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## The Adequacy of Fees Charged in Pennsylvania's Instant Check System for Firearms Purchases

A Review Conducted Pursuant to  
Act 1995-17 (First Special Session of 1995)

December 2000

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# Report Summary

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## Background

The 1994 federal Brady Handgun Violence Prevention Act required the establishment of a National Instant Criminal Background Check System (NICS) by November 30, 1998. During the “interim Brady Act period” (1994 through November 1998) the U.S. Department of Justice worked with the states to develop a national instant check system.

Pennsylvania’s involvement in this effort was formalized with the passage of Act 1995-17 during the 1995 Special Legislative Session on Crime. Act 17 amended Pennsylvania’s Uniform Firearms Act to require the Pennsylvania State Police to establish, maintain, and operate an instantaneous firearm background check program. This system is to provide for immediate access to a background check on individuals who attempt to purchase a firearm, receive a firearm through a transfer, or apply for a license to carry firearms.

Act 17 also established two separate fees pertaining to firearm sales and background record checks. These include a \$3 surcharge on the sale of each firearm and a \$2 fee charged to firearm dealers for each telephone request they make to the State Police for an instant background check.<sup>1</sup> Revenues collected from these fees are deposited in the Firearm Records Check Fund and appropriated annually to the State Police to carry out the records check function.

Another provision in Act 17 directs the Legislative Budget and Finance Committee (LB&FC) to review the need to increase or decrease the \$2 instant check fee and to issue a report of its findings and recommendations to the General Assembly. This first review was carried out five years following the effective date of the act, and is to be repeated at five-year intervals hereafter.

## The Pennsylvania Instant Check System (PICS)

The Pennsylvania State Police has developed and is operating an instantaneous firearm background check program. This program, designated as the Pennsylvania Instant Check System (PICS), became operational on July 1, 1998.

PICS uses a relatively new technology incorporating an Interactive Voice Response (IVR) system that provides for instantaneous access to a completely automated background check through a toll-free telephone number.<sup>2</sup> The toll-free line is designated for use by county sheriffs and firearm dealers. This telephone line is operational 365 days a year between the hours of 8:00 a.m. and 10:00 p.m.

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<sup>1</sup>County sheriffs also request instant background checks when issuing a license to carry a firearm. The law exempts these transactions from the \$2 fee.

<sup>2</sup>Section III of this report includes a step-by-step description of the instant check process.

In the national system, Pennsylvania is one of 14 “Point of Contact,” or POC states. This means that Pennsylvania is responsible for conducting background checks for all federal firearms licensees. Designation as a POC state enables background checks done in the Commonwealth to include accessing of Pennsylvania background files that would not be checked if the firearm dealers and sheriffs conducted checks only through the FBI’s National Instant Check System.

The PICS background check process involves comprehensive searches of many state and federal databases that as of 1999 included 1.8 million Pennsylvania criminal history and juvenile records, 107,713 mental health records, approximately 700,000 wanted person files, and federal files containing approximately 36 million criminal history records, and 962,472 records on other persons prohibited from purchasing firearms. During calendar year 1999, PICS conducted a total of 557,992 transactions for sheriffs and firearms dealers throughout the Commonwealth. The following are selected statistical highlights of the 1999 PICS activity:

- Of the 557,992 calls, 80 percent were placed by licensed dealers; the remainder were made by county sheriffs.
- Of the 557,992 calls, 58 percent were automatically approved through the PICS computer; the remaining 42 percent of the calls were forwarded to PICS operators for assistance.
- Calls handled through the automated system averaged 3.12 minutes; operator assisted calls averaged 4.72 minutes.
- Of the 557,992 calls, 14,183 were denied through prohibitions indicated on the individual’s record. Of these, 6,301 individuals challenged their denials, and 2,861 were subsequently reversed. The overall approval rate for firearm background check transactions in 1999 was 98.0 percent.
- As a by-product of the background checks, the State Police report that a total of 121 fugitives were identified and apprehended.

### **PICS Costs and Funding**

Between FY 1995-96 and June 30, 2000, the Pennsylvania State Police expended \$11.1 million to develop, implement, and operate PICS. During these years, the bulk of PICS costs were funded from three sources: a \$1.2 million start-up appropriation from the General Fund; \$4.0 million from the State Police’s General Government Operations Appropriation; and \$3.3 million in revenues from the \$3 firearms purchase surcharge. The \$2 instant check fee did not go into effect until July 1998, and revenues from these fees totaled only \$1.7 million through June 30, 2000. Another \$1.0 million was contributed from the General Fund Gun Checks Appropriation.

Because the State Police was finding it necessary to spend substantial amounts of its General Government Operations appropriation monies for PICS, the agency requested supplemental funding from the General Fund. In FY 1999-00, the

Legislature approved a new appropriation for the State Police entitled "Gun Checks." This \$1.0 million appropriation supplemented fee revenues to cover PICS costs in FY 1999-00.

The PICS operating budget for FY 2000-01 is \$4.4 million. The State Police project that the \$2.2 million General Fund "Gun Checks" appropriation, in combination with fee revenues of \$2.2 million, will be sufficient to cover PICS costs in FY 2000-01. State Police fiscal staff project that PICS annual costs will stabilize at about \$4.5 million over the next several years.

### **Adequacy of the Current \$2 Instant Check Fee**

The maximum \$2 fee provided for in law is not adequate to cover the costs incurred by the Pennsylvania State Police in providing the instant background check service. During calendar year 1999, PICS received a total of 557,992 telephone inquiries and had operating expenses of \$3,687,938. This equates to an average cost of \$6.61 per call, and is more than three times greater than the current \$2 fee.

For FY 1999-00, revenues from the \$2 fee funded only about 22 percent of total PICS operating costs. When combined with revenues from the \$3 firearm purchase surcharge, fee revenues still contributed only about 43 percent of PICS costs. Because fee revenues have not been sufficient to fully fund the Instant Check System, the State Police have had to supplement fee revenues with General Fund monies each year since PICS became operational.

During FY 1997-98 and FY 1998-99, the State Police used a total of \$4.0 million from its General Government Operations appropriation to fund PICS. The Legislature approved a new General Fund appropriation entitled "Gun Checks" for both FY 1999-00 (\$1.0 million) and FY 2000-01 (\$2.2 million).

### **Audit of Firearms Dealer Accounts**

Although not directly related to the question of fee adequacy, another PICS-related matter came to the attention of LB&FC staff during the course of this review. This matter warrants legislative attention because of the need to monitor and ensure firearm dealer compliance with the provisions of the Uniform Firearm Act, including the instantaneous background check program.

Included in the State Police's administration of PICS is a responsibility to identify firearm dealers who are failing to comply with the administrative provisions of the act, and to identify dealers who are providing firearms to individuals who are prohibited under the law from purchasing and possessing such firearms. The PSP's FY 2000-01 Budget Request states that the Department does not currently have a firearm dealer compliance/audit program in place to efficiently initiate investigative efforts.

## Recommendations

- 1. In light of actual system costs, the House Judiciary and Senate Law and Justice Committees should reexamine the statutory provisions relating to the funding of Pennsylvania's Instant Check System.<sup>3</sup> Because fee revenues alone have not been sufficient to fully fund PICS, there are a number of options the General Assembly can consider:**

*Option A:* Leave the current \$2 instant check fee unchanged and continue to supplement fee revenues (from both the instant check fee and the \$3 firearm purchase surcharge) with General Fund monies. The General Fund "Gun Checks" appropriation to PICS for FY 2000-01 is \$2.2 million. In the absence of a fee increase, an ongoing commitment of General Fund monies will be required.<sup>4</sup>

*Option B:* Increase the current \$2 instant check fee to a level that, when used in combination with revenues from the \$3 firearm surcharge, generates enough revenue to fully fund PICS costs without supplemental funding from the General Fund. We estimate that this would require a \$7.50 increase in the instant check fee from the current \$2 to about \$9.50 per background check.<sup>4,5</sup>

*Option C:* Increase the current \$2 instant check fee to a level that generates enough revenue to fully fund PICS costs without supplemental funding from either the \$3 firearm surcharge or the General Fund. We estimate that this would require a \$10.50 increase in the instant check fee from the current \$2 to about \$12.50 per background check.<sup>4,5</sup>

- 2. The Pennsylvania State Police should develop a staffing and cost proposal to establish an "audits and compliance unit" within its Firearms Division. Such a unit is needed to audit firearm dealers' accounts and to ensure that they are in compliance with the law and are remitting the required fees. The State Police should submit this proposal, including necessary civilian staffing requirements, to the Office of Administration for authorization. Also, if a decision is made to increase the instant check fee as discussed in Recommendation #1, the General Assembly should take into account the additional costs of the new audits and compliance unit in establishing a fee level that is sufficient to cover system costs.**

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<sup>3</sup>18 Pa. C.S. §§6111(b)(3) and 6111.2(a).

<sup>4</sup>Note on Related Federal Development: In January 1999, a bill was introduced in the 106<sup>th</sup> Congress that would provide funding for national instant criminal background check system improvements. This bill (Senate Bill 254) included a \$40 million appropriation to the FBI to make payments to states that act as points of contact for access to the national instant check system. No action was taken on this proposal and the bill died at the close of the session.

<sup>5</sup>Note About Estimates: The estimated fee increase amounts cited here assume annual PICS operating costs of \$4.4 million, annual gun sales of 370,000 and, that PICS will handle approximately 435,000 background check inquiries a year (the system's four-year average to date). The estimates also assume that of the estimated 435,000 background checks, about 80 percent would be made by firearm dealers and involve payment of the instant check fee.

# **I. Introduction**

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Act 1995-17 (Special Session No. 1 of 1995) amended the Uniform Firearms Act to require that the Pennsylvania State Police (PSP) establish and operate a system capable of performing instantaneous firearm background checks. The law also requires that the State Police charge a fee (\$2.00) for conducting these instant background checks and that the Legislative Budget and Finance Committee (LB&FC) periodically review the need to increase or decrease the amount of the fee. At five-year intervals, the LB&FC is to issue a report of its findings and recommendations to the General Assembly concerning the need for a statutory change in the fee. The first report is due in late 2000. (See Appendix A.)

## **Study Objectives**

1. To develop descriptive information on the nature and operation of the Pennsylvania State Police's Instant Check System (PICS) for Firearms Purchases.
2. To determine the number of instant checks the State Police conducts annually, associated revenue collections, and related program activity and statistical measures.
3. To examine the financial condition of the Firearm Records Check Fund and assess the adequacy of the fee the State Police currently charges to conduct the instant check on firearms purchases.
4. To present findings and recommendations to the General Assembly on the need to increase or decrease the instant check fee on firearms purchases.

## **Scope and Methodology**

The Pennsylvania State Police's Instant Check System became operational on July 1, 1998. This is a limited scope review focusing on the adequacy of the fees charged for these background checks.

The Uniform Firearms Act requires that the State Police, beginning five years from the effective date of the act, and every five years thereafter, is to provide the LB&FC with such information as is needed to do this review. Because the effective date of the act was September 13, 1995, the first information on the instant check fee was due from the State Police on or about September 13, 2000. Members of the LB&FC staff held an initial project meeting with State Police officials and received information needed to begin the project on September 7, 2000. The LB&FC's review was conducted between September and November 2000.

To develop descriptive information on the nature and operation of the Pennsylvania State Police's Instant Check System (PICS), LB&FC staff examined the pertinent statutes, regulations, and program materials. This included, for example, the interim program guidelines the PSP issued to Pennsylvania firearm dealers, the

1998 and 1999 Firearms Annual Reports, the PICS Basic Office and Operational Procedures Manual, and the Firearms Dealer Manual. LB&FC staff also obtained an organizational overview and program briefing from officials of the Firearms Division and conducted follow-up meetings with various PSP staff.

To determine the number of instant checks the PSP conducts annually and the associated revenue collections as well as related program activity and statistical measures, LB&FC staff reviewed monthly statistical reports obtained from the PSP for the months July 1998 through August 2000. The 1998 and 1999 Firearms Annual Reports also contain statistical data used in this review. To determine revenue collections, we also analyzed the Reports of Revenues and Receipts for each fiscal year beginning with FY 1995-96 through FY 2000-01 to date.

To examine the financial condition of the Firearm Records Check Fund and to assess the adequacy of the \$2.00 fee the PSP currently charges to conduct the instant check on firearms purchases, LB&FC staff obtained and analyzed PICS expenditure reports for FY 1995-96 through FY 1999-00. LB&FC staff also reviewed the FY 1999-00 and the FY 2000-01 PSP Budget Requests in order to obtain information on the financial condition of the fund. Expenditures by minor object were obtained and reviewed for FY 1998-99 and FY 1999-00 and rebudget figures by major object were obtained for FY 2000-01. We met, additionally, with department staff and reviewed the Status of Appropriations reports to assess the financial condition of the fund and the adequacy of the fee.

## **Acknowledgements**

LB&FC staff gratefully acknowledges the cooperation and assistance provided by the Pennsylvania State Police during the conduct of this project. Special thanks are extended to: Colonel Paul J. Evanko, Commissioner of the PA State Police; Major Ronald J. Hackenberg, Director of the Bureau of Records and Identification; Captain John Thierwechter, Director of the Operational Records Division; Lieutenant Joseph Elias, Director of the Firearms Division; Corporal Albert Picca, PA Instant Checks System Section; Corporal Rojean Reidenbaugh, Administration Section of the Firearms Division; Captain Jeffrey B. Miller, Director of Legislative Affairs; Marc Infantino, Budget Analyst of the Fiscal Division; and Ronald Plesco, Director of the Policy Office.

## **Important Note**

*This report was developed by Legislative Budget and Finance Committee staff. The release of this report should not be construed as indicating that the Committee's members endorse all the report's findings and recommendations.*

*Any questions or comments regarding the contents of this report should be directed to Philip R. Durgin, Executive Director, Legislative Budget and Finance Committee, P.O. Box 8737, Harrisburg, Pennsylvania 17105-8737.*

## II. Overview Information on the National Instant Criminal Background Check System (NICS)

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Firearms are sold either by dealers licensed under federal (and state) law, or by unlicensed persons (private sales). Most sales occur at the business premises of licensed dealers or at gun shows, which may include licensed and unlicensed sellers. In addition to sales, firearms can be transferred in pawn transactions, where a weapon is pledged as collateral for a loan and can be redeemed when the loan is repaid. Redemptions of pawned firearms are often regulated in the same manner as sales.<sup>1</sup>

The Federal Gun Control Act (GCA), as codified at 18 U.S.C. 922, prohibits the sale and transfer of any firearm to any person who:

- is under indictment for, or has been convicted of, a crime punishable by imprisonment for more than one year;
- is a fugitive from justice;
- is an unlawful user of or addicted to any controlled substance;
- has been adjudicated as a mental defective or committed to a mental institution;
- is a juvenile (less than 18 years of age for long guns and less than 21 years of age for handguns);
- was discharged from the armed forces under dishonorable conditions;
- has renounced United States citizenship;
- is subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child;
- has been convicted in any court of a misdemeanor crime of domestic violence;
- is an alien unlawfully in the United States; or
- is an alien admitted to the United States under a nonimmigrant visa.

This section of the report provides a summary of the origin and development of the instant background check system at the national level. This overview is derived from information contained in a 1999 report by the U.S. Department of Justice entitled *Survey of State Procedures Related to Firearm Sales, Midyear 1999*.

### The Brady Act

In 1994, the federal Brady Handgun Violence Prevention Act, P.L. 103-159, amended the Federal Gun Control Act. The act included both interim and permanent provisions, with the permanent provisions requiring the establishment of a

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<sup>1</sup>Handguns cannot be pawned in Pennsylvania.

National Instant Criminal Background Check System (NICS) by November 30, 1998.

The U.S. Department of Justice and Federal Bureau of Investigation, along with the states, developed a national instant check system during the “interim Brady Act period” (February 1994 through November 1998).<sup>2</sup> Pennsylvania’s involvement was formalized during the 1995 Special Legislative Session on Crime with Act 1995-17, which amended Pennsylvania’s Uniform Firearms Act (UFA) and required the development of an instantaneous firearm background check program. During this period, Pennsylvania was established as a Point of Contact (POC) state. A POC state has responsibility for conducting background checks for all federal firearms licensees.

### **Interim Brady Provisions**

From February 28, 1994, until November 29, 1998, the “interim provisions” of the Brady Act were in effect. These provisions prohibited the sale of a handgun by a federal firearms licensee for up to five days or until the licensee had been advised that, based on a background check, a prospective purchaser was not prohibited from purchasing a firearm under federal or state law. Checks were to be conducted by the chief law enforcement officer of the jurisdiction where the licensee operated. Thirty-two states, including Pennsylvania (called “original Brady States”), were required to follow the review procedures set forth in the interim provisions when they became effective.

The interim provisions of the Brady Act also allowed states with prohibitory statutes comparable to federal law to follow a variety of alternative procedures. State laws that qualified under these alternatives required that before any licensee completed the transfer of a handgun to a non-licensee, a government official verified that possession of a handgun by the transferee would not be a violation of law. These “Brady-alternative States” generally employed either an “instant check” or a “permit or other approval-type” system.

By the end of the interim period, the number of states following the Brady Act review procedures, rather than alternative state statutes, had dropped to 23.

### **Permanent Brady Provisions**

The permanent provisions of the Brady Act, 18 U.S.C. 922(t), required establishment of the National Instant Criminal Background Check System (NICS) by November 30, 1998. The U.S. Department of Justice, with the states, developed the system during the 57-month interim Brady Act period. The act allows a licensee to

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<sup>2</sup>During the “interim Brady Act period,” a 48-hour waiting period applied only to handgun purchases from licensed firearm dealers.

contact the system by telephone or other electronic means for information (to be supplied immediately) on whether receipt of a firearm by a prospective transferee would violate federal or state law.

In addition to regulating handgun sales, the Brady Act mandates that licensees request background checks on long gun purchasers and persons who redeem a pawned firearm. Licensees also have the option of requesting a NICS check on persons who attempt to pawn a firearm.

Prospective transferees undergo a NICS check requested by a dealer or present a state permit that the Bureau of Alcohol, Tobacco and Firearms (ATF) has qualified as an alternative to the point-of-transfer check. A licensee initiates a NICS check by contacting either the FBI or a point-of-contact (POC) agency designated by state government. The FBI or the POC checks federal and state databases and responds with a notice to the licensee that the transfer may proceed, may not proceed, or is delayed pending further review of the transferee's record. If further review of a record indicates the transfer would not violate federal or state law, the checking agency notifies the licensee that the transfer may proceed. If the licensee does not receive a response within three business days, the transfer may proceed. All NICS checks by the FBI are conducted without charge; fees for NICS checks conducted by point-of-contact agencies are determined by state law.

Under FBI regulations, persons prohibited from purchasing a firearm may request the reason for denial from the denying agency (FBI or POC), which has five business days to respond. The applicant may then submit information to correct the record on which the denial was based and may be required to contact the agency where the record originated.

As an alternative, the applicant's challenge to the record can be directed to the FBI, which will contact the denying agency or the source of the record. Persons denied by a POC may also have appeal rights under state law.

## **State Government Involvement in NICS**

Instant check systems allow licensed dealers to contact a checking agency by telephone or other electronic means and receive a response immediately, or as soon as possible without delay, as to whether a prospective purchaser is ineligible to purchase a firearm under the law.

Each state determines the nature of its involvement in the National Instant Check System. According to the U.S. Department of Justice, three basic forms of state involvement currently exist. As illustrated on Exhibit 1, these include the following models:

## Exhibit 1

### Forms of State Involvement in Instant Check Systems

Point of Contact (POC) Agency Requests NICS Check on <u>All Firearm Transfers</u> <sup>a</sup>	POC Requests NICS Check on Handgun Transfers; <u>FBI for Long Guns</u> <sup>b</sup>	State Does Not <u>Maintain a POC</u> <sup>c</sup>
Arizona	Indiana	Alabama
California	Iowa	Montana
Colorado	Maryland	New Hampshire <sup>d</sup>
Connecticut	Michigan	New Mexico <sup>e</sup>
Florida <sup>h</sup>	Nebraska	New York <sup>g</sup>
Georgia	North Carolina	North Dakota
Illinois	Oregon	Ohio
Nevada	Washington	Oklahoma
New Jersey	Wisconsin	Rhode Island <sup>i</sup>
<b>Pennsylvania</b>		South Carolina
Tennessee		South Dakota
Utah		Texas
Vermont		West Virginia
Virginia		Wyoming

\*Note: Hawaii operates on a “permit” system where a permit to acquire, valid for ten days, is needed for every handgun purchase. A permit to acquire, valid for one year, is needed for unlimited purchases of long guns.

<sup>a</sup>A point-of-contact agency requests a NICS check on all firearm transfers originating in the state. The fees charged by the POC states for background checks are shown in Appendix C.

<sup>b</sup>A POC agency requests a NICS check on all handgun transfers; firearms licensees in the state are required to contact the FBI for approval of long gun transfers.

<sup>c</sup>The state does not maintain a POC; firearms licensees are required to contact the FBI for NICS checks on all firearms transfers originating in the state.

<sup>d</sup>Department of Safety is a partial point-of-contact for NICS and conducts checks required by federal and state law. Licensed dealers request the Department of Safety to perform instant checks on sales and redemptions of handguns. Dealers contact the FBI for checks on sales and redemptions of long guns.

<sup>e</sup>State background check system may be used in the near future.

<sup>f</sup>Licensed dealers contact the State Police for instant checks under state law. The state is not a point-of-contact for the NICS; dealers must contact the FBI for all NICS checks.

<sup>g</sup>Licensed dealers contact the FBI for checks on long gun sales and on all firearm redemptions. County judges issue handgun licenses and are partial points-of-contact for NICS.

<sup>h</sup>Checks on firearms redeemed within 90 days of being pawned are conducted by the FBI; if redeemed after 90 days, Florida’s POC conducts the check.

<sup>i</sup>Police departments conduct checks on firearm purchasers as required by state law. The state is not a point-of-contact for NICS. Licensed dealers contact the FBI for NICS.

Source: *Survey of State Procedures Related to Firearm Sales, Midyear 1999*, U. S. Department of Justice.

- a point of contact (POC) agency requests a NICS check on all firearm transfers originating in the state.
- a POC agency requests a NICS check on all handgun transfers; licensees in the state are required to contact the FBI for approval of long gun transfers; or
- the state does not maintain a POC; licensees are required to contact the FBI for NICS checks on all firearm transfers originating in the state.

Some states, including Pennsylvania, have designated a single agency as their NICS point of contact. The POC agencies conduct any checks and issue any permits required by state law in addition to following procedures mandated under the NICS. The POC agencies also conduct most checks required by state laws.

According to State Police officials, a number of advantages accrue to those states designated as a POC. These include the following:

- States have access to additional records not available in the NICS, such as mental health records.
- The criminal history records maintained by the states often have more complete and timely information than that available via NICS (specifically, states will often have disposition data prior to its availability via NICS).
- States have a tremendous advantage in interpreting their own criminal history record data, which is important in several aspects including determining domestic violence cases and identifying felony charges.
- States performing background checks will be better able to disqualify persons based on their own state statutes.
- States often know under what conditions a convicted person's rights have been restored rendering the person as relieved from the federal firearms disability.
- When a state POC performs a NICS check, the record interpretation process is decentralized, i.e., the decisions regarding who can and cannot possess a firearm in the United States are made at the state level which many citizens prefer over having the federal government make these decisions.

As shown on Exhibit 2, other states have multiple points of contact (e.g., including local sheriffs and police departments, and county judges).

## Agencies Conducting Firearm Background Checks Under Federal or State Law, by State (As of June 30, 1999)

Jurisdiction	Names or Description of Checking Agencies	Jurisdiction	Names or Description of Checking Agencies	Jurisdiction	Names or Description of Checking Agencies
Alabama .....	None <sup>a</sup>	Louisiana .....	None	Ohio .....	None
Alaska .....	None	Maine .....	None	Oklahoma .....	None
Arizona .....	Dept. of Public Safety Firearm Clearance Center	Maryland .....	State Police Firearms Enforce- ment Division <sup>b</sup>	Oregon .....	State Police Firearms Unit <sup>b</sup>
Arkansas .....	None	Massachusetts ..	Police Departments <sup>c</sup>	Pennsylvania.	State Police
California .....	California Dept. of Justice	Michigan .....	Police Departments <sup>b, d</sup>	Rhode Island ...	Police Departments <sup>e</sup>
Colorado .....	Colorado Bureau of Investiga- tion	Minnesota .....	Sheriffs and Police Depts.	South Carolina.	None
Connecticut .....	State Police	Mississippi .....	None	South Dakota ...	None
Delaware .....	State Police <sup>f</sup>	Missouri .....	Sheriffs and Police Depts. <sup>g</sup>	Tennessee .....	Bureau of Investigation
Florida .....	Dept. of Law Enforcement <sup>h</sup>	Montana .....	None	Texas .....	None
Georgia .....	Bureau of Investigation	Nebraska .....	Police Departments <sup>b, d</sup>	Utah .....	Bureau of Criminal Identifica- tion
Hawaii .....	Police Departments <sup>i</sup>	Nevada .....	Highway Patrol	Vermont .....	Chittenden County Sheriffs Office
Idaho .....	None	New Hampshire	Department of Safety <sup>j</sup>	Virginia .....	State Police
Illinois .....	State Police	New Jersey .....	State Police	Washington .....	Sheriffs and Police Depts. <sup>b</sup>
Indiana .....	State Police <sup>b</sup>	New Mexico .....	None <sup>k</sup>	West Virginia ...	None
Iowa .....	Department of Public Safety <sup>b, l</sup>	New York .....	None <sup>m</sup>	Wisconsin .....	Department of Justice <sup>b</sup>
Kansas .....	None	North Carolina .	Bureau of Investigation <sup>b, d</sup>	Wyoming .....	None
Kentucky .....	None	North Dakota....	None		

Note: Agencies conduct checks on persons applying for purchases or permits required for purchases.

<sup>a</sup>None means that there is no state point-of-contact; licensed firearm dealers must contact the FBI for approval on all gun transfers. <sup>b</sup>A point-of-contact agency re-  
quests a NICS check on all handgun transfers; firearms licensees in the state contact the FBI directly for approval of long gun transfers. <sup>c</sup>Police departments for-  
ward identification card applications to the State Police for criminal history and fingerprint checks. The state is not a point-of-contact for NICS checks; dealers con-  
tact the FBI for all NICS checks. <sup>d</sup>County sheriffs are also partial points-of-contact for the NICS. <sup>e</sup>Police departments conduct checks on firearm purchasers as re-  
quired by state law. The state is not a point-of-contact for NICS. Licensed dealers contact the FBI for all checks required by NICS. <sup>f</sup>Licensed dealers contact DSP  
for instant checks under state law. The state is not a point-of-contact for the NICS; dealers must contact the FBI for all NICS checks. <sup>g</sup>Police departments conduct  
background checks for permits to acquire handguns. The state is not a point-of-contact for NICS checks; dealers must contact the FBI for all NICS checks. <sup>h</sup>For cer-  
tain pawnbroker redemptions, the dealer must contact the FBI. <sup>i</sup>Operates on a "permit" system. <sup>j</sup>Department of Safety is a partial point-of-contact for NICS and  
conducts checks required by federal and state law. Licensed dealers request the Department of Safety to perform instant checks on sales and redemptions of hand-  
guns. Dealers contact the FBI for checks on sales and redemptions of long guns. <sup>k</sup>State background check may be used in the near future. <sup>l</sup>County sheriffs are also  
partial points-of-contact for the NICS, by checking handgun redemptions by persons with state permits. <sup>m</sup>Licensed dealers contact the FBI for checks on long gun  
sales and on all firearm redemptions. County judges issue handgun licenses and are partial points-of-contact for NICS.

Source: *Survey of State Procedures Related to Firearm Sales, Midyear 1999.*

### **III. Pennsylvania's Instant Check System for Firearms Purchases (PICS)**

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#### **Overview of System Operations**

Act 1995-17 (Special Session No. 1 of 1995) amended that portion of the Crimes Code known as the Uniform Firearms Act, 18 Pa. C.S.A. §6101 *et seq.*, to provide support to law enforcement in the area of crime prevention and control. Pursuant to Act 17, the Pennsylvania State Police are required to establish, maintain, and operate an instantaneous records check system. Among other provisions, the act requires the State Police to:

- establish a telephone number operational seven days each week between 8:00 a.m. and 10:00 p.m. in order to respond to background check requests from licensed manufacturers, licensed importers, and licensed dealers;
- distribute without charge summaries of uniform firearm laws and firearm safety brochures;
- conduct criminal history, juvenile delinquency, and mental health records background checks; and
- provide for the confidentiality of all information provided by a potential purchaser, transferee, or applicant.

The Pennsylvania State Police has established the required system. Pennsylvania's Instant Check System (PICS) provides for immediate access to a background check on individuals attempting to purchase a firearm, receive a firearm through a transfer, or apply for a license to carry firearms.<sup>1</sup> PICS uses a relatively new technology incorporating an Interactive Voice Response (IVR) system that provides for a completely automated background check when no adverse or prohibitive records are identified on the subject of an inquiry.

The PICS background check process involves accessing both state and federal databases to determine an individual's eligibility to acquire a firearm or license to carry a firearm. In addition to the record check databases, PICS also accesses the Pennsylvania Bureau of Motor Vehicle records to derive the individual's complete name, date of birth, and social security number of the applicant prior to the initiation of the background check. (See Exhibit 3.)

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<sup>1</sup>Pennsylvania licensed firearms dealers have responsibilities under the Pennsylvania Uniform Firearms Act for the sale and transfer of firearms. Dealers are required to conduct background checks on individuals attempting to acquire either a handgun or a long gun through purchase or transfer. Private transfers of long guns are not required to be conducted through a dealer. Therefore, a background check is not conducted to determine the individual's eligibility to possess the firearm on private long gun transactions. County sheriffs request PICS background checks in the course of issuing licenses to carry firearms.

## State and Federal Databases Searched During Pennsylvania's Instant Background Checks

*State databases searched include:<sup>a</sup>*

- Pennsylvania Criminal History Records
- Juvenile Records (contained within the criminal history record file)
- Mental Health File (containing 302, 303, and 304 involuntary commitment information and adjudication of incompetence)
- Pennsylvania Protection From Abuse File (not all Pennsylvania PFAs fit the criteria for entry into the National Protection Order File)
- Pennsylvania Wanted/Missing Persons File (wanted persons for which the entering agency will not extradite, are contained in this file only, not the National Crime Information Center (NCIC) Wanted Persons File)

*Federal databases searched include:<sup>b</sup>*

- Interstate Identification Index - contains criminal history submitted by states throughout the country, and federal records
- Military Records - dishonorable discharges from the armed services
- Illegal Alien Records
- Renounced Citizenship
- Mental Defectives
- Federal Protection Order File (does not contain Pennsylvania temporary PFA records)
- NCIC Wanted Persons

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<sup>a</sup>In addition to the record check databases, PICS also accesses the Pennsylvania Bureau of Motor Vehicle records to derive the individual's complete name, date of birth, and social security number of the applicant prior to the initiation of the background check.

<sup>b</sup>As a Point of Contact state, PICS conducts the check of the federal databases through the National Instant Check System (NICS).

As of September 2000, 3,087 active Pennsylvania licensed firearm dealers were using the PICS program. Each dealer and county sheriff has a security code for lawfully accessing the system. County sheriffs are also authorized PICS users. Sheriffs request instant background checks when processing applications for a license to carry firearms and when involved in a firearm transfer. According to State Police officials, virtually all checks the county sheriffs request are for licenses to carry firearms.

The following steps provide an overview description of the background check process involving licensed dealers, county sheriffs, and PICS operators working in the Instant Check Unit. (The process is illustrated in the flow-chart in Exhibit 4 on the following page.) Firearm dealers are required to pay a \$2 fee for each background check they request.<sup>2</sup> The law exempts sheriffs from the payment of this fee.

Step 1: The dealer or sheriff initiates a call to the PICS toll-free number; the Interactive Voice Response (IVR) computer program prompts the caller for the security access code. If the caller does not have a touch tone telephone, waiting on the line will transfer the call directly to a PICS operator, and the check then proceeds with operator assistance.

Step 2: With a touch tone telephone, the caller is prompted through each step. The IVR requests the Pennsylvania driver's operator number or photo identification card number. The number is entered on the telephone key pad.

Step 3: Upon receiving the license number, the IVR initiates a database inquiry to the Pennsylvania Bureau of Motor Vehicles. The database returns the name, date of birth, and social security number of the subject of the background check.

Step 4: The IVR asks the dealer to verify the information received. Upon indicating the information is correct, the IVR system will then initiate the background check query through Pennsylvania and federal databases. The databases queried at this time are listed on Exhibit 3.

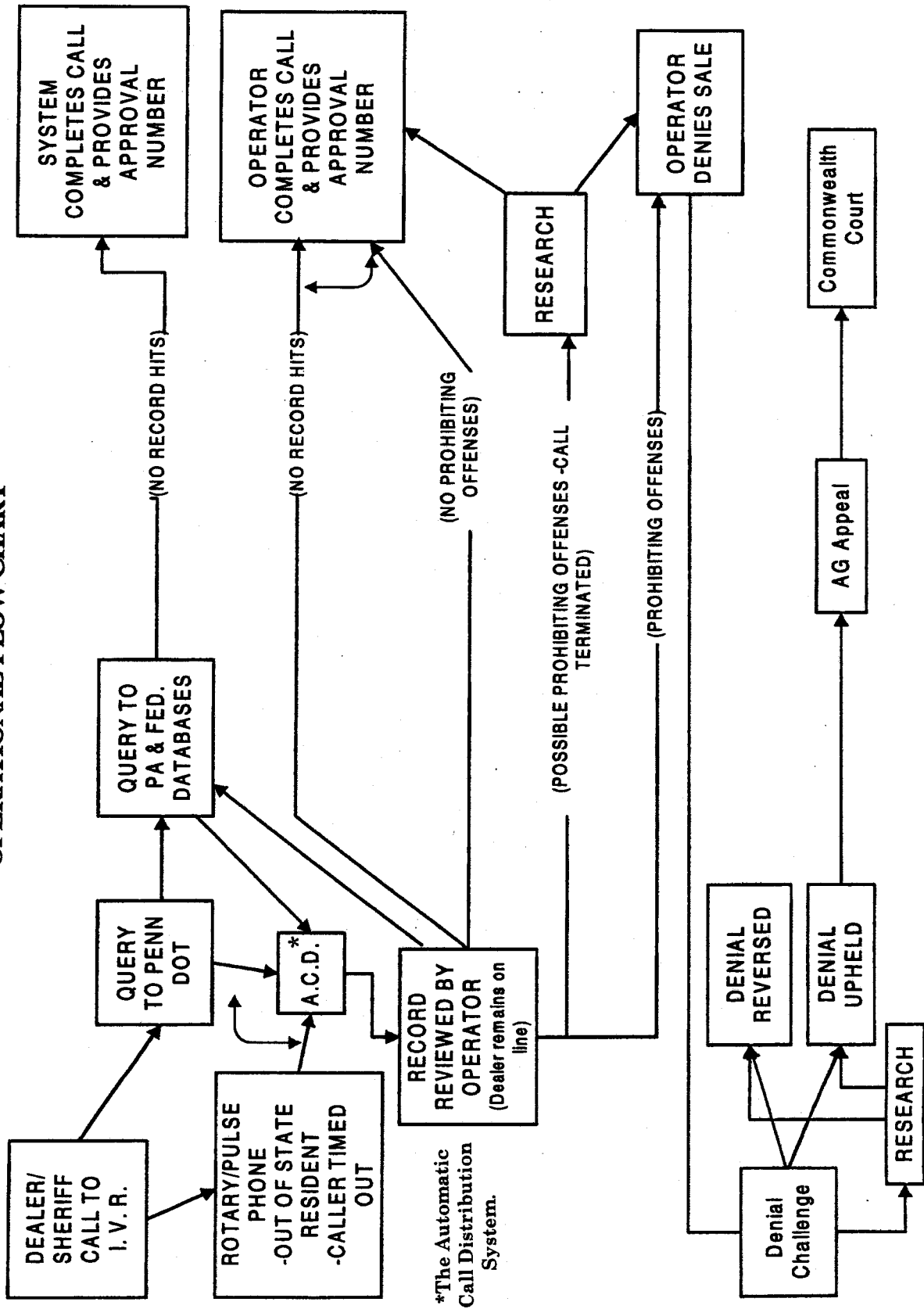
Step 5: The IVR advises the dealer at this time that he/she has been charged \$2 for the background check. County sheriffs are not required to collect and pay this fee.

Step 6: If no record is found for the individual, the IVR system automatically approves the transaction.

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<sup>2</sup>Other background checks conducted by the PSP have a substantially higher fee. Individuals and noncriminal justice agencies that request criminal history background records checks through the PSP's Criminal History Record database are required to pay a fee not to exceed \$10 per request.

**PENNSYLVANIA INSTANT CHECK SYSTEM  
OPERATIONAL FLOW CHART**



\*The Automatic Call Distribution System.

Step 7: If a record is located, the call is transferred through the Automatic Call Distribution (ACD) system to an operator, who then continues to process the background check.

Step 8: The operator re verifies the identification information and reviews the information returned from the various databases. If the information is determined to be nonprohibiting, the operator will issue an approval number.

Step 9: If the information is prohibiting, the dealer/sheriff is advised that the transaction must be denied. The dealer/sheriff should, at this time, provide the denied individual with a copy of the Pennsylvania State Police Denial Challenge form. If the individual feels they may have been denied in error, he/she may read and complete the form and submit it to the Pennsylvania State Police's Legal Unit.

Step 10: Occasionally, a transaction cannot be completed instantly for a number of reasons:

- A lack of numeric identifiers on the record--i.e., date of birth or social security number.
- A similar name exists, making identification difficult without fingerprints.
- A similar name issue may occur when the database involved is not a fingerprint-based file.
- Research of potentially prohibiting offenses from another state is needed.
- Research of missing criminal record disposition information is needed.
- Pennsylvania was not the sole source for criminal record submission to the FBI prior to 1983. Local agencies could submit records directly. Occasionally, the records have conflicting or ambiguous information.

Step 11: If a timely resolution cannot be obtained, the transaction is placed into research and the dealer/sheriff is advised that PICS will re-contact them as soon as possible, and at the very latest within 15 days, with a determination.

In addition to handling the initial background check calls, the PICS operators are responsible for a variety of other tasks. They answer calls on pending background checks, conduct basic research on checks that require additional information or clarification involving direct telephone contact with courts, investigating agencies, and other state and federal repositories. They also prepare correspondence, conduct data entry on mental health records, and maintain files on PICS documentation.

## Organization and Staffing

The Pennsylvania State Police is responsible for administering the provisions of the Uniform Firearms Act (PUFA). The Firearms Division, located within the Bureau of Records and Identification, has specific responsibility for the firearm background check program. The Firearms Division is organized into two sections: the Administrative Section and the Operations Section. As shown on Exhibit 5, the staff complement as of September 2000 was 99, including three enlisted and 96 civilian personnel. (The enlisted personnel include the Division Director, the Supervisor of the Firearms Administrative Section, and the Supervisor of the PICS Operations Section.)

The *Operations Section* is comprised of an enlisted Section Supervisor, the PICS Legal Assistance Unit with 12 staff members, and the Instant Check Unit with 64 staff members.

The Instant Check Unit is a call center conducting the background check requests. This responsibility requires ensuring accurate identification of the subject of the background check, conducting evaluation and research of records, maintaining comprehensive documentation, and keeping positive communication with firearm dealers and sheriffs.

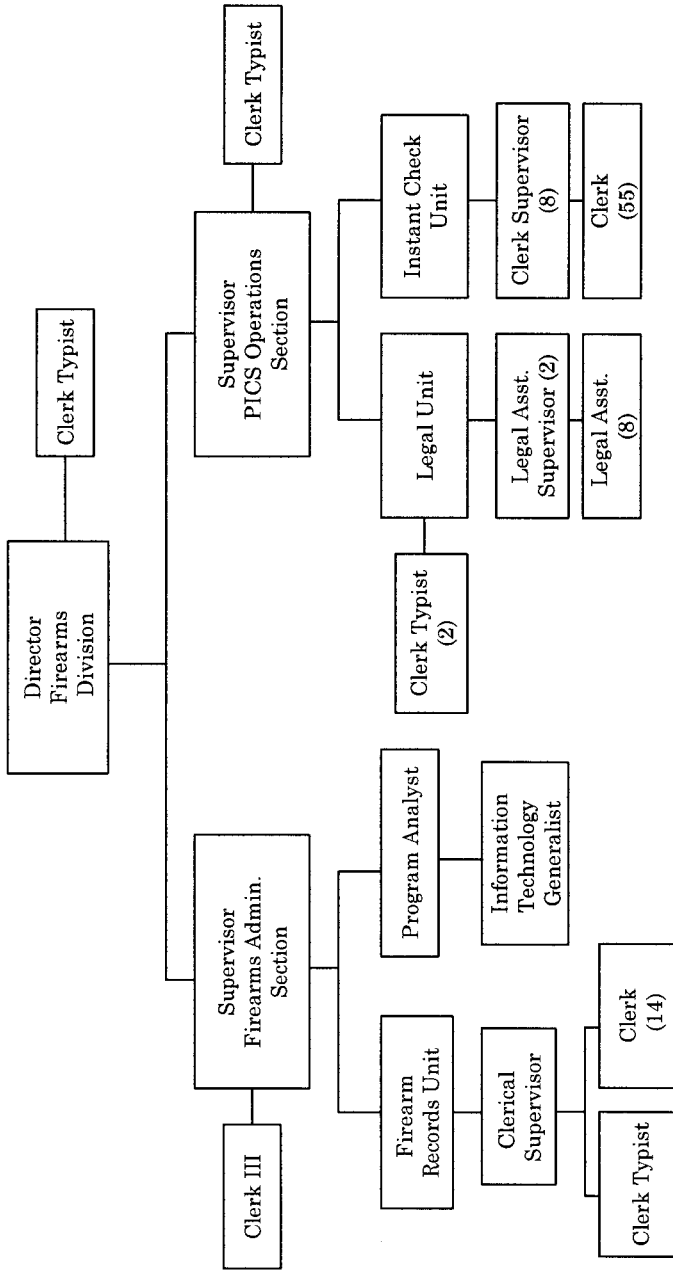
The Legal Unit handles all PICS denial challenges submitted to the Department. The staff conducts extensive research of records and attempts to obtain information from originating sources if the records are incomplete. The Unit also prepares case files for appeals through the Office of the Attorney General and testifies at the appeal hearings when required.

The *Firearm Administrative Section* is responsible for initiating and coordinating all firearm-related investigations involving dealer license compliance issues under state law, and enforcement investigations involving individuals who knowingly and intentionally furnish false identification or information in the attempt to acquire a firearm, in violation of the PUFA.

The Firearm Records Unit has been an integral part of the Bureau for many years in the administration of earlier firearm legislation. The Unit processes all firearm records of sale and surcharge documents submitted by Pennsylvania licensed firearm dealers. Information about licenses to carry firearms submitted by county sheriffs, and sportsman's firearm permit information provided by county treasurers, is compiled and maintained by this Unit. Information is data entered and microfilmed for records retention in compliance with the PUFA. All fees collected through the surcharge remittance and PICS background checks are processed through this office. The Firearm Records Unit is also the source for firearms-related forms, firearm information

Exhibit 5

**Organization Chart and Staff Complement for the Pennsylvania State Police Firearms Division**



<u>Administrative Section</u>	<u>Filled Positions</u>	<u>Operations Section</u>	<u>Filled Positions</u>
Supervisor.....	1	Supervisor .....	1
Personnel Analyst .....	1	Legal Assistant Supervisor.....	2
Information Technology Generalist .....	1	Legal Assistant .....	8
Clerical.....	17	Clerical .....	60
Section Total.....	20	Section Total .....	71

Total Division Filled Complement..... 93<sup>a</sup>

<sup>a</sup>Includes Division Director and Clerk Typist 3 who reports to the Director.

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police, September 2000.

brochures, and general information regarding the administrative provisions of the act.

The *Administrative Section* also handles all Division related special projects, maintains the automated systems, obtains statistical information from the computer systems, identifies procedural modification requirements, coordinates Division staff training programs, and updates and maintains all procedural manuals associated with Division operations.

The act also established a special Firearms Background Advisory Committee to review PICS operations and advise the Pennsylvania State Police on the development and maintenance of the instantaneous records check system.

The Committee consisted of six members as follows:

- The Governor or a designee.
- The Attorney General or a designee.
- The Majority Leader of the Senate or a designee.
- The Minority Leader of the Senate or a designee.
- The Majority Leader of the House of Representatives or a designee.
- The Minority Leader of the House of Representatives or a designee.

Pursuant to the provisions of the act, the Advisory Committee disbanded in June 2000. According to PSP officials, the Advisory Committee did not examine or take a position on the adequacy of the \$2 instant check fee.

## **PICS Operational Statistics**

In 1999, a total of 396,709 firearms were reported as purchased or privately transferred in Pennsylvania. Licensed firearm dealers reported 179,272 handgun transactions and 217,437 long gun transactions for the year. (See Appendix \_ for a county-by-county breakdown of firearm sales/transfers).

PICS conducted a total of 557,992 transactions for sheriffs and firearms dealers throughout the Commonwealth during 1999. The following are highlights of statistical information on Pennsylvania's Instant Check System for calendar year 1999. This data is as reported in the Pennsylvania State Police's *1999 Firearms Annual Report*:

- Approximately 72 percent of the 557,992 calls received were for gun checks, 22 percent for Licenses to Carry a concealed weapon, and the remaining 6 percent were requests for information on pending checks.

- Of the 557,992 calls, 58 percent were automatically approved through the IVR computer. The remaining 42 percent of the calls were forwarded to PICS operators for assistance.
- Calls handled through the automated system averaged 3.12 minutes; operator assisted calls averaged 4.72 minutes.
- Of the 557,992 transactions, 14,183 were denied through prohibitions indicated on the individual's record. Of these, 6,301 individuals challenged their denials and 2,861 were subsequently reversed. The overall approval rate for firearm background check transactions in 1999 was 98.0 percent.
- Of those individuals issued final denials, 188 appealed their case to the Office of Attorney General. Of these, 47 were reversed prior to the scheduled hearing date. The following summarizes the outcome of the remaining cases:

Cases Upheld .....	73
Cases Reversed .....	3*
Cases Withdrawn/Cancelled ...	25
Cases Pending .....	40
<hr/>	
*The PSP has appealed these cases to Commonwealth Court.	

- In 1999, there were 108 days in which PICS experienced technical difficulties. Computer downtime ranged from as little as 3 minutes, to as much as 5 ½ hours. Overall, the system was down a total of 3 percent of its scheduled operating time.
- In 1999, a total of 121 fugitives were identified and apprehended as a result of PICS.

## IV. Instant Check System Costs and Funding

### PICS Expenditures

Between FY 1995-96 and June 30, 2000, the Pennsylvania State Police expended \$11.1 million to develop, implement, and operate PICS. Table 1 breaks down PICS spending in the major object expenditure categories of "Personnel Services," "Operational Expenses," and "Fixed Assets" during each of these years. As shown, the personnel services costs for the 99 staff assigned to the PSP's Firearms Division account for the bulk of PICS expenditures. Much of the system's costs in the operating and fixed assets areas (e.g., computer and peripheral equipment and vendor-provided EDP services) were incurred in FY 1997-98, FY 1998-99, and prior fiscal years.

Table 1

<b>PICS Expenditures Since Program Inception</b>				
<u>Fiscal Year</u>	<u>Personnel Services</u>	<u>Operating Expenses</u>	<u>Fixed Assets</u>	<u>Total</u>
1995-96.....	\$ 937,221	\$ 177,057	\$ 6,352	\$ 1,120,630
1996-97.....	9,041	0	0	9,041
1997-98.....	411,867	1,697,201	514,056	2,623,124
1998-99.....	2,503,893	1,269,000	143,000	3,915,893
1999-00.....	<u>3,196,201</u>	<u>263,782</u>	<u>0</u>	<u>3,459,983</u>
Subtotal (Thru 6-30-00)	\$7,058,223	\$3,407,040	\$663,408	\$11,128,671
2000-01 (Est.).....	\$3,477,000	\$ 779,000	\$125,000	\$4,381,000

Source: Developed by LB&FC staff using information obtained from the PA State Police.

A more detailed breakdown of PICS expenditures within minor object code is provided on Table 2.

The PICS's operating budget for FY 2000-01 is \$4.4 million. This represents a 26.6 percent increase over the prior year and a 16.0 percent increase over system expenditures during its first full year of operations in FY 1998-99. Much of this increase is in operating expenses for contracted maintenance, printing, phone lines, and system modifications and enhancements.

The monies budgeted for system modifications and enhancements if proposed legislation relating to certain mental health commitments had been passed. House Bill 1943 of the 1999 session<sup>1</sup> proposed an expansion of the mental health conditions that would prohibit a person from possessing a firearm. If this legislation had passed, the PICS database would have required a major enhancement for the

<sup>1</sup>This bill did not pass during the 1999 Session. Passage will require reintroduction and consideration during the next legislative session which begins in January 2001.

additional categories. Also, according to PSP officials, extended research on all previously submitted records would have been required to properly categorize them.

According to PSP Fiscal Division staff, PICS expenditures over the next several years are projected to stabilize at about the current \$4.4 million budget level. After reaching a high of 110, staffing of the PICS function has leveled off at 99. Additionally, as of late 2000, all major equipment and software purchases had been made, and the system is now moving from a “start-up mode” to a “maintenance mode.” PSP fiscal staff believe that in the short-term, operating expenses will consist primarily of contracted services, and spending for fixed assets will be minimal. Officials point out, however, that system costs are subject to change if any legislative mandates related to background checks are made.

Table 2

**PICS Expenditures, by Major and Minor Object**

<u>Description</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01 (Rebudget)</u>
<b><u>Personnel Services:</u></b>			
Salaries.....	\$1,661,796	\$2,183,325	
Overtime .....	50,856	17,761	
Shift Differential Pay .....	27,401	32,141	
Employees Health Benefits.....	330,479	420,387	Minor Object
Annuitants' Hospitalization Insurance .....	154,652	222,478	Breakdown
Social Security Contributions .....	132,933	170,728	Not Available
Retirement Contributions.....	100,536	93,226	
State Workmen's Insurance Premium Payments	34,820	46,317	
Employees' Group Life Insurance .....	6,322	6,884	
Unemployment Compensation .....	752	430	
General Pay Increase .....	1,526	2,446	
Annual Leave Payout.....	<u>1,819</u>	<u>78</u>	
Subtotal - Personnel Services .....	\$2,503,893	\$3,196,201	\$3,477,000
<b><u>Operational Expenses:</u></b>			
Legal Fees .....	\$ 0	\$ 29,278	
Telecommunications Nonrecurring Charges .....	0	109,741	
Travel .....	0	505	a
EDP Contr. Svcs. - Vendor Provided.....	1,269,000	39,569	
Contracted Maintenance Service-Data Proc.....	<u>0</u>	<u>84,690</u>	
Subtotal - Operational Expenses.....	\$1,269,000	\$ 263,782	\$ 779,000
<b><u>Fixed Assets:</u></b>			
Computer & Peripheral Equipment.....	<u>143,000</u>	<u>0</u>	<u>a</u>
Subtotal - Fixed Assets.....	\$ 143,000	\$ 0	\$ 125,000
Total .....	\$3,915,893	\$3,459,983	\$4,381,000

<sup>a</sup>Although a breakdown of minor object code is not available, PSP budget materials show that much of the increase in these areas is associated with system modifications and enhancements related to mental health files.

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police.

## PICS Funding

Pennsylvania's Instant Check System is funded through a combination of state General Fund monies and fee and surcharge revenues from the Firearm Records Check Fund. (See Table 3.)

Table 3

Fiscal Year	<b>Funding of Pennsylvania's Instant Background Check System, by Source</b>					
	Firearm Background Check Fund (Fees) <sup>a</sup>	State Appropriation			Federal Funds	Total
		Gun Control <sup>b</sup>	General Government Operations	Gun Checks <sup>c</sup>		
1995-96 .....	\$ 0	\$1,081,890	\$ 38,740	\$ 0	\$ 0	\$1,120,630
1996-97 .....	0	9,041	0	0	0	9,041
1997-98 .....	1,124,117	0	1,482,597	0	16,410	2,623,124
1998-99 .....	1,412,000	0	2,503,893	0	0	3,915,893
1999-00 .....	2,459,983 <sup>d</sup>	0	0	1,000,000	0	3,459,983
2000-01 (Est.)	2,200,000	0	0	2,181,000	0	4,381,000

<sup>a</sup>Includes revenues from both the \$2 instant check fee and the \$3 firearms surcharge; these revenues are deposited in the Firearm Records Check Fund and are subsequently disbursed from the fund through the "Purchase of Firearms" appropriation.

<sup>b</sup>This was a two-year start-up appropriation from the General Fund.

<sup>c</sup>This was a new General Fund appropriation in FY 1999-00.

<sup>d</sup>Includes a year-end adjustment of \$27,184.

Source: Developed by LB&FC staff using information obtained from the Fiscal Division of the PA State Police.

The following is a chronology of PICS funding since FY 1995-96:

***FY 1995-96 and FY 1996-97:*** The General Assembly appropriated \$1.2 million to the State Police in an appropriation line item entitled "Gun Control." This was a two-year "start-up" appropriation to initiate the instant check system mandated in law. In addition to the one-time start-up appropriation, the PSP also used monies from its General Government Operations (GGO) appropriation in FY 1995-96 to fund PICS.

***FY 1997-98:*** In FY 1997-98, fee revenues from the Firearm Records Check Fund began to be used to cover a portion of PICS costs. During this year, the State Police continued to use monies from its General Government Operations appropriation. FY 1997-98 funding also included a small one-time federal grant entitled "Computerized Identification."

***FY 1998-99:*** Revenues from the Firearm Records Check Fund continued to be used to operate the system. However, as PICS costs increased, the need for the State Police to use additional GGO monies also increased (increasing

to \$2.5 million in this year). This demand on the General Government Operations appropriations limited the amount of GGO funds available for other State Police programs.

*FY 1999-00:* The PSP submitted a request to the Office of the Budget for supplemental funding in order to move away from using General Government Operation monies to fund PICS. In FY 1999-00, the Office of the Budget recommended, and the Legislature approved, a new General Fund appropriation for the State Police designated as “Gun Checks.” This \$1.0 million appropriation supplemented monies from the Firearm Records Check Fund to cover PICS costs in FY 1999-00.

*FY 2000-01:* The PSP projects that the Gun Checks appropriation (\$2.2 million) will be adequate to supplement the Purchase of Firearms appropriation from the Firearm Records Check Fund, and that no GGO monies will be needed to fund PICS in FY 2000-01. If funds are not sufficient, however, the PSP will be forced to again use some of its GGO funds to cover PICS’ costs.

### **Fee Revenues Compared to Fee-Related Costs**

Fee revenues used in the funding of the PICS are derived from the \$2 fee charged for each background check and \$3 surcharge imposed on each sale of a firearm subject to state sales tax. Between FY 1995-96 and FY 1997-98, only the \$3 surcharge was being collected. In FY 1998-99, PICS became operational, and the State Police began to also collect the \$2 fee for background checks requested by firearm dealers. Table 4 lists fee collections during these years.

Table 4

<b>Instant Check Fee and Firearm Surcharge Revenue Collections</b>			
<u>Fiscal Year</u>	<u>\$2.00 PICS Fee</u>	<u>\$3.00 Surcharge</u>	<u>Total Collections<sup>a</sup></u>
1995-96 .....	\$ 0	\$ 445,880	\$ 445,880
1996-97 .....	0	1,006,679	1,006,679
1997-98 .....	0	1,229,792	1,229,792
1998-99 .....	640,638	849,218	1,489,856
1999-00 .....	752,271	997,196	1,749,467
2000-01 Rebudget .....	774,000	1,026,000	1,800,000
2001-02 Estimate .....	817,000	1,083,000	1,900,000

<sup>a</sup>Revenues from the \$2 instant check fee and \$3 firearm surcharge are not separately recorded in PSP or Commonwealth fiscal documents. LB&FC staff estimated the revenue breakdown shown above.

Source: Developed by LB&FC staff using information obtained from the Pennsylvania State Police.

LB&FC staff examined reported collection amounts for both the PICS fee and the purchase surcharge in light of fiscal year expenditures for PICS. We found that

revenues from the \$2 fee are sufficient to cover only about 20 percent of the total PICS costs. Even when combined with revenues from the \$3 surcharge, fee revenues cover less than 50 percent of PICS costs. (See Table 5.)

Table 5

Fiscal Year	PICS Costs	Percentage of Costs Covered by Fees	
		\$2 Only	\$2 and \$3 Combined
1995-96.....	\$1,120,630	0.0%	a
1996-97.....	9,041	0.0	a
1997-98.....	2,623,124	0.0	46.9%
1998-99.....	3,915,893	16.4	38.0
1999-00.....	3,459,983	21.7	50.6
2000-01 Rebudget.....	4,381,000	17.7	41.1
2001-02 Estimate .....	4,400,000	18.6	43.2

<sup>a</sup>For bookkeeping purposes FY 1996-97 expenditures were recorded with FY 1995-96 expenditures. Combined fee revenues for these two years amount to \$1,452,559; combined expenditures total \$1,129,671. The combined two-year funding percentage is 128.6 percent.

Source: Developed by LB&FC staff using information obtained from the PA State Police.

It appears that the General Assembly intended the Instant Check Fee (\$2) to fully cover the costs incurred by the State Police in conducting the instant checks. As established in the Uniform Firearms Act, 18 Pa. C.S.A. §6111(b)(3), “the requester shall be charged a **fee equivalent to the cost of providing the service** but not to exceed \$2 per buyer or transferee.” (Emphasis added.) This fee, along with a \$3 surcharge is to be deposited into the Firearm Records Check Fund established by §6111.3(a) of the act and is to be used for carrying out the provisions of §6111.<sup>2</sup> The act at 18 Pa. C.S.A. §6111.2(b) also states that the Legislative Budget and Finance Committee shall review the need to increase or decrease the \$2 Instant Check Fee.

In the aggregate, the Pennsylvania State Police has spent \$11.1 million to develop, implement, and operate PICS during the period FY 1995-96 through FY 1999-00. During that same period, revenues generated from the \$2 fee totaled only about \$1.4 million. The \$2 fee did not go into effect, however, until FY 1998-99.

As shown on the next page, about two-thirds of PICS costs between FY 1995-96 and FY 1999-00 were funded through the PSP’s General Government Operations Appropriation and revenues from the \$3 firearms purchase surcharge:

<sup>2</sup>The provisions of §6111 include the following: the process of sale or transfer of firearms, such as application/record requirements; carrying out the instant background checks; PSP investigation of criminal and court records, and monitoring licensee adherence to statutory requirements.

		<u>% of Total</u>
General Government Operations Appropriations.....	\$ 4,025,230	36.2%
\$3 Firearm Purchase Surcharge.....	3,331,147	29.9
\$2 Instant Check Fee .....	1,664,953	15.0
Start-Up Appropriation (General Fund) .....	1,090,931	9.8
Gun Checks Appropriation (General Fund).....	1,000,000	9.0
Federal Funds .....	<u>16,410</u>	<u>0.1</u>
Total Through June 30, 2000.....	\$11,128,671	100.0%

While the aggregate figures provide an overall perspective during the program's start-up phase, it is necessary to look at fiscal year and individual transaction data to more precisely assess fee adequacy.

Because PICS did not become operational until July 1998, calendar year 1999 is the first full year for which cost and operational data is accessible. During 1999, the State Police expended \$3,687,938 to receive and process 557,992 telephone inquiries through PICS. This equates to a cost of \$6.61 per telephone inquiry, or \$4.61 more per inquiry than the current \$2 per transaction charge.

In 1999, as was the case in prior years, the difference between revenues generated by the \$2 fee and the actual cost of providing the service was made up by revenues from the \$3 firearms surcharge fee and the State Police's General Government Operations Appropriation and the Gun Checks Appropriation.

During the first six months of calendar year 2000, the average cost per inquiry processed by PICS was \$7.56 (6 months costs of \$1,729,992 divided by 228,782 inquiries), or \$5.56 more per inquiry than the current \$2 per transaction fee.

### **Financial Condition of the Firearm Records Check Fund<sup>3</sup>**

In addition to requiring the establishment of an instantaneous records check system, Act 1995-17 also established a restricted account in the State Treasury for the State Police to use in carrying out the provisions of Act 1995-17 relating to firearm ownership. This fund receives revenues from the \$3.00 surcharge imposed on each firearm sale in Pennsylvania and from the \$2.00 fee charged to firearm dealers for use of the instantaneous telephone-based firearm records check system.

Table 6 on the next page provides a financial statement for the Firearms Records Check Fund through June 30, 2000. Distributions began to be made from the fund in FY 1997-98. At that time, a separate appropriation entitled "Purchase of Firearms" was established. Each year since FY 1997-98, a disbursement has been made from the restricted revenue "Firearm Records Check Fund" and this amount

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<sup>3</sup>In FY 1995-96, the State Treasury established a restricted revenue account for the PSP entitled the "Firearm Ownership Fund." Act 1995-66 (of the regular session) amended the title of the fund to the "Firearm Instant Records Check Fund" and finally, Act 1998-70 amended the fund title to the "Firearm Records Check Fund."

has been deposited into the "Purchase of Firearms" appropriation. It is from this "Purchase of Firearms" account that the actual expenditures are made.

Table 6

<b>Firearm Records Check Fund Financial Statement</b>					
	<u>FY 1995-96</u>	<u>FY 1996-97</u>	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>
Beginning Balance .....	\$ 0	\$ 445,880	\$1,452,559	\$1,558,234	\$1,636,090
Revenues <sup>a</sup> .....	445,880	1,006,679	1,229,792	1,489,856	1,749,467
Available Funds .....	445,880	1,452,559	2,682,351	3,048,090	3,385,557
Expenditures <sup>b</sup> .....	<u>0</u>	<u>0</u>	<u>(1,124,117)</u>	<u>(1,412,000)</u>	<u>(2,763,745)</u>
Ending Balance .....	\$445,880	\$1,452,559	\$1,558,234	\$1,636,090	\$ 621,812

<sup>a</sup>Includes revenues from the \$2 PICS fee and the \$3 firearm sales surcharge. Revenues shown for FY 1995-96, FY 1996-97, and FY 1997-98 include collections from the \$3 surcharge only; the \$2 instant check fee did not go into effect until FY 1998-99.

<sup>b</sup>Monies are dispersed from this fund and transferred to the *Purchase of Firearms* Appropriation for expenditure by the PA State Police.

Source: Developed by LB&FC staff from the *Status of Appropriations* documents.

Apparent from the financial statement is the fact that General Fund monies have been used to help fund PICS even though additional funds were available in the Firearm Records Check Fund. The State Police's Budget Analyst explained that the Department has taken a very conservative approach to using monies from this fund. Because the system was new and the fee revenues and system costs were uncertain, the Department's approach was initially to maintain a "reserve" in the fund.

During the initial years of PICS operation, the State Police first used any available General Fund monies before drawing on fee revenues from the Firearm Records Check Fund (the fund balance was \$1.6 million as of June 30, 1999). However, now that the system is somewhat established, PSP fiscal staff believe they are in a position to more accurately estimate PICS revenues and expenditures.

The PSP's Budget Analyst stated that all funds available in the Firearm Records Check Fund will be used during FY 2000-01 and that the fund will have little, if any, balance remaining at June 30, 2001. Hereafter, the State Police approach will be to use all monies available in the fund and to supplement them with General Fund monies from the "Gun Checks" appropriation.

## **V. Appendices**

## APPENDIX A

### Copy of Pertinent Sections of Act 1995-17, the Uniform Firearms Act

#### § 6111. Sale or transfer of firearms.

##### (b) Duty of seller.

(3) Requested by means of a telephone call that the Pennsylvania State Police conduct a criminal history, juvenile delinquency history and a mental health record check. The purchaser and the licensed dealer shall provide such information as is necessary to accurately identify the purchaser. The requester shall be charged a fee equivalent to the cost of providing the service but not to exceed \$2 per buyer or transferee.

#### § 6111.2. Firearm sales surcharge.

(b) **Increases or decreases.**--Five years from the effective date of this subsection, and every five years thereafter, the Pennsylvania State Police shall provide such information as necessary to the Legislative Budget and Finance Committee for the purpose of reviewing the need to increase or decrease the instant check fee. The committee shall issue a report of its findings and recommendations to the General Assembly for a statutory change in the fee.

## APPENDIX B

### 1999 Firearm Sales/Transfers Reported by County

<u>County</u>	<u>Handguns<sup>a</sup></u>	<u>Long Guns<sup>b</sup></u>	<u>County</u>	<u>Handguns<sup>a</sup></u>	<u>Long Guns<sup>b</sup></u>
Adams .....	1,518	3,431	Lancaster .....	7,531	9,620
Allegheny .....	13,650	10,464	Lawrence.....	1,224	1,832
Armstrong.....	986	1,651	Lebanon .....	3,669	5,298
Beaver .....	3,500	2,984	Lehigh .....	6,721	5,356
Bedford.....	1,351	4,661	Luzerne .....	5,356	6,622
Berks .....	5,276	5,508	Lycoming.....	3,107	5,371
Blair .....	3,711	3,361	McKean .....	555	1,178
Bradford.....	1,142	3,208	Mercer .....	1,245	1,981
Bucks.....	9,248	6,951	Mifflin .....	444	1,201
Butler .....	5,995	6,580	Monroe .....	3,012	2,345
Cambria .....	2,089	3,524	Montgomery.....	6,915	4,885
Cameron .....	123	132	Montour .....	16	23
Carbon.....	562	981	Northampton .....	2,802	2,890
Centre .....	1,166	2,750	Northumberland..	1,318	2,291
Chester.....	4,224	2,946	Perry.....	560	1,042
Clarion .....	711	2,226	Philadelphia.....	10,757	1,917
Clearfield .....	3,592	8,338	Pike .....	546	1,007
Clinton .....	637	1,798	Potter .....	569	1,111
Columbia.....	1,311	2,453	Schuylkill .....	2,804	4,040
Crawford.....	980	2,230	Snyder .....	709	2,224
Cumberland.....	2,329	4,839	Somerset .....	2,003	4,392
Dauphin .....	3,674	3,004	Sullivan.....	82	308
Delaware.....	6,839	2,691	Susquehanna .....	948	2,058
Elk .....	564	1,347	Tioga.....	932	3,093
Erie.....	4,124	7,334	Union.....	306	931
Fayette .....	3,356	4,303	Venango .....	1,040	1,806
Forest .....	1	0	Warren .....	878	1,865
Franklin.....	2,318	4,830	Washington.....	5,475	5,228
Fulton.....	233	413	Wayne .....	1,629	2,583
Greene.....	1,020	2,236	Westmoreland.....	8,231	9,151
Huntingdon.....	518	1,494	Wyoming .....	153	557
Indiana.....	1,252	2,694	York.....	<u>5,105</u>	<u>6,130</u>
Jefferson .....	814	1,391			
Juniata .....	162	651			
Lackawanna .....	3,654	3,697	State Totals .....	179,272	217,437

Note: Reported as of 08/02/00; totals include any taxed and non-taxed sales/transfers reported with surcharge dates that began in 1999 regardless of when they ended.

<sup>a</sup>A handgun is defined as: a pistol or revolver with a barrel length less than 15 inches, a shotgun with a barrel length less than 18 inches, or a rifle with a barrel length less than 16 inches, or a pistol, revolver, rifle, or shotgun with an overall length of less than 26 inches. The barrel length of a firearm is determined by measuring from the muzzle of the barrel to the face of the closed action, bolt, or cylinder, whichever is applicable.

<sup>b</sup>A long gun is defined as: any weapon, that is not a handgun, designed to or that may readily be converted to expel a projectile by the action of an explosion, or the frame or receiver of the weapon.

Source: Pennsylvania State Police, *1999 Firearms Annual Report*.

## APPENDIX C

### Instant Check Fees in PA and Other Point of Contact (POC) States

<u>State</u>	<u>Fee</u>
Arizona .....	\$ 0
California.....	14/10 <sup>a</sup>
Colorado.....	0
Connecticut.....	0
Florida .....	5 <sup>b</sup>
Georgia .....	5
Illinois.....	2
Nevada.....	15
New Jersey .....	15
<b>Pennsylvania .....</b>	<b>2</b>
Tennessee .....	10
Utah.....	7.50
Vermont.....	0
Virginia.....	2/5 <sup>c</sup>

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<sup>a</sup>The California Department of Justice charges \$14 for a check on a single handgun or an unlimited number of long guns and \$10 for additional handguns purchased at the same time.

<sup>b</sup>For certain pawnbroker redemptions, the background check is conducted by the FBI. For all other background checks, the fee is \$8. The \$5 fee takes effect December 1, 2000. Prior fee was \$8.00.

<sup>c</sup>\$2 for a resident; \$5 for a nonresident.

Source: U.S. Department of Justice, Bureau of Justice Statistics, *Survey of State Procedures Related to Firearm Sales*, Mid-Year 1999.



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
1800 ELMERTON AVENUE  
HARRISBURG, PA 17110

COLONEL PAUL J. EVANKO  
COMMISSIONER

December 8, 2000

Mr. Philip R. Durgin  
Executive Director  
Legislative Budget and  
Finance Committee  
Room 400, Finance Building  
Harrisburg, Pennsylvania 17105-8737

Dear Mr. Durgin:

Thank you for the opportunity to review the confidential draft of your review of the adequacy of fees charged in the Pennsylvania Instant Check System (PICS). My staff has thoroughly reviewed this confidential draft.

During telephone conversations between my staff and your analysts on December 7<sup>th</sup> and December 8<sup>th</sup>, three areas of the draft report were discussed.

The first area is found in page S-3 of the draft report. The number 557,992 telephone inquiries was cited, and used in your calibrations to determine appropriate fee options. It should be noted, that approximately 112,000 of these calls were placed by sheriffs to do background checks for persons applying for a permit to carry a firearm. PICS does not assess the \$2.00 fee to sheriffs conducting these background checks, in accordance with provisions of the Uniform Firearms Act.

The second item discussed was the organizational chart that appears on page 14 of the draft report. In the far left box, attached to the "Supervisor, Firearms Administration Section"; the box should read "Clerk 3", rather than "Clerk Typist". Down further in the same tree, "Personnel Analyst" should read "Program Analyst". And again in this same tree, "Clerk Steno" should be changed to "Clerical Supervisor".

The last item discussed was on page 23 of the draft report. The last paragraph stops in mid-sentence with the words "and this amount". It appears the remainder of the sentence was omitted from the draft report.

Mr. Philip R. Durgin  
December 8, 2000  
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It is my understanding that all of the above items will be corrected prior to the presentation of the final report during the meeting of the Legislative Budget and Finance Committee on December 12, 2000. Lieutenant Joseph L. Elias and Corporal Rojean L. Reidenbaugh will represent the State Police at that meeting.

Again, I thank you for the opportunity to review the confidential draft of you report.

Sincerely

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Colonel Paul J. Evanko  
Commissioner



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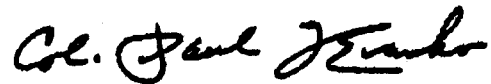
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