



**Brady Statute Data:
Persons Who are Subject to a Court Order
Restraining Them from Threatening or Committing
Acts of Domestic Violence or Abuse**

Report submitted to the
Bureau of Justice Statistics
and the
Alaska Department of Public Safety

by

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JC 9615.02

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This project was supported by Grant No. 96-RU-RX-K026 awarded by the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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Persons who are Subject to a Court Order Restraining Them from Threatening or Committing Acts of Domestic Violence or Abuse

Introduction

This project is a component of the National Criminal History Improvement Program (NCHIP). It is funded by the United States Department of Justice, Office of Justice Planning, Bureau of Justice Statistics, grant number 96-RU-RX-K026. The purpose of this Advanced State Awards program (ASAP) project is to determine the feasibility of identifying and assembling information on persons other than felons who are prohibited from purchasing firearms under 18 U.S.C. 922 (g) and (n), as amended by the Violent Crime Control and Law Enforcement Act of 1994. The information on the non-felons covered by the act would be added to the Alaska Public Safety Information Network (APSIN) used by the Alaska Department of Public Safety for background checks prior to the purchase or sale of handguns. The APSIN system was created in the early 1980s as a computerized criminal history database for use by law enforcement agencies across the state.

Unless an arrest has been made, state law enforcement agencies do not obtain any data on three of the following four noncriminal categories prohibited by the above federal law from obtaining guns: adjudicated mental defectives and involuntary mental commitments; aliens illegally in the United States; and those who are an unlawful user of, or addicted to, any controlled substance. Currently, only limited data is collected on the category of individuals subject to a court order restraining them from threatening or committing acts of domestic violence or abuse.

With the advent of new state statutory provisions and an overhaul of the APSIN system with regards to the type of information captured, the amount of data obtained in this last category will increase and will make Brady checks more complete. Also, with additions to the National Crime Information Center federal database (NCIC 2000) and Alaska's participation in supplying data to the national system, presale handgun checks should be easier and more accurate.

This is the second in a series of Alaska Statistical Analysis Unit reports describing how each category can be or is defined within an Alaska context and discussing the possible procedures, problems and solutions associated with data collection. At the conclusion of this project a summary report will be written that will synopsise the four components of the project.

The second of these four noncriminal classifications to be examined is that of **individuals who are subject to a court order restraining them from threatening or committing acts of domestic violence or abuse.**

Background

In recent years Congress has passed new legislation and amended existing legislation that would aid in the detection of domestic violence and help to protect victims once the abuse has occurred. The Violent Crime Control and Law Enforcement Act of 1994 prohibits the sale of handguns to persons who have been convicted of the misdemeanor crime of domestic violence or who are subject to a court order restraining them from threatening or committing acts of domestic violence.

Domestic violence has long been viewed as a national problem and, in Alaska, it has become one of our more serious concerns. Even though we are one of the smallest states based on population, our numbers for assault have skyrocketed. However, unlike numbers for UCR crimes such as aggravated or simple assault, exact numbers for cases of domestic violence statewide are not kept. For estimates of the number of domestic violence cases, one has to turn to private and state social service agencies who provide shelter and counseling for victims of domestic violence, such as Abused Women's Aid In Crisis, Inc. (AWAIC), which keep counts of the number of clients they serve each year. Also, within the Alaska Department of Public Safety, the Council on Domestic Violence and Sexual Assault (CDVSA), which provides funding for various programs and private agencies furnishing services to victims of domestic violence and sexual assault, does track the number of victims of domestic violence who are referred to their funded agencies. However, no agency actually collects data on all domestic violence related incidents statewide. Therefore, there is no way to present a clear picture of the actual number of incidents of domestic violence across the state each year.

The SAFE City Program run by the Municipality of Anchorage, Department of Health and Human Services has attempted to maintain a tally of domestic violence cases reported each year to the Anchorage Police Department. Between the years 1990-1997 the number of reported cases has more than doubled and continue to climb. In 1990, the number of reported cases was 1,760; by 1997 it had risen to 3,818. This is a 117 percent increase over the base year (Table 1).

The number of statewide domestic violence cases that have involved handguns has also never been calculated. CDVSA records do contain general facts about domestic violence assaults but accumulate very little consistent data on whether a weapon was utilized in the assault and, if so, the type of weapon used.

Civil Protection Orders

There are three types of civil protection orders available, Emergency Order, Ex parte Order, and Protective Order. An emergency order is requested by a police officer with the consent of the victim when there is probable cause to believe that the victim is in imminent danger of further

Table 1. Reported Domestic Violence Cases in Anchorage, 1990-1997

	1990	1991	1992	1993	1995	1995	1996	1997
January	118	129	205	256	295	356	241	279
February	115	155	202	246	271	254	208	298
March	141	162	244	288	273	282	318	319
April	188	167	253	256	301	282	332	326
May	161	137	228	264	280	293	318	354
June	135	179	217	314	276	277	295	366
July	170	198	224	309	271	321	303	374
August	133	184	233	285	332	311	317	325
September	137	174	208	301	278	324	270	326
October	161	167	257	216	338	291	294	277
November	134	167	239	236	257	263	280	284
December	167	208	293	270	322	228	307	290
Total	1,760	2,027	2,803	3,241	3,494	3,482	3,483	3,818
Population	226,338	235,893	245,095	251,805	255,422	253,614	254,269	254,849
Population rate	0.78	0.85	1.14	1.29	1.37	1.37	1.37	1.5

Source of data: Figures for cases are based on Anchorage Police Department reports and tallied by the Municipal Department of Health and Social Services SAFE City Program. The population and population rates were added by the Justice Center.

domestic violence. This order may be requested orally or in writing to a judicial officer; it expires in 72 hours.

The court at the request of the victim can issue an ex parte order after establishing probable cause that domestic violence has occurred, without convening a hearing to allow the respondent to answer the allegations. The order expires 20 days after it is issued unless dissolved earlier by the court.

A protective order is issued after a hearing in which both the petitioner and respondent have been given the opportunity to be heard. Depending on the circumstances, this order has a time limit of 6 months but it can be renewed or modified if needed. This is the only type of order that is applicable to the Brady requirements. The Alaska statute reads:

AS 18.66.100. Protective orders: eligible petitioners; relief. (a) A person who is or has been a victim of a crime involving domestic violence may file a petition in the district or superior court for a protective order against a household member. A parent, guardian, or other representative appointed by the court under this section, may file a petition for a protective order on behalf of a minor. The court may appoint a guardian ad litem or attorney to represent the minor. Notwithstanding AS 25.24.310 or this section, the office of public advocacy may not be appointed as a guardian ad litem or attorney for a minor in a petition filed under this section unless the petition has been filed on behalf of the minor.

(b) When a petition for a protective order is filed, the court shall schedule a hearing, and provide at least 10 days' notice to the respondent of the hearing and of the respondent's right to appear and be heard, either in person or by an attorney. If the court finds by a preponderance of evidence that the respondent has committed a crime involving domestic violence against the petitioner, regardless of whether the respondent appears at the hearing, the court may order any relief available under (c) of this section. The provisions of a protective order issued under

(1) (c)(1) of this section are effective until further order of the court;

(2) (c)(2) - (16) of this section are effective for six months unless earlier dissolved by court order.

(c) A protective order under this section may

- (1) prohibit the respondent from threatening to commit or committing domestic violence, stalking, or harassment;
- (2) prohibit the respondent from telephoning, contacting, or otherwise communicating directly or indirectly with the petitioner;
- (3) remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence;
- (4) direct the respondent to stay away from the residence, school, or place of employment of the petitioner or any specified place frequented by the petitioner or any designated household member;
- (5) prohibit the respondent from entering a propelled vehicle in the possession of or occupied by the petitioner;
- (6) prohibit the respondent from using or possessing a deadly weapon if the court finds the respondent was in the actual possession of or used a weapon during the commission of domestic violence;
- (7) direct the respondent to surrender any firearm owned or possessed by the respondent if the court finds that the respondent was in the actual possession of or used a firearm during the commission of the domestic violence;
- (8) request a peace officer to accompany the petitioner to the petitioner's residence to ensure that the petitioner
 - (A) safely obtains possession of the petitioner's residence, vehicle, or personal items; and
 - (B) is able to safely remove a vehicle or personal items from the petitioner's residence;
- (9) award temporary custody of a minor child to the petitioner and may arrange for visitation with a minor child if the safety of the child and the petitioner can be protected; if visitation is allowed, the court may order visitation under the conditions provided in AS 25.20.061;
- (10) give the petitioner possession and use of a vehicle and other essential personal items, regardless of ownership of the items;
- (11) prohibit the respondent from consuming controlled substances;
- (12) require the respondent to pay support for the petitioner or a minor child in the care of the petitioner if there is an independent legal obligation of the respondent to support the petitioner or child;
- (13) require the respondent to reimburse the petitioner or other person for expenses associated with the domestic violence, including medical expenses, counseling, shelter, and repair or replacement of damaged property;
- (14) require the respondent to pay costs and fees incurred by the petitioner in bringing the action under this chapter;
- (15) order the respondent, at the respondent's expense, to participate in (A) a program for the rehabilitation of perpetrators of domestic violence that meets the standards set by the Department of Corrections under AS 44.28.020(b), or (B) treatment for the abuse of alcohol or controlled substances, or both;
- (16) order other relief the court determines necessary to protect the petitioner or any household member.
 - (d) If the court issues a protective order under this section, it shall
 - (1) make reasonable efforts to ensure that the order is understood by the petitioner and by the respondent, if present; and
 - (2) have the order delivered to the appropriate local law enforcement agency for expedited service and for entry into the central registry of protective orders under AS 18.65.540.
 - (E) A court may not deny a petition for a protective order under this section solely because of a lapse of time between an act of domestic violence and the filing of the petition (§ 33 ch 64 SLA 1996)

Civil protection orders have been routinely added to the APSIN system. However, the total number of orders is not available as some have been archived due to the expiration of the order. The way information is captured in APSIN creates problems for background checks done on applicants prior to the sale of handguns. Once any type of protective order has been issued by the court, it is hand delivered to the local law enforcement agency the same day for service and input

into the APSIN system. Currently, when a restraining order is entered into the APSIN system's WANTS/WARRANTS screen, only limited information is captured. The current screen allows information about a restraining order for domestic violence (RO), but the type of order issued is never listed and very little information (due to space restraints) is given about the conditions related to the order. Further, there is no indication whether this order falls under the Brady provisions. The only way to get further information is to contact the law enforcement agency that input the data.

The number of civil protection orders issued statewide for domestic violence each year is not counted. In Anchorage, there were 2,796 ex parte orders filed in 1997, but it is not currently known how many of the petitioners later filed for long term protective order. The Alaska Court System is currently working on a database that would track individual protective orders to include type and duration, but the database is not expected to be completed until Fall 1998.

Handgun Applications

Since the inception of the five-day waiting period on handgun purchases on February 28, 1994, the Alaska Department of Public Safety has tried to tally the number of purchase requests. Poor data entry procedures and failure of outlying Chief Law Enforcement Officers (CLEOs) to report statistics makes possible only an approximation of the total number of requests. Table 2 shows the number of requests, approvals, denials and challenges statewide reported to the Alaska Department of Public Safety for each year.

There have been a total of 49,262 applications filed since March 1994. The table also shows that the number of requests has decreased substantially since the initial year. However, the denial rate has remained between 2.2 and 3.1 percent each year with a four year average of 2.5 percent not much higher than the national average for all states of 2.2 percent (Manson & Lauver, 1997; Manson & Gilliard, 1997).

Table 2. Handgun Purchase Applications in Alaska, 1994-1997

	Total applications	Approved		Denied		Challenged
		N	%	N	%	
Alaska statewide						
1994	15,392	15,026	97.6 %	345	2.2 %	61
1995	13,880	13,537	97.5	354	2.6	95
1996	10,378	10,132	97.6	252	2.2	46
1997	9,612	9,342	97.2	294	3.1	45
Statewide total	49,262	48,037	97.5 %	1,245	2.5 %	247

Source of data: Alaska Department of Public Safety

Table 3. Handgun Purchase Applications in Anchorage, 1994-1997

	Total applications	Approved		Denied		Challenged
		N	%	N	%	
Troopers (Anchorage)						
1994	1,929	1,877	97.3 %	51	2.6 %	3
1995	1,493	1,441	96.5	52	3.5	13
1996	1,533	1,501	97.9	32	2.1	3
1997	1,040	1,014	97.5	26	2.5	2
Total	5,995	5,833	97.3 %	161	2.7 %	21
Anchorage Police Department						
1994	6,380	6,262	98.2 %	118	1.8 %	24
1995	6,194	6,033	97.4	161	2.6	73
1996	4,195	4,080	97.3	114	2.7	37
1997	4,340	4,206	96.9	130	3.0	28
Total	21,109	20,581	97.5 %	523	2.5 %	162
Anchorage total	27,104	26,414	97.5 %	684	2.6 %	183

Source of data: Alaska Department of Public Safety, Anchorage Police Department

The Anchorage Police Department and the Alaska State Trooper (AST) office in Anchorage handled the majority (55%) of the handgun purchase applications over the four-year period. Table 3 shows both the Anchorage Police Department and Anchorage AST distribution of total applications, approvals, denials, and challenges for the four year period. The overall denial rate of 2.6 percent is slightly higher than the statewide average for 1994-1997.

New Policies

In response to the Violent Crime Control and Law Enforcement Act of 1994, the FBI has added another component to its National Crime Information Center (NCIC) database called the NCIC Protection Order File. This file will allow authorized state criminal justice agencies to enter into and retrieve from the database information on orders issued by the court for the protection of individuals from stalking and domestic violence. All types of protective orders will be entered. Those that are applicable under Brady will be flagged, making it easier to recognize. NCIC requires that ALL protection orders meet the following criteria:

- The protection order must have been issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil or criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.
- Reasonable notice and opportunity to be heard must be given to the person against whom the order is sought. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by state laws, and in any event within reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

- Protection orders which indicate that the subject is believed to be armed or dangerous should be entered using a caution indicator.
- The record must be supported by a protection order.

In addition, a protection order must meet the following criteria, in order to prohibit a person from receiving or possessing a firearm under Federal law:

- The protection order must have been issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and
- The order must restrain such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or persons, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
- The order must include a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or, by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. (Federal Bureau of Investigation, 1996: 2-3)

The NCIC Protection Order File is scheduled to be completed by November 1998, though there are several states currently reporting to the system. Alaska, which already has a computerized criminal database, APSIN, will be on line with NCIC by May 1998. One hundred percent compliance is expected from all states by the November completion date.

Although general requirements are set out in the federal act, it has been left up to each individual state to enact specific legislation that would 1) provide training for those persons such as police officers, health care workers, prosecutors and teachers in the proper ways to handle domestic violence cases; 2) provide information and protection for victims of domestic violence or abuse; and 3) insure that persons who fall under the categories prohibited from purchasing handguns are known to the Chief Law Enforcement Officer (CLEO) when conducting a background check for the purpose of obtaining a handgun.

To combat the rise in domestic violence cases in Alaska, Governor Tony Knowles transmitted a bill to the state legislature entitled the "Domestic Violence Prevention Act of 1996." In his transmittal letter dated January 26, 1996, the Governor wrote:

The Domestic Violence Prevention Act of 1996 will protect children and adults from domestic violence in many ways. The bill sets out procedures for comprehensive civil protection orders consistent with due process. It treats domestic violence as a crime that requires early, effective, and thorough intervention. The Domestic Violence Prevention Act of 1996 assures that the child's safety and well-being is of paramount concern when domestic violence exists. Finally, it will provide the training necessary for police, prosecutors, health workers, and teachers to respond effectively to domestic violence.

Domestic violence is a wrong that needs to be righted. The key is community commitment to recognize, address, and prevent domestic violence. The Domestic Violence Act of 1996 is the cornerstone in Alaska's efforts to abate the ravages of violence in families.

By July 1996 the state legislature had proposed and enacted sweeping changes to Alaska statutes. The final bill entitled the "Domestic Violence Prevention and Victim Protection Act of

1996" changed the way police and others handle domestic violence and its victims. The changes include making all incidents of domestic violence an arrestable offense and provide for mandatory arrest for crimes involving domestic violence, violations of the conditions of release and violations of protective orders. It also set out specific relief for victims wishing to obtain a protective order and most importantly, instigated the creation of a comprehensive central registry of protective orders to be added to the computerized criminal history database APSIN. Unfortunately, the legislature failed to fund the creation of the registry and changes necessary to the APSIN system, so outside sources for funding had to be found. A grant from the Department of Justice, Violence Against Women grant office "Mandatory Arrest Grant," has supplied funding for the central registry, the renovation of the APSIN system and four other related projects.

The police will be required to enter the order into the registry within 24 hours after it is received. The statute reads:

AS 18.65.540. Central registry of protective orders.

(a) The Department of Public Safety shall maintain a central registry of protective orders issued by or filed with a court of this state under AS 18.66.100 - 18.66.180. The registry must include for each protective order the names of the petitioner and respondent, their dates of birth, and the conditions and duration of the order. The registry shall retain a record of the protective order after it has expired.

(b) A peace officer receiving a protective order from a court under AS 18.66.100 - 18.66.180, a modified order issued under AS 18.66.120, or an order dismissing a protective order, must take reasonable steps to ensure that the order, modified order, or dismissal is entered into the central registry within 24 hours after being received.

(c) A petitioner or respondent who is the subject of a protective order may request the Department of Public Safety to correct information about the order in the central registry. The person requesting the correction has the burden of proving that the information is inaccurate or incomplete. The person may appeal an adverse decision to the court under applicable court rules for appealing the decision of an administrative agency. On appeal, the appellant has the burden of showing that the department's action was an abuse of discretion. An appeal filed under this subsection may not collaterally attack a protective order, challenge the grounds upon which the order was based, or challenge the evidence submitted in support of the order.

(d) The Department of Public Safety may adopt regulations to implement this section.

(e) A person may not bring a civil action for damages for a failure to comply with the provisions of this section.

Scheduled to be fully operational by April 1998, the central registry will be modeled along the same lines as the national NCIC Protection Order File and will incorporate not only the name of the respondent but also the name of the petitioner, the dates of birth for both petitioner and respondent, the duration of the order and the conditions of the protective order set by the court. Most importantly it will note whether the order is Brady applicable. Proposed changes to the WANTS/WARRANTS screens and additions to the protective order screens in APSIN are included in the appendix. These changes will enable the local CLEO in determining the status of any protective order on file including all conditions set forth in the order and additionally will show specifically any convictions for a misdemeanor offense of domestic violence.

Conclusion

There are many advantages to the new system currently being implemented in Alaska. The Alaska Legislature has revamped the state statutes to include sweeping changes in the way domestic violence is handled. The statutes have been revised to include training for police and other individuals in the appropriate ways to handle domestic violence and provide for relief for victims of domestic violence who wish to obtain a protective order. Additionally, domestic violence has been made a crime punishable by law and the statutes provide for mandatory arrest for crimes of domestic violence, violations of protective orders and for violations of conditions of release. Also, once the central registry has been created, all modifications to the APSIN database have been made and are on line with the FBI's NCIC Protection Order file, Alaska will have the capability to conduct extensive and complete background checks involving all domestic violence violations.

How much impact will all of these improvements have on the use of guns in domestic violence incidents in Alaska? Comparisons previous to 1994 are impossible for many reasons. First, though domestic violence has been with us for many years, it has only in the last decade come to national attention as a serious problem. Prior to this, incidents were dismissed as "family problems" and even law enforcement personnel were inclined to overlook the problem partly because they were not properly trained in how to handle the situation. Second, data were never gathered on how many incidents occurred each year and how many of them involved weapons. Furthermore, prior to the Brady Act, requests for handgun purchases were never counted. As a result, it will be impossible to determine the impact that the Brady Act has had on domestic violence in this state.

Comparisons of the years since the Brady Act took effect will be problematic because of the lack of mandatory reporting procedures and data entry errors. Until these are corrected, the data available will at best be estimates. Further studies are warranted to test the impact of Brady.

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Appendix A

APSIN Screens

Record Criminal History
Add/Update Want/Warrants
Protective Order Conditions