

The author(s) shown below used Federal funds provided by the U.S. Department of Justice and prepared the following final report:

Document Title: Enforcement of the Brady Act, 2009: Federal and State Investigations and Prosecutions of Firearm Applicants Denied by a NICS Check in 2009

Author: Ronald J. Frandsen

Document No.: 234173

Date Received: April 2011

Award Number: 2009-BJ-CX-K006

This report has not been published by the U.S. Department of Justice. To provide better customer service, NCJRS has made this Federally-funded grant final report available electronically in addition to traditional paper copies.

Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Enforcement of the Brady Act, 2009

Federal and state investigations and prosecutions of
firearm applicants denied by a NICS check in 2009

Ronald J. Frandsen

Regional Justice Information Service
4255 West Pine Boulevard
St. Louis, Missouri 63108

April, 2011

Enforcement of the Brady Act, 2009

Abstract

The Brady Handgun Violence Prevention Act (Brady Act) requires criminal history background checks by the Federal Bureau of Investigation (FBI) and state agencies on persons who attempt to purchase a firearm from a licensed dealer. In 2009, the FBI and state agencies denied a firearm to nearly 133,000 persons due to National Instant Criminal Background Check System (NICS) records of felonies, domestic violence offenses, and other prohibiting factors. *Enforcement of the Brady Act, 2009* reports on investigations and prosecutions of persons who were denied a firearm in 2009. The report describes how the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) screens denied-person cases and retrieves firearms that were obtained illegally. Statistics presented include charges most often filed against denied persons by United States Attorneys and results of prosecutions. Investigation statistics from two states are also presented. Key statistics are compared for the years 2009 and 2008. Statistical highlights are presented in the body of the report and complete details are included in an Appendix.

Disclaimer

This project was supported by Grant No. 2009-BJ-CX-K006 awarded by the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Background

The Brady Act. The Brady Handgun Violence Prevention Act (Brady Act) was enacted in 1993 to provide a method for blocking transfers of firearms to prohibited persons. From February 28, 1994 to November 30, 1998, the interim Brady provisions, 18 U.S.C. 922(s), required a Federal Firearms Licensee (FFL) to request a background check on a handgun applicant from the Chief Law Enforcement Officer (CLEO) of the jurisdiction where the licensee operated. A handgun could be transferred if a notice of denial was not transmitted to the FFL within five days by the CLEO.

National Instant Criminal Background Check System. Pursuant to the permanent provisions of the Brady Act, 18 U.S.C. 922(t), the NICS began operations on November 30, 1998. The NICS allows a licensee to contact the system by telephone or other electronic means for information, to be supplied immediately, on whether receipt of a firearm by a transferee would violate federal or state law. In addition to regulation of handgun sales, the permanent provisions mandate background checks on long gun purchasers and persons who redeem a pawned firearm. A licensee has the option of requesting a check on a person who attempts to pawn a firearm.

A NICS inquiry is not required if a transferee presents a state permit qualified by ATF as an alternative to the point-of-transfer check. Qualified permits allow a transferee to possess, acquire, or carry a firearm, and were issued not more than five years earlier by the state in which the transfer is to take place, after verification by an authorized government official that possession of a firearm by the transferee would not be a violation of law. A permit issued after November 30, 1998 qualifies as an alternative only if the information available to the state authority includes the NICS.

The NICS process begins when a licensee receives a completed Firearms Transaction Record (ATF Form 4473) and a government-issued photo identification from an applicant. Completion of a state disclosure form may also be required. Submitting false information in regard to a firearm transaction is illegal under federal law and many state statutes.

A licensee initiates a NICS check by contacting either the Federal Bureau of Investigation (FBI) or a point of contact (POC) agency designated by state government. The FBI and the POC agencies always check three major federal databases, the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS Index. If the transferee is not a citizen of the United States, the NICS will query Bureau of Immigration and Customs Enforcement (ICE) records. A POC may check additional state records. A check may include contacting an agency that maintains a record that the FBI or POC cannot access directly.

After a search of available federal and state records, the checking agency responds with a notice to the licensee that the transfer may proceed, may not proceed, or is delayed

pending further review of the applicant's record. If further review of a record indicates that 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 at the licensee's discretion. A person who is not allowed to proceed may appeal to the FBI or POC and submit information to correct the record on which the denial was based.

NICS checking agencies most often block the transfer of a firearm or a permit to a person whose records indicate a felony indictment or conviction, a fugitive warrant, unlawful drug use or addiction (within the prior year), a mental defective adjudication or an involuntary commitment to a mental institution, illegal or non-immigrant alien status, a domestic violence restraining order, or a misdemeanor domestic violence conviction. These and other prohibitors are stated in the Gun Control Act (GCA), 18 U.S.C. 922. A NICS denial may also be based on a state law prohibition.

NICS Denials in 2009. The FBI conducted over six million NICS transfer checks in 2009 and denied over 67,000 applications, a denial rate of about 1%. The most frequent reason for denial by the FBI was a record of a felony indictment or conviction, which accounted for approximately 49% of the denials. Domestic violence misdemeanor convictions and restraining orders made up 11% of the FBI denials. (Table 1.) Fugitives from justice composed about 17% of denials and illegal drug users accounted for 9% (Appendix table A).

Table 1. Background checks by the FBI in 2009

	Number	Percent
Applications for firearm transfer	6,083,428	
Denials / denial rate	67,324	1.1%
Selected reasons for denial / percent of denials		
Felony indictment or conviction	32,652	48.5%
Domestic violence misdemeanor conviction	4,845	7.2%
Domestic violence restraining order	2,868	4.3%

ATF Investigations

Denial data is electronically transmitted by the FBI on a daily basis to ATF's Denial Enforcement and NICS Intelligence (DENI) Branch (formerly Brady Operations Branch). Transactions denied by the FBI contain data on prohibited persons who unlawfully attempted to purchase a firearm. Some prohibited persons obtain a firearm during a "delayed transaction," where the FBI has not completed a check in three business days and the dealer is allowed to transfer the firearm. When the FBI finds a prohibitory record and is informed by the dealer that a transfer occurred, a "delayed denial" referral is made to ATF.

As a way to assist ATF investigations, the FBI NICS Section implemented a system enhancement that ranks a delayed denial transaction based on ATF categories applicable to the specific denial and separates the ranked delayed denials from the standard denials. (*NICS Operations 2005*, FBI CJIS Division, January 2006, http://www.fbi.gov/about-us/cjis/nics/reports/2005-operations-report/ops_report_2005.pdf).

In addition, the DENI Branch queries the daily NICS referrals to identify collateral (pre-pawn) checks where a person who attempted to pawn a firearm was found to be prohibited. Research by the DENI Branch that covered October 2001 to November 2005 concluded that collateral checks have a denial rate of 3.3%, which is over two times greater than the overall FBI denial rate. The pawnbroker who requested the collateral check is contacted to find out if the denied person left the pawnshop with the firearm. If the denied person still possesses the firearm, the referral is expedited in the same manner as a delayed denial. If the pawnbroker retained the firearm, the denial is processed as a standard denial.

The DENI Branch searches databases available to ATF for additional data on denied persons referred by the FBI. After an initial screening, denials are referred to the 19 ATF field divisions serviced by the DENI Branch (six other divisions' territories are only comprised of POC states). All delayed denials are required to be referred within 48 hours. Routinely, delayed denials are referred within 24 hours of receipt from the FBI. Referrals are made in accordance with criteria established for the federal judicial districts within each division's territory. ATF and United States Attorneys have developed referral criteria for all 94 judicial districts that reflect the types of cases most likely to merit prosecution. Cases involving restraining orders, domestic violence misdemeanors, non-immigrant aliens, violent felonies, warrants, and indictments are most often included in referral criteria.

The DENI Branch screened 71,010 NICS denials received from the FBI during 2009 and referred 4,681 denials (approximately 7%) within the established guidelines to field divisions. The referred cases were made up of 2,390 delayed denials (nearly 4% of all denials) and 2,291 standard denials (over 3%). The remaining denials (66,329, or about 93%) did not meet referral guidelines or were overturned after review by the DENI Branch or after the FBI received additional information. (Table 2.) Standard denials that are not being referred are reported weekly to the field divisions and made available in a database if further review is deemed necessary.

Denials because of protective orders, domestic violence misdemeanor convictions, and felony convictions comprised nearly 76% of referrals to field divisions. (Table 2.) Referrals also involved persons who were an unlawful user of a controlled substance, under indictment or information, or a fugitive from justice. The six most common reasons for referral accounted for about 98% of the cases. (Appendix table B.)

Table 2. NICS denials by FBI referred to ATF field divisions in 2009

	Cases	Percent
FBI denials referred to ATF DENI Branch	71,010	100%
DENI Branch referrals to ATF field divisions	4,681	6.6%
Delayed denials	2,390	3.4%
Standard denials	2,291	3.2%
Not referred to field or overturned	66,329	93.4%
Most common reasons for referrals to field		
Subject to protective order	1,343	28.7%
Domestic violence misdemeanor	1,149	24.5%
Convicted felon	1,057	22.6%

A NICS coordinator in each ATF division receives and distributes referrals to the appropriate field office. A state point of contact may also refer denials to the nearest field office. Special agents at the field offices verify conviction and prohibition information and conduct additional investigations. The FBI is notified if ATF determines that a person should not have been denied.

In a delayed denial case, the agent contacts the firearm purchaser and seizes or takes an abandonment of the firearm or coordinates a transfer of the firearm to a licensed dealer or to a third party who is not a prohibited person. In POC states, a retrieval may be handled by local law enforcement, a statewide firearms unit, or ATF.

In addition to the delayed denials, a small number of 2009 standard denials potentially involved unlawful firearm possession. Field offices investigated a total of 2,063 unlawful possession cases that began in 2009. A retrieval of a firearm (or firearms) from a prohibited person by field agents occurred in 1,256 (nearly 61%) of the cases. The subject of the investigation was cleared in 559 cases (approximately 27%). About 95% of the cases had been resolved by December 13, 2009, with the subject missing in just over 5% of the cases. (Table 3.)

Table 3. Outcomes of 2009 unlawful possession cases

	Cases	Percent
Total	2,063	100%
Retrieval of a firearm (or firearms)	1,256	60.9%
Subject not prohibited	559	27.1%
Unable to locate subject	109	5.3%
Other outcomes	139	6.7%

The 1,256 retrieval cases reached the following resolutions: transfers to non-prohibited third parties - 630 (about 31% of total cases); returns to firearms dealers - 533 (about 26%); seizures by ATF - 60 (about 3%); and abandonments by transferees - 33 (about 2%). These cases resulted in retrieval of 1,285 firearms. (Appendix table C.)

Prosecutions by U.S. Attorneys

When an investigation is complete, the field office and the U.S. Attorney decide whether the case merits prosecution. A case that is not deemed appropriate for federal prosecution may be referred to a state prosecutor. If the U.S. Attorney decides to prosecute, an arrest is made or a warrant is issued.

Field offices declined to refer 4,726 cases for prosecution. The most common reasons for declinations were no prosecutive merit (2,037 cases or just over 43%), federal or state guidelines were not met (1,104 cases or about 23%), and subjects found to not be prohibited (572 cases or just over 12%). (Table 4). Other reasons for declination by a field office included no potential or unfounded (484 cases or about 10%) and closure by a supervisor (446 cases or over 9%). (Appendix table D.)

Table 4. 2009 cases declined by ATF field offices

	Cases	Percent
Total	4,726	100%
Most common reasons for declination		
No prosecutive merit	2,037	43.1%
Federal or state guidelines not met	1,104	23.4%
Not a prohibited person	572	12.1%

A total of 140 charges from the 2009 cases were referred by field offices for consideration by prosecutors. The most common charge referred was submitting falsified information when buying firearms, which accounted for 60 charges and 43% of all charges. The second and third most common charges were possession of a firearm by a convicted felon (26 charges or approximately 19%) and possession of a firearm after a domestic abuse charge (9 charges or about 6%). (Table 5.)

Table 5. Charges referred for prosecution, 2009

Charge definition	Charges	Percent
Total	140	100%
Falsified information when buying firearms	60	42.9%
Possession of firearm by convicted felon	26	18.6%
Possess firearm after domestic abuse charge	9	6.4%
Possession of firearm by drug user	5	3.6%
Possession of firearm while under restraining order	5	3.6%
Other charges	35	24.9%

Subsections of the Gun Control Act, 18 U.S.C. 922, were the basis for 110 charges (approximately 79% of all charges). The 2009 cases produced charges referred for prosecution against 79 persons, 50 from delayed denials and 29 from standard denials. (Appendix table E.)

Of the 140 charges referred from the 2009 cases, 63 (45%) had been declined by a prosecutor as of November 28, 2010. A guilty plea was obtained on 31 charges (about 22%) and 17 charges (about 12%) were dismissed as part of a plea agreement. Nearly eighty-nine percent of the charges had been resolved, with approximately 11% pending action by the prosecutor. (Table 6.) In addition, one charge resulted in a guilty verdict at trial and one defendant received a pretrial diversion (Appendix table F).

Table 6. Status of 2009 charges referred for prosecution

Judicial status	Charges ^a	Percent
Total	140	100%
Selected outcomes:		
Declined by prosecutor	63	45.0%
Guilty plea by defendant	31	22.1%
Dismissed per plea agreement	17	12.1%
Pending action by prosecutor	16	11.4%

^aAs of November 28, 2010

Of the 32 charges that resulted in a guilty plea or verdict, 13 (about 41%) were for submitting falsified information when buying firearms and eight (25%) were for possession of a firearm by a convicted felon (Table 7). State offenses accounted for five of the charges and the remainder were federal charges. Twenty-six charges in the guilty pleas and verdicts (approximately 81%) were based on subsections of the Gun Control Act. Twenty-five defendants pled or were found guilty, 12 from delayed denial cases and 13 from standard denial cases. (Appendix table G.) In the only trial verdict, a defendant in the District of Maine was found guilty of supplying falsified information when buying firearms.

Table 7. 2009 charges that resulted in guilty pleas and verdicts

Charge definition	Charges	Percent
Total	32	100%
Falsified information when buying firearms	13	40.6%
Possession of firearm by convicted felon	8	25.0%
Other charges	11	34.4%

Federal Judicial District Summary

The District of Arizona had the highest number of unlawful possession investigations from the 2009 cases (164), followed by the Western District of Wisconsin (108). The Eastern District of Kentucky had the most field office declinations (299), followed by the District of Arizona (252). The highest number of charges referred for prosecution was in the Eastern District of New York (19). The Northern District of Indiana and the Northern District of Ohio each had the most charges that resulted in a guilty plea or verdict (6). (Appendix table H.)

Comparisons With Prior Year

FBI referrals of NICS denials to the DENI Branch decreased 10%, from 78,906 in 2008 to 71,010 in 2009. The DENI Branch's referrals to ATF field divisions decreased 16%, from 5,573 in 2008 to 4,681 in 2009. Unlawful possession investigations decreased by 4% and investigations that resulted in a firearm retrieval increased by 3% during 2009. The number of charges referred by field offices for prosecution fell 5%, from 147 in 2008 to 140 in 2009. The number of charges that resulted in guilty pleas and verdicts fell by over 25%, from 43 in 2008 to 32 in 2009. (Appendix table I). For a complete summary of the prior year, see *Enforcement of the Brady Act 2008*, NCJ No. 231052, June 2010, <http://www.ncjrs.gov/pdffiles1/bjs/231052.pdf>.

State Investigations of Denied Persons

As of December 31, 2009, 13 states maintained a full point of contact for the NICS and conducted background checks on all persons who applied to purchase a firearm from a licensed dealer. Eight states maintained a partial NICS point of contact and conducted checks on all persons who applied to purchase a handgun from a dealer (the FBI checked long gun purchasers in these states). See *Background Checks for Firearm Transfers, 2009*, <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2214>. In addition, six states require an applicant for a purchase or a purchase permit to undergo a background check that does not access the NICS Index.

When a denied person is suspected of violating federal law, most state point-of-contact agencies refer the case to the nearest ATF field office. States differ as to how potential state law violations are investigated. In some states, the checking agency immediately notifies the police or sheriff's department that has jurisdiction over a denied person's residence or the gun shop where the transaction occurred. The local agency is then responsible for investigation and prosecution of the case. Other states have a unit with statewide jurisdiction that screens cases before deciding whether a referral should be

made to a state police troop or local law enforcement. Data on denied person investigations from two states is available for 2009 and 2008.

Pennsylvania. The Pennsylvania State Police (PSP) Firearms Division is a NICS point of contact and conducts background checks on prospective firearm purchasers. PSP denials that involve federal prohibitions are referred to ATF. Referrals to ATF decreased 92%, from 120 in 2008 to 10 in 2009. Cases with potential state law violations may be referred to PSP troops or local law enforcement. PSP denied 9,449 firearm transfers in 2009, a decrease of 13% from the 10,823 denials issued in 2008. Denials referred for investigation decreased 35%, from 504 in 2008 to 328 in 2009. Apprehensions of wanted persons increased from 112 in 2008 to 114 in 2009 (about 2%) and reported arrests increased from 96 in 2008 to 215 in 2009 (124%). Convictions of denied persons increased nearly 119%, from 69 in 2008 to 151 in 2009. (Appendix table J.)

Virginia. The Virginia State Police (VSP) Firearms Transaction Center is a NICS point of contact and conducts background checks on prospective firearm purchasers. VSP reports denied persons with federal prohibitors to ATF. Potential state law violations are reviewed by VSP Troopers, who consult with Commonwealth Attorneys as part of their investigative process. VSP denied 3,101 firearm transfers in 2009, about a 12% increase from the 2,777 denials issued in 2008. Denials referred for investigation increased by approximately 44%, from 891 in 2008 to 1,286 in 2009. The number of reported arrests increased by almost 15%, from 810 in 2008 to 930 in 2009. In addition, VSP investigations led to the apprehension of 74 wanted persons and the retrieval of 6 firearms from prohibited persons in 2009. (Appendix table J.)

Methodology

The DENI Branch provided the Regional Justice Information Service (REJIS) with statistics on denied person cases received from the FBI's NICS Section and referred to ATF field offices after screening. The National Field Office Case Information System (NFOCIS) unit provided REJIS with records from ATF's case management system (NForce) on field office and U.S. Attorney processing. The records reflect activity up to November 28, 2010. Court decisions are included in the records but sentencing information was not available.

No personal identifiers were included in the records. Cases or charges could only be distinguished by NICS numbers. NICS numbers for the 2009 cases were compared to those for the 2008 cases and a small number of duplicate entries were deleted. In calculating the number of persons referred for prosecution and the number of persons convicted, it was assumed that each separate NICS number represented one person. However, it is possible that a person could have more than one NICS number.

Additional Contributors

Scott Stargel, ATF
 Provided case management data

Gene Lauver and Michael Bowling, REJIS
 Christine Raposa, Virginia Runion, Carrie Robertson, and Terry Clark, ATF
 Reviewed the report

Appendix

Table A. Background checks on firearm applicants processed by the FBI in 2009

	FBI / NICS ^a	
	Number	Percent
Applications	6,083,428	
Denials / Denial rate	67,324	1.1%
Appeals / Appeal rate	14,211	21.1%
Appeals reversed / Reversal rate	3,332	23.4%
Reasons for denials:		
Felony indictment/conviction	32,652	48.5%
State law prohibition	7,518	11.2%
Domestic violence		
Misdemeanor conviction	4,845	7.2%
Restraining order	2,868	4.3%
Fugitive	11,341	16.8%
Illegal or non-immigrant alien	670	1.0%
Mental illness or disability	923	1.4%
Drug use or addiction	6,301	9.4%
Other prohibitions ^b	206	0.3%

-- Not applicable

^aFirearm transfer transactions reported by the FBI NICS Section.

^bIncludes juveniles, persons dishonorably discharged from the Armed Services, persons who have renounced their U. S. citizenship, and other unspecified persons.

Table B. NICS denials by FBI referred to ATF field divisions in 2009

	Cases	Percent
FBI denials referred to ATF DENI Branch	71,010	100.0%
DENI Branch referrals to ATF field divisions		
Total referred to field	4,681	6.6%
Delayed denials	2,390	3.4%
Standard referrals	2,291	3.2%
Not referred to field	64,221	90.4%
Not referred and overturned	2,108	3.0%
Reasons for referrals to ATF field divisions		
Subject to protective order	1,343	28.7%
Domestic violence misdemeanor	1,149	24.5%
Convicted felon	1,057	22.6%
Unlawful user of controlled substance	418	8.9%
Under indictment or information	375	8.0%
Fugitive from justice	257	5.5%
Illegal or unlawful alien	42	0.9%
Adjudicated mentally defective	32	0.7%
Other reasons ^a	8	0.2%

^aThe category "other reasons" is compiled from four other prohibiting categories utilized by the DENI Branch to refer denials for field investigation.

Table C. 2009 NICS denial cases involving unlawful firearm possession

Outcome of ATF investigation	Delayed	Standard	All Cases	Percent
Total	2,020	43	2,063	100.0%
Retrieval of a firearm ^a by:				
Transfer to third party	628	2	630	30.5%
Return to firearms dealer	532	1	533	25.8%
Seizure by ATF	59	1	60	2.9%
Abandonment by transferee	33	0	33	1.6%
	1,252	4	1,256	60.9%
Subject not prohibited	548	11	559	27.1%
Unable to locate subject	108	1	109	5.3%
Firearm not transferred	65	26	91	4.4%
Given to local law enforcement	32	1	33	1.6%
Referred to other agency	15	0	15	0.7%

^aA total of 1,285 firearms were retrieved by ATF.

Table D. 2009 NICS denial cases declined by ATF field offices

Reason for case declination	Delayed	Standard	All cases	Percent
Total	2,243	2,483	4,726	100.0%
No prosecutive merit	848	1,189	2,037	43.1%
Federal or State guidelines not met	442	662	1,104	23.4%
Not a prohibited person	494	78	572	12.1%
No potential or unfounded	212	272	484	10.2%
Closed by supervisor	240	206	446	9.4%
Referred to another agency	5	70	75	1.6%
Assisted prosecution	1	6	7	0.1%
Investigation withdrawn	1	0	1	0.0%

Note: The number of cases declined is obtained from NForce. On occasion, a field office will close a case initially transferred from the DENI Branch and open the case under a different number; therefore the number of prosecuted cases may seem low compared to the number of cases referred to the field.

Table E. Charges in 2009 NICS denial cases referred for prosecution

18 USC 922		Delayed	Standard	All charges ^a	Percent
Subsection	Charge definition				
	Total ^b	90	50	140	100.0%
(a)(6)	Falsified information when buying firearms	36	24	60	42.9%
(g)(1)	Possession of firearm by convicted felon	19	7	26	18.6%
(g)(9)	Possession of firearm after domestic abuse charge	7	2	9	6.4%
(g)(3)	Possession of firearm by drug user	5	0	5	3.6%
(g)(8)	Possession of firearm while under restraining order	4	1	5	3.6%
(n)	Receive/ship/transport firearm after indictment	3	0	3	2.1%
Other		1	1	2	1.4%
	Total 18 USC 922	75	35	110	78.6%
	Other statutes ^c	15	15	30	21.4%

^aCharges were referred against 79 persons, 50 from delayed denials and 29 from standard referrals.

^bEight charges were for state offenses; the remainder were federal charges.

^cIncludes 5 charges for causing a firearms dealer to falsify records, 18 USC 924(a)(1)(A), 4 charges for conspiracy, 18 USC 371, 13 charges based on eight additional federal statutes, and 8 charges based on two unspecified state statutes.

Table F. Judicial status of charges in 2009 NICS denial cases referred for prosecution

Judicial status (as of November 28, 2010)	Delayed	Standard	All charges	Percent
Total	90	50	140	100.0%
Declined by prosecutor	44	19	63	45.0%
Guilty plea by defendant	15	16	31	22.1%
Dismissed per plea agreement	9	8	17	12.1%
Pending action by prosecutor	12	4	16	11.4%
Indictment, information or complaint filed	6	1	7	5.0%
Dismissed prior to indictment	2	0	2	1.4%
Dismissed after indictment	1	0	1	0.7%
Guilty verdict at trial	0	1	1	0.7%
Pretrial diversion	0	1	1	0.7%
No true bill	1	0	1	0.7%

Table G. Charges in guilty pleas and verdicts, 2009 NICS denial cases

18 USC 922 Subsection	Charge definition	Delayed	Standard	All charges ^a	Percent
	Total ^b	15	17	32	100.0%
(a)(6)	Falsified information when buying firearms	8	5	13	40.6%
(g)(1)	Possession of firearm by convicted felon	3	5	8	25.0%
(g)(9)	Possession of firearm after domestic abuse charge	1	1	2	6.3%
Other		3	0	3	9.4%
	Total 18 USC 922	15	11	26	81.3%
	Other statutes	0	6	6	18.8%

^a25 defendants pled or were found guilty, 12 from delayed and 13 from standard denials.

^bFive charges were for state offenses; the remainder were federal charges.

Table H. Federal judicial district summary, 2009 NICS denial cases

Districts with the most unlawful possession cases

Arizona	164
Wisconsin Western	108
South Carolina	106
Georgia Northern	89
Missouri Eastern	81

Districts with the most case declinations

Kentucky Eastern	299
Arizona	252
Kentucky Western	243
South Carolina	216
Georgia Northern	206

Districts with the most charges referred for prosecution

New York Eastern	19
Indiana Northern	11
Ohio Northern	11
South Dakota	11
South Carolina	8

Districts with the most charges that resulted in a guilty plea or verdict

Indiana Northern	6
Ohio Northern	6

(Four districts have two each)

Table I. Selected statistics on NICS denial cases, 2009 and 2008

	Number of Cases		Percent Change
	2009	2008 ^a	
FBI denials referred to DENI Branch	71,010	78,906	-10.0%
DENI Branch referrals to ATF field divisions	4,681	5,573	-16.0%
Unlawful possession investigations	2,063	2,154	-4.2%
Investigations resulting in firearm retrieval	1,256	1,218	3.1%
Field office declinations	4,726	6,086	-22.3%
	Number of Charges		Decrease
	2009	2008	
Referred for prosecution	140	147	-4.8%
Declined by prosecutor	63	42	50.0%
Guilty plea or verdict	32	43	-25.6%

^aSource: Enforcement of the Brady Act, 2008, (NCJ No. 231052, June 2010), <http://www.ncjrs.gov/pdffiles1/bjs/231052.pdf>

Table J. Investigations of State POC Denial Cases, 2009 and 2008

	Pennsylvania ^a			Virginia ^b		
	2009	2008	Change	2009	2008	Change
Total denials	9,449	10,823	-12.7%	3,101	2,777	11.7%
Referred for investigation	328	504	-34.9%	1,286	891	44.3%
State police troops	222	294	-24.5%	1,286	891	44.3%
Local police departments ^c	96	90	6.7%	---	---	---
ATF field offices	10	120	-91.7%	---	---	---
Investigation outcomes						
Firearms retrieved	---	---	---	6	11	-45.5%
Apprehend fugitive	114	112	1.8%	74	77	-3.9%
Arrests reported	215	96	124.0%	930	810	14.8%
Prosecutor declinations	74	41	80.5%	---	---	---
Convictions	151	69	118.8%	---	---	---

---Not applicable or not available

^aSource: Pennsylvania State Police, Firearms Annual Reports, <http://www.portal.state.pa.us/portal/server.pt?open=512&objID=4451&&PageID=462425&level=2&css=L2&mode=2>.

^bSource: Virginia State Police.

^c Pennsylvania cases were initially referred to state police troops and further referred to local police departments.