

# The Proposals and Prospects for Automated Record Checks

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National criminal record checks of firearm purchasers would require: means to determine the purchaser's identity; and query of local, State, and Federal criminal record systems, which could include State or Federal felon identification files listing the names and identifiers of persons with disqualifying felony convictions. Proposals that have been advanced include record checks conducted:

- at the POS (e.g., at a gun shop or gun show while the customer is present);
- during a waiting period (typically 3, 7, or 15 days from the time a customer purchases a firearm to delivery); and
- during an application and prior approval period (typically several weeks or months) before an identification card or purchase permit is issued (see figure 3).<sup>56</sup>

About half the States currently require record checks during a waiting or prior approval period (e.g., California, Oregon, and Illinois) or at the POS (e.g., Virginia, Florida, Delaware). About half the States do not require record checks. The States that require checks vary widely in how the checks are carried out.

Automated checks are essential for any POS system. Manual checks take hours to days, under the best conditions, and can take weeks. The feasibility of automated checks depends on the use of computer technology by each State to maintain criminal record files (criminal history and wanted person), including automated fingerprint identification files when needed for firearm purchaser checks. The efficacy of the checks depends on the completeness and accuracy of these files. These criteria also apply to Federal criminal record systems maintained by the FBI.

If these requirements are met, automated checks could be made through a combination of gun dealer options:

1. direct access to State and Federal computerized felon identification or criminal record files via a touchtone telephone or computer terminal;

2. indirect access to felon or criminal history information (not the records themselves) via a telephone connection with a local, State, or Federal law enforcement agency;
3. live scanning of the purchaser's fingerprints (using laser or video scanning instead of ink);
4. live scanning of other purchaser biometric identifiers (e.g., retina, voiceprint); and
5. scanning of the purchaser's smart card (that includes a magnetic or laser data strip or computer chip with identification information).

These technologies could be used as part of POS waiting period, or prior approval systems for automated checks of firearm purchasers.

## Point-of-Sale (POS) Systems

### *How POS Checks Work*

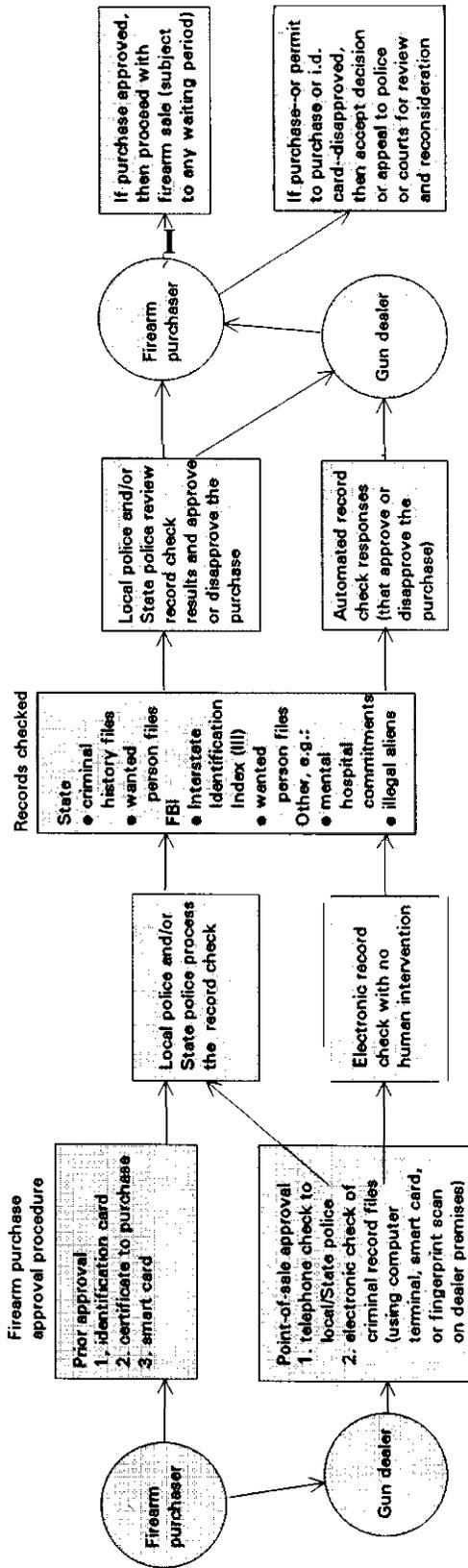
POS record checks make the most demands on criminal record systems. The records must be computerized, indexed, and accessible online in real time. The FBI's computerized National Crime Information Center (NCIC) responds to remote inquiries from criminal justice agencies nationwide in seconds. NCIC maintains computer files on wanted and missing persons and stolen property (e.g., vehicles, boats), and handles about 1 million inquiries a day nationwide. The NCIC telecommunication network permits remote access to the Interstate Identification Index (III) file maintained by the FBI's Identification Division. The III includes the names and identifiers (e.g., date of birth, race, sex) of persons with arrest records. The computerized criminal history records of persons listed in the III can be accessed electronically, usually within about 15 seconds, from the States or the FBI. (During peak periods, the sending or receiving of computerized records on persons in the III can take up to 15 minutes—an infrequent occurrence.)<sup>57</sup> Any manual records on a person listed in the III could be accessed in hours or even days—not minutes—because the source State would have to search for and retrieve the records by hand and then send them (by mail or facsimile, unless keyboarded) to the requestor.

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<sup>56</sup>See U.S. Department of Justice, Task Force on Felon Identification in Firearm Sales, *Report to the Attorney General*, op. Cit., footnote 50, for discussion of a wide range of proposals.

<sup>57</sup>Note that the quality of the criminal history records transmitted as a result of a III hit can only be as good as the record quality in the State (or Federal) repositories from which the records are sent.

Figure 3—Automated Criminal Record Checks of Firearm Purchasers: An Overview



SOURCE: Office of Technology Assessment, 1991; and Bureau of Justice Statistics, 1989.

States with computerized criminal history records and so-called "hot files" (e.g., wanted persons, stolen vehicles) can also provide responses within seconds. Virginia was the first State to implement (on Nov. 1, 1989) a POS system for checking the criminal records of firearm purchasers buying handguns with a barrel length under 5 inches (Virginia will extend coverage to all firearm purchases from licensed dealers starting July 1, 1991). The other States with POS systems are Delaware (operational since Jan. 14, 1991) and Florida (operational since Feb. 1, 1991). Both are modeled after Virginia and likewise apply to dealer sales only. Delaware record checks apply to handgun and rifle purchases, but not shotguns; Florida record checks apply to all firearm purchases.

Licensed firearm dealers in Virginia call an 800 number at Virginia State Police headquarters in Richmond to check the criminal records of handgun purchasers (see figure 4). The dealer provides the name and identification information of each purchaser to an operator, who keys the information into a computer terminal connected to State and FBI record systems. The Virginia State Police can check both Virginia criminal history and wanted person records and the NCIC hot files while connected on the phone with the dealer (the III also will be checked online, starting about July 1, 1991). The State police can usually provide an initial response within 90 seconds.

About 94 percent of the inquiries result in a "no hit" (no records indicated), and the purchase is approved.<sup>58</sup> Six percent are 'hits,' and the purchase is temporarily disapproved. The State police staff reviews each hit, obtains more detailed criminal record information if necessary, and confirms every disqualifying criminal record. About one-quarter of the hits (1.5 percent of all inquiries) are confined and the disapproval stands. Three-quarters of the time hits are on a different person (e.g., with a similar but different name and identifiers), or reveal

a felony arrest charge that did not lead to a conviction or a conviction for a misdemeanor that is not disqualifying. The State police contact the dealers on false positives within hours, or at the latest by the end of the next business day, to change initial disapprovals to approvals.

The Virginia experience points up the strengths and weaknesses of the 800 number approach to POS record checks. The main advantage is that the initial record check can be completed in a few seconds. This is only possible, however, because Virginia has a substantially computerized criminal history record system. Several other States are also computerized, but most States have either incomplete or no computerized criminal history files. Even computerized States like Virginia still have some manual records, usually for older, inactive offenders who are least likely to be involved in current crimes.

### *The Problem of Record Quality*

A State computerized criminal history (CCH) file is needed to provide rapid response and, potentially, a complete and accurate response. State CCH records maintained by the FBI are missing some arrests and many more dispositions. About half the arrests in the FBI's criminal history files are missing dispositions.<sup>59</sup> The FBI finds it difficult to get these dispositions, and the FBI and the States are collaborating on a strategy to get the FBI out of the criminal history recordkeeping business—except for Federal offenders. The III would be used to access CCH records in the State repositories. The operational responsibility for record completeness and accuracy would lie with the States. About 80 percent of all offenders are single-State offenders (with a criminal record in only one State);<sup>60</sup> thus the vast majority of CCH hits in any record check system (POS, waiting period, or proapproval) will be on in-State records.

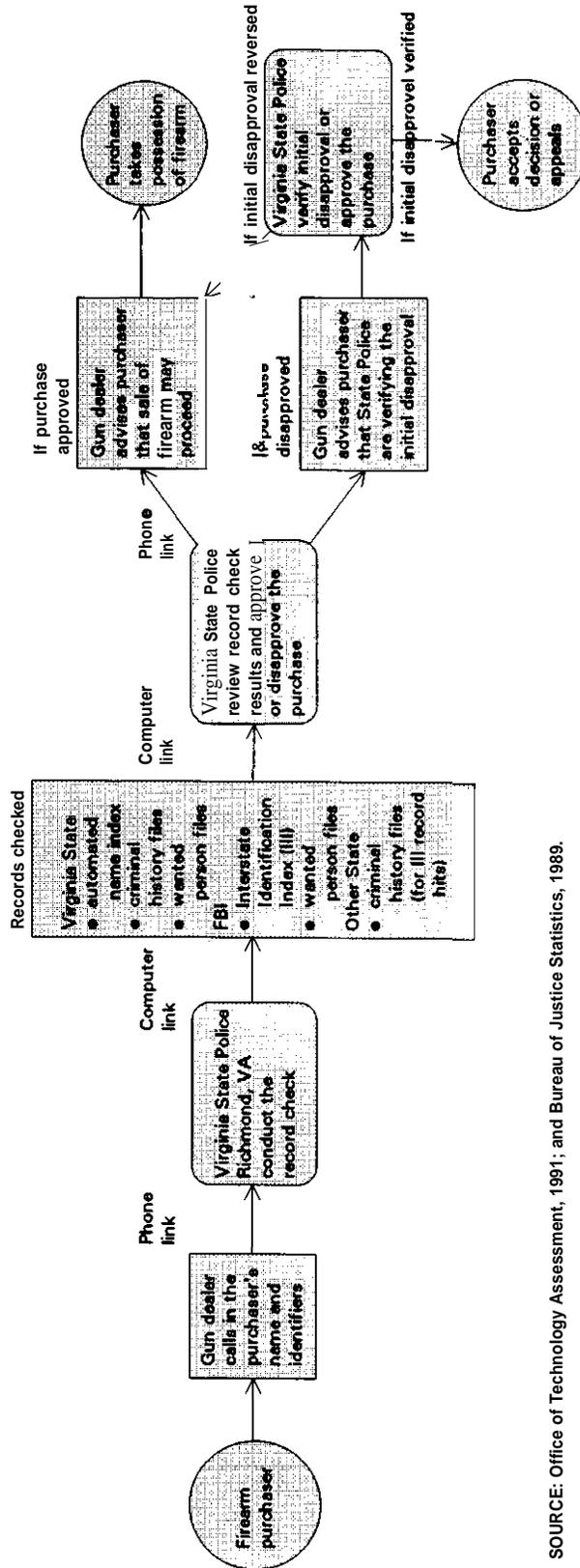
A computerized CCH does not guarantee high record quality. Virginia happens to have a relatively

<sup>58</sup>Operational &~ on the Virginia POS system were provided by the Virginia State Police. For further details, see Virginia State Police, *Virginia Firearms Transaction Program: Procedures for Dealers* (Richmond, VA: Virginia State Police, Nov. 1, 1989), *Virginia Firearms Transaction Program: Report for the Office of the Governor* (Richmond, VA: Virginia State Police, 1990).

<sup>59</sup>The FBI currently receives about 8,000 disposition reports per day compared to about 17,000 arrest reports. This suggests a disposition reporting rate of 47 percent, which is consistent with 1980 and 1986 FBI data indicating about 45 percent disposition reporting. The FBI notes that an unknown number of arrest reports may contain disposition information that makes filing of a formal disposition report unnecessary. For further discussion, see U.S. Congress, Office of Technology Assessment, *An Assessment of Alternatives for a National Computerized Criminal History System*, OTA-CIT-161 (Springfield, VA: National Technical Information Service, October 1982), pp. 89-90; and statement on "Criminal Justice Record Quality" by Fred B. Wood, OTA Project Director, before a July 16, 1986, hearing of the House Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights.

<sup>60</sup>As of Jan. 1, 1991, the FBI estimates that single-State offenders accounted for 81 percent of the records indexed by Sines participating in the Interstate Identification Index. Earlier estimates (1979-81) suggested a single-State offender rate of about 70 percent.

Figure 4-Telephone "Instant" Check by Gun Dealers



SOURCE: Office of Technology Assessment, 1991, and Bureau of Justice Statistics, 1989.

high level of disposition reporting (roughly 85 percent for all arrests, 95 percent for recent arrests) and is using computerized techniques to improve record quality further. Some States have better record quality than Virginia, but many States have worse. Record quality is essential to all record check systems but is critical to POS systems because there is no time available for updating or verifying information before making an initial response. The initial firearm purchase approval or disapproval must be made within seconds; any followup on disapprovals must be made within hours (or within 2 to 3 working days at most, in current POS States). The better the record quality, the fewer the missed hits due to missing felony arrests and convictions (false negatives) or false positive hits due to missing felony acquittals.

The ideal is 100 percent arrest and disposition reporting; but few States are perfect today—nor can they expect to be for sometime. What level of record quality is acceptable for POS firearm purchaser checks? Most agree that the record quality of the FBI's criminal history file is unacceptable. With half of the dispositions missing, a large percentage of record hits would have to be checked (through telephone calls to local courts, prosecutors, etc.), and many would likely be found to be false positive hits. Virginia's 85 to 95 percent disposition reporting is more acceptable. Most of the false positive hits on the Virginia POS system are not due to State CCH record quality problems, but to hits on similar but different names in the FBI's NCIC wanted person file. (NCIC is programmed to pickup anyone with similar names and dates of birth.)

### *The Problem of Positive Identification— the Promise of Live Scans*

A major weakness of 800 number POS systems is the lack of positive identification. Identification of firearm purchasers in the Virginia system was based on the requirements of two forms of identification (ID), including one with a photo. (A recent legisla-

tive action reduced the number of required IDs to one, if it is a government-issued photo ID.) The Virginia State Police report few problems with false identification during the first year of operation. Critics claim that purchasers using fake identification are likely to go undetected. The FBI believes that about one in six persons with a criminal record may be using alias names and identification. But whether this ratio applies to firearm purchasers is unknown.<sup>61</sup>

Currently, a set of fingerprints is the only form of positive biometric identification (based on unique human descriptors or measurements, i.e., biometrics) accepted by the criminal justice community. Voiceprints, handprints, retina scans, and electronic mug shots and signatures are used for some high-security purposes—primarily in the defense and intelligence communities—but are still many years away for widespread criminal justice use. Only the electronic mug shot along with electronic fingerprints were included in the final version of a long-range plan for the NCIC—known as NCIC 2000; identifiers like DNA profiles were judged premature for widespread application.<sup>62</sup>

Fingerprint identification could be included in POS systems by live scanning the purchaser's fingerprints and: 1) electronically transmitting the prints for checking against State and, if necessary, Federal automated fingerprint files; or 2) comparing the live scanned prints against those stored digitally on a smart card issued to the purchaser. In addition to a live scan positive identification with pre-recorded prints on a smart card, dealers must check for criminal activity that had occurred since the issuance of the card. This could be done using an 800 number, touchtone telephone, or computer terminal connected to criminal record repositories. Criminal justice agencies oppose direct access by gun dealers (and other noncriminal justice users) to electronic criminal record systems to protect security and privacy in compliance with State and Federal regulations. Live scan plus an 800 number connect-

<sup>61</sup>The Oregon State Police found that about 1 in 14 handgun purchasers with criminal records used phony names and identification, and very few of these (1 of 70) had disqualifying criminal records.

<sup>62</sup>For further discussion of biometric technologies, see U.S. Congress, Office of Technology Assessment, *Defending Secrets, Sharing Data: New Locks and Keys for Electronic Information*, OTA-CIT-310 (Washington DC: U.S. Government Printing Office, October 1987); *Criminal Justice: New Technologies and the Constitution*, OTA-CIT-366 (Washington DC: U.S. Government Printing Office, May 1988); and *Genetic Witness: Forensic Uses of DNA Tests*, OTA-BA-438 (Washington DC: U.S. Government Printing Office, July 1990). Also see SEARCH Group, Inc., *Biometric Identification Technologies*, op. cit., footnote 50, especially chs. 2 and 3 and the appendix. For discussion of planned NCIC capabilities, see NCIC Advisory Policy Board, *Planning and Evaluation Subcommittee*, NCIC staff paper, topic #2, "NCIC 2000 Phase II Implementation Schedule" (San Diego, CA, Dec. 3-4, 1990), pp. 3-7.

ing dealers with officials who would access the records may overcome the concerns of the criminal justice agencies.<sup>63</sup>

Live scan technologies exist today; but their further development to support POS firearm purchaser checks involves substantial costs and complexities. All licensed gun dealers must have a live scan fingerprint machine; and all States and the FBI must have an automated fingerprint matching capability for a POS system to work. The cost of live scan fingerprint readers compatible with criminal justice systems is about \$40,000 to \$50,000 at this time. The low-cost POS scanners now available cannot perform full criminal fingerprint checks.<sup>64</sup> Equipping all gun dealers with suitable live scan readers at today's prices would be costly-about \$10.8 billion assuming 270,000 licensed dealers at about \$40,000 per unit. Equipping just the storefront gun dealers could cost about \$600 million.<sup>65</sup> The cost of live scanners must drop below \$1,000 per unit-the range of credit card scanning devices-for widespread application. This could happen within 5 to 10 years, if the market for biometric technologies develops rapidly. Fingerprint or other biometric identification could also reduce fraud in credit card transactions and eliminate use of phony identification for retail transactions-including firearm purchases.

In addition to affordable POS live scan devices, State and Federal criminal fingerprint repositories would need to be able to process a large number of additional fingerprint checks likely to be generated by firearm purchases. About 60 percent of the States have or are implementing automated fingerprint identification systems; most, if not all, States may have such systems in 5 to 10 years. The FBI is planning a major upgrade of its automated fingerprint system to be completed by 1995. These

systems could, in principle, handle fingerprint checks of firearm purchasers, but it is improbable whether they could do so at the POS because of the need for a short response time. Even the FBI's planned state-of-the-art automated fingerprint identification system aims for a 2-hour response time for criminal justice checks and 24 hours for noncriminal justice checks.<sup>66</sup> For POS purposes, 2 to 24 hours is too slow. Automated POS fingerprint checks maybe feasible in the future, but are not likely to be cost effective on the scale required for firearm purchaser checks until early in the 21st century. In the meantime, there are two other options: a national felon identification file; and smart cards.

### *National Felons File*

A national felons file would include the names and identifiers of all persons convicted of a felony offense who are prohibited under Federal law from purchasing a firearm. A convicted felon file would be much smaller in size than the State and Federal criminal files, which it would replace for firearm purchaser checks. A felon file would exclude misdemeanors and felony arrests not resulting in a conviction. This could alleviate the record quality problem and reduce costs since firearm purchasers need only be checked against the felon file.

A national felon file would be difficult to implement in the short-term for four reasons. First, a national file could not be compiled until each of the State criminal history files has identified in-State felony convictions. Only a few States, including Virginia, have done this to date. A flagged State criminal history file is a prerequisite for any State POS system to avoid picking up excessive false hits, like firearm purchasers convicted of a misdemeanor but not a felony. The new voluntary Federal standards for felony reporting could improve felony flagging

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<sup>63</sup>For further discussion, see U.S. Department of Justice, Task Force on Felon Identification in Firearm Sales, *Report to the Attorney General*, op. cit., footnote 50.

<sup>64</sup>POS fingerprint scanners are used in controlled access facilities where single fingerprints of persons seeking access are compared against a file of fingerprints of persons authorized access. When a person arrives at a door or gate, he or she punches in an identifying number that calls up a stored fingerprint to be compared against his or her "live" scanned fingerprint. The Immigration and Naturalization Service is pilot testing the use of live scanned fingerprints to check detainees against a file of illegal alien criminal offenders; but the file size is much smaller than would be necessary for State or national criminal identification checks.

<sup>65</sup>For discussion of cost estimates for various options, see *ibid.*, @ T. Orsagh, "Estimates of Start-up and Operational Costs of Systems for Identifying Felons Who Attempt To Purchase Firearms," contractor paper prepared by Fisher-Orsagh Associates, Inc., 221 Vance Street, Chapel Hill, NC 27514, for the U.S. Department of Justice, Task Force on Felon Identification in Firearm Sales, June 1989.

<sup>66</sup>For discussion of the FBI identification automation program, see statements of Fred B. Wood, Senior Associate, Mice of Technology Assessment, and Stanley Klein, Deputy Assistant Director, FBI Identification Division, before a Mar. 13, 1991, hearing of the House Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights. Also see OTA, *The FBI Fingerprint Identification Automation Program*, op. cit., footnote 14, in preparation.

of State and FBI criminal history files, but they will take several years to implement.

Second, the definition of a felony offense varies from State to State. Federal firearm laws honor State law definitions of felony (or other) offenses that may be disqualifying for firearm purchasers.<sup>67</sup> The intent in part was to recognize variations in State laws with regard to expungement and restoration of rights (including the right to purchase and possess firearms) for offenders who have served their time or been pardoned. And some State laws disqualify firearm purchasers for serious misdemeanor as well as felony convictions. The result has been to complicate the enforcement of Federal law, both by gun dealers and law enforcement agencies. The BATF is required to issue gun dealers an annual compilation of State firearm laws and felony definitions, so that dealers can answer purchaser questions about what is a disqualifying conviction.<sup>68</sup> Dealers are responsible for knowing the firearm laws of the State and local jurisdiction where the guns are delivered to the customer. This can be difficult. BATF regulations, for example, permit licensed dealers to sell or dispose of rifles and shotguns-but not handguns-over-the-counter at in-State gun shows to out-of-State residents if the sale is legal in both States.<sup>69</sup> BATF has fallen behind in issuing the compilation of State firearm laws; the most recent edition is dated July 1988.<sup>70</sup>

The compilation of a national felon file would require screening of each State's criminal history records and its firearm laws. Law enforcement officials and criminal record managers believe that this task is best accomplished on a State-by-State basis for the time being. A national felon file might

eventually be possible, but only after all State records are flagged and screened.<sup>71</sup>

Third, a national convicted felon file would, by definition, exclude persons convicted of certain serious misdemeanors, under indictment for a felony offense, or who are fugitives from justice. Persons in these categories are also prohibited from purchasing or receiving firearms by Federal law. Any person convicted of a misdemeanor punishable by more than 2 years imprisonment, or under indictment or information<sup>72</sup> in any court for a crime punishable by more than 1 year imprisonment, is prohibited.<sup>73</sup> "Fugitives from justice" are defined as any person who has fled from a State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.<sup>74</sup> The State of Virginia interprets Federal law as justifying the checking of State and national wanted person files in addition to State and national criminal history files. In checking NCIC, Virginia assumes that persons listed in NCIC are wanted for a felony offense in another State and by being in Virginia to purchase a firearm are fugitives from justice. The FBI indicates that: 1) almost all NCIC wanted persons are wanted for felony offenses, frequently serious felonies; and 2) arrest warrants have been issued (usually by a judge or magistrate) on almost all NCIC wanted persons.<sup>75</sup>

If the Virginia approach as used in its POS system is accepted as sound, then the rationale for establishing a national felon file may not be justified for purposes of firearm purchaser checks. A national file limited to convicted felons would exclude persons wanted or indicted for murder, armed robbery, rape, and lesser felonies. If the goal is to check for persons wanted or indicted as well as convicted of felony

<sup>67</sup>See U.S. Congress, Senate, Committee on the Judiciary, *Federal Firearms Owners Protection Act*, Senate report No. 98-583, 98th Cong., 2d sess. (Washington, DC: U.S. Government Printing Office, Aug. 8, 1984); Public Law 99-308, the "Federal Firearm Owners Protection Act," 99th Cong., 2d seas., May 19, 1986.

<sup>68</sup>U.S. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, *State Laws and Published Ordinances-Firearm.r.*, 18th ed. (Washington, DC: BATF, July 1988).

@See generally U.S. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms *Federal Firearms Regulations, 1988-89* (Washington, DC: BATF, June 1988).

<sup>70</sup>Bureau of Alcohol, Tobacco and Firearms, *State Laws*, op. cit., footnote 68. BATF could issue periodic legal updates on a regular basis (e.g., every 6 months) to meet the legislative intent, while publishing the full compilation less frequently.

<sup>71</sup>See U.S. Department of Justice, Task Force on Felon Identification in Firearm Sales, *Report to the Attorney General*, op. Cit., footnote 50; statement of P.J. Doyle, Florida Department of Law Enforcement and Chairman, NCIC Advisory Policy Board, before a Mar. 13, 1991, hearing of the House Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights.

<sup>72</sup>An indictment is a formal accusation of a crime presented by a grand jury; an information is a formal accusation made by a prosecuting attorney.

<sup>73</sup>18 U.S.C. 44, sees. 921(a) (20), 922(d)(1) and (2), and 922(g)(1) and (2).

<sup>74</sup>18 U.S.C. 44, sec. 921(a) (15).

<sup>75</sup>The Florida POS system also checks wanted person files. During the first 2 months of operation, Florida identified 21 wanted persons attempting to purchase firearms. See Florida Department of Law Enforcement, "Firearm Purchase Program," op. cit., footnote 45.

offenses, a national felon file may not be adequate. Many law enforcement and criminal records officials believe that improvement and automation of the State and Federal criminal record systems is better suited for effective firearm purchaser checks than the development of a national felon file. In their view, automated, updated, and properly flagged State and Federal criminal files should best meet the need. Entries in the FBI's Interstate Identification Index could be flagged so that persons wanted, indicted, or convicted of felony (or serious misdemeanor) offenses could be immediately disapproved for firearm purchases, subject, of course, to followup verification based on the complete criminal records. This option would require that State criminal records first be similarly flagged—a major challenge.<sup>76</sup>

Fourth, a national felon file, and other proposed national computerized files, raise significant privacy and security issues. Each proposal to add a new file to the National Crime Information Center generates debate and controversy. Privacy and civil liberty advocates are concerned that a national felon file might lead to uncontrolled, and inappropriate or illegal, use of criminal record information for noncriminal justice purposes. Some consider a national felon file as another step toward a 'virtual' national database of personal and private information. Critics are concerned that someday a felon file might be matched or interconnected with computerized tax, education, health, social security, and similarly sensitive databases. Criminal justice record managers are wary that a national felon file might complicate system security and privacy, especially if tens of thousands of gun dealers were allowed direct electronic access to the NCIC computer network.<sup>77</sup>

### Smart Cards<sup>78</sup>

Smart card technology offers advantages if linked to an 800 number POS firearm purchaser check. Smart cards are now used for: financial transactions; distribution of government benefits and entitlements (e.g., food stamps); health and emergency medical information (e.g., blood type, medical history, allergic reactions); and security purposes (e.g., access to restricted facilities, computer centers). Smart cards look like ordinary plastic credit cards but include a magnetic- or laser-readable strip or a computer chip encoded and embedded within. Nearly any digital information can be stored on smart cards, including personal identifiers and criminal history information.

One option proposed would be to issue a smart card to persons who desire to purchase a firearm. The card could include fingerprint identification information that could be compared with the cardholder's live scan fingerprints taken at the POS for positive identification. At the same time, the gun dealer could call an 800 number to check for criminal activity subsequent to the date the smart card was issued.

Another option would be to piggyback on smart cards issued for other governmental purposes, such as driver's licenses. Some States like California are now using smart cards for a variety of purposes. But even the most advanced States would take several years to convert to smart card driver's licenses,<sup>79</sup> many States much longer. Using a general purpose ID card, like a driver's license, for firearm purchaser checks could minimize concerns about the State or Federal Government compiling lists of law-abiding gun owners. Including fingerprint information on

<sup>76</sup>The FBI has concluded that a separate national felon file is not necessary, and that State and III records can be properly flagged for felony convictions. The NCIC wanted-persons file flags fugitives and can be checked simultaneously with III. Many State criminal history files do not, however, maintain information on felony indictments; thus flagging State and Federal files for indictments will be difficult. Virginia again provides a model of how this can be done. The Virginia CCH file includes police and prosecutor as well as court dispositions. A record is flagged for a felony arrest, but the flag is removed in the event of a dismissal, none pro se, or acquittal.

<sup>77</sup>See U.S. Congress, Office of Technology Assessment, *An Assessment of Alternatives for a National Computerized Criminal History System*, Op. cit., footnote 59; U.S. Congress, Office of Technology Assessment *Federal Government Information Technology: Electronic Record Systems and Individual Privacy*, OTA-CIT-296 (Springfield, VA: National Technical Information Service, June 1986); U.S. Congress, Office of Technology Assessment, "Issues Relevant to NCIC 2000 Proposals," OTA staff paper, Nov. 12, 1987; J.J. froming, P.G. Neumann, D.D. Redell, J. Goldman, D.R. Gordon, M. Rotenberg, and L. Siegel, *A Review of NCIC 2000: The Proposed Design for the National Crime Information Center* (Washington DC: Computer Professionals for Social Responsibility, February 1989); and July 26, 1989, comments of J. Gel@ American Civil Liberties Union, on the U.S. Department of Justice Draft Report on "Systems for Identifying Felons Who Attempt to Purchase Firearms."

<sup>78</sup>The term "smart card" technically refers to cards with built-in computer chips that can process, send, and receive as well as store information. Common usage of "smart card" in the law enforcement community includes magnetic strip cards (that store information) and laser strip cards (that store and update, i.e., read and write) as well as computer chip cards. See U.S. Congress, Office of Technology Assessment, *Electronic Delivery of Public Assistance Benefits: Technology Options and Policy Issues*, OTA-BP-CIT-47 (Washington, DC: U.S. Government Printing Office, April 1988), especially pp. 7-12.

<sup>79</sup>Presumably as new licenses are issued and old licenses renewed.

the card would reduce the potential for fraud, but might cause concern about fingerprinting law-abiding license applicants and the creation of a de facto national identification card.<sup>80</sup>

## Automated Record Checks and Waiting Periods

### *How Waiting Periods Work*

Some States have enacted waiting periods to provide time for record checks of firearm purchasers, alone or as part of broader background checks. Specific procedures vary widely. Waiting periods range from 2 days to several weeks (see table 1). The extent of records checked ranges from criminal history records only, to criminal history and wanted person files, to criminal and other records—such as commitments to mental health institutions. In most States that have record checks (e.g., California, Illinois, Oregon, Virginia) the record checks are mandatory before a firearm purchase can be approved. In a few States (e.g., Michigan, Pennsylvania, South Carolina) the record checks are conducted after the purchaser has taken possession of the firearm, because police are unable to complete the record check before the end of the waiting period or because there is no waiting period. Some State waiting periods apply to specific handguns only, others to all handguns and some other firearms (e.g., semiautomatic firearms), and others to all firearms (handguns, rifles, and shotguns).<sup>81</sup>

Waiting periods can be combined with both POS and proapproval systems. Virginia allows until the close of the next business day to confirm POS disapprovals. This amounts to a 24- to 48-hour waiting period for some persons (but not counted as a formal waiting period), depending on the time of day the record check is made. There is no waiting period for Virginia purchasers whose POS record checks clear. Florida combines a POS record check with a 3-working-day waiting period for “cooling off” purposes (as of Oct. 1, 1991). Illinois combines a required firearm owner identification card, which includes a record check, with a 72-hour waiting

**Table 1—Maximum Time Periods Required for Initial Firearm Purchase by State Resident<sup>a</sup>**

	Handgun		Long gun
180 days	New York		
60 days	Washington, DC	60 days	Washington, DC*
	Indiana		
40 days	Massachusetts	40 days	Massachusetts**
30 days	Illinois	30 days	Illinois**
	New Jersey		New Jersey*
	North Carolina		
15 days	California	15 days	California***
	Hawaii		Hawaii**
	Oregon		
	Tennessee		
14 days	Connecticut	14 days	Connecticut***
9 days	Missouri		
7 days	Maryland	7 days	Maryland**
	Minnesota		
	Rhode Island <sup>b</sup>		
5 days	Washington		
3 days	Delaware <sup>b</sup>	3 days	Delaware****
	Florida <sup>c</sup>	3 days	Florida <sup>c*</sup>
	Iowa		
	South Dakota		
2 days	Alabama		
	Pennsylvania		
	Virginia <sup>d</sup>	2 days	Virginia <sup>d*</sup>
	Wisconsin		

<sup>a</sup>Includes waiting time for both documentation (i.e., processing of a firearm purchase application, where and when required) and for taking possession of the firearm. The waiting time listed is for the first purchase. In some states the documentation is good for subsequent purchases in a given time period; in other states the documentation must be processed for each purchase. In most States with waiting periods, the time required for documentation and taking possession is the same. In a few States, the waiting time for taking possession is shorter: Washington, DC (2 days for preregistered handguns—the only handguns allowed in D.C.); Illinois (3 days for handguns, 1 day for long guns); and Indiana (7 days for handguns).

<sup>b</sup>Delaware can take up to 3 working days to verify initial point-of-sale (POS) disapprovals.

<sup>c</sup>Florida can take up to 3 working days to verify initial POS disapprovals; a 3-working-day waiting period for all handgun purchases goes into effect Oct. 1, 1991.

<sup>d</sup>Virginia can take until the close of the next working day to verify initial POS disapprovals; POS checks apply to all firearm purchases as of July 1, 1991.

● All long guns.

\*\*Shotguns and assault rifles only.

● \*\* Rifles only.

SOURCE: U.S. Department of Justice, Bureau of Justice Statistics and U.S. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms; updated by OTA, 1991.

period for handgun purchases and 24 hours for long gun purchases. California has a 15-day waiting period that applies to all firearm sales in California, whether handguns or long guns, and covers sales

<sup>80</sup>*Ibid.*; also see statement of W.J. Henderson, L. Guttentag, and J. Gel- American Civil Liberties Union, on “Voluntary Work Authorization Cards” before a Nov. 9, 1989, hearing of the House Committee on the Judiciary, Subcommittee on Immigration, Refugees, and International Law. For a general discussion of smart card options, see U.S. Department of Justice, Task Force on Felon Identification in Firearm Sales, *Report to the Attorney General*, op. cit., footnote 50.

<sup>81</sup>For details on State waiting periods, see U.S. Department of the Treasury, BATF, *State Laws and Ordinances-Firearms*, Op. cit., footnote 68; U.S. Department of Justice, Bureau of Justice Statistics, “State Requirements and Systems Controlling Firearms Sales,” Apr. 4, 1989, prepared for the Task Force on Felon Identification in Firearms sales.

from a licensed dealer and an individual. Oregon has a 15-day wait combined with a fingerprint and record check on handgun purchasers. Oregon gun dealers ink the purchaser's fingerprints (thumbs only) on the store premises and mail the prints to the Oregon State Police for processing (the completed purchase forms are sent to both local and State police). Oregon is one of a handful of States known to actually run fingerprint checks on purchasers; most States with record checks use names and identifiers, not fingerprints.

The impact of automated record checks on waiting periods or proapproval periods differs depending on the original purpose of the waiting period. If the wait was intended to allow time for criminal record checks, then automating the process could reduce the waiting period for issuing a firearm owner identification card. With enough time and resources, most States should be able to implement a POS system. However, waiting or proapproval periods would not necessarily be reduced. States may want to keep them for cooling off purposes, to provide time for background checks beyond criminal records, or to conduct fingerprint checks that would not be possible at the POS.

### *State Computerized Criminal History (CCH) Files—A Key Prerequisite*

The key prerequisite for automated firearm purchaser record checks is State computerized criminal history (CCH) files. State CCH files must meet several conditions to reduce the time for record checks and move toward POS checks. These requirements include the following:

1. complete and fully automated master name index to criminal offenders;
2. complete CCH file, at least for recent felony offenders;

3. an acceptable level of final dispositions in the CCH file; and
4. substantially complete flagging of felony convictions in the CCH file.

Most States meet some of these requirements today; few meet all.

In 1989, 44 States had all in-State offenders in a master name index, and three other States had over 85 percent of the offenders included.<sup>82</sup> Of those States, 39 have fully automated name indexes. Illinois and Ohio are the only States with large populations that do not have automated name indexes. Most States, however, have only partially automated criminal history files. Ten States have fully automated files with computerized records for all offenders.<sup>83</sup> Eight States have manual files. Most States fall somewhere between (see figure 5).<sup>84</sup> The percentages may be somewhat better for purposes of firearm purchaser checks, since many partially automated States give priority to computerizing records of recent, felony offenders. Nationwide, about 60 to 70 percent of State criminal history records are automated.<sup>85</sup>

Most States have only partially complete disposition reports.<sup>86</sup> Just one State—Massachusetts—indicates 100 percent reporting. Thirteen States include 10 to 50 percent of the final dispositions for arrests in the criminal history file. The remaining States include between 60 and 95 percent of the final dispositions (see figure 6).<sup>87</sup> Nationwide, about 65 to 70 percent of State criminal history records include final dispositions.<sup>88</sup>

The level of 'acceptable' disposition reporting is debatable. The goal for most States is 100 percent; many are taking steps to improve reporting. Only a few States can match the disposition reporting levels of Virginia, which are 86 percent of all arrests and 95 percent of arrests occurring within the last 5 years.

<sup>82</sup>See SEARCH Group, Inc., *Survey of Criminal History Information Systems, NCJ-125620* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, March 1991), which is the primary data source for the following discussion of State criminal record system capabilities. The survey results should be interpreted as an approximate snapshot or profile of State criminal record systems, rather than a precise accounting. Many States do not have reliable, complete statistics on their record systems and therefore responded to the survey with best estimates.

<sup>83</sup>Colorado, Georgia, Hawaii, Idaho, Michigan, Menu Nevada, Oregon, Rhode Island, and Washington.

<sup>84</sup>13 States with 1 to 50 percent of records automated; 7 States with 51 to 75 percent automated; and 13 States with 76 to 99 percent automated.

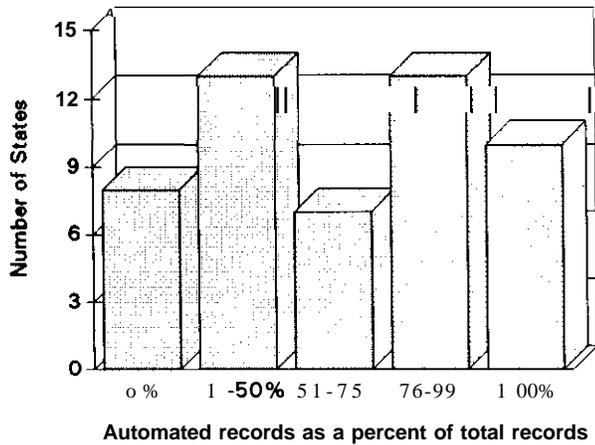
<sup>85</sup>The BJS/SEARCH Group, Inc. survey found that about 60 percent of all State criminal history records were automated as of 1989. See SEARCH Group, Inc., *Survey of Criminal History Information Systems*, op. cit., footnote 82. The percentage likely has increased somewhat since 1989.

<sup>86</sup>SEARCH Group, Inc., *Survey of Criminal History Information Systems*, op. cit., footnote 82.

<sup>87</sup>14 States with 60 to 75 percent disposition reporting; and 12 States with 76 to 95 percent disposition reporting.

<sup>88</sup>The BJS/SEARCH Group, Inc. survey found that about 63 percent of all State criminal history records included final dispositions (for completed arrest cycles) as of 1989. See *ibid.* The percentage likely has increased somewhat since 1989.

Figure 5—Automation of State Criminal History Records, 1989



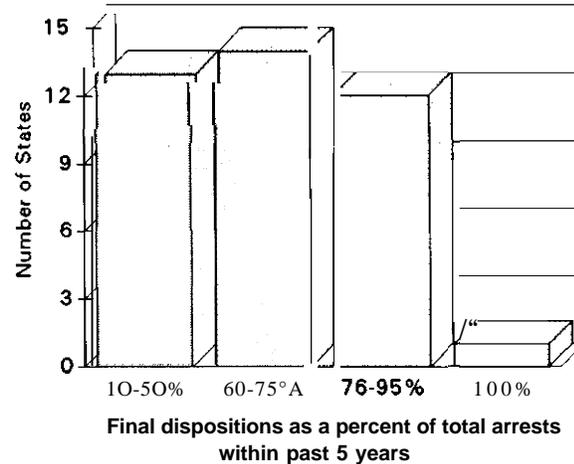
SOURCE: Bureau of Justice Statistics/SEARCH Group, Inc., 1991.

if the Virginia level of disposition reporting was accepted as a standard, the States meeting this criterion in 1989 would include: Connecticut, Maine, New Jersey, and North Carolina, in addition to Virginia.<sup>89</sup>

Other States could meet lower standards. At 80-percent current disposition reporting, for example, California, Iowa, Minnesota, Montana, New Jersey, and North Dakota would also “qualify.”<sup>90</sup> At each increment of lower disposition reporting, the percentage of false positive hits and the time and effort needed to verify these hits would likely increase. Waiting periods and proapproval periods are used in part to compensate for incomplete disposition reporting. Criminal records personnel use waiting time to check all questionable hits and to identify false positive hits. Under the Virginia and similar POS systems, all purchases resulting in hits are initially disapproved, since there is no time allowed to check incomplete records before responding to the dealer. In Virginia, California, Illinois, Oregon, and other States with statistics, the great majority of initial hits are false positives.<sup>91</sup>

For purposes of firearm purchaser checks, State criminal history files should be flagged to identify

Figure 6—Final Dispositions in State Criminal History Files, 1989



SOURCE: Bureau of Justice Statistics/SEARCH Group, Inc., 1991.

persons with felony convictions. Flagging means entering a code designation into the database that indicates a felony conviction, so that a search of the file will indicate whether a person has a felony conviction without having to review the entire criminal history record. Persons formally charged (e.g., indicted) for felony offenses, which also disqualifies persons to purchase firearms under Federal law, could be flagged as well. Only six States have flagged all persons with felony convictions: Idaho, Illinois, New York, South Dakota, Virginia, and Wisconsin. A few States have flagged some felony convictions; the majority of States have flagged none. Most of the States claim to have the necessary information in their criminal history systems; but it will take time and resources to flag convictions (23 States could flag all felony convictions, and 18 States could flag some convictions).<sup>92</sup> And States can only flag convictions that have been reported to the State criminal history repository; when final dispositions are missing, convictions cannot be flagged.

#### Wide Variability in State CCH Systems

States vary widely in the ability to conduct criminal record checks of firearm purchasers. The

<sup>89</sup>Ibid.

<sup>90</sup>Ibid.

<sup>91</sup>Approximate false hit ratios (false positive initial hits:total initial hits) reported to OTA by State officials are, by State: Virginia (4:6 to 5:6); California (27:28); Oregon (17: 18); Delaware (7: 10); and Florida (3:5).

<sup>92</sup>SEARCH Group, Inc., *Survey of Criminal History Information Systems*, op. cit., footnote 82.

1989 SEARCH Group survey of the States (sponsored by the Bureau of Justice Statistics (BJS)) compiled information on the key components of each State's criminal record check capabilities.<sup>93</sup> This information should be analyzed by BJS to rank the States in order of: length of time to conduct criminal record checks, and reduction in time for checks at 1-year intervals in the future based on different assumptions. Ability of a State to reduce record check time depends on its current status of name index and criminal history automation and disposition reporting. Well-automated States with complete reporting can reduce the record check response times easier than those with incomplete records.

California is positioned to reduce record checking time because it has the following:

1. a fully automated, complete name index of criminal offenders;
2. a substantially automated criminal history file (67 percent of all offenders, all recent or active offenders);
3. 75-percent disposition reporting (85 percent for arrests within 5 years); and
4. some felony conviction flags in place with information available to flag all felony convictions.

California's waiting period for handgun purchases was once 5 days. But that was too short to complete record checks, so the waiting period was extended to 15 days.

California Department of Justice officials estimate that improvements in the automated record system, cost recovery user fees (raised from \$7.50 to about \$15.00 per transaction), and possibly smart id cards could halve the processing time. Then, the 15-day waiting period could be reduced. Some California officials and gun dealers opt for a POS/smart card system with a 3- to 7-day waiting period for cooling off. Minnesota, Montana, New Jersey, New York, North Carolina, and South Carolina are also well positioned to improve their record checks.

Many States have serious deficiencies in their CCH systems that make it more difficult to improve record check accuracy and response time. Arkansas, for example, has a manual criminal history file, low disposition reporting rate (20 to 30 percent), and no current capability to flag convicted felons. Colorado has a fully automated name index and criminal history file, but low disposition reporting (10 percent) and no felony conviction flags. Other States have the following serious CCH deficiencies: no CCH file (Maine, Mississippi, New Mexico, Tennessee, Vermont, West Virginia, and the District of Columbia, along with Arkansas); limited CCH file, with automated records on 40 percent or fewer offenders (Arizona, Indiana, Kansas, Louisiana, Massachusetts, Nebraska, North Dakota, Ohio, Oklahoma, and Pennsylvania); low disposition reporting, with 40 percent or fewer dispositions reported for arrests within the past 5 years (Alabama, Alaska, Delaware, Georgia,<sup>94</sup> Idaho, New Mexico, Arkansas, and Colorado); and no current capability to flag convicted felons (Colorado, Connecticut, District of Columbia, Georgia, Idaho, Illinois, Iowa, Nebraska, Ohio, Oklahoma, West Virginia, and Arkansas).<sup>95</sup>

### *Problem of Funding*

Record check improvements will take significant time and increased funding. How fast improvements can be made depends on the volume of firearm purchaser record checks (a function of population), the commitment of State legislatures and the Congress to improving record checks of firearm purchasers (enabling the reduction of waiting or proapproval periods and movement toward POS checks), and the financial resources available.

The U.S. Department of Justice has not yet performed a detailed State-by-State analysis of the money and time required to implement various firearm purchaser check options. The BJS and FBI, and various States, have conducted or sponsored several preliminary, partial studies of selected op-

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<sup>93</sup>Ibid.

<sup>94</sup>Georgia indicates that over 70 percent of dispositions were reported within the past 5 years; the problem is that many of these dispositions were not recorded in the State criminal history records, due to a large processing backlog that is now being reduced. For purposes of automated firearm purchaser checks, however, a disposition reported but not recorded is just as inaccessible as a disposition not reported.

<sup>95</sup>Ibid.

tions or components thereof.<sup>96</sup> The composite results provide the following order-of-magnitude estimates of nationwide start-up costs and time:

- A purchaser POS “instant” telephone check “hot line” in each State (based on name and identifier checks, not fingerprint checks) would cost roughly \$25 million, exclusive of the costs of needed criminal record system improvements.<sup>97</sup>
- A purchaser POS “instant” check option (whether with a national or individual State telephone “hot lines”) would require roughly \$260 million over the next 3 to 5 years to provide a substantially automated, complete, and up-to-date criminal history records infrastructure.<sup>98</sup>
- A purchaser fingerprint check option (not at the POS) would require roughly an additional \$200 million (\$40 million Federal, \$160 million State)<sup>99</sup> and 5 plus years to provide the necessary automated fingerprint identification capability.
- A POS purchaser fingerprint check option would cost an additional \$600 million to \$11 billion,<sup>100</sup> depending on whether only store-front or all gun dealers are equipped with the

necessary equipment, if implemented over the next 5 to 10 years (the cost might drop significantly in 10 plus years).

- A purchaser smart card option with POS check (but no fingerprints) would roughly cost an additional \$410 million for magnetic strip cards (\$270 million for dealer equipment, \$140 million for issuing cards)<sup>101</sup> up to \$890 million for computer chip cards<sup>102</sup> over the next 3 to 5 years.

The State CCH and AFIS criminal record funds would be required in any event for general improvements in criminal record and identification systems. Smart cards would add another few hundred million dollars, and POS fingerprint checks a few hundred million to several billion dollars.

Funds for upgrading record check capabilities and for operating costs could come from the following sources: 1) State and local government general revenues, 2) Federal block or discretionary grants, 3) licensing fees (from gun dealers), and 4) user fees (from firearm purchasers). All States provide general revenue funding for State and local criminal record systems development and operation. The amounts provided vary widely by State and over

<sup>96</sup>See generally U.S. Department of Justice, *Report to the Attorney General*, op. cit., footnote 50; T. Orsagh, “Estimates of Start-up and Operational Costs,” op. cit., footnote 65; U.S. Department of Justice, Bureau of Justice Statistics, “Summary of Criminal History Record Improvement Grantees,” Mar. 13, 1991. Also see cost analyses of numerous individual States planning or implementing computerized criminal history and automated fingerprint identification systems.

<sup>97</sup>Assumes the Virginia POS “instant” check start-up cost (about \$250,000 for checks on handguns with barrel length under 5 inches) can be extrapolated to all States checking all firearm purchases from dealers. The BJS contractor arrived at a similar estimate in 1989; see U.S. Department of Justice, *Report to the Attorney General*, op. cit., footnote 50, and T. Orsagh, “Estimates of Start-up and Operational Costs,” op. cit., footnote 65. OTA did not estimate operating costs. The BJS contractor estimated State “hot line” operating costs at about \$40 to \$50 million per year; the Congressional Budget Office estimated the cost of an FBI “hot line” at \$5 to \$10 million per year, although the comparability of these estimates is unknown. Both estimates exclude the cost of record system improvements.

<sup>98</sup>Cost depends on the level of automation and record quality, and also on the size of the State and the baseline condition of record systems. Achieving 90 to 95 percent automation and 90 to 95 percent disposition reporting in all States is estimated to cost two to three hundred million dollars over the next 3 to 5 years. This assumes an average automation cost of roughly \$132 million (\$5 million, \$2 million, and \$1 million per State for the 21, 7, and 13 States with 0 to 50 percent, 51 to 75 percent, and 76 to 99 percent automation respectively, as of 1989) and an average disposition reporting cost of roughly \$134 million (\$6 million, \$3 million, and \$2 million per State for the 13, 14, and 12 States with 10 to 50 percent, 60 to 75 percent, and 76 to 95 percent reporting respectively, as of 1989). This cost estimate also assumes that records of many older, inactive criminals (e.g., no activity for 25 to 30 years) might never be fully automated, but would be listed in automated, flagged name indexes. Time is also widely variable. Implementation of major State CCH or AFIS systems takes, on the average, 2 to 4 years from initial planning to full operation; upgrades typically take 1 to 2 years. Major improvements in record quality likewise usually take years. See SEARCH Group, Inc., *Survey of Criminal History Information Systems*, op. cit., footnote 82, for State-by-State data on rates of improvement in automation and record quality during 1983-1989. The Congressional Budget Office estimated the infrastructure improvement cost to support automated firearm purchaser checks at ‘hundreds of millions over several years.’ See letter from Robert D. Reischauer, CBO Director, to Rep. Charles E. Schumer, May 3, 1991.

<sup>99</sup>The Federal cost is based on preliminary estimates of the FBI’s fingerprint identification automation program (excluding building and site acquisition), and assumes that the incremental cost of supporting firearm purchaser checks would be about \$40 million (or 10 to 15 percent of the total FBI AFIS cost). The State cost assumes AFIS upgrades for 30 States at \$2 million each to handle the additional workload from firearms purchaser checks, and new AFIS systems for 20 smaller States at \$5 million each (assumes that the larger States have already invested in AFIS at costs of, typically, \$10 to \$25 million each). For further discussion, see OTA, *The FBI Fingerprint Identification Automation Program*, op. cit., footnote 14.

<sup>100</sup>Assumes 15,000 to 270,000 dealer terminals at \$40,000 each.

<sup>101</sup>Assumes 270,000 dealer terminals at \$1,000 each plus 70 million magnetic or laser strip cards at \$2 each.

<sup>102</sup>Assumes 270,000 dealer terminals at \$2,000 each plus 70 million computer chip cards at \$5 each.

time. This reflects differences in economic conditions and political commitment to criminal justice improvements. Funding is influenced by the vagaries of the regional and national economies. Most State and local government budgets are strained, and many of the States with the most serious record system deficiencies are strapped for funds. This makes Federal funding even more important.

Federal finds for State and local record system improvements are available from the Bureau of Justice Assistance (BJA). BJA, with the assistance of BJS, administers the \$9 million per year (for 3 years, starting in FY91) discretionary criminal record quality improvement program and the roughly \$20 million per year (starting in FY92) 5-percent set-aside Anti-Drug Abuse block grant program for record system improvements.<sup>103</sup> The block grant set-aside program is still being defined. Only States that can demonstrate complete and accurate criminal record systems will be eligible to waive the 5-percent requirement. The discretionary program is already operational. These funds can be used for any component necessary to implement automated firearm purchaser checks, such as:

- flagging of felony convictions in criminal history records, with emphasis on arrests and convictions within the last 5 years;
- implementing the FBI's voluntary reporting standards for convicted felons, including the use of fingerprint identification;
- improving the reporting of arrests, dispositions, and other criminal history information to central State repositories;
- auditing the record quality of criminal history record systems;
- implementing or enhancing automated name indexes and computerized criminal history record systems; and
- improving the capability to participate in the Interstate Identification Index (III) system for

the interstate exchange of criminal history information.<sup>104</sup>

As of March 13, 1991, BJA and BJS had awarded \$8.7 million to 26 States, with \$1.3 million intended for 3 States in process. Projects range from eliminating backlogs of unfilled arrests and dispositions, to designing a CCH (for States with a manual system), to automating the information exchange among judicial and law enforcement record systems, to conducting record quality audits.<sup>105</sup>

Full implementation of the BJA and BJS grant programs will speed up the improvement of State and local criminal record systems and improve the ability of those systems to support automated record checks of firearm purchasers. BJA and BJS have not yet conducted a State-by-State examination of: needed criminal record system improvements; the cost of needed improvements; and how quickly (and by how much) these improvements might reduce record check response time, and upgrade completeness and accuracy. Such an examination might be included in the program evaluation that BJA and BJS are planning for FY 1992,<sup>106</sup> and could cover both State and local criminal record system improvements and full implementation of the FBI's separate but related Interstate Identification Index (III) and National Fingerprint File (NFF).<sup>107</sup>

Licensing and user fees are other sources of revenue for automated firearm purchaser checks. The current Federal firearm dealer license fee is \$10 per year, renewable every 3 years.<sup>108</sup> This fee could be increased to raise additional funds for implementing automated firearm purchaser checks and to cover the cost of more extensive criminal record checks on license applications. A licensing fee of \$100 every 3 years, for example, would raise about \$7 million per year (assuming 70,000 new or renewal licenses per year). About \$2 million could be used to fund complete criminal record and fingerprint checks on license applicants and renew-

<sup>103</sup>See U.S. Department of Justice, Office of Justice Programs, *Attorney General's Program*, op. cit., footnote 32.

<sup>104</sup>U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance and Bureau of Justice Statistics, "Improvement of Criminal History Record Information and Identification of Convicted Felons," *Federal Register*, vol. 56, pp. 11275-11278, Mm. 15, 1991.

<sup>105</sup>U.S. Department of Justice, Bureau of Justice Statistics, "SummZUY of Criminal History Record Improvement Grantees," Mar. 13, 1991, submitted for the record of a Mar. 13, 1991, hearing of the House Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights.

<sup>106</sup>See U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Edward Byrne Memorial State and Local Law Enforcement Assistance Program: Discretionary Program Application Kit* (Washington, DC: BJA, Feb. 20, 1991), especially p. 38, "Criminal History Information System Evaluation."

<sup>107</sup>See OTA, FBI Automated *Fingerprint Identification program*, op. cit., footnote 14, in preparation.

<sup>108</sup>It costs \$25 per year for pawnbrokers; \$50 per year for firearms and ammunition manufacturers or importers. See 18 U.S.C. 44, sec. 923(a).

als. The remaining \$5 million could be transferred to the BJA and BJS grant program to augment funds for record system improvements necessary to support automated firearm purchaser checks.

User fees vary by State and range from no charge to \$29 per firearm purchaser.<sup>109</sup> Fees for criminal record checks based on name and personal identifiers range from about \$2 to \$10 per purchaser, when fees are charged.<sup>110</sup> Fees for full record checks including fingerprints range from about \$12 to \$29. Some States (e.g., Oregon) do not charge even for fingerprint checks, with funding provided from general revenues.<sup>111</sup> A user fee surcharge could raise significant additional funds to offset costs. A \$2 Federal surcharge could generate roughly \$5 million per year, assuming, conservatively, 2.5 million firearm purchases per year at licensed dealers (multiple purchases in the same transaction would still be assessed at \$2). These funds could go directly to each State, or be transferred to BJA and BJS for redistribution to the States as part of the criminal record grant programs. States could, alternatively, add a \$2 surcharge themselves and deposit revenues in an account reserved for State and local record system improvements.<sup>112</sup> Some gun owner groups view user fees and possible surcharges as, in effect, a tax on the exercise of their constitutional right to keep and bear arms. Some law enforcement agencies view such revenue sources as a legitimate way to cover the costs of conducting record checks and to make the improvements needed to help ensure these checks are as complete and timely as possible.

### *Challenge of Improving Record Quality*

Additional resources will be needed, whether from Federal grants, increased licensing or user fees, or elsewhere, if complete and accurate firearm

purchaser record checks are to be provided. Problems with record quality are compounded by delays and omissions in the information submitted by courts and law enforcement agencies to State repositories and delays in entering information once submitted into State criminal record systems.<sup>113</sup>

Many States, but not all, require criminal justice agencies to provide arrest cycle information to the State record repositories, that is, information on what happens to each offender after the initial arrest (see figure 7).

This means that arrests can be legally carried in the criminal history records with no indication if the charges were dropped (one-third of the States) and with no indication of final felony dispositions (one-fifth of the States). Even when prosecutor and court disposition reporting is required, reporting levels vary widely. Some States with mandatory prosecutor reporting estimate that half or more of prosecutor declinations are never submitted to the State repository.<sup>114</sup> Some States with mandatory felony court disposition reporting likewise estimate that half or more of final dispositions are never submitted.<sup>115</sup> Even when dispositions are submitted, the timeliness varies widely (see table 2).

It is apparent that State disposition reporting rates vary from very low to very high. Many court dispositions are never filed with the State criminal record repository or filed late. When filed, many State repositories take weeks to months to enter the dispositions into the criminal history records. Even States with high overall disposition reporting (e.g., 95 percent in Virginia) and rapid entry of dispositions once received (5 days in Virginia) still experience significant delays. An initial hit with the Virginia POS firearm purchaser record check, for

<sup>109</sup>See SEARCH Group, Inc., *Survey of Criminal History Information Systems*, op. cit., footnote 82.

<sup>110</sup>Virginia charges \$2 per record check, but estimates that the full cost is about \$10 per check. The difference is provided from general revenues. See Virginia State Police, *Virginia Firearms Transaction Program: Report for the Office of the Governor*, op. cit., footnote 82.

<sup>111</sup>The Oregon State Police estimate an approximate total direct cost of \$11 per check, \$6 for the fingerprint check by state police and \$5 for other record checks by local law enforcement. The indirect capital cost of additional automated fingerprint identification capability could add as much as another \$10 per check. See Oregon State Police, 1990 *Study of Retail Firearm Sales*, op. cit., footnote 45.

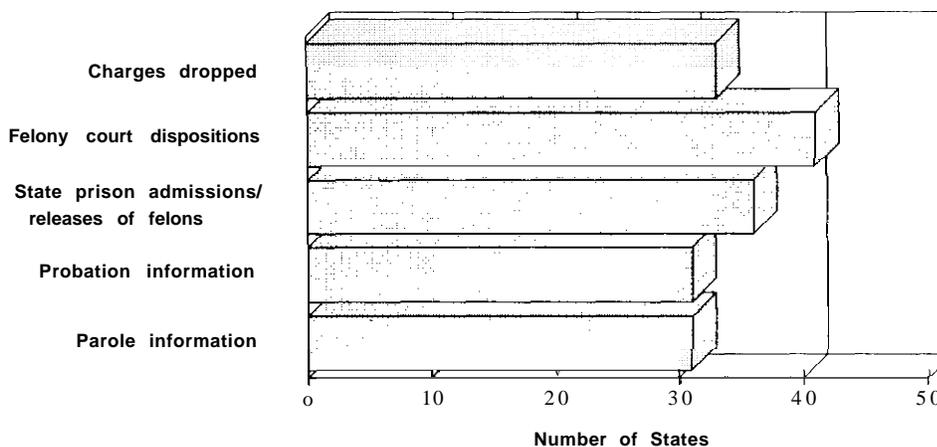
<sup>112</sup>Florida charges \$10 per record check, which generated \$367,000 during the first 2 months of operation. These funds cover both operating costs and related record system improvements. Virginia charges \$2 per record check, and recovers only a part of the operating costs. Virginia estimates the full cost (operating and related infrastructure) at \$10 per check.

<sup>113</sup>See OTA, *Assessment of Alternatives for a National Computerized Criminal History System*, op. cit., footnote 59; U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Patents, Copyrights, and Trademarks, *Computerized Criminal History Records*, hearing, 98th Cong., 1st sess. (Washington, DC: U.S. Government Printing Office, May 12, 1983); U.S. Department of Justice, Task Force on Felon Identification in Firearm Sales, *Report to the Attorney General*, op. cit., footnote 50; and SEARCH Group, Inc., *Survey of Criminal History Information Systems*, op. cit., footnote 82.

<sup>114</sup>Alabama, District of Columbia, Illinois, Indiana, Kansas, Maine, Mississippi, South Dakota, Utah, and Washington.

<sup>115</sup>District of Columbia, Florida, Illinois, Louisiana, Mississippi, Nebraska, New Mexico, Tennessee, and Washington.

Figure 7—Types of Criminal History Information Submitted to State Repositories, 1989



SOURCE: Bureau of Justice Statistics/SEARCH Group, Inc., 1991.

Table 2—Average Time Required To Receive and Enter Final Dispositions Into State Criminal History Records, 1989

State <sup>a</sup>	Average number of days between	
	Court disposition and submission to State repository	Receipt of disposition and entry into State criminal history records
Arizona	57 days	45 days
California	30	40
Florida	180	180 <sup>b</sup>
Idaho	35	730 <sup>b</sup>
Maine	14	1
Nebraska	365	
New Jersey	7	60-90 <sup>b</sup>
Pennsylvania	180	2
Tennessee	28-42	2
Utah	180	14
Virginia	90-120	5
Washington	60	28
Wisconsin	14	60-90 <sup>b</sup>
Wyoming	7	3

<sup>a</sup>Illustrative States with mandatory final disposition reporting.  
<sup>b</sup>Backlog of entering dispositions into criminal history database.

SOURCE: BJS/SEARCH Group, Inc., 1991.

example, could turn out to be false, since a court acquittal could take 3 to 4 months to be reported and entered into the Virginia State CCH file.

The situation is further complicated because Virginia is one of the majority of States whose State laws provide for expungement of felony convictions, pardon of felons, or restoration of felons' civil rights. These actions typically must be noted on the criminal history records. In some States, the record itself must be destroyed, sealed, or returned to the

Table 3—Average Time Required To Receive and Enter Arrest Information into State Criminal History Records, 1989

State <sup>a</sup>	Average number of days between	
	Arrest event and submission to State repository	Receipt of arrest data and entry into State criminal history records
Alabama	7 days	3 days
California	21	15-20
Colorado	2	2
Georgia	3-4	252 <sup>b</sup>
Illinois	1-5	1
Louisiana	7	365 <sup>b</sup>
Massachusetts	28	300 <sup>b</sup>
Michigan	7	5
New Jersey	7-14	1
New York	7	1-14
South Carolina	5	10
Virginia	3-5	5

<sup>a</sup>Illustrative States.

<sup>b</sup>Backlog of entering data into criminal history database.

SOURCE: BJS/SEARCH Group, Inc., 1991.

court or originating agency. All of these actions could affect the right of a convicted felon to purchase or possess firearms.

The reporting of arrests to State repositories also varies, although not as much as for disposition reporting (see table 3). Arrests typically are reported to the State repository within a week or two and entered into the criminal history records within a few days to a week of receipt. Some States have problems obtaining timely submissions from arresting agencies or in eliminating filing backlogs, which

**delay the** entry of arrest information into criminal history databases. Just as missing dispositions can lead to erroneous firearm purchaser record checks, so can missing arrests-if the arrestee was formally charged with a felony offense. An arrestee out on bond or personal recognizance, for example, could get a clean POS record check at a gun dealer and walk out with a firearm if the arrest had not yet been entered into the State criminal history file. (Missing arrests present similar problems for record checks conducted during waiting or proapproval periods.)

**Achieving even reasonably complete and** accurate criminal history records on a nationwide basis will require substantial procedural and automation improvements by police, prosecutors, courts, and criminal record repositories.<sup>116</sup> These improvements will take considerable time and resources, even if assigned a high priority-thus the need to consider sources of additional funds.

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<sup>116</sup>See *OTA, Assessment of Alternatives for a National Computerized Criminal History System*, op. cit., footnote S9; SEARCH Group, **Inc.**, *Strategies for Improving Data Quality*, NCJ 115-339 (Washington DC: U.S. Department of Justice, Bureau of Justice Statistics, April 1989) and *Data Quality of Criminal History Records*, NCJ-98079 (Washington DC: U.S. Department of Justice, Bureau of Justice Statistics, October 1985); U.S. Department of Justice, Task Force on Felon Identification in Firearm Sales, *Report to the Attorney General*, op. cit., footnote 50.