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# Background Checks for Firearm Transfers, 2004

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The Brady Handgun Violence Prevention Act (Brady Act) mandates criminal history background checks on persons applying to purchase firearms from federally licensed firearm dealers, Federal Firearm Licensees (FFL's). This Bulletin reports the number of applications for firearm transfers and permits, rejections that resulted from background checks, and reasons for rejection for selected States during 2004.

The permanent provisions of the Brady Act became effective on November 30, 1998. The act established the National Instant Criminal Background Check System (NICS) and requires a background check by the Federal Bureau of Investigation (FBI) or a State point of contact (POC) on persons applying to receive firearms from an FFL.

The Bureau of Justice Statistics (BJS) began the Firearm Inquiry Statistics (FIST) program in 1995 to collect information on background checks conducted by State and local agencies. The State and local data — when combined with FBI NICS data — provide national estimates of the total number of applications and rejections resulting from the Brady Act and similar State laws.

## Highlights

### Background checks of applications for firearm transfers since implementation of the Brady Act

Applications for firearm transfer	National total during —				
	2004	2003	2002	2001	1994-2004
Received	8,084,000	7,831,000	7,806,000	7,958,000	61,632,000
Rejected	126,000	126,000	136,000	151,000	1,228,000
Rejection rate	1.6%	1.6%	1.7%	1.9%	2.0%

Note: All counts are rounded. See notes on table 1.

- From the inception of the Brady Act on February 29, 1994, to December 31, 2004, more than 61 million applications for firearm transfers or permits were subject to background checks. About 1,228,000 were rejected.
- Total applications for firearm transfers or permits increased 3.2% nationwide, from 7,831,000 in 2003 to 8,084,000 in 2004.
- State and local agencies conducted background checks on 42% of the total applications for firearm transfers or permits in 2004, while the FBI was responsible for the remainder.
- In 2004, 126,000 (1.6%) of approximately 8,084,000 applications for firearm transfers or permits were rejected by the FBI or State and local agencies.
- In 2004 the rejection rate for applications checked by the FBI (1.4%) was lower than that for checks by State and local agencies (1.8%).
- A felony conviction or indictment was the most common reason for rejection during 2004 by State or local agencies (50%) and the FBI (38%).
- A domestic violence misdemeanor conviction or restraining order was the second most common reason for rejection by State or local agencies (16%).
- Other criminal history was the second most common reason for rejection by the FBI (25%).
- An estimated 1,500 persons were arrested in 2004 for an outstanding warrant or submission of false information on an application, according to checking agencies reporting arrests to FIST.
- In 2004 ATF referred for prosecution 1,140 cases involving false information on applications for firearm transfers. These referrals are based on prosecutorial criteria provided by the individual U.S. attorney offices.

In 2004 FIST collected information from almost 700 State and local agencies, including 17 statewide POC's that conduct their own checks under Federal and State laws. The FBI also compiled data on the inquiries or transactions handled by the NICS section.<sup>1</sup>

Nearly all applications included in the 2004 FIST survey were subject to a NICS check, as well as checks that fulfilled any additional State requirements. A small number of applications were subject only to checks required by State laws. (See *Components of the national firearm check system* on page 9 for further details.)

### National estimates

In 2004, 8,084,000 applications for firearms transfers or permits were filed, an increase of 3.2% over the 7,831,000 applications filed in 2003 (table 1). In addition to the nearly 4.7 million applications for firearm transfers processed by the FBI in 2004, State and local checking agencies processed 3.4 million applications.

In the first 6 years of the permanent Brady period, the FBI and State and local agencies received about 49 million applications. State and local agencies received 12.7 million applications during the interim Brady period (1994-98). Most of the applications in the interim period were for handgun transfers. Under the permanent provisions, background checks for long guns were added, greatly increasing the volume of checks.

<sup>1</sup>The number of background checks handled by State POC's, as reported by the National Instant Criminal Background Check System (NICS) may be higher than the estimates reported here because multiple inquiries or transactions for the same application are processed. FIST only counts the first of multiple inquiries.

**Table 1. Number of applications and estimates of rejections for firearm transfers, 1994-2004**

	Total		Rejection rate
	Number of applications Received	Rejected	
Total	61,632,000	1,228,000	2.0%
<b>Interim period</b>			
1994-98 <sup>a</sup>	12,740,000	312,000	2.4%
<b>Permanent Brady</b>			
1998 <sup>b</sup>	48,892,000	916,000	1.9%
1999	893,000	20,000	2.2
2000	8,621,000	204,000	2.4
2001	7,699,000	153,000	2.0
2002	7,958,000	151,000	1.9
2003	7,806,000	136,000	1.7
2004	7,831,000	126,000	1.6
	8,084,000	126,000	1.6

Note: Counts are rounded. Statistics for national totals from 1999 to 2004 combine FIST estimates of the number of checks and rejections done by State and local agencies and the FBI number of actual transactions and rejections reported by the NICS operations reports. Data through November 29, 1998, are primarily for handguns. For information about FIST estimates before 1999 see *Presale Handgun Checks, the Brady Interim Period, 1994-98* (NCJ 175034) <<http://www.ojp.usdoj.gov/bjs/abstract/phc98.htm>>.

<sup>a</sup>March 1, 1994 - November 29, 1998.

<sup>b</sup>November 30 - December 31, 1998. Counts are from the *National Instant Criminal Background Check System (NICS) Operations Report* (November 30, 1998 - December 31, 1999) and may include multiple transactions for the same application.

Since the inception of the Brady Act, State and local agencies have conducted more than 21 million background checks. The FBI accounted for more than 26 million background checks under the permanent provisions of the Brady Act. When a background check produces evidence of factors that disqualify an applicant from receiving a firearm, the application is rejected. (See *Definitions* on page 10 for more detail.)

In 2004 checking agencies rejected 126,000 applications, the same number rejected in 2003. State and local agencies rejected 62,000 applications in 2004, a 1.8% rejection rate. The FBI rejected nearly 64,000 applications, a 1.4% rejection rate. The overall rejection rate in 2004 was 1.6%, the same rate as in 2003.

Since the inception of the Brady Act, more than 61 million applications for firearm transfers have been checked. Of the total, 1,228,000 applications, or 2.0%, were rejected.

### State approval systems

State systems for approval of a prospective firearm purchaser can be classified as "instant approval," "purchase permit," "exempt carry permit," or "other approval" systems.

#### *Instant approval systems*

Instant approval (instant check) systems require a seller to transmit the applicant's information to a checking agency by telephone or computer. The checking agency is required to respond to the seller at once or as soon as possible (generally within 3 business days). State agencies conducted over 1.9 million instant checks in 2004, and about 37,000 (1.9%) of the applications were rejected (table 2). From 1999 to 2004 State instant approval systems received 13.1 million applications, rejecting 346,000 (2.6%).

The FIST survey also included applications for two types of State permits. Federal law does not mandate a permit to purchase firearms.

### Purchase permit systems

These systems require firearm purchasers to obtain, after a background check, a government-issued document (such as a permit, license, identification card, or other document) that must be presented to a seller in order to receive a firearm. Most agencies issuing purchase permits operate under State statutes that allow between 7 and 30 days to complete a background check. In 2004 State and local agencies received 710,000 applications for purchase permits, while 15,000, or 2.2%, were rejected. From 1999 to 2004, 4.3 million applications for purchase permits were received by State and local agencies, of which 92,000 were rejected (2.1%).

### Exempt carry permit systems

An exempt carry permit is not required for purchase but can be used to exempt the holder from a background check at the point of sale. A permit is exempt if it is issued after a check that

includes the NICS and meets other requirements of the Brady Act under a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) regulation and 18 U.S.C. 922 (t).

Agencies issuing ATF-approved exempt carry permits usually request a check by sending information to the FBI. Some permits are only exempt under State law, including Indiana and Minnesota carry permits.

Nine States reported complete statewide data on exempt carry permits for 2004. State agencies received 161,000 exempt carry permit applications, of which 3,000 were rejected (1.9%). Local agencies received 192,000 applications for exempt carry permits and rejected 2,000 (1.0%). From 1999 to 2004 State and local agencies received 2,044,000 applications for exempt carry permits, rejecting 41,000 or 2.0%.

### Other types of approval systems

Other approval systems require a seller to transmit the applicant's information

to a checking agency by mail, telephone, or computer. The checking agency is not required to respond immediately but must respond before the end of a State statutory time limit, generally within 7 to 10 days. Other types of approval systems processed 401,000 applications in 2004 (predominately in California), and rejected 4,000 (or 1%).

From 1999 to 2004 these systems received 2.8 million applications, rejecting 29,000 (or 1%).

	State agencies issuing exemptions		Rejection rate
	Applications	Rejections	
Alaska	1,062	22	2.1%
Arizona	17,685	1,248	7.1
Arkansas	4,762	53	1.1
Indiana*	69,814	709	1.0
North Dakota	2,431	2	0.1
South Carolina	9,520	321	3.4
Texas	27,134	452	1.7
Utah	8,127	104	1.3
Wyoming	1,032	26	2.5

Note: The States listed reported statewide data for 2004.

\*State exempt only.

**Table 2. FIST estimates, by type of agency and approval system and total FBI checks, 1999-2004**

Type of checks conducted	2004			1999-2004		
	Applications	Rejections	Rate of rejection	Applications	Rejections	Rate of rejection
<b>State agencies</b>						
<b>Total</b>	2,852,910	51,422	1.80%	18,650,587	439,587	2.36%
Instant checks	1,983,149	37,312	1.88	13,139,763	346,033	2.63
Purchase permits	363,549	7,244	1.99	1,937,883	42,663	2.20
Carry permits	161,455	3,116	1.93	1,090,063	24,808	2.28
Other approvals	344,757	3,750	1.09	2,482,878	26,083	1.05
<b>Local agencies</b>						
<b>Total</b>	595,568	10,745	1.80%	3,633,987	68,370	1.88%
Purchase permits	346,710	8,218	2.37	2,394,730	49,225	2.06
Carry permits	192,352	1,976	1.03	953,606	16,562	1.74
Other approvals	56,506	551	0.98	285,651	2,583	0.90
Unadjusted State and local total	3,448,478	62,167	1.80	22,284,574	507,957	2.28
Adjustment (see note)	(49,687)	--	--	(386,724)	--	--
<b>State and local total (FIST)</b>	3,398,791	62,167	1.83%	21,897,850	507,957	2.32%
<b>FBI total</b>	4,685,018	63,675	1.36%	26,993,908	407,892	1.51%
<b>National total (FIST and FBI)</b>	8,083,809	125,842	1.56%	48,891,758	915,849	1.87%

Note: Agencies that conduct checks for exempt carry permits in Alaska, Arkansas, Mississippi, North Dakota, South Carolina, Texas, and Wyoming request that the FBI conduct the background check, but the State agency makes the decision to reject. Thus, the total number of applications in these States is included in the FBI checks, but the number of rejections is included in the State and local checks. Totals for the 6-year period include December 1998.

## Analysis of rejection rates

### FBI reporting

Among the States for which the FBI conducted both long gun and handgun background checks for transfers in 2004, rejection rates ranged from 2% for Alaska to less than 1% for Kansas, Massachusetts, Maine, Missouri, Rhode Island, and West Virginia (table 3).

Rejection rates in Massachusetts and Rhode Island may have been low in part because these States require a background check by a local agency separate from the NICS check. The local background check may eliminate some applicants before a NICS check is necessary. Delaware is similar because the State Police conduct a check separate from the NICS process. In 2004 the Delaware State Police reported a rejection rate of 3.8% that included checks of mental health records, while the FBI rejection rate for Delaware was 1.6%.

### Statewide reporting

In 2004 the FIST survey obtained statewide data from 15 NICS points of contact and Delaware. These 16 States processed checks for 2.2 million applications in 2004, rejecting 40,000 (or 1.8%) (table 4).

Rejection rates varied slightly in 2004 by the type of statewide approval system. Purchase permits (2.0%), instant checks (1.9%), and exempt carry permits (1.9%) had the highest rates, and other approval systems had a lower rate (1.1%). The rejection rates for individual States surveyed in 2004 ranged from 0.2% in Connecticut to 3.8% in Delaware.

Among the lowest rejection rates in 2004 were instant checks in New Jersey (0.3%) and Illinois (0.7%), where an instant check at the time of transfer is the second step required for approval of prospective firearm owners. During the first step of the process — application for the requisite permit or ID card — the rejection rate is considerably higher in Illinois (2.3%),

**Table 3. Rejection rates for selected FBI States, 1999-2004**

	2004			1999-2004		
	Total transactions	Total rejections	Rejection rate	Total transactions	Total rejections	Rejection rate
Total	3,384,017	40,257	1.2%	18,062,231	268,219	1.5%
Alaska	40,504	816	2.0%	230,607	5,923	2.6%
Alabama	229,997	3,400	1.5	1,320,342	22,364	1.7
Arkansas	158,366	2,495	1.6	905,734	17,933	2.0
Delaware	16,424	255	1.6	100,708	1,591	1.6
Idaho	75,553	1,265	1.7	385,768	8,598	2.2
Kansas	99,007	920	0.9	577,177	6,367	1.1
Kentucky	234,974	2,567	1.1	1,351,916	19,031	1.4
Louisiana	172,421	3,046	1.8	1,029,466	19,817	1.9
Massachusetts	112,996	94	0.1	261,150	746	0.3
Maine	52,665	374	0.7	293,892	2,001	0.7
Minnesota	227,846	2,438	1.1	1,000,363	11,722	1.2
Missouri	209,316	1,921	0.9	1,183,929	14,272	1.2
Mississippi	152,294	1,520	1.0	908,048	11,396	1.3
Montana	83,545	1,234	1.5	421,958	7,781	1.8
North Dakota	34,690	386	1.1	182,027	2,026	1.1
New Mexico	81,546	1,156	1.4	474,077	7,595	1.6
Ohio	327,040	4,122	1.3	1,771,068	27,708	1.6
Oklahoma	173,188	1,875	1.1	930,241	13,270	1.4
Rhode Island	10,054	79	0.8	60,590	502	0.8
South Dakota	50,323	607	1.2	245,250	3,537	1.4
Texas	672,995	8,103	1.2	3,493,357	53,641	1.5
West Virginia	132,846	1,077	0.8	747,225	7,388	1.0
Wyoming	35,427	507	1.4	187,338	3,010	1.6

Note: States are those for which the FBI conducted all checks under permanent Brady. The total for the 6-year period includes December 1998.

more similar than the second step to the national average of 1.6%.

Generally, the higher rejection rates in 2004 occurred in States that implemented an instant approval system on or after the effective date of the Brady Act, including Colorado (3.3%) and Tennessee (2.4%). Approval systems established before the Brady Act, such as California (1.1%) and Virginia (1.1%), generally had lower rates that varied little from year to year.

### Local reporting

Local agencies mainly conduct checks for purchase and exempt carry permits. In 2004 local agencies received 596,000 applications, of which 11,000 (1.8%) were rejected. Rejection rates varied among local agencies by size of the population served, by the jurisdiction, and by the type of permit.

Population served	Local rejection rates by population served and type of permit, 1999-2004	
	2004	1999-2004
<b>Purchase permits</b>		
Over 100,000	3.40%	2.72%
10,000 to 100,000	1.59	1.70
Under 10,000	1.04	1.30
<b>Exempt carry permits</b>		
Over 100,000	1.07%	1.87%
10,000 to 100,000	1.14	1.41
Under 10,000	0.49	1.06

Rejection rates for purchase permits were highest in jurisdictions with a population over 100,000 and lowest in those under 10,000. Rejection rates for exempt carry permits were highest in jurisdictions with populations between 10,000 and 100,000, and lowest in the smallest jurisdictions. Overall, local agency rejection rates in 2004 were higher for purchase permits than for exempt carry permits.

There was a similar pattern during the permanent Brady period: rejection rates for purchase and exempt carry permits were highest in jurisdictions with populations over 100,000 and lowest in those under 10,000.

### Availability of records

All States maintain databases that record felony convictions, and many maintain data on other disqualifying factors such as fugitive status, court restraining orders, mental illness, and domestic violence misdemeanor convictions. States differ as to the degree of automation used in record searching and whether records are in a central database or in county courts or other local agencies.

As of December 31, 2001, 49 States had automated at least some records in their criminal history files. Automation expanded from 1999 to 2001, as the number of States with fully automated criminal history files increased from 21 to 27. (See *Survey of State Criminal History Information Systems, 2001*, NCJ 200343).

Checking agencies often encounter delays when they access incomplete records. The most frequent delays occur when researching the final disposition of a criminal charge indicated in an arrest or indictment record. If the final disposition cannot be found during the time allowed for a background check, the agency must decide, based on Federal or State law, whether the application will be approved, denied, or delayed pending further research. A State's rejection rate may tend to be lower if an approval is mandated and higher if a denial is mandated.

The Brady Act allows a transfer to proceed if a disqualifying record is not found within the 3 business day limit for a NICS check. Some States have laws and regulations that allow their agencies to deny or delay a transfer if an incomplete record is being researched when the time limit expires. These types of rules may partially account for the comparatively high rejection rates in States such as Colorado and Tennessee.

### Reasons for rejection

Half of all rejections for firearm transfers among State and local checking agencies (about 31,000 applications in 2004) occurred because the applicant either had a felony conviction or was under felony indictment (table 5). The second most common reason for rejection was a domestic violence

misdemeanor conviction or restraining order (about 16% of rejections or approximately 10,000 applications). Other common reasons for rejections were the presence of a State law prohibition (9% of rejections) and an applicant's status as a fugitive (8.3%).

The FBI reported that 38% of their rejections were for felony-related

**Table 4. Number of firearm purchase applications received and rejected by State agencies, 1999-2004**

	2004			1999-2004		
	Number of applications	Rejections	Rejection rate	Number of applications	Rejections	Rejection rate
<b>All statewide agencies</b>	2,220,505	39,833	1.8%	13,027,657	299,198	2.3%
California	313,584	3,325	1.1%	2,209,735	22,047	1.0%
Colorado	146,518	4,852	3.3	810,359	35,344	4.4
Connecticut <sup>a</sup>	57,557	124	0.2	347,130	1,013	0.3
Delaware	9,845	372	3.8	58,779	2,696	4.6
Florida	298,279	6,632	2.2	1,588,072	37,713	2.4
Georgia	193,813	3,227	1.7	1,250,997	45,502	3.6
Hawaii <sup>b</sup>	6,842	104	1.5	--	--	--
Illinois <sup>a</sup>	436,951	7,455	1.7	2,378,697	42,139	1.8
Purchase permits	279,511	6,347	2.3	1,415,243	34,611	2.4
Instant checks	157,440	1,108	0.7	963,454	7,528	0.8
Maryland	23,663	347	1.5	166,492	2,977	1.8
New Hampshire <sup>c</sup>	13,667	134	1.0	79,812	991	1.2
New Jersey <sup>a,b</sup>	79,176	879	1.1	478,378	5,587	1.2
Purchase permits	43,708	781	1.8	257,768	4,861	1.9
Instant checks	35,468	98	0.3	220,610	750	0.3
Oregon	128,363	2,400	1.9	606,357	13,272	2.2
Tennessee	205,784	4,945	2.4	1,288,796	60,436	4.7
Utah <sup>d</sup>	65,222	2,146	3.3	400,525	11,470	2.9
Virginia	207,823	2,348	1.1	1,167,509	15,020	1.3
Wisconsin <sup>c</sup>	33,418	543	1.6	196,019	2,991	1.5

Note: Each of the 16 listed States reported complete statewide data for applications and rejections in 2004. Pennsylvania reported 379,369 instant checks for 2004, but the number rejected is unavailable. An estimate for Nevada was included in the national estimate.  
<sup>a</sup>Connecticut, Illinois, and New Jersey conduct checks on permits, ID cards, and transfers.  
<sup>b</sup>Hawaii and New Jersey permits are issued locally, but counts are reported by the State.  
<sup>c</sup>Counts in this table include handguns only for these States.  
<sup>d</sup>Applications for carry permits are listed separately elsewhere.

**Table 5. Reasons for rejection of firearm transfer applications, 1999-2004**

Reason for rejection	FBI		State and local agencies						
	2004	1999-2004	2004	2003	2002	2001	2000	1999	1999-2004
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%
Felony indictment/conviction	37.6	51.9	49.6	44.8	51.8	57.7	57.6	72.5	57.2
Other criminal history <sup>a</sup>	25.0	16.6	--	--	--	--	--	--	--
Domestic violence									
Misdemeanor conviction	11.5	13.0	12.6	11.7	10.4	10.6	8.9	9.0	10.3
Restraining order	5.1	4.5	3.4	3.8	3.5	3.7	3.3	2.1	3.2
State law prohibition	--	--	9.0	10.4	9.9	7.0	4.7	3.5	6.9
Fugitive	4.6	3.5	8.3	7.8	8.0	5.8	4.3	5.0	6.2
Illegal alien	2.0	1.2	0.6	1.1	0.8	0.4	0.2	0.2	0.5
Mental illness or disability	0.5	0.4	2.7	2.4	1.4	1.2	1.0	0.5	1.4
Drug use	9.1	6.3	1.5	1.8	1.3	1.0	0.7	1.0	1.1
Local law prohibition	--	--	0.1	1.2	0.9	0.5	0.2	0.2	0.5
Other <sup>b</sup>	4.7	2.5	12.3	14.9	12.0	12.1	19.2	6.0	12.7

--Not available or not applicable.

<sup>a</sup>Includes State prohibitors, multiple DUI's, non-NCIC warrants, and other unspecified criminal history disqualifiers.

<sup>b</sup>Includes juveniles, persons dishonorably discharged from the Armed Services, persons who have renounced their U.S. citizenship, and other unspecified persons.

reasons (about 24,000 applications), followed by other criminal history disqualifiers (about 16,000 applications, or 25%), which includes State prohibitors. A domestic violence misdemeanor conviction or restraining order accounted for 17% of the rejections (about 11,000 applications). Other common reasons for rejection were an applicant's drug use (9.1%) or status as a fugitive (4.6%).

Although a felony conviction or indictment was the most common reason for rejection by both State and local law enforcement during 2004, the State agencies rejected for this reason more frequently (59%) than the local agencies (28%). State agencies were more likely to reject an applicant because of fugitive status while local agencies were more likely to base a rejection on a State or local prohibitor, drug addiction, or mental illness.

Reason for rejection	Rejections, 1999-2004	
	State	Local
Total	100%	100%
Felony indictment/conviction	59.3	27.9
Domestic violence		
Misdemeanor conviction	10.2	10.7
Restraining order	3.3	1.8
State law prohibition	6.3	15.9
Fugitive	6.6	1.1
Illegal alien	0.5	0.5
Mental illness or disability	1.2	4.2
Drug use	0.7	7.0
Local law prohibition	0.1	6.7
Other*	11.8	24.4

\*Includes juveniles, persons dishonorably discharged from the Armed Services, persons who have renounced their U.S. citizenship, and other unspecified persons.

During the permanent Brady period, the number of rejections by State and local agencies for reasons other than felony conviction or indictment increased 28% (from 57,000 to 73,000). The percentage of rejections for nonfelony reasons increased from 28% to 58%. Over the same period the total number of rejections fell 38%, and the number of felony-related rejections decreased 64% (table 6).

States have used funds from NCHIP to flag criminal history records that contain a domestic violence misdemeanor conviction or protection order. Forty-six States now submit data to the NCIC Protection Order File, which

became operational in May 1997 and includes over 920,000 records as of July 2005.

### Appeals of denials

Specific procedures for appealing the denial of a firearm purchase or permit are codified in Federal law and in the laws of nearly all States that process background checks. The most

common procedure provides an appeal to the checking agency and a subsequent appeal to a court.

Eighteen States provide an appeal to the checking agency for a person who is denied a firearm purchase or a permit required for a purchase (table 7). (In eight other States, local agencies may reconsider their

**Table 6. Trends in applications, rejections, and reasons for rejection during the permanent Brady period, among all agencies conducting such checks, 1999-2004**

	2004	2003	2002	2001	2000	1999	Percent change, 1999-2004
Inquiries	8,084,000	7,831,000	7,806,000	7,958,000	7,699,000	8,621,000	-6.2%
Rejections	126,000	126,000	136,000	151,000	153,000	204,000	-38.2
Felons rejected	53,000	53,000	65,000	87,000	88,000	147,000	-63.9
All other	73,000	73,000	71,000	64,000	65,000	57,000	28.1
Percent felony	42%	42%	48%	58%	58%	72%	
Felons per 1,000 inquiries	6.6	6.8	8.3	10.9	11.4	17.0	-61.4

Note: Counts are rounded. See notes on table 1.

**Table 7. Appeals of denied applications, 2004**

State	Appeal forums			Statewide agencies		
	Denying agency	Other agency or official <sup>a</sup>	Court	Number of appeals	Percent appealed (appeals/denials)	Number of denials reversed <sup>b</sup>
California	■	--	--	--	--	--
Colorado	■	--	--	1,801	37.1	723
Connecticut	■	■	--	--	--	--
Delaware	■	--	■	--	--	--
Florida	■	--	--	1,508	22.7	443
Georgia	■	--	■	--	--	--
Illinois	■	--	■	--	--	--
Indiana	■	--	■	--	--	--
Iowa <sup>c</sup>	--	--	■	--	--	--
Maryland	■	--	■	0	0.0	0
Massachusetts <sup>c</sup>	--	--	■	--	--	--
Michigan <sup>c</sup>	--	--	■	--	--	--
Minnesota <sup>c</sup>	--	--	■	--	--	--
Missouri <sup>c</sup>	--	--	■	--	--	--
Nebraska <sup>c</sup>	--	--	■	--	--	--
Nevada	■	--	--	--	--	--
New Hampshire	■	--	■	--	--	--
New Jersey	■	--	■	--	--	--
North Carolina <sup>c</sup>	--	--	■	--	--	--
Oregon	■	--	--	1,581	65.9	144
Pennsylvania	■	■	■	3,783	50.5	1,573
Tennessee	■	--	--	4,548	92.0	2,464
Utah	■	--	--	--	--	--
Virginia	■	--	■	13	0.6	13
Washington <sup>c</sup>	--	--	■	--	--	--
Wisconsin	■	--	■	--	--	--

Note: Includes States that provide a specific appeal procedure.

--Not available or not applicable.

■State has type of appeal forum.

<sup>a</sup>A different agency from the one that denied the application.

<sup>b</sup>The number of appeals reversed may include appeals from prior years.

<sup>c</sup>Although not required by law, a local agency may reconsider its decision to deny an application.

decisions although they are not required to do so by law.) Some agencies allow a denied person to initiate a review with a telephone request. Another 18 States provide an appeal to a court, and in 2 States a government officer in a department separate from the checking agency performs an administrative review.

Other agencies involved in appeals are those that maintain criminal histories or other records which could disqualify an applicant. An appellant may be required to contact the agency that supplied a criminal history or another record that caused a denial.

Appeals often arise when an applicant denies being the individual named in a disqualifying record found by the checking agency. To resolve the identity question, the appellant will ordinarily submit fingerprints for comparison with Federal and/or State arrestee records. If the appellant's prints do not match any records on file, the denial may be reversed.

Another common appeal arises when an applicant is denied because of a felony arrest or charge without a

**Table 8. Number of appeals reported, by type of agency, 1999-2004**

Type of agency	Number of appeals	Percent appealed	Number reversed	Percent reversed
Total	138,154	15.1%	49,159	35.6%
FBI	60,812	14.9%	18,396	30.3%
State	76,423	17.4	30,446	39.8
Local	919	1.3	317	34.5

recorded disposition. The applicant can have the denial reversed by submitting court records to prove that the charge was subsequently dismissed. The vast majority of disputed denials are resolved at the administrative level, and turn on the accuracy of records rather than interpretation of law.

Of the 916,000 denials by the FBI and State and local agencies in the first 6 years of the permanent Brady period, 138,000 (15%) were appealed (table 8). Of the appealed denials, 49,000 (36%) were reversed.

In 2004 checking agencies that reported data to FIST received 23,000 appeals of denials, of which 8,500 (or 37%) were reversed. Of the 62,000 denials issued in 2004 by State and local agencies, 13,000 (or 21%) were appealed. Of the appealed denials, 5,500 (or 42%) were reversed.

The FBI NICS Appeal Services Team (AST) reviews and investigates appeals of NICS denials. Of the 64,000 denials issued by the FBI in 2004, 10,000 (or 16%) were appealed. About 3 in 10 appeals resulted in the denial being overturned.

In the aggregate, the number of reversals of denials is only 0.1% (49,000 reversals/ 48,892,000 checks).

### Denied persons subject to arrest

Persons prevented from receiving a firearm or a permit by a background check may be subject to arrest and prosecution if they are wanted in an outstanding warrant or have submitted false information on their application (table 9). When a check identifies a wanted person, the checking agency generally will inform the agency that entered the warrant, in addition to notifying the agency with jurisdiction over the fugitive's location or place of residence. A statewide fugitive apprehension unit may also be informed.

Many checking agencies notify ATF of persons who submit false information on a Federal firearm transaction record or fail to disclose required information. If a misrepresentation violates State law, the checking agency will inform the agency with jurisdiction either over the location of the transaction (usually a dealer's premises) or over the applicant's residence, or both agencies.

In seven States persons who falsify an application or attempt an illegal transfer are reported to a special police unit to make an arrest determination. In some States all persons denied a firearm are reported to a special police unit. Of the States reporting for 2004, Virginia had the largest number of arrests of denied persons due to outstanding warrants or other reasons.

**Table 9. Notification procedures of State points of contact (POC's) regarding denied persons subject to arrest, 2004**

State	Notice of outstanding warrant		Notice of false application or illegal attempt to buy		ATF
	Agency with jurisdiction <sup>a</sup>	Special State unit <sup>b</sup>	Agency with jurisdiction <sup>a</sup>	Special State unit <sup>b</sup>	
California	■	--	■	--	--
Colorado	■	--	■	--	--
Connecticut	■	--	--	■	--
Delaware	■	--	■	--	--
Florida	■	--	■	■	■
Georgia	■	--	■	--	■
Illinois	■	--	--	■	■
Indiana	■	--	--	--	■
Maryland	--	■	--	■	--
Nevada	■	--	--	--	■
New Hampshire	■	--	■	--	■
New Jersey	■	■	--	■	--
Oregon	■	--	■	--	--
Pennsylvania	■	--	■	--	■
Tennessee	■	--	--	--	■
Utah	■	--	■	--	■
Virginia	--	■	--	■	■
Wisconsin	■	■	■	■	■
Totals	16	4	10	7	12

--Not applicable or not available.

<sup>a</sup>May include Federal, State, or local agencies that issued a warrant or have jurisdiction over the site of the transaction or the denied person's residence.

<sup>b</sup>Includes units within the same agency as the checking unit.

State	Number of arrests in 2004
Colorado	215
Connecticut*	27
Delaware	7
Georgia	98
Oregon	98
Pennsylvania	343
Virginia*	702

\*A statewide unit made arrests for false applications or illegal attempts to buy in this State; arrests in other States listed were those made by local agencies, which may not always be reported to the State.

During the permanent Brady period, over 8,000 persons have been arrested, according to checking agencies reporting arrests to FIST (table 10). The number of arrests may be higher because some State and local agencies did not report their arrests.

#### Firearm retrievals

The NICS and several State systems do not prohibit a Federal Firearm Licensee from transferring a firearm to a buyer, when the dealer has not received a response within 3 business days of requesting a check (termed an "open" by the NICS). A checking agency may continue to research an incomplete record even after a transfer has occurred. If a disqualifying record is found at a later date (termed a "delayed denial" by the ATF), the dealer will be contacted to determine if the applicant completed the transaction and received a firearm.

ATF is informed when the FBI discovers that a firearm was transferred to a prohibited person. A State checking agency that discovers a delayed denial may inform a statewide firearms unit, local law enforcement, or ATF.

#### Prosecutions

In 2004 ATF referred for prosecution 1,140 cases involving false information provided on applications for firearm transfers (ATF form 4473). These referrals are based on prosecutorial criteria provided by the individual U.S. attorney offices.

**Table 10. Number of arrests reported, by type of agency, 1999-2004**

Type of agency	2004	2003	2002	2001	2000	1999	1999-2004
Total	1,509	1,473	1,742	1,964	1,327	301	8,316
State	1,497	1,430	1,697	1,901	1,294	295	8,114
Local	12	43	45	63	33	6	202

#### Background

##### Prohibited persons

The Federal Gun Control Act (GCA), 18 U.S.C. 922, prohibits transfer of a firearm to a person who —

- is under indictment for, or has been convicted of, a crime punishable by imprisonment for more than 1 year
- is a fugitive from justice
- is an unlawful user of, or is addicted to, any controlled substance
- has been adjudicated as a mental defective or committed to a mental institution
- is an illegal alien or has been admitted to the United States under a nonimmigrant visa
- was discharged from the U.S. Armed Forces under dishonorable conditions
- has renounced U.S. citizenship
- is subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child
- has been convicted in any court of a misdemeanor crime of domestic violence.

In addition the GCA prohibits transfers of long guns to persons under 18 and transfers of handguns to persons under 21. The GCA categories of prohibited persons are the prevailing minimum for all States. Many States have similar prohibitions and have enacted additional categories of prohibited persons, such as those who have committed alcohol-related or juvenile offenses. (See *Survey of State Procedures Related to Firearm Sales, Midyear 2004* <[www.ojp.usdoj.gov/bjs/abstract/ssprfs04.htm](http://www.ojp.usdoj.gov/bjs/abstract/ssprfs04.htm)>.)

##### Brady Act provisions

The Brady Act amended the GCA and included interim provisions, 18 U.S.C. 922(s), in effect from February 29, 1994, until November 29, 1998. The U.S. Department of Justice, with the

States, developed the NICS during the 57-month interim period, as authorized by the permanent provisions of the Brady Act, 18 U.S.C. 922(t).

Since November 30, 1998, the NICS has allowed a licensee to contact the system by telephone or other electronic means for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate Federal or State law.

In addition to regulation of handgun sales, the permanent Brady provisions mandate that licensees request background checks on long gun purchasers and persons who redeem a pawned firearm. Licensees have the option of requesting a NICS check on persons who attempt to pawn a firearm.

##### National Criminal History Improvement Program (NCHIP)

The Brady Act established the grant program NCHIP to ensure immediate availability of complete and accurate State records. The Firearm Inquiry Statistics Program (FIST), collecting statistics on background checks, is one of many NCHIP programs.

NCHIP is designed to assist States to develop or improve existing criminal history records systems and to establish an interface with the NICS and other national record systems. Grant funds have also supported direct technical assistance, evaluation, and research related to improving nonfelony records within the States.

To date, over \$495 million has been awarded to States to assist them in establishing and enhancing criminal records which support the FBI's record system. All States have received funding under the NCHIP program.

## Components of the national firearm check system

Over 3,000 Federal, State, and local agencies conduct background checks on persons who apply to purchase a firearm or for a permit that can be used to make a purchase. Variations in Federal and State procedures for determining firearm possession eligibility are summarized below.

### Overview of the NICS

Prospective firearm transferees undergo a NICS check requested by a dealer or present a State permit that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has qualified as an alternative to the point-of-transfer check. Qualifying permits are those that —

(1) allow a transferee to possess, acquire, or carry a firearm, and  
(2) were issued not more than 5 years earlier by the State in which the transfer is to take place, after verification by an authorized government official that possession of a firearm by the transferee would not be a violation of law.

A permit issued after November 29, 1998, qualifies as an alternative only if its approval process included a NICS check. Many qualifying permits may be used for multiple purchases while valid. However, State laws often provide that a permit will be revoked if the holder is convicted of an offense or otherwise becomes ineligible after receiving the permit.

Prior to transferring a firearm subject to permanent Brady requirements, a licensee must receive a completed Firearm Transaction Record (ATF form 4473).

A licensee initiates a NICS check by contacting either the FBI or a point of contact (POC) agency designated by State government. Most inquiries are initiated by telephone. In 2002 the FBI added online checking (known as E-Check) as another means to contact the NICS, and about 50,000 inquiries were made by this method in 2004.

The FBI or POC checks available Federal, State, and/or local databases and responds with a notice to the licensee that the transfer may proceed, may not proceed, or is delayed pending further review of the transferee's record.

### State and local NICS participation

Each State government determines the extent of its involvement in the NICS process. Three forms of State involvement currently exist:

- A full POC requests a NICS check on all firearm transfers originating in the State.
- A partial POC requests a NICS check on all handgun transfers; licensees in the State are required to contact the FBI for NICS checks for long gun transfers.
- The State does not maintain a POC; licensees are required to contact the FBI for NICS checks on all firearm transfers originating in the State.

The FBI conducts all NICS checks for 28 States and POC agencies conduct all NICS checks in 14 States. In eight States NICS checks are conducted by POC agencies on handgun transfers and by the FBI on long gun transfers (see *Appendix A*). The FBI also conducts all NICS checks for the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

Participation in the NICS by POC agencies includes initiating checks on persons who apply for qualified State permits. Generally, POC agencies conduct a background check that incorporates Federal and State requirements. In a few States with full or partial participation, the FBI conducts the NICS check on certain pawn transactions instead of the POC. Most States have designated a single agency with statewide jurisdiction as their NICS point of contact; some States have multiple points of contact, which are usually county sheriffs or local police departments. (For agencies conducting firearm checks, see *Appendix B* on the BJS website <<http://www.ojp.usdoj.gov/bjs/abstract/bcft04.htm>>.)

The NICS is integrated with most State instant approval, purchase permit, or other approval systems. Twenty-nine States maintained approval systems for purchase or permits required for purchase during 2004. Sixteen States operated instant check systems; 12 required purchase permits; and 5 maintained other types of approval systems. (Connecticut, Illinois, and New Jersey are each counted twice because they operated separate purchase permit and instant check systems; Minnesota is counted twice because it gives the buyer the options of a purchase permit or an "other approval" process). During 2004, 19 States issued carry permits that exempted the holder from a check under the permanent Brady law or a State law or both.

In addition to the Brady Act's regulation of sales by licensed dealers, some States require background checks for firearm transfers that occur between unlicensed persons at gun shows or other locations. A few States require a mandatory waiting period after a purchaser applies and before a firearm transfer can be made, regardless of when a background check is completed.

### Parallel State systems

If agencies that conduct checks under State law are unable to access the NICS, licensees in that State are required to contact the FBI for approval of transfers. Thus, prospective transferees in these States are required to undergo a permit or point-of-transfer check by a State or local agency and a NICS check by the FBI. Seven States in 2004 (Delaware, Indiana, Massachusetts, Minnesota, Missouri, New Jersey, and Rhode Island) maintained firearm check systems that can be described as parallel to the NICS process.

For more information on approval systems in specific States, see *Survey of State Procedures Related to Firearm Sales, Midyear 2004* <[www.ojp.usdoj.gov/bjs/abstract/ssprfs04.htm](http://www.ojp.usdoj.gov/bjs/abstract/ssprfs04.htm)>.

## Definitions

*Appeal* is an objection by the denied person to an agency's decision.

*Application* for firearm transfer is information submitted by a person to a State or local checking agency to purchase a firearm or obtain a permit that can be used for a purchase; includes information submitted directly to a checking agency or forwarded by a prospective seller.

*Exempt carry permit* is a State carry permit (issued after a background check) that exempts the holder from a check at the time of purchase under an ATF regulation or State law.

*Instant check (instant approval) systems* require a seller to transmit a purchaser's application to a checking agency by telephone or computer; the agency is required to respond immediately or as soon as possible.

*Other approval systems* require a seller to transmit a purchaser's application to a checking agency by telephone or other electronic means; the agency is not required to respond immediately but must respond before the end of the statutory time limit.

*Permanent Brady period* is the period that began on November 30, 1998, when the permanent provisions of the Brady Act became effective.

*Purchase permit systems* require a prospective firearm purchaser to obtain, after a background check, a government-issued document (called a permit, license, or identification card) that must be presented to a seller to receive a firearm.

*Rejection* occurs when an applicant is prohibited from receiving a firearm or a permit that can be used to receive a firearm, due to the finding of a disqualifying factor during a background check.

*Transactions* are inquiries to the Federal NICS system and may include more than one inquiry per application.

## Methodology

### *Data collection procedures*

The Regional Justice Information Service (REJIS), through a cooperative agreement with BJS under the Firearm Inquiry Statistics (FIST) program, collected the data from Federal, State, and local agencies.

Participating agencies supplied data on paper or diskette, or electronically. Several different forms were provided to meet the varying office procedures of the agencies. In addition REJIS wrote special software distributed free of charge to requesting agencies. This software was designed to simplify the record tabulating functions of the agency. It also helped to reduce the burden of keeping the statistical data because a capability of the software was to automatically report the data needed for the study. In all cases the data that the agency sent to REJIS contained only statistical information and would not allow the identification of an individual. The software also assists agencies in purging records after the delay time specified by law.

Information collected included counts of firearm transfer or permit applications made to an agency, applications rejected by the agency, and the reasons for rejection. Other data collected included the number of denials appealed by applicants and the number of persons who were arrested by an agency after a background check caused a denial. Many checking agencies do not handle appeals and arrests through the entire process and may have only limited information on the outcomes of such events.

### *Determining populations*

To estimate the application and rejection rates within a given area, the agency population was needed and was determined as follows: The stratification classification of the county was based on the size of the largest city within the county. If cities within a county were conducting their own background checks, their populations were subtracted from the county population. If a municipal agency

provided services for other selected municipalities, then populations for those municipalities were added to the populations of the reporting municipality. If an agency participating in the study relied upon other jurisdictions to conduct background checks, they were replaced by those other jurisdictions.

State and local checking agencies were stratified by size of the population served: State agencies that served an entire State population; local agencies that served a population greater than 100,000; local agencies that served a population between 10,000 and 100,000; and local agencies that served a population of less than 10,000. Population size was based on 2000 Census Bureau information. The population categories were chosen to be consistent with those used by the FBI when conducting similar studies.

All agencies serving a population greater than 100,000 were asked to contribute data in 2004. The number of agencies in the survey is shown by population category:

<u>Population served</u>	<u>Number of agencies</u>
Total	682
Statewide	28
Over 100,000	40
10,000 to 100,000	333
Under 10,000	281

In some States one statewide agency conducts background checks for purchase and another agency (or division within an agency) issues ATF-approved permits. Care was taken not to count State populations twice in the estimation process. This situation of dual agencies conducting background checks did not occur among local agencies.

### *Estimation procedures*

Based on data provided by both sets of agencies, national estimates were developed using population weighting factors. When an agency did not provide data for all months, a simple linear extrapolation or interpolation was used to generate a 12-month total.

Agencies with rejection rates over four standard deviations above the average standard rejection rate were classified as outliers and their data were not used for projection of estimates. In addition, rejection rates that could not be determined with sufficient accuracy were not used. The estimates do not include U.S. Territories or the District of Columbia.

Estimation based on State population was used to determine the number of carry permit applications and rejections in Mississippi.

Pennsylvania reported 379,369 instant checks, included in the FIST national estimate, and 123,721 applications for nonexempt carry permits. Pennsylvania provided the combined number of denials of all applications, which was prorated to obtain the number of denials of instant checks.

The accuracy of the estimates presented in this report depends on two types of errors: nonsampling and sampling. In this study, nonsampling error may occur from the following: nonresponse; differences in the methods checking agencies use to process, code, store, and retrieve their information; differences in interpretation of the survey questions; and activities that delay personnel from completing the survey.

In any sample survey, the full extent of nonsampling error is never known. However, steps were taken to minimize the potential for error. Extensive telephone follow-ups were made to encourage responses, answer questions about misunderstood requests, and generally assist in assembling the information in a useable form. Extensive verification of the data ensured the accuracy of the numbers. Agencies providing data were asked to review and revise their reports, and various quality checks were performed in receiving and processing the data.

**Appendix A. National Instant Criminal Background Check System: Checking agencies — FBI or State point of contact— for firearm transfers, 2004**

State	FBI conducts checks for all firearms	POC conducts checks for all firearms	POC - handguns FBI - long guns
Alabama	■		
Alaska	■		
Arizona	■		
Arkansas	■		
California		■	
Colorado		■	
Connecticut		■	
Delaware	■		
Florida		■	
Georgia		■	
Hawaii*		■	
Idaho	■		
Illinois		■	
Indiana	■		
Iowa*			■
Kansas	■		
Kentucky	■		
Louisiana	■		
Maine	■		
Maryland			■
Massachusetts	■		
Michigan*			■
Minnesota	■		
Mississippi	■		
Missouri	■		
Montana	■		
Nebraska*			■
Nevada		■	
New Hampshire			■
New Jersey		■	
New Mexico	■		
New York	■		
North Carolina*			■
North Dakota	■		
Ohio	■		
Oklahoma	■		
Oregon		■	
Pennsylvania		■	
Rhode Island	■		
South Carolina	■		
South Dakota	■		
Tennessee		■	
Texas	■		
Utah		■	
Vermont	■		
Virginia		■	
Washington*			■
West Virginia	■		
Wisconsin			■
Wyoming	■		
Totals	28	14	8

Note: Includes check on purchase or permit required for purchase.  
 \*States with multiple points of contact.

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The online version of this report offers the *Methodology* and a State-by-State appendix table describing the agencies doing background checks. Access the report at <<http://www.usdoj.gov/bjs/abstract/bcft04.htm>>.

**Office of Justice Programs**  
Partnerships for Safer Communities  
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The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Lawrence A. Greenfeld is director.

BJS Bulletins present the first release of findings from permanent data collection programs such as the Firearm Inquiry Statistics program. State and local officials have cooperated in reporting the data presented.

Michael Bowling and Gene Lauver of REJIS and Devon B. Adams and Matthew J. Hickman of BJS wrote this Bulletin. David M. Naglich and Ronald J. Frandsen of REJIS collected and analyzed the FIST data presented. Terry Tomazic, Ph.D., professor of research methodology at St. Louis University, provided statistical consultation. At BJS, Steven K. Smith reviewed the report. Tom Hester edited the report.

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