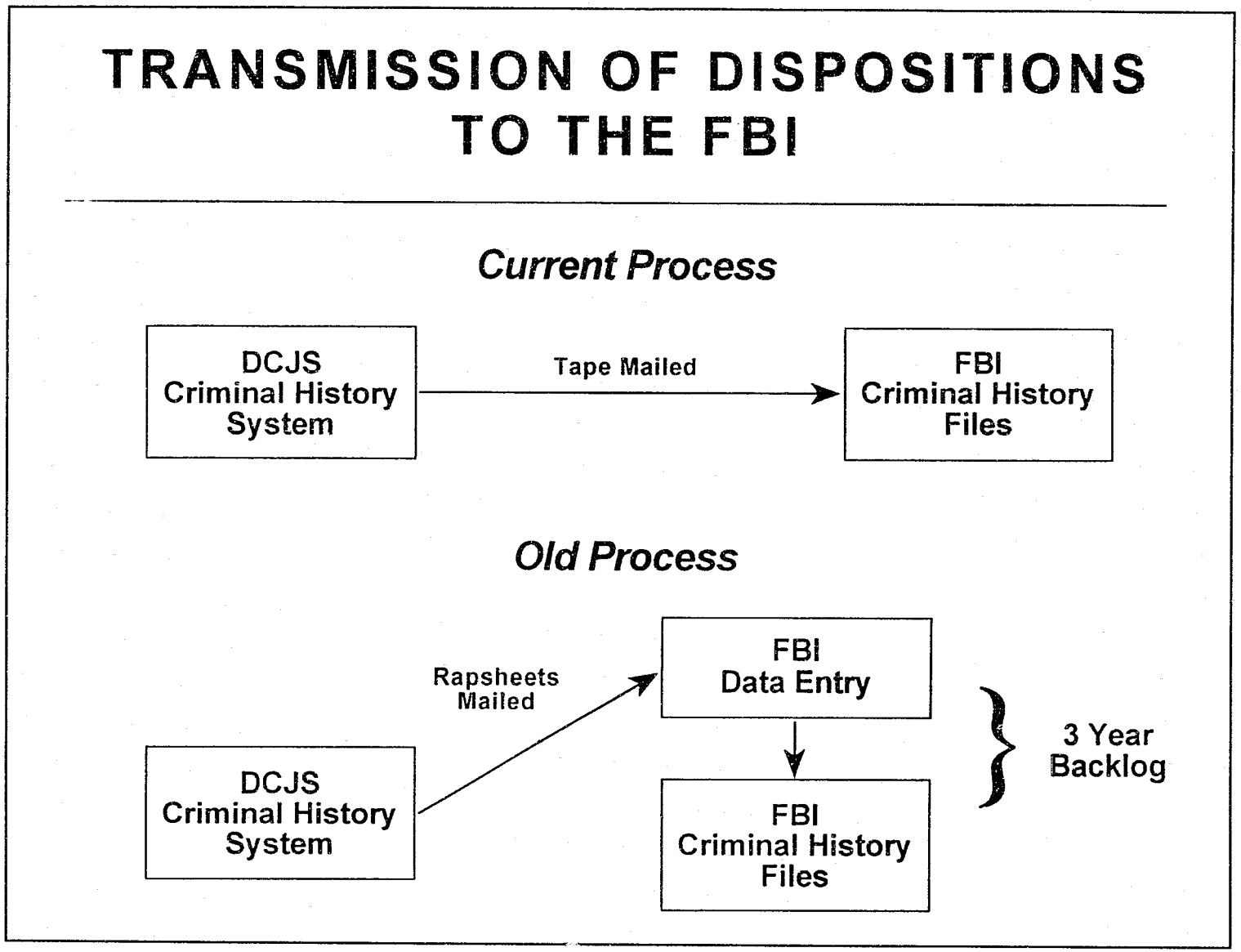


Figure 4: Transmission of dispositions from DCJS to the FBI

Arrest Scenario

Appearance Tickets

Court Appearances

Fingerprints (often not done)

Dispositions

Without a fingerprint card, an arrest event is not posted to the criminal history file. Therefore, there is no event to which to attach the dispositions.

Figure 5: Arrest scenario #1

An Arrest for Multiple Incidents Occurring in Different Jurisdictions Printed on a Single Card

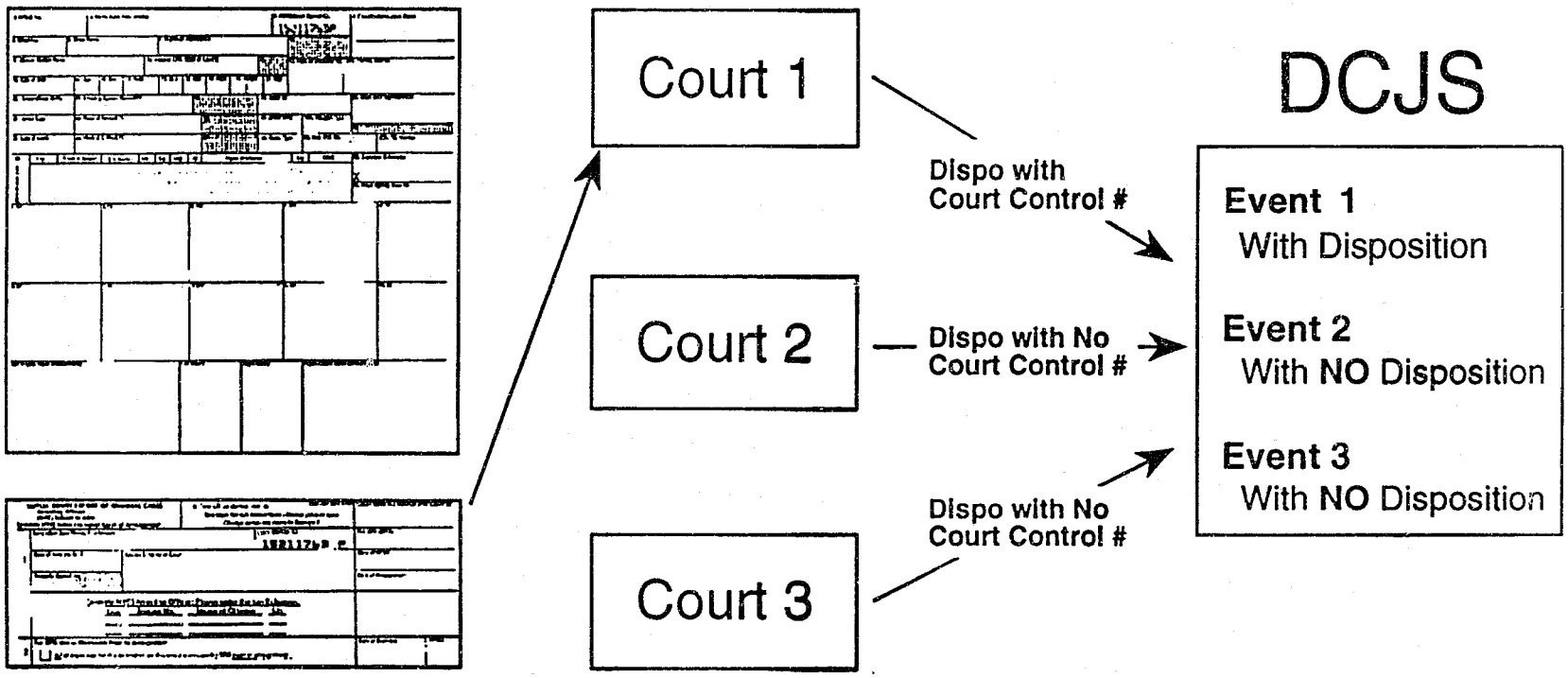


Figure 6: Arrest scenario #2

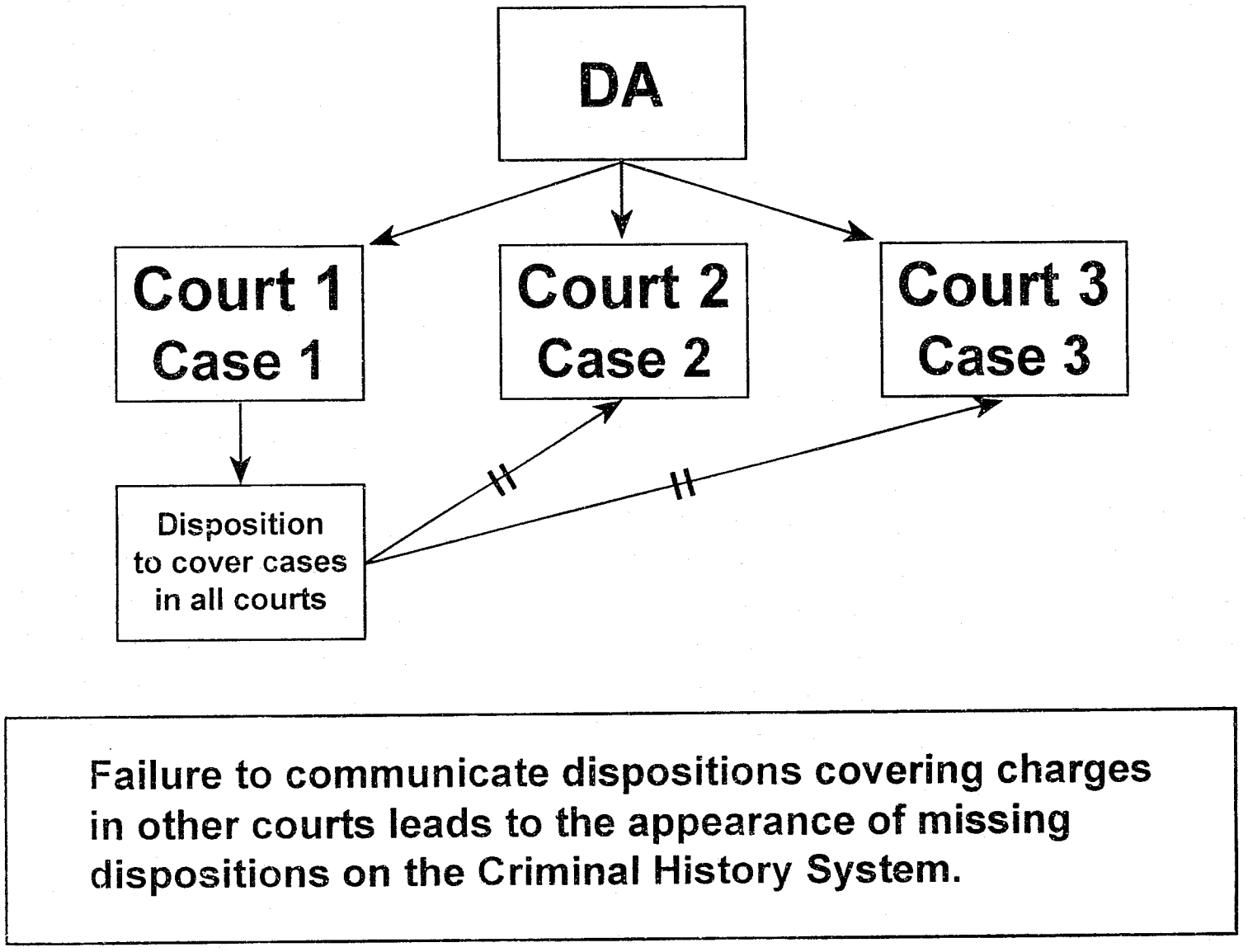


Figure 7: Disposition reporting scenario

II. Current decisionmaking and future policies

Day two opening address

Laurie O. Robinson

Keynote address

Janet Reno

Day two opening address

LAURIE O. ROBINSON
Acting Assistant Attorney General
Office of Justice Programs
U.S. Department of Justice

It has been almost exactly a year since President Clinton announced his intention to nominate Janet Reno as his Attorney General. When he made that announcement, the President said his nominee would bring a sense of pride, integrity and new energy to the Justice Department, and that she would be an innovator for law enforcement in this country. I think you will agree with me that the Attorney General has done all of that, and more.

In the 6 months that I have been at the Justice Department, I have had the opportunity to see up close how committed she is to doing something about the violence in this Nation and, in her words, to "put people first." When you look at her background, it is not surprising that Janet Reno has done an enormous amount in a short period of time to help focus the Nation's attention on the proliferation of guns in our society, problems with child abuse, the scourge of domestic violence, and the crisis of violence in our streets.

As the State's Attorney for Dade County, Florida, for 15 years, she was bold in implementing innovative programs on domestic violence, victim-witness assistance, child support and juvenile justice. They have become models for her State and for the Nation. At the Office of Justice Programs, we are trying to replicate many of those same programs today around the country.

She spearheaded the establishment of a Children's Assessment Center to assist child victims of sexual and physical abuse. She established a Drug Court, now so famous that it has become the forerunner of many similar programs around the country which we hope, through Crime Bill funding and programs, to see spread across this Nation.

In Washington, Janet Reno has built on her Florida experiences to translate broad policy objectives into practice, finding practical solutions to the problems faced by communities across the country. She has worked hard to bring everyone to the table in this effort: Federal, State and local criminal justice agencies, human services officials, community groups, schools, public health and law enforcement.

As the Attorney General said in her first address to Justice Department employees, we must use our limited resources to build real partnerships with State and local governments — partnerships that are built on mutual regard and respect. Because of her own background at the State and local level, she has a unique understanding of the frustrations which State and local officials face in dealing with the Federal government. She often says that as a local official, she has sat "across the table" in dealing with the Federal government. For that reason, she is pledged to make this Justice Department more responsive and user-friendly to those of you on the State and local side. I hope we are making steps in that direction. Obviously, one of the main reasons for holding this conference is to bring us all together as we look at new challenges with the implementation of the Brady Act and the National Child Protection Act.

We know all too well the problems caused by the proliferation of illegally obtained firearms. Our National Institute of Justice and Office of Juvenile Justice and Delinquency Prevention recently completed a study which found that

handguns of all types — even military-style rifles — are readily available, even to young people. More than one out of five male high school students surveyed in crime-ridden urban neighborhoods in four States reported owning a gun. A similar survey of male juveniles behind bars in those same States found that 83 percent said they had at least one gun at home. The Attorney General has grappled with these tough issues throughout her career as State's Attorney, when she worked on revising the State's criminal code for the Florida Senate Criminal Justice Committee, and as Staff Director of the Judiciary Committee of the Florida House of Representatives.

Before I present her to you, let me turn to something more personal. I am often asked by friends or family members to describe what Janet Reno is *really* like. In every sense, she has a presence that is larger than life.

She is also determined, wanting to press forward on a project when everyone else in the room may secretly want to give up and go home. That kind of commitment and determination is a virtue when it comes to getting things done.

She also is one of the most straightforward people I have ever met. She does not mince words. Many years ago, a Florida friend of hers told me that Janet Reno *always* speaks her mind. I saw that side of her in the 1980s in bar association work, when she never hesitated to state her views — even if they were unpopular ones.

She is also deeply committed. It is that commitment that has been a mainstay for her throughout her career, and which characterizes her approach as she tackles the tough problems all of us face today.

I have also seen how much she cares about people. I have seen that in the personal notes she sends to families of slain police officers, in the time she takes to visit children ir inner-city public schools to read to them, and in the fact that she does *not* want to be an Attorney General who is isolated behind a desk; she would rather be someone who gets out, talks with the employees at the Department, visits U.S. Attorneys Offices, and talks with people who are doing something about crime in their own neighborhoods. That caring attitude touches everything she does.

I hope you will join me now in welcoming Janet Reno, the Attorney General of the United States.

Keynote address

UNITED STATES ATTORNEY GENERAL JANET RENO

Thank you very much, Laurie. I spoke to the State Supreme Court Chief Justices yesterday and as I explained to them and as I will explain to you, I am a product of a local system — of a State court system. I am now here at the Federal government, and I do not want to forget where I came from and how difficult it is to deal with the issues of technology, of constitutional issues, of policing on the streets of America. Local and State law enforcement have the hardest single job of anybody in law enforcement, and they do an incredible job considering all the Federal regulations that we impose and all the unfunded Federal mandates that are often imposed on local government. I want to do everything I can to work with you on the issues that we discussed today, and on the issues of the future, to make sure that there is a real partnership so that the Federal government does not come to town to say, "Hey, we know better," but that "We understand the difficult problems that you face, and we will work with you to use whatever Federal resources are available to solve them."

There are scores of legitimate reasons for needing to know whether a certain individual has ever committed a crime and, if so, what crime? Yet, as I will discuss today, our current ability to do that is distressingly inadequate. I think about my own experience of trying to develop a career criminal program and trying to get sound and immediate prior records to prove what we were doing and to focus our priorities on the true career criminal. I think in terms of trying to get information to court for pre-sentence investigations. Every time I turned around, criminal records were keyed to everything we were doing and the issues involved were very, very difficult. But I also had a sense of hope. I used to sit there in Miami, as I struggled with the Metro-Dade Police Department's identification and records section, and tried to understand what the issues were. To think, in 10 years, I am going to be looking at this and thinking, "We did *what*? We were able to provide that much information with that kind of technology?" I am convinced that if we work together and use technology in the right way — if we avoid duplication and if we all go in the same direction developing the best we can with the resources we have — criminal history informations are going to be easily accessible and law enforcement's efforts will be far enhanced by that effort.

It is all too easy to forget how often we need to know about a person's criminal history. For example, when bond is set in a criminal case, how many of you have stood before a bond judge saying, "Well, we really don't know about the defendant's criminal history." How many of you have picked up the paper a day after a bond hearing to find that a man whom you let out because you thought he had no priors, had killed somebody? I have been there, and it hurts. A defendant's criminal history may indicate whether there is a serious risk of flight when a judge prepares to sentence an individual convicted of a crime. The judge is entitled to know the past criminal behavior of the person standing before the bench. When our government is trying to decide whether an individual can be trusted to have access to our Nation's military secrets, a history of criminal behavior also may shed light on that question.

Yet the legitimate uses for criminal history background information go well beyond the needs of criminal justice and other agencies. In various States, criminal background checks are done before individuals may be hired as bank tellers, day-care workers, retirement

home aides and school bus drivers. I know how difficult it is to balance the rights of individuals to work in day-care centers with the desperate need to make sure that people who work with our children can be trusted enough to do so. Checks are done before licenses are issued to sell insurance, run an auction, or serve food to the general public. In some States, we check backgrounds before people can take leadership roles with public organizations. Now the Brady Law provides that we should check for a criminal history before we sell someone a gun. And we must make sure that the National Child Protection Act is implemented. We need to have accurate criminal history record information to do so.

The business of criminal histories is a tricky one. Our society believes that people can make mistakes and that those mistakes should not necessarily be held against them forever. Our society also believes that we should respect people's privacy. Our society also understands what happens to a person when they get unfairly labeled with inaccurate information and how disastrous that can be in this era of automation. That inaccuracy can follow a person through one credit check or background check after another, and it sometimes takes an act of God to erase it from the automated system.

Our society has learned that we must take steps to protect ourselves from those who have not just made a mistake, but who have broken the law repeatedly or with malice, those who by their actions have demonstrated that they are dangerous. It is, unfortunately, because of these people — those who have demonstrated that they cannot be trusted — that we must check the backgrounds of *all* people who wish to engage in occupations or activities in which only the people that society trusts should be allowed to engage. But we must make sure the information is accurate and well-maintained, and we must do so consistent with due process.

Given the new miracles of technology which emerge every day, our current ability to conduct reliable background checks is abysmal. (Figures 1 and 2 help to illustrate the current state of affairs.) Figure 1 shows records held by States and the FBI in 1992. Referring to this chart, which uses the best data available from 1992, we can see that, at that time, there were just over 53 million criminal history records scattered throughout the country. This chart shows that of those 53 million, just 17.5 million of them, or 33 percent, were available through the Interstate Identification Index (III), the only real multi-State database of criminal records. Thus, in 1992, a computer search would not even have had access to two-thirds of the criminal history records in the country. But it gets worse.

Of the 17.5 million records available in III, only about 9 million of them had information about the ultimate disposition of the case. How many criminal histories have you looked at where there is an arrest for a very serious crime and *no* disposition? The judge is about to sentence the defendant or place the defendant on probation. You are grappling with the hard issue that the judge will not give you a continuance, and you just wish you had the dispositions there. What is the result? This means that for about 8 million of those 17.5 million records available in III, we can see that an arrest is made, but we do not know what happened. We do not know if the person was convicted, acquitted, had the charges dropped, or pleaded guilty to a lesser offense. For purposes of evaluating a person's background, almost half the records available in III do not tell us what we need to know.

So where does that leave us? It leaves us with only 9.2 million records in III with case dispositions out of a total of 53 million records — just 17 percent. Just 17 percent of the criminal records in this country are complete enough and accessible enough to be instantaneously useful to our law enforcement community and the rest of society. And 17 percent is so far away from a passing grade — let alone the A-plus quality work to which Americans are entitled — that we must make improvements in this area on a national, State and local basis, and as a priority.

To be fair, there has been considerable improvement in recent years. I think back to 1978 when I took office as State's Attorney, and see a distinct difference.

Figure 2 shows the percent of criminal records accessible through the III. Federal and State funds have been invested in the effort to improve criminal histories. Some have started to recognize the critical nature of improvement in the area. Thus, the percent of criminal records accessible through III has risen slowly, but steadily, through the first half of this decade. We are now up to 39 percent of all criminal records included in III. Twenty-six States now participate in III and by the end of 1994, between 30 to 35 States will be participating in III. And disposition reporting has been improved, too. Through tremendous efforts on your part, we are making progress, but we still have a very long way to go. I recognize that it is an extraordinarily difficult task to automate all of the those records that are still manual, to link the data that are contained in different automated systems, and to make those records immediately available. Nonetheless, the American people expect no less of us, and we cannot let them down.

Fortunately, when the Congress passed the Brady Bill, it understood that we were not ready to rely on an instant-check system starting at the end of February 1994. There was a recognition that computerized records with case dispositions were not sufficiently complete to prevent sales to prohibited buyers. That is why the Congress gave all of us involved in conducting background checks 5 *working* days to complete the checks.

Because of the current state of computerized records, the background check burden will fall even more heavily on local law enforcement. When the computer shows an arrest without a disposition, you will have a few days to find out what happened in that case. When there is a question about which "John Smith" is seeking to buy a gun —

and whether it is the same John Smith convicted of aggravated battery last year — you will have a few days to find out.

Without the 5 working days which law enforcement agencies have been granted to conduct background checks, you would be forced to rely exclusively on that computer system that is so far away from a passing grade right now. The 5-day waiting period is a critical tool for law enforcement officials. That gives you at least some of the time you need to conduct a reliable background check.

At the end of 5 years, we must be ready to conduct background checks, not in 5 days, but instantaneously. That, too, will be a substantial challenge. I believe that working together, we can meet that challenge. And I look forward to trying to do everything I can to support your efforts and to use the Federal government in ways that can be most helpful to you.

Those of you here today are on the front line. You maintain the records. You use the records. You have prosecutors hollering at you. You have judges telling you to be in court 5 minutes before you are supposed to be over there. I have been there. I have been called downstairs, from the sixth floor to the fourth floor, and asked why I did not have the criminal history records of the defendant. I understand. You are court administrators, probation officials, police officers and judges. You work for organizations concerned with crime victims, child abuse and sensible gun laws. When I talk about the importance of criminal background checks to the people assembled here today, I think, "You know it better than anybody else." And it falls on those of us who understand the problem to make it a priority for our Federal, State and local governments.

The politicians love to build jails, and at times they love to provide operating expenses for jails. But when we consider the difficult issues of technology, technology that can make law enforcement so much more effective, it becomes incumbent upon those of us who understand how important it is to appear before county commissions, State legislators and governors' cabinets and to let them know how critical this information is, and what we can do with a relatively small investment to make law enforcement so much more effective. We can explain it to them in these terms: "Technology is a wave of the future; if you make this investment now, you are going to save us dollars in re-arrests that have to be made because a dangerous offender was let out of prison prematurely because we didn't have criminal records." You are going to be able to explain to them that we could put a career criminal away, and keep him away, because we had the up-to-date disposition information, rather than seeing the offender released on probation, only to be recycled back into the system — both a tragic injury to a victim and a considerable expense to arresting and prosecuting authorities.

We *can* make a difference. We must remind the public of the uses for which they expect criminal history records to be available, and we must be honest with them about how far we have to go before we can have a really reliable check to determine someone's criminal history. Furthermore, the Federal government must do its part to assist you in this effort in every way we can. I am pleased that President Clinton's budget submitted to the Congress on February 7, 1994, requested $100 million for the improvement of State criminal history record quality and accessibility. This money, if appropriated by the Congress, will be distributed in grants based on the priorities established in the Brady Law and the timetables established by the Justice Department, *in consultation with each State.* The Justice Department does not decide these priorities; we will set these priorities working jointly with the States. In addition to providing funding, the Justice Department and the FBI will continue our partnership with all of you to make sure that we have a national records system that works — one that provides the type of complete, accurate, timely information we and the criminal justice community need. With your dedicated efforts and with these critical Federal funds, I have no doubt that working together, we can make real progress toward improving all of the criminal history databases in this country.

We have the Brady Law. And we now have the National Child Protection Act, or the "Oprah Winfrey Bill," which will improve the quality of our data regarding those who commit crimes against these children. But these laws are only a small part of the mosaic of uses for criminal histories.

The President has called for an enactment of the "Three Strikes And You're Out Law," and we are working to define it carefully so that we go after the truly violent offenders — the people who I have long said should be put away and kept away. But I understand, as I have mentioned, what it is like to try to prove that somebody is a career criminal — to try to prove that somebody had "three strikes." How can such a sensible law work if we do not know which people have committed violent crimes in the past? Right now, the computer can only give us reliable information, in that regard, for less than 25 percent of the criminal histories in our country. For "Three Strikes and You're Out" to keep violence off the streets, for the Brady Law to keep handguns out of the reach of those who should not have them, for the National Child Protection Act to keep our children safer from child abuse and neglect, we must improve the quality of criminal history databases, and we must do it quickly.

I thank you all for your dedication to law enforcement, whether it be in the issue of criminal histories, community policing, support that we can give you for technology, or technical and expert information that we can share with you. We want to develop a mechanism for truly sharing.

There is an interesting "face" to law enforcement in the Federal government now. We have, as Director of the FBI, a man who was an FBI agent, who was a Federal prosecutor, who was a Federal judge. For the United States Marshal, we have a man who was Deputy Director of the Metro-Dade Police Department and Chief of Police in Tampa, Florida, a man

who came up through the ranks from Patrolman to become the Director of the United States Marshals Service. As the leader of the Drug Enforcement Administration, we have a man who worked his way up through the ranks in New York to become Commissioner of the State of New York, who understands the aspect of law enforcement from a State perspective. And you have a local prosecutor hanging around, too. Never has there been, I think, such a chance for cooperation. There is now a splendid effort underway between the Federal agencies and the Justice Department. The DEA and the FBI have announced a resolution of the intelligence sharing aspect of their two agencies that, I think, brings unparalleled efforts of cooperation and coordination and an end to turf battles.

More importantly, I think we now have the chance to share with you as *real* partners. You are the people on the front line. You are also the people who are on the front line of probably the greatest burst of knowledge in all of human history. You have to take what that street officer knows and what that scientist knows and marry them together so that we can form an effort where law enforcement is going to be ahead of the sophisticated crooks, where law enforcement is going to have up-to-date information so that it can respond immediately. We look forward to working with you in that partnership.

Thank you.

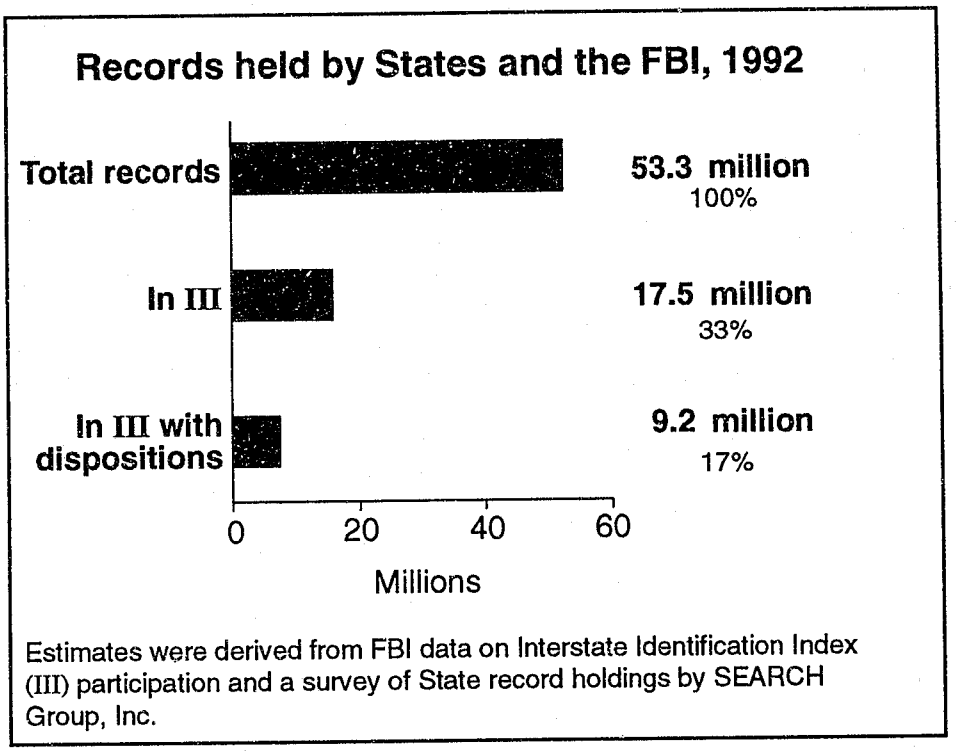


Figure 1: Criminal History records held by States and the FBI, 1992

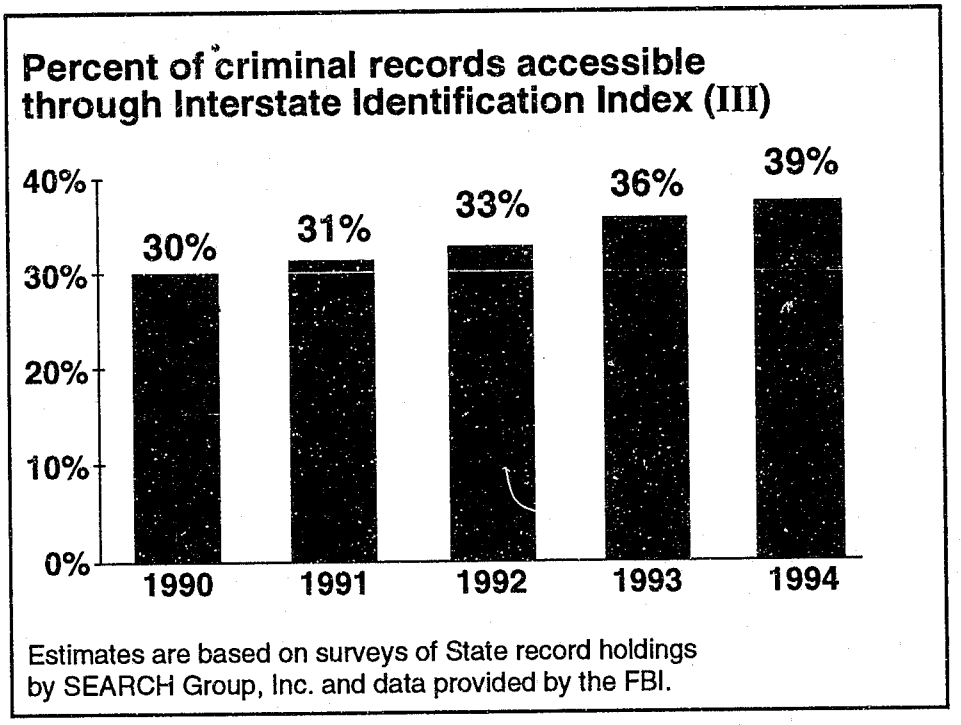


Figure 2: Percent of criminal records accessible through III

II. Current decisionmaking and future policies

National Child Protection Act of 1993

Requirements and systems of the National Child Protection Act: Panel
Requirements of the National Child Protection Act
James X. Dempsey

Authorized record checks for screening child-care and youth-service workers
Noy S. Davis

Report on national study of existing screening practices by child-care organizations
Kimberly Dennis

Current child abuse crime reporting: A State experience
David Eberdt

Requirements of the National Child Protection Act

JAMES X. DEMPSEY
Assistant Counsel
Judiciary Subcommittee on Civil and Constitutional Rights
U.S. House of Representatives

I want to take a few seconds to acknowledge our gratitude to SEARCH Group, the organizer of this conference. SEARCH is a tremendously useful resource, one that our Subcommittee relies on heavily. Gary Cooper, the Executive Director, is always immediately available to consult with us over the telephone, to explain the likely impact of particular proposals or to put things in perspective for us. Bob Belair, the General Counsel, is one of the leading experts in Washington, D.C. on privacy matters and records information policy. He is always very helpful and available to provide advice on issues both large and small. Over the years, I have had the pleasure to work with the former Chairman, Gary McAlvey, who has visited our office in Washington a number of times and walked us through important issues in the area of records policy. Jim Martin, a SEARCH Board Member, is someone I have talked to on a number of occasions at the National Crime Information Center Advisory Policy Board (NCIC APB) meetings and who has always been very helpful. P.J. Doyle, Chairman of the NCIC APB and a former SEARCH Member, is another person we listen to and rely upon. Congressman Don Edwards, the Chairman of our Subcommittee, always describes SEARCH as an important friend of the Subcommittee.

Federal mandates requiring criminal history records checks

We know that State and local criminal justice practitioners are the ones who have to implement the mandates that come down from Washington. We know that they are being pulled in hundreds of directions at once. At the Federal level, there are also a host of interests to be balanced in trying to draft a piece of legislation on any issue. I think this conference is part of a continuing dialogue that we need to have as we try to work through these issues. The fact is, the use of criminal history records for background screening purposes in the employment and licensing areas is a trend that is going to continue in an unabated manner.

We continue to see proposals demanding that Federal legislation either require or authorize criminal history background checks in a host of areas. As the Attorney General pointed out, and as our Subcommittee recognizes, these records are currently very limited as a *reliable* screening device. The number one problem, of course, is the lack of disposition data. This is a problem that we are increasingly trying to deal with in legislation. Both the Brady Act and the National Child Protection Act address this issue head-on.[1] In the course of that, they impose significant responsibilities on State and local officials who manage these record systems.

When the Subcommittee approaches a piece of legislation like the National Child Protection Act, one of our primary goals is to try to ensure that the legislation fits into the existing system. All too often, we see proposals put forth which mandate criminal history background checks for a particular area. The proponents often are unaware that

[1] Brady Handgun Violence Prevention Act, Pub. L. No. 103-159 (November 30, 1993); National Child Protection Act of 1993, Pub. L. No. 103-209 (December 20, 1993). The text of both Acts are included in this report as Appendixes 1 and 10, respectively.

there is an existing, working, decentralized State-based system with the FBI as the national focal point. The legislation often proposes setting up a *new* system (such as one that only checks day-care workers or some other sector). Our goal, at the very least, is to try to bring that legislation within the existing system and to avoid reinventing the wheel.

As I said, the pressure for use of criminal history records as a screening device is not going to end any time soon. There is a bill pending in the House right now which would require the States to conduct criminal history background checks for all private security officers, both those who carry weapons and the vast majority who do not.[2] Of course, this is a sector that vastly exceeds sworn law enforcement officers in numbers.

One interesting thing in that bill — and it is another issue we will see increasingly — is a desire to bypass the State repository in conducting the records checks in favor of going directly to the FBI. That is born from a concern that State criminal history records checks are taking too much time. There is also an obvious significant delay at the Federal level. But the proponents of these checks argue, "Sure there is a delay at the Federal level, but why should we also face a 6-week or longer delay at the State level? Let us just jump right over the State check and send the card straight to the FBI without a local check." That is the argument about fingerprint-based background checks that is going to be made increasingly, given the time frames involved.

National Child Protection Act

In terms of the National Child Protection Act, I am going to review what I think are the ways in which it conforms to the existing system and then highlight some of the differences. What are the main elements of the Act?

— *State law authorizing checks*

The first element of the Act says that each State that wants to conduct national criminal history record checks of child care or youth service workers must pass a law. (It is important to note that the Act tries to say that there *is* an existing background check system, and that many States already have some form of law requiring a criminal history record check on certain individuals having contact with children.)

The main section of the Act, Section 3, is *not* self-activating: a State would have to pass a law before the Act's provisions can be enforced. Thus, if the States receive telephone calls, inquiries or fingerprint cards from child care providers and there is no State law allowing the checks, the providers *cannot* cite this Federal legislation as authority for conducting those checks. If the FBI receives fingerprint cards, I believe they will turn those cards back unless there is a State law defining what categories of jobs or positions *require* the background check.

In that context, we left it very wide open to the States as to how broadly to extend the coverage of such a law in their particular State. We always try to remain sensitive to the Federalism issue and the question of how much we *tell* the States to do as opposed to how much we simply *suggest* to the States. (Such as outlining goals or parameters for the States to operate in, leaving the final decisions as to how the laws will look to the States.) At the Federal level, I do not think we could specify for every State a category of occupations (both paid and volunteer) that would require a background check. We left that decision to the States. Therefore, just as the system has always operated prior to the Child Protection Act, there still must be a State law that allows FBI criminal history background checks of child care providers.

— *Fingerprint-based searches*

The second element of the Act stipulates that the criminal records search must be based upon fingerprints. On the employment side, there is tremendous pressure to move toward name-checks or to have name-checks followed up by fingerprint checks. Again, this is born largely from the frustration with the waiting periods that are entailed with fingerprint checks. But this Act makes it clear that there must be a fingerprint accompanying *each request* for a criminal history background check.

— *Searches processed through a State agency*

The third element of the Act is that the fingerprint-based search request must be submitted by, and the results are to be returned to, a State agency. Again, an objective of the Act was to keep the State agencies involved in the process and *not* have a situation where employers are bypassing State agencies and going straight to the Federal government.

— *Entire record sent to States*

Fourth, the Act intends that the entire record, including arrests without dispositions, would be made available to the State agency. That is, once the fingerprint card or the fingerprint images are forwarded to the FBI, the *entire* record goes back to the State agency.

— *States determine disqualifying offenses*

Fifth, the State agency which has responsibility for regulating child care in that State must make a determination as to whether the individual has been convicted of a crime which would negatively affect the person's suitability for contact with children.

Again, the Subcommittee tried to give the States maximum latitude here. When this legislation was originally introduced, there was a list of so-called "background check crimes," the conviction of which would render a person disqualified from employment related to child care. As the Act now stands, however, there is no concept of what is considered a background check crime and the Act does not provide a specific list of offenses which are disqualifying. Ultimately, it is impossible to draw up such a list: first, it is easy to forget to include a particular crime; second, subsequent statutes may be passed which

[2] H.R. 34, introduced by Rep. Matthew Martinez (D-California).

have a direct bearing on the list of disqualifying crimes. There is always a problem in compiling a list like that.

Instead, the Act uses a general term that was drawn from an earlier Federal statute on background checks: "... convicted of a crime that bears upon an individual's fitness to have responsibility for the safety and well-being of children." We try to keep that as broad as possible and to give the State regulatory agencies, either by statute, regulation or practice, the ability to determine what would be a conviction that would disqualify a person from having responsibility for children. This approach also saved us from dealing with those particular cases where, for example, an agency might want to hire someone who has a drug conviction to work as a drug counselor in a youth program. For us to say that a person with a prior drug record is, per se, disqualified, would put a straitjacket on some of those programs. Thus, we leave some flexibility to the States.

— Right to challenge

The sixth major element in the Act is that an individual who is affected by the criminal history record check has a right to see the record and to challenge the accuracy or completeness of any of the information.

— Prohibition against redissemination

Finally, the Act includes a catch-all reference to Public Law 92-544, the Federal law that governs State access to the FBI's identification records for employment and licensing purposes.

New elements in the Act

What is new in the National Child Protection Act? There are some new elements in this law that go beyond current practice and do impose some mandates on the States.

— Mandatory reporting of child abuse crimes

First, Section 2 of the Act *requires* the reporting of child abuse crime information to the national criminal history system maintained by the FBI. To my knowledge, this is the first time that Congress has mandated the reporting of criminal history records to the FBI. Up until now — although there has been widespread participation by the States for decades — that technically has been a voluntary system.

The Act singles out a narrow category of records called "child abuse crime records" for reporting. The law is a clear indication by the Congress that it is important to have a single system by which we can conduct 50-State checks on individuals seeking to work with children. In a sense, we have taken one category of employee, one category of risk, and elevated it by requiring that the States must submit those records to the Federal government so that there is a centralized location to conduct a 50-State check.

The Act, in referring to this mandatory reporting requirement, says the States shall *report* or *index* their records with the national system. The reference to indexing was specifically intended to anticipate the ultimate full decentralization of State criminal records systems through the Interstate Identification Index (III).[3] Until the III is fully implemented and until there is some way to resolve the conflicting State laws that involve access to these records, in most instances, most States will continue to forward their full records to the FBI. But in anticipation of a decentralized system and in an effort to promote the III, the Act says that States must report or index child abuse criminal records to the Federal government.

The Judiciary Committee Report accompanying the legislation provides some background information and may help resolve some individual issues that come up under the legislation.[4] The report makes it clear that neither the States nor the FBI are required, under this legislation, to create new databases. We are not proposing, and I do not think that the Act should be read as such, to require States to establish separate databases or files on child abuse offenders. The purpose was to tell the States that within their overall repository system, they must put greater emphasis on ensuring that arrests and convictions in the area of child abuse crimes are reported to or indexed with the Federal system so that those records will be available for a 50-State check.

— Disposition reporting

Second, the law sets an 80 percent disposition reporting goal. It says that States must, within 3 years from the date of the law's enactment, have an 80 percent disposition reporting rate for records in which there has been activity within the preceding 5 years. Although this is a goal, it is also an effort by Congress to say that disposition reporting levels hamper the usefulness of these records. We cannot continue legislating the *use* of these records, we cannot continue passing laws offering people some promise of security through the use of these records, when we recognize (but sometimes not publicly) that these records are often not useful because of the lack of disposition data.

I think the Brady Law does acknowledge that problem as well. I know that all of you have acknowledged it for many years. People who do not work with these records systems tend to forget the fact of so many of these records lack dispositions. We just could not move forward with legislation like the National Child Protection Act without having some very explicit recognition that there is a problem with data quality, and that it is something that has to be dealt with. As we are going to see continuing efforts to use these

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[3] When the issues involving noncriminal justice access to the criminal history record information retained in III can be resolved, the Federal and State governments will fully implement the III system, in which the States maintain the full criminal history records and the FBI retains an index "pointing" to the State which holds the actual records.

[4] House Report 103-393, *Report of the House Judiciary Committee to accompany H.R. 1237, the National Child Protection Act of 1993.*

records for more and more purposes, the data quality issue *must* be addressed.

— 15-day response time

Third, the Act set a goal of 15 business days for responding to record requests, and there is language in the law that refers to "reasonable efforts" or "best efforts" to meet the 15-day turnaround time. We recognize that in many jurisdictions that is unattainable. It is a goal, and it is a recognition of the fact that businesses and government agencies are being adversely affected by having to wait months, in many cases, to get a response to a criminal history record check.

— Tracking down dispositions

Fourth, the law specifically states that the regulatory agency receiving back a naked arrest[5] on a record must make efforts to complete that record. This involves making telephone calls, sending out written inquiries or doing any follow-up necessary to complete that information instead of just ignoring it, particularly where the record raises some questions (such as where there are a series of drunk-driving arrests or where there is a single arrest for a violent crime).

— Fees

Fifth, a very difficult issue for the Subcommittee was the question of imposing background check fees on volunteer organizations, such as the Boy Scouts, Girl Scouts, camp groups and others that work with children and depend upon volunteers to do their work. One of the things that worried them the most was the question of a $50 fee being imposed upon the volunteer or organization for a background check.

The law tries to strike a balance here by stipulating that fees for conducting background checks on volunteers be limited to the actual cost of doing the check. This will, I believe, require some States to establish a two-tier fee structure, particularly in those States that are currently charging an increment that pays automation costs or goes to other purposes not directly related to the cost of the check. The FBI has long had a segregated fee system and they know what the cut-off figure is. I assume the States do, as well. An actual-cost fee may still be significant, but we tried to provide some relief to volunteers.

Although there was significant pressure on us to allow free criminal history checks for volunteers, we did not feel that we could do that. In effect, that would force the business-users to subsidize the volunteer organizations. The legislation does, however, contain a recommendation to the States that they try to get that fee even lower, if they can, in order not to discourage volunteers from participating in child welfare programs.

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5 An arrest record that has no disposition.

Authorized record checks for screening child care and youth service workers

NOY S. DAVIS
Project Manager/Attorney
American Bar Association Center on Children and the Law

When the American Bar Association (ABA) first began the study on the effective screening of child care and youth service workers, the publications of SEARCH and the Bureau of Justice Statistics were tremendously important. The lengthy review of the literature that we did last year includes numerous citations from both organizations.

I am the Project Manager on a study by the ABA Center on Children and the Law titled "The Effective Screening of Child Care and Youth Service Workers."[1] In an effort to further an understanding of the impact of the National Child Protection Act, my colleague Kim Dennis and I will be sharing information from the study regarding several topics.

I will review the extent to which criminal record checks are currently authorized for the screening of child care and youth service workers. Ms. Dennis will discuss some of the major issues raised in literature regarding criminal record checks, as well as the extent to which checks are currently used by organizations and agencies that provide care and other services to children.

ABA study background

First, I would like to provide more information about the study. The 2-year project is funded by the Justice Department's Office of Juvenile Justice and Delinquency Prevention and will be completed in summer 1994. The Project Director is Dr. Susan Wells. The main goals of the project are: (1) to provide a comprehensive overview and evaluation of the effectiveness of current practices used to identify potentially abusive individuals, including the use of criminal record checks, and (2) to make recommendations regarding a national approach to screening.

To accomplish these goals, we have undertaken a number of specific tasks. They include:

- Developing population estimates as to the number of people in youth-serving professions, as well as the number of children served in those professions. These estimates will assist in identifying the potential universe of those who work with children and in analyzing the degree of risk to children.
- Conducting a nationwide survey of youth-serving organizations regarding types, costs and the perceived effectiveness of their screening practices. Ms. Dennis will provide some preliminary findings from this national survey.
- Working with the U.S. Department of Defense to evaluate its screening practices. The department is one of the largest providers of services to youth and is subject to a 1990 law requiring criminal record checks to be done on all employees in federally operated or federally contracted child care facilities. To date, no formal documentation exists evaluating the implementation or effectiveness of this law in screening out potential offenders.
- Reviewing the laws impacting the use of certain screening practices, including criminal record checks.

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[1] The study was scheduled to be completed and a final report issued in July 1994. A memorandum from the ABA Center on Children and the Law summarizing the provisions of the National Child Protection Act of 1993 is enclosed as Appendix 11.

State statutes authorizing child care records checks

I will now review the laws that authorize access to State or Federal criminal records to screen individuals who work with kids.

Under the National Child Protection Act, Federal criminal background checks continue to be available to child- and youth-serving organizations, provided there is a State statute approved by the Attorney General authorizing the Federal checks. I want to clarify this last point, because I have received numerous calls, and I continue to receive calls, from child care providers who think that they are required or entitled to get criminal background checks under the Act. The Act simply does not do this. To obtain a Federal criminal check on a person who works with children, there still must be a State statute that authorizes the Federal check.

Our State law research, to date, reveals that almost all States now have statutes that authorize either a State or a Federal criminal record check, or both, for at least some category of person who works with kids. The scope and reach of these statutes is tremendously different, however, on a number of points, as shown in Figure 1.

— *Type of check, work settings*

State criminal record check statutes differ by the type of check authorized (Federal, State or both), with about 60 percent of the States currently authorizing Federal checks for some kind of child care or youth service workers.

Figure 2 lists some of the most frequently authorized work settings for criminal record checks. Day care is the setting for which checks are most frequently mandated: About 80 percent of the States require some type of criminal record check for at least some categories of day care workers.

The next setting for which checks are frequently authorized is foster or adoptive homes. About 60 percent of the States authorize criminal record checks for foster or adoptive parents. Approximately half of the States require checks for school personnel, and about 40 percent authorize record checks for social service or social welfare agencies. Roughly one-third of the States' authorized criminal record checks are for school bus services and another one-third are for juvenile-detention or youth-residential facilities. In addition, about one-quarter of the States have enacted what can be fairly broad provisions that authorize criminal record checks for persons having supervisory or disciplinary power over a child.

Other settings that are sometimes covered by State record check statutes include youth camps, youth organizations, public recreation or youth programs. And one State specifically authorizes State criminal checks for in-home babysitters.

— *Type of workers*

Within each of the work settings, the types of workers to be screened differs and, in some cases, may be quite limited. In most States, statutes include all paid employees who have contact with children, and often include the licensed operator, owner or administrator. Volunteers, however, are not always included. Approximately one-third of the States that authorize checks for a particular work setting do not include volunteers. And a few States authorize checks *only* on the licensed operator, owner or administrator of a facility or organization. Thus, checks for some of the people who may actually be working with the children are not included.

— *Required or permitted check*

Another point of difference regarding the checks is whether the check is *required* or *permitted*. Of the States that allow criminal record checks, most require the checks for some settings and permit them in others. For example, one State requires checks for school bus drivers and family day care workers, but permits them for licensed day care workers and for prospective adoptive parents and youth workers.

— *Types of crime*

The statutes also differ in the types of crimes that the check is to focus on. About one-third of the States focus on violent crimes and/or sex offenses, and a number of States include child abuse or neglect crimes, while some add drug offenses. About one-half of the States look at all crimes.

— *Effect on employment*

Another point of variance is whether the statutes require that the existence of a criminal record bars employment. About 40 percent provide that whether employment is barred depends upon the type of crime involved and the position which the person is seeking. Another 30 percent state that the criminal record is to be a factor. Less than one-quarter state that a criminal record is an outright bar to employment.

— *Fingerprint submissions*

The last point of variance is whether fingerprints are required to be submitted. As you know, Federal checks require the subject's fingerprints. For State checks, there is a fairly even split as to whether or not fingerprints are required.

Conclusions

Given the lack of uniformity to the laws, there can be few overall conclusions. Because many of the criminal record check laws are of fairly recent vintage, there clearly is a trend toward authorizing these checks. Given the numerous ways in which the laws vary, it is also clear that States have made, and may continue to make, very different judgments as to when and about whom these checks must, or may be made.

In determining whether to permit or require criminal record checks, competing policy considerations often come into play — the tremendous desire to protect children from out-of-home child abuse, the desire to enable convicted persons to rehabilitate themselves, and privacy considerations.

CRIMINAL RECORD CHECK STATUTES: SOME POINTS OF VARIANCE

1. State and/or Federal Check
2. Work Settings
3. Types of Workers
4. Criminal Check Required or Permitted
5. Types of Crimes of Interest
6. If/When Criminal Record is a Bar to Employment
7. Fingerprints Required?

Figure 1: Points of variance in criminal record check statutes which allow screening of child care workers

CRIMINAL RECORD CHECK STATUTES: FREQUENTLY COVERED WORK SETTINGS

1. Day Care
2. Foster and Adoptive Homes
3. Schools
4. Social Service/Welfare Agencies
5. School Bus/Transportation Services
6. Juvenile Detention/Residential Facilities
7. Supervisory/Disciplinary Power Over Child

Other Settings: youth organizations, youth camps, public recreation or youth programs

Figure 2: Frequently covered work settings in criminal record check statutes which allow screening of child care workers

Report on national study of existing screening practices by child care organizations

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Research Associate
American Bar Association Center on Children and the Law

My presentation switches the discussion from the legislative nature of the National Child Protection Act to its practical application and focuses on current screening practices, as indicated by the preliminary findings from a national survey conducted by the American Bar Association Center on Children and the Law.[1]

Before I discuss this study, I thought it might be useful to first provide a general overview of some of the major issues concerning criminal record checks, and then follow with a discussion of the preliminary findings as they relate to some of these broader issues.

Record check issues

As evidenced by the passage of the National Child Protection Act and solid turnout here today, there is currently a strong movement toward an interest in using criminal record checks as part of the hiring and selection process for employees and volunteers who work with children.

The use of criminal record checks is not without limitations, and it is from this vantage point that I would like to begin. While the Act seeks to rectify a number of the major problems and criticisms that have been identified with record checks, I think it is useful to briefly address these, keeping in mind how these problems are going to affect child- and youth-serving organizations in particular.

I want to very quickly run through the problems of criminal record checks for employment or volunteer screening purposes: their relevance and usefulness (the likelihood of obtaining a "hit"); data quality issues; timeliness; and cost.

— *Effectiveness*

First, how effective are criminal record checks in identifying individuals unsuitable to work with children? Although there are over 53 million records on file with the FBI and the States, the likelihood that one of those records belongs to a child abuser is slim. In fact, the likelihood of obtaining a record hit of *any kind* on any individual is often less than 1 percent and sometimes is just above 5 percent.

The important thing to keep in mind when you are contemplating hit rates is that even if a hit does come back, the probability that the criminal history record is going to contain a child abuse or child-specific offense is *very rare*. Overall, low hit rates can be attributed to the fact that child abusers are hardly ever detected to begin with. If they are detected, they are not necessarily arrested. And if tried, convictions are often difficult to come by, or the individual may plead to a lesser, unrelated offense.

— *Data quality*

The second commonly cited problem has to do with the *quality* of criminal history data. As was discussed earlier at this conference, less than optimal quality is due to the lack of final disposition information. It is important to realize that this also extends to the problem of backlogs in simply entering records into the computer systems, both at the State and Federal levels.

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[1] A final report containing the results of the survey was scheduled to be issued in July 1994.

— Timeliness

Third is timeliness. The lengthy turnaround time in receiving criminal history information is especially problematic with FBI and State fingerprint checks, the results of which may take 6 to 8 weeks to reach organizations. State name-based and local police checks are often much quicker, ranging from several days to as long as 2 to 3 weeks. Timeliness with respect to child care and youth-serving organizations is of special concern, because they often have an immediate need for staff, or a high volume of seasonal or part-time employees. Take, for example, a youth summer camp: The camp may have a hundred counselors on which it needs to do the checks very quickly, yet it is not going to do much good if the summer is already halfway over when the FBI results come back. One other concern for the child care and youth-serving organizations is that they often have a high turnover rate among their employees — as high as 40 to 50 percent in some fields.

— Fees

The fourth common problem relates to the fees. It now costs $24 to do an FBI check, and State checks may range from no-cost to about $27, depending on whether it is name- or fingerprint-based.

I want to put this cost issue in perspective. Figure 1 provides selected estimates of the number of adults that come into contact with children in various settings. By no means is this list exhaustive. I picked a couple of the settings where we know there are a large number of adults. There are almost 35 million employees and volunteers in just these settings alone. If you take the extreme and assume that you are doing an FBI check at $24 a shot, it is going to cost about $840 million to conduct checks on all these individuals. I know that is an extreme case, but it is really presented just to provide an idea of how the costs can add up. These numbers also provide an indication of potential demand on the States and at the Federal level.

Policy issues

As with any issue, there are advantages and disadvantages to weigh when implementing policy. I am going to begin with some of the disadvantages of criminal record checks, which are outlined in Figure 2.

— Disadvantages of record checks

First and foremost, critics say that criminal record checks create a false sense of security; that is, they often foster complacency and over-confidence in the selection of adults who work with children. By creating this false sense of security, organizations may neglect to conduct additional, perhaps more illuminating, screening, such as extensive interviews of persons or reference checks.

The second criticism involves administrative and procedural complaints, which can range from increased bureaucracy and red tape, to securing adequate financial and human resources to conduct the checks.

The third critique extends to issues of fairness and privacy. Our society has an inherent belief that individuals deserve a second chance or that they can be rehabilitated. Unfortunately, this is often in direct conflict with our desire to protect children. Some opponents of record dissemination seek to block access to these records because they fear that employers will not use the information appropriately, resulting in discrimination. In fact, many argue that criminal record checks have an adverse impact on low-income persons, African-Americans or other minorities who account for a disproportionate share of those with criminal records.

— Advantages of record checks

Why conduct criminal record checks? There are two primary advantages, as shown in Figure 2. First, identifying even one offender may save hundreds of children, given the repetitive nature of child abuse. Second, by conducting checks, we are deterring individuals from applying to positions where they can gain access to children. The one problem with the latter argument is that it assumes there is, in fact, a record to be found.

The one additional advantage I want to point out is that conducting such record checks sends a message to individuals that the organization will not tolerate abusive behavior and that it is, in fact, taking an active stand to *prevent* abuse within the organization.

Preliminary survey findings

I want to turn now to the national survey of screening practices that we are conducting. First, I want to provide some general information about the survey, and then share some of the preliminary findings as they relate to some of the issues that I have just discussed.

Today we have been talking about screening — primarily under the guise of criminal record checks. While that is, in fact, the focus of this conference, there are a host of other screening practices that can be used by child care and youth serving organizations. Figure 3 illustrates the existing screening mechanisms. They range from the basic screening of reference checks and interviews, to the criminal record checks, and to other methods such as drug or psychological testing.

Our survey was sent out to approximately 3,800 various youth serving organizations, and we covered categories such as day care centers, youth development organizations, public school districts, private schools, foster care agencies, juvenile-detention and correctional facilities, and hospitals and psychiatric facilities that serve children and youth. Our overall response rate was approximately 46 percent, with wide fluctuation among groups. At least 60 percent of youth development organizations and juvenile facilities responded, while only about one-third of hospitals and private schools chose to answer. Sample selection was designed to be as representative of the national picture as possible and proportionate to the number of children served.

The survey instrument inquired not only about the types of screening used, but also about how they may differ between employees and volunteers, and

how effective organizations consider such practices in weeding out unsuitable applicants. We also inquired about the cost and time associated with screening, and whether the organization experienced any allegations of abuse involving employees and volunteers.

— Frequency of screening

Our respondents were asked about the frequency with which they used some of the various screening practices. As shown in the graph in Figure 4, just less than one-half (45 percent) choose to conduct State criminal record checks on employees, while approximately one-fourth conduct State checks on volunteers. The numbers drop off for the local criminal record checks, and then decline even further for the FBI checks, where 26 percent of respondents say that they use them on employees and 11 percent conduct them on volunteers.

I added one additional screening practice for your information. Over one-third (35 percent) will check employees against the State Central Child Abuse Registry, which contains the civil — not criminal — cases of child abuse.

In breaking down the use of criminal record checks by *type* of youth-serving organization, at least 50 percent or more of all the groups, with the exception of private schools, say that they conduct record checks on potential and/or current employees. Juvenile detention and correctional facilities are at the high end — overall, 97 percent said they use criminal record checks on employees.

— Employee/volunteer screening

Figure 5 provides a breakdown between the employees and the volunteers. For certain types of organizations, the differences are significant. For example, about two-thirds of day care centers will conduct the checks on employees, but less than one-half of those surveyed subject volunteers to such checks. Foster care is pretty consistent between the employees and providers, and then it drops somewhat for their volunteers.

This is a continuation with the other settings. Figure 6 shows that the disparity between employees and volunteers is even greater for public school districts and private schools. You can see that about 30 percent less will conduct checks on volunteers versus employees. And while three-fourths of hospitals use a criminal record check on employees, only 28 percent do so for volunteers.

— Record check problems

We asked our respondents to tell us about any of the problems that they experienced as a result of their efforts to screen using criminal record checks. The good news is that many indicated that they experienced few problems at all. However, timeliness, both in conducting the criminal record screening process as a whole and in receiving the actual information, were cited as the primary difficulties. Certain types of organizations — public school districts, youth development organizations and foster care agencies — did report experiencing more problems than others.

As Figure 7 indicates, over half (51 percent) said that information is *not* provided on a timely basis. According to our respondents, their average wait for an FBI check was about 49 days, which is pretty consistent with what the literature says and what we know. Their average wait for State checks ranged from 27 to 29 days, and for local checks it was nine days.

The second problem cited by 45 percent of our respondents — and also related to the first — is that the process is too time-consuming, often creating delays in hiring for these organizations. And while, overall, less than one-third (30 percent) noted that information is inadequate to make a decision, meaning that it is either sometimes incomplete or it lacks detail for them to make a judgment, the majority of hospitals, youth development organizations and foster care agencies indicated this was a problem.

On a more positive note, a strong majority (82 percent) did not experience problems with unsuitable applicants not being identified (see Figure 8). And no more than a quarter indicated that costs or personnel time associated with conducting the checks was a problem. In fact, aside from the processing fees, only about 10 percent indicated that they incurred any additional expenses associated with criminal record checks. This would include hiring special staff or providing training or workshops to instruct people how to do checks.

— Effectiveness, usefulness

Our respondents were also asked that *of those screening mechanisms they used,* what do they perceive to be the most effective in identifying individuals who are unsuitable to work with children and youth (see Figure 9). A full 85 percent of our respondents — whether they use criminal record checks or not — selected reference checks with past employers as their most useful practice, while 74 percent pointed to the personal interviews. State records checks were cited by just under half, 47 percent, followed by personal reference checks and on-the-job observation (both 44 percent).

What is it the organizations feel would help them to more effectively screen employees and volunteers? We provided a list of 16 items and asked respondents to select their top five recommendations:

(1) Over half (58 percent) recommended the development of a national registry of child-abusers, specifically for employment and volunteer-screening purposes.
(2) Fifty-five percent would like training on what background screening techniques are available and how to properly use them.
(3) Forty-nine percent would welcome training on how to identify potentially abusive staff.
(4) Forty-four percent would like to see implementation of a more centralized way to conduct criminal record checks.
(5) Forty percent recommended increased access to criminal history and other relevant information.

Finally, when we asked how useful it would be to access a National Registry of Child Abusers for screening purposes, less than half (46 percent) felt that access

to such a registry would be *very useful*, while 30 percent indicated that such a registry would only be *somewhat useful* for their screening purposes.

At this point, I want to reiterate that these are preliminary findings, and so I caution anyone against making definitive conclusions using these numbers. As already mentioned, our final report will be out this summer, which will provide a more detailed analysis.

In conclusion, we hope this discussion has been informative and has helped to placed the use of criminal record checks for child care and youth serving organizations in the larger context of the many screening practices that are available to help keep children safe.

ADULTS WHO COME INTO CONTACT WITH CHILDREN and YOUTH

Selected Estimates of the Population (by Type of Profession)

PROFESSION/SETTING	# ADULTS (approximate)
CHILD CARE:	1,821,000
ELEMENTARY AND SECONDARY SCHOOLS:	6,496,400
SELECTED NATIONAL YOUTH DEVELOPMENT AND VOLUNTARY ORGANIZATIONS:	15,436,000
HEALTH CARE AND MENTAL HEALTH:	11,122,000
TOTAL	**34,875,000**

Figure 1: Adult contact with children and youth: population estimates by profession

DISADVANTAGES/CRITICISMS OF CRIMINAL RECORD CHECKS:

- Creates False Sense of Security
- Increases Bureaucracy and Difficult to Secure Adequate Resources to Conduct
- Checks are Unfair and an Invasion of Privacy

ADVANTAGES OF CRIMINAL RECORD CHECKS:

- Identifying One Offender May Save 100's of Children
- Deters Applicants from Seeking Positions Which Give Them Access to Children
- Sends Message that Organization is Concerned About Abuse

Figure 2: Criminal record checks disadvantages and advantages

TYPES OF BACKGROUND SCREENING MECHANISMS FOR INDIVIDUALS WHO WORK WITH CHILDREN AND YOUTH

- Employment Reference Checks
- Personal Reference Checks
- Personal Interviews
- Confirmation of Education

- Local Criminal Record Check
- State Criminal Record Check
- FBI Criminal Record Check
- State Central Child Abuse Registry Check
- State Sex Offender Registry Check
- Motor Vehicle Record Check

- Alcohol/Drug Testing
- Psychological Testing
- Mental Illness/Psychological History Check
- Home Visits
- On-the-Job Observation

Figure 3: Background screening mechanisms for individuals who work with children and youth

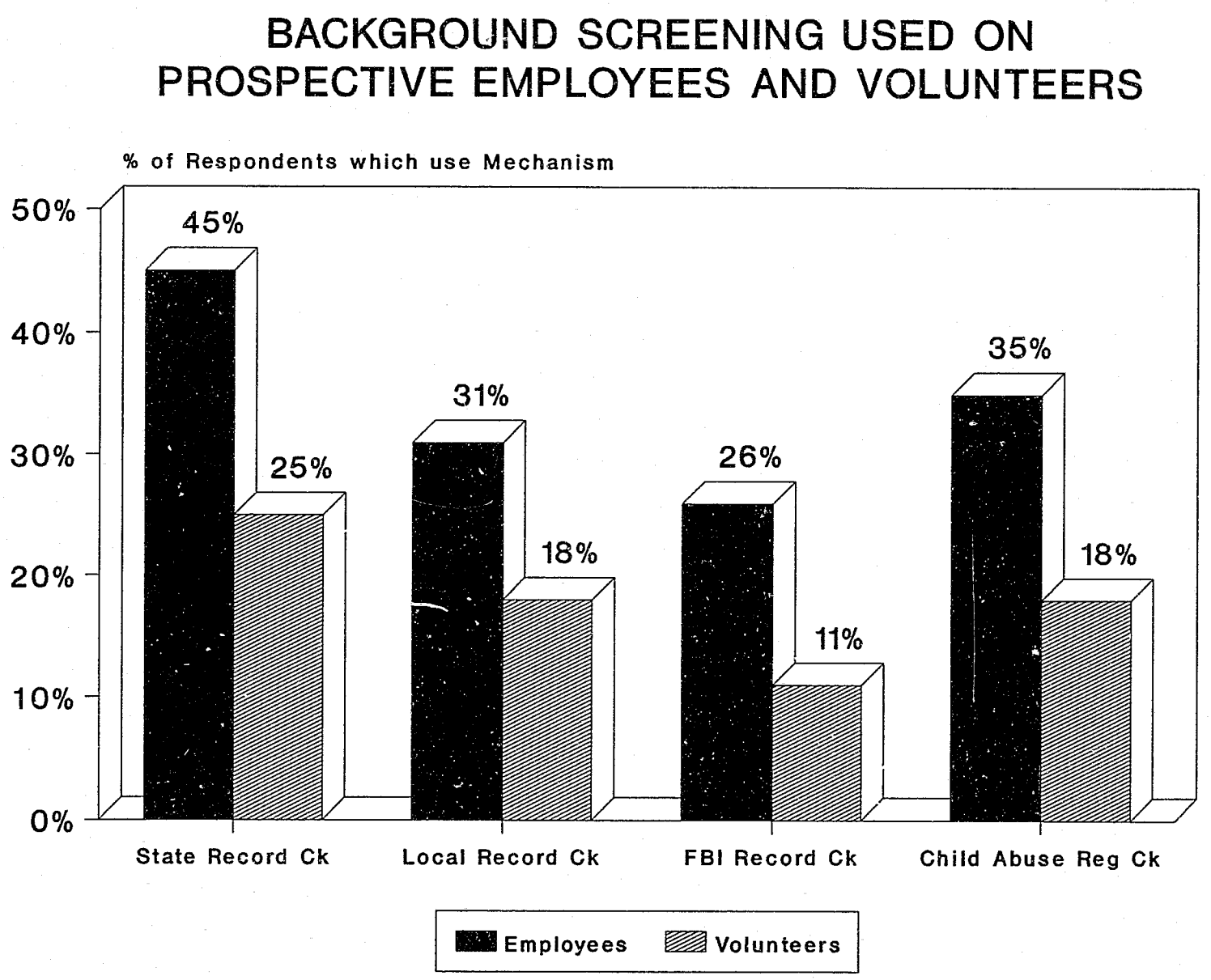

Figure 4: Background screening used on prospective employees and volunteers

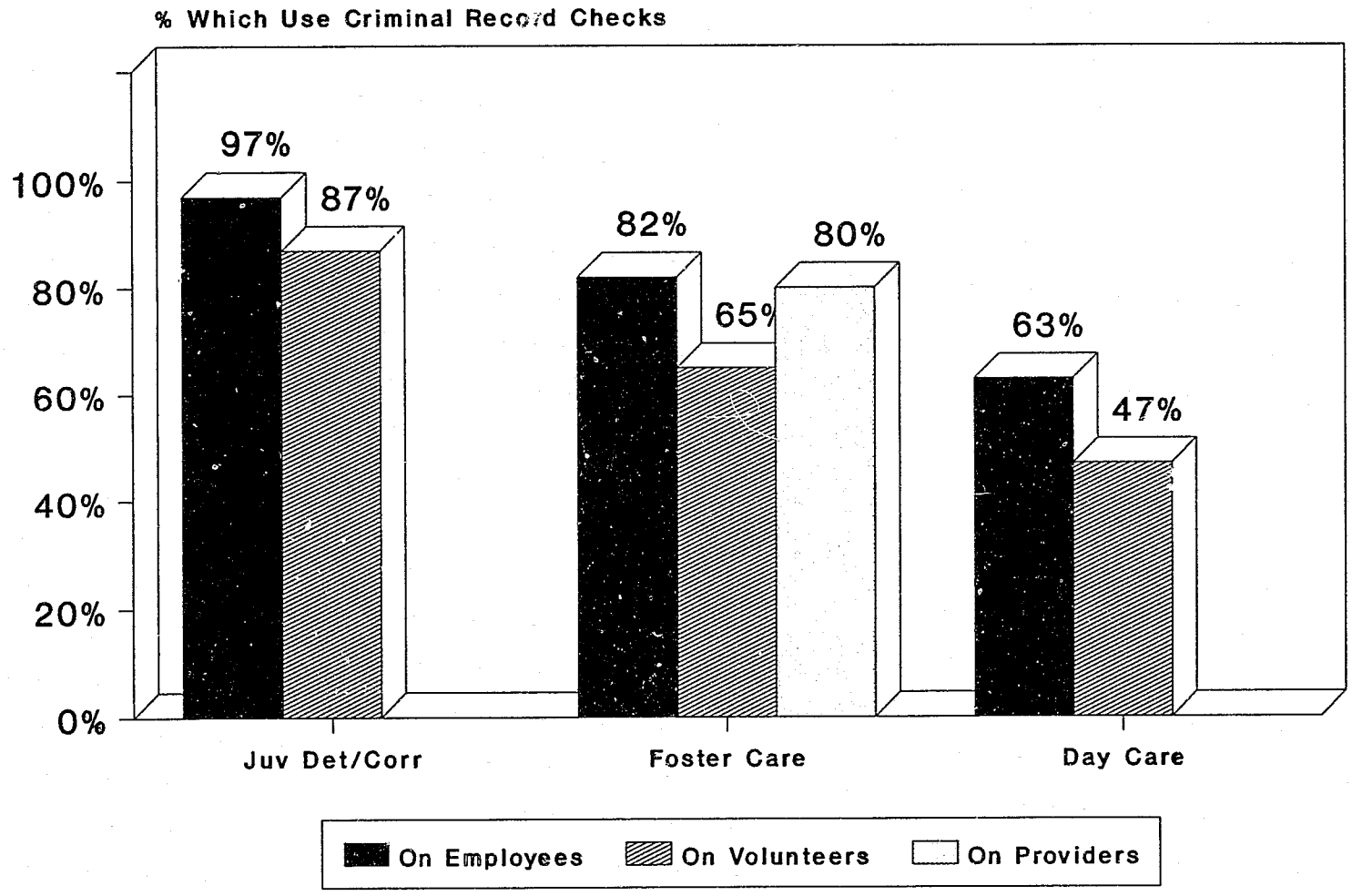

Figure 5: Use of criminal record checks for employment/volunteer screening (Juvenile detention, foster care, day care)

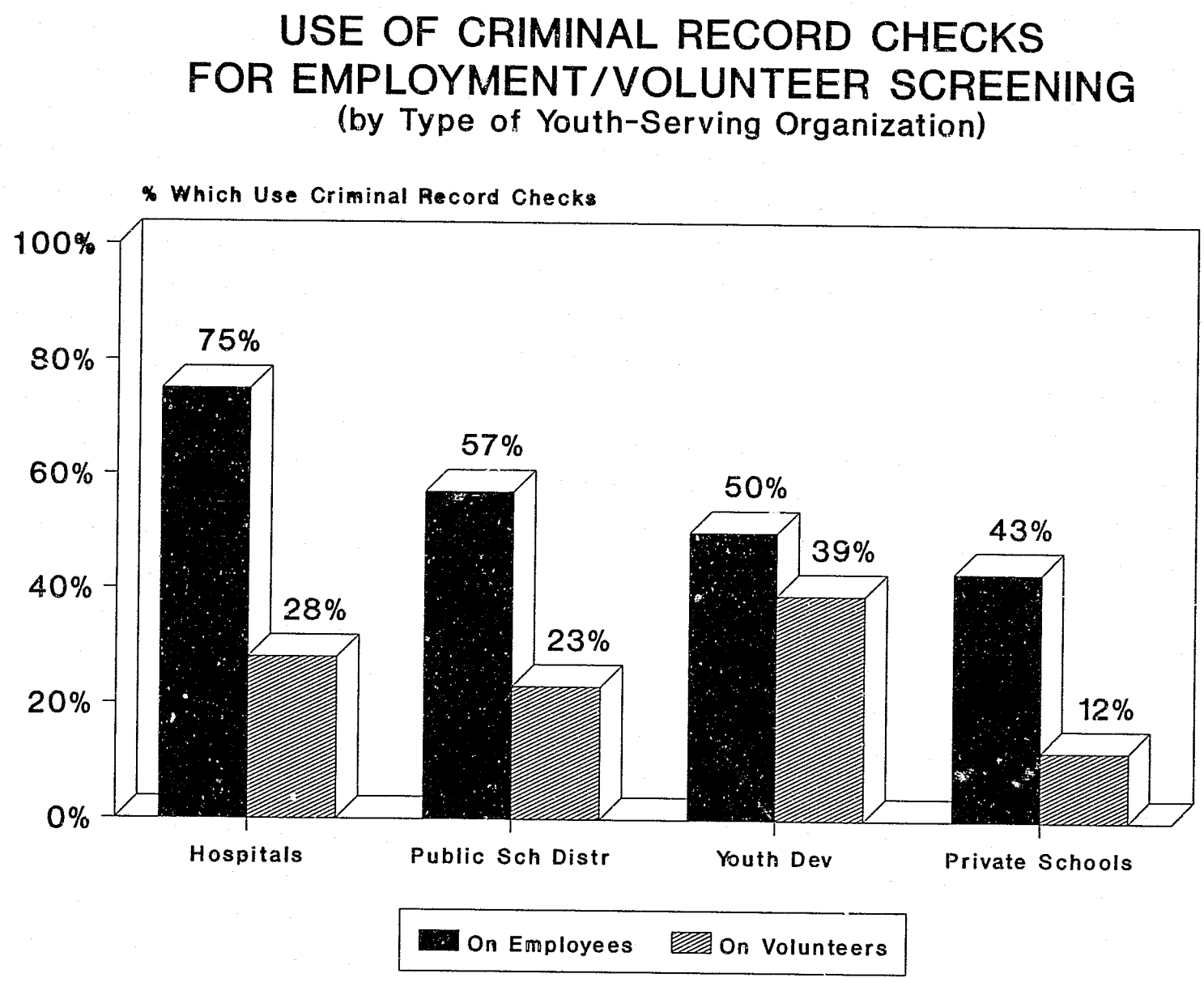

Figure 6: Use of criminal record checks for employment/volunteer screening (Hospitals, public school districts, youth development groups, private schools)

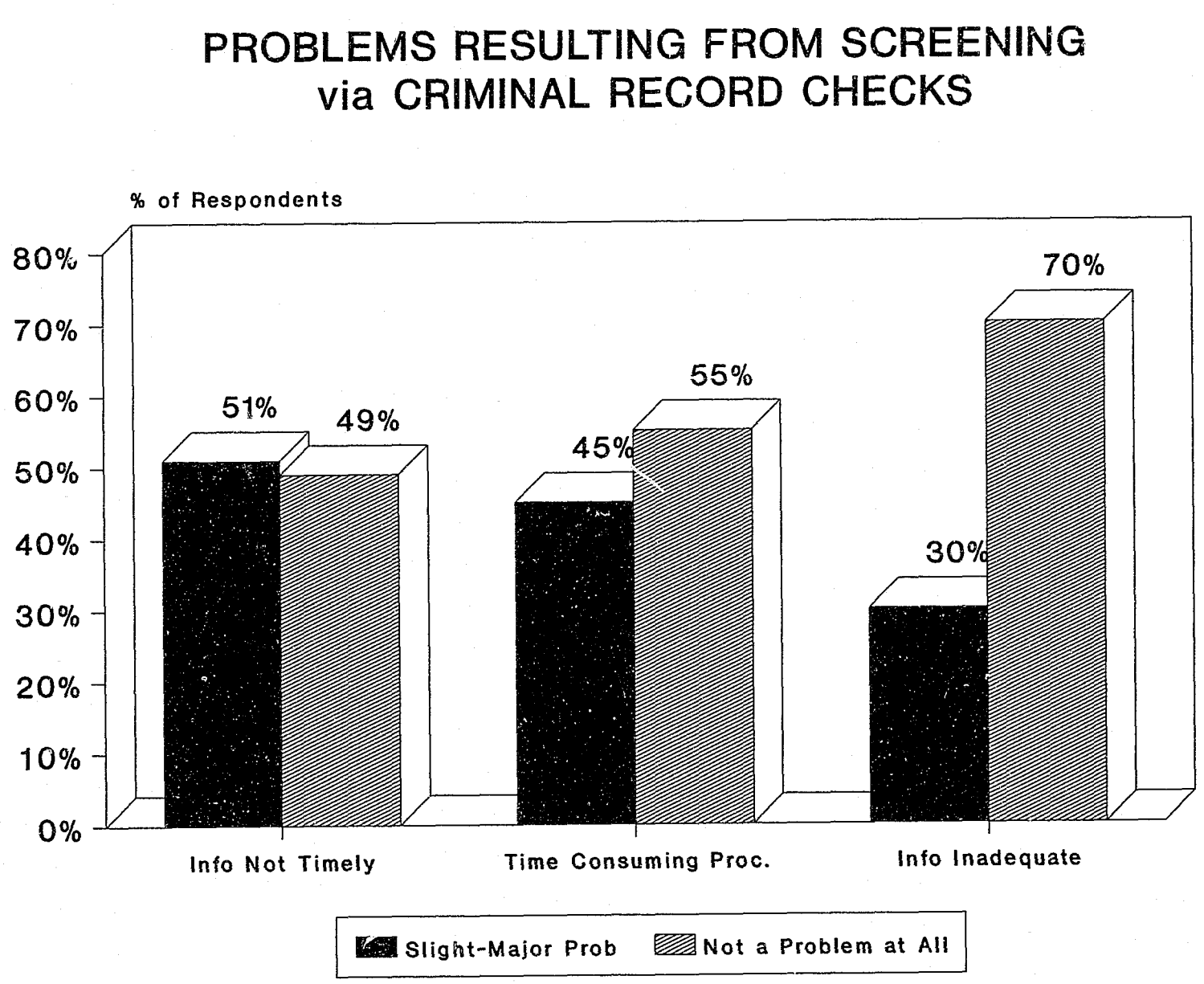

Figure 7: Problems resulting from screening via criminal record checks (Timeliness, inadequate information issues)

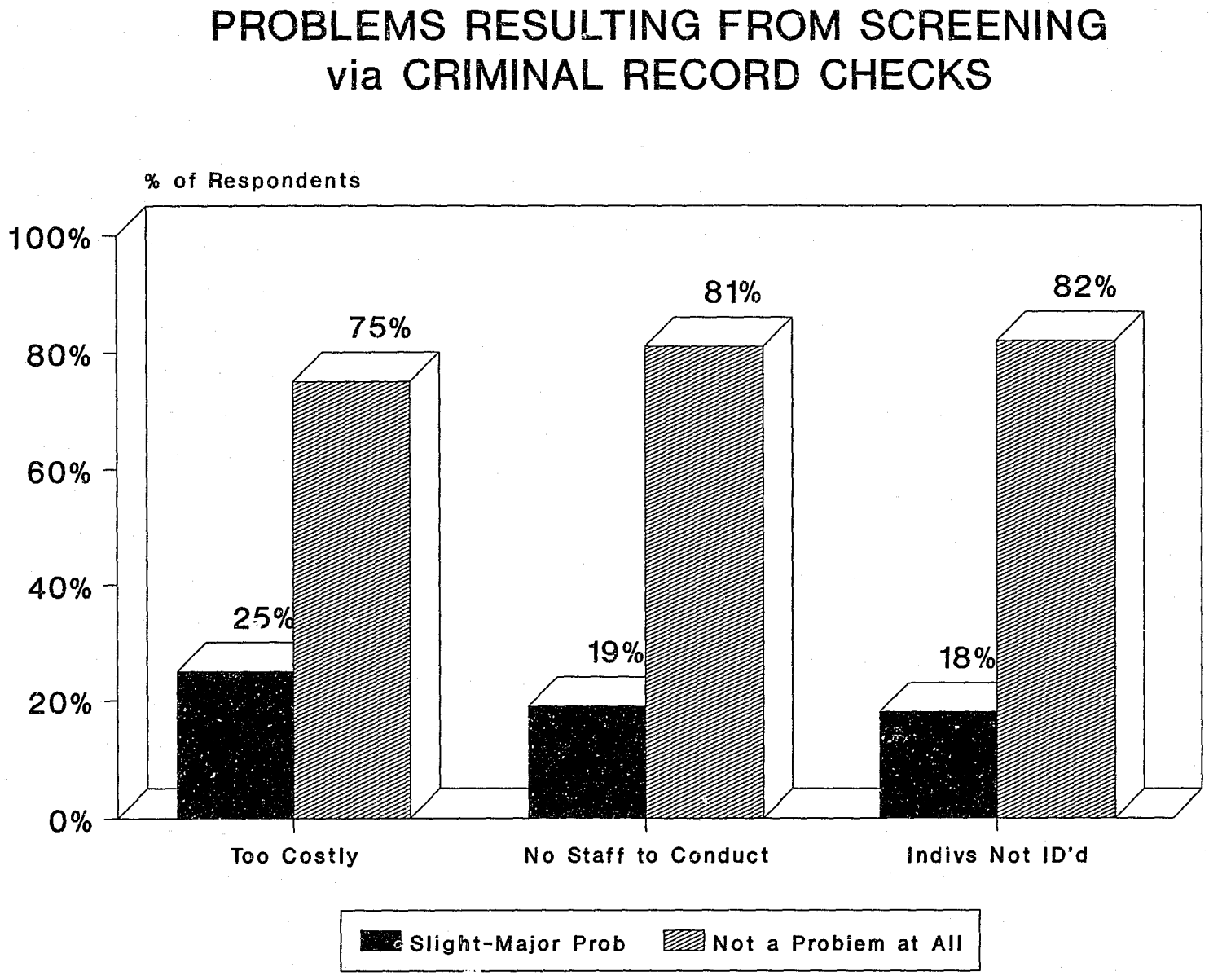

Figure 8: Problems resulting from screening via criminal record checks (Cost, staff resource and identification issues)

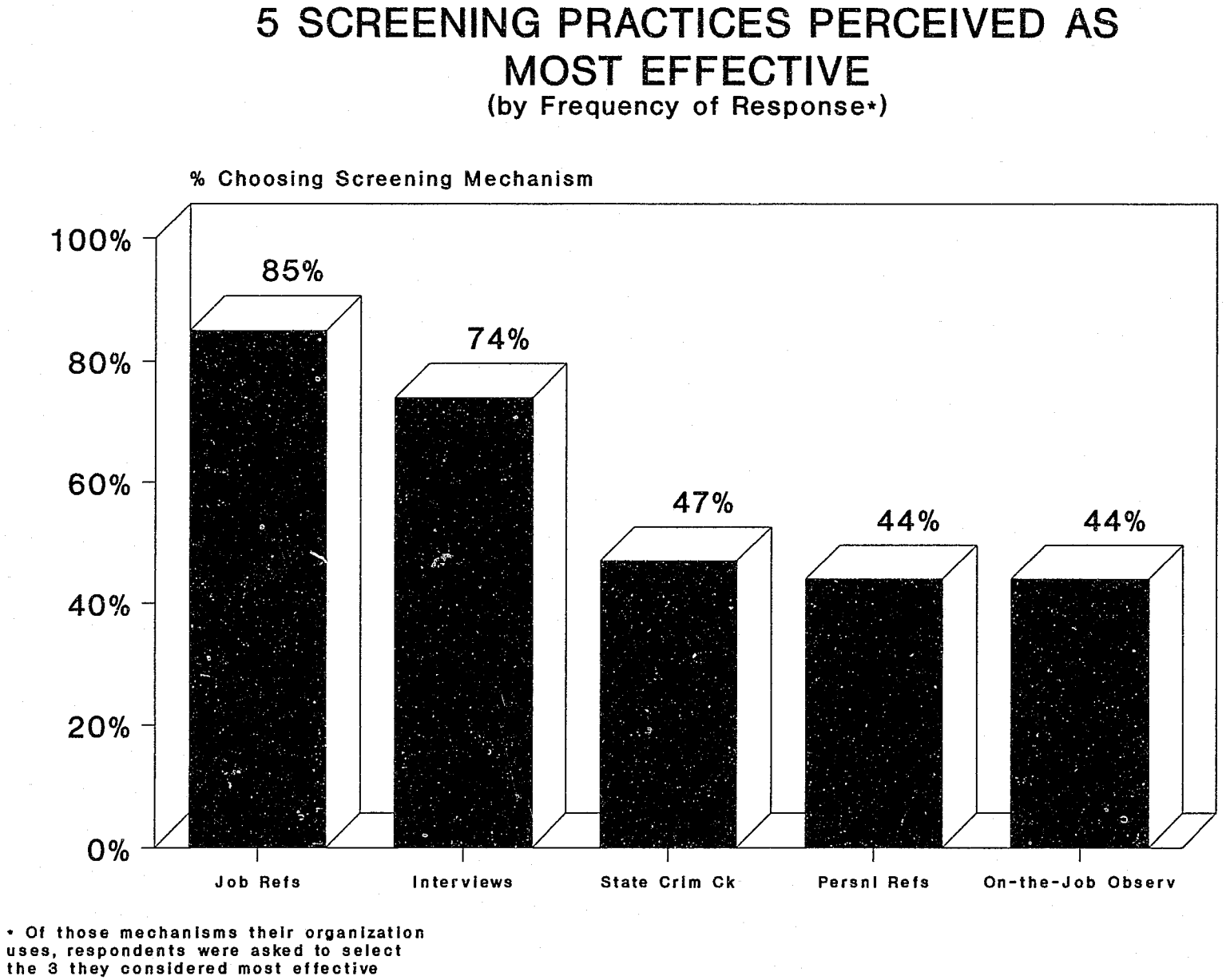

Figure 9: Five screening practices perceived as most effective

Current child abuse crime reporting: A State experience

DAVID EBERDT
Director
Arkansas Crime Information Center

My remarks will be in the area of child care facility licensing legislation, specifically an overview of the Arkansas law that requires fingerprint-based background checks for licensed child care facilities, their owners, operators and employees.[1] My discussion focuses specifically on child care facilities, not on any other area like the Boy Scouts, Girl Scouts or teachers.

In Arkansas, my agency is responsible for the automated criminal history file. We are the National Crime Information Center control terminal agency, the primary contact in Arkansas with the Interstate Identification Index. Because of that, the staff of the Arkansas Child Care Facility Licensing Board came to us a couple of years ago and asked what they needed to do in order to conduct national criminal history checks on employees and owners of child care facilities. We outlined, generally, our understanding of what was required then: that it would take a State law to authorize the checks, that the checks would need to be fingerprint-based, and that the law would have to be approved by the U.S. Attorney General.

Following that meeting, we did not hear from them for almost 2 years. Then last spring, near the end of the 1993 session of our legislature, we were asked to look at and comment upon a bill that this licensing board had introduced. We looked at it, made a few comments, and sent a copy to the FBI attorneys for an unofficial review. They also made a few comments. With those, a few minor amendments were put on the bill, and it was approved by the State Legislature and signed into law in April 1993.

Arkansas child care records checks law

The law requires "each applicant for a license to operate a child care facility" and "anyone seeking employment in a child care facility" to be checked through the State Identification Bureau and have a national check conducted through the FBI. The check must be based on fingerprints, and the results of the check will be forwarded back to the Child Care Facilities Review Board, a State agency. The operators of the child care facilities are required to maintain evidence that the checks were made, and the fingerprint cards are to be destroyed by the State Identification Bureau following the check.

The bill sets out 17 specific criminal offenses, and a conviction on any of those disqualifies the person from being an owner, operator or employee in a child care facility. After the bill was signed into law, we submitted a copy to the FBI; it was approved subsequently by the U.S. Attorney General to enable us to access the national system in order to conduct these checks.

Soon after the bill was signed, a statewide newspaper ran a story on it, and the phone calls and questions began to flood in. Initially, there were a lot of questions regarding the fee because, up until that point, the checks that had been done (not based on any State requirement) were done at no charge by the Identification Bureau. But under another law approved during the 1993 session, a fee was authorized for noncriminal justice record checks. Because of that, there were rumors it was

[1] The text of this law, Arkansas Code Annotated §§20-78-601 to 604 (1993), is included in this report as Appendix 12.

going to cost $100 for every check, including the FBI check.

Since our legislature had already adjourned, a legislative interim committee called a hearing to look into this law that they had just passed. A lot of misinformation about it was corrected, and the question of the fee ($15 for the State check and $24 for the FBI check) was a little more palatable. Still, there was a lot of concern as to *who* was going to pay it — the facility owners or the applicant employees.

The legislation was somewhat unclear in several areas, and some questions were submitted to our State Attorney General for opinion. Here are just a few of them:

- Who has to be checked when a license is renewed each 2 years, if the owner of the facility is a corporation, a school or a church?
- Must these licensees be checked every 2 years when they renew their license?
- Who must be checked "when seeking employment" (the words in the bill) — all applicants or only the successful applicants?
- Are volunteer employees required to be checked? What about bus drivers, nurses, janitorial personnel, and so forth?
- Are *existing* employees to be checked, since the language in the bill specified only those *seeking* employment?

Attorney General opinion

The State Attorney General, Winston Bryant, released an opinion in November 1993 pointing out that the Child Care Facilities Review Board had authority to issue regulations, and those regulations could deal with a lot of these questions.[2] Those regulations should indicate who is to be checked when the licensed owner is a corporation, a school or a church. The Attorney General also said background checks must be done every time a license is issued (every 2 years) because it is actually a *reapplication*, not a *renewal*.

On the question about which applicants must be checked, the Attorney General said "seeking employment" means receiving a *conditional* offer of employment, subject to the check, and does not refer to everyone who applies for a position.

On the question of unpaid employees, there is extensive wording in the opinion regarding volunteers. The Attorney General's opinion states, "The fact that they [the volunteers] are 'not paid' does not mean that they are not employees" within the intent of the legislation. Rather, it is more determined by the degree of control that the employer has over the activities of the unpaid workers. The opinion then discussed the amount of contact and control that volunteers may have over the children. But the conclusion was that the regulations could require background checks for unpaid workers.

Finally, the Attorney General indicated that current or existing employees in child care facilities are *not* required to submit to background checks, since the wording in the law specifically states that the checks are to be done on those *seeking* employment.

For various reasons, including the delay by the legislative committees and waiting for the Attorney General's opinion, the regulations have not yet been issued by this licensing board. Criminal history checks are being made in many cases, but not in all cases.

Remaining issues

A number of issues remain, including where and when and by whom fingerprints are to be taken, and so forth. I thought it was interesting (and somewhat of a surprise to me) that there are over 2,000 licensed child care facilities in our relatively small State, so the numbers nationally, I am sure, are going to be staggering.

Ours is certainly not a complex piece of legislation, but it turned out to be a lot more involved than anyone thought when it was proposed. There are plans to amend the bill in January 1995, and I am sure that parts of it will be changed. I do not think that the main thrust will be changed that much, but certainly there are questions about it right now (such as whether existing employees should be checked, and whether it is a good idea to have a specific list of offenses that disqualify people).

It is important to point out that if your State does not already have such a law and you want one, or you will be drafting one, or you will be involved in any way in the input — it *will* require a State statute. It will have to be (or should be) a fingerprint-based check, and the law must be approved by the U.S. Attorney General. Other than that, the particulars will be unique to the various States.

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2 Opinion No. 93-324.

II. Current decisionmaking and future policies

Grant agency perspective

Grant agency perspective on implementation of the Brady and National Child Protection Acts

Lawrence A. Greenfeld

Grant agency perspective on implementation of the Brady and National Child Protection Acts

LAWRENCE A. GREENFELD
Acting Director, Bureau of Justice Statistics
U.S. Department of Justice

On behalf of the staff at the Bureau of Justice Statistics (BJS), I am delighted to be here to both sponsor and participate in this conference, which focused on the implementation of the Brady and National Child Protection Acts and on improving criminal history records. Improving the quality and usefulness of records has been a principal goal of BJS for the last 20 years. This is the sixth major national conference we have sponsored over the course of the years, and we have sponsored numerous training meetings on every topic from auditing records to privacy concerns. Over these two decades, BJS has generated literally dozens of reports and materials to help move the improvement of criminal history records to become a more prominent and visible concern to everyone, regardless of whether they work in the criminal justice system.

No one should ever doubt the importance of our concern about complete, accurate and accessible records. For example:

- In a BJS follow-up study of a sample representing 109,000 offenders released from prisons in 11 States, we learned how mobile criminals could be. About 31 percent had arrests in States other than the States in which they had served time. Together, these 109,000 offenders compiled 1.6 million fingerprintable arrest charges both before their imprisonment and within 3 years afterward.
- A BJS survey carried out in State prisons nationwide revealed that about 4 percent of the U.S. prison population were non-U.S. citizens and that nearly 80 percent of these aliens were serving time for violent or drug crimes.[1]
- That same BJS prisoner survey revealed that one in five prisoners serving time for violence had committed their crime against a child, and that nearly eight in 10 of these offenders had raped or sexually assaulted the child-victim.
- About 43 percent of prisoners said they had owned or possessed a firearm; of these, three out of four owned or possessed a handgun and one in five had owned or possessed a military weapon such as an Uzi, AK-47, AR-15 or M-16. While about one in six prisoners admitted to carrying a firearm during the crime they committed, for 82 percent of these armed offenders, the weapon was a handgun and, for more than one-quarter of them, the handgun was obtained from a retail outlet such as a gun shop, pawn shop, flea market or gun show. About one-quarter of all prisoners said that in the past, before the current offense which brought them to prison, they had used a gun to commit a crime.

Handguns and murder

One useful way to look at the importance of the criminal history record and a record check at the time of a handgun purchase is by looking at imprisoned murderers and their description of their offense and the source for their weapons. In 1991, BJS

[1] U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Survey of State Prison Inmates, 1991*, by Allen Beck, et. al. (Washington, D.C.: Government Printing Office) March 1993.

interviewed a nationally representative sample of State prisoners drawn to represent those offenders who had been convicted of murder or non-negligent manslaughter.[2] Here is what we found:

- About 44 percent of these murderers said they had used a handgun during the commission of the murder.
- About 52 percent of the handgun murderers had a prior adult record of convictions for crimes.
- About 17 percent of the handgun murderers said they had purchased the handguns at a retail outlet.

Combining these characteristics, about 6 percent of murderers interviewed were recidivist offenders who purchased the handgun which they used in their crime at a retail outlet. About the same number — 6 percent — were first-time offenders who purchased their handguns at a retail outlet. In other words, about a third of those murderers who used handguns acquired their weapons in a retail outlet and half of these had a prior adult record of convictions.

Today there are about 89,000 State prisoners currently serving time for murder. Of these, about 11,000 purchased their handgun in a retail outlet and an estimated 5,500-6,000 had an adult criminal conviction record at the time of the handgun purchase. Since about 15 percent of murderers reported two or more victims, the number of murdered and injured victims is somewhat higher than the number of offenders.

We may be able to "guesstimate" that the current cohort of murderers (those who are repeat offenders and who used a handgun which they had purchased at a retail outlet) may account for about 6,000 or more victims. It is somewhat more difficult to estimate the size of the victim pool affected by the other 302,000 violent offenders currently in State prisons. What is amazing, however, is that about half of those offenders who carried a handgun during their crime report that they discharged the firearm during the offense.[3] (This includes all crimes whether they were violent or not.) Researchers with the Virginia Department of Criminal Justice Services achieved nearly identical estimates in a survey they recently conducted among State prisoners — half of the prisoners who carried a gun during their crime fired their weapon during the crime.

Data from the FBI Uniform Crime Reports indicate that the number of firearms crimes is growing. In 1987, there were an estimated 366,000 murders, robberies and aggravated assaults with firearms.[4] In 1992, the FBI data indicate a 55 percent increase in the number of these crimes involving firearms, reaching about 566,000 incidents reported to law enforcement agencies.[5] In 1991, The National Crime Victimization Survey showed that about 600,000 violent incidents occurred that year involving handguns.[6]

Improving criminal history records

BJS is very excited about the Brady and National Child Protection Acts. Both give new and important visibility to what is among the most important challenges facing the infrastructure of the criminal justice system — how to keep accurate and timely records of criminal justice transactions and make those records available for not only justice system purposes but also for noncriminal justice purposes as well.

As most of you probably know, BJS has undertaken two major efforts in recent years: the Criminal History Record Improvement Program, a 3-year, $27 million program to fund State projects to improve the quality of criminal history records; and in 1992, a nationwide survey of State criminal history record repositories to assess the quality of their criminal history record information, to determine the accessibility of the information, and to examine the extent and frequency of data quality audit activity.[7]

— *Timetable survey*

We are about to undertake a new survey of State criminal history record systems to estimate the time required for each State to fully implement the National Instant Criminal Background Check System required under the Brady Act and for each State to meet the record quality expectations of the National Child Protection Act. It is highly likely that when Congress completes the appropriations for the new assistance programs to continue the upgrading of criminal history records, it will be the single largest Federal shot-in-the-arm ever for records. The grant programs which accompany the Brady and National Child Protection Acts will help move us along toward better linkage of arrests and dispositions and will foster greater shareability of records through the Interstate Identification Index (III) program.

As mentioned, the first stage of this effort and one which we are in the process of funding and fielding is a survey of the steps needed in each State to ensure participation in III and more complete disposition reporting and the ability to detect child-victim crimes. Both Acts stipulate that those States which have less-developed records systems will receive the most immediate

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2 Ibid, pp. 18-19.

3 Thirteen percent of all prisoners reported carrying a handgun during the commission of their crime; of these, 6 percent report that they discharged the handgun. Ibid, p. 19.

4 U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1987, Uniform Crime Reports,* (Washington, D.C.: Government Printing Office, July 10, 1988).

5 U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1992, Uniform Crime Reports,* (Washington, D.C.: Government Printing Office, October 3, 1993).

6 U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *National Crime Victimization Survey, 1991,* (Washington, D.C.: Government Printing Office, 1992).

7 This survey was published in 1993. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Survey of Criminal History Information Systems, 1992,* by Sheila J. Barton, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, November 1993).

funding priority. The accurate and timely completion of this timetable survey is therefore a critical element to establishing the foundation for the subsequent assistance programs. We have asked SEARCH to conduct the survey and we are currently in the final stages of working through the concepts which will underlie a full grant application.

— 1992 survey findings

The previous State survey, conducted in 1992, will serve as the basis for much of the new survey. That survey revealed that although three out of four criminal history records are now automated, there is still a long way to go in terms of obtaining disposition information and making records available through III.[8]

Some of the most important points found in the 1992 survey were:

- Forty-eight States have a Master Name Index and most of these (40) are automated.
- The Nation's repositories hold 47.3 million criminal history records and an estimated 77 percent (36.4 million) are in automated form.
- The number of records is growing by an average of 2 million annually.
- Sixteen States could not report the percentage of arrests with dispositions.
- Only 33 States could report the number of arrest dispositions received in 1992.
- Eleven States reported that at least 80 percent of the arrests in the preceding 5 years contained disposition information; 12 States reported 60 percent-79 percent completeness; 11 reported that 40 percent-59 percent of records were complete; and 19 States reported lower levels of completeness or that they did not know how complete their records were.
- Twenty-three States do not require notification to the repository if an arrestee is not subsequently charged.
- Only 12 States systematically notify the repository of prosecutor declinations and most do not know or report low percentages of cases in which nonconvictions following summonses are reported to the repository.
- Only 15 States routinely receive probation admissions and releases and 21 received parole admissions and releases for entry into the criminal history record.
- States reported wide disparities in the time required to receive and post entries to records ranging up to 2 to 3 years and many do not know how long the process requires.
- About half the States have audited the quality and completeness of their record-holdings in the past 5 years.
- Only nine of 24 States make at least 80 percent of their criminal history files available to the III, which will be the primary vehicle for sharing such records across jurisdictions.
- Nineteen States report firearms presale records checks and 15 States permit the sharing of such information with firearms dealers.

With respect to the Child Protection Act, we have little data that tell us how many jurisdictions could identify a person with prior convictions for violence against children. Identifying those who have such histories may be difficult, if not impossible, in most current record systems. Practically speaking, however, it is unlikely that a child-care job applicant who has a history of rape convictions or convictions for other violent acts would be cleared for the job, regardless of whether the age of the prior victims was known. This does not mean that flagging the records of violent predators who prey on vulnerable victims can be avoided. In the coming years, we will probably see increasing interest among legislative bodies at all levels of government to broaden the range of record checks. Most importantly, the Child Protection Act defines a quality standard for records which commonsensibly helps State and local records administrators argue for more and better resources.

Grant programs

The grant programs which accompany the Brady and National Child Protection Acts will do much to strengthen the information base of justice system decisionmakers. It is disturbing how often important public safety decisions are made without apparently adequate information. A recent BJS study of pretrial release practices in the 75 largest counties nationwide illustrates what surely must be a reflection of inadequate information: among felony defendants released pending trial, about 20 percent were rearrested while on release and, of these, two-thirds were re-released.[9]

The recent $27 million Criminal History Record Improvement Program reveals the types of activities of highest priority: 41 States placed an emphasis on improving disposition reporting, 25 States emphasized identifying felons by flagging records, 18 States directed the Federal funds to III participation, and 15 States wanted to reduce backlogs and lessen the time required to post transactions to records. I would expect that the new grant programs in fiscal 1995 will build on these activities with an additional emphasis, due to the National Child Protection Act, on improved and more rapid and efficient fingerprint-based record checks. Some jurisdictions may seek to use the Federal funds to leverage their entry into Automated Fingerprint Identification System (AFIS) technology, for example.

The new grant program, for which the Administration is requesting $100 million, will build on the goals and objectives of the earlier Criminal History Record Improvement Program. An obvious priority of the program will be to focus Federal funding assistance on those arrest and other transactions which are of the most recent vintage, say the last 5 years, with much less priority given to

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8 Ibid.

9 U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *National Pretrial Reporting Program, Pretrial Release of Felony Defendants, 1990,* Bureau of Justice Statistics Bulletin Series (Washington, D.C.: Government Printing Office, November 1992) p. 2.

records which have not had transactions in many years. In addition, priority probably will be given to those applications which involve reducing substantial backlogs of new records or posting new transactions to old records or implementing procedures to avoid future backlogs.

— Eligible funding activities

Among the types of activities which would be eligible for funding presumably will be:

- Efforts to flag felony and child-victim convictions in criminal history records;
- Efforts to improve reporting to the central repository of all arrests, dispositions and other relevant information;
- Initiating, automating or expanding Master Name Indexes;
- Automating records, particularly records with recent arrest transactions, and reducing the time required to post all transactions to records;
- Designing, developing or implementing procedures to ensure participation in III;
- Developing or acquiring technologies to permit the electronic interchange of data (for example, from courts to the State repository);
- Implementing procedures or software to monitor missing arrests and dispositions, missing fingerprint cards, and so on, and to notify jurisdictions of their need to submit missing information and for letting them know exactly what is missing;
- Efforts to move toward the expanded use of AFIS technologies that are consistent with FBI technologies; and
- Efforts to link National Incident-Based Reporting System data with criminal history record information using a unique, fingerprint-supported number.

The types of activities which would probably *not* be eligible to receive funding would be wholesale replacement of hardware and software or systems currently in use, extensive planning, or conversion of old manual records to a machine-readable format. If you had to pin me down, the three most important things to do would be (1) to gain participation in III, (2) to improve the coverage of disposition reporting and the linkage to arrest transactions, and (3) to put in place a set of procedures to improve timeliness in posting entries to the records and ensuring that missing data are monitored, identified, sought and recorded.

Other recordkeeping activities

There are other recordkeeping needs which we will need to devote greater attention to in the future and which could perhaps be pushed along with Federal funds. Accessible databases on illegal aliens, persons with histories of commitments for mental problems or drug addiction, and the other prohibited categories of firearms purchasers under the 1968 Gun Control Act will need to be developed, but these are probably lower priorities at the moment.

One area that has always been of great concern to me as a former probation officer who used rap sheets to prepare presentence reports, is that the rap sheet is simply a record of criminal justice transactions — it is not a record of the public safety consequences of a person's criminal conduct. For example, rap sheets tell us nothing about the number of victims injured over a criminal career or whether and what types of firearms may have been used in crimes, the value of property stolen or damaged, the age and vulnerabilities of victims, and so forth. The FBI's National Incident-Based Reporting System, which I expect will cover 40 percent of the U.S. population by the end of 1994 and which will eventually replace aggregate Uniform Crime Reporting statistics, offers a potentially golden opportunity to cross-walk between a criminal record and an incident record with perhaps a change as simple as the addition of the State identification number of the arrestee to the incident record. It would permit the criminal record to grow into a record of community victimization.

I look forward to working with each and every State as we move forward toward this new program during the coming fiscal year. The timetable survey which we will be implementing shortly is dependent upon State involvement in order to measure what needs to be done and how the available resources are to be allocated. I am sorry to say that it will require a rather short turn-around but I am hopeful that it will not be excessively burdensome.

I believe that the 20-year record of BJS financial and technical assistance, the FBI's strong commitment to the development of a national system of accurate and shareable records, and the skill and devotion of State and local information managers represents a partnership that benefits every citizen. The Brady Act and the National Child Protection Act enable this partnership to gain the kind of visibility and importance that all of us have known for many years was sorely needed. These fresh new resources, when they become available, will create new opportunities to expand and strengthen the partnership.

Contributors' biographies

Contributors' Biographies

Robert R. Belair

Mr. Belair, SEARCH General Counsel, is a partner with the Washington, D.C. law firm of Mullenholz, Brimsek and Belair. The principal emphasis of Mr. Belair's practice is privacy and information law involving administrative, legislative and litigation activity. His practice includes counseling in all aspects of privacy and information law; defamation; intellectual property, including software copyright; constitutional law; and criminal justice administration.

As General Counsel, Mr. Belair has participated in SEARCH's security and privacy programs and has authored many studies in the area of criminal justice information law and policy. He was actively involved in the development of SEARCH's revised standards of criminal history record information, *Technical Report No. 13: Standards for the Security and Privacy of Criminal History Record Information* (Third Edition).

Mr. Belair has served as consultant to numerous Federal agencies and commissions on information policy and law. He is former Deputy General Counsel and Acting General Counsel of the Domestic Council Committee on the Right of Privacy, Office of the President.

Mr. Belair is a graduate of Kalamazoo College and the Columbia University School of Law.

Robert J. Creighton

Mr. Creighton was recently appointed to serve as the National Brady Law Coordinator for the Bureau of Alcohol, Tobacco and Firearms (ATF), U.S. Department of the Treasury. Prior to this appointment, Mr. Creighton was Special Agent in Charge of the ATF Florida Field Division. In that position, he directed the management of ATF's law enforcement activities in the State of Florida.

Mr. Creighton joined the ATF as a Special Agent in 1967 and has served in New York, Boston, and New Haven and Hartford, Connecticut. From 1977-80, he was Resident Agent in Charge in Hartford. In 1980, Mr. Creighton joined the staff of the Assistant Director of Law Enforcement as an Operations Officer in the Explosives Enforcement Branch, coordinating the reorganization and development of ATF's National Response Teams. From 1981 to February 1983, he served as Special Agent in Charge of ATF's Explosives Enforcement Branch. In this position, he was responsible for managing the National Explosives and Arson Enforcement Programs. He coordinated ATF's role in training programs in the Departments of Justice and Treasury, and in State and local law enforcement agencies.

Mr. Creighton serves on the Board of Directors of Youth Crime Watch of America, the Metro-Dade Chiefs Association and the Florida Advisory Committee for Arson Prevention. He is also a member of the International Association of Chiefs of Police, the Florida State Chiefs of Police Association, the International Association of Bomb Technicians and Investigators, and the International Association of Arson Investigators.

A graduate of the University of Connecticut, Mr. Creighton also has attended graduate school at the University of California, Berkeley, and the University of New Mexico.

Lt. Clifford W. Daimler

Lt. Daimler has been Director of the Oregon State Police, Identification Services Section since 1991. Prior to this assignment, he served as Assistant Director for 7 years. He also served in the Criminal Division for 8 years and in the Patrol Division for 2 years.

Under the direction of Lt. Daimler, the Identification Services Section is responsible for the following: the State computerized criminal history file, firearms regulations, automated fingerprint identification system, regulatory background checks, forensic latent print laboratory, questioned document examination and forensic photography laboratory. Lt. Daimler was instrumental in implementing Oregon's handgun regulation laws that went into effect in 1990.

Lt. Daimler is a Central Site Member of the Western Identification Network and is the Chair of its Policy and Procedure Committee. He also is involved in numerous State and Federal criminal justice organizations.

Noy S. Davis

Ms. Davis is a Project Manager/Attorney at the American Bar Association (ABA) Center on Children and the Law. She is currently working on two projects: the Effective Screening of Child Care and Youth Service Workers, and the Program to Increase Understanding of Child Sexual Exploitation.

Ms. Davis received her Juris Doctorate from the University of California Hastings College of Law in 1984 and served as law clerk to the Hon. Howard Turrentine, U.S. District Court for the Southern District of California. Prior to working at the ABA Center on Children and the Law, Ms. Davis represented children and their families in civil child abuse and neglect cases in the District of Columbia. Since 1990, Ms. Davis has chaired the Child Advocacy and Protection Committee of the Young Lawyers Section of the Bar Association of the District of Columbia. In 1992, she received the association's Marvin E. Preis Award for outstanding committee chair of the year.

In addition to her J.D., Ms. Davis has a B.A. in political science from the University of California, Davis.

James X. Dempsey

Mr. Dempsey is Assistant Counsel to the U.S. House of Representatives' Judiciary Committee's Subcommittee on Civil and Constitutional Rights, chaired by Rep. Don Edwards (D-California).

Mr. Dempsey's areas of responsibility include FBI oversight, privacy, and other civil liberties and constitutional law issues.

Prior to joining the Subcommittee staff, Mr. Dempsey practiced with a law firm in Washington, D.C.

Kimberly Dennis

Ms. Dennis is a Research Associate at the American Bar Association (ABA) Center on Children and the Law. She received her Master of Public Administration from the Columbia University School of International and Public Affairs in 1992.

Before joining the ABA, Ms. Dennis had extensive experience as a Research Assistant and Program Analyst on issues including homelessness and substance abuse. Her background includes managing a project to survey public policy experts in New York City regarding necessary policy and management changes for the City, as well as conducting other significant field work, data analysis, policy analysis and writing for several nonprofit organizations.

In addition to her M.P.A., Ms. Dennis holds a B.A. in sociology from the University of California, Berkeley.

David Eberdt

Mr. Eberdt is Director of the Arkansas Crime Information Center (ACIC), a position he has held since ACIC was established in 1972. Under his direction, this State agency administers the computerized criminal justice information system in Arkansas.

Mr. Eberdt is active in numerous State and national criminal justice organizations. He is currently serving his second term as President of the National Law Enforcement Telecommunications System and is the Arkansas governor-appointee to SEARCH.

Before becoming Director of ACIC, Mr. Eberdt was a Circuit Court Reporter from 1962-71. Mr. Eberdt has a bachelor's degree in business administration from the University of Arkansas, Monticello.

Lawrence A. Greenfeld

Mr. Greenfeld is Acting Director of the Bureau of Justice Statistics (BJS), U.S. Department of Justice. He has served in this position since early 1993.

Mr. Greenfeld previously served as the agency's Deputy Associate Director and Chief of Correctional Statistics Programs. He also has served as a Statistician with BJS, a Social Science Analyst with the National Institute of Justice, a member of the technical staff of MITRE Corporation, a Planning Coordinator for the Maryland Governor's Commission on Law Enforcement and the Administration of Justice, and a probation officer.

Mr. Greenfeld has authored or co-authored more than 50 statistical publications and analyses covering probation, jails, prisons, parole, death row populations and juveniles in custody. He also has supervised the development and publication of numerous reports by BJS Corrections Unit staff and BJS statisticians. He has authored several chapters of books and served as a reviewer for the *Journal of Quantitative Criminology*. Mr. Greenfeld also has overall responsibility for planning, scheduling and editing the publications produced annually by BJS in all areas of crime and criminal justice.

Mr. Greenfeld has spoken at numerous conferences and meetings on corrections and criminal justice. In January 1993, he received the Peter P. Lejins Award for Research from the American Correctional Association.

Mr. Greenfeld has a B.A. from the University of Maryland with a specialization in criminology. He also holds an M.S. degree from American University with a specialization in correctional administration.

Rebecca L. Hedlund

Ms. Hedlund is the Legislative Policy Advisor to the Assistant Secretary of the Treasury for Enforcement, Ronald K. Noble. The Office of Enforcement at the Treasury Department oversees the Customs Service; the Bureau of Alcohol, Tobacco and Firearms; the Secret Service; the Financial Crimes Enforcement Network; the Federal Law Enforcement Training Center; and the Office of Foreign Assets Control. In addition to being responsible for the Office of Enforcement's legislative policy, Ms. Hedlund is the key point of contact in the Office on firearms issues, including Brady Act implementation.

Prior to joining the Treasury Department in October 1993, Ms. Hedlund worked on Capitol Hill for 11 years. She was a professional staff member of the now-defunct House Select Committee on Narcotics Abuse and Control. Her work at the Committee focused on the international aspect of the drug problem in source and transit countries, including production, alternative development, money laundering, interdiction, intelligence, organized crime, gun smuggling and drug abuse prevention.

Dr. Sally T. Hillsman

In October 1991, Dr. Hillsman became the Vice President of Research and Technical Services for the National Center for State Courts (NCSC). She oversees all NCSC Federal grant proposals and national scope projects. Among other issues, these national initiatives deal with caseflow management for general civil, domestic relations, felony, misdemeanor, drug, traffic, small claims and appellate cases; differentiated case management; and trial delay and decisions. NCSC's national projects also focus on court applications of technology, including statewide and trial court automation, as well as such topics as trial court accountability and performance standards, human management, and racial and ethnic bias.

From 1979-91, Dr. Hillsman was the Associate Director of the Vera Institute of Justice in New York City and its Director of Research. She conducted research using experimental and nonexperimental designs in a wide range of criminal justice areas, including intermediate sanctions, case processing, prosecution and court delay, pretrial diversion and policing. Her past work included research on narcotics law enforcement in New York City, the

provision of criminal defense services in the New York criminal courts, and fining practices in criminal cases in the United States and Western Europe.

Dr. Hillsman holds a Ph.D. in sociology from Columbia University.

Kent Markus

Mr. Markus is Counsel to the Deputy Attorney General of the United States. His primary responsibility is to coordinate all U.S. Department of Justice (DOJ) activity with respect to the logistical, educational, technical, policy and communications aspects of implementing the Brady Act. In addition to coordinating internal DOJ activity, Mr. Markus also acts as the primary DOJ liaison with other Federal agencies and with the States with respect to Brady Act implementation.

Prior to his service at the Justice Department, Mr. Markus was the Chief of Staff at the Democratic National Committee and, before that, the Chief of Staff for Ohio Attorney General Lee Fisher. In each capacity, he had overall management responsibility for the budget, staff and operations of the institution.

Earlier in his career, Mr. Markus worked at law firms in Australia, Alaska and Washington, D.C. before returning to Ohio to practice law and teach at the Cleveland State Law School. On Capitol Hill, Mr. Markus also worked for U.S. House Speakers Carl Albert and Thomas P. (Tip) O'Neill and House Rules Committee Chairman Richard Bolling.

Mr. Markus is a graduate of Northwestern University and Harvard Law School. He is also a graduate of the Kennedy School of Government's Program for Senior Executives in State and Local Government.

Maj. James V. Martin

Maj. Martin is Director of the Criminal Justice Information and Communications System, South Carolina Law Enforcement Division, which is the State's central repository for criminal history records. It also consists of the Uniform Crime Reporting unit and the Criminal Justice Data Center and Intrastate Network.

Maj. Martin currently serves on the National Crime Information Center Advisory Policy Board and on the board of the FBI's National Law Enforcement Telecommunications System. He also is a member of the Board of Directors of SEARCH and chairs its Law and Policy Program Advisory Committee.

Maj. Martin received his undergraduate degree in industrial management at Charleston South University. He received an M.B.A. from the University of South Carolina.

Insp. Gary D. McAlvey

Insp. McAlvey currently serves as Special Assistant to the Deputy Director of the Illinois State Police Division of Administration and as Advisor to the State Armed Felon Enforcement Task Force of the Illinois State Police. From 1977-93, he held the position of Chief of the Bureau of Identification, Illinois State Police. Prior to serving as Chief, Insp. McAlvey worked in various positions within the Illinois State Police and for the Pittsburgh and Allegheny County Crime Laboratory, Pittsburgh, Pennsylvania.

Insp. McAlvey has served as an Editor of the *Journal of Criminal Law, Criminology and Police Science* and the *Journal of Police Science and Administration*. He also has served as an instructor and lecturer at the University of Louisville, Southern Police Institute and Waubonsee Community College, Aurora, Illinois. He is a member of several professional organizations.

Insp. McAlvey is the most senior member of the SEARCH Membership Group, having been appointed in 1970. He has served a total of five terms as Chairman of SEARCH and in 1986 was awarded its *Board of Directors Award for Meritorious Service*.

Insp. McAlvey holds a B.S. in Police Administration (Forensic Science) from Michigan State University.

Janet Reno

The Honorable Ms. Reno was appointed Attorney General of the United States by President Clinton on March 12, 1993. From 1978 until the time of her appointment, Ms. Reno served as the State's Attorney in Miami, Florida. She was initially appointed to that position by the Governor of Florida and was subsequently elected to that office five times.

Ms. Reno was a partner in the Miami-based law firm of Steel, Hector and Davis from 1976-78. Before that, she served as an Assistant State's Attorney and as Staff Director of the Florida House of Representatives' Judiciary Committee, after starting her legal career in private practice.

Ms. Reno received her A.B. in chemistry from Cornell University and her LL.B. from Harvard Law School.

Thomas F. Rich

Mr. Rich is a Senior Analyst at Queues Enforth Development (QED), Inc., a Cambridge, Massachusetts-based criminal justice consulting and software company. He has been at QED since 1982 and has participated in a variety of criminal justice studies, primarily for the U.S. Department of Justice and for various New York City agencies. His work at QED also includes developing geographic information systems for public safety agencies.

Mr. Rich is co-author of the Justice Department publication, *Identifying Persons, Other than Felons, Ineligible to Purchase Firearms: A Feasibility Study*. He is currently Project Manager of the Criminal History Records Improvement project, funded by the Bureau of Justice Assistance, U.S. Department of Justice.

Mr. Rich holds an A.B. in mathematics from Cornell University and an M.S. in engineering-economic systems from Stanford University.

Laurie O. Robinson

Ms. Robinson was named Acting Assistant Attorney General of the U.S. Department of Justice's Office of Justice Programs on August 23, 1993. Ms. Robinson also serves as an Associate Deputy Attorney General.

Prior to joining the Justice Department, Ms. Robinson was Director of the American Bar Association's (ABA) Criminal Justice Section since 1979. In that position, she was responsible for special projects, policy development and liaison with other criminal justice and public interest organizations in furthering the policy goals of the ABA. During her tenure, from 1986-93, Ms. Robinson also headed the ABA's Professional Services Division, which included the Taxation, International Law, Criminal Justice and Individual Rights sections; the Center on Children and the Law; the Standing Committee on National Security; the Central and East European Law Initiative (CEELI); and the Commission on Homelessness and Poverty.

From 1972-79, Ms. Robinson served as Assistant Staff Director of the ABA Criminal Justice Section. She also worked as a reporter and editor for a New York City Ford Foundation-funded effort to provide better news coverage for the city's African-American and Puerto Rican communities.

Ms. Robinson served as Chair of the National Forum on Criminal Justice from 1991-93, and was a member of the Board of Regents of the National College of District Attorneys and the National Committee on Community Corrections. She also has sat on the Boards of Directors for the National Association of Women in Criminal Justice and the Victim Assistance Legal Organization. She currently serves on the Advisory Board of the *Federal Sentencing Reporter*.

Ms. Robinson graduated from Pembroke College in Brown University with a degree in political science.

Stephen R. Rubenstein

Mr. Rubenstein is Senior Counsel of the Firearms and Explosives Unit in the Office of the Chief Counsel, Bureau of Alcohol, Tobacco and Firearms (ATF), U.S. Department of the Treasury. Among his primary duties in this position are acting as legal counsel to ATF on all matters arising in the administration and enforcement of the Federal firearms and explosives laws; drafting legal opinions concerning firearms and explosives laws and regulations; providing technical assistance to Congressional committees in legislative drafting sessions relating to firearms and explosives; and providing legal advice and assistance to other Federal, State and local agencies, including United States Attorneys and U.S. Justice Department officials in the prosecution of ATF cases related to firearms and explosives matters. Mr. Rubenstein also teaches law enforcement classes at the Federal Law Enforcement Training Center in Glynco, Georgia.

Mr. Rubenstein received his J.D. from Boston College Law School and his B.A. from Boston University.

Edward J. (Jack) Scheidegger

Mr. Scheidegger has been Chief of the Bureau of Criminal Identification and Information (BCII) in the California Department of Justice (DOJ) since 1991. He is responsible for administering criminal identification and information services to local and national criminal justice systems from a complex organization consisting of approximately 1,000 positions with a $47 million annual budget.

Previous to his appointment as BCII Chief, Mr. Scheidegger held the following positions in the California DOJ: Chief, Bureau of Forensic Services; Director, Bureau of Medi-Cal Fraud and Patient Abuse; Chief Investigator, Bureau of Medi-Cal Fraud; Legislative Advocate, Attorney General's Office; Program Manager, Statistical Analysis Center, Bureau of Criminal Statistics; Manager, Automated Latent Print System, Bureau of Forensic Services; and Chief, Special Services Bureau, Investigative Services Branch.

Mr. Scheidegger's 25 years of experience in the law enforcement field also has included serving as Chair of the Attorney General's Advisory Committee on Identification and Information, a member of the Los Angeles Police Department Hillside Strangler Task Force, and as a legislative advocate for law enforcement. He is the California governor-appointee to SEARCH and currently serves on the SEARCH Board of Directors. Mr. Scheidegger also chairs the Bureau of Justice Statistics/SEARCH National Task Force on Improving the Utility of the Criminal History Record, which is reviewing the content of rap sheets nationwide and will make recommendations for improvements.

Mr. Scheidegger received a B.A. degree in public administration from California State University, Sacramento, and an M.P.A. from the University of Southern California. He has also completed the Executive Management Program at the University of California, Davis.

James F. Shea

Mr. Shea is Assistant Director of Integrated Systems Development (ISD) at the New York State Division of Criminal Justice Services. In addition to coordinating the statewide criminal justice data standardization project, ISD staff is developing standard software and forms for local law enforcement, prosecution, jails and courts. The unit is also funded by two Federal grants that support efforts to improve the data quality of criminal justice records. ISD staff is completing an assessment of data quality within the criminal justice system in New York State.

Mr. Shea has over 20 years of experience in the criminal justice field. He holds a B.A. from Holy Cross College and an M.B.A. from Union College.

Capt. R. Lewis Vass

Capt. Vass is the Records Management Officer of the Records Management Division, Virginia Department of State Police. His responsibilities include overseeing the Virginia Automated Fingerprint Identification System (AFIS), Virginia Central Criminal Records Exchange, Virginia Firearms Transaction Program (VFTP), Virginia Criminal Information Network, Virginia Missing Children Information Clearinghouse and the Uniform Crime Reporting Section. He is a representative on the National Crime Information Center Southern Region Working Group and the National Law Enforcement Telecommunications System, and is the Control Terminal Officer for the State of Virginia. Capt. Vass was instrumental in designing and developing the VFTP, the first instant check point-of-sale approval system in the Nation for firearms sales, as well as the design and implementation of the Multiple Handgun Application/ Certificate Program.

Capt. Vass served as a member of the Felon Identification in Firearms Sales Ad Hoc Task Force for the U.S. Department of Justice, and as a member of the steering committee to assist the Bureau of Justice Assistance in the design of a methodology to evaluate criminal history records programs. He currently serves on the Bureau of Justice Statistics/SEARCH National Task Force on Increasing the Utility of the Criminal History Record; is a member of the AFIS Internet; and serves as a coordinator of legislative liaisons to the Virginia General Assembly for the State Police.

Capt. Vass graduated from the Virginia State Police Academy in 1967. During his 26-year service with the State Police, he has received specialized training in many areas of law enforcement, including the handling of explosive devices, terrorist activities and civil disorders. He is a graduate of Northwestern University Traffic Institute, and is currently a student at Virginia State University.

Virgil L. Young Jr.

Mr. Young is currently the Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation. In 1991, he was also designated as an Inspector-in-Place.

Mr. Young began his FBI career as a Special Agent in 1970 and was assigned to the Detroit Field Office. He was later assigned to the San Francisco Field Office to attend the Defense Language Institute in Monterey, California. In 1972, he served as a "street agent" and later a Squad Supervisor in the New York Office.

Mr. Young has held various other positions with the Bureau, including supervisory duties in the Criminal Investigative Division at FBI headquarters; Unit Chief; Inspector's Aide; Assistant Section Chief; and Section Chief in the Identification Division. He also served in the Richmond, Virginia Field Office as Assistant Special Agent in Charge.

Mr. Young earned a B.A. degree in political science from the University of Kansas. Upon graduation, he was commissioned a second lieutenant in the U.S. Marine Corps, where he spent 4 years as an infantry officer, including 1 year in Vietnam. He later earned a master's degree in professional studies from Long Island University.

Appendix 1

Public Law 103-159:
Brady Handgun Violence Prevention Act

Appendix 2

Bureau of Alcohol, Tobacco and Firearms:
Preliminary list of States subject to the
Federal five-day waiting period or
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Bureau of Alcohol, Tobacco and Firearms:
Open letter to all Federal firearms licensees
subject to the waiting period provisions
of the Brady Law

Appendix 4

Bureau of Alcohol, Tobacco and Firearms:
Open letter to all Federal firearms licensees
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Appendix 5

Bureau of Alcohol, Tobacco and Firearms
Form 5300.35:
Statement of intent to obtain a handgun(s)

Appendix 6

Bureau of Alcohol, Tobacco and Firearms:
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Appendix 7

Bureau of Alcohol, Tobacco and Firearms:
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Appendix 8

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Appendix 11

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Appendix 1

Public Law 103-159:
Brady Handgun Violence Prevention Act

HANDGUN CONTROL, MULTIPLE FIREARM PURCHASES, AND FEDERAL FIREARMS LICENSE REFORM

("BRADY HANDGUN VIOLENCE PREVENTION ACT")

Public Law 103-159
103d Congress

An Act

Nov. 30, 1993
[H.R. 1025]

To provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be contacted by firearms dealers before the transfer of any firearm.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Brady Handgun Violence Prevention Act.
Inter-governmental relations.
Law enforcement and crime.
18 USC 921 note.

TITLE I—BRADY HANDGUN CONTROL

SEC. 101. SHORT TITLE.

This title may be cited as the "Brady Handgun Violence Prevention Act".

SEC. 102. FEDERAL FIREARMS LICENSEE REQUIRED TO CONDUCT CRIMINAL BACKGROUND CHECK BEFORE TRANSFER OF FIREARM TO NON-LICENSEE.

(a) INTERIM PROVISION.—

(1) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

Effective date.
Termination date.

"(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

"(II) verified the identity of the transferee by examining the identification document presented;

"(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

"(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement

to the chief law enforcement officer of the place of residence of the transferee; and

"(ii)(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

"(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

"(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

"(C)(i) the transferee has presented to the transferor a permit that—

"(I) allows the transferee to possess or acquire a handgun; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

"(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

"(E) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

"(F) on application of the transferor, the Secretary has certified that compliance with subparagraph (A)(i)(III) is impracticable because—

"(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

"(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

"(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

"(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether

receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

"(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

"(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

"(B) a statement that the transferee—

"(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

"(ii) is not a fugitive from justice;

"(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

"(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

"(v) is not an alien who is illegally or unlawfully in the United States;

"(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

"(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

"(C) the date the statement is made; and

"(D) notice that the transferee intends to obtain a handgun from the transferor.

"(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of the place of business of the transferor; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

"(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

"(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law—

Records.

"(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record

containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

"(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

"(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

"(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

"(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

"(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

"(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

"(8) For purposes of this subsection, the term 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

"(9) The Secretary shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.". Publication. Public information.

(2) HANDGUN DEFINED.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(29) 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 in subparagraph (A) can be assembled.".

(b) PERMANENT PROVISION.—Section 922 of title 18, United States Code, as amended by subsection (a)(1), is amended by adding at the end the following:

"(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless— Effective date.

"(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

"(B)(i) the system provides the licensee with a unique identification number; or

"(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

"(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in

section 1028(d)(1) of this title) of the transferee containing a photograph of the transferee.

"(2) If receipt of a firearm would not violate section 922 (g) or (n) or State law, the system shall—

"(A) assign a unique identification number to the transfer;

"(B) provide the licensee with the number; and

Records.

"(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

"(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

"(A)(i) such other person has presented to the licensee a permit that—

"(I) allows such other person to possess or acquire a firearm; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

"(B) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

"(C) on application of the transferor, the Secretary has certified that compliance with paragraph (1)(A) is impracticable because—

"(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

"(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

"(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

"(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

"(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Secretary may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than $5,000.

"(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—

"(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

"(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.".

(c) PENALTY.—Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking "paragraph (2) or (3) of"; and

(2) by adding at the end the following:

"(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined not more than $1,000, imprisoned for not more than 1 year, or both.".

SEC. 103. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

Computers. Records. Telecommunications. 18 USC 922 note.

(a) DETERMINATION OF TIMETABLES.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall—

(1) determine the type of computer hardware and software that will be used to operate the national instant criminal background check system and the means by which State criminal records systems and the telephone or electronic device of licensees will communicate with the national system;

(2) investigate the criminal records system of each State and determine for each State a timetable by which the State should be able to provide criminal records on an on-line capacity basis to the national system; and

(3) notify each State of the determinations made pursuant to paragraphs (1) and (2).

(b) ESTABLISHMENT OF SYSTEM.—Not later than 60 months after the date of the enactment of this Act, the Attorney General shall establish a national instant criminal background check system that any licensee may contact, by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 of title 18, United States Code, or State law.

(c) EXPEDITED ACTION BY THE ATTORNEY GENERAL.—The Attorney General shall expedite—

(1) the upgrading and indexing of State criminal history records in the Federal criminal records system maintained by the Federal Bureau of Investigation;

(2) the development of hardware and software systems to link State criminal history check systems into the national instant criminal background check system established by the Attorney General pursuant to this section; and

(3) the current revitalization initiatives by the Federal Bureau of Investigation for technologically advanced fingerprint and criminal records identification.

(d) NOTIFICATION OF LICENSEES.—On establishment of the system under this section, the Attorney General shall notify each licensee and the chief law enforcement officer of each State of

the existence and purpose of the system and the means to be used to contact the system.

(e) ADMINISTRATIVE PROVISIONS.—

(1) AUTHORITY TO OBTAIN OFFICIAL INFORMATION.—Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate subsection (g) or (n) of section 922 of title 18, United States Code or State law, as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system.

(2) OTHER AUTHORITY.—The Attorney General shall develop such computer software, design and obtain such telecommunications and computer hardware, and employ such personnel, as are necessary to establish and operate the system in accordance with this section.

(f) WRITTEN REASONS PROVIDED ON REQUEST.—If the national instant criminal background check system determines that an individual is ineligible to receive a firearm and the individual requests the system to provide the reasons for the determination, the system shall provide such reasons to the individual, in writing, within 5 business days after the date of the request.

(g) CORRECTION OF ERRONEOUS SYSTEM INFORMATION.—If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate subsection (g) or (n) of section 922 of title 18, United States Code or State law, the prospective transferee may request the Attorney General to provide the prospective transferee with the reasons therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The prospective transferee may submit to the Attorney General information to correct, clarify, or supplement records of the system with respect to the prospective transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to the prospective transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

Confidential information.

(h) REGULATIONS.—After 90 days' notice to the public and an opportunity for hearing by interested parties, the Attorney General shall prescribe regulations to ensure the privacy and security of the information of the system established under this section.

(i) PROHIBITION RELATING TO ESTABLISHMENT OF REGISTRATION SYSTEMS WITH RESPECT TO FIREARMS.—No department, agency, officer, or employee of the United States may—

(1) require that any record or portion thereof generated by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons, prohibited by section 922 (g) or (n) of title 18, United States Code or State law, from receiving a firearm.

(j) DEFINITIONS.—As used in this section:

(1) LICENSEE.—The term "licensee" means a licensed importer (as defined in section 921(a)(9) of title 18, United States Code), a licensed manufacturer (as defined in section 921(a)(10) of that title), or a licensed dealer (as defined in section 921(a)(11) of that title).

(2) OTHER TERMS.—The terms "firearm", "handgun", "licensed importer", "licensed manufacturer", and "licensed dealer" have the meanings stated in section 921(a) of title 18, United States Code, as amended by subsection (a)(2).

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, which may be appropriated from the Violent Crime Reduction Trust Fund established by section 1115 of title 31, United States Code, such sums as are necessary to enable the Attorney General to carry out this section.

SEC. 104. REMEDY FOR ERRONEOUS DENIAL OF FIREARM.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 925 the following new section:

"§ 925A. Remedy for erroneous denial of firearm

"Any person denied a firearm pursuant to subsection (s) or (t) of section 922—

"(1) due to the provision of erroneous information relating to the person by any State or political subdivision thereof, or by the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act; or

"(2) who was not prohibited from receipt of a firearm pursuant to subsection (g) or (n) of section 922,

may bring an action against the State or political subdivision responsible for providing the erroneous information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the erroneous information be corrected or that the transfer be approved, as the case may be. In any action under this section, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 44 of title 18, United States Code, is amended by inserting after the item relating to section 925 the following new item:

"925A. Remedy for erroneous denial of firearm.".

SEC. 105. RULE OF CONSTRUCTION. 18 USC 921 note.

This Act and the amendments made by this Act shall not be construed to alter or impair any right or remedy under section 552a of title 5, United States Code.

SEC. 106. FUNDING FOR IMPROVEMENT OF CRIMINAL RECORDS.

(a) USE OF FORMULA GRANTS.—Section 509(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

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

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

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

"(4) the improvement of State record systems and the sharing with the Attorney General of all of the records described in paragraphs (1), (2), and (3) of this subsection and the records

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

18 USC 922 note.

(b) ADDITIONAL FUNDING.—

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

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

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

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

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

TITLE II—MULTIPLE FIREARM PURCHASES TO STATE AND LOCAL POLICE

SEC. 201. REPORTING REQUIREMENT.

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

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

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

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

Records.

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

Certification.

TITLE III—FEDERAL FIREARMS LICENSE REFORM

Federal Firearms License Reform Act of 1993.

SEC. 301. SHORT TITLE.

18 USC 921 note.

This title may be cited as the "Federal Firearms License Reform Act of 1993".

SEC. 302. PREVENTION OF THEFT OF FIREARMS.

(a) COMMON CARRIERS.—Section 922(e) of title 18, United States Code, is amended by adding at the end the following: "No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.".

(b) RECEIPT REQUIREMENT.—Section 922(f) of title 18, United States Code, is amended—

(1) by inserting "(1)" after "(f)"; and

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

"(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.".

(c) UNLAWFUL ACTS.—Section 922 of title 18, United States Code, as amended by section 102, is amended by adding at the end the following new subsection:

"(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.".

(d) PENALTIES.—Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(i)(1) A person who knowingly violates section 922(u) shall be fined not more than $10,000, imprisoned not more than 10 years, or both.

"(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.".

SEC. 303. LICENSE APPLICATION FEES FOR DEALERS IN FIREARMS.

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

(1) in subparagraph (A), by adding "or" at the end;

(2) in subparagraph (B) by striking "a pawnbroker dealing in firearms other than" and inserting "not a dealer in";

(3) in subparagraph (B) by striking "$25 per year; or" and inserting "$200 for 3 years, except that the fee for renewal of a valid license shall be $90 for 3 years."; and

(4) by striking subparagraph (C).

Approved November 30, 1993.

LEGISLATIVE HISTORY—H.R. 1025 (S. 414):

HOUSE REPORTS: Nos. 103-344 (Comm. on the Judiciary) and 103-412 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 139 (1993):

Nov. 10, considered and passed House.

Nov. 19, 20, considered and passed Senate, amended, in lieu of S. 414.

Nov. 23, House agreed to conference report.

Nov. 24, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 29 (1993):

Nov. 30, Presidential remarks.

○

Appendix 2

Bureau of Alcohol, Tobacco and Firearms:
Preliminary list of States subject to the
Federal five-day waiting period or
States having alternative systems
as defined in the law

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

PRELIMINARY LIST OF STATES SUBJECT TO THE FEDERAL FIVE DAY WAITING PERIOD OR STATES HAVING ALTERNATIVE SYSTEMS AS DEFINED IN THE LAW [AS OF 1-19-94]

STATES WHICH MUST COMPLY WITH THE FEDERAL 5-DAY WAITING PERIOD

Alaska	Maine	Oklahoma
Arizona	Minnesota	Rhode Island
Arkansas	Montana	Texas
Colorado	Nevada	Utah
Idaho	New Hampshire	Vermont
Kansas	New Mexico	Washington State
Kentucky	North Dakota	West Virginia
Louisiana	Ohio	Wyoming

STATES WHICH MEET ONE OF THE ALTERNATIVES TO THE FEDERAL 5-DAY WAITING PERIOD

California	-	Permit or other Approval-type system
Connecticut	-	Permit or other Approval-type system
Delaware	-	"Instant check"
Florida	-	"Instant check"
Hawaii	-	Permit or other Approval-type system
Illinois	-	Permit and "instant check"
Indiana	-	Permit or other Approval-type system
Iowa	-	Permit or other Approval-type system
Maryland	-	Permit or other Approval-type system
Massachusetts	-	Permit or other Approval-type system
Michigan	-	Permit or other Approval-type system
Missouri	-	Permit or other Approval-type system
Nebraska	-	Permit or other Approval-type system
New Jersey	-	Permit or other Approval-type system
New York	-	Permit or other Approval-type system
Oregon	-	Permit or Other Approval-type system
Wisconsin	-	"Instant check"
Virginia	-	"Instant check"

STATES WHICH MAY NOT FALL FULLY WITHIN EITHER CATEGORY

All of these States issue "carry permits" which may fall within the "permit and records check" alternative.

Alabama
Georgia
Mississippi
North Carolina
Pennsylvania
South Carolina
South Dakota
Tennessee

Prepared: January 19, 1994

Appendix 3

Bureau of Alcohol, Tobacco and Firearms:
Open letter to all Federal firearms licensees
subject to the waiting period provisions
of the Brady Law

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

DIRECTOR

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES SUBJECT TO THE WAITING PERIOD PROVISIONS OF THE BRADY LAW:

The purpose of this letter is to advise you of your responsibilities under Public Law 103-159, commonly referred to as the "Brady Law."

Beginning on February 28, 1994, the Brady Law imposes a 5-day waiting period on the sale of a handgun in States that do not already require a prior background check. ATF has made a preliminary determination that your State does not currently impose a requirement that handgun purchasers must undergo a background check. Therefore, your sales to non-licensees will be subject to the waiting period procedures.

In brief, before you sell a handgun to anyone who is not an FFL you must:

1. **have the purchaser complete and sign ATF Form 5300.35, Statement Of Intent To Obtain A Handgun (copies of this form will be provided to you prior to the effective date);**

2. **examine the purchaser's photo identification, and verify that it identifies the purchaser and agrees with the information on the ATF Form 5300.35;**

3. **within one day after the purchaser completes the form, notify the Chief Law Enforcement Officer where the purchaser lives of the information on ATF Form 5300.35;**

4. **within one day after the purchaser completes the form, send a copy of it to the Chief Law Enforcement Officer;**

5. **wait 5 business days (days on which State offices are open) from the date the Chief Law Enforcement Officer received notice of the sale before transferring the handgun.**

If you are advised by the officer that he has reason to believe the purchaser is prohibited from possessing the handgun, the transfer must not be made.

The law defines Chief Law Enforcement Officer to mean the chief of police, sheriff or equivalent officer or designee. In some jurisdictions there may be more than one official that meets this definition. You should contact any one of the listed officials and follow their advice as to which agency you should contact and what procedures you should follow in providing the required notice.

Additionally, the Brady Law:

- requires you to furnish multiple sales reports to the State or local law enforcement agency of the jurisdiction in which the sale or other disposition took place (Use the enclosed order form to request a supply of the revised ATF Form 3310.4. In the interim, you are to forward the "Post of Duty" copy of the current ATF Form 3310.4 to the appropriate State or local law enforcement agency);

- requires you to sign for the receipt of firearms that have moved in interstate commerce by common carrier, i.e., UPS, Federal Express, etc.;

- makes it a Federal crime for any person to steal a firearm from your business inventory;

  (NOTE: Report any theft of firearms to your local ATF office.)

- increases the licensing fee for all firearms dealers, including pawnbrokers, to $200 for 3 years, except that the fee for renewal of a valid license is $90 for 3 years.

Regulations explaining the requirements of the Brady law will be published prior to February 28, 1994.

For your information, effective March 1, 1994, out-of-business firearms records are to be submitted to the following address:

ATF Firearms Out-of-Business Records Center
Spring Mills Office Park
2020 Stonewall Jackson Drive
Falling Waters, West Virginia 25419

We have enclosed a list of questions and answers addressing various aspects of the Act that should be of additional assistance to you. If you have any questions concerning these new requirements, contact your local ATF office or the Firearms and Explosives Division at (202) 927-8300.

John W. Magaw
Director

Enclosures

Appendix 4

Bureau of Alcohol, Tobacco and Firearms:
Open letter to all Federal firearms licensees
not subject to the waiting period provisions
of the Brady Law

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

DIRECTOR

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES NOT SUBJECT TO THE WAITING PERIOD PROVISIONS OF THE BRADY LAW:

The purpose of this letter is to advise you of your responsibilities under Public Law 103-159, commonly referred to as the "Brady Law."

Beginning on February 28, 1994, the Brady Law imposes a 5-day waiting period on the sale of handguns in States that do not already require a prior background check. ATF has made a preliminary determination that your State has a system that already subjects handgun purchasers to a prior background check. Therefore, sales made in compliance with the existing permit or background check system in your State will not be subject to the waiting period procedure. Regulations will, however, require that you maintain records to demonstrate that a sale was made under the State system. If the sale is made to a handgun permit holder, the permit must have been issued within 5 years.

Additionally, the Brady law :

- **requires you to furnish multiple sales reports to the State or local law enforcement agency of the jurisdiction in which the sale or other disposition took place (Use the enclosed order form to request a supply of the revised ATF Form 3310.4. In the interim, you are to forward the "Post of Duty"copy of the current ATF Form 3310.4 to the appropriate State or local law enforcement agency.) ;**

- **requires you to sign for the receipt of firearms that have moved in interstate commerce by common carrier, i.e., UPS, Federal Express, etc.;**

- **makes it a Federal crime for any person to steal a firearm from your business inventory;**

  (NOTE: Report any theft of firearms to your local ATF office.)

- **increases the licensing fee for all firearms dealers, including pawnbrokers, to $200 for 3 years, except that the fee for renewal of a valid license is $90 for 3 years.**

Regulations explaining the requirements of the Brady law will be published prior to February 28, 1994.

For your information, effective March 1, 1994, out-of-business firearms records are to be submitted to the following address:

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We have enclosed a list of questions and answers addressing various aspects of the Act that should be of additional assistance to you. If you have any questions concerning these new requirements, contact your local ATF office or the Firearms and Explosives Division at (202) 927-8300.

John W. Magaw

John W. Magaw
Director

Enclosures

Appendix 5

Bureau of Alcohol, Tobacco and Firearms Form 5300.35:
Statement of intent to obtain a handgun(s)

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

_____ (Chief Law Enforcement Officer) OF _____ (Law Enforcement Agency) ON _____ (Date) BY

(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 _____ (Date) BY

(Check the appropriate answer.)

☐ MAIL ☐ TELEFAX ☐ IN PERSON ☐ OTHER (Specify) _____

10. ON _____ (Date), THE CHIEF LAW ENFORCEMENT OFFICER PROVIDED REASON TO BELIEVE THAT THIS TRANSFER

☐ 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)

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 is 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)

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.

Appendix 6

Bureau of Alcohol, Tobacco and Firearms:
Open letter to State and local
law enforcement officials

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

DIRECTOR

JAN 21 1994

OPEN LETTER TO STATE AND LOCAL
LAW ENFORCEMENT OFFICIALS

The purpose of this letter is to disseminate information to all State and local law enforcement agencies regarding Public Law 103-159, 107 Stat. 1536 (hereafter, "the Act"), signed by the President on November 30, 1993. It is also intended to provide law enforcement agencies with the Bureau of Alcohol, Tobacco and Firearms' (ATF) interpretation of the Act so that you will be better able to fulfill the requirements the Act imposes on "Chief Law Enforcement Officers" (CLEO) throughout the Nation. ATF places a high priority on ensuring that you are provided with accurate and reliable information regarding this matter.

First, we hope that you will undertake a thorough reading of the Act, a copy of which we have enclosed with this letter. Your examination will reveal that the Act contains three separate sections; **Title I, Brady Handgun Violence Protection Act (hereafter, "Brady"), commonly referred to as the Brady Bill, is effective February 28, 1994;** Title II, Multiple Firearm Purchases to State and Local Police, was effective November 30, 1993; and Title III, Federal Firearms License Reform Act of 1993, was also effective November 30, 1993.

OVERVIEW

By way of background, the Act amended the Gun Control Act of 1968 (GCA). Consequently, ATF is the Federal agency responsible for implementing the Act, except for those functions expressly charged to the U.S. Attorney General. **You should be aware that all of the Brady provisions we will be covering in this letter are interim provisions. The permanent provisions of Brady, establishing a national instant criminal background system, are initially the responsibility of the Department of Justice (DOJ).** We will provide a more detailed view of the Attorney General's functions later in this letter.

Since 1968, the GCA has required that all manufacturers, importers, dealers, and pawnbrokers in firearms have to be licensed by ATF. Additionally, under the GCA, Federal firearms licensees (FFL) can generally sell firearms to residents of their own State, must abide by State and local laws in making their sales, and must keep detailed records of all firearms transactions. Required records and firearms inventories are subject to ATF inspections. In addition, FFLs are prohibited from selling firearms to anyone they know or have reasonable cause to believe:

- is under indictment for or convicted of a felony
- is a fugitive from justice
- is an unlawful user of or addicted to controlled substances
- has been adjudicated a mental defective or committed to a mental institution
- is an illegal alien
- has a dishonorable discharge or
- has renounced his citizenship

Until Brady, the only Federal requirement aimed at preventing a felon or other prohibited person from purchasing a firearm was that purchasers complete a Federal form, ATF F 4473, on which they would certify to their name, residence, and that they do not fall within one of the above categories of persons prohibited from receiving a firearm.

Brady has added an additional means of screening out prohibited purchasers by imposing a 5 business day waiting period during which time the dealer is required to notify the CLEO of the purchaser's residence of the proposed sale of a handgun. You should also be aware that Brady's 5-day waiting period applies to unlicensed individuals who are attempting to obtain a handgun(s).

ATF is closely coordinating our implementation of Brady with the DOJ. Under Brady, the DOJ is responsible for the development of a national instant criminal background check system that will replace the 5-day waiting period system within 5 years. DOJ is also responsible for designating the national system of records that the CLEO should check when making a determination about the purchaser's eligibility to

acquire a handgun. The U.S. Attorney General has designated the National Crime Information Center (NCIC), including a wanted person check and the Interstate Identification Index. For your convenience, we have enclosed a draft copy of ATF F 5300.35 (Interim) that ATF will use for the Brady statement. If you will examine the instructions part of the form, you will see a reference to the NCIC in item 2 under the "Instructions to Chief Law Enforcement Officers" caption.

The contents of the buyer's statement of intent to obtain a handgun is specifically limited by Brady. The only identifying information we can require the buyer to provide to the FFL is the buyer's name, address, and date of birth. Obviously, it is often not possible to conduct a reasonably accurate criminal background check with only this information. While we cannot insist on more information, we are asking the buyers, on ATF F 5300.35 (see enclosure), to provide their social security number, place of birth, and other descriptive information on an optional basis. In asking for this information, we explain that it is in the buyer's self-interest to provide the additional information to "help avoid the possibility of being misidentified as a felon or other prohibited person."

Due to time constraints we faced in getting a form designed, approved, printed, and distributed prior to February 28, we were not able to fully consult with State and local law enforcement officials in our initial form design. However, we believe that it is essential that the form is designed in such a way as to meet the CLEO's needs. Consequently, the initial form is being introduced as a temporary form, with a limited printing. Before we finalize the form, we want the comments and recommendations of the State and local officials who will be using it.

TITLE I - BRADY

The greatest immediate task before us is to implement the waiting period aspect of Brady by February 28, 1994. Prior to that date, ATF will issue temporary regulations telling dealers how to comply with the new law, and ATF will also distribute the Brady statement form, ATF F 5300.35. In the interim, we will be working with you to ensure State and local law enforcement officials understand the law by ensuring that you know your responsibilities, liabilities, and options.

As you begin to thoroughly examine the contents of Brady, you should keep in mind its primary intent is to provide law enforcement an opportunity to screen out unlawful purchasers. Our goal is to see that Brady is as effective as possible at keeping handguns out of the wrong hands.

We believe that a typical example of a handgun sale, as envisioned under Brady, would be:

> An individual goes to an FFL and fills out an ATF F 5300.35 (Statement of Intent To Obtain A Handgun) and certifies that he/she is not a prohibited person. The FFL is required to complete the form and verify the identity of the person by examining a valid government-issued identification document that contains the individual's name, address, date of birth, and photograph. Within 1 day, the FFL contacts the individual's CLEO and provides the name, address, and date of birth to the CLEO. Also, within 1 day, the FFL forwards a copy of ATF F 5300.35 to the CLEO. The FFL must then wait 5 business days to provide the CLEO the opportunity to respond. Upon being notified, and within the 5 days, the CLEO makes a "reasonable effort" to determine whether the individual is a prohibited person under the law.
>
> The CLEO makes a determination based upon information available to him/her. The CLEO finds nothing that would give him/her "reason to believe" that the individual is a prohibited person and, although not required to do so, the CLEO contacts the FFL and tells the FFL it is okay to sell the handgun.

MAJOR ISSUES

Under Brady, there are several major issues that we face as we attempt to implement its requirements, such as:

- What States have existing laws that would qualify as alternatives to the 5-day waiting period?
- Who are the CLEOs for purposes of the criminal record checking requirements?
- What form of notice must the FFL make to the CLEO?

- What is a "reasonable effort?"

ATF's nearly 25 years of previous experience with the Federal firearms laws under the GCA provides us with a solid foundation to correctly interpret many of these issues, and, coupled with the input and assistance from the law enforcement community, we are confident that these and other issues will soon be resolved.

ALTERNATIVES TO BRADY

One major aspect of Brady is that there are a series of alternatives to the notice and 5-day waiting period requirements. Some of these alternatives will essentially make those Brady requirements inapplicable in many States. ATF's Office of Chief Counsel has completed a study of all States to determine which States currently have laws that would qualify as alternatives to the 5-day waiting period requirements. For your convenience, we have enclosed a list of our preliminary findings.

The five alternatives to the 5-day waiting period generally are:

1. Threat to life - Allows the transferee (buyer) to present the FFL a written statement from the buyer's CLEO stating that the buyer needs a handgun because the buyer or his/her household member has received a threat on his/her life. The written statement must be dated within the 10-day period of the buyer's most recent attempt to obtain a handgun. An example of this transaction would typically be a situation where the buyer receives a threat against his/her life and goes to an FFL expecting to immediately obtain a handgun for personal protection. (This would be the beginning of the above 10-day period.) After being told about the 5-day waiting period by the FFL, the buyer contacts his/her CLEO and requests the CLEO to issue such letter. If the CLEO agrees with the buyer's request, the buyer returns to the FFL, presents the written statement, and purchases the handgun. **You should be advised that Brady does not compel the CLEO to issue such letter.**

   ATF does not anticipate very many of these type of transactions occurring. However, because of the potential impact of this type of transaction, you should bear this alternative in mind when deciding who the designated CLEOs may be in your State.

2. Purchase permits - A buyer goes to an FFL and presents a State permit to obtain a handgun that was issued not more than 5 years earlier. The permit must be from the State where the transfer of the handgun is to take place. The permit must also have been issued only after an authorized government official has verified that available information does not indicate that the buyer's possession of a handgun would violate the law.

   ATF believes that this alternative provision will apply in the alternative States listed on the enclosed list of States. We should point out that this section of Brady does not specify what information must be checked by the authorized government official in verifying the buyer's status to possess a handgun. **ATF believes that a State meets the requirements of this section of Brady if the State law requires, that prior to the issuance of the permit, an authorized government official has verified that the "available information" does not indicate that possession by the buyer (transferee) would violate the law.**

3. Instant check systems - A buyer goes to an FFL to purchase a handgun in a State that has an instant check system that requires the FFL to verify (usually while the buyer waits) the buyer's eligibility to possess a handgun by contacting an authorized government official prior to completing the transaction. Such systems are generally designed to work through computer terminals or "900 number" telephone-links from the FFL to a central point within the State where the buyer's background check is made.

   ATF believes that this alternate provision of Brady will apply in the alternative States with instant check systems that are listed on the enclosed list of States. As in the case of purchaser permits, this section of Brady does not specify what information the authorized government official must check prior to notifying the FFL of the buyer's status to possess a handgun. **It is ATF's position that States meet the requirements of this section of Brady if the law of the State requires that, prior to the transfer of a handgun, an authorized government official has verified that the "available information" does not indicate that possession by the buyer (transferee) would violate the law.**

4. Secretary approval - Some handguns are subject to transfer approval under section 5812 of the Internal Revenue Code of 1986. For example, smooth bore pistols or revolvers. These firearms are required to be registered with ATF, and transfers of these firearms require the approval of ATF. Strict background checks are made on any individual who desires to receive approval to possess this type of firearm. Only a relatively small number of FFLs are qualified to handle firearms transactions of this kind. Additionally, a transfer tax is levied and paid before any transfer to an individual is approved by ATF.

5. Impractical transactions - There may be some areas of the Nation where the FFL is located in a place that is extremely remote in relation to the CLEO and the ratio of CLEOs in the State to number of square miles of land area does not exceed .0025. This would also need to be an area where there are no telecommunications systems. If an FFL's business location meets these requirements, he/she can request that ATF certify that the FFL need not meet the requirement to notify the CLEO of the buyer's intent to obtain a handgun because it is impractical.

Before ATF will issue any certification to an FFL stating that because his/her business location is "extremely remote" it would be "impractical" for him/her to comply with the notification of the CLEO, we will require additional data. ATF regulations will require that the FFL provide sufficient written data to support all of the criteria that would make his/her location qualify.

The following captions, CLEO, FORM OF NOTICE TO CLEO, and REASONABLE EFFORT, will cover information that will be critical to law enforcement officials in those States that will be subject to the 5-day waiting period requirements of Brady.

CLEO

On February 28, 1994, in States and for sales that are not alternatives to Brady, FFLs will begin contacting the CLEO for the jurisdiction where the buyer lives in order to provide the CLEO with certain information identifying a potential buyer. The law defines the term "chief law enforcement officer" to mean, "the chief of police, the sheriff, or an equivalent officer, or the designee of any such individual." While the law

itself is broad enough, in some cases, to give the FFL more than one official to contact, we believe the law will clearly permit law enforcement officials to agree that, within a given jurisdiction, one agency will serve the role as CLEO. It is essential that State and local law enforcement officials agree, within a given jurisdiction, that one agency will serve the role of chief law enforcement officer, for purposes of which agency should receive the notice of handgun sales. Letters have been sent to all State Attorney Generals advising them of this key issue.

In the coming weeks, ATF representatives from the Office of Law Enforcement, Compliance Operations, and Assistant Chief Counsel will be meeting with law enforcement officials of each State for the purpose of explaining the provisions of Brady and its effect on your jurisdiction. Initially, these meetings will be targeted for those States that are subject to the 5-day waiting period requirements of Brady, as shown on the enclosed list of States.

We urge you to work with your counterparts on the State and local level to decide who will be the CLEO for your area. Your discussions should also include consideration of the designation of the CLEO for the purposes of the "threat to life" alternative that was previously referenced and the "multiple sales reports" that are referred to later in this letter. Once you have reached a determination, ATF will be able to inform the FFLs when they begin calling us on February 28. **ATF's regulations will make it clear to FFLs that they will be required to abide by instructions from State and local officials as to which agency to contact.**

FORM OF NOTICE TO CLEO

Brady requires that within 1 day of the buyer's completion of the ATF F 5300.35, the FFL must "provide notice" to the CLEO of the contents of the form. If that is done orally, the FFL must also within 1 day, transmit a copy of the ATF F 5300.35 to the CLEO. The law clearly contemplates that notice of the contents of the ATF F 5300.35 will often be separate from the form being sent through the mail. Nonetheless, if the ATF F 5300.35 is faxed to the CLEO for example, both notice and transmittal of ATF F 5300.35 occur simultaneously. **In any event, ATF's position is that the 5-day waiting period runs from the time the CLEO receives actual notice of the contents of the ATF F 5300.35, not from the time ATF F 5300.35 is**

received by the CLEO.

While Brady permits oral notice of the contents of ATF F 5300.35, ATF does not view this as an obligation that CLEOs must set up a system to accept this information over the telephone. **Just as we will require FFLs, by regulation, to comply with your designation as to which agency will serve as the CLEO, we will also require FFLs, by regulation, to abide by your instructions as to the manner in which you will accept actual notice of a buyer's attempt to obtain a handgun.**

REASONABLE EFFORT

Brady requires the CLEO to "make a reasonable effort to ascertain within 5 business days whether the buyer's receipt or possession of a handgun would be in violation of law, including research in whatever State and local recordkeeping systems are available and in a national system to be designated by the Attorney General." Receipt or possession of firearms would violate the Federal law if the buyer falls in any of the categories in item 6 of ATF F 5300.35, i.e. felons, fugitives, etc. State and local laws may expand on these categories and include, for example, violent misdemeanors or habitual drunkards.

The obvious question that Brady raises is what will constitute a "reasonable effort," both in terms of an initial criminal record search and the degree of followup on searches with incomplete findings. Before we answer this question, we need to provide you with a little more background information.

In terms of the initial search, the law clearly anticipates some minimal effort to check commonly available records. It is not realistic to expect the CLEO to have available, or check, every conceivable record system that may contain information relating to categories of prohibited persons. The vast majority of persons who are prohibited from possessing a handgun are prohibited by virtue of some criminal background. Accordingly, a reasonable effort should be made to determine whether the buyer has a criminal record that would make the sale unlawful. Criminal record systems can reveal that the buyer is a fugitive, is under indictment, or has been convicted of a felony. The criminal record systems may also indicate that the buyer is possibly an unlawful user of controlled substances or has had mental health problems. In some States, centralized mental health records may be available. Since Federal prohibitions include persons

adjudicated mentally defective or who have been committed to a mental institution, these records could also be searched if accessible.

With potentially thousands of law enforcement agencies functioning as CLEOs, it is difficult to prescribe precisely what must be done in every instance. The level of research may justifiably vary among law enforcement agencies. In rural, sparsely populated counties where many handgun purchasers are personally known to the CLEO, little or no research may be necessary in many cases. In densely populated urban areas, every potential buyer might be run through the available computer records to determine whether any disqualifying information is on file. Each law enforcement agency serving as the CLEO will have to set it own standards based on its own circumstances, i.e., the availability of resources, access to records, and taking into account the law enforcement priorities of the jurisdiction. The law is designed so that the law enforcement authority who is doing the check, is the one who is most likely to have to deal with the consequences of the buyer obtaining a handgun. Therefore, the CLEO of the buyer's residence has a vested interest in conducting an appropriate check and ultimately is in the best position to determine what is reasonable.

Brady does not require you to report back to the FFL with your findings on the buyer's status. However, unless the FFL hears from you, he/she can complete the sale after 5 business days have elapsed from the time the FFL gave you **actual notice** of the contents of the buyer's statement, as contained on ATF F 5300.35. If, during the 5 days, you obtain information that would indicate that the buyer is prohibited under Federal, State, or local law from receiving or possessing a handgun, you can choose from a number of responsible options. First, you may decide to simply notify the FFL that the transaction would be illegal, in which case the FFL would be prohibited from completing the sale. If the ineligible buyer is a fugitive, or someone you already have under investigation, you may set up a surveillance and arrest the buyer when he/she returns to pick up the handgun. You may choose to turn the matter over to another law enforcement agency that has an interest in the buyer. These options, and variations of these options, are virtually limitless and will ultimately be determined by your particular circumstances.

Now, getting back to the question of what constitutes a

"reasonable effort." To answer this question, it is necessary to examine various key elements of the GCA and the Brady amendments. As noted earlier, under the GCA, the FFL need not have definitive information that the buyer is a prohibited person. He/she is prohibited from making a sale if he/she has **"reasonable cause to believe"** that the buyer is a prohibited person. An example of this would be if you told an FFL not to sell a firearm to a person whom you knew had recently been convicted of a felony or had recently been indicted for a felony offense. Since the enactment of the GCA in 1968, this very situation has occurred many thousands of times. Brady now makes it unlawful for the FFL to sell a handgun unless 5 days have lapsed and the FFL **has not received information from the CLEO that receipt or possession of the handgun by the buyer would violate the law.** Brady also requires the CLEO to destroy the buyers statement (ATF F 5300.35) and any record generated from the statement within 20 days after it was made, unless the CLEO determines that a transaction would violate Federal, State, or local law. Finally, Brady provides that the CLEO shall not be liable for damages for preventing a sale or transfer of a handgun to a buyer who may lawfully receive or possess a handgun.

Since it is unlawful for an FFL to transfer a handgun if he has "reasonable cause to believe" the buyer is prohibited, ATF believes that this is the standard that should govern the CLEO's notification to FFLs. In other words, where you locate information that would lead you to believe that the buyer might be prohibited from acquiring a handgun, you would be justified in reporting to the FFL that you have "reasonable cause to believe" that the buyer is a prohibited person. However, you should make every reasonable effort to determine a disposition of a criminal charge which would be a felony. If the buyer wants to contest his/her status, you can be in the position of shifting the burden of tracking down absolute proof to the buyer. If the buyer can provide you with criminal disposition records or other documents that establish that he/she is not prohibited from receiving or possessing a handgun, you could then notify the FFL that you have withdrawn your objection to the sale.

Note: You are not required to advise the FFL of the circumstances upon which your advice was based. All you need to advise the FFL is that you have reason to believe that the buyer's possession of a handgun would/would not violate the law.

TITLE II - REPORTS OF MULTIPLE HANDGUNS SALES TO STATE AND LOCAL POLICE

This section of the Act (see enclosure) amends section 923(g)(3) of the GCA to read as follows:

(A) "Each licensee shall prepare a report of multiple sales or other dispositions whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more pistols, or revolvers, or any combination of pistols and revolvers totalling two or more, to an unlicensed person. The report shall be prepared on a form specified by the Secretary and forwarded to the office specified thereon and to the department of State police or State law enforcement agency of the State or local law enforcement agency of the local jurisdiction in which the sale or other disposition took place."

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

You should note that "the department of State police or State law enforcement agency of the State or local law enforcement agency" referred to in this section of the Act, is somewhat different than what is contained under the definition of a CLEO in Brady. You should also be advised that this section of the Act will apply to all States, not just those States that do not have acceptable alternatives to the 5-day waiting period. **However, as in Brady, ATF's regulations will make it clear to FFLs that they will be required to abide by**

instructions from State and local officials as to where the multiple sales reports are to be sent.

In practical terms, these amendments will result in your department being notified, through receipt of an ATF F 3310.4, anytime an FFL sells two or more handguns to any unlicensed person during any 5 consecutive business days. This new law does not require you to conduct any inquiry into the buyer's background to ascertain whether his/her receipt or possession of a firearm would be in violation of the law, nor does it contain any provision that would prohibit you from conducting such an inquiry.

ATF will be notifying all FFLs of the new requirements for multiple firearms sales reporting to State or local law enforcement agencies. We will also instruct them to use the current ATF F 3310.4, Report of Multiple Sale or Other Disposition of Pistols and Revolvers, which is identified as Copy 2-ATF Group/POD, until the amended form is printed and becomes available for their use. For your convenience, we have enclosed a draft copy of the revised ATF F 3310.4.

You may soon be receiving copies of the current ATF F 3310.4 from FFLs in your jurisdiction. You should be advised that this new statute prohibits State and local law enforcement agencies from disclosing the form or the contents thereof to any person or entity and that they shall destroy such form and any record of the contents thereof no more than 20 days from the date such form is received. The only exceptions to this requirement would be in those cases involving a purchaser who is prohibited from receiving a firearm under 18 U.S.C. §§ 922(g) and (n), i.e. convicted felon, fugitive, illegal drug user, mental defective, illegal alien, dishonorably discharged, renounced citizenship, and those under indictment for a felony offense.

Currently, we are not aware of what procedures the U.S. Attorney General will institute to address the 6-month disclosure certifications that are referenced under 18 U.S.C. § 923(g)(3)(B).

TITLE III - FEDERAL FIREARMS LICENSE REFORM ACT OF 1993

COMMON AND CONTRACT CARRIERS

The amendments to the GCA in this section of the Act, covering common and contract carriers, were intended to impact incidents of thefts of firearms from interstate

shipments, and you should be familiar with their content.

First, section 922(e), which is the Federal law that generally requires any person to provide written notice to a common or contract carrier anytime a package or container in which there is any firearm or ammunition is to be shipped, was amended as follows:

> "No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm."

The effect of this amendment is that common or contract carriers are now prohibited from requiring or causing the placing of any information on the outside of any package, luggage, or container that would identify the contents as containing a firearm(s). This labeling prohibition also includes the transportation or shipment of any firearm(s) aboard any common or contract carrier by any passenger who delivers the firearm(s) into the custody of the pilot, captain, conductor, or operator for the duration of the trip. However, you should be aware that the Act does not apply to the transportation or shipment of ammunition.

Second, section 922(f), which is the Federal law that generally prohibits common or contract carriers from knowingly transporting or delivering in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would violate the Federal firearms laws, was amended as follows:

> "It shall be unlawful for any common or contract carrier to deliver in interstate of foreign commerce any firearm without obtaining written acknowledgement of the receipt from the recipient of the package or other container in which there is a firearm."

Although the Act's amendment to section 922(f) requires little clarification, you should note that common and contract carriers are not required to obtain written notification of receipt from the recipient for deliveries of ammunition. Furthermore, we do not believe that the amendment to section 922(f) applies to the return of a firearm by a carrier to a passenger who

placed his/her firearm in the carrier's custody for the duration of the trip.

THEFT OF FIREARMS FROM FFLS AND FFL LICENSE FEES

The amendments to the GCA in this section of the Act, theft of firearms from FFLs, and increases in FFLs license fees, do not require much detailed explanation; however, you should be familiar with their content. We would invite your examination for the purpose of further discussion during informational meetings you may attend with ATF representatives in the coming weeks.

CONCLUSION

As you undertake the task of determining the impact of this new law on your jurisdiction, we want you to know that ATF representatives will be available to assist you at each turn. For example:

- ATF will provide "model laws" from other States that are being used to offset the administrative costs that will be associated with administrating Brady.

- ATF's Counsel will be available to assist those States that might be seeking to enact State firearms legislation that would qualify as an alternative to the 5-day waiting period of Brady.

- In cooperation with the Law Enforcement Television Network (LETN), ATF is making telecasts on the new law for the benefit of State and local law enforcement officials. These will be scheduled for broadcast on LETN during the coming weeks.

- ATF's Office of Compliance Operations will begin sending the CLEOs current lists of all FFLs in the CLEO's jurisdiction. They will also begin providing law enforcement officials information on FFL applicants in their jurisdictions.

For your convenience, we have enclosed a list of questions and answers that should be of additional assistance to you. If you have any questions, comments or concerns on this new law, please contact your local ATF office. If they do not have an immediate answer for you, they will find the answer and get back to you.

You may also write to us at the following address:

Mr. Terry L. Cates
Chief, Firearms and Explosives Division
Office of Compliance Operations
Bureau of Alcohol, Tobacco and Firearms
650 Massachusetts Avenue NW.
Washington, DC 20226

You may be assured that ATF will continue to be responsive to your needs.

Sincerely yours,

John W. Magaw

Director

Enclosures

Appendix 7

Bureau of Alcohol, Tobacco and Firearms:
Brady Handgun Violence Prevention Act
Questions and Answers

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

DIRECTOR

BRADY HANDGUN VIOLENCE PREVENTION ACT

QUESTIONS AND ANSWERS
March 18, 1994

1. **Q. Who must comply with the 5-day waiting period requirement imposed by the Brady Act?**

   A. Federally licensed firearms importers, manufacturers, and dealers must comply with the requirement prior to the sale, transfer, or delivery of a handgun to a nonlicensed individual.

2. **Q. How does the Brady Act affect a Federal firearms licensee?**

   A. The waiting period provisions of the law make it unlawful for any Federal firearms licensee to sell a handgun to a nonlicensee unless the licensee:

   (1) obtains a statement from the purchaser (Brady form) containing the purchaser's name, address, and date of birth appearing on a valid photo identification, and a statement that the purchaser is not a felon, under indictment, or otherwise prohibited from receiving or possessing the firearm under the law;

   (2) verifies the identity of the transferee by examining an identification document presented;

   (3) within 1 day after the purchaser furnishes the statement, contacts (by telephone or otherwise) the chief law enforcement officer (CLEO) of the place of the residence of the purchaser and advises such officer of the contents of the statement;

   (4) within 1 day after the purchaser furnishes the statement, provides to the chief law enforcement officer of the place of residence of the purchaser a copy of the statement and the officer makes a reasonable effort to determine whether the purchaser is prohibited from possessing the particular handgun(s) sought to be purchased; and

   (5) the licensee waits 5 business days from the date the licensee furnished notice of the contents of the statement before transferring the handgun to the purchaser (during which period the licensee has not

received information from the chief Law enforcement officer that possession of the handgun by the purchaser would be in violation of the law' OR the licensee receives notice from the chief law enforcement officer of the place of the residence of the purchaser that possession of the handgun by the purchaser does not violate the law.

3. **Q. Does the 5-day waiting period requirement apply to sales of handguns to Law Enforcement?**

A. No. These sales are exempt. However, the dealer must obtain from the purchaser a certification from the purchaser's commanding officer stating that the handgun is being acquired for official use.

4. **Q. What is the effective date of the Brady Act?**

A. The waiting period provisions of the law are effective on February 28, 1994 and cease on November 30, 1998. However, the provisions dealing with the increase in license fees, multiple sales reports, transport of firearms by common carriers, and thefts of firearms from a Federal firearms licensee are permanent and were effective on November 30, 1993.

5. **Q. Are there any exceptions to the 5-day waiting period requirement?**

A. Licensees need not comply with the waiting period requirements in 4 situations. These include handgun transfers (a) pursuant to an offical's written statement of the buyer's need for a handgun based upon a threat to life; (b) to buyers having a State permit or whose records have been checked and in either case 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.

6. **Q. Must a dealer wait 5 days before transferring the handgun to the buyer?**

A. No, if the dealer has received notice from the chief law enforcement officer within the 5 business days that the officer has no information indicating that the buyer's receipt or possession of the handgun would violate the law.

7. **Q. When does the 5-day waiting period begin to run?**

A. At the time the licensee provides notice to the CLEO.

8. **Q. Does the Brady Act apply to licensed collectors?**

A. No, except if they purchase other than a curio or relic handgun. In that event they would have to provide the licensed dealer with a Brady form.

9. **Q. Why can't the Brady form contain information such as P.O.B., gender, race, SS#, etc.?**

A. Because it is restricted to only 5 areas that are specifically referenced under the new law. ATF is offering the buyer the option to place this information on the Brady form.

10. **Q. How much checking does the CLEO have to do?**

A. The CLEO must conduct a check that involves a reasonable effort to determine whether Federal, State, or local law would prohibit receipt by the transferee. For example, checking NCIC, wanted persons, and triple III.

11. **Q. Does the CLEO have to respond to the licensee?**

A. No, the law does not specifically require a response either way. However, if the CLEO fails to respond on prohibited buyers, the officer would not be preventing the sale from occurring.

12. **Q. What is a "handgun" for purposes of the Brady Act?**

A. 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.

13. **Q. Is the dealer required by the Brady Act to obtain and retain a copy of the Brady form?**

A. Yes.

14. **Q. Does the CLEO have to maintain any records?**

A. No. Within 20 days after the date the Brady form was signed and dated by the purchaser, the CLEO must destroy all records except those that involved prohibited buyers.

15. **Q. Does a licensed collector selling a curio of relic**

handgun have to obtain a Brady form?

A. No. Collectors' sales of handguns are not subject to the waiting period requirement. However, a licensed collector would be subject to the requirements of the Brady law if purchasing other than a curio or relic handgun from a licensed dealer.

16. **Q. What is the penalty for a buyer's falsification of the Brady form?**

A. A felony offense under 18 U.S.C. 922(a)(6), 924(a)(1)(A).

17. **Q. What is the penalty for the failure of a FFL to obtain the Brady form?**

A. Whoever knowingly violates these provisions shall be subject to a fine of not more than $100,000, imprisonment for not more than one year, or both.

18. **Q. Were there any provisions under the Brady Act other than the 5-day waiting period?**

A. Yes. The Act contains provisions dealing with multiple sales reports, transport of firearms by common carriers, thefts of firearms from Federal firearms licensees, and an increase in the license fee for dealers in firearms.

19. **Q. What is the change regarding the multiple sales report?**

A. In addition to furnishing multiple sales reports to ATF, licensees are required to submit such reports to the "department of State police or State law enforcement agency of the State or local law enforcement agency of the jurisdiction in which the sale or other disposition took place."

20. **Q. Can the CLEO or other law enforcement official maintain a file of Reports of Multiple Sales received from a licensee?**

A. No. The law prohibits keeping records more than 20 days after the date the form is received by the CLEO. Exceptions would be for those forms involving prohibited persons.

21. **Q. Will current Federal firearms dealers (including pawnbrokers) have to pay an additional fee to maintain their license?**

A. Upon the next renewal of their license they will be required to pay a $90 fee for a 3-year period.

22. **Q. Does the new law on common and contract carriers require that intrastate carriers obtain written acknowledgement of delivery of firearms?**

A. Yes, if the carrier delivers firearms which are being shipped interstate.

23. **Q. What is the penalty for theft of a firearm from the person or premises of a licensed dealer?**

A. As provided by 18 U.S.C. 924(i)(1) - $250,000 fine, 10 years imprisonment, or both.

24. **Q. A licensed firearms dealer attends a gunshow in a town distant from his licensed premises and meets a prospective customer who is interested in acquiring a handgun. However, because the handgun may not be delivered until the 5-day waiting period has elapsed, the dealer finds that he will be unable to meet with the customer and deliver the handgun after the period expires. May the dealer transfer the handgun to the gunshow promoter for delivery to the purchaser at the end of the 5-day waiting period?**

A. No. Assuming the gunshow promoter is unlicensed, the transfer of a handgun between the dealer and the promoter would be subject to the requirements of Brady. Thus, the transfer between the dealer and promoter could not be made without completion of ATF F 5300.35 and compliance with the 5-day waiting period.

25. **Q. Dealer A attends a gunshow in a town distant from his licensed premises, but in the same state in which his licensed premises is located, and meets a prospective customer who is interested in acquiring a handgun. May Dealer A transfer the handgun to Dealer B for delivery to the purchaser at the end of the 5-day waiting period?**

A. Yes. Transfers of handguns between licensees are not subject to the requirements of Brady. Dealer A could transfer the handgun to Dealer B, and Dealer B could then have the purchaser complete ATF Form 5300.35. After Dealer B has complied with the Brady requirements and 5 business days have elapsed, Dealer B could deliver the handgun to the purchaser, assuming the other requirements of the law have been satisfied. In addition, Dealer B should obtain an executed ATF Form

4473 from the purchaser at the time of delivery.

26. Q. **What evidence is required for a CLEO to advise a licensee not to sell a handgun to an individual?**

A. The GCA makes it unlawful for an FFL to transfer a handgun if the FFL has reasonable cause to believe the buyer is prohibited from receiving or possessing the handgun under Federal, State, or local law. The same standard applies to notifications by CLEOs under Brady. Thus, if a records check results in information that an individual may be prohibited from acquiring a handgun, a CLEO would be justified in reporting to the FFL that there is reasonable cause to believe the buyer is a prohibited person. For example, a records check indicates that a purchaser was arrested for a felony but does not indicate the disposition of the charge. CLEOs should make every reasonable effort to determine a disposition of felony charges. However, if a disposition cannot be determined, the CLEO may notify the FFL that there is reasonable cause to believe the buyer is a prohibited person. If the buyer can provide the CLEO with information establishing that he/she was not under indictment for or convicted of the charge, the CLEO could notify the FFL that the CLEO has withdrawn the objection to the sale.

Any questions CLEOs have concerning the effect under State law of convictions for various offenses, deferred adjudications, pardons, expunctions, etc. should be addressed to State authorities. Unless the particular offenses were charged in Federal court, State law will dictate whether the offenses are disabling. Questions concerning the effect of these events under Federal law should be addressed to the appropriate ATF Assistant Chief Counsel.

27. Q. **What is sufficient evidence that an individual is an unlawful user of or addicted to controlled substances so that a CLEO should advise an FFL not to transfer a handgun to the individual?**

A. The disability of unlawful use is imposed only upon a present unlawful user of controlled substances. Evidence of such use might, for example, consist of statements of witnesses to such unlawful use, a series of convictions for unlawful possession where possession was of a quantity indicating personal use, a recent conviction for unlawful possession where the quantity possessed indicated personal use, or medical records showing use of or addiction to controlled substances.

28. **Q. What forms of identification must a dealer obtain from a purchaser under Brady?**

A. The identification document presented by the purchaser must have a photo of the purchaser, name, address, and date of birth, and must be issued by a governmental entity for the purposes of identification of individuals. Examples of acceptable identification documents are driver's licenses and passports.

29. **Q. If a CLEO will accept notification only by mail, what evidence should the dealer obtain to establish the date on which the CLEO received actual notice so he will know when the 5-day waiting period begins?**

A. If a CLEO is notified by mail, licensees are required to send the notice by registered or certified mail (return receipt requested) or by any other method of mailing which will provide a written receipt. The date of receipt by the CLEO will be indicated on the return receipt returned to the FFL. The date of receipt will determine when the 5-day waiting period begins.

30. **Q. What records should a CLEO check to determine whether the purchaser is prohibited from receiving or possessing firearms due to drug abuse, a dishonorable discharge, or being an illegal alien?**

A. Brady requires CLEOs to make a "reasonable effort" to ascertain within 5 business days whether the buyer's receipt or possession of a handgun would be in violation of law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General (NCIC). The law clearly anticipates some minimal effort to check available records. Thus, the CLEO should check every available record system that may contain information relating to the categories of prohibited persons, including drug abusers, individuals dishonorably discharged from the military, and illegal aliens. For example, if centralized mental health records are maintained in the jurisdiction and are accessible by the CLEO, the CLEO should make a "reasonable effort" to determine whether the individual has been committed to a mental institution. Criminal records systems available to the CLEO may disclose whether the purchaser is possibly an unlawful user of controlled substances or an illegal alien.

It is difficult to prescribe what type of records search is a "reasonable effort" in every instance. The

level of research will vary from CLEO to CLEO, depending on the resources available, the personnel available to conduct the searches, and the law enforcement priorities of the CLEO's jurisdiction.

31. **Q. When must a purchaser complete ATF F 5300.35? At what point in the transaction is the purchaser required to execute the ATF F 4473?**

A. Brady requires that ATF F 5300.35 be completed at the time the buyer expresses an intent to acquire a handgun from a licensee. The firearm need not be in the licensee's inventory as long as the buyer has the intent to acquire a handgun. The instructions on ATF F 4473 provide that the form is to be executed by the transferee at the time of delivery of the firearm. Thus, ATF Form 5300.35 would be executed prior to sale of a handgun and Form 4473 would be executed after the sale is made, at the time of delivery of the handgun.

32. **Q. Can a CLEO maintain a data base of handgun purchasers? If so, what kind of information can be maintained in the data base?**

A. CLEOs are required to destroy Forms 5300.35 and records containing information derived from the forms within 20 business days after the date the form was executed. However, CLEOs need not destroy forms or information derived from forms if the purchaser is found to be prohibited by law from receiving or possessing a handgun. Thus, the Brady law does not prohibit CLEOs from maintaining a data base of individuals who are prohibited by law from receiving or possessing handguns.

33. **Q. Can a dealer maintain a data base of handgun purchasers?**

A. Federal law does not preclude a dealer from maintaining a data base of handgun purchasers. However, such a data base would not excuse a dealer from complying with the requirements of Brady for each handgun sale, transfer, or delivery.

34. **Q. If a CLEO advises an FFL not to transfer a handgun to an individual, does the individual have any appeal rights?**

A. The individual may request the CLEO to provide the reason for the determination. The CLEO is required to provide reasons for the determination in writing within

20 business days after receipt of the request.

The law provides that CLEOs and other persons responsible for providing criminal history background information are not liable for damages for preventing the sale of a handgun to an individual who may lawfully receive or possess a handgun.

35. **Q. Brady requires a dealer to wait 5 "business days" before transferring a handgun to a purchaser. What are "business days?"**

A. "Business days" are days on which State offices in the State where the dealer's premises is located are open. If State offices are not open on Saturday and Sunday, these days do not count as "business days," even if the CLEO is open on these days.

36. **Q. May a CLEO charge licensees a fee for performing a background check? If so, and the licensee refuses to pay the fee, is the CLEO still required to perform the records check?**

A. The Brady law does not prohibit the imposition of fees for performing records checks. Such fees would be imposed pursuant to applicable State and local law. If State law prohibits the sale of a handgun unless the fee for the records check is paid, then such a sale could not be made. Under these circumstances a CLEO would have no obligation to perform a records check.

37. **Q. Is the redemption of a pawned handgun subject to the requirements of the Brady law? If so, may the pawnbroker obtain an executed Form 5300.35 and comply with the waiting period requirements before the redemption of the handgun so that at the time of redemption the handgun may be returned to the owner without further delay?**

A. The transfer of a pawned handgun from the licensed pawnbroker to the owner is subject to the requirements of Brady. The licensee may have the owner of the handgun execute the Form 5300.35 at the time the handgun is pawned or at any time during the redemption period. Thus, the licensee may comply with the waiting period requirement prior to the redemption of the handgun.

38. **Q. A handgun is delivered to a licensee by an unlicensed individual for the purposes of repair. Is the return of the repaired handgun subject to the requirements of**

the Brady law? Would the transfer of a replacement handgun from the licensee to the owner of the damaged handgun be subject to the requirements of Brady?

A. Neither the transfer of a repaired handgun nor the transfer of a replacement handgun would be subject to the requirements of the Brady law. Completion of ATF F 4473 is also not required. However, the licensee's permanent acquisition and disposition records should reflect the return of the handgun or transfer of a replacement handgun.

39. **Q. In light of the Brady law, may a licensee sell, transfer, or deliver a handgun to a nonlicensed individual who does not appear in person at the licensed premises?**

A. In states where Brady's 5-day waiting period provisions apply, handguns can only be sold over-the-counter. Unless the purchaser appears in person at the licensed premises, the licensee cannot comply with the requirement in the Brady law that the identity of the purchaser be verified by means of a Government-issued identification document containing a photograph.

40. **Q. When does the 5-day waiting period begin to run under the Brady law?**

A. The 5-day waiting period runs from the time the CLEO receives actual notice of the contents of ATF F 5300.35 not from the time ATF F 5300.35 is received by the CLEO. FFL's are required by regulation to comply with the CLEO's instructions as to the manner in which actual notice must be given.

41. **Q. If an alien legally in the United States has a letter from his embassy or consulate authorizing him to purchase a firearm, would his purchase of a handgun from a licensed dealer be subject to the Federal 5-day waiting period?**

A. The GCA makes it unlawful for a licensee to sell or deliver a handgun to a person who does not reside in the State in which the licensee's business premises is located. An alien legally in the United States having such an embassy or consulate letter is considered a resident of the State in which the embassy or consulate is located and may purchase a firearm from a licensee in that State. If the Federal 5-day waiting period applies to licensees' sales of handguns in that State, the alien's purchase of a handgun from a licensee would

be subject to the waiting period.

It should be noted that if State law prohibits the licensee from selling handguns, the letter of an embassy or consulate in that State authorizing the purchase of a firearm would not allow the alien to purchase a handgun. For example, a letter issued by an embassy in the District of Columbia, where the sale of handguns is prohibited, would not permit the alien to buy a handgun.

42. **Q. The regulations require that dealers in alternative states with "instant check" systems retain with the Form 4473, a statement showing the date of verification, any identifying number, and the name, location, and title of the Government official who did the check. If the Government official refuses to provide FFLs with their name or any of the other information, will the FFL be in violation of the regulation?**

A. FFLs in "instant check" states should request all of the information listed in the regulation. However, if the individual responding to the requested background check refuses to provide the information, the FFL should record all available information and attach it to the Form 4473, including a notation that the individual refused to provide a name, etc.

43. **Q. If an individual repeatedly pawns the same firearm, is the FFL required to do a records check each time the firearm is redeemed?**

A. The fact that the transferee has redeemed the handgun before does not excuse the licensee from complying with the Federal waiting period requirements. The transferee must obtain an executed Form 5300.35, give notice, and comply with all the other requirements of the law before transferring the handgun to the transferee. However, if all the information on a previously executed Form 5300.35 is accurate, the transferee may recertify the form by signing and dating it below the previous signature and date.

44. **Q. Can a licensee contact a chief law enforcement officer other than the CLEO designated by State or local officials?**

A. No. The term "chief law enforcement officer" (CLEO) is defined at 18 U.S.C. § 922(s)(8) as "the chief of police, the sheriff, or an equivalent officer or the

designee of any such individual." The regulations at 27 C.F.R. § 178.102(a)(4) provide, "Where the State or local law enforcement officials have notified the licensee that a particular official has been designated to receive the notice and statement specified in paragraphs (a)(1)(iii) and (iv) of this section, the licensee shall provide the information to that designated official." If the licensee contacts a CLEO other than the designated official, the licensee will be in violation of the law and the regulations.

45. **Q. In the case of a pawned firearm, an installment sale, or a layaway, there may be a long lapse of time between execution of the ATF Form 5300.35 and delivery of the firearm to the transferee. Does the law prohibit a licensee from executing the form and having a records check performed well in advance of delivery?**

A. The law requires licensees to execute ATF Form 5300.35 after the most recent proposal of transfer by the transferee and before transferring the handgun. The law would not prohibit a licensee from transferring a handgun even though there is a long lapse of time between execution of the form and delivery of the firearm. ATF would encourage licensees to have the form executed as close in time to the delivery of the firearm as possible, so that any records check performed will be recent.

46. **Q. What should a licensed pawnbroker do with a handgun he has in pawn when a records check performed under Brady results in the CLEO advising that the transferee is a felon and that the handgun cannot lawfully be returned to the transferee?**

A. The licensee cannot transfer the handgun to the transferee without violating the law and placing the transferee in violation of the law. Federal law would not preclude the licensee from transferring the handgun to the owner's attorney or any other person who is not prohibited by law from receiving or possessing the handgun. The transfer of the handgun to such an individual cannot be a subterfuge for the felon retaining control over the handgun, which would amount to constructive possession. The transfer to such other person must also comply with the Brady law.

47. **Q. Do the provisions of the Brady law apply to the loan or rental of a handgun by a licensee to a nonlicensee?**

A. Yes. The regulations at 27 C.F.R. § 178.97 provide that a licensee may loan or rent a firearm to a nonlicensee for temporary use off the licensed premises for lawful sporting purposes so long as the licensee records the transaction in his permanent records of acquisition and disposition and on ATF Form 4473. For consistency in administering the GCA, ATF takes the position that such a transfer is also subject to the requirements of the Brady law.

48. **Q. In a State where the provisions of Brady apply, may a licensee accept an identification document from a transferee that has an incorrect address?**

A. The term "identification document" is defined in the law and regulations as "a document containing the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United States Government, a State, political subdivision of a State. . .." A transferee who presents a driver's license with an address that is not a current residence would not present a proper "identification document" as that term is defined in the law and the regulations. A licensee may not accept such a document for purposes of complying with Brady. If the individual presents a combination of documents, all issued by a governmental entity, containing all the information required by Brady, the combination of documents would satisfy the identification requirements of the law.

49. **Q. A member of the armed forces wishes to acquire a handgun from a licensee in the State where his permanent duty station is located. The Brady law applies in the State. The individual has a driver's license issued in another State which shows an address for a previous residence. What identification documents must the licensee obtain to comply with Brady?**

A. In the case of military personnel, the purchaser's military identification card and official orders showing that his permanent duty station is within the State where the licensed premises is located will suffice for purposes of the identification requirement of Brady.

50. **Q. Who are the CLEOs for individuals who reside on military installations?**

A. The Provost Marshall or an equivalent official on the military installation is the CLEO for purposes of the Brady law.

51. **Q. Who are the CLEOs for individuals who reside on Indian reservations?**

A. The law enforcement agency having jurisdiction to enforce the law on the Indian reservation is the CLEO for purposes of the Brady law.

52. **Q. Is the sale of a Thompson/Center Contender pistol together with a carbine kit subject to the requirements of the Brady law?**

A. The term "handgun" is defined in the law and regulations as "a firearm which has a short stock and is designed to be held and fired by the use of a single hand." A Thompson/Center Contender pistol together with a carbine kit (consisting of a stock, 21-inch barrel, and a fore-end) is a "handgun" as that term is defined in the Brady law, since it has a short stock and is designed to be held and fired by the use of a single hand.

53. **Q. Do the criminal penalties of the Brady law apply to CLEOs who fail to make a "reasonable effort" to perform a records check?**

A. The criminal penalties of the Brady law do not apply to a CLEO who does not perform a background check of a prospective handgun purchaser or who fails to perform any other duties imposed by the Brady law.

54. **Q. A chief law enforcement officer notifies licensed dealers within his jurisdiction that he will only accept notification of the contents of ATF Form 5300.35 by hand delivery. Would a dealer who sent notice by certified or registered mail be in violation of the Brady law and implementing regulations?**

A. The regulations at 27 C.F.R. § 178.102(a)(3) provide that the notice licensees are required to give CLEOs shall be actual notice and shall be given in a manner acceptable to the CLEO. This regulation was based on the assumption that CLEOs would specify a reasonable manner of delivering the notice. Licensees in

jurisdictions where CLEOs have specified hand-delivery as the only means of delivering notice will satisfy their legal obligation under the Brady law if they provide notice by registered or certified mail.

Appendix 8

Queues Enforth Development, Inc.:
Executive summary to *Identifying Persons, Other Than Felons, Ineligible to Purchase Firearms: A Feasibility Study*

Q.E.D.

QUEUES ENFORTH
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January 1994

In July 1989 the Bureau of Justice Statistics selected Queues Enforth Development, Inc. (Q.E.D.) -- at that time called ENFORTH Corporation -- to conduct a study to determine if an effective method exists for the immediate and accurate identification of persons other than felons who attempt to purchase one or more firearms but are ineligible to purchase firearms by reason of Section 922(g) of Title 18, United States Code. This includes any person who:

- "is an unlawful user of or addicted to any controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802));
- has been adjudicated as a mental defective or who has been committed to a mental institution;
- being an alien, is illegally or unlawfully in the United States;
- has been discharged from the Armed Forces under dishonorable conditions;
- having been a citizen of the United States, has renounced his citizenship."

A final report, entitled "Identifying Persons, Other Than Felons, Ineligible to Purchase Firearms: A Feasibility Study", was published in May 1990. The Executive Summary of this report is attached herein.

The reader should note that four years have elapsed since this study was conducted. During that time, neither Q.E.D. nor -- to our knowledge -- any other organization has attempted to update the study findings.

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

Identifying Persons, Other Than Felons, Ineligible to Purchase Firearms: A Feasibility Study

May 1990

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NCJ-123050

Report of work performed under BJS Contract No. OJP-89-C-006, awarded to ENFORTH Corporation, 432 Columbia Street, Cambridge, Massachusetts 02141. Contents of this document do not necessarily reflect the views or policies of the Office of Justice Programs' Bureau of Justice Statistics or the U.S. Department of Justice.

Executive Summary

Section 6213(c) of the Anti-Drug Abuse Act of 1988 (Public Law 100-690) requires the Attorney General, in consultation with the Secretary of the Treasury, to conduct a study to determine if an effective method exists for the immediate and accurate identification of persons other than felons who attempt to purchase one or more firearms but are ineligible to purchase firearms by reason of Section 922(g) of title 18, United States Code. Such persons include any person who is an unlawful user of or addicted to any controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)); who has been adjudicated as a mental defective or who has been committed to a mental institution; who, being an alien, is illegally or unlawfully in the United States; who has been discharged from the Armed Forces under dishonorable conditions; or who, having been a citizen of the United States, has renounced his citizenship. The results of this study are contained herein. Possible verification alternatives (based on a review of available data sources and procedures) are identified and assessed in terms of eleven pertinent measures. The relative importance of these measures will determine which alternative may be feasible for implementation.

In surveying potential data sources in each disability category, we have kept a number of issues in mind. For example, does the Federal government maintain a centralized data repository, or are repositories dispersed at the State, local, or service provider level? Is the database manual or automated? Is the database complete and accurate? Is the fact that a person is in a database a valid determinant of whether he/she is in a disability category? Are there privacy and confidentiality issues governing access to the database? As noted below, the data sources we surveyed varied widely in respect to these issues.

Data Sources

Data sources for each disability category are summarized below.

Unlawful Users of Controlled Substances

It should first be noted that the law applies only to a person who is an unlawful user. Unfortunately, the Gun Control Act does not specify how recently the unlawful use must have taken place; the National Institute on Drug Abuse (NIDA), for example, defines a current user as anyone who has used drugs within the past month. There is no national database containing a list of all current unlawful users of controlled substances. However, there are four general types of drug-related databases that contain names of persons who come in contact with various government agencies and that could potentially be used to determine whether a person is in this disability category; they include (1) drug treatment databases, maintained independently by thousands of local treatment facilities, (2) data collected by the Drug Abuse Warning Network, a National Institute on Drug Abuse-funded large scale data collection effort, (3) State and Federal criminal history databases, which contain data on persons recently arrested, and possibly convicted, on drug-related charges, and (4) drug testing databases, particularly those used by pretrial services agencies to test new arrestees. Not surprisingly, these databases contain a very small fraction of the 14.5 million persons who are estimated by the National Institute on Drug Abuse to be in this disability category.

Mental Defective

This category includes persons adjudicated by a court, authority, commission, or board (with jurisdiction over mental health matters) as being mentally defective or committed by such a court, authority, commission, or board to a mental institution. There are literally hundreds of such courts, authorities, commissions, and boards that could either declare a person mentally defective or commit a person to a mental institution. In addition, there are a variety of mental health facilities in the U.S., including State-run mental institutions and private psychiatric facilities. Many veterans hospitals and general hospitals also offer psychiatric services. The largest, centralized databases are those maintained by State mental health departments. In fact, those states currently verifying mental health information utilize only information maintained by their State mental health departments, which have records on some 67 percent of the 2.7 million persons who are estimated to belong in this category. This estimate does not include persons who voluntarily seek admission to mental health facilities, inasmuch as in United States v. Hansel (474 F. 2d 1120 [8th Cir. 1973]) it is implied that such admissions are not covered by this category.

Illegal Alien

The Immigration and Naturalization Service (INS) is the Federal agency charged with administering laws related to aliens. Typically, illegal aliens are classified based on how they enter the U.S., either (1) illegally or (2) legally, in which case the alien's legal status must have changed and some provision of his/her visa was violated. The INS has a number of databases that could potentially be used to identify illegal aliens who attempt to purchase firearms, including the Non-Immigrant Information System, which has records of most non-immigrants legally entering the U.S. by air or sea, and the Deportation Accounting and Control System, which supports deportation case management. However, it is not surprising that the vast majority of illegal aliens are not included in any INS database, inasmuch as most illegal aliens enter the country illegally and have not been apprehended or identified by the INS. Based on INS and Census Bureau figures, the total number of illegal aliens is estimated to be 2.3 million. (See page 59 for details on basis for estimation.)

Dishonorably Discharged

The Defense Manpower Data Center (DMDC) in Monterey, California maintains the only automated database of military service records. An average of 400 dishonorable discharges are issued each year, implying that approximately 20,000 people have been issued dishonorable discharges over the past 50 years. DMDC officials estimate that their database contains 90 percent of the names of the estimated 7,200 persons who have received dishonorable discharges since 1971, which is equivalent to 36 percent of the 20,000 target population figure. In spite of this low percentage, the database is centralized and accurate, unlike the databases containing the names of persons in the unlawful users of controlled substances, mental defective, and illegal alien disability categories.

Renunciate

The requirements for renouncing U.S. citizenship are stated in 8 USC 1481(a)(5) and (6): formal renunciation must be made voluntarily before a diplomatic or consular officer of the U.S. in a foreign state, or, when the U.S. is at war, in the U.S. before an officer designated by the Attorney General. The Passport Services Office of the U.S. State Department maintains a database of renunciates on the Automated Visa Lookout System. This system contains a "near 100 percent" listing of persons who have renounced their citizenship since 1941. According to State Department personnel, roughly 200

persons renounce their citizenship each year. Thus, since 1941, an estimated 9,800 persons have renounced their citizenship; consequently, the target population of the renunciate disability category is the smallest of the disability categories.

The following table summarizes data availability and coverage for each of the five disability categories.

	Number of Persons				
		For Whom Records Exist		With Automated Records	
	In Disability Category (Est.)	Total	% of all in Category	Total	% of all in Category
Unlawful Users of Controlled Substances	14,500,000	470,800	3%	247,000	2%
Mental Defectives	2,700,000	2,700,000	100%	800,000	30%
Illegal Aliens	2,300,000	550,000	24%	550,000	24%
Dishonorably Discharged	20,000	20,000	100%	7,200	36%
Renunciates	9,800	9,800	100%	9,800	100%

Note: These columns should not be added since there may be substantial overlap across the disability categories, particularly unlawful users of controlled substances and those known to be convicted felons.

As can be seen, the coverage problem is greatest for the category which is estimated to have the most members (i.e., unlawful users of controlled substances); it is least for the category with the fewest members, renunciates.

Note, however, that even when appropriate records exist, there may be legal prohibitions on accessing and sharing them. For the unlawful users of controlled substances category, Federal regulations (42 C.F.R. Part 2) now prohibit drug treatment programs receiving Federal funds from disclosing patient records. In addition, many states have their own laws requiring confidentiality of drug treatment records. For the mental defective category, every State has mental health record confidentiality laws, although some states explicitly allow release of such information for the purposes of determining firearm eligibility. For both the dishonorably discharged and renunciate categories, the Defense and State Departments indicate that the Privacy Act (5 U.S.C. 552a(b)) prohibits routine dissemination of data about individuals in these categories. Thus, it appears that only the category of

illegal aliens is currently free from legal restrictions on access.

Procedures For Eligibility Verification

Two or three possible eligibility verification methods of data access were investigated for each disability category. Basically, the methods can be divided into three groups. First, "written request" methods entail having local licensing authorities -- usually, local police departments -- request information from the agencies maintaining the data repositories. Many licensing authorities currently utilize this method to verify firearm eligibility, particularly for the mental defective category. A second group of verification methods involve having data repositories share pertinent records with an integrated firearm eligibility system. This appears advantageous if the databases are widely distributed at the State, local, or service provider level, as is the case with the unlawful users of controlled substances and mental defective categories. The third group relies on verifying information or documents provided by the firearm purchaser to the firearm dealer, rather than remote data sources. Such eligibility verification methods can mitigate data validity problems which arise when a person's status relative to a disability category can change quickly, as is the case with the unlawful users of controlled substances and illegal alien categories. They may, however, present problems with fraudulent documents.

Costs

Each procedure to access data and establish applicant eligibility has been assessed in terms of costs (start-up and operating), legal and policy considerations, accuracy, completeness and validity of data, resources required, time for implementation and individual checks and the extent to which the persons and their disability category are included in the database.

It should be noted that inasmuch as this is a feasibility study and that development and implementation issues have not been fully addressed, we have not been able to build a detailed cost model. We have made some gross estimates and defined three cost ranges: low (less than $10 million), moderate ($10 million to $100 million), and significant (greater than $100 million).

Under the "written request" method of eligibility verification, moderate start-up and operating costs are required. If records are shared in an integrated firearm system, initial start-up and operating costs will be significant. If, as in the second method, an integrated firearm system is operational, the marginal cost to add any additional disability categories would be low, although costs will still be incurred, primarily by the organizations providing information relevant to the additional disability categories. Under the third verification method mentioned above, no system costs are incurred if the purchaser of a firearm provides verifying information or documents. If the felon system databases are utilized to identify persons arrested for drug-related charges, no additional start-up and operating costs are required.

Integrated Firearm System Considerations

Integrating the individual databases into a single system raises a variety of issues. Such a system would require that (1) drug treatment centers, (2) courts, authorities, commissions, and boards with mental health jurisdiction, (3) the INS, (4) the Defense Manpower Data Center, and (5) the Passport Services Office share relevant records on either a centralized or decentralized (i.e., distributed) basis. It would entail significant start-up and operating costs for both the integrated system and the literally thousands of local, State, and Federal agencies which must either share or access the data. It would also require removing the current legal impediments for sharing or accessing the required data, as well as establishing new regulations and procedures for ensuring appropriate privacy and confidentiality protections. For three of the disability categories, the data accuracy, completeness, and validity would generally be good. The exceptions would be the unlawful users of controlled substances and illegal alien categories, both of which would have poor data validity. This system would provide for timely verification, since it is based on a point-of-sale verification approach. As noted earlier, however, obtaining the cooperation of thousands of data repositories to share their data, even if legal impediments were overcome, would be very time consuming, not to mention difficult to attain. Identification accuracy would also be poor, since, other than for the felon category, there are no fingerprints or other biometric identifiers available to verify the identity of the firearm purchaser. Indeed, there would be no way to prove

positively that a firearm purchaser is the person whose records can be accessed through the integrated system.

Issues To Be Considered

In assessing the feasibility of a system to prevent firearm sales to ineligible persons other than felons, a variety of technical and policy issues are presented. specifically, these issues focus on:

Data Quality

- Whether the level of data quality and coverage in existing databases is adequate to ensure that pre-sale checks are "accurate", as required by statute;
- The extent to which current or anticipated levels of automation permit data to be accessed in sufficient time for "immediate" pre-sale checks as required under the statute;
- Whether the identification data included in the relevant databases is sufficient to prevent an unacceptable level of "false positives" (i.e., erroneous identification of eligible persons);

System Configuration

- Whether the final system configuration should require that data currently maintained by different agencies be included in a single database, linked through a common system, or maintained in decentralized databases;
- Whether the administration and policy control over operation of the system should be assigned to the Federal government, a consortium of states, or some combination of the two;
- The extent to which the non-felon checks should be coordinated with the felon identification database checks;

Legal and Policy Questions

- Whether commingling of criminal and noncriminal records (including drug and mental

health records) in a single system presents policy problems;

- The extent to which legislation or regulations are needed to protect the confidentiality of data and to prevent unauthorized access to systems holding both criminal and noncriminal justice data;

- The need for legal and administrative procedures to ensure that persons prohibited from purchasing a firearm are permitted to review and challenge the data upon which the denial was based;

- The extent to which current Federal and/or State legislation which prevents the release of data necessary to implement the record checks can be amended to facilitate implementation of appropriate record checks;

- Whether the definitions as set out in Section 922 of the Gun Control Act create major impediments to data collection, and, if so, whether such definitions should be modified.

Appendix 9

State of Oregon
Dealer's Record of Sale of Handgun

TRIPLICATE	STATE OF OREGON DEALER'S RECORD OF SALE OF HANDGUN		Dealer's Transaction Number

SECTION A - MAY BE COMPLETED BY EITHER DEALER/SELLER OR PURCHASER.

PURCHASER'S NAME (Last, First Middle)	Male [ ] Female [ ]	AGE	HEIGHT	WEIGHT	RACE	EYE	HAIR	PLACE OF BIRTH

DATE OF BIRTH (MM/DD/YY)	SOC (Voluntary)	PLACE OF EMPLOYMENT

PURCHASER'S PERMANENT STREET ADDRESS	CITY, TOWN	STATE	ZIP	TELEPHONE

SECTION B - MUST BE COMPLETED PERSONALLY BY PURCHASER. An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question.

1. Are you less than 21 years of age?	
2. Have you been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony? Conviction of a felony means a sentence where you could have been incarcerated in a federal or state penitentiary.	
3. Have you been convicted of a misdemeanor involving violence or found guilty, except for insanity under ORS 161.295, of a misdemeanor involving violence within the previous four (4) years? Misdemeanor involving violence means: Assault in the fourth degree, Menacing, Recklessly endangering another person, Assaulting a public safety officer, or Intimidation in the second degree.	
4. Do you have any outstanding warrants for arrest for a felony?	
5. Are you free on any form of pretrial release for a felony?	
6. Were you committed to the Mental Health and Developmental Disability Services Division under ORS 426.130 within four (4) years prior to January 1, 1990?	
7. Have you been found, after January 1, 1990, to be mentally ill and subject to an order under ORS 426.130 that you be prohibited from purchasing or possessing a firearm as a result of the mental illness?	
8. If you have answered "yes" to any of the questions above, have you been granted relief from that disability under ORS 166.274 and 18 U.S.C. 925(c) or have you had your record expunged under the law of this state or an equivalent law of another jurisdiction and federal government? Documentation must be provided to dealer/seller.	

I hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to questions 1 through 7 is prohibited from purchasing a firearm, except as provided by State or 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 Class A misdemeanor.

SIGNATURE OF PURCHASER (In Triplicate)	PURCHASE DATE	WITNESSED BY SALESPERSON (In Triplicate)

SECTION C - TO BE COMPLETED BY DEALER/SELLER DESCRIPTION OF HANDGUN

MAKE	MODEL	SERIAL NUMBER	CALIBER	BARREL LENGTH	FINISH	PISTOL [ ] REVOLVER [ ]
MAKE	MODEL	SERIAL NUMBER	CALIBER	BARREL LENGTH	FINISH	PISTOL [ ] REVOLVER [ ]
MAKE	MODEL	SERIAL NUMBER	CALIBER	BARREL LENGTH	FINISH	PISTOL [ ] REVOLVER [ ]

PROOF OF IDENTIFICATION (One piece of identification must bear purchaser's photograph)		DEALER/SELLER INFORMATION (Business Stamp may be used in this block)		
1. Type (Photo):	Number:	BUSINESS NAME		
2. Type (Other):	Number:	BUSINESS STREET ADDRESS		
CONCEALED HANDGUN LICENSE County/	Number/	BUSINESS MAILING ADDRESS		
POLICE OFFICER IDENTIFICATION Agency/	Number/	CITY, TOWN	ZIP	TELEPHONE

LAW ENFORCEMENT AGENCY DUPLICATE SUBMITTED TO: Police Department [ ] City Name/
Sheriff's Office [ ] County Name/

NOTICE TO DEALERS: The ORIGINAL is for your files. If spoiled in making out, void entire 3 part form and do not destroy. Keep voided form in your records and begin a new form. Place the purchaser's right and left thumb prints in the boxes provided on the back of the TRIPLICATE of this form. The DUPLICATE sheet of the form must be hand delivered or mailed to the local law enforcement authority on the day of the sale. If the sale is made in a district where there is no municipal police department, the DUPLICATE sheet must be hand delivered or mailed first class to the sheriff of the county wherein the sale is made. The TRIPLICATE sheet of the form must be mailed first class to the Oregon State Police on the day of the sale.

The purchaser must present to the dealer/seller two (2) pieces of current identification, one of which must bear a photograph of the purchaser.

Fifteen calendar days shall have elapsed after application for the purchase and the register entries have been completed, except that if the seller is notified by the Oregon State Police that the thumbprints on the triplicate are illegible, a new set of thumbprints shall be taken and sent to the Oregon State Police and a new 15-day period shall begin.

The seller may deliver a handgun at the time of sale to a person holding a valid concealed handgun license issued by this state or to a person presenting identification that shows the person is a police officer as defined in ORS 181.610.

"Police Officer" includes an officer or member of a law enforcement unit who is employed full- or part-time as a peace officer commissioned by a city, port, school district, mass transit district, county, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission or the Governor or who is a member of the Department of State Police and who is responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security. Also includes a corrections, parole and probation, US Marshall or agent of the FBI, and city and county reserve officers.

Violation of this law (ORS 166.420) is a Class C felony.

The DUPLICATE and TRIPLICATE may be folded on the dotted lines and mailed in a standard business envelope.

NOTICE TO PURCHASER: Disclosure of Purchaser's Social Security Account Number is voluntary; solicitation of the number is authorized under ORS 166.420. It will be used only as a means of identification.

Areas are provided for the simultaneous left and right four finger impressions. These fingerprints are not required by law, however, they permit the Oregon State Police to make a more efficient and quicker search of the thumbprints. The additional fingerprints significantly reduce the rejection of handgun sale forms due to poor quality of thumb prints causing the seller to obtain new thumb prints and begin a new 15-day waiting period.

ON THE DAY OF THE SALE, MAIL TRIPLICATE TO:

OREGON STATE POLICE
IDENTIFICATION SERVICES SECTION
3772 PORTLAND ROAD NE
SALEM, OREGON 97303-2500

Telephone (503) 378-3070

LEFT 4 FINGERS TAKEN SIMULTANEOUSLY

RIGHT 4 FINGERS TAKEN SIMULTANEOUSLY

LEFT THUMB	RIGHT THUMB

Appendix 10

Public Law 103-209:
National Child Protection Act of 1993

PUBLIC LAW 103-209—DEC. 20, 1993

NATIONAL CHILD PROTECTION ACT OF 1993

Public Law 103-209
103d Congress

An Act

Dec. 20, 1993
[H.R. 1237]

To establish procedures for national criminal background checks for child care providers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

National Child Protection Act of 1993.
Inter-governmental relations.
42 USC 5101 note.
42 USC 5119.

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Child Protection Act of 1993".

SEC. 2. REPORTING CHILD ABUSE CRIME INFORMATION.

(a) IN GENERAL.—In each State, an authorized criminal justice agency of the State shall report child abuse crime information to, or index child abuse crime information in, the national criminal history background check system.

(b) PROVISION OF STATE CHILD ABUSE CRIME RECORDS THROUGH THE NATIONAL CRIMINAL HISTORY BACKGROUND CHECK SYSTEM.—(1) Not later than 180 days after the date of enactment of this Act, the Attorney General shall, subject to availability of appropriations—

(A) investigate the criminal history records system of each State and determine for each State a timetable by which the State should be able to provide child abuse crime records on an on-line basis through the national criminal history background check system;

(B) in consultation with State officials, establish guidelines for the reporting or indexing of child abuse crime information, including guidelines relating to the format, content, and accuracy of criminal history records and other procedures for carrying out this Act; and

(C) notify each State of the determinations made pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of each State timetable that the State—

(A) by not later than the date that is 3 years after the date of enactment of this Act, have in a computerized criminal history file at least 80 percent of the final dispositions that have been rendered in all identifiable child abuse crime cases in which there has been an event of activity within the last 5 years;

(B) continue to maintain a reporting rate of at least 80 percent for final dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding 5 years; and

(C) take steps to achieve 100 percent disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

(c) LIAISON.—An authorized agency of a State shall maintain close liaison with the National Center on Child Abuse and Neglect, the National Center for Missing and Exploited Children, and the National Center for the Prosecution of Child Abuse for the exchange of technical assistance in cases of child abuse.

(d) ANNUAL SUMMARY.—(1) The Attorney General shall publish an annual statistical summary of child abuse crimes.

(2) The annual statistical summary described in paragraph (1) shall not contain any information that may reveal the identity of any particular victim or alleged violator.

(e) ANNUAL REPORT.—The Attorney General shall, subject to the availability of appropriations, publish an annual summary of each State's progress in reporting child abuse crime information to the national criminal history background check system.

(f) STUDY OF CHILD ABUSE OFFENDERS.—(1) Not later than 180 days after the date of enactment of this Act, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall begin a study based on a statistically significant sample of convicted child abuse offenders and other relevant information to determine—

(A) the percentage of convicted child abuse offenders who have more than 1 conviction for an offense involving child abuse;

(B) the percentage of convicted child abuse offenders who have been convicted of an offense involving child abuse in more than 1 State; and

(C) the extent to which and the manner in which instances of child abuse form a basis for convictions for crimes other than child abuse crimes.

(2) Not later than 1 year after the date of enactment of this Act, the Administrator shall submit a report to the Chairman of the Committee on the Judiciary of the Senate and the Chairman of the Committee on the Judiciary of the House of Representatives containing a description of and a summary of the results of the study conducted pursuant to paragraph (1). Reports

SEC. 3. BACKGROUND CHECKS. 42 USC 5119a.

(a) IN GENERAL.—(1) A State may have in effect procedures (established by State statute or regulation) that require qualified entities designated by the State to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon an individual's fitness to have responsibility for the safety and well-being of children.

(2) The authorized agency shall access and review State and Federal criminal history records through the national criminal history background check system and shall make reasonable efforts to respond to the inquiry within 15 business days.

(b) GUIDELINES.—The procedures established under subsection (a) shall require—

(1) that no qualified entity may request a background check of a provider under subsection (a) unless the provider first provides a set of fingerprints and completes and signs a statement that—

(A) contains the name, address, and date of birth appearing on a valid identification document (as defined in section 1028 of title 18, United States Code) of the provider;

(B) the provider has not been convicted of a crime and, if the provider has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) notifies the provider that the entity may request a background check under subsection (a);

(D) notifies the provider of the provider's rights under paragraph (2); and

(E) notifies the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to a child to whom the qualified entity provides child care;

(2) that each provider who is the subject of a background check is entitled—

(A) to obtain a copy of any background check report; and

(B) to challenge the accuracy and completeness of any information contained in any such report and obtain a prompt determination as to the validity of such challenge before a final determination is made by the authorized agency;

(3) that an authorized agency, upon receipt of a background check report lacking disposition data, shall conduct research in whatever State and local recordkeeping systems are available in order to obtain complete data;

(4) that the authorized agency shall make a determination whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon an individual's fitness to have responsibility for the safety and well-being of children and shall convey that determination to the qualified entity; and

(5) that any background check under subsection (a) and the results thereof shall be handled in accordance with the requirements of Public Law 92–544.

(c) REGULATIONS.—(1) The Attorney General may by regulation prescribe such other measures as may be required to carry out the purposes of this Act, including measures relating to the security, confidentiality, accuracy, use, misuse, and dissemination of information, and audits and recordkeeping.

(2) The Attorney General shall, to the maximum extent possible, encourage the use of the best technology available in conducting background checks.

(d) LIABILITY.—A qualified entity shall not be liable in an action for damages solely for failure to conduct a criminal background check on a provider, nor shall a State or political subdivision thereof nor any agency, officer or employee thereof, be liable in an action for damages for the failure of a qualified entity to take action adverse to a provider who was the subject of a background check.

(e) FEES.—In the case of a background check pursuant to a State requirement adopted after the date of the enactment of this Act conducted with fingerprints on a person who volunteers with a qualified entity, the fees collected by authorized State agencies

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 5. DEFINITIONS. 42 USC 5119c.

For the purposes of this Act—

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

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

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

injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by any person;

(4) the term "child abuse crime information" means the following facts concerning a person who has been arrested for, or has been convicted of, a child abuse crime: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the child abuse crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information that the Attorney General determines may be useful in identifying persons arrested for, or convicted of, a child abuse crime;

(5) the term "child care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children by persons having unsupervised access to a child;

(6) the term "national criminal history background check system" means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification;

(7) the term "provider" means—

(A) a person who—

(i) is employed by or volunteers with a qualified entity;

(ii) who owns or operates a qualified entity; or

(iii) who has or may have unsupervised access to a child to whom the qualified entity provides child care; and

(B) a person who—

(i) seeks to be employed by or volunteer with a qualified entity;

(ii) seeks to own or operate a qualified entity; or

(iii) seeks to have or may have unsupervised access to a child to whom the qualified entity provides child care;

(8) the term "qualified entity" means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides child care or child care placement services, including a business or organization that licenses or certifies others to provide child care or child care placement services; and

(9) the term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific.

Approved December 20, 1993.

LEGISLATIVE HISTORY—H.R. 1237:

HOUSE REPORTS: No. 103-393 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 139 (1993):
Nov. 20, considered and passed House and Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 29 (1993):
Dec. 20, Presidential remarks.

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Appendix 11

American Bar Association
Center on Children and the Law
memorandum on the
National Child Protection Act of 1993

AMERICAN BAR ASSOCIATION
Center on Children and the Law
1800 M Street, NW
Washington, DC 20036
(202) 331-2250
ABA Fax (202) 331-2220

MEMORANDUM

TO: State Criminal Record Repositories, Child Care/Youth Service Organizations, Child Protection Advocates and other Interested Parties

FROM: Noy S. Davis, Esq.
American Bar Association Center on Children and the Law

DATE: January 6, 1994

RE: The National Child Protection Act of 1993 (aka "the Oprah bill"), Public Law 103-209.

On December 20, 1993, President Clinton signed the National Child Protection Act into law. The ABA Center on Children and the Law has received a number of inquiries about the Act. In particular, individuals have asked whether the Act requires or permits all child care and youth service organizations to conduct national criminal record checks on their workers. Because the Center has undertaken a two-year project, *Effective Screening of Child Care and Youth Service Workers*,[1] in which various methods used to identify potentially abusive persons working with children are being examined, we have followed the development of the federal legislation closely. This memorandum answers some basic questions about the Act and summarizes its provisions. Should you have any further questions, I can be reached at (202) 331-2244.

Does the Act require or permit child care or youth service organizations to conduct criminal record checks on their current or prospective workers?

The Act does not itself either require or permit any organizations to conduct state or federal criminal record checks on their workers. The Act doesn't address access to state criminal records at all; the right of access to state criminal records remains a matter of state law. With respect to national criminal background checks on persons working with children, the Act maintains the framework set forth in 1972 appropriations legislation which *requires that there be a state statute (approved by the U.S. Attorney General) that authorizes a national criminal background check through a*

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[1]The study, *Effective Screening of Child Care and Youth Service Workers*, will be completed and a final report issued in July 1994.

designated state agency before any such check can be made.[2] Thus, for child care or youth service organizations to be able to obtain any information based on national criminal background checks on their workers, they still must: (1) be required or permitted to do so under an existing state statute (one that has also been approved by the Attorney General); and (2) request the check through a designated state agency, NOT directly through the FBI.

Every state has a criminal record repository, which may be operated through the state police, public safety, or law enforcement department or the state bureau of investigation. Generally, this state agency handles the requests for any state and federal criminal record checks on persons working with children. (In addition, a state regulatory agency, such as the state department of human services/resources, frequently is involved as a result of licensing, certification or registration provisions requiring criminal record checks on certain persons working with children. This agency *may* be the agency to whom the child care organization applies for the check.)

What does the Act do?

The Act enhances, and focuses attention on, the existing national background check system to which child care placement and broadly-defined child care[3] organizations may, depending upon state law and through a state agency, be required to obtain information as to whether an individual (a current or prospective operator, owner, employee, volunteer or person who may have unsupervised access to a child to whom the organization provides services) has been convicted of, or is under pending indictment for, a crime that bears upon the individual's fitness to have responsibility for the safety and well-being of children.

The Act builds upon the FBI's criminal record system and encourages states to authorize the use of criminal record checks on persons who work with children through three main components: (1) provisions that augment the scope and accuracy of state records that, along with federal records, comprise the existing national criminal background check system maintained by the FBI (hereinafter FBI Checks); (2) requirements and guidelines for any state procedures that may require FBI Checks on current or prospective

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[2]See Pub. L. 92-544, Title II, §201, 1972 U.S.C.C.A.N. (86 Stat.) 1307 (relevant language also set forth in note, entitled *Funds for Exchange of Identification Records*, following 28 U.S.C.A. §534 (West 1993)). Duly enacted state statutes have generally been approved by the Attorney General. States seeking to enact legislation authorizing national criminal background checks may wish contact the Control Terminal Agency for the National Crime Information Center (NCIC) in their state or NCIC in Washington, D.C.

[3] The Act defines "child care" to include the provision of care, treatment, education, training, instruction, supervision, or recreation to children by persons having unsupervised access to a child (hereinafter Child Care and Service refers to these types of activities as well as child care placement services). The Act §5(c). What constitutes "unsupervised access" is not set forth in the Act. If the term refers to situations where a person is not under line-of-sight supervision, then most child care and youth service organizations would probably fall within the Act's definition of child care. If the term refers to a lack of any oversight of child or youth service workers, then most organizations would probably not fall within the Act's definition of child care. The legislative history indicates that Congress intends the Act to potentially encompass a broad spectrum of child care and youth service workers, so "unsupervised access" is likely to be interpreted so as to include most organizations.

owners, operators, employees, and volunteers of Child Care and Service organizations as well as persons who have or seek to have unsupervised access to a child to whom the orga[illegible]tion provides services; and (3) funding provisions which may make monies available to ass[illegible] states in reporting state child abuse crimes and that, beginning in December 1994, may reduce other monies if states are not in compliance with the Act.

A more detailed discussion of the Act's provisions follows. (Copies of the Act and the Report of the House Committee on the Judiciary are attached.)

SUMMARY OF THE ACT'S PROVISIONS

I. STATE CHILD ABUSE CRIMES: STATES MUST REPORT OR INDEX CRIMES IN THE FBI SYSTEM

The Act *requires* State[4] criminal justice agencies to report or index State child abuse crime information in the FBI's criminal record system and sets up a framework for the U.S. Attorney General to oversee this effort. Currently, the FBI maintains 24 million criminal history records voluntarily submitted by the States. An enhanced national criminal history record system is being developed in which state criminal records would be available through the FBI by means of an interstate indexing system (known as the Interstate Identification Index or III). Ultimately, it is contemplated that state criminal records will be available on-line for employment screening purposes through this indexing system and a computerized national fingerprint file (known as the Integrated Automated Fingerprint Identification System or IAFIS). As the House Committee Report on the Act makes clear, the Act does not require States or the FBI to create any new databases; rather it is "intended to give impetus to efforts currently underway to implement the IAFIS and the [III]."[5]

A. Scope of Crimes and Information to be Reported or Indexed by States to the FBI. "Child abuse crime" is defined as a crime committed under any State law that "involves the physical or mental injury, sexual abuse or exploitation, negligent treatment or maltreatment of a child by any person." (The Act does not require States to report information about crimes that do not involve children.) The word "involves" is key here. A charge or conviction for assault, kidnapping, rape, etc. where the child was the purported victim will need to be reported even though the offense is not specifically labeled as a child abuse or child sexual abuse crime. Specifically, the information that must be reported includes identifying information about the person who has been arrested for or convicted of the crime (e.g., full name, race, sex, date of birth, height, weight, fingerprints), a description of the charges and any other information that the Attorney General determines to be useful in identification.

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[4]A "State" is broadly defined under the Act to include the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam and the Trust Territories of the Pacific. In this memorandum, "State" has the same broad definition.

[5]H.R. Rep No. 103-393, 103d Cong., 1st Sess. at 7 (1993).

B. Attorney General to Oversee Reporting and Indexing by Establishing State Timetables and Guidelines for Reporting or Indexing. The Act requires the Attorney General (by June 1994 and subject to the availability of appropriations) to: (1) determine a timetable by which each State should be able to provide child abuse crime records on an on-line basis through the FBI; and (2) establish guidelines for the reporting or indexing of child abuse crime information in consultation with State officials.

C. Disposition Data Levels as Part of State Timetables. The Act mandates that each State timetable (determined by the Attorney General for each State to report child abuse crime information) require the State: (1) not later than December 1996 to have in a State computerized criminal history file at least 80 percent of the final dispositions that have been rendered in all identifiable child abuse crime cases in which there has been an event of activity within the last 5 years; (2) continue to maintain a reporting rate of at least 80 percent for final dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding 5 years; and (3) take steps to achieve 100% disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

D. Additional Duties of the Attorney General: Annual Summary of Child Abuse Crimes and Annual Report of Each State's Progress in Reporting or Indexing Child Abuse Crimes. The Act imposes two additional obligations on the Attorney General, subject to the availability of appropriations. The Attorney General must publish an annual statistical summary of the nation's child abuse crimes (which is not to contain any information that may reveal the identity of any particular victim or alleged violator). Further, the Attorney General is to publish an annual summary of each State's progress in reporting or indexing child abuse crime information to the FBI.

E. OJJDP Study of Child Abuse Offenders. Not later than June 1994, the Administrator of the Office of Juvenile Justice and Delinquency Prevention is required to begin a study of convicted child abuse offenders and other relevant information to determine: (1) the percentage of convicted child abuse offenders who have more than one conviction for an offense involving child abuse; (2) the percentage of convicted child abuse offenders who have been convicted of an offense involving child abuse in more than one State; and (3) the extent to which and the manner in which instances of child abuse form a basis for convictions for crimes other than child abuse crimes. The OJJDP Administrator is to submit a report with a summary of the study's results to the House and Senate Committees on the Judiciary by December 1994.

II. STATE ACTION ON FBI CHECKS UNDER THE ACT

As previously noted, the Act does not itself permit or require FBI Checks on Child Care and Service providers nor does it mandate States to enact laws permitting or requiring FBI Checks on Child Care and Service providers. However, *if* States have (and presently approximately 30 states have some provision authorizing FBI checks on some types of Child Care and Service workers) or later enact similar laws, then the Act: (1) requires States to use reasonable efforts to respond to FBI Check requests within 15 business days; (2) sets forth guidelines for State procedures regarding FBI Checks; (3) authorizes the Attorney

General to issue regulations regarding State procedures for FBI checks; (4) contains provisions limiting liability; and (5) limits fees that may be charged for checks on some volunteers and admonishes States to establish background check fees for non-profit entities that "do not discourage volunteers from participating in child care programs." Each of these provisions is discussed in greater detail below.

A. "Reasonable Efforts" to Respond to Request for FBI Check Within 15 Business Days. If a State has procedures that require qualified entities to conduct FBI Checks, the Act requires the State to "make reasonable efforts" to respond to check requests within 15 business days. Lengthy turnaround time -- the time from a request for a check on someone to the time results are received -- has historically been a problem with criminal background checks. Whether this "reasonable efforts to respond within 15 business days" provision will shorten turnaround time depends largely on what will be construed by the Attorney General as constituting "reasonable efforts" and what enforcement mechanism, if any, may be developed by the Attorney General.

B. Guidelines for State Procedures Regarding FBI Checks. If a State has procedures that require an FBI Check, the Act mandates that those procedures require: (1) a signed statement and fingerprints from the person who is the subject of the FBI Check; (2) a specified process for challenging information in the resulting FBI Check report; (3) the state agency to conduct research for missing data; (4) the release of only the determination as to conviction or pending indictment of the relevant crime(s), NOT the release of the criminal record itself to the organization; and (5) fee limits for some volunteers and non-profits.

1. *There Must Be a Signed Statement and Fingerprints from Check Subject.* State procedures on FBI Checks must prohibit a business or organization providing Child Care and Service from requesting an FBI Check unless the person about whom the check is sought provides a set of fingerprints and signs a statement that sets forth:

- the person's name, address, date of birth (as appearing on a valid identification document (as defined in the 18 U.S.C. 1028)[6]);
- that the person has not been convicted of any crime or a description (and particulars) of any crime(s) for which the person has been convicted;
- notification that the organization may request a background check and advises the person of his or her right to obtain a copy of and challenge any background check report; and
- notification that prior to the completion of any background check, the organization may choose to deny that person unsupervised access to a child to whom the organization provides care or services.

[6]18 U.S.C.A. §1028 (West Supp. 1993) does not list specific types of valid documents, but defines "identification document" as "a document made or issued under the authority of the United States Government [or state or foreign governments or international governmental or quasi-governmental organizations] which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals."

2. ***The Subjects of All Checks Are Entitled to Specified Due Process Rights.*** State procedures for FBI Checks must require that each person who is the subject of an FBI Check be entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any information in the report and obtain a prompt determination as to the validity of a challenge before a final determination is made by the state agency.

3. ***State Agencies Are Required to Conduct Research for Missing Data.*** If an FBI Check is done on an employee or volunteer who works with children (pursuant to a State statute approved by the Attorney General), the FBI will report the results of the federal check to the designated State agency. The State agency will review the report from the FBI and, under the Act, *if the FBI report lacks "disposition data" (i.e., information as to whether a conviction, acquittal, dismissal, etc. resulted) then the State agency must conduct research in "whatever State and local recordkeeping systems are available" in order to complete the record.* One of the problems with criminal record checks has been missing disposition data; if this is the case, the Act requires the State agency to conduct research for the missing information, even across state lines.

4. ***The Determination of Conviction/Pending Indictment, NOT the Criminal Record Itself, is to be Provided to the Employer.*** Under the Act, the State agency (through which the request for and results from the FBI Check are funnelled) determines whether the individual "has been convicted of, or is under pending indictment for, a crime that bears upon an individual's fitness to have responsibility for the safety and well-being of children." Under the Act, the State agency is permitted to convey such a determination, *but not the full criminal record*, to the entity requesting the check.

5. ***State Agencies to Determine Specific Crimes that "Bear Upon an Individual's Fitness to Have Responsibility for the Safety and Well-Being of Children."*** The Act does not list the precise crimes that are deemed relevant, but generally refers to crimes that "bear upon an individual's fitness to have responsibility for the safety and well-being of children." This provision appears to permit State agencies to determine the specific crimes which are relevant and *may* allow some differentiation depending upon the type of employment or volunteer position that is sought. For example, a State may find that convictions for some drug offenses do not render a person unsuitable for certain positions (e.g. in Juvenile Substance Abuse Treatment Centers), although they may make that person unsuitable for other types of Child Care and Service positions (e.g. in day care).

6. Both the Check and Its Results Can Only Be Provided Through a State Agency Pursuant to State Law. The Act requires that FBI Checks be handled in compliance with Public Law 92-544. For years, this law has been the vehicle allowing certain private organizations access to FBI files for employment and licensing purposes through a designated State agency if a State statute, approved by the Attorney General, authorized nationwide screening of criminal records by fingerprinting the applicant. As previously noted, the Attorney General has generally approved state statutes submitted under Public Law 92-544.

C. Attorney General May Issue Regulations. The Attorney General is authorized to issue regulations that prescribe "such other measures as may be required to carry out the purposes of this Act, including measures relating to the security, confidentiality, accuracy, use, misuse, and dissemination of information, and audits and recordkeeping." In issuing these regulations, the Attorney General is to encourage the use of the best technology in conducting background checks.

D. Limitation on Damages Liability. The Act contains two provisions limiting liability in damages actions: (1) a Child Care and Service business or organization shall not be liable *solely* for failure to conduct a criminal background check on an owner, operator, employee, volunteer or other person having unsupervised access to a child; and (2) a State (or political subdivision, agency, officer or employee thereof) shall not be liable for the failure of any business or organization to take adverse action against a provider who has been the subject of a background check.

The effect of these provisions is unclear. With respect to the first, to the extent liability has been found in cases where children were abused by a child care worker (who had a previous child abuse or other conviction), liability has often been based on a general failure to adequately investigate that child care worker's background and not simply upon the failure to conduct a criminal record check, if one was available. In these situations, the effect of the provision may be limited.

This first provision may also affect a State that makes criminal background checks part of the standard of care that certain employers must follow in hiring workers. In that situation, the question arises as to whether this liability provision would preempt state law. The answer is unclear: neither the Act nor the Report of the House Judiciary Committee explains the reach of the provision. Testimony from the July 1993 hearings reflected a concern on the part of some youth groups that the bill would effectively establish a standard of care. In light of this concern and the lack of an express Congressional intention to preempt State law on this point, the provision may well be interpreted in a limited fashion -- simply to reflect that the bill does not establish a standard of care and not to preempt states that may affirmatively establish such checks as part of a standard of care. In any event, given the Act's focus on FBI checks and not single State criminal record checks that may be required or permitted under a given State's law, it appears that any preemption would be limited to any State-required FBI checks rather than State criminal record checks.

The effect of the provision insulating a State from damages actions for the failure of any business or organization to take adverse action against a person who has been the subject of a background check depends upon how broadly it is interpreted. If the failure of the organization to take adverse action against a person who has been the subject of a check is due solely to a decision (or negligence) of the business or organization based upon accurate information received from the State, then it seems that insulating the State from damages actions is appropriate. If the failure of the organization to take adverse action against a person who has been the subject of a check is due to the State's failure to competently process information pursuant to the check request, then it is less clear that the State should be insulated from liability. As this provision in the Act currently reads, the scope of the liability limitation is unclear.

E. Fees for Volunteers and Non-Profits. The Act limits the fees that may be charged for fingerprint-based background checks on some volunteers of businesses or organizations that provide child care placement services or that provide care, treatment, education, training, instruction, supervision or recreation to children by persons having unsupervised access to a child. For States that, after the Act, enact statutes requiring such checks, the fees that may be charged for checks on volunteers may not exceed the actual cost of the background check conducted with fingerprints. In a number of States and the federal government, background check fees include costs of automation (e.g., computer upgrades) as well as costs associated with processing the background check.[7] This provision would limit the fees that may be charged for volunteers checked under a statute requiring such a check, but again only with laws that were enacted after the Act. For those States that amend current statutes, if the amendment institutes a new requirement that certain Child Care and Service organizations conduct checks, it may well fall within the scope of this provision limiting the fees for checks on some volunteers. In addition, the Act instructs the States to set check fees for non-profit entities that do not discourage volunteers from participating.

III. FUNDING: CARROTS AND STICKS

The Act contains several funding provisions: (1) the improvement of State criminal record systems and the sharing of child abuse crime records with the Attorney General under the Act are added to the list of purposes for which formula grant funds under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §3759(b), are to be spent; (2) a total of 20 million dollars is authorized to be appropriated for fiscal years 1994, 1995, 1996, and 1997 through grants by the Attorney General: and (3) beginning in December 1994, the Attorney General *may reduce by up to 10 percent* for a fiscal year, a State's allocation under Title I of the Omnibus Crime Control and Safe Streets Act of 1968 if that State is not in compliance with the Act. As of this date, there has been no money appropriated by Congress for any of the new provisions of this Act, including the specific responsibilities of the Attorney General under the Act.

[7]Pub. L. 101-515, Title II, 1990 U.S.C.C.A.N.(104 Stat.) 2112, authorized the FBI to establish fees to process fingerprint identification records and name checks for non-criminal justice, non-law enforcement employment and licensing purposes "at a level to include an additional amount to establish a fund to remain available until expended to defray expenses for the automation of fingerprint identification services and associated costs." The relevant portion of this legislation is included as a note, entitled *FBI Fees to Process Fingerprint Identification Records and Name Checks*, following 28 U.S.C.A. §534 (West 1993).

Appendix 12

Arkansas Code Annotated §§20-78-601 to 604:
Background checks of child care
facility licensees and employees

/ARKANSAS CODE ANNOTATED §§ 20-78-601 TO -604, (1993)

BACKGROUND CHECKS OF CHILD CARE FACILITY LICENSEES AND EMPLOYEES

§ 20-78-601. Child abuse central registry check-- Owners, operators, and prospective employees.

(a) The name of each applicant for a license to own or operate a child care facility and the name of each person seeking employment in a licensed child care facility shall be checked with the Arkansas Child Abuse Central Registry for reports of child abuse and neglect or maltreatment.

(b) The Child Care Facility Review Board shall have the authority to deny a license to any applicant found to have any record of founded child abuse and neglect or maltreatment in the official record of the Arkansas Child Abuse Central Registry.

(c) Any person seeking employment in a licensed child care facility found to have any record of child abuse and neglect or maltreatment in the official record of the Arkansas Child Abuse Central Registry shall be reviewed by the owner or operator of the facility in consultation with the board to determine appropriate corrective action measures, which would include but are not limited to training, probationary employment, or nonselection for employment.

§ 20-78-602. Criminal records check.

(a) Criminal Records Check -- Owners and Operators. (1) Each applicant for a license to own or operate a child care facility shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a nationwide criminal records check, to be conducted by the Federal Bureau of Investigation. The check shall conform to the applicable federal standards and shall include the taking of fingerprints. Such applicant shall sign a release of information and shall be responsible for the payment of any fee associated with the criminal records check.

(2) Upon completion of the criminal records check, the Identification Bureau of the Department of Arkansas State Police shall forward all information obtained concerning the applicant for a license to the Child Care Facility Review Board.

(b) Criminal Records Check -- Employees. (1) Any person seeking employment, if that employment involves supervisory or disciplinary power over a child or children, or involves routine contact with a child or children, in any child care facility which is required to be licensed by the board, shall apply to the Identification Bureau of the Department of Arkansas State Police for a nationwide criminal records check, to be conducted through the Federal Bureau of Investigation. The check shall conform to the applicable federal standards and shall include the taking of fingerprints. Upon applying for a criminal records check, such person shall sign a release of information and shall be responsible for the payment of any fee associated with the check.

(2) Upon completion of the criminal records check, the Identification Bureau of the Department of Arkansas State Police shall forward all information obtained concerning the person seeking employment in a child care facility to the Child Care Facility Review Board.

(3) The owner or operator of a child care facility shall maintain on file, subject to inspection by the board, evidence that criminal records checks have been initiated on all employees seeking employment after September 1, 1993, and the results of the checks. Failure to maintain that evidence on file will be prima facia grounds to revoke the license of the owner or operator of the child care facility.

§ 20-78-603. Destruction of fingerprint records.

At the conclusion of any background check required by this subchapter, the Identification Bureau of the Department of Arkansas State Police shall promptly destroy the fingerprint card of the applicant or employee.

§ 20-78-604. Qualifications for child care ownership, operation, or employment.

No person shall be eligible to be a child care facility owner, operator, or employee if that person has been found guilty of any of the following offenses by any court in the State of Arkansas or in any other state:

(1) Capital murder as prohibited in @ 5-10-101;

(2) Murder in the first and second degrees as prohibited in @@ 5-10-102 ad 5-10-103;

(3) Manslaughter as prohibited in @ 5-10-104;

(4) Battery in the first and second degrees as prohibited in @@ 5-13-201 and 5-13-202;

(5) Aggravated assault as prohibited in @ 5-13-204;

(6) Terroristic threatening in the first degree as prohibited in @ 5-13-301;

(7) Kidnapping as prohibited in @ 5-11-102;

(8) False imprisonment in the first degree as prohibited in @ 5-11-103;

(9) Permanent detention or restraint as prohibited in @ 5-11-106;

(10) Rape and carnal abuse in the first and second degrees as prohibited in @@ 5-14-103 -- 5-14-105;

(11) Sexual abuse in the first and second degrees as prohibited in @@ 5-14-108 and 5-14-109;

(12) Violation of a minor in the first and second degrees as prohibited in @@ 5-14-120 and 5-14-121;

(13) Incest as prohibited in @ 5-26-202;

(14) Endangering the welfare of a minor in the first degree as prohibited in @ 5-27-203;

(15) Permitting child abuse as prohibited in subdivisions (a)(1) and (a)(3) of @ 5-27-221;

(16) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child as prohibited in @@ 5-27-303, 5-27-305, 5-27-402, and 5-27-403; and

(17) Criminal attempt, criminal solicitation, or criminal conspiracy as prohibited in @@ 5-3-201, 5-3-202, 5-3-301 and 5-3-401 to commit any of the offenses listed in this section.

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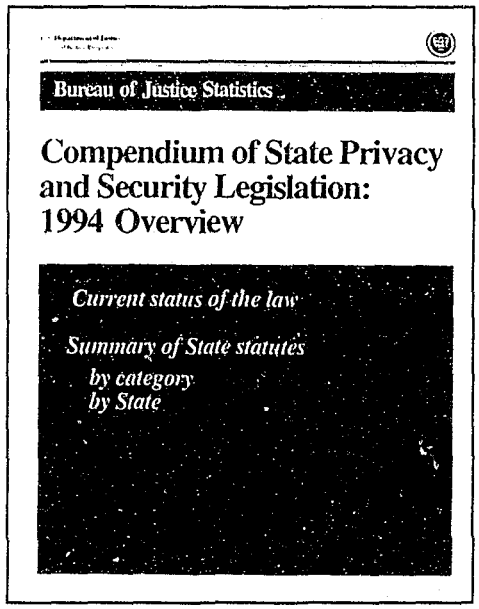

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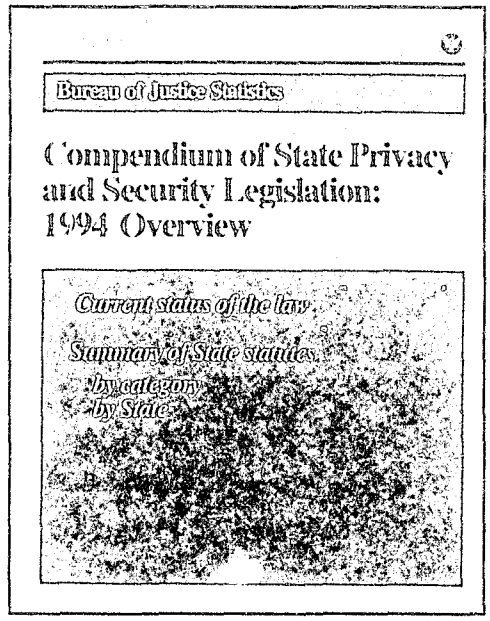

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