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## The Brady Act in Alaska

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Gun control—especially keeping handguns out of the wrong hands—has been a reoccurring theme across America in the last three decades. In the wake of school shootings in places like Alaska, Kentucky, Arkansas, and most recently Colorado and Georgia, the public has expressed outrage over the perceived inability of law enforcement to keep guns out of the hands of potential killers. Polls and surveys all show that growing numbers of the public feel that tougher gun laws are the most effective way to curb the violence, not just in schools but in general.

Will tougher laws solve the problem? In order to ascertain the extent to which gun laws need to be strengthened, it is necessary to look at how the current laws are administered. The Brady Handgun Violence Protection Act (18 U.S.C. 922) was enacted after the assassination attempt on President Reagan, in which his press secretary, James Brady, was shot and paralyzed. The assassination attempt riveted public attention in 1981, but it had been preceded by years of growing public perception of the dangers associated with handguns. Finally enacted in 1994, as an addition to the Gun Control Act of 1964, the Brady Act expressly prohibits the sale of handguns to individuals who fall under certain classifications.

By keeping guns out of the hands of criminals and others deemed to be potentially dangerous, the Brady Act was to have

been a major step toward reducing gun violence in America. The act set out specific conditions under which an individual could purchase a handgun. The individual must be a resident of the state in which the handgun is being purchased and must be at least eighteen years of age. The individual cannot fall under any of nine prohibited categories:

- those who are under indictment for or have been convicted of a felony
- fugitives from justice
- unlawful users of or those addicted to a controlled substance
- those adjudicated as mental defectives or committed to a mental institution
- illegal aliens
- those who have dishonorable discharges from the military
- those who have renounced their United States citizenship
- those who are subject to a restraining order
- those who have been convicted of a misdemeanor crime of domestic violence.

Under the act, law enforcement has five days to complete a background check after an individual makes formal application to purchase a handgun.

But how well does the act really work? Administration of an act such as this is depends on the data available and the methods of enforcement. To assess whether the Brady Act is working in Alaska it is necessary to look at two areas—training of the individuals responsible for compiling background checks on applicants and the results of applicant denials.

In August 1998, the Justice Center began a project to determine the effectiveness of the provisions of the Brady Act in Alaska. To accomplish this, we divided the project into two parts. The first was to determine if the procedures and definitions used by each Chief Law Enforcement Officer (CLEO) in the state were uniform when determining the eligibility of each applicant for handgun

purchase and if the procedures met the demands of the Brady Act. The second part looked at denied applicants from the Anchorage Police Department to determine the reasons for denial and the effectiveness of the background check in keeping handguns out of the hands of prohibited persons. (Anchorage was the only city that had an adequate number of denied applications available for analysis). Given the low population numbers of both CLEOs and denied applications, we are unable to do any statistical comparisons. However, a description of what we found shows areas that may require further study.

To determine the effectiveness of training and the overall knowledge of the Brady Act, we designed and conducted a telephone survey with all 38 Chief Law Enforcement Officers (CLEO) across the state. Chief Law Enforcement Officers are the authorities responsible for making the decision to approve or deny an application—in Alaska, usually the police chief in the nearest local hub community or the Alaska State Trooper in a given region. Each officer was asked to have all training materials handy during the interview. The telephone survey was divided into three sections: training, knowledge of Brady requirements, and opinions. Information was also collected on each interviewee: age, race, rank, certifications (if any), type of department, number of years in law enforcement, number of years processing background checks, average number of applications processed per month and length of time in the community.

### Training

In looking at training we were chiefly concerned with how much guidance was received prior to and after the commencement of Brady; how adequate the training was for each officer; and what training materials were provided to guide the process.

Uniformity of procedures and definitions

*Please see **Brady in Alaska**, page 6*

### HIGHLIGHTS INSIDE THIS ISSUE

- An opinion on the Brady Act's implementation (page 2).
- The Bureau of Justice Statistics discusses capital punishment in 1997 (page 3).
- An international perspective on the death penalty (page 4).

## A Viewpoint

# Notes on the Brady Bill

Lawrence C. Trostle

An argument in vogue is that one of the best ways of reducing interpersonal violence, homicides, suicides and accidental deaths is to control the instruments of violence, which all too often are handguns. The “Brady Act” has been the most publicized legislative attempt to control the sales of handguns.

The act is altruistic, complex and controversial. Many Americans see the legislation as an infringement on their constitutional right to bear arms, while others see the act as a necessary societal step in controlling instruments of violence. What I have discovered to be problematic, in a two-and-a-half year study of the Brady Act in Alaska, is twofold: first, there were problems with the conceptualization of the policy which led to the legislation, and second, there have been problems with the administration of the policy as embodied in the act.

### Problems with Conceptualization of the Act

The major flaw with the act is that the law cannot do what it was intended to do. This is not to say that the act does not have merit, but rather that it was not conceptualized from an application perspective before it was drafted. Significant implications of the legislation do not seem to have been considered.

As written, the Brady Act restricts nine classifications of individuals from purchasing handguns: those who are under indictment for or are convicted of a felony; fugitives from justice; unlawful users of or those addicted to a controlled substance; and those adjudicated as mental defectives or committed to a mental institution; illegal aliens; those who have dishonorable discharges from the military; those who have renounced their United States citizenship; those who are subject to a restraining order or have been convicted of a misdemeanor crime of domestic violence. Most people would argue that substance abusers, persons that are the subject to domestic violence restraining orders, the mentally infirm and felons should not have ready access to over-the-counter handguns. The policy has face validity; however, its provisions are problematic. How does a free society identify the individuals who fall into the restricted classifications? To implement the law, law enforcement personnel must be able to identify these people when they do a background

check. But how do they do this?

As an example of the problems involved in identifying individuals for the purposes of the law’s enforcement, I shall discuss in particular the category of those who have been involuntarily committed to a mental institution. In Alaska, the Superior Court determines whether a person shall be involuntarily committed. One might think that all that would be needed is for the court system to create a data base on involuntarily-committed individuals which law enforcement agencies could then access. However, even if it were possible for the court system to create a new data base and enter and delete information on a regular basis, identifying individuals would still be problematic. First, state and federal statutes limit access to such information. For example, 42 USC 9501(H) states that the mentally ill have “the right to confidentiality of such ... records.” This barrier to access also applies to law enforcement agencies. In addition, the Alaska Constitution (Art I, sec 22) guarantees a right to privacy, and the guarantee is supplemented more specific Alaska statutes pertaining to confidentiality of certain personal records.

A second issue which arises is that this classification only pertains to people who have been *involuntarily* committed to a mental institution. In Alaska, if a person is involuntarily committed to a mental institution and, at any time thereafter, elects to change his institutional classification from involuntary to voluntary, he is legally eligible to do so. As soon as a person changes the commitment status from involuntary to voluntary, the involuntary commitment records are expunged. Such a person would not be subject to the Brady restrictions upon release because the status of commitment would be voluntary and not involuntary.

As complicated as the issue of tracking involuntary mental commitments is, it pales when compared to the problems presented by other restricted classifications.

To identify individuals in the nine restricted classifications on anything more than an occasional basis would require intrusive measures. Federal and state laws would have to be modified to allow for the

capture and retention of information on individuals in the restricted groups. This could only be done at tremendous cost – both monetary and social – with the potential loss of freedoms and privacy.

### Problems with Administration of the Policy

The writers of the Brady Act and others at the federal level do not appear to have supported participatory management in drafting the act. There was little, if any, input from those at the state level who would implement it. The who, how, why, what and when seem to have been decided upon by those who would not have any hands-on responsibility. This shortcoming is where the Brady Act really appears to have broken down.

One major problem with the implementation of the Brady Act in Alaska has been a dearth of training. Exactly what each of the nine categories means and the exact criteria for disqualification were generally either not understood or misunderstood by individuals at the state level responsible for doing actual background checks. Some Alaska agencies have stated that the federal government left them to their own devices in interpreting the legislation. The failure to assure that everyone was properly trained at the outset of the program, as discussed in the accompanying article “The Brady Act in Alaska,” meant that everyone involved in the implementation of the policy began on a different footing.

Planning, as a future-oriented management function, is perhaps the most cerebral aspect of management. If legislation such as Brady is to be effective and efficient in assisting us in dealing with issues such as interpersonal violence and homicides, it needs to be more thoroughly thought out prior to its codification, and everyone involved needs to be adequately trained in every aspect of its implementation.

*Lawrence C. Trostle is an Associate Professor with the Justice Center. He directed a recently-completed examination of data sources related to the provisions of the Brady Act.*

## Gun Control Resources on the Web

Internet resources reflecting a spectrum of research and positions on gun control issues are available through the Justice Center Web Site page on crime prevention, <http://www.uaa.alaska.edu/just/links/crimepre.html>.

## A BJS Report

## Capital Punishment in the U.S. in 1997

Table 1. Status of the Death Penalty, December 31, 1997

Executions during 1997		Number of prisoners under sentence of death		Jurisdictions without a death penalty	
Texas	37	California	486	Alaska	
Virginia	9	Texas	438	District of Columbia	
Missouri	6	Florida	370	Hawaii	
Arkansas	4	Pennsylvania	214	Iowa	
Alabama	3	Ohio	177	Maine	
Arizona	2	North Carolina	176	Massachusetts	
Illinois	2	Alabama	159	Michigan	
South Carolina	2	Illinois	159	Minnesota	
Colorado	1	Oklahoma	137	North Dakota	
Florida	1	Arizona	120	Rhode Island	
Indiana	1	Georgia	115	Vermont	
Kentucky	1	Tennessee	98	West Virginia	
Louisiana	1	Missouri	88	Wisconsin	
Maryland	1	Nevada	87		
Nebraska	1	Louisiana	70		
Oklahoma	1	South Carolina	68		
Oregon	1	Mississippi	64		
		18 other jurisdictions	309		
<b>Total</b>	<b>74</b>	<b>Total</b>	<b>3,335</b>		

Source: Bureau of Justice Statistics

According to figures released by the Bureau of Justice Statistics, seventeen states executed 74 prisoners in 1997. The number executed was 29 greater than in 1996 and was the largest annual number since the 76 executed in 1955. The prisoners executed during 1997 had been under sentence of death an average of 11 years and 1 month, 8 months more than that for inmates executed in 1996.

At the end of 1997, 3,335 prisoners were under sentence of death. California held the largest number on death row (486), followed by Texas (438), Florida (370), and Pennsylvania (214). Fifteen prisoners were under a federal sentence of death.

After ruling in 1972 that the death penalty was unconstitutional as it was then legislated, in 1976 the Supreme Court upheld revised state capital punishment laws. Between January 1, 1977 and December 31, 1997, twenty-nine states had executed 432 people.

Nearly two-thirds of the executions occurred in five states: Texas (144), Virginia (46), Florida (39), Missouri (29), and Louisiana (24).

At the end of 1997 the death penalty was authorized by the statutes of 38 states and by federal statute. During 1997 there were no successful challenges to the constitutionality of state death penalty laws, and no state enacted any new legislation authorizing capital punishment.

During 1997, 74 men were executed. Of those executed, 41 were non-Hispanic

whites; 26 were non-Hispanic blacks; 4, white Hispanics; 1, black Hispanic; 1, American Indian; and 1, Asian. Sixty-eight of the executions were carried out by lethal injection, and 6 by electrocution.

#### Automatic Review

Of the 38 states with capital punishment statutes at the end of 1997, 36 provided for review of all death sentences regardless of the defendant's wishes. Arkansas had no specific provisions for automatic review. The federal death penalty procedures did not provide for automatic review after a sentence of death had been imposed. In South Carolina the defendant had the right to waive sentence review if the defendant was deemed competent by the court. In Mississippi the question of whether a defendant could waive the right to automatic review of the sentence had not been addressed, and in Wyoming neither statute nor case law clearly precluded a waiver of appeal.

While most of the 36 states authorized an automatic review of both the conviction and sentence, Idaho, Indiana, Oklahoma, and Tennessee required review of the sentence only. In Idaho review of the conviction had to be filed through appeal or forfeited. In Indiana and Kentucky a defendant could waive review of the conviction.

The review is usually conducted by the state's highest appellate court regardless of the defendant's wishes. If either the conviction or the sentence is vacated, the case

can be remanded to the trial court for additional proceedings or for retrial. As a result of retrial or resentencing, the death sentence can be reimposed.

#### Minimum Age

In 1997 eight jurisdictions did not specify a minimum age for which the death penalty could be imposed.

In some states the minimum age was set forth in the statutory provisions that determine the age at which a juvenile may be transferred to criminal court for trial as an adult. Fourteen states and the federal system required a minimum age of 18. Sixteen states indicated an age of eligibility between 14 and 17.

This article was adapted from the BJS bulletin "Capital Punishment 1997," NCJ 172881.

Table 2. Demographic Characteristics of Prisoners Under Sentence of Death, 1997

	Percentage of prisoners
<b>Sex</b>	
Male	98.7 %
Female	1.3
<b>Race</b>	
White	56.3 %
Black	42.2
Other*	1.6
<b>Hispanic origin</b>	
Hispanic	9.2 %
Non-Hispanic	90.8
<b>Education</b>	
8th grade or less	14.2 %
9th-11th grade	37.6
High school graduate/GED	38
Any college	10.1
Median	11th grade
<b>Marital status</b>	
Married	24.5 %
Divorced/separated	21.3
Widowed	2.6
Never married	51.5
<b>Total number under sentence of death</b>	<b>3,335</b>

Note: Calculations are based on those cases for which data were reported. Missing data by category were as follows:

Hispanic origin	258
Education	504
Marital status	304

\*At yearend 1996, "other" consisted of 25 American Indians, 18 Asians, and 8 self-identified Hispanics.

Source: Bureau of Justice Statistics

## International Data on the Death Penalty

According to the most recent figures assembled by Amnesty International, more than half the countries in the world no longer use the death penalty. The international human rights organization, which opposes the death penalty, regularly gathers and publishes data on its status and use throughout the world. In February 1999, the division between abolitionist and retentionist countries was as follows:

- 67 countries and territories have abolished the death penalty for all crimes;
- 14 countries have abolished it for all but exceptional crimes such as certain offenses committed during time of war;
- 23 countries can be considered to be abolitionist *de facto*, because although they retain the death penalty in law, they have not carried out executions for the past ten years or more;

- 91 countries retain and use the death penalty.

During 1997, the last year for which figures are available, at least 2607 persons were executed in 40 countries and 4363 sentenced to death in 69 countries. These numbers include only the cases which can be verified by Amnesty International. The

*Please see **Death Penalty**, page 6*

**Table 1. Countries Which Retain the Death Penalty, 1999**

**Countries and territories whose laws retain the death penalty for ordinary crimes (91 countries).**

Most of these countries and territories are known to have carried out executions in the past 10 years. On some countries Amnesty International is unable to ascertain whether or not executions have taken place. Several countries have carried out executions in the past 10 years but have since instituted national moratoria on executions.

Afghanistan	Equatorial Guinea	Latvia	Sierra Leone
Algeria	Eritrea	Lebanon	Singapore
Antigua and Barbuda	Ethiopia	Lesotho	Somalia
Armenia	Gabon	Liberia	Sudan
Bahamas	Ghana	Libya	Swaziland
Bahrain	Guatemala	Malawi	Syria
Bangladesh	Guinea	Malaysia	Taiwan (Republic of China)
Barbados	Guyana	Mauritania	Tajikistan
Belarus	India	Mongolia	Tanzania
Belize	Indonesia	Morocco	Thailand
Benin	Iran	Myanmar	Trinidad and Tobago
Botswana	Iraq	Nigeria	Tunisia
Burkina Faso	Jamaica	Oman	Turkmenistan
Burundi	Japan	Pakistan	Uganda
Cameroon	Jordan	Palestinian Authority	Ukraine
Chad	Kazakhstan	Philippines	United Arab Emirates
Chile	Kenya	Qatar	United States of America
China (People's Republic)	Korea (Democratic People's Republic)	Russian Federation	Uzbekistan
Comoros	(North Korea)	Rwanda	Vietnam
Congo (Democratic Republic)	Korea (Republic) (South Korea)	Saint Christopher and Nevis	Yemen
Cuba	Kuwait	Saint Lucia	Yugoslavia (Federal Republic)
Dominica	Kyrgyzstan	Saint Vincent and the Grenadines	Zambia
Egypt	Laos	Saudi Arabia	Zimbabwe

**Countries and territories considered "abolitionist de facto" (23 countries).**

Amnesty International considers these countries to be "abolitionist de facto" because they have not executed anyone during the past 10 or more years or have made an international commitment not to carry out executions. The date of last execution is given in parentheses, if available.

	Date of last execution		Date of last execution		Date of last execution		Date of last execution
Albania		Cote D'Ivoire (Ivory Coast)		Mali	1980	Suriname	1982
Bermuda	1977	Djibouti	I	Nauru	I	Togo	
Bhutan	1964 K	Gambia	1981	Niger	1976 K	Tonga	1982
Brunei Darussalam	1957	Grenada	1978	Papua New Guinea	1950	Turkey	1984
Central African Republic	1981	Madagascar	1958 K	Senegal	1967	Western Samoa	I
Congo (Republic)	1982	Maldives	1952 K	Sri Lanka	1976		

I = No executions since independence.

K = Date of last known execution.

**Source of data:** Amnesty International, "The Death Penalty: List of Abolitionist and Retentionist Countries," February 1999, <http://www.amnesty.org/ailib/intcam/dp/abrelist.htm>.

**Table 2. Countries Which Have Abolished the Death Penalty, 1999**

**Countries and territories whose laws do not provide for the death penalty for any crime (67 countries).**

Country	Date of last execution	Date abolished for		Country	Date of last execution	Date abolished for	
		ordinary crimes	all crimes			ordinary crimes	all crimes
Andorra	1943		1990	Macedonia			
Angola			1992	Marshall Islands	I		
Australia	1967	1984	1985	Mauritius	1987		1995
Austria	1950	1950	1968	Micronesia (Federated States)	I		
Azerbaijan	1993		1998	Moldova			1995
Belgium	1950		1996	Monaco	1847		1962
Bulgaria	1989		1998	Mozambique	1986		1990
Cambodia			1989	Namibia	1988 K		1990
Canada	1962	1976	1998	Nepal	1979	1990	1997
Cape Verde	1835		1981	Netherlands	1952	1870	1982
Columbia	1909		1910	New Zealand	1957	1961	1989
Costa Rica			1877	Nicaragua	1930		1979
Croatia			1990	Norway	1948	1905	1979
Czech Republic			1990 *	Palau			
Denmark	1950	1933	1978	Panama	1903 K		
Dominican Republic			1966	Paraguay	1928		1992
Ecuador			1906	Poland	1988		1997
Estonia	1991		1998	Portugal	1849 K	1867	1976
Finland	1944	1949	1972	Romania	1989		1989
France	1977		1981	San Marino	1468 K	1848	1865
Georgia	1994 K		1997	Sao Tome and Principe	I		1990
Germany			1987 **	Slovakia			1990 *
Greece	1972		1993	Slovenia			1989
Guinea-Bissau	1986 K		1993	Solomon Islands	I	1966	
Haiti	1972 K		1987	South Africa	1991	1995	1997
Honduras	1940		1956	Spain	1975	1978	1995
Hungary	1988		1990	Sweden	1910	1921	1972
Iceland	1830		1928	Switzerland	1944	1942	1992
Ireland	1954		1990	Tuvalu	I		
Italy	1947	1947	1994	Uruguay			1907
Kiribati	I			Vanuatu	I		
Liechtenstein	1785		1987	Vatican City State			1969
Lithuania	1995		1998	Venezuela			1863
Luxembourg	1979		1979				

**Countries whose laws provide for the death penalty only for exceptional crimes, such as crimes under military law or crimes committed in exceptional circumstances such as wartime (14 countries).**

Country	Date of last execution	Date abolished for		Country	Date of last execution	Date abolished for	
		ordinary crimes	all crimes			ordinary crimes	all crimes
Argentina		1984		Fiji	1964	1954	
Bolivia	1974	1997		Israel	1962	1971	
Bosnia-Herzegovina		1997		Malta	1943		
Brazil	1855	1979		Mexico	1937		
Cook Islands				Peru	1979	1979	
Cyprus	1962	1983		Seychelles	I		
El Salvador	1973 K	1979		United Kingdom	1964	1973	

I = No executions since independence.

K = Date of last known execution.

\* The last execution in the Czech and Slovak Federal Republic took place in 1988; the death penalty was abolished there in 1990. On January 1, 1993 the Czech and Slovak Federal Republic divided into two states, the Czech Republic and the Slovak Republic.

\*\* The last execution in the Federal Republic of Germany (FRG) took place in 1949; the death penalty was abolished there in 1949. The date of the last execution in the German Democratic Republic (GDR) is not known; the death penalty was abolished there in 1987. The FRG and the GDR were unified in October 1990.

**Source of data:** Amnesty International, "The Death Penalty: List of Abolitionist and Retentionist Countries," February 1999, <http://www.amnesty.org/ailib/intcam/dp/abrelist.htm>.

**Table 3. International Treaties on the Death Penalty, 1997**

Parties and unratified signatories to anti-death penalty treaties as of December 31, 1997.

<b>International Treaty</b>	<b>Sponsoring body</b>	<b>State parties to the treaty</b>	<b>States which have signed but not yet ratified</b>
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	United Nations	Australia, Austria, Croatia, Denmark, Ecuador, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Luxembourg, Macedonia, Malta, Mozambique, Namibia, Netherlands, New Zealand, Norway, Panama, Portugal, Romania, Seychelles, Slovenia, Spain, Sweden, Switzerland, Uruguay, Venezuela	Belgium, Costa Rica, Honduras, Nicaragua
Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty	Council of Europe	Andorra, Austria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Macedonia, Malta, Moldova, Netherlands, Norway, Portugal, Romania, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland	Belgium, Estonia, Greece, Russia, Ukraine
Protocol to the American Convention on Human Rights to Abolish the Death Penalty	Organization of American States	Brazil, Panama, Uruguay, Venezuela	Costa Rica, Ecuador, Nicaragua

**Source:** Amnesty International, "The Death Penalty Worldwide: Developments in 1997," April 1998.

<http://www.amnesty.org/ailib/intcam/dp/develop97.htm>.

## **Death Penalty** (continued from page 4)

organization believes that the true figures would be higher.

Four countries accounted for 85 per cent of all executions officially recorded by the organization: China (1876), Iran (143), Saudi Arabia (122), and the United States (74). The organization also received reports of hundreds of executions in Iraq but could not verify most of these reports.

## **Brady in Alaska** (continued from page 1)

is essential in guaranteeing that all persons prohibited from purchasing firearms are recognized during background checks. On a national scale this requires that extensive amounts of information be generated and distributed to all those responsible for accomplishing this mandate. Definitions need to be spelled out so that those conducting background checks can insure all prohibited persons are identified, and procedures need to be standardized to assure that all aspects of the act are covered.

In spite of the fact that procedures had not been developed at the national level (the act itself states that the CLEOs only make a reasonable effort to determine eligibility), the application process was the same for most areas in Alaska. Once the dealer had submitted a copy of the application form (this was usually done by fax, although some agencies required they be mailed), a background check was processed that usually

According to Amnesty International, the death penalty is rarely reinstated once it has been abolished. Since 1985, only four countries have reintroduced the death penalty and of those four, one—Nepal—later abolished it again.

### **Execution of Juveniles**

More than 100 countries have laws which specifically prohibit the execution of juvenile offenders or are parties to one or

another of the international human rights treaties which prohibit the use of the death penalty against anyone who was under 18 years old at the time of the crime.

From 1990 to 1998 six countries are known to have executed prisoners who were under 18 at the time of the offense: Iran, Nigeria, Pakistan, Saudi Arabia, the United States and Yemen. The United States executed the highest number of juvenile offenders during that period—10 since 1990, according to Amnesty International.

included accessing both the APSIN (Alaska Public Safety Information Network) and the NCIC (National Crime Information Center) criminal history files. The CLEO was given five days in which to make a decision on approval.

Information dissemination was another matter. Although the federal government, through the Alaska Department of Public Safety, tried to make sure that information was distributed to those responsible for background checks, some CLEOs were left out. For example, in November 1993, the Bureau of Alcohol, Tobacco and Firearms and the Federal Bureau of Investigation held a one-day regional training conference for all registered Federal Firearms Licensed dealers (gun dealers) in Alaska to go over the requirements of the Brady Act. This training conference was open to all, but besides representatives from the Alaska Department of Public Safety and the Anchorage and Seward Police Departments, no law enforcement agency we contacted stated that they had attended. A few did not attend

because their locations in remote areas of the state made travel too expensive, but the majority of people we talked to had never heard about the conference until we mentioned it during the survey. Most stated that if they had been told about it, they would have attended.

To insure CLEOs were informed of the requirements of Brady, the state was to send copies of the act and memoranda from the Bureau of Alcohol, Tobacco and Firearms to each designated CLEO, but only fifty percent stated that they had received any training materials at all. At no time was any information distributed that gave detailed definitions for each category. For example, the category "persons who are users of or addicted to a controlled substance" was never defined. Some law enforcement agencies did not know whether this meant a person with one or more DWIs should be included in this category. (Receiving three DWIs in a five-year period was considered a felony and hence denied under the first classification.) Yet, when asked, most

CLEOs who had received materials felt that the information they received was adequate for the job they were required to do. Their one complaint was that materials were rarely or never updated. It was up to each department to stay on top of any changes in the law that occurred.

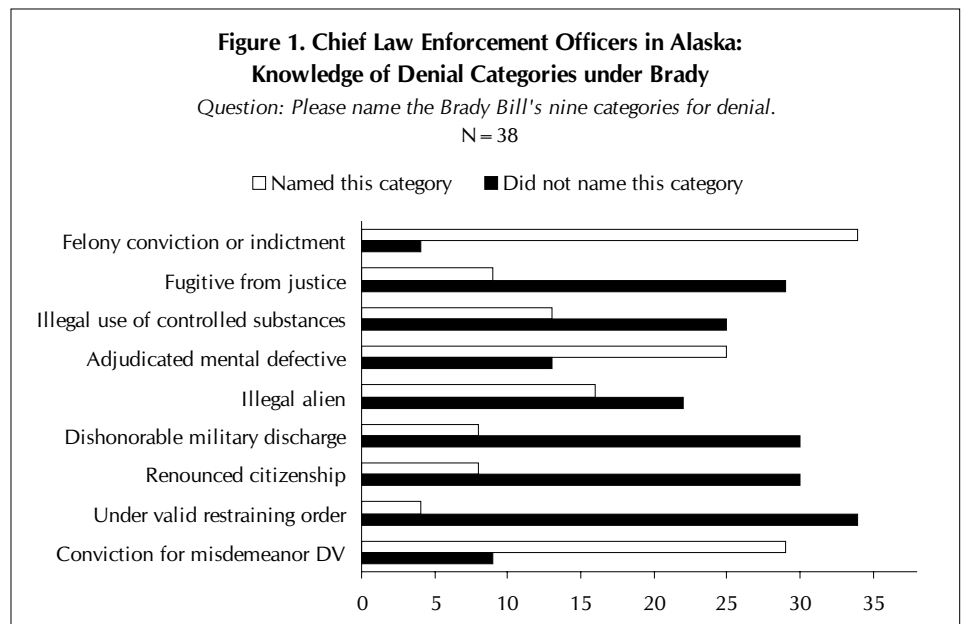
Because of the numerous questions received from the field over the first year, the Bureau of Alcohol, Tobacco and Firearms (ATF) published definitions for each category in June 1996 in the Federal Register, but agencies were not told that they had been published and a full sixty-eight percent of CLEOs in Alaska had not seen or read these revisions.

### Knowledge of Brady

With the exception of those who attended the training conference, learning what was required in Brady was left up to each individual CLEO. Most respondents (71%) said that they felt they had adequate training and understood the requirements of Brady, but when asked during the interview to give the nine categories for denial, most could only name four (mean 3.89) even with training materials in front of them. These are the categories most frequently missed with the corresponding percentages: valid restraining order (90%); dishonorably discharged from the military (79%); renounced citizenship (79%); fugitive from justice (76%); addicted to controlled substances (66%); illegal aliens (58%).

We also asked questions about specific categories. For example, interviewees were asked to think about the category “adjudicated as a mental defective or has been committed to a mental institution.” They were then asked whether a voluntary commitment would be considered grounds for denial. The revised definitions established by the ATF in 1996 specifically state that voluntary commitments are not grounds for denial, yet almost half (47%) felt that it would be, or sometimes would be, grounds for denial.

We then asked whether they had ever called the ATF or the FBI for help. Most (60%) had tried contacting the ATF or the FBI when questions arose, but only 31 percent found them to be any help. Most interviewees felt that even though the ATF or the FBI were “sympathetic” or “friendly,” they provided little or no help. One CLEO responded, “There was no true guidance. Local police departments were placed in a position of decision with no answers or clear guidance.” Another stated that he had contacted the ATF for help but never heard anything back. “I thought, well if I’m doing something wrong I’ll hear about it.” He’s



never received any response.

### Opinions on Brady

The last section of the survey asked the opinions of each CLEO on the effectiveness of the Brady Act in restricting access to handguns by prohibited persons; on what information should be required on the application; and on whether local law enforcement should be responsible for performing background checks. We were especially interested in the last question because a recent change in the law requires gun dealers to contact the new FBI crime information center for approval of any gun purchase (handguns and long guns); state and local law enforcement will no longer be involved. The first question dealt with the effectiveness of Brady. A majority of those we talked to (71%) felt the act was not effective in preventing people from obtaining guns. Most cited the availability of guns from other arenas such as private sales and the “black market” and the lack of available information for some categories.

It should be noted that Brady does not apply to gun sales from unlicensed persons. Private sales between friends or sales from private collections are not covered in the act as it now stands. Someone who wishes to sell a gun that is privately owned has only to place an advertisement in the newspaper. No paperwork needs to be filled out by the buyer and no background check needs to be performed.

Additionally, the lack of data available for some categories makes determining eligibility for a handgun purchase difficult. For instance, even though the number of hospitals that accept involuntary mental commitments in Alaska is finite, the list changes

constantly depending on which hospitals hold the state contracts within any given year. This makes obtaining the data problematic at best. Also, the medical information on these commitments is protected by law and is not available to law enforcement. Even the court system that commits individuals has no way of distributing this information, not only because of the right to privacy for medical information, but also because of the inability of its computer system to interface with others and the lack of personnel to obtain the information manually.

Another question asked was what kind of information should be required on an application to purchase a gun. Currently, the application only requires name, address and date of birth. Other information requested, but not required, includes social security number, place of birth and alien registration number (if applicable). Most (82%) felt that this information should be required on the application. They felt it would insure that the information they received on the background check belonged to the applicant. It also would be helpful in determining what areas of the country to contact for further background information.

The final question dealt with whether the CLEO thought that Brady background checks should be done by local law enforcement rather than federal. More than half (52%) felt checks should be done locally. The reasons given by the respondents were clear. Local law enforcement knows the community. They know who the troublemakers are and can better protect the community by using this knowledge. It was felt that local law

*Please see **Brady in Alaska**, page 8*

## **Brady in Alaska** (continued from page 7)

enforcement loses this ability when the background check is done at a national level given that the FBI does not, in most cases, have access to local records.

### **Application Denials**

To further determine whether Brady is working in Alaska, the Justice Center looked at two factors: the original reasons for denials of handgun purchases in Anchorage and reasons for any subsequent arrests of denied applicants. With the cooperation of the Anchorage Police Department (APD), we were given access to all applications that had been denied by APD between the enactment of Brady in February 1994 and November 1998—a total of 581. (According to figures compiled by DPS, APD handled 25,375 applications over this period. It should be noted that DPS figures and those of APD differ, but this total gives at least a notion of the overall level of applications.) The reasons for the original denials varied, but the majority of denials (82%) fell into four categories: indictment or conviction for a felony, 49.1 per cent (286 of 581); subject to a current restraining order or violation of a restraining order, 7.7 per cent (45 of 581); domestic violence assaults, 14.3 per cent (83 of 581); and outstanding warrants, 10.8 per cent (63 of 581). The warrants included both felony and misdemeanor charges.

In looking at these denials, we wanted to find out if, after the application was denied, the applicants had been arrested for any offenses involving handguns. With the cooperation of the Alaska Department of Public Safety, new APSIN criminal history records starting from the date of denial were

obtained for each applicant denied by APD. It should be noted that we were only able to access criminal histories compiled within the state. We were not able to gain access to any national criminal history database.

Of the 576 names sent to DPS (some individuals applied more than once), 193 (34%) came back with a new criminal history record. The Anchorage Police Department handled 118 of these incidents. The charges ranged from “driving without a license” to “manslaughter.” We selected from the data only those offenses that might have involved the use of weapons. APD allowed access to the police reports for each of these incidents so that we could determine if handguns were used.

A total of 19 incidents involved handguns. The crimes associated with this handgun use were 2 robberies, 8 weapons offenses and 9 assaults (including domestic violence, stalking and road rage). The actual percentage of new incidents was small (3 to 4%) but does indicate that handgun offenses can occur despite the Brady Act. Further study would be necessary to determine when the weapons were obtained and whether the source of these weapons was legal or illegal (i.e. prior ownership, purchased from a gun show, or theft, etc.).

It is not possible to tell whether the Brady Act has reduced handgun crime. We do know that very few persons denied handguns were subsequently charged with a handgun offense.

We also know that CLEOs were not adequately prepared to conduct background checks, because steps were not taken at the national or state level to insure that procedures were uniform, that definitions were clearly spelled out and that information was readily available. Brady’s enforcement has now been switched from the local to national levels, so the problems with its



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administration will change; however, the history of the act and its enforcement do contain some lessons on how to administer national policy at the state and local levels.

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