



**Brady Statute Data:
Establishing Noncriminal Classifications
for the Alaska Department of Public Safety**

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

by

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This report incorporates the following subreports:

Brady Statute Data: Establishing Noncriminal Classifications for the Alaska Department of Public Safety—Executive Summary

Brady Statute Data: Adjudicated Mental Defectives and Involuntary Mental Commitments

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

Brady Statute Data: Persons Who Are Unlawful Users of or Addicted to Any Controlled Substances

Brady Statute Data: Persons Who Are Illegally or Unlawfully in the United States



**Brady Statute Data:
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Brady Statute Data: Establishing Noncriminal Classifications for the Alaska Department of Public Safety

Executive Summary

Background

In the spring of 1996, the Alaska Justice Statistical Analysis Unit of the Justice Center, University of Alaska Anchorage with the cooperation of the Alaska Department of Public Safety was awarded funds to study how the state of Alaska could improve its compliance with what is commonly called the Brady Bill handgun background checks. This award was made under the Bureau of Justice Statistics, Office of Justice Programs, US Department of Justice, “Advanced State Award Program” (ASAP), a program to augment the National Criminal History Improvement Project (NCHIP). This summary and the reports that follow fulfill the initial requirements of that award.

Operation of Central Repository

Because the Department of Public Safety (DPS) operates the central repository for Alaska criminal history records, the Governor has designated the department to coordinate the National Criminal History Improvement Program (NCHIP) in Alaska.

Alaska Statute 12.62.110¹ requires that the Commissioner of DPS shall:

1. Develop and operate a criminal justice information system to serve as the state’s central repository of criminal history record information, and collect, store, and release criminal justice information;
2. Consult with the Criminal Justice Information Advisory Board (CJIAB) regarding matters concerning the operation of the criminal justice information systems;
3. Provide a uniform crime reporting system for the periodic collection, analysis, and reporting of crimes, and compile and publish statistics and other information on the nature and extent of crime in the state;
4. Cooperate with other agencies of the state, the criminal record repositories of other states, the Interstate Index (III)², the National Law Enforcement Telecommunications System (NLETS), the National Crime Information Center (NCIC), and other appropriate agencies or systems, in the development and operation of an effective interstate, national, and international system of criminal identification, records, and statistics; and
5. Adopt regulations to implement state laws regarding criminal justice information.³

¹ AS 12.62 was rewritten by the Alaska Legislature in 1994 by House Bill 442, “An Act relating to criminal justice information; providing procedural requirements for obtaining certain criminal justice information; and providing for an effective date.”

² Alaska became a fully participating *III* state in August 1991.

³ Alaska’s prior NCHIP efforts are detailed in the state’s prior NCHIP application.

The Alaska Department of Public Safety (DPS) collects information from arresting agencies, prosecutors, courts, correctional institutions, probation and parole agencies, and parole boards and stores it in the central repository, or computerized criminal history (CCH). CCH resides in the Alaska Public Safety Information Network (APSIN). APSIN is an on-line, real-time system, supporting over 2,000 users statewide via a 650-terminal, dedicated private line network.

The Division of Administrative Services, DPS, is responsible for the following functions:

1. Input and update of criminal history in APSIN.
2. Administration, as control terminal agency, of NCIC and NLETS operations.
3. Operation of Alaska Automated Fingerprint Identification System (AAFIS).
4. Retention and management of operator's (driver's) license photos.
5. Compilation of Uniform Crime Reports (UCR) and Fatal Accident Reporting System (FARS) data.
6. Microfilming and retention of Alaska State Trooper and Fish and Wildlife Protection case reports and all arrest and disposition source documents.
7. Background checks for employment or volunteer purposes and dissemination of criminal history reports to agencies or persons without terminal access to CCH.

Brady Checks

State and local law enforcement agencies have terminal access to APSIN to enter arrest data and check criminal records without intervention by Records and Identification (R&I) staff. This access includes APSIN's *Wants and Warrants* files, which store some active domestic violence restraining orders, in addition to active felony and misdemeanor warrants. Law enforcement agencies rely on CCH and wants/warrants files to identify persons ineligible to purchase firearms under the Brady statute. Access to probation/ parole conditions and status is currently not fully available for Brady checks; the state is planning upgrades and integration work with the Department of Corrections which will enable such checks in the future.

Needs and Benefits

Alaska has a significant problem with violent crime. Many of these incidents are related to the use of a firearm. DPS views the objective of ASAP in building a body of knowledge on the proposed categories of non-felons who are prohibited from purchasing firearms as most beneficial. Consequently, DPS utilized the resources of the Alaska Justice Statistical Analysis Unit (SAU) housed in the Justice Center at University of Alaska Anchorage to conduct the research and prepare the relevant reports described below.

By identifying and examining the existence and completeness of noncriminal data bases and by evaluating the feasibility of accessing the relevant noncriminal justice data systems for the

purposes of background checks, the state will be better prepared to restrict the flow of firearms to certain at-risk populations. The ASAP funds were to be used to: (1) investigate the existence and completeness of noncriminal history data bases; and (2) evaluate the feasibility of accessing relevant noncriminal justice data systems for the purposes of background checks on the following four classifications:

1. A person who has been adjudicated as a mental defective or has been committed to a mental institution;
2. A person who is subject to any court order restraining him or her from threatening or committing acts of domestic violence;
3. A person who is an unlawful user of, or addicted to, any controlled substance;
3. An alien who is illegally or unlawfully in the United States.

Goals and Objectives

The fundamental goal of this project was to enhance the state's data collection process so that information on these four noncriminal classifications can be collected and captured in the state's computer files. These restricted classifications of individuals will thereby be automatically and discretely identified in the state's data files and flagged if they attempt to purchase a firearm. The accomplishment of this goal required the completion of four objectives:

1. To determine the existence of data collected and maintained by any state, borough or municipal agency on the above noncriminal classifications.
2. To determine if there are any state and/or municipal statutory requirements for accessing/gathering the above data. If so where are the data maintained? Is it feasible and legal to integrate these data into the state's system?
3. If data are not currently being gathered in any form, to evaluate the feasibility of gathering, maintaining and disseminating such information.
4. To recommend ways in which the state can gather and maintain current and on-going data for these noncriminal classifications.

Project Design

The Justice Center performed the activities necessary to accomplish the goals and specific objectives of this project. The activities associated with each of these objectives was organized around the following four steps:

1. *Evaluate current sources of data available on each of the four noncriminal target groups.*

This step entailed locating and examining research records/data that were currently kept throughout the state on each noncriminal classification. Criminal justice agencies, mental

health facilities, and private institutions that may be repositories for such records were identified and contacted regarding the existence and availability of records. Relevant agencies included, but were not limited to, law enforcement agencies, the Alaska Court System, Alaska Psychiatric Hospital, the Alaska Department of Correction, the U.S. Department of Defense, rehabilitation centers (drug/mental health), the Immigration and Naturalization Service, and federal probation offices.

2. *Investigate state and local statutory provisions for retention of data on the above noncriminal target groups.*

This step involved identifying any statutes or ordinances that deal with the collection and storage of data on the four classifications of noncriminal individuals. This phase also examined statutory and ethical constraints on the dissemination of any such data.

3. *Identify areas where data are lacking.*

This step identified areas in which data were not being gathered in any form. An evaluation was conducted as to the fiscal and practical feasibility of initiating data collection, storage, retrieval and dissemination.

4. *Recommend and demonstrate ways in which target data can be feasibly collected, maintained and disseminated*

This step suggested and demonstrated feasible ways in which the state can access currently existing databases or create and maintain data on the noncriminal classifications identified above. In addition, constitutional and statutory considerations that may apply were identified and recommendations made.

The following summarizes our findings concerning each targeted group using the above steps as a format.

Findings by Classification

A. Persons with a mental defect or committed to an institution

1. *Evaluate current sources of data available on each of the four noncriminal target groups.*

There is no central repository of this information. It does reside in the individual files of each state agency authorized to evaluate or treat individuals with mental problems, and in the case files of the court, schools, and state mental institutions. Private agencies also would have this information. The federal Social Security Administration also maintains files on individuals with mental disabilities.

2. *Investigate state and local statutory provisions for retention of data on the above noncriminal target groups.*

There is a significant body of state law that prohibits the general release of information germane to this classification. There is no state requirement that information concerning individuals who fall into this classification must be kept for this type of purpose and even the courts may expunge the records those who were once committed involuntarily.

3. *Identify areas where data are lacking.*

There is no central database or even a network of smaller databases to draw upon. There is also the problem of the court potentially changing the nature of the hospital admission to “voluntary” and thus removing the admission from consideration. We can assume that the data are extant but prying it out of these small and diverse pockets and communicating it to the proper authority presents challenges that may prevent that data from ever consistently being used.

4. *Recommend and demonstrate ways in which target data can be feasibly collected, maintained and disseminated.*

Extensive revisions to the state’s privacy laws seem to be a first step in obtaining this information. Next, we recommend that the Department of Health and Social Services (DHSS) house this data as they have the most experience with this type of information. An infrastructure would need to be built to allow the existing DPS computer system to query this new database. Lastly, would be the statutory requirement to report the necessary information to the depository. The normal maintenance of the database, i.e., error checking, verification, security clearances, etc. would fall to DHSS.

B. Persons subject to a domestic violence restraining order

1. *Evaluate current sources of data available on each of the four noncriminal target groups.*

The state is rapidly moving to the point where all individuals who meet the Brady definition for this category will be identified, the information housed in a separate database, and reported to federal agencies. This came about due to close cooperation of DPS and the court system. Each made significant modifications of their data capture and dissemination capability.

2. *Investigate state and local statutory provisions for retention of data on the above noncriminal target groups.*

The state has moved swiftly to make the changes necessary to implement this portion of the Brady Bill. AS 18.65.540 provides for a central registry of Domestic Violence Protective Orders, a product of the Domestic Violence Prevention and Victim Protection Act of 1996.

3. *Identify areas where data are lacking.*

The new central registry is not completely operational throughout the state but in those areas that are reporting and following the new statute, the results are reported to be excellent. One can assume that this may be the one non-legal Brady criteria fully met.

4. *Recommend and demonstrate ways in which target data can be feasibly collected, maintained and disseminated.*

We have no further recommendations given the state's compliance with this provision. Everyone anticipates that the reporting of these orders by law enforcement to the central repository will continue to expand without incident.

C. Person who are unlawful users or addicted to any controlled substance

1. *Evaluate current sources of data available on each of the four noncriminal target groups.*

The definition of who would be prohibited under this category is very broad and somewhat vague, extending from accusations of acquaintances to findings by a court of proper jurisdiction. The only reasonable assumption is that these “less than official” determinations, e.g., accusations of social acquaintances, needle marks, a single “failed” drug screening test, etc., are to be incorporated into a Brady relevant database as these factors come to the attention of law enforcement through the normal investigative process. Another significant source of this information could potentially come from medical doctors and psychiatrists and drug treatment facilities.

2. *Investigate state and local statutory provisions for retention of data on the above noncriminal target groups.*

Court records relevant to this category and law enforcement information obtained in the course of an investigation are not prohibited by state statute from becoming part of a Brady Bill database. However, state privacy laws would protect medical records, psychiatric records, and treatment records in an approved state or private facilities.

3. *Identify areas where data are lacking.*

Given the broad definition, it is possible that a with a liberal interpretation of this provision of the bill there may be a large number of individuals who might become subject to its provisions. We have no way to estimate this “dark figure” of individuals. Court determinations and law enforcement findings could potentially be added with a modification to the current APSIN data collection process.

4. *Recommend and demonstrate ways in which target data can be feasibly collected, maintained and disseminated.*

We recommend that the current APSIN Arrest Disposition Form be modified to include Brady Bill relevant flags for this prohibited category in much the same manner as it was modified to indicate felony convictions. This would allow input from the courts, law enforcement, and the prosecutor’s office. However, state privacy statutes would protect any type of medical or psychiatric record and these statutes would need to be modified.

D. Persons who are illegal aliens or unlawfully in the United States

1. *Evaluate current sources of data available on each of the four noncriminal target groups.*

The Immigration and Naturalization Service (INS) is the most logical locus for this information. Indeed, the INS maintains several databases that could potentially be use to verify that the individual was not one of the prohibited class of persons. Of these databases, the most promising would be the “Verification Information System” (VIS) that can be used by public agencies to determine if an applicant is a qualified non-citizen in order to receive public benefits. A check of this database would indicate if an individual was an alien and further if that individual was a member of the prohibited class.

2. *Investigate state and local statutory provisions for retention of data on the above noncriminal target groups.*

We know of no state statute that would prohibit the collection and retention of this information for Brady Bill purposes.

3. *Identify areas where data are lacking.*

The data in the VIS is currently only directly accessible to law enforcement agencies in two states. However, the Alaska Department of Revenue’s Permanent Fund Division has direct access in order to check on the residency of applicants for the permanent fund.

4. *Recommend and demonstrate ways in which target data can be feasibly collected, maintained and disseminated.*

We feel that direct access to the VIS is the only feasible means to obtain this information. Any other method requires INS operator assistance making the cost of each inquiry extraordinarily high considering the projected number of prohibited individuals in Alaska. The equipment and precedents are already in place to accomplish the VIS query. Unfortunately, we never received any feedback from our INS inquiries on the requirements for actual access.

Conclusion

Obtaining the information required to fully meet the provisions of the Brady Bill in Alaska presents significant obstacles. Reporting of relevant information by law enforcement agencies, the courts, correctional facilities, etc., is only limited by the technical details of computerized data transmission and the money needed to program and hardwire the infrastructure, much of which currently exists. The court reporting of domestic violence restraining orders provides an encouraging example of the cooperative arrangements needed to meet the bill's provisions. However, even this working model of cooperation requires hand delivery and law enforcement responsibility for entry. Hardly the seamless and automatic data entry, storage and retrieval that is needed to form the fast and cost effective background check envisioned by the bill's creators.

The private sector reporting problems are enormous. There is no infrastructure for collecting and verifying data and the cost to the public and private sectors would be extremely high.

The most significant obstacle for Alaska is the state's right to privacy statutes and constitutional protections. Draconian measures would be needed to meet the bill's information requirements both at the state and federal level. The costs associated with the infrastructure of data collection may be compounded by the costs of litigation associated with the release of medical records and other protected communications. Our proposals for meeting the requirements are made with the intent of making reasonable use of limited resources. However, millions could be spent on upgrading the various state computer systems to ensure the efficient transfer of information. Given these problems it is of little wonder that the state does not wish to be a "point of contact" for Brady background checks after November 1998.

And finally, there is the issue of any database of this sort to fairly and completely report the information. If all sources of the relevant data cannot be included, is it fair to deny a handgun purchase to those who are "caught in the web" when others are able to escape detection by having high status personal physicians or the means to seek out of state treatment? Our reliance on a database, any database, to protect us from those who would do harm is certainly suspect and if we respond by saying that the use of that database reduces harm then we must ask to what extent does it make us safer and at what cost to society.



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Brady Statute Data: Adjudicated Mental Defectives and Involuntary Mental Commitments

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 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 1980's as a computerized criminal history database for law enforcement agencies.

Currently, state law enforcement agencies do not obtain data on the following four non-criminal categories prohibited by the above federal law from obtaining guns: adjudicated mental defectives and involuntary mental commitments; individuals subject to any court order restraining them from threatening or committing acts of domestic violence or abuse; aliens illegally in the United States; and those who are an unlawful user of, or addicted to, any controlled substance.

This is the first in a series of Alaska Statistical Analysis Unit reports describing how each category can be 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 first of these four non-criminal classifications to be examined is that of adjudicated mental defectives and involuntary mental commitments.

Adjudicated Mental Defectives

Neither the State of Alaska nor the federal government maintain any type of central repository of those persons found to be "adjudicated mental defectives"; therefore, in researching possible sources we had to look at definitions for terms set out in the federal statute and those agencies that furnish some sort of monetary or physical assistance to the disabled.

Definitions

Federal statute, 18 U.S.C. 922 (g), as amended by the Violent Crime Control Act , lists the provisions which prohibit the purchase, sale or transport of firearms by some individuals. It reads:

- (g) It shall be unlawful for any person~~
 - (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
 - (2) who is a fugitive from justice;
 - (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
 - (4) **who has been adjudicated as a mental defective or who has been committed to a mental institution;**
 - (5) who, being an alien, is illegally or unlawfully in the United States;
 - (6) who has been discharged from the Armed Forces under dishonorable conditions;
 - (7) who, having been a citizen of the United States, has renounced his citizenship;
 - (8) who is subject to a court order that~~
 - (A) was issued after a hearing of which such person received actual notice, and which such person had an opportunity to participate;
 - (B) restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (ii) 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; or
 - (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.(Emphasis added)

The definitions for “adjudicated as a mental defective” and “ committed to a mental institution” found in 27 CFR 178.11 were amended June 27, 1997 and finalized August 26, 1997. They read:

- Adjudicated as a mental defective. (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:
- (1) Is a danger to himself or to others; or
 - (2) Lacks the mental capacity to contract or manage his own affairs.
- (b) The term shall include--
- (1) A finding of insanity by a court in a criminal case; and
 - (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

Committed to a mental institution. A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes a commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

The term *lawful authority*, though not specifically defined in the statute, is explained in the notice published June 27, 1997. The notice states:

In ATF's view, "lawful authority" as used in the proposed regulations clearly means a government entity having the legal authority to make adjudications or commitments, other than courts, boards, or other commissions which are specifically mentioned.

This would, in our opinion, include social service agencies such as the Social Security Administration, the Anchorage School District and the Alaska Department of Health and Social Services, each of which make determinations on the eligibility of persons for assistance. Each of these agencies handle a number of clients who may or may not be included among those prohibited from obtaining handguns. For example, persons with a physical disability such as paraplegia may require assistance from the Department of Health and Social Services but are neither "a danger to themselves or others" nor are they "lacking the mental capacity to manage their own affairs." In order to capture those persons who should be included in APSIN the agency would be required to flag the appropriate cases.

Also, the term "mental defective" is not used by any social service or mental health agency in this state, nor is there a standard alternative term. These agencies use the terms "developmentally delayed," "mentally retarded," "disabled" or "developmental disability," with each agency defining these terms differently. The state definition for a person with a developmental disability is found in Alaska Statute 47.80.900:

- (7) "person with a developmental disability" means a person who is experiencing a severe, chronic disability that
 - (A) is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - (B) is manifested before the person attains age 22;
 - (C) is likely to continue indefinitely;
 - (D) results in substantial functional limitations in three or more of the following areas of major life activity: self care, receptive and expressive language, learning, mobility, self direction, capacity for independent living, and economic self sufficiency; and
 - (E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated;

Current Policies

The Department of Health and Social Services, Division of Developmental Disabilities, in Juneau, handles compensation for developmentally disabled persons seeking assistance in Alaska. Most of the division's clients are children and young adults, and their disabilities range from mental retardation to a physical handicap. Though the division has a database with information about the types of clients it serves, because of privacy laws it does not include any identifying information.

At this time, it would be impossible to identify any single person who should be included in the APSIN database.

The Social Security Administration (SSA) also administers monetary compensation benefits for persons with disabilities. Only those drawing Supplemental Security Income (SSI) have identifying information in the database; however, the database can only be accessed by social security number and there is no way to differentiate between those with physical disabilities and those with mental disabilities without a manual search of the files. Currently federal privacy laws restrict access to information on individuals contained in this database unless the individual gives written consent. Court orders are scrutinized to insure that information is released only for a valid reason and even then may require the individual's written consent.

The Anchorage School District Special Education Department keeps records on children for five years after they leave school regardless of age of matriculation, but because of the Family Educational Rights Privacy Act (20 U.S.C.A. 1232(g)), the office is not able to release any information on a student or former student without written permission from the parent, guardian or the individual himself (if over the age of 18). The Family Educational Rights Privacy Act reads in part:

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following ~~

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, or (iii) State educational authorities under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted~~

...

(I) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or

(ii) after November 19, 1974, if~~

(I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

(II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under state law without the prior written consent of the parent of the student.

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of Title 26;

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such is necessary to protect the health or safety of the student or other persons; and

(J) (i) the entity of persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

(ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection, unless~~

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) except as provided in paragraph (1) (J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

Private agencies such as Charter North Hospital and Providence Alaska Medical Center would not be included as they are not a "lawful authority" as defined by the Bureau of Alcohol, Tobacco and Firearms. In Addition, they do not maintain any type of database on clients other than those currently being served and/or billed, and because of state privacy laws would be unable to release any information on an individual without a court order.

Discussion

Many agencies within the state, both public and private, assist people with mental disabilities, but currently no central repository for information on those persons who have been found to be developmentally disabled exists. Unless a person has applied for monetary compensation or physical assistance, no way exists to determine who has been found to be developmentally disabled. In

order to obtain this information, either a manual check of all files within an agency would have to be done or a central repository would have to be set up and laws would have to be initiated requiring all persons with developmental disabilities to be registered with the repository agency, whether or not they require assistance. This would best be done at the federal level requiring compliance by all states. Also, statutory changes would have to be made to both state and federal privacy laws to allow any access of information. However, two problems would still remain even if privacy laws were amended. The first would be of a technical nature.

If a central repository was set up through the Department of Health and Social Services (the most logical flagging point) their computer system would have to be modified so that it would be possible for their system to interface with the APSIN system or additional permanent manpower would be required to initiate and maintain a manual search of files. Either way this would be a costly procedure and may require the purchase of a brand new computer system or the hiring of additional personnel. Secondly, the requirement for all developmentally disabled to register with the state, which may infringe on their constitutional rights, would undoubtedly create considerable litigation. Considering the small number of individuals this bill intends to capture, the cost of identification, computerization and potential litigation could be prohibitive.

Involuntary Mental Commitments

Involuntary mental commitment is a process through which a person can be confined in a mental institution or hospital for treatment against his or her will. In order for this process to occur the person has to be believed to pose a substantial risk of physically harming himself or others or be found to be unable to take care of his own basic needs. The handbook from the Alaska Court System states the following criteria:

The person must be mentally ill and, as a result of his mental illness, he must be GRAVELY DISABLED OR PRESENT A LIKELIHOOD OF SERIOUS HARM TO HIMSELF OR OTHERS.

Gravely disabled means that the person cannot take care of his own basic needs, like food and shelter, and this inability puts him in danger of serious harm. A person is also considered gravely disabled if he will suffer severe and abnormal mental, emotional or physical distress if not treated, and this distress is associated with significant impairment of judgement, reason or behavior causing him/her to be able to function much less independently.

Under this law, a person presents a likelihood of causing serious harm if: (1) he poses a substantial risk of physically harming himself as shown by his behavior causing, attempting to threatening harm to himself OR (2) he poses a substantial risk of harm to others shown by recent behavior and is likely in the near future to physically hurt someone else or cause substantial property damage, OR (3) he shows a current intent to carry out plans of serious harm to himself. (Alaska Court System 1989, p. 2; emphases in original. A complete copy of this pamphlet is contained in Appendix A.)

There are three ways to achieve a court-ordered confinement: an ex parte order, a police officer application (POA) or a criminal confinement. The first two are civil commitments and require a

hearing before a judge or court official. In Anchorage, Alaska's largest city, all civil commitments are handled by the Probate Division, with hearings conducted by a court master and given to a Superior Court judge for signature. In other areas of the state, the hearings are held before a Superior Court judge. (Appendix B contains copies of forms used by the courts for the commitment process.)

The Process of Commitment: Getting to Court

The two civil commitments are used in different circumstances. The first, an ex parte order, is used when no emergency situation exists. Any adult who believes that an individual is mentally ill, gravely disabled, and cannot function normally can petition the Superior Court to order a screening investigation for that individual. If the court finds that the petition lists appropriate grounds for an examination the Superior Court Judge will order that the individual be temporally confined for a screening investigation. The screening investigation takes up to 48 hours. A hearing is scheduled within 72 hours of the original confinement to determine whether the respondent should continue to be institutionalized or be released.

A police officer application (POA) is used under emergency circumstances. A police officer or other public health official can place a person in custody and take the individual to the nearest hospital or treatment facility if the official has good reason to believe that a person is gravely disabled and a threat to his or her own safety or the safety of others. An evaluation must take place within 24 hours and a hearing convened to determine if the person should remain in the hospital or be released.

The third court-ordered confinement is a criminal commitment. When someone is found guilty but mentally ill, the inmate is taken directly to the hospital for treatment. These types of incidents are already noted in APSIN because of the criminal conviction and therefore would show up during a Brady check.

Time Frames

A screening investigation for an ex parte order cannot take longer than 48 hours, and an evaluation for a police officer application cannot take longer than 24 hours. In either case, a hearing before the court must take place within 72 hours after the initial confinement. If the court decides that it is in the best interest of the person to be institutionalized, it will order a 30-day commitment. If at the end of 30 days, the person's condition has not improved to the point of warranting release, another hearing is scheduled and a new order can be entered for up to 90 days confinement. Again, at the end of 90 days, if the person has not shown significant improvement, another hearing is ordered and a commitment will be ordered for up to 180 days. All hearings after that are held every 180 days.

Participants

Many people are required to take part in the hearing process. Depending upon the area of the state, participants differ. In Anchorage, the Probate Division of the court system handles all involuntary mental commitments. Though a Superior Court Judge is required to sign a commitment order, the hearings in Anchorage are presided over by a court master who in turn will present findings to a Superior Court judge for his signature. In all other areas of the state it appears that a Superior Court judge presides over the hearings, as defined by Alaska Statutes 47.30.915.

Present at all hearings are the court paralegal, the respondent, the respondent's attorney (usually an attorney from the Public Defender's Office), the petitioner, and any witnesses. In the case of a police officer application (POA) instead of the petitioner, the police officer or public health official making the original application is present.

Available Institutions

No listing specifying which facilities within the state are currently under contract to provide for involuntary mental commitments appears to exist. The "Mental Health Commitment" handbook given out by the Probate Division states that Alaska Psychiatric Institute (API), Fairbanks Memorial Hospital, and Mt Edgecumbe Hospital in Sitka are allowed to accept involuntary mental commitments. The Anchorage office of the Division of Mental Health and Developmental Disabilities (MHDD) in the Department of Health and Social Services states that API, Providence Medical Center, and Charter North Hospital all accept involuntary mental commitments. The regional director's office of MHDD states that only API can accept them. API states that only API and Mt. Edgecumbe can accept involuntary mental commitments. Mt. Edgecumbe Hospital personnel state that they do accept involuntary mental commitments for a limited time period (up to 90 days), but after that the person is sent to API. The actual hospitals used vary depending upon the contracts signed each year. One year a hospital may elect to take an involuntary mental commitment but the next, due to rising costs, they may elect to discontinue the practice. API is the only hospital required by statute to take involuntary mental commitments. Other than API, each institution's willingness to take involuntary mental commitments appears to be solely an artifact of budgetary constraints. Consequently, tracking the institutions accepting commitments would have to be researched on a yearly basis and would cause problems with maintaining an accurate database because the system could not be automated and each individual commitment would have to be manually researched and input into the APSIN system on a continuing basis.

Court Records

Because no central database exists listing involuntary mental commitments, tracking for the Brady legislation will have to be done through the courts. Since statute requires that a Superior

Court judge sign all commitments, court records would be the logical place to obtain the information. Again, a major problem would be getting the two computer systems to interface with each other. Currently neither system is capable of interfacing with the other so a major overhaul of one or both of the systems would be necessary or permanent manpower would have to be hired to gather the information from the court and input it in the APSIN system.

The Anchorage Superior Court, Probate Division would have the most information on involuntary commitments since they handle the majority of cases within the state. A computerized database of all cases exists, and flagging the commitments would take only adding another field to their database for inclusion in APSIN. However, other courts in the state may not have a computerized database that can be used to flag information for Brady checks; hence, a hand check of all court records would be required unless additional funds were expended to bring all court systems across the state on line with the APSIN system. This may cause not only logistical problems as mentioned but security problems as well. Decisions would have to be made regarding who would have access and for what purposes. The information about involuntary commitments should only be available to those in the Department of Public Safety responsible for completing the handgun check. Therefore, a system would have to be designed that allows this potentially damaging information to be accessed only by specific persons within the state law enforcement network.

Another problem for acquiring data on who can be included in this category is that the involuntary status of a commitment can be changed at any time. Alaska Statute 47.30.803 allows conversion from involuntary to voluntary status. After the initial screening, the respondent can change the status of his commitment from involuntary to voluntary as long as a responsible physician agrees that the individual is an appropriate patient for voluntary commitment. Even after the respondent has been released from the institution, he can petition the court to expunge the records of the proceedings. Alaska Statute 47.30.850 states:

Following the discharge of the respondent from a treatment facility or the issuance of a court order denying a petition for commitment, the respondent may at any time move to have all court records pertaining to the proceedings expunged on condition that the respondent file a full release of all claims of whatever nature arising out of the proceedings and the statement and actions of persons and facilities in connection with the proceedings. Upon the filing of the motion and full release, the court shall order the court records either expunged or sealed, whichever the court considers appropriate under the circumstances.

Both of these statutes would complicate establishing thorough databases on involuntary commitments. The statutory provision would have to be changed to allow for status change only in special circumstances or be removed completely, and expunging or sealing the records after release would have to be limited to special circumstances. Such changes would require legislative action.

Discussion

People outside of the law enforcement community tend to overrate the accuracy, extent, and reliability of criminal records, assuming that they are much more sophisticated than they really are. Consequently, problem-solving remedies are frequently based on the spurious perception of law enforcement's ability to capture, process and retain criminal history information. Capturing information and making it accessible to criminal history records for the purpose of a very limited classification of individuals is most problematic.

At this time there is no clear or cost-effective way to create and maintain a database for either of the two categories -- adjudicated mental defectives and involuntary mental commitments -- with any accuracy. Records are not kept on mentally ill individuals, and even if they were, because of the right to privacy, access would be denied. This would preclude even a manual check of the files of social service agencies. Involuntary mental commitments, on the other hand, are handled through the court system so records are available, but current statutory provisions allowing changes in status or the expungement or sealing of records preclude maintaining the accuracy needed for a Brady handgun check. As a stop-gap measure to insure accuracy of the information added to the system personnel could be hired to gather, verify and input information from the Probate Court records in Anchorage and in the various Superior Courts across the state. This would involve checking the system monthly not only to pick up additional cases for input into the APSIN system but also to check for changes in status for those who have already been added.

In the long run major issues need to be addressed at both the state and federal levels to provide limited access to this sensitive information. The first of these issues involves the right to privacy, which is protected by both state and federal privacy laws. Numerous federal statutory provisions limit access to an individual's records. The limitations for access to a mentally ill person's records is contained in federal code 42 U.S.C.A. 9501(H), which states the mentally ill have "the right to confidentiality of such person's records." In fact, the federal government limits access to individual information that is not of a criminal nature to even law enforcement agencies without a court order. Major statutory revisions to numerous privacy laws would have to be made at the federal level for such access to be allowed.

Additionally, the Alaska Constitution (Art. I, §22) guarantees Alaskans' personal privacy, further limiting access to an individual's information. To change this provision would require a two-thirds vote in each house of the state legislature and a simple majority vote in the general election.

Alaska Statute also limits access to information about individuals except for very specific purposes. Alaska Statute 47.30.845 states:

Information and records obtained in the course of a screening investigation, evaluation, examination, or treatment are confidential and are not public records, except as the requirements of a hearing under AS 47.30.660 - 47.30.915 may necessitate a different procedure. Information and records may be copied and disclosed under regulations established by the department only to

- (1) a physician or a provider of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient;
- (2) the patient or an individual to whom the patient has given written consent to have information disclosed;
- (3) a person authorized by a court order;
- (4) a person doing research or maintaining health statistics, if the anonymity of the patient is assured, and the facility recognizes the project as a bona fide research or statistical undertaking;
- (5) the Department of Corrections in a case in which a prisoner confined to the state prison is a patient in the state hospital on authorized transfer either by voluntary admission or by court order;
- (6) a governmental or law enforcement agency when necessary to secure the return of a patient who is on unauthorized absence from a facility where the patient was undergoing evaluation or treatment;
- (7) a law enforcement agency when there is substantiated concern over *imminent* danger to the community by a presumed mentally ill person. (Emphasis added)

Also, technical problems exist with the creation of a central database for “mental defectives” or the automation of records from the state courts. Currently the various computer systems across the state are unable to “talk” to each other and major overhauls of the systems would be required to correct this problem. Until this can be accomplished the state would have to rely on a manual check of all files containing the required information. This is a lengthy and costly procedure and because of the time involved in researching and inputting the information it would mean a delay in the completeness of the records for certain individuals. Given the time limit mandated by federal law for a handgun check, this could create difficulties in assuring the accuracy of records.

To overcome the above difficulties will require extensive federal leadership and coordination amongst the various and diverse state agencies. In Alaska we would recommend that a database listing those persons found to be mentally defective be established and maintained by the Department of Health and Social Services. The data identifying these individuals are obviously very sensitive and should be statutorily protected. The maintenance and control of a database by one central agency such as DHSS which is acutely aware of the sensitivity of these records/needs of these individuals would be the most logical repository. Statutory provisions could be made for limited access for the Department of Public Safety exclusively for the purpose of meeting the mandates of the Brady Bill. These various state databases could also meet a myriad of needs of other concerned local, state, and federal agencies who could also be given statutory access for their limited needs, e.g. school districts, medical and psychological providers, Social Security Administration, and Aid to Families with Dependent Children (AFDC). With sufficient protection this database would not have to be an intrusive element but rather one that in the long run would benefit those individuals that it identifies.

References

- Alaska Court System. 1989. *Mental Health Commitments (Civil Commitments): Answers to Some Common Questions*. PUB-6 STWD (2.89) MHC. Anchorage: Administrative Office of the Alaska Court System. February.
- Definitions for the Categories of Persons Prohibited from Receiving Firearms, 62 Red. Reg. 34,634 (1997) (to be codified at 27 C.F.R. § 178.11).

Appendix A

Mental Health Commitments (Civil Commitments) Answers to Some Common Questions

Administrative Office of the Alaska Court System
Revised February 1989

Mental Health Commitments (Civil Commitments): Answers to Some Common Questions

Administrative Office of the Alaska Court System.
Revised February 1989
PUB-6 STWD (2/89) MHC

Note: This appendix contains the complete text of the original pamphlet; the original's pagination is indicated by italicized page numbers in brackets at the start of each page's text.

[page 1]

WHAT IS A CIVIL COMMITMENT?

A civil commitment is a procedure by which a mentally ill person is placed in a hospital or other type of health care center for treatment of his or her mental illness.

WHAT IF A MENTALLY ILL PERSON DOESN'T WANT TREATMENT?

There are two types of commitments: voluntary and involuntary.

A mentally ill person may voluntarily admit himself to a treatment facility by signing papers agreeing that he wants to be admitted. A person who has voluntarily committed himself can request to be released at any time. The person must be released or involuntary proceedings must be started within 48 hours after receipt of the patient's request.

(At this point in time, Alaska Psychiatric Institute in Anchorage, Fairbanks Memorial Hospital, and Mt. Edgecumbe Hospital in Sitka are the only treatment facilities in Alaska designated by the Department of Health and Social Services to receive persons seeking to formally commit themselves on a voluntary commitment. However, a number of other hospitals will also admit persons who seek to enter the hospitals because they are mentally ill.)

If a mentally ill person does not want to get treatment, or if he is so ill that it is impossible to determine what he wants, the superior court can commit him for treatment against his will under certain special circumstances which are described in the Alaska Statutes.

A person who has been involuntarily committed can convert to voluntary status at any time if his doctor agrees that the person is an appropriate patient for voluntary hospitalization and is acting in good faith.

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HOW SICK DOES THE MENTALLY ILL PERSON HAVE TO BE BEFORE HE CAN BE INVOLUNTARILY COMMITTED?

Alaska law is clear on this point. The person must be mentally ill and, as a result of his mental illness, he must be **GRAVELY DISABLED OR PRESENT A LIKELIHOOD OF SERIOUS HARM TO HIMSELF OR OTHERS**.

Gravely disabled means that the person cannot take care of his own basic needs, like food and shelter, and this inability puts him in danger of serious harm. A person is also considered gravely disabled if he will suffer severe

and abnormal mental, emotional or physical distress if not treated, and this distress is associated with significant impairment of judgment, reason or behavior causing him/her to be able to function much less independently.

Under this law, a person presents a likelihood of causing serious harm if: (1) he poses a substantial risk of physically harming himself as shown by his behavior causing, attempting or threatening harm to himself OR (2) he poses a substantial risk of harm to others shown by recent behavior and is likely in the near future to physically hurt someone else or cause substantial property damage, OR (3) he shows a current intent to carry out plans of serious harm to himself.

WHO MAKES THE DECISION ABOUT WHETHER OR NOT SOMEONE SHOULD BE INVOLUNTARILY COMMITTED?

A superior court judge will decide whether or not a mentally ill person will be involuntarily committed after the judge hears the facts of the case and the opinions of mental health professionals (for example, psychiatrists) who have examined the mentally ill person.

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HOW DOES THE INVOLUNTARY COMMITMENT PROCEDURE START?

The procedure usually starts in one of two ways.

1. Any adult can file a petition with the superior court (not a district court judge or magistrate).

A petition is a legal document which says:

- a. That the petitioner (the person who makes out the petition) believes the mentally ill person (called the respondent) is likely to seriously harm himself or others or is gravely disabled as a result of mental illness.
- b. the facts which support the petitioner's belief, and
- c. the names and addresses of all persons known to the petitioner who have knowledge of the facts through personal observation.

When a superior court judge receives a petition, he or she immediately takes steps to direct a mental health professional to do a screening investigation of the mentally ill person. Depending on the results of that investigation, either the mentally ill person will be hospitalized and a court hearing will then be scheduled, or no further action will be taken.

2. If a peace officer (for example, a state trooper or a policeman) has a good reason to believe **THAT A PERSON IS GRAVELY DISABLED OR IS SUFFERING FROM MENTAL ILLNESS AND IS LIKELY TO CAUSE SERIOUS HARM TO HIMSELF OR OTHERS OF SUCH IMMEDIATE NATURE THAT CONSIDERATIONS OF SAFETY DO NOT ALLOW FOR A PETITION TO BE FILED AND SCREENED AS DESCRIBED ABOVE**, the peace officer can take immediate action. The peace officer can take the mentally ill person into custody and deliver him to the nearest hospital or other appropriate facility which can evaluate the person.

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(Government health officers and public health nurses are considered peace officers under this law, also.)

When the peace officer delivers the person to the evaluation facility, the peace officer fills out a request that the person be examined by a mental health professional. The person is admitted to the facility and held while an investigation is conducted. The investigation must take place within 24 hours after the person's arrival. Depending on the results of that investigation, the mentally ill person may be hospitalized and a court hearing will then be scheduled.

WHAT CAN I DO IF I KNOW SOMEONE WHOM I THINK IS MENTALLY ILL AND NEEDS HELP? WHOM SHOULD I CONTACT?

You can get information about how you can help a mentally ill person by contacting your community mental health center or your regional CMHC coordinator. A list of these agencies is provided at the back of this pamphlet.

If the situation is an emergency (for example, if you think the person is going to hurt himself or others if some immediate action isn't taken), contact a peace officer. As described above, a peace officer can take immediate custody of the mentally ill person.

If the situation is not an emergency, you or any other adult can write up and sign a petition about the mentally ill person and give it to a superior court. There is no filing fee or other charge for doing this. Each superior court in the State has petition forms you can fill out and sign. The addresses of all superior courts are listed on the back of this pamphlet. (The contents of the petition were described above.)

This petition cannot be handled by a district court. It can only be handled by a superior court. IF YOU LIVE IN A COMMUNITY IN WHICH A MAGISTRATE IS THE ONLY JUDGE, THE MAGISTRATE CANNOT HANDLE THIS CASE FOR YOU.

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A person who files a petition in good faith upon either actual knowledge or reliable information cannot be found civilly or criminally liable as a result of filing the petition.

However, a person who willfully begins an involuntary commitment procedure by filing a petition with the superior court without good cause to believe the other person is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others is guilty of a felony.

IF A PERSON IS COMMITTED, WHERE DOES HE GO?

At this point in time, Alaska Psychiatric Institute in Anchorage, Fairbanks Memorial Hospital, and Mt. Edgecumbe Hospital in Sitka are the only treatment facilities in Alaska at which committed persons are placed for treatment on an inpatient basis.

WHO PROTECTS THE COMMITTED PERSON'S RIGHTS AND MAKES SURE THAT THE PERSON IS TREATED FAIRLY?

From the time any action is taken against a mentally ill person, that person is entitled to legal protection and help. The person has definite legal rights which will be protected.

The person has the right to be notified, orally and in writing, of the commitment proceedings and his rights. These explanations must be given in a language the person understands. The person has the right to communicate with his guardian or another adult of his choice. He will be represented by a lawyer, and he is entitled to a free lawyer if he and his family cannot pay to hire a lawyer. He will be able to attend court hearings about his case, and he can present evidence and cross-examine witnesses. He has a right to have a court hearing within 72 hours (excluding weekends and holidays) after he arrives at a treatment facility for evaluation, and he has the right to have further hearings 30 days later, then 90 days later and then 180 days later if he continues to be committed.

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He has specific rights to receive treatment and to refuse specific types of treatment which are listed in the Alaska Statutes, and his freedom can only be restricted to the extent necessary for his treatment. He must be released at any time if his condition improves to the point that he is no longer committable. He retains his civil rights, and his care and treatment are kept confidential. He has the right to a nutritional evaluation and the right to receive a medically

appropriate diet while he remains in the treatment facility. He has the right to be free of corporal punishment, the right to exercise and recreation and the right to be in contact with a lawyer.

After his release, he can request that all records of his commitment proceedings be expunged (erased).

There is a non-profit mental health advocacy agency which responds to complaints of abuse, neglect and other rights violations from individuals in mental health facilities such as API. Advocacy Services of Alaska has offices in Anchorage, Fairbanks and Juneau (see page 13 for addresses and phone numbers).

HOW LONG IS A CIVIL COMMITMENT FOR?

That depends. A committed person must always be released as soon as his condition improves to the point that he could no longer be committed under the standards of the law.

If the person was taken to a treatment facility by a peace officer, the first court hearing must be held within 72 hours (excluding weekends and holidays) of when the mentally ill person arrives at a treatment facility for evaluation. If the superior court judge finds that the person should be committed, a 30 day commitment order is made. At the end of 30 days, if the person's condition has not improved, another hearing is held and the person may be committed for up to 90 days more. Likewise, at the end of 90 days, another hearing may be held and a commitment order of up to 180 more days may be made. After that, hearings are held and orders are made every 180 days.

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A voluntary commitment can last as long as the person continues to be mentally ill and continues to consent to a voluntary commitment.

CAN A CHILD BE CIVILLY COMMITTED?

Yes, but the procedures are slightly different. The child's parents or guardians are involved in the procedures.

CAN A PERSON APPEAL FROM A JUDGE'S DECISION ORDERING A CIVIL COMMITMENT OF THAT PERSON?

Yes, the person can appeal from any court order of involuntary commitment, and the judge must tell him about his right to appeal.

WHO PAYS FOR ALL OF THIS?

To the extent that they are able, a person who is committed, or his legal guardian, or his spouse, or his parents if the person is under 18 years of age, must pay for the care, transportation and treatment of the person. If no one else can pay the expenses, the State of Alaska will pay.

When the commitment process is started, the Department of Health and Social Services is required to arrange and pay for the transportation of the person to a treatment facility. The department also pays for appropriate persons to go with the mentally ill person, and for return transportation for these people. When advisable, one or more relatives or friends shall be permitted to go with the mentally ill person. The department may pay necessary travel, housing and meal expenses for one relative or friend to go with the person, if the department finds that the person's best interests require that he travel with the relative or friend and the relative or friend doesn't have enough money to pay his own expenses. For more information about this possibility, contact your community mental health center or your regional CMHC coordinator.

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COMMUNITY MENTAL HEALTH PROGRAMS

REGION I PROGRAMS

Community Mental Health Center Coordinator
Department of Health and Social Services
Division of Mental Health and DD
350 Main Street
P. O. Box H-04
Juneau, Alaska 99811-0620
(907) 465-3370

Juneau Regional Mental Health Clinic
210 Admiral Way
Juneau, AK 99801
Ivan H. Frasier, MA, Director (907) 586-5280

Lynn Canal Mental Health Program
P. O. Box 117
Haines, AK 99827
William Stacy, MSW (907) 766-2177

Baranof Mental Health Clinic
Box 1180
Sitka, AK 99835
Stanley Laughridge, Ph.D., Director (907) 747-8994

COHO Mental Health Services
P. O. Box 8
Craig, AK 99921
Dick Puckett, Director

Cordova Community Hospital
Mental Health Program
Box 160
Cordova, AK 99574
John P. Crowley, Ph.D. (907) 424-8300

Gateway Community M.H. Center
3134 Tongass Avenue
Ketchikan, AK 99901
Ann Graham (907) 225-4135

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REGION II PROGRAMS

Ken Taylor, ACSW, Community Mental Health Center Coordinator
Department of Health and Social Services
Division of Mental Health and Developmental Disabilities
3601 "C" Street, Suite 580
P. O. Box 240249
Anchorage, AK 99519-0249
(907) 561-4247

Southcentral Counseling Center
 4020 Folker Street
 Anchorage, AK 99508
 Glade Birch, Executive Director (907) 563-1000

Mat-Su Community Counseling Center
 230 E. Paulson
 Wasilla, AK 99687
 Bob Irvine, Director (907) 376-2411

Central Peninsula Mental Health Center
 11355 Kenai Spur Hwy., Suite 228
 Kenai, AK 99611
 Kathy Dinius, Ph.D., Ex. Director (907) 283-7501

South Peninsula Mental Health Center
 3948 Ben Walters Lane
 Home [sic], AK 99603
 Malgosia Cegielski, Ph.D., Director (907) 235-7701

Seward Mental Health Program
 Box 1045
 Seward, AK 99664
 Dennis Scholl, Ph.D., Director (907) 224-3027

Aleutian Counseling Center
 Box 485
 Dutch Harbor, AK 99692
 Charles Gasta, Ph.D., Director (907) 581-1761

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REGION II PROGRAMS - continued

Bristol Bay Mental Health Center
 P. O. Box 130
 Dillingham, AK 99576
 Cecilie Martin, MA, Director (907) 842-1230

Kodiak Island Mental Health Center
 316 Mission Rd., #119
 Kodiak, AK 99615
 Pamela Delys-Baglien, Ph.D., Director (907) 486-5742

Valdez Counseling Center
 Box 1050
 Valdez, AK 99686
 Robert Donald, MA, Director (907) 835-2838

Copper River Mental Health Center
 Drawer "H"
 Copper Center, AK 99573
 Clara (Billie) Lewis, Health Director (907) 822-5241

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REGION III PROGRAMS

Norma Forbes, Ph.D., Community Mental Health Center Coordinator
Department of Health and Social Services
Division of Mental Health & Development Disabilities
Regional Office Building
675 7th Avenue
Station A
Fairbanks, AK 99701
(907) 451-2855

Fairbanks Community Health Center
1305 21st Avenue
Fairbanks, AK 99701
Wes Terwilliger, MA, Ex. Director (907) 452-1575

Tok Area Mental Health Program
P. O. Box 398
Tok, AK 99780
Irene Orr, MSW, Director (907) 883-5106

North Slope Borough M.H. Program
Box 669
Barrow, AK 99723 (907) 852-5600

McGrath-Anvik Community and Family Services
Box 44
McGrath, AK 99627 (907) 524-3867

Yukon-Koyukuk Mental Health Center
Box 17
Galena, AK 99741
Moira Kirkpatrick, Ph.D., Director (907) 656-1617

KNA Community Counseling Program
Box 155
Aniak, AK 99557
John Bajowski, Director (907) 675-4445

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REGION III PROGRAMS - continued

Yukon-Kuskokwim Health Corporation
Box 528
Bethel, AK 99559
Margaret Berendes, M.D., Director (907) 543-3321

Maniilaq Mental Health Center
Box 256
Kotzebue, AK 99752
Elizabeth Leo, MSS, ACSW, Director (907) 442-3311

Norton Sound Family Services
Box 966
Nome, AK 99762
Sharon Walluk, MSW, Director (907) 443-5206

Fort Yukon Behavioral Health Center
Box 21
Fort Yukon, AK 99740
Ann R. Davis, MSW, Director (907) 662-2526

Yukon-Tanana Mental Health Program
Box 49
Tanana, AK 99777
Vicki Koehler, ACSW, Director (907) 366-7269

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ADVOCACY SERVICES OF ALASKA (“ASK”)

ANCHORAGE: 325 E. Third Avenue, Suite 400
Anchorage, Alaska 99501
274-3658; Toll Free: 800-478-1234

FAIRBANKS: 250 Cushman, Suite 3H
Fairbanks, Alaska 99701
456-1070

JUNEAU: 230 South Franklin, Suite 213
Juneau, Alaska 99801
586-1627

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SUPERIOR COURT LOCATIONS

ANCHORAGE: 303 K Street, Anchorage AK 99501-2083
264-0440

BARROW: Box 2700, Barrow AK 99723-2700
852-4800

BETHEL: Box 130, Bethel AK 99559-0130
543-2196

FAIRBANKS: 604 Barnette Street, Room 228
Fairbanks AK 99702-4571
452-9256

JUNEAU: P. O. Box U, Juneau AK 99811-4100
463-4700

KENAI: 145 Main Street Loop, Room 106-Main Floor
Kenai AK 99611
283-3110

KETCHIKAN: 415 Main Street, Room 400,
Ketchikan AK 99901-6399, 225-3195

KODIAK: 202 Marine Way, Kodiak AK 99615-1367
486-5765

KOTZEBUE: Box 317, Kotzebue AK 99752-0317
442-3208

NOME: Box 100, Nome AK 99762-0100, 443-5216

PALMER: 435 S. Denali, Palmer AK 99645-0860
745-4283

PETERSBURG: Box 1009, Petersburg AK 99833-1009
772-4466/4468

SITKA: 304 Lake Street, Rm. 203, Sitka AK 99835
747-3291

VALDEZ: Box 127, Valdez AK 99686-0127, 835-2266

WRANGELL: Box 869, Wrangell AK 99929-0869, 874-2311

DISTRICT COURT LOCATION WHICH WILL ACCEPT
CIVIL COMMITMENT PETITIONS

HOMER: 3670 Lake Street, Homer AK 99603, 235-8171

**Copies of forms themselves are not
available in this file.**

Appendix B

**Forms Used in the Alaska Court System
During the Involuntary Mental
Commitment Process**

Ex Parte Order (Temporary Custody for Emergency Examination/Treatment), MC-305
Peace Officer/Mental Health Professional Application for Examination, MC-105
Order for Screening Investigation
Order of Dismissal of Petition for Commitment, MC-325
Petition for Initiation of Involuntary Commitment, MC-100
Notice of Respondent's Arrival at Evaluation Facility, MC-400
Notice of Rights Upon Detention for Evaluation, MC-405
Notice of 30-Day Commitment Hearing, MC-200
Petition for 30-Day Commitment, MC-110
Order for 30-Day Commitment, MC-310
Notice of 90-Day Commitment Hearing, MC-205
Petition for 90-Day Commitment, MC-115
Order for 90-Day Commitment, MC-315
Notice of 180-Day Commitment Hearing, MC-210
Petition for 180-Day Commitment, MC-120
Order for 180-Day Commitment, MC-320
Notice of Release, MC-410



**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

Cassie Atwell
Research Associate

Allan R. Barnes
Project Director

Lawrence C. Trostle
Principal Investigator

Alaska Justice Statistical Analysis Unit
Justice Center
University of Alaska Anchorage



JC 9615.02

March 6, 1998



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JC 9615.02
March 6, 1998

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 synopsize 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.

References

- Federal Bureau of Investigation. (1996). *National Crime Information Center (NCIC) Protection Order File (Draft)*. U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division. September 16.
- Manson, Donald A. and Lauver, Gene. (1997). *Presale Firearm Checks: A National Estimate*. Bureau of Justice Statistics Bulletin. U.S. Department of Justice. February. NCJ-162787.
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Pictures of APSIN screens are not
available in this file format.

Appendix A

APSIN Screens

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



**Brady Statute Data:
Persons who are Unlawful Users of
or Addicted to Any Controlled Substance**

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

by

Lawrence C. Trostle
Principal Investigator

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Alaska Justice Statistical Analysis Unit
Justice Center
University of Alaska Anchorage



JC 9615.03

September 1998



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JC 9615.03
September 1998

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Brady Statute Data: Individuals Who are Unlawful Users of or Addicted to Any Controlled Substance

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, federal 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 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 law enforcement agencies.

Currently, state law enforcement agencies do not obtain data on the four non-criminal categories prohibited by the above federal law from obtaining guns: adjudicated mental defectives and involuntary mental commitments; individuals subject to any court order restraining them from threatening or committing acts of domestic violence or abuse; aliens illegally in the United States; and **those who are unlawful users of, or addicted to, any controlled substance.**

This is the third in a series of Alaska Statistical Analysis Unit reports describing how each category can be 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 review the four components of the project.

The first and second reports focused on adjudicated mental defectives and involuntary mental commitments and those subjects with domestic violence restraining orders. The third of these four non-criminal classifications to be examined is that of **persons who are unlawful users of or addicted to any controlled substance.**

First, this report will examine the statutory provisions pertaining to persons who are addicted to or are abusers of controlled substances; thus it will look at the identification and tracking of drug addicts and unlawful users. The next component will present proposed procedures for collecting data on non-adjudicated addicts and substance abusers from criminal agencies and discuss how their data could be contributed to the currently existing criminal history repository. The next section will address proposed reporting procedures from public non-justice-related agencies. The last section

of the report will look at how addicts and controlled substance abusers could be tracked in the private sector.

Persons who are Users of or Addicted to Any Controlled Substance

Definitions

Federal statute, 18 U.S.C. 922 (g), as amended by the Violent Crime Control Act, lists the provisions which prohibit the purchase, sale or transport of firearms by some individuals. Among the groups to whom a sale is prohibited is anyone:

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the controlled Substances Act (21 U.S.C. 802);

Controlled substances include, but are not limited to: marijuana, depressants, stimulants, and narcotic drugs. They do not include distilled spirits, wine, malt beverages, or tobacco as defined or used in Subtitle E of the Internal Revenue Code of 1986, as amended.

It is unlawful to use any illegal controlled substance (such as PCP), or to use any other controlled substance (such as morphine) in a manner other than as prescribed by a licensed physician. A person who is addicted to a controlled substance is any individual who is found to (1) habitually use a controlled substance so as to endanger the health, safety, welfare, or morals of the public, or (2) to have lost the power of self-control with reference to the addiction.

To be prohibited from purchasing a firearm, there must be evidence that a person is a current unlawful user of, or addicted to, a controlled substance. Such unlawful use or addiction may be demonstrated by evidence of: (1) the recent use of a controlled substance, which is part of a pattern of unlawful use or addiction; or (2) the current unlawful use of, or addiction to, a controlled substance.

Evidence of unlawful use or addiction includes, but is not limited to, any of the following: a criminal record, self-admission of use, diagnoses or other records at a drug treatment or rehabilitation center or other medical facility, testimony or a statement by a psychiatrist or other licensed physician who diagnosed the symptoms or treated the person, needle marks on the person, a failed (that is, “positive”) drug test, or testimony of a social acquaintance who observed the unlawful use of a controlled substance by the person.

Concerning drug tests, failing a single drug test would give reasonable cause for disqualifying a person from purchasing a firearm. Federal agencies may exercise discretion in determining when to report the “positive” results of a drug test for controlled substances. For example, agencies are not required to report such results prior to giving the person an opportunity to contest the results of the “test” through a proceeding that provides due process. The potential disqualifications with possible procedures, are further discussed in the definition section below.

The definitions for “addict” and “controlled substance” found in Food and Drugs, Drug Abuse Prevention and Control, 21 U.S.C.A. section 802, approved May 11, 1998 read:

(1) the term “addict” means any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self control with reference to his addiction....

(6) The term “controlled substance” means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, V of part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Subtitle E of the Internal Revenue Code of 1986, as amended.

The Bureau of Alcohol, Tobacco and Firearms (ATF) proposed to amend the “Definitions for the Categories of Persons Prohibited From Receiving Firearms (95R-051P)” 62 *Federal Register* 34634-02. ATF felt that the amendments would facilitate the implementation of the national instant criminal background check system (NICs) required under the Brady Handgun Violence Prevention Act.

On September 6, 1996, ATF published in the *Federal Register* a notice proposing to amend the regulations to provide for the various categories of persons who are prohibited from receiving or possessing firearms (Notice Number 839; 61 FR 47095):

An unlawful user of or addicted to any controlled substance. A person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance. A person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance; and any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct.

A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm or receive or possess a firearm. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possessions that reasonably covers the present time, e.g., a conviction for the use or possession of a controlled substance within the past year, or multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year.

The Department of Justice Office of Policy Development inquired whether the proposed definition includes persons found through a drug test to use a controlled substance unlawfully, provided the test was administered within the last year. In response, ATF agrees that this information would give rise to an inference of unlawful drug use. Accordingly, the final regulations are being amended to identify these persons in the definition.

The Department of Defense (DOD) noted that the examples should be expanded to include illegal drug use as evidenced by nonjudicial or administrative proceedings. DOD believes that it would be helpful to add the following to the proposed definitions:

For a recruit or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, nonjudicial punishment, or an administrative discharge based on drug use or drug rehabilitation failure.

ATF commented that the Defense Department's proposed language helps to clarify the definition with respect to the military, and ATF is adopting the proposed amendments into the regulations.

Identification and Tracking of Drug Addicts and Unlawful Users

The main aim of the Brady legislation is prevent ineligible persons from purchasing handguns from federally licensed dealers. Tracking drug addicts and unlawful users is problematic in that substance abuse and/or addiction is an attribute of the person and not the crime. There are two classifications of individuals that the legislation hoped to capture in regards to their abuse and or addiction:

1. Those who have been identified by the criminal justice system as addicts or abusers; and
2. Those who are addicted to or abuse controlled substances that have yet to be identified by the criminal justice system.

Those who have been identified by the criminal justice system as addicts or abusers should not present an identification problem in regards to a Brady handgun check. A background check through the criminal history records should immediately identify those individuals who are deemed ineligible for a handgun purchase. For example, if a records check reveals that the individual has any kind of misdemeanor or felony arrest or is on probation for a controlled substance violation, a check with the court system, law enforcement agency and/or the probation department will reveal such disqualifying information. If the arrest is recent, if there is any evidence of court-ordered drug counseling the application could be denied. If the check indicated that there is court-ordered urine analysis and any of the results have been "hot" within the last twelve months, the application could be denied.

Identifying and denying the handgun applications of those addicts/abusers who have been identified by the justice system should not be problematic. However, identifying those individuals who have not been formally charged with a controlled substance violation will be much more challenging. As noted above, evidence of unlawful use or addiction includes criminal records, self-admission, diagnoses or records of drug treatment, medical testimony by a psychiatrist or other licensed physician who diagnosed the symptoms or treated the person, needle marks on the person,

a failed (that is, “positive”) drug test, or testimony of a social acquaintance who observed the unlawful use of a controlled substance by the person.

Identification of addiction and/or controlled substance abuse often comes to light during the course of a criminal investigation. However, even though an addiction and/or controlled substance abuse identification is made during the course of such an investigation there is no record kept of such identification unless there is an appropriate charge made that is directly related to such addiction and or abuse.

Contributing Data to the Criminal History Repository

What is needed to facilitate the identification of substance abusers and addicts pursuant to a Brady handgun check is a document that is **a contributor to the criminal history repository** of the Alaska Criminal History Record Information program (ACHIP.) Such a document currently exists and is maintained by the Alaska Public Safety Information Network (APSIN). (See Arrest Disposition Form.)

APSIN is the automated depository for Alaska criminal history information. APSIN is an on-line criminal justice information system which supports over 2000 users statewide, including state, federal and municipal agencies. In addition, APSIN interfaces with the National Crime Information Center (NCIC) and the National Law Enforcement Telecommunications System (NLETS) to enable Alaska to routinely exchange criminal history information with criminal justice agencies in other states for law enforcement purposes. An additional law enforcement purpose, that of facilitating Brady checks should not be problematic.

Currently if a defendant is arrested for a controlled substance violation(s), the charges are translated into the appropriate NCIC codes. These codes are used for a myriad of purposes, one of which is to identify/indicate relevant classifications for Brady disqualifications. An example of this procedure is provided in the following section using a **Felony Indicator** as an example.

APSIN Screens with Felony/Felon Indicators

This section provides a potential APSIN user with a visual display of existing APSIN screens which include a **Felony Indicator**. Each of the following hypothetical screens shows the Felony Indicator. On each of these screens the felony indicator has been highlighted to indicate the location and provide a replica of the indicator. The letter “Y” indicates that a felony conviction has been recorded and the letter “N” indicates that one has not been recorded. The highlighted boxes indicating the location of the felony indicator used here are for illustrative purposes only. The APSIN screens displayed are:

Figure 1. Arrest Disposition Form

Defendant of		Citation		Criminal Case Intake and Disposition				Page of	
D. A. File Number		ATN SAMPLE				Court Number			
		Print this number in the "State Usage" block of the fingerprint card(s).							
Defendant's Name	Last	First	M.I.	Birth Date	Birth Country	AK ID / Lic.	Report Attached	<input type="checkbox"/>	
Defendant Note							Rule 45 Date		
Reporting Officer's Name		Agency		Report Number(s)		Date Case Submitted			
Date of Offense		Date of Arrest		Place of Offense		Victim's Name		Victim's Phone	
Charge(s) Referred for Prosecution			Statute		Class of Offense	Screening Disposition (100-330)	Reason if not Accepted as Referred		
1									
2									
3									
Case Received By		Date Case Received		Case Screened By		Date Case Screened			
Decisions to prosecute are often subject to dispute and investigating officers sometimes feel that inadequate weight has been given to a particular aspect of a case. If you feel that the decision made in this case was improper, please notify the screening prosecutor to discuss why a different result should occur.									
Instructions and Comments (Include information on concurrent/consecutive sentences):									
					Booking/Fingerprinting Ordered by the Court				
					Date Ordered		Judge		
					Booking Information				
					Date		Time		
					Institution		Agency		
Please notify the screening prosecutor of the progress of any further investigation no later than:					Committing Officer				
Charge(s) Accepted for Prosecution If different from than Referred			Statute		Class of Offense	Final Disposition (100-430)	Reason if not Prosecuted as Accepted		
1									
2									
3									
Case Note									
Charge(s) Disposed of if different than Accepted			Term Total suspended		Fine Total suspended		Duration of Suspension		Duration of S.U.S.
1			/		/				
2			/		/				
3			/		/				
Assigned Prosecutor's Signature			Evidence may be disposed of: Yes <input type="checkbox"/> No <input type="checkbox"/>		Sentencing Judge			Date	

- Maintain Criminal History
- Update Person Information
- Record Criminal History
- Basic Person Record
- Full Criminal History
- Secondary Criminal History
- Criminal History Convictions

By using the Criminal Case Intake and Disposition Form in conjunction with the APSIN screens, identification and tracking of drug addicts and unlawful users could be facilitated. What would be required would be the addition of a field that would identify drug addicts and unlawful users who have been identified by the criminal justice system but not necessarily through an arrest.

Figure 2. APSIN Screen: Maintain Criminal History

PS00110P TERMID: TRSO NAST75TH CRIMINAL HISTORY 04/15/91 17:26:34.9									
PERSON NAME: EFFIE LONGACRE									
AST NUM:				FBI NUM:			SEX: ♀		
(MORE) DOB: 9/12/1961				(MORE) SSN: 345-62-3466					
S#	COURT DOCKET	ARREST AGENCY	ARREST DATE	ORIG CHC	CONV COURT	CONV DATE	-CONV CHG	DISP	PELONY FLAG
1	91-001	ANC	03/15/1991	1313	DAN	03/15/1991	1399	S	N
2	K91001	INFO	03/15/1991	2202	SAN	03/15/1991	2202	G	Y
3	K91-002	INFO	02/15/1991	5404	SAN	02/15/1991	5404	G	N

ENTER SEQUENCE NUMBER OF SELECTION: ____ AND ACTION (A, U, D, OR E): ____ * AT END *

Figure 3. APSIN Screen: Update Person Information

```

PS00100P  TERMID: TESO      UPDATE PERSON INFORMATION      04/15/91  17:27:08.9
PERSON NAME: EFFIE LONGACRE
DOB: 09/12/1961  10 15 1960  10 15 1960  10 15 1960  10 15 1960
SSN: 345-62-3466  345 62 3466  642 56 4566  336 64 5656
SEX: F          WEIGHT: 120          HEIGHT: 5 05          HAIR: BLK
EYE COLOR: GRN          RACE: W          SKIN:          MEDICAL:
TEMPERAMENT:
BIRTH CITY: PORTLAND          STATE: ME          COUNTRY:
AST NUMBER:          FELLOW: Y          FBI NUMBER:
CITIZEN:          PF ON FILE: Y
STREET/EXTRA LINE          CITY/COUNTRY          STATE ZIP CODE
MAILING ADDR: 1883 CLINTON WAY          ANCHORAGE          AK 99504
RES ADDR: 1883 CLINTON WAY          ANCHORAGE          AK 99504
OCCUPATION:          EMPLOYED:
ID/LIC NUM: 6274070          UPDATED:
CRIMINAL HISTORIES MAY BE LIST IN:
PF2 MULT PERSON          PF12 UPDATE ALIAS
    
```

Figure 4. APSIN Screen: Record Criminal History

```

PS00120P  TERMID: TESO      RECORD CRIMINAL HISTORY      04/15/91  17:27:30.9
PERSON NAME: EFFIE LONGACRE
AST NUMBER:          PF ON FILE: Y          FBI NUMBER:
ARREST AGENCY: AKC          ARREST DATE: 03 03 1991          ORIGINAL CHARGE: 1313
CONV COURT: DAN          CONV DATE: 03 15 1991          CONV CHARGE: 1399
COURT SOCKET: 91-001          POS ID: W          FELONY: M          DISPOSITION: G
CONDITION:
SENTENCE  YEARS  DAYS  AMOUNT  CONF  DATE
S          --   --   --       Y    03 20 1991
J          --   180  --       --   --
--         --   --   --       --   --
--         --   --   --       --   --
--         --   --   --       --   --
--         --   --   --       --   --
--         --   --   --       --   --
--         --   --   --       --   --
--         --   --   --       --   --
--         --   --   --       --   --
--         --   --   --       --   --
PF11 QUIT/SELECT  PF12 UPDATE/SELECT
    
```

Figure 5. APSIN Screen: Basic Person Record

```

PST0300P  TERMID: PAXQ      BASIC PERSON RECORD      04/22/91  08:46:42.2
PERSON NAME: EFFIE LONGACRE
(MORE) DOB: 09/12/1961  10 15 1960  (MORE) SSN: 345-62-3466  PDM ID:
SEX: F  HGT: 5 05  WGT: 120  HAIR: BLK          EYE COLOR: GRN
BIRTH PLACE CITY: PORTLAND          STATE: ME          RACE: W
MEDICAL CODE:          PF ON FILE: Y          FELLOW: Y
STREET/EXTRA LINE          CITY/COUNTRY          ST LAST CHG
MAILING ADDR: 1883 CLINTON WAY          ANCHORAGE          AK 10/23/1990
RES ADDR: 1883 CLINTON WAY          ANCHORAGE          AK 10/23/1990
ID/LIC NUM: 6274070          STATUS:
CLASS EXPIRES          CLASS EXPIRES
D
RESTRICTIONS:
PF2 MULT PER  PF3 FWP RST  PF9 CITH UPD  PF10 NCIC W/W  PF12 DIS N/W
PF7 DRIV RST  PF8 CRIM RST
    
```

Figure 6. APSIN Screen: Full Criminal History

```

PSTD400P  TERMID: TESO          CRIMINAL HISTORY          04/15/91  17:14:07.9
PERSON NAME: EFFIE LONGACHE
DOB: 09/12/1961  10/15/1960  10/15/1960  10/15/1960  10/15/1960
SSN: 345-62-3466  345-62-3466  642-56-4566  356-64-5656
SEX: F          HEIGHT: 120  HEIGHT: 5 05  HAIR: BLK
EYE COLOR: GRN  RACE: W      SKIN:      MEDICAL:
TEMPERAMENT:    MARKS:
BIRTH CITY: PORTLAND  STATE: ME  COUNTRY:
AST NUMBER:     FBI NUMBER:      PP ON FILE: Y
CITIZEN:                               FELON: Y
STREET/EXTRA LIME  CITY/COUNTRY  STATE  LAST CHGD
MAILING ADDR: 1883 CLINTON WAY  ANCHORAGE    AK  10/23/1990
RES ADDR: 1883 CLINTON WAY      ANCHORAGE    AK  10/23/1990
OCCUPATION:        EMPLOYMT:
ID/LIC NUM: 6274070  UPDATED:
CRIMINAL HISTORIES MAY EXIST IN:
PP2 MULT PERSON    PFS CONVICTIONS          MORE...
    
```

```

PSTD410P  TERMID: TESO          CRIMINAL HISTORY          04/15/91  17:14:22.5
PERSON NAME: EFFIE LONGACHE
AST NUMBER:       ID/LIC NUMBER: 6274070  FBI NUMBER:
ARRESTING AGENCY: ANC  DATE: 03 03 1991  CHARGE: 1313  ASLT/NOW AGGRAVATED
CONVICTING COURT: DAN  DATE: 03 15 1991  CHARGE: 1399  ASSAULT
COURT DOCKET: 91-001  POS ID: W  FELONY: M  DISP: SIS/DIS
CONDITION:
SENTENCE        YEARS  DAYS  AMOUNT  DATE TO COMPLETE
SIS            180
JAIL
PFS CONVICTIONS
    
```

Figure 7. APSIN Screen: Secondary Criminal History

```

PST0420P  TERMID: TESO      SECONDARY CRIM HIST      04/15/91  17:22:59.5
PERSON NAME: EFFIE LONGACRE
DOB: 09/12/1961  10/15/1960  10/15/1960  10/15/1960  10/15/1960
SSN: 345-62-3466  345-62-3466  642-56-4566  356-64-5656
SEX: F
EYE COLOR: GRN  WEIGHT: 120  HEIGHT: 5 05  HAIR: BLK
TEMPERAMENT:    RACE: W      SKIN:    MEDICAL:
BIRTH CITY: PORTLAND  STATE: ME  COUNTRY:
AST NUMBER:      FBI NUMBER:      FELLOW: Y
CITIZEN:
STREET/EXTRA LINE  CITY/COUNTRY  STATE  LAST CHG
MAILING ADDR: 1883 CLINTON WAY  ANCHORAGE    AK  10/23/1990
RES ADDR: 1883 CLINTON WAY  ANCHORAGE    AK  10/23/1990
OCCUPATION:      EMPLOYMT:
ID/LIC NUM: 6274070  UPDATED:
CRIMINAL HISTORIES MAY EXIST IN:
PF2 MULT PERSON                                     MORE...
    
```

```

PST0430P  TERMID: TESO      SECONDARY CRIM HIS      04/15/91  17:24:18.7
PERSON NAME: EFFIE LONGACRE
AST NUMBER:      ID/LIC NUMBER: 6274070  FBI NUMBER:
ARRESTING AGENCY: INFO  DATE: 02/02/1991  CHARGE: 5404 DWI - ALCOHOL
CONVICTING COURT: DAN  DATE: 02/02/1991  CHARGE: 5404 DWI - ALCOHOL
COURT DOCKET: K91-002  POS ID: Y  FELLOW: N  DISP: GUILTY
CONDITION:
SENTENCE  YEARS  DAYS  AMOUNT  DATE TO COMPLETE
JAIL      30
    
```

Figure 8. APSIN Screen: Criminal History Convictions

```

PST0800P  TERMID: TESO      CRIMINAL CONVICTIONS  04/15/91  17:40:00.6
PERSON NAME: EFFIE LONGACRE
UPDATED:      AST NUM:      ID/LIC NUM: 6274070  FBI NUM:
CRIMINAL HISTORIES MAY EXIST IN:
CONV  CONVICTION  CONVICTING  COURT  POS  DISPOSITION  FELLOW
COURT  DATE  CHARGE  DOCKET  ID
DAN  03/15/1991  ASSAULT  91-001  N  S15/B15  Y
SAN  02/15/1991  DWI - ALCOHOL  K91-002  Y  GUILTY  N
* NOT ALL CRIMINAL RECORD MEET OCH DISSEMINATION CRITERIA *
* CONTACT BSI FOR FULL INFORMATION *
PF2 MULT PERSON      PF8 FULL HIST      * AT END*
    
```

Law Enforcement

During the course of an arrest/investigation the law enforcement agency is apt to encounter evidence of drug addiction and/or substance abuse that would not be evidentially sufficient to sustain a prosecution for a controlled substance violation but would be sufficient as a disqualifier for a handgun purchase pursuant to the Brady statute. For example, the officers may observe needle marks, there may be statements about the individual or testimony made by a social acquaintance who observed the unlawful use of a controlled substance by the person. If there is evidence of Brady disqualifiers, the arresting officer would include the relevant information in the police report and the reporting agency could make an appropriate notation on the Criminal Case Intake and Disposition Form. This information would be entered into the criminal history record in a special field much like the felony indicator is.

If the investigation revealed that a subject, who was the focus of the investigation, was an addict or controlled substance abuser but was not arrested, a Brady flag could still be created by using the Criminal Case Intake and Disposition Form. This information could be entered into APSIN creating a Brady flag albeit no criminal charge had been filed against the individual. This procedure could also be used to identify individuals encountered by the police during their investigations or routine activities to create a Brady flag identifying known addicts and/or substance abusers.

If the subject attempted to purchase a hand gun, the agency conducting the Brady check would identify a potential disqualifier and deny the application. In the event of an appeal, the official reports could be checked to ascertain if there was, in fact, sufficient evidence in the records to support the denial. This would require additional training of law enforcement personnel and a modification of both the Criminal Case Intake and Disposition Form and the Alaska Public Safety Information Network (APSIN). However, the relevant information could be captured by investigators in a relatively easy and cost effective fashion and the criminal history records could be updated, thus facilitating a Brady check of addicts/substance abusers who were not arrested or charged.

Prosecution Information

The prosecutor's office is a rich source of information that frequently does not give rise to a specific charge. Defendant's addictions or drug abuse patterns are known but not relevant to a particular prosecution so they are not noted or tracked. With administrative or statutory amendments these data could be captured and electronically stored, providing the Department of Public Safety with a record of non-criminal activity that would identify addicts and/or controlled substance abusers who are ineligible to purchase handguns.

The Criminal Case Intake and Disposition Form as noted above is a document that follows a subject through the criminal justice process. The prosecutor and/or one of their investigators may discover information or facts that would also be a disqualifier under the Brady legislation. While information may not be sufficient to support a charge, if the prosecutor discovered such information a Brady flag on the Criminal Case Intake and Disposition Form could be created which would subsequently be entered into APSIN. Likewise if a complaint is filed as a result of the prosecutor's investigation, the prosecutor would indicate the addiction and/or controlled substance abuse on the Criminal Case Intake and Disposition Form. The prosecutor should also ensure that the defendant is booked and fingerprinted prior to the final court proceedings in order to ensure that there is a criminal record of the event in APSIN. If the prosecutor adds charges or amends them the appropriate criminal history record notifications should also be made.

Courts (District and Superior Court)

Currently the lower and superior courts are responsible for obtaining and reporting applicable court information on the Criminal Case Intake and Disposition Form. As with the police and the prosecutor's office, the courts may also become aware of an individual's addiction or substance abuse problems. This information often comes to light during the course of trial testimony. If such information is discovered during the course of trial the court would create a Brady flag on the Criminal Case Intake and Disposition Form. These data would subsequently be entered into APSIN. The trial transcript would provide support/documentation of the disqualifier flag.

The court could also initiate a Criminal Case Intake and Disposition Form for a witness who reveals addiction or abuse during the course of a trial. Even though the witness was not charged with a crime, the Criminal Case Intake and Disposition Form would be used to identify the subject as being ineligible to purchase a handgun. Since what is needed to facilitate the identification of substance abusers and addicts pursuant to a Brady handgun check is a document that is **a contributor to the criminal history repository**, the Criminal Case Intake and Disposition Form is the logical document to use. This disqualifying information would be stored in APSIN to be used only for Brady checks.

In addition, addiction/substance abuse often comes to light during the course of civil court actions, e.g., domestic relations, divorce, child custody and numerous torts. If Brady disqualifying information comes to light during the course of these proceedings, the court would also make the proper APSIN notifications by initiating a Criminal Case Intake and Disposition form.

The suspended imposition of sentence (SIS) in conjunction with probation poses a problem in flagging felonies/felons as well as addicts/substance abusers. The successful completion of a suspended imposition of sentence results in the setting aside of a conviction. [AS 12.55.085(d) and

(e)] The APSIN update field contains a specific column for the notation of such a successful completion. If the suspended imposition of sentence is revoked because of a failure to satisfy the terms of the suspended imposition, then the subsequent sentence is entered accordingly. Someone who successfully completes an SIS should not be designated as a felon and should be removed from the felony list. It is unclear if this classification of individual would be ineligible to purchase a firearm.

For some clearly categorized felonies the conviction will be flagged regardless of whether the offender receives an SIS. However, the trigger of the completion date of the SIS will suffice to remove the offense from the felony flag list. Moreover, the state does not permit SIS sentences for sexual offenses (including some misdemeanors), nor for any offense in which a gun is used [AS 12.55.085 (f)], thus alleviating some of the ambiguous areas (attempted assaults with the use of a gun and attempted sexual assaults).

However, for the ambiguous categories of offenses, the one-year-or-more incarceration factor will not differentiate a felony from a misdemeanor if no sentence has been imposed. For these cases involving an SIS, the system utilizes the conviction court (superior or district) as an indicator of felony or misdemeanor. Consequently the third tier of the felony indicator process will address those ambiguous cases where SIS occurs and there is no jail sentence. The conviction court will be used as the last means for assigning felony/felon status. (Thus, someone with an SIS for a designated or ambiguous felony will appropriately appear as a felon for the duration of the probationary period, but will be taken off the list as soon as he or she is discharged and the conviction is set aside.)

The SIS needs to be addressed as to felonies in general: are individuals who complete an SIS still to be considered as ineligible to purchase a firearm? Should records be expunged upon successful completion of an SIS or should all felons and substance abusers continue to carry a Brady flag in APSIN even though their conviction (SIS) will be taken off the list?

Department of Corrections

As a general rule those subjects who have been remanded to the Department of Corrections (DOC) would be disqualified from purchasing a hand gun as a result of their felony conviction. (However, some individuals who have been subject to the supervision of DOC may not be flagged as felons, e.g. those individual who have been diverted and/or received and successfully completed a SIS.)

These individuals may be mandated to submit to urine analysis to determine if there is a controlled substance in their system. Additionally there are frequently "Treatment Conditions" imposed by the court that must be met if these individuals are to successfully complete their SIS. Even though a subject may have a "hot" urinalysis it may not be sufficient cause for the probation

officer to generate a “Petition to Revoke” (PTR) which would bring the subject back before the court to show cause why the SIS should not be revoked. If there is not PTR filed, and the subjects meets the other conditions of their SIS then there will be no record of either the conviction or the substance abuse. A subsequent Brady check would not reveal any disqualifying information.

If the probation officer files a PTR, the individual would be brought back before the court. As a matter of course the courts are generally disposed to reinstate the “Treatment Conditions” and not revoke the SIS. If this is the case the subject could successfully complete the SIS and not be disqualified from purchasing a handgun even though the court and the probation officer are aware of a substance abuse problem. Probation officers often encounter other individuals who are associated with their clients who are abusers of controlled substances but have no criminal history that would disqualify them from purchasing a handgun. In such cases what is need is some way in which this controlled substance abuse problem could be flagged and the appropriate APSIN notification made.

The Department of Corrections is not currently a contributor to the “criminal history repository,” nor does DOC utilize the Criminal Case Intake and Disposition form. Moreover, DOC has its own computerized system, Offender Based State Correctional Information System (OBSCIS).

OBSCIS currently does not interface with APSIN. There is nothing to preclude the additional distribution of the Criminal Case Intake and Disposition form to DOC personnel. In the event that DOC became aware of a disqualifying Brady event, the department could make the proper notification to DPS for entering the information/event into APSIN. DOC records would server as the supporting documentation for a Brady denial. It is anticipated that OBSCIS will eventually interface with APSIN. When this interface occurs, then the use of the Criminal Case Intake and Disposition form would no longer be required. DOC could make a direct electronic entry that would be accessible to anyone running a Brady background check.

Non-Law-Enforcement Reporting of Addiction/Controlled Substance Abuse Contacts

Currently a data base exists that would contain the above types of Brady disqualifying information on some subjects. Department of Health and Social Services (DHSS) records contain information on individuals who are addicted to or abuse controlled substances whom law enforcement may not be aware of. DHSS comes into contact with these individuals as a result of psychiatric/ medical treatment, referrals to drug treatment or rehabilitation centers and the department may frequently provide benefits provided to these subjects. Data on these individuals are frequently captured by DHSS, Division of Alcoholism and Drug Abuse, and maintained electronically. See Private Sector Reporting below.

The Division of Family and Youth Services encounters situations where children may be placed at risk because of a controlled substance abuse problem by a parent, family member, a

guardian, foster parent(s) or the like. The addiction/substance abuse comes to light during the course of their intervention. Currently the pragmatic problem with capturing this type of information from DHSS is that DHSS employs an encrypted identifier rather than a name. As the data base currently exists there is no way that DHSS could capture this type of information and report it. With some difficulty, modifications could be made to the data base that would enable the capturing of such information. Currently, some of this information may be made available to law enforcement agencies.

The real problem with capturing this data is not so much a technological issue but rather a statutory one. The statutory issues here are quite similar to the ones discussed with capturing and reporting information on mental detectives - issues which involve the right to privacy, which is protected by both state and federal privacy laws. Numerous federal statutory provisions limit access to an individual's records. The federal government limits access to individual information that is not of a criminal nature even to law enforcement agencies without a court order. Major statutory revisions to numerous privacy laws would have to be made at the federal level for such access to be allowed. As to addicts/substance abusers, Alaska statutes Chapter 37, Uniform Alcoholism and Intoxication Treatment Act, states:

Section 47.37.219 Records of alcoholics, drug abusers, and intoxicated persons.

- (a) Except as required by AS 28.35.030(d), the registration and other records of treatment facilities shall remain confidential and are privileged to the patient.
- (b) Notwithstanding (a) of this section, the director may make available information from patients' records for purposes of research into the causes and treatment of alcoholism or drug abuse. Information may not disclose a patient's name.

Additionally, the Alaska Constitution (Art. I, §22) guarantees Alaskans' personal privacy, further limiting access to information on any individual. To change this provision would require a two-thirds vote in each house of the state legislature and a simple majority vote in the general election.

Alaska statutes also limit access to information about individuals except for very specific purposes. Alaska Statute 47.30.845 states:

Information and records obtained in the course of a screening investigation, evaluation, examination, or treatment are confidential and are not public records, except as the requirements of a hearing under AS 47.30.660 - 47.30.915 may necessitate a different procedure. Information and records may be copied and disclosed under regulations established by the department only to

- (1) a physician or a provider of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient;
- (2) the patient or an individual to whom the patient has given written consent to have information disclosed;

- (3) a person authorized by a court order;
- (4) a person doing research or maintaining health statistics, if the anonymity of the patient is assured, and the facility recognizes the project as a bona fide research or statistical undertaking;
- (5) the Department of Corrections in a case in which a prisoner confined to the state prison is a patient in the state hospital on authorized transfer either by voluntary admission or by court order;
- (6) a governmental or law enforcement agency when necessary to secure the return of a patient who is on unauthorized absence from a facility where the patient was undergoing evaluation or treatment;
- (7) a law enforcement agency when there is substantiated concern over *imminent* danger to the community by a presumed mentally ill person. (Emphasis added)

Treatment Providers and the Private Sector

Public-Funded Treatment Providers

As noted above there is a data base maintained by DHSS, Division of Alcoholism and Drug Abuse. The data base captures diagnoses and other records at a drug treatment or rehabilitation centers and/or other medical facilities. It also contains records, testimony and/or statements by a psychiatrist(s) or other licensed physician(s) who diagnosed the symptoms or admitted such person into a treatment facility. Data are also maintained on those individuals who have voluntarily committed themselves.

The Division of Alcoholism and Drug Abuse (DADA) is mandated to maintain records on state, federal, state or federally funded and/or non-profit agencies within the state that provide drug treatment services. However, the agency currently does not maintain records on individuals treated at “for profit” agencies. Alaska Statutes Title 47, Chapter 37, provides for the Uniform Alcoholism and Intoxication Treatment Act. Under Alaska Statutes 47.37.030 the powers of the division are to:

- (6) keep records and engage in research and gathering relevant statistics:....

The duties of the division are to:

- (8) Sponsor and encourage research into the causes and nature of alcoholism, drug abuse, and inhalant abuse, and the treatment of alcoholics, intoxicated persons, drug abusers, and inhalant abusers, and serve as a clearinghouse for information relating to alcoholism, drug abuse and inhalant abuse;
- (9) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment; . . .

Alaska Statue 47.37.210 (Records of alcoholics, drug abusers, and intoxicated persons states):

- (a) Except as required by AS 28.35.030(d), the registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(b) Notwithstanding (a) of this section, the director may make available information from patients' records for purpose of research into the causes and treatment of alcoholism or drug abuse. Information may not disclose a patient's name.

In addition, federal statutes prohibit the disclosure of the patient's names to external organizations such as the ADAD. For example, the Code of Federal Regulations (3CFR) 42 CFR §290 ee-3 (Confidentiality of Patient Records) states:

(a) Disclosure authorization. Records of the identity, diagnoses, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under circumstances expressly authorized under subsection (b) of this section.

(b) Purposes and circumstances of disclosure affecting consenting patient and patient regardless of consent

(1) The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection(g) of this regulation.

Each agency within the state, at the program level, which provides publicly funded drug treatment service reports to DADA on each individual that they see and each abuse event that they deal with. (DADA itself does not provide treatment services so their data bases are precluded from containing the names of the substance abusers.) Each substance abuser in the data base is tracked by an identification number assigned by the treatment provider when the provider forwards the data to DADA.

The Division of Alcoholism and Drug Abuse can identify the treatment provider by the identification number submitted but not the individual abuser. DADA indicates that it has a 95% accuracy rate in tracking individual treatment cases/events. Their data base contains, along with demographic information on the abuser, the abuser's drug(s) of choice for that particular treatment event. The data base also contains information on whether the individual's abuse pattern is one of dependency, episodic abuse or if the abuse is dysfunctional. The records contain information on each and every treatment, indicating whether it was successful or if there was a relapse; they provide information on whether the individual completed treatment or left without medical consent and/or completing the program. DADA enters approximately 10,000 events/records annually and the data base contains records dating back to 1983.

In order to capture the individual addict's/abuser's name for the purposes of a Brady handgun check it would be necessary to establish a data base that would be accessible to the Department of Public Safety (DPS). Currently each entry into the DADA data base is predicated on an individual treatment event and not the individual being treated. In other words, an individual receiving treatment

through two different treatment facilities/programs would have two different identification numbers assigned. However, the treatment provider could be identified and the treatment provider would then be able to identify the addict/abuser by name.

Given the lack of identifiers (names) in the DADA data base, the data base, as it currently exists, is of no value to DPS for the purposes of a Brady handgun check. The creation of a identification procedure unique to DPS/Brady needs to be developed. In essence, a separate data file containing a linkage between the treatment provider and DPS needs to be established that would allow DPS to capture the name of the addict/abuser and the date of the treatment event. This identification would be unique to DPS and would still preclude DADA from being able to identify individuals by name. DADA would still receive the data that they currently do in the same format.

The only time that DPS could access this data base would be during a Brady record check. Names of individuals in the data base would only be available on a search-by-search basis. The entire list of names as a whole would not be available to DPS personnel. Each examination by DPS in this data base could be flagged. This flagging would enable auditors and/or investigators to see if DPS was abusing its access to the sensitive information. These data would be highly confidential but they would allow law enforcement to obtain information on addicts/substance abusers whom they may not have identified and who have no criminal/substance abuse record(s).

The creation of such a linkage would require extensive legislative changes at both the federal and state levels. Since DPS would not be providing treatment they are precluded from obtaining addict's/substance abuser's names under current statutory provisions. The technological protocol for creating and accessing the data base would be considerably less problematic to develop than the legislation that would be required in order to create and enable the access.

The Private Sector

There are no specific data bases in the private sector that track addicts and substance abusers. There are records of these individuals contained in the files of physicians, psychiatrists, psychologists and insurance companies. However, these files and records are so amorphous that the addiction/abuse information relevant to a Brady check could never be obtained as things currently exist. The data are scattered. Also, gathering this information would give rise to numerous confidentiality issues as well. What appears to be needed is a required statutory reporting procedure in the private sector for addiction and substance abuse.

Legislation predicated upon "Child Protection" legislation could be enacted that would require that treatment and care providers in the private sector be required to report addicts and controlled substance abusers just like they currently are required to do in instances of suspected child abuse and/or neglect. This information could be reported to the Department of Public Safety solely for

the purposes of Brady handguns checks. Every state in the union currently has some statutory provisions for reporting child abuse. In Alaska the relevant legislation is contained in Alaska Statutes (AS) §47.17.010 to .290.

A reporting procedure, similar to the child abuse statute, could be enacted and, coupled with some evidentiary standard, could be employed to capture the identification of drug addicts and controlled substance abusers. Such a procedure would be quite costly and rather draconian but in theory it would work.

Summary

At this time there is no clear or cost-effective way to create and maintain a database for either addicts or controlled substance abusers with any accuracy. Records are not kept on addicts or controlled substance abusers, and even if they were, because of the right to privacy, access would be denied. However the Criminal Case Intake and Disposition form is currently used statewide by law enforcement personnel. It could be modified with little effort to capture information on some addiction/controlled substance abuse events for the purpose of Brady handgun checks.



Brady Statute Data: Persons who are Illegally or Unlawfully in the United States

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

by

Cassie Atwell
Research Associate

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Brady Statute Data: Persons who are Illegally or Unlawfully in the United States

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 Programs, 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.

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

This is the fourth in a series of Alaska Justice Statistical Analysis Unit reports describing how each category can be 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 synopsize the four components of the project.

The first, second and third reports focused on adjudicated mental defectives and involuntary mental commitments, those subject to domestic violence restraining orders and persons who are unlawful users of or addicted to any controlled substance. The fourth of these four non-criminal classifications to be examined is that of **aliens illegally in the United States**.

Background

In Alaska, Brady checks are conducted by a designated (local) Chief Law Enforcement Officer (CLEO) anytime someone tries to purchase a handgun from a licensed dealer. Currently, there are

thirty-nine CLEO's across the state, who perform background checks. However, given Alaska's population disbursement the majority of requests are handled by three departments: the Alaska State Troopers (who perform checks for many of the outlying areas), the Fairbanks Department of Public Safety, and the Anchorage Police Department. The procedures vary from agency to agency but the records used to conduct a check are the same. Two computerized systems are primarily used. The first is the state criminal history database which includes information on felony convictions, wanted fugitives, domestic violence restraining orders and domestic violence misdemeanor convictions (because of a state constitutional provision granting a right to privacy, mental health commitments are not kept in the system). The second is the national records of the National Crime Information Center (NCIC). If a local law enforcement agency is completing the check, local records are also reviewed.

Law enforcement agencies are given five days (not including holidays) to complete the record review and make a decision whether to approve or deny the application. If the application is approved, the application and all internal records created are destroyed within twenty days. If the application is denied, the length of retention of the records is up to each individual agency. Some larger agencies like the Anchorage Police Department retain the applications and all corresponding paperwork indefinitely. Other, smaller police departments only keep the applications for a few months. If the application is denied, no reason for denial is given to the dealer. It is up to the individual to contact the law enforcement agency within twenty days for the specific reasons.

Definitions

In September 1996 the Bureau of Alcohol, Tobacco and Firearms published revisions to the proposed definitions associated with the Brady Act in 61 FR 47095. Comments on the proposed regulations were requested and in June 1997 ATF published the final definitions (62 FR 34634-02), along with the comments. The INS stated that the original definition published for an illegal alien did not adequately reflect the terminology used in the Immigration and Nationality Act (INA). Therefore, for the purposes of Brady, the definition of an illegal alien was changed to reflect the more precise legal terms used in the INA. The final definition can be found in 27 CFR 178.11 and reads as follows:

Alien illegally or unlawfully in the United States. Aliens who are unlawfully in the United States are not in valid immigrant, nonimmigrant or parole status. The term includes any alien—

- (a) Who unlawfully entered the United States without inspection and authorization by an immigration officer and who has not been paroled into the United States under section 212 (d) (5) of the Immigration and Nationality Act (INA);
- (b) Nonimmigrant whose authorized period of stay has expired or who has violated the terms of the nonimmigrant category in which he or she was admitted;
- (c) Paroled under INA section 212 (d) (5) whose authorized period of parole has expired or whose parole status has been terminated; or
- (d) Under an order of deportation, exclusion, or removal, or under an order to depart the United States voluntarily, whether or not he or she has left the United States

INS Records Availability

The Immigration and Naturalization Service is responsible for determining the status of people entering the country and maintaining records on their authorized period of stay.

There are three primary databases maintained by the INS: the Central Index System (CIS), the Deportable Alien Control System (DACCS), and the Nonimmigrant Information System (NIIS). All three systems can be accessed by the regional INS office and are used for investigations and tracking of aliens. Additionally, the regional INS office maintains hard copy files, called "A" files, on persons being investigated locally. These are generally kept in the regional office records section but can at any time be requested from any other INS office or the Federal Records Center in Washington, D.C.

In addition to the three databases used by the INS, a fourth database was created for use by state and federal agencies that use public monies to provide benefits such as unemployment insurance and welfare. This database called the "Verification Information System" (VIS) allows agencies to determine if the applicant for public benefits is a qualified non-citizen eligible to receive them. This database contains information on approximately 50 million non-citizens in the United States and is updated daily.

Each regional office, with authorization from the main office in Washington, D.C., has the ability to allow access to the VIS system. At this time only two state law enforcement agencies, Connecticut and Georgia, have tried to obtain a direct connection with their regional INS office. Though Connecticut was still in the process of connecting to the system, the Georgia Crime Information Center has been connected to the INS regional office for two years.

During the course of our research, we requested the regional INS office to contact their superiors to find out exactly what would be entailed in obtaining a direct connection to the VIS database by law enforcement. The local office has done so numerous times but to date they have not received an answer.

The INS has however allowed direct terminal access to this database by the Alaska Department of Revenue, Permanent Fund Division. Every year residents of Alaska receive a dividend on earnings from state invested oil revenues. In order to receive this money people are required to fill out an application asserting that they are in fact legal residents of Alaska. The division in turn investigates the accuracy of the application that includes a check on residency status through the INS "Verification Information System" (VIS). The check done by the Permanent Fund Division is not as rigorous as what would be required for Brady but it does show that INS records are available.

The INS does not report any information on illegal alien activity to any law enforcement or criminal history database. The only indication in the APSIN system or the FBI database (NCIC) that a person might be an illegal alien would be a notation for an arrest by an INS or Border Patrol

agent. Immigration violators are held in Anchorage pending court appearance in either the Cook Inlet Pretrial Facility or the 6th Avenue Jail. Otherwise persons held for deportation are sent directly to Seattle, Washington.

Determining an Individual's Classification for Brady

Determining whether someone applying to purchase a handgun is classified as an illegal alien is difficult for many reasons. Knowing whether someone has entered the country legally is impossible as the Immigration and Naturalization Service does not report alien status to the state criminal history database or the National Crime Information Center and the INS is not routinely contacted by the state CLEOs for information on an applicant.

Further complicating the situation is that those persons entering the country illegally have been known to purchase fraudulent "green cards" and other official documentation in order to obtain employment or other benefits. Even though the INS has prepared a guide explaining what the commonly used documents look like (Appendix A), they caution that there are other less commonly used documents and earlier revisions of documents not included and that fraudulent documents are also available.

Also, according to William F. McDonald (*National Institute of Justice Journal* No. 232, June 1997), the majority of aliens illegally in the United States (41%) did not enter the country illegally; they instead have allowed their visas to expire. Since they entered the country legally there is no way to determine, at the time their application is filed, if their visa is still valid unless the INS is contacted directly.

The problem stems from the application itself. The application assumes that the purchaser, when filling out the form, will be truthful about his residency status. The application entitled "Statement of Intent to Obtain a Handgun(s)" (Appendix B) requires that Section A of the form be completed by the transferee (buyer). However, the subsection that requests information on place of birth and alien registration number (#4) is optional. The only requirement for identification is "the buyer provide a valid government issued photo identification to the seller that contains the buyer's name, date of birth, and residence." This could mean all that is required is for the buyer to present a driver's license or a state identification card, neither of which lists the residency status of the individual. Each is easily obtainable by a resident alien on a temporary visa or someone with a falsified alien registration card.

Verification Process

As mentioned earlier, we have requested information on what would be entailed for law enforcement to gain access to the INS "Verification Information System" database and have not yet

received an answer. Even though this system is not as complete as it would be to check all three internal databases, connection to this system would be the most fiscally feasible route. It would not require a change in either federal or state statutory law nor would it require the hiring of additional personnel to run the system. Furthermore, there would not be any additional costs associated with upgrading current computer hardware or buying new equipment. The equipment in place now would be adequate because there are several different ways to connect to the system including 3270 terminal emulation, asynchronous dial-in, Touch-tone telephone, PC file transfers and modem-equipped PCs.

If direct access to this system is not obtainable, the only other means to verify whether the applicant for a handgun is an alien is by entry into the other three databases maintained by INS. This would necessitate authorization from the INS national office and the hiring of additional personnel to check the records for each applicant.

This alternative process would require we look up each of the applications processed during a fiscal year. For example, during the Federal Fiscal Year 1996-97 Alaska processed 9,881 applications, averaging approximately 823 applications per month. This would mean an average of 30 checks per day. Access to the system would have to be done either at the regional INS office, requiring INS to find space for an employee to work, or additional monies would have to be spent to install a computer link to the INS system at the Alaska Department of Public Safety. The main Central Index System (CIS) at INS will run slow during hours of peak usage, making the background check slow and cumbersome. It may also be necessary to obtain an individual's "A" file from another region or get copies of birth records or other vital statistics to do a through check, making the time necessary to complete the background investigation longer than the 5 day maximum waiting period. Therefore, the possibility of completing all 30 checks in one day is remote.

This type of access would also require the state to add job duties to a current DPS employee or the INS would have to hire an additional employee to run the background checks. According to the regional INS office, the person would have to be hired for a full time GS-7 position making \$24,734 per year with a 25% cost of living allotment (COLA) of \$6,183, totaling \$30,917 per year in wages.

Conclusion

How efficient is this use of the resources? Looking at the population estimates and actual number of cases handled by the INS, we would not get very much. Alaska is a sparsely populated state with an estimated population of 611,300 (Alaska Population Overview, 1996-97). Also, the total number of illegal aliens is unknown, but the Immigration and Naturalization Service has estimated the undocumented alien population in Alaska to be 3,700 as of 1996 (NIJ Journal, No. 232). Moreover during that same fiscal year 1996-97, the local INS office handled only 354 cases

of suspected illegal aliens. These numbers raise doubts concerning the outlay of the time, money and resources required to check on so few individuals prohibited from potentially purchasing handguns.

If access to the VIS database were available, the minimal expenditure would make this an attractive option. Otherwise, hiring additional personnel and obtaining information through internal records and databases would be time consuming and, overall, not cost effective.

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Appendix A

**U.S. Immigration and Naturalization Service Guide to
Commonly Used Documents Used to Identify Persons Eligible
for Benefits Under the Immigration and Naturalization Act**

Not shown in this format due to size.

Appendix B

**U.S. Bureau of Alcohol, Tobacco and Firearms
Statement of Intent to Obtain a Handgun(s)**