

## Insta-check or Insta-trafficking? A Different Perspective on Waiting Periods

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In the past, most of the debate about firearms purchase waiting periods centered about the argument that delaying delivery might “cool off” buyers who were inclined to hurt themselves or others. Save occasional anecdotes about persons who committed suicide or murdered a spouse within a day or two of buying a gun, the rationale prompted surprisingly little empirical inquiry.

Waiting periods then became an integral plan of the *Brady* bill, which for the first time imposed uniform national criminal check requirements on persons who bought firearms from licensed dealers. (*Brady* did not apply to States that already had equivalent provisions. Such areas, including California, continue to operate under their own, stricter waiting period and record-check requirements.) But where gun sales were previously unregulated, *Brady* has imposed a wait of up to three (3) days, thus allowing a minimal amount of time to complete a criminal record check.

In short order, the U.S. Supreme Court overthrew the mandate that the check be performed by local authorities. A Federal “insta-check” system has since taken over, which ultimately intends to zero out the waiting period and return gun sales to cash-and-carry transactions in areas where gun sales are not further restricted by State or local law.

Significantly, *Brady* never affected firearms transactions between private parties, which in many locales remain unregulated. Fears that criminals may capitalize on the private party exception recently prompted the President to recommend that all sales at gun shows be subject to criminal record checks.

Although technical issues about the FBI insta-check system remain, it can be said that everyone who buys a firearm from a *licensed firearms dealer* in the United States is now subject to a criminal history check (of whatever accuracy) before delivery takes place. However, those who favor the “cooling-off” effects of a waiting period are concerned that, in areas subject only to *Brady*, buyers will soon be able to gain immediate possession. Their suggestion of a waiting period *for cooling-off purposes only* have drawn predictably strong opposition from gun enthusiast organizations and the firearms industry.

As pro-gun and anti-gun forces continue to battle out the merits of cooling-off prospective buyers, scant attention has been paid to what seems a most defensible and salutary aspect of delaying sales: the need to counter purchases by straw buyers and unlicensed gun peddlers. It is now known that 25 percent or more of guns recovered by police were legally purchased at retail within two or three years of recovery. It is also known that the majority of these firearms are *not* stolen.

So where do these guns originate? From investigations and casework we know that many were purchased on behalf of the possessor by “straw buyers”, often friends or relatives. We also know that inner-city communities are beleaguered by street gun peddlers who indiscriminately market desirable new pistols to all comers. Some of these unlicensed entrepreneurs get their guns from corrupt licensees, while others employ the services of straw buyers who buy firearms in quantity at gun stores. Surrogate purchasers who do not have a disabling criminal record simply use their own ID, wait the required period, and in the absence of local limits buy as many handguns as they wish. (For examples of multiple sales, and their consequences, see our website’s gun trafficking slide show.)

As unlikely as it may seem, this author has personally investigated episodes of unlicensed gun dealing that were enabled by straw purchasers who bought forty or more guns *at one time*. Of course, straw buying in lesser quantities - say, three to five guns at once - is much more common. According to records maintained by the California Department of Justice, 40,722 handguns were transferred in that State during 1998 in quantities of two or more. Of course, hobbyists often buy multiple handguns to enhance a collection. But the use of straw buyers is ubiquitous. Large-scale straw purchase is a particularly common practice in the East and South. There, street gun dealers circumvent local gun buying restrictions by traveling to nearby “weak-law” States, where local straw buyers purchase guns in quantity from licensed outlets.

Federal law does not restrict the number of firearms that an eligible person can acquire. However, licensed dealers must mail a report to ATF and local authorities whenever they sell two or more *handguns* to a private party within a five-day period. (There is no requirement that multiple *long-gun* purchases be reported. That is a separate issue.) But reporting alone does not offer adequate protection from straw purchase or unlicensed dealing. In sheer volume, the number of multiple sales can prove overwhelming. For example, 5,743 reports of multiple sale were received by ATF during one 9-month period *in Southern California alone*. Mailing delays, burdens of processing and analysis, and limited staffing severely constrain ATF’s ability to conduct a timely inquiry. Moreover, where the waiting period is brief, persons who buy multiple handguns will have picked up their goods and disappeared before authorities can react. “Watching for next time” is typically futile, and for the same reason.

In January, 2000, California responded to this threat by restricting buyers to one *handgun* per month. This practice is followed in a few other States, including Virginia. Even so, private persons can still purchase as many long-guns at one time as they wish. And as long as State laws differ, traffickers can easily turn to nearby “weak-law” States (such as Arizona and Nevada) to acquire their wares.

An adequate, professional response to suspicious multiple sales requires that investigators be alerted well in advance of an intending pickup. Occasionally, gun dealers will call in, and for that we should be grateful. But many simply proceed “business as usual”, sell and deliver no matter the quantity, and provide no advance

notice other than by mailing in the required card. That is why for experienced trafficking investigators, “insta-check” really means “insta-trafficking”.