

107TH CONGRESS
2D SESSION

S. 2826

To improve the national instant criminal background check system, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 30, 2002

Mr. SCHUMER (for himself, Mr. CRAIG, Mr. KENNEDY, and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To improve the national instant criminal background check system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Our Lady of Peace
5 Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Since 1994, more than 689,000 individuals
9 have been denied a gun for failing a background
10 check.

1 (2) States that fail to computerize their crimi-
 2 nal and mental illness records are the primary cause
 3 of delays for background checks. Helping States
 4 automate their records will reduce delays for law-
 5 abiding gun owners.

6 (3) 25 States have automated less than 60 per-
 7 cent of their felony criminal conviction records.

8 (4) 33 States do not automate or share dis-
 9 qualifying mental health records.

10 (5) In 13 States, domestic violence restraining
 11 orders are not automated or accessible by the na-
 12 tional instant criminal background check system.

13 (6) In 15 States, no domestic violence mis-
 14 demeanor records are automated or accessible by the
 15 national instant criminal background check system.

16 **TITLE I—TRANSMITTAL OF**
 17 **RECORDS**

18 **SEC. 101. ENHANCEMENT OF REQUIREMENT THAT FED-**
 19 **ERAL DEPARTMENTS AND AGENCIES PRO-**
 20 **VIDE RELEVANT INFORMATION TO THE NA-**
 21 **TIONAL INSTANT CRIMINAL BACKGROUND**
 22 **CHECK SYSTEM.**

23 (a) IN GENERAL.—Section 103(e)(1) of the Brady
 24 Handgun Violence Prevention Act (18 U.S.C. 922 note)
 25 is amended—

1 (1) by inserting “electronically” before “fur-
2 nish”; and

3 (2) by adding at the end the following: “The
4 head of each department or agency shall ascertain
5 whether the department or agency has any records
6 relating to any person described in subsection (g) or
7 (n) of section 922 of title 18, United States Code
8 and on being made aware that the department or
9 agency has such a record, shall make the record
10 available to the Attorney General for inclusion in the
11 system to the extent the Attorney General deems ap-
12 propriate. The head of each department or agency,
13 on being made aware that the basis under which a
14 record was made available under this section does
15 not apply or no longer applies, shall transmit a cer-
16 tification identifying the record (and any name or
17 other relevant identifying information) to the Attor-
18 ney General for removal from the system. The Attor-
19 ney General shall notify the Congress on an annual
20 basis as to whether the Attorney General has ob-
21 tained from each such department or agency the in-
22 formation requested by the Attorney General under
23 this subsection.”.

24 (b) IMMIGRATION RECORDS.—The Commissioner of
25 the Immigration and Naturalization Service shall cooper-

1 ate in providing information regarding all relevant records
 2 of persons disqualified from acquiring a firearm under
 3 Federal law, including but not limited to, illegal aliens,
 4 visitors to the United States on student visas, and visitors
 5 to the United States on tourist visas, to the Attorney Gen-
 6 eral for inclusion in the national instant criminal back-
 7 ground check system.

8 **SEC. 102. REQUIREMENTS TO OBTAIN WAIVER.**

9 (a) IN GENERAL.—Beginning 5 years after the date
 10 of the enactment of this Act, a State shall be eligible to
 11 receive a waiver of the 10 percent matching requirement
 12 for National Criminal History Improvement Grants under
 13 the Crime Identification Technology Act of 1988 if the
 14 State provides at least 95 percent of the information de-
 15 scribed under subsections (b) and (c). The length of such
 16 a waiver shall not exceed 5 years.

17 (b) ELIGIBILITY OF STATE RECORDS FOR SUBMIS-
 18 SION TO THE NATIONAL INSTANT CRIMINAL BACK-
 19 GROUND CHECK SYSTEM.—

20 (1) REQUIREMENTS FOR ELIGIBILITY.—The
 21 State shall make available the following information
 22 established either through its own database or pro-
 23 vide information to the Attorney General:

24 (A) The name of and other relevant identi-
 25 fying information relating to each person dis-

1 qualified from acquiring a firearm under sub-
2 section (g) or (n) of section 922 of title 18,
3 United States Code, and each person disquali-
4 fied from acquiring a firearm under applicable
5 State law.

6 (B) The State, on being made aware that
7 the basis under which a record was made avail-
8 able under subparagraph (A) does not apply or
9 no longer applies, shall transmit a certification
10 identifying the record (and any name or other
11 relevant identifying information) to the Attor-
12 ney General for removal from the system.

13 (C) Any information provided to the Attor-
14 ney General under subparagraph (A) may be
15 accessed only for background check purposes
16 under section 922(t) of title 18, United States
17 Code.

18 (D) The State shall certify to the Attorney
19 General that at least 95 percent of all informa-
20 tion described in subparagraph (A) has been
21 provided to the Attorney General in accordance
22 with subparagraph (A).

23 (2) APPLICATION TO PERSONS CONVICTED OF
24 MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE.—

25 (A) For purposes of paragraph (1), a person dis-

1 qualified from acquiring a firearm as referred to in
2 that paragraph includes a person who has been con-
3 victed in any court of any Federal, State, or local of-
4 fense that—

5 (i) is a misdemeanor under Federal or
6 State law or, in a State that does not classify
7 offenses as misdemeanors, is an offense punish-
8 able by imprisonment for a term of 1 year or
9 less (or punishable by only a fine);

10 (ii) has, as an element of the offense, the
11 use or attempted use of physical force (for ex-
12 ample, assault and battery), or the threatened
13 use of a deadly weapon; and

14 (iii) was committed by a current or former
15 spouse, parent, or guardian of the victim, by a
16 person with whom the victim shares a child in
17 common, by a person who is cohabitating with
18 or has cohabitated with the victim as a spouse,
19 parent, or guardian, (for example, the equiva-
20 lent of “common-law marriage” even if such re-
21 lationship is not recognized under the law), or
22 a person similarly situated to a spouse, parent,
23 or guardian of the victim (for example, two per-
24 sons who are residing at the same location in
25 an intimate relationship with the intent to make

1 that place their home would be similarly situ-
2 ated to a spouse).

3 (B) A person shall not be considered to have
4 been convicted of such an offense for purposes of
5 subparagraph (A) unless—

6 (i) the person is considered to have been
7 convicted by the jurisdiction in which the pro-
8 ceeding was held;

9 (ii) the person was represented by counsel
10 in the case, or knowingly and intelligently
11 waived the right to counsel in the case; and

12 (iii) in the case of a prosecution for which
13 a person was entitled to a jury trial in the juris-
14 diction in which the case was tried—

15 (I) the case was tried by a jury; or

16 (II) the person knowingly and intel-
17 ligently waived the right to have the case
18 tried by a jury, by guilty plea, or other-
19 wise.

20 (C) A person shall not be considered to have
21 been convicted of such an offense for purposes of
22 subparagraph (A) if the conviction has been ex-
23 punged or set aside, or is an offense for which the
24 person has been pardoned or has had civil rights re-
25 stored (if the law of the jurisdiction in which the

1 proceedings were held provides for the loss of civil
2 rights upon conviction of such an offense) unless the
3 pardon, expungement, or restoration of civil rights
4 expressly provides that the person may not ship,
5 transport, possess, or receive firearms, and the per-
6 son is not otherwise prohibited by the law of the ju-
7 risdiction in which the proceedings were held from
8 receiving or possessing any firearms.

9 (c) APPLICATION TO PERSONS WHO HAVE BEEN AD-
10 JUDICATED AS A MENTAL DEFECTIVE OR COMMITTED TO
11 A MENTAL INSTITUTION.—

12 (1) REQUIREMENT.—The requirement of this
13 subsection is that the State shall provide the name
14 of and other relevant identifying information relat-
15 ing to persons adjudicated as mental defective or
16 those committed to mental institutions to the Attor-
17 ney General for inclusion in the national instant
18 criminal background check system.

19 (2) DEFINITION.—For purposes of paragraph
20 (1), an adjudication as a mental defective occurs
21 when a court, board, commission, or other govern-
22 ment entity determines that an individual is men-
23 tally retarded or of marked subnormal intelligence,
24 mentally ill, or mentally incompetent, including—

1 (A) defendants in criminal cases adju-
2 dicated as not guilty by reason of insanity, or
3 found incompetent to stand trial;

4 (B) individuals who are a danger to others
5 as a result of a mental disorder or illness;

6 (C) individuals involuntarily committed to
7 a mental institution by a court, board, commis-
8 sion, or other authority;

9 (D) individuals committed because they
10 lack the mental capacity to contract or manage
11 their own affairs; and

12 (E) individuals found to be a danger to
13 themselves as a result of a mental disorder or
14 illness.

15 (3) EXCEPTION.—This subsection does not
16 apply to—

17 (A) a person—

18 (i) in a mental institution for observa-
19 tion; or

20 (ii) voluntarily committed to a mental
21 institution; or

22 (B) information protected by doctor-pa-
23 tient privilege.

24 (4) PRIVACY PROTECTIONS.—For any informa-
25 tion provided under the national instant criminal

1 background check system, the Attorney General
2 shall work with States and local law enforcement
3 and the mental health community to establish regu-
4 lations and protocols for protecting the privacy of
5 information provided to the system.

6 (5) STATE AUTHORITY.—Notwithstanding any
7 other provision of this subsection, a State may des-
8 ignate that records transmitted under this sub-
9 section shall be used only to determine eligibility to
10 purchase or possess a firearm.

11 (d) ATTORNEY GENERAL REPORT.—Not later than
12 January 31 of each year, the Attorney General shall sub-
13 mit to the Committee on the Judiciary of the Senate and
14 the Committee on the Judiciary of the House of Rep-
15 resentatives a report on the progress of States in auto-
16 mating the databases containing the information described
17 in subsections (b) and (c) and in providing that informa-
18 tion pursuant to the requirements of such subsections.

19 **SEC. 103. IMPLEMENTATION GRANTS TO STATES.**

20 (a) IN GENERAL.—From amounts made available to
21 carry out this section, the Attorney General shall make
22 grants to each State, in a manner consistent with the na-
23 tional criminal history improvement program, which shall
24 be used by the State, in conjunction with units of local
25 government and State and local courts, to establish or up-

1 grade information and identification technologies for fire-
2 arms eligibility determinations.

3 (b) USE OF GRANT AMOUNTS.—Grants under this
4 section may only be awarded for the following purposes:

5 (1) Building databases that are directly related
6 to checks under the national instant criminal back-
7 ground check system (NICS), including court dis-
8 position and corrections records.

9 (2) Assisting States in establishing or enhanc-
10 ing their own capacities to perform NICS back-
11 ground checks.

12 (3) Improving final dispositions of criminal
13 records.

14 (4) Supplying mental health records to NICS.

15 (5) Supplying court-ordered domestic restrain-
16 ing orders and records of domestic violence mis-
17 demeanors (as defined in section 102 of this Act) for
18 inclusion in NICS.

19 (c) CONDITION.—As a condition of receiving a grant
20 under this section, a State shall specify the projects for
21 which grant amounts will be used, and shall use such
22 amounts only as specified. A State that violates this sec-
23 tion shall be liable to the Attorney General for the full
24 amount granted.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated to carry out this section
3 \$250,000,000 for each of fiscal years 2004, 2005, and
4 2006.

5 (e) USER FEE.—The Federal Bureau of Investiga-
6 tion shall not charge a user fee for background checks pur-
7 suant to section 922(t) of title 18, United States Code.

8 **TITLE II—FOCUSING FEDERAL**
9 **ASSISTANCE ON THE IM-**
10 **PROVEMENT OF RELEVANT**
11 **RECORDS**

12 **SEC. 201. CONTINUING EVALUATIONS.**

13 (a) EVALUATION REQUIRED.—The Director of the
14 Bureau of Justice Statistics shall study and evaluate the
15 operations of the national instant criminal background
16 check system. Such study and evaluation shall include, but
17 not be limited to, compilations and analyses of the oper-
18 ations and record systems of the agencies and organiza-
19 tions participating in such system.

20 (b) REPORT ON GRANTS.—Not later than January
21 31 of each year, the Director shall submit to Congress
22 a report on the implementation of subsections (b) and (c)
23 of section 102 of this Act.

24 (c) REPORT ON BEST PRACTICES.—Not later than
25 January 31 of each year, the Director shall submit to Con-

1 gress, and to each State participating in the National
2 Criminal History Improvement Program, a report of the
3 practices of the States regarding the collection, mainte-
4 nance, automation, and transmittal of identifying informa-
5 tion relating to individuals described in subsection (g) or
6 (n) of section 922 of title 18, United States Code, by the
7 State or any other agency, or any other records relevant
8 to the national instant criminal background check system,
9 that the Director considers to be best practices.

10 **TITLE III—GRANTS TO STATE**
11 **COURTS FOR THE IMPROVE-**
12 **MENT IN AUTOMATION AND**
13 **TRANSMITTAL OF DISPOSI-**
14 **TION RECORDS**

15 **SEC. 301. GRANTS AUTHORIZED.**

16 (a) IN GENERAL.—From amounts made available to
17 carry out this section, the Attorney General shall make
18 grants to each State for use by the chief judicial officer
19 of the State to improve the handling of proceedings related
20 to criminal history dispositions and restraining orders.

21 (b) USE OF FUNDS.—Amounts granted under this
22 section shall be used by the chief judicial officer only as
23 follows:

24 (1) For fiscal year 2004, such amounts shall be
25 used to carry out assessments of the capabilities of

1 the courts of the State for the automation and
2 transmission to State and Federal record reposi-
3 tories the arrest and conviction records of such
4 courts.

5 (2) For fiscal years after 2004, such amounts
6 shall be used to implement policies, systems, and
7 procedures for the automation and transmission to
8 State and Federal record repositories the arrest and
9 conviction records of such courts.

10 (c) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated to the Attorney General
12 to carry out this section \$125,000,000 for each of fiscal
13 years 2004, 2005, and 2006.

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