

October 1, 2004

Dear Sir,

To refresh your memory, the city police is requiring all retail firearm sales within the city to be registered with the city police. This registration is contrary to the McClure-Volkmer Act, also known as the Firearm Owners Protection Act of 1986, the Tiahrt Amendment. I brought this matter to the attention of Mr. Kuhn, the Chief of Police, and the Mayor. Mr. Kuhn asked if I would kindly find these laws and send him a copy. As you can tell from my previous communications, I have diligently been trying to fulfill his request.

Inclosed you will find that aspect of the McClure-Volkmer Act that the city is in direct violation. You will also see from the reading that the Brady Law also prohibits the retention of the data that the police department is now requiring.

I'll continue to try to find the entire law as requested.

Thank you,

Harold T. Pack

Gun Owners of America, a not-for-profit grassroots membership organization representing over 300,000 American gun owners, submits the following comments to Attorney General John Ashcroft with respect to the proposed revised policy concerning retention of NICS records.

In short, we believe that ANY retention of records of firearms owners or purchasers is a violation of the McClure-Volkmer Firearms Owners Protection Act and of other provisions of law.

We do, however, believe that the proposed one-day retention period is less unlawful than -- and therefore a significant improvement over -- the Clinton-era efforts to retain records for 90 and/or 180 days. Therefore, we commend you for taking a step in the right direction.

18 U.S.C. 926 (a)(3) provides, in part:

No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established.

The Brady Law itself, at 18 U.S.C. 922 (t)(2), requires that "[i]f receipt of a firearm would not violate subsection 922(g) or (n) or State law, the system shall ... destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer."

It is important to note that the Brady Law explicitly prohibits the retention of records for the "fraud-related purposes" proposed by the Clinton administration -- or even the one-day period envisioned by the proposed revised policy. In fact, had proponents of the Brady Bill publicized the fact that the system might be abused in the manner supposedly addressed by the retention period, it is unlikely that the bill could have achieved passage.

Since that time, the Senate has repeatedly gone on record as favoring the "immediate" destruction of the Brady records -- first, in connection with the Smith Amendment, adopted with 69 votes, and subsequently in connection with committee language inserted in successive appropriations bills.

It is not surprising that a Clinton administration which held the law in contempt would ignore the statutory restrictions on the FBI's authority in order to retaliate against the Second Amendment community for its decisive support of anti-Clinton congressional candidates in the 1994 elections.

The American people punished the Clinton camp for its lawlessness and lack of ethics by delivering control of the White House and both Houses of Congress to the Republicans in the 2000 elections.

We, however, have a right to expect better things from George W. Bush and his administration.

We would ask, first, that you consider eliminating entirely the unlawful retention of Brady records. If, in fact, persons are accessing the system unlawfully for illegitimate purposes, this is a problem which needs to be addressed in some other manner.

Second, we would ask that you review your system to insure that information concerning gun owners and firearms transactions is not being retained in any manner whatsoever which would allow it to be retrieved under current technology -- or even under some technology not yet available. This would include, for instance, a review of your "backup" policies.

And finally, because of the increasing militarization of law enforcement in this country, and the growing catalog of FBI and BATF abuses against the civil and constitutional rights of American citizens such as the [redacted] and [redacted] tragedies, and the subsequent cover-ups, we feel compelled to take this opportunity to reiterate on the absurdity of the FBI and BATF having additional authority over the lives of law-abiding [redacted] and have lost the trust and confidence of [redacted]

COMMENTS OF GUN OWNERS OF AMERICA WITH RESPECT TO THE DEPARTMENT OF JUSTICE PROPOSED REVISED RECORD RETENTION POLICY UNDER THE BRADY LAW

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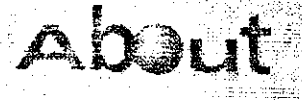
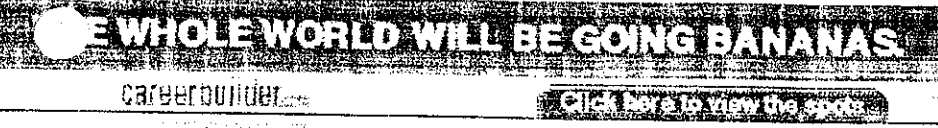
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The Brady Handgun Control Act

Public Law 103-159
 H.R. 1025 - 103rd Congress

Gun Control Online Debate Read or join in a free online forum dedicated to the gun control.

AT THE FIRST SESSION Begun and held at the City of Washington on Tuesday, the fifth day of January, one thousand nine hundred and ninety-three

An Act

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

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

TITLE I--BRADY HANDGUN CONTROL

SEC. 101. SHORT TITLE.

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

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

(a) INTERIM PROVISION-

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

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

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

(i) the transferor has--

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(3) the current revitalization initiatives by the Federal Bureau of Investigation for technologically advanced fingerprint and criminal records identification.

(d) **NOTIFICATION OF LICENSEES-** On establishment of the system under this section, the Attorney General shall notify each licensee and the chief law enforcement officer of each State of the existence and purpose of the system and the means to be used to contact the system.

(e) **ADMINISTRATIVE PROVISIONS-**

(1) **AUTHORITY TO OBTAIN OFFICIAL INFORMATION-** Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate subsection (g) or (n) of section 922 of title 18, United States Code or State law, as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system.

(2) **OTHER AUTHORITY-** The Attorney General shall develop such computer software, design and obtain such telecommunications and computer hardware, and employ such personnel, as are necessary to establish and operate the system in accordance with this section.

(f) **WRITTEN REASONS PROVIDED ON REQUEST-** If the national instant criminal background check system determines that an individual is ineligible to receive a firearm and the individual requests the system to provide the reasons for the determination, the system shall provide such reasons to the individual, in writing, within 5 business days after the date of the request.

(g) **CORRECTION OF ERRONEOUS SYSTEM INFORMATION-** If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate subsection (c) or (n) of section 922 of title 18, United States Code or State law, the prospective transferee may request the Attorney General to provide the prospective transferee with the reasons therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The prospective transferee may submit to the Attorney General information to correct, clarify, or supplement records of the system with respect to the prospective transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to the prospective transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

(h) **REGULATIONS-** After 90 days' notice to the public and an opportunity for hearing by interested parties, the Attorney General shall prescribe regulations to ensure the privacy and security of the information of the system established under this section.

(i) **PROHIBITION RELATING TO ESTABLISHMENT OF REGISTRATION SYSTEMS WITH RESPECT TO FIREARMS-** No department, agency, officer, or employee of the United States may--

(1) require that any record or portion thereof generated by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited by section 922 (g) or (n) of title 18, United States Code or State law, from receiving a firearm.

(j) **DEFINITIONS.** As used in this section: