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COLORADO  
DEPARTMENT  
OF PUBLIC SAFETY

Colorado Bureau of Investigation  
Robert C. Cantwell, Director

<http://cbi.state.co.us/>

February 9, 2007

Senator Stephanie Takis, Chairperson  
Legislative Audit Committee  
Attn Jonathan Trull  
200 East 14<sup>th</sup> Ave.  
Denver, CO 80203-2211

Dear Senator Takis,

The Colorado Bureau of Investigation (CBI) has received the State Auditor's request for an implementation status report on the progress being made regarding the Insta-Check System Performance Audit (submitted to the Audit Committee on July 17, 2006). The following are the original recommendations made by the State Auditor, followed by the status of the implementation and a brief discussion of our agency's actions.

**Recommendation No. 1:**

The CBI should improve the timeliness of Brady Act-related background checks to meet its own standards and to comply with legislative intent. More specifically, CBI should:

- a. Develop methods to track, analyze, and report response times for telephone and Internet background checks, including queue and processing time. CBI should use this information to assess performance, identify and address reasons for delays, and better allocate staff. CBI should also revisit its goal for queue time and develop additional performance goals for processing and response times. CBI should report its performance results on its website and in the agency's annual budget request.

**Implemented**

**In December 2006, the CBI implemented a system to track Internet queue time, and will report both queue times (telephone and Internet) on our monthly firearms statistics page on our website and in our annual budget**

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request. These statistics will be used to evaluate staffing needs, and to measure individual and unit performance.

The CBI occasionally issues a "delay" to a gun dealer before issuing an approval or denial. Reasons for delays have been identified as records requiring further research. Over 90 percent of all delays are a result of a protective order showing on the subject's record. These entries must be researched to determine the relation of the subject to the protected party, and the language of the order itself. The remainder of the delays fall into the following categories: criminal history record entries reflecting military charges, other federal charges, other states records that must be researched to determine if they are disqualifying, and "hits" on the FBI's "violent gang and terrorist offender file" (VGTOF). Federal rules require the CBI to delay the subject of a "hit" on VGTOF record until we receive notice from the Terrorist Screening Center (via the FBI) that no records were located to prevent a firearms transaction. All such delays are beyond the control of the CBI.

In light of the increase in processing time, a result of additional database checks and increases in the volume of calls, CBI has reevaluated the goal for the average queue times, and has revised it to be a yearly average of fifteen minutes. We achieved this goal in calendar 2006.

- b. Survey firearms dealers to determine normal retail business hours and access fluctuations in call volume. CBI should use the call volume and hours of operation data, as compared to the minimum federal requirements, and recommend statutory changes if needed for more efficient staffing of the Insta-Check Unit.

### **Implemented**

In September, 2006, the CBI sent surveys to every licensed firearms dealer who is registered to conduct Insta-Checks in the state of Colorado. CBI received responses from about 25 percent. The survey itself, and the evaluated responses, are attached. The majority of gun dealers approve of shortening our business hours in order to improve response times.

The minimum federal requirements for operational hours of a state "point of contact" are 10:00 A.M. to 9:00 P.M. Monday through Saturday, and "normal business hours" (which can vary by state, and can be "no business hours") on Sunday. C.R.S. 24-33.5-424(7)(b)(IV)(A) establishes the Insta-Check hours of operation as 9:00 A.M. to 9:00 P.M. every day of the year except Thanksgiving Day and Christmas Day.

**Based on survey responses, and the minimum federal requirements, the CBI recommends a statutory change to allow the Insta-Check hours of operation to be condensed to 10:00 A.M. to 9:00 P.M. Monday through Saturday and 10:00 A.M. to 6:00 P.M. on Sunday. This will allow for a greater number of employees to cover the busiest times of the day, as reflected in the attached graphs.**

**Fluctuations in call volume are a result of two factors: daily fluctuations, which peak on weekdays during the lunch and dinner hours (peak retail hours) and around the lunch hour on weekends, and monthly fluctuations due to hunting seasons and the Christmas holiday. The Insta-Check unit has been provided with sufficient personal services funds to hire and train temporary workers to assist during the busy season.**

c. Determine the reasons for high turnover of temporary staff. CBI should also evaluate its process for hiring temporary workers to complete firearm background checks and consider options, including bonuses, for improving retention. CBI should also consider other sources of temporary workers, such as college students or interns.

### **Implemented**

**The CBI had an excessive amount of turnover in temporary staff during the 2005 high volume season, which runs from the hunting season in October through the December holidays. All of the ten (out of fourteen) temporary workers who resigned before the season ended obtained permanent employment, with benefits, elsewhere. During the 2006 season, the CBI hired thirteen temporary workers and offered a \$500 bonus to those who remained in FT employment until December 31, 2006. Seven of the thirteen temporary employees remained until December 31. Only three temporary workers resigned during the 2006 busy season, all for other employment. Another three were let go for performance issues.**

**Because we maintained more temporary staff, the monthly queues were lower this season (from last season) in all months except for December. December queues were impacted by several snow storms.**

Recommendation No. 2:

The Colorado Bureau of Investigation should comply with federal law and discontinue accepting concealed firearms permits as identification documents. The CBI should notify licensed gun dealers of this change, establish appropriate procedures, and train operators on these procedures.

**Implemented**

**The CBI conveyed this information to gun dealers in a cover letter dated September 8, 2006 (attached) that was included with the surveys. The information is also posted to CBI's website, and all staff have been trained on this documented procedure.**

The CBI appreciates the focused recommendations made by the State Auditor, and we were very pleased with the quality of the staff that we worked with on these matters.

Thank you for the opportunity to update you on our progress. Please contact me if you have any questions, or if you require further documentation. My direct line is (303) 239-4235.

Sincerely,  
ROBERT C. CANTWELL  
Director

A handwritten signature in cursive script that reads "Susan Kitchen". The signature is written in black ink and is positioned above the printed name and title.

Susan Kitchen  
Agent in Charge

xc: Karl Wilmes



**COLORADO  
DEPARTMENT  
OF PUBLIC SAFETY**

**Colorado Bureau of Investigation  
Robert C. Cantwell, Director**

September 8, 2006

**Important information for all Colorado Federal Firearms Dealers  
From the Colorado Bureau of Investigation**

**Concealed Firearms Permits don't constitute "valid identification"**

The Colorado Bureau of Investigation (CBI) has been advised by the staff of the Legislative Audit Committee that a permit issued by a sheriff for a concealed firearm does not constitute a "valid identification document" for the purpose of a firearm transaction. This is in large part because Colorado's statutes require the bearer of such permit to present the permit along with a driver's license or state issued identification. According to Colorado law, the permit does not stand alone to identify an individual.

Permits can (if they have the bearer's current address listed on them) still be used to establish residency when the identity document does not.

**Concealed Firearms Permit Holders Are Not Exempt from NICS Check**

As a reminder, permit holders in Colorado must undergo a NICS background check. Colorado's concealed weapons permits have never been recognized as an exemption to the NICS background check. If you have exempted them in error, you should contact an Insta-Check supervisor to arrange for checks to be conducted during a relatively "slow" time.

**Sale of firearms to persons residing in a contiguous state**

There has been some confusion among gun dealers regarding Colorado Statute 12-27-101, pertaining to gun sales to residents of contiguous states. To better assist you, attached is a summary analysis of the statute.

Federal Firearms Licensees in the state of Colorado may sell a long gun to a resident of any other state, as long as the sale does not otherwise violate state and federal law. Please check your blue books to determine which states restrict sales to their residents purchasing out of state.

**Reasons for the increase in processing times**

CBI shares your concerns regarding the increase in processing times to conduct background checks of your gun buyers. Those increases are primarily due to an increase in volume, a decrease in the number temporary employees (budget cuts), the additional databases being checked and additional research on restraining orders that CBI conducts.

The CBI is currently hiring and training additional temporary employees to minimize the "wait" times during the upcoming hunting and Christmas season. We are also enclosing a survey regarding our performance and our hours of operation. CBI believes that by slightly reducing operational hours, we can be more responsive to you during your busiest hours. Please take time to review and complete the survey below, and return it to us.

**Rejected Internet Checks**

Please review your Internet submissions for accuracy prior to transmitting them to the CBI. When the

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CBI receives information that is not accurate (e.g., the name submitted does not match the name on the driver's license used to establish identity), it is rejected and returned to you.

#### **New Insta-Check Supervisors**

Supervisors Linda Maddux and Courtney Heber have been promoted to Fingerprint Technician Supervisors in the CBI Identification Unit. Newly promoted supervisors in the Insta Check Unit are Ted Derosa and JoAnne Barry. They join supervisors James Spoden and Becky Shoe.

#### **Colorado's "Contiguous States" Statutes A historical analysis of CRS 12- 27-101 through 104**

With the passage of the Federal Gun Control Act (GCA) of 1968, federal law allowed the sale of long guns to nonresidents only under very limited circumstances and subject to specific procedures. The "contiguous state" exception (922(b)(3)) allowed for sales of long guns to nonresidents of contiguous states only if the laws of both states allowed it, and only if the Federal Firearms Licensee (FFL) followed the procedures outlined in 922(c) applicable to interstate transactions other than at the licensee's business premises. Section 922(c) requires that a sworn statement of the gun buyer be sent registered mail by the FFL to the chief law enforcement officer where the buyer lives, and it imposes a waiting period of at least seven days.

The Colorado General Assembly passed legislation in 1968 (CRS 12-27-101 to 104) to meet the federal requirements to allow residents of contiguous states to purchase long guns in Colorado and to allow Colorado residents to purchase in contiguous states. Colorado law duplicated the federal requirement that such sales comply with 922(c) provisions applicable to interstate transactions other than the licensee's business premises.

In 1986, the federal law (922(b)(3)) was amended to allow interstate transfers of long guns to all nonresidents (except when otherwise prohibited by federal or state laws), but section 922(c) remained unchanged. Colorado law continues to point to valid 922(c) requirements for Colorado FFLs conducting transactions with residents of contiguous states and for FFLs in contiguous states conducting transactions with Colorado residents.

Colorado statutes pertaining to contiguous state transactions have never carried any penalties. They were written to facilitate firearms sales, and with a presumption that the federal GCA imposed its own penalties for noncompliant FFLs. A strict reading of the Colorado statutes might seem to require compliance with 18 USC 922(c) when the sale involves a resident of a contiguous state. However, attorneys for the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) have assured us that in light of the evolution of the Gun Control Act, a Colorado FFL would not violate federal regulation when selling to a resident of a contiguous state without following 922(c) requirements.

Pursuant to federal law, Colorado FFLs may sell to a nonresident of ANY state (contiguous or not), so long as the sale complies with the GCA and with the laws of both states.

#### **SURVEY OF COLORADO FEDERAL FIREARMS LICENSEES Regarding performance & hours of operation of the Colorado Insta-Check**

During a recent audit, the Colorado Bureau of Investigation (CBI) was encouraged to survey Colorado firearms dealers to determine your support in limiting the hours of operation of the Insta-Check. It was noted during the audit that more CBI employees could be available to handle checks during the "peak" hours if we reduced our operating hours. It is CBI's belief that by shortening the hours of operation, wait times would be reduced during peak business hours.

Please note that any change to our operating hours would require a statutory change by the Colorado General Assembly. The results of this survey will be reported to the Colorado State Legislative Audit Committee. Your opinions are important to the CBI, and to your elected representatives.

PLEASE RETURN THIS SURVEY IN THE ENCLOSED SELF ADDRESSED STAMPED ENVELOPE NO LATER THAN OCTOBER 31, 2006. We will forward the results of this survey to the Legislative Audit Committee, and publish the same on our Insta-Check public web site at:

[www.cbi.state.co.us/ic](http://www.cbi.state.co.us/ic)

## INSTACHECK FFL SURVEY RESPONSES

Total Surveys sent: 1443

Total Surveys returned: 355

1. Would you support a reduction of Insta-Check operating hours (from the current (9:00 A.M - 9:00 P.M.) to 10:00 A.M. – 9:00 P.M. (explain why/why not)  
Yes-58%  
No- 37%  
Other- 5%  
(Other time options were suggested)
2. Would you support limiting Insta-Check's Sunday operation (currently 9:00 A.M.- 9:00 P.M. ) to 10:00 A.M.- 6:00 P.M. (explain)  
Yes-77%  
No- 18%  
Other- 5%  
(Other time options were suggested)
3. Would you support the closure of Insta-Check on Sundays? (explain)  
  
Yes- 31%  
No - 66%  
Other- 3%
4. Do you feel that Insta-Check personnel act professionally and courteously?  
  
Yes-95%  
No- 1%  
Other- 4%  
(Other responses were "Sometimes", "Not Always", "Some of the employees are and some are not".
5. What do you dislike about Colorado's Insta-Check program? Please list multiple responses in descending order (your greatest complaint first):  
  
Wait time- 73%  
Rejection off of the Internet- 5%  
Other- 22%  
(Other responses were –Don't like delays  
Don't like the hold music  
Can't hear the operator on phone  
Don't like the internet format  
Don't want to do background checks  
at all.
6. Are Insta-Check personnel knowledgeable regarding state and federal laws and regulations?  
  
Yes- 85%  
No-4%

Other- 11%

(Other response was that the Data Specialists are not knowledgeable, but they usually refer to a supervisor who is knowledgeable.)

7. Are Insta-Check personnel responsive to your concerns?

Yes-90%

No- 2%

Other- 8%

(Other responses received were that they are not always responsive and that it depends on what the issue is.)

8. How would you improve Colorado's Insta-Check program?

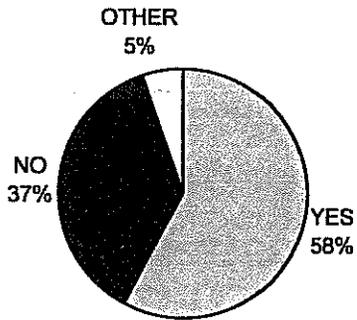
Wait time- 66%

Other-34%

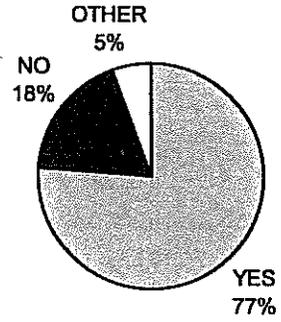
(Other Responses

- Change the Internet Format
- Stop rejecting checks off of the internet due to mistakes.
- Doing call backs during gun shows and high volume times instead of leaving the dealer on hold.
- More regulation at gun shows
- CCW's should qualify as a NICS exempt permit.

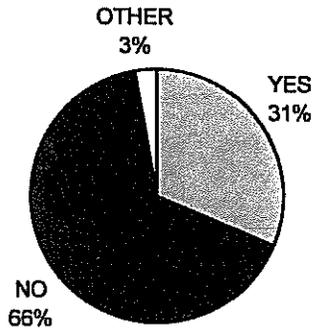
**September 2006 FFL Survey Results  
Reduction in hours to 10am-9pm**



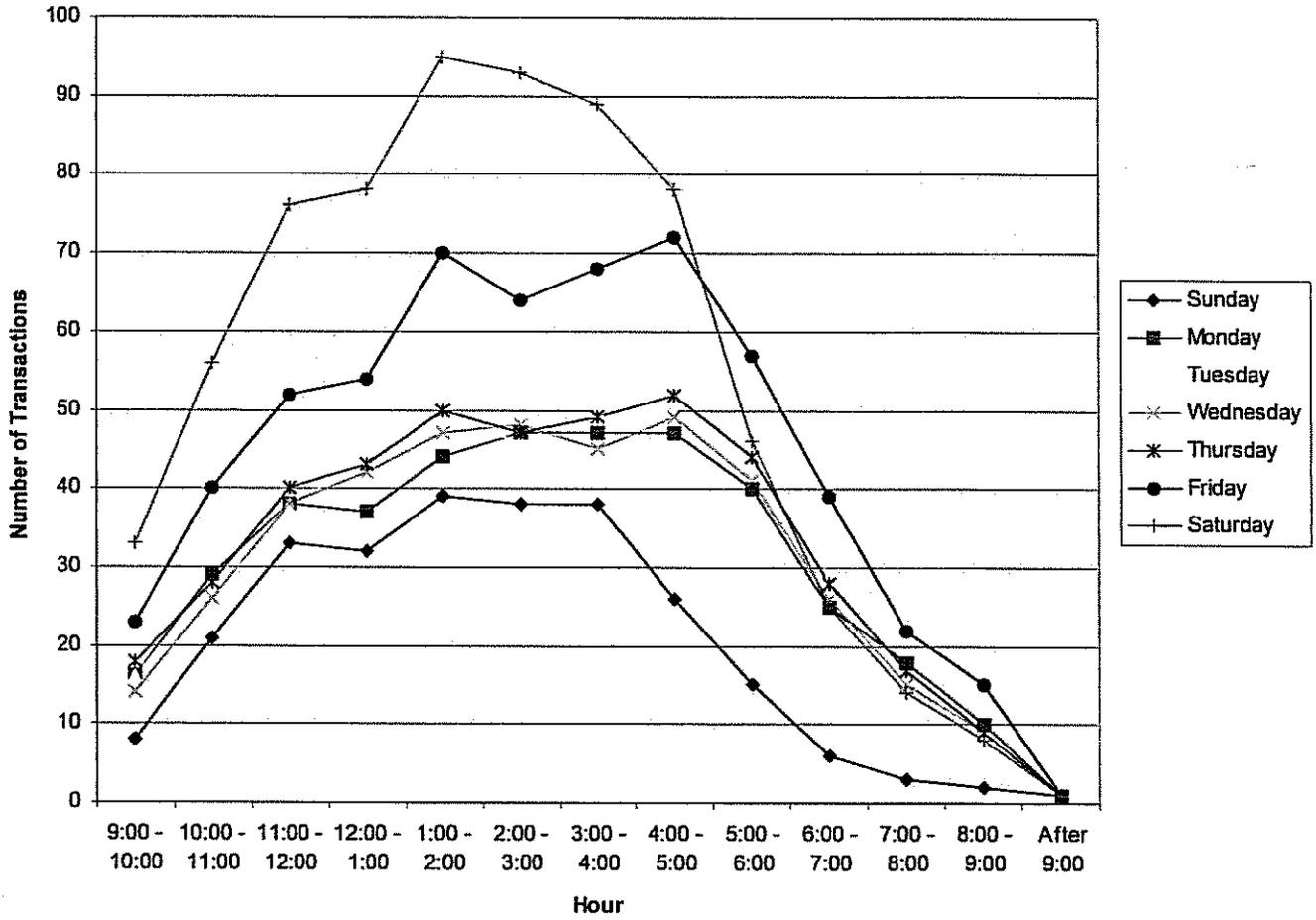
**September 2006 FFL Survey Results  
Reduction in hours to 10am-6pm Sunday  
only**



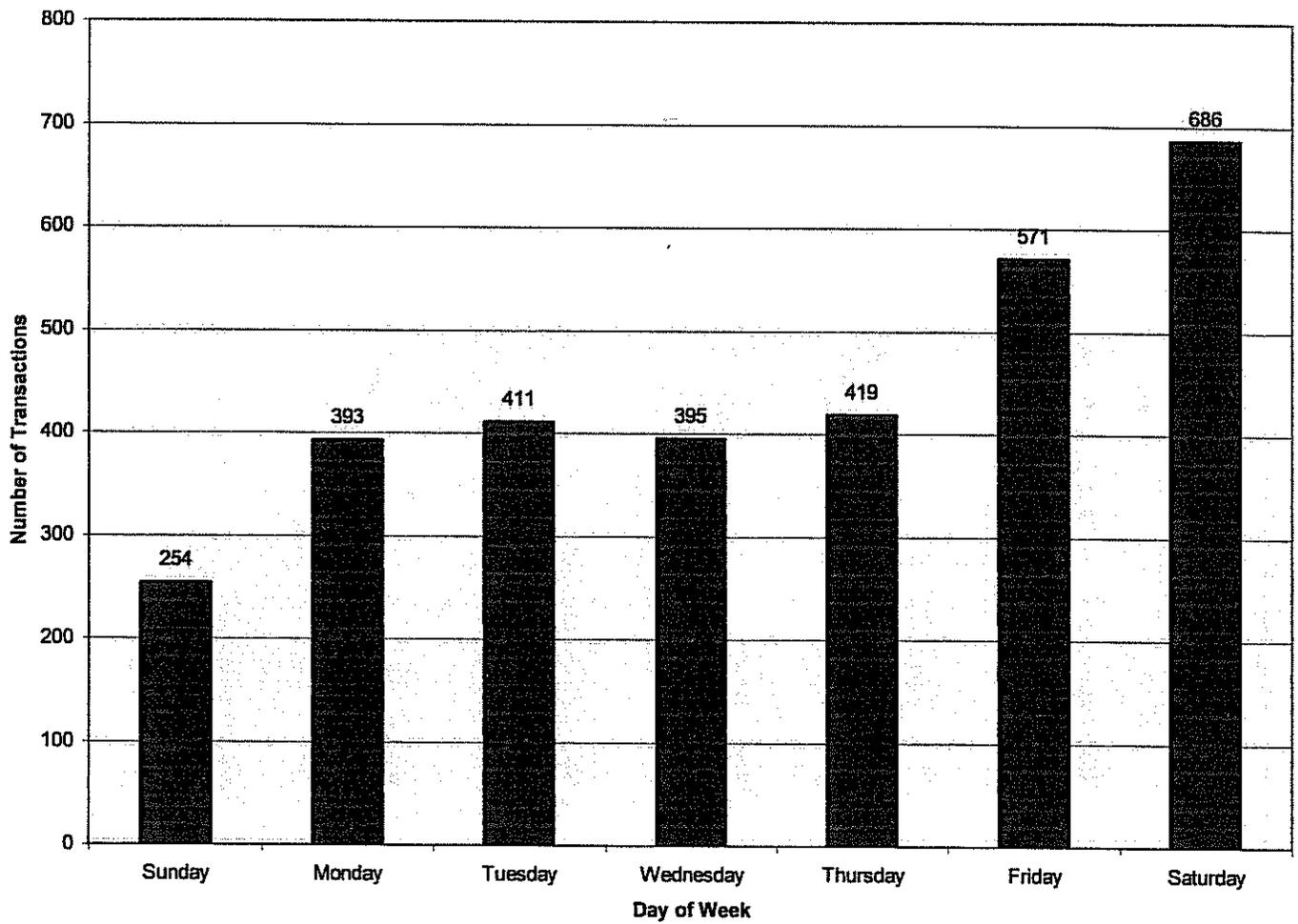
**September 2006 FFL Survey Results  
Closure of Instacheck on Sundays**



Average Transactions per hour by day of week. Using 2006 transaction data 2/6/06



Average Transactions by day of week using 2006 statistics -- 2/8/07



Transaction demand vs. Staffing levels using 2006 statistics – 2/9/07

