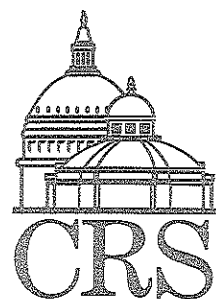


# CRS Report for Congress

## Brady Handgun Violence Prevention Act

Updated August 5, 1997

Keith Bea and James Sayler  
Specialists, American National Government  
Government Division



# Brady Handgun Violence Prevention Act

## Summary

In the last hours of its first session, the 103rd Congress approved the "Brady Bill" and sent it to President Clinton, who signed it into law on November 30, 1993. Much of the Brady Act (P.L. 103-159/H.R. 1025) resembles the "Brady" subtitle of the omnibus crime control bill developed during the 102nd Congress (H.R. 3371), the conference agreement of which had been approved by the House (but not by the Senate) in 1991.

The first "Brady Bill" was introduced in the 100th Congress. The name refers to James Brady, the Press Secretary to President Ronald Reagan. Brady was permanently disabled by a gunshot wound sustained during an attempted assassination of the President in 1981. The name of the Act also recognizes the efforts of his wife Sarah, an official of Handgun Control, Inc., to promote the proposal.

The Act established restrictions on retail firearm sales in a two-phase program. Phase I, which expires November 29, 1998, requires a waiting period before purchasing and possessing a handgun from federally licensed dealers, manufacturers, or importers (licensees). The delay is intended to give local law enforcement officials a chance to conduct a criminal record check on the prospective buyer. However, the Act's requirement that local law enforcement officials check criminal records was ruled unconstitutional and struck down by the Supreme Court on June 27, 1997, in *Printz v. U.S.* and *Mack v. U.S.* The Court declined to rule on severability, but lower federal courts ruled that the background check was severable from the remainder of the Brady Act, leaving the rest of the Act in force. Open to question is how much practical effect the decision will have, since many police and sheriffs departments have said they will continue to perform background checks without any legal obligation to do so. Some also argue that such checks may violate state constitutional or statutory provisions. In a concurring opinion, Justice Sandra Day O'Connor noted that state and local governments may voluntarily continue the checks.

Before Phase I ends the Attorney General must establish a nationwide instant check system for point-of-purchase screening of the buyer of *any* firearm from a licensee. During Phase II, if information needed to process the transaction at the point of purchase is unavailable, the prospective purchaser will have to wait three days for the firearm. Phase II is a permanent provision. Transactions between non-licensed individuals are not affected by the Act.

The national instant check system comprising Phase II requires state criminal record systems to be automated and otherwise improved. The Brady Act establishes a new program of grants (\$200 million authorized until expended) to the states for this purpose. Funds have been appropriated and obligated for those grants every year since FY1994. The instant check system may not be used as, or in, a registration system to identify firearm transactions or owners, except for applicants prohibited from taking part in such transactions (felons, narcotic addicts, and others considered a risk to society). Also, state and local law enforcement agencies are prohibited from disclosing the information and must certify that application forms and records have been destroyed (except those with information about disqualified persons).

## Contents

Summary of Provisions .....	2
Phase I: Waiting Period/Background Check by Local Law Enforcement ..	2
Requirements for Licensees .....	2
Requirements for Law Enforcement Agencies .....	3
Exemptions .....	4
Liability and Penalties .....	4
Phase II: National Instant Check System .....	4
Requirements for the Attorney General .....	5
Requirements for Licensees .....	6
Exemptions .....	7
Penalties for Non-compliance .....	7
Federal Funds for Upgrading State Records .....	8
Authorizations and Appropriations .....	8
Liability Protection for Government Employees .....	8
Other Provisions .....	8
Summary of Issues .....	9
Implementation .....	10
Phase I and Phase II Distinctions .....	12
Chronology of Legislative Events: 1987-1997 .....	14

# Brady Handgun Violence Prevention Act

First introduced in the 100th Congress, the "Brady Bill" as amended became law in the closing days of the 103rd Congress. The Brady Handgun Violence Prevention Act (the Brady Act) consists of two phases, both restricting commercial firearms sales. Phase I of the Brady Act<sup>1</sup> requires that federal firearm licensees transmit information that identifies the potential purchaser of a handgun to the chief law enforcement officer (CLEO) in each local jurisdiction where the prospective purchaser resides. Under the Act when it went into force, that law enforcement officer was required to "make a reasonable effort" to determine through a background check whether the purchase would violate applicable laws, and notify the seller within five business days if the sale should not proceed.<sup>2</sup>

On June 27, 1997, the U.S. Supreme Court, voting 5 to 4, ruled that the Brady Act's interim provision commanding CLEO's to conduct background checks was unconstitutional.<sup>3</sup> Accordingly, the other tasks assigned to the CLEOs by the Act were either extinguished or inoperable with regard to CLEOs who chose not to participate in the background checks. The Court specifically declined to address the severability of the Act's provisions that established a five-day waiting period before dealers could transfer firearms to purchasers. Justice Antonin Scalia, writing for the majority, summarized the decision:

We held in *New York v. United States*, 505 U.S. 144 (1992)] that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.<sup>4</sup>

---

<sup>1</sup>P.L. 103-159/H.R. 1025, sec. 102(a), "Interim Provision." Also, 18 U.S.C. 922(s).

<sup>2</sup>The Act defines "business days" as those days on which state offices are open. See P.L. 103-159/H.R. 1025, sec. 102(a). Also, 18 U.S.C. 922(s)(1)(A)(ii)(I).

<sup>3</sup>*Printz v. United States*, No. 95-1478, (U.S. June 27, 1997).

<sup>4</sup>The quotation comes from *Printz v. United States*, 95-1478 & 95-1503 U.S. 37 (1997). For Justice Scalia's reference to the *New York* decision, see the above decision, p. 27: *New York v. United States* 505 U.S. 144 (1992). The dissenting opinion by Justice John Paul Stevens noted that the interstate commerce and "necessary and proper" clauses of the Constitution are "surely adequate to support the temporary enlistment ..." of non-federal officers in such background checks. (Dissent, p. 3)

Exactly what practical effect the decision will have remains open to question, since many police and sheriffs departments have said they will continue to perform background checks even without any legal obligation to do so. In a meeting with a delegation of police representatives on July 16, 1997, Secretary of the Treasury Robert E. Rubin and Attorney General Janet Reno said they would work with local police to make sure background checks on prospective handgun buyers continue.<sup>5</sup>

Phase I is scheduled to terminate five years from enactment, on November 29, 1998, and is to be succeeded by Phase II. Phase II is a permanent provision that will require that federal licensees use the national instant criminal background check system—informally known as "the instant check system"—to transfer any firearm. The statute requires that the system be established by the Attorney General no later than five years after enactment of the Brady Act.<sup>6</sup>

## Summary of Provisions

### Phase I: Waiting Period/Background Check by Local Law Enforcement

Phase I applies to sales or other transfers of handguns by a licensed firearms dealer, manufacturer, or importer, (licensee) made to a non-licensee. "Handgun" is defined as—

- (1) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and
- (2) any combination of parts from which such a gun can be assembled.

#### Requirements for Licensees.

Phase I of the bill requires a firearms licensee, prior to transferring a handgun, to do the following:<sup>7</sup>

- (1) obtain a statement from the prospective buyer that includes the name, address, date of birth, and an affidavit to the effect that he is not a person prohibited under federal law [18 U.S.C. 922(g)] from receiving a firearm, the date of the statement, and intention to purchase a handgun;

---

<sup>5</sup>For indications about the intentions of local and state law enforcement officials toward background checks, see Reuter News Service, "Reno, Rubin to Press Local Police on Gun Buyer Background Checks," *Washington Post*, July 17, 1997, p. A10; also, Pierre Thomas, "Little Effect Predicted on Gun Checks," *Ibid.*, June 28, 1997, p. A12; also, Donald Murray and Donna Clemons-Sacks, "High Court Invalidates Background Checks on Guns," *County News*, July 7, 1997, pp. 1, 2.

<sup>6</sup>P.L. 103-159/H.R. 1025, sec. 102(a) 18 U.S.C. 922(t); also, sec. 102(b), "Permanent Provision."

<sup>7</sup>18 U.S.C. 922(s)(1)(A).

(2) verify buyer ID through a "valid identification document [as defined in 18 U.S.C. 1028(d)(1)] containing a photograph;" and

(3) provide notice of and transmit a copy of the above statement, within one day after receiving the statement, to the chief law enforcement officer of the area in which the buyer's residence is located.

To complete the sale, the licensee must wait until either: (1) five business days have elapsed from the date the buyer furnished the statement and the licensee has not received word from the law enforcement agency that receipt or possession by the buyer would be in violation of federal, state, or local law; *or* (2) the licensee has received positive word within the five day period that no such violation would thereby be committed.

If, after the transaction is made, the licensee receives notice that possession of the gun by the purchaser violates federal, state, or local laws, the licensee must, within one business day of such notice, transmit information about the purchase to appropriate law enforcement agencies. Licensees are prohibited from sharing information related to the transaction with anyone other than the purchaser, law enforcement agencies, "or pursuant to the direction of a court of law." Records pertinent to the transaction must be kept by the licensee, apparently indefinitely.<sup>8</sup>

#### **Requirements for Law Enforcement Agencies.**

Pursuant to the Supreme Court ruling in *Printz*, the chief law enforcement officer who receives the statement from the licensee may voluntarily agree to continue observing the requirements of the Brady Act. Within five business days, he or she would determine whether the transaction violates applicable laws.<sup>9</sup> If the transfer is disallowed and the prospective purchaser requests the reason, the officer must respond in writing to the requester on the matter within 20 business days after the request is received.<sup>10</sup> If the transaction would not violate applicable laws, the law enforcement official to whom notice of a prospective gun purchase is sent must—within 20 days after the date of the buyer's statement—destroy the copy of the statement sent to him and any record containing information derived from the statement. The officer, as with licensees, is prohibited from conveying such information to anyone. Officers, however, may convey the information in the records to "a person who has a need to know in order to carry out this subsection," and can only use this information to carry out the provisions of the Act.<sup>11</sup>

---

<sup>8</sup>18 U.S.C. 922(s)(4),(5),(6)(A).

<sup>9</sup>18 U.S.C. 922(s)(2).

<sup>10</sup>18 U.S.C. 922(s)(6)(C). The issue of whether the background check may be conducted even on a voluntary basis has been raised. The counsel for the prevailing party in the *Printz* decision reportedly contends that many state laws prohibit "involvement in firearms transactions" by law enforcement officials. See "Clinton Urges Action Illegal in Most States," *The New Gun Week*, July 20, 1997, p. 1, 10.

<sup>11</sup>18 U.S.C. 922(s)(6)(B).

### **Exemptions.**

Transactions involving the following circumstances are exempted from the background check requirements discussed above:<sup>12</sup>

- (1) the prospective purchaser presents the licensee with a written statement issued—within the preceding ten days—by the chief law enforcement officer in his or her area of residence indicating that a handgun is needed because of threats to life to household members (including the purchaser);
- (2) the prospective purchaser presents the licensee with a permit, issued within the preceding five years by the state in which the transfer is to take place, that allows possession of a handgun—provided that the state law requires a background check to ascertain whether a law would be violated by such possession;
- (3) the state in which the transfer is to take place has a requirement that prior to licensee transfer of a handgun, an authorized government official verify that available information does not indicate that possession of a handgun by the transferee would be in violation of law (states with instant check systems are thereby exempted);
- (4) compliance is impracticable because of the dealer's inability to communicate with the appropriate law enforcement official as a result of the dealer's remote location and the absence of telecommunication facilities; or
- (5) the Secretary of the Treasury has approved the transfer under the National Firearms Act.

### **Liability and Penalties.**

Law enforcement officers or others providing the background information on a prospective purchaser are not liable for damages for preventing, or failing to prevent, the transfer.<sup>13</sup> Anyone who knowingly violates the requirements will be fined up to \$1,000, imprisoned for no more than one year, or both.<sup>14</sup>

## **Phase II: National Instant Check System**

The Brady Act requires that when Phase I ends on November 29, 1998, the Attorney General must have established a nationwide instant background check system. When Phase II begins, licensees must use the system before transferring any firearm to a non-licensee. Development of the system requires that the Attorney General specify hardware and software criteria necessary to link state data and needs.

<sup>12</sup>18 U.S.C. 922(s)(1)(B)-(F).

<sup>13</sup>U.S.C. 922(s)(7). However, see "Liability Protection for Government Employees," below.

<sup>14</sup>P.L. 103-159/H.R. 1025, Sec. 102(c), 18 U.S.C. 924(a)(5).

The Act contains no means for enforcing the requirement, and questions may be raised about whether Phase II will be implemented as set forth in the statute, in relation to other difficulties the FBI has experienced in constructing information systems.

### **Requirements for the Attorney General.**

The Brady Act required that the Attorney General survey the status of state criminal history records as part of preparations for implementing the instant gun check system.<sup>15</sup> That survey was designed to:

- (1) determine the type of computer hardware and software that will be used to operate the national check system and the means by which state criminal records systems will communicate with the national system;
- (2) study the criminal records system of each state and determine for each state a timetable by which its criminal records should be provided on-line to the national system; and
- (3) notify each state of these findings.<sup>16</sup>

In response to the requirements of the statute, the Justice Department in March 1994 undertook the survey of state criminal record systems. The Attorney General developed timetables for states to achieve complete and automated records. In letters of May and June 1994, the Attorney General informed the state governors of the timetables and noted that the goals were expected to be met if sufficient grant funds would be available under the Brady and Child Protection Acts.<sup>17</sup>

In addition, the Brady Act requires that the Attorney General expedite upgrading and indexing of state criminal history records in the records system. The Act also mandates development of hardware and software systems to link the state and national systems, and the improvement of FBI initiatives regarding "technologically advanced fingerprint and criminal records identification." Difficulties with the construction of FBI databases have been noted, and some Members of Congress have reportedly expressed concern with the management of systems development by the Bureau. In March the *Washington Post* reported that the FBI's highly technical Integrated Automated Fingerprint Identification System is 15 months behind schedule and almost 25% over budget. State and local agencies rely on this database to check for criminal records of suspected criminal offenders, and much of the success of an

---

<sup>15</sup>The act requires that the Attorney General "investigate" the systems of each state (P.L. 103-159/H.R. 1025, sec. 103(a)(2), 107 Stat. 1541). Note also that the National Child Protection Act of 1993 (P.L. 103-209, 107 Stat. 2490) requires the Attorney General to establish deadlines for states to provide child abuse crime records through the national check system established by the FBI.

<sup>16</sup>P.L. 103-159/H.R. 1025, sec. 103(a). Also, 107 Stat. 1541.

<sup>17</sup>U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics, *National Criminal History Improvement Program: Fiscal Year 1996. Program Announcement*, NCJ-161135 (Washington, 1996), p. 3.



instant gun check system will likely turn on the effectiveness of this database. An April 15, 1997, article in *Law Enforcement News* reported that massive FBI efforts (through its NCIC-2000 program) to upgrade its criminal records and fingerprint identification systems are running at least two years behind schedule, and will eventually cost much more than originally estimated. On the other hand, the *News* continued, according to Harlin McEwen, deputy assistant director of the FBI's Criminal Justice Information Services Division (which is eventually to oversee operation of the updated National Crime Information Center), the upgrade will be well worth the wait because of the increased efficiencies that will be realized. Additional support for the FBI appears in *Federal Computer Week*, which commended the agency for having moved early to update the database available to the National Crime Information Center.<sup>18</sup>

By November 1998, five years after enactment of the Brady Act, the Attorney General under the Brady Act must establish the instant background check system; employ personnel; and notify licensees and law enforcement officials with regard to the use of the system. In addition, regulations regarding the privacy and security aspects of the system must be published (no timetable specified). The Act contains no provision for enforcing its mandates for the Attorney General should the deadlines not be met.<sup>19</sup>

As referred to above, under the discussion of Phase I of the Brady Act, another Attorney General requirement under the Act provides that if the transfer of a weapon is prohibited and the prospective purchaser requests information on the reasons why the purchase was disallowed, "the system" must provide the reasons in writing within five business days. In addition, if a purchaser who is denied a firearm requests information on the reason for the denial, the Attorney General must "immediately comply" with the request and, if records are incorrect, make appropriate changes.<sup>20</sup>

### **Requirements for Licensees.**

Once Phase II is in force, a dealer (or other federal licensee) may not transfer any firearm to a non-licensee unless:

- (1) the national instant criminal background check system is used;

---

<sup>18</sup>For the federal mandate to upgrade the records, see: P.L. 103-159, sec. 103(c). Also, 107 Stat. 1541. Criticisms of the FBI effort appear in: Jim McGee and Roberto Suro, "FBI's Credibility with Hill Slumps after Missteps; Computer Systems Improvements Far Behind Schedule, Over Cost," *Washington Post*, March 16, 1997, pp. A1, A10-A11; and, Jacob R. Clark, "A Day Late, A Dollar Short; But FBI Says NCIC-2000 is Worth the Wait & the Cost," *Law Enforcement News*, vol. XXIII, no. 465, April 15, 1997, pp. 1, 8. The FBI's defense likewise is reported in the same *Law Enforcement News* article. See also, Elana Varon and John Moore, "Year 2000: Federal/State Links Loom as Hidden Risk," *Federal Computer Week*, vol. 11, no. 9, April 14, 1997, p. 50.

<sup>19</sup>P.L. 103-159/H.R. 1025, sec. 103(b),(e)(2),(h).

<sup>20</sup>P.L. 103-159/H.R. 1025, sec. 103(f),(g).

(2) staff operating the system notify the dealer that a record has been located to indicate that the transfer would be in violation of federal prohibitions of receipt or possession of a firearm by specified high-risk individuals [18 U.S.C. 922(g) and (n)]; and

(3) the dealer has attempted to verify the identity of the transferee by examining a valid identification document containing a photograph of the transferee.

If the national background check system clears the transfer, a unique identification number will be supplied to the dealer and will be included in the record of the sale. All information pertaining to the request must be destroyed, with the exception of the transaction identification number and the sale date. Also, the licensee may proceed with the sale if three business days pass and the system does not respond to the licensee's request for information.<sup>21</sup>

### **Exemptions.**

As in Phase I, the instant check requirements may be waived under specified circumstances. See paragraphs (2), (4), and (5) under "Exemptions," above.<sup>22</sup>

### **Penalties for Non-compliance.**

**Licensees.** Any licensee who knowingly violates the general provisions is subject to imprisonment for not more than one year, a fine of up to \$1,000, or both. Also, the knowing transfer of a firearm by a licensee to a disqualified person could result in revocation of a license or its suspension for up to 6 months and a fine of up to \$5,000.<sup>23</sup>

**Purchasers.** As in Phase I, any purchaser who knowingly violates the general provisions is subject to a fine of up to \$1,000, imprisonment for no more than one year, or both.<sup>24</sup>

Information in the instant check system cannot be transferred or used to establish a registration system, except with regard to disqualified purchasers.<sup>25</sup> Also, existing federal privacy rights regarding information and records on individuals (5 U.S.C. 552a) are explicitly protected.<sup>26</sup>

<sup>21</sup>18 U.S.C. 922(t)(1)(2).

<sup>22</sup>18 U.S.C. 922(t)(3).

<sup>23</sup>18 U.S.C. 922(t)(5), 924(a)(5).

<sup>24</sup>P.L. 103-159/H.R. 1025, sec. 102(c), 18 U.S.C. 924(a)(5).

<sup>25</sup>P.L. 103-159/H.R. 1025, sec. 103(i).

<sup>26</sup>P.L. 103-159/H.R. 1025, sec. 105.

## Federal Funds for Upgrading State Records

### Authorizations and Appropriations.

The Act authorizes "such sums as are necessary" for the Attorney General to put the new, revised, federal system in place. In addition, the Act authorizes \$200 million for federal grants to the states to improve their criminal records systems. Beyond the \$200 million, states generally must allocate at least 5% of their Edward Byrne Memorial formula grant dollars for "the improvement of state record systems and the sharing ... of records ... [for] implementing [the Brady Act]." Funds have been appropriated since FY1994 through direct appropriations, and, for state grants, are authorized to be appropriated from the Violent Crime Reduction Trust Fund.<sup>27</sup>

### Liability Protection for Government Employees

A federal, state, or local government employee responsible for providing information to the national system would not be liable in an action at law for damages:

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

(B) for preventing such sale or transfer to a person who may lawfully receive or possess a handgun.<sup>28</sup>

Note, however, that the "Remedy for Erroneous Denial of Firearm" provision permits a prospective purchaser denied a firearm to take action subsequently against the responsible unit of government. The provision also permits the court in such an action to allow reasonable attorney's fees to the prevailing party.<sup>29</sup>

### Other Provisions

Titles II and III of the Brady Act included other amendments to the Gun Control Act (18 U.S.C. Chapter 44). Title II required licensees to transmit information on multiple handgun sales to state or local law enforcement agencies; the same information previously had to be transmitted only to the Department of the Treasury.

---

<sup>27</sup>For the authorization of "such sums as are necessary," see P.L. 103-159/H.R. 1025, sec. 103(k). The \$200 million authorization comes from P.L. 103-159/H.R. 1025, sec. 106(b)(2), 107 Stat. 1544. For more information on the Byrne program see: U.S. Library of Congress, Congressional Research Service, *Crime control assistance through the Byrne programs*, by Garrine P. Laney, CRS Report 97-265 GOV (Washington: Feb. 21, 1997), 6p. As for "the improvement of state record systems" citation, see: Omnibus Crime Control Act of 1968, as amended; 42 U.S.C. 3759. This allocation requirement may be waived if the Director of the Bureau of Justice Assistance certifies that the criminal records are sufficiently maintained by a state and that the expenditure of Byrne formula money is not warranted. Finally, the Violent Crime Reduction Trust Fund citation is P.L. 103-159/H.R. 1025, sec. 103(k).

<sup>28</sup>P.L. 103-159/H.R. 1025, sec. 102(b), 18 U.S.C. 922(t)(6).

<sup>29</sup>P.L. 103-159/H.R. 1025, sec. 104(a), 18 U.S.C. 925A.

Also, provisions concerning licensees are amended to prohibit the disclosure of information on any approved purchases and to require the destruction of any forms or information within 20 days. In addition, every six months law enforcement agencies must certify that the requirements regarding privacy and destruction of information have been met.<sup>30</sup>

Title III prohibits labeling of packages containing firearms, requires written receipt of delivery of firearms, and adds a firearm theft provision (with a savings clause regarding state laws). In addition, application fees increase for licensed dealers of firearms, from \$25 annually for pawnbrokers and \$10 for others, to \$200 for three years for all such licensees, with renewals of valid licenses costing \$90 for three years.<sup>31</sup>

## Summary of Issues

Throughout the debate on different versions of the "Brady" legislation, the two alternatives intended to resolve the problem of access to handguns by criminals—establishment of a waiting period and development of an instant check system—have been considered viable options that address a variety of concerns. Proponents of Phase I have raised issues such as the following:

- law enforcement officials should be given the opportunity to investigate criminal justice records or to use other means to determine whether the prospective purchaser poses a known risk to the community;
- individuals should be forced to take time to "cool off" so that crimes of passion or suicides dictated by immediate pressures would be prevented; and
- in the course of investigating the background of prospective purchasers, law enforcement agencies will be able to locate and apprehend felons.

Opponents of a waiting period counter with the following issue contentions:

- few offenders attempt to obtain handguns from legitimate sources, so law enforcement resources allocated to the background checks will likely be primarily expended on citizens who pose no threat, many of whom need a handgun for self-defense;
- civil liberties might be compromised, intentionally or not, by paperwork requirements and arbitrary decisions by law enforcement officers; and
- criminal offenders or persons intent on suicide are not deterred by "cooling off" periods and, if they do not have access to a handgun, will turn to other weapons or means of self-destruction.

---

<sup>30</sup>P.L. 103-159/H.R. 1025, sec. 201, 18 U.S.C. 923(g)(3).

<sup>31</sup>P.L. 103-159/H.R. 1025, sec. 301,302,303.

## Implementation

Since enactment of the Brady Act several federal agencies have published studies that discuss the Act's effectiveness. One controversial measure of the effect of the Brady Act has been the influence of background checks on potential gun buyers. In February 1997, the Justice Department's Bureau of Justice Statistics (BJS) published *Presale Firearm Checks; A National Estimate*, which estimated on average that each month 6,600 firearm purchases were prevented by background checks of potential gun buyers during the 28 months after the Brady Handgun Violence Prevention Act. The checks revealed purchasers' ineligibility to buy a handgun or other firearm under federal or state laws.<sup>32</sup>

According to the Bureau's study, more than 70% of the rejected purchasers were convicted or indicted felons. Moreover, between March 1994 and June 1996, almost 9 million applications to purchase firearms were made throughout the United States, of which 186,000 were rejected. The data, the Bureau's survey noted, do not indicate whether rejected purchasers later obtained a firearm through other means.<sup>33</sup>

The General Accounting Office (GAO) likewise reviewed the influence of background checks of potential gun buyers in its January 1996 report to the House and Senate Judiciary Committees, *Gun Control; Implementation of the Brady Handgun Violence Prevention Act*. The scope of this report, however, is narrower than the Bureau's study, drawing its statistics from selected areas that are not representative of the whole country. In its report GAO reviewed how often the five-day waiting period and background checks resulted in denying criminals and other ineligible persons the chance to purchase handguns from federally licensed dealers. Its analysis of denial statistics and reasons in 15 selected jurisdictions found that almost half (48.7%) of the denials happened because the prospective handgun purchasers had felony or misdemeanor criminal histories. Of the remaining denials, 4.1% derived from other Brady ineligible categories, 0.8% from restraining orders, 7.6% from traffic offenses, and the remaining 38.9% from administrative or other reasons.<sup>34</sup>

A second topic covered by the 1996 GAO report was the extent to which denials of gun purchase applications produced follow-up actions, such as arrests and prosecutions against convicted felons and other ineligible purchasers who falsely completed the handgun purchase applications form. On the basis of queries to field officers of the Bureau of Alcohol, Tobacco, and Firearms, as of July 1995, at least

---

<sup>32</sup>U.S. Dept. of Justice, Bureau of Justice Statistics, *Presale Firearm Checks; A National Estimate* NCJ 162787 (Feb. 1997). 5p.

<sup>33</sup>U.S. Dept. of Justice, *Presale Firearm Checks*... p. 1.

<sup>34</sup>U.S. General Accounting Office, *Gun Control; Implementation of the Brady Handgun Violence Prevention Act*, GAO Report to the Committee on the Judiciary, U.S. Senate, and the Committee on the Judiciary, House of Representatives GAO/GGD-96-22 (Jan. 1996), p. 4.

seven persons nationally had been prosecuted with success for making false statements on the Brady handgun purchase form.<sup>35</sup>

Other reports, issued by the Department of the Treasury, included estimates about the effect of the Act on the purchase of guns from federally licensed dealers. In a press release of Feb. 28, 1996, the Department estimated that, based on projections developed by its Bureau of Alcohol, Tobacco, and Firearms (BATF), the Act had stopped more than 60,000 felons, fugitives and other prohibited purchasers from buying handguns from federally licensed dealers. It was this estimate that President Clinton cited—in the speech he gave on Aug. 29, 1996, accepting the Presidential nomination of the Democratic National Convention—when proposing that the Brady Act be strengthened.<sup>36</sup>

Earlier, on Feb. 28, 1995, BATF released another estimate about the effect of Brady on the purchase of guns from federally licensed dealers. A BATF survey of 30 law enforcement authorities indicated that, from March 1994 through January 1995, more than 15,500 persons who applied to purchase handguns in the jurisdictions surveyed had their applications denied. The denials represented 3.5% of all of the applications submitted in the jurisdictions surveyed. BATF confirmed through discussions with the firearms industry that the overall volume of handgun sales remained relatively constant during the period surveyed. The consistency of those sales, BATF concluded, "effectively is preventing the criminal element from accessing handguns, and is doing so with minimal inconvenience to law-abiding handgun owners."<sup>37</sup>

The dissemination of statistics on the effectiveness of the Brady Act has resulted in claims of success as well as counter-claims that the Act has had little effect. For example, in his acceptance speech of his party's nomination, President Clinton cited the "good news" from the 1996 BATF press release that 60,000 persons had been prohibited from purchasing firearms. Gun control opponents, however, counter that many people prohibited from purchasing guns were subsequently determined to be qualified (*Gun Week*, 3/10/95). Also, gun control opponents charge, the number of prohibited applicants who have been prosecuted have been so few as to demonstrate the ineffectuality of the Brady Act.

---

<sup>35</sup>U.S. General Accounting Office, *Gun Control...* (Jan. 1996), p. 4.

<sup>36</sup>U.S. Dept. of Treasury, Office of Public Affairs, *On Second Anniversary, Rubin and Reno Hail Brady Act's Success Limiting Illegal Handgun Sales and Fighting Crime; More than 60,000 Felons, Fugitives and Others Denied Handguns*, Treasury News [press release RR-902] (Washington: Feb. 28, 1996), p. 1. Also, "Clinton Describes His Path to the 21st Century [Text of President Clinton's speech accepting the Democratic Party's Presidential nomination]," *Congressional Quarterly Weekly Report*, vol. 54, no. 35, Aug. 31, 1996, p. 2487.

<sup>37</sup>U.S. General Accounting Office, *Gun Control...* (Jan. 1996), [Overview, no page number.] Of those denied, 4,365 were convicted felons, 945 were fugitives, 97 were under indictment, 649 were illegal drug users, 2 were juveniles, and 63 were under restraining orders for allegedly stalking, harassing, or engaging in other forms of domestic threats or intimidation.

The effect of the Brady Act on crime likewise remains in dispute. Some attribute the decline in the nation's incidence of crime in 1995, at least in part, to the Brady Act. Others argue that the lower crime rates are attributable to other factors, such as the incarceration of violent offenders for longer periods of time in prison. Experts who favor gun control as well as those who oppose such control continue to debate what conclusions may and should be drawn.

## Phase I and Phase II Distinctions

Phase II, like Phase I, hinges on background checks of purchasers (of all firearms, not just handguns). As a result, concerns about privacy intrusions and potential violations of the civil rights of private citizens are still applicable to the debate on the instant check system. Because the instant check system does not require a waiting period, however, the "cooling off" issues do not apply.

The two phases of the Brady Act also differ with regard to (1) the involvement of local law enforcement officials, (2) the grounds on which a purchase may be prevented, and (3) the sources of information to be used in making that determination. Generally, a handgun may be transferred by a licensee under Phase I if information available to the law enforcement agency does not indicate that any laws would be violated.<sup>38</sup> Under the "Permanent Provision," by comparison, local law enforcement agencies are not mentioned. Phase II generally establishes one source of information—the national instant criminal background check system—to be used by licensees before any firearm is transferred.<sup>39</sup> Also, the grounds upon which a transaction may be halted are limited to certain violations of the Gun Control Act or state law.<sup>40</sup>

Proponents of the Phase I approach would likely argue that law enforcement officers should have the right to screen handgun (or all firearm) purchases using whatever information sources are legally available. In addition, they might also argue

<sup>38</sup>See subsections 18 U.S.C. 922(s)(1)(A)(ii)(I),(II) [licensee does not receive notice that the transfer would violate federal, state, or local law]; 18 U.S.C. 922(s)(1)(B) [the waiting period may be by-passed if the law enforcement agency certifies that the handgun is needed by the purchaser for protection]; 18 U.S.C. 922(s)(1)(C) [state issued permit on the belief that possession would not violate the law]; 18 U.S.C. 922(s)(1)(D) [if state law requires that a government official verify that the information available does not indicate that possession of a handgun by the transferee would violate the law]; 18 U.S.C. 922(s)(2) [the agency "shall make a reasonable effort" to determine whether receipt or possession would violate the law, including research in available state and local record keeping systems and in a national system].

<sup>39</sup>If the prospective purchaser presents a state issued permit (18 U.S.C. 922(t)(3)), the "instant-check" provisions do not apply. Also, the exemptions regarding approval by the Secretary of the Treasury and regarding remote areas also apply to Phase II transactions.

<sup>40</sup>See 18 U.S.C. 922(t)(2). The transfer may only proceed if the prospective purchaser is not identified as a member of proscribed categories in 18 U.S.C. 922(g) [felons, fugitives, narcotic addicts, mental defectives, illegal aliens, or those dishonorably discharged from the Armed Forces or who have renounced citizenship], anyone under indictment for a felony [subsection (n)], or in violation of state law.

that the decision to stop a requested transfer should not necessarily be constrained by the list of proscribed categories in the Gun Control Act but by a consideration of violations of all federal, state or local laws. Proponents of Phase II, on the other hand, would likely argue that the right to obtain a firearm, particularly for purposes of self-defense, should not rest on the decisions made by law enforcement officers. Also, they might argue that the proscribed categories in the Gun Control Act are appropriate reasons for disallowing firearm transfers. It also should be noted that some may oppose both Phase I and Phase II approaches on the grounds that possession of a firearm is an immutable right that is best regulated under the current system, or that both the interim and permanent authorities compromise civil liberties.



## Chronology of Legislative Events: 1987-1997

- 02/04/87** — Representative Edward F. Feighan and Senator Howard M. Metzenbaum introduced the "Handgun Violence Prevention Act" (H.R. 975/S. 466). Some backers of the bill called it the "Sarah Brady Bill", referring to the lobbying efforts of the wife of White House Press Secretary James Brady. Mr. Brady was seriously wounded during the attempted assassination of President Reagan on March 31, 1981.
- 06/16/87** — Hearings on S. 466 (100th Congress) were held by the Senate Subcommittee on the Constitution.
- 11/30/87** — Hearings on H.R. 975 (100th Congress) were held by the House Subcommittee on Crime.
- 06/30/88** — House Judiciary Committee approved (by voice vote) a draft amendment, submitted by Representative Feighan, with provisions similar to those of H.R. 975, as an amendment to an omnibus drug control bill, adding language to designate it the "Brady Amendment." Prior to the vote approving the amendment, the Committee rejected (22 to 12) a substitute that would have ordered the Attorney General to devise a system to identify felons who seek to purchase handguns. The Brady Amendment incorporated a significant change in the original Feighan bill, eliminating private transfers from the transactions covered by its requirements.
- 08/11/88** — The language of the Brady Amendment was included in the omnibus drug control bill (H.R. 5210, 100th Congress) introduced by the Speaker and the Minority Leader. On the same day the House Rules Committee approved the rule on the bill (H. Res. 521), which allowed floor consideration of two amendments relating to the waiting period provisions: one by Representative McCollum to substitute a provision directing the Attorney General to develop a felon identification system to be used for checking on a prospective handgun buyer, and the other by Representative Volkmer—to be offered only if the first one failed—to strike the section.
- 09/15/88** — House voted (228 to 182) to replace the Brady Amendment provisions of H.R. 5210 with the McCollum amendment to require a study of the feasibility of a felon identification system for handgun purchases and a proposal for its implementation.
- 09/22/88** — House passed H.R. 5210, an omnibus drug control bill containing the above-described McCollum amendment.
- 11/18/88** — President Reagan signed H.R. 5210, the Anti-Drug Abuse Act of 1988 (P.L. 100-690), containing a number of provisions relating to

firearm regulation or to crimes involving firearms (including one requiring the Attorney General to develop and propose to Congress a system accessible to gun dealers that would facilitate the identification of felons who attempt to purchase firearms).

- 01/04/89 — H.R. 467 (101st Congress), the "Brady Handgun Violence Prevention Act," was introduced by Representative Feighan and 152 cosponsors.
- 04/05/89 — House Subcommittee on Crime began two days of hearings on a number of firearm control bills, including the Brady Bill (H.R. 467). The hearings were principally devoted to proposals for further restrictions on semiautomatic military-style long guns and certain semiautomatic handguns.
- 06/22/89 — Senator Metzenbaum introduced the Brady Bill in the Senate (S. 1236).
- 11/21/89 — Hearings on S. 1236 were held by the Senate Subcommittee on the Constitution.
- 06/26/90 — An amended version of H.R. 467 was approved by the House Subcommittee on Crime and forwarded to the full Judiciary Committee.
- 07/24/90 — H.R. 467, amended, was approved (27 to 9) and ordered to be reported by the House Committee on the Judiciary. A substitute amendment offered by Representative McCollum was defeated 12-24; it would have required states to spend 5% of their federal anti-crime funds to keep criminal justice records and to develop a "point of purchase" verification system allowing gun dealers to make an immediate check on the criminal record of a prospective handgun buyer.
- 09/10/90 — H.R. 467 was reported to the House (H.Rept. 101-691) and placed on Union Calendar No. 431. No further action was taken in the 101st Congress.
- 05/08/91 — H.R. 7, amended, was passed by the House, which defeated a substitute proposal ("Staggers bill") allowing for a point-of-purchase check by the dealer through calling a designated central registry of available criminal records.
- 07/11/91 — An omnibus crime control bill (S. 1241) was passed by the Senate; a title called the Brady Handgun Violence Prevention Act was described by sponsors as a compromise reflecting the positions of both those calling for a waiting period and those who want any screening to be conducted at the point of purchase. A two-phase program would be established.

- 10/22/91 — An omnibus crime control bill (H.R. 3371) was passed by the House, with one title duplicating the provisions of the previously passed H.R. 7.
- 11/21/91 — The Senate passed H.R. 3371 with the contents of S. 1241 substituted.
- 11/27/91 — A House-Senate conference agreement on H.R. 3371, containing the Senate version of the Brady Bill, was approved by the House. A failed cloture motion prevented a Senate vote.
- 03/19/92 — A second motion to close Senate debate on the conference report on H.R. 3371 was unsuccessful.
- 10/02/92 — Senate leaders made a final, unsuccessful effort to bring the conference report on H.R. 3371 to a floor vote.
- 02/22/93 — Representative Schumer introduced H.R. 1025, Senator Metzenbaum introduced S. 414.
- 11/10/93 — House passed H.R. 1025, roll call vote of 238 yeas, 189 nays.
- 11/19/93 — Senate began consideration of S. 414, failed to invoke cloture (57 yeas, 42 nays).
- 11/20/93 — Senate approved H.R. 1025, 63 yeas, 36 nays, and inserted text of S. 414.
- 11/22/93 — Conferees approved conference report (House Report 103-412).
- 11/23/93 — House approved conference report, roll call vote 238 yeas, 187 nays.
- 11/24/93 — Senate approved conference report under unanimous consent agreement. Senator Dole introduced S. 1785 to amend the Brady Act.
- 11/30/93 — President Clinton signed H.R. 1025 (P.L. 103-159).
- 08/26/94 — Enactment of supplemental FY1994 funding that included \$100 million for grants authorized by the Brady Act.
- 02/27/95 — The BATF published final rule implementing the Brady Act (60 FR 10782-88).
- 02/28/95 — The BATF published the *One-Year Progress Report* on the Brady Act.
- 01/25/96 — The General Accounting Office published a report on implementation of Phase I of the Brady Act. See *Gun Control: Implementation of the Brady Handgun Violence Prevention Act*, GAO/GGD-96-22.

- 02/29/96** — The Clinton Administration released a second report on the Brady Act, noting that over 60,000 firearm sales were prevented. Others contended that very few people had been prosecuted under the Act.
- 12/03/96** — The Supreme Court heard oral arguments on the constitutionality of the Act (*Printz v. United States*).
- 06/27/97** — In the *Printz* decision (No. 95-1478), the Supreme Court held unconstitutional the Brady Act provisions requiring non-federal law enforcement officials to conduct background checks on handgun purchases from licensed dealers. The court declined to rule on severability since no firearms dealer was a plaintiff in the case. In a concurring opinion, Justice O'Connor noted that such non-federal officials may voluntarily conduct background checks. All of the lower federal courts that previously considered the challenges to the Act held the background check requirements severable from the remainder of the Act, a finding not challenged by the Supreme Court. Therefore, other parts of the Act remain in force.

crsphpgw