

# Snake gaining respect, not just fear

## U.S. wants timber rattler given global protections

By Traci Watson  
USA TODAY

No matter how mightily biologists defend it, the timber rattlesnake has an image problem. Humans regard it as a killer to either run from or bash to death.

Now, however, the rattler might be about to get a makeover. If the government has its way, the timber rattlesnake will join the blue whale, the giant panda and other superstars of the animal kingdom on a list of species protected by a global treaty regulating wildlife trade. American negotiators will try to line up support for rattler protection at an international meeting that starts April 10 in Nairobi, Kenya.

The irony of asking for protection for a potentially deadly species is not entirely lost on the snake's advocates.

"It is a hard sell," admits Susan Lieberman of the U.S. Fish & Wildlife Service. But, she adds, "Just because it's a venomous animal doesn't mean we're not concerned about conservation."

Federal representatives at the Nairobi meeting will argue that the timber rattler should be classified as a species that will go extinct if trade continues unchecked. If the rattler makes the list, every export of live snakes or boots made from their skins would need a permit to certify it doesn't put the survival of the species at risk.

### Vanishing viper

The timber rattlesnake, known in the South as the canebrake rattlesnake, was once found in 33 states but is now extinct in Maine and Rhode Island. It is the biggest snake in some states, with a record length of 6 feet, 2½ inches. Habitat of the timber rattlesnake:



Source:  
Venomous  
Reptiles of  
North  
America

By Genevieve Lynn, USA TODAY

The snake still flourishes in some places, federal officials say. But it has been declining rapidly, especially in the past five or six years. While there are no numbers on the snake's status nationwide, studies of individual dens, the holes where great tangles of snakes hibernate for the winter, show the animal is in dire straits.

The rattlesnake is so American that a Revolutionary War battle flag depicted it with the slogan "Don't Tread On Me." But the timber rattler has been trodden on enthusiastically by humans for centuries. Even in the 1990s, many states offered



File photo by Craig Houtz, AP

Rattle trapped: John Lee shows a timber rattlesnake at a roundup in Curwensville, Pa., in June 1997.

bounties for each dead one. Recently, suburban development has gobbled the snake's habitat. And snake hunters who sell the animals for pets or hides have devastated populations.

Even the scientists who named it set aside objectivity: Its Latin tag, *Crotalus horridus*, means "horrid rattler."

In places where the rattler is still common, many people familiar with the animal don't see the need for protecting the serpent — at least at first.

"Off the top of my head, I wonder if they've taken leave of their senses," George Tru-

lock, president of the Whigham (Ga.) Community Club, says of federal regulators. His club holds a yearly fundraiser called a rattlesnake roundup, for which hunters catch and display hundreds of rattlers, including 20-30 timber rattlers.

But told of the reasons behind the proposed restrictions, Trulock is sympathetic. So are others.

"I don't have any problem with protecting any species," says Jay Montfort of Fishkill, N.Y. If anyone should nurse a grudge against the rattler, it would be Montfort. For months,

he has been in a feud with the state about a fence he erected to keep timber rattlers off his property. Still, he doesn't object to snake conservation.

But where the snakes are most common, skepticism greets the idea of international protection. "We don't have a shortage of them," says Joe Paul Stuart, an agriculture extension agent in Little River County, Ark., where the rattlers are thick in the river bottoms. Told they're scarce in the Northeast, Stuart makes a generous offer: "We might could send them a few."

Guns -  
Talley Pt.

# Many children have easy access to guns, study says

By Marilyn Elias  
USA TODAY

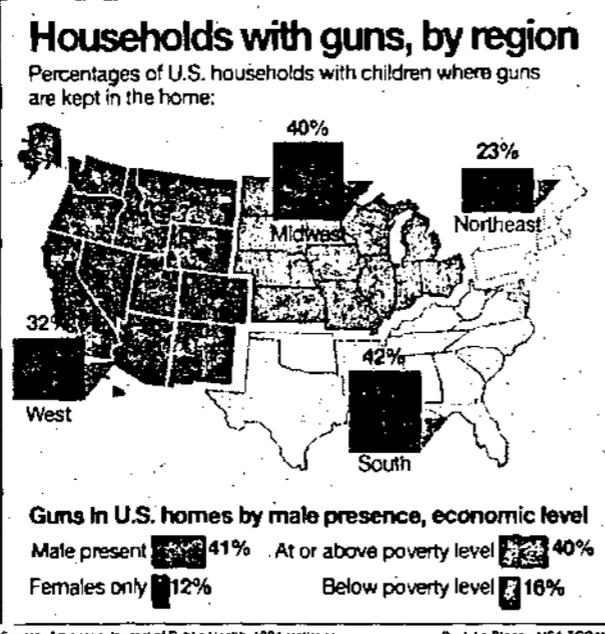
More than 22 million U.S. children live in homes with firearms, and the guns aren't locked up or fitted with trigger locks in 43% of these homes, shows a national survey out Thursday.

"A surprisingly large number of kids are in homes where guns are loaded and ready to be shot. The numbers are very concerning from a public health standpoint," says Mark Schuster, a UCLA pediatrician and researcher with the RAND think tank in Santa Monica, Calif.

He analyzed the federal survey on gun storage practices in 6,990 households with children, a representative national sample. Believed to be the largest study ever done on how Americans store firearms, it's reported in the *American Journal of Public Health*.

The study found that 9% of homes keep firearms unlocked and loaded — homes with 1.7 million children. Another 4% of the homes have guns that are unlocked with ammunition nearby.

That means homes with about 2.6 million children had



Source: American Journal of Public Health, 1994 statistics. By Julia Stacey, USA TODAY

firearms stored in a manner most accessible to children, the report says.

Many parents know guns should be locked up, "but our polling shows there's a disconnect between talk and action," says David Bernstein of the Center to Prevent Handgun

Violence in Washington, D.C. "They think the top shelf or under the mattress is secure. But kids are curious and go snooping around."

Accidental shootings are down nationally, despite an increase in private gun owner-

## Backlash aimed at gunmaker

The gun industry is retaliating against Smith & Wesson for its agreement to put safety locks on handguns, Connecticut Attorney General Richard Blumenthal said.

Blumenthal said a multi-state antitrust investigation is under way into allegations that gun distributors and wholesalers are boycotting Smith & Wesson products.

Smith & Wesson, based in Springfield, Mass., has received reports of attempts to pressure gun publications into refusing to accept its ads, said Ken Jorgensen, a company spokesman.

Robert Delfay, president

of the National Shooting Sports Foundation, denied allegations of a conspiracy.

"I could not be more confident that these are just independent actions by businessmen," Delfay told *The New York Times*.

In the agreement with the Clinton administration, Smith & Wesson said it would include safety locks with all handguns and pistols within two years.

In exchange, several cities, states and the federal government agreed to drop threatened lawsuits over gun violence.

Reuters

ship. Gun groups say the numbers show that gun ownership is not as dangerous as portrayed, but critics say the statistics are not reliable and miss many cases.

The National Rifle Association advocates safety classes, such as its Eddie Eagle Gun-Safe education program, which has taught 12 million elemen-

tary school kids to avoid gun accidents. The NRA also provides safe storage tips in its adult training. "Education is the only answer," NRA chief lobbyist James Baker says.

Bernstein says parents should not only look at their own firearm storage but ask about weapons at their kids' friends' homes.

# Net tax board unable to reach a majority vote

By Richard Wolf  
USA TODAY

A national commission voted 10-8 Thursday to submit a report to Congress that opposes taxation of Internet sales. But it did not get the two-thirds majority needed for a formal recommendation.

After a year of increasingly heated meetings, a final conference call failed to create a supermajority for either business leaders who oppose Internet sales taxes or government officials who want electronic and local sales taxed equally.

As a result, the report Congress receives next month will be inconclusive on what many economists consider to be a looming financial bombshell: the impact of rapidly rising Internet purchases on state and local sales tax collections.

"We think the majority report is going to be persuasive," said Virginia Gov. James Gilmore, the panel's chairman and a leading proponent of eliminating taxes.

Proponents of taxing Internet sales denounced the report's anti-tax tilt and the decision by Gilmore and business representatives to bar submission of a minority report. "It represents the result of posturing taking precedence over policy," said Stuart Eizenstat, deputy secretary of the Treasury Department.

The report embraces a proposal, crafted by business representatives AT&T, MCI WorldCom, America Online, Time Warner, Gateway and Charles Schwab, that would keep most Internet sales tax-free until at least 2006. Although Internet purchases are technically taxable, out-of-state sellers are not required to collect them, and consumers are not forced to pay them.

The proposal also calls for eliminating the 3% federal telephone excise tax, and banning Internet access taxes, and making anything that can be sent electronically — such as music, books and videos — tax-free.

Guns -  
talking P's

(Don't want to take anyone's guns away)

Just common sense. We don't let crimes buy guns at gun stores. Why gun stores  
we child proof aspirin bottles. Why can't we child proof guns.  
It's a lot easier to child proof a gun than to  
bullet proof a child.

This isn't about politics. It's about saving lives.  
We're delighted Gov Owens is ~~supp~~ <sup>Pres</sup> come here to keep promises to parents  
of children. Outside looks like this isn't a partisan issue. The 12 kids we lose every  
day aren't R's or D's  
We're delighted Gov Owens is supporting their activities.  
Good things are happening in Md, Mass, + other states, Minnesota.  
We're asking Cong to get politics aside + get this done  
for all those kids

Congress - moonwalking

We need stronger gun laws + stronger ~~govt~~ enforcement  
Our records: 16-22-2-35 (500,000)

~~The NPA~~ IF Cong is serious about enforcement, pass 280m  
budget - 1000/500. And let's ~~let the~~ stop trying to ~~find~~  
~~hands~~ let's - And let's go after criminals at gun shows

Other stats: 120/50%

\* Stricter bad apple cases - distribution of records loophole

## KEEPING GUNS AWAY FROM YOUTH AND CRIMINALS

-- The Clinton-Gore Administration Record --

Guns -  
Talking  
P.H.

### KEEPING GUNS OUT OF THE HANDS OF CRIMINALS

**Winning Passage of the Brady Bill.** Since taking effect in 1994, the Brady Law has helped to prevent over a half a million felons, fugitives, domestic abusers, and other prohibited purchasers from buying guns. In November 1998, the National Instant Criminal Background Check System (NICS) took effect under the Brady Law, allowing access to a fuller set of records that law enforcement officials can use to conduct checks of all prospective gun purchases – not just for handguns. As of March 2000, NICS has conducted over 10 million background checks on gun purchasers, and stopped an estimated 179,000 illegal gun sales.

**Banning the Manufacture and Importation of 19 of the Deadliest Assault Weapons.** The 1994 Violent Crime Control and Law Enforcement Act banned 19 of the deadliest assault weapons and their copies, while specifically protecting more than 50 legitimate sporting weapons. Cop-killing assault weapons, like the Uzi, are the weapons of choice for drug dealers and gangs – not hunters and sportsmen.

**Banning the Importation of Modified Deadly Weapons.** In 1998, President Clinton announced a general ban on the importation of more than 50 non-recreational, modified assault weapons. The Treasury Department concluded that modified semiautomatic assault rifles that accept large capacity military magazines – or LCMM rifles – are not “particularly suitable for or readily adaptable to sporting purposes” and are generally not importable. The more than 50 models of firearms affected by the decision are modified versions of military assault weapons that were banned by the Bush Administration in 1989 or by the assault weapons ban of 1994.

**Strengthening Penalties that Apply to Gun-Carrying Criminals and Drug Traffickers.** In November 1998, the President signed a new law to clarify and strengthen the federal penalties that apply to violent criminals and drug felons who commit crimes while carrying a gun. This new law makes it clear that violent criminals and drug felons who possess a firearm during the commission of a federal crime are subject to an additional – and mandatory – sentence of five years. The law provides that in addition to the penalties that apply for underlying violent or drug crimes – criminals receive a mandatory minimum sentence of at least seven years for brandishing a firearm and of at least 10 years if the firearm is discharged.

**Cracking Down on Problem Gun Dealers.** In February 2000, the President announced new enforcement actions that the ATF will take to crack down on problem gun dealers in order to prevent guns from entering into the illegal firearms market. While the vast majority of gun dealers are law-abiding businesspeople, a recent ATF report shows the need to focus resources on the relatively small number of dealers and pawnbrokers who are the source of most traced crime guns. President Clinton announced new actions ATF will take to target enforcement and inspection resources on those dealers who have high numbers of crime gun traces, whose guns quickly turn up in crimes after sale, and who have a poor record of cooperation with law enforcement.

**Strengthening Gun Enforcement Efforts.** Under the Clinton Administration, the number of gun prosecutions has increased 16 percent from 1992 to 1999, and gun crime has decreased by over 35 percent. In March 1999, President Clinton directed the Secretary of the Treasury and Attorney General to develop a national strategy to increase gun prosecutions and further reduce gun violence. This strategy will expand the Administration's successful enforcement efforts like Project Exile in Richmond, VA and Operation Ceasefire in Boston, MA to more jurisdictions. The strategy includes: expanded efforts to identify illegal gun markets and gun "hot spots"; improved coordination with state and local law enforcement; closer supervision of gun criminals on parole or probation; and innovative, community-based efforts to reduce gun violence.

**Creating a National Gun Buyback Program.** In 1999, President Clinton launched the largest gun buyback program in history. The program provides \$15 million for public housing authorities to partner with local law enforcement agencies to take an estimated 300,000 firearms out of circulation in communities nationwide. Cities across the nation – including New York, Chicago and Washington, D.C. – have conducted successful gun buybacks to curtail incidences of gun violence, including accidental shootings, homicides, suicides and domestic violence. Over 80 public housing authorities, including Flint, Michigan and Memphis, Tennessee, have already committed to conducting gun buybacks within the next year.

## **RESTRICTING YOUTH ACCESS TO GUNS**

**Launching the Youth Crime Gun Interdiction Initiative.** In 1996, President Clinton launched the Youth Crime Gun Interdiction Initiative (YCGII) in 17 cities to help trace crime guns to their source, as well as identify and arrest the adults who traffic firearms to children. Since then, the President has expanded the YCGII initiative to 37 cities ATF agents have conducted more than 200,000 crime gun traces for local law enforcement. In 1998 alone, ATF initiated over 300 investigations in these cities, which involved over 3,300 illegally trafficked firearms. The President's FY 2001 budget proposes to increase YCGII to 50 cities with more ATF agents and additional resources to help more cities to trace their firearms.

**Issuing Directive on Child Safety Locks for Handguns.** Child safety locks and other safety devices can reduce the unauthorized use of handguns, by a child at play or a teen looking to commit a crime. Many youth have to look no further than their own home to get their hands on a gun: an estimated one-third of all privately-owned handguns are left both loaded and unlocked. In March 1997, the President signed a directive to every federal agency, requiring child safety locking devices with all handguns issued to federal law enforcement officers. And, in an historic agreement, eight major gun manufacturers followed the President's lead and have voluntarily agreed to provide child safety locking devices with all their handguns.

**Signing into Law the Youth Handgun Safety Act.** In 1994, President Clinton signed into law the Youth Handgun Safety Act, which generally banned the possession of handguns or handgun ammunition by juveniles under the age of 18, and made it a federal offense for adults to transfer handguns to juveniles, with limited exceptions. In 1997, the President directed the Treasury Department to require that signs be posted on the premises of Federal firearms licensees and that written notification be issued with each handgun sold to non-licensees to help ensure compliance with the Youth Handgun Safety Act.

**Enforcing Zero Tolerance for Guns and Other Weapons in Schools.** In October 1994, President Clinton signed into law the Gun-Free Schools Act, requiring school districts to expel students who bring guns to school. The President issued a Presidential Directive later that month to enforce the "zero tolerance" policy for guns in schools, consistent with the Gun-Free Schools Act. Over the 1996-98 school years, the U.S. Department of Education estimates that, under zero tolerance policies, nearly 10,000 students were expelled from public schools for bringing a firearm to school.

## **WORKING WITH THE GUN INDUSTRY TO IMPLEMENT UNPRECEDENTED REFORMS**

**Reached historic agreement with Smith and Wesson.** On March 17, 2000, President Clinton announced an unprecedented partnership between the government and Smith and Wesson – the largest handgun manufacturer in the nation – to bring about meaningful reforms in the way the industry does business. The agreement represents the first time a major gun manufacturer has committed to fundamentally change the way guns are designed, distributed and marketed. Key provisions of the landmark agreement include: (1) new design standards to make guns safer and prevent accidental shootings and gun deaths, with required locking devices and smart gun technology, (2) new sales and distribution controls to help keep guns out of the hands of criminals including restrictions on sales at gun shows, required ballistics testing for new firearms, and gun safety training requirements for purchasers; and (3) a new oversight commission that will work with ATF to help oversee implementation of the agreement.

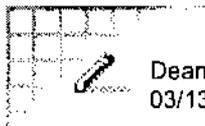
## **MOVING FORWARD WITH AN AGGRESSIVE AGENDA TO REDUCE GUN VIOLENCE**

**Introducing the Youth Gun Crime Enforcement Act.** In 1999, the President unveiled the most comprehensive gun legislation put forward by any Administration in over 30 years. The President's legislation would strengthen the Brady Law and the assault weapons ban, restrict access to guns by our youth and crack down on illegal gun traffickers. The President's proposed bill would: (1) require Brady background checks for the purchase of explosives and at gun shows; (2) raise the age of the youth handgun ban from 18 to 21 years of age; (3) ban youth possession of semi-automatic assault rifles; (4) prohibit violent juveniles from ever owning guns; (5) require child safety locking devices for guns; (6) reduce illegal gun running by limiting the purchase of handguns to no more than one per month; (7) halt the importation of large capacity ammunition magazines (8) help law enforcement trace more crime guns to their source; and (9) require a 3-day mandatory waiting period for all handgun sales.

**Proposing the Largest Increase Ever for Gun Enforcement.** President Clinton's FY 2001 budget contains an unprecedented \$280 million for gun enforcement, to: (1) hire 500 new ATF agents and inspectors to crack down on armed criminals and illegal gun traffickers; (2) hire over 1,000 new federal, state and local gun prosecutors to put more dangerous gun criminal behind bars; (3) fund comprehensive crime gun tracing and increased ballistics testing to catch and prosecute more gun criminals; (4) fund local media campaigns to highlight penalties for breaking gun laws and proper storage of firearms to preventing child access, and (5) to support research in "smart gun" technologies that can limit a gun's use to its authorized owner.

**Unveiling a State-Based Licensing Proposal for Handgun Purchases.** In this year's State of the Union Address, President Clinton proposed a state-based licensing system that would apply to all handgun purchases. Under the President's proposal, individuals seeking to buy a handgun would be required to obtain a photo license from their state of residence, and to present the license when they purchase a handgun. States would issue a license only if the applicant has: (1) passed a Brady background check; and (2) shown proof of having completed a certified safety course or exam. Under the President's proposal, state participation would be optional, not mandated. For states that choose not to participate, federally-approved gun dealers or a federal entity would be authorized to issue licenses, in an arrangement comparable to the current Brady check system.

Guns -  
Talking Pt3.



Deanne E. Benos  
03/13/2000 11:13:51 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP@EOP, Eric P. Liu/OPD/EOP@EOP, Leanne A. Shimabukuro/OPD/EOP@EOP  
cc: Anna Richter/OPD/EOP@EOP  
Subject: Handgun Control's Response to NRA this weekend: THE BIG LIE(S)\*.FROM THE NRA

TO: State Gun Control Activists  
FROM: HCI State Legislation  
DATE: March 13, 2000

The following press release went out yesterday.

#### THE BIG LIE(S)\*.FROM THE NRA

(Washington, D.C.) In his appearance this morning on ABC's "This Week," National Rifle Association Executive Vice-President Wayne LaPierre told some whoppers that, even by the standards of his organization, strain the credulity of any American who has ever followed the gun control debate.

§ "The NRA created the Instant-Check system." As President Clinton pointed out, the NRA fought the Brady Bill - the proposal that eliminated prohibited purchases by background check and waiting period - for seven long years. Only after President Clinton's election, and with the support of his Administration, did passage of the Brady Law become a political possibility. And only then did the NRA offer an "instant-check" system as a substitute for the locally-administered background check and waiting period proposed by Brady. With the usual political haggling and threats from the gun lobby, the compounding of ingredients by a Congress longing for a compromise gave us the original Brady proposal for five years, which was replaced by the Instant-Check system on November 30, 1998. Thirty-four states now have no waiting period for new handgun purchases, putting public safety at risk from impulse homicides and suicides.

§ The NRA: the brave protector of innocent children. Wayne LaPierre claims that his organization supports holding gun-owners responsible for leaving guns accessible to children. There's a name for that: it's called a Child Access Protection law, which in 17 states has lowered the number of accidental deaths of children from firearms by an average of 23%. This is the law currently being proposed in Ohio, where the NRA just this week labeled it "the [Governor] Taft Burglar Protection Bill" and urged its members to "oppose any bill which attempts to dictate how law-abiding citizens should store their firearms." Last week, in its member blast-fax, the NRA congratulated pro-gun legislators in Georgia for opposing a CAP bill which "would have made you a criminal if a child were to gain unauthorized access to your firearms." As the NRA webpage noted on Friday, in Georgia, Michigan and South Carolina they opposed bills which would make it easier to prosecute and convict irresponsible gunowners whose guns are used by children to kill or injure others.

And oh, by the way, you'll have to look long and hard for the NRA's supposed "support" for the mandatory sale of trigger locks. They have consistently opposed this admittedly modest measure at both the Federal

and state level since it was first proposed, more than five years ago.

§ Let's just lock up those gun-toting criminals and throw away the key, or words to that effect. Like in Illinois, where the NRA is again fighting a state law which would make illegal firearms possession a felony instead of a misdemeanor. Or Utah, where the gun lobby fights a legislative attempt to 'deprive' violent misdemeanants of their ability to purchase a firearm. Or Florida, where the NRA filed an amicus brief supporting the right of a gang member standing on a corner NOT to be searched for the illegal weapon he was carrying. Or in the United States Congress, where every year the NRA searches for funding for the ATF to research and restore the 'gun rights' of convicted felons who want their weapons back.

The Charlton Heston who now challenges President Clinton to a debate about "enforcement" is the same Charlton Heston who last week found himself too busy to share a platform with Jim Brady supporting Project Exile in Colorado. Why? Because the entire enforcement issue is a false choice: we can prosecute and convict gun-toting criminals and do everything possible to prevent them from getting guns in the first place. The NRA's enforcement red herring certainly smells fishy these days.

§ The NRA really wanted to pass that gun-control package bottled up in Congress. News to us. Handgun Control lobbyists saw more of NRA chief lobbyist James Jay Baker on the Hill last spring than they did their own mothers, and it never occurred to us that we were all after the same thing. Let's not rewrite history: Senator (and NRA Board Member) Larry Craig first got an amendment passed that actually broadened the gun-show loophole, and the NRA pulled in every chit to defeat the subsequently successful Lautenberg amendment, which closed it. The issue of taking 24 hours vs. 72 to check out gun-show purchasers whose records show a problem is not a meaningless debate. The way the NRA wants it, after 24 hours (on a weekend, most likely), if the instant-check cannot PROVE that the purchaser is prohibited, he happily gets his gun and goes on his way. This is not about waiting periods; this is about the five percent of purchasers whose records show problems and for whom research is needed. The NRA sure loves that five percent, enough to ensure that, as the NRA put it in its year-end report, "NRA's grassroots army prevailed upon the House of Representatives. While the Senate passed a version of Juvenile Justice Reform legislation (S. 254) containing the Lautenberg amendment, the House of Representatives stood fast and blocked similar legislation."

§ Suburban women are safe from guns\*despite what Clinton/Gore say. The NRA's newfound interest in suburban women stems from its understanding that suburban women are the swing voting bloc for the 2000 elections. In Missouri last year, it was suburban voters who defeated the NRA's proposal to let virtually anyone carry a hidden handgun in the state. Just last week, suburban voters in California defeated a pro-gun Democrat, replacing him with Hilda Solis, who has led the gun-control charge in the California legislature.

Suburban women haven't forgotten that every school shooting, except in Michigan, occurred in suburban schools, at the hands of suburban kids with guns. But according to Wayne LaPierre, because one school shooting was committed by a child who lived in a crackhouse, now ALL the problems of youth violence are "inner city" and "drug-related." It's just those inner-city drug-dealers who are putting suburban women at risk\*. classic NRA rhetoric to try to divide and conquer, and to persuade average Americans that gun violence couldn't possibly touch their lives. But after watching kids shoot and kill other kids, all Americans have been touched by gun violence. The NRA's greatest fear is that the American people, especially the swing voters, will make support for stricter gun laws a voting issue. This November, the NRA's greatest fear will be realized.

The NRA obviously believes that most Americans, including the national press, can be easily duped. But all the message-training that money can buy will not make people forget that the NRA is, in the words of that lefty liberal publication Fortune Magazine, "a pariah even among some of its friends." Shame on the NRA for its latest attack ads, shame on them for their hypocrisy, and shame on them for believing Americans to be stupid enough to believe the big lies.

Guns-  
Talking Pt.

**PRESIDENT CLINTON ANNOUNCES NEW REPORT ON EFFECTIVENESS OF  
NATIONAL INSTANT CHECK SYSTEM AND URGES PASSAGE OF  
COMMON SENSE GUN LAWS**

**March 15, 2000**

Joined by members of Congress, President Clinton today will unveil the FBI's first annual report on the National Instant Criminal Background Check System (NICS) created under the Brady Law. The new report shows that in its first year of operation, the NICS stopped 179,000 felons, fugitives, domestic abusers, and other prohibited persons from buying guns. The President today will also highlight his budget proposal to make Brady checks even faster and more effective. Finally, he will urge Congress to resist the gun lobby by passing the motion Representative Lofgren will offer today calling on juvenile justice conferees to meet in the next two weeks, and by moving on gun safety legislation that has been stalled for over eight months.

**RELEASING FIRST ANNUAL REPORT ON NATIONAL INSTANT CHECK SYSTEM.**

Today's report confirms that the NICS is a powerful tool to help law enforcement and federally-licensed gun dealers keep guns out of the wrong hands. In its first 13 months of operation (November 30, 1998-December 31, 1999), the NICS conducted over 10 million background checks and blocked an estimated 179,000 prohibited gun sales. Through NICS, the FBI and its state and local law enforcement partners perform instant searches of over 35 million records to help prevent the sale of guns to prohibited buyers. To date, the Brady Law has stopped more than 500,000 felons, fugitives, and other prohibited persons from purchasing firearms. Among the key findings of today's report:

- **Most checks completed within seconds.** During the first year of NICS, 72 percent of checks were completed within 30 seconds, and 95 percent were completed within two hours. In the remaining cases where completing a check takes longer, there is a strong law enforcement rationale for additional time: an individual whose check takes more than 24 hours to complete is almost 20 times more likely than the average gun buyer to be a felon or other prohibited purchaser.
- **Vast majority of sales blocked to felons and other criminals.** Of sales denied by the FBI, 71 percent were to felons, 15 percent to individuals with domestic violence misdemeanors or under restraining orders, and 4 percent to persons with histories of drug abuse.
- **NICS checks help law enforcement apprehend fugitives.** The report shows that NICS prevented more than 2,400 wanted persons from buying guns, and that FBI employees identified those persons to federal, state and local law enforcement agencies – leading to the apprehension of dangerous fugitives from justice.
- **Cutting time for law enforcement checks means more criminals get guns.** The report shows that if the FBI were given only 24 hours to complete all background checks, instead of up to three business days as under current law, nearly 34,000 prohibited purchasers – over 38 percent of FBI denials – would have received guns since the NICS first took effect.

**DOUBLING FUNDS TO MAKE BRADY CHECKS FASTER AND MORE EFFECTIVE.**

The President today will also announce that his FY 2001 budget provides \$70 million to give law enforcement more tools to increase the speed and accuracy of Brady Background checks, and keep guns out of the hands of even more prohibited persons. The President's initiative doubles funding for the National Criminal History Records Improvement Program (NCHIP), created under the Brady Law to improve the accessibility of records used for Brady background checks. NCHIP helps states to update, computerize and complete their records on felons, fugitives, domestic abusers, mentally ill prohibited persons and others restricted from purchasing firearms. To date, over \$200 million has been provided to states through NCHIP.

**PUSHING FOR BIPARTISAN CONGRESSIONAL ACTION ON COMMON SENSE**

**GUN LEGISLATION.** For over eight months, the Republican leadership has refused to allow the House and Senate conferees to meet and have a substantive debate on the common sense gun measures in the pending juvenile crime bill. Joined by a bipartisan group of House members, the President will urge Congress to pass Representative Lofgren's motion today calling on conferees to meet in the next two weeks. The President will also call again on Congress to send him strong gun safety legislation that would: require background checks at gun shows; mandate the sale of child safety locks with handguns; bar the importation of high capacity ammunition clips; and hold adults accountable if they allow children easy access to loaded guns that are later used to kill or maim. As part of his comprehensive strategy to reduce gun violence, the President will also urge support for his \$280 million National Gun Enforcement Initiative to hire 500 new Bureau of Alcohol, Tobacco & Firearms (ATF) agents and inspectors; fund over 1,000 new federal, state and local gun prosecutors; expand ATF's crime gun tracing and ballistics testing program; and help communities replicate successful gun violence reduction programs like Richmond's Project Exile and Boston's Operation Ceasefire.



# National Instant Criminal Background Check System (NICS)

*Guns -  
Talking Pts.*



Operations Report  
(November 30, 1998 - December 31, 1999)

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## EXECUTIVE SUMMARY

In November 1993, the Brady Handgun Violence Prevention Act of 1994 (Brady Act) was signed into law, requiring Federal Firearms Licensees (FFLs) to request background checks on individuals attempting to purchase a firearm. The permanent provisions of the Brady Act, which went into effect on November 30, 1998, required the Attorney General to establish the National Instant Criminal Background Check System (NICS) that any FFL may contact for information to be supplied immediately as to whether the receipt of a firearm by a prospective transferee would violate federal or state law.

In its first 13 months of operation,<sup>1</sup> November 30, 1998, through December 31, 1999, the NICS has proven to be a highly effective system processing over 10 million inquiries. Each NICS background check includes automated searches of approximately 35 million criminal records, over 500,000 records on wanted persons, over 200,000 subjects of protective/restraining orders, and over one million records on other prohibited persons. Since its establishment, the NICS has ensured the timely transfer of firearms to individuals who are not specifically prohibited under federal law, while denying transfers to more than an estimated 179,000 felons, fugitives, and other prohibited persons.

In many ways, the NICS represents a partnership among the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco and Firearms (ATF), and local, state, and other federal agencies. For example, the FBI worked together with ATF and local and state law enforcement to design the NICS. State and federal agencies contribute records on disqualified persons for inclusion in the NICS. States may serve as points of contact (POCs) to support their FFLs in conducting NICS checks. Among the most significant examples of this partnership is that in addition to preventing more than 2,400 wanted persons from purchasing firearms, the FBI's NICS examiners have actively contacted local, state, and federal law enforcement agencies to provide information that has resulted in the apprehension of many of these fugitives from justice.

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<sup>1</sup>Note: This NICS operations report covers the period of November 30, 1998, through December 31, 1999, and updates the statistical information in the seven month report released on September 9, 1999. Future reports will be published annually and will encompass transactions on a calendar year (January-December) basis.

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## **BACKGROUND OF THE NICS**

### **Situation Before the Brady Handgun Violence Prevention Act**

Since the passage of the Gun Control Act in 1968, certain individuals, such as convicted felons, have been prohibited from possessing firearms under federal law. Until the passage of the Brady Act in 1993, however, there was no mechanism to prevent these individuals from obtaining firearms. Firearms were sold, even by FFLs, on an honor system. Virtually the only recourse that federal law enforcement had against felons and other prohibited people who sought to purchase firearms was to prosecute them *after* they gained illegal possession of the firearm.

### **Brady Act Requires Background Checks**

The Brady Act put an end to the honor system by requiring background checks on firearms purchasers buying firearms from FFLs. The Brady Act called for implementation in two phases: from February 28, 1994, until November 30, 1998, the rules of Interim Brady applied; since November 30, 1998, the provisions of Permanent Brady have been in place. During the Interim Brady phase, the Brady Act applied only to handgun sales, and background checks were conducted by local and state law enforcement. During this time, there was no centralized mechanism for firearms background checks, and the Brady Act relied on the willingness of local sheriffs and other state law enforcement officials to do the background checks. Under Interim Brady, law enforcement officials had up to a maximum of five business days to complete background checks. The Interim Brady system was extremely effective, preventing over 310,000 felons, fugitives, and other prohibited persons from getting handguns.

### **Brady Act Requires a National System for Conducting Instant Background Checks**

The Brady Act also required the Attorney General to develop within five years a national system for conducting criminal background checks instantly. The Brady Act requires that the national system, the NICS, be utilized by any FFL to determine whether a prospective firearms transfer would violate federal or state laws.

### **Local and State Officials Assist the FBI in Designing the NICS**

To ensure that the national system required by the Brady Act would meet the needs of local and state law enforcement, the FBI created the Brady Act Task Group. This group was composed of representatives from the ATF and state and local officials who assisted the FBI in identifying the requirements for the NICS and in designing the system. Between 1994 and 1998, the Brady Act Task Group held formal meetings to provide detailed comments and recommendations to the FBI's NICS system developers. This task group was instrumental in preparing the NICS concept of operations.

The concept called for firearms background checks to include a check of databases at the state and national levels. When an FFL conducts a NICS check, a name search is conducted for any matching records in three different databases, managed by the FBI. These include:

- The National Crime Information Center (NCIC), which contains over 500,000 records on wanted persons and over 200,000 subjects of protective/restraining orders;
- The Interstate Identification Index (III), which contains approximately 35 million criminal history records; and
- The NICS Index, which contains over one million records of other prohibited persons, as outlined in the Gun Control Act, such as individuals who have received dishonorable discharges from the armed services, individuals who have renounced their citizenship, mental defectives, and illegal/unlawful aliens.<sup>2</sup>

### **Establishment of the NICS Program Office**

On August 1, 1998, the FBI's Criminal Justice Information Services Division established the NICS Program Office. This entity had the responsibility to closely coordinate the final stages of the development of NICS and the transition to an operational program. This included coordinating a multitude of functions and projects such as: staffing; development of a training manual; training of employees; developing work procedure manuals; documenting state statutes regarding prohibitive NICS categories; enrollment of FFLs; acquiring space, desks, phones, and computers; testing computer applications; setting up a management structure; creating reports on operations; preparing budget estimates; preparing workload projections; and creating and modifying work schedules.

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<sup>2</sup>During the first year of the NICS operations, records in the NICS Index rose from approximately 900,000 to over one million. The FBI continues to work to increase records in this database.

Coordination of employee input resulted in the creation of the following NICS mission statement:

To enforce the provisions of the Brady Handgun Violence Prevention Act by utilizing an effective system to ensure the timely transfer of firearms to individuals who are not specifically prohibited under federal law and denying the transfer to those who are prohibited from possessing or receiving such firearms through:

1. effective leadership in the management and operation of the NICS;
2. timely, accurate, and complete responses to NICS background checks; and
3. timely and effective customer service to other local, state, and federal law enforcement agencies, Federal Firearms Licensees, and other users of NICS.

### **FBI's Continuing Partnership with the States**

The FBI has continued to seek and act upon the advice of local and state law enforcement in its operation of the NICS. Proven mechanisms are in place for the continual improvement of NICS operations. For example, regional and national meetings are held semi-annually in which the FBI provides status reports on the NICS to local, state, and federal advisory groups and receives recommendations for NICS system and operational enhancements. In addition, the FBI's NICS Program Office has hosted two NICS State Participant Conferences—one was held while under the provisions of interim Brady and the other took place after permanent Brady was implemented. The second conference was held on June 23-24, 1999, during which the FBI presented briefings and received supportive feedback on the NICS operation to date. Finally, the FBI incorporated NICS information into its Law Enforcement Online (LEO) program, and, in conjunction with the Department of Justice (DOJ), established the NICS Web site ([www.fbi.gov/programs/nics/index.htm](http://www.fbi.gov/programs/nics/index.htm)) to ensure the rapid, continual dissemination of important new information about the NICS.

## **WHAT IS A NICS CHECK AND HOW DOES IT WORK?**

### **Legal Requirements for the NICS Background Check**

The Brady Act prohibits a FFL from transferring a firearm until the FFL has contacted the NICS and *either* the transfer has been allowed *or* three business days have passed without an indication from the NICS that the prospective purchaser is prohibited from possessing a firearm. Once contacted, the NICS is expected to provide information regarding whether the prospective firearm purchaser is prohibited from possessing a firearm under federal or state law.

Prohibited categories include:

1. convicted felons and persons under indictment for a felony;
2. fugitives from justice;
3. unlawful drug users or drug addicts;
4. individuals who have been involuntarily committed to a mental institution or determined to be mentally incompetent;
5. illegal aliens and legal aliens admitted under a non-immigrant visa;
6. individuals who have been dishonorably discharged from the military;
7. persons who have renounced their citizenship;
8. persons subject to certain domestic violence restraining orders; and
9. persons convicted of misdemeanor crimes of domestic violence.

### **Actions Involved in a NICS Check**

#### **Applicant Completes Bureau of Alcohol, Tobacco and Firearms (ATF) Form 4473**

It has been determined that approximately 15 percent of the licensed dealers account for 80 percent of the NICS transactions. Currently, there are 49,844 type one (gun dealer) and type two (pawn broker) license holders in the United States and U.S. Territories enrolled with the NICS Operations Center. The purchaser must provide photo identification to the FFL. The purchaser and the FFL then complete their respective parts of the ATF Form 4473, known as the Firearms Transaction Record. The completed ATF Form 4473 contains information such as name, address, and date of birth, and a certification from the purchaser that he or she is not prohibited under state or federal law from purchasing or possessing a firearm.

## FFLs Contact the State Law Enforcement Agency Serving as a POC for NICS Checks

In states that agree to conduct Brady background checks, once the ATF's Form 4473 is completed, the FFL contacts the state POC for a NICS check. A state POC is a state agency that agrees to conduct Brady background checks, including NICS checks, on prospective gun purchasers. In states that have agreed to serve as POCs, FFLs contact the state POC for a Brady background check rather than contacting the FBI. Currently, 15 states serve as a full POC for NICS (checks on handguns and long guns) and 11 states serve as partial POC for NICS (states perform checks for handgun purchases; and FBI processes checks for long gun purchases.) See Appendix A.

A state POC will access the state's independent criminal history database as well as the NICS system. The NICS provides access to millions of criminal history records from all 50 states and the District of Columbia. A state's database typically contains references not only to those of the state's records which are part of the NICS databases, but also to the state's records and manual records—including many final dispositions—which are not part of the NICS. Many states also have access to records about people in the other prohibited categories, such as people who have been involuntarily committed to a mental institution or are under a domestic violence restraining order. Through programs such as the National Criminal History Improvement Program (NCHIP), federal authorities are working to improve NICS access to such records, but the availability of these records to the states is a very important benefit of state participation in the system.

## In Other States, FFLs Contact the FBI for NICS Checks

In states that have not agreed to serve as state POCs, once the ATF Form 4473 is completed, the FFL contacts the NICS at the FBI, via a toll free telephone number,<sup>3</sup> to request a background check. (Refer to NICS Operation Workflow Diagram—Appendix B—for overview of activities described on next several pages.) NICS is available for background checks 17 hours a day, seven days a week, including holidays (except Thanksgiving and Christmas). The call is received at one of two call centers located in Moundsville, West Virginia, and Uniontown, Pennsylvania.

A call center customer service representative (CSR) enters the buyer's descriptive information into the NICS computer to initiate a search of the NICS databases. Once this information is entered and sent to NICS, one of two responses will be returned from

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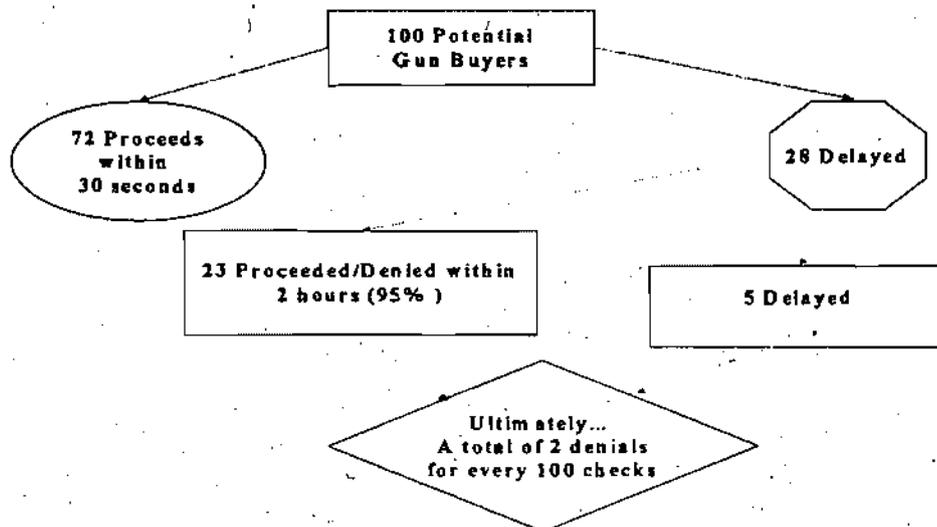
<sup>3</sup>The NICS Operation Center is currently working to develop an alternative electronic means by which FFLs might contact the NICS in addition to the telephone.

NICS—proceed or delay—along with a NICS Transaction Number (NTN) for that particular transaction.

The call center CSR does not have access to and cannot receive any other information in the NICS relative to criminal history information, wanted persons information, or any other NICS Index protected information. Most of the time, the NICS responds immediately with a proceed response because there is no disqualifying or potentially disqualifying information in the system. In these instances, the FFL can complete the sale, and the purchaser can leave the gun store or gun show with the firearm. Sometimes, the NICS identifies disqualifying or potentially disqualifying information in the system and generates a delay response. In these cases, the NICS will forward the information to the FBI Operations Center where an FBI employee known as a NICS examiner will review the record to determine whether it is complete, whether it matches the prospective buyer, and whether it contains disqualifying arrest or disposition information.

### NICS Responses to Requests for Background Checks Must be Timely and Accurate

Under the Brady Act, as soon as the NICS is able to determine accurately that there is no information demonstrating that the buyer is a prohibited person, the gun transfer is allowed to proceed. This means that there is *no* federal waiting period. As described in greater detail below, 72 percent of all prospective gun purchasers are authorized by the NICS to make their purchase *immediately* (within approximately 30 seconds on average after information is entered into NICS). Experience shows that the NICS provides a definitive response (proceed or deny) to 95 percent of all requests within two hours of receipt of information to search NICS. Only five percent of prospective purchasers have to wait more than two hours for a NICS response, and these persons are given their response as soon as the NICS obtains the necessary information. A purchaser whose NICS check takes more than 24 hours to complete is almost 20 times more likely to be a prohibited person than the average gun buyer. This process is further illustrated as follows:



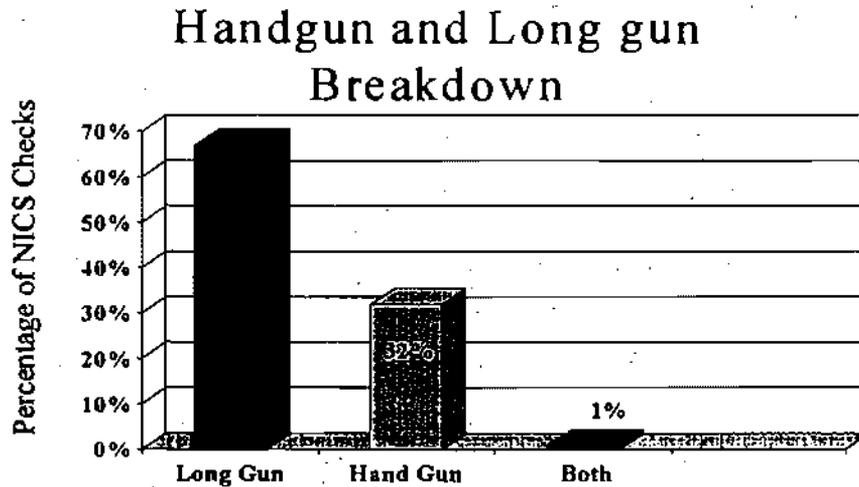
## RESULTS FROM THE FIRST YEAR OF NICS OPERATIONS

### Number of NICS Checks

In the first 13 months of operation, the NICS completed 10,030,963 background checks. Of these, 5,044,574 were handled by the FBI, while 4,986,389 were handled by state POCs. The chart below shows queries by month, divided between FBI and state POCs.

<b>NICS TRANSACTIONS</b>		
	<i>State</i>	<i>Federal</i>
<i>November 98 (one day only)</i>	6,626	14,570
<i>December 98</i>	379,660	491,984
<i>1998 Totals</i>	386,286	506,554
<i>January 99</i>	315,869	275,486
<i>February 99</i>	369,647	326,676
<i>March 99</i>	399,574	353,509
<i>April 99</i>	341,128	305,584
<i>May 99</i>	311,736	264,536
<i>June 99</i>	306,825	262,668
<i>July 99</i>	303,485	285,991
<i>August 99</i>	363,503	339,891
<i>September 99</i>	382,779	425,848
<i>October 99</i>	435,325	510,376
<i>November 99</i>	459,161	545,172
<i>December 99</i>	611,071	642,283
<i>1999 Totals</i>	4,600,103	4,538,020
<i>Project to Date</i>	4,986,389	5,044,574

With the establishment of the NICS, background checks were required for the first time in connection with the purchase of long guns. Experience has shown that there are significantly more NICS inquiries for long gun purchases than for handgun purchases, as illustrated below.



**Note:** NICS inquiries require information as to whether the purchase is for a long gun, handgun or both. NICS does not include information pertaining to the number, make, model or serial number of the firearm(s) being purchased.

#### **Immediate Proceeds – There is No Disqualifying Information in the NICS**

Of the total 5,044,574 NICS checks handled at the federal level, 4,890,399 were processed through the Call Center, where 3,494,311 (72 percent) resulted in an immediate proceed determination to the FFL.<sup>4</sup> This indicates that no records regarding the prospective buyer have been located by the NICS, and that the Brady Act does not prohibit transfer of the gun. It takes 30 seconds or less to provide an immediate proceed after information is entered into NICS.

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<sup>4</sup>The remaining 154,175 NICS checks were processed through the FBI's Operations Center. These include overflow calls from the Call Center, processing of permit checks, and initial searches from FFLs in POC states that experience difficulty with their state system.

## Delays—There is Potentially Disqualifying Information in the NICS

The other 28 percent of NICS checks are delayed because additional time is required to determine whether a firearm purchaser is prohibited from possessing a firearm. If information needed to finish the background check is available electronically, the background check is completed within two hours. Of the NICS checks for which additional information is required, 80 percent are completed within two hours after performing additional electronic checks. In other words, approximately 95 percent of all NICS checks are completed within two hours.

The remaining five percent of checks cannot be completed electronically and require more time to finish. The FBI must contact the local or state entity that has the information usually disposition information about an arrest, to complete the record. For example, the check of criminal history records, which are comprised primarily of state submissions, is a critical element of a NICS check. Usually, these records contain information about an arrest, the crime charged, and whether or not the person was found guilty of the crime. Sometimes, however, the criminal history record will only show an arrest without showing the disposition of that arrest (that is, whether the arrest resulted in a conviction). Under current federal law, an arrest alone is insufficient to disqualify a prospective purchaser from obtaining a firearm. Therefore, final disposition information from the states is critical to the NICS.

The first year of NICS operation demonstrated the connection between the lack of state arrest disposition information and the delays in NICS responses. When the NICS shows a potentially disqualifying criminal history record for a prospective purchaser but does not have electronic access to final disposition information, a NICS examiner must take steps to obtain that information from nonelectronic sources often requiring direct contact with the local court where the information is held. The ability to obtain the required disposition information depends on several factors, including whether the court is open (courts are typically closed on weekends), the availability of the court clerk to assist, and accessibility of the disposition information. For these reasons, the Brady Act allows the NICS three business days to complete a check.

It is significant that the Brady Act allows the NICS three business days to complete a check, rather than three days or 72 hours. A 72-hour rule would mean that, if a purchase were initiated on a Saturday morning and arrest disposition information was needed, the FBI would have approximately eight business hours—on Monday—to obtain this information in order to complete the check. Of the 89,836 NICS denials issued by the FBI during the first year of NICS operation, over 13,000 or 15 percent would not have been issued if the law allowed only 72 hours to complete a check instead of three business days.

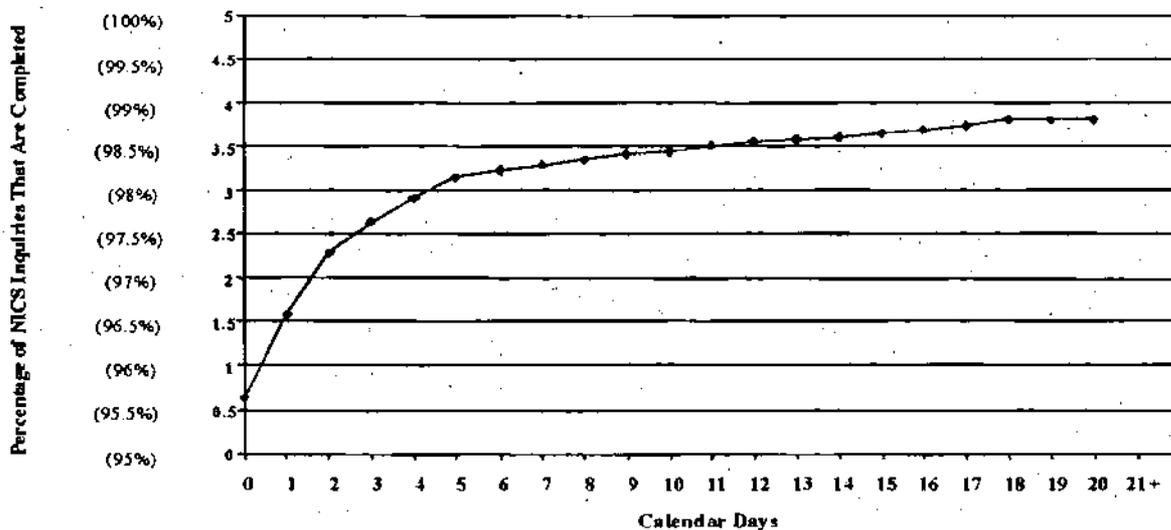
Some examples illustrate the impact of a 72-hour rule. The following denied persons, who tried to buy a gun on Saturday in past months, would not have been stopped from purchasing a firearm: a person convicted of rape in Virginia who tried to buy a gun on Saturday, May 15, 1999, a person convicted in Texas of Aggravated Kidnaping with Attempt to Rape a Child who tried to buy a gun on Saturday, February 27, 1999, and a person convicted of domestic violence in Kansas who tried to buy a gun on Saturday, January 30, 1999.

Reducing the time limit for checks from three business days to lesser periods, such as 48 hours or 24 hours, would mean a corresponding decrease in the ability of the NICS to prevent unlawful purchases. Of the FBI NICS denials during the first year, 21,354 or 24 percent would not have been stopped if a 48-hour limit had been in place and 33,992 or 38 percent would not have been stopped if a 24-hour limit had been in place.

**Default Proceeds—Although There is Potentially Disqualifying Information in the NICS, Three Business Days have Passed Since the NICS Check was Initiated**

A portion of the five percent of NICS checks that require more than two hours to complete cannot be completed within the three-business day time period currently provided under the Brady Act. The data regarding the time where checks cannot be completed in two hours is illustrated in the graph below:

**Allocation of the Five Percent of NICS Inquiries That Are Not Completed in Two Hours**



Note - 99% of all inquiries are completed within two hours. This chart represents the five percent of inquiries not completed within two hours

As soon as the NICS examiner receives information to complete the check—such as the disposition of an arrest—contact is immediately made with the relevant FFL to provide the result of the NICS check, whether or not within the statutory three business day period. However, the Brady Act does not prohibit FFLs from transferring firearms after three business days even if the check is incomplete.

These situations are called default proceeds, because the FBI does not actually issue a proceed for the firearms transfer. Rather, the FBI provides the FFL with information that efforts are continuing to obtain data to complete the background check. When a final disposition is unretrievable within the three business days, the NICS Operations Center contacts and advises the FFL verbally through a prepared script that the NICS is still in the process of reviewing the matter and cannot give either a proceed or a denial response for the sale. The FFL is also advised that if they are not contacted by the NICS by the close of business that day, the Brady Act does not prohibit the transfer of the firearm on the following day or at any time within 30 days. Additionally, the FFL is advised that the NICS will continue to review the matter for two more weeks and will contact the FFL within that time if the NICS discovers definitive information regarding the transaction. Sometimes, the FBI will receive information such as a disposition of an arrest after the three business days indicates the purchaser is prohibited from purchasing or possessing a firearm. The FBI will contact the FFL to determine whether or not the firearm has been transferred.

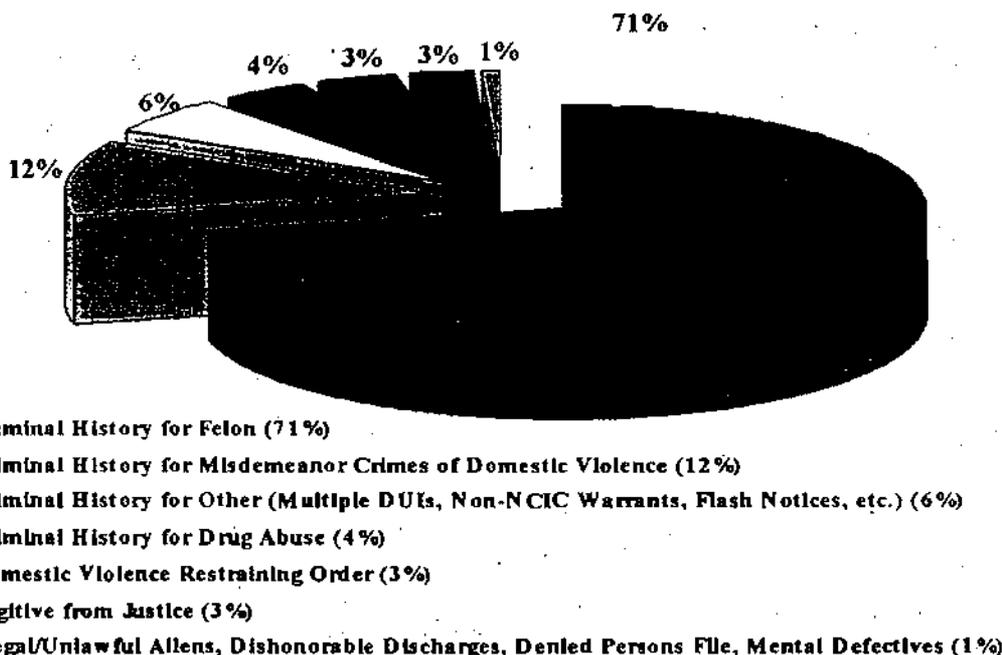
### **Retrievals**

When the FBI determines that an FFL has already transferred the firearm to an individual determined by the NICS to be a prohibited person, the FBI notifies both the ATF and local law enforcement where the firearm was sold (or where the purchaser lives, if different), that a prohibited person received a firearm. During the first year of NICS operations, there were 3,849 occasions where information demonstrating a purchaser was prohibited was received after three business days, and it was determined that the firearm had been transferred to the purchaser, thus necessitating local law enforcement or ATF having to retrieve the firearm(s) from the prohibited person.

## Denials

Since November 30, 1998, the FBI and the state POCs each have performed approximately one-half of the NICS checks. Even though the FBI tracks the number of denials that it issues, the FBI does not routinely receive information about denials from the state POCs. In the first year of NICS operation, the FBI blocked 89,836 illegal gun sales, a denial rate of about two percent. Based on the information received from individual states, the FBI estimates that a comparable number of denials have been issued by the state POCs, for an estimated total of 179,000 denials under the permanent provisions of the Brady Act.<sup>5</sup> The FBI denials by prohibited category are illustrated as follows:

### FBI Percentage of Denials by Category



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<sup>5</sup>The denial calculation basis now used by the NICS eliminates a software flaw that, in limited circumstances, previously counted an original denial and a subsequent entry in the same record as two separate denials.

As reflected by the preceding chart, the overwhelming majority of NICS denials by the FBI are for people with criminal convictions. These includes individuals who have been convicted of a felony, a misdemeanor crime of domestic violence, or drug crimes that establish illegal drug use or drug addiction. Detailed information on each denial transaction is referred to ATF for investigation.

### Dispositions

In trying to prevent as many prohibited people with disqualifying information as possible from obtaining firearms, the FBI is continuing to work with the states on improving NICS' direct access to state final disposition information, and to assist states in improving the accuracy and completeness of the records that are available to the NICS system for background checks. In addition, FBI representatives have been attending state court clerk conferences to encourage states to expeditiously provide the needed disposition information.<sup>6</sup> Finally, because POC states have access to more records containing dispositions, the FBI is working to encourage more states to serve as POCs.

Additional time beyond the current three business days would improve the ability of NICS to obtain information on prohibited persons before a transfer of a firearm takes place.

### Appeals

When an individual is denied a firearms transfer on the basis of a NICS check, that person may appeal the decision directly to the FBI. A critical measure of the accuracy of NICS background checks is the number of appeals that have been generated, and more importantly, the number of decisions that have been overturned on appeal. Regarding the 89,836 denials issued by the FBI from November 30, 1998 through December 31, 1999, the FBI has received 15,505 appeals, representing 17 percent of the denials. Denials have been sustained on 10,895 appeals while 2,913 appeals have resulted in the denial being overturned. Of those overturned upon appeal, approximately 46 percent were the result of information missing from the original record, such as an expungement or restoration of rights. As of December 31, 1999, 1,697 appeals were in various stages of the review process. 37

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<sup>6</sup>Some state court systems have expressed significant difficulties in responding to NICS requests for information. Some courts are seeking reimbursement from the NICS for the costs of locating disposition information. Unfortunately, this is not an expense for which the NICS can currently provide reimbursement.

## **NICS SYSTEM AVAILABILITY AND DEVELOPMENT**

During July 1999, the FBI replaced two computer systems that are integral to the NICS operation and that interface with the NICS. One of the new systems, the National Crime Information Center (NCIC) 2000, which includes information on wanted persons, persons under protective orders, and others, was implemented on July 11, 1999. Because NCIC 2000 provides enhanced name search capabilities, it is very beneficial to the NICS process.

The second new system, the Integrated Automated Fingerprint Identification System (IAFIS) was interfaced with the NCIC 2000 and NICS on July 28, 1999. The IAFIS was developed to support the electronic capture, submission, processing, matching, and storage of fingerprints received by the FBI. The IAFIS will enhance system capabilities and reliability, provide rapid response time, provide electronic submission and transfer of fingerprint and criminal history information, conduct remote searches of FBI criminal and fingerprint database information, and enhance latent fingerprint search capabilities.

Implementation of these two new systems will significantly enhance law enforcement's ability to identify the perpetrators of criminal activity. Bringing these two systems on-line however, did have some adverse effect on NICS availability.

## System Availability

NICS system availability generally improved from the date of first operation through June 1999. As previously discussed, in July 1999, the FBI replaced two major computer systems; both of which interface with the NICS. Implementation of these two new systems created some periods of system unavailability. The FBI is continuing to refine these systems and to eliminate all periods of unavailability. The table below summarizes the availability for NICS during its first 13 months of operation.

MONTH	TOTAL CALL CENTER AVAILABILITY <sup>7</sup>	TOTAL POINT OF CONTACT STATE AVAILABILITY <sup>8</sup>
December '98	97.24%	97.74%
January '99	94.82%	95.58%
February '99	97.48%	96.71%
March '99	98.41%	98.63%
April '99	98.89%	98.94%
May '99	98.50%	98.54%
June '99	99.54%	99.62%
July '99	92.04%	92.67%
August '99	95.20%	95.56%
September '99	95.81%	95.97%
October '99	97.71%	97.94%
November '99	94.37%	94.54%
December '99	95.32%	95.47%
Average	96.56%	96.76%

<sup>7</sup>Availability through the NICS system at the FBI's call center in Moundsville, West Virginia, and Uniontown, Pennsylvania.

<sup>8</sup>Availability recorded through the NICS system in the states that serve as POCs.

## System Development

A future enhancement to the processing of the NICS background checks includes the utilization of electronic access or unassisted search, whereby FFLs will query the NICS through a direct electronic line. It is anticipated that a pilot system could be in place as early as at the beginning of year 2001.

The NICS system was Y2K tested and found to be compliant, which was demonstrated with the successful rollover into the new millennium. Continual efforts are being made to ensure that the NICS is operating to its full capacity.

## PRIVACY AND SECURITY ISSUES

Because the NICS contains an extensive amount of sensitive personal information about individual criminal histories and other disqualifying information, there is the potential that the system will be used improperly. Congress recognized this possibility and required the Attorney General to ensure the privacy and security of the system. To fulfill this responsibility, instances of fraud and abuse must be identified. Audits of those entities and individuals who have access to the system are conducted to detect and punish fraud. To perform audits, the FBI must have access not only to the records of prospective firearms purchasers who are denied, but also at least for a limited period of time to records of firearms purchasers who are approved.

Basic security audits are essential to preventing the invasions of privacy that would result from misuse of the system. Audits allow the FBI, working in conjunction with the ATF, to detect both persons who misuse the system to perform unauthorized background checks and felons who assume the identity of a qualified person to buy firearms illegally. Audits also enable the FBI to determine whether FFL submit false names to evade the name check system. For instance, a corrupt FFL may send in one name known to have no disqualifying record for a NICS check, but record a different name on the firearms transaction record. If the record of the name sent to the system were destroyed immediately, there would be no way of proving that the dealer had deliberately evaded the background check system by sending the NICS a false name. The audit log contains information relating to each NICS background check requested by FFLs and allows the FBI to audit use of the system by FFLs and POCs. The audit log also allows the FBI to perform quality control checks on the system's operation by a review of the accuracy of the responses given by the NICS record examiners to FFLs.

Thus far, NICS audits conducted by the FBI and ATF based on the current NICS rule (the interim audit system) have uncovered multiple instances involving improper use of the system. For example, the audit log has helped the FBI to identify an FFL who was transferring firearms without doing background checks and has aided in identifying several possible straw purchases forwarded to the ATF for investigation.<sup>9</sup> The audits have also been used to identify FFLs who have been conducting NICS inquiries on persons outside of the context of a gun transfer.

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<sup>9</sup>A straw purchase includes the situation in which the person acquiring the firearm purchases it on behalf of a person who has previously been denied a purchase.

The DOJ NICS Regulation Final Rule was published in the *Federal Register* on October 30, 1998. This final rule provides that the FBI may retain records of all NICS transactions for six months, and that the FBI will work to reduce the retention period to the shortest practicable period of time (less than six months) that would allow basic security audits of the NICS. The final rule also provides that records be retained for a longer period if necessary to pursue identified cases of misuse of the system. In addition, the final rule mandates that information in the audit log be used only for the purpose of conducting audits of the use and performance of the system or pursuing cases of misuse of the system.

## SUCCESS STORIES

As a result of the concerted efforts of NICS personnel and law enforcement officials at all levels of government, firearms transfers to non-prohibited purchasers have been accomplished with minimal inconvenience to both the FFL and purchaser. At the same time, numerous persons prohibited by law from possessing a firearm have been denied a firearm. The following are some examples of instances within different prohibited categories, where NICS has been successful in obtaining relevant information to deny a firearms transfer.

### The NICS Has Assisted in Capturing Wanted Persons

The NICS has prevented more than 2,400 fugitives from purchasing firearms. In addition, the FBI's NICS examiners have contacted local, state, and federal law enforcement agencies to provide information which often resulted in the fugitives' apprehension. The following recent examples illustrate the success of the NICS in helping capture fugitives:

- In December 1999, an individual in Texas who was attempting to redeem a firearm, was found to be under indictment and had an outstanding warrant for a felony charge of indecency with a child involving sexual contact. NICS notified the Wichita Fall Sheriff's Office which would extradite the individual to the Big Lake Sheriff's who had issued the warrant.
- On November 30, 1999, an individual tried to purchase a firearm in Corinth, Mississippi. NICS identified the individual was wanted for escaping from a prison in Georgia. In obtaining the individual's address from the FFL, the NICS notified the Georgia Department of Corrections which contacted Mississippi law enforcement and the individual was captured.
- On November 30, 1999, an individual with an active warrant for several offenses in Maryland attempted to purchase a firearm in Kentucky. The subject was apprehended and is awaiting extradition to Maryland.
- On November 30, 1999, through a NICS transaction it was found that an employee of an FFL in Missouri was attempting to purchase a firearm. The employee had an active warrant in Jefferson County, Missouri. Since the FFL was out of jurisdiction for the Jefferson County Sheriff's Office, the Joplin Police Department was notified and the subject was taken into custody.
- On November 26, 1999, an individual with two active warrants for a probation violation on charges of controlled substance, drug trafficking and unlawful use of a weapon attempted to purchase a firearm. Within ten minutes of NICS initiating the transaction, the Clarksburg, West Virginia, Police Department obtained the individual's address and apprehended the subject.

- On November 23, 1999, an individual with an active warrant for a probation violation attempted to purchase a firearm. The NICS obtained the subject's address from the FFL and notified the Umatilla County, Oregon, Sheriff's Office. The individual was apprehended in a sting operation at the FFL within an hour of the NICS processing the transaction.
- On November 20, 1999, Oklahoma law enforcement agency confirmed an active warrant on an individual attempting to purchase a firearm. Authorities immediately responded and the individual was apprehended within 20 minutes.
- On October 11, 1999, the NICS notified El Reno, Oklahoma, law enforcement of an individual with an active warrant. The individual was apprehended. The Oklahoma law enforcement agency who worked with the NICS in apprehending the individual informed the examiner that law enforcement officers have apprehended several individuals due to the NICS program.
- On August 21, 1999, an individual wanted for military desertion from the United States Navy was apprehended by the Minnesota State Police the same day.
- On August 21, 1999, an individual with an active warrant was attempting to purchase a firearm. Law enforcement confirmed the warrant. Within one hour NICS was advised that the subject was apprehended while trying to purchase a firearm at another FFL.
- On August 21, 1999, a fugitive from justice was apprehended within an hour of NICS contacting the Minnesota state police as a result of an attempted gun purchase. This individual had a valid warrant with the United States Navy and was later extradited to the United States Naval Authorities.
- An individual with an active warrant attempted to purchase a firearm. The originating agency of the warrant was notified. NICS notified the originating agency and later received a call from the arresting agency thanking the FBI for their efforts. The subject had been apprehended and was being extradited back to Florida.

### **Mental Defectives Prevented from Purchasing a Firearm**

- As a result of a NICS transaction, an escapee from a mental health facility, involuntarily committed for suicidal attempts, was apprehended by local authorities.
- An individual who had been involuntarily committed to a state hospital on three occasions for threats against elected officials in the state of Washington was denied the purchase of a firearm.

### **Individuals Who Had Controlled Substance Related Charges Prevented from Purchasing a Firearm**

- An individual wanted for felony marijuana and cocaine drug ring involvements in Texas was arrested.
- An individual from Louisiana with a drug conviction within the past year and on probation was denied from buying a firearm. Information on his attempt to purchase a firearm was turned over to his probation officer.

### **Individuals With Criminal Domestic Violence History Prevented From Purchasing a Firearm**

- On December 31, 1999, an individual attempted to purchase a firearm in Mississippi and was discovered to be using a false name. In researching the case, the NICS discovered the individual was under a domestic violence indictment in California. NICS notified the District Attorney's Office.
- An individual in Florida with an outstanding warrant for domestic battery and controlled dangerous substance (cocaine) was arrested.

### **Dishonorably Discharged Individuals Prevented From Purchasing a Firearm**

- An individual who was charged with rape/sodomy of a child and was dishonorably discharged from the military was denied a firearm.
- An individual in the military was convicted of stealing by force and violence and dishonorably discharged was prevented from purchasing a gun.

### **Illegal Aliens Prevented From Purchasing a Firearm**

- An individual who had been arrested on three separate occasions by United States Immigration and Naturalization Service (USINS) in Laredo, Texas, was apprehended.

### **USINS Deported Felons Prevented From Purchasing Firearms**

- An arrest was made of a deportable individual by the Portland, Oregon, USINS and returned to Mexico.

### **Other Individuals Prevented from Purchasing a Firearm**

- On July 16, 1999, NICS received a call from a department store in Jacksonville, Texas, regarding some juveniles looking to purchase explosive devices. The local authorities were notified and the youths were questioned. NICS received thanks for helping to prevent a potentially dangerous situation.
- An individual in Alaska was using a deceased brother's identification to attempt to purchase a firearm. The individual was apprehended for various charges and questioned regarding the death of his brother.

## COMMENDATIONS

The NICS Program has received many commendations for denying firearms to ineligible persons as well as other NICS initiatives.

- Holt and Associates, Auctioneers from Colorado Springs, Colorado, stated: "We have had the opportunity to use your NICS Program Services. I am prompted to advise you that the reception was outstanding and that the personnel who assisted were most helpful, courteous, and did make our job much easier. We were conducting an estate auction that included a collection of firearms, and our buyers were from several states. This could have caused a great deal of difficulty for the buyers. I want you to know you have a great staff. In this busy world, too many people don't stop to say - thanks, good job."
- A licensed gun dealer in Kansas wrote to commend the NICS on its performance running checks for him at a recent gun show: "First of all, I would compliment you for the professionalism that your people extend to us.... This past weekend I attended a gun show in Wichita, Kansas. During that period, I ran 40-50 checks with several delays. I was quite surprised at how fast these delays were investigated. The customers also made comments as to how fast the delays were taken care of.... Again, thanks for a job well done."
- The Chief Information Officer from the Administrative Office of Courts in Montgomery, Alabama, wrote a letter dated July 11, 1999 to the NICS Program Office complimenting two members of the NICS staff who attended the Alabama Court Clerks Conference regarding the receipt of dispositions. An excerpt from this letter follows:

"...the two representatives were there to give a presentation on NICS and to answer questions from the clerks. As you probably know, the NICS program in Alabama has been received with a lack of enthusiasm and the reception given to the two representatives when they arrived on Thursday was cool. Despite this start, your two representatives worked diligently to change the situation and in just a day and a half they had made remarkable progress. Our clerks were sorry to see them leave so soon and they were invited back. The problems of dispositions for NICS in the State of Alabama are not over. However, the attitude has definitely changed and I anticipate that increased cooperation will be seen by your staff. Thank you for devoting some personal attention to this problem.

The two representatives were as confident as any program representatives I have seen. They simply could not be flustered even by the most pointed question or comment. They did not let a potential negative situation overwhelm them but,

rather, handled it with tenacity and style... I would like to extend the compliments of the Alabama Judicial System to them."

## RECOMMENDATIONS

Based on the first year of operation, it is clear that the ability of the NICS to stop prohibited persons from acquiring firearms would be improved by:

- more time to complete checks when records are not electronically available;
- a means to help states with the cost of performing as a POC state;
- a means to assist state courts with the costs of seeking disposition information;
- additional funds for NCHIP to improve NICS access to records; and
- longer retention of records period to enable the NICS Program Office to review examiner accuracy, assure system privacy, and detect fraud and misuse of the system. Currently, the retention period is 180 days. A notice of proposed rulemaking is being finalized that reduces the retention period to 90 days. The Advisory Policy Board concurs with the FBI to have a one-year retention of records.

## CONCLUSION

The NICS has been working successfully for more than a year to ensure that prohibited persons do not acquire firearms from licensed gun dealers. It has prevented the acquisition of firearms by an estimated 179,000 criminals, fugitives, and others who should not have firearms. The NICS staff has provided timely and effective customer service to other local, state and federal law enforcement agencies, FFLs, and other users of NICS, and has ensured the timely transfer of firearms to individuals who are not prohibited by law from possessing a firearm.

Partnership with the states has been successful through the transition from design and development to the operation of the NICS. The cooperation with the states continues via conferences, seminars, and telephonic communications for future enhancements to the NICS.

An excellent, detailed baseline of statistical data has been collected which will help the NICS Program Office in evaluating and improving performance of the NICS. By assuring that effective audits of the system are conducted and by assuring that adequate time and resources are provided to complete thorough checks, the NICS will be able to perform more effectively in the future.

## APPENDIX A: POINT OF CONTACT (POC) STATES AND TERRITORIES

• **Full Participants (15):** States which conduct NICS checks for all firearms purchases and for permits for handguns and long guns:

Arizona	Nevada
California	New Jersey
Colorado	Pennsylvania
Connecticut	Tennessee
Florida	Utah
Georgia	Vermont
Hawaii	Virginia
Illinois	

(NICS performs pre-pawn checks for Florida.)

• **Partial Participants (11):** States which perform checks for handgun permits, while the FBI performs NICS checks for long gun purchases:

Iowa	New York
Michigan	North Carolina
Nebraska	

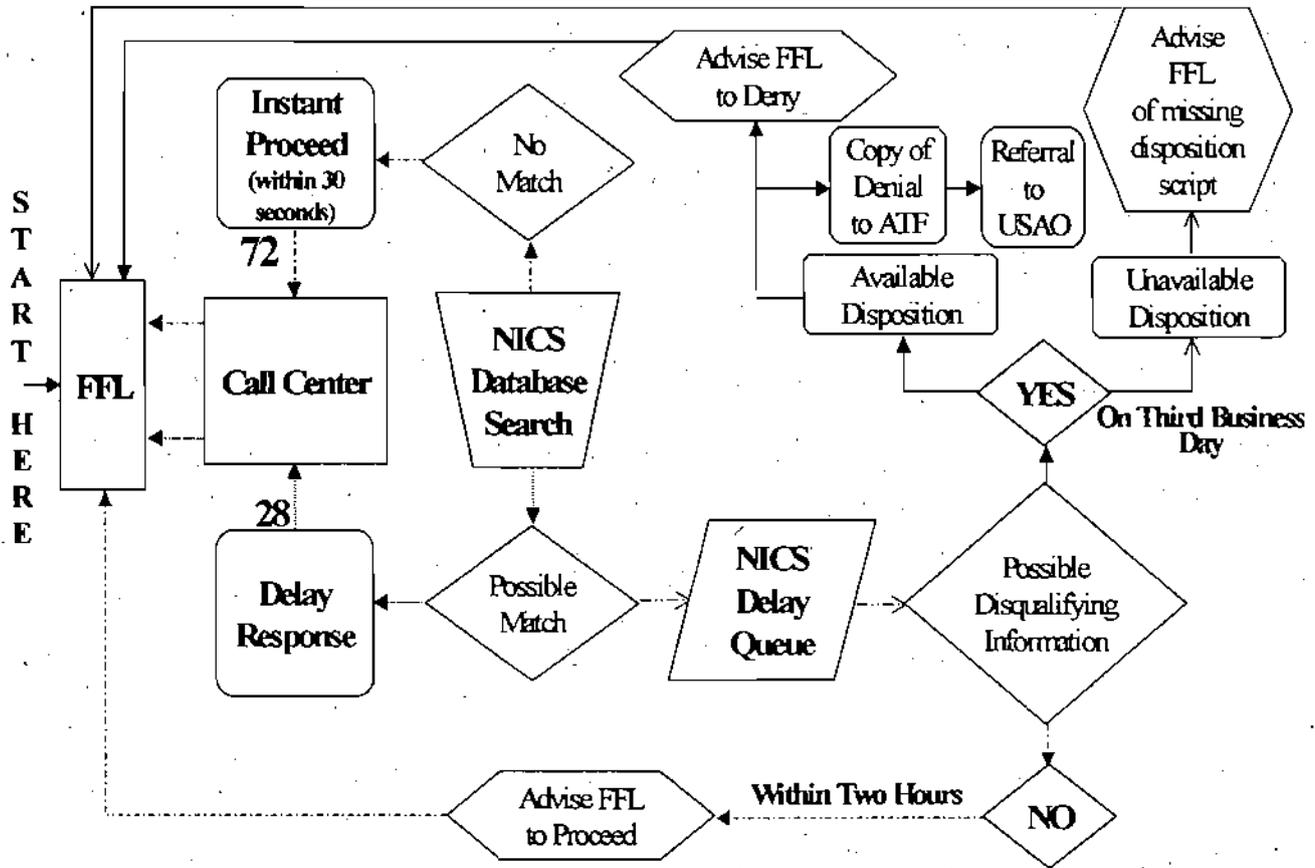
States which perform NICS checks for handgun purchases, while the FBI performs NICS checks for long gun purchases:

Indiana	Oregon
Maryland	Washington
New Hampshire	Wisconsin

• **Non-Participants (27):** The FBI performs NICS checks on both handguns and long guns for:

Alabama	New Mexico
Alaska	North Dakota
Arkansas	Ohio
Delaware	Oklahoma
Idaho	Puerto Rico
Kansas	Rhode Island
Kentucky	South Carolina
Louisiana	South Dakota
Maine	Texas
Massachusetts	U.S. Virgin Islands
Minnesota	West Virginia
Mississippi	Wyoming
Missouri	Washington, D.C.
Montana	

## APPENDIX B: NICS Transaction Flow



HUD OFFICE OF GENERAL COUNSEL

→ HUD Talking Points

FACSIMILE TRANSMITTAL SHEET

TO: Deann Benos	FROM: Douglas S. Kantor
COMPANY:	DATE: December 17, 1999
FAX NUMBER: 202-456-7028	TOTAL NO. OF PAGES INCLUDING COVER: 6
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE: Talking Points	YOUR REFERENCE NUMBER:

- URGENT  
 FOR REVIEW  
 PLEASE COMMENT  
 PLEASE REPLY  
 PLEASE RECYCLE

NOTES/COMMENTS:

FYI - these are talking points that we want to use on the gun issue. Let Max or me know as soon as you can if you have issues with them.

GUNS - TALKING PTS

### Information Regarding Gun Litigation

The Clinton Administration, at the request of cities that have filed suit against the gun industry, will enter into negotiations with the industry in an attempt to reform industry practices and settle the suits that have been filed as well as a potential suit by public housing authorities (PHAs). HUD has worked with the Nation's PHAs, including those under federal control, to determine the viability of legal claims the PHAs have against the gun industry for that industry's failure to responsibly distribute, market and design its products. The PHAs are prepared to bring legal action against the gun industry similar to the actions that 29 cities and counties and the NAACP have already filed. At a press conference on December 8, 1999, President Clinton voiced support for the PHA efforts.

HUD's work on this issue is driven by its mandate to provide "decent, safe and sanitary" housing to millions of American families. The Department has implemented other anti-violence initiatives designed to curb the tragic and deadly consequences of gun-related violence in public housing communities. These include HUD's ongoing Drug Elimination Program and the Violence Reduction Gun Buyback Initiative.

These efforts are only a part of the Administration's comprehensive legislative and enforcement efforts related to gun crime and violence. The Administration helped pass the Brady Law which has stopped 470,000 felons and other prohibited purchasers from buying guns. The Administration has proposed legislation to: Close the gun show loophole; Limit handgun purchases to one per month; Raise the minimum age for buying a handgun from 18 to 21; Ban juvenile possession of semi-automatic assault rifles; Stop imports of large capacity ammunition magazines; and more. The Clinton Administration also has stepped up enforcement efforts. Since 1992, federal and state prosecutions for weapons offenses have increased 25% and the number of people sentenced to 5 or more years in prison has risen 30%.

These actions by the Administration, PHAs, cities, counties and the NAACP are not designed to ban guns. Instead, they seek to cut down on gun violence and ensure safe and responsible gun ownership. The need for these steps is overwhelmingly clear.

### Gun-Related Injuries and Deaths in America.

- Every year in America guns are used to kill more than 30,000 people and injure about 100,000 people.
- Crimes, murders, suicides, accidents - all are avoidable gun-related tragedies. The numbers are compelling?

- 600,000 crimes, including almost 70% of all murders, are committed with guns each year;
- 18,000 suicides are committed with guns each year;
- 1,300 accidental deaths are caused by guns each year.
- Our children pay the heaviest price:
  - The rate of firearm deaths for American kids is higher than for any other country and is 12 times higher than the rate for children in the world's other 25 industrialized nations combined.
  - From 1984 to 1994, the firearm death rate for 15-19 year olds increased 222%, while the non-firearm homicide death rate decreased almost 13%.
  - Gunshot wounds have become the second leading cause of death for Americans between the ages of 10 and 34.

#### Violence and Murder in Public Housing.

- Gun violence is a community-wide problem that has taken a deadly toll on our nation's public housing community. Residents of many public housing projects – already disadvantaged by the negative effects of intense poverty – must endure constant fear of violent crime because of the widespread availability of unsafe guns.
- In America's 100 largest Public Housing Authorities there are 10,000 crimes each year and an average of one murder each day committed with a gun.
- The individual tragedies suffered are overwhelming. Just a few examples include:
  - On July 21, 1999, one teenager was murdered and three others – including a 15 year old who was 9 months pregnant – were shot at a birthday party in the Easter Hill public housing complex in Richmond, CA – San Francisco Chronicle, "Richmond Teen Dies After Party Shooting" July 23, 1999
  - On July 10, 1999, Renee Childers, her 9 year old son and two others were held hostage for 13 ½ hours before the gunman killed Mrs. Childers and himself in the Lincoln Park public housing community in Portsmouth, VA – The Virginian-Pilot, "Police Wanted to Charge Man Months Before Fatal Standoff; In

**December, Portsmouth Prosecutors Decided the Case Wasn't Strong Enough" July 22, 1999**

- On June 21, 1999, grandmother Helen Foster-El was shot to death as she tried to shepherd neighborhood children to safety in the East Capitol Dwellings public housing complex in Washington, DC – Washington Post, "Renovation Planned at Slaying Site; Agency to Rebuild East Capitol Units" July 1, 1999
- On June 13, 1998, 17 year old Antonio Taliaferro was killed and two friends were wounded in a drive-by shooting on the steps of the New Hope Apostolic Temple across the street from the Southside Terrace public housing development in Omaha, Nebraska – Omaha World-Herald, "One Dead in Shooting at Church Two Others are Injured After Shots are Fired From a Passing Car Early Saturday Morning" July 14, 1998
- In May 1998, Melissa Stone, a 29 year old mother of 7, was abducted at gunpoint, then raped and killed in the Desire public housing complex in New Orleans, LA – The Times-Picayune "Body of Woman ID'd by Family; Mother of 7 Last Seen on Sunday" July 7, 1998

**Economic Costs of Gun Violence in Public Housing.**

- HUD spends approximately \$3 billion annually in Operating Fund grants to PHAs, a significant percentage of which is allocated to security costs.
- It is estimated that PHAs spend about \$1 billion per year on security and other costs related to gun violence.
- For example, in 1997 Chicago spent \$43,777,157 of its HUD Public Housing Comprehensive Grant -- 38% of the total -- on security.
- In 1998, HUD's Drug Elimination Program grants totaled \$243,736,400, of which about 46% was spent by Housing Authorities on security, law enforcement, investigators and tenant patrols.

**Gunmakers' Responsibility for the Violence and Death.**

Manufacturers bear much of the responsibility for the flood of guns into public housing and the acquisition of guns by criminals.

- Senator Charles Schumer (D-NY) recently released a gun tracing report entitled "A Few Bad Apples" which demonstrated that 1% of gun dealers account for 50% of all crime guns sold. To merely shut down this 1% of

dealers would dramatically decrease the number of violent crimes committed and guns available in public housing.

- Manufacturers have failed to take action against dealers who repeatedly sell guns that are used in crimes and turn up on Bureau of Alcohol, Tobacco and Firearms (ATF) trace requests.
- Manufacturers also market guns to criminals. For example, Intratec advertises its TEC-DC9 as an "assault-type pistol" with a coating that provides "excellent resistance to fingerprints."

**Improving Distribution Practices.** Making the gun industry monitor and control the sales of its products in the same way that other industries do would make Americans safer. This type of monitoring and control occurs in industries as diverse as life insurance, all-terrain vehicles, chemicals, alcohol, spray paints and many others. Beneficial industry self-regulation has been spurred by lawsuits in many of these instances including life insurance, all-terrain vehicles and others. There are many common sense measures that gun manufacturers should take. A few examples include:

- Requiring dealers to abide by a code of conduct.
- Cutting off dealers that sell too many guns used in crimes.
- Tracking inventory electronically so that sales of guns used in crimes can be traced more easily.
- Refusing to sell to gun dealers under indictment.

**Basic Gun Safety Remedies.** The gun industry has the ability to take basic steps to make their products safer. Many shooting injuries and deaths could be prevented through the use of relatively simple safety mechanisms by the gun industry. Such measures would be particularly effective in preventing unintentional shootings.

- There are approximately 1,300 deaths from unintentional shootings each year.
- The U.S. General Accounting Office (GAO) has estimated that 31% of accidental shooting deaths might be prevented simply by child-proofing guns and incorporating loading indicators into their design.
- A few of the available safety measures include:
  - Magazine disconnects that do not allow guns to be fired once the magazine is removed;

- Warnings indicating that a round is in the chamber;
  - child-resistant locking mechanisms; and
  - Personalization techniques such as combination locks. Personalization also could help stem another form of crime – the theft of approximately 500,000 guns each year.
- 
- While there are a few gun models that include safety devices, the gun industry has failed to incorporate these relatively modest safety devices on a scale that would have a significant impact.