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Report to Congressional Requesters

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GUN CONTROL

Options For Improving the National Instant Criminal Background Check System

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The Honorable Charles E. Schumer
Ranking Minority Member
Subcommittee on Criminal Justice Oversight
Committee on the Judiciary
United States Senate

The Honorable Richard J. Durbin
United States Senate

This report responds to your request for information about the effectiveness of the Brady Act's phase I (interim Brady) and phase II (permanent Brady) provisions in preventing the sale of firearms to prohibited individuals.[1] Under interim Brady—which went into effect February 28, 1994, and applied to handguns only—background checks generally were to be conducted by the chief law enforcement officer (CLEO) in the purchaser's residence community. During phase I, handguns were not to be transferred for 5 business days (a waiting period) unless the dealer received an approval from the applicable state or local CLEO before that time.

Under permanent Brady—effective November 30, 1998, and applicable to all firearms, both handguns and long guns (e.g., rifles and shotguns)—background checks generally are to be conducted using a computerized system, the National Instant Criminal Background Check System (NICS), which is managed by the Federal Bureau of Investigation (FBI). Under NICS, firearms are not to be transferred until a background check determines that the transfer will not violate applicable federal and state laws. However, if the background check is not completed within 3 business days, the sale is allowed to proceed by default (a "default proceed").

[1]The Brady Handgun Violence Prevention Act (Brady Act), Public Law 103-159, amended the Gun Control Act of 1968 (P.L. 90-618). Under federal law, persons are prohibited from receiving a firearm if they (1) have been convicted of, or are under indictment for, a felony; (2) are a fugitive from justice; (3) are unlawful drug users or addicts; (4) have been involuntarily committed to a mental institution or judged mentally incompetent; (5) are aliens, such as those illegally or unlawfully in the United States, or certain aliens admitted under a nonimmigrant visa; (6) have been dishonorably discharged from the military; (7) have renounced their U.S. citizenship; (8) are under a domestic violence restraining order; or (9) have been convicted of a domestic violence misdemeanor. These prohibited categories are also commonly referred to as "Brady disqualifiers."

As agreed with you, our work addressed the following questions:

- Regarding access to databases or other information sources for conducting background checks to identify individuals prohibited by law from receiving firearms, how does permanent Brady compare with interim Brady? For instance, under permanent Brady, does the FBI have access to the same types of information that were available to state and local CLEOs under interim Brady? If not, what steps are being taken to enhance access to such information?

- Under permanent Brady, depending on the specific state, either the FBI or a designated state law enforcement agency (e.g., the state police) uses NICS to conduct background checks. What are the advantages and disadvantages of NICS background checks being conducted by a designated state agency versus such checks being conducted by the FBI?

- Under permanent Brady, to what extent have default proceeds resulted in firearms being sold to prohibited individuals? To prevent or minimize such transfers, what are the options that policymakers can consider?

Results in Brief

Under both interim and permanent Brady, access to automated criminal history records—the basis for most firearms purchase denials—has been essentially the same. There are some differences, however, regarding the nonfelony, noncriminal Brady disqualifiers. Under interim Brady, for example, state or local CLEOs in some jurisdictions accessed information on some of the disqualifiers (such as mental health records and court restraining orders) that may not be available for background checks conducted by the FBI under permanent Brady. However, under permanent Brady, the NICS Index database now provides automated access to some information on the nonfelony, noncriminal Brady disqualifiers that was not centrally available under interim Brady—that is, information about persons who have been unlawful drug users or addicts, who have been adjudicated or involuntarily committed as mentally defective, who are illegal or unlawful aliens, who have been dishonorably discharged from the military, or who have renounced their U.S. citizenship. Although the NICS Index expanded the amount of disqualifying information centrally available for firearms background checks, the database does not contain all relevant records, most notably federal and state records on unlawful drug users and mental defectives. The FBI has a process for contacting federal agencies and states to determine the extent to which disqualifying records are available for incorporation into the NICS Index. FBI officials characterized this as a continuous and cooperative effort, especially given that the FBI cannot compel the submission of state records.

Under permanent Brady, state agencies generally are better positioned than the FBI to conduct background checks. For example, we found that state agencies have access to all of the information available to the FBI through NICS, plus some states also have additional information available only to their respective state. In addition, state agencies may be better able to interpret their own state firearms purchase and possession laws, resulting in a more efficient and effective background check process. This can be particularly important due to the complex nature of firearms laws, which vary from state to state. The FBI agreed that state agencies generally are better positioned to conduct NICS background checks and favors expanding the number of state participants in NICS. However, several factors may prevent such an increase, including (1) the cost to the states for staffing and operating a background check unit and (2) the states' willingness or ability to participate.

Default proceed transactions involving prohibited persons who purchased firearms totaled 2,519 during the first 10 months of permanent Brady. These transactions involved the transfer of firearms to persons who the FBI later determined to be prohibited from receiving firearms. Such transactions increased public safety concerns, placed demands on law enforcement resources—particularly the Bureau of Alcohol, Tobacco and Firearms (ATF)—in retrieving the firearms, and exposed law enforcement agents to potential risk associated with such retrievals. According to FBI officials, these default proceeds occurred primarily because many states' automated criminal history records did not show the dispositions (e.g., acquittals or convictions) of felony arrests, and efforts to obtain such information took longer than 3 business days. FBI data for these transfers indicated that an average of 25 business days elapsed between the initial NICS inquiry and the date the FBI initiated retrieval of the firearms.

To minimize the number of default proceed transactions involving prohibited persons, Congress could consider adopting one or more options. One option is to continue a program established under interim Brady that provides criminal justice grants to states to improve the quality and completeness of automated criminal history records. Recognizing that state agencies generally are better positioned than the FBI to conduct NICS background checks, another option is to provide financial incentives to states in order to increase the number of states that participate in NICS. Finally, another option would be to amend the 3 business-day default proceed requirement of the Brady Act to treat differently those potential purchasers who had been arrested for disqualifying offenses and disposition information concerning the arrest was not readily available. The first two options could offer a positive, long-term impact on the

overall efficiency and effectiveness of NICS and facilitate the identification of prohibited persons. The third option could immediately reduce the number of prohibited persons receiving firearms under NICS by providing additional time to research incomplete criminal history records. FBI data suggested that this option would affect a relatively small percentage of FBI NICS transactions—about 88,000 (or 2 percent)—that currently take more than 3 business days to resolve.

Background

As noted previously, interim Brady background checks generally were to be conducted by the CLEO (e.g., a chief of police or sheriff) in the purchaser's residence community to determine, on the basis of available records, if the individual was legally prohibited from buying a handgun under the provisions of federal, state, or local law. By the end of interim Brady, over 5,000 CLEOs were conducting presale handgun background checks. Most states (29) had multiple local CLEOs conducting checks. For example, in Texas almost 1,000 local CLEOs were responsible for interim Brady background checks. In the other 21 states, a single state agency—typically a subdivision of the state police—was responsible for conducting background checks. Virginia, for example, established an instant background check system in 1989 (before interim Brady) operated by the Virginia State Police, and the state continued to operate that system after interim Brady went into effect.

Under permanent Brady, background checks are conducted by either the FBI or a designated state agency (for those states willing to act as a NICS liaison) using NICS to automatically query available federal, state, and local records to determine a purchaser's eligibility to own a firearm.[2] As of October 1, 1999, 15 states had agreed to be full participants in NICS—that is, to designate a state agency to conduct background checks on all firearms purchases.[3] Another 11 states agreed to be partial participants by conducting checks for handguns, while the FBI conducts checks for long guns. In the remaining 24 nonparticipant states, the FBI conducts all NICS firearms background checks.

In designing NICS, the FBI hoped that as many states as possible would be full participants. Although there are only 15 full-participant states, they

[2] NICS background checks are to be performed in connection with firearms transfers and are not to be limited to firearms sales (see 63 FR 58306). When we use the term "potential buyer" or "potential purchaser," we are also referring to other potential firearms recipients, such as individuals redeeming pawned firearms.

[3] In commenting on a draft of this report in March 2000, Justice officials noted that in some full-participant states the background checks continue to be carried out by local law enforcement officers; that is, the checks are carried out by the agencies that were previously CLEOs under interim Brady.

include some of the most populous states, such as California, Florida, Illinois, New Jersey, Pennsylvania, and Virginia. According to FBI data for the first year of NICS operations (Nov. 30, 1998, through Nov. 30, 1999), about one-half of all NICS background checks were conducted by the states.

During the first year of NICS operations, the FBI and designated state agencies conducted about 8.8 million background checks using NICS. About 66 percent of the checks involved long guns, about 32 percent involved handguns, and about 1 percent involved dual transactions (both long guns and handguns).[4] FBI data indicated that 2 percent (about 81,000) of the FBI's 4.4 million background checks resulted in denials.[5] That is, the potential buyer was found to be disqualified under federal or state law from receiving or possessing a firearm because, for example, criminal history records showed a felony conviction. Moreover, for about 72 percent of firearm-purchase background checks conducted by the FBI, NICS provided approval responses within 30 seconds after the purchaser's identifying information was input into the system. The remaining 28 percent of the background checks had delayed responses. From a sample of delayed responses handled by NICS examiners, the FBI concluded that about 80 percent were resolved within 2 hours or less and that the remaining 20 percent required several hours or days to resolve.

More details on interim and permanent Brady and firearms background check procedures are presented in appendix I. Also, we recently reported on the implementation of permanent Brady.[6]

NICS Index Provides Centralized Access to More Data but Has Not Reached Its Full Potential

Under interim Brady, background checks focused on criminal history and other records available through state repositories and two automated FBI databases: (1) the National Crime Information Center (NCIC),[7] which is the nation's most extensive criminal justice information system and (2) the Interstate Identification Index (III), which is an index-pointer system for the interstate exchange of criminal history records. Under permanent Brady, the NICS Index provides some centralized information on the nonfelony and noncriminal categories that could not be easily checked

[4] Percentages do not add to 100 due to rounding.

[5] In commenting on a draft of this report in March 2000, Justice officials noted that the Bureau of Justice Statistics eventually is to report on the number of denials resulting from background checks conducted by state agencies.

[6] Gun Control: Implementation of the National Instant Criminal Background Check System (GAO/GGD/AIMD-00-64, Feb. 29, 2000).

[7] NCIC 2000, an upgraded version of NCIC, became operational on July 11, 1999.

under interim Brady. However, despite increasing the overall quantity of information centrally available for firearms background checks, the NICS Index does not contain all relevant records. The FBI has a process for contacting federal agencies and states to identify and obtain available records.

No Central Database for Nonfelony, Noncriminal Disqualifiers Existed Under Interim Brady

Under interim Brady, state and local CLEOs had centralized, automated access to federal and state criminal history records and wanted-persons files—the basis for most firearms purchase denials—through NCIC and III, two criminal justice information systems that predated the Brady Act and are now key components of NICS. In addition, many CLEOs also had access to state or locally maintained data on some of the other Brady disqualifying factors—e.g., mental illness, court restraining orders, and domestic violence misdemeanors. Some CLEOs accessed local automated databases (e.g., city or county criminal justice information databases) for these data, but the data were not all available at the state level for statewide dissemination. However, under interim Brady, state and local CLEOs did not access specific data files or databases for other nonfelony, noncriminal Brady disqualifiers—such as illegal or unlawful aliens, dishonorable discharges, and citizenship renunciations.

Appendix II gives more details on data and databases that were available under interim Brady.

NICS Index Provides Centralized Access to Data but Does Not Include All Disqualifying Records

FBI officials have stated that firearms background checks under permanent Brady are more efficient than under interim Brady, because all of Brady's disqualifying categories can now be checked in a single, computerized search using NICS. That is, NICS provides centralized access to criminal history and other records (such as domestic violence misdemeanors and restraining orders) through NCIC 2000 and III, while providing simultaneous access to the nonfelony, noncriminal disqualifying records contained in the NICS Index. However, as of November 30, 1999—1 year after the implementation of NICS—the NICS Index database had relatively few records for most of the categories. For example, as table 1 shows, the vast majority of records (about 90 percent) in the NICS Index covered one category (illegal or unlawful aliens). These records were provided by one federal agency, the Immigration and Naturalization Service (INS).

The status of other categories in the NICS Index was as follows:

- Controlled Substance Abuse – A total of 97 records had been submitted by 3 states. According to the FBI, privacy interests may prohibit states from

submitting records about unlawful users or persons addicted to drugs. Justice officials also noted that, if this type of information were to be available for other than firearms purchase background check purposes, it could have a chilling effect on persons who otherwise might seek drug treatment. For this reason, and because including certain records posed concerns about unreasonable search and seizure, in February 1998, Attorney General Reno made a decision not to acquire federal agency drug-testing and drug-treatment information for inclusion in the NICS Index.

- Mental Defectives – A total of 41 records had been submitted by 6 states. The FBI received about 89,000 federal records from the Department of Veterans Affairs (VA) on November 1, 1999.
- Dishonorable Discharges – About 6,300 federal records had been submitted by the Department of Defense (DOD) and the U.S. Coast Guard. These records covered only the period since the Vietnam War. Also, some U.S. Navy records were yet to be entered, pending efforts to make the records compatible with NICS Index requirements. FBI officials told us that each dishonorable discharge record submitted for inclusion in the NICS Index was first validated by DOD to ensure that the dishonorable discharge had not been subsequently overturned by court action. Also, the FBI officials noted that records on dishonorable discharges before 1973 were not available at DOD in an official, electronic database.
- Citizenship Renunciants – A total of 626 records had been submitted by the State Department. According to FBI officials, the remaining records on renunciants have had to be identified by the State Department on a case-by-case basis and have had to be converted to a format that can be accepted by the NICS Index. In this regard, in January 2000, FBI officials told us that the State Department has identified approximately 11,000 additional records of renunciants and was in the process of creating an input file for NICS.
- Denied Persons – Almost 11,000 records had been submitted by 8 states. Provided by state law enforcement agencies, these records contain the names of persons who have been denied the purchase of a firearm in accordance with federal law and for whom disqualifying data are not contained in any other file accessed by NICS.

Table 1: Number and Category of Records in the NICS Index (as of November 30, 1999)

Category	Federal records	State records	Total active records	Percent of NICS Index total
Controlled substance abuse	0	97[a]	97	<.01%
Mental defectives	88,898	41[b]	88,939	8.6
Illegal/unlawful aliens	927,874	3[c]	927,877	89.7
Dishonorable discharges	6,303	0	6,303	0.6
Citizenship renounced	626	0	626	0.1
Denied persons	0	10,805[d]	10,805	1.0
Total	**1,023,701**	**10,946**	**1,034,647**	**100%**

[a]Records were submitted by three states.

[b]Records were submitted by six states.

[c]Records were submitted by two states.

[d]Records were submitted by eight states.

Source: FBI data.

As indicated above, the FBI has largely focused on entering federal records into the NICS Index. As of November 30, 1999, the NICS Index contained just over 1 million records. This total represents about a 10-percent increase over the number of records the NICS Index contained when it became operational 1 year earlier, on November 30, 1998. And, nearly all of the increase involved records from one federal agency—VA. Few disqualifying records have been obtained from the states during that time.

We recognize that not all existing records can or will be included in the NICS Index, even though these records could be useful in identifying persons attempting to purchase firearms who are disqualified by law from doing so. For example, according to FBI officials, some state and local agencies may be prohibited by state law from sharing substance abuse or mental health records with others. Some states have also expressed concern about whether the records would ever be used for other purposes, such as background checks for employment or professional licensing. Similarly, in February 2000, the Bureau of Justice Statistics (BJS) reported[8] that the identification of nonfelons ineligible to purchase firearms is likely to remain problematic under NICS. BJS further reported that dissemination of mental health and drug abuse information raises legal and

[8] U.S. Department of Justice, BJS, Continuing Criminal History Records Improvement Evaluation: Final 1994-98 Report (NCJ-179768), February 2000.

ethical questions about the rights to privacy, and new enabling statutes may be required to identify and access such information.

According to FBI officials, the identification of records that should be included in the NICS Index requires ongoing cooperation among numerous federal and state agencies. The officials commented that the FBI's role in this process is to ensure that all federal and state agencies have been notified of (1) the availability of the NICS Index and the system interface requirements and (2) the necessity to provide accurate and valid records that can be supported in the event of an appeal. Initial outreach efforts cited by FBI officials included the following:

- Soon after Congress passed the Brady Act, the FBI established the Brady Act Task Group, composed of state and local law enforcement officials, to develop functional requirements for NICS and the requirements for records to be included in the NICS Index. Also, the FBI drafted the Attorney General's letter that was sent, on June 9, 1994, to federal departments requesting that they identify the format and location of relevant records. And, in October 1994, the FBI began a series of bilateral meetings with applicable federal agencies.
- Since 1994, NICS Index data-entry requirements have been discussed at periodic meetings of the Brady Act Task Group and other groups, including the semiannual meetings of the Criminal Justice Information Services Advisory Policy Board.
- In August 1997, the FBI hosted a "NICS National Technical Conference" for representatives of every state. The conference presented briefings on the specifications for the NICS Index, as well as the procedures for submitting records.
- In June 1998, the FBI hosted a "NICS Participant Conference" for states that serve as NICS points of contact. Again, the conference presented information about the NICS Index.
- In August 1999, the FBI drafted a letter to applicable federal agencies requesting additional data to be loaded into the NICS Index.

As of December 1999, FBI officials summarized their ongoing outreach efforts as follows:

- The FBI is continuing to contact federal agencies to identify and obtain any relevant federal records that can be incorporated into the NICS Index. Approximately half of the agencies have responded so far; the remaining agencies are being contacted by telephone.

- For state records, the FBI has drafted a letter to be sent to all states inquiring whether they possess any records to submit to the NICS Index. That letter is still being reviewed internally.
- The FBI is also contacting the NICS points-of-contact in each state that participates in NICS to further inquire about records that may be available for submission to the NICS Index.
- Also, the FBI is preparing an FBI/state memorandum of understanding to address the issue of how state records will be used in the NICS Index and allow states to delete their records if NICS' purpose is ever expanded beyond firearms background checks.

According to FBI officials, once these outreach efforts are completed, the FBI will decide the types of additional action that are needed to increase the number of federal and state records in the NICS Index. However, the officials noted that, since the FBI cannot compel state agencies to identify records and submit them to the NICS Index, their outreach efforts must be viewed as a continuous and cooperative process.

Increased State Participation Could Improve NICS, but Barriers Exist

Under permanent Brady, states generally are better positioned than the FBI to conduct firearms purchase background checks because some state agencies (1) can access additional data and databases and (2) may be better able to interpret their own state's laws. The FBI agreed that states have certain advantages in conducting NICS background checks and would like for more states to be full participants in NICS. However, funding and other reasons may present barriers to increased state participation.

State Agencies Can Access NICS Databases Plus Additional State Data

Under NICS, when the FBI or a state agency performs a firearm purchase background check, disqualifying records are checked using NCIC 2000, III, and the NICS Index. The FBI's initial automated NICS check is limited to records in these three databases.[9] However, some states have automated access to additional databases or records available only within their state. And in some cases, state law may prohibit sharing this information with others—such as other states or the NICS Index. For example, Georgia, Virginia, and Washington have databases that list individuals within their state who have mental health disabilities or have been adjudicated mentally incompetent. Virginia's mental health database, however, is available only to the Virginia State Police for firearms background check purposes. Therefore, if the FBI conducted a firearms background check on a Virginia resident (e.g., for an out-of-state long gun purchase), the NICS

[9] For delayed transactions that require research beyond the initial automated inquiry, the FBI also accesses additional in-house automated databases.

check could not access information contained in Virginia's mental health database. According to Virginia State Police data for January through September 1999, Virginia's instant check system denied 51 firearms transactions based on information in the state's mental health database—information that would not have been available to the FBI through NICS.[10]

Another example is the wanted-persons file in NCIC 2000. This national file may not contain information on every state arrest warrant issued. According to FBI officials, at one time NCIC would not accept an outstanding warrant if the originating state would not agree to extradition if the person was apprehended in another state. That restriction was lifted prior to NICS implementation so that NCIC 2000 now accepts all state warrants. However, each individual agency that issues warrants is responsible for entering their warrants into NCIC 2000. Consequently, there is no way to tell whether outstanding warrants have been issued by state and local agencies but not entered into NCIC 2000. On the other hand, most states can access information about wanted fugitives through their own state databases. For example, Colorado and Virginia state officials said that they can access their own outstanding warrants through state or local databases, regardless of whether the warrant had been entered into NCIC 2000.

Moreover, information regarding restraining orders is not always available through NCIC 2000 because of incompatibilities between state records and NCIC 2000 records requirements. However, state agencies that conduct background checks would have access to state or local databases where the restraining order information was originally recorded. In Colorado, for example, the FBI recently approved the transfer of a firearm to an individual who should have been prohibited from purchasing a firearm due to an active restraining order. The information regarding the restraining order was not available to the FBI through NCIC; but, according to state officials, it would have been accessible to a Colorado law enforcement agency. The prohibited individual purchased the firearm and used it to kill three children.[11] According to FBI officials, each individual agency that issues restraining orders is responsible for entering them into NCIC 2000. Consequently, there is no way to tell whether such orders have been issued

[10] Once denied, however, Virginia could enter the names of these persons into the NICS Index's "denied persons" file, after which that information would be available to the FBI or any other state agency when conducting a NICS background check.

[11] Although currently a full-participant in NICS, at the time of this incident, Colorado had discontinued its state-run instant check program—which had been in operation since 1994—due to financial considerations. Following the publicity surrounding the incident, funding for the program was reinstated by executive order, pending permanent authorization by the Colorado legislature.

by state and local agencies but not entered into NCIC 2000. FBI officials acknowledged that compatibility problems exist in some states and noted that these states are working with NCIC 2000 officials to resolve the problems.[12]

In its February 2000 report (as cited above) on criminal history records, BJS reported that NICS background checks performed by states accessed more complete state-level criminal records—as well as certain nonfelon information—compared with NICS checks performed by the FBI. As a result, in those states where the FBI performs NICS checks, BJS reported that there were likely to be more firearms sales to ineligible purchasers than in states where state agencies performed the checks.

FBI officials acknowledged that states can, in some instances, access additional databases; however, they also noted that the usefulness of such access may be limited with respect to long guns bought outside the purchaser's state of residence. The officials explained that:

- In most states, it is lawful to purchase a long gun without being a resident of that state. Thus, an individual could cross state lines to buy a long gun, even after that person had been denied the right to purchase a firearm in his or her state of residence.
- Therefore, if a state possesses information showing a person is prohibited from purchasing firearms, such information must be included in a national system to be most effective. Otherwise, such information will serve to stop only in-state purchases and will create a false sense of security.

Finally, as discussed in more detail below, we note that during the first year of NICS implementation, the FBI estimates that it was unable to resolve, within 21 days, about 75,000 background checks—roughly 1.7 percent of the 4.4 million checks that the FBI conducted. According to FBI officials, these background checks could not be completed because information on arrest dispositions could not be obtained to verify the purchaser's eligibility. The number of these "unresolved" background checks perhaps would have been fewer if the checks had been conducted by state law enforcement agencies—given that these agencies generally have access to additional data and databases for background check research purposes.

[12] In commenting on a draft of this report in March 2000, Justice officials also noted that a federal grant program (the National Criminal History Improvement Program) specifically funds states to overcome these technical obstacles and submit their records to the FBI's national systems.

State Agencies May Be Better Able to Interpret State Laws

Many states have enacted their own unique statutes regarding the sale and possession of firearms—including requirements for firearms purchase permits, mandatory waiting periods, and notification to state or local authorities. These state laws can have complex provisions, particularly regarding the restoration of an individual's rights to possess a firearm, once those rights have been revoked (e.g., because of criminal activity). For example, according to ATF officials, persons convicted of a criminal offense in Colorado have their federal firearms rights automatically restored under the following conditions:

- A person convicted of a misdemeanor offense (including domestic violence) who was convicted and completed his or her sentence.
- A person convicted of a violent felony offense who completed his or her sentence prior to July 1, 1994, and at least 10 years had elapsed since completion of the sentence.
- A person convicted of a nonviolent felony offense who completed his or her sentence prior to July 1, 1994.[13]

As such, in performing firearms background checks, state agencies may be better able to interpret their own state laws to determine a person's eligibility to purchase firearms. That is, state agencies generally have a better understanding of how their own state laws apply to an individual's eligibility to purchase a firearm in their state.

The FBI agreed that state agencies may be better able than the FBI to interpret their own applicable state laws. Also, this belief is consistent with our analysis of appeals decisions regarding firearms-purchase denials made by the FBI under NICS. For example, during the first year of NICS operations:

- About 22 percent of the appeals (on which a final decision had been reached as of November 30, 1999) were successful—that is, the denials were reversed.
- About 42 percent of reversed denials (for which the reason for reversal was available) occurred because FBI examiners had misinterpreted state statutes or records in making the initial denials.

[13] However, as of July 1, 1994, all convicted felons (violent or nonviolent) in Colorado became permanently disqualified from possessing firearms under state law. Consequently, although felons whose rights were completely restored prior to July 1, 1994, are not considered to be prohibited under federal law, they would still be prohibited under state law.

Although the percentage of denials reversed for this reason was over 50 percent of all reversals in January and February of 1999, it declined to about 30 percent in October and November of 1999.

To help improve interpretation of state laws, the FBI contacted the states via mass mailing in June 1999 to request that the states validate their firearms laws. Subsequently, the FBI made state law information widely accessible electronically within the law enforcement community by including such information in the Law Enforcement On-Line Internet site.[14]

Appendix III presents more information about variations in state firearms purchase laws.

Possible Barriers to State Participation in NICS

The FBI acknowledges that states may have certain advantages in conducting NICS background checks, including access to additional data in their own state and the ability to better interpret their own criminal history records and firearms laws. Further, according to the FBI, the functioning of NICS would be more effective and efficient if more or all states were full participants (i.e., if each state had a designated agency for conducting background checks). Despite the potential advantages of states conducting background checks, any consideration of ways to encourage states to be full participants in NICS would need to recognize the following mitigating factors:

- States may have competing fiscal priorities that prevent them from initiating or expanding their role in NICS. Because the FBI performs NICS checks without charging a fee, some states may consider performing this effort at the state level to be a waste of state resources. According to FBI officials, one state—South Carolina—recently dropped out as a full participant in NICS, and four other states may be at risk to drop out because they are currently operating under executive order rather than state statute. Federal funding proposals—including a NICS user fee and direct appropriations—have been developed that could increase state participation in NICS; however, these proposals have not been approved by Congress.
- States that already conduct NICS background checks for handguns—such as Maryland and Washington—may not want to expand their responsibilities to long guns, which may be viewed as less of a public

[14] Law Enforcement On-Line is a secure law enforcement Internet site managed by the FBI, which provides communication and information services to the federal, state, and local law enforcement community.

safety risk than handguns. And, as noted above, the FBI is already performing long-gun background checks in those states free of charge.

- Some states may be philosophically unwilling to participate in NICS, as demonstrated by the various legal challenges to the local background check requirements of interim Brady.[15] Because NICS was also established under the Brady Act, some states may consider NICS implementation to be a federal government responsibility.
- States may encounter difficulties in conducting timely or complete background checks for a variety of administrative reasons, including a lack of resources or expertise. During early 1999, for example, the Maryland State Police encountered difficulties in processing NICS background checks in a timely manner, allowing a number of prohibited persons to purchase handguns.

Default Proceed Transactions Increase Public Safety and Other Concerns

During the first 10 months of NICS implementation, 2,519 individuals who were sold firearms were later determined by the FBI to be prohibited persons. These default proceeds were the result of NICS background checks that could not be completed by the FBI within the 3 business days allowed by statute under permanent Brady. After 3 business days elapsed, these transactions were considered default proceeds, and the gun dealers were then legally able to transfer the firearms without an affirmative response from the FBI as to the purchasers' eligibility.[16]

Default proceeds that result in firearms being transferred to prohibited persons are a cause for concern because they present public safety risks and place resource demands on law enforcement agencies in retrieving the firearms. According to FBI procedure, when a NICS examiner discovers that a firearm has been transferred to a prohibited individual, the FBI is to notify (1) the local police department, as determined by the purchaser's address and (2) ATF headquarters. In each one of these instances, ATF guidance then requires that an investigation be initiated and attempted retrieval of the firearm be coordinated with state or local law enforcement to ensure public safety.

[15] In Printz v. U.S. (521 U.S. 898), the Supreme Court ruled that the Brady Act's interim (phase I) provision commanding the CLEO of each local jurisdiction to conduct background checks was unconstitutional in that it compelled state officers to execute federal law.

[16] A small number of these—33—actually occurred within 3 business days. According to FBI officials, for these delayed NICS transactions the gun dealer transferred the firearm to a prohibited person before 3 business days had elapsed, without having received a proceed or deny response from NICS.

FBI Attributes Default Proceeds to Lack of Arrest Dispositions in Automated State Criminal History Records

According to FBI officials, default proceeds occur primarily due to lack of arrest dispositions in automated state criminal history records. As a result, for some delayed transactions, the FBI is unable to determine the purchaser's eligibility within the 3 days allowed by law under permanent Brady. A typical example of a delayed NICS transaction involves a record showing a felony-related arrest (not a Brady disqualifier) but no information about whether the case was prosecuted and resulted in a conviction (which would be a Brady disqualifier). In these instances, additional research is needed before the transaction can be approved or denied. FBI examiners typically must contact a state or local entity that has the needed information—often a local court—to determine the purchaser's eligibility. The ability to obtain the required disposition information in a timely manner depends on several factors, including whether the court is open, the willingness of the court's staff to assist the FBI, and the availability and accessibility of the disposition information.

The problem of incomplete and/or inaccessible state criminal history records is a long-standing criminal justice issue. Appendix IV gives more details about this issue, including the relationship between background checks and the quality of automated records.

Three Business Days for Research Have Been Insufficient to Prevent Default Proceed Transactions

As mentioned previously, during the first 10 months of permanent Brady implementation—November 30, 1998, through September 30, 1999—2,519 individuals who were sold guns were later determined by the FBI to be prohibited persons. FBI data on these 2,519 default proceeds show that an average of 25 business days elapsed between the initial NICS inquiry and the date that the FBI initiated retrieval of the firearms. As table 2 shows:

- 5 percent (118) of these transactions were resolved in 5 business days or less, the amount of time previously allowed under interim Brady to conduct a background check;
- 77 percent (1,937) of these transactions were resolved in 30 business days or less; and
- 91 percent (2,288) of these transactions were resolved in 60 business days or less.

Table 2: Number of Business Days Taken to Identify Default Proceed Transactions Involving Prohibited Purchasers (as of September 30, 1999)

Time to retrieval initiation	Total number of transactions	Percent of transactions	Cumulative percent
Within 5 days	118	5%	5%
6 to 10 days	378	15	20
11 to 20 days	936	37	57
21 to 30 days	505	20	77
31 to 60 days	351	14	91
More than 60 days	192	8	99
Unknown[a]	39	2	100
Total	**2,519**	**100%**	**100%**

Note: Percentages do not add to 100 due to rounding.

[a]For these transactions, the FBI data did not contain a valid NICS transaction date and retrieval decision date.

Source: GAO analysis of FBI data.

Further, the actual number of default proceed transactions involving sales of firearms to prohibited persons might be higher than the 2,519 already identified by the FBI. For example, during the first year of NICS implementation, the FBI estimates that it was unable to resolve, within 21 days, about 75,000 background checks—roughly 1.7 percent of the 4.4 million checks that the FBI conducted. According to FBI officials, these delayed transactions could not be completed because the FBI was never able to obtain information on arrest dispositions in order to verify the purchaser's eligibility. Because, as reported by the FBI, background checks delayed more than 24 hours are more likely to involve prohibited persons than other NICS checks, some of these 75,000 transactions potentially represent firearms sold to prohibited persons.[17] Given the increased public safety concerns, the additional demands on law enforcement—particularly ATF—and the exposure of law enforcement agents to the risks associated with firearms retrievals, it is therefore important to explore options for reducing the number of these transactions.

Options for Improving NICS and Reducing the Number of Default Proceed Transactions

As mentioned previously, in researching delayed NICS transactions, the FBI often must rely on the cooperation of state and local agencies to obtain information—such as the disposition of an arrest—needed to determine a purchaser's eligibility. To facilitate this process, the FBI has requested that each state establish a contact point that will be responsible for assisting the FBI (and other states) with obtaining disposition or other

[17] In commenting on a draft of this report in March 2000, Treasury officials noted that the status of these default proceed transactions is unknown and could result in a substantial increase in ATF enforcement obligations if these transactions are later determined to involve prohibited persons.

relevant information. When the disposition of a potentially disqualifying arrest is not directly accessible by computer, under FBI procedure, NICS examiners are to notify the applicable state contact point by telephone, fax, and/or law enforcement teletype. Additional notifications may also be necessary to other state or local agencies, such as courts and arresting agencies. Although the FBI identified a goal in its fiscal year 2000 budget that all delayed transactions would be resolved within 15 minutes per record (on average), the ability to obtain such disposition information in a timely manner—even within 3 business days—is often beyond the FBI's control. Therefore, options to improve NICS and reduce the number of default proceed transactions may need to focus on legislative, rather than administrative, efforts.

One option for improving NICS and reducing or minimizing the number of default proceed transactions is to continue funding to provide federal grants to states for improving the quality and completeness of automated criminal history records. Another possible option is to encourage increased state participation in NICS by providing some form of federal financial assistance. Finally, the 3 business-day default proceed requirement of the Brady Act could be amended to treat differently those potential purchasers with arrests for disqualifying offenses with no disposition information. These options should be considered complementary, rather than mutually exclusive.

Federal Grant Funding to Improve State Criminal History Records

Because, according to the FBI, most default proceeds occur due to a lack of arrest dispositions in automated state criminal history records, one option for reducing or minimizing these delayed transactions is to help states upgrade the quality and completeness of these records. A relevant federal effort ongoing since 1995 is the National Criminal History Improvement Program (NCHIP), which provides grant funds to states. Administered by the Bureau of Justice Statistics, NCHIP has provided funding to assist states to improve the quality and accessibility of their criminal history records, in order to support the implementation of NICS and enhance the effectiveness of NICS background checks. Federal obligations under NCHIP totaled about $293 million during fiscal years 1995 through 1999. Additionally, 5 percent of the funds awarded to states each year under the Byrne Formula Grants Program are to be used for improving criminal justice records.[18]

[18] Crime Technology: Federal Assistance to State and Local Law Enforcement (GAO/GGD-99-101, June 7, 1999), pp. 29 and 31.

For fiscal year 1999, NCHIP guidelines called for improving NICS background checks by (1) increasing states' commitment to the implementation of NICS, (2) increasing state participation in III, and (3) supporting state court efforts to improve the completeness of criminal history records. Regarding III, for example, the NCHIP announcement stated that state participation in III is critical to ensuring that the most accurate and complete criminal records are available instantly for NICS firearms checks. Justice officials said that they plan to address NICS implementation issues—such as automation and accessibility of records on arrest dispositions—in future years by seeking increased funding through NCHIP grants. For fiscal year 2000, $35 million was specifically appropriated for NCHIP grants, and the President's budget for fiscal year 2001 requests $70 million for NCHIP.

Financial Incentives to Encourage State Participation in NICS

Because states can have advantages over the FBI in conducting NICS background checks—including access to additional data in their own state and the ability to better interpret their own criminal history records and firearms laws—another option for improving NICS' effectiveness and reducing the number of default proceed transactions is to increase state participation in NICS. The following are several approaches that could encourage such participation:

- NICS User Fee. Establishing a NICS user fee could remove a disincentive for states to be NICS participants. Currently, states have less incentive to participate because the federal government performs the NICS check free of charge. The FBI has previously introduced budget proposals to fund NICS operations with a user fee. Congress, however, has acted to prohibit a NICS user fee by including prohibiting language in the Department of Justice's fiscal year 1999 and 2000 appropriations acts.[19]

- Direct Appropriations. Through direct appropriations, states could be funded to establish and/or operate NICS units. The U.S. Senate passed a provision in its 1999 Juvenile Justice bill that would have authorized $40 million in direct appropriations to states that participate in NICS.[20] The House version of the bill differed markedly from the Senate version, so the legislation was sent to conference to resolve the differences. However, the 1999 legislative session ended without any further action being taken.

[19] Public Law 105-277 (Oct. 21, 1998) and Public Law 106-113 (Nov. 29, 1999), respectively.

[20] Title VIII, section 861, S. 254, passed by the Senate on May 20, 1999.

- Criminal Justice Grants. Although the Supreme Court has ruled that states cannot be required or mandated to conduct Brady background checks, the Court has recognized elsewhere that Congress, in general, may impose reasonable conditions on the receipt of federal funds by states.[21] Incentive grants, perhaps associated with an existing criminal justice grant program, could be offered to states that agree to become NICS participants. One such example of an incentive grant is the Violent Crime Control and Law Enforcement Act of 1994,[22] which authorized federal incentive grants to eligible states for building or expanding correctional facilities for violent offenders, if the states implemented measures ensuring stricter sentences for violent offenders. In addition to incentive grants, the NCHIP grant program already authorizes funding for, among other things, states to establish programs to participate in NICS. However, NCHIP grant requirements currently preclude such funds from being used to cover any ongoing operating costs of conducting the background checks.

Amending the Brady Act to Minimize Default Proceed Transactions

Given the long-term nature of efforts to improve automated criminal history records and the possibility that not all states would agree to become NICS participants, another option involves amending the 3 business-day default proceed requirement of the Brady Act to treat differently those potential purchasers who had been arrested for disqualifying offenses and disposition information concerning the arrest was not readily available. Washington state offers one approach that could be considered. In Washington, which is a partial participant in NICS (handguns only), state law allows up to 5 days to perform a background check. However, if available records indicate the prospective purchaser has an arrest for a potentially disqualifying offense, a hold for up to 30 days can be placed on the transaction's approval, pending receipt of disposition information to verify the purchaser's eligibility to possess a firearm. After 30 days, if the disposition of the arrest still cannot be verified, an extension of the hold may be initiated by obtaining a judicial order showing good cause.[23]

Different approaches are offered by the states of Colorado and Georgia, both of which are full-participant states under NICS. Operating under

[21] New York v. U.S., 505 U.S. 144, 165 (1992); South Dakota v. Dole, 483 U.S. 203, 206 (1987).

[22] Public Law 103-322 (Sept. 13, 1994).

[23] Washington's 30-day hold rule also applies to firearms transactions where the background check indicates open criminal charges, pending criminal proceedings, pending commitment proceedings, or an outstanding warrant.

temporary state authority,[24] Colorado can deny a purchaser with an open disqualifying arrest (such as a felony), even if the disposition cannot be obtained within the 3 days allowed under permanent Brady, thus obviating the need for additional time to further research the transaction. Georgia has issued regulations stating that, where a background check identifies the existence of a criminal record that is not immediately available to determine the eligibility of the purchaser (e.g., an arrest disposition), the gun dealer may not transfer the firearm until being advised by the state that the purchaser is not prohibited. According to Colorado and Georgia state officials, because of the public safety issues involved in a prohibited person obtaining a firearm, when a background check reveals a potentially disqualifying record, it is more prudent to deny the transaction and place the burden on the individual to prove (through an appeals process) that he or she should not be prohibited from purchasing a firearm.

Amending the 3 business-day default proceed requirement of the Brady Act could have a significant impact on reducing the number of default proceeds involving prohibited persons and mitigating public safety concerns. For example:

- Adopting either the Colorado or the Georgia approach would, for all intents and purposes, eliminate default proceed transactions, including those where a prohibited person obtains a firearm. The Colorado approach, however, could result in some purchasers being incorrectly denied based solely on arrest records, with the burden then being placed on the purchasers to appeal the decisions and correct the records. The Georgia approach would not result in incorrect denials; however, it places no limit on the amount of time allowed to research the transaction.
- Under the Washington state approach, if a 30 business-day hold had been in effect during the first 10 months of NICS, the number of default proceed transactions involving prohibited persons would have been reduced by over 75 percent. Also, FBI data suggested that such a hold on delayed transactions would have affected only about 88,000 (or 2 percent) of all FBI NICS transactions—those that the FBI has reported to be almost 20 times more likely to involve a prohibited person than transactions involving the average gun buyer.[25] Therefore, additional time to research

[24] This authority was incorporated into legislation permanently reauthorizing Colorado's instant check program, which was enacted into state law on March 7, 2000.

[25] FBI, Criminal Justice Information Services Division, National Instant Criminal Background Check System: Operations Report (November 30, 1998 – December 31, 1999). More specifically, FBI data for the first 13 months of NICS implementation show that delayed background checks taking more than 24 hours accounted for about 38 percent of the total number of NICS denials, compared with the overall NICS denial rate of about 2 percent.

such delayed transactions could play a significant role in preventing firearms sales to potentially prohibited persons.

Scope and Methodology

In performing our work, we interviewed officials and reviewed documentation at the FBI's NICS Operations Center (Clarksburg, WV). Also, we contacted state and/or local law enforcement officials in six states—Colorado, Georgia, Maryland, Texas, Virginia, and Washington—jurisdictions we judgmentally selected to cover a variety of background check roles and responsibilities possible under interim and permanent Brady. Generally, in conducting this assignment, we obtained agency statistics and other information. We did not fully assess the reliability or accuracy of data provided to us by agency officials; however, we did discuss the sources of the data with agency officials. Also, we worked with agency officials to reconcile any discrepancies we identified in the data. We did our audit work between May 1999 and January 2000 in accordance with generally accepted government auditing standards. Appendix V gives more details about our objectives, scope, and methodology.

Conclusions

Under permanent Brady, creation of the NICS Index database provides the FBI and state agencies with centralized access to certain nonfelony, noncriminal disqualifying information that was not easily available to state and local law enforcement agencies under interim Brady. However, 1 year after it was implemented, the NICS Index has yet to reach its full potential in that it contains relatively few records for several categories of prohibited purchasers. The FBI is currently taking steps to contact federal agencies and states to identify the universe of available disqualifying records and have those records incorporated into the NICS Index. Despite this effort, however, privacy concerns and state laws may prevent some types of records—such as those involving substance abuse or mental health treatment—from becoming widely accessible through the NICS Index.

In many respects, state agencies are better positioned than the FBI to conduct NICS background checks. State agencies have access to all of the information available to the FBI through NICS, plus additional information available only to their respective state. Further, state agencies may be better able to interpret their respective state's criminal records and applicable firearms laws. The FBI acknowledges that NICS' effectiveness could be enhanced with full participation by more states. However, at the time of our review, most states were either nonparticipants or partial participants in NICS. Increased state participation in NICS may be hindered by fiscal pressures, lack of interest in long gun regulation,

unwillingness to implement an essentially federal program, or administrative difficulties in administering NICS background checks.

Default proceed transactions involving prohibited persons who purchased firearms—over 2,500 identified by the FBI during the first 10 months of permanent Brady—increase concerns about public safety, create resource demands on law enforcement (particularly ATF) in retrieving firearms from prohibited persons, and expose law enforcement agents to potential risk associated with firearms retrievals. Two long-term options for improving NICS operations and reducing the number of these default proceed transactions would be to (1) continue funding to provide federal grants to states for improving the quality and completeness of automated criminal history records and (2) provide financial incentives to states to increase the number that participate in NICS. A third option would be to amend the 3 business-day default proceed requirement of the Brady Act to treat differently those potential purchasers who had been arrested for disqualifying offenses and disposition information concerning the arrest was not readily available. Some states already have laws or other provisions to minimize the number of default proceed transactions. Under Washington state law, for example, a hold for up to 30 days can be placed on a handgun purchase transaction, pending receipt of arrest disposition information regarding the prospective purchaser's eligibility to purchase the handgun.

FBI data suggested that allowing more time to research delayed NICS transactions would have affected a relatively small percentage of all FBI NICS transactions—about 2 percent—that took more than 3 business days to resolve. However, additional research time may have prevented firearms sales to prohibited persons. For example, based on data for the first 10 months of NICS implementation, the number of default proceeds involving sales of firearms to prohibited persons would have been reduced by 5 percent with 5 days of research, by 57 percent with 20 days, by 77 percent with 30 days, and by 91 percent for 60 days.

Matters for Congressional Consideration

The Congress may wish to consider one or more options for reducing or minimizing the number of default proceed transactions involving the transfer of firearms to prohibited persons. One option is to continue providing federal grants to states for improving the quality and completeness of automated criminal history records. Another possible option is to encourage increased state participation in NICS by providing some form of federal financial assistance. Also, the 3 business-day default proceed requirement of the Brady Act could be amended to treat differently those potential purchasers who had been arrested for

disqualifying offenses and arrest disposition information was not readily available.

Agency Comments

On March 1, 2000, we provided a draft of this report for comment to the Department of Justice and the Department of the Treasury.

- On March 24, 2000, Justice's Audit Liaison Office (Justice Management Division) provided us with a written response indicating that the draft had been reviewed and commented on by representatives of the FBI, BJS, the Office Justice Programs, the Executive Office for U.S. Attorneys, the Office of Policy Development, and the Office of the Deputy Attorney General.
- On March 24, 2000, Treasury's Office of Finance and Administration (Office of Under Secretary for Enforcement) provided us with a written response indicating that the draft report had been reviewed and commented on by representatives of Treasury's Office of Enforcement and ATF.

Department of Justice

Justice generally concurred with the findings presented in the draft report and provided various technical clarifications and/or updated information, which we incorporated in this report where appropriate. Regarding default proceed transactions, Justice expressed agreement with the three possible solutions or options that we set forth and also noted that these were not mutually exclusive. More specifically, Justice commented substantially as follows regarding the options:

- Option 1: Federal Grants to Improve State Criminal History Records. Justice believes that continuing NCHIP funding is critical and supports enhanced funding for the program. The administration's fiscal year 2001 budget request reflects a doubling of the current level of funding—i.e., from $35 million in fiscal year 2000 to $70 million in fiscal year 2001. Also, Justice believes that the NCHIP grants will have their effect only over the long term. The FBI, state, and local law enforcement have been working for years to centralize all criminal information into a national system, and Justice will continue to work with the states toward achieving that goal. The use of a national system is important because the U.S. population is very mobile and using 50 different databases to access information concerning firearm disabilities is neither feasible nor desirable.

- Option 2: Financial Incentives to Encourage State Participation in NICS. Since well before the implementation of NICS, the FBI has strongly supported the concept of states serving as points of contact for conducting background checks. Under permanent Brady, the FBI continues to believe that states are better positioned than the FBI to conduct background

checks. Similarly, Justice strongly supports having states serve as points of contacts, and Justice believes that states can perform more thorough checks for the reasons discussed in the draft report. However, it is not clear from any data that (1) having more states serve as points of contacts would reduce the volume of unresolved checks and (2) the states would be better able to track down missing criminal dispositions, which is the major reason for default proceeds. When arrest disposition information is not found in automated state criminal history systems, NICS examiners typically must contact the appropriate courts of record to obtain the disposition. Thus, providing funding to the states without focusing it for the courts is unlikely to resolve the issue of missing dispositions. The FBI has already collected and entered more than 80,000 such dispositions into the FBI criminal history database and forwarded these dispositions to the appropriate states to update their own criminal history databases.

- Option 3: Amending the Brady Act to Minimize Default Proceed Transactions. Justice takes no exception to this option. Whereas option 1 is a long-term solution, amending the Brady Act to alter the 3-day window would provide a much more immediate reduction in default proceeds. The number of default proceeds relative to the number of total background checks is quite small; however, the risks and costs associated with the occurrence of default proceeds are significant. In the judgment of Justice, the public benefits in extending the 3 business-day default period substantially outweigh the inconvenience that would thereby be incurred by the very small minority of gun buyers. Therefore, Justice suggests that Congress give serious consideration to altering the 3-day window.

  Moreover, regarding option 3, Justice commented that it has considered the issue of fairness to repeat purchasers. That is, Justice noted that since many gun purchasers are repeat purchasers, if the Brady Act were amended to extend the 3-day window, fairness to nonprohibited applicants requires that any dispositions found during the lengthened background check period be subsequently included in the applicable electronic criminal history records. In this regard, NCHIP provides federal funds to states to cover specifically the costs of entering dispositions found during NICS background checks into criminal history records.

Department of the Treasury

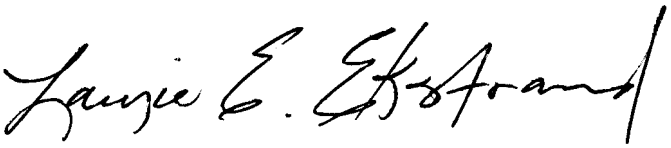
Treasury said that the report was thorough, expressed concurrence with the report's findings, and provided some technical clarifications, which we incorporated in this report where appropriate. Regarding default proceed transactions resulting in the sale of firearms to prohibited persons, Treasury expressed support for the various options we presented for addressing this issue. Also, Treasury noted that:

- Responding to default proceed transactions is a resource-intensive, potentially dangerous mission, which diverts ATF's already limited special agent resources from other investigations.
- Clarification of default proceed procedures and analysis of the origin, cause, and status of unresolved background checks would be helpful in reducing their number in the future, as well as determining medium-term resource implications for Treasury in meeting its enforcement obligations.

As we arranged with your offices, unless you publicly announce this report's contents earlier, we plan no further distribution of it until 30 days after the date of this report. At that time, we will send a copy of this report to Senator Strom Thurmond, Chairman, Senate Subcommittee on Criminal Justice Oversight, and to other relevant congressional committees. We will also send copies to The Honorable Janet Reno, Attorney General; The Honorable Louis Freeh, FBI Director; The Honorable Lawrence Summers, the Secretary of the Treasury; and The Honorable Bradley Buckles, ATF Director. This report will be provided to other interested parties upon request.

If you or your staff have any questions about this report or wish to discuss the matter further, please contact me at (202) 512-8777, or Danny R. Burton at (214) 777-5600. Other key contributors to this report are acknowledged in appendix VI.

Sincerely yours,



Laurie E. Ekstrand
Director, Administration of
Justice Issues

Contents

Letter		1
Appendix I Overview of Firearms Purchase Application and Background Check Procedures Under Interim and Permanent Brady		30
	Interim Brady	30
	Permanent Brady	32
	Background	33
	Questions and Responses Regarding the Process in Which the FFL Contacts the FBI	42
Appendix II Access To Disqualifying Records Under Interim Brady		44
	BJS Report on Results of Interim Brady	44
	Our Report on Implementation of Interim Brady	45
	State and Local Perspectives on Access to Information Under Interim Brady	46
Appendix III Information on States' Firearms Laws		51
	Overview	51
	Permits	53
	Waiting Periods	54
	Reporting	55
Appendix IV Relationship Between Background Checks and Quality of Automated Records		57
	OTA Report (1991)	57
	BJS Report (1999)	59
	Improving the Quality of Automated Records	61
Appendix V Objectives, Scope, and Methodology		64
	Objectives	64
	Scope and Methodology of Our Work	65

Appendix VI GAO Contacts and Staff Acknowledgments 71

Tables

Table 1: Number and Category of Records in the NICS Index (as of November 30, 1999) 8
Table 2: Number of Business Days Taken to Identify Default Proceed Transactions Involving Prohibited Purchasers (as of September 30, 1999) 17
Table I.1: State Participation Under Interim Brady 31
Table II.1: State Access to Disqualifying Information Under Interim Brady (as of November 1998) 45
Table III.1: State Permit, Waiting Period, and Reporting Requirements for Firearms Purchases (1999) 51
Table V.1: Brady Status of States Selected for Site Visits 67

Figures

Figure I.1: State and Territory Participation in the National Instant Criminal Background Check System (as of Feb. 1, 2000) 34
Figure I.2: Flowchart of NICS Background Checks Conducted by the FBI 36
Figure I.2 (cont.) 37
Figure I.3: Flowchart of NICS Background Checks Conducted by Designated State Agencies 38

Overview of Firearms Purchase Application and Background Check Procedures Under Interim and Permanent Brady

This appendix provides a general overview of firearms purchase application and background check procedures under the interim and permanent provisions of the Brady Act (effective February 28, 1994, and November 30, 1998, respectively).

Interim Brady

Effective February 28, 1994, the Brady Act's phase I or interim provisions required licensed firearms dealers to, among other things, request a presale background check on handgun purchasers. The checks generally were to be conducted by the chief law enforcement officer (CLEO)[1] in the purchaser's residence community to determine, on the basis of available records, if the individual was legally prohibited from buying the firearm under the provisions of federal, state, or local law. The sale was not to be completed for 5 business days unless the dealer received an approval from the CLEO before that time. If the CLEO did not contact the dealer within the 5-day period, the dealer could make the sale unless the dealer had reason to believe the transaction would be unlawful.

Under interim Brady, the prospective handgun purchaser was to complete a form—generally referred to as the Brady form[2]—giving his name, date of birth, and residence address and certifying that he or she was not a member of various categories prohibited from buying a firearm. Then, the dealer was to provide notice of the form's contents to the CLEO of the area in which the buyer's residence was located. The CLEO then was to "make a reasonable effort" to ascertain within 5 business days whether the sale would violate federal, state, or local law, including research in whatever state and local recordkeeping systems were available and the FBI-operated National Crime Information Center files.

The CLEO could allow the sale to proceed at any time during the 5-day waiting period by advising the gun dealer that the applicant had not been determined to be a prohibited person. Alternatively, if not notified to the contrary, the gun dealer could assume that the purchaser was not disqualified and could complete the sale upon expiration of the 5-day period. However, if the search revealed that the applicant was ineligible to receive a handgun, the CLEO was to notify the dealer (without providing the reason) that the sale was denied. The CLEO could also instruct the dealer to refer the buyer to the CLEO if the buyer had questions or otherwise challenged the denial.

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

[2] ATF Form 5300.35, Statement of Intent to Obtain A Handgun(s).

Further, under interim Brady, the Bureau of Alcohol, Tobacco and Firearms (ATF) categorized each state as either a "Brady state" or a "Brady-alternative state."[3] The Brady states were those that had to comply with the 5-day waiting period provision to facilitate background checks by CLEOs. Each Brady-alternative state was so designated by ATF because each state had an "alternative" system to the federal 5-day waiting period. Generally, the alternative system was either (1) a permit or other preapproved system or (2) a point-of-sale or instant check system. Under either alternative, state law had to require that an authorized official verify that the "information available" to such official did not indicate that the prospective purchaser's possession of the handgun would violate the law. Also, according to ATF officials, the same minimum standard for background checks applied to both Brady and Brady-alternative states. That is, at a minimum, a check of criminal history records was required to screen out all convicted felons.

Table I.1 shows each state's status under interim Brady, as well as the number of CLEOs responsible for performing background checks.[4] More details about interim Brady are presented in our 1996 report.[5]

Table I.1: State Participation Under Interim Brady

	Orginal Brady states (3/1/94)	Brady states (11/29/98)	Brady-alternative states (11/29/98)	Number of CLEOs (11/29/98)
Alabama	•	•		67
Alaska	•	•		35
Arizona	•	•		1
Arkansas	•	•		1
California			•	1
Colorado	•		•	1
Connecticut			•	1
Delaware			•	1
Florida			•	1
Georgia	•		•	1
Hawaii			•	4
Idaho	•		•	1
Illinois			•	1

[3] As of February 28, 1994, 32 states were categorized as Brady states, and the other 18 states were categorized as Brady-alternative states.

[4] In 1997, the U.S. Supreme Court ruled that the Brady Act's interim (phase I) provision commanding CLEOs to conduct background checks was unconstitutional in that it compelled state officers to execute federal law (Printz v. U.S. (521 U.S. 898)).

[5] Gun Control: Implementation of the Brady Handgun Violence Prevention Act (GAO/GGD-96-22, Jan. 25, 1996).

	Orginal Brady states (3/1/94)	Brady states (11/29/98)	Brady-alternative states (11/29/98)	Number of CLEOs (11/29/98)
Indiana			•	1
Iowa			•	100
Kansas	•	•		123
Kentucky	•	•		5
Louisiana	•	•		64
Maine	•	•		129
Maryland			•	1
Massachusetts			•	270
Michigan			•	595
Minnesota	•		•	568
Mississippi	•	•		262
Missouri			•	115
Montana	•	•		56
Nebraska			•	95
Nevada	•	•		1
New Hampshire	•		•	1
New Jersey			•	505
New Mexico	•	•		113
New York			•	58
North Carolina	•		•	100
North Dakota	•	•		53
Ohio	•	•		1
Oklahoma	•	•		440
Oregon			•	1
Pennsylvania	•	•		67
Rhode Island	•	•		39
South Carolina	•	•		1
South Dakota	•	•		66
Tennessee	•		•	96
Texas	•	•		991
Utah	•		•	1
Vermont	•	•		22
Virginia			•	1
Washington	•		•	291
West Virginia	•	•		1
Wisconsin			•	1
Wyoming	•	•		40
Total	**32**	**23**	**27**	**5,390**

Source: BJS, Presale Handgun Checks, the Brady Interim Period, 1994-98 (June 1999).

Permanent Brady

Under the Brady Act's phase II or permanent provisions, the National Instant Criminal Background Check System (NICS) began operations on

November 30, 1998. NICS is managed by the FBI but can be accessed by designated state agencies, as discussed below. Federal firearms licensees (FFLs)—particularly retail sales outlets—have a key role in helping to ensure the integrity of the background check process by verifying the identity of the purchaser and relaying the purchaser's personal identification information to the FBI or to a designated state agency.[6]

Background

Depending on the willingness of their state government to act as a NICS liaison, FFLs contact either the FBI or a designated state agency to initiate background checks on individuals purchasing firearms.[7] Generally, depending upon the state in which the FFL is conducting business and the type of weapon purchased, there are three methods of performing background checks:

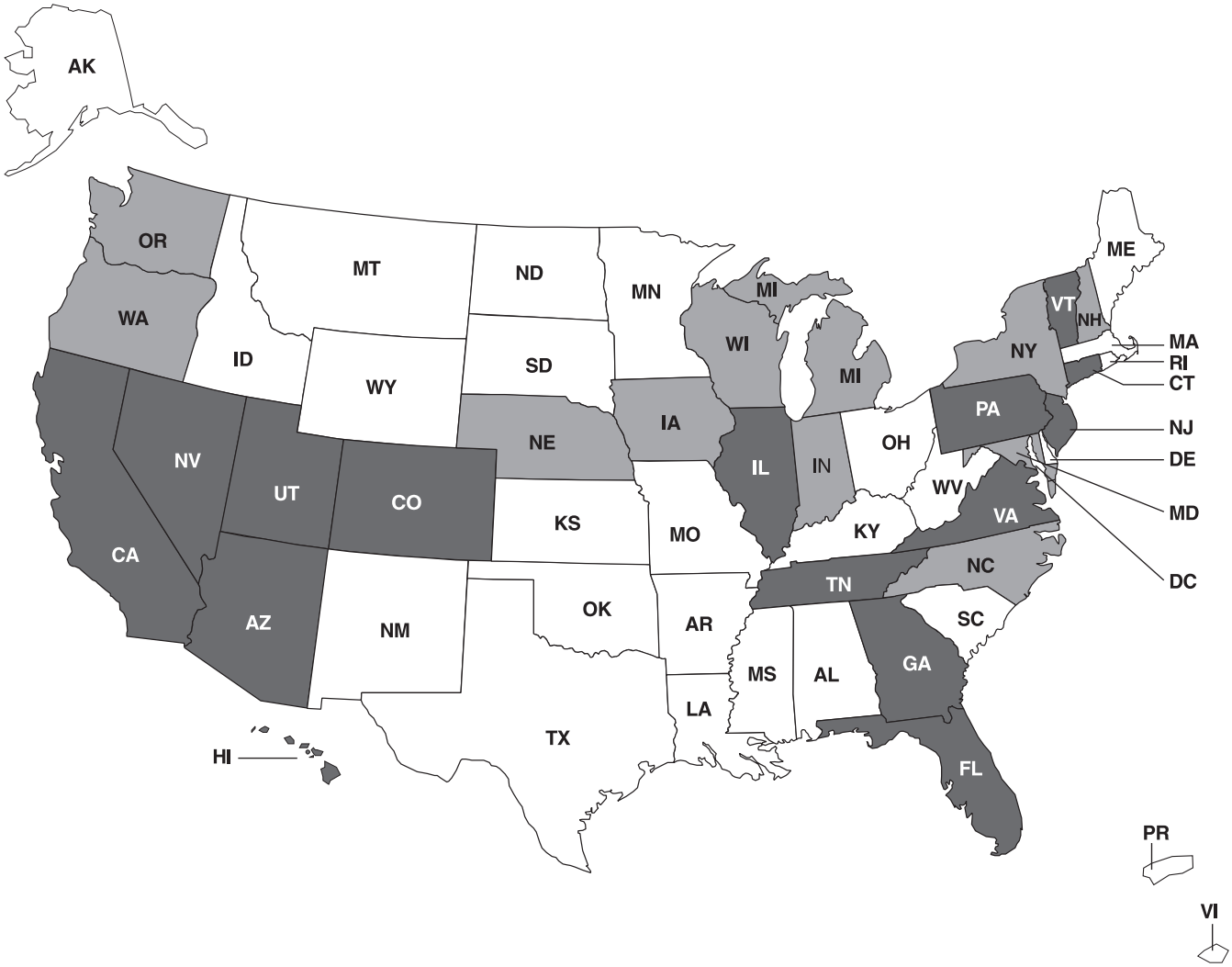
- In the 24 "nonparticipant" states in which the state government has declined to designate a point of contact or liaison for conducting background checks, the FFLs are to contact the FBI to initiate a background check on all firearms transfers (permits or purchases). In addition to 24 states, this category also includes the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.
- In the 15 "full participant" states, FFLs are to contact a designated state agency (e.g., state police), which is to make the NICS background check and determine whether the transfer or issuance of a permit would violate state or federal law.
- In the remaining 11 "partial participant" states, FFLs are to contact (1) the FBI for background checks on long-gun purchases or permits or (2) a designated state agency for background checks on handgun purchases or permits.

Figure I.1 illustrates which states and territories are in each of the three participation categories as of February 1, 2000.

[6] NICS background checks are to be performed in connection with firearms transfers and are not to be limited to firearms sales (see 63 FR 58306). When we use the term "potential buyer" or "potential purchaser," we are also referring to other potential firearms recipients, such as individuals redeeming pawned firearms.

[7] Federal law prohibits persons from receiving a firearm if they (1) have been convicted of, or are under indictment for, a felony; (2) are fugitives from justice; (3) are unlawful users of, or addicted to, any controlled substance; (4) have been adjudicated as mental defectives or have been involuntarily committed to a mental institution; (5) are illegal or unlawful aliens, or certain other aliens admitted to the United States under a nonimmigrant visa; (6) have been dishonorably discharged from the military; (7) have renounced their U.S. citizenship; (8) are subject to certain domestic violence restraining orders; or (9) have been convicted of a domestic violence misdemeanor.

Figure I.1: State and Territory Participation in the National Instant Criminal Background Check System (as of Feb. 1, 2000)



Full participants: States that conduct NICS checks for all firearm purchases and permits for handguns and long guns.

Partial participants: States that perform NICS checks for handgun purchases or permits while the FBI performs NICS checks for long-gun purchases or permits..

Nonparticipants: States and territories for which the FBI performs NICS checks for both handgun and long-gun purchases or permits.

Source: FBI data.

As previously discussed, FFLs contact either the FBI or a designated state agency for a NICS background check. Figure I.2 illustrates the background check process in which the FFL contacts the FBI, and figure I.3 illustrates the process in which the FFL contacts a designated state agency.

Figure I.2: Flowchart of NICS Background Checks Conducted by the FBI

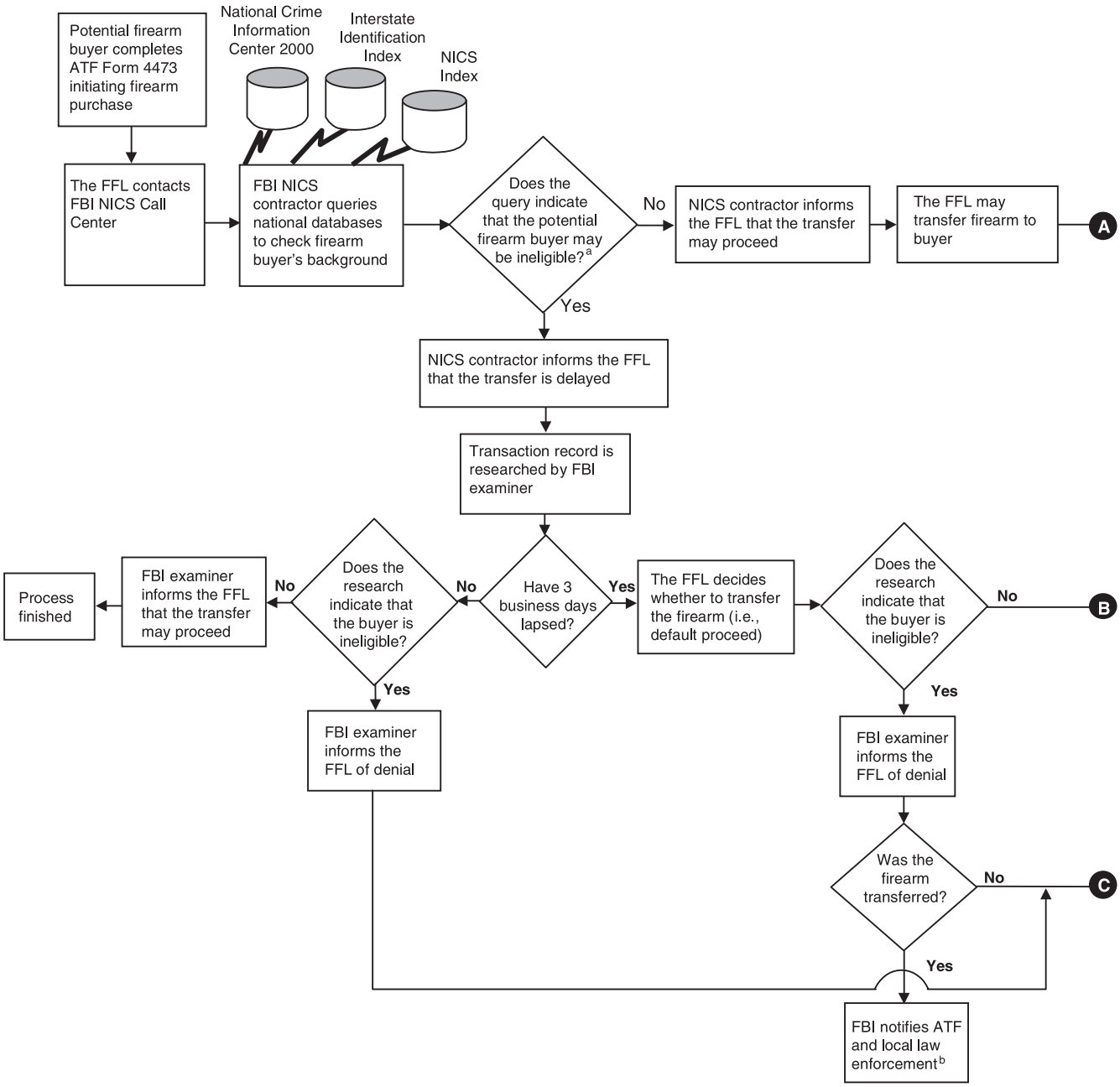
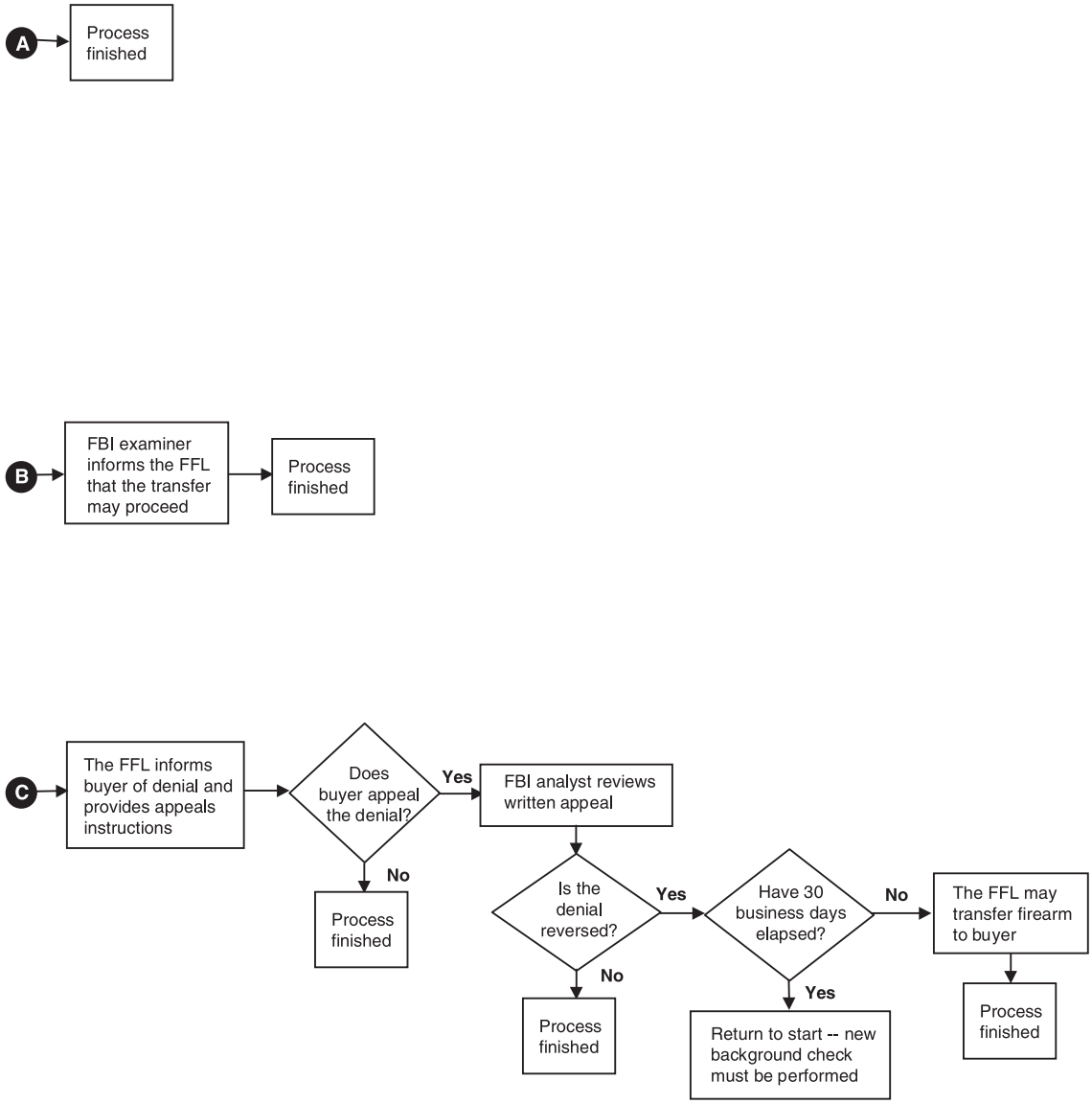


Figure I.2 (cont.)



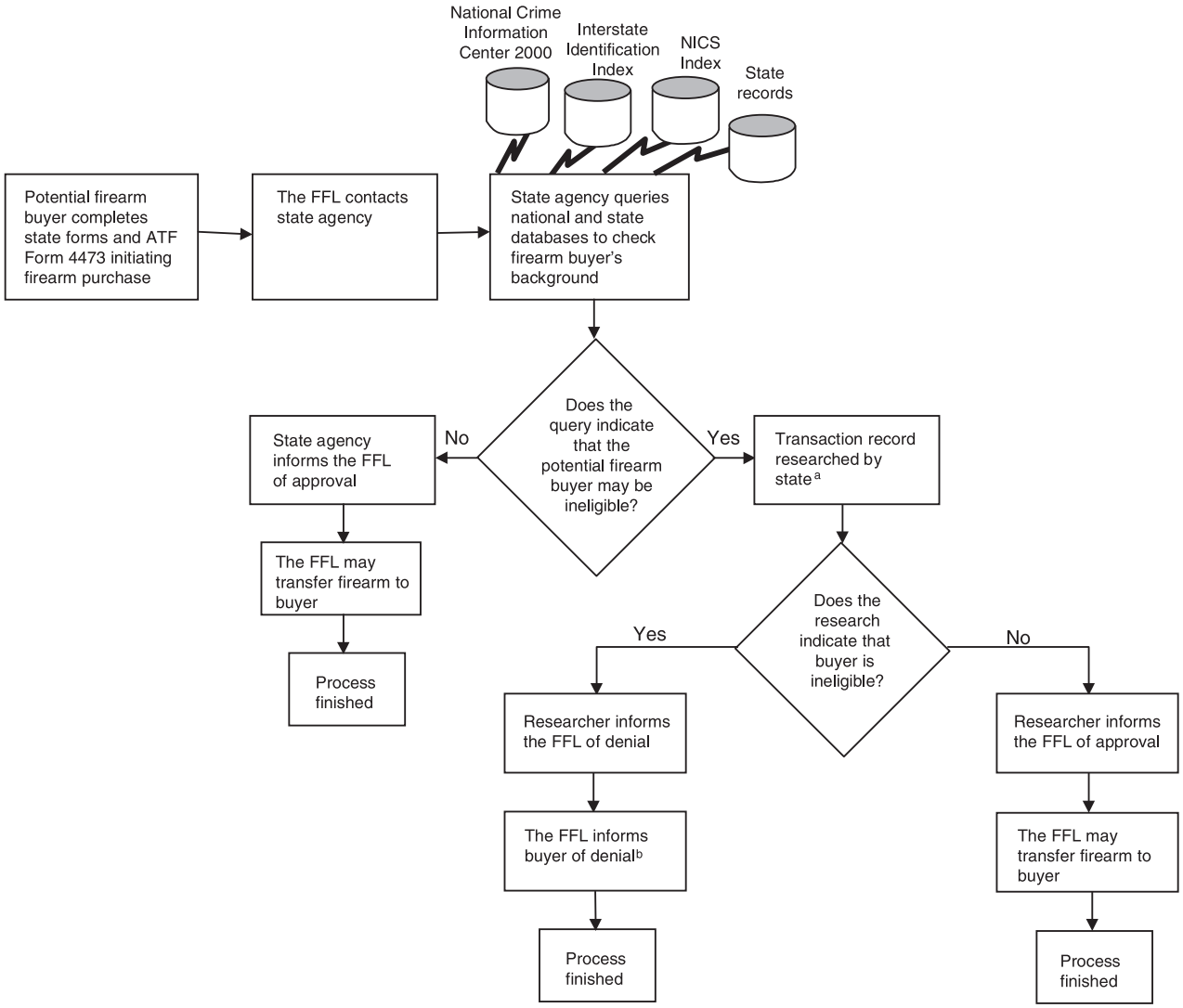
[a]NICS contract personnel are not authorized to review actual criminal history records. The database

query results seen by these personnel are simply an indicator that there either is no match (therefore, a proceed) or a potential match on one or more of the databases (therefore, a delay).

[b]The retrieval actions are discussed in appendix III of this report.

Source: GAO analysis of FBI data.

Figure I.3: Flowchart of NICS Background Checks Conducted by Designated State Agencies



[a]If after 3 business days the FFL has not been notified of the background check results, the FFL may transfer the firearm, unless a state statute provides for a period greater than 3 business days.

[b]States are to have a process whereby denied individuals may appeal the denial.

Source: GAO analysis of FBI data.

Although the two processes presented in figures I.2 and I.3 are similar in that both entities use NICS in the background check process, the following narrative sections relate specifically to the former (fig. I.2), that is, the process in which the FFL contacts the FBI.

The FBI's NICS Program Office is responsible for conducting the background checks and consists of the following components:

- Two Call Centers staffed with contract personnel are located in Uniontown, PA, and Moundsville, WV. FFLs are to use a toll-free telephone number to contact a Call Center.
- The NICS Operations Center (located in the FBI's Criminal Justice Information Services complex in Clarksburg, WV) consists of two groups of FBI legal instrument examiners—(1) research and analysis and (2) customer service.

Firearm Buyer Must Complete ATF Form 4473

Purchasers of any firearm type (both handguns and long guns) from FFLs are subject to a presale background check. The prospective purchaser initiates the process by completing the Bureau of Alcohol, Tobacco and Firearms' (ATF) Form 4473 (Firearms Transaction Record).[8] Basically, in completing this form, the individual is certifying that he or she is not prohibited by federal law from purchasing a firearm.

On the ATF Form 4473, the prospective buyer must also provide the following descriptive data: (1) name; (2) sex; (3) height; (4) weight; (5) race; (6) residence address; (7) date of birth; (8) place of birth; and (9) at the prospective buyer's option, Social Security number or other identification numbers, such as alien registration number or military number. The FFL is to verify the identity of the buyer by examining a valid form of identification that contains a photograph of the buyer.

FFL Contacts FBI Call Center Contract Staff, Who Queries National Databases

After the ATF Form 4473 is completed, the FFL uses a toll-free telephone number to contact an FBI Call Center. Upon receiving the telephone request for a background check, the Call Center's contract staff are to verify the caller's FFL number and code word, initiate a name-based search, and provide a NICS transaction number (NTN)[9] for a valid inquiry. Some of the descriptive data provided on the ATF Form 4473 are to be

[8] Use of ATF Form 4473 preceded the Brady Act.

[9] The NTN is generated by the NICS computer. Each NTN is to be a unique number assigned to each valid background check inquiry received by NICS. The primary purpose of NTNs is to provide a means of associating inquiries to NICS with the responses provided by NICS to FFLs. The NTNs are further discussed in appendix IV.

provided to the Call Center contract staff and are searched against the records contained in the NICS' three relevant national databases as follows:

National Crime Information Center 2000 (NCIC 2000).[10] NCIC 2000 is the nation's most extensive computerized criminal justice information system. It consists of a central computer located in the FBI's Criminal Justice Information Services complex, Clarksburg, WV; dedicated telecommunications lines; and a coordinated network of federal and state criminal justice information systems. The NCIC 2000 system contains files on the following subjects, among others:

- The wanted persons file contains information on persons for whom a federal warrant, felony warrant, or serious misdemeanor warrant is outstanding, including domestic and foreign warrants.
- The protection order file contains information on restraining orders issued for the purpose of preventing violent or threatening acts or harassment against another person. Active orders that contain a Brady Act indicator of "yes" are disqualifiers.

Interstate Identification Index (III).[11] Managed by the FBI, III is an index-pointer system for the interstate exchange of criminal history records. III records include information on persons who are indicted for, or have been convicted of, a crime punishable by imprisonment for a term exceeding 1 year or have been convicted of a misdemeanor crime of domestic violence.

NICS Index. Managed by the FBI, this database contains information provided by federal and state agencies about certain persons prohibited under federal law[12] from receiving or possessing a firearm. The NICS Index is separate and apart from NCIC and III, and all records in the NICS Index are disqualifying records and will prohibit the sale of a firearm. More specifically, the NICS Index contains records on persons who

- were discharged from the armed forces under dishonorable conditions,
- have renounced their U.S. citizenship,

[10]NCIC 2000, which replaced NCIC, became operational on July 11, 1999.

[11]III became operational in the 1980s. III was made a segment of the Integrated Automated Fingerprint Identification System, which became operational on July 28, 1999.

[12]Records on individuals denied under state law, but who are not prohibited under federal law, are not to be entered into the NICS Index. Also, any record entered into the NICS Index must be removed if the record is overturned through the appeal process (discussed later in this appendix).

- have been unlawful users of or addicted to any controlled substance,[13]
- have been adjudicated as a mental defective or have been committed to a mental institution,[14]
- are known aliens and are illegally or unlawfully in the United States or certain aliens admitted under a nonimmigrant visa, or
- have been denied the purchase of a firearm in accordance with federal laws.

On the basis of a consolidated search of the three national databases, the FBI Call Center is to provide the FFL with one of the following two possible one-word responses:[15]

- Proceed. This response is to be provided if no record that might be a match is found in the NCIC 2000, III, and NICS Index databases.

- Delayed. This response is to be provided if the search finds a potentially matching record.[16] A delayed response to the FFL indicates that it would be unlawful to transfer the firearm until receipt of a follow-up proceed response or the expiration of 3 business days, whichever occurs first.[17] Delayed means that more research is required before a proceed or a denied response can be given.

For each delayed response, FBI staff are to conduct research to verify that the matching record applies to the potential buyer and to determine if the potential buyer is disqualified by federal or state law from possessing a firearm. This practice exists because Call Center contract staff are not authorized to review criminal history records; instead, FBI staff

[13]Under federal law, a drug-related arrest without a conviction normally will not prohibit a person from purchasing a firearm. However, according to ATF regulations, persons who have had multiple arrests (regardless of disposition) for use or possession of a controlled substance within the past 5 years, if the most recent arrest occurred within the past year, are prohibited.

[14]According to ATF regulations, (1) individuals committed to a mental institution by a court, board, commission, or other lawful authority; (2) a person found to be insane in a criminal case; (3) a person found to be mentally incompetent to stand trial; or (4) a person found not guilty by reason of mental responsibility are prohibited. In contrast, persons suffering from mental illness who have voluntarily committed themselves to a mental institution are not disqualified by law from possessing firearms.

[15]Neither response provided to the FFL is to contain any details of the information in the records checked by the system.

[16]A delayed response is also to be given in the event that a search of the databases is not completed within the time limit (normally a 30-second limit). These delays are to be resolved by the FBI after the database search is complete.

[17]"Business day" is defined by federal regulation as a 24-hour day (beginning at 12:01 a.m.) during which state offices are open in the state in which the proposed firearm transaction is to take place (63 Fed. Reg. 58303, 58307 (1998)).

(examiners) at the NICS Operation Center are to conduct the necessary research of each delayed response to determine whether records indicate that a proceed response or a denied response should be provided.

Questions and Responses Regarding the Process in Which the FFL Contacts the FBI

Using a question-and-response format (as illustrated in fig. I.2), this section provides further information about the firearm-purchase application and background check process in which an FFL contacts the FBI.

Question 1

Does the query indicate that the potential firearm buyer may be ineligible?

Possible Response

No: If the database query finds no records indicating ineligibility, the Call Center contract staff is to (1) provide a proceed response to the FFL and (2) also provide the FFL with an NTN, which is to be recorded on the ATF Form 4473. After receiving the proceed response from the FBI, the FFL can transfer the firearm to the buyer.

Yes: If the database query finds records indicating possible ineligibility, the Call Center contract staff is to (1) inform the FFL that the transaction is delayed, (2) provide the FFL with an NTN to be recorded on the ATF Form 4473, and (3) obtain the FFL contact person's name and telephone number so that he or she may receive the results of the FBI's additional research. Then, as previously mentioned, because Call Center contract staff are not authorized to review criminal history records, FBI staff (examiners) at the NICS Operations Center are to conduct the necessary research to determine eligibility.

According to FBI officials, most delayed responses are the result of the computer search identifying existing criminal history records. Delays that take extensive research generally occur when the search identifies criminal records showing an arrest for a potentially disqualifying offense but containing no information about the outcome or result. For example, there may be a record showing a felony-related arrest with no final disposition, such as whether the case was dismissed or resulted in a conviction.

Question 2

Does the research indicate that the buyer is ineligible?

Possible Response	**No**: If the research finds no records indicating ineligibility, the FBI is to provide the FFL with a proceed response, and the FFL can then transfer the firearm to the buyer. **Yes**: If the research does find records indicating ineligibility, the FBI is to provide the FFL with a denied response. In turn, the FFL is to inform the buyer of the denial and provide the buyer with appeal instructions. The FFL is not to transfer the firearm until receipt of a proceed response from the NICS Operations Center or expiration of 3 business days (excluding the day on which the query was made), whichever comes first. If 3 business days lapse before the NICS Operations Center has notified the FFL that the firearm purchase should be denied and the FFL transfers the firearm, the FBI is to initiate steps to have the firearm retrieved.
Question 3	Does the buyer appeal the denial?
Possible Response	**No**: If the buyer does not appeal the denial, no further action is required of the FBI. The FBI noted, however, that if it were to receive information that would change a denial determination to a proceed it would correct the criminal history records. **Yes**: The appeal must be made in writing by the appellant. An FBI analyst is to review the appeal.
Question 4	Is the denial reversed on appeal?
Possible Response	**No**: If the denial is not reversed on appeal, the FBI is to inform the buyer and is not required to take any further action. **Yes**: If the denial is reversed on appeal, the FBI is to inform the buyer. If fewer than 30 days have elapsed since completion of the ATF Form 4473, the FFL can transfer the firearm to the buyer. However, if 30 or more days have elapsed, the buyer must submit another ATF Form 4473 to initiate an updated background check. When an appeal results in a proceed determination, the NICS records are to be updated to avoid having future denials based on the same information.

Access To Disqualifying Records Under Interim Brady

In discussing the way firearms background checks were performed under interim Brady, this appendix summarizes (1) previous reports on access to records under interim Brady and (2) the results of our visits to state and local law enforcement agencies in six states.

BJS Report on Results of Interim Brady

In June 1999, the Bureau of Justice Statistics (BJS) released a comprehensive study on the results of interim Brady from its inception in February 1994 until its transition to NICS in November 1998.[1] BJS reported that approximately 312,000 handgun purchases had been denied under interim Brady. About 63 percent of the denials were for a prior felony conviction or current felony indictment, domestic violence misdemeanors accounted for about 10 percent of the denials, and domestic violence protection orders about 3 percent.

Despite the number of denials during interim Brady, state and local agencies were not accessing data or databases for all of the Brady disqualifiers. As shown in table II.1 below, BJS reported that the extent of state and local access to data differed somewhat based on the particular disqualifying factor:

- All of the states maintained statewide databases that recorded criminal histories—such as past felony convictions.
- Many states had access to data on other disqualifying factors—such as fugitive status, court restraining orders, mental illness, and domestic violence misdemeanors.
- In some states, these data were not available at the state level for statewide dissemination, but some local agencies maintained automated databases of this type of information.
- Some states had separate data files or databases related to their own state prohibitions (e.g., probation and parole, juvenile offenses, and motor vehicle offenses).
- None of the states accessed specific databases for other noncriminal Brady disqualifiers—illegal alien status, dishonorable discharge, and citizenship renunciation.

[1] U.S. Department of Justice, Office of Justice Programs, BJS, Presale Handgun Checks, the Brady Interim Period, 1994–98 (NCJ-175034), June 1999.

In addition to the above, BJS previously reported that all states also had access to federal wanted files and Interstate Identification Index (III) files through the FBI's National Crime Information Center (NCIC).[2]

Table II.1: State Access to Disqualifying Information Under Interim Brady (as of November 1998)

	Number of states	Percent of states
State information		
Criminal histories	50	100%
Wanted fugitives	44	88
Restraining orders	36	72
Mental health	16	32
Domestic violence misdemeanors	34	68
Federal information		
Wanted persons	50	100
III index	50	100

Source: BJS.

In its 1999 report, BJS concluded that once NICS was implemented on November 30, 1998, background checks handled entirely by the FBI might not access all of the state-level files accessed under interim Brady.

Our Report on Implementation of Interim Brady

In our previous report on interim Brady,[3] we found that most of the 20 state or local jurisdictions we surveyed relied primarily on criminal history records to conduct interim Brady background checks. For example, in the 15 jurisdictions that maintained records, of the 9,941 denials based on Brady disqualifiers, about 91 percent were based on criminal history records—primarily due to a felony indictment, arrest, conviction, or outstanding warrant. Another 1 percent of the denials were based on restraining orders, and the other 8 percent of the denials were for other disqualifying factors under interim Brady.

We further reported that the lack of centralized, automated databases containing information on the other Brady disqualifiers restricted the

[2] U.S. Department of Justice, Office of Justice Programs, BJS, Survey of State Procedures Related to Firearm Sales, 1996 (NCJ-163918), September 1997.

[3] Gun Control: Implementation of the Brady Handgun Violence Prevention Act (GAO/GGD-96-22, Jan. 25, 1996).

ability of law enforcement officers to identify prospective gun buyers who fell into one of these categories. According to law enforcement officials, information concerning the other Brady disqualifiers was only coincidentally included in the criminal history databases. For example:

- Drug User or Addict – Denials were based on criminal history records showing that the prospective gun buyer had arrests for drug offenses.
- Mentally Disabled – Denials were based on local court records, state and county mental health records, or mental problems indicated in the criminal history records.
- Dishonorable Discharge – Denials were based on criminal history records indicating arrests for being absent without leave from the military.
- Illegal Alien – Denials were based on alien status indicated in the criminal history records.

Thus, while interim Brady specified background checks on a number of disqualifying, nonfelony categories, most law enforcement officers had no way to check purchasers' backgrounds, with respect to these disqualifiers.

State and Local Perspectives on Access to Information Under Interim Brady

As part of our review, from June through October 1999, we visited state and/or local law enforcement agencies in six states[4] to obtain additional state and local perspectives on what databases had been available under interim Brady. More specifically, we met with officials of the following agencies:

- Colorado: Colorado Bureau of Investigation.
- Georgia: Georgia Bureau of Investigation, Cobb County Sheriff's Office, and Fulton County Sheriff's Office.
- Maryland: Maryland State Police.
- Texas: City of Dallas Police Department and City of Fort Worth Police Department.
- Virginia: Virginia State Police.
- Washington: King County Sheriff's Office and Pierce County Sheriff's Office.

Colorado (Colorado Bureau of Investigation)

Under interim Brady, Colorado operated a statewide instant check system, established in early 1994 at about the same time interim Brady became effective. As such, Colorado was designated as a Brady-alternative state. The state's background check system covered handgun purchases and was

[4] As discussed in appendix V, we judgmentally selected the six states to cover a variety of background check roles and responsibilities possible under interim and permanent Brady.

operated by the Colorado Bureau of Investigation. The state instant check process differed from Brady Act requirements in the following respect:

- The background check generally had to be completed within 24 hours of the inquiry, at which time the gun dealer could legally sell the gun without having received an affirmative response from the state.
- Prospective purchasers could be denied if they had been arrested or charged with any crime that, if convicted, would disqualify the person from possessing a handgun.

During the instant background checks, the state accessed NCIC and III to obtain records on nationwide wanted persons and persons under restraining orders, as well as federal and state criminal records. Background checks also accessed the state's criminal record repository, which included the state's criminal history records as well as state files on Colorado restraining orders and Colorado wanted persons. Colorado's background checks did not access information about some of interim Brady's noncriminal disqualifiers. For example, mental health records were not included in any of the databases accessed during firearm purchase background checks under interim Brady. According to Colorado officials, access to these types of medical records would be illegal under state law. Similarly, there was no computerized access to specific records on the federal disqualifiers—persons dishonorably discharged, illegal or unlawful aliens, and persons who have renounced their citizenship—unless that information was with a criminal record.

Georgia (Georgia Bureau of Investigation, Cobb and Fulton County Sheriffs' Offices)

Initially under interim Brady, Georgia relied on local law enforcement officers to conduct handgun background checks. As such, Georgia was a Brady state, subject to the background check requirements (including the 5-day background check period) of interim Brady. During this initial phase, local background checks primarily accessed criminal history, wanted person, and restraining order records through NCIC, III, and the state's criminal record repository. The background checks would also search local city or county criminal justice databases for any additional disqualifying records—for example, misdemeanors or disposition information—that may not have been submitted to the state repository or NCIC. These local background checks did not access databases containing records for some of interim Brady's noncriminal disqualifying categories, including mental disability, illegal or unlawful aliens, and persons dishonorably discharged from the military.

In January 1996, Georgia established a statewide instant check system and, thus, was considered a Brady-alternative state under interim Brady. The

new system provided instant background checks for handgun purchases and was operated by the Georgia Bureau of Investigation. The state instant check process differed from Brady Act requirements in the following respect:

- If the background check revealed the existence of a potential disqualifying record not immediately available to the state, the gun dealer was advised the transaction was delayed, and the gun could not be sold until the gun dealer received an affirmative response from the state.

Georgia's instant check system essentially accessed the same computerized databases as those accessed by local law enforcement agencies, with the exception of the local criminal justice databases. There was no computerized access to specific records for some of interim Brady's noncriminal disqualifying categories, including mental defectives, illegal or unlawful aliens, and persons dishonorably discharged from the military, unless that information was associated with a criminal record.

Maryland (Maryland State Police)

Under interim Brady, Maryland operated a statewide background check system for handguns and was a Brady-alternative state. The statewide background check program—in place since 1966—was operated by the Maryland State Police. The state background check process differed from Brady Act requirements in the following respect:

- The state was allowed 7 days to complete the background check, and the gun could not be sold until after 7 days had elapsed (a mandatory waiting period), regardless of when the check was completed. After 7 days, the gun could be legally sold without an affirmative response from the state.
- Only one handgun could be purchased by the same person in a 30-day period.

Under Maryland's firearms background check process, the state could access various state and local databases containing records about federal and state criminal histories and wanted persons (through NCIC, III, and the Maryland criminal record repository), state motor vehicle offenses (for indications of drug and alcohol abuse), and state civil warrants (for protective orders). Under interim Brady, however, Maryland did not have computerized access to specific information regarding mental defectives, illegal or unlawful aliens, or other federal noncriminal disqualifiers, unless that information was associated with a criminal record.

Texas (Dallas and Fort Worth Police Departments)

In Texas, various local law enforcement agencies conducted handgun purchase background checks under interim Brady. Texas was considered a Brady state, subject to the background check requirements (including the 5-day background check period) of interim Brady. Local background checks normally accessed criminal history, wanted person, and restraining order records through NCIC, III, and the state's criminal record repository. The background check would also search local city or county criminal justice databases for any additional disqualifying records—such as misdemeanors or disposition information—that may not have been submitted to the state repository or NCIC.

Some law enforcement agencies accessed other sources of data, in addition to the nationwide databases identified above. For example, in addition to the computerized databases accessed, the Fort Worth Police Department also manually accessed information on persons committed to the county mental health center. Local background checks did not access computerized databases containing specific records on some of interim Brady's noncriminal disqualifiers, such as illegal or unlawful aliens and persons dishonorably discharged from the military, unless that information was associated with a criminal record.

Virginia (Virginia State Police)

Under interim Brady, Virginia operated a statewide instant background check system and was a Brady-alternative state. The state's background check covered all firearms and was operated by the Virginia State Police. The state instant check process differed from Brady Act requirements in the following respect:

- The background check generally had to be completed by the end of the gun dealer's next business day, at which time the gun could be legally sold without having received an affirmative response from the state.
- Only one handgun could be purchased by the same person in a 30-day period.

During the background check, the state accessed its own criminal information network, which electronically checked nationwide criminal history records and wanted files through NCIC and III. In addition, the state check also accessed the following state databases for additional disqualifying information not available through NCIC or III: Virginia Mental Health File, Virginia Wanted and Protective Order Files, Virginia Central Criminal Records Exchange, and Virginia 30-day Calendar File. While the Virginia background check system allowed an instant computerized search for many of the disqualifying categories, the state could not check for some of interim Brady's noncriminal disqualifiers, such as illegal or

unlawful aliens and persons dishonorably discharged, unless that information was associated with a criminal record.

Washington (King and Pierce County Sheriffs' Offices)

In Washington, local law enforcement agencies conducted handgun purchase background checks under interim Brady. Washington was considered a Brady state, subject to the background check requirements (including the 5-day background check period) of interim Brady. The state background check process differed from Brady Act requirements in the following respect:

- If the background check revealed the existence of a potential disqualifying record not immediately available to the state, the state could delay approval of the transaction for 30 days, during which time the gun could not be sold without an affirmative response from the state.

Local law enforcement agencies in Washington accessed NCIC and the Washington state criminal record repository for nationwide records on persons wanted or under protective orders, or persons with federal or state criminal histories. Local agencies also accessed statewide databases operated by the state's Department of Social and Health Services (for mental disability records) and the state's Department of Licensing (for information about previous handgun purchases and concealed weapons permits). Finally, the background check would search local city or county criminal justice databases for any additional disqualifying records—such as misdemeanors or disposition information—that may not have been submitted to the state repository or NCIC. King County, for example, also checked the county's fingerprint database, the sheriff's office report management database, and the county prosecutor's database for potentially disqualifying information. Washington law enforcement agencies did not have access to specific information regarding some of interim Brady's noncriminal disqualifiers, such as illegal or unlawful aliens and persons who renounced their citizenship, unless such information was associated with a criminal record.

Information on States' Firearms Laws

This appendix provides information on various aspects of states' firearms laws. The information was compiled primarily from secondary sources—that is, material published by the National Rifle Association, Handgun Control, the Bureau of Justice Statistics (BJS), and the Bureau of Alcohol, Tobacco and Firearms (ATF). Where possible, we corroborated or expanded on the data using state sources, including law enforcement agencies we contacted in the six states that we visited (see app. V).

Overview

As shown in table III.1, many states have enacted their own firearms laws, including requirements for (1) obtaining permits to purchase firearms, (2) waiting a specified or mandatory time period before firearms can be purchased, and (3) reporting firearms purchases to state or local authorities. In some cases, state requirements—such as permit provisions or mandatory waiting periods—are more stringent than federal requirements under permanent Brady. Consequently, firearms purchases must comply with all of the applicable requirements of both state and federal law.

Table III.1: State Permit, Waiting Period, and Reporting Requirements for Firearms Purchases (1999)

	State permit to purchase[a]		State waiting period to purchase or obtain permit (days)[b]		Purchase reported to state or local agency[c]
State	Long guns	Handguns	Long guns	Handguns	
Alabama				2	•
Alaska					
Arizona					•
Arkansas					
California		[d]	10	10	•
Colorado					•
Connecticut		•	14[e]	14[e]	•
Delaware					•
Florida				3	•
Georgia					[f]
Hawaii	•	•	14[g, h]	14[h]	•
Idaho					
Illinois	•	•	1[i]	3[i]	•
Indiana					•
Iowa		•		3[g]	•
Kansas					
Kentucky					
Louisiana					
Maine					
Maryland		[d]		7[h, j]	•
Massachusetts	•	•	30	30	•
Michigan		•		[k]	•
Minnesota		•[j, l]		7[e, j]	•

State	State permit to purchase[a]		State waiting period to purchase or obtain permit (days)[b]		Purchase reported to state or local agency[c]
	Long guns	Handguns	Long guns	Handguns	
Mississippi					
Missouri		•		7	•
Montana					
Nebraska		•		2[g]	•
Nevada					•
New Hampshire					•
New Jersey	•	•	30[g]	30[m]	•
New Mexico					
New York		•		180	•
North Carolina		•		30	•
North Dakota					
Ohio					
Oklahoma					
Oregon					•
Pennsylvania					[f]
Rhode Island			7	7	•
South Carolina		[d]			•
South Dakota				2	•
Tennessee					[f]
Texas					
Utah					•
Vermont					•
Virginia		[d]			•
Washington				5[h]	•
West Virginia					
Wisconsin				2[h]	•
Wyoming					
Total	**4**	**12**	**7**	**19**	**31**

Note: This table represents a compilation of data originally obtained and reported by the National Rifle Association, Handgun Control, BJS, and ATF. Where necessary, we also corroborated the data with other state data sources.

[a]In some cases, a permit or license is good for multiple purchases of firearms, while in other cases, a separate permit is required for each purchase. Also, in some cases, a valid permit may allow the purchaser to forgo the required state or federal background check.

[b]In some cases, a waiting period applies to obtaining the permit; in other cases it applies to the firearms purchase. Also, some waiting periods (e.g., for purchases) are mandatory, while others (e.g., for obtaining permits) represent the maximum time allowed for the process.

[c]In some cases, reporting may be for the purpose of conducting a law enforcement background check; in other cases, it may be for licensing or registration of the firearm. Also, in states that perform their own firearms background checks, some information about approved and/or denied transactions is retained by state or local agencies.

[d]Permit or statutory exemption is required to purchase more than one handgun in a 30-day period.

[e]Waiting period does not apply to valid license or permit holders.

[f]Only information about denied transactions is retained by the state.

[g]Waiting period applies to initial purchase only.

[h]Waiting period may be extended as follows: no more than 20 days total under any circumstance (HI); indefinitely pending the disposition of open criminal proceedings (MD); an additional 30 days to verify an applicant's eligibility (WA); an additional 3 days to obtain felony arrest dispositions (WI).

[i]Waiting period of up to 30 days to initially obtain license or permit to purchase.

[j]Handgun waiting period and/or permit requirements also apply to defined assault weapons.

[k]No specific time limit is placed on the handgun permit process.

[l]In lieu of obtaining a permit to purchase multiple handguns, purchasers may elect to undergo a separate background check and waiting period for each handgun purchase.

[m]Handgun permit is not valid for purchases until at least 7 days have elapsed since the date of the permit application.

Source: National Rifle Association, Compendium of State Firearms Laws (Apr. 14, 1999); Handgun Control, What Happened in My State When the Brady Law Waiting Period Expired? (undated); BJS, Survey of State Procedures Related to Firearm Sales, Midyear 1999 (Mar. 2000); ATF, Permanent Brady Permit Chart (Dec. 27, 1999); state statutes, laws, and regulations.

As shown above, states are more likely to enact laws addressing the purchase of handguns, as opposed to long guns. This distinction may, in part, be indicative of the greater interest by some states in regulating handguns due to a perception that handguns are more likely to pose a public safety risk. Maryland and Washington, for example, have specific background check and waiting period requirements that apply to handgun purchases. However, the same requirements do not apply to long gun purchases (with the exception of defined assault weapons in Maryland).

Permits

As table III.1 shows, 12 states have implemented systems that require prospective firearms purchasers to obtain a separate license or permit before purchasing a handgun.[1] Four of these states—Hawaii, Illinois, Massachusetts, and New Jersey—also require a permit or license to purchase long guns. States with firearms permit or license laws generally require a waiting period and mandatory background check to obtain the permit or license. In contrast to these state permit requirements, the Brady Act does not require individuals to obtain a permit or license prior to purchasing any firearms.

Other restrictions or requirements may also apply to some states' firearms permit or license processes. For example:

- A waiting period may apply to the permit process. In Illinois, for example, there is up to a 30-day wait to initially obtain a Firearm Owners Identification Card, required for the purchase of any firearm. In Hawaii, a purchase permit is required for all firearms, but the permit may not be issued until 14 days after application.

[1] Four other states require a permit or exemption only for purchases of more than one handgun within a 30-day period.

- Cities or counties may impose their own local firearms permit requirements, in addition to any state requirements. New York, for example, requires a state permit to acquire a handgun; however, New York City requires a permit to purchase long guns as well.
- Permits may be required for multiple firearms purchases. Maryland and Virginia, for example, do not normally require permits to purchase handguns. However, both states have laws that require a permit to purchase more than one handgun in a 30-day period.

Waiting Periods

Table III.1 shows that 19 states currently allow or require specific waiting periods prior to purchasing or obtaining a permit to purchase a handgun.[2] Seven of these states have enacted state waiting periods for long gun purchases or permits as well.

Under permanent Brady, a firearm may be transferred as soon as the background check verifies that a prospective purchaser is eligible to purchase a firearm (or after 3 business days have elapsed without disqualifying information being received). However, some states have enacted mandatory waiting periods—that is, even if the purchaser is approved, the firearm cannot be transferred until the specified time has expired. Other states specify a maximum waiting period (up to 5 days, for example), but the firearm can be transferred as soon as the gun dealer is notified that the purchaser is eligible. For example:

- Maryland requires that an eligible handgun purchaser wait 7 days from the date of the purchase before the firearm can be transferred, regardless of when the state completes the background check.[3] If the state does not notify the gun dealer of the purchaser's eligibility within this time, the firearm may be transferred after the 7 days has elapsed.
- Washington allows local law enforcement agencies up to 5 business days to perform a handgun background check. The firearm may be transferred as soon as the dealer is notified that the purchaser is eligible, or after the 5 days has elapsed. Also, if available records indicate that the purchaser has an arrest for a potentially disqualifying offense, the local law enforcement agency performing the check can automatically extend the waiting period up to 30 days, pending receipt of disposition information that would verify the purchaser's eligibility to possess a firearm.

[2] One other state, Michigan, requires that permits be processed with due speed and diligence, but no time limit is placed on this process.

[3] This waiting period applies to handguns and certain long guns defined by the state as assault weapons.

- In Illinois, as noted above, individuals must obtain a Firearm Owners Identification Card prior to purchasing any firearm. However, once this Identification Card is obtained, purchasers are still subject to mandatory state waiting periods for each firearms purchase—1 day for long guns and 3 days for handguns.

Reporting

Table III.1 shows that 31 states require some information about approved firearms purchases to be reported to and retained by state or local authorities (3 other states require only information on denied purchases be retained). In some cases, this process involves owner registration of all firearms—including serial number and description—with a government authority, usually local or state police. In other cases, this process involves recording information only about purchases from licensed gun dealers, which may then be forwarded by the dealers to a government authority. For example:

- In Washington, all handgun purchases are first reported to a local law enforcement agency in the purchaser's place of residence to determine the purchaser's eligibility to possess a handgun. Within 7 days of transfer of the handgun, information about the sale—including the purchaser's name and description of the handgun—must also be reported to the state's Department of Licensing, which maintains a database of all persons who have purchased handguns.
- Maryland requires that all handgun sales or transfers be reported within 7 days of the transfer to the Maryland State Police, which is to maintain a permanent record of all completed sales and transfers. Dealers must provide a copy of the written notification of the transaction, including details about the firearm transferred—such as make, model, and caliber.
- Hawaii requires that all firearms be registered with the chief of police of the county of the person's place of business or residence. The registration is to include information about the firearm (e.g., make, model, and caliber), the source of the firearm, and the owner's permit number. This requirement applies to all firearms, whether purchased in the state or previously owned and brought into the state.

In contrast, permanent Brady does not require any reporting of firearms sales to local authorities, nor does it require owner registration of firearms. In fact, the Brady Act specifically prohibits the establishment of any

registration of firearms, firearms owners, or firearms transactions, except for those persons prohibited from receiving a firearm.[4]

[4] Under permanent Brady, firearms transactions are recorded by licensed gun dealers, and that information is retained by the dealer on site. For those dealers who contact the FBI for NICS background checks, some identifying information about the purchase is maintained on computer by the FBI for up to 180 days, after which all records relating to approved transactions are to be destroyed except the NICS transaction number and the date the number was created.

Relationship Between Background Checks and Quality of Automated Records

In discussing the relationship between automated background checks and waiting periods, this appendix summarizes information reported by the Office of Technology Assessment (OTA)[1] and the Bureau of Justice Statistics (BJS).

OTA Report (1991)

Before passage of the Brady Act, OTA reviewed various proposals for making automated firearms background checks, including the use of point-of-sale instant checks similar to NICS.[2] Among other things, OTA's review examined the relationship between automated record checks and waiting periods. OTA's 1991 report noted that:

- While instant check systems already seemed practical in a few states, in many others a waiting period of several days (and sometimes weeks) was needed to check a combination of manual and automated criminal records.
- The average waiting period could shorten over time as more states developed the capabilities needed for instant checks; however, this assumed states do not retain waiting periods for other reasons—such as cooling off or checks of noncriminal justice records.

The OTA report went on to state that:

> "Waiting periods help provide the time needed for criminal record checks in many states using whatever combination of manual and automated capabilities exists. The amount of time required for checks is, all other things being equal,[3] inversely related to automation, record quality, and the ability to accurately identify firearms purchasers. The more automated and complete a state's criminal records, and the lower the incidence of false identification, the less the need for waiting periods for the purpose of [background] checks."

State-to-State Comparisons

The OTA report compared the states of Virginia and California to illustrate the function between waiting periods and availability of automated records. In Virginia, the state had the ability to conduct an initial instant check in a matter of seconds, with a relatively low level of known "false positive" outcomes (incorrectly identifying a firearms purchaser as prohibited) or "false negative" outcomes (failing to identify a prohibited firearms purchaser). OTA found, for example, that about 4 out of every 100 purchasers were initially disapproved incorrectly based on false positive hits; and that half of these were corrected within several hours or by the

[1] OTA, a nonpartisan congressional research agency, ceased operations on September 29, 1995.

[2] U.S. Congress, OTA, Automated Record Checks of Firearm Purchasers: Issue and Options (OTA-TCT-497), July 1991.

[3] "Like the state's population, volume of firearm sales, and resources available to conduct checks."

next business day. OTA concluded that, if this level of false positives was judged acceptable, then the value of a waiting period for the purpose of making a background check—as opposed to cooling off—was relatively low.

In California, by comparison, OTA found that firearm background checks took 4 to 7 days on average and noted further that this was part of the justification for the state's (at that time) 15-day waiting period. The reasons California took longer than Virginia were as follows:

- a much larger volume of firearms background checks (almost 5 times as many);
- a somewhat lower level of disposition reporting for recent arrests (85 percent versus 95 percent); and
- the necessity to check certain noncriminal records (e.g., mental health commitments).

Further, OTA reported that California experienced a high initial false positive rate—so high that an instant check system might be unacceptable, even if technically feasible:

- About 28 of every 100 purchasers were initially disapproved, but only 1 of the 28 was eventually confirmed as not qualified to purchase a firearm.
- Because of the state's waiting period, the other 27 false positive hits were corrected before the responses were sent back to the gun dealers.
- If California had an instant check system, however, the incorrect initial disapproval would have to be provided to dealers before the purchaser's legal status could be fully determined.

According to OTA, the major factor in implementing a successful instant background check system is the quality of criminal history records—that is, reasonably complete and timely arrest and disposition information, accessible through telecommunication and computing technology. That is, without the appropriate criminal record infrastructure, an instant check system could result in (1) a large number of false positive hits, frustrated criminal records officials, and unhappy gun purchasers and (2) an unknown number of felons and fugitives who are erroneously authorized to, in effect, illegally purchase firearms (false negatives).

Checking Noncriminal Records

However, as difficult as instant criminal record checks may be, the challenges posed by checking other types of records—including records involving drug users, mental defectives, illegal aliens, citizenship renunciants, and persons dishonorably discharged—are even greater. OTA

estimated that as many as 20 million persons fell into one of these categories and that records did not even exist on perhaps four-fifths of these people. For those records that did exist, OTA estimated that probably half were not automated and many were subject to complicated, conflicting laws, rules, and traditions on disclosure. OTA noted, for example, that:

- Over 14 million persons were unlawful users of controlled substances; but only about 3 percent were included in some kind of record system (not counting those that may be felons or fugitives).
- About 2.7 million persons were estimated to be illegal aliens, but only about one-fourth were listed in any record system.
- Another 2.7 million persons were estimated to be mentally defective (including only those persons involuntarily committed to mental institutions); and, while many of these persons were listed in state mental health databases, the completeness and accuracy of these records were largely unknown, and most of the records were not automated.

OTA noted that the outlook was not good for including all disqualifying categories in routine firearms purchase record checks:

- Illegal drug users and illegal aliens posed perhaps insurmountable problems, because most were not included in any record system.
- Records on citizenship renunciants and persons dishonorably discharged were relatively complete and accessible (through the Departments of State and Defense) but made up an insignificant portion of all disqualifying records.
- Involuntarily committed mental patients might eventually be checked on a systematic basis, but substantial record automation and quality improvement would be needed in most states. Voluntary commitments, which accounted for the vast majority of mental cases, would be much more difficult and controversial to check.

OTA further concluded that, depending on the extent to which background checks for all disqualifying categories are to be conducted, a lengthy waiting period may be necessary to locate and search whatever records exist.

BJS Report (1999)

In April 1999, BJS published the data from its most recent periodic survey on the status of state criminal history records.[4] The survey involved 53

[4] U.S. Department of Justice, BJS, Survey of State Criminal History Information Systems, 1997: A Criminal Justice Information Policy Report (NCJ-175041), April 1999.

jurisdictions (all 50 states plus Washington, D.C.; Puerto Rico; and the U.S. Virgin Islands), and the results were based on data that were current as of December 31, 1997. The survey addressed various issues, including the quantity and quality of records[5] held in criminal history databases, the level of automation of the criminal history records, and the level and timeliness of disposition reporting to criminal history repositories.

Quantity and Accessibility of Records

According to BJS, most criminal history records are either automated and quickly accessible or can be identified through state pointer indexes. BJS reported that, as of December 31, 1997, over 54.2 million criminal history records were held in states' criminal history repositories, of which about 87 percent were automated. The remaining 13 percent, approximately 6.8 million records, were not automated.[6] Despite not being automated, the existence of these records can still be identified during a background check by accessing states' master name indexes—an identification index that includes names and other identifiers for all persons about whom a criminal history record is held. Forty-five of the 52 reporting jurisdictions had fully automated master name indexes, and 5 others had partially automated master name indexes. Some indexes may also include "felony flags," which quickly indicate whether the record subject has an arrest or conviction for a felony offense. An automated master name index is the key to rapidly identifying persons who may have criminal records for purposes such as presale firearms checks.

Completeness of Records

A large portion of criminal history records do not contain information about the disposition of the case. BJS reported that central repositories in only 7 jurisdictions received court disposition information (i.e., sentencing or other final settlement of a criminal case) for 100 percent of their felony arrest records. Conversely, central repositories in 7 other jurisdictions received dispositions for less than 50 percent of their criminal history records. During a background check, a "hit" on a criminal history record that does not include disposition information (e.g., whether an arrest resulted in a conviction) requires that the checking authority do additional—sometimes manual—research to determine the outcome of the case. This is particularly important during a firearms background check, since the simple existence of a felony arrest (without a conviction) does not disqualify the purchaser from obtaining a firearm under federal law.

[5] A criminal history record is a record that includes individual identifiers and describes an individual's arrests and subsequent dispositions.

[6] Maine and the U.S. Virgin Islands had no automated criminal history files.

Timeliness of Records

There is a significant time lag in entering disposition information (and to a lesser extent arrest information) into criminal history repositories. BJS reported that, in 1997 it took an average of 42 days between the time of an individual's final court disposition and the receipt of that information at the state criminal history repository. Although the majority of responding jurisdictions received disposition information within 30 days of the outcome, 1 state—Pennsylvania—reported that such receipt took an average of 360 days. Further, although the average number of days between receipt of the disposition information and entry in the criminal history databases was 33, in 2 states—Indiana and Minnesota—it took an average of 180 days. To illustrate the magnitude of the problem, 26 jurisdictions indicated they had backlogs in entering disposition data into criminal history databases. For example, Louisiana reported 180,000 dispositions partially or wholly unprocessed and estimated that 4,500 person days would be needed to eliminate the backlog. In addition, 5 other states reported backlogs of 100,000 or more dispositions. Because of this time lag, at any given point in time, a criminal history background check (such as NICS) will not have access to all the records necessary to accurately determine an individual's criminal history.

Potential Impact of Criminal History Records on NICS

Regarding the quality of state criminal history records, BJS concluded that the key concern is the completeness of records and the extent to which records include dispositions as well as arrest and charge information. Other concerns included the timeliness of data reporting to criminal history repositories and the timeliness of data entry by the repositories. In relating the quality of criminal history records with the November 1998 implementation of NICS, BJS further stated that the levels of coverage, completeness, accuracy, and accessibility of the state criminal history information systems can directly affect the effectiveness and efficiency of NICS.

Improving the Quality of Automated Records

The National Criminal History Improvement Program (NCHIP) is a long-term and comprehensive federal effort, administered by BJS, to improve the quality of automated criminal history records. Begun in 1995, NCHIP has provided about $293 million (including about $43 million in August 1999) in grant funding to help states build an accurate and useful national system of criminal records to, among other things, facilitate background checks on persons attempting to purchase firearms. Relevant to firearms background checks, NCHIP funds can assist states to

- establish programs and systems to facilitate full state participation in III and NCIC;
- develop systems to facilitate full participation in NICS;

- ensure that noncriminal history records information systems relevant to firearms eligibility determinations become available and accessible to NICS;
- improve the level of automation, accuracy, and completeness of records, including arrest and disposition reporting;
- identify, classify, collect, and maintain records of protection orders, warrants, arrests, and convictions of persons violating protection orders so as to protect victims of stalking and domestic violence;
- support court-based criminal justice information systems that promote reporting of dispositions; and
- establish domestic violence offender identification and information systems.

In its fiscal year 1999 NCHIP program announcement, BJS identified three specific program priorities, all of which are directly related to improving the efficiency and effectiveness of NICS:

- Commitment to full implementation of NICS – BJS noted that states are encouraged to serve as full participants in NICS in order to (1) allow access to the most complete and up-to-date state criminal records and records of noncriminal factors and (2) utilize state personnel who can best interpret criminal records. In support of NICS, fiscal year 1999 NCHIP funds were available to cover costs associated with participating in NICS and to ameliorate any problems that were delaying instant responses to firearms dealers' background check inquiries.
- Commitment to participation in III – BJS noted that III participation by states was critical to ensuring that the most accurate and complete criminal records are available instantly for NICS firearms checks. This priority required states that were not III members to identify problems precluding participation and to focus 1999 NCHIP funds on activities that furthered this goal.
- Commitment to support courts' development of record systems – BJS stressed the importance of NICS having access to computerized criminal history records complete with dispositions, as well as immediate statewide and interstate access to domestic violence protection orders. In recognizing the importance of the courts in this effort, 1999 NCHIP funding plans were to help ensure that adequate attention was directed to help the courts make this information available on a complete and immediate basis.

In a February 2000 report[7] on NCHIP and two other federally funded programs to improve criminal history records, BJS reported that automation has made records available on a more timely basis and that these records have become more accessible and useful as a result of improvements in automated systems and record completeness. However, linking arrest and disposition records continues to pose problems stemming from (1) delays in rendering dispositions in court and communicating those dispositions to the state's criminal history repository and (2) long-term difficulties in obtaining 100 percent of felony dispositions and linking them to the appropriate felony arrest.

Regarding NICS, BJS reported that more firearms sales to ineligible purchasers may occur under NICS than during the interim provisions of Brady, in part, because the majority of states are not points of contact under NICS. In these other states (where the FBI performs NICS background checks), the FBI would not have access to the more complete state-level criminal records and may not be able to verify certain nonfelon information—such as mental health information. As a result, the FBI NICS checks are less likely to uncover disqualifying information than either state NICS checks or checks performed under interim Brady.

BJS also reported that the identification of nonfelons ineligible to purchase firearms—such as persons with a history of mental illness or drug abuse, persons subject to restraining orders, and persons who have committed domestic violence misdemeanors—is expected to remain problematic. For example, the dissemination of mental health and drug abuse information raises legal and ethical questions about the rights to privacy, and new enabling statutes may be required to identify and access such information. Further, states may not be able to easily identify those restraining orders—among the several types of orders that exist—that are considered Brady disqualifiers. Finally, domestic violence misdemeanors, which in the past were often categorized simply as assaults, may be difficult to extract from criminal history records.

[7] U.S. Department of Justice, BJS, Continuing Criminal History Records Improvement Evaluation: Final 1994-98 Report (NCJ-179768), February 2000. This report evaluated the effects of three federal programs: the BJS-funded Criminal History Records Improvement Program; the 5-percent set-aside of the Edward Byrne Memorial State and Local Law Enforcement Assistance Program, funded by the Bureau of Justice Assistance; and the BJS-funded National Criminal History Improvement Program.

Objectives, Scope, and Methodology

Objectives

Senator Charles E. Schumer, Ranking Minority Member, Subcommittee on Criminal Justice Oversight, Senate Committee on the Judiciary and Senator Richard J. Durbin requested that we provide information about the effectiveness of the Brady Act's phase I (interim Brady) and phase II (permanent Brady) provisions in preventing the sale of firearms to prohibited individuals.

Under interim Brady—which went into effect February 28, 1994, and applied to handguns only—background checks generally were to be conducted by the chief law enforcement officer in the purchaser's residence community. During phase I, handguns were not to be transferred for 5 business days (a waiting period), unless the dealer received an approval from the applicable state or local chief law enforcement officer (CLEO) before that time. If the dealer was not contacted within the 5-day period, the dealer was allowed to proceed with the sale unless the dealer had reason to believe the transaction would be unlawful.

Under permanent Brady—effective November 30, 1998, and applicable to all firearms, both handguns and long guns (e.g., rifles and shotguns)—background checks generally are to be conducted using a computerized system, the National Instant Criminal Background Check System (NICS), which is managed by the FBI. Under NICS, firearms are not to be transferred until a background check determines that the transfer will not violate applicable federal and state law. However, if the background check is not completed within 3 business days, the sale is allowed to proceed by default (a "default proceed").

As agreed with the requesters, our work addressed the following questions:

- Regarding access to databases or other information sources for conducting background checks to identify individuals prohibited by law from receiving firearms, how does permanent Brady compare with interim Brady? For instance, under permanent Brady, does the FBI have access to the same types of information that were available to state and local CLEOs under interim Brady? If not, what steps are being taken to enhance access to such information?

- Under permanent Brady, depending on the specific state, either the FBI or a designated state law enforcement agency (e.g., the state police) uses NICS to conduct background checks. What are the advantages and disadvantages of NICS background checks being conducted by a designated state agency versus such checks being conducted by the FBI?

- Under permanent Brady, to what extent have default proceeds resulted in firearms being sold to prohibited individuals? To prevent or minimize such transfers, what are the options that policymakers can consider?

Scope and Methodology of Our Work

In comparing FBI NICS background checks with local checks conducted under interim Brady and state checks conducted under permanent Brady, we our did work at the FBI's NICS Operations Center, as well as at law enforcement agencies in selected states. We also reviewed studies on interim Brady implementation that were issued by the Bureau of Justice Statistics (BJS) and us.

To obtain information about the NICS background check process, we met with FBI officials at the FBI's NICS Operations Center (in Clarksburg, WV), which conducts presale background checks involving (1) firearms, both handguns and long guns, purchased from licensed dealers in 24 states and (2) long guns purchased from licensed dealers in 11 other states.[1]

To obtain state and local perspectives on interim Brady and assess the advantages and disadvantages of NICS background checks compared with state background checks, we interviewed responsible officials at state and local law enforcement agencies in six selected states—Colorado, Georgia, Maryland, Texas, Virginia, and Washington.

To determine whether permanent Brady's 3-day period for conducting background checks has resulted in firearms being sold to prohibited persons, we reviewed previous congressional and Bureau of Justice Statistics studies on automated background checks. We also analyzed FBI NICS transactions to determine the length of time required to verify purchasers' qualifications, the number of firearms sold to persons later found to be prohibited, and the reasons why NICS transactions were delayed beyond 3 days.

Generally, in performing our work, we largely relied on testimonial and documentary evidence—such as agency statistics—provided by FBI and other agency officials. We did not fully assess the reliability or accuracy of the data provided to us by agency officials. However, we did discuss the sources of the data with agency officials. We also worked with agency officials to reconcile any discrepancies we identified in the data. In addition, the FBI did not have visibility over all NICS-related national

[1] As discussed in appendix I, the 24 states are referred to as "nonparticipants" in NICS, and the 11 states are referred to as "partial participants." In the other 15 states ("full participants"), licensed dealers are to contact a designated state point of contact (e.g., state police), who will conduct the NICS check and determine whether the transfer would violate state or federal law.

statistics (including those transactions handled by point of contact states), such as the number of denials by prohibited categories and the number of denials successfully appealed. For these types of data, the FBI was able to provide us statistics covering only those background checks conducted by the FBI—and not those conducted by state agencies in full-participant and partial-participant states.

The following sections present more details about our scope and methodology for each of the objectives.

Scope and Methodology of Our Work Regarding NICS Compared With Interim Brady

Our work focused on identifying (1) data and databases used by law enforcement agencies during interim Brady to identify persons that were prohibited from purchasing firearms and (2) differences between information accessed under interim Brady and information now accessed by the FBI under NICS. We specifically looked for any differences in access to certain nonfelony, noncriminal records—such as those indicating drug abuse or mental disability—that would disqualify persons from purchasing firearms.

We first reviewed existing studies and reports about background checks performed under interim Brady. Our previous report on implementation of the Brady Act[2] described the interim Brady background check process in general, specific processes followed in several selected jurisdictions, and the types of data and databases accessed by CLEOs during background checks. We also contacted BJS, which has published three reports covering interim Brady:

- Presale Firearm Checks (NCJ-162787), February 1997.
- Presale Handgun Checks, 1997 (NCJ-171130), June 1998.
- Presale Handgun Checks, the Brady Interim Period, 1994-98 (NCJ-175034), June 1999.

To obtain additional state and local perspectives on interim Brady background checks, we visited law enforcement officials in six states—Colorado, Georgia, Maryland, Texas, Virginia, and Washington. As shown in table V.1, we judgmentally selected these locations in order to reflect a

[2] Gun Control: Implementation of the Brady Handgun Violence Prevention Act (GAO/GGD-96-22, Jan. 25, 1996).

mix of CLEO types under interim Brady and state participation types under NICS.[3] More specifically:

- Colorado was a single-state instant check CLEO under interim Brady, became a full-participant state under NICS, then switched to the nonparticipant category, and now is back to the full-participant category.
- Georgia began as a local CLEO under interim Brady, switched to a single-state instant check, and now is a full-participant state under NICS.
- Maryland was a single-state CLEO under interim Brady and is a partial-participant state (handgun purchases) under NICS.
- Texas was a local CLEO under interim Brady and is a nonparticipant state under NICS.
- Virginia was a single-state instant check CLEO under interim Brady and is a full-participant state under NICS.
- Washington was a local CLEO under interim Brady and is a partial-participant state (handgun purchases) under NICS.

Table V.1: Brady Status of States Selected for Site Visits

	Interim Brady[a]		---------- Permanent Brady[b] ----------		
State	Brady state	Brady-alternative state	Point of contact state (full participant)	Point of contact state (partial participant)	FBI state (nonparticipant)
Colorado		•	•		[c]
Georgia	[d]	•	•		
Maryland		•		•	
Texas	•				•
Virginia		•	•		
Washington	[d]	•		•	

[a]Beginning February 28, 1994, interim Brady allowed CLEOs at the state or local level 5 days to conduct presale background checks on purchasers of handguns. By the end of Phase I, 27 states ("Brady states") were subject to interim Brady's waiting period requirements because no alternative system was in place to perform background checks. However, 23 states ("Brady-alternative states") had systems in place (permit systems or other procedures for operating background check systems) that ATF determined were acceptable alternatives to the interim Brady background check and waiting period.

[b]Beginning November 30, 1998, permanent Brady allowed states 3 days to conduct presale background checks on purchasers of firearms by relying on the new FBI NICS system, or by using their own state systems. Currently, 15 states (point of contact - full participants) conduct NICS checks for all firearm purchases and for permits for handguns and long guns. Eleven states (point of contact - partial participants) perform NICS checks for handgun permits and purchases while the FBI performs NICS checks for long gun purchases. The FBI performs NICS checks on both handguns and long guns for the remaining 24 states (FBI states – nonparticipants).

[c]Colorado was a nonparticipant state from April 1, 1999, through July 31, 1999.

[d]Georgia and Washington began as Brady states, but later became Brady-alternative states.

[3] Appendix I provides more information about the state participation categories under interim Brady and NICS.

Source: BJS, Presale Handgun Checks, the Brady Interim Period, 1994-98 (NCJ-175034), June 1999; FBI, National Instant Criminal Background Check System: The First Seven Months (November 30, 1998 – June 30 1999); and Gun Control: Implementation of the Brady Handgun Violence Prevention Act (GAO/GGD-96-22, Jan. 25, 1996).

To obtain information about how access to data and databases under NICS differs from that available under interim Brady, we first discussed these issues with officials at the FBI's NICS Operations Center. During our visits, we interviewed applicable managers and reviewed relevant documents related to the establishment of NICS and the types of data accessed during the NICS background check. We also obtained from the FBI a description of the types of data available through the newly created NICS Index database and the number of records in the database.

Scope and Methodology of Our Work Regarding FBI Compared With State Agencies Under NICS

Our work focused on identifying the advantages and disadvantages of state agencies performing NICS background checks versus the FBI performing those checks. We specifically looked for any differences in (1) access to background check information and (2) ability to interpret applicable federal and state firearms laws. During the course of our work, we attempted to identify factors that could preclude states from becoming full participants in NICS.

As noted above, we met with FBI NICS Operations Center officials to obtain information about the NICS background check process. During our visits, we interviewed applicable managers and reviewed relevant documents related to the establishment and operation of NICS, including the types of data accessed during the NICS background check and how NICS examiners verify a purchaser's eligibility under federal and state law.

Five of the six states we visited were either full or partial participants under NICS. At these locations, we interviewed state law enforcement officials and documented the extent to which these states accessed data for all of the Brady disqualifying factors when performing background checks. We also identified examples of NICS transactions where the states had access to certain disqualifying information that the FBI would not have had and the reason for disparities.

To document whether states may be better able to interpret federal and state firearms laws, we identified examples of variations and complexities in state firearms laws during our state visits. We obtained a 2000 report[4] by BJS that described state procedures related to firearms sales. We also

[4] U.S. Department of Justice, BJS, Survey of State Procedures Related to Firearm Sales, Midyear 1999 (NCJ-179022), March 2000.

obtained FBI data on the total number of NICS denials that were appealed, the number of denials that were reversed through appeal, and the reasons why the FBI reversed those denials. We used these data to identify the extent to which FBI reversals are due to misinterpretation of criminal history records. For additional support, we also obtained examples from selected ATF field offices in the locations we visited documenting FBI NICS denials that had been referred for investigation, but which ATF later found had been denied based on incorrect interpretation of state law.

Scope and Methodology of Our Work Regarding 3-Day Background Check Period Under NICS

Our work focused on (1) identifying the number of NICS background checks that were delayed beyond 3 business days, (2) determining how many of these checks resulted in firearms being sold to persons later found to be prohibited by the FBI, and (3) documenting the reasons why such delays take place. During the course of our work, we attempted to identify options for reducing the incidence of firearms being sold to prohibited persons.

We first reviewed existing studies and reports about the relationships between background checks, waiting periods, and automated records. We obtained a 1991 study[5] by the Office of Technology Assessment[6] about the need for background check waiting periods to facilitate accurate checks of automated records. We obtained a 1999 report[7] by BJS that described the extent to which state criminal history records are automated, complete, and accurate. We also obtained a 2000 report by BJS that described efforts to improve the quality of state criminal history records through federal grant programs.[8]

In addition to having various telephone discussions with officials at the FBI's NICS Operations Center, we also visited the Center during June and September 1999. We interviewed responsible FBI officials and reviewed relevant NICS documentation, including the NICS Standard Operating Procedures Manual, Point of Contact State Manual, and FFL NICS Manual.

[5] U.S. Congress, OTA, Automated Record Checks of Firearm Purchasers: Issues and Options (OTA-TCT-497), July 1991.

[6] OTA, a nonpartisan congressional research agency, ceased operations on September 29, 1995.

[7] U.S. Department of Justice, BJS, Survey of State Criminal History Information Systems, 1997: A Criminal Justice Information Policy Report (NCJ-175041), April 1999.

[8] U.S. Department of Justice, BJS, Continuing Criminal History Records Improvement Evaluation: Final 1994-1998 Report (NCJ-179768), February 2000.

We also obtained the FBI's 1999 status reports on the implementation of NICS.[9]

For the period beginning November 30, 1998, (when NICS began operations) through September 30, 1999, we obtained various NICS statistics from the FBI's NICS Operations Center, such as the number of background checks performed, the number of transactions denied and the reasons for denial, and the number of denials successfully appealed. To specifically document the length of time needed to complete NICS transactions and the reason why transactions are delayed, we also obtained the following data:

- For all denied NICS transactions, the length of time the FBI needed to make the final decision to deny the firearm purchase;
- For those transactions where the FBI could not make a determination within 3 business days, the number of firearms released to prohibited persons and the length of time the FBI needed to deny the firearm purchase and initiate the firearm retrieval process;
- The total number of NICS denials that were appealed, the number of denials that were reversed through appeal, and the reasons why the FBI reversed those denials.

[9] U.S. Department of Justice, FBI, National Instant Criminal Background Check System (NICS): The First Seven Months (November 30, 1998 – June 30, 1999); and U.S. Department of Justice, FBI, National Instant Criminal Background Check System (NICS): Operations Report (November 30, 1998 – December 31, 1999).

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