



Department of Justice

STATEMENT

OF

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U.S. DEPARTMENT OF JUSTICE

BEFORE

THE

HOUSE JUDICIARY SUBCOMMITTEE ON CRIME

CONCERNING

THE ATTORNEY GENERAL'S REPORT TO CONGRESS

ON

THE OPTION SELECTED FOR IDENTIFYING
FELONS WHO ATTEMPT TO PURCHASE FIREARMS

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STATEMENT BY EDWARD S. G. DENNIS, JR., ASSISTANT ATTORNEY GENERAL,
CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, BEFORE THE HOUSE
JUDICIARY SUBCOMMITTEE ON CRIME ON JANUARY 25, 1990

Mr. Chairman and Members of the Subcommittee, I am pleased to be here today to discuss the efforts of the Department of Justice to develop a system for identifying felons who attempt to purchase firearms. I am joined here by two members of the Attorney General's Task Force on Felon Identification in Firearms Sales: Mr. Lawrence K. York, Assistant Director of the FBI's Identification Division, and Dr. Joseph M. Bessette, Acting Director of the Bureau of Justice Statistics, who directed the research staff and the preparation of the Task Force report.

As you may know, section 6213 of the Anti-Drug Abuse Act of 1988 required the Attorney General to report to Congress on a system for immediate and accurate identification of felons who attempt to purchase firearms. The Attorney General submitted his report on November 20, 1989 and recommended the use of a touch tone telephone system to determine whether prospective gun purchasers are eligible to purchase a firearm.

The selection of this system reflects our commitment to the goal of immediate identification of felons in order that they may be denied the right to purchase firearms consistent with existing Federal statutes. Specifically, since this system would permit on-the-spot automated review of criminal records, unauthorized

firearms sales could be prevented without imposing undue delays on law abiding citizens attempting to purchase firearms.

Additionally, a touch tone system would not require special identification cards, lengthy waiting periods to obtain them, or centrally maintained lists of those who have sought clearance to purchase firearms. Furthermore, this recommendation is consistent with and furthers the Department's goal to see in place a viable, fingerprint-based, identification system that will be of significant utility to law enforcement.

To assist him in preparing his report to Congress, the Attorney General established a Task Force to develop a range of options that would comply with the statute. The following agencies served on the Task Force: the Office of Justice Programs, including the Bureau of Justice Assistance, the Bureau of Justice Statistics and the National Institute of Justice; the Federal Bureau of Investigation; the Immigration and Naturalization Service; and the Bureau of Alcohol, Tobacco and Firearms.

The goal of the Task Force was to identify the entire range of issues that ought to be considered before implementing a felon identification system. The Task Force published its draft report on June 26, 1989, in the Federal Register for a 30-day public comment period. The Department received more than one-hundred comments from Members of Congress, State and local officials,

public interest groups, and private citizens. In mid-October, the Task Force completed its final report and submitted it to the Attorney General for his consideration. On October 25, 1989, the final report was published in the Federal Register.

The final report described a variety of possible options for a system for identifying felons who attempt to purchase firearms. The Task Force did not recommend any particular option. The options were organized into two basic types: point-of-sale systems that involve some form of immediate verification at the gun shop and prior approval systems that document an individual's eligibility to purchase firearms for some specified period of time.

Option A, the basic point-of-sale option, provides for onsite, immediate access to automated name indexes maintained by State repositories and the FBI through telephone calls to the repository of the State in which the sale takes place. The Task Force estimated that 80 to 90 percent of all prospective buyers would receive immediate approval. However, if there was a "hit" on the name index, the gun dealer would be notified and the sale would be prohibited at that time. The prospective buyer could then seek clearance through a secondary verification process. Under this procedure fingerprints would be taken at a local law enforcement agency and sent to the State repository and the FBI.

If no evidence was found at the FBI or State repository, a Certificate to Purchase would be issued to the buyer.

Option B, the basic prior approval system, is essentially the same as the secondary verification of Option A; however, everyone who wanted to purchase a firearm would go through a fingerprint-based clearance process. If there was no evidence of a felony conviction, the State would issue a Firearm Owner's Identification (FOID) Card, which would enable the bearer to purchase a firearm. The chief advantage of Option B over Option A is that it would eliminate the problem of "false hits" that occur in a name-based automated search of criminal history records because of mistaken identity. The chief disadvantage is that Option B puts every prospective gun purchaser through a 4-6 week clearance procedure at regular intervals.

Specific details of each of these options as well as their advantages and disadvantages, costs, and potential modifications were closely examined in the report by the Task Force.

Today, however, I would like to make a few comments about what the Task Force learned about criminal history records maintained by State repositories and the FBI. The completeness, accuracy, and accessibility of these records have profound consequences for any system for identification of felons who attempt to purchase firearms.

First, criminal history records are kept at three different levels of government: by operational law enforcement agencies, such as police departments; by centralized state identification bureaus; and by the FBI. A local law enforcement official who wants to conduct a thorough criminal history check can access State and federal records ("rap sheets") through telecommunications systems such as the National Crime Information Center (NCIC) and the National Law Enforcement Telecommunications System (NLETS).

However, not all criminal history records are automated. A telephone survey of 20 States conducted for the Task Force in April 1989 found that only 3 of the 20 States had fully automated criminal history records, and half the States had less than 65% of their records automated. At the FBI only about half of the nearly 25 million criminal records are automated and accessible through NCIC. Records on approximately 13 million persons arrested for felonies or serious misdemeanors for the first time during or after 1974 are automated. Access to the remaining manual records at the FBI is possible only through a lengthy process of fingerprint identification, searching both manual and automated indexes, and then the assembly of the paper records maintained by the FBI's Identification Division. Under current procedures a fingerprint search at the FBI takes about 10-20 business days to process and more time is needed to receive the request and mail

back the results. Fingerprint searches conducted by the 20 State repositories surveyed in April take an estimated 3 to 23 working days, depending on the degree of automation and current work loads.

Second, even when automated records exist, the final disposition of an individual's case is often missing. In other words, State and Federal data bases often show an arrest, but do not show whether a person was convicted. The FBI, for instance, estimates that approximately one-half of the arrest charges in their records do not show a final disposition. Data from a survey of State repositories conducted for the Bureau of Justice Statistics in 1984 showed that about 34% fewer final dispositions than arrests were reported to the repositories in 1983. In several States the proportion of underreporting was as high as 70-80%. Moreover, the survey of 20 States conducted in April 1989 revealed that 8 of the 17 States able to supply a figure estimated that at least 20% of convictions were not reported to the repository.

Third, even when an automated record exists and a disposition has been reported, the actual record may not clearly identify the offense as a felony. In some States a felony conviction flag exists in the record. In other States felony identification is obtained from the State statutory code listed for each offense. Interpretation of this code is typically achieved manually. In

other States felony identification is only sometimes possible-- when the word "felony" appears in a free text field. The issue is further complicated by the fact that the State definition of a felony may not correspond with the definition in the Gun Control Act (an act punishable by imprisonment for more than one year). The task of accurately identifying felony convictions in FBI records is even more difficult. FBI offense codes are typically recorded as literals or as numeric codes--State statutes and text containing the word "felony" are only infrequently reported.

Finally, in addition to the lack of automation, the underreporting of dispositions, and the difficulties in identifying felonies, there are other problems with State and Federal criminal history record systems. For instance, not all arrests for printable offenses get recorded in the State or FBI files. The Task Force survey revealed that repositories in 8 of the 15 States able to supply data did not receive fingerprint cards on all printable arrests. Missing arrest information is primarily the result of the failure of local agencies to submit records to the State repository or the submission of unreadable print cards. Moreover, 8 of the 14 States able to provide data estimated that 10 percent or more of all fingerprint cards for felonies and serious misdemeanors in their States are unreadable and returned by the FBI. These arrests and subsequent dispositions are only rarely recorded in the FBI files.

In sum, Mr. Chairman, the problems with criminal history records led the Task Force to conclude that "such a high level of undercoverage renders impracticable a felon identification system that relies principally on immediate access to automated conviction records." No matter how sophisticated the technology of identifying the prospective purchaser, and no matter what additional automation can be introduced to search the files, the accuracy of a criminal history check is only as good as the existing data bases.

Because of these problems and others identified by the Task Force, the Attorney General forwarded a four-part recommendation for your consideration on November 20, 1989. While a comprehensive, accurate system for identifying felons through an on-the-spot computer review of criminal record files simply cannot be fully accomplished in the near term, the Attorney General considers it as a worthwhile goal to be accomplished over time. As the Task Force pointed out, under current technology and with the current status of criminal history records, a truly effective check would take at least one month. The Attorney General believes that such a delay would impose an unreasonable burden on legitimate gun purchasers, and therefore is unacceptable.

In order to move forward to achieve the goal of "immediate and accurate" identification of felons seeking to purchase firearms, the Attorney General recommended Option A2 as presented

in the Task Force report. Option A2 provides for the use of a touch tone telephone by the gun dealer to access an intermediary computer. The dealer would enter the applicant's name, perhaps in digitized form, and descriptive data, such as date-of-birth. The intermediary computer would then send the message to the State repository and to the National Crime Information Center where it would be checked against the FBI Identification Division's automated name index. The dealer would be notified if the prospective purchaser had a criminal record, and the sale would be prohibited. This system cannot be established overnight. It will require significant effort and expenditure on the part of both the states and the FBI.

In compliance with the mandate of Congress, the Attorney General has initiated the following activities in support of Option A2:

(1) The FBI will establish a complete and automated data base of felons who are prohibited from purchasing firearms.

(2) In order to facilitate this effort, the FBI in conjunction with the Bureau of Justice Statistics (BJS), will develop voluntary reporting standards for state and local law enforcement officials, which will emphasize enhanced record

keeping for all arrests and convictions made within the last five years and in the future.

(3) BJS will also undertake a comprehensive study of state criminal history reporting systems to evaluate reporting accuracy and information retrieval capabilities. The initial phase of this study will be completed within six months.

(4) The Bureau of Justice Assistance will devote \$9 million of its Anti-Drug Abuse Act Discretionary Fund in each of the next three years to fund grants to States for compliance with the new standards.

I would like to explain in somewhat greater detail the activities that the Department will be undertaking in response to the Attorney General's mandate. It will be useful to begin with some background on the FBI's Identification Division and its operation.

The FBI's Identification Division was established by an Act of Congress in 1924 to provide fingerprint identification services to the criminal justice community. The Identification Division provides assistance by performing two primary functions: (1) it serves as the nation's fingerprint repository, and (2) it compiles and disseminates criminal history records. Criminal justice agencies voluntarily submit fingerprint cards and disposition

reports on individuals who are arrested for felonies and serious misdemeanors, which are then compiled into criminal history records. In 1989 the Identification Division received 4.3 million fingerprint card submissions relating to criminal activity. Fingerprint cards are also received for non-criminal purposes such as: security clearances, military, and employment/licensing record checks. During 1989 the Identification Division received 3.8 million of these civil fingerprint cards to be searched through the criminal files. In addition, law enforcement agencies made 12.7 million inquiries of the Identification Division's automated files through the Interstate Identification Index.

Automation began in the Identification Division with the computerization of criminal history records for those arrested for the first time in 1974. At the end of 1989, 13 million of the Identification Division's 24.7 million criminal records were fully automated. There are 8.8 million manual records established prior to 1974, in which the subjects of the record have a date of birth subsequent to 1928, and these records have an automated index which points an inquirer to the manual records. There are 2.9 million records which are entirely manual. The subjects of these records have a date of birth prior to 1929. These records have a manual index and the records are maintained in a manual mode.

Typically, criminal history records are based on information taken from arrest fingerprint cards completed by arresting agencies each time an individual is arrested. One card is kept by the arresting agency; one is sent to the State's fingerprint repository; and one is sent to the FBI's Identification Division. Arrest data is later supplemented with case disposition and custody information as it is reported to the various record systems.

The FBI's identification records are used and have been used historically to meet most interstate needs for records including the needs of Federal agencies. The most common access to these FBI records is through the submission of arrest and applicant fingerprint cards. Additionally, the records may be accessed through the National Crime Information Center as a part of the Interstate Identification Index program which also provides access to participating States' records.

Criminal justice agencies in many cases now get automated State records for individuals when the Interstate Identification Index is accessed. Many State repositories would prefer to provide their records for all interstate needs and discontinue supplying the FBI with complete arrest and disposition reports necessary to maintain the FBI's file. This concept is currently being studied; it is known as the national fingerprint file.

During an average day users of the Interstate Identification Index will check the index about 50,000 times to determine if a matching record is on file and/or to obtain descriptive identification information. Approximately 9,000 - 10,000 criminal records will be provided by the FBI and participating States. Transactions drop about 50 percent during the weekend.

As I indicated earlier, the FBI's fully automated records cover those who were arrested for serious offenses for the first time on or after January 1, 1974. This includes everyone who has an arrest record with the FBI whose date of birth is January 1, 1956, and thereafter. These 8.8 million manual records are for individuals born between January 1, 1929 and December 31, 1955. Although these records have an automated index, the actual arrest and disposition data remain in paper form stored in five-drawer file cabinets. These paper records are physically stored at two locations: 2.8 million records at FBI headquarters and 6 million in Alexandria, Virginia. Prior to dissemination, these records must be reviewed for juvenile and non-serious offenses which must be purged; the records must be updated by adding arrest and disposition data not previously added to the records; and additional modifications may have to be made resulting from expungements, etc. The automated index to these records is currently available for in-house use only.

Making the automated index to these manual records available for on-line name checks (QH inquiries) would not pose a computer processing problem. However, the anticipated volume of record requests (QR requests) that would result from positive responses to queries of the index records would exceed the Identification Division's current physical ability to respond. It is anticipated that if the index to the manual records were made available to law enforcement agencies through the FBI's automated identification system, the Identification Division would receive a daily average of 3,000 law enforcement requests for manual records. Moreover, if all fifty States used this system for checking on the background of gun purchasers, there are likely to be another 1,000 requests for manual records per day. The Department is currently analyzing the personnel and other resource needs that would be required to carry out this task.

In order to make the implementation of Option A2 feasible, the Attorney General has also directed the FBI to establish an automated database of felons who are prohibited from purchasing firearms. The FBI is currently examining various means by which this could be done. This task is complicated by the fact that the FBI's criminal history records, both automated and manual, often do not contain sufficient information to determine whether an individual has been convicted of a disqualifying felony. In some cases State records will be more complete because they will contain more detailed court disposition information. Thus, in

order to build a database of disqualified felons it will be necessary for Federal and State authorities to undertake a coordinated effort to make accurate determinations.

The Attorney General has also instructed the FBI to work with the Bureau of Justice Statistics to develop for public comment voluntary reporting standards for the submission of arrest and disposition data. These standards should emphasize enhanced recordkeeping for all arrests and convictions made within the last five years and in the future. The initial standards are to be made available for dissemination and public comment by May 20, 1990. The Identification Division has established a standards committee which will be working in concert with BJS, the Identification Services Subcommittee of the NCIC Advisory Policy Board, representatives of State officials, and other interested and affected parties.

In addition to these FBI activities, the Department will be devoting \$9 million in each of the next three fiscal years for the following purposes: (1) to enhance State criminal history records in order to provide accurate identification of felons attempting to purchase firearms; (2) to comply with new FBI voluntary reporting standards for identifying such individuals; and (3) to improve the quality and timeliness of criminal history record information.

To enable us to determine how this money can be used most effectively, the Bureau of Justice Statistics is doing several things. First, it has initiated a study to provide information on the accuracy, completeness, timeliness, and accessibility of data in the State repositories in each of the 50 States, the District of Columbia, and the territories. This study will include workshops to allow State officials to share their experiences regarding the impediments to automated disposition reporting. These workshops will also provide a forum for the discussion of systems and techniques for identifying convicted felons and submitting these data to the FBI.

Second, BJS will conduct a review of audits of State criminal history records which have been conducted within the last five years. A workshop for selected States will be conducted to discuss audit experiences and problems. A detailed final report will present the results of the audit review.

Third, BJS will sponsor a national conference to discuss problems and procedures to improve the accuracy and completeness of criminal history record data, particularly the reporting of felony dispositions to automated data systems. The conference will also address procedures for establishing targeted data bases for identifying felons who attempt to purchase firearms. Participants at the conference will include representatives of

the Federal and State governments, interested organizations, and criminal justice practitioners.

I believe, Mr. Chairman, that the activities I have just outlined demonstrate the Attorney General's commitment to move ahead vigorously and thereby make feasible the implementation of Option A2.

But we must keep in mind one important consideration. It is incorrect to assume that a felon identification system would always or even often keep guns out of the hands of felons. The stark fact is, criminals often get their weapons from sources other than gun dealers, and as identification systems employed by gun dealers improve, criminals may increasingly rely on these other sources. In a study published in 1986 by the National Institute of Justice, Professor James D. Wright and Peter H. Rossi found that about five-sixths of the offenders surveyed in State prisons who admitted to ownership of handguns claimed that they got these guns through nondealer means. Consequently, even a perfect felon identification system would not stop black market sales to criminals, acquisition by thefts, and sales to strawmen who then immediately turn the firearm over to a felon.

As a matter of fact, it is so easy for a felon to get a firearm without going through a gun dealer that I have to question the significance of some of the statistics that are sometimes

cited in support of State waiting periods. We often hear that several thousand "felons" were identified in one State, several thousand more "felons," in another State, and so on. While thousands of persons may have been identified and told they could not purchase firearms, I seriously question whether each person identified translates into one less felon who got a firearm. In all likelihood, many of the felons so identified simply went out on the black market and bought a gun or stole one. In any event, a large number of felons are always going to find ways to get firearms no matter what kind of identification system we have.

Mr. Chairman, that concludes my prepared testimony. I would be pleased to answer questions at this time.