

GAO

Report to the Committee on the  
Judiciary, U.S. Senate, and the  
Committee on the Judiciary, House of  
Representatives

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January 1996

# GUN CONTROL

## Implementation of the Brady Handgun Violence Prevention Act







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

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**Comptroller General  
of the United States**

B-259804

January 25, 1996

The Honorable Orrin G. Hatch  
Chairman  
The Honorable Joseph R. Biden, Jr.  
Ranking Minority Member  
Committee on the Judiciary  
United States Senate

The Honorable Henry J. Hyde  
Chairman  
The Honorable John Conyers, Jr.  
Ranking Minority Member  
Committee on the Judiciary  
House of Representatives

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

This report focuses on the number of and reasons for handgun purchase denials in selected jurisdictions. In addition, the report addresses the extent of federal agency follow-up enforcement action regarding convicted felons and others who falsify their status on handgun purchase application forms. Finally, the report also discusses effects of court cases challenging the constitutionality of the act.

The Departments of Justice and the Treasury and the Bureau of Alcohol, Tobacco and Firearms (ATF) provided written comments on a draft of this report. Their views have been incorporated where appropriate, and their comments have been reprinted in appendixes V and IV, respectively.

We are sending copies of this report to the Secretary of the Treasury, the Attorney General, the Director of ATF, and other interested parties. Copies will also be made available to others upon request.

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B-259804

The major contributors to this report are listed in appendix VI. Please feel free to call me at (202) 512-8777 if you or your staff have any questions.

A handwritten signature in black ink that reads "Norman Rabkin". The signature is written in a cursive, flowing style.

Norman J. Rabkin  
Director, Administration of  
Justice Issues

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B-259804

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# Executive Summary

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## Purpose

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

GAO's self-initiated review of the first full year of Brady's implementation was designed to determine (1) how frequently the 5-day waiting period and background checks were resulting in denying criminals and other ineligible individuals the opportunity to purchase handguns from federally licensed dealers; (2) the extent to which such denials have resulted in follow-up enforcement actions (e.g., arrests and prosecutions) against convicted felons and other ineligible purchasers who falsely complete the handgun purchase application form; and (3) the effects of the various legal challenges to Brady.

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## Background

Enacted after several years of extensive public debate, Brady continues to be controversial. Opponents of gun control note that criminals can easily circumvent the law by purchasing handguns on the secondary market or by having friends or spouses without a criminal record make the purchases from dealers. Proponents acknowledge that criminal records checks alone will not prevent felons from obtaining firearms but say the checks could reduce dealer sales to disqualified persons and complement other crime control measures, such as stiffer mandatory sentences for firearms offenses.

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

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

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

requirements. ATF, within the Department of the Treasury, licenses gun dealers and is responsible for overseeing their compliance with Brady.<sup>3</sup>

Generally, the law enforcement community has strongly supported Brady, as evidenced by public endorsements from the International Association of Chiefs of Police and other organizations. Nonetheless, some sheriffs have filed federal lawsuits essentially contending, among other things, that the phase I background check provision of Brady is beyond the scope of Congress' Commerce Clause powers and is inconsistent with the Tenth Amendment. Eight of the nine court cases that had been initiated against the Brady Act through December 31, 1995, resulted from separate filings by individual sheriffs—each having jurisdictional responsibility for one county or parish in his respective state—whereas the ninth and most recent case was filed by the Wyoming Sheriff's Association. By December 1994, federal district courts had ruled in favor of the respective sheriff in five of the six cases decided. All six cases were appealed to U.S. circuit courts. In September 1995, the U.S. Court of Appeals for the Ninth Circuit reversed two of the federal district courts' decisions, saying the federal government can require state and local law enforcement agencies to check records of prospective handgun buyers. As of October 1995, the four remaining federal district court cases were still under appeal.

Brady does not impose any reporting requirements on gun dealers or law enforcement officials. Thus, except for estimates, no comprehensive or national data on handgun purchase applications and denials are available. As reported by the Treasury Department, limited surveys by ATF found denial rates of 4.7 percent (The Brady Law: The First 100 Days) and 3.5 percent (One-Year Progress Report: Brady Handgun Violence Prevention Act) in selected jurisdictions.

GAO did not conduct a national survey of law enforcement officials. To do so would have involved hundreds of jurisdictions and would have been beyond GAO's available resources. Instead, GAO judgmentally selected and surveyed 20 law enforcement jurisdictions (7 statewide and 13 local). The results of GAO's study, therefore, are not projectable to the universe of denials nationwide.

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## Results in Brief

The legislative history of Brady gives no indication of what policymakers expected or considered to be a reasonable denial rate. The law

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

enforcement agencies in GAO's survey cumulatively denied 19,740 (4.3 percent) of the 457,020 applications processed during the first year of Brady's implementation.<sup>4</sup> The results of GAO's survey are not projectable to the universe of denials nationwide. In 15 of the jurisdictions with more detailed records, GAO found that the denial rate varied from jurisdiction to jurisdiction, in part, because law enforcement officials did not use common or standard criteria in making denials. For instance, regarding criminal history disqualifiers, some jurisdictions made denials only if the records showed a felony conviction or pending indictment, but other jurisdictions also denied on the basis of outstanding misdemeanor warrants, including warrants for unpaid traffic tickets. Also, in three jurisdictions in Texas, application forms being sent to wrong law enforcement agencies was a primary factor causing high denial rates.

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

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

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

The full effects of the court challenges to Brady will not be known until all appeals are decided. In the meantime, indications are that background

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<sup>4</sup>These denials are based on local law enforcement officials' judgment. GAO did not attempt to determine whether the denials were appropriate.



checks are still being conducted in seven of the nine jurisdictions involved in the lawsuits, while no checks have been conducted at all in the other two jurisdictions. The Justice Department has determined that it lacks authority to impose penalties or otherwise prosecute chief law enforcement officers who choose not to conduct background checks. Justice has noted, however, that injunctive relief,<sup>5</sup> for example, may be an option to compel law enforcement officials to fulfill their responsibilities under the act. Moreover, Brady provides neither Justice nor Treasury the authority to redesignate chief law enforcement officers in situations where the initially designated officers do not perform the background checks.

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## GAO's Analysis

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### Brady Results: Handgun Purchase Denials and Follow-Up Enforcement Actions

In analyzing denial statistics and reasons in 15 judgmentally selected jurisdictions, GAO found that almost half (48.7 percent) of the denials were because the prospective handgun purchasers had felony or misdemeanor criminal histories, 4.1 percent were based on other Brady ineligible categories, 0.8 percent involved restraining orders, 7.6 percent involved traffic offenses, and the remaining 38.9 percent were based on administrative or other reasons.<sup>6</sup>

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

Given the absence of pertinent databases, denials based upon the other Brady ineligible categories were relatively few. GAO found that most of these denials resulted coincidentally from searches of criminal history records. For example, in some instances, the records showed arrests or convictions for violations of immigration laws or absences without leave from the military.

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<sup>5</sup>Injunctive relief refers to the use of an injunction—a court order—to compel a party to do or refrain from doing a particular act.

<sup>6</sup>These rates are not projectable to the universe of denials nationwide.

Among the 15 jurisdictions, 6 jurisdictions denied applications because of outstanding misdemeanor warrants. For four of the jurisdictions, the available data did not enable GAO to determine the nature of the warrants. For the other two, GAO found that all of the denials were for unpaid parking tickets and other traffic offenses.

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

On the basis of queries to ATF's field offices, ATF headquarters staff told GAO that as of July 1995, a total of at least seven persons (nationally) had been successfully prosecuted for making false statements on the Brady handgun purchase form. Three of the cases involved individuals who lied about drug-related convictions. The subsequent prosecutions of these individuals resulted in prison or custody sentences of 12 to 24 months. The other four cases (related gun-trafficking cases) involved individuals who had falsified state identification cards and the Brady handgun purchase form to portray themselves as residents of West Virginia when, in fact, they resided in New York. All four defendants pled guilty. Three defendants were sentenced to 2 years' probation, and the fourth was sentenced to 6 months' home confinement and 3 years' probation.

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## Effects of Court Challenges to Brady

In five of the six cases decided as of July 1995, the federal district courts held Brady's phase I background check provision to be unconstitutional as a violation of the Tenth Amendment. However, the decisions found the remainder of Brady's provisions severable and that they, therefore, remained operative. In the sixth case, the court held that Brady's phase I background check provision was consistent with the Tenth Amendment. In September 1995, the U.S. Court of Appeals for the Ninth Circuit reversed two of the rulings of unconstitutionality. The appeals court held that the federal government can impose the minimal burden of requiring

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state and local law enforcement agencies to check the records of prospective handgun buyers.

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

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## Recommendations

GAO is making no recommendations in this report.

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## Agency Comments

The Justice Department, as well as the Treasury Department and ATF jointly, provided written comments on a draft of this report. These comments are presented in appendixes V and IV, respectively. GAO incorporated the technical and clarifying comments where appropriate, and the more substantive comments are discussed at the ends of chapters 2 and 3. All three agencies generally said that the draft report accurately portrayed Brady's implementation.

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**Abbreviations**

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

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# Introduction

Effective February 28, 1994, the Brady Handgun Violence Prevention Act (Brady)<sup>7</sup> requires firearms licensees, such as licensed firearms dealers, to, among other things, request a presale background check on handgun purchasers. Brady calls for implementation in two phases. Under phase I, or the interim provisions, the checks are to be conducted by the chief law enforcement officer (CLEO) in the purchaser's residence community to determine, on the basis of available records, if the individual is legally prohibited from buying the firearm under the provisions of federal, state, or local law.<sup>8</sup> The sale may not be completed for 5 business days unless the dealer receives an approval from the CLEO before that time.<sup>9</sup> If the CLEO does not contact the dealer within the 5-day period, the dealer may make the sale unless the dealer has reason to believe the transaction would be unlawful. Under the phase II permanent provisions effective November 30, 1998, the 5-day waiting period requirement terminates and presale inquiries for all firearms sales will be made only to a national background check system that will be operated by the Federal Bureau of Investigation (FBI).

## Brady Calls for Background Checks of Prospective Handgun Purchasers

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

<sup>7</sup>P.L. 103-159, 107 Stat. 1536 (1993).

<sup>8</sup>Brady defines a CLEO as the "chief of police, sheriff, or an equivalent officer or the designee of any such individual." In some states—by agreement among the applicable law enforcement agencies—the state police department serves as the CLEO.

<sup>9</sup>Brady defines a business day as a day on which state offices are open.



The current two-phased approach, first introduced in 1991 and described by its original sponsors as a compromise, (1) includes a waiting period that allows CLEOS time to conduct the background check required of them<sup>10</sup> and (2) provides for the eventual point-of-sale background check system. To do this, Brady amends the Gun Control Act of 1968,<sup>11</sup> which contains the principal federal restrictions on commerce in firearms and ammunition.

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

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

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

Under Brady’s interim provisions, a prospective handgun purchaser must complete a form—generally referred to as the Brady form (see app. D)—giving his or her name, date of birth, and residence address and

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<sup>10</sup>Brady’s interim provisions provide that a CLEO “shall make a reasonable effort” in conducting a background check.

<sup>11</sup>P.L. 90-618, 82 Stat. 1213 (1968).

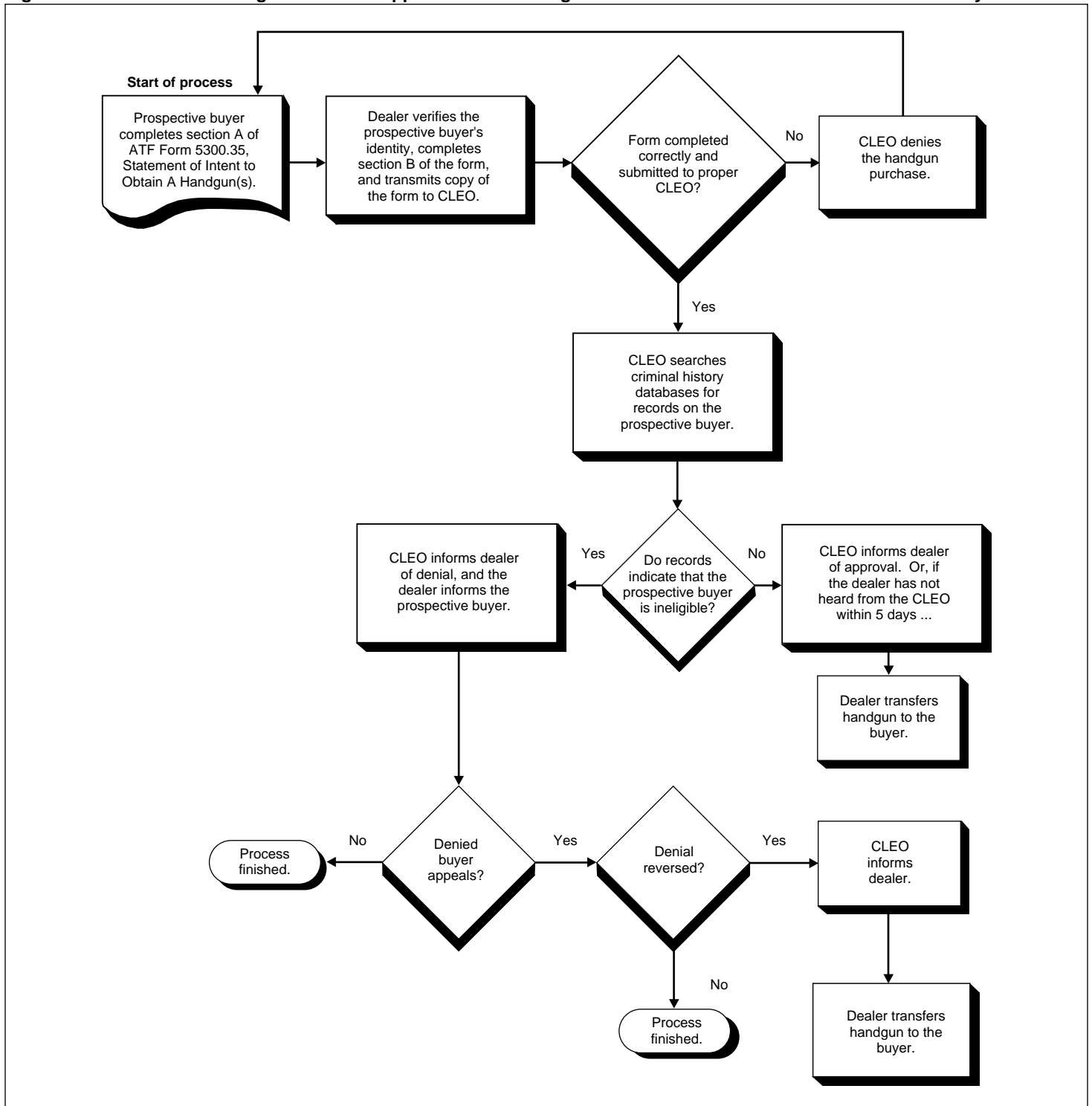
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certifying that he or she is not a member of various categories prohibited from buying a firearm.<sup>12</sup> Then, within 1 business day, the gun dealer must provide notice of the form's contents to the CLEO of the area in which the buyer's residence is located. The CLEO must then "make a reasonable effort" to ascertain within 5 business days whether the sale would violate federal, state, or local law, including research in whatever state and local record-keeping systems are available and the FBI-operated National Crime Information Center files (see fig. 1.1).

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<sup>12</sup>As discussed further in chapter 2, as of the time of our review, the Brady form had not been updated to include the "restraining order" category of prohibited purchasers.

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



(Figure notes on next page)

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

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

Finally, under Brady’s interim provisions, certain specified transactions in states that screen handgun purchasers—e.g., through a permit system or some other procedure for conducting criminal background checks—are exempt from Brady’s waiting period. States that operate an alternative system that meets certain standards have been designated as Brady-alternative states by ATF. As of February 28, 1995, 24 states had systems in place that ATF determined were acceptable alternatives to Brady. Residents, dealers, and law enforcement officials in the other 26 states—the so-called “Brady states”—are subject to Brady’s waiting period requirements (see app. II).

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## Effective Implementation Largely Depends Upon the Cooperation of Local Law Enforcement Officials and Gun Dealers

To be implemented effectively, Brady depends on the cooperation of local law enforcement officials and gun dealers. However, Brady provides no federal funds to local law enforcement agencies to conduct the background checks, and, according to the Department of Justice (DOJ), these agencies cannot be penalized for refusing to conduct them.<sup>13</sup> In addition, several local law enforcement officials have challenged in court the phase I background check provision. Gun dealers are heavily relied on to stop prohibited persons from buying guns, but ATF lacks the resources to inspect all gun dealers to ensure compliance with Brady. For instance, at a January 1994 congressional hearing, the ATF Director testified that:

“With 285,000 licensees and only 240 ATF inspectors to check their premises and the records that they keep to ensure compliance, it would take approximately 10 years for us to inspect all the gun dealers.”<sup>14</sup>

More recently, the number of licensed dealers has begun to decline—to about 220,000<sup>15</sup> by the end of March 1995—partly as a result of the increase in the license fee required by the Federal Firearms License Reform Act of 1993.<sup>16</sup> Another contributing factor is the 1994 Crime Act, which required that gun dealers certify compliance with state and local law as a condition for a license. On the other hand, even if ATF had more resources to inspect gun dealers, there are legislated limits on the frequency of compliance inspections. For instance, under 18 U.S.C. 923, absent reasonable cause or a warrant, ATF can inspect or examine a licensed dealer “not more than once during any 12-month period” to ensure compliance with record-keeping requirements.<sup>17</sup>

Finally, while gun dealers are required to maintain a copy of completed Brady forms for at least 5 years, the dealers are not required to report information from the forms to federal authorities. Brady allows CLEOS to

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<sup>13</sup>On the other hand, millions of dollars in federal grants have been awarded to states to improve their criminal history records systems. For example, the Crime Control Act of 1990 required states to devote a portion of grant funds provided to them under the Omnibus Crime Control and Safe Streets Act of 1968 to improvement of their criminal justice records. More recently, additional grant funds for improving criminal history records systems were made available to meet the goals of Brady and the National Child Protection Act of 1993.

<sup>14</sup>Gun Violence: Problems and Solutions: Hearings Before the Committee on the Judiciary, 103d Congress, 2d Sess. 30 (1994).

<sup>15</sup>According to ATF data, about 92,000 federal firearms licenses were held by gun dealers in the 26 Brady states, as of March 31, 1995.

<sup>16</sup>P.L. 103-159, 107 Stat. 1545 (1993).

<sup>17</sup>Section 923 of title 18 also provides for inspections or examinations without such reasonable cause or warrant in other specified situations in connection with a criminal investigation.

retain forms for individuals denied a purchase but requires that all other forms be destroyed within 20 days. CLEOS also are not required to maintain or report data. In fact, various statutory provisions restrict the use of firearms-related information and prohibit the establishment of systems to register firearms, firearms owners, or firearms transactions.<sup>18</sup> Thus, no data were readily available that would allow for monitoring trends in handgun purchases and denials or otherwise judge the impact of Brady.

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## Policymakers Recognize That Brady May Not Keep All Criminals From Obtaining Handguns

In July 1995, the Department of Justice issued a report on guns and crime in the United States.<sup>19</sup> Among other information, the report noted that:

- Over 40 million handguns have been produced in the United States since 1973. Most guns are not used to commit crimes. Further, most crime is not committed with guns. However, most gun crime is committed with handguns.
- During 1993, there were 4.4 million murders, rapes, robberies, and aggravated assaults in the United States, and more than one-fourth of these violent crimes involved the use of a gun.
- From 1985 through 1994, the FBI received an annual average of over 274,000 reports of stolen guns. By definition, all stolen guns are available to criminals.
- At the request of police agencies, ATF's National Tracing Center will trace firearms back to their original point of sale. More than three-quarters of the 83,000 guns used in crime that ATF traced for law enforcement agencies in 1994 were handguns.

Policymakers recognize that even a perfect felon identification system may not keep felons from obtaining firearms and that Brady may not directly result in measurable reductions of gun-related crimes. For example, Brady does not apply to transactions between nonlicensed individuals. Tens of millions of handguns are already in private hands. Thus, the apparently sizable numbers of handgun transactions that take place between private individuals, such as at gun shows and even "on the street," are not subject to Brady's requirements. In fact, the purpose of

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<sup>18</sup>ATF appropriations language in the Treasury, Postal Service and General Government Appropriations Act of 1995 (P.L. 102-329), for example, prohibits the use of appropriated funds in connection with consolidating or centralizing, within the Department of the Treasury, the records of acquisition and disposition of firearms maintained by federal firearms licensees. In addition, 18 U.S.C. Section 926(a) provides, in part, that no system of registration of firearms, firearms owners, or firearms transactions or dispositions be established.

<sup>19</sup>Department of Justice, Office of Justice Programs, Marianne W. Zawitz, "Guns Used in Crime", Bureau of Justice Statistics Selected Findings Number 5 (July 1995, NCJ-148201).

Brady is to prevent convicted felons and other ineligible persons from purchasing firearms from licensed dealers.

Opponents of Brady point to a 1991 survey of state prison inmates, which showed that 73 percent of those who had ever possessed a handgun did not purchase it from a gun dealer.<sup>20</sup> Generally, opponents contend that it is a mistake to claim Brady prevents criminals from obtaining handguns since anyone denied a purchase from a licensed dealer can easily obtain a gun from another source and will almost certainly do so. Also, denied applicants may have friends or spouses without a criminal record make the purchases from dealers for them.

On the other hand, Brady proponents use the same study to counter that 27 percent of those inmates surveyed obtained their firearms from licensed gun dealers and argue that no criminals should be able to buy guns from licensed dealers. Proponents acknowledge that criminal records checks alone will not prevent felons from obtaining firearms but could reduce dealer sales to disqualified persons; complement other crime control measures, such as stiffer mandatory sentences for firearms offenses; and clamp down on illegal gun trafficking.<sup>21</sup>

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## Objectives, Scope, and Methodology

Our self-initiated review of the first full year of Brady implementation was designed to determine the following:

- How frequently were the 5-day waiting period and background checks resulting in criminals and other ineligible individuals being denied the opportunity to purchase handguns from federally licensed dealers? (See ch. 2.)
- To what extent had handgun purchase denials resulted in federal follow-up enforcement actions (e.g., arrests and prosecutions) against convicted felons and other ineligible purchasers who falsely completed the Brady form? (See ch. 2.)
- What were the effects of the various legal challenges to Brady? For instance, we were particularly interested in whether background checks of handgun purchasers were being conducted in those jurisdictions represented by CLEOS who had filed lawsuits challenging the

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<sup>20</sup>U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Survey of State Prison Inmates, 1991, NCJ-136949 (Washington, D.C.: Government Printing Office, March 1993).

<sup>21</sup>For a more detailed discussion of firearms regulation issues, see Office of Technology Assessment, Automated Record Checks of Firearm Purchasers: Issues and Options, OTA-TCT-497 (Washington, D.C.: U.S. Government Printing Office, July 1991).

constitutionality of Brady. If no background checks were being conducted in certain jurisdictions, we wanted to determine why and what alternative arrangements were permissible or practical. (See ch. 3.)

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

To obtain information on how frequently the 5-day waiting period and background checks were resulting in denials, we contacted local law enforcement agencies in several Brady states. Our results are not projectable to the universe of denials nationwide. We did not use a nationally projectable sample because (1) it would have involved contacting hundreds of law enforcement agencies nationwide, (2) Brady was less than 1 year old when we began our data gathering, and (3) Brady did not impose any record-keeping requirements on CLEOS.

We judgmentally selected 20 state and local law enforcement agencies in 12 (46 percent) of the 26 Brady states. Selection factors—which are discussed in more detail below—included data availability, jurisdictional variety, denial rate variety, and geographic dispersion. In seven of the Brady states we contacted, a state agency conducted background checks for all jurisdictions within the state. In the other five Brady states (13 jurisdictions), local agencies were responsible for the background checks. Also, as noted in table 1.1, 14 of the 20 agencies we contacted were surveyed earlier by ATF for Treasury's interim report on Brady's impact.



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

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

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

Brady does not require any reports from CLEOs or gun dealers. In fact, Congress has passed various statutory provisions that restrict the use of firearms-related information and prohibit the establishment of systems to register firearms, firearms owners, or firearms transactions. Thus, no data were readily available for monitoring national trends in handgun purchases and denials. Consequently, we relied on the voluntary cooperation and judgment of selected state and local law enforcement officials to provide data on the number and results of Brady background checks performed in their respective jurisdictions. We did not attempt to determine whether the denials were appropriate. For its initial Brady

report, ATF had already developed cooperative working relationships with 16 CLEOS in 8 states.<sup>22</sup> Thus, after first checking with ATF officials, we selected 14 of those 16 jurisdictions to build upon the already established relationships.<sup>23</sup> We did not select Gwinnett County, Georgia, and Providence, Rhode Island, because those jurisdictions do not maintain cumulative data. Two of the 16 CLEOS selected by ATF have statewide (Kentucky and Ohio) responsibilities for performing background checks of prospective handgun buyers. In addition to selecting these two states, to provide broader coverage we also selected the other Brady states that have a centralized agency with statewide responsibility for performing background checks—Arizona, Arkansas, Nevada, South Carolina, and West Virginia. Finally, because press accounts listed the Fort Worth, Texas, Police Department as having one of the highest handgun denial rates in the nation, we included that jurisdiction in our review, which resulted in a total of 20 jurisdictions.

Then, from each of the 20 applicable law enforcement agencies, we obtained available data on the number of Brady handgun purchase forms processed and the number denied<sup>24</sup> during the first year of Brady implementation, February 28, 1994, through February 28, 1995. We used this information to calculate jurisdiction-specific denial rates, as well as an overall denial rate for the 20 jurisdictions. Although we did not verify the accuracy of the data obtained, during our on-site visits to three jurisdictions—Arkansas; South Carolina; and Fort Worth, Texas—and in numerous follow-up telephone calls with the other 17 jurisdictions, we discussed the procedures for gathering and compiling the data and have no reason to believe the data are unreliable. However, the denial rates we calculated are not projectable beyond the jurisdictions covered.

In contacting the law enforcement officials in these jurisdictions, we also inquired about the availability and completeness of databases to conduct background checks. Our inquiries included questions covering criminal history databases, as well as possible data sources covering drug users, illegal aliens, and other categories of ineligible purchasers. Regarding criminal history databases, for example, we were interested in what course of action was taken if the background search found incomplete

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<sup>22</sup>Department of the Treasury, The Brady Law: The First 100 Days, July 27, 1994.

<sup>23</sup>At the time we made these selections, ATF officials told us that they had no further survey or reporting plans with respect to Brady Act results in these or other jurisdictions. Subsequently, however, in response to the Clinton administration's request for a 1-year anniversary assessment of the act, the Treasury Department issued another report, One-Year Progress Report: Brady Handgun Violence Prevention Act (February 28, 1995). We discuss that report further in chapter 2.

<sup>24</sup>We accepted the jurisdictions' criteria for and judgment in denying applications. We did not attempt to determine whether the denials were appropriate.

records—particularly records showing a felony arrest but not showing a disposition.

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

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

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

Also, we interviewed staff from ATF's headquarters and Office of Chief Counsel as well as ATF officials in field offices encompassing jurisdictions in which CLEOS have challenged Brady. In so doing, we obtained information and views on (1) whether background checks have been or

are being performed in those jurisdictions in which CLEOS have challenged Brady; (2) what ATF's statutory and/or operational responsibility is with respect to CLEOS and their performance of Brady background checks; (3) ATF's role with respect to the designation of alternate CLEOS to perform the Brady background checks; and (4) what actions, if any, ATF has taken regarding Brady background checks on prospective handgun buyers in the jurisdictions involved in the lawsuits.

We conducted our review in Arkansas; Georgia; South Carolina; Texas; and Washington, D.C., from July 1994 through August 1995 in accordance with generally accepted government auditing standards. The Justice Department, as well as Treasury and ATF jointly, provided written comments on a draft of this report. These comments are included in appendixes V and IV. We incorporated technical and clarifying comments in the report where appropriate and discussed the more substantive comments at the ends of chapters 2 and 3.

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# Brady Results: Handgun Purchase Denials and Follow-Up Enforcement Actions

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

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## Comprehensive Data on Background Check Results Were Not Available

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

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

To develop a systematic approach for monitoring Brady's impact on the acquisition and use of firearms, in September 1994 the Justice Department's Bureau of Justice Statistics (BJS) entered into an agreement with the Regional Justice Information Service (REJIS).<sup>25</sup> Under the terms of

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<sup>25</sup>REJIS, located in St. Louis, Missouri, is a quasi-governmental organization that provides data processing services to criminal justice agencies.

the agreement, REJIS is designing an information system, called the Firearms Inquiries Statistical System, to routinely collect data from volunteer samples of the estimated 22,000 local law enforcement officers within the Brady states and from state criminal history repositories, the FBI, and ATF. The primary objectives of this information system are to (1) identify, describe, and categorize the procedures used to implement Brady; (2) measure results of Brady in terms of the number of applications accepted and denied, the reasons for the denials, and the actions taken as a result of the denials; and (3) create a database to permit analyses of the use of firearms in the commission of crimes. BJS officials anticipate that initial output under the system will be available in early 1996.

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

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## Results of Two ATF Surveys of Selected Jurisdictions

ATF's initial survey of Brady's results covered approximately the first 3 months of implementation.<sup>26</sup> In conducting the survey, ATF contacted state and local law enforcement officers representing 16 jurisdictions—2 states, 7 counties, 2 parishes, and 5 cities.<sup>27</sup> For handgun purchase applications processed by the respective law enforcement officers within these 16 jurisdictions, ATF found that the overall denial rate was 4.7 percent.

The report on ATF's second survey of Brady's results was issued on the first anniversary of the act's effective date.<sup>28</sup> In conducting this survey, which provided data covering the period March 1994 through January 1995, ATF contacted law enforcement officers representing 30 jurisdictions—7 states, 9 counties, 1 parish, 12 cities, and Puerto Rico. As table 2.1 shows, for handgun purchase applications processed by the respective law enforcement officers within these 30 jurisdictions, ATF found that the overall denial rate was 3.5 percent.

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<sup>26</sup>Department of the Treasury, The Brady Law: The First 100 Days, July 27, 1994.

<sup>27</sup>See table 1.1 in chapter 1 for a listing of the 16 jurisdictions surveyed by ATF.

<sup>28</sup>Department of the Treasury, One-Year Progress Report: Brady Handgun Violence Prevention Act, February 28, 1995.

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

State	Jurisdiction	Law enforcement agency	Number of Brady handgun applications		Denial rate (percent)
			Processed	Denied	
Alabama	Jefferson County	Sheriff's Department	19,646	964	4.9
Alaska	City of Anchorage	Police Department	6,960	111	1.6
Arizona <sup>a</sup>	City of Phoenix	Police Department	28,708	1,718	6.0
	State	Department of Public Safety	32,374	776	2.4
Arkansas	State	State Police	25,434	472	1.9
Georgia	Dekalb County <sup>b</sup>	Department of Public Safety	4,685	680	14.5
Kansas	Elk County	Sheriff's Department	15	0	0.0
Kentucky	State	State Police	58,474	2,030	3.5
Louisiana	New Orleans Parish	Superintendent of Police	5,337	607	11.4
Maine	City of Lewiston	Police Department	190	6	3.2
Mississippi	Rankin County	Sheriff's Department	1,150	24	2.1
Montana	Yellowstone County	Sheriff's Department	698	12	1.7
	City of Billings	Police Department	1,519	11	0.7
Nevada	State	Department of Motor Vehicles and Public Safety	33,550	522	1.6
New Mexico	City of Albuquerque	Police Department	5,338	192	3.6
North Carolina <sup>c</sup>	Rowan County	Sheriff's Department	•	•	•
North Dakota	Cass County	Sheriff's Department	735	9	1.2
Ohio	State	Bureau of Criminal Identification and Investigation	61,074	447	0.7
Oklahoma	City of Oklahoma City	Police Department	9,197	165	1.8
Pennsylvania	City of Philadelphia	Police Department	10,238	487	4.8
Puerto Rico	Puerto Rico	Superintendent of Police	5,390	150	2.8
Rhode Island	City of Providence <sup>d</sup>	Police Department	175	10	5.7
South Carolina	State	State Law Enforcement Division	55,171	2,199	4.0
South Dakota	Minnehaha County	Sheriff's Department	236	6	2.5
Texas	Harris County <sup>e</sup>	Sheriff's Department	10,139	1,117	11.0
	City of Houston <sup>e</sup>	Police Department	32,137	2,442	7.6
Vermont	City of Montpelier	Police Department	38	2	5.3
Washington	City of Seattle	Police Department	6,213	154	2.5
West Virginia	State	State Police	25,712	182	0.7
Wyoming	City of Cheyenne	Police Department	1,012	11	1.1
<b>Totals</b>			<b>441,545</b>	<b>15,506</b>	<b>3.5</b>

(Table notes on next page)

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

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

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

<sup>c</sup>No data were available for Rowan County, North Carolina.

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

<sup>e</sup>The number of denials for Harris County and the city of Houston (Texas) do not include handgun purchase applications that were missent to these jurisdictions.

Source: Department of the Treasury, One-Year Progress Report: Brady Handgun Violence Prevention Act, February 28, 1995, pages 4-6. Notes "a" through "e" are GAO's clarifications of ATF's data.

**The rates presented in Treasury's One-Year Progress Report do not reflect the fact that some of the initially denied applications were subsequently approved, following administrative or other appeal procedures.<sup>29</sup> For example, the following information about the number of appealed denials was presented in June 1995 correspondence from DOJ in response to congressional requesters:**

"In its survey, ATF identified 15,506 handgun denials pursuant to the Brady Law. Of this number, 2,048 rejections were administratively appealed.<sup>30</sup> Of these, 1,620 were resolved administratively, but ATF does not have information concerning the dispositions. ATF reports that two of the 15,506 denials were successfully appealed in court."

"ATF does not have any information concerning the basis for the denials or the reasons for any reversals of initial denials. As you are no doubt aware, under the Brady Law, the responsibility for determining whether an applicant seeking to purchase a pistol is eligible to do so rests with local Chief Law Enforcement Officers (CLEOs). ATF informs us that many CLEOs maintain no statistical data concerning the specific basis for a Brady denial and lack

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<sup>29</sup>In its One-Year Progress Report, the Treasury Department used other data and assumptions to arrive at an estimate of total handgun purchase denials for all Brady states. The report noted that historical data—from certain states that have their own laws requiring screening of prospective purchasers of handguns—show that an overall denial rate of 2.5 percent would be a conservative figure. Treasury applied this percentage to the total number of firearms-related queries (1,638,838) made to the FBI's criminal history database, that is, queries made by state and local law enforcement authorities during the period March 1994 through January 1995. Thus, for this 11-month period, Treasury estimated that potential denials in the Brady states totalled 40,971.

<sup>30</sup>If all 2,048 appeals are successful, the overall denial rate for the 30 jurisdictions surveyed by ATF would be 3 percent rather than 3.5 percent as shown in the Treasury's One-Year Progress Report.



the resources for doing so. Accordingly, ATF has never requested the submission of such information and, in fact, lacks the authority to require its collection.<sup>31</sup>

## Results of Our Survey of 20 Selected Jurisdictions

In conducting our survey to obtain data covering the first full year of Brady Act implementation, we contacted state and local law enforcement officers representing 20 jurisdictions—the 7 Brady states that have centralized background check procedures, 6 counties, 2 parishes, and 5 cities. As table 2.2 shows, for handgun purchase applications processed by the respective law enforcement officers within these 20 jurisdictions, we found that the overall denial rate was 4.3 percent.

Our survey of 20 jurisdictions and ATF’s survey of 30 jurisdictions for its *One-Year Progress Report* (see table 2.1) include 11 jurisdictions covered in both surveys—the 7 Brady states that have centralized background check procedures; 2 counties (DeKalb County, Georgia, and Harris County, Texas); and 2 cities (Houston, Texas, and Seattle, Washington). Our data differ from ATF data, in part, because we surveyed a longer period—see, for example, the differences reported for Arizona and Kentucky. However, for Harris County and the city of Houston, we also include numerous denials for applications erroneously sent to these law enforcement agencies; these denials were not reported by ATF.<sup>32</sup> Finally, the numbers of denials we report for Arkansas; DeKalb County, Georgia; and Ohio are lower than ATF’s numbers, in part, because our denial data were adjusted for successful appeals.

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

State	Jurisdiction	Law enforcement agency	Number of Brady handgun applications		Denial rate (percentage)
			Processed	Denied	
Arizona	State	Department of Public Safety <sup>a</sup>	40,185	928	2.3
Arkansas	State	State Police	27,933	377	1.3
Georgia	Clayton County	Sheriff’s Office	2,484	146	5.9
	Cobb County <sup>b</sup>	Sheriff’s Office	4,298	151	3.5
	DeKalb County <sup>b</sup>	Department of Public Safety	4,791	409	8.5

(continued)

<sup>31</sup>Separately addressed letters (both dated June 21, 1995) to Senator Phil Gramm and Senator Jon Kyl from DOJ’s Office of Legislative Affairs.

<sup>32</sup>According to an ATF official, ATF did not report these missent forms as denials because the CLEOs they surveyed did not report them as denials.

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State	Jurisdiction	Law enforcement agency	Number of Brady handgun applications		Denial rate (percentage)
			Processed	Denied	
	Fulton County	Sheriff's Department	5,369	256	4.8
Kentucky	State	State Police <sup>c</sup>	69,420	2,045	2.9
Louisiana	Bossier Parish	Sheriff's Department	1,983	49	2.5
	Caddo Parish	Sheriff's Office	5,727	220	3.8
Nevada	State	Department of Motor Vehicles and Public Safety	38,719	531	1.4
Ohio	State	Bureau of Criminal Identification & Investigation	67,101	406	0.6
Pennsylvania	Allegheny County <sup>b</sup>	Sheriff's Office	26,005	288	1.1
South Carolina	State	State Law Enforcement Division	62,812	1,980	3.2
Texas	City of Abilene	Police Department	1,876	18	1.0
	City of Fort Worth	Police Department <sup>d</sup>	8,904	1,288	14.5
	Harris County	Sheriff's Department	14,514	3,892	26.8
	City of Houston	Police Department	34,203	6,322	18.5
	City of Pasadena	Police Department	3,071	112	3.6
Washington	City of Seattle <sup>b</sup>	Police Department	7,048	103	1.5
West Virginia	State <sup>b</sup>	State Police	30,577	219	0.7
<b>Totals</b>			<b>457,020</b>	<b>19,740</b>	<b>4.3</b>

<sup>a</sup>Arizona data cover the period October 1994 through February 1995.

<sup>b</sup>These jurisdictions do not maintain detailed information on the reasons for handgun purchase denials.

<sup>c</sup>Kentucky data cover the period February 28, 1994, through February 25, 1995.

<sup>d</sup>Fort Worth Police Department data cover the period February 28, 1994, through March 3, 1995.

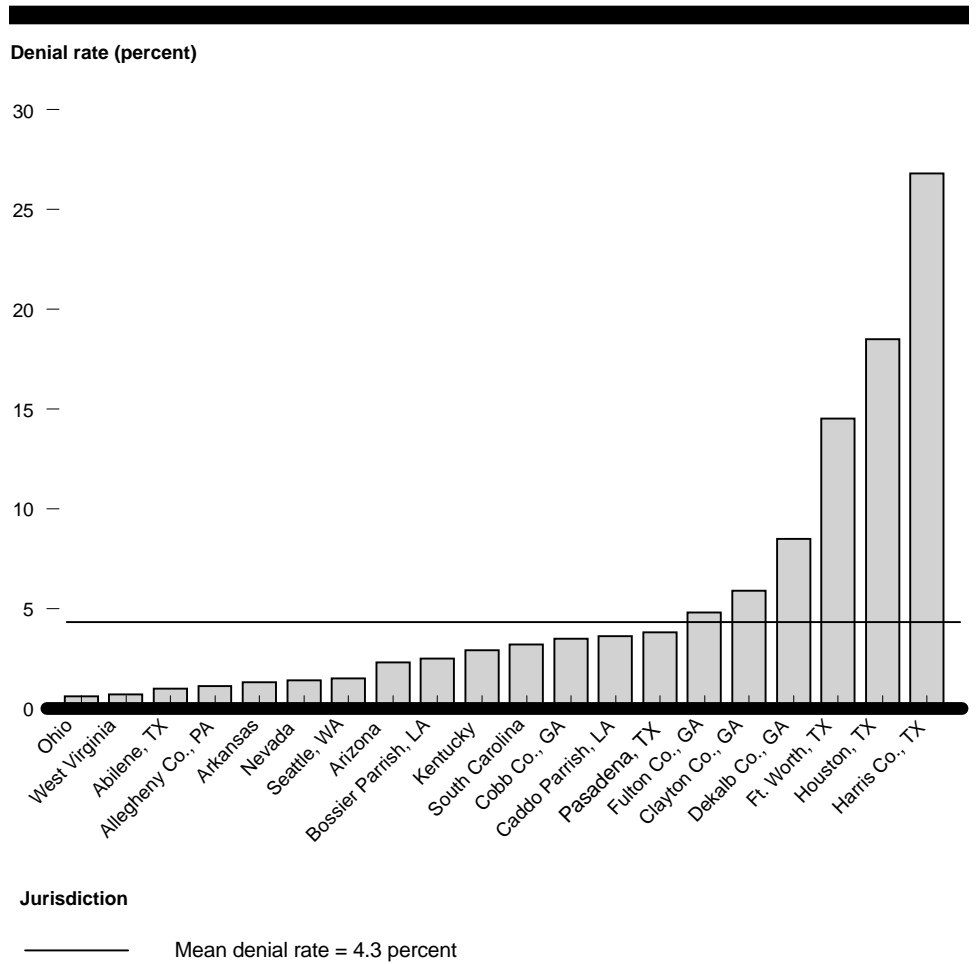
Source: Data provided to GAO by the law enforcement agencies.

Only 15 of the 20 jurisdictions we surveyed maintained records (some more detailed than others) showing reasons for denials. During the period covered by our survey (February 28, 1994, through February 28, 1995), the respective law enforcement officers within these 15 jurisdictions conducted background checks involving a total of 384,301 handgun purchase applications and denied 18,570, an overall denial rate of 4.8 percent. Figure 2.1 shows the denial rates across the 15 jurisdictions

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we contacted. Table 2.3 shows the number of denials by category for each of these 15 jurisdictions.

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



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

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

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

<sup>a</sup>Percentage does not total 100.0 due to rounding.

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

**Denials Based on Criminal History Records**

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

Next, we attempted to determine how many of the felony-related denials involved violent crimes—aggravated assault, murder, rape, and

robbery—as defined by the FBI. However, only 4 of the 15 jurisdictions had sufficiently detailed information for this analysis. Table 2.4 provides for these jurisdictions the number of violent crimes and violent crimes as a percentage of felony-related denials, total denials, and total applications.

**Table 2.4: Violent Crime-Related Denials in Four Jurisdictions**

Jurisdiction	Number of violent crimes	Violent crimes as a percent of		
		Felony-related denials	Total denials	Total applications
Fort Worth, Texas	29	21.0	2.3	0.3
Harris County, Texas	133	13.1	3.4	0.9
Ohio	62	16.5	15.3	0.1
South Carolina	147	7.7	7.4	0.2

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

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

Some of the other jurisdictions do not follow the practice of making denials on the basis of felony arrest records alone. For example, an official with the South Carolina State Law Enforcement Division told us that if a purchase-disqualifying disposition cannot be determined within 5 business days, the handgun sale is allowed to proceed. The official added that as of the end of March 1995, the Division had only one case in which (1) the disposition of a felony charge against a prospective handgun buyer could not be determined within 5 business days, (2) the applicant was allowed to purchase a handgun, and (3) case disposition information subsequently showed that the purchase should have been denied. Law enforcement officials from the Division reportedly retrieved the handgun from the purchaser.

Misdemeanor warrants accounted for 452 (2.4 percent) of the 18,570 denials (see table III.1). These 452 denials represent 5.0 percent of the 9,043 criminal history denials. Of the 15 jurisdictions providing data on reasons for handgun purchase denials, 7 denied handgun purchases on the basis of outstanding misdemeanor warrants—4 states (Arizona, Arkansas,<sup>33</sup> Kentucky, and South Carolina); 1 parish (Bossier Parish, Louisiana); and 2 cities (Fort Worth and Pasadena, Texas). Three of these 7 jurisdictions accounted for 380 (84.1 percent) of the misdemeanor warrant denials—Arizona had 272 (table III.2), the city of Fort Worth had 58 (table III.13), and the city of Pasadena had 50 (table III.16). In each of these jurisdictions, law enforcement officers told us that while neither state nor local laws prohibit misdemeanants from purchasing handguns, these persons are considered fugitives from justice, a prohibited category under Brady. In commenting on a draft of this report, Treasury and ATF said “because a person may be a fugitive from justice with respect to a misdemeanor warrant, it could not be concluded that the person was erroneously denied a handgun without checking the facts of his or her case.”

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### Denials Based on Other Brady Ineligible Categories

Our review of total denials (18,570) for the 15 jurisdictions showed that 753, or 4.1 percent, were based on the other ineligible categories under Brady—fugitives from justice, unlawful drug users or addicts, individuals adjudicated mentally defective or committed, persons dishonorably discharged from the armed services, illegal aliens, and individuals who have renounced their U.S. citizenship (see tables 2.3 and III.1). These ineligible purchasers, sometimes referred to as the “other-than-felons” categories, are particularly difficult for CLEOS to identify. In 1990, for instance, a study sponsored by DOJ reported that few databases contain information on these categories of individuals.<sup>34</sup>

The lack of databases containing information on the other Brady ineligible categories restricts the ability of law enforcement officers to identify prospective handgun buyers who fall into one of these categories. For instance, law enforcement officers in 11 of the 15 jurisdictions told us that they rely solely on the national and/or state criminal history databases to obtain information on the other Brady ineligible categories. According to

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<sup>33</sup>Effective January 1, 1995, the Arkansas State Police stopped using misdemeanor warrants as a basis for denying handgun purchases.

<sup>34</sup>U.S. Department of Justice, Bureau of Justice Statistics, Identifying Persons, Other Than Felons, Ineligible to Purchase Firearms: A Feasibility Study, ENFORTH Corporation (Cambridge, Massachusetts: May 1990).

several officers, information concerning the other Brady ineligible categories is only coincidentally included in the criminal history databases. For example, Arkansas officials made a “mental defective” denial because criminal history records showed that an individual charged with battery and criminal property damage had been adjudicated “not guilty by reason of insanity.” Thus, while Brady specifies a number of other ineligible categories, most law enforcement officers have no way to check purchasers’ backgrounds with respect to these disqualifiers. In a few instances, information on these categories may be found in criminal history records. The following sections present more specifics on these disqualifying categories in the 15 jurisdictions we analyzed.

#### Fugitives From Justice

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

#### Unlawful Drug Users or Addicts

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

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

Prospective handgun buyers classified as having been adjudicated mentally defective or committed accounted for 38 (5.0 percent) of the 753 denials in the other Brady ineligible categories (see table III.1). These 38 denials were made in 8 jurisdictions. The states of Arkansas and Nevada and the City of Houston, Texas, cumulatively denied 10 handgun purchases solely on the basis of mental problems noted in the prospective buyers’ criminal history records. Two counties (Clayton County, Georgia, and Harris County, Texas) denied a total of 10 handgun purchases on the basis of local court records. The state of Ohio and the city of Fort Worth, Texas, denied a total of 13 handgun purchases on the basis of state or

county mental health records. For example, six handgun purchases were denied in Ohio on the basis of state mental hospital records checks (see table III.10, note b); and seven purchases were denied by the Fort Worth, Texas, Police Department on the basis of county mental health center records (see table III.13, note d). In the remaining jurisdiction, South Carolina, five denials were the result of relatives of the prospective handgun buyers contacting the state police and submitting physicians' statements confirming that the prospective buyers previously had been committed to a mental institution (see table III.11, note e).

Dishonorable Discharges From  
the Armed Forces

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

Illegal Aliens

Illegal aliens accounted for 149 (19.8 percent) of the 753 denials in the other Brady ineligible categories (see table III.1). The 149 denials were made in 6 jurisdictions—2 states (Nevada and South Carolina); 1 Texas county (Harris County); and 3 Texas cities (Abilene, Fort Worth, and Houston)—on the basis of searches of criminal history records. The Houston Police Department accounted for 112 (75.2 percent) of the 149 denials (see table III.15). Beyond denying the handgun sales to the illegal aliens, the Houston Police Department took no other follow-up enforcement or referral action. The other three Texas jurisdictions followed this same procedure. In only the two state jurisdictions did law enforcement officers tell us that they notify the Immigration and Naturalization Service when illegal aliens are identified.

Renounced U.S. Citizenship

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

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Denials Based on the 1994  
Crime Act

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



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

As discussed in chapter 1, Brady’s interim provisions require prospective handgun purchasers to certify that they are not a member of various categories prohibited from possessing or receiving a firearm. The categories contained in Brady reflect but do not reference those categories found at section 922(g) as they existed before the 1994 Crime Act. Thus, according to ATF’s Associate Chief Counsel (Firearms and Explosives), even though the 1994 Crime Act amended section 922(g), Brady itself was not amended to add the court order prohibition. The official told us that ATF had provided the Department of the Treasury with a list of legislative proposals, including a proposed technical amendment to Brady.<sup>35</sup> Further, the Associate Chief Counsel told us that as a practical matter, ATF has been educating law enforcement officers about the “restraining order” disqualifying category and that applicants can be denied on this basis, even though ATF Form 5300.35 (see app. I) is awaiting modification pending passage of the technical amendment.

In the 15 jurisdictions we analyzed, 145 (0.8 percent) of the 18,570 handgun purchase denials were based on the 1994 Crime Act (see table 2.3 and table III.1). The 145 denials were made in 3 jurisdictions—1 denial in Clayton County, Georgia (table III.4); 142 denials in Kentucky (table III.6); and 2 denials in Nevada (table III.9). According to an official with the Kentucky State Police—representing the jurisdiction with 97.9 percent of the denials in this category—the 142 denials in Kentucky were based on domestic violence orders, which are similar to restraining orders but expire (under Kentucky law) after 1 year.

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## Denials Based on Traffic Offenses

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

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<sup>35</sup>As of October 1995, Brady had not been amended to include the court order prohibition.

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traffic offenses, according to officials from these jurisdictions.<sup>36</sup> Local law enforcement officials told us that these denials were made because individuals with outstanding warrants (including warrants involving traffic offenses) were considered to be fugitives from justice.

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### Denials Based on Administrative or Other Reasons

Denials based on administrative or other reasons accounted for 7,216 (38.9 percent) of the 18,570 handgun purchase denials in the 15 jurisdictions we analyzed (see table 2.3). These 7,216 denials were based on a variety of reasons, as table III.1 shows, but the large majority involved application forms sent to the wrong law enforcement agency. It is worth noting that these denials are not based on arbitrary reasons, however, because Brady authorizes only the CLEO of the place of residence of the purchaser to approve the sale. Incomplete forms are also to be denied.

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

Our review of denial records at the Fort Worth Police Department indicated that many of the misdirected applications may have resulted from jurisdictional confusion.<sup>37</sup> For example, we found that the vast majority of the Fort Worth Police Department's 434 denials in this category involved individuals with addresses near but not within the incorporated limits of the city. Although the number of missent Brady forms might suggest something more than confusion or carelessness, our analyses did not show any clear patterns, except that the levels of missent forms remained relatively constant throughout the year.<sup>38</sup> In June 1995, we shared our Fort Worth analyses with ATF headquarters and applicable field office officials who told us that ATF's response to jurisdictional confusion is to disseminate clarifying information to licensed gun dealers.

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<sup>36</sup>These four jurisdictions are Arizona (table III.2, note b); Arkansas (table III.3, note b); Kentucky (table III.6, note b); and Bossier Parish, Louisiana (table III.7, note a).

<sup>37</sup>In Texas, the responsibility for performing Brady background checks on prospective handgun buyers falls on chiefs of police for residents of incorporated cities or towns and on county sheriffs for residents of unincorporated areas.

<sup>38</sup>Officials of the three jurisdictions that experienced these denials told us in December 1995 that they were still receiving a significant number of applications that should have been sent to other CLEOs.

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## ATF and DOJ Officials View Brady Primarily as a Means to Deny Purchases to Criminals

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

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

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

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

“[Before the Brady Act] . . . there was no means by which . . . falsification [of handgun purchase forms] would routinely be brought to the attention of at least the U.S. Attorneys. The Brady bill, now, puts into place, with the help of the ATF working with their local police officers and law enforcement, a means by which I think we will start getting more referrals with respect to false statements on gun applications.”<sup>39</sup>

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

“[S]tatistics maintained by the Department’s Executive Office of United States’ Attorneys reflect that, since enactment of the Brady Law, a total of 162 prosecutions have been initiated in which the making of a false statement in connection with the acquisition or attempted acquisition of a firearm (18 U.S.C. Section 922(a)(6)) was the principal charge. It is not possible to determine readily the number of these prosecutions that were initiated as the result of the falsification of statements on Brady forms, as opposed to the falsification

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<sup>39</sup>Prosecution of Federal Gun Crimes: Hearings Before the Subcommittee on Crime and Criminal Justice of the House Committee on the Judiciary, 103d Cong., 2d Sess. 51 (1994).

of statements on other federal firearms acquisition forms.<sup>40</sup> . . . In addition, this number does not reflect cases in which charges may have been brought under Section 922(a)(6) as part of a larger prosecution involving other, possibly more serious charges, since some of the computer systems in operation in U.S. Attorneys' offices are able to track only the lead charge. More detailed information would require a review of the case file in each of the Section 922(a)(6) prosecutions reported by the United States Attorneys, a task that would be unduly burdensome to undertake.

“Such statistics are not a meaningful measure of the effectiveness of the Brady Law. . . . [T]he statute was not primarily intended as a prosecutive mechanism but rather as a means of keeping handguns out of the hands of convicted felons, fugitives, and other prohibited persons. From an enforcement perspective, the Brady Law fully serves its purpose when it succeeds in thwarting the acquisition of a firearm by such individuals. By that standard, the success of the Brady Law is reflected by the fact that, since its enactment, approximately 41,000<sup>41</sup> applications for the purchase of handguns have been denied.”<sup>42</sup>

In response to our inquiries about referrals and prosecutions issues, the Acting Assistant Attorney General—who is a senior DOJ official responsible for monitoring Brady implementation—reinforced the view that the act was intended primarily to deter or prevent unauthorized individuals from obtaining handguns from federally licensed firearms dealers. DOJ has noted that because prosecutions for false statements on handgun purchase applications are inefficient and ineffective in advancing this purpose, the number of prosecutions is not a good measure of Brady's effectiveness or usefulness. In addition, with regard to the prospect of prosecuting Brady-generated cases, the Special Counsel to the Acting Assistant Attorney General stated that no new resources were provided to U.S. Attorney Offices, which already must make resource allocation decisions to address competing demands, including the emphasis in recent years on prosecuting drug kingpins and pursuing other complex, significant cases.

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

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<sup>40</sup>According to an ATF official we contacted, besides the Brady form (see app. I), the only other federal firearms acquisition form is ATF Form 4473 (“Firearms Transaction Record”), which has been in use since the Gun Control Act of 1968.

<sup>41</sup>This figure represents a rounding up of 40,971, which is the number of potential denials that the Treasury Department estimated in its One-Year Progress Report (see footnote 29 in this chapter).

<sup>42</sup>Separately addressed letters (both dated June 21, 1995) to Senator Phil Gramm and Senator Jon Kyl from DOJ's Office of Legislative Affairs.

prosecutorial tool to use frequently, irrespective of the volume of referrals and potential cases involving falsified Brady forms.

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

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

**Chapter 2**  
**Brady Results: Handgun Purchase Denials**  
**and Follow-Up Enforcement Actions**

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

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

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

Source: ATF's Firearms Enforcement Branch.

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

The other four cases—related gun-trafficking cases prosecuted within the Southern District of West Virginia—involved individuals who had falsified state identification cards and the Brady handgun purchase form to portray themselves as residents of West Virginia when, in fact, they were residents

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of New York. In all four cases, the defendants pled guilty. Three of the four defendants were sentenced to 2 years' probation, and the fourth was sentenced to 6 months' home confinement and 3 years' probation.

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## Conclusions

No comprehensive, national data existed on handgun purchase applications and denials for the first year of Brady; however, limited data from ATF's and our surveys suggested that the denial rates were around 4 percent in selected jurisdictions analyzed. In the 15 jurisdictions we analyzed, about half of the denials were to individuals with felony or misdemeanor criminal histories. Denials based on the other Brady ineligible categories accounted for only 4.1 percent of the total denials in the 15 jurisdictions. Almost 40 percent of the total denials from our survey were because the gun dealers sent the Brady forms to the wrong CLEOS. However, all of these denials occurred in only 3 of the 15 jurisdictions, and it is unknown whether any of these purchases would have been denied if the forms had been sent to the proper CLEOS.

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

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## Agency Comments and Our Evaluation

In its written comments on a draft of this report, DOJ provided updated information on its efforts to develop databases for identifying nonfelony classes of ineligible purchasers—fugitives, unlawful drug users or addicts, individuals adjudicated mentally defective or committed, persons dishonorably discharged, illegal aliens, and persons who have renounced U.S. citizenship. Our work did not specifically address the status of efforts to develop these databases, which will be important components of the national instant background check system under the phase II permanent provisions (effective November 30, 1998) of Brady.

DOJ also provided clarifying information regarding arrests and prosecutions for falsely completing the handgun purchase application form. DOJ's view is that Brady's main purpose is to prevent certain categories of persons from obtaining handguns from federally licensed gun dealers. Given this main purpose, DOJ said that our report affords too much attention to evaluating the success of Brady in generating prosecutions for falsely completing the Brady handgun purchase form, which is not a good

measure of Brady’s effectiveness or usefulness. We agree with DOJ that Brady’s main purpose is to prevent ineligible persons from purchasing handguns from federally licensed dealers. Most of this chapter—and all of appendix III—deal with this topic. On the other hand, one objective of our review was to determine the extent to which handgun purchase denials had resulted in federal follow-up enforcement actions. In this regard, we believe the prosecution-related information in our report is relevant, accurate, and presented in a balanced manner.

Treasury and ATF provided a combined set of comments on the draft. Treasury stated that it is erroneous to treat Brady forms sent to the wrong CLEO as denials. We treated them as denials because the CLEOs in our review treated them as denials. We agree with Treasury that “simply because the notice was sent to the wrong CLEO does not mean that the purchaser did not [eventually] receive the handgun.” Treasury also commented that even though certain handgun transactions are not subject to Brady’s provisions, nonetheless the law is an important first step in reducing illegal transfers to private individuals.



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# Challenges to Brady: Court Cases and Related Legal Issues

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

DOJ has determined that it lacks the authority to penalize or redesignate CLEOS who choose not to check backgrounds of handgun purchasers. DOJ has noted, however, that injunctive relief,<sup>43</sup> for example, may be an option to compel local law enforcement officials to fulfill their responsibilities under the act. In two jurisdictions where CLEOS had not performed presale background checks, ATF's National Tracing Center data did not show any crime-related handgun purchases from licensed dealers.

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## Federal Court Decisions Are Mixed

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

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

Despite the generally widespread support of the law enforcement community, eight sheriffs and one sheriff's association have initiated court cases challenging the constitutionality of Brady,<sup>44</sup> particularly the phase I provision directing state or local law enforcement officers to make a

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<sup>43</sup>Injunctive relief refers to the use of an injunction—a court order—to compel a party to do or refrain from doing a particular act.

<sup>44</sup>Generally, the sheriffs alleged, among other things, that the phase I background check provision of Brady is beyond the scope of Congress' Commerce Clause powers (U.S. Const. Art. I Section 8. cl. 3) and is inconsistent with the Tenth Amendment to the U.S. Constitution. The Commerce Clause gives Congress the exclusive authority to regulate interstate commerce. The Tenth Amendment provides that powers not delegated to the federal government are reserved to the states and to the people.

reasonable effort to conduct background checks.<sup>45</sup> The first eight cases are separate filings by individual sheriffs—each having jurisdictional responsibility for one county or parish in his respective state—and the ninth and most recent case was filed by the Wyoming Sheriff’s Association.<sup>46</sup>

As of July 1995, federal district courts had rendered decisions in six of the nine cases, and all six cases were on appeal to federal circuit courts. In five of the six decided cases, the courts have held Brady’s phase I background check provision to be unconstitutional as a violation of the Tenth Amendment. The first decision in the several challenges to Brady was Printz v. United States.<sup>47</sup> In that May 1994 decision, for example, the Federal District Court for Montana ruled that the phase I background check provision substantially commandeers state executive officers and indirectly commandeers the legislative processes of the states to administer an unfunded federal program. The court observed that the CLEOs are indirectly required to allocate their resources to implement Brady instead of using those resources to address problems important to their constituents. In so ruling, the court rejected the federal government’s argument that the phase I background check provision was discretionary.

The only federal district court ruling to date to hold that Brady’s phase I background check provision is consistent with the Tenth Amendment involves the case filed by a county sheriff in Texas (Koog v. United States).<sup>48</sup> In that case, also decided in May 1994, the Federal District Court for the Western District of Texas reasoned that Brady confers great discretion on the CLEO to determine what is a reasonable background search and that no search may be required if the circumstances dictate. The court concluded that Brady imposes only minimal duties on CLEOs.

From the government’s perspective, five of the six district court decisions were adverse rulings in that the phase I background check provision was deemed unconstitutional; therefore, DOJ has appealed the decisions. Even in these decisions, however, the courts found the remainder of Brady’s

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<sup>45</sup>Although not a party to any of the litigation, the International Association of Chiefs of Police filed briefs in many of the cases supporting the Brady Act’s provision. Joining the Association in this support were various other law enforcement groups—the Major Cities Chiefs of Police, the National Association of Police Organizations, the Fraternal Order of Police, the Police Foundation, the Federal Law Enforcement Officers Association, the Police Executive Research Forum, the National Troopers Coalition, the National Organization of Black Law Enforcement Executives, and the International Brotherhood of Police Organizations.

<sup>46</sup>The Wyoming Sheriff’s Association has 23 member sheriffs, 1 for each of the state’s 23 counties.

<sup>47</sup>Printz v. United States, 854 F. Supp. 1503 (D. Mont. 1994).

<sup>48</sup>Koog v. United States, 852 F. Supp. 1376 (W.D. Tex. 1994).

provisions severable and that they, therefore, remained operative. The Vermont court, for example, noted that CLEOS could perform background checks if they voluntarily chose to do so.

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

In September 1995, the U.S. Court of Appeals for the Ninth Circuit upheld the constitutionality of Brady, saying the federal government can require state and local law enforcement agencies to check the records of prospective handgun buyers.<sup>49</sup> The court reasoned that Brady’s provision that law enforcement agencies “make a reasonable effort to ascertain” the legality of a handgun purchase is a minimal burden that the federal government can impose on state and local law enforcement agencies. The court accordingly reversed the judgments of the Arizona and Montana district courts, which had held Brady unconstitutional as a violation of the Tenth Amendment (see table 3.1).<sup>50</sup>

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

State	Jurisdiction of sherriff	Federal district court information			Appeals status
		Case citation or file number	Date decided	Decision for <sup>a</sup>	
Arizona	Graham County	Mack v. United States, 856 F. Supp. 1372 (D. Ariz. 1994 )	6-28-94	Sheriff	District court decision reversed by the U.S. Court of Appeals for the Ninth Circuit (9-8-95).
Louisiana	Iberia Parish	Romero v. United States, 883 F. Supp. 1076 (W.D. La. 1994)	12-8-94	Sheriff	On appeal to the U.S. Court of Appeals for the Fifth Circuit; stayed pending the <u>Koog</u> and <u>McGee</u> decisions.
Mississippi	Forrest County	McGee v. United States, 863 F. Supp. 321 (S.D. Miss. 1994)	6-3-94	Sheriff	Consolidated with <u>Koog</u> and is on appeal to the U.S. Court of Appeals for the Fifth Circuit.
Montana	Ravalli County	Printz v. United States, 854 F. Supp. 1503 (D. Mont. 1994)	5-16-94	Sheriff	District court decision reversed by the U.S. Court of Appeals for the Ninth Circuit (9-8-95).

(continued)

<sup>49</sup>Mack v. United States, 1995 U.S. App. LEXIS 25263 (Ninth Cir. Sept. 8, 1995).

<sup>50</sup>This ruling applies to the Brady states in the Ninth Circuit. These states are Alaska, Arizona, Montana, Nevada, and Washington.

**Chapter 3**  
**Challenges to Brady: Court Cases and**  
**Related Legal Issues**

**Federal district court information**

<b>State</b>	<b>Jurisdiction of sherriff</b>	<b>Case citation or file number</b>	<b>Date decided</b>	<b>Decision for<sup>a</sup></b>	<b>Appeals status</b>
New Mexico	Otero County	Lee v. United States, (CIV. 94-1132 LH) (D. NM 1994)	Pending		
North Carolina	Alamance County	Frye v. United States, (2:95CV00034) (M.D. NC 1995)	Pending		
Texas	Val Verde County	Koog v. United States, 852 F. Supp. 1376 (W.D. Tex. 1994)	5-31-94	U.S.	Consolidated with McGee and is on appeal to the U.S. Court of Appeals for the Fifth Circuit.
Vermont	Orange County	Frank v. United States, 860 F. Supp. 1030 (D. Vt. 1994)	8-2-94	Sheriff	On appeal to the U.S. Court of Appeals for the Second Circuit.
Wyoming	Statewide	Wyoming Sheriff's Association v. United States, Case No. 95 CV 066 (D. Wy. 1995)	Pending		

<sup>a</sup>This refers specifically to court rulings on the Tenth Amendment constitutional challenge issue regarding Brady's phase I background check provision.

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

## No Background Checks Had Been Conducted in Two Jurisdictions

At the time of our review, no background checks had been conducted in two of the nine jurisdictions where the CLEOS had challenged Brady. However, indications were that background checks had been conducted in the other seven jurisdictions. The situation regarding each of these seven jurisdictions was as follows:

- While district court decisions were pending in three of the cases, Brady requirements were still being implemented by the plaintiff sheriffs in the respective jurisdictions—Otero County, New Mexico; Alamance County, North Carolina; and the counties in Wyoming.
- Although the sheriff of Forrest County, Mississippi, was relieved of the requirement to conduct the Brady background checks by the district court's ruling, he said he continued to perform the background checks so that eligible purchasers do not have to wait 5 business days.

- Also, as noted above, the sheriff of Val Verde County, Texas, lost his case in district court and, thus, was still conducting background checks.
- State-level agencies assumed responsibility for conducting background checks in Graham County, Arizona, and Orange County, Vermont. Effective October 1, 1994, the Arizona Department of Public Safety assumed a centralized role in conducting background checks for all residents of that state. In Vermont, when the Orange County sheriff refused to conduct background checks, the Vermont Department of Public Safety voluntarily assumed this responsibility in July 1994.

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

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## Iberia Parish, Louisiana

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

- After passage of Brady in November 1993, officials from the Louisiana Attorney General's Office and the Louisiana State Police met to determine which law enforcement agency or agencies would be designated to perform background checks of prospective purchasers of handguns. The Louisiana State Police officials said their agency was not interested in serving as the CLEO for implementing Brady Act background checks. Thus, the Attorney General's Office and the State Police officials agreed that the sheriff of each parish should serve as CLEO.
- Shortly thereafter, the Iberia Parish sheriff told dealers and ATF that he would not be performing background checks because he had insufficient resources to do so.
- In early 1994, ATF staff visited the sheriff to discuss his decision not to perform Brady background checks, but the sheriff still insisted that he had insufficient resources and would not be performing background checks.

The ATF Group Supervisor told us that ATF had no authority to designate or require another law enforcement agency to perform the background checks in Iberia Parish and that as of March 1995, no agency had volunteered to take on the added responsibility. Later that month, we spoke with the sheriff of Iberia Parish. He told us that his office had never

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conducted any Brady background checks and that he did not know how many, if any, Brady forms had been received by his office.

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## Ravalli County, Montana

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

- ATF's Portland Area Office is staffed with only eight inspectors but is responsible for four states, one of which is Montana. Generally, inspectors spend most of their time on higher priority efforts and have no time for inspections related to Brady Act implementation.
- Thus, ATF staff do not know whether the Ravalli County sheriff is conducting (or has ever conducted) any Brady background checks.

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

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## Federal Agency Authority to Penalize or Redesignate CLEOs

DOJ's Office of Legal Counsel has interpreted Brady's criminal penalty provisions to be inapplicable to state or local law enforcement officers in performance of their duties under the act and that the government, therefore, lacks the authority to prosecute such officers for violations of the act.<sup>51</sup> A majority of the district courts considering the issue have either recognized or endorsed such interpretation. Moreover, responsible ATF and DOJ officials told us that neither Treasury nor DOJ has authority to redesignate CLEOs in situations where the initially designated CLEOs fail to perform their expected duties.

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## Applicability of Criminal Penalties to CLEOs

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

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

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<sup>51</sup>DOJ has noted, however, that injunctive relief, for example, may be an option to compel local law enforcement officials to fulfill their responsibilities under the act.

“This reasoning is reinforced by the great solicitude paid to law enforcement officials in other provisions of the Act. It would be incongruous to insulate the CLEO against liability for damages . . . for providing erroneous information that prevents a sale and then turn around and subject him or her to criminal fine or imprisonment for failure to perform ministerial acts. Our conclusion is further supported by the impracticality, if not impossibility, of prosecuting a chief law enforcement officer for failing to make a ‘reasonable effort.’ The use of the term ‘reasonable effort’ reflects Congress’ apparent intent to vest discretion in CLEOs by providing a flexible statutory requirement. This elasticity, though common in civil statutes, is unusual in criminal laws because it does not clearly define a punishable act. It would be difficult to prosecute a CLEO for failing to make a ‘reasonable effort’, and such prosecution could be subject to a Fifth Amendment due process challenge. In light of the fact that applying criminal penalties to the ‘reasonable effort’ requirement would be both unusual and arguably unconstitutional, we find it difficult to believe that Congress intended the ‘reasonable effort’ to be criminally enforceable.”<sup>52</sup>

In summary, DOJ’s Office of Legal Counsel concluded that 18 U.S.C. Section 924(a)(5) does not apply to state officials, and the U.S. government, therefore, lacks the authority to prosecute state or local law enforcement officials for not conducting Brady background checks. This position has been recognized and endorsed by several of the district court decisions discussed above. For example, in determining the Forrest County, Mississippi, sheriff’s standing to sue, the federal district court noted that it believed the Department of Justice “is correct in its interpretation” of Brady’s penalty provisions.<sup>53</sup> DOJ has noted, however, that injunctive relief may be an option. At the time of our review, DOJ had not sought injunctive relief.

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## No Specific Authority to Redesignate CLEOs

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

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<sup>52</sup>Memorandum (dated March 16, 1994) from DOJ’s Office of Legal Counsel to Attorney General Janet Reno, subject: “Application of the Criminal Penalties in the Brady Act to State or Local Law Enforcement Officers.”

<sup>53</sup>McGee v. United States, 863 F. Supp. 321 at 324 (S.D. Miss. 1994). More recently, the U.S. Court of Appeals for the Ninth Circuit vacated, as unripe for judicial review, both the District Court of Arizona ruling that the criminal provisions apply to CLEOs and are void for vagueness, as well as the District Court of Montana ruling that the criminal provisions do not apply to CLEOs. The Court of Appeals noted that the plaintiffs in both cases had not been charged under Brady and that such charges against them were unlikely in view of DOJ’s official position that the criminal sanctions of Brady do not apply to CLEOs. *Mack v. United States*, 1995 U.S. App. LEXIS 25263 at 9-10 (Ninth Cir. Sept. 8, 1995).

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

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## The Effects of Not Conducting Background Checks Are Unknown

We tried to determine whether there have been any negative effects resulting from the absence of presale background checks of handgun purchasers residing in the two jurisdictions discussed above—Iberia Parish, Louisiana, and Ravalli County, Montana. We wanted to determine, for example, whether any gun-related crimes had been committed—with a handgun purchased on or after February 28, 1994 (the effective date of Brady)—by any resident of these jurisdictions and, if so, whether the purchaser had a criminal history or other disqualifier identifiable by a routine background check.

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

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

On the other hand, since no background checks had been conducted in these two jurisdictions there is no assurance that ineligible persons did not purchase handguns from licensed dealers. Moreover, the Tracing Center's search covered only one jurisdiction in each state. Thus, the search did not cover the possibility that residents of one county or parish may have purchased handguns in another county or parish in their state.



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## Conclusions

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

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

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

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## Agency Comments and Our Evaluation

In its written comments, DOJ said the fact that local law enforcement officials are not subject to criminal prosecution does not mean there is no way to compel them to fulfill their responsibilities under Brady. DOJ commented that injunctive relief may be an option. We have added this point to our discussion.

In their combined written comments, Treasury and ATF suggested that we add language indicating that the federal district court decisions were limited to the plaintiff sheriffs only and that other CLEOS in surrounding jurisdictions were still subject to Brady's phase I background check provision. While the McGee and Romero district court decisions were limited to the plaintiff sheriffs, the Mack, Printz, and Frank district court decisions did not contain such a limitation. For example, the Frank decision enjoined "the United States from enforcing that provision in the District of Vermont," the Mack decision ordered "that defendant United States of America and its agents are permanently enjoined from further enforcing 18 U.S.C. § 922(s)(2)," and the Printz decision enjoined "the United States from enforcing said provision."

Also, Treasury and ATF commented that the number of jurisdictions affected by the legal challenges to Brady is very small compared to overall enforcement of the act. Further, we and the agencies pointed out that the

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**Chapter 3**  
**Challenges to Brady: Court Cases and**  
**Related Legal Issues**

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federal appeals court decision overturned two of the five district court decisions against Brady, and the appeals were pending in the remaining three cases as of October 1995.

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# Brady Handgun Purchase Form

Form Approved: OMB No. 1512-0520 (02/28/98)

**DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
STATEMENT OF INTENT TO OBTAIN A HANDGUN(S)**

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

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

1. TRANSFEREE'S (BUYER'S) NAME (Last, (and maiden, if applicable), first, middle) \_\_\_\_\_ 2. DATE OF BIRTH (Month, day, year) \_\_\_\_\_

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

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

SOCIAL SECURITY NUMBER	HEIGHT	WEIGHT	SEX
PLACE OF BIRTH	ALIEN REGISTRATION NUMBER A _____		

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

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

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

TRANSFEREE'S (BUYER'S) SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

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

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

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

TYPE OF IDENTIFICATION \_\_\_\_\_ NUMBER ON IDENTIFICATION \_\_\_\_\_  
 DRIVER'S LICENSE  OTHER (Specify) \_\_\_\_\_

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

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

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

11. TRANSFEROR'S (SELLER'S) SIGNATURE \_\_\_\_\_ TRANSFEROR'S TITLE \_\_\_\_\_ DATE \_\_\_\_\_

ATF F 5300.35 (2-95) (INTERIM)

## Appendix I Brady Handgun Purchase Form

### INSTRUCTIONS FOR ATF F 5300.35

#### NOTICE

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

#### PRIVACY ACT

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

#### WARNING

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

#### INSTRUCTIONS TO TRANSFEREE (BUYER)

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

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

2. The buyer shall print the responses to Section A, Items 1, 2, 3, 4, and 5.
3. The buyer must provide a valid government-issued photo identification to the seller that contains the buyer's name, date of birth, and residence address.

#### INSTRUCTIONS TO TRANSFEROR (SELLER)

**NOTE:** This form need not be completed if the proposed transfer of a handgun(s) is subject to any of the alternatives in 27 CFR 178.102(b).

1. You may use Forms 5300.35 supplied by ATF or use photocopies of such forms. If photocopies are used, the photocopies must include the instructions.
2. The Federal 5-day waiting period is inapplicable and this form need not be completed if the transfer is subject to any of the alternatives in 27 CFR 178.102(b). Generally, these include transfers (a) pursuant to an official's written statement of the buyer's need for a handgun based upon a threat to life; (b) to buyers whose records have been checked and an official has verified eligibility to possess firearms; (c) of National Firearms Act weapons approved by ATF; and (d) certified by ATF as exempt because compliance with the waiting period is impractical. See section 178.102(b) for a detailed explanation of these alternatives.

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

3. If the proposed transfer of a handgun(s) is subject to the 5-day waiting period, the buyer must complete Section A, and the seller must complete Section B.
4. The seller must:
  - (a) ensure that the buyer completes Section A and signs and dates the statement;
  - (b) if the buyer's name is illegible, print the buyer's name above the name of the buyer; and
  - (c) establish the identity of the buyer by requiring the buyer to provide a valid government-issued photo identification bearing the buyer's name, date of birth, and residence address.

5. Within 1 day after the buyer furnishes the statement, the seller must provide notice of the contents of this statement to the Chief Law Enforcement Officer of the place of residence of the buyer. (See Item 8 on the form.)
6. Within 1 day after the buyer furnishes the statement, the seller shall sign and date the form in Item 11 and transmit a copy of this form, including its instructions to the Chief Law Enforcement Officer of the place of residence of the buyer. (See Item 9 on the form.)
7. The seller shall delay delivery of the handgun(s) until 5 business days (meaning days on which State Offices are open) have elapsed from the actual date the seller has furnished notice of the contents of the statement to the Chief Law Enforcement Officer. (Unless, within the 5-day period, the seller has received no information from the Chief Law Enforcement Officer of the place of residence of the buyer that the buyer's receipt or possession of the handgun(s) would violate Federal, State, or local law.)
8. After the seller has provided actual notice of the contents of the buyer's intent to obtain a handgun(s) to the Chief Law Enforcement Officer, this form must be maintained as part of the seller's permanent records, regardless of whether the transfer occurs.
9. If prior to the expiration of the 5-day waiting period or prior to actual delivery of the handgun(s) to the buyer, the seller receives notification from the Chief Law Enforcement Officer that the officer has reason to believe that the possession or receipt of a handgun by the buyer would violate the law, the seller is prohibited from transferring the handgun(s) to the buyer. Include in Item 10 any agency number or other identifier assigned by the Chief Law Enforcement Officer to the transaction.
10. Any seller, who after the transfer of a handgun(s) receives a report from a Chief Law Enforcement Officer containing information that the receipt or possession of the handgun(s) by the buyer would violate the law, shall within 1 business day communicate all information that the seller has about the transfer and the buyer to a) the Chief Law Enforcement Officer of the place of business of the seller and b) the Chief Law Enforcement Officer of the place of residence of the buyer. The seller should also provide this information to the local ATF office.
11. After the seller has provided a copy of this form to the Chief Law Enforcement Officer, any subsequent proposal(s) made by the same buyer to obtain a handgun(s) require the execution of a new ATF Form 5300.35.
12. After the seller has completed the handgun(s) transaction, the original ATF Form 5300.35 becomes part of the seller's permanent records. ATF Form 5300.35 must be attached to the ATF Form 4473 that reflects the handgun transfer.

#### INSTRUCTIONS TO CHIEF LAW ENFORCEMENT OFFICIALS

1. This form contains the statement of intent to obtain a handgun(s) by the person identified in Section A. The seller may not lawfully deliver the handgun(s) to the buyer until 5 business days have elapsed from the date the seller furnished actual notice of the contents of this statement to you, or you have notified the seller within the 5-day period that you have no information that the buyer's receipt or possession of the handgun(s) would violate Federal, State, or local law.
2. You are required to make a reasonable effort to ascertain within the 5-day period whether the buyer's receipt or possession of a handgun(s) would violate the law, including research in whatever State and local recordkeeping systems are available to you, and in the National Crime Information Center, to include a wanted person check and the Interstate Identification Index. For your information, the receipt or possession of a handgun by a person who falls within any category of persons listed in Section A, Item 5, would violate Federal law.
3. At the earliest possible time, you should advise the seller if you have reason to believe that the buyer's receipt or possession of the handgun(s) would violate the law. Unless you notify the seller that the buyer's receipt or possession of a handgun(s) would violate the law, the seller may deliver the handgun(s) to the buyer. Notification either during or after the 5-day

(Continued on reverse)

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**Appendix I**  
**Brady Handgun Purchase Form**

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

4. Unless you determine that the buyer's receipt or possession of the handgun(s) may violate the law, you shall, within 20 business days from the date of the buyer's statement, destroy this form, any record containing information derived from this form and any record created as a result of the notice of the contents of this form.
5. If you determine that the buyer is ineligible to receive or possess a handgun(s), you should maintain this form. The buyer may request that you provide the reason(s) for such determination and you must provide such reason(s) to the buyer within 20 business days after the receipt of the request. Your retention of this form may assist you in responding to such inquiries.

**DEFINITIONS**

1. The term "Chief Law Enforcement Officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.
2. The term "handgun" means (a) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and (b) any combination of parts from which a firearm described by (a) can be assembled.

**Paperwork Reduction Act Notice**

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

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

# Designation of “Brady” and “Brady-Alternative” States

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

- a 5-day waiting period to facilitate background checks or
- an applicable state’s system that meets requisite standards for screening backgrounds and denying ineligible purchasers.

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





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**Appendix II**  
**Designation of “Brady” and**  
**“Brady-Alternative” States**

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available” to such official does not indicate that the prospective purchaser’s possession of the handgun would violate the law.

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

“Certain State laws may enumerate the records to be searched, or require that the State official conduct ‘such investigation’ as is deemed necessary to determine the person’s eligibility to possess a handgun. In some cases, this may encompass a check of State criminal histories only. . . . [A]t a minimum, the States must be able to conduct a criminal records check of those systems of records available to the State. Thus, if these systems only contain information indicating felony convictions, such a check would be sufficient to fall within the permit or instant check exception.”<sup>2</sup>

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

Nonetheless, as of May 1995, no state had contested ATF’s decisions on Brady and Brady-alternative designations, according to agency officials. Moreover, during our review, we saw indications that ATF has demonstrated a willingness to work with officials in those Brady states interested in making the legislative changes needed to achieve Brady-alternative status. At applicable times, for example, ATF Assistant Chief Counsels have worked with officials from requesting states to review whether the respective state’s proposed legislative changes would meet Brady-alternative criteria. In fact, six states originally categorized as Brady states have subsequently met alternative requirements—Colorado, Idaho, Minnesota, New Hampshire, Tennessee, and Utah.

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<sup>2</sup>ATF document (undated), “Rationale under the Brady Law for Categorization of States as Subject to the Federal 5-Day Waiting Period Requirement for Handgun Sales or Having Alternative Systems to the Waiting Period Requirements.”

# GAO Analysis of Handgun Purchase Denial Statistics in Selected Jurisdictions

As discussed in chapter 1, we judgmentally selected 20 jurisdictions (see table 1.1) to contact for the purpose of developing and analyzing handgun purchase application and denial statistics covering approximately the first year of Brady Act implementation—February 28, 1994, through February 28, 1995. We found that the availability and specificity of records with respect to reasons for denials varied by jurisdiction.

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

It should be emphasized that the state and local law enforcement officers have no statutory obligation to maintain or report denial statistics and, accordingly, there is no standardized format mandated for accumulating such data. Nonetheless, to the extent possible, we tried to use a common format to present the data tables in this appendix. In doing so, however, we did not substantively recategorize or otherwise “second guess” the denial reasons recorded in the respective state or local agency’s files, even though some files (the usual case) gave only broad generic reasons (e.g., felony conviction) and other files were much more specific, with dozens of separately categorized reasons.

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

Category/reason	Denied applications		
	Number	Percent	
		Of category	Of total denied applications
Criminal history records			
Total felonies	8,299	91.8	44.7
Felony indictments	103		0.6
Felony arrests (no disposition shown)	365		2.0
Felony convictions	1,663		9.0
Felony warrants	77		0.4
Other felony-related denials	6,091 <sup>a</sup>		32.8
Misdemeanor warrants	452	5.0	2.4
Other criminal offenses	292	3.2	1.6
<b>Total</b>	<b>9,043</b>	<b>100.0</b>	<b>48.7</b>
Other Brady ineligible categories			
Fugitives from justice	160	21.2	0.9

(continued)

**Appendix III**  
**GAO Analysis of Handgun Purchase Denial**  
**Statistics in Selected Jurisdictions**

Category/reason	Number	Denied applications	
		Percent	Of total denied applications
Unlawful drug users or addicts	357	47.4	1.9
Adjudicated mentally defective or committed	38	5.0	0.2
Dishonorable discharge from Armed Forces	49	6.5	0.3
Illegal aliens	149	19.8	0.8
Renounced U.S. citizenship	0	0.0	0.0
<b>Total</b>	<b>753</b>	<b>99.9</b>	<b>4.1</b>
1994 Crime Act			
Restraining order (harassing, stalking, or threatening)	145	100.0	0.8
Traffic offenses			
Traffic offense warrants	1,413	100.0	7.6
Administrative or other			
Dealer transmitted Brady form to wrong law enforcement agency	7,012	97.2	37.8
Part A of Brady form incomplete/inaccurate	36	0.5	0.2
Part B of Brady form incomplete/inaccurate	88	1.2	0.5
Brady form incomplete (part not specified or illegible)	14	0.2	0.1
Violation of state law	33	0.5	0.2
Applicant presented questionable or invalid identification	21	0.3	0.1
Form delivered by regular instead of registered mail	9	0.0	0.0
Applicant under legal age to purchase handgun	2	0.0	0.0
Copy of Brady form not transmitted to law enforcement agency within 1 day	1	0.0	0.0
<b>Total</b>	<b>7,216</b>	<b>99.9</b>	<b>38.9</b>
<b>Grand total</b>	<b>18,570<sup>b</sup></b>		<b>100.1<sup>c</sup></b>

(Table notes on next page)

**Appendix III**  
**GAO Analysis of Handgun Purchase Denial**  
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<sup>a</sup>Denial of these 6,091 applications was for felony-related reasons and involved 5 of the 15 jurisdictions we analyzed—Kentucky; Ohio; South Carolina; Harris County, Texas; and Houston, Texas. In these jurisdictions, the records available for our review did not specify the status (e.g., indictment, arrest, or conviction) of the felony offenses.

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

<sup>c</sup>This percentage does not add to 100 percent because of rounding.

Source: GAO analysis of data from the 15 jurisdictions.

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

Category/reason	Denied applications	
	Number	Percent of total
Criminal history records		
Total felonies	656	70.7
Felony convictions	619	66.7
Felony warrants	37 <sup>a</sup>	4.0
Misdemeanor warrants	272 <sup>b</sup>	29.3
<b>Total</b>	<b>928</b>	<b>100.0</b>
Other Brady ineligible categories	0	0
1994 Crime Act	0	0
Traffic offenses	0	0
Administrative or other	0	0
<b>Grand total</b>	<b>928<sup>c</sup></b>	<b>100.0</b>

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

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

<sup>b</sup>Denial of these 272 applications was based on the existence of outstanding misdemeanor warrants. According to a Department spokesperson, these misdemeanor warrants were issued for offenses ranging from bad checks and theft to fraud and traffic violations. The spokesperson told us that there is no state or local handgun law prohibiting persons from purchasing a handgun if they have been found guilty of a misdemeanor offense; however, the Department considers such individuals to be fugitives from justice if their criminal history records include any outstanding warrants.

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

Source: Arizona Department of Public Safety.

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

Category/reasons	Denied applications	
	Number	Percent of total
Criminal history records		
Total felonies	332	88.1
Felony arrests (no disposition shown)	143	37.9
Felony convictions	180	47.7
Felony warrants	9 <sup>a</sup>	2.4
Misdemeanor warrants	42 <sup>b</sup>	11.1
<b>Total</b>	<b>374</b>	<b>99.2</b>
Other Brady ineligible categories		
Adjudicated mentally defective or committed	3 <sup>c</sup>	0.8
1994 Crime Act	0	0
Traffic offenses	0	0
Administrative or other	0	0
<b>Grand total</b>	<b>377<sup>d</sup></b>	<b>100.0</b>

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

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

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

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

Source: Arkansas State Police.

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

Category/reasons	Denied applications	
	Number	Percent of total
Criminal history records		
Total felonies	106	72.6
Felony arrests (no disposition shown)	65	44.5
Felony convictions	41	28.1
<b>Total</b>	<b>106</b>	<b>72.6</b>
Other Brady ineligible categories		
Fugitives from justice	27 <sup>a</sup>	18.5
Adjudicated mentally defective or committed	9 <sup>b</sup>	6.2
<b>Total</b>	<b>36</b>	<b>24.7</b>
1994 Crime Act		
Restraining order (harassing, stalking, or threatening)	1	0.7
Traffic offenses	0	0
Administrative or other		
Applicant presented questionable identification	3	2.1
<b>Grand total</b>	<b>146<sup>c</sup></b>	<b>100.0</b>

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

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

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

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

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

Category/reasons	Denied applications	
	Number	Percent of total
Criminal history records		
Total felonies	256	100.0
Felony convictions	230	89.8
Felony warrants	26 <sup>a</sup>	10.2
<b>Total</b>	<b>256</b>	<b>100.0</b>
Other Brady ineligible categories	0	0
1994 Crime Act	0	0
Traffic offenses	0	0
Administrative or other	0	0
<b>Grand total</b>	<b>256<sup>b</sup></b>	<b>100.0</b>

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

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

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

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

Category/reasons	Denied applications	
	Number	Percent of total
Criminal history records		
Total felonies	1,895 <sup>a</sup>	92.7
Misdemeanor warrants	8 <sup>b</sup>	0.4
<b>Total</b>	<b>1,903</b>	<b>93.1</b>
Other Brady ineligible categories	0	0
1994 Crime Act		
Restraining order (harassing, stalking, or threatening)	142 <sup>c</sup>	6.9
Traffic offenses	0	0
Administrative or other	0	0
<b>Grand total</b>	<b>2,045<sup>d</sup></b>	<b>100.0</b>

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

<sup>b</sup>Denial of these eight applications was based on the existence of outstanding misdemeanor warrants. According to a State Police spokesperson, these misdemeanor warrants were issued for offenses ranging from making threats to disorderly conduct to traffic violations. The spokesperson told us that there is no state or local law prohibiting persons from purchasing a handgun if they have been found guilty of a misdemeanor offense; however, the State Police considers such individuals to be fugitives from justice if their criminal history records include any outstanding warrants.

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

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

Source: Kentucky State Police.



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

Category/reasons	Denied applications	
	Number	Percent of total
Criminal history records		
Total felonies	26	53.1
Felony convictions	26	53.1
Misdemeanor warrants	21 <sup>a</sup>	42.9
<b>Total</b>	<b>47</b>	<b>95.9</b>
Other Brady ineligible categories	0	0
1994 Crime Act	0	0
Traffic offenses	0	0
Administrative or other		
Applicant under legal age to purchase handgun	2	4.1
<b>Grand total</b>	<b>49<sup>b</sup></b>	<b>100.0</b>

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

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

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

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

<b>Category/reasons</b>	<b>Denied applications</b>	
	<b>Number</b>	<b>Percent of total</b>
Criminal history records		
Total felonies	155	70.5
Felony convictions	155	70.5
Other criminal offenses	65 <sup>a</sup>	29.5
<b>Total</b>	<b>220</b>	<b>100.0</b>
Other Brady ineligible categories	0	0
1994 Crime Act	0	0
Traffic offenses	0	0
Administrative or other	0	0
<b>Grand total</b>	<b>220<sup>b</sup></b>	<b>100.0</b>

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

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

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

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

Category/reasons	Denied applications	
	Number	Percent of total
Criminal history records		
Total felonies	467	87.9
Felony indictments	80	15.1
Felony arrests (no disposition shown)	155	29.2
Felony convictions	232	43.7
<b>Total</b>	<b>467</b>	<b>87.9</b>
Other Brady ineligible categories		
Fugitives from justice	47 <sup>a</sup>	8.9
Adjudicated mentally defective or committed	1 <sup>b</sup>	0.2
Dishonorable discharge from Armed Forces	4 <sup>c</sup>	0.8
Illegal aliens	10 <sup>d</sup>	1.9
<b>Total</b>	<b>62</b>	<b>11.7</b>
1994 Crime Act		
Restraining order (harassing, stalking, or threatening)	2	0.4
Traffic offenses	0	0
Administrative or other	0	0
<b>Grand total</b>	<b>531<sup>e</sup></b>	<b>100.0</b>

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

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

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

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

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

Source: Nevada Department of Motor Vehicles and Public Safety.

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

Category/reasons	Denied applications	
	Number	Percent of total
Criminal history records		
Total felonies	376 <sup>a</sup>	92.6
Other Brady ineligible categories		
Adjudicated mentally defective or committed	6 <sup>b</sup>	1.5
Dishonorable discharge from Armed Forces	21 <sup>c</sup>	5.2
<b>Total</b>	<b>27</b>	<b>6.7</b>
1994 Crime Act	0	0
Traffic offenses	0	0
Administrative or other		
Brady form incomplete/inaccurate	3	0.7
<b>Grand total</b>	<b>406<sup>d</sup></b>	<b>100.0</b>

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

<sup>b</sup>According to a Bureau spokesperson, the denial of these six applications was based upon state mental hospital records.

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

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

Source: Ohio Bureau of Criminal Identification and Investigation.

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

<b>Category/reasons</b>	<b>Denied applications</b>	
	<b>Number</b>	<b>Percent of total</b>
Criminal history records		
Total felonies	1,903 <sup>a</sup>	96.1
Misdemeanor warrants	1	0.1
<b>Total</b>	<b>1,904</b>	<b>96.2</b>
Other Brady ineligible categories		
Fugitives from justice	27 <sup>b</sup>	1.4
Adjudicated mentally defective or committed	5 <sup>c</sup>	0.3
Dishonorable discharge from Armed Forces	8 <sup>d</sup>	0.4
Illegal aliens	3 <sup>e</sup>	0.2
<b>Total</b>	<b>43</b>	<b>2.2</b>
1994 Crime Act	0	0
Traffic offenses	0	0
Administrative or other		
Violation of state law	33 <sup>f</sup>	1.7
<b>Grand total</b>	<b>1,980<sup>g</sup></b>	<b>100.0</b>

(Table notes on next page)

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

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

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

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

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

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

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

Source: South Carolina State Law Enforcement Division.

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

Category/reasons	Denied applications	
	Number	Percent of total
Criminal history records		
Total felonies	11	61.1
Felony arrests (no disposition shown)	2	11.1
Felony convictions	9 <sup>a</sup>	50.0
<b>Total</b>	<b>11</b>	<b>61.1</b>
Other Brady ineligible categories		
Fugitives from justice	2 <sup>b</sup>	11.1
Unlawful drug users or addicts	2 <sup>c</sup>	11.1
Illegal aliens	2 <sup>d</sup>	11.1
<b>Total</b>	<b>6</b>	<b>33.3</b>
1994 Crime Act	0	0
Traffic offenses	0	0
Administrative or other		
Applicant presented questionable identification	1	5.6
<b>Grand total</b>	<b>18<sup>e</sup></b>	<b>100.0</b>

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

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

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

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

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

Source: Abilene, Texas, Police Department.

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

Category/reasons	Denied applications	
	Number	Percent of total
Criminal history records		
Total felonies	138	10.7
Felony indictments	23	1.8
Felony convictions	112	8.7
Felony warrants	3 <sup>a</sup>	0.2
Misdemeanor warrants	58 <sup>b</sup>	4.5
Other criminal offenses	1 <sup>c</sup>	0.1
<b>Total</b>	<b>197</b>	<b>15.3</b>
Other Brady ineligible categories		
Adjudicated mentally defective or committed	7 <sup>d</sup>	0.5
Illegal aliens	2 <sup>e</sup>	0.2
<b>Total</b>	<b>9</b>	<b>0.7</b>
1994 Crime Act	0	0
Traffic offenses		
Traffic offense warrants	505	39.2
Administrative or other		
Dealer transmitted Brady form to wrong law enforcement agency	434	33.7
Brady form incomplete/inaccurate	127 <sup>f</sup>	9.9
Brady form illegible	5 <sup>g</sup>	0.4
Form delivered by regular versus registered mail	9	0.7
Copy of Brady form not transmitted to law enforcement agency within 1 day	1	0.1
Applicant presented invalid identification	1	0.1
<b>Total</b>	<b>577</b>	<b>44.8</b>
<b>Grand total</b>	<b>1,288<sup>h</sup></b>	<b>100.0</b>

(Table notes on next page)



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

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

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

<sup>d</sup>Denial of these seven applications was based on records maintained by the Tarrant County Mental Health Center.

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

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

<sup>g</sup>These five applications were denied because a facsimile of the Brady form that was provided by gun dealers was illegible.

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

Source: Fort Worth, Texas, Police Department.

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

Category/reasons	Denied applications	
	Number	Percent of total
Criminal history records		
Total felonies	1,012 <sup>a</sup>	26.0
Other criminal offenses	226 <sup>b</sup>	5.8
<b>Total</b>	<b>1,238</b>	<b>31.8</b>
Other Brady ineligible categories		
Adjudicated mentally defective or committed	1 <sup>c</sup>	0.0
Dishonorable discharge from Armed Forces	6 <sup>d</sup>	0.2
Illegal aliens	20 <sup>e</sup>	0.5
<b>Total</b>	<b>27</b>	<b>0.7</b>
1994 Crime Act	0	0
Traffic offenses	0	0
Administrative or other		
Dealer transmitted Brady form to wrong law enforcement agency	2,608	67.0
Applicant presented questionable identification	16	0.4
Brady form incomplete/inaccurate	3	0.1
<b>Total</b>	<b>2,627</b>	<b>67.5</b>
<b>Grand total</b>	<b>3,892<sup>f</sup></b>	<b>100.0</b>

<sup>a</sup>Denial of 129 of these 1,012 applications was for felony arrests, but the final disposition was not shown in the criminal history records. Denial of the remaining 883 applications was also for felony-related reasons; however, the Harris County Sheriff's records available for our review did not specify the status (e.g., indictment, arrest, or conviction) of the offense.

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

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

<sup>d</sup>The Department spokesperson told us that denial of these applications was based on criminal history records involving a dishonorable discharge from the Armed Forces.

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

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

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

**Appendix III**  
**GAO Analysis of Handgun Purchase Denial**  
**Statistics in Selected Jurisdictions**

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

Category/reasons	Denied applications	
	Number	Percent of total
Criminal history records		
<b>Total felonies</b>	<b>905<sup>a</sup></b>	<b>14.3</b>
Other Brady ineligible categories		
Fugitives from justice	57 <sup>b</sup>	0.9
Unlawful drug users or addicts	355 <sup>c</sup>	5.6
Adjudicated mentally defective or committed	6 <sup>d</sup>	0.1
Dishonorable discharge from Armed Forces	9 <sup>e</sup>	0.1
Illegal aliens	112 <sup>f</sup>	1.8
<b>Total</b>	<b>539</b>	<b>8.5</b>
1994 Crime Act	0	0
Traffic offenses		
Traffic offense warrants	908	14.4
Administrative or other		
Dealer transmitted Brady form to wrong law enforcement agency	3,970	62.8
<b>Grand total</b>	<b>6,322<sup>g</sup></b>	<b>100.0</b>

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

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

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

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

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

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

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

Source: Houston, Texas, Police Department.

**Appendix III**  
**GAO Analysis of Handgun Purchase Denial**  
**Statistics in Selected Jurisdictions**

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

Category/reasons	Denied applications	
	Number	Percent of total
Criminal history records		
Total felonies	61	54.5
Felony convictions	59	52.7
Felony warrants	2 <sup>a</sup>	1.8
Misdemeanor warrants	50 <sup>b</sup>	44.6
<b>Total</b>	<b>111</b>	<b>99.1</b>
Other Brady ineligible categories		
Dishonorable discharge from Armed Forces	1 <sup>c</sup>	0.9
1994 Crime Act	0	0
Traffic offenses	0	0
Administrative or other	0	0
<b>Grand total</b>	<b>112<sup>d</sup></b>	<b>100.0</b>

<sup>a</sup>When an applicant's criminal history record includes an outstanding felony warrant, the Pasadena Police Department's policy is to serve the warrant. However, if the Department is unable to serve the warrant, it is to contact and provide the originating agency with the pertinent information.

<sup>b</sup>Denial of these 50 applications was based on the existence of outstanding misdemeanor warrants. According to a Department spokesperson, there is no state or local law prohibiting persons from purchasing a handgun if they have been found guilty of a misdemeanor offense; however, the Department considers such individuals to be fugitives from justice if their criminal history records include any outstanding warrants.

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

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

Source: Pasadena, Texas, Police Department.

# Comments From the Department of the Treasury and the Bureau of Alcohol, Tobacco and Firearms

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



DIRECTOR

DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D.C. 20226

NOV 6 1995

Mr. Norman J. Rabkin  
Director, Administration of  
Justice Issues  
General Accounting Office  
Washington, DC 20548

Dear Mr. Rabkin:

Thank you for the opportunity to comment on your draft report on implementation of the Brady Handgun Violence Prevention Act (Brady) prior to its release.

We have reviewed the report and believe that generally the report fairly and accurately portrays the facts relating to the implementation of this statute. However, we offer the following comments for your consideration before the final report is released.

The report states that sheriffs filed lawsuits challenging Brady on the grounds that it is beyond the scope of Congress' Commerce Clause powers and, therefore, it is inconsistent with the Tenth Amendment (pp. 4, 70). The plaintiffs' arguments based upon the Commerce Clause and the Tenth Amendment were separate and distinct. A finding by the courts that Brady violated the Tenth Amendment was not contingent upon a finding that Brady lacked support in the Commerce Clause.

The report refers to the Department of Justice (DOJ) and the Bureau of Alcohol, Tobacco and Firearms (ATF) (pp. 7, 31). It would be more consistent if the report referred to DOJ and the Department of the Treasury.

The report treats proposed handgun purchases with respect to which firearms dealers forwarded Brady forms to the wrong chief law enforcement official (CLEO) as having been denied (pp. 8, 9, 59, 68). The report refers to these as "administrative" denials. The report does not contain facts supporting this conclusion. Simply because the notice was sent to the wrong CLEO does not mean that the purchaser did not receive the handgun.

Now on pp. 5  
and 47.

See comment 1.  
Now on pp. 6 and 52.

Now on pp. 6,  
8, 40, and 45.

**Appendix IV  
Comments From the Department of the  
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Mr. Norman J. Rabkin

If the CLEO did not inform the licensee of the error, the licensee may have assumed that notice was sent to the proper CLEO and delivered the firearm after the 5-day waiting period. If the CLEO did inform the licensee of the error, the licensee may have sent the notice to the proper CLEO and delivered the handgun after the waiting period. Therefore, it is erroneous to assume that a Brady form sent to the wrong CLEO automatically results in the denial of a handgun purchase. It would also be erroneous to assume that all of these purchases would have been approved had they been sent to the proper CLEO.

Now on p. 31.

The report also states that denials for applications sent to the wrong law enforcement agency were not reported by ATF (p. 44). As this statement is worded, it might be construed as suggesting that ATF intentionally did not report these denials. The survey sheets completed by the CLEOs and submitted to ATF did not reflect notices of intent to purchase forwarded to the wrong CLEO as denials.

Now on p. 7.  
See p. 36.

The report states that law enforcement officials told the General Accounting Office (GAO) that any individual with an outstanding misdemeanor warrant is considered to be a fugitive from justice (p. 8). In order to clarify this statement, we would recommend that the following sentence be added. "Because a person may be a fugitive from justice with respect to a misdemeanor warrant, it could not be concluded that the person was erroneously denied a handgun without checking the facts of his or her case."

Sentence added.  
See p. 14.

The report states that under Brady's interim provisions, a firearm sale may not be completed for 5 days unless the dealer receives an approval from the CLEO before that time (p. 50). We recommend that the following sentence be added for clarification. "If the CLEO does not contact the dealer within the 5-day period, the dealer may make the sale unless the dealer has reason to believe the transaction would be unlawful."

See p. 35 and  
comment 2.

For the same reason, we believe that the second sentence of the second paragraph of page 16 should be amended to read "For example, an official with the South Carolina State Law Enforcement Division told us that unless it finds a record within 5 business days

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Mr. Norman J. Rabkin

that the purchaser was actually convicted of a disabling crime, the handgun sale is allowed to proceed."

Substitution made.  
Now on p. 15.

The report states that the Gun Control Act of 1968 contains the principal Federal restrictions on commerce in "small arms and ammunition" (p. 18). The Act's restrictions apply to firearms of any size as defined by 18 U.S.C. § 921(a)(3). Therefore, the word "firearms" should be substituted for "small arms."

Revised. Now on p. 18.

The report states that if a record check reveals that a prospective handgun purchaser is ineligible to receive a handgun, the CLEO is to instruct the dealer to refer the buyer to the CLEO if the buyer has questions or challenges the denial (p. 22). As the statement is worded, the instruction appears to be legally required. While we would recommend these actions, they are not mandated by Brady.

Revised. Now on p. 20.

The report states that "neither the Gun Control Act of 1968 nor Brady apply to transactions between nonlicensed individuals" (p. 26). The Gun Control Act does apply to certain transactions between nonlicensees, e.g., the prohibitions against the transfer of firearms to felons, and the receipt of firearms by felons, the transfer of firearms to a nonresident, and the receipt of a firearm interstate. This error could be corrected by deleting the reference to the Gun Control Act.

Substitution made.  
Now on p. 20.

The statement "Policymakers recognize that even a perfect felon identification system will not keep most felons from obtaining firearms and that Brady may not directly result in measurable reductions of gun-related crimes." (p. 26) is too conclusory. In our opinion, the words "may not" should be substituted for the words "will not."

Sentence not added.  
Now on p. 20.

Additionally on page 26, the report states: "Thus, the apparently sizable numbers of handgun transactions that take place between private individuals, such as at gun shows and even 'on the street,' are not subject to Brady's requirements." A sentence should be added stating: "However, supporters of Brady would likely argue that blocking the illegal purchase of handguns through commercial channels is one of the first steps in reducing illegal transfers to private individuals."

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The report attributes certain positions to proponents of Brady (p. 27). An additional position which might be included is that Brady is intended to choke off criminals' access to illegal firearms through legal sources before they get to the grey or black market.

We recommend making clear that the 40 percent denial rate referred to in the report reflects GAO's survey and not the survey done by Treasury (p. 68).

We also would recommend that the report clarify that the number of jurisdictions affected by the legal challenges to Brady is very small compared to the overall enforcement of Brady (p. 69). In addition, it should be pointed out that the Federal appeals court decision holding that the Act is constitutional overturned two of the five lower court decisions against Brady and that appeals are pending in the remaining three cases.

We suggest adding a sentence to the second paragraph on page 72 indicating that the court decisions were limited only to the plaintiff sheriffs and that other CLEOs in surrounding jurisdictions were still subject to the Brady background check provision.

The example of the Statement of Intent to Purchase a Handgun(s) in Appendix I is not the most current version. There was a modification of this form in February, 1995, which added a section wherein the prospective handgun purchaser supplies his/her alien registration number. This section was added at the request of the Immigration and Naturalization Service.

Again, we appreciate the opportunity to offer our comments. The comments in this response are the combined comments of ATF and the Treasury Department. If we may be of any further assistance, please do not hesitate to contact us.

Sincerely yours,

  
for John W. Magaw  
Director

Language not added.  
Now on p. 21.

Revised. Now  
on p. 45.

Now on p. 47.  
See p. 55.

See p. 48.

See comment 3.



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Following are GAO's comments on the Department of the Treasury's and the Bureau of Alcohol, Tobacco and Firearms' (ATF) November 6, 1995, letter.

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## **GAO's Comments**

1. Treasury and ATF noted that our report refers to ATF and the Department of Justice (DOJ) and that, to be more consistent, we should refer instead to DOJ and the Department of the Treasury. We recognize that our references are to agencies of different levels and that ATF is part of Treasury. However, our contacts in completing this review were all with DOJ and ATF employees, so we feel we are appropriately referring to these agencies.
2. Treasury and ATF wanted us to clarify a sentence in which we disclose what a South Carolina official told us regarding the handling of a handgun sale when a purchase-disqualifying disposition cannot be determined within 5 business days. We believe our sentence clearly and accurately reflects what the official told us.
3. Treasury and ATF noted that the Brady handgun purchase form included in our draft report was not the most current form. The modified form contains a section for the prospective handgun purchaser to supply his or her alien registration number, if applicable. A copy of the modified ATF form appears in appendix I.

# Comments From the Department of Justice



U. S. Department of Justice

Washington, DC 20530

NOV - 8 1995

Norman J. Rabkin  
Director  
Administration of Justice Issues  
General Government Division  
U.S. General Accounting Office  
820 First Street, N.E.  
Washington, D.C. 20002

Dear Mr. Rabkin:

In response to your October 10, 1995, request to the Attorney General, the Department has reviewed the General Accounting Office (GAO) draft report entitled "Gun Control: Implementation of the Brady Handgun Violence Prevention Act." The Department found the report useful and generally accurate. However, the Department would like clarify various points in the report and update the information presented on two of the Department's more recent efforts to achieve the objectives of the Brady Handgun Violence Prevention Act.

The Department would like to clarify information in the report related to 1) the importance given to prosecutions in the report, 2) the exemptions for permit and non-permit state systems, and 3) the methods for ensuring compliance by local law enforcement officials.

One of the study's three main objectives was to determine the extent to which the Act has resulted in arrests and prosecutions for falsely completing the gun purchase application form and considerable attention is devoted to evaluating the success of the Act in generating false completion prosecutions. In our view, the Act's main purpose is to prevent certain categories of persons from obtaining firearms from licensed gun dealers. Prosecutions for false statements on purchase applications are an inefficient and ineffective way of advancing this purpose. Thus, although the extent of prosecutions may be of independent interest to the report recipients, we do not believe it is a good measure of the Act's effectiveness or usefulness. While the report recognizes that the Department of Justice does not regard such arrests and prosecutions as a primary purpose of the Act, the attention afforded this aspect of the Act unbalances the

Appendix V  
Comments From the Department of Justice

Mr. Norman J. Rabkin

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See p. 46.

report. We would suggest that the GAO ensure that the major theme of its report is the Act's impact on denying criminal and other ineligible individuals the opportunity to purchase handguns from federally licensed dealers.

See p. 18.

Further, the report's description of the permit and non-permit alternative systems is imprecise (p. 22-23). The report should make clear that non-permit systems are provided for only under the interim provisions and explain that permit and non-permit systems must satisfy specific requirements of the Act in order to create exemptions. In addition, it is not quite accurate to say that states with permit systems are exempt from the Act. Rather, the exemption operates on a purchase-by-purchase basis.

Change made  
throughout.  
See p. 47,  
for example.

Finally, the report states that the Department of Justice "has determined that it lacks authority to impose penalties or otherwise prosecute chief law enforcement officers who choose not to conduct background checks" (pp. 7, 69). The report should make clear, however, that the fact that local officials are not subject to criminal prosecution does not mean that there is no way to compel local officials to fulfill their responsibilities under the Act. For example, injunctive relief may be an option.

The Department understands that the GAO must set a time frame for the completion of its field work so it may issue a final product. To maintain that deadline and make the report more current, we would like to take this opportunity to present information on our more recent efforts to achieve the objectives of the Brady Handgun Violence Prevention Act by improving data collection and inquiry systems.

In its review of application denials based on non-felony classes of ineligible purchasers (i.e., fugitives, unlawful drug users or addicts, individuals adjudicated mentally defective or committed, persons dishonorably discharged, illegal aliens, and persons who have renounced U.S. citizenship), the GAO noted a lack of databases containing such information. Thus, these ineligible purchasers are particularly difficult for chief law enforcement officers to identify. The Department of the Treasury is in the process of promulgating regulations to create standard definitions for each non-felony classification. Once promulgated, these regulations will provide consistency across the country, and will lay a foundation for developing appropriate data bases. The Department of Justice is committed to creating accessible data bases of these categories and is negotiating with other agencies, including the Department of State, to include such information in its data bases.

Mr. Norman J. Rabkin

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The GAO also reviewed the efforts to collect data to monitor Brady's impact on the acquisition and use of firearms, including the Department's efforts to develop the Firearms Inquiry Statistics (FIST) system. The FIST system will routinely collect data from a voluntary sample of local and state law enforcement agencies describing procedures being implemented under the Brady Act. The initial data collection on this component of the project is nearing completion. Data will also be collected estimating the number of applications reviewed and/or denied, the reason(s) for denial, and law enforcement actions taken as a result of the denial. The windows-based software for this segment of data collection has just been completed and will be mailed shortly to participant agencies. This system will not collect the personal identification of the applicant or a description of the firearm involved. The initial FIST report will be available in early 1996.

Other minor comments by the Department have been provided to the GAO evaluation team under separate cover. We understand that the GAO team will review those comments and include them in the report as appropriate. We appreciate the opportunity to review the report in draft.

Sincerely,



Stephen R. Colgate  
Assistant Attorney General  
for Administration

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