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# **Identifying Persons, Other Than Felons, Ineligible to Purchase Firearms: A Feasibility Study**

**May 1990**

123050



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U.S. Department of Justice  
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NCJ-123050

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The Gun Control Act of 1968 (18 U.S.C. 922(g)) states that "it shall be unlawful for any person:

1. who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
2. who is a fugitive from justice;
3. [who] is an unlawful user of or addicted to any controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802));
4. who has been adjudicated as a mental defective or who has been committed to a mental institution;
5. who, being an alien, is illegally or unlawfully in the United States;
6. who has been discharged from the Armed Forces under dishonorable conditions; or
7. who, having been a citizen of the United States, has renounced his citizenship,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

## **Foreword**

The Attorney General, in consultation with the Secretary of the Treasury and others, was required by Congress to develop a system for the immediate and accurate identification of felons attempting to purchase firearms which, under Federal law, most felons are ineligible to do. Pursuant to this congressional mandate [§6213(a) of the Anti-Drug Abuse Act of 1988 (the Act), 102 Stat 4360], the Attorney General appointed a Task Force on Felon Identification in Firearm Sales. After a thorough inquiry and analysis, the Task Force published its *Report to the Attorney General on Systems for Identifying Felons Who Attempt to Purchase Firearms* in the Federal Register on 25 October 1989. Subsequently, as required in §6213(b) of the Act, the Attorney General reported these findings to Congress and made four comprehensive recommendations on the issue of felon identification.

Section 6213(c) of the Act provides the next stage of this process. The Attorney General, again in consultation with the Secretary of the Treasury and others, is required to conduct a study to determine if an effective method exists for the immediate and accurate identification of other persons who attempt to purchase firearms but are ineligible to do so because they fall into other ineligible categories created by the Gun Control Act of 1968 [18 U.S.C. 922(g)].

As with the felon identification project, the Attorney General called upon the Office of Justice Programs and its Bureau of Justice Statistics (BJS) to oversee this project. BJS selected the ENFORTH Corporation to conduct the necessary research which has been compiled in this report, *Identifying Persons, Other Than Felons, Ineligible to Purchase Firearms: A Feasibility Study*.

This Study is, indeed, a feasibility study. It does not directly address such issues as the development or implementation of systems, nor does it discuss, other than very roughly, estimates of costs involved. Unlike the earlier report on identifying felons attempting to purchase firearms, where the Attorney General was directed to "develop a system for immediate and accurate identification," here he was directed only to "conduct a study." Nonetheless, the two studies are complementary in that they both address the issue of how to identify persons ineligible to purchase firearms.

In addition to a felon or fugitive [18 U.S.C. §922(g)(1) and (2)], a person is ineligible to possess or receive a firearm in interstate commerce who:

- (3) is an unlawful user of or addicted to any controlled substance;

- (4) has been adjudicated as a mental defective or who has been committed to a mental institution;
- (5) being an alien, is illegally or unlawfully in the United States;
- (6) has been discharged from the Armed Forces under dishonorable conditions; or
- (7) having been a citizen of the United States, has renounced his or her citizenship.

In addition, it is unlawful for anyone to sell or dispose of a firearm to a person in these ineligible categories.

Even the casual reader of the two studies will immediately note that two quite different sets of circumstances are involved. In the felon identification study, the Federal Government as well as the governments of the States, have developed over the years extensive sets of records of persons within the ineligible felon class and indeed are *expected* to have this data and, generally, to have them readily retrievable. That, of course, is not true with most of the categories of ineligible persons in the second study. While it probably comes as no particular surprise that a governmental agency has virtually a complete set of data, fully automated at that, of those in the renunciate category, most people would be surprised, many even offended, if a similar agency were to have a complete set of data for those who are users of controlled substances or who are or ever had been adjudicated a mental defective or committed to a mental institution.

In fact, it is a violation of Federal law to disclose the medical records of persons who have been engaged in a drug rehabilitation program funded by the Federal Government. Medical record disclosure is also prohibited by many State laws. Additionally, for example, the Departments of State and Defense interpret the Federal Privacy Act to prohibit the routine dissemination of data about individuals in the renunciate and dishonorably discharged categories.

These are just a few illustrations of the challenges of placing into operation a system or systems to identify those in the non-felon categories of persons ineligible to purchase firearms. If a comprehensive verification system for identifying these persons is to be put into place, a broad legislative package and necessary financial resources will be required.



Richard B. Abell  
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## Preface

Section 6213(a) of the Anti-Drug Abuse Act of 1988 (Public Law 100-690) requires the Attorney General to "develop a system for [the] immediate and accurate identification of felons who attempt to purchase one or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code." To comply with this provision, the Attorney General convened a task force, chaired by the Assistant Attorney General, Office of Justice Programs, and with representatives from the Bureau of Alcohol, Tobacco and Firearms, the Bureau of Justice Assistance, the Bureau of Justice Statistics (BJS), the Federal Bureau of Investigation, the Immigration and Naturalization Service, the National Institute of Justice, and the U.S. Marshals Service. The task force was charged with developing alternative methods of identifying felons who attempt to purchase firearms. On June 26, 1989, the task force issued a draft report on systems for identifying felons. A public review period followed, with comments received through the following September 6th. The final report was issued on October 22, 1989 and transmitted by the Attorney General to Congress on November 20, 1989.

Section 6213 also requires the Attorney General, in consultation with the Secretary of the Treasury, to "conduct a study to determine if an effective method [exists] for [the] immediate and accurate identification of other persons who attempt to purchase one or more firearms but are ineligible to purchase firearms by reason of Section 922(g) of title 18, United States Code." This includes any person who:

- is an unlawful user of or addicted to any controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802));
- has been adjudicated as a mental defective or has been committed to a mental institution;
- being an alien, is illegally or unlawfully in the United States;
- has been discharged from the Armed Forces under dishonorable conditions;
- or having been a citizen of the United States, has renounced his citizenship.

For this study, the BJS, acting on behalf of the Attorney General, decided to seek the assistance of an outside contractor. The BJS subsequently selected ENFORTH Corporation to conduct the necessary research on methods for identifying ineligible persons. Work began on July 11, 1989. The results of this research are contained in this report; it should be viewed as an addendum to the former felon system study -- in particular, it is assumed that the reader has read the felon system report.

## Acknowledgments

The authors would like to acknowledge the support of the Bureau of Justice Statistics (BJS). In particular, we would like to recognize the contributions of our contract monitor, Mr. John R. Jones, and members of the ad hoc BJS committee (including S.S. Ashton, Jr., Allen Beck, Joseph M. Bessette, Carol G. Kaplan, Benjamin H. Renshaw, and Bernard E. Shipley) which was established to monitor this study; they provided critical feedback, suggestions and encouragement.

This study could not have been carried out without the cooperation of numerous Federal, State and local officials who provided essential information regarding current data sources, statutes and practices in connection with firearm purchases, and those individuals deemed ineligible to purchase firearms. At the Federal level, we communicated with the Department of Commerce (i.e., the Bureau of the Census), the Department of Defense (i.e., the Defense Manpower Data Center), the Department of Health and Human Services (i.e., the National Institute of Drug Abuse and the National Institute of Mental Health), the Department of Justice (i.e., the Bureau of Justice Assistance, the Drug Enforcement Administration, the Federal Bureau of Investigation, the National Institute of Justice, the Immigration and Naturalization Service, the Office of Justice Programs, and the U.S. Marshalls Service), the Department of State (i.e., the Bureau of Consular Services and the Passport Services Office), and the Department of Treasury (i.e., the Bureau of Alcohol, Tobacco and Firearms). At the State and local levels, we communicated with many drug abuse, judicial, law enforcement and mental health agencies. In addition, we communicated with several national associations and resource centers, including the Criminal Justice Statistics Association, the Freedom of Information Clearinghouse, the National Association of State Mental Health Planners, the National Center for State Courts, the National Law Enforcement Telecommunications System, and the Pretrial Services Resource Center. Although we cannot list all of the officials with whom we communicated by name, we would like to acknowledge their contributions and the countless hours they spent in responding to our data requests and in reviewing our findings.

Particular thanks should be expressed to our technical advisor, Mr. James A. McClure, and to our legal consultants, Messrs. Joseph B. Green and Walter W. Cohen. Finally, Ms. Mary Ellen Fullum and Ms. Kristine M. Burke provided clerical and typing support.

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## **Executive Summary**

Section 6213(c) of the Anti-Drug Abuse Act of 1988 (Public Law 100-690) requires the Attorney General, in consultation with the Secretary of the Treasury, to conduct a study to determine if an effective method exists for the immediate and accurate identification of persons other than felons who attempt to purchase one or more firearms but are ineligible to purchase firearms by reason of Section 922(g) of title 18, United States Code. Such persons include any person who is an unlawful user of or addicted to any controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)); who has been adjudicated as a mental defective or who has been committed to a mental institution; who, being an alien, is illegally or unlawfully in the United States; who has been discharged from the Armed Forces under dishonorable conditions; or who, having been a citizen of the United States, has renounced his citizenship. The results of this study are contained herein. Possible verification alternatives (based on a review of available data sources and procedures) are identified and assessed in terms of eleven pertinent measures. The relative importance of these measures will determine which alternative may be feasible for implementation.

In surveying potential data sources in each disability category, we have kept a number of issues in mind. For example, does the Federal government maintain a centralized data repository, or are repositories dispersed at the State, local, or service provider level? Is the database manual or automated? Is the database complete and accurate? Is the fact that a person is in a database a valid determinant of whether he/she is in a disability category? Are there privacy and confidentiality issues governing access to the database? As noted below, the data sources we surveyed varied widely in respect to these issues.

### **Data Sources**

Data sources for each disability category are summarized below.

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### Unlawful Users of Controlled Substances

It should first be noted that the law applies only to a person who is an unlawful user. Unfortunately, the Gun Control Act does not specify how recently the unlawful use must have taken place; the National Institute on Drug Abuse (NIDA), for example, defines a current user as anyone who has used drugs within the past month. There is no national database containing a list of all current unlawful users of controlled substances. However, there are four general types of drug-related databases that contain names of persons who come in contact with various government agencies and that could potentially be used to determine whether a person is in this disability category; they include (1) drug treatment databases, maintained independently by thousands of local treatment facilities, (2) data collected by the Drug Abuse Warning Network, a National Institute on Drug Abuse-funded large scale data collection effort, (3) State and Federal criminal history databases, which contain data on persons recently arrested, and possibly convicted, on drug-related charges, and (4) drug testing databases, particularly those used by pretrial services agencies to test new arrestees. Not surprisingly, these databases contain a very small fraction of the 14.5 million persons who are estimated by the National Institute on Drug Abuse to be in this disability category.

### Mental Defective

This category includes persons adjudicated by a court, authority, commission, or board (with jurisdiction over mental health matters) as being mentally defective or committed by such a court, authority, commission, or board to a mental institution. There are literally hundreds of such courts, authorities, commissions, and boards that could either declare a person mentally defective or commit a person to a mental institution. In addition, there are a variety of mental health facilities in the U.S., including State-run mental institutions and private psychiatric facilities. Many veterans hospitals and general hospitals also offer psychiatric services. The largest, centralized databases are those maintained by State mental health departments. In fact, those states currently verifying mental health information utilize only information maintained by their State mental health departments, which have records on some 67 percent of the 2.7 million persons who are estimated to belong in this category. This estimate does not include persons who voluntarily seek admission to mental health facilities, inasmuch as in United States v. Hansel (474 F. 2d 1120 [8th Cir. 1973]) it is implied that such admissions are not covered by this category.

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### Illegal Alien

The Immigration and Naturalization Service (INS) is the Federal agency charged with administering laws related to aliens. Typically, illegal aliens are classified based on how they enter the U.S., either (1) illegally or (2) legally, in which case the alien's legal status must have changed and some provision of his/her visa was violated. The INS has a number of databases that could potentially be used to identify illegal aliens who attempt to purchase firearms, including the Non-Immigrant Information System, which has records of most non-immigrants legally entering the U.S. by air or sea, and the Deportation Accounting and Control System, which supports deportation case management. However, it is not surprising that the vast majority of illegal aliens are not included in any INS database, inasmuch as most illegal aliens enter the country illegally and have not been apprehended or identified by the INS. Based on INS and Census Bureau figures, the total number of illegal aliens is estimated to be 2.3 million. (See page 59 for details on basis for estimation.)

### Dishonorably Discharged

The Defense Manpower Data Center (DMDC) in Monterey, California maintains the only automated database of military service records. An average of 400 dishonorable discharges are issued each year, implying that approximately 20,000 people have been issued dishonorable discharges over the past 50 years. DMDC officials estimate that their database contains 90 percent of the names of the estimated 7,200 persons who have received dishonorable discharges since 1971, which is equivalent to 36 percent of the 20,000 target population figure. In spite of this low percentage, the database is centralized and accurate, unlike the databases containing the names of persons in the unlawful users of controlled substances, mental defective, and illegal alien disability categories.

### Renunciate

The requirements for renouncing U.S. citizenship are stated in 8 USC 1481(a)(5) and (6): formal renunciation must be made voluntarily before a diplomatic or consular officer of the U.S. in a foreign state, or, when the U.S. is at war, in the U.S. before an officer designated by the Attorney General. The Passport Services Office of the U.S. State Department maintains a database of renunciates on the Automated Visa Lookout System. This system contains a "near 100 percent" listing of persons who have renounced their citizenship since 1941. According to State Department personnel, roughly 200

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persons renounce their citizenship each year. Thus, since 1941, an estimated 9,800 persons have renounced their citizenship; consequently, the target population of the renunciate disability category is the smallest of the disability categories.

The following table summarizes data availability and coverage for each of the five disability categories.

In Disability Category (Est.)	Number of Persons					
	For Whom Records Exist		With Automated Records		Total	% of all in Category
	Total	% of all in Category	Total	% of all in Category		
Unlawful Users of Controlled Substances	14,500,000	470,800	3%	247,000	2%	
Mental Defectives	2,700,000	2,700,000	100%	800,000	30%	
Illegal Aliens	2,300,000	550,000	24%	550,000	24%	
Dishonorably Discharged	20,000	20,000	100%	7,200	36%	
Renunciates	9,800	9,800	100%	9,800	100%	

Note: These columns should not be added since there may be substantial overlap across the disability categories, particularly unlawful users of controlled substances and those known to be convicted felons.

As can be seen, the coverage problem is greatest for the category which is estimated to have the most members (i.e., unlawful users of controlled substances); it is least for the category with the fewest members, renunciates.

Note, however, that even when appropriate records exist, there may be legal prohibitions on accessing and sharing them. For the unlawful users of controlled substances category, Federal regulations (42 C.F.R. Part 2) now prohibit drug treatment programs receiving Federal funds from disclosing patient records. In addition, many states have their own laws requiring confidentiality of drug treatment records. For the mental defective category, every State has mental health record confidentiality laws, although some states explicitly allow release of such information for the purposes of determining firearm eligibility. For both the dishonorably discharged and renunciate categories, the Defense and State Departments indicate that the Privacy Act (5 U.S.C. 552a(b)) prohibits routine dissemination of data about individuals in these categories. Thus, it appears that only the category of

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illegal aliens is currently free from legal restrictions on access.

### **Procedures For Eligibility Verification**

Two or three possible eligibility verification methods of data access were investigated for each disability category. Basically, the methods can be divided into three groups. First, "written request" methods entail having local licensing authorities -- usually, local police departments -- request information from the agencies maintaining the data repositories. Many licensing authorities currently utilize this method to verify firearm eligibility, particularly for the mental defective category. A second group of verification methods involve having data repositories share pertinent records with an integrated firearm eligibility system. This appears advantageous if the databases are widely distributed at the State, local, or service provider level, as is the case with the unlawful users of controlled substances and mental defective categories. The third group relies on verifying information or documents provided by the firearm purchaser to the firearm dealer, rather than remote data sources. Such eligibility verification methods can mitigate data validity problems which arise when a person's status relative to a disability category can change quickly, as is the case with the unlawful users of controlled substances and illegal alien categories. They may, however, present problems with fraudulent documents.

### **Costs**

Each procedure to access data and establish applicant eligibility has been assessed in terms of costs (start-up and operating), legal and policy considerations, accuracy, completeness and validity of data, resources required, time for implementation and individual checks and the extent to which the persons and their disability category are included in the database.

It should be noted that inasmuch as this is a feasibility study and that development and implementation issues have not been fully addressed, we have not been able to build a detailed cost model. We have made some gross estimates and defined three cost ranges: low (less than \$10 million), moderate (\$10 million to \$100 million), and significant (greater than \$100 million).

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Under the "written request" method of eligibility verification, moderate start-up and operating costs are required. If records are shared in an integrated firearm system, initial start-up and operating costs will be significant. If, as in the second method, an integrated firearm system is operational, the marginal cost to add any additional disability categories would be low, although costs will still be incurred, primarily by the organizations providing information relevant to the additional disability categories. Under the third verification method mentioned above, no system costs are incurred if the purchaser of a firearm provides verifying information or documents. If the felon system databases are utilized to identify persons arrested for drug-related charges, no additional start-up and operating costs are required.

## **Integrated Firearm System Considerations**

Integrating the individual databases into a single system raises a variety of issues. Such a system would require that (1) drug treatment centers, (2) courts, authorities, commissions, and boards with mental health jurisdiction, (3) the INS, (4) the Defense Manpower Data Center, and (5) the Passport Services Office share relevant records on either a centralized or decentralized (i.e., distributed) basis. It would entail significant start-up and operating costs for both the integrated system and the literally thousands of local, State, and Federal agencies which must either share or access the data. It would also require removing the current legal impediments for sharing or accessing the required data, as well as establishing new regulations and procedures for ensuring appropriate privacy and confidentiality protections. For three of the disability categories, the data accuracy, completeness, and validity would generally be good. The exceptions would be the unlawful users of controlled substances and illegal alien categories, both of which would have poor data validity. This system would provide for timely verification, since it is based on a point-of-sale verification approach. As noted earlier, however, obtaining the cooperation of thousands of data repositories to share their data, even if legal impediments were overcome, would be very time consuming, not to mention difficult to attain. Identification accuracy would also be poor, since, other than for the felon category, there are no fingerprints or other biometric identifiers available to verify the identity of the firearm purchaser. Indeed, there would be no way to prove

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positively that a firearm purchaser is the person whose records can be accessed through the integrated system.

### **Issues To Be Considered**

In assessing the feasibility of a system to prevent firearm sales to ineligible persons other than felons, a variety of technical and policy issues are presented. Specifically, these issues focus on:

#### **Data Quality**

- Whether the level of data quality and coverage in existing databases is adequate to ensure that pre-sale checks are "accurate", as required by statute;
- The extent to which current or anticipated levels of automation permit data to be accessed in sufficient time for "immediate" pre-sale checks as required under the statute;
- Whether the identification data included in the relevant databases is sufficient to prevent an unacceptable level of "false positives" (i.e., erroneous identification of eligible persons);

#### **System Configuration**

- Whether the final system configuration should require that data currently maintained by different agencies be included in a single database, linked through a common system, or maintained in decentralized databases;
- Whether the administration and policy control over operation of the system should be assigned to the Federal government, a consortium of states, or some combination of the two;
- The extent to which the non-felon checks should be coordinated with the felon identification database checks;

#### **Legal and Policy Questions**

- Whether commingling of criminal and noncriminal records (including drug and mental

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health records) in a single system presents policy problems;

- The extent to which legislation or regulations are needed to protect the confidentiality of data and to prevent unauthorized access to systems holding both criminal and noncriminal justice data;
- The need for legal and administrative procedures to ensure that persons prohibited from purchasing a firearm are permitted to review and challenge the data upon which the denial was based;
- The extent to which current Federal and/or State legislation which prevents the release of data necessary to implement the record checks can be amended to facilitate implementation of appropriate record checks;
- Whether the definitions as set out in Section 922 of the Gun Control Act create major impediments to data collection, and, if so, whether such definitions should be modified.

## **1 Introduction**

The Gun Control Act of 1968 (18 U.S.C. 922(g)) states that "it shall be unlawful for any person:

1. who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
2. who is a fugitive from justice;
3. [who] is an unlawful user of or addicted to any controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802));
4. who has been adjudicated as a mental defective or who has been committed to a mental institution;
5. who, being an alien, is illegally or unlawfully in the United States;
6. who has been discharged from the Armed Forces under dishonorable conditions; or
7. who, having been a citizen of the United States, has renounced his citizenship,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." The Bureau of Alcohol, Tobacco, and Firearms (BATF), the agency charged with administering Federal firearm regulations, has been responsible for implementing this act. In essence, the BATF has required that all persons purchasing a firearm complete its BATF Form 4473. There are actually three versions of BATF Form 4473 -- for (1) over-the-counter, (2) low volume, over-the-counter (where the licensed dealer disposes of no more than 50 firearms in a year), and (3) non-over-the-counter purchases, respectively. All three versions require the prospective firearm purchaser to certify that he/she does not belong to any of the above seven disability categories before the firearm dealer can sell him/her a firearm. The appropriate completion of the form is the sole Federal requirement for a firearm purchase. Furthermore, the prospective purchaser's

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responses on the form are not verified; indeed, the form does not contain a statement by the applicant that would authorize the release of information for such verification purposes.

While local law enforcement agencies in many states do attempt to verify that a prospective firearm purchaser does not belong to those disability categories which are also included in their State statutes, firearms are still being obtained and used by ex-felons, unlawful controlled substance users, and mental defectives for committing heinous firearms-related crimes. In May 1989, President George Bush, in outlining a broad initiative against individuals who commit violent crime (including new laws to punish them, new agents to arrest them, new prosecutors to convict them, and new prisons to hold them), focused especially on crimes committed with firearms. In particular, the President proposed, among other changes, enhancing penalties for Federal firearms violations (including doubling the mandatory penalty from 5 to 10 years for use of a semiautomatic firearm during the commission of a violent crime or drug felony, and raising the prospect that the use of a firearm in committing a violent crime, or a previous conviction of a violent felony involving a firearm, constitutes an aggravating factor justifying capital punishment); allowing pretrial preventive detention of defendants in cases involving certain serious Federal firearms and explosive offenses; restricting plea bargaining for those who commit violent firearms offenses; restricting imported weapons; restricting gun clips and magazines; and improving methods of identifying criminals who attempt to purchase firearms.

Actually, in regard to the latter issue and as a provision (Section 6213(a) -- see Exhibit A.1) of the Anti-Drug Abuse Act of 1988 (Public Law 100-690), Congress required the Attorney General to "develop a system for [the] immediate and accurate identification of felons who attempt to purchase one or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code." In addition, Section 6213(b) requires the Attorney General, in consultation with the Secretary of the Treasury, to "conduct a study to determine if an effective method for [the] immediate and accurate identification of persons other than felons who attempt to purchase one or more firearms but are ineligible to purchase firearms by reason of Section 922(g) of title 18, United States Code" (Section 6213(c) -- see Exhibit A.1). The BJS, acting on behalf of the Attorney General, decided to seek the assistance of a contractor to conduct research into this issue and a request for proposals was issued on April 21, 1989. The BJS subsequently selected ENFORTH Corporation to conduct the necessary research, beginning July 11, 1989.

## **1 Introduction**

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Thus, whereas the felon identification system (FIS) study was concerned with prospective firearm purchasers who might be ineligible because they belong to disability categories 1 (felon) and/or 2 (fugitive), our research is concerned with disability categories 3 (unlawful users of controlled substances), 4 (mental defective), 5 (illegal alien), 6 (dishonorably discharged), and 7 (renunciate). The key issues are (1) whether there are databases containing individuals in these disability categories, (2) whether the data are complete and accurate, and (3) whether the data can be legally and technically accessed in a timely and cost-effective manner. In sum, then, while our research is broader in scope than the FIS study, it is less detailed than that study (which, for example, was required to include a detailed cost analysis).

This report is comprised of eight major sections and two appendices, followed by a list of references. The remainder of this first section discusses a number of important background issues. Section 1.1 identifies several key considerations which have had an impact on this research. Our research approach is described in Section 1.2, and our research conduct is summarized in Section 1.3. Section 2 provides some background on current statutes and procedures relating to the purchase of firearms. The disability categories are defined and critically assessed in Section 2.1; the activities of the BATF are discussed in Section 2.2; and the current firearm laws, application procedures, and verification procedures are contained in Section 2.3. The five firearm disability categories within the scope of our research are the subject of Sections 3 (unlawful users of controlled substances), 4 (mental defective), 5 (illegal alien), 6 (dishonorably discharged), and 7 (renunciate). These five sections follow a similar format. First, the results of our survey of data sources are provided; second, we estimate various data-related population sizes; and, third, some possible firearm eligibility verification methods are discussed and assessed. Following the discussion of the individual disability categories, Section 8 addresses all the disability categories from a systems perspective and considers the development of an integrated firearm eligibility verification system, together with a discussion of database location issues, policy issues and policy options. Finally, relevant Federal forms and statutes are contained in Appendix A, while relevant State statutes are contained in Appendix B.

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### **1.1 Research Considerations**

Our research has been influenced by many considerations. Some of these considerations are discussed elsewhere in the report. For example, Section 2.1 highlights definitional issues relating to the disability categories; these issues have obviously had an impact on our data survey activities, as well as on our identification of possible verification methods. Two key considerations are discussed in this section, including the FIS direction and Section 6213 of the Anti-Drug Act.

#### **Felon Identification System Direction**

Although the FIS report focuses on system development and implementation and our research focuses on system feasibility, the two studies are nevertheless complementary in that they both address the issue of how to identify persons ineligible to purchase firearms. In this regard, we must consider the findings of the FIS report. Since the Attorney General was not required to act on the FIS findings and report to Congress until November 1989 (at which time our research was well over half completed), it was not realistic to constrain our research by those findings. BJS officials, in fact, recommended that our research results should be "compatible with", but not necessarily "integrated with", the FIS findings.

What, then, are the key findings of the FIS report that have impacted our research? The FIS task force identified two alternative methods for identifying felons. The "point-of-sale" approach would require firearm retailers to contact law enforcement officials at the time of the firearm purchase. These officials would then immediately access existing automated criminal history databases, including both the state's databases and the FBI's Automated Identification - Phase III databases to determine if the prospective firearm purchaser has a criminal history record. A second method, the pre-authorization -- or, more specifically, pre-sale -- approach, would require all persons wanting to purchase firearms to be fingerprinted and, if they qualify, issued firearm purchase certificates which would be presented to the firearm dealer.

In his letter to Congress, dated November 20, 1989, the Attorney General recommended a variant of the point-of-sale approach described above, which would provide for the use of a touch-tone telephone by licensed firearm dealers to contact a criminal justice agency for access to criminal records

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currently on file with the states or the Federal government. At the same time, the Attorney General acknowledged that such a system could not be implemented in the near term because roughly half of all automated criminal history records maintained by law enforcement agencies do not contain information necessary to determine whether the person was convicted of a felony.

### **Section 6213 of Anti-Drug Act**

Section 6213 of the Anti-Drug Act of 1988 calls for "an effective method for [the] immediate and accurate identification" of persons ineligible to purchase firearms. The words "effective", "immediate", and "accurate" need to be addressed. For the purpose of this research, we assume effectiveness to be determined by a cost-benefit or cost-impact analysis. In the next section, we identify three cost-related and eight impact-related measures.

In the conduct of our research, we have focused on verification methods which satisfy the immediacy requirement, including point-of-sale and post-sale schemes. (A post-sale system would allow for firearm eligibility verification after the sale; should it be determined that the purchaser is ineligible, then the firearm sale is voided and the weapon must be returned -- although not as effective as a pre-sale scheme, the post-sale approach does allow for the immediate sale of a firearm.)

Finally, as pointed out in the FIS report, accuracy is required when verifying the identity of a prospective firearm purchaser and when verifying the eligibility status of the purchaser. Accuracy should reflect the level of error (or, alternatively, correctness), the completeness and the validity of the data. Although ascertaining these data characteristics is almost impossible, unless one were to match a sample of records against some known records (i.e., known for being correct, complete and valid), we have nevertheless included these measures of data accuracy in our list of impact measures.

### **1.2 Research Approach**

Our research has consisted of three tasks: survey, identification and assessment. The majority of the research effort has been on surveying Federal, State and local agencies which maintain databases containing persons with a firearm disability. In addition, State and local law enforcement

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agencies have been contacted to determine their current procedures for licensing firearm purchasers. A second task has focused on identifying possible verification methods for each disability category. Finally, the third task has been directed at systematically assessing the various verification methods both individually and holistically. Specifics of each task are discussed below.

### Survey

Listed below are some of the issues we have considered in assessing a potential data source for each of the five disability categories within our scope of effort.

- Is the definition of the disability category clear and concise? Is it part of a legal statute? Are there exceptions to or difficulties with the definition? Are there court rulings on the definition?
- Given the definition of a disability category, what is the estimated number of persons who belong to the category? How many of these persons are known? How many have automated records?
- Does the Federal government maintain a centralized data repository, or does each State maintain its own repository?
- Are individuals who are listed in a database of persons for one firearm disability also listed in another database for persons with a different firearm disability? In other words, is there overlap between two or more categories?
- Is the database manual, partially automated (e.g., an automated name index), or fully automated? If it is manual, are there plans to automate it? How many years has the database been maintained? What procedures, if any, govern the purging of data from the database?
- Are the data elements valid (i.e., does it contain the correct information)? What level of error exists in the database?
- Is the database complete? What types of persons are included in the database? What types are not included? Which critical data elements have a low percentage of completeness?

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- How timely is the database? What is the elapsed time from a contact with the person to when his/her record is added to or updated in the database?
- Under what circumstances is the database information accessible to persons in other agencies? How long does it take to respond to outside requests for information?
- How much of the database can be currently accessed via remote computer terminals? What additional hardware, software and start-up costs would be required for it to be an effective part of a national firearm eligibility verification system? What operating costs would be required to maintain such a remotely accessible and automated database?
- Are there privacy and confidentiality issues governing access to the database? What new enabling statutes or procedures would be necessary to overcome these restrictions?

These and other data-related issues have guided our survey of potential data sources.

One of the goals of the data survey in particular, and the research in general, is to determine whether persons belonging to a disability category are included in databases and whether these databases are automated and accessible. To facilitate the analysis of this issue, we have viewed the population of each disability category in terms of four data-related and overlapping layers. More specifically,

- The "target" population, representing the largest layer, includes all persons belonging to the disability category. In the mental defective category, for example, the target population includes all persons "adjudicated as a mental defective or committed to a mental institution".
- The "known" population includes those persons who have readily available records which identify them as belonging to the disability category; as such, it is a subset of the target population. For example, State mental health departments typically only have records on those persons committed to State or county mental hospitals;

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they do not know about persons committed to private, local or Federal hospitals. In other categories, the known population could be equal to the target population, particularly if every person must be processed by a single agency in order to be in the category.

- The "automated" population includes those persons who have readily available automated records which identify them as belonging to the disability category; as such, it is a subset of the known population. In the mental health example, it might be the case that only certain states have automated mental health records. Or, the single Federal data repository of another disability category may only have automated records for the past few years. In either of these cases, the automated population would be a subset of the known population.
- The "remotely-accessible" population includes those persons who have readily available records which identify them as belonging to the disability category and which can be accessed and, thus, available to a national firearm eligibility verification system, albeit at a possible cost. Note that if the remote access time frame allows for manual record checking (as may be the case in a pre-sale or post-sale approach), then the remotely-accessible population might be equal to the known population; otherwise, the remotely-accessible population would most likely be a subset of the automated population.

This layered approach provides a convenient way to quickly assess a verification method's coverage. Once the four population sizes are determined, the ratio of the different population sizes to the target population size can be computed. If the known population divided by the target population were only 0.1 for a particular category, then we know that even if the records of all the known population were remotely accessible (i.e., remotely-accessible population equals known population), the best any verification method can do is to identify 10 percent of the individuals in that category. In fact, as discussed later in this section, we define this ratio or percentage as the coverage ratio of a particular verification method or system.

While this research is primarily concerned with enforcement of a Federal law (i.e., the Gun Control Act of 1968), it is important to note that the State governments are

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also quite concerned about firearm purchases. Moreover, while both Federal and State laws must be satisfied, State-level personnel are more familiar with and hence more oriented toward enforcing their own State laws. Therefore, we have reviewed State, and, in some cases, local firearm-related procedures and statutes, including their definition of a firearm, their firearm disability categories, their firearm application procedures, and their firearm verification procedures.

### Identification

The results obtained from the above survey would obviously impact this task, which involves identifying possible verification methods within each disability category. The data availability, quality, and accessibility may, for example, preclude some methods and suggest others. There is a range of issues to consider in identifying possible verification methods, including the what's, how's, who's and when's.

First, what data sources should be accessed? The data sources could be remote or local. The remote data sources could, in turn, be centralized on a mainframe or decentralized among several mainframes but connected through a central computer switch, or they could be located in manual files with only partial automation. The local data source approach, on the other hand, would not depend on a telecommunications network but simply on available documentation and/or locally administered tests.

Second, how should the data sources be accessed? Obviously, this issue is only meaningful in the case of remote data sources. Actually, several possible access mechanisms are suggested when one considers the current state of criminal data sharing. Such sharing is facilitated by State message switches, each of which is usually networked to both the National Crime Information Center (NCIC) and the National Law Enforcement Telecommunications System (NLETS), as well as to the state's motor vehicle registry, criminal information system, local police departments, etc. The State message switch is uniquely identified in each State; for example, it is known as LEAPS in Massachusetts, VLETS in Vermont, NYSPIN in New York, and COLLECT in Connecticut. Also, it should be recognized that while NCIC is a criminal history repository, NLETS is actually a switch located in Phoenix through which one State can communicate or share data with another. Additionally, the Treasury Enforcement Communications System (TECS), owned and operated by the U.S. Customs Service, is currently a user of

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both NCIC and NLETS, without actually sharing its own databases with the other users.

Third, who should access these data sources? If the data sources are accessed through either NCIC or NLETS, then, for reasons of privacy and security, the data must go through local law enforcement agencies. Indeed, in most cases, local law enforcement officials would have to handle eligibility verification checks. However, it may be possible to establish a special database which can be directly accessed by firearm dealers, perhaps on a touch-tone telephone basis, as suggested by the Attorney General. Indeed, the Immigration and Naturalization Service (INS) currently has a Systematic Alien Verification for Entitlements (SAVE) system that allows Federal, State and local entitlement issuing agencies, as well as private sector concerns, to directly verify the immigration documentation of aliens applying for benefits, licenses, etc. The user is prompted for required input through either synthesized voice commands, in the case of touch-tone telephone access, or formatted screens, in the case of computer terminal access. Based on an alien registration number input, SAVE provides a last name, first name, date of birth, country of birth, date of entry, social security number (if any), immigration status, and an employment eligibility statement to the user for verification purposes. SAVE is maintained by Martin Marietta Data Systems.

Fourth, when should these data sources be accessed? As discussed earlier, a firearm purchase authorization could occur pre-sale, point-of-sale, or post-sale. While the FIS report considered both pre-sale and point-of-sale schemes, the Attorney General recommended a point-of-sale system in his November 20, 1989 report to Congress.

### **Assessment**

The final research task has been to assess each possible verification method identified in the previous task. As detailed in Exhibit 1.1, our assessment approach is based on four groups of measures (i.e., cost, data, process and coverage measures), each containing two or three specific measures.

In regard to cost, we consider start-up, operating and legal costs. The start-up dollar cost would include initial hardware, software, data conversion and training costs in connection with establishing a verification method. The operating dollar cost would include annual maintenance, personnel, and facility costs in connection with the method's operation. The legal costs may be regarded as a start-up cost; however, we have explicitly identified it to highlight specific

## Exhibit 1.1 Assessment Measures

<b>Measure</b>	<b>Definition</b>	<b>Purpose</b>
<b>Cost</b>		
• Start-Up	• Start-up dollar cost of verification method	• Quantitative measure for comparing different verification methods
• Operating	• Annual operating dollar cost of verification method	• Quantitative measure for comparing different verification methods
• Legal	• Enabling legislation required for implementation	• Legal impediments to implementing verification method
<b>Data</b>		
• Accuracy	• Correctness of information in data source	• Determines data source's usefulness
• Completeness	• Degree to which data elements are entered	• Determines data source's usefulness
• Validity	• Degree to which data source is an appropriate determinant of whether applicant is in disability category	• Determines data source's usefulness
<b>Process</b>		
• Verification Timeliness	• Elapsed time from application submission to firearm purchase approval or denial	• Does approach meet the "immediate" verification criterion?
• Implementation Timeliness	• Elapsed time until verification method can be fully operational	• Takes into account difficulty in implementing verification method
• Identification Accuracy	• Assuming data source is accurate, degree to which firearm purchaser can be correctly identified	• Determines degree to which firearm purchaser can be correctly identified
<b>Coverage</b>		
• Target Population	• Total number of people in disability category	• Determines relative importance of having disability category included in the verification system
• Coverage Ratio	• (Population with appropriately accessible data)/(target population)	• Determines fraction of target population which can be identified through remotely-accessible data, assuming entire target population would go through licensed dealers for firearm purchases

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legal impediments to implementing a particular verification method. It should be noted that inasmuch as this is just a feasibility study and that development and implementation issues have not been addressed, we have not been able to build a detailed cost model in the same manner that Orsagh [1989(b)] did for the FIS options. Instead, we have made some gross estimates and defined three cost ranges: low (less than \$10 million), moderate (\$10 million to \$100 million), and significant (greater than \$100 million).

In Section 1.1, we indicate that the term "accuracy" in the Anti-Drug Abuse Act of 1988, Section 6213, should reflect three data characteristics: correctness, completeness and validity. Consequently, we have correspondingly defined three data measures: accuracy (which, in many situations, is assumed to be synonymous with correctness), completeness, and validity. Data accuracy, while difficult to ascertain, is obviously an important measure. Data completeness is also important because a database that is missing key identifiers (e.g., name, date of birth) is not very useful. Finally, data validity measures whether the presence of an individual in a particular database is a valid determinant of whether that person belongs in the disability category. For example, while a State may maintain mental health records, these records would not be valid in determining if a person belongs to the mental defective category if the records do not include data relating to adjudication or commitment.

The three process measures are verification timeliness, implementation timeliness, and identification accuracy. Verification timeliness, the elapsed time from when the firearm purchaser completes the firearm application to when the firearm can be purchased (assuming the purchaser is eligible), can be on the order of minutes, hours, weeks, or months. The purpose of the implementation timeliness measure, which indicates how soon a verification method can be implemented, is to take into account the difficulty of implementing a verification method. Identification accuracy reflects how correctly the identity of the applicant can be determined; clearly, biometric (e.g., fingerprint) identification is more accurate and reliable than a name-based database search.

Finally, two additional measures assess the "coverage" of a verification method. The target population -- defined as the total number of persons belonging to a disability category -- indicates the relative importance of having the category included in a verification system. The coverage ratio indicates the likelihood that a prospective firearm purchaser with the disability would be verified ineligible. It should be noted,

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however, that this coverage measure is conditioned on the assumption that the firearm purchaser obtains the firearm from a licensed dealer and is therefore "covered" by the verification system. Of course, not all purchasers acquire a weapon through a legitimate firearm dealer, as noted in the FIS report and in an earlier National Institute of Justice study [NIJ, 1986]. If, for example, one in six firearm purchasers who belong to a disability category were to obtain his/her firearm through a licensed dealer, then the corresponding coverage ratio would be further decreased by a factor of six.

### **1.3 Research Conduct**

As noted earlier, ENFORTH Corporation began this research on July 11, 1989; the draft final report was due some six months later -- on January 8, 1990. Given the brevity of the research, the five disability categories to be assessed, the national scope of the effort, and the cost constraint, we have had to approach the research in a purposeful and systematic manner. In general, we have relied principally on interviews -- both in person and via telephone -- with key administrators, agency personnel, and criminal justice officials. This process has been facilitated in several ways. First, we have been able to obtain critical guidance from BJS. Second, a "To Whom It May Concern" letter signed by the BJS Acting Director has helped to "open doors" and to overcome initial reluctance on the part of many of our contacts. Third, we have developed an outline of "Issues to be Discussed" (reflecting our research approach, as detailed in Section 1.2); in most cases, we have mailed the outline to prospective contacts before we interviewed them on the telephone -- this has greatly enhanced our ability to obtain relevant information from the various Federal, State and local agencies. Fourth, we have productively broadened our list of contacts by soliciting names of other individuals who our contacts felt would be helpful to our research. In total, we have contacted almost 100 individuals, representing 64 agencies and associations, located in some 34 states and the District of Columbia.

It should be noted that we have also relied on both published reports and internal documents. In particular, we have reviewed relevant material obtained from BJS, the General Accounting Office, the National Institute of Justice, the National Institute of Mental Health, the National Institute on Drug Abuse, numerous State and local agencies, journals and newspapers. Some of the publications are listed in the references.

## **2 Background**

There are between 100 and 200 million firearms in the United States, with approximately 7.5 million new and used firearms sold each year through some 270,000 federally licensed firearm dealers [Howe, 1988; DOJ, 1989(b)]. The purpose of this section is to discuss several important background issues related to these firearm purchases. Inasmuch as the immediate and accurate identification of persons ineligible to purchase firearms depends on clear and concise definitions of the firearm disability categories, Section 2.1 addresses definitional issues regarding these disability categories. Section 2.2 describes key activities of the Bureau of Alcohol, Tobacco, and Firearms (BATF), the agency which oversees Federal involvement in firearms. Additional firearm-related laws are contained in the statutes of all 50 states, the District of Columbia, and many local jurisdictions. In particular, all existing firearm verification procedures stem from these State and local statutes. Section 2.3 discusses such procedures and highlights the not-surprising inconsistencies among the states and between the states and the Federal government.

### **2.1 Disability Categories**

Discussed below are definitions of each Federal firearm disability category. Some of the categories are well-defined. Others, such as the unlawful users of controlled substances and the mental defective categories, are not. For those categories that are not well-defined in the Gun Control Act, we sought interpretations of the Act from both relevant court cases and from the BATF legal counsel office. Unfortunately, very few persons have ever been prosecuted under these statutes, so that there are few, if any, court opinions which could shed light on some of the definitional issues.

Category 3: "... who is an unlawful user of or addicted to any controlled substance ..."

While the controlled substances to which the Gun Control Act refers are well-defined (i.e., those specified in 21 USC 802), this disability is perhaps the most difficult of the five

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categories to define precisely. The definitional problem stems from the present tense -- "is" -- of the verb. The Gun Control Act does not specify how recently the unlawful use must have taken place -- is it within the past 24 hours? the past week? the past month? We have not found any court decisions to help clarify this issue. While the BATF is also not aware of any court case addressing this issue, they did indicate that to prosecute someone for this disability there would need to be "current evidence of use." Possible examples of evidence the BATF cited include needle marks, current enrollment in a drug treatment center, or a urine test.

In the absence of any court interpretation, we have adopted the definition used by the National Institute on Drug Abuse (NIDA), which defines a current user as anyone who has used drugs within the past month. Obviously, this broad interpretation of the category means that the number of persons in the disability category (i.e., the target population) could be quite large. While one could argue for a stricter interpretation (e.g., drug use within the past week), any definition of a current user or addict does not alleviate the key problem of how to identify those persons who belong in this category, especially since a person's status relative to the disability can change on short notice. Indeed, the same individual could be ineligible to purchase a firearm one week, eligible the next, and so on. This implies that any database of persons belonging to this disability category would not be very valid, unless it were continually updated by adding new users and deleting "non-current users." Such a database would be exceedingly costly to establish and maintain.

### **Category 4: "... who has been adjudicated as a mental defective or who has been committed to a mental institution ..."**

The wording of this particular part of the Gun Control Act raises two issues. First, the statute refers to any person who "has been", rather than any person "who is". The statute therefore covers, for example, any person who has ever been committed to a mental institution, and not just those currently in an institution. An implication of this fact is that the number of persons in this category would be more difficult to estimate than if the statute only covered those currently in mental institutions. More importantly, some potential data repositories may only have automated records of current patients, or, at best, a few years worth of automated records, depending on when the facility began automating its records.

A second issue is the vagueness regarding who actually belongs in the category. As each State has its own laws regarding who can commit persons to mental institutions and

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what procedures must be followed, it is easy to see that in many cases it could be difficult to determine who is and who is not covered by the Gun Control Act.

As stated above, the Gun Control Act covers persons adjudicated as a mental defective or committed to a mental institution. In their interpretation, the BATF has qualified this statute: only persons adjudicated as a mental defective or committed to a mental institution by a court, authority, commission, or board are ineligible to purchase firearms. In particular, the BATF has indicated that "commitments" by other parties -- such as friends, family members, the family doctor -- and "self-commits" (i.e., voluntary admissions) are not covered by the Gun Control Act. The vast majority of adjudications and commitments covered by the Gun Control Act, as noted in Section 4.2, result from civil commitment proceedings. Also included are criminal-related adjudications and commitments, including persons found incompetent to stand trial, not guilty by reason of insanity, and guilty but mentally ill.

There are court cases concerning this section of the Gun Control Act that support the above stated BATF interpretation. For example, in Redford v. United States Department of the Treasury (691 F. 2d 471 [10th Cir. 1982]), the court found that persons found not guilty of a criminal charge by reason of insanity have been "adjudicated as a mental defective," and hence are ineligible to purchase firearms. In United States v. Hansel (474 F. 2d 1120 [8th Cir. 1973]), the court held that persons being evaluated for the purpose of determining whether they are mentally defective are not covered by this statute. Indeed, a sizable population in mental institutions are there for evaluation purposes, not because they have been formally declared "mentally defective." In civil commitment or criminal competency proceedings, for example, the court's final decision is based in part on the recommendations of mental health professionals who evaluate the person. During this evaluation period, the person is often in a mental institution. Unless the court, acting on the evaluation results, commits such a person to an institution, he/she is eligible to purchase a firearm. Falling in this same category are so-called emergency detentions initiated by family members, friends, and others who are statutorily permitted to do so. In United States v. Giaradina (861 F. 2d 1334 [5th Cir. 1988]), the court found that the defendant's detention for emergency treatment and observation did not constitute a commitment.

It should be noted that the court in United States v. Hansel also ruled that the term "mental defective" refers to a person with impaired intellectual capability, rather than to a

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person suffering from mental illness. Finally, we should note that no court that we are aware of has specifically addressed the issue of whether "self-commits" (i.e., voluntary admissions) are covered by the Gun Control Act. As indicated above, the BATF indicated that voluntarily admitted persons are not ineligible to purchase firearms. This interpretation is important because roughly three quarters of persons in mental institutions today are "voluntary" patients, as noted in Section 4.2.

### **Category 5: "... who, being an alien, is illegally or unlawfully in the United States ..."**

The definition of an illegal alien is straightforward. Usually, these persons are classified based on how they entered the U.S., either (1) illegally or (2) legally, in which case the alien's legal status changed and some provision of his/her visa was violated. What is a problem is that a person's status relative to the disability category can and does change, as is also the case with the unlawful users of controlled substances category. For example, a person can legally enter the U.S. on a valid visa and then overstay his/her visitation time. At some later time, that person might regain his/her legal alien status by obtaining a visa extension or by being granted permanent residence status. A person entering the U.S. clandestinely can change his/her legal status by marrying a U.S. citizen. The fact that a legal alien can become an illegal alien, and vice versa, at almost a moment's notice and that the Gun Control Act specifies that only a person who "is" illegally or unlawfully in the U.S. is prohibited from purchasing firearms impacts the validity of any database used to identify illegal aliens. It may be that the only information on a person's alien status timely enough to deny a firearm sale is information obtained locally at the point-of-sale through, for example, documents supplied by the applicant.

### **Category 6: "... who has been discharged from the Armed Forces under dishonorable conditions ..."**

All persons discharged from the Armed Forces are given a discharge status, which is either honorable, dishonorable, less than honorable, or uncharacterized. Originally, the Gun Control Act prohibited "any person who has been discharged under other than honorable conditions" from purchasing firearms. Congress soon after amended this section to cover only discharges under dishonorable conditions. It should be noted that the constitutionality of this statute was upheld in United States v. Day (476 F. 2d 562 [6th Cir. 1973]).

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Category 7: "... who, having been a citizen of the United States, has renounced his citizenship ..."

The requirements for renouncing U.S. citizenship are stated in 8 USC 1481(a)(5) and (6) (see Exhibit A.2). Basically, formal renunciation must be made voluntarily before a diplomatic or consular officer of the U.S. in a foreign state, or, when the U.S. is at war, in the U.S. before an officer designated by the Attorney General. It should be noted that renouncing citizenship is not the same as losing citizenship. Renouncing citizenship is only one way of losing citizenship. Other ways a citizen loses his/her citizenship are specified in 8 USC 1481(a)(1), (2), (3), (4), and (7) (see Exhibit A.2). They include committing any act of treason against the United States, serving in the armed forces of a country at war with the United States, and becoming a naturalized citizen of another country.

### **2.2 BATF Activities**

The Federal government has the authority to regulate the sale of firearms because of its constitutional authority over interstate commerce. Federal involvement in firearms is under the jurisdiction of the BATF. Utilizing primarily the provisions of the Gun Control Act of 1968, the BATF has promulgated a series of firearm regulations contained in Parts 47, 178, and 179 of Title 27 of the Code of Federal Regulations (CFR). Discussed below is a brief review of BATF's activities in firearm licensing and purchases, followed by a discussion of their relief procedure (which allows a person with a firearm disability to petition the BATF to have the disability waived).

#### **Licensing and Firearm Purchases**

The BATF controls firearms by (1) licensing firearm dealers and (2) recording firearm sales. Potential firearm dealers are investigated by the BATF to determine if the applicant is eligible to sell firearms. A license is denied if, for example, the applicant has previously violated any firearm laws or is in one of the seven firearm disability categories.

Firearm sales at these federally licensed dealers are, as noted in Section 1, recorded on BATF Form 4473. Various information about the firearm purchaser is recorded on the form, including name, sex, height, weight, race, residence, date of birth, and place of birth. The applicant also indicates whether he/she is in any of the seven firearm disability

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categories; as noted in Section 1, this information is not verified, although if the applicant indicates that he/she is in one or more of the disability categories, the sale is not allowed. The firearm dealer then indicates on the form that he/she either personally knows the applicant, or, that the applicant has provided satisfactory identification. According to BATF Ruling 79-7, the identification must include the purchaser's name, age or date of birth, place of residence, and signature. Typically, a driver's license is used for this purpose. Social Security cards, alien registration cards, and military identification cards by themselves are not acceptable because they each lack one or more of the identifiers listed above. After the purchaser has been identified, the dealer records on the form the type, model, caliber or gauge, serial number, and manufacturer of each firearm sold. There is no federally mandated waiting period between the time when the BATF Form 4473 is completed and when the sale is allowed.

After the sale, the completed BATF Form 4473 must be kept on the dealer's premises for 20 years. The form is not, however, forwarded to the BATF. Because of this, tracing a firearm involved in a serious crime to its owner is a time consuming process. Once the BATF obtains a description of a firearm, including its serial number, they trace it to the firearm manufacturer, who in turn directs the BATF to the dealer to whom they sold the firearm. The BATF can then search, subject to strict laws and regulations, the dealer's 4473 forms to determine the owner of the firearm.

### Relief Procedure

Persons ineligible to purchase firearms because of any of the seven categories listed in the Gun Control Act can have their disability waived by applying to the BATF "for relief" on BATF Form 3210 (see Exhibit A.3). According to the BATF, about 2,000 persons per year apply for relief, virtually all of whom are convicted felons. About 50 percent of those applications are granted relief in accordance with Title 27 CFR Part 178.144 (see Exhibit A.4). Basically, in applying for relief, a person must supply: (1) written statements from three persons recommending that relief be granted; (2) written consent to examine background information, including any employment, medical history, military service, and criminal history records; and (3) copies of official records related to the disability (e.g., Court records in the case of a felony conviction). Records of the application, including whether or not relief is granted, are maintained on the Treasury Enforcement Communications System (TECS). Persons granted relief receive a letter from the Director of the BATF; in addition,

## **2 Background**

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names of persons granted relief are published in the Federal Register.

Although the number of persons granted relief each year (i.e., roughly 1000) is small, the number is nevertheless larger than the combined number of persons receiving dishonorable discharges and formally renouncing their citizenship. It is therefore obvious that persons granted relief must be accounted for in any national firearm eligibility verification system. It is not obvious, however, that it is necessary to check the remote relief database for each firearm purchase. Instead, and if applicable, the prospective firearm purchaser should locally produce the letter from the Director of the BATF indicating that relief has been granted.

### **2.3 Current Procedures**

Although the Federal government has made it unlawful for certain persons to purchase firearms, the Federal government has not imposed any requirement that the states do anything to verify whether a prospective firearm purchaser falls into one of the Federal disability categories. Since there are no Federal laws on verifying eligibility, the states are free to enact whatever laws they see fit, or none, to enforce the prohibitions against purchasing firearms. Federal law is satisfied if the dealer requires the purchaser to sign BATF Form 4473, swearing that the purchaser is not in any of the Federal disability categories. Obviously, dealers and purchasers must also comply with any relevant State laws. In fact, many states, as noted in this section, have adopted specific verification procedures, as well as more broadly defined disability categories. On the other hand, some states have no verification requirements or disability categories in their State statutes; however, dealers and purchasers in such states must still comply with the Federal law.

Why are the State firearm laws and procedures important? The answer is because State and local firearm licensing authorities are more familiar with and oriented toward enforcing their own State laws. Very few of our State and local contacts, for example, had ever heard of the Federal disability categories. For this reason, we review below the State-level firearm definitions, disability categories, application procedures, and verification procedures. With verification neither required nor recommended with any specificity by the Federal government, it is not surprising that there is a broad range of State-level procedures.

## 2 Background

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### Firearm Definition

Variations in State and Federal firearm laws begin with differences in the definition of a firearm. The Federal definition, as written in Section 921(3) of the Gun Control Act [BATF, 1988(a)] and replicated in Exhibit A.5, states that a firearm "means:

- A. any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- B. the frame or receiver of any such weapon;
- C. any firearm muffler or firearm silencer; or
- D. any destructive device."

According to the BATF [1988(b)] and as summarized in Exhibit B.1, only six states have adopted the above broad firearm definition. Twenty-nine states have a narrower definition, typically encompassing only Section 921(3)(A). The remaining states' firearm definitions could not be determined from the BATF [1988(b)] report.

### Disability Categories

Most states have enacted laws prohibiting various persons from purchasing firearms. As shown in Exhibit B.1, no State, with the exception of Maryland and the District of Columbia (both of which have banned some types of handgun sales), restricts or prohibits sales to persons in all seven Federal disability categories. Interestingly, not all states have laws prohibiting sales to convicted felons. Recently in Maine, one of the six states without such a law, a judge ruled that a convicted felon did have the right to possess a gun, in spite of the Federal ban on such ownership [Albany Times Union, 1989]. The judge, in his decision, cited a recent amendment to the Maine Constitution which guarantees every citizen the right to keep and bear arms. Other states, such as Massachusetts, prohibit persons who have been convicted of a felony within the past five years from purchasing firearms. This inconsistency with the Federal law (which, as indicated in Section 1, states that felons can never possess firearms) creates confusion, according to the Federal Public Defenders Office [Neuffer, 1989(b)]. Nevertheless, the fact that most states have laws prohibiting or restricting firearm purchases by felons should facilitate the implementation of a Federal felon identification system.

## 2 Background

Fewer states have enacted laws prohibiting persons in the non-felon disability categories from purchasing firearms. In the unlawful users of controlled substances category, 22 states have laws restricting or prohibiting firearm purchases by these persons. However, as shown in Exhibit B.2, the State statutes are not consistent; while the majority prohibit sales to drug addicts, others restrict sales to persons with previous drug-related convictions, persons currently under the influence of drugs, and persons currently or previously enrolled in a drug treatment program. The widest variations in State laws are related to firearm purchases by mental defectives. As shown in Exhibit B.3, 26 states have laws restricting firearm purchases by persons in this category. The laws range from vague and difficult to enforce statutes (e.g., the Indiana, Pennsylvania, and Tennessee statutes prohibiting sales to persons "of an unsound mind"), to statutes similar to the Federal law, to even more restrictive statutes. As noted in Section 4.1 and as shown in Exhibit B.3, some states prohibit purchases by anyone who has ever been in a mental institution, rather than only those who have been committed to mental institutions. Returning to Exhibit B.1, it is seen that no states expressly prohibit dishonorably discharged persons from purchasing firearms. Finally, while only one State (i.e., Rhode Island) specifically outlaws sales to illegal aliens, eight states have laws more restrictive than the Federal law; they prohibit sales to all aliens, both legal and illegal. Renunciates would obviously be prohibited from purchasing firearms in these eight states due to these same statutes.

Finally, it should be noted that many local jurisdictions have also enacted firearm legislation. Often these jurisdictions are major urban areas, such as New York City, with particularly restrictive firearm laws. Notably, many urban areas in Virginia have more stringent laws than the recently enacted State law which mandates the nation's first point-of-sale firearm verification system.

### Application Procedures

Firearm application procedures also vary from State to State, as shown in Exhibit B.4. In 24 states, firearm purchasers are only required to satisfactorily complete BATF Form 4473 in order to proceed with the purchase. The other 26 states and the District of Columbia have additional requirements for purchasing firearms; specifically, they require applicants to obtain either a "firearm permit" or a "firearm ID card". In 21 of the 26 states and the District of Columbia, applicants must obtain a firearm permit for each firearm purchase; in the other five states applicants must

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obtain a firearm ID card, which is valid for all firearm purchases made during a specified period of time. In addition, the vast majority of these states and the District of Columbia impose a waiting period of anywhere from one to 180 days between the application for and the issuance of the permit or ID card, allowing for a "cooling-off" period that could prevent crimes committed in the heat of passion with just-purchased firearms and during which time at least some of the information supplied on the application is verified. California, for example, enacted a new law, which goes into effect January 1, 1991, which requires a 15-day waiting period before the purchase of a rifle or a shotgun [Albany Times Union, 1990]. Other states requiring a permit or ID card include Michigan and South Carolina (both of which have no waiting period but perform post-sale verification), Wisconsin (which requires a waiting period but no verification), and Louisiana and Mississippi (which have no waiting period and no verification).

Another interesting variation in State procedures is where the application for the permit or ID card is submitted. In 12 states, the purchaser gives the completed application to the firearm dealer, who in turn forwards the application to the appropriate law enforcement agency. In another 12 states and the District of Columbia, the application for the permit or ID card is submitted directly to the local police or county sheriff. In the remaining two states, the application is submitted to the State Police.

### **Eligibility Verification Procedures**

Of the 26 states that require either a permit or a firearm ID card to purchase a firearm, 23 attempt to verify at least some of the information the applicant provides on the application. (In addition, the District of Columbia verifies information required for a firearm certificate.) Various aspects of the eligibility verification process are considered in Exhibit B.5. Most of these states perform pre-sale verification during the waiting period. Virginia recently initiated -- on November 1, 1989 -- the nation's first point-of-sale verification system, as discussed below. Seven states perform some post-sale verification, often in conjunction with additional pre-sale verification. It should be noted that the vast majority of verification procedures attempt to determine if the applicant is a convicted felon. We could only identify five states (i.e., California, Illinois, Massachusetts, Minnesota, and New York) which conduct systematic verification related to any of the other disability categories; in particular and as discussed later in this section, these states verify an applicant's mental health status.

## 2 Background

Who coordinates and conducts the verification procedures? Again, the states have adopted a variety of practices. They vary from entirely State-run systems to approaches that allow for considerable local control and discretion. Virginia's new point-of-sale system is State-run. For sales involving either handguns or assault-style rifles, the firearm dealer must contact the Virginia State Police by using a toll-free telephone number. After the identity of the firearm dealer is verified, State Police personnel conduct a name-based search of the State criminal history index. If the search does not yield a "hit", the sale is allowed. If there is a "hit", the State Police have one day to conduct follow-up investigations to verify that the applicant is in fact ineligible to purchase a firearm.

In Illinois, the State Police issue Firearm Owner's Identification (FOID) cards, which are required for all firearm purchases. Applicants submit a notarized application to the State Police, stating that he/she "is 21 years of age or over", "has not been convicted of a felony under the laws of this or any other jurisdiction", "is not addicted to narcotics", "has not been a patient in a mental institution within the past 5 years", and "is not mentally retarded". During the 30-day waiting period, the State Police attempt to verify at least two of these requirements -- that the applicant is not a convicted felon and has not been a patient in a mental institution -- by searching the State and the NCIC arrest history indices and by contacting the Illinois Department of Mental Health (DMH). Each Thursday night, the DMH receives from the State Police a magnetic tape containing the name, date of birth, and sex of all persons applying for FOID cards in the previous week. In an average week, 5,000 persons apply for FOID cards. Over the weekend, the DMH compares the list, utilizing a soundex-type name search, with their database of all persons who have been in a State hospital over the past five years. The "hits" from this search are then manually verified by locating the person's paper records. On average, there are ten hits per tape (i.e., per week), which are then reported to the State Police on Tuesday morning. In addition to the weekly pre-sale verification check, each month the State Police and the DMH conduct post-sale verification. The State Police provides to the DMH a tape of all current FOID card owners. This list is then compared to the list of persons admitted to State hospitals in the previous month. On average, this process yields a list of 30 FOID card owners who have become ineligible to possess firearms. It is the State Police's responsibility to confiscate their weapons.

Other State verification systems utilize both local and State law enforcement resources to verify whether an

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individual is eligible to purchase a firearm. Such a system was slated to begin operation in Oregon on January 1, 1990. Oregon recently passed a new gun law which mandates a 15-day waiting period and a comprehensive eligibility verification for handgun purchases. The law states that a person is ineligible to purchase a handgun if he/she is (1) under 18 years of age, (2) has been convicted of a felony or found guilty of a felony, (3) has any outstanding felony warrants, (4) is free on any form of pretrial release for a felony, (5) was committed to a mental institution within the past four years prior to January 1, 1990, (6) was forbidden -- by a previous court order of commitment to a mental institution -- from owning a firearm (as of January 1, 1990, Oregon judges are supposed to coincidentally find at the commitment hearing that the committed person is also ineligible to purchase a firearm), and (7) has been convicted of a misdemeanor involving violence. In addition to completing BATF Form 4473, the potential purchaser is required by the new law to complete a State firearm purchase form at the firearm dealer's shop. One copy of the form is immediately mailed to the local law enforcement authority, which conducts a local criminal history and a State mental health background check. The new law states that the Oregon Mental Health Division shall provide the local law enforcement agency with the information necessary to determine if the person is eligible to purchase a handgun. Another copy of the form, which has the potential purchaser's thumbprint on it, is mailed to the State Police, which is responsible for checking State and Federal criminal history records. Any disqualifying records located by the State Police are forwarded to the local law enforcement agency, which then informs the firearm dealer of the decision.

In stark contrast to the State-run, centralized Virginia and Illinois verification systems are the procedures for obtaining firearm licenses in Massachusetts. State firearm law specifies a firearm disability for any person who (1) has within the past five years been convicted of a felony in any State or Federal jurisdiction; (2) has within the past five years been released from confinement for serving a sentence for a felony conviction; (3) has been confined to any hospital or institution for mental illness; (4) has within the last five years been convicted of a violation of any State or Federal narcotic or harmful drug law, or within that period has been released from confinement for such a conviction, or is or has been under treatment for or confinement for drug addiction or habitual drunkenness; or (5) is an alien. Also, the law requires that "the licensing authority shall forward a copy of such application to the commissioner of public safety, who shall within twenty-one days advise in writing of any

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disqualifying criminal record". However, the State law also grants considerable discretion to the local licensing authorities, typically the city or town police department. For example, the State law says that the local licensing authority may issue a permit to carry a firearm "if it appears that the applicant is a suitable person to be so licensed, and that the applicant has good reason to fear injury to his or her person or property, or for any other proper purpose, including the carrying of firearms for use in target practice only".

Not surprisingly, each Massachusetts city and town has their own firearm-related application forms, application procedures, and verification procedures. Moreover, these procedures vary widely throughout the State: some cities and towns issue licenses on the spot, some conduct perfunctory verification checks, some conduct thorough verification checks, while some are notorious for having not issued any licenses for extended periods of time. Other cities and towns have special requirements. In the Town of Somerville, for example, applicants for licenses to carry a firearm are photographed, fingerprinted, and interviewed by the police department. Local variations in verification procedures are well demonstrated by the extent to which an applicant's mental health background is verified. (Massachusetts law prohibits any person who "has been confined to any hospital or institution for mental illness" from purchasing a firearm.) At least two Massachusetts cities -- Lowell and Lynn -- routinely contact the State Department of Mental Health to request a mental health history check, and, in fact, require that applicants sign consent forms to facilitate the release of this information. (Further details on the check of the mental health records in Massachusetts are discussed in Section 4.1.) In other jurisdictions -- including Boston -- checks are made on an ad hoc basis. According to the head of the Boston Police Department's firearm licensing division, whether a mental health background check is made "depends on the person's behavior and attitude when they come into the station" [Mohl, 1989]. Since the Department of Mental Health (DMH) only receives about 100 requests per week from local licensing authorities across the Commonwealth of Massachusetts, it is clear that a significant fraction of cities and towns do not request mental health information. (While the number of firearm applications per week in Massachusetts is not known, in Illinois, whose population is roughly twice that of Massachusetts, roughly 5,000 persons per week apply for FOID cards.)

The Massachusetts DMH processes requests from firearm licensing authorities even though the names of patients in the State mental health hospitals are not

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maintained at the DMH headquarters in Boston. Each week DMH personnel compile a list of about 100 requests from all the licensing authorities in the State, listing each person's name and date of birth. A copy of this list is then mailed to each of the twelve State mental hospitals. According to DMH personnel, typical response times to these requests are anywhere from three weeks to six months, reflecting the fact that the records at the State hospitals are not automated and that the State hospitals do not consider these requests to be of high priority. Often follow-up phone calls are required to obtain information from the hospitals. It should be noted that if information on an applicant, who was a patient at one of the State hospitals, is not available until after the waiting period has expired, then the person's firearm identification (FID) card or permit to carry a firearm can be revoked. After the information is obtained from the State hospitals, DMH personnel respond in writing to the various licensing authorities. Further discretion is exercised when interpreting information received from the Department of Mental Health. In the City of Lynn, for example, there are no set rules on what mental health-related conditions disqualify an individual, as each case is individually evaluated. According to the Lynn police officials, "We consider a number of things; we are much more concerned about what they were in for than how they got to the institution."

Some jurisdictions we contacted were quick to point out the advantages of local control over firearm permits. In North Carolina, for example, the county sheriffs issue handgun permits. According to State firearm officials, since most counties have small populations, the county sheriffs, who are elected officials, often personally know either the applicant or a family member or a friend of the applicant. While it is beyond the scope of this research to evaluate the advantages of local-based versus State-based verification procedures, what is important is that both types of procedures exist in a significant number of states. Any attempt to implement a national verification standard across the nation must recognize and deal with this reality.

### **3 Unlawful Users of Controlled Substances**

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## **3 Unlawful Users of Controlled Substances**

Section 922(g)(3) of title 18, United States Code, states that it shall be unlawful for any person who "is an unlawful user of or addicted to any controlled substance (as defined in Section 102 of the Controlled Substance Act [21 USC 802])" to purchase a firearm. The purpose of this section is to describe the data sources that could be used to identify persons in this disability category, to estimate the sizes of the four data-related populations (i.e., the target population, known population, automated population, and remotely-accessible population), and to assess possible verification methods for this disability category.

### **3.1 Current Data Sources**

Not surprisingly, there is no national database containing a list of all "current" unlawful controlled substance users. Nevertheless, we have identified four general types of drug-related databases. Each database contains names of persons who come in contact with a particular type of agency, including persons who are undergoing drug treatment, persons who are admitted to hospital emergency rooms for drug-related reasons, persons who are arrested for drug-related crimes, and persons involved in justice-related drug testing programs. Each database type is discussed below.

#### **Drug Treatment Databases**

Treatment for drug-related problems, although primarily funded by the Federal and State governments and coordinated by State-level substance abuse agencies, are provided at the local and community treatment centers. Local control, as noted by the South Carolina Commission on Alcohol and Drug Abuse [1988], "acknowledges [that] alcohol and other drug related problems develop within the community setting where their greatest impact is felt. Just as problems are best treated at the community level where they occur, attitudes towards the alcohol and other drug user are shaped in the community, and therefore, may be most effectively altered there". In addition to government-funded treatment centers, there are, of course, private treatment facilities. A wide variety of treatment services are typically available in a given State, including intensive outpatient programs, specialized

### **3 Unlawful Users of Controlled Substances**

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residential treatment services, halfway houses, detoxification services, and outpatient counseling services.

People are referred to drug treatment centers by a variety of sources. Obviously, many persons seek treatment voluntarily. Others are committed to treatment centers. Nineteen states have civil commitment laws for committing addicts to treatment centers. In Massachusetts, for example, judges can commit persons to a 30-day treatment program "if they pose a threat to themselves or to others". The majority of states, however, require that a person be convicted of a criminal charge in order to be committed to a treatment facility. Recent figures obtained from the Massachusetts and Rhode Island substance abuse agencies show that 31 percent and 18 percent of their treatment facility clients, respectively, were referred by the courts. Persons committed to these facilities as a result of a felony conviction are obviously also in the convicted felon firearm disability category. Further evidence of the not-surprising overlap of the unlawful controlled substance user and convicted felon disability categories are discussed later in this section.

How many persons are undergoing drug treatment? The NIDA's rule of thumb is that one out of every ten persons addicted to drugs is currently undergoing treatment. If, as NIDA estimates, there are 4 million persons addicted to drugs, then 400,000 persons would currently be undergoing treatment. It is not possible to confirm or refute this figure based on data obtained from State substance abuse agencies, because, as discussed below, State-based databases are typically admissions-driven rather than client-driven; thus, the State-based counts would be higher, given the fact that more than one admission could be generated by a single client.

Could the databases at the local drug treatment facilities be utilized to identify persons ineligible to purchase firearms? Aside from the existence of confidentiality and privacy laws, which are discussed later in Section 3.3, the sheer number of local treatment facilities makes it impractical for firearm dealers or law enforcement officials to directly access these local databases. (A recent directory compiled by the NIDA and the National Institute on Alcohol and Alcoholism lists 8,689 treatment facilities [NIDA, 1989(c)].) A more practical approach would be to have the local treatment facilities forward lists -- preferably in computer-readable form -- of their clients to a centralized drug treatment database at the State or Federal level, much like how local police departments forward crime and arrest data to the FBI.

### **3 Unlawful Users of Controlled Substances**

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State or federally funded treatment facilities do, in fact, forward to the State-level agency a "client admission profile" of each admittee. Typically, data elements on the profile include age, sex, race, date of admission, referral source, and a description of the client's drug problem. Local treatment centers in the surveyed states do not, however, forward the client's name to the State-level agency. Instead, the client admission profile has a unique reference number recorded on it. Even if the same client enters the same treatment facility several times, the client is assigned a different reference number each time. Once the State agency receives a client admission profile, the data are entered in the State agency's database, and are used for research and administrative purposes. (Nine of the ten states surveyed had fully automated databases; the other State is in the process of obtaining a computer system.) Given that the government-funded local facilities do not provide client names to the State-level treatment agencies, it seems highly unlikely that they would provide such information to a Federal-level repository. Of course, private treatment facilities are under no obligation to provide any information to any government agency.

The State directors to whom we spoke unanimously cited strict State and Federal confidentiality laws as the reason that client names are not released by local facilities or provided to the State-level agency. The relevant Federal confidentiality law, 42 C.F.R. Part 2, was originally promulgated in 1975. According to the U.S. Department of Health and Human Services, "the patient's records generally may not be disclosed outside the program unless: the patient consents in writing; the disclosure is allowed by a court order; or the disclosure is made for a medical emergency or for purposes of research, audit, or program evaluation" [Pascal, 1988]. This regulation is consistent with the Federal government's goal of encouraging persons with drug problems to enter treatment. Directors of State substance abuse agencies also informed us about strict State confidentiality laws. In New York State, for example, Section 3371 of the Public Health Law states that no person shall disclose the identity to a person outside the State agency of a patient who has ever been in a State treatment facility, except when a court order requires it. One director stated that the agency risked losing its Federal funding if the Federal confidentiality law was violated. The directors also strongly believe that the confidentiality laws are necessary, because without the laws they that people would be less likely to seek treatment. Finally, aside from the characteristics of their databases, several State directors believe that persons undergoing drug treatment should not be considered "current users". In sum, existing confidentiality laws are obstacles to

### **3 Unlawful Users of Controlled Substances**

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using the State substance abuse databases for identifying persons ineligible to purchase firearms.

#### **Hospitals**

Another possible source of data on current controlled substance abusers are data collected by the Drug Abuse Warning Network (DAWN), an NIDA-funded large scale drug abuse data collection system operating since the early 1970s. The goals of this program are to monitor drug abuse patterns and trends and to provide data to drug abuse planners and administrators. In particular, DAWN's stated objectives are to (1) identify substances associated with drug abuse episodes that are reported by participating facilities, (2) monitor drug abuse patterns and trends and detect new abuse entities and new combinations, (3) assess health hazards associated with drug abuse, and (4) provide data for national, state, and local drug abuse policy and program planning [NIDA, 1988(a)].

DAWN data are collected from 756 hospital emergency rooms and 75 medical examiners in 27 major metropolitan areas in the U.S. Hospital staff complete and forward to DAWN officials a data sheet describing each "drug abuse episode", which is a reported death or emergency room admission that involves drug abuse. In 1987, 146,778 drug-related emergency room admissions were reported to DAWN. That number increased to 160,170 in 1988. However, as is the case with State-level drug treatment databases, the DAWN database tracks admissions, and not patients. In fact, no patient names are supplied to DAWN personnel. While the DAWN database provides useful information to planners and administrators, it is obviously not useful for verifying firearm eligibility. Moreover, it is unlikely that hospitals would participate in a program in which they would be required to share names. Even if names were provided, it is clear that the data would be highly inaccurate for identifying persons in this disability category, because a person admitted to a hospital emergency room for drug-related reasons need not be a current and unlawful user of controlled substances.

#### **Criminal History Databases**

A third potential data source of current unlawful users of controlled substances are the State and Federal criminal history repositories. These databases will be utilized in the proposed felon identification system and are described in detail in DOJ [1989(b)].

But how useful are the criminal justice databases for the purposes of identifying current unlawful users of controlled

### **3 Unlawful Users of Controlled Substances**

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substances? On the one hand, they are more complete than the State-level drug treatment and DAWN databases, since the criminal justice databases contain the person's name, as well as a number of other key identifiers. On the other hand, whether or not a person is listed in a criminal justice database as having a recent drug conviction is not a valid determinant of whether the person is in the controlled substance disability category. For instance, a drug possession or drug sale conviction does not necessarily imply that the person is -- or, for that matter, has ever been -- an unlawful user of drugs. Moreover, even if the person was using drugs at the time of the arrest he/she may or may not still be a current user.

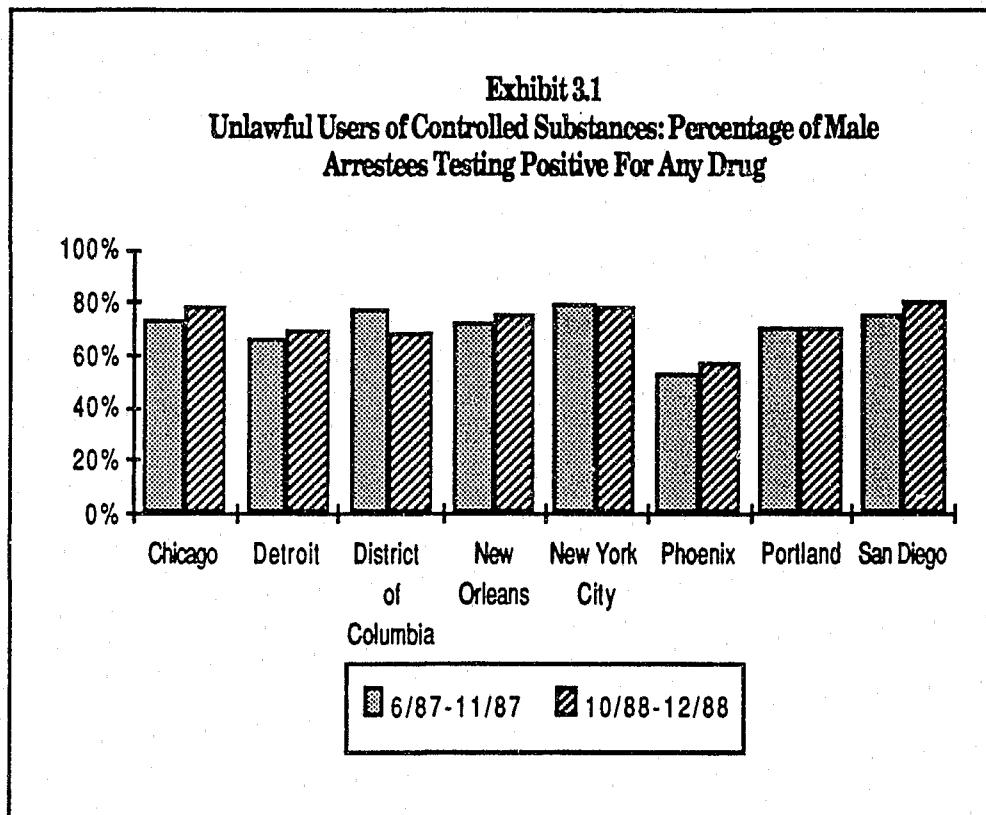
The Federal and State criminal history databases do, however, contain many persons who are undoubtedly current drug users that are not included in any of the drug-related databases considered in this section. Moreover, many of these persons are convicted felons who are already ineligible to purchase firearms. BJS studies, for example, have shown that drug use is far more prevalent among the offender population than the non-offender population [BJS, 1983]. More recently, an on-going National Institute of Justice (NIJ) study is attempting to quantify the relationship between arrestees and current drug users. NIJ's Drug Use Forecasting (DUF) program samples arrestees in a number of major U.S. metropolitan areas four times each year. Arrestees voluntarily submit to urine tests, which are then analyzed for evidence of recent drug use. As of June 1989, 22 cities were participating in the program. Regarding identifying persons ineligible to purchase firearms, the value of the DUF program is not that it could provide a database of current drug users (indeed, it cannot since the drug tests are confidential); what the DUF program results have shown is the prevalence of drug use among the arrestee population [NIJ, 1988; NIJ, 1989]. As illustrated in Exhibit 3.1, the percentage of male arrestees who tested positive for drug use ranges from roughly 55 to 80 percent. Thus, the DUF data support the hypothesis that there is significant overlap between the population of arrestees -- many of whom would later be convicted felons and thus be identified by the felon identification system -- and the population of current drug users. The issue of overlap between the various disability categories is discussed later in Section 8.1.

#### **Drug Testing Databases**

While the drug test results of the DUF program have been used exclusively for research purposes, there are other drug testing programs that utilize test results to influence decisions regarding how an arrestee is processed through the

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criminal justice system. The databases containing these test results constitute a possible source of identifying persons in the unlawful controlled substance user disability category.



The most well known of such programs is run by the Pretrial Services Agency (PSA) in Washington, D.C. Arrestees are tested for drugs prior to their first court appearance. PSA personnel analyze urine specimens, using the Enzyme Multiplied Immunoassay Technique, at the court facilities; enter the results in their computer; and provide the test results to the court. The court then uses the result to help determine whether to grant release to the arrestee on his/her own recognizance. If the test result is positive, the arrestee could be ordered to submit to periodic drug testing prior to the next court appearance. Based on the success of this program, similar programs have also been implemented in Tucson (Arizona), Phoenix (Arizona), Portland (Oregon), Prince George's County (Maryland), and Milwaukee (Wisconsin). It should be noted that a key feature of these programs is that arrestees are not required to provide a urine sample. In practice, according to PSA personnel, very few arrestees refuse

### **3 Unlawful Users of Controlled Substances**

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to provide samples, in part because arrestees are told that they are unlikely to be granted release on own recognizance if they do not provide a sample. Also, arrestees are assured that the test results could only be used for determining the conditions of their release. At each program site, in fact, there is an explicit agreement between the courts, the prosecutor, and the testing agency to use the test results only for the intended purpose. In fact, this strict limitation was cited as a key reason for the program's success.

Drug testing has also been utilized at the post-conviction phase, as probation officers generally have the right to test probationers for drugs. While there have been experiments with large scale testing of probationers for drugs [Wish et al., 1986], it is perhaps not surprising that there are no such large scale testing programs operating today, given the large ratio of probationers to probation officers in most jurisdictions. With regard to firearm purchases, it should be noted that many of these probationers would already be ineligible to purchase firearms because they are convicted felons.

#### **3.2 Current Population Estimates**

Based on the data survey results in the previous section, it should be clear that very little, if any, data are available that could be used to identify current unlawful users of controlled substances. Assuming that the legal obstacles were overcome, the databases would be invalid and would only contain a small fraction of persons who belong to the disability category. The population estimates derived below highlight the fact that there are databases that could be utilized for this purpose.

##### **Target Population**

Estimates of the number of "current users" and "persons addicted" to controlled substances are based on surveys. The most recent one is the Department of Health and Human Services' 1988 Household Survey, the ninth in a series that began in 1971; they are conducted by NIDA. The most recent survey results, which were announced at a news conference on July 31, 1989, were based on personal interviews with 8,814 persons randomly selected from the U.S. household population [NIDA, 1989(a)]. (It should be noted that one limitation of the survey is that it is restricted to households, thus ignoring perhaps more drug-prone groups such as incarcerated and homeless persons.) Based on the survey responses, NIDA estimates that 28 million persons used an illicit drug in the past year. Those using an illicit drug in the

### **3 Unlawful Users of Controlled Substances**

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past 30 days -- persons that the NIDA defines as current drug users -- numbered 14.5 million, which represents 5.9 percent of the total U.S. population, based on a total U.S. population of 245 million.

In sum, the target population size is currently estimated at 14.5 million. Of course, not all of the 14.5 million current drug users should be considered "drug addicts". The Household Survey results suggested that there are about 4 million persons addicted to illicit drugs. (In this survey, an addict is defined as someone who has used drugs at least 200 times in the past year.) The 4 million figure constitutes roughly 28 percent of the current user population and 1.6 percent of the total U.S. population; it is somewhat lower than the data obtained from State substance abuse agencies. The Massachusetts Division of Substance Abuse Services [1989], for example, estimates that there are 116,000 (i.e., 2.0 percent of 5.7 million Massachusetts residents) drug addicts in the State. The South Carolina Commission on Alcohol and Drug Abuse [1988] estimates that there are 90,000 drug addicts in the State, representing 2.7 percent of their state's population.

#### Known Population

Of the four types of drug-related databases described in Section 3.1, only the criminal history and drug treatment databases currently contribute to the known population of controlled substance abusers. Regarding the criminal history databases, because only current users of controlled substances are considered ineligible to purchase firearms, only persons recently -- say, within the previous month -- arrested for drug-related offenses are of potential interest. In 1988, according to the FBI's Uniform Crime Reports, 811,400 persons were arrested on drug-related charges; this is equivalent to about 70,800 arrests per month. Inasmuch as not all persons arrested for drug-related offenses are themselves drug users, the 70,800 figure reflects an upper estimate of the "current" users among those with criminal histories. The drug treatment databases contain an estimated 400,000 persons, as noted in Section 3.1. Assuming that all 400,000 are "current" abusers and by adding 70,800, we have a total size of 470,800 for our known population; this is equivalent to only 3.3 percent of the category's target population.

#### Automated Population

Although the percentage of drug-related arrest records that are automated is not known, a reasonable estimate of this percentage can be obtained from the results of a telephone survey conducted in April 1989 for the felon system task force.

### **3 Unlawful Users of Controlled Substances**

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Orsagh [1989(b)] determined the fraction of criminal history records that are automated in 20 different states. Using each state's 1980 census population as "weights", an overall average fraction of criminal history records that are automated in these 20 states can be computed. From this computation, we can assume that roughly 67 percent of the criminal history records in the known population of unlawful users of controlled substances (i.e., 67 percent of 70,800, or 47,436) are automated. Because drug treatment records are dispersed over thousands of agencies, no estimate is available on the fraction of these records that are automated. Nevertheless, assuming optimistically that 50 percent of the drug treatment databases are also automated, then we have an estimated 247,436 records in our automated population, equivalent to 1.71 percent of the category's target population.

#### **Remotely Accessible Population**

As indicated in Section 1.2, the remotely-accessible population of a disability category depends on how the particular data source is accessed. If a point-of-sale option were implemented, then at best the automated criminal history and drug treatment records would be in the remotely-accessible population; that is, the remotely-accessible population would be equal to the automated population. If a pre-sale or post-sale option were implemented, then both the manual and the automated records would be in the remotely-accessible population; that is, the remotely-accessible population would be equal to the known population. In either case, however, the coverage ratio (i.e., the population with appropriately accessible data divided by the target population) is no greater than 3.3 percent.

### **3.3 Possible Eligibility Verification Methods**

Summarizing briefly the results of the data survey discussed in Section 3.1, it is noted that (1) there is no national "current drug user" database, (2) there are thousands of local drug treatment databases, and (3) there are hundreds of local, State, and Federal criminal history databases that contain drug-related arrest records. Given these results, we have identified two eligibility verification methods that could utilize these databases. The first would utilize the felon identification system to identify persons recently arrested for drug-related charges, while the second method would have drug treatment centers share relevant records with an integrated firearm eligibility system. (Recognizing that a disadvantage of these two methods is that the data may not be timely enough to

### **3 Unlawful Users of Controlled Substances**

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identify "current" users, administering a drug test to the applicant prior to the firearm sale is another possible verification method; however, we have not considered this method because of its legal, technical, and logistical problems.) Both of these possible verification methods are discussed below in more detail, in terms of the four groups of assessment measures listed in Exhibit 1.1. A summary of the key advantages and disadvantages of each approach is shown in Exhibit 3.2.

#### **Cost**

Perhaps the key advantage of utilizing the felon databases to identify persons in the unlawful users of controlled substance category is that there are no additional start-up, operating, or legal costs, assuming the Attorney General-recommended felon system is operational. The marginal start-up and operating costs of having drug treatment centers share records with an integrated firearm eligibility system -- again assuming such a system exists -- should be low, depending, of course, on how such a verification method would be implemented. If, for example, local treatment centers were to forward relevant records to a State or Federal drug treatment database, each local repository would have to be notified of the reporting procedures, including when a person's record should be added to the database, and when a record should be removed from the database. Probably one person at each local repository would be responsible for these activities.

There are legal impediments, however, to requiring drug treatment centers to share their records. State and local drug treatment programs that receive Federal funds must comply with Federal laws regarding confidentiality of records. As indicated in Section 3.1, Federal law now prohibits drug treatment programs from disclosing patient records, even to another agency, unless: the patient consents; a court orders disclosure; disclosure is necessary for a medical emergency; disclosure is necessary for reporting child abuse or neglect under State law; disclosure is necessary for reporting or assisting in the investigation of a crime, or threat to commit a crime, on program premises against program personnel; or disclosure is related to research, audit, or program evaluation. These Federal regulations are in 42 C.F.R. Part 2, enacted under the authority of sections 544 and 548 of the Public Health Service Act, 42 U.S.C. 290ee-3 and 42 U.S.C. 290ff-3, as redesignated by Section 611 of the "Stewart B. McKinney Homeless Assistance Act," Public Law 100-77. In addition to the Federal law currently preventing access to the names of

**Exhibit 3.2****Unlawful Users of Controlled Substances: Possible Eligibility Verification Methods**

<b><u>Verification Method</u></b>	<b><u>Compatible With:</u></b>	<b><u>Advantages</u></b>	<b><u>Disadvantages</u></b>
Utilize felon system databases to identify persons recently arrested for drug-related charges	Pre-Sale Point-of-Sale Post-Sale	<ul style="list-style-type: none"> <li>• Cost: no additional costs, assuming existence of felon system</li> <li>• Process: timely verification assuming existence of point-of-sale felon system; high identification accuracy, assuming existence of biometric identification system</li> </ul>	<ul style="list-style-type: none"> <li>• Data: poor validity, since person arrested on drug charges need not be a "current" user</li> <li>• Coverage: coverage ratio ≈ 0.3%;</li> </ul>
Have drug treatment centers share relevant records with an integrated firearm eligibility system	Pre-Sale Point-of-Sale Post-Sale	<ul style="list-style-type: none"> <li>• Cost: low marginal start-up and operating costs, assuming existence of eligibility system</li> <li>• Process: timely verification if point-of-sale option is implemented</li> </ul>	<ul style="list-style-type: none"> <li>• Cost: legal impediments</li> <li>• Data: poor validity, since person's status relative to category can change</li> <li>• Process: not timely implementation, since must obtain cooperation of several thousand agencies; poor identification accuracy</li> <li>• Coverage: coverage ratio ≈ 3.3%, assuming full cooperation</li> </ul>

### **3 Unlawful Users of Controlled Substances**

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persons in drug treatment programs, many states have their own laws requiring confidentiality of drug treatment records, including New York (Section 3371 of the Public Health Law) and Massachusetts (M.G.L. c. 111E, § 18).

#### **Data**

A key disadvantage of utilizing the felon databases concerns data validity. A recent drug-related arrest is not a valid determinant of whether a person is in this disability category. A person arrested for possessing or selling drugs is not necessarily a drug user. In addition, even if a person were a current drug user at the time of the arrest, he/she may no longer be a current drug user. As noted earlier, because a person's status relative to this category can abruptly change, any database-oriented verification approach suffers from poor data validity. In addition, this observation also applies to having drug treatment centers share relevant records with an integrated firearm eligibility system. By the time the information regarding a current drug user is forwarded to and entered in such a system, the person may no longer be a current user.

Another critical problem regarding the drug treatment databases is their accuracy. Unlike law enforcement agencies, which expend considerable time and effort on accurately identifying arrestees (i.e., through fingerprinting), drug treatment centers are not overly concerned with the accuracy of identifying information provided by new admittees; they are more concerned with providing services to someone in need than in correctly identifying the person. Thus, while a drug treatment center's database may record each admittee's name and date of birth, such data should be highly suspect.

#### **Process**

Both verification methods offer timely verification, assuming the point-of-sale option is implemented. Sharing records with an integrated firearm eligibility system could not, however, be implemented in a timely manner. Undoubtedly, notifying, training, and obtaining the cooperation of thousands of local treatment facilities would take years.

The third process measure, identification accuracy, focuses on the degree to which the firearm purchasers can be correctly identified, assuming that the data source is correct. Assuming a biometric identification technology is employed, utilizing the felon database to identify persons in this category would have high identification accuracy. Because there are no fingerprint or other biometric identifiers associated with the

### **3 Unlawful Users of Controlled Substances**

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drug treatment databases, the second verification method, based on these databases, would provide a low level of identification accuracy. Indeed, if a firearm applicant were matched -- by name, date of birth, and sex, for example -- with a record in these databases and he/she disputed the accuracy of the record, it would be very difficult to prove the validity of the match beyond a reasonable doubt.

#### **Coverage**

While the unlawful users of controlled substance category, as noted in Section 8.1, has the largest target population of any of the disability categories, the fraction of the target population with remotely-accessible criminal history data (i.e., the coverage ratio) is the smallest of any of the disability categories. More specifically, using the population estimates in Section 3.2, if only the felon system databases are utilized, the coverage is equal to  $70,800/(14.5 \text{ million})$  or 0.5 percent. Having drug treatment centers share relevant records with an integrated firearm eligibility system, as also noted in Section 3.1, results in a coverage ratio of only 3.3 percent, assuming that all of the drug treatment centers cooperate fully.

## **4 Mental Defective**

Section 922(g)(4) of title 18, United States Code, states that it shall be unlawful for any person "who has been adjudicated as a mental defective or who has been committed to a mental institution" to purchase a firearm. The purpose of this section is to describe the data sources that could be used to identify persons in this disability category, to estimate the sizes of the four data-related populations (i.e., target population, known population, automated population, and remotely-accessible population), and to assess possible verification methods for this disability category.

### **4.1 Current Data Sources**

Like the unlawful users of controlled substances category, the scope of the mental defective data survey has been broad. There are literally hundreds of courts, authorities, commissions, and boards with mental health jurisdiction that could either declare a person mentally defective or commit a person to a mental institution. In addition, there are a variety of mental health facilities in the U.S., including State-run mental institutions and private psychiatric facilities. Many veterans hospitals and general hospitals also offer psychiatric services. Because of tight time constraints, we have had to limit our data survey. A detailed look at the various mental health organizations and related agencies has led us to focus on two types of data sources. First, as Brakel et al. [1985] point out, the vast majority of commitments (of the variety that render a person ineligible to purchase a firearm) to mental institutions are made by courts, as opposed to authorities, commissions, and boards with mental health jurisdiction. Second, we have noted that those states which currently verify a potential firearm purchaser's mental health status obtain their information from the State mental health department. For these reasons, our data survey has focused on the courts and the State mental health departments.

#### **Courts**

Could court records be part of a national firearm eligibility verification system? One problem is that although the current trend in court organization is toward "unified" court systems, courts have traditionally been decentralized and

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autonomous. In fact, courts with jurisdiction over mental health-related cases in eight states (i.e., Alabama, Connecticut, Georgia, Michigan, North Dakota, South Carolina, Tennessee, and Texas) are still locally funded and operated. This tradition has obviously impacted the way the court maintain their records, particularly the development of State-wide record systems. Not surprisingly, efforts to automate court records vary from State to State.

Another obstacle to using court records for verifying whether or not an applicant is eligible to purchase a firearm is the existence of confidentiality laws. In general, court records are open to the public, except for those records specified by statutes as confidential. Again, each State has different statutes on which records are confidential, but, in general, juvenile records, pre-sentence investigation reports, incompetency proceedings, and mental commitment proceedings are sealed. In fact, the National Center for State Courts' [1986] proposed guidelines for involuntary commitment suggest that "[c]ourt records of involuntary civil commitment proceedings should be closed. They should be opened only by permission of the respondent, his or her counsel, by court order to the attorney for the State, or by court order for purposes of research and program evaluation authorized by the court".

In our survey of State verification practices, we have found few instances when the courts were utilized in checking the mental health status of a prospective firearm purchaser. A small number of licensing authorities indicated they occasionally telephone the local court clerk's office, if they have reason to believe a person may be ineligible to purchase a firearm because of a mental defect. On a larger scale, two states deserve mention. In Oregon, the State Attorney General's office would like to use the State-wide court information system to facilitate the mental health checks, once their new gun law takes effect on January 1, 1990 (see Section 2.3). According to officials in that office, however, it was not clear that this could be accomplished, primarily because of the state's confidentiality law on mental health-related court records. In California, the State laws require that courts immediately notify the Department of Justice, the agency that issues handgun permits, whenever a person has been (1) adjudicated by the court to be a danger to others as a result of a mental disorder or mental illness; (2) adjudicated to be a mentally disordered sex offender; (3) found not guilty by reason of insanity; (4) found to be mentally incompetent to stand trial; or (5) placed under conservatorship. These statutes also require the courts to notify the Department of Justice when the persons are no longer mental defectives. Further, the statutes

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state that such records "shall be kept confidential, separate, and apart from all other records maintained by the [Department of Justice], and shall be used only to determine eligibility to purchase or possess a firearm." While it would be extremely difficult to implement nationwide, having courts (as well as other authorities, commissions, and boards with mental health jurisdiction) share commitment orders with an integrated firearm eligibility system is clearly one possible verification method for this disability category. Moreover, if full cooperation were obtained from all the participating agencies over a period of time, the integrated system could contain the vast majority of persons in this disability category.

Aside from California, however, states verifying mental health information utilize the State mental health departments, even though they recognize that these databases do not include persons committed to non-State hospitals. In some cases, like in Massachusetts, there is no choice because the relevant court records are sealed. But, in general, the typical attitude is "let's do the best we can with the resources we have", meaning that only the single largest repository (i.e., the State mental health department) is checked. For this reason, we have focused primarily on the State-level mental health agencies as a possible data source.

#### **State Mental Health Departments**

Hospitals run by the State mental health department house a variety of types of patients. For the purposes of identifying persons ineligible to purchase firearms, it is unfortunate that, as noted in Section 4.2, the vast majority of persons in these hospitals are not covered by the Gun Control Act. Based on the discussion in Section 2.1 regarding the interpretation of this disability category, those not covered include persons who voluntarily admit themselves to the hospitals, as well as persons who are admitted for emergency detention or for observation and evaluation purposes. From an administrative perspective, the voluntary patients can be distinguished from the involuntary patients: each State has statutory procedures for voluntary and involuntary admissions and the State-level mental health department databases which we have surveyed usually record whether a patient is voluntary or involuntary.

Persons in State mental health hospitals who are covered by the Gun Control Act are those committed through civil or criminal commitment proceedings. During these proceedings, the court orders an evaluation of the defendant. Each State has its own procedures for carrying out these evaluations. In many states, the defendant is committed to a

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mental institution for a brief period of time so that the evaluation can be conducted at that location. In other states, the evaluation is performed on an outpatient basis. If the evaluators determine that the defendant is incompetent and the court concurs with this determination, the court typically commits the defendant to a mental institution for a designated period of time. Given the widespread publicity of criminal commitment cases, it is perhaps surprising that criminal commitments are such a small fraction of all admissions to mental institutions. Several studies (e.g., Brakel et al., [1985]) have shown that persons found incompetent to stand trial constitute the vast majority of these cases. Less common than persons found incompetent to stand trial are persons found not guilty by reason of insanity. Again, each State has its own particular statutes governing the disposition of these cases. In general, the states either treat the defendant as if he/she were found not guilty and release the defendant, or evaluate the defendant for the purposes of determining whether he/she is a candidate for civil commitment, or automatically commit the defendant to an institution for the criminally insane.

How useful are the State mental health department databases for identifying persons in this disability category? While the databases and the computer systems vary from State to State, some general observations can be made. Not surprisingly, private psychiatric hospitals and other non-State run hospitals do not furnish the names of persons admitted, much less committed, to their hospitals to the State-level mental health department. Indeed, our survey of State mental health departments show that the only persons in their databases are persons admitted to the State-run mental hospitals. To expand these State databases to include non-State hospital admissions would require enabling legislation and, in the case of Pennsylvania, for example, "a very large increase in State funds appropriated for the design, development, and implementation of hardware/software to collect the necessary data from about 100 general hospitals and 20 private psychiatric hospitals".

A second key observation is that in ten of the thirty states we surveyed, the State mental health department database does not contain patient names. Just as in the unlawful users of controlled substances category (in which names of persons undergoing drug treatment are only kept at the local treatment center and not at the State-level substance abuse agency, as noted in Section 3.1), in Colorado, Connecticut, Kansas, Nebraska, Massachusetts, Louisiana, Wisconsin, Maine, New Jersey, and South Carolina the patient names are kept only at the hospital where the patient is housed. A unique patient reference number, along with other patient characteristics, is

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forwarded to the mental health department. One reason for not having the names at the State-level mental health department is the particular state's mental health confidentiality statute. Another reason, which was cited by our contacts in the above mentioned ten states, is that the names are not needed at the State level. Moreover, as one director said, "If we don't have the names, then we can't give them out", thus reflecting an attitude taken by some states that this type of information should not be provided for any reason.

However, it should be noted that even in those states that maintain the patient names, as well as other key identifiers, in the State mental health database, the data should be viewed as highly suspect. Mental health agencies, as well as nearly all of the other agencies discussed in this report, are not oriented towards ensuring or verifying the accuracy of patient identifiers. In this regard, these agencies are fundamentally different from law enforcement agencies, which commit substantial resources toward verifying an arrestee's true identity by matching his/her fingerprints to those taken from previous arrestees. Needless to say, there are no fingerprints associated with records at the State mental health databases, with the exception of patients who are criminal commitments.

Another critical observation regarding the State mental health databases (as well as mental health records maintained by courts) is the confidentiality of these records. In fact, it is an important maxim of mental health treatment that confidentiality is assured. Courts have held that therapists owe a common law duty to patients not to easily make records of treatment available (Commonwealth v. Kobrin, 395 Mass. 284, 479 N.E. 2d 674 [1985]). Breaking of the confidential relationship can subject a therapist to a civil lawsuit for breach of privacy and perhaps to disciplinary action by a State regulatory board. Therefore, in the absence of a statutory directive to furnish information, a therapist generally is not free to provide mental health information to other authorities.

In order to obtain accurate information, the licensing authority must have legislative authorization both to seek mental health histories from the prospective purchaser and to check with public and private mental health authorities. The Indiana State Police, for example, cannot obtain information from the State mental health department for the purposes of determining firearm eligibility; instead, they rely on unsolicited information from the purchaser's family and friends. Without such a statutory requirement, State mental health officials typically stated, "we would never give out this information". In addition, they cited ethical reasons, similar to those given by State substance abuse directors for not

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divulging information about persons undergoing drug treatment.

Given that every State has mental health record confidentiality laws [Brakel et al, 1985], those states that currently allow release of mental health information for the purposes of determining firearm eligibility have explicit exceptions to their State confidentiality laws. Even in these few states, however, the mental health department databases are not, strictly speaking, remotely-accessible. In these states, the licensing authority must request, typically in writing, the information from the mental health department, whose personnel then perform the background check. In no State does the licensing authority have on-line access to the patient database. One reason for this is that very few persons in the patient databases are deemed ineligible to purchase firearms.

### **4.2 Current Population Estimates**

Like the unlawful users of controlled substances category, estimating the data-related populations of the mental defective category presents special problems. First, the statute covers any person who "has ever" been adjudicated as a mental defective or committed to a mental institution. This implies that we must account for persons who, for example, were committed to a mental institution but have since been discharged. Another problem, noted in Section 4.1, is that there are a wide variety of mental health facilities in the U.S.

#### **Target Population**

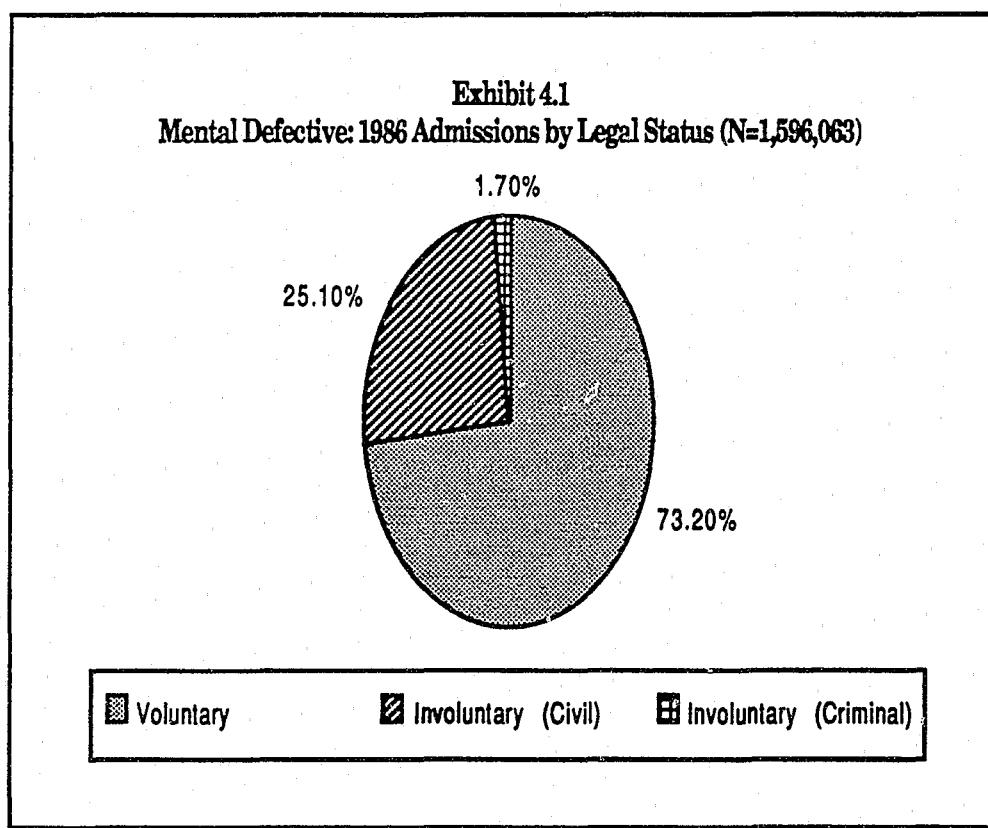
Our approach in estimating the target population is to first estimate the fraction of persons currently in mental institutions that are in the category and then to extrapolate backwards to capture persons committed at an earlier point in time but who are no longer in mental institutions. This is obviously based on a number of assumptions, which are described later in this section. A key assumption is that all persons belonging to this disability category were committed on an inpatient basis to hospitals and not to outpatient facilities or simply to the custody of an individual. Actually, according to many State mental health administrators, this assumption is quite valid.

To estimate the number of persons currently in mental institutions who are ineligible to purchase firearms, we utilized the most recent survey data collected by the National Institute of Mental Health (NIMH). The Institute periodically

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surveys admissions to State and county hospitals, private psychiatric hospitals, non-Federal general hospitals, veterans hospitals, and multi-service mental health centers. Their unpublished 1986 figures showed 1,596,063 inpatient admissions to these various facilities [NIMH, 1989]. However, the NIMH data are admission-based, rather than patient-based, as is the case with the drug treatment databases described in Section 3.1. Obviously, any estimate of the target population must convert the admission-based numbers to patient-based numbers by assuming some "recidivism" rate. Moreover, the Gun Control Act does not cover all persons associated with the 1,596,063 admissions, as noted earlier in Section 4.1. Indeed, persons not covered include those who voluntarily admitted themselves, which, as shown in Exhibit 4.1, constitute the vast majority (i.e., 73.2 percent) of the 1986 admissions.



The second largest group of admissions in the 1986 data set are what the NIMH classifies as involuntary civil commitments, which, as shown in Exhibit 4.1, constitute 25.1 percent (i.e., 401,315) of the 1986 admissions. However, not all

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of these involuntary civil admissions resulted from a commitment by a court, authority, commission, or board. Many resulted from emergency detentions and evaluations or observation orders, which, as noted earlier, are not covered by the Gun Control Act. Unfortunately, the NIMH involuntary civil admissions are not broken down by "type of admission" (e.g., court commitment, emergency detention, evaluation or observation order). The data are, however, broken down by "referral source" (i.e., which organization referred the person to the mental institution). Possible referral sources in the NIMH data set are family, police/court, outpatient program, private psychiatrist/physician, State/county hospital, other inpatient facility, and other ambulatory facility. For the purposes of estimating the target population of this disability category, we assume that only the "police/court" referrals are in this disability category. This group constitutes 30.5 percent of the 401,315 involuntary civil commitments in the NIMH data set, thus adding another 122,416 to the target population. Actually, the 30.5 percent figure is consistent with data obtained from some State mental health departments, whose hospitals typically house a large fraction of patients whose mental condition is being evaluated.

The final group of admissions covered by the Gun Control Act are the criminal commitments, which account for only 1.7 percent (i.e., 27,042) of the 1,596,063 admissions (see Exhibit 4.1). Thus, summarizing this analysis of the 1986 NIMH data, only persons associated with the 122,416 court-ordered civil commitments and the 27,042 criminal commitments are ineligible to purchase firearms. Together, they constitute 9.0 percent of all admissions in the 1986 NIMH data set.

To derive the entire mental defective target population, we need to estimate how many persons admitted to mental institutions in previous years are ineligible to purchase firearms. To answer this question, we have developed a simple model that considers (1) the number of annual admissions to mental institutions; (2) the fraction of admissions that are covered by the Gun Control Act; and (3) the recidivism rate (i.e., the number of admittees in a given year who had been admitted in a previous year). The number of admissions at State and county hospitals has increased from less than 200,000 in 1956 to over 350,000 in 1980 [Brakel et al., 1985]. (Interestingly, the population at these hospitals has decreased during the same time period, indicating a trend away from long-term institutionalization.) Coincidentally, the fraction of all institutionalized patients housed at State and county hospitals has dropped considerably. Thirty years ago, State and county hospitals housed the vast majority of

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institutionalized patients; in 1986, only 20.4 percent were in State and county hospitals [NIMH, 1989]. (This low percentage impacts the known population of this disability category, as discussed below.) Another key assumption of our model is that the percentage of admissions covered by the Gun Control Act has steadily decreased to the 9.0 percent figure associated with the 1986 statistics. This assumption is based on the fact that the percentage of involuntary admissions to State and county hospitals has decreased from 90 percent in 1949 to 50 percent in 1972 and then subsequently increased to 67 percent in 1986 [Brakel et al., 1985]. The percentage of involuntary admissions at non-State and county hospitals has traditionally always been roughly 85 percent. Finally, we have assumed, based on discussions with State mental health personnel, a recidivism rate of 50 percent and have run the model for admissions over the past 25 years, which, according to State mental health personnel, should capture the names of the vast majority of living persons who have ever been institutionalized. Based on the above stated assumptions, we estimate that the target population for the mental defective disability category is currently at 2.7 million persons.

##### **Known Population**

Unlike the unlawful users of controlled substances and the illegal alien disability categories, all persons in the mental defective disability category are known, in the sense that they were all processed by a court (or some other mental health-related authority, commission, or board). Hence, as noted in Section 4.1, if all these institutions shared commitment orders with an integrated firearm eligibility system, such a verification method would have the potential of having an extremely high coverage ratio. Thus, in principle the known population is also 2.7 million persons.

A verification method utilizing only the State mental health databases, however, would have less coverage. As noted earlier, only 20.4 percent of the admissions in the 1986 NIMH survey were to State and county hospitals. Fortunately, a disproportionate number of court-ordered civil and criminal commitments were to State and county hospitals. In fact, in 1986 45.6 percent of 122,416 civil court commitments and 84.3 percent of 21,825 criminal commitments that are covered by the Gun Control Act were to State or county hospitals, respectively [NIMH, 1989]. Together, 51.4 percent of the 1986 target population are at these hospitals. Interestingly, when asked what determines to which type of hospital an involuntary civil commitment is sent, State mental health officials frequently indicate that it is the person's financial resources, so that

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persons with little or no financial resources are sent to State hospitals.

If 51.4 percent of the 1986 target population is in the known population, what can be assumed about this percentage over the past 25 years? As noted above, the percentage of institutionalized patients housed at State and county hospitals has decreased over the past 25 years, suggesting that in previous years a higher percentage, relative to the 51.4 percent figure in 1986, of all patients covered by the Gun Control Act would be "known" to the State mental health department. Including this assumption into our model, we estimate the known population of the mental defect disability category to be 1.8 million, which is equal to roughly 67 percent of the target population.

#### **Automated Population**

To accurately estimate the automated population of the mental defective disability category, we would need the fraction of all patient records that are automated by each State. In the absence of these figures, we can, however, make a few general observations which may constitute the basis for an estimate of the automated population.

That 10 of the 30 states surveyed did not have names in their patient databases (see Section 4.1) suggests a first order approximation that no more than two thirds of the known population is in the automated population. In fact, the percentage is even lower because many states have had automated databases for less than 25 years. Most states in our survey have automated records as far back as the mid-1970s. California, with automated records since 1968, has the oldest system of automated records among the states we surveyed. Factoring an estimate of the percentage of records automated by year into our model resulted in an estimated size of the automated population of 0.8 million persons for this disability category. This represents roughly 30 percent of the target population and 44 percent of the known population.

#### **Remotely-Accessible Population**

For verification methods utilizing only State mental health databases, the remotely-accessible population is equal to the automated population (i.e., 0.8 million). On the other hand, as noted earlier, the remotely-accessible population of persons in this disability category could approach the category's target population, if all the courts, authorities, commissions, and boards shared commitment orders with an integrated firearm eligibility system.

### **4.3 Possible Eligibility Verification Methods**

The preceding description of mental health databases highlights several facts. First, there is, obviously, no national repository for persons in this disability category. Second, existing data repositories are widely dispersed among hundreds of mental health service providers and courts and other authorities, commissions, and boards with jurisdiction over mental health-related proceedings. Third, access to mental health records are restricted by State confidentiality laws.

Nevertheless, the discussion in Section 4.2 suggests three possible eligibility verification methods. The first method, which is the approach utilized in those states currently verifying an applicant's mental health status, entails the licensing authority (i.e., typically, the local police) making a written request to the State mental health department. In the second method, the State mental health department's database is interfaced with the State law enforcement computer system. Finally, the third method would have courts, authorities, commissions, and boards with mental health jurisdiction share the commitment order with an integrated firearm eligibility system. The advantages and disadvantages of each method are discussed below and summarized in Exhibit 4.2.

#### **Cost**

The start-up and operating costs of the two verification methods involving the State mental health departments should be somewhat more than that of having courts, authorities, commissions, and boards share the commitment order with an integrated firearm eligibility system, assuming such a system exists. The costs of having the local police make written requests for information to appropriate State mental health departments depend largely on how many departments are contacted. Obviously, the department in the firearm purchaser's State of residence would be contacted. On the other hand, contacting mental health departments in all fifty states, while making for a truly "national system", would be prohibitively expensive and most likely unnecessary, particularly if it can be determined in what states the applicant has resided in the past ten years or so. In any case, the departments would clearly need to hire additional employees to process the requests for information. For example, at one time California considered having each applicant's mental

**Exhibit 4.2**  
**Mental Defective: Possible Eligibility Verification Methods**

<b><u>Verification Method</u></b>	<b><u>Compatible With:</u></b>	<b><u>Advantages</u></b>	<b><u>Disadvantages</u></b>
Local police makes written request to appropriate State mental departments	Pre-Sale Post-Sale	<ul style="list-style-type: none"> <li>• Process: timely implementation in a few states (which are currently already using such a verification method)</li> </ul>	<ul style="list-style-type: none"> <li>• Cost: moderate start-up and operating costs; legal impediments in most States</li> <li>• Data: poor completeness, since 1/3 of State databases lack patient names</li> <li>• Process: not timely verification; poor identification accuracy</li> <li>• Coverage: coverage ratio ~ 30%, since missing data from non-State facilities</li> </ul>
Interface State mental health databases with State law enforcement computer system	Pre-Sale Point-of-Sale Post-Sale	<ul style="list-style-type: none"> <li>• Process: timely verification, if point-of-sale option is implemented</li> </ul>	<ul style="list-style-type: none"> <li>• Cost: moderate start-up and operating costs; legal impediments in all States</li> <li>• Data: poor completeness, since 1/3 of State databases lack patient names</li> <li>• Process: not timely implementation; poor identification accuracy</li> <li>• Coverage: coverage ratio~ 30%, since missing data from non-State facilities</li> </ul>
Have courts, authorities, commissions, and boards share commitment order with integrated firearm eligibility system	Pre-Sale Point-of-Sale Post-Sale	<ul style="list-style-type: none"> <li>• Cost: low marginal start-up and operating costs, assuming existence of eligibility system</li> <li>• Data: potentially excellent accuracy, completeness, and validity</li> <li>• Process: timely verification if point-of-sale option is implemented</li> </ul>	<ul style="list-style-type: none"> <li>• Cost: legal impediments in all States</li> <li>• Process: not timely implementation, since must obtain cooperation of several hundred courts, authorities commissions, and boards; poor identification accuracy</li> <li>• Coverage: coverage ratio~ 100%, assuming full cooperation.</li> </ul>

health history verified by the Department of Mental Health during the required waiting period, but quickly abandoned the idea because a study conducted to determine the number of additional staff necessary to process the requests estimated that an additional 20 persons would be needed. The start-up and operating costs of interfacing the State mental health database with the State law enforcement computer system, while obviously entailing lower labor costs than the written request verification method, would require substantially more computer-related costs, particularly to fund the necessary upgrades of each state's mental health and law enforcement systems.

The start-up costs of having courts, authorities, commissions, and boards share commitment orders with an integrated firearm eligibility system, assuming such a system already exists, should be less compared to the other two verification methods discussed in this section. This would depend, of course, on how the commitment orders were processed and made available to the integrated system.

All three verification methods have substantial, legal costs, as each method requires release of confidential materials and records. In order to obtain accurate information, the public authority must have legislative authorization both to seek mental health histories from the applicant and to check with public and private mental health authorities. As was noted in Section 4.1, all states have statutes which protect the confidentiality of mental health records.

#### Data

The quality of the data, including its accuracy, completeness, and validity, varies from State to State. Most notably, one third of the states we surveyed do not have patient names on the State mental health databases. Although this fact does not preclude implementing the first two verification methods (the Massachusetts State mental health database, for example, does not have patient names, yet the State mental health department still processes requests from local licensing authorities, as noted in Section 2.2), the timeliness of the verification checks would obviously be poor. The majority of the other states indicated that they can identify persons by their name, date of birth, sex, and Social Security number, if available. As far as accuracy of this data is concerned, as was pointed out in Section 4.1, mental health departments are not overly concerned with verifying the accuracy of patient identifiers, as a law enforcement agency would be.

The data accuracy, completeness and validity in the third verification method -- of having courts, authorities, commissions, and boards share commitment orders with an integrated firearm eligibility system -- are, of course, superior to that of the first two verification methods, primarily because the data are obtained directly from the organization that commits the persons or finds the person mentally defective. The problems stemming from the State mental health departments database structure (e.g., keeping the patient names at the hospital level) and how State systems handle the data provided by the courts, authorities, commissions, and boards are avoided in such an approach.

**Process**

As noted in Exhibit 4.2, two of the three verification methods (i.e., interfacing the State mental health department database with the State law enforcement computer system and having courts, authorities, commissions, and boards share commitment orders with an integrated firearm eligibility system) are compatible with the point-of-sale option and therefore could provide timely verification. On the other hand, these same two verification methods could not be implemented in a timely manner. For example, to interface the State mental health department database with the State law enforcement computer system, each State would have to invest a substantial amount of resources into creating the electronic link between the two systems. Many of the computer systems we surveyed are the older transaction processing, assembly code-based machines. Adding another type of transaction (i.e., processing a query from the State law enforcement computer system) to such a system entails a major reprogramming and upgrading effort. Getting the states to commit to the necessary manpower for such a project, to monitor the progress, and to ensure a standard performance level would all be extremely difficult. Also, having courts, authorities, commissions, and boards share commitment orders with an integrated firearm eligibility system could also not be implemented in a timely manner, because cooperation of the hundreds of such institutions would be necessary.

As noted above, the written request verification method, while not providing timely verification, could probably be implemented sooner than the other two verification methods. For instance, six states already have implemented such a system. Further, this verification method would not require extensive and time consuming reprogramming of existing computer systems. The most time consuming factor, aside from overcoming the above stated legal impediments, would be

#### **4 Mental Defective**

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hiring and training the personnel needed to process the requests for information.

Finally, it is important to note that all three verification methods have poor identification accuracy. With the possible exception of criminal commitments, which as noted in Section 4.2 constitute a small fraction of persons in this disability category, there are no fingerprints in the court or State mental health databases. There would be no way to positively identify persons in this disability category.

#### **Coverage**

Another disadvantage of the two verification methods that utilize the State mental health databases is that a significant fraction of persons in this disability category are not listed in the State mental health databases, such persons are committed to a private, veterans, or other non-State mental hospital. Indeed, as argued in Section 4.2, the coverage ratio of this verification method (i.e., the remotely-accessible population divided by the target population) is only 30 percent.

As indicated above, an advantage of obtaining data from the courts, authorities, commissions, and boards with mental health jurisdiction, rather than from the State mental health department, is that persons committed to non-State hospitals are covered. Assuming all of the various data sources cooperate and share commitment orders and adjudication findings with an integrated firearm eligibility system for a number of years, this verification method could, in theory, identify all of the persons in this disability category (i.e., the coverage ratio could be 100 percent).

## **5 Illegal Alien**

Section 922(g)(5) of title 18, United States Code, states that it shall be unlawful for any person "who, being an alien, is illegally or unlawfully in the United States" to purchase a firearm. The purpose of this section is to describe the data sources that would be used to identify persons in this disability category, to estimate the sizes of the four data-related populations (i.e., target population, known population, automated population, and remotely-accessible population), and to assess possible verification methods for this disability category.

### **5.1 Current Data Sources**

The Immigration and Naturalization Service (INS) is the Federal agency charged with administering laws related to aliens. Typically, illegal aliens are classified based on how they entered the U.S., either (1) illegally or (2) legally, in which case the alien's legal status must have changed. Records of most non-immigrants legally entering the U.S. by air or sea are entered in INS's Non-Immigrant Information System (NIIS), a computer system operational since the early 1980s. This system contains a database that tracks arrival and departure dates of non-immigrant aliens. When aliens enter the U.S. at any of the ports of entry, INS personnel remove the I-94 Arrival/Departure Record form from the visa and indicate the arrival date and time and the visa's expiration date. (The Departure portion of the Record is stapled to the person's passport. This Record then becomes the non-immigrant's proof of legal admission to the U.S., and, therefore, a potential local data source for verifying an alien's eligibility to purchase a firearm.) The Arrival portion of the Record is forwarded to a central repository in Kentucky, where INS clerks enter information from the form into NIIS. In 1987, the year for which the most data are available, records of 12.3 million non-immigrants were entered in this system [INS, 1989]. Unfortunately, according to INS officials it takes up to six weeks for the information to be entered in NIIS. Given that an alien's legal status can change on short notice, as indicated in Section 2.1, the NIIS system, as it currently exists, would appear to be an invalid source of information for identifying illegal aliens.

## **5 Illegal Alien**

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Other factors contributing to inaccuracies in the NIIS database include the fact that Arrival Records are more likely to be entered in NIIS than Departure Records. Whereas Arrival Records are collected by INS personnel at ports of entry, non-INS personnel, such as airline employees, frequently collect Departure Records. For a person who has an overdue Departure Record, NIIS would indicate that the person has violated his/her visa, when in fact the person has already left the U.S. Even when Departure Records are collected and forwarded to INS, keypunching and other human errors can cause the Arrival Record not to be matched with the appropriate Departure Record.

Records of those aliens for whom INS has initiated deportation proceedings are entered in INS's Deportation Accounting and Control System (DACS), which supports deportation case management. (It should be noted that DACS does not include illegal aliens apprehended along the U.S.-Mexican border, since they are typically taken immediately back to Mexico.) However, not all aliens in DACS are illegal aliens. Indeed, the primary focus of INS investigators is on identifying criminal aliens who have committed deportable offenses (but who may or may not be illegal aliens). The Immigration and Nationality Act authorizes INS to deport aliens if they have been (1) convicted of a crime involving moral turpitude (i.e., murder, manslaughter, or rape) that is committed within five years of entry or (2) convicted of two or more crimes involving moral turpitude at any time after entry. INS can also deport aliens who are drug addicts or aliens convicted of a drug-related crime. (Illegal aliens can, of course, be deported independent of any criminal activity.) To identify criminal aliens, INS relies on assistance from local criminal justice personnel. In fact, local law enforcement officials are required by the Anti-Drug Abuse Act of 1986 to notify INS when they arrest any person on drug-related charges who they suspect of being an illegal alien. A recent General Accounting Office report [1987(c)] describes how INS investigators in five major metropolitan areas work with local law enforcement personnel in identifying criminal aliens. In two cities, Chicago and Denver, law enforcement and INS officials screen foreign born arrestees immediately following their arrest, while in Houston, Los Angeles, and Miami, law enforcement and INS officials screen only foreign born arrestees who have been convicted of a deportable offense.

Formally deporting aliens is a difficult, time consuming, and costly process. Therefore, it is perhaps not surprising that very few aliens are formally deported. In Fiscal Year 1986, for example, only 12,543 cases were referred

## **5 Illegal Alien**

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from INS investigators to INS detention and deportation personnel, while only 5,217 aliens were deported [GAO, 1987(c)]. Moreover, as noted above, deported aliens include both legal and illegal aliens. In any case, the number deported is insignificant to the number of "visa overstayers", as noted in Section 5.2. The investigation and deportation process, nevertheless, shows that there is overlap between the known illegal alien population and the convicted felon population. We can also assume that there is overlap between the unknown illegal alien population and the convicted felon population.

Finally, there are a number of other computer systems that could be used by INS investigators to help determine a person's alien status. The Central Index System (CIS) contains roughly twenty-two million records of aliens who have come into contact with INS, including those admitted to the U.S. with the intention of becoming permanent residents, those for whom deportation proceedings have begun, and those who have been deported. The National Automated Immigration Lookout System (NAILS), which became operational in 1983, is used at certain ports of entry to help determine whether an alien should be allowed entry into the U.S. Similar to the lookout files maintained by the State Department and the Customs Service to support the processing of aliens requesting entry into the U.S., NAILS contains about one million records of persons whose alien registration cards have been lost or stolen, aliens who have been denied visas, deported aliens, and other persons wanted or under investigation by other Federal agencies. NAILS is available on-line at less than 10 percent of the ports of entry. Those ports of entry without on-line capability use the Service Lookout Book (SLOB), which contains a subset of 40,000 of the NAILS records. The Alien Status Verification Index (ASVI) -- which is at the core of the SAVE system described in Section 1.2 -- is a database of more than 25 million alien registration numbers designed to allow Federal, State, and local entitlement agencies to verify the immigration documentation of permanent resident aliens applying for benefits. Finally, there is a separate computer system for listing foreign students in the U.S. who are on student visas.

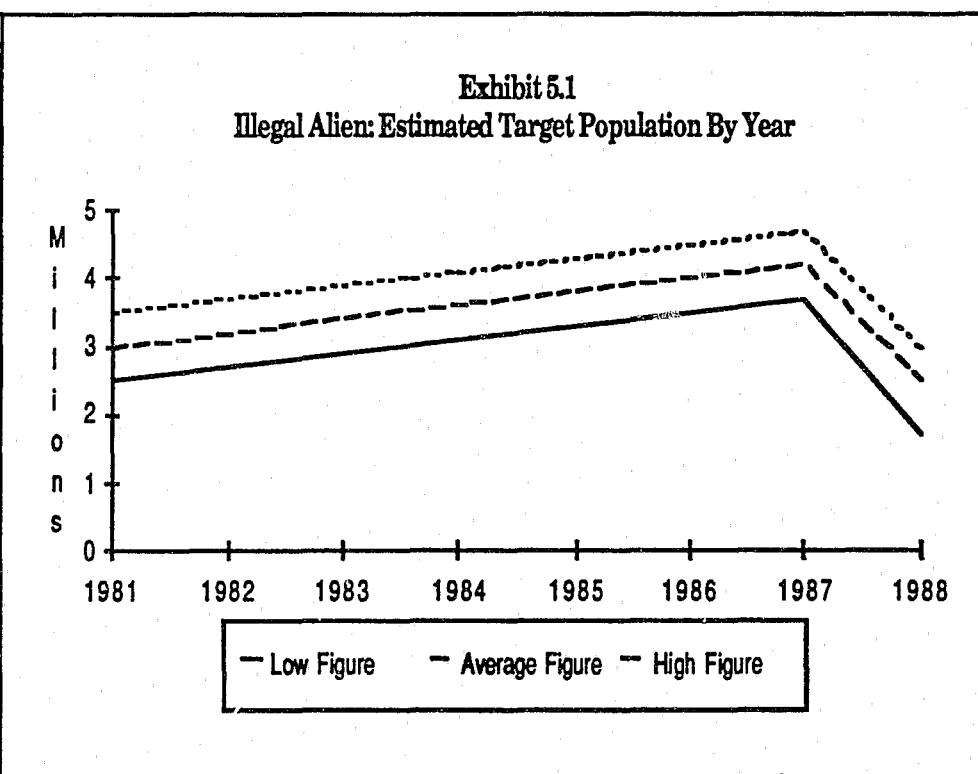
### **5.2 Current Population Estimates**

No one knows precisely how many illegal aliens there are in the U.S. This fact obviously makes estimates of the various data-related population sizes somewhat speculative. In the 1970s, some estimates of the illegal alien population,

## **5 Illegal Alien**

based primarily on the estimated one million illegal aliens caught and deported each year along the U.S.-Mexican border, were as high as 12 million. Since the 1980 census, both the INS and the Bureau of the Census have formulated several empirically-based estimates. Typically, these estimates are based on the difference between (1) the foreign born population counted in the census and (2) the number of legally resident aliens [Warren and Passel, 1987]. According to the Bureau of the Census, 2.1 million illegal aliens were included in the 1980 census. Subsequent research suggested that the 1980 figure was actually between 2.5 and 3.5 million. From 1980 to 1986, it is estimated that the illegal alien population grew by roughly 200,000 per year [Woodrow et al., 1987]. From May 1987 to May 1988 the population dropped by 1.7 million because of the amnesty program of the 1986 Immigration Reform and Control Act. The Bureau of the Census currently estimates that there are between 1.7 and 2.9 million illegal aliens in the U.S. The INS, according to figures published in the January 1989 President's Comprehensive Triennial Report on Immigration, estimates the number to be between 1.5 and 3.0 million [INS, 1989]. These yearly estimates are summarized in Exhibit 5.1. Since the mid-point of the ranges from both sources is roughly 2.3 million, we assume it to be the target population of the illegal alien disability category.

**Exhibit 5.1**  
**Illegal Alien: Estimated Target Population By Year**



The discussion in Section 5.1 suggests that the illegal aliens in the category's known population are predominantly visa overstayers. Again, estimates of the number of visa overstayers are somewhat speculative. Based on an analysis of the NIIS database, Warren [1986] reported that 4.5 percent of non-immigrants entering the U.S. had overstayed their visa. He cautioned that this percentage should be considered an upper bound because of NIIS inaccuracies. In addition, many of these visa overstayers presumably left the U.S. at a later time. If it is assumed that the visa overstayer population is roughly stable over time, then this data suggest that 550,000 (i.e., 4.5 percent of the roughly 12.3 million non-immigrant aliens admitted to the U.S. in 1987) overstayed their visa and could also be considered illegal aliens at some time during the year. The 550,000 figure, which represents 23.9 percent of the category's 2.3 million target population, could be considered the approximate size of the known population, as well as that of the automated and remotely-accessible populations. Interestingly, Woodrow et al. [1987] point out that an estimated 70 percent of the 2.3 million illegal aliens are Mexicans, who are, for the most part, not included in the 550,000 visa overstayer figure.

Unfortunately, for the purposes of identifying persons ineligible to purchase firearms, most illegal aliens enter the country clandestinely and have not been apprehended or identified by INS. Therefore, we do not have records that identify the vast majority of persons who are illegal aliens in this country.

### **5.3 Possible Eligibility Verification Methods**

In the unlawful users of controlled substances and mental defective categories, possible verification methods had to recognize that data sources are at the State, local, and service provider-level, as noted in Sections 3.3 and 4.3, respectively. Eligibility verification methods for the illegal alien category are simpler because the available data sources are centralized in one Federal agency. Of the three possible verification methods identified in Exhibit 5.2, two utilize the INS databases; they entail having the local police make written requests to the INS for the firearm purchaser's alien status and having the INS share illegal alien records with an integrated firearm eligibility system.

A third verification method would require firearm purchasers to provide proof of citizenship (i.e., certificate of

**Exhibit 5.2**  
**Illegal Alien: Possible Eligibility Verification Methods**

<b><u>Verification Method</u></b>	<b><u>Compatible With:</u></b>	<b><u>Advantages</u></b>	<b><u>Disadvantages</u></b>
Local police makes written request to INS for applicant's alien status	Pre-Sale Post-Sale	<ul style="list-style-type: none"> <li>• Cost: no legal impediments</li> </ul>	<ul style="list-style-type: none"> <li>• Cost: moderate start-up and operating costs</li> <li>• Data: poor validity, since alien status can quickly change; poor accuracy, since INS databases are typically six weeks out-of-date</li> <li>• Process: not timely verification; poor identification accuracy</li> <li>• Coverage: coverage ratio = 24%</li> </ul>
Have INS share illegal alien records with an integrated firearm eligibility system	Pre-Sale Point-of-Sale Post-Sale	<ul style="list-style-type: none"> <li>• Cost: low marginal start-up and operating costs, assuming existence of eligibility system</li> <li>• Process: timely verification if point-of-sale option is implemented</li> </ul>	<ul style="list-style-type: none"> <li>• Data: poor validity, since alien status can quickly change; poor accuracy, since INS databases are typically six weeks out-of-date</li> <li>• Process: poor identification accuracy</li> <li>• Coverage: coverage ratio = 24%</li> </ul>
Locally require firearm purchaser to provide proof of U.S. citizenship or legal alien status to firearm dealer	Point-of-Sale	<ul style="list-style-type: none"> <li>• Cost: no start-up or operating costs; no legal impediments</li> <li>• Data: excellent completeness and validity</li> <li>• Process: timely verification; timely implementation; moderate identification accuracy</li> <li>• Coverage: coverage ratio = 100%</li> </ul>	<ul style="list-style-type: none"> <li>• Data: accuracy subject to fraudulent documents</li> </ul>

## **5 Illegal Alien**

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birth, certificate of naturalization, or a valid U.S. passport), or proof of permanent residency (i.e., alien registration or "green" card), or proof of legal alien status (i.e., valid visa) to the firearm dealer. Providing such documentation would not be a hardship on prospective firearm purchasers. The only cost might be in connection with training firearm dealers to recognize these documents, especially since fraudulent "green" cards are becoming a serious problem [Stevenson, 1989]. To facilitate this verification method, a form similar to the INS's Employment Eligibility Verification (I-9) form (see Exhibit A.6) could be adapted for identification purposes and perhaps integrated into the BATF Form 4473. Basically, the I-9 form requires employers to document that an employee is either a citizen or national of the U.S., an alien lawfully admitted for permanent residence, or an alien authorized by the INS to work in the U.S. As shown in Exhibit A.6, the I-9 form lists a number of documents that establish identity and/or employment eligibility. Although certainly not a fool-proof method of determining whether a person is an illegal alien, an I-9-type of form is more effective in this regard than current procedures. As indicated in Section 2.1, the BATF requires that the firearm purchaser provide identification showing his/her name, age or date of birth, place of residence, and signature. A driver's license is typically used for these purposes. The information required to obtain a driver's license is different from State to State. For example, the New York State motor vehicle registry lists 25 different forms of identification, any two of which are acceptable for establishing proof of identity and place of residence (e.g., armed services identification card, cancelled check with pre-printed name and address, college photo identification card, credit card, insurance policies in effect more than three years, property tax statement, rent receipts, recent utility bill, and W-2 tax form). An additional problem with requiring only a driver's license is that even if the person were a legal alien when the license was obtained, his/her legal status could have changed since that time.

The key advantages and disadvantages of each method are discussed below and summarized in Exhibit 5.2.

### **Cost**

As noted in Exhibit 5.2, the verification method with the highest start-up and operating costs is having the local police make written requests for information to the INS. As is the case with the "written request" verification method for the other disability categories, the costs in connection with this method stem primarily from the additional INS employees who would be needed to process the information requests. Less

## **5 Illegal Alien**

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costly is having the INS share pertinent records with an integrated firearm eligibility system. One key operating cost of this method stems from having to maintain the records, by adding records of newly-discovered illegal aliens and by deleting records of persons who are no longer illegal aliens. Managing this process would require new employees, albeit a fewer number than that required to process written requests from licensing authorities. Locally requiring firearm purchasers to provide identification documents would not involve any start-up or operating costs. (If the BATF chose to integrate an I-9-type form in its Form 4473, some start-up costs would be incurred.) Finally, we are not aware of any legal impediments for implementing these three verification methods.

### **Data**

The quality and validity of the INS databases is another key disadvantage of the two verification methods that utilize these databases. As noted in Section 5.2, the key database for identifying visa overstayers is typically up to six weeks out of date. Even if the database were current, the fact that an alien's status relative to this disability category can change means that any database-oriented verification method will have poor data validity. Although requiring firearm purchasers to provide identification documents avoids the problems inherent in the INS databases, the accuracy of this verification method is still subject to the use of fraudulent documents.

### **Process**

Two of the three possible verification methods (i.e., having the INS share pertinent records with an integrated firearm eligibility system and requiring the firearm purchaser to provide identification documents) are compatible with a point-of-sale option, and, therefore, can provide timely verification. Having the local police make written requests to the INS obviously would not be compatible. In addition, all three verification methods have questionable identification accuracy, since there are no fingerprint records available to positively verify that the firearm purchaser is in this disability category. Nevertheless, it should be noted that the identification accuracy is somewhat better in the case of locally provided documentation than for the other two verification methods.

## **5 Illegal Alien**

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### **Coverage**

It is estimated in Section 5.2 that the coverage ratio of the two verification methods utilizing the INS databases is at about 24 percent. On the other hand, the ratio when requiring firearm purchasers to provide identification documents is 100 percent.

## **6 Dishonorably Discharged**

Section 922(g)(6) of title 18, United States Code, states that it shall be unlawful for any person "who has been discharged from the Armed Forces under dishonorable conditions" to purchase a firearm. The purpose of this section is to describe the data sources that could be used to identify persons in this disability category, to estimate the sizes of the four data-related populations (i.e., target population, known population, automated population, and remotely-accessible population), and to assess possible verification methods for this disability category.

### **6.1 Current Data Sources**

An estimated 370,000 persons are discharged from the Armed Forces each year. The discharge status is determined by the particular service branch according to their service policy. Actually, a person's discharge from the Armed Forces has two attributes -- character and reason. The character of the discharge can be (1) honorable, (2) dishonorable, (3) less than honorable, or (4) uncharacterized. There are roughly 100 different reasons for discharge, including, for example, the person was found to be unsuitable for medical or physical reasons, the person was absent without leave, and the person committed a crime. A particular reason for discharge is not necessarily associated with one particular character of discharge. A person's reason for discharge could be drug use, but his/her character of discharge could be either dishonorable or less than honorable. However, only persons whose character of discharge is dishonorable are ineligible to purchase firearms.

Because the individual branches do not maintain personnel files of persons no longer on active duty, these files are forwarded to the National Personnel Records Center in St. Louis. Persons discharged from the Armed Forces can obtain copies of their service records by sending a written request to the St. Louis Center. About 30,000 requests are received each week. While the paper records are sent to St. Louis, service record summaries are forwarded to the Defense Manpower Data Center (DMDC) in Monterey, California, where summaries, including the character and reason for discharge, are entered into an automated database.

## **6 Dishonorably Discharged**

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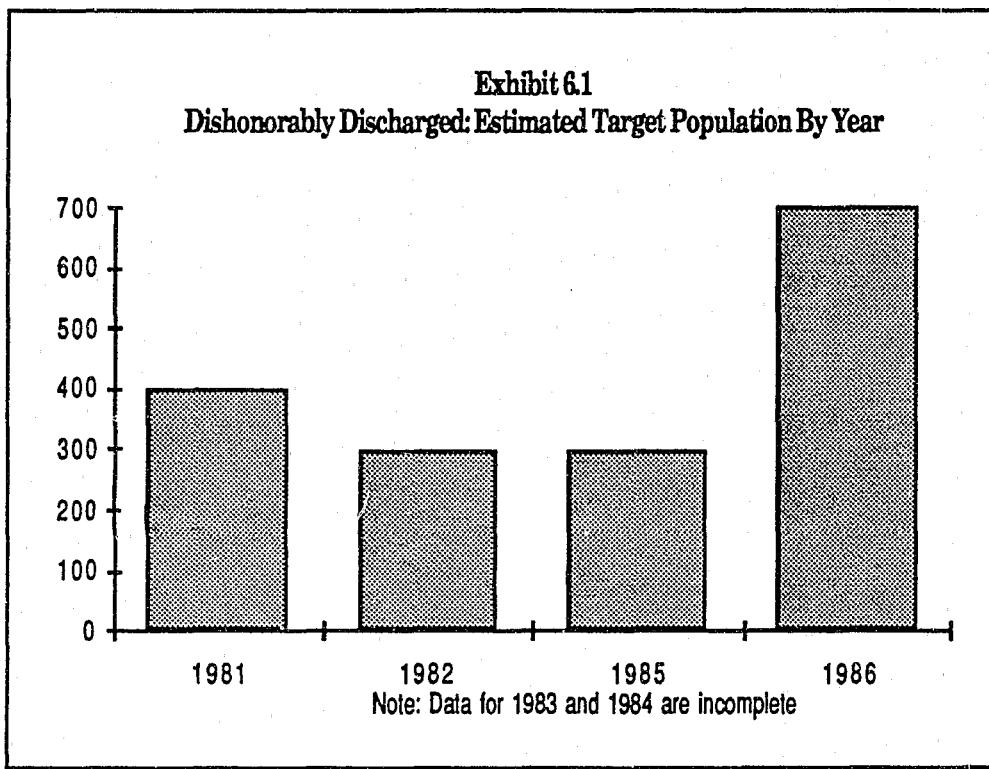
The DMDC maintains the only automated database of military service records. There are an estimated 11 million records in the database, consisting of most persons discharged from the Armed Forces since 1971. The key identifiers in the database are the person's name, date of birth, Social Security number, and date of discharge. (While persons entering the Armed Forces are fingerprinted, the prints are kept at the St. Louis center, not at the DMDC.) DMDC does not conduct any identification verification procedures; the records are accepted as is from the individual Armed Forces branches. Even so, DMDC officials believe that their database is 99 percent accurate. Finally, in terms of currency of the database, typically two to four months elapse from the time the discharge is issued to when the record is added to the database.

The primary purposes of the database are to provide statistical analyses to the Defense Department and to supply personnel information to military recruiters and the Veterans Administration. Military recruiters, for example, verify that new recruits are not persons who were previously dishonorably discharged. According to DMDC personnel, anyone in the Defense Department can contact the DMDC by telephone to request information from their database. Typically one to four DMDC personnel are assigned to process these requests. The requests are usually processed in one day. It should be noted, however, that there are no remote terminals with access to the DMDC's system. In addition, access to information in the database by persons outside the Defense Department is not currently allowed, because of the Department's regulations and the provisions of the Privacy Act.

### **6.2 Current Population Estimates**

According to DMDC personnel, an average of 400 dishonorable discharges (i.e., 0.1 percent of all discharges) are issued each year. The number of dishonorable discharges for recent years are displayed in Exhibit 6.1. Assuming there have been 400 dishonorable discharges per year over the past 50 years, the target population of this disability category is estimated to be 20,000. The dishonorably discharged known population would also be equal to 20,000, since all discharges from the Armed Forces are assigned and processed by the service branches.

## **6 Dishonorably Discharged**



DMDC officials estimate that their database contains 90 percent of the estimated 7,200 persons who have received dishonorable discharges since 1971. The database is not complete during this time period due to problems with Navy discharge records from 1972 to 1973 and Army discharge records from 1983 to 1985. According to DMDC officials, there are no automated service records of persons discharged prior to 1971; such records are only kept in paper form at the St. Louis Center. The dishonorably discharged automated population of 7,200 therefore constitutes an estimated 36 percent of the category's known and target populations. In spite of this low percentage, the database is centralized and accurate, unlike the databases containing persons in the unlawful users of controlled substances, mental defective, and illegal alien disability categories. Finally, since all of these records could be remotely-accessible, and assuming that appropriate legislation would be enacted, the remotely-accessible population could be equal to the automated population.

### **6.3 Possible Eligibility Verification Methods**

Because the dishonorably discharged database is centralized in a single location, developing eligibility

## 6 Dishonorably Discharged

verification methods for this category is simplified. Two alternative verification methods are considered and identified in Exhibit 6.2. They include (1) having the local police make written requests to the DMDC for discharge information, and (2) having the DMDC share the dishonorably discharged records with an integrated firearm eligibility system. The key advantages and disadvantages of the two verification methods are discussed below and also summarized in Exhibit 6.2.

### Cost

Of the two possible verification methods, the written request to the DMDC method obviously has higher start-up and operating costs. A significant fraction of these costs stem from additional DMDC personnel who would be required to respond to the requests. Of course, without precise specifications on how these requests would be processed, for example, what additional computer equipment would be required, and how much additional working space would be needed, precise cost estimates cannot be made. Having the DMDC share pertinent records with an integrated firearm eligibility system, of course, would entail low marginal start-up and operating costs, assuming the existence of such a system.

The legal costs are substantial for both verification methods, since there are legal impediments to accessing these records. The Privacy Act, 5 USC 552a(b), generally forbids disclosure of records held by a government agency without the consent of the individual whose records are held. Moreover, Defense Department officials indicated that the Privacy Act applies to the records in the DMDC database. Therefore, in the absence of consent from the firearm purchaser or statutory authorization, the Department of Defense could not furnish information about discharge or separation status.

### Data

According to DMDC personnel, the information in the database is "99 percent" accurate. As noted in the previous section, the database is incomplete during certain years, particularly regarding the date of birth field from 1971 to 1976. Still, it is by far the most complete record of dishonorable discharges. Moreover, it is a valid source of dishonorably discharged data.

### Process

As shown in Exhibit 6.2, the point-of-sale requirement is only compatible with providing pertinent records to an integrated system. Written requests to the DMDC would

**Exhibit 6.2**  
**Dishonorably Discharged: Possible Eligibility Verification Methods**

<u>Verification Method</u>	<u>Compatible With:</u>	<u>Advantages</u>	<u>Disadvantages</u>
Local police makes written request to Defense Manpower Data Center	Pre-Sale Post-Sale	<ul style="list-style-type: none"> <li>• Data: excellent accuracy and validity</li> </ul>	<ul style="list-style-type: none"> <li>• Cost: moderate start-up and operating costs; legal impediments</li> <li>• Process: not timely verification; poor identification accuracy</li> <li>• Coverage: small target population (<math>\approx 20,000</math>); coverage ratio <math>\approx 36\%</math></li> </ul>
Have Defense Manpower Data Center share pertinent records with an integrated firearm eligibility system	Pre-Sale Point-of-Sale Post-Sale	<ul style="list-style-type: none"> <li>• Cost: low marginal start-up and operating costs, assuming existence of eligibility system</li> <li>• Data: excellent accuracy and validity</li> <li>• Process: timely verification if point-of-sale option is implemented</li> </ul>	<ul style="list-style-type: none"> <li>• Cost: legal impediments</li> <li>• Process: poor identification accuracy</li> <li>• Coverage: small target population (<math>\approx 20,000</math>); coverage ratio <math>\approx 36\%</math></li> </ul>

## **6 Dishonorably Discharged**

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obviously take days to process, and therefore would not provide timely verification.

The identification accuracy is the same for both verification methods. In each case, DMDC records would be searched for a matching name, date of birth, and Social Security number. It should be noted, however, that unlike the other disability categories within the scope of our research, there are fingerprint-based records available that could be utilized if an applicant who is initially denied a firearm decides to appeal his/her denial. However, as noted in Section 6.2, the fingerprints are kept in the St. Louis National Personnel Records Center, and therefore unlikely to be available to resolve identification disputes when they arise. For this reason, both verification methods have poor identification accuracy.

### **Coverage**

As noted in Section 6.2, the coverage ratio of this category is approximately 36 percent. Since DMDC officials continue to add to the database new persons in this disability category, the coverage should increase in the future. In addition to this low coverage ratio, the dishonorably discharged target population is minuscule compared to the target populations of the unlawful users of controlled substances, mental defective, or illegal alien categories. For this reason, the DMDC database would have a minimal overall impact on the effectiveness of a national firearm eligibility verification system.

## **7 Renunciate**

Section 922(g)(7) of title 18, United States Code, states that it shall be unlawful for any person "who, having been a citizen of the United States, has renounced his citizenship" to purchase a firearm. The purpose of this section is to describe the data sources that could be used to identify persons in this disability category, to estimate the sizes of the four data-related populations (i.e., target population, known population, automated population, and remotely-accessible population), and to assess possible verification methods for this disability category.

### **7.1 Current Data Sources**

The U.S. State Department maintains a complete and accurate database of persons who have renounced their U.S. citizenship. In fact, the renunciate database, which is described later in this section, is the only database we surveyed that is complete, in the sense that the renunciate target population is equal to the renunciate remotely-accessible population. Unfortunately, persons who have renounced their citizenship constitute, not surprisingly, the least populous firearm disability category.

As noted in Section 2.1, formal renunciation must be made voluntarily before a diplomatic or consular officer of the U.S. in a foreign state, or, when the U.S. is at war, in the U.S. before an officer designated by the Attorney General. When the renunciation is made, the Oath of Renunciation (see Exhibit A.7) and the Certificate of Loss of Nationality are completed, signed, and sworn to. These two documents are then delivered via diplomatic pouch to the Office of Citizens Consular Services in the Bureau of Consular Services of the State Department in Washington, D.C. Personnel in this office either accept or deny the "application" for renunciation. The application could be denied if it was determined, for example, that the oath was taken involuntarily (e.g., a child pressured by his/her parents) or if the person is mentally incompetent. If the application is accepted, the Certificate of Loss of Nationality is forwarded to the Passport Services Office of the State Department, as discussed below.

A list of persons in this disability category is maintained by the State Department on its Automated Visa Lookout System

## **7 Renunciate**

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(AVLOS). As the name implies, this computer system is used primarily by State Department consular offices to determine whether or not aliens should be issued visas. Roughly two million records are in the visa lookout file, including persons previously denied visas, persons under investigation by agencies such as the Drug Enforcement Administration, Immigration and Naturalization Services (INS), and Customs Service, and other persons who should be denied visas or who should at least be investigated further before being granted a visa. A separate file on AVLOS, however, contains roughly 300,000 records of persons ineligible to receive U.S. passports. Renunciates are one of several categories of persons in this passport lookout file, which is maintained by the Passport Services Office of the State Department.

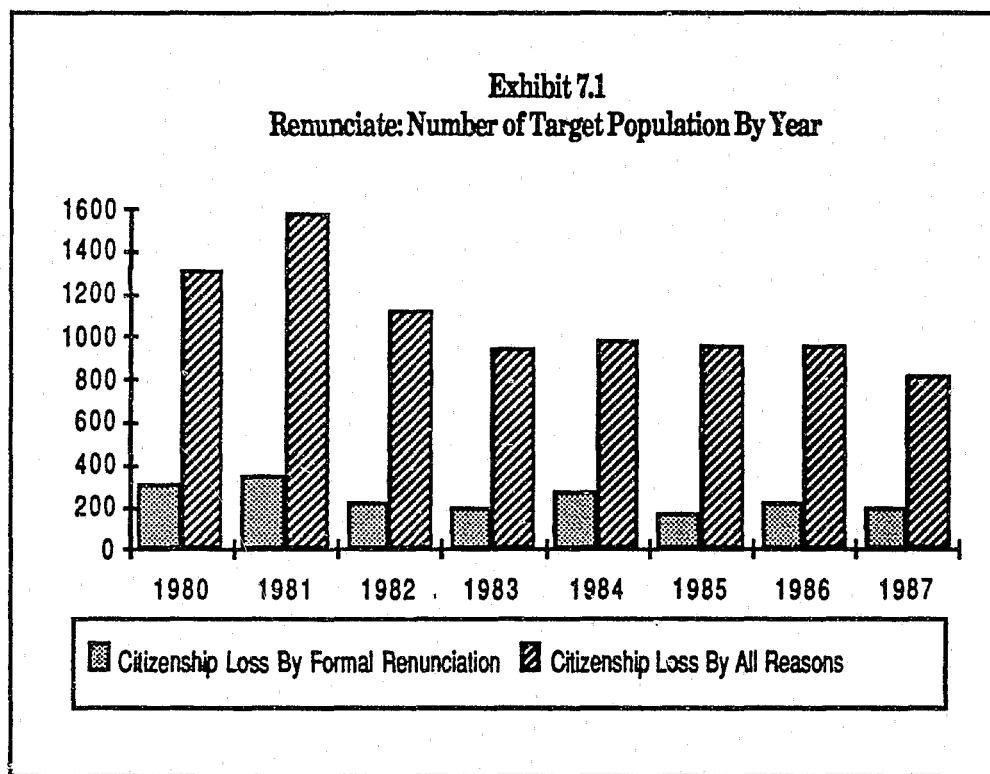
If Consular Services personnel accept an application for renunciation, they complete a "lookout sheet", which is basically a data entry sheet for the passport lookout file, and then forward the sheet, the Oath of Renunciation, and the Certificate of Loss of Nationality to the Passport Services office. It is important to note, however, that only a subset of the information on the lookout sheet is actually entered in the lookout file. While the person's name, date of birth, place of birth, date of file entry, and the "reason code" (which indicates why the person is ineligible to obtain a passport) are entered, the "reason subcode" is not currently entered. Unfortunately, there is not a separate reason code for renunciates. Instead, renunciates are assigned the reason code "L", indicating loss of citizenship. Renunciates constitute only about 20 percent of persons who have lost their citizenship.

After an entry is made in the lookout file, the case paperwork is filed in cabinets at the Passport Services office. These manual files are arranged alphabetically and include, according to Passport Services personnel, all non-routine passport-related documents. It is important to note that there are no fingerprints associated with the manual files. However, the identity of each person in the file is well established, since it is usually obtained from the person's passport at the time of renunciation. In terms of currency, the file is typically at most one month out of date -- this is the elapsed time from when the application for renunciation is accepted to the time the record is entered in the lookout file. In addition, it should be noted that a copy of the Certificate of Loss of Nationality is also forwarded to INS. According to INS personnel, an entry is made in the Central Index System (see Section 5.1); unfortunately, entries have only been made in this system during the past year, so this represents a very incomplete database of renunciates.

Currently, the passport lookout file is directly accessible -- either via terminal or by contacting Passport Services personnel by phone -- to employees of the State Department, in particular, to personnel at local passport offices across the U.S. In addition, remote access is available to roughly 90 of 240 U.S. foreign consulates. Access to the lookout file by non-State Department employees is governed by the provisions of the Privacy Act. This being the case, all such requests must be made in writing to the Passport Services office.

### 7.2 Current Population Estimates

According to Consular Services personnel, roughly 200 renunciation applications are accepted each year. During Fiscal Years 1986 and 1987, the years for which the most recent data is available, 219 and 194 persons renounced their citizenship, respectively. Exhibit 7.1 shows the number of persons renouncing their citizenship by year since 1980. The exhibit also shows the number of persons who have lost their citizenship for any reason, including by formal renunciation; as stated earlier, renunciates typically account for about 20 percent of all persons losing their citizenship.



Assuming 200 persons per year have renounced their citizenship since 1941, the year the law establishing the Oath of Renunciation was enacted, the target population of the renunciate disability category is estimated at 9,800, which is the smallest target population of the five disability categories discussed in this report. In fact, the target population is probably much smaller, since it can be assumed that a significant fraction of renunciates are not living in the U.S. Renunciates can, of course, apply for visas to enter the U.S., but they are not entitled to special treatment in the processing of their visa applications. Since all renunciates have had their applications processed and approved by the State Department, the known population of renunciates should be equal to the renunciate target population. This would not be the case if persons "informally" renouncing their citizenship were also ineligible to purchase firearms.

According to Consular Services and Passport Services personnel, the passport lookout file contains a "near 100 percent" listing of persons who have renounced their citizenship since 1941, indicating that the renunciate automated and remotely-accessible populations are equal to the renunciate target population.

### **7.3 Possible Eligibility Verification Methods**

As is the case with the dishonorably discharged category, developing verification methods for the renunciate category is simplified since the renunciate database is centralized in a single location. Not surprisingly, many of the comments made in Section 6.3 concerning the dishonorably discharged eligibility verification methods apply to the renunciate verification methods. In fact, the two possible methods identified in Exhibit 7.2 are analogous to those considered in Section 6.3. They include (1) having the local police make a written request to the Passport Services Office, and (2) having the Passport Services Office share the pertinent records with an integrated firearm eligibility system. The key advantages and disadvantages of these two methods are also summarized in Exhibit 7.2 and discussed below.

#### **Cost**

The assumptions regarding the start-up and operating costs of these two verification methods are similar to those made in Section 6.3 regarding the two dishonorably discharged

**Exhibit 7.2**  
**Renunciate: Possible Eligibility Verification Methods**

<u>Verification Method</u>	<u>Compatible With:</u>	<u>Advantages</u>	<u>Disadvantages</u>
Local police makes written request to Passport Services Office	Pre-Sale Post-Sale	<ul style="list-style-type: none"> <li>• Data: excellent accuracy, completeness, and validity</li> <li>• Coverage: coverage ratio = 100%</li> </ul>	<ul style="list-style-type: none"> <li>• Cost: moderate start-up and operating costs; legal impediments</li> <li>• Process: not timely verification; poor identification accuracy</li> <li>• Coverage: small target population (<math>\approx 10,000</math>)</li> </ul>
Have Passport Services Office share pertinent records with integrated firearm eligibility system	Pre-Sale Point-of-Sale Post-Sale	<ul style="list-style-type: none"> <li>• Cost: low marginal start-up and operating costs, assuming existence of eligibility system</li> <li>• Data: excellent accuracy, completeness, and validity</li> <li>• Process: timely verification, if point-of-sale option is implemented</li> <li>• Coverage: coverage ratio = 100%</li> </ul>	<ul style="list-style-type: none"> <li>• Cost: legal impediments</li> <li>• Process: poor identification accuracy</li> <li>• Coverage: small target population (<math>\approx 10,000</math>)</li> </ul>

## **7 Renunciate**

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verification methods. Of the two possible verification methods, the written request method obviously has higher start-up and operating costs. A significant fraction of the these costs stem from additional Passport Services Office personnel who would be required to respond to the requests. Having the Passport Services Office share pertinent records with an integrated firearm eligibility system would entail low marginal start-up and operating costs, assuming the existence of such a system.

The legal costs of both of these verification methods are substantial. As with information about dishonorable discharge status, the Privacy Act prohibits routine dissemination of data about renunciates, according to State Department officials.

### **Data**

According to State Department personnel, the data accuracy and completeness of the renunciate database are both excellent, particularly concerning the name, date of birth, and place of birth identifiers. This database, moreover, is the only valid source of renunciate data.

### **Process**

As with the dishonorably discharged verification methods, the point-of-sale requirement is only compatible with the verification method which entails sharing renunciate records with an integrated system. Written requests to the Passport Services Office would obviously not result in timely verification.

A larger problem is that both verification methods have poor identification accuracy, since there are no fingerprints or other biometric characteristics associated with the renunciate records. Thus, there would be no way to positively prove that an applicant is a renunciate.

### **Coverage**

Since the renunciate database contains a complete listing of all renunciates (i.e., the target population equals the remotely-accessible population), the coverage ratio for both verification methods is 100 percent.

Finally, as noted earlier, the renunciate disability category is the least populous category, with a target population of about 9,800 persons. Of those, a substantial fraction, if not virtually all, are presumably living in foreign countries, unless they are visiting the U.S., or have been granted permanent residence in the U.S., or have been re-

## **7 Renunciate**

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naturalized as U.S. citizens. Would it be possible to verify that a person is not in this firearm disability category by means other than a check of the renunciate database? Unlike some of the other disability categories, we cannot envision a full proof local verification technique for this category. The best one could do is require proof of U.S. citizenship, or, if the purchaser is not a U.S. citizen, require the purchaser to present a valid visa or permanent residence card. As indicated in Section 5.3, this is similar to the local verification technique for the illegal alien disability category.

## **8 System Considerations**

Sections 3 through 7 highlight two or three possible verification methods for each of the five firearm disability categories within the scope of our research. The advantages and disadvantages of each method are summarized in Exhibits 3.2, 4.2, 5.2, 6.2, and 7.2. The purpose of this section is to consolidate the findings in the earlier sections from a systems perspective and to consider firearm eligibility verification systems which not only encompass the five disability categories of interest to this research but also the felon and fugitive disability categories. In particular, the resultant integrated national firearm eligibility verification system assumes that the felon (including fugitive) portion of the system to be that recommended by the Attorney General (i.e., a point-of-sale method in which records of felony convictions could be accessed by licensed firearm dealers through touch-tone telephones).

### **8.1 An Integrated System**

In configuring an integrated national firearm eligibility verification system, a number of important design considerations have to be taken into account. One policy consideration that has been decided by the Attorney General concerns verification timeliness. As noted in Section 1.1, he has decided that a viable verification system must be a point-of-sale type of system, since a pre-sale system "would impose an unreasonable burden on legitimate gun purchasers." Several of the possible verification methods we considered in Sections 3 through 7 are not point-of-sale systems. More specifically and as summarized in Exhibit 8.1, four of the thirteen verification methods would not meet the immediacy requirement. However, inasmuch as there is one verification method in each disability category that is based on the sharing of pertinent records with an integrated firearm eligibility system, it is obvious that the combination of these methods would yield a system that is both compatible and integrated with the felon system. Other than the Attorney General's recommended felon system, the verification methods include having (1) drug treatment centers, (2) courts, authorities, commissions, and boards with mental health jurisdiction, (3) the INS, (4) the Defense Manpower Data Center, and (5) the Passport Services Office share relevant records with an integrated firearm eligibility system. Exhibit 8.2 identifies key advantages and

### **Exhibit 8.1 Immediacy Considerations: Firearm Verification Methods**

<b><u>Verification Method</u></b>	<b><u>Is Verification Method Compatible With Point-of-Sale System?</u></b>
Felon and/or Fugitive	
• Attorney General recommended option -- have FBI establish complete record of felony convictions	Yes
Controlled Substance Abuser	
• Utilize felon databases	Yes
• Share pertinent records with integrated system	Yes
Mental Defective	
• Written request to state mental health departments	No
• Interface state mental health database with state law enforcement computer system	Yes
• Share pertinent records with integrated system	Yes
Illegal Alien	
• Written request to INS	No
• Share pertinent records with integrated system	Yes
• Locally require proof of U.S. citizenship or legal alien status	Yes
Dishonorably Discharged	
• Written request to Defense Manpower Data Center	No
• Share pertinent records with integrated system	Yes
Renunciate	
• Written request to Passport Services Office	No
• Share pertinent records with integrated system	Yes

**Exhibit 8.2****Possible Felon-Compatible National Firearm Eligibility Verification System:  
An Integrated System**

<b><u>Verification System</u></b>	<b><u>Advantages</u></b>	<b><u>Disadvantages</u></b>
<b>Felon/Fugitive:</b> Attorney General recommended option -- have FBI establish complete record of felony convictions	<ul style="list-style-type: none"> <li>• Data: good accuracy and completeness; good validity (except for controlled substance abuser and illegal alien categories)</li> </ul>	<ul style="list-style-type: none"> <li>• Costs: Significant start-up and operating costs for both eligibility system and local agencies which must share and/or access eligibility system; substantial legal impediments</li> </ul>
<b>Unlawful User of Controlled Substances:</b> Have drug treatment centers share relevant records with an integrated eligibility system	<ul style="list-style-type: none"> <li>• Process: timely verification</li> </ul>	<ul style="list-style-type: none"> <li>• Process: not timely implementation; poor identification accuracy</li> </ul>
<b>Mental Defective:</b> Have courts, authorities, commissions, and boards share commitment orders with an integrated eligibility system	<ul style="list-style-type: none"> <li>• Coverage: sizable target population</li> </ul>	<ul style="list-style-type: none"> <li>• Coverage: coverage ratio ≈ 19%</li> </ul>
<b>Illegal Alien:</b> Have INS share illegal alien records with an integrated eligibility system		
<b>Dishonorably Discharged:</b> Have Defense Manpower Data Center share pertinent records with an integrated eligibility system		
<b>Renunciate:</b> Have Passport Services Office share pertinent records with an integrated eligibility system		

## **8 System Considerations**

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disadvantages of such an integrated verification system; they are based on each component verification method's advantages and disadvantages, as summarized in Exhibits 3.2, 4.2, 5.2, 6.2, and 7.2.

As noted in Exhibit 8.2, we view the costs of this system as a disadvantage, as it would entail significant start-up and operating costs for both the firearm eligibility system and the innumerable local, State, and Federal agencies which must either share or access the data. More problematic, however, are the legal costs. As noted in Sections 3 through 7, there are legal impediments for sharing the relevant data currently under the jurisdiction of the drug treatment facilities, the mental health-related organizations, the Defense Manpower Data Center, and the Passport Services Office. For the unlawful controlled substance user category, Federal regulations (i.e., 42 C.F.R. Part 2, enacted under the authority of Sections 544 and 548 of the Public Health Service Act, 42 U.S.C. 290ee-3 and 42 U.S.C. 290ff-3, as redesignated by Section 611 of the "Stewart B. McKinney Homeless Assistance Act," Public Law 100-77) now prohibit drug treatment programs from disclosing patient records. In addition, many states have their own laws requiring confidentiality of drug treatment records. For the mental defective category, every State has mental health record confidentiality laws. Those states that currently allow release of such information for the purposes of determining firearm eligibility have explicit exceptions to their State confidentiality laws. For both the dishonorably discharged and renunciate categories, the Privacy Act (5 U.S.C. 552a(b)) prohibits routine dissemination of data about individuals in these categories.

For three of the disability categories the data accuracy, completeness, and validity would generally be good. The exceptions are the unlawful users of controlled substances and the illegal alien categories, both of which would have poor data validity. As required, this system has timely verification, since it is based on a point-of-sale approach. The other two process measures (i.e., implementation timeliness and identification accuracy) are both poor for such an encompassing system. As noted earlier, obtaining the cooperation of thousands of data repositories would be very time consuming, not to mention difficult to attain. Identification accuracy would also be poor, since, other than for the felon category, there are no fingerprints or other biometric identifiers available to verify the identity of the firearm purchaser. Indeed, there would be no way to prove positively that a firearm purchaser is the person whose records are in the integrated system.

## 8 System Considerations

An advantage of this integrated verification system -- and of any verification system that attempts to include all the disability categories -- is the sizable target population. The estimated sum of the target populations of the disability categories within the scope of our research is 19.7 million. It should be noted that a certain number of persons in these categories would also be identified through the felon system, since there are obviously overlaps between the felon and non-felon categories, particularly the unlawful users of controlled substances, mental defective, and illegal alien categories. For example and as noted in Exhibit 3.1, NIJ's Drug Use Forecasting Model has shown that a high percentage (usually between 50 and 80 percent) of arrestees test positive for controlled substances. INS studies have noted that in some areas of the United States a significant fraction of arrestees, especially among those arrested on drug-related charges, are also illegal aliens [GAO, 1987(c)], highlighting the fact that there are overlaps involving persons in various disability categories.

Finally, a disadvantage of this integrated system is its coverage. The system-wide coverage ratio is based on the coverage ratios of the individual verification methods, which, as noted earlier in the report, are 3.3 percent for the unlawful controlled substance user category, 100 percent for the mental defective category, 24 percent for the illegal alien category, 36 percent for the dishonorably discharged category, and 100 percent for the renunciate category. Rather than setting the system-wide coverage ratio equal to the arithmetic average of these percentages, it is more appropriate to weight each percentage by the category's target population divided by the sum of the target populations of all seven disability categories. Thus, the system-side coverage ratio is equal to 19.2 percent. Obviously, this low percentage reflects the fact that the unlawful controlled substance user category, which is by far the largest category, has a coverage ratio of only 3.3 percent.

Given the discussion in Section 5.3 regarding the illegal alien verification methods, it is clear that the integrated system could be improved by requiring potential firearm purchasers to provide documentation proving they are either U.S. citizens or legal aliens, as opposed to having the INS share pertinent records with the integrated firearm eligibility system. Inasmuch as just one component of the system has changed (i.e., the method for identifying illegal aliens) in comparison with the integrated system, the majority of the conclusions regarding the cost, data, process, and coverage measures are the same as those discussed above. The two notable differences concern data validity and coverage.

## **8 System Considerations**

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Obviously, the local verification method for the illegal alien category would enhance the system's data validity. Additionally, the fact that the coverage of having firearm purchasers provide either U.S. citizenship or alien identification documents is 100 percent, as opposed to the 24 percent coverage of having the INS share pertinent records, with the integrated system, increases the overall system-wide coverage ratio from 19.2 to 28.1 percent. That the system-wide percentage increase is so small again illustrates the dominating effect the unlawful users of controlled substances category has on this percentage.

### **8.2 Database Location Issues**

While the Attorney General directed the FBI "to establish a complete and automated database of felons who are prohibited from purchasing firearms," he did not specify whether the records of felony convictions should be located at the Federal level (e.g., located on an existing system or on a computer system dedicated solely for the purpose of firearm eligibility verification) or at the State level. There are many options regarding the location of the databases comprising the integrated firearm eligibility system, since these databases are currently at the Federal, State, and local levels.

The databases at the Federal level (i.e., the illegal alien, dishonorably discharged, renunciate, and FBI databases), for example, could remain in their current location or be centralized on a single computer system. If this latter option were selected, the National Crime Information Center (NCIC) would appear to be a logical location, since it is the nation's central repository for criminal history information and it is electronically linked to State and local law enforcement agencies. However, according to NCIC officials, data on persons in the non-felon disability categories cannot reside in NCIC because it can only contain arrest-related and documented criminal justice information. Another possible location is the Treasury Enforcement Communications System (TECS), owned and operated by the U.S. Customs Service. TECS supports a number of Customs Service activities, including investigations and intelligence gathering functions. Several other Federal agencies enter records in TECS, including other Treasury Department agencies -- the BATF, the Internal Revenue Service, and the Secret Service -- as well as the State Department, the INS, the Federal Aviation Administration, and the Drug Enforcement Administration. In addition, it should be noted that the BATF maintains its

## **8 System Considerations**

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investigation and relief from firearm disability databases on TECS. More importantly, TECS is already linked with the National Law Enforcement Telecommunications System (NLETS), although State-level personnel cannot currently access TECS through NLETS (a TECS user, however, can access State-level systems through NLETS). Yet another option would be to construct a completely new computer system to be used exclusively for firearm eligibility purposes. Although such a system could be tailored to the needs of the database, it would obviously be more expensive than "piggybacking" on an existing computer system.

Data sources at the State and local level (i.e., the drug treatment, mental defective, and State and local felon databases) could likewise remain in their current locations, be centralized at the State level, or be centralized at the Federal level. It should be noted that centralization at the State or Federal level does not necessarily imply that one computer system will contain persons in several disability categories. Indeed, there could be a State-level computer system for each disability category, just as there could be a Federal-level computer system for each disability category.

Where policymakers decide to locate the databases impacts another design consideration, namely the method by which the databases are accessed. It should be noted that this is largely a technical question, as this aspect of the system will probably be transparent to the system users. One option is to access the databases through NLETS, the hub of a nationwide telecommunications network designed to facilitate the exchange of information between local, State, and Federal agencies. At present, NLETS links together State law enforcement computer systems. Each State, in turn, has linked together various local law enforcement agencies, thus allowing a local police department to obtain warrant information from another State in a timely manner. In addition to linking the 50 State systems, NLETS is also linked to several Federal systems, including NCIC, TECS, the Department of Justice's System (JUST), Postal Inspection Service, Naval Investigation Service, INTERPOL, Air Force Office of Special Investigation, U.S. Secret Service, and the Department of State. NLETS processes more than 18 million messages per month and is in the process of being upgraded from a 30 transactions per second system to a 100 transactions per second system. According to NLETS personnel, an additional 7.5 million transactions per year (i.e., the estimated number of transactions stemming from a national firearm verification system) would not create an excessive burden on the NLETS switching system. In fact, it would increase total system load by only about 3.5 percent. However, the increased

## **8 System Considerations**

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number of transactions may cause problems for those State law enforcement computer systems that are already running at or near capacity.

### **8.3 Policy Issues**

Section 8.1 summarizes the advantages and disadvantages of an integrated system for identifying persons ineligible to purchase firearms. Whether or not policymakers would want to expend the required effort to implement such a system, or even whether such a system is feasible, is obviously a policy judgment. In part such a decision depends on how policymakers view the relative importance of the eleven assessment measures we have examined in this report. In any policy judgment one must consider tradeoffs between the cost, data, process, and coverage measures.

#### **Cost**

We have summarized the integrated system's legal impediments in Section 8.1. Dollar costs are also required in connection with starting and operating a verification system, respectively. As indicated in Section 1.2, we have not developed start-up and operating cost estimates for the different verification methods discussed in Sections 3 through 7. To do this would require specifying in detail system characteristics and procedures, which would clearly be beyond the scope our research. Should policymakers decide that a verification method is feasible, then precise system specifications and costs could be developed, as discussed later in this section.

It should be noted that the dollar cost for many of the verification methods clearly depends on whether the integrated firearm eligibility system is operational. If it is, the marginal cost of adding other disability categories to the system's scope of responsibility should be considerably lower. Even if an eligibility system were operational, there are other costs to be considered, especially those in connection with supplying the system with the pertinent information, costs that must be borne by law enforcement agencies, drug treatment facilities, mental health-related sources (i.e., courts, authorities, commissions, and boards), the INS, the Defense Manpower Data Center, and the Passport Services Office. These issues must be taken into consideration by policymakers.

### Data

The Anti-Drug Abuse Act of 1988, Section 6213, states that the verification method must be "accurate." It does not, however, specify how accurate the system must be. It is up to policymakers to decide if the data sources described in this report that could be used to determine if a person is ineligible to purchase a firearm satisfy the accuracy requirement. One important consideration is that the organizations that compile and maintain the necessary data seriously review the accuracy of their data. Law enforcement agencies are very concerned, for example, about whether a new arrestee has ever been arrested before and therefore try to maintain accurate identifying data. Indeed, identification of criminals is one of their key objectives; yet the felon report notes that many problems exist with the criminal history databases. However, many of the data repositories described in this report are not very concerned about whether their identifying data are accurate; in particular, the service providers (i.e., drug treatment and mental health facilities) are more concerned with providing service -- it is perhaps for this reason that their data are admissions-oriented and not person-oriented.

In addition to data accuracy, there are two other important data attributes to consider -- data completeness and data validity. The usefulness of a data source would be minimal if either data completeness or data validity were poor.

### Process

The accuracy requirement also pertains to the degree to which a firearm purchaser can be correctly identified; we call this the identification accuracy. While the Attorney General did not specify what role, if any, fingerprints or other biometric technologies would play in his recommended system, a felon verification system could utilize fingerprint-based records to identify convicted felons. This positive means of identification is not available, however, for the five disability categories within the scope of our research. Policymakers need to decide how to resolve this issue. Verification timeliness is one policy consideration that has been decided by the Attorney General; as noted in Section 1.1, he has decided that any verification system must be a point-of-sale type of system, since a pre-sale system "would impose an unreasonable burden on legitimate gun purchasers." Consequently, we include in the integrated system only verification methods that meet this criterion. (It should be noted, however, that in the meantime those verification methods that are not compatible with the point-of-

## **8 System Considerations**

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sale approach could still be utilized in those states which currently require or allow waiting periods.)

### **Coverage**

Whether or not a verification system is "worth" implementing also depends on the number of persons in a disability category (i.e., target population) and the ratio or fraction of them that the system could cover or identify assuming that they purchase firearms through licensed dealers. For example, policymakers may decide not to include, say, one or two categories in a national firearm eligibility verification system because their target populations are quite small, as is the case with the dishonorably discharged and renunciate categories. Even if a category has a large target population, policymakers may decide not to include the category in the verification system because its coverage ratio is low.

### **Privacy and Confidentiality**

The implementation of any interstate system to access data regarding individuals raises privacy and confidentiality factors. Careful consideration must be given to issues relating to control of the system, access limitations, dissemination controls, system security and record accuracy. Guidelines and procedures governing these issues would have to be developed.

### **8.4 Policy Options**

Should policymakers decide that the felon-compatible and integrated national firearm eligibility verification system described in Section 8.1 is feasible, or that another combination of verification methods might constitute a feasible system, the next step would be to detail such a system from an implementation perspective. Just as the Task Force on Felon Identification in Firearm Sales designed some alternative systems for identifying felons who attempt to purchase firearms, the purpose would be to build on the findings of this research and develop a set of system specifications, costs, and enabling legislation for identifying non-felons who attempt to purchase firearms. The focus would be on the essential components of a verification system, including, as indicated in the Task Force's report, how the request for information is initiated, which organizations would conduct the verification, which data sources are utilized to verify whether the person is eligible to purchase firearms, which organization interprets

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the results of the verification check, what are the implications of each verification check outcome, what are the appeal procedures, and what policy there is regarding the use of the information stored in the system. Obviously, if the national firearm eligibility verification system is to integrate the felon and non-felon records, then any future decisions made regarding the felon system would impact the conduct of this detailed design effort.

What can be done regarding firearm eligibility verification in the interim period prior to the adoption and implementation of a national verification system, should policymakers decide to exercise this option? We have identified four steps that we believe would greatly facilitate the implementation of a national firearm eligibility verification system at some future date. First, the disability categories in the Gun Control Act should be reassessed in light of the definitional problems discussed in Section 2.1. The unlawful controlled substance user category could be modified so that it is better-defined and more enforceable. For example, rather than "persons who are unlawful users of or who are addicted to controlled substances," the category could be "persons who are in treatment or are under arrest for a drug-related offense."

The mental defective category should also be reassessed. Given the wide array of State commitment statutes, treatment modalities, and mental conditions, it may not be possible to definitively state whether a particular firearm applicant is eligible or not. Should policymakers choose to include this disability category in a national firearm eligibility system, a more precise definition is needed, perhaps broadening the definition to include voluntary commitments. As noted in Sections 4.2, roughly three quarters of persons in mental institutions today are "voluntary" patients. A possible rationale for allowing voluntary patients to purchase firearms is that since they acknowledged that they need help, voluntary patients are more suitable to possess a firearm than involuntary patients. However, many mental health experts to whom we spoke indicated that there is little difference between the average voluntary and the average involuntary patient. In the vast majority of both types of cases, they noted, it is the family who instigates the process. As Brakel et al. [1985] point out: "The phenomenon of a freely derived, fully conscious, voluntary decision to enter a mental facility (particularly a public facility) is as rare as knowing, overt resistance to involuntary commitment. In short, the voluntary-involuntary dichotomy of mental institutionalization, the traditional roles that are assigned to the participants in this dichotomized process, and many of the laws and procedures enacted to

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regulate it, suffer from their irrelevance to most practical situations." Moreover, some states indicated that they allow many patients to switch from involuntary to voluntary status at any time. It is also worth noting that both John Hinckley (who shot President Reagan) and Jack Tilford (who recently shot to death seven persons in Kentucky) legally purchased their weapons, since both voluntarily committed themselves to mental institutions. Thus, while public concern is rising over the availability of firearms to the Hinckleys and Tilfords, it appears that the Gun Control Act does not apply to such persons.

Second, the identification of illegal aliens could be improved by integrating a form similar to the INS's Employment Eligibility Verification (I-9) form into the BATF Form 4473. As noted in Section 5.3, the I-9 form lists a number of documents that establish identity and/or employment eligibility. While still subject to fraudulent documents, this local verification method for identifying illegal aliens would be more effective than using the current BATF Form 4473.

Third, programs aimed at improving the quality of the databases described in this report could be initiated. Just as the Attorney General called for initiatives to improve the accuracy and completeness of the criminal history databases, a similar initiative for the non-felon databases would facilitate the eventual implementation of a national firearm eligibility verification system.

Fourth, the Federal government, perhaps by developing and promulgating model legislation, could encourage the states to adopt consistent firearm-related statutes and perhaps even similar verification procedures. Implementation of a national firearm eligibility verification system would be greatly facilitated if the Federal, State, and local laws were consistent and if similar verification procedures were already in place at the State and local levels. With verification neither required nor recommended with any specificity by the Federal government, it is not surprising that there is a broad range of State-level procedures. Nevertheless, an effort could be undertaken to increase consistency in these areas prior to the implementation of any national verification system.

Finally, it should be emphasized that even if policymakers decide that a national firearm eligibility verification system encompassing all disability categories is not feasible, we would still recommend that the above defined interim steps be taken, as it would significantly improve the current situation in regard to limiting the availability of firearms to felons, fugitives, unlawful controlled substance

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users, mental defectives, illegal aliens, dishonorably discharged armed forces personnel, and renunciates. As the Attorney General stated in his November 1989 letter to Congress, "I believe the Federal government, working in cooperation with the states, can have an impact in reducing the availability of firearms to those who bring violence to our neighborhoods."

## **Appendix A**

### **Relevant Federal Forms and Statutes**

The following relevant Federal forms and statutes are contained in this appendix:

- Exhibit A.1 -- Anti-Drug Abuse Act of 1988 (Public Law 100-690):  
Section 6213
- Exhibit A.2 -- Procedures for Renouncing U.S. Citizenship
- Exhibit A.3 -- Firearms Disabilities Relief Form: BATF Form 3220
- Exhibit A.4 -- Procedures for Granting Relief From Firearms Disabilities
- Exhibit A.5 -- Firearm Definition
- Exhibit A.6 -- Form I-9: Employment Eligibility Verification
- Exhibit A.7 -- Oath of Renunciation Form

**Exhibit A.1**

**Anti-Drug Abuse Act of 1988: Section 6213**

(a) IDENTIFICATION OF FELONS INELIGIBLE TO PURCHASE HANDGUNS. The Attorney General shall develop a system for immediate and accurate identification of felons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code. The system shall be accessible to dealers but only for the purpose of determining whether a potential purchaser is a convicted felon. The Attorney General shall establish a plan (including a cost analysis of the system) for implementation of the system. In developing the system, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. The Attorney General shall begin implementation of the system 30 days after the report to the Congress as provided in subsection (b).

(b) REPORT TO CONGRESS. Not later than 1 year after the date of the enactment of this Act, the Attorney General shall report to the Congress a description of the system referred to in subsection (a) and a plan (including a cost analysis of the proposed system) for implementation of the system. Such report may include, if appropriate, recommendations for modifications of the system and legislation necessary in order to fully implement such system.

(c) ADDITIONAL STUDY OF OTHER PERSONS INELIGIBLE TO PURCHASE FIREARMS. The Attorney General in consultation with the Secretary of the Treasury shall conduct a study to determine if an effective method for immediate and accurate identification of other persons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g) of title 18, United States Code. In conducting the study, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. Such study shall be completed within 18 months after the date of the enactment of this Act and shall be submitted to the Congress and made available to the public. Such study may include, if appropriate, recommendations for legislation.

(d) DEFINITIONS. As used in this section, the terms "firearm" and "dealer" shall have the meanings given such terms in section 921(a) of title 18, United States Code.

**Exhibit A.2**  
**Procedures for Renouncing U.S. Nationality**

**Loss of Nationality By Native-Born or Naturalized Citizen**

(8 U.S.C. 1481)

(a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality:

(1) obtaining naturalization in a foreign state upon his own application or upon an application filed by a duly authorized agent, after having attained the age of eighteen years; or

(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof after having attained the age of eighteen years; or

(3) entering, or serving in, the armed forces of a foreign state if (a) such armed forces are engaged in hostilities against the United States, or (b) such person serves as a commissioned or non-commissioned officer; or

(4) (A) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years, if he has or acquires the nationality of such foreign state; or (B) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years, for which office, post, or employment an oath, affirmation, or declaration of allegiance is required; or,

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(6) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

(7) committing any act of treason against, or attempting by force to overthrow, or bear arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of title 18, United States Code, or willfully performing any act in violation of section 2385 of title 18, United States Code, or violating section 2384 of said title by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction.

## Appendix A Relevant Federal Forms and Statutes

### **Exhibit A.3 Firearm Disabilities Relief Form: BATF Form 3210**

<b>DEPARTMENT OF THE TREASURY Bureau of Alcohol, Tobacco and Firearms</b>		
<b>AUTHORITY FOR RELEASE OF INFORMATION</b>		
<b>THIS SHEET MUST ACCOMPANY ALL COPIES OF ATF F 3210.1, APPLICATION FOR RESTORATION OF FIREARMS AND/OR EXPLOSIVES PRIVILEGES</b>		
<p>1. AUTHORITY. The authority to solicit this information is stated in ATF F 3210.1, Application for Restoration of Firearms and/or Explosives Privileges. This form is in compliance with the Privacy Act of 1974.</p> <p>2. PURPOSE AND USE. The information you supply by signing this release of information form will be used principally to aid in the compilation of a background investigation conducted by the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (BATF), pursuant to 18 U.S.C. §§ 925(c) and 845(b), in conjunction with your Application for Restoration of Firearms and/or Explosives Privileges.</p> <p>3. EFFECTS OF NONDISCLOSURE. Your signature on this Authority for Release of Information form is voluntary; however, your failure to complete this form may mean that the required information cannot be obtained to complete your investigation, and may result in the termination of your application.</p>		
NAME OF APPLICANT <i>(Include Last, First and Middle Name and all aliases used)</i>		DATE OF BIRTH
PRESENT ADDRESS <i>(Number, Street, City, State, Zip Code)</i>		TELEPHONE NUMBER <i>(Include Area Code)</i>
<p>This release, when presented by a duly authorized representative of the Department of the Treasury, will constitute my consent and authority to examine and obtain copies and abstracts of records and to receive statements and information regarding my background. Specifically, I hereby authorize the release of the following data or records to the Department of the Treasury (BATF):</p>		
EMPLOYMENT INFORMATION, MILITARY INFORMATION/RECORDS, POLICE AND CRIMINAL RECORDS		
MEDICAL INFORMATION/RECORDS		
IF YOU ANSWERED "YES" TO ITEMS 17(e), (f) OR (g) ON ATF F 3210.1, COMPLETE THE FOLLOWING SECTION.		
NAME OF ATTENDING PHYSICIANS, ALCOHOL OR DRUG ABUSE REHABILITATION CENTERS, OR MENTAL HEALTH INSTITUTIONS	ADDRESS <i>(Including City, State and Zip Code)</i>	AREA CODE AND TELEPHONE NUMBER
SIGNATURE OF APPLICANT	DATE	SPECIAL AGENT <i>(Signature)</i>

## Appendix A Relevant Federal Forms and Statutes

Form Approved: OMB No. 1512-0005 (10/31/89)

<b>DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS</b> <b>APPLICATION FOR RESTORATION OF</b> <b>FIREARMS AND/OR EXPLOSIVES PRIVILEGES</b> <i>(Complete in Triplicate)</i>		<b>1. NAME (1) (Last, First, Middle)</b>		
<p>The following information is provided pursuant to section 3 of the Privacy Act of 1974 (5 U.S.C. § 552(e)(3)).</p> <p><b>Authority:</b> Solicitation of this information is made pursuant to 18 U.S.C. Chapters 40 and 44. Disclosure of this information by the applicant is mandatory if the applicant wishes to seek relief from disabilities, i.e., restoration of firearms and/or explosives privileges.</p> <p><b>Purpose:</b> To determine whether the applicant is eligible to apply for relief from disabilities under 18 U.S.C. §§ 925(c) and 845(b); and to determine whether the restoration of privileges should be granted.</p> <p><b>Routine Use:</b> The information will be used by ATF to make the determinations set forth in paragraph 2. In addition, the information may be disclosed to other Federal, State, foreign, and local law enforcement and regulatory agency personnel to verify information on the application and to aid in the performance of their duties with respect to the regulation of firearms, ammunition, and explosives. The information may further be disclosed to the Justice Department if it appears that the furnishing of false information may constitute violation of Federal Law.</p> <p><b>Effects of not Supplying the Information Requested:</b> Failure to supply complete information will delay processing and may cause denial of the application.</p> <p>The following information is provided pursuant to section 7(b) of the Privacy Act of 1974.      Disclosure of the individual's social security number is voluntary. Solicitation of this information is made pursuant to 18 U.S.C. §§ 925(c) and 845(b), and may be used to verify the identity of the applicant.</p> <p style="text-align: center;"><b>PAPERWORK REDUCTION ACT NOTICE</b></p> <p>This request is in accordance with The Paperwork Reduction Act of 1980. This information is required in order to determine whether or not firearms and/or explosives privileges may be restored. It is used to conduct an investigation to establish if it is likely that the applicant will act in a manner dangerous to public safety or contrary to public interest. The information is required in order to restore privileges, (18 U.S.C. 925(c) and 845(b)).</p> <p><b>APPLICATION IS HEREBY MADE FOR RESTORATION OF PRIVILEGES (Relief From Disabilities) (Check appropriate box).</b></p> <p><input type="checkbox"/> Under Chapter 40, Title 18, U.S.C. (Explosives), for a crime punishable by imprisonment for a term exceeding one year or an Indictment with respect thereto.      <input type="checkbox"/> Under Chapter 44, Title 18, U.S.C. (Firearms), for a crime punishable by imprisonment for a term exceeding one year.</p>				
<b>2. BIRTHPLACE (23) (City &amp; State)</b>	<b>3. DATE OF BIRTH (7)</b>	<b>4. ALIASES (19)</b>		
<b>5. SOCIAL SECURITY NUMBER (12)</b>				
<b>6. PRESENT ADDRESS (8) (No., Street, City, State, Zip Code)</b>			<b>7. TELEPHONE NUMBER (44)</b>	
<b>8. LENGTH OF RESIDENCE AT PRESENT ADDRESS (month and year)</b>	<b>9. DESCRIPTION</b> <small>RACE/SEX (2) HEIGHT (3) WEIGHT (4) HAIR (5) EYES (6)</small>			
<b>10. RESIDENCES DURING PAST TEN YEARS (In columns (b) and (c) enter the month and year of residence)</b> <small>ADDRESS (Number, Street, City, State, Zip Code) (a)</small>				
<small>FROM (b)</small>			<small>TO (c)</small>	
<b>11. EMPLOYMENT RECORD (List present and immediate prior employers and show month and year of employment)</b> <small>NAME AND ADDRESS OF EMPLOYER (a)</small>				
<small>POSITION (b)</small>		<small>FROM (c)</small>	<small>TO (d)</small>	
<b>12. CONVICTIONS (If pardoned for a conviction, write "yes" in column (e) and attach a copy of the pardon.)</b>				
<b>SPECIFIC CRIME (a)</b>	<b>NAME AND LOCATION OF COURT (b)</b>	<b>SENTENCE RECEIVED (c)</b>	<b>CONVICTION DATE (d)</b>	<b>PARDONED (e)</b>
<b>13. OTHER ARRESTS</b>				
<b>CHARGE, (a)</b>	<b>DATE AND PLACE OF ARREST (b)</b>			<b>DISPOSITION (c)</b>
<b>14. PROBATION OFFICER'S NAME, ADDRESS AND TELEPHONE NO.</b>		<b>15. PAROLE OFFICER'S NAME, ADDRESS AND TELEPHONE NO.</b>		

## Appendix A Relevant Federal Forms and Statutes

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<b>16. CHARACTER REFERENCES (Three required)</b>		
NAME AND ADDRESS (a)		OCCUPATION (b)
<b>17. APPLICANT DATA (All questions must be answered by a "Yes" or "No")</b>		
(a) ARE YOU A FUGITIVE FROM JUSTICE?		YES    NO
(b) ARE YOU AN UNLAWFUL USER OF OR ADDICTED TO MARIJUANA, ANY DEPRESSANT OR STIMULATING DRUG, OR ANY NARCOTIC DRUG?		
(c) HAVE YOU EVER RENOUNCED YOUR UNITED STATES CITIZENSHIP?		SERVICE SERIAL NUMBER
(d) ARE YOU AN ALIEN ILLEGALLY IN THE UNITED STATES?		KIND OF DISCHARGE
(e) HAVE YOU EVER BEEN ADJUDICATED AS A MENTAL DEFECTIVE?		(k) ARE YOU NOW UNDER INDICTMENT OR INFORMATION IN ANY COURT FOR A CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR? (If "Yes" show date, court, charges and current status.)
(f) HAVE YOU EVER BEEN COMMITTED TO A MENTAL INSTITUTION?		
(g) HAVE YOU EVER BEEN ADJUDGED BY A COURT OF BEING MENTALLY INCOMPETENT?		(l) HAVE YOU EVER APPLIED FOR FEDERAL FIREARMS LICENSE OR A FEDERAL EXPLOSIVES LICENSE OR PERMIT? (If "Yes" show date and with whom filed.)
(h) ARE YOU NOW ON PROBATION OR PAROLE?		
(i) HAVE YOU EVER BEEN DISCHARGED FROM THE ARMED FORCES UNDER DISHONORABLE CONDITIONS?		
<b>18. Complete This Item Only If Applicant Was Ever Issued A Federal Firearms License Or A Federal Explosives License Or Permit.</b>		
BUSINESS NAME AND ADDRESS (LICENSE/PERMIT ISSUED UNDER)		LICENSE OR PERMIT NO.
		EXPIRATION DATE OF LATEST LICENSE OR PERMIT
THE BUSINESS IS (Check one) <input type="checkbox"/> INDIVIDUALLY OWNED <input type="checkbox"/> A PARTNERSHIP <input type="checkbox"/> A CORPORATION <input type="checkbox"/> OTHER (Specify)		
<b>19. I BELIEVE I SHOULD BE GRANTED RELIEF BECAUSE:</b>     		
<b>20. IMPORTANT: Applicants Filing For Restoration Privileges (Relief From Disabilities) Under Chapter 44, Title 18, U.S.C. (Firearms) Must Complete This Item.</b>		
No application for restoration under Chapter 44, Title 18, U.S.C. will be considered unless the applicant acknowledges and agrees that a notice of approval will appear in the Federal Register, an official U.S. Government publication available to the general public, if and when the application is approved. The notice of approval will give all essential details including the applicant's name, address, the court and date of conviction.		
<b>IN THE EVENT THIS APPLICATION IS APPROVED:</b>		
<input type="checkbox"/> I understand that a notice of approval will appear in the Federal Register immediately following the issuance of the approval, and		
<input type="checkbox"/> I hereby agree to publication of the notice of approval giving my name, address, and the date of my conviction.		
Under penalties imposed by 18 U.S.C. 924 and 18 U.S.C. 844, I declare that I have examined the entries in this application and, to the best of my knowledge and belief, they are true, correct, and complete.		
<b>21. SIGNATURE OF APPLICANT</b>		<b>22. DATE</b>
<b>NOTE: A COMPLETED FD 258 (FINGERPRINT IDENTIFICATION CARD) MUST ACCOMPANY THIS APPLICATION</b>		
<b>MAIL APPLICATION FORM TO:</b> Bureau of Alcohol, Tobacco and Firearms P.O. Box 784, Ben Franklin Station Washington, D.C. 20044		

**Exhibit A.4**  
**Procedures for Granting Relief from**  
**Firearm Disabilities**

**Title 27 Code of Federal Regulations Part 178.144**

(a) Any person may make application for relief from the disabilities under section 922(g) and (n) of the Act (see 178.32).

(b) An application for such relief shall be filed, in triplicate, with the Director. It shall include the information required by this section and such other supporting data as the Director and the applicant deem appropriate.

(c) Any record or document of a court or other government entity or official required by this paragraph to be furnished by an applicant in support of an application for relief shall be certified by the court or other government entity or official as a true copy. An application shall include:

(1) In the case of an applicant who is an individual, a written statement from each of 3 references, who are not related to the applicant by blood or marriage and have known the applicant for at least three years, recommending the granting of relief;

(2) Written consent to examine and obtain copies of records and to receive statements and information regarding the applicant's background, including records, statements and other information concerning employment, medical history, military service, and criminal record;

(3) In the case of an applicant under indictment, a copy of the indictment or information;

(4) In the case of an applicant having been convicted of a crime punishable by imprisonment for a term exceeding 1 year, a copy of the indictment or information on which the applicant was convicted, the judgment of conviction or record of any plea of nolo contendere or plea of guilty or finding of guilt by the court, and any pardon, expunction, setting aside or other record purporting to show that the conviction was rendered nugatory or that civil rights were restored;

(5) In the case of an applicant who has been adjudicated a mental defective or committed to a mental institution, a copy of the order of a court, board, commission, or other lawful authority that made the adjudication or ordered the commitment, any petition that sought to have the applicant so adjudicated or committed, any medical records reflecting the reasons for commitment and diagnoses of the applicant, and any court order or finding of a court, board, commission, or other lawful authority showing the applicant's discharge from commitment, restoration of mental competency and the restoration of rights;

(6) In the case of an applicant who has been discharged from the Armed Forces under dishonorable conditions, a copy of the applicant's summary of service record (Department of Defense Form 214), charge sheet (Department of Defense Form 458), and final court martial order; and

## **Appendix A Relevant Federal Forms and Statutes**

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(7) In the case of an applicant who, having been a citizen of the United States, has renounced his or her citizenship; a copy of the formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign State or before an officer designated by the Attorney General when the United States was in a state of war (see 8 U.S.C. 1481(a)(5) and (6)).

(d) The Director may grant relief to an applicant if it is established to the satisfaction of the Director that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

The Director will not ordinarily grant relief if the applicant has not been discharged from parole or probation for a period of at least 2 years. Relief will not be granted to an applicant who is prohibited from possessing all types of firearms by the law of the State where such applicant resides.

(e) In addition to meeting the requirements of paragraph (d) of this section, an applicant who has been adjudicated a mental defective or committed to a mental institution will not be granted relief unless the applicant was subsequently determined by a court, board, commission, or other lawful authority to have been restored to mental competency, to be no longer suffering from a mental disorder, and to have had all rights restored.

(f) Upon receipt of an incomplete or improperly executed application for relief, the applicant shall be notified of the deficiency in the application. If the application is not corrected and returned within 30 days following the date of notification, the application shall be considered as having been abandoned.

(g) Whenever the Director grants relief to any person pursuant to this section, a notice of such action shall be promptly published in the **FEDERAL REGISTER**, together with the reasons therefor.

**Exhibit A.5**  
**Firearm Definition**

Section 921(a)(3) and (4) of the Gun Control Act of 1968

(3) The term "firearm" means

- (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- (B) the frame or receiver of any such weapon;
- (C) any firearm muffler or firearm silencer; or
- (D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means:

- (A) any explosive, incendiary, or poison gas:
  - (i) bomb,
  - (ii) grenade,
  - (iii) rocket having a propellant charge of more than four ounces,
  - (iv) missile having an explosive or incendiary charge of more than one-quarter ounce,
  - (v) mine, or
  - (vi) device similar to any of the devices described in the preceding clauses;
- (B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter;
- (C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

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### Exhibit A.6

### Form I-9: Employment Eligibility Verification

#### EMPLOYMENT ELIGIBILITY VERIFICATION (Form I-9)

<b>1 EMPLOYEE INFORMATION AND VERIFICATION:</b> (To be completed and signed by employee.)			
Name: (Print or Type) Last	First	Middle	Birth Name
Address: Street Name and Number	City	State	ZIP Code
Date of Birth (Month/Day/Year)	Social Security Number		

I attest, under penalty of perjury, that I am (check a box):

- 1. A citizen or national of the United States.
- 2. An alien lawfully admitted for permanent residence (Alien Number A \_\_\_\_\_).
- 3. An alien authorized by the Immigration and Naturalization Service to work in the United States (Alien Number A \_\_\_\_\_, or Admission Number \_\_\_\_\_, expiration of employment authorization, if any \_\_\_\_\_).

I attest, under penalty of perjury, the documents that I have presented as evidence of identity and employment eligibility are genuine and relate to me. I am aware that federal law provides for imprisonment and/or fine for any false statements or use of false documents in connection with this certificate.

Signature	Date (Month/Day/Year)		
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**PREPARER/TRANSLATOR CERTIFICATION:** (To be completed if prepared by person other than the employee). I attest, under penalty of perjury, that the above was prepared by me at the request of the named individual and is based on all information of which I have any knowledge.

Signature	Name (Print or Type)		
Address (Street Name and Number)	City	State	Zip Code

#### **2 EMPLOYER REVIEW AND VERIFICATION:** (To be completed and signed by employer.)

**Instructions:**

Examine one document from List A and check the appropriate box, OR examine one document from List B and one from List C and check the appropriate boxes. Provide the *Document Identification Number* and *Expiration Date* for the document checked.

<b>List A</b> Documents that Establish Identity and Employment Eligibility	<b>List B</b> Documents that Establish Identity and	<b>List C</b> Documents that Establish Employment Eligibility
<input type="checkbox"/> 1. United States Passport <input type="checkbox"/> 2. Certificate of United States Citizenship <input type="checkbox"/> 3. Certificate of Naturalization <input type="checkbox"/> 4. Unexpired foreign passport with attached Employment Authorization <input type="checkbox"/> 5. Alien Registration Card with photograph <i>Document Identification</i> # _____ <i>Expiration Date (if any)</i> _____	<input type="checkbox"/> 1. A State-issued driver's license or a State-issued I.D. card with a photograph, or information, including name, sex, date of birth, height, weight, and color of eyes. (Specify State) _____ <input type="checkbox"/> 2. U.S. Military Card <input type="checkbox"/> 3. Other (Specify document and issuing authority) _____ <i>Document Identification</i> # _____ <i>Expiration Date (if any)</i> _____	<input type="checkbox"/> 1. Original Social Security Number Card (other than a card stating it is not valid for employment) <input type="checkbox"/> 2. A birth certificate issued by State, county, or municipal authority bearing a seal or other certification <input type="checkbox"/> 3. Unexpired INS Employment Authorization Specify form # _____ <i>Document Identification</i> # _____ <i>Expiration Date (if any)</i> _____

**CERTIFICATION:** I attest, under penalty of perjury, that I have examined the documents presented by the above individual, that they appear to be genuine and to relate to the individual named, and that the individual, to the best of my knowledge, is eligible to work in the United States.

Signature	Name (Print or Type)	Title
Employer Name	Address	Date

## Appendix A Relevant Federal Forms and Statutes

### **Exhibit A.7 Oath of Renunciation Form**

#### **OATH OF RENUNCIATION OF THE NATIONALITY OF THE UNITED STATES**

(This form has been prescribed by the Secretary of State pursuant to Section 349(a)(5) of the Immigration and Nationality Act, 66 Stat. 268, as amended by Public Law 95-432, October 10, 1978, 92 Stat. 1046.)

Consulate General of the United States of America at

Toronto, Canada, ss:

I, \_\_\_\_\_, a national of the United States,  
(Name)  
solemnly swear that I was born at \_\_\_\_\_ Denver \_\_\_\_\_.  
(City or town)  
(Province or country) \_\_\_\_\_ Colorado \_\_\_\_\_, on June 8, 1945.  
(State or country) \_\_\_\_\_ (Date)  
That I formerly resided in the United States at 133 King Street  
(Street)  
Denver, \_\_\_\_\_ Colorado \_\_\_\_\_.  
(City) \_\_\_\_\_ (State)  
That I am a national of the United States by virtue of  
birth in the United States  
(If a national by birth in the United States, or abroad, so state; if  
naturalized, give the name and place of the court in the United States before  
which naturalization was granted and the date of such naturalization.)

That I desire to make a formal renunciation of my American nationality, as provided by section 349(a)(5) of the Immigration and Nationality Act and pursuant thereto I hereby absolutely and entirely without mental reservation, coercion or duress, renounce my United States nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

\_\_\_\_\_  
(Signature)

Subscribed and sworn to before me this 12th day of May  
1983, in the American Consulate General at Toronto, Canada.

George J. Sanders  
(Signature of officer)

SEAL

George J. Sanders  
(Typed name of officer)

Consul of the United States of America  
(Title of officer)

## **Appendix B Relevant State Statutes**

The following relevant State statutes are contained in this appendix:

- Exhibit B.1 -- Firearm Statutes: Firearm Definition and Disability Categories
- Exhibit B.2 -- Firearm Statutes: Unlawful Controlled Substance User
- Exhibit B.3 -- Firearm Statutes: Mental Defective Definition
- Exhibit B.4 -- Firearm Statutes: Application Procedures
- Exhibit B.5 -- Firearm Statutes: Verification Procedures

**Exhibit B.1**  
**Firearm Statutes: Firearm Definition and Disability Categories**

State	Firearm Definition*	Applicable Disability Categories						
		Felon	Fugitive	Unlawful User of Contr. Substances	Mental Defective	Illegal Alien	Dishonorably Discharged	Renunciate
Alabama	Narrower	X		X				
Alaska	Undetermined	X		X	X			
Arizona	Narrower	X			X			
Arkansas	Undetermined	X			X			
California	Narrower	X		X	X			
Colorado	Narrower	X				X		
Connecticut	Narrower	X				X		X
Delaware	Narrower	X			X	X		
District of Columbia	Similar	X	X	X	X	X	X	
Florida	Similar	X						
Georgia	Narrower	X						
Hawaii	Narrower	X	X	X	X			
Idaho	Undetermined							
Illinois	Narrower	X		X	X			
Indiana	Narrower	X		X	X			
Iowa	Narrower	X		X	X			
Kansas	Undetermined	X		X				
Kentucky	Narrower	X						
Louisiana	Similar	X						
Maine	Narrower							
Maryland	Undetermined	X	X	X	X	X	X	
Massachusetts	Narrower	X		X	X	X		X
Michigan	Narrower	X			X	X		
Minnesota	Undetermined	X		X	X			
Mississippi	Undetermined							
Missouri	Narrower	X	X	X	X			
Montana	Undetermined							
Nebraska	Similar	X	X					
Nevada	Narrower	X						
New Hampshire	Undetermined	X						
New Jersey	Narrower	X		X	X			
New Mexico	Similar	X			X			
New York	Narrower	X			X			
North Carolina	Undetermined	X	X	X	X			
North Dakota	Narrower	X			X			
Ohio	Narrower	X	X	X	X			
Oklahoma	Undetermined	X		X	X			
Oregon	Narrower	X						
Pennsylvania	Narrower	X		X	X			
Rhode Island	Similar	X	X	X	X	X		
South Carolina	Undetermined	X	X	X	X			
South Dakota	Narrower	X						
Tennessee	Narrower	X	X	X	X			
Texas	Narrower	X		X	X	X		
Utah	Narrower	X		X	X	X		
Vermont	Undetermined							
Virginia	Undetermined	X				X		
Washington	Narrower	X						X
West Virginia	Undetermined							
Wisconsin	Narrower	X			X			
Wyoming	Undetermined	X						
Federal Government	Similar	X	X	X	X	X	X	X

Source: BATF [1988(a), 1988(b)]

\* Definition is assessed relative to the federal definition of a firearm; "narrower" implies that the state law is less comprehensive than the federal definition; "similar" implies that the state law is similar to the federal definition; "undetermined" implies that the above referenced source did not provide a definition.

**Exhibit B.2**  
**Firearm Statutes: Unlawful Users of Controlled Substances**

State	Drug Addict	Previous Conviction of Drug-Related Offense	Under Influence of Drugs	Is or Has Been In Drug Treatment
Alabama	X			
Alaska	X			
California	X			
District of Columbia		X		
Hawaii		X		
Illinois	X			
Indiana	X			
Iowa	X			
Kansas	X			
Maryland	X			
Massachusetts		X		X
Minnesota		X		
Missouri	X			
New Jersey	X			
North Carolina	X		X	
Ohio	X	X		
Oklahoma			X	
Pennsylvania	X			
Rhode Island		X		
South Carolina	X			
Tennessee	X			
Utah	X			

Source: Bureau of Alcohol, Tobacco, and Firearms [1988(b)]

## **Exhibit B.3**

### **Firearm Statutes: Mental Defective Definitions**

<u>State</u>	<u>Definition of Mental Defective (For the Purposes of Being Ineligible to Purchase Firearms)</u>
Arizona	"constitute a danger to himself or to others pursuant to court order and whose court ordered treatment has not been terminated by court order" [AZ Rev. Stats. 13-3101.5.a]
Arkansas	"adjudicated a mental defective"; "committed involuntarily to any mental institution" [AR Stats. Ann. 41-3103.1]
California	"is a mental patient in any hospital or institution"; "has been adjudicated by a court to be a danger to others as a result of mental disorder or mental illness, or adjudicated as a mentally disordered sex offender"; "person who has been found not guilty by reason of insanity of certain serious crimes"; "persons found mentally incompetent to stand trial"; "persons placed under a guardianship by a court due to mental disorder or impairment" [CAL Welf & Inst. Code 3-8100, 3-8103(a)(1), 3-8103(b)(1), 3-8103(c)(1), 3-8103(d)(1), 3-8103(e)(1)]
Delaware	"any person who has ever been committed for a mental disorder to any hospital, mental institution or sanatorium" [DE Code Ann. 11-1448]
Washington, D.C.	"acquitted by reason of insanity in previous five years"; "voluntarily or involuntarily committed to any mental hospital or institution within the past five years" [DC Code Ann. 6-2313.5, 6-2313.6]
Hawaii	"admitted to and detained at a psychiatric facility"; "acquitted of a crime because of mental disease or disorder"; "is or has been under treatment for significant behavioral, emotional, or mental disorders, as defined by the most current diagnostic manual of the American Psychiatric Association" [HI Rev. Stats. 10-134-7.c]
Illinois	"has been a patient in a mental hospital within the past five years"; "is mentally retarded" [IL Ann. Stat. 38-24-3.1(a)(5), 38-24-3.1(a)(6)]
Indiana	"is of unsound mind" [IN Stat. Ann. 35-47-2-7.4]
Iowa	"has been adjudged mentally defective" [IA Code Ann. 724.15.1.f]
Maryland	"spent more than 30 consecutive days in any mental institution for treatment of a mental disorder" [Ann. Code of MD 27.442(e)(2)(v)]
Massachusetts	"has been confined to any hospital or institution for mental illness" [Ann. Laws of MA 140:129B(b)]

Michigan	"has been adjudged insane" [MI Stat. Ann. 28.92(1)]
Minnesota	"has ever been confined or committed as mentally ill, mentally retarded, or mentally ill and dangerous to the public to a treatment facility" [MN Stat. Ann. 624.713.1(c)]
Missouri	"is currently adjudged mentally incompetent or has been committed to a mental health facility" [Ann. MO Stat. 571.090.1(b)]
New Jersey	"is confined for a mental disorder to a hospital, mental institution, or sanitarium" [NJ Stat. Ann. 2C:58-3.c(2)]
New York	"has ever suffered any mental illness or been confined in any hospital or institution for mental illness" [NY Consol. Laws 39-400.00.1-c]
North Carolina	"has been adjudicated incompetent on the ground of mental illness or has been committed to any mental institution" [Gen. Stat. of NC 14-404]
North Dakota	"has been diagnosed and confined or committed to a hospital or institution as a mentally ill person or as a mentally deficient person" [ND Century Code 62.1-02-01.3]
Ohio	"is under adjudication of mental incompetence" [OH Revised Code 2923.13(A)(5)]
Oklahoma	"is mentally or emotionally unbalanced or disturbed" [OK Stat. Ann. 21-53.1289.12]
Pennsylvania	"is of an unsound mind" [PA Stat. Ann. 18-6110]
Rhode Island	"under guardianship or treatment or confinement by virtue of being a mental incompetent" [Gen. Laws of RI 11-47-6]
South Carolina	"who has been adjudicated mentally incompetent" [Code of Laws of SC 16-23-30(a)]
Tennessee	"is of an unsound mind" [TN Code Ann. 39-6-1704(b)]
Utah	"who has been declared mentally incompetent" [UT Code Ann. 76-10-503.1(a)]
Wisconsin	"found not guilty of or not responsible for a crime elsewhere that would be a felony in this state by reason of insanity or mental disease, defect or illness" [WI Stat. Ann. 941-29.1(d)]
Federal Government	"who has been adjudicated as a mental defective or who has been committed to a mental institution" [US Code 18-922(g)(4)]

Source: BATF [1988(b)]

**Exhibit B.4**  
**Firearm Statutes: Application Procedures**

State	Application Required*	Applicable Firearms	Application Required For	Application Submitted To	Maximum Waiting Period	Fingerprints Taken?	Verification Performed?
Alabama	Yes	Pistol	Purchase	Firearm dealer	2 days	No	Yes
Alaska	No	N/A	N/A	N/A	No waiting period	No	No
Arizona	No	N/A	N/A	N/A	No waiting period	No	No
Arkansas	No	N/A	N/A	N/A	No waiting period	No	No
California	Yes	Handgun	Purchase	Firearm dealer	15 days	No	Yes
Colorado	No	N/A	N/A	N/A	No waiting period	No	No
Connecticut	Yes	Handgun	Purchase	Firearm dealer	14 days	No	Yes
Delaware	No	N/A	N/A	N/A	No waiting period	No	No
District of Columbia	Yes	Rifles	Certificate (Valid for single purchase)	Local Police	60 days	Yes	Yes
Florida	No	N/A	N/A	N/A	No waiting period	No	No
Georgia	No	N/A	N/A	N/A	No waiting period	No	No
Hawaii	Yes	Handguns	Permit (Valid for single purchase)	County Sheriff	15 days	Yes	Yes
Idaho	No	N/A	N/A	N/A	No waiting period	No	No
Illinois	Yes	All Firearms	ID Card (Valid for 5 years)	State Police	30 days	No	Yes
Indiana	Yes	Handguns	License (Valid for 4 years)	Firearm dealer	60 days	Yes	Yes
Iowa	Yes	Handguns	Permit (Valid for 1 year)	County Sheriff	3 days	No	Yes
Kansas	No	N/A	N/A	N/A	No waiting period	No	No
Kentucky	No	N/A	N/A	N/A	No waiting period	No	No
Louisiana	Yes	All Firearms	Purchase	State Police	No waiting period	No	No
Maine	No	N/A	N/A	N/A	No waiting period	No	No
Maryland	Yes	Pistols	Purchase	Firearm dealer	7 days	No	Yes
Massachusetts	Yes	All Firearms	ID Card (Valid until revoked)	Local Police	40 days	No	Yes
Michigan	Yes	Pistols	Permit (Valid for single purchase)	Local Police	No waiting period	No	Yes
Minnesota	Yes	Handguns	Permit (Valid for 1 year)	Local Police	7 days	No	Yes
Mississippi	Yes	All Firearms	Purchase	County Sheriff	No waiting period	No	No
Missouri	Yes	Handguns	Permit (Valid for single purchase)	County Sheriff	7 days	No	Yes
Montana	No	N/A	N/A	N/A	No waiting period	No	No
Nebraska	No	N/A	N/A	N/A	No waiting period	No	No
Nevada	No	N/A	N/A	N/A	No waiting period	No	No
New Hampshire	No	N/A	N/A	N/A	No waiting period	No	No
New Jersey	Yes	Handguns	Permit (Valid for single purchase)	Local Police	30 days	No	Yes
New Mexico	No	N/A	N/A	N/A	No waiting period	No	No
New York	Yes	Handguns	Permit (Valid for single purchase)	Local Police	180 days	Yes	Yes
North Carolina	Yes	Handguns	Permit (Valid for single purchase)	County Sheriff	30 days	No	Yes
North Dakota	No	N/A	N/A	N/A	No waiting period	No	No
Ohio	No	N/A	N/A	N/A	No waiting period	No	No
Oklahoma	No	N/A	N/A	N/A	No waiting period	No	No
Oregon	Yes	Handguns	Purchase	Local Police	15 days	No	Yes
Pennsylvania	Yes	Handguns	Purchase	Firearm dealer	2 days	No	Yes
Rhode Island	Yes	Handguns	Purchase	Firearm dealer	3 days	No	Yes
South Carolina	Yes	Handguns	Purchase	Firearm dealer	No waiting period	No	Yes
South Dakota	Yes	Handguns	Purchase	Firearm dealer	2 days	No	Yes
Tennessee	Yes	Handguns	Purchase	Firearm dealer	15 days	Yes	Yes
Texas	No	N/A	N/A	N/A	No waiting period	No	No
Utah	No	N/A	N/A	N/A	No waiting period	No	No
Vermont	No	N/A	N/A	N/A	No waiting period	No	No
Virginia	Yes	Handguns	Purchase	Firearm dealer	1 day	No	Yes
Washington	Yes	Handguns	Purchase	Local Police	5 days	No	Yes
West Virginia	No	N/A	N/A	N/A	No waiting period	No	No
Wisconsin	Yes	Handguns	Purchase	Firearm dealer	2 days	No	No
Wyoming	No	N/A	N/A	N/A	No waiting period	No	No

\* Other than completion of BATF Form 4473

Source: BATF [1988(b)], DOJ [1988(b)], various state and local contacts

**Exhibit B.5**  
**Firearm Statutes: Verification Procedures**

State	Verification Conducted?	When Conducted			Who Conducts Verification	Criminal History Records Checked?	Mental Health Records Checked?
		Pre-Sale	Point-of-Sale	Post-Sale			
Alabama	Yes	X			Local Police	Local, State	No
Alaska	No						
Arizona	No						
Arkansas	No						
California	Yes	X		X	State Justice Department	State, NCIC	Routinely
Colorado	No						
Connecticut	Yes	X			Local, State Police	Local, State	No
Delaware	No						
District of Columbia	Yes	X			Local Police	Local, NCIC	No
Florida	No						
Georgia	No						
Hawaii	Yes	X			County Sheriff	Local, State, NCIC	No
Idaho	No						
Illinois	Yes	X		X	State Police	State, NCIC	Routinely
Indiana	Yes	X			Local, State Police	Local, State	No
Iowa	Yes	X			Local, State Police	Local, State, NCIC	No
Kansas	No						
Kentucky	No						
Louisiana	No						
Maine	No						
Maryland	Yes	X			State Police	State, NCIC	No
Massachusetts	Yes	X		X	Local Police	Local, State, NCIC	Local Discretion
Michigan	No			X	Local Police	Local, State, NCIC	No
Minnesota	Yes	X			Local Police	Local, State, NCIC	Occasionally
Mississippi	No						
Missouri	Yes	X			County Sheriff	Local, State	Local Discretion
Montana	No						
Nebraska	No						
Nevada	No						
New Hampshire	No						
New Jersey	Yes	X			Local Police	Local, State, NCIC	No
New Mexico	No						
New York	Yes	X			State Criminal Justice Services	State, NCIC	Routinely
North Carolina	Yes	X			County Sheriff	Local, State, NCIC	Local Discretion
North Dakota	No						
Ohio	No						
Oklahoma	No						
Oregon	Yes	X			Local, State Police	Local, State, NCIC	Routinely
Pennsylvania	Yes	X		X	Local, State Police	Local, State	No
Rhode Island	Yes	X			Local, State Police	Local, State, NCIC	No
South Carolina	Yes						
South Dakota	Yes	X		X	State Police	State	No
Tennessee	Yes	X			Local Police	Local, State	No
Texas	No				County Sheriff	Local, State, NCIC	No
Utah	No						
Vermont	No						
Virginia	Yes		X	X	State Police	State, NCIC	No
Washington	Yes		X		Local Police	Local, State, NCIC	No
West Virginia	No						
Wisconsin	No						
Wyoming	No						

Source: BATF [1988(b)], DOJ [1989(b)], various state and local contacts

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