



LCAV Case Study
Keeping Guns Out of Dangerous Hands –
Research to Help States Enforce Prohibitions on Firearms Possession

The Challenge: On January 2, 2004, a 29-year old Alabama man shot and killed two police officers with a gun he had purchased on Christmas Eve at a local pawn shop. According to his lawyers, he thought he was shooting aliens who were conspiring against him. Despite the fact that the shooter had been hospitalized five separate times between 2001 and 2003 for paranoid schizophrenia, he was able to purchase the gun because the seller had no information about his history of mental illness.

Under federal law, it is illegal for a person who “has been adjudicated as a mental defective or who has been committed to a mental institution” to possess a firearm. The Brady Handgun Violence Prevention Act requires federally licensed dealers to conduct background checks, using the FBI’s National Instant Criminal Background Check System (NICS), on all prospective purchasers so that prohibited purchasers can be identified. However, most states do not send mental health records to the FBI due to concern for the privacy of individuals with mental illness. Unless states submit mental health records to the FBI database, a background check alone will not reveal a purchaser’s history of mental illness, no matter how severe or dangerous.

In a recent study, the U.S. General Accounting Office found that the FBI only received 41 mental health records from six states in 1998 (the Department of Veterans Affairs provided an additional 89,000 records relating to those institutionalized in Veterans’ hospitals), despite the fact that an estimated 2.7 million Americans have been involuntarily committed to mental institutions. Although the number of mental health records provided to NICS has increased – the Bureau of Justice Statistics reports that there were more than 143,000 records provided in 2003 – mental illness remains significantly underreported.

LCAV’s Role: Days after the January 2004 shooting, Alabama State Senator Tom Butler contacted LCAV for assistance in crafting legislation to ensure that mental health information is supplied to the FBI and available for NICS background checks. Senator Butler was particularly interested in information regarding other states’ practices with respect to mental health records.

LCAV undertook an exhaustive analysis of state law and prepared a memorandum for the Senator explaining how other states have addressed the issue. After Senator Butler shared the analysis with the Alabama Department of Mental Health/Mental Retardation, LCAV answered the Department’s inquiries relating to the laws and policies of specific states.

Results: Senator Butler introduced Alabama Senate Bill 169 on February 3, 2004, with 27 of 35 senators co-sponsoring the measure. The bill was adopted by both houses of the Alabama Legislature and signed by the Governor in May 2004. The bill requires judges responsible for adjudicating mental competency to report to the state’s Criminal Justice Information Center the name of any person involuntarily committed for mental health treatment. The bill also requires the Criminal Justice Information Center to report the information to the FBI so that it will be provided as part of the information available to firearms dealers conducting routine background checks of prospective purchasers.

LCAV is a public interest law center dedicated to preventing gun violence. Formed in the wake of the 1993 assault weapon massacre at 101 California Street in San Francisco, LCAV provides free legal assistance to activists and public officials, including law enforcement and government attorneys, working to prevent gun violence. To learn more about our services or to request assistance, visit our web site, www.lcav.org, the nation’s most comprehensive source for information on U.S. firearms regulation.

June 2004