



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

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

by

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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.