

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this Act”, meaning Pub. L. 112-253, Jan. 10, 2013, 126 Stat. 2407, known as the Katie Sepich Enhanced DNA Collection Act of 2012, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title of 2013 Act note set out under section 10101 of this title and Tables.

CODIFICATION

Section was formerly classified to section 14137c of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

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§ 40901. Establishment**(a) Determination of timetables**

Not later than 6 months after November 30, 1993, the Attorney General shall—

- (1) determine the type of computer hardware and software that will be used to operate the national instant criminal background check system and the means by which State criminal records systems and the telephone or electronic device of licensees will communicate with the national system;
- (2) investigate the criminal records system of each State and determine for each State a timetable by which the State should be able to provide criminal records on an on-line capacity basis to the national system; and
- (3) notify each State of the determinations made pursuant to paragraphs (1) and (2).

(b) Establishment of system**(1) In general**

Not later than 60 months after November 30, 1993, the Attorney General shall establish a national instant criminal background check system that any licensee may contact, by tele-

phone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 of title 18 or State law.

(2) Voluntary background checks**(A) In general**

Not later than 90 days after June 25, 2022, the Attorney General shall promulgate regulations allowing licensees to use the national instant criminal background check system established under this section for purposes of voluntarily conducting an employment background check relating to a current or prospective employee. The Attorney General may not collect a fee for an employment background check under this subparagraph.

(B) Notice

Before conducting an employment background check relating to a current or prospective employee under subparagraph (A), a licensee shall—

- (i) provide written notice to the current or prospective employee that the licensee intends to conduct the background check; and
- (ii) obtain consent to conduct the background check from the current or prospective employee in writing.

(C) Exemption

An employment background check conducted by a licensee under subparagraph (A) shall not be governed by the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(D) Appeal

Any individual who is the subject of an employment background check conducted by a licensee under subparagraph (A) the result of which indicates that the individual is prohibited from possessing a firearm or ammunition pursuant to subsection (g) or (n) of section 922 of title 18 may appeal the results of the background check in the same manner and to the same extent as if the individual had been the subject of a background check relating to the transfer of a firearm.

(c) Expedited action by the Attorney General

The Attorney General shall expedite—

- (1) the upgrading and indexing of State criminal history records in the Federal criminal records system maintained by the Federal Bureau of Investigation;
- (2) the development of hardware and software systems to link State criminal history check systems into the national instant criminal background check system established by the Attorney General pursuant to this section; and
- (3) the current revitalization initiatives by the Federal Bureau of Investigation for technologically advanced fingerprint and criminal records identification.

(d) Notification of licensees

On establishment of the system under this section, the Attorney General shall notify each licensee and the chief law enforcement officer of

each State of the existence and purpose of the system and the means to be used to contact the system.

(e) Administrative provisions

(1) Authority to obtain official information

(A) In general

Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate subsection (g) or (n) of section 922 of title 18 or State law, as is necessary to enable the system to operate in accordance with this section.

(B) Request of attorney general

On request of the Attorney General, the head of such department or agency shall furnish electronic versions of the information described under subparagraph (A) to the system.

(C) Quarterly submission to Attorney General

If a Federal department or agency under subparagraph (A) has any record of any person demonstrating that the person falls within one of the categories described in subsection (g) or (n) of section 922 of title 18, the head of such department or agency shall, not less frequently than quarterly, provide the pertinent information contained in such record to the Attorney General.

(D) Information updates

The Federal department or agency, on being made aware that the basis under which a record was made available under subparagraph (A) does not apply, or no longer applies, shall—

- (i) update, correct, modify, or remove the record from any database that the agency maintains and makes available to the Attorney General, in accordance with the rules pertaining to that database; and
- (ii) notify the Attorney General that such basis no longer applies so that the National Instant Criminal Background Check System is kept up to date.

The Attorney General upon receiving notice pursuant to clause (ii) shall ensure that the record in the National Instant Criminal Background Check System is updated, corrected, modified, or removed within 30 days of receipt.

(E) Annual report

The Attorney General shall submit an annual report to Congress that describes the compliance of each department or agency with the provisions of this paragraph.

(F) Semiannual certification and reporting

(i) In general

The head of each Federal department or agency shall submit a semiannual written certification to the Attorney General indicating whether the department or agency is in compliance with the record submission requirements under subparagraph (C).

(ii) Submission dates

The head of a Federal department or agency shall submit a certification to the Attorney General under clause (i)—

(I) not later than July 31 of each year, which shall address all relevant records, including those that have not been transmitted to the Attorney General, in possession of the department or agency during the period beginning on January 1 of the year and ending on June 30 of the year; and

(II) not later than January 31 of each year, which shall address all relevant records, including those that have not been transmitted to the Attorney General, in possession of the department or agency during the period beginning on July 1 of the previous year and ending on December 31 of the previous year.

(iii) Contents

A certification required under clause (i) shall state, for the applicable period—

(I) the total number of records of the Federal department or agency demonstrating that a person falls within one of the categories described in subsection (g) or (n) of section 922 of title 18;

(II) for each category of records described in subclause (I), the total number of records of the Federal department or agency that have been provided to the Attorney General; and

(III) the efforts of the Federal department or agency to ensure complete and accurate reporting of relevant records, including efforts to monitor compliance and correct any reporting failures or inaccuracies.

(G) Implementation plan

(i) In general

Not later than 1 year after March 23, 2018, the head of each Federal department or agency, in coordination with the Attorney General, shall establish a plan to ensure maximum coordination and automated reporting or making available of records to the Attorney General as required under subparagraph (C), and the verification of the accuracy of those records, including the pre-validation of those records, where appropriate, during a 4-year period specified in the plan. The records shall be limited to those of an individual described in subsection (g) or (n) of section 922 of title 18.

(ii) Benchmark requirements

Each plan established under clause (i) shall include annual benchmarks to enable the Attorney General to assess implementation of the plan, including—

(I) qualitative goals and quantitative measures;

(II) measures to monitor internal compliance, including any reporting failures and inaccuracies;

(III) a needs assessment, including estimated compliance costs; and

(IV) an estimated date by which the Federal department or agency will fully comply with record submission requirements under subparagraph (C).

(iii) Compliance determination

Not later than the end of each fiscal year beginning after the date of the establishment of a plan under clause (i), the Attorney General shall determine whether the applicable Federal department or agency has achieved substantial compliance with the benchmarks included in the plan.

(H) Accountability

The Attorney General shall publish, including on the website of the Department of Justice, and submit to the Committee on the Judiciary and the Committee on Appropriations of the Senate and the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives a semiannual report that discloses—

(i) the name of each Federal department or agency that has failed to submit a required certification under subparagraph (F);

(ii) the name of each Federal department or agency that has submitted a required certification under subparagraph (F), but failed to certify compliance with the record submission requirements under subparagraph (C);

(iii) the name of each Federal department or agency that has failed to submit an implementation plan under subparagraph (G);

(iv) the name of each Federal department or agency that is not in substantial compliance with an implementation plan under subparagraph (G);

(v) a detailed summary of the data, broken down by department or agency, contained in the certifications submitted under subparagraph (F);

(vi) a detailed summary of the contents and status, broken down by department or agency, of the implementation plans established under subparagraph (G); and

(vii) the reasons for which the Attorney General has determined that a Federal department or agency is not in substantial compliance with an implementation plan established under subparagraph (G).

(I) Noncompliance penalties

For each of fiscal years 2019 through 2022, each political appointee of a Federal department or agency that has failed to certify compliance with the record submission requirements under subparagraph (C), and is not in substantial compliance with an implementation plan established under subparagraph (G), shall not be eligible for the receipt of bonus pay, excluding overtime pay, until the department or agency—

(i) certifies compliance with the record submission requirements under subparagraph (C); or

(ii) achieves substantial compliance with an implementation plan established under subparagraph (G).

(J) Technical assistance

The Attorney General may use funds made available for the national instant criminal background check system established under subsection (b) to provide technical assistance to a Federal department or agency, at the request of the department or agency, in order to help the department or agency comply with the record submission requirements under subparagraph (C).

(K) Application to Federal courts

For purposes of this paragraph—

(i) the terms “department or agency of the United States” and “Federal department or agency” include a Federal court; and

(ii) the Director of the Administrative Office of the United States Courts shall perform, for a Federal court, the functions assigned to the head of a department or agency.

(2) Other authority

The Attorney General shall develop such computer software, design and obtain such telecommunications and computer hardware, and employ such personnel, as are necessary to establish and operate the system in accordance with this section.

(f) Written reasons provided on request

If the national instant criminal background check system determines that an individual is ineligible to receive a firearm and the individual requests the system to provide the reasons for the determination, the system shall provide such reasons to the individual, in writing, within 5 business days after the date of the request.

(g) Correction of erroneous system information

If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate subsection (g) or (n) of section 922 of title 18 or State law, the prospective transferee may request the Attorney General to provide the prospective transferee with the reasons therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The prospective transferee may submit to the Attorney General information to correct, clarify, or supplement records of the system with respect to the prospective transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to the prospective transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records. For purposes of the preceding sentence, not later than 60 days after the date on which the Attorney General receives such information, the Attorney General shall determine whether or not the prospective transferee is the subject of an erroneous record and remove any records that are determined to be erroneous. In addition to any funds made available under subsection (k), the Attorney General may use such sums as are necessary and otherwise available for the salaries and expenses

of the Federal Bureau of Investigation to comply with this subsection.

(h) Regulations

After 90 days' notice to the public and an opportunity for hearing by interested parties, the Attorney General shall prescribe regulations to ensure the privacy and security of the information of the system established under this section.

(i) Prohibition relating To establishment of registration systems with respect to firearms

No department, agency, officer, or employee of the United States may—

(1) require that any record or portion thereof generated by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons, prohibited by section 922(g) or (n) of title 18 or State law, from receiving a firearm.

(j) Definitions

As used in this section:

(1) Licensee

The term “licensee” means a licensed importer (as defined in section 921(a)(9) of title 18), a licensed manufacturer (as defined in section 921(a)(10) of that title), or a licensed dealer (as defined in section 921(a)(11) of that title).

(2) Other terms

The terms “firearm”, “handgun”, “licensed importer”, “licensed manufacturer”, and “licensed dealer” have the meanings stated in section 921(a) of title 18, as amended by subsection (a)(2).

(k) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to enable the Attorney General to carry out this section.

(l) Requirements relating to background checks for persons under age 21

If a licensee contacts the system established under this section regarding a proposed transfer of a firearm to a person less than 21 years of age in accordance with subsection (t) of section 922 of title 18, the system shall—

(1) immediately contact—

(A) the criminal history repository or juvenile justice information system, as appropriate, of the State in which the person resides for the purpose of determining whether the person has a possibly disqualifying juvenile record under subsection (d) of such section 922;

(B) the appropriate State custodian of mental health adjudication records in the State in which the person resides to determine whether the person has a possibly disqualifying juvenile record under subsection (d) of such section 922; and

(C) a local law enforcement agency of the jurisdiction in which the person resides for the purpose of determining whether the person has a possibly disqualifying juvenile record under subsection (d) of such section 922;

(2) as soon as possible, but in no case more than 3 business days, after the licensee contacts the system, notify the licensee whether cause exists to further investigate a possibly disqualifying juvenile record under subsection (d) of such section 922; and

(3) if there is cause for further investigation, as soon as possible, but in no case more than 10 business days, after the licensee contacts the system, notify the licensee whether—

(A) transfer of a firearm to the person would violate subsection (d) of such section 922; or

(B) receipt of a firearm by the person would violate subsection (g) or (n) of such section 922, or State, local, or Tribal law.

(Pub. L. 103-159, title I, §103, Nov. 30, 1993, 107 Stat. 1541; Pub. L. 103-322, title XXI, §210603(b), Sept. 13, 1994, 108 Stat. 2074; Pub. L. 104-294, title VI, §603(h), (i)(1), Oct. 11, 1996, 110 Stat. 3504; Pub. L. 110-180, title I, §101(a), Jan. 8, 2008, 121 Stat. 2561; Pub. L. 115-141, div. S, title VI, §602, Mar. 23, 2018, 132 Stat. 1132; Pub. L. 117-159, div. A, title II, §§12001(a)(2), (3), 12004(h)(1), June 25, 2022, 136 Stat. 1323, 1324, 1330.)

AMENDMENT OF SUBSECTION (l)

For repeal of amendment by section 12001(a)(3) of Pub. L. 117-159, see Termination Date of 2022 Amendment note below.

Editorial Notes

REFERENCES IN TEXT

The Fair Credit Reporting Act, referred to in subsec. (b)(2)(C), is title VI of Pub. L. 90-321, as added by Pub. L. 91-508, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the Brady Handgun Violence Prevention Act, and not as part of the NICS Improvement Amendments Act of 2007 which comprises this chapter.

Section was formerly classified as a note under section 922 of Title 18, Crimes and Criminal Procedure, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2022—Subsec. (b). Pub. L. 117-159, §12004(h)(1), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (l). Pub. L. 117-159, §12001(a)(2), (3), temporarily added subsec. (l). See Termination Date of 2022 Amendment note below.

2018—Subsec. (e)(1)(F) to (K). Pub. L. 115-141, §602(1), added subpars. (F) to (K).

Subsec. (g). Pub. L. 115-141, §602(2), inserted at end “For purposes of the preceding sentence, not later than 60 days after the date on which the Attorney General receives such information, the Attorney General shall determine whether or not the prospective transferee is

the subject of an erroneous record and remove any records that are determined to be erroneous. In addition to any funds made available under subsection (k), the Attorney General may use such sums as are necessary and otherwise available for the salaries and expenses of the Federal Bureau of Investigation to comply with this subsection.”

2008—Subsec. (e)(1). Pub. L. 110-180 designated first and second sentences as subpars. (A) and (B), respectively, inserted subpar. headings, substituted “furnish electronic versions of the information described under subparagraph (A)” for “furnish such information” in subpar. (B), and added subpar. (C).

1996—Subsecs. (e)(1), (g). Pub. L. 104-294, § 603(h), made technical amendment to reference in original act which appears in text as reference to subsection (g) or (n) of section 922 of title 18.

Subsec. (i)(2). Pub. L. 104-294, § 603(h), made technical amendment to reference in original act which appears in text as reference to section 922(g) or (n) of title 18.

Subsec. (k). Pub. L. 104-294, § 603(i)(1), amended directory language of Pub. L. 103-322, § 210603(b). See 1994 Amendment note below.

1994—Subsec. (k). Pub. L. 103-322, § 210603(b), as amended by Pub. L. 104-294, § 603(i)(1), struck out “, which may be appropriated from the Violent Crime Reduction Trust Fund established by section 1115 of title 31” after “authorized to be appropriated”.

Statutory Notes and Related Subsidiaries

TERMINATION DATE OF 2022 AMENDMENT

Amendment by section 12001(a)(2) of Pub. L. 117-159 repealed effective Sept. 30, 2032, and section restored as if such amendment had not been enacted, see section 12001(a)(3) of Pub. L. 117-159, set out as an Effective and Termination Dates of 2022 Amendment note under section 922 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 603(i)(1) of Pub. L. 104-294 effective as if the amendment had been included in section 210603(b) of Pub. L. 103-322 on Sept. 13, 1994, see section 603(i)(2) of Pub. L. 104-294, set out as a note under section 40302 of this title.

SHORT TITLE

For short title of Pub. L. 110-180, which is classified to this chapter, as the “NICS Improvement Amendments Act of 2007”, see section 1(a) of Pub. L. 110-180, set out as a Short Title of 2008 Act note under section 10101 of this title.

STATUTORY CONSTRUCTION; EVIDENCE

Nothing in amendment made by section 12004(h)(1) of Pub. L. 117-159 to be construed to create a cause of action against any person licensed as an importer, manufacturer, or dealer of firearms under chapter 44 of Title 18, Crimes and Criminal Procedure, or any other person for any civil liability or to establish any standard of care, with additional provision relating to nonadmissibility of evidence, see section 12004(h)(4) of Pub. L. 117-159, set out as a note under section 534 of Title 28, Judiciary and Judicial Procedure.

Nothing in amendment made by section 12004(h)(1) of Pub. L. 117-159 to be construed to allow the establishment of a Federal system of registration of firearms, firearms owners, or firearms transactions or dispositions, see section 12004(k) of Pub. L. 117-159, set out as a Rule of Construction note under section 922 of Title 18, Crimes and Criminal Procedure.

REPORT ON REMOVING OUTDATED, EXPIRED, OR ERRONEOUS RECORDS

Pub. L. 117-159, div. A, title II, § 12001(b), June 25, 2022, 136 Stat. 1324, provided that:

“(1) IN GENERAL.—On an annual basis for each fiscal year through fiscal year 2032, each State and Federal

agency responsible for the submission of disqualifying records under subsection (d), (g), or (n) of section 922 of title 18, United States Code, to the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act (34 U.S.C. 40901) shall submit to the Committee on the Judiciary and the Committee on Appropriations of the Senate and the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives a report detailing the removal from the system of records that no longer prohibit an individual from lawfully acquiring or possessing a firearm under such subsection (d), (g), or (n).

“(2) CONTENTS.—Each report submitted by a State or Federal agency under paragraph (1) shall include pertinent information on—

“(A) the number of records that the State or Federal agency removed from the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act (34 U.S.C. 40901) during the reporting period;

“(B) why the records were removed; and

“(C) for each record removed, the nature of the disqualifying characteristic outlined in subsection (d), (g), or (n) of section 922 of title 18, United States Code, that caused the State or Federal agency to originally submit the record to the system.”

DESTRUCTION OF IDENTIFYING INFORMATION FOR PERSONS NOT PROHIBITED FROM POSSESSING OR RECEIVING FIREARMS

Pub. L. 112-55, div. B, title V, § 511, Nov. 18, 2011, 125 Stat. 632, provided that: “Hereafter, none of the funds appropriated pursuant to this Act [div. B of Pub. L. 112-55, see Tables for classification] or any other provision of law may be used for—

“(1) the implementation of any tax or fee in connection with the implementation of subsection [sic] 922(t) of title 18, United States Code; and

“(2) any system to implement subsection [sic] 922(t) of title 18, United States Code, that does not require and result in the destruction of any identifying information submitted by or on behalf of any person who has been determined not to be prohibited from possessing or receiving a firearm no more than 24 hours after the system advises a Federal firearms licensee that possession or receipt of a firearm by the prospective transferee would not violate subsection (g) or (n) of section 922 of title 18, United States Code, or State law.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106-58, title VI, § 634, Sept. 29, 1999, 113 Stat. 473.

Pub. L. 105-277, div. A, § 101(h) [title VI, § 655], Oct. 21, 1998, 112 Stat. 2681-480, 2681-530.

IDENTIFICATION OF FELONS AND OTHER PERSONS INELIGIBLE TO PURCHASE HANDGUNS

Pub. L. 100-690, title VI, § 6213, Nov. 18, 1988, 102 Stat. 4360, provided that:

“(a) IDENTIFICATION OF FELONS INELIGIBLE TO PURCHASE HANDGUNS.—The Attorney General shall develop a system for immediate and accurate identification of felons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code. The system shall be accessible to dealers but only for the purpose of determining whether a potential purchaser is a convicted felon. The Attorney General shall establish a plan (including a cost analysis of the proposed system) for implementation of the system. In developing the system, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. The Attorney General shall begin implementation of the system 30 days after the report to the Congress as provided in subsection (b).

“(b) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act [Nov. 18,

1988], the Attorney General shall report to the Congress a description of the system referred to in subsection (a) and a plan (including a cost analysis of the proposed system) for implementation of the system. Such report may include, if appropriate, recommendations for modifications of the system and legislation necessary in order to fully implement such system.

“(c) ADDITIONAL STUDY OF OTHER PERSONS INELIGIBLE TO PURCHASE FIREARMS.—The Attorney General in consultation with the Secretary of the Treasury shall conduct a study to determine if an effective method for immediate and accurate identification of other persons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g) of title 18, United States Code. In conducting the study, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. Such study shall be completed within 18 months after the date of the enactment of this Act [Nov. 18, 1988] and shall be submitted to the Congress and made available to the public. Such study may include, if appropriate, recommendations for legislation.

“(d) DEFINITIONS.—As used in this section, the terms ‘firearm’ and ‘dealer’ shall have the meanings given such terms in section 921(a) of title 18, United States Code.”

Executive Documents

TRACING OF FIREARMS IN CONNECTION WITH CRIMINAL INVESTIGATIONS

Memorandum of President of the United States, Jan. 16, 2013, 78 F.R. 4301, provided:

Memorandum for the Heads of Executive Departments and Agencies

Reducing violent crime, and gun-related crime in particular, is a top priority of my Administration. A key component of this effort is ensuring that law enforcement agencies at all levels—Federal, State, and local—utilize those tools that have proven most effective. One such tool is firearms tracing, which significantly assists law enforcement in reconstructing the transfer and movement of seized or recovered firearms. Responsibility for conducting firearms tracing rests with the Department of Justice’s Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Over the years, firearms tracing has significantly assisted law enforcement in solving violent crimes and generating thousands of leads that may otherwise not have been available.

Firearms tracing provides two principal benefits. First, tracing is an important investigative tool in individual cases, providing law enforcement agents with critical information that may lead to the apprehension of suspects, the recovery of other guns used in the commission of crimes, and the identification of potential witnesses, among other things. Second, analysis of tracing data in the aggregate provides valuable intelligence about local, regional, and national patterns relating to the movement and sources of guns used in the commission of crimes, which is useful for the effective deployment of law enforcement resources and development of enforcement strategies. Firearms tracing is a particularly valuable tool in detecting and investigating firearms trafficking, and has been deployed to help combat the pernicious problem of firearms trafficking across the Southwest border.

The effectiveness of firearms tracing as a law enforcement intelligence tool depends on the quantity and quality of information and trace requests submitted to ATF. In fiscal year 2012, ATF processed approximately 345,000 crime-gun trace requests for thousands of domestic and international law enforcement agencies. The Federal Government can encourage State and local law enforcement agencies to take advantage of the benefits of tracing all recovered firearms, but Federal law enforcement agencies should have an obligation to do so. If Federal law enforcement agencies do

not conscientiously trace every firearm taken into custody, they may not only be depriving themselves of critical information in specific cases, but may also be depriving all Federal, State, and local agencies of the value of complete information for aggregate analyses.

Maximizing the effectiveness of firearms tracing, and the corresponding impact on combating violent crimes involving firearms, requires that Federal law enforcement agencies trace all recovered firearms taken into Federal custody in a timely and efficient manner.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

SECTION 1. *Firearms Tracing.* (a) Federal law enforcement agencies shall ensure that all firearms recovered after the date of this memorandum in the course of criminal investigations and taken into Federal custody are traced through ATF at the earliest time practicable. Federal law enforcement agencies, as well as other executive departments and agencies, are encouraged, to the extent practicable, to take steps to ensure that firearms recovered prior to the date of this memorandum in the course of criminal investigations and taken into Federal custody are traced through ATF.

(b) Within 30 days of the date of this memorandum, ATF will issue guidance to Federal law enforcement agencies on submitting firearms trace requests.

(c) Within 60 days of the date of this memorandum, Federal law enforcement agencies shall ensure that their operational protocols reflect the requirement to trace recovered firearms through ATF.

(d) Within 90 days of the date of this memorandum, each Federal law enforcement agency shall submit a report to the Attorney General affirming that its operational protocols reflect the requirements set forth in this memorandum.

(e) For purposes of this memorandum, “Federal law enforcement agencies” means the Departments of State, the Treasury, Defense, Justice, the Interior, Agriculture, Energy, Veterans Affairs, and Homeland Security, and such other agencies and offices that regularly recover firearms in the course of their criminal investigations as the President may designate.

SEC. 2. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect the authority granted by law to a department or agency, or the head thereof.

(b) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 3. *Publication.* The Attorney General is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

PROMOTING SMART GUN TECHNOLOGY

Memorandum of President of the United States, Jan. 4, 2016, 81 F.R. 719, provided:

Memorandum for the Secretary of Defense[,] the Attorney General[, and] the Secretary of Homeland Security

For more than 20 years, the Federal Government has worked to keep guns out of the wrong hands through background checks. This critical effort in addressing gun violence has prevented more than two million prohibited firearms purchases from being completed. But tens of thousands of people are still injured or killed by firearms every year—in many cases by guns that were sold legally but then stolen, misused, or discharged accidentally. Developing and promoting technology that would help prevent these tragedies is an urgent priority.

In 2013, I directed the Department of Justice to review the availability and most effective use of new gun safety technologies, such as devices requiring a scan of the owner’s fingerprint before a gun can fire. In its re-

port, the Department made clear that technological advancements in this area could help reduce accidental deaths and the use of stolen guns in criminal activities.

Millions of dollars have already been invested to support research into a broad range of concepts for improving gun safety. We must all do our part to continue to advance this research and encourage its practical application, and it is possible to do so in a way that makes the public safer and is consistent with the Second Amendment. The Federal Government has a unique opportunity to do so, as it is the single largest purchaser of firearms in the country. Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

SECTION 1. *Research and Development.* The Department of Defense, the Department of Justice, and the Department of Homeland Security (departments) shall, to the extent practicable and permitted by law, conduct or sponsor research into gun safety technology that would reduce the frequency of accidental discharge or unauthorized use of firearms, and improve the tracing of lost or stolen guns. Not later than 90 days after the date of this memorandum, the Secretary of Defense, the Attorney General, and the Secretary of Homeland Security shall prepare jointly a report outlining a research and development strategy designed to expedite the real-world deployment of such technology for use in practice.

SEC. 2. *Department Consideration of New Technology.* The departments shall, to the extent permitted by law, regularly (a) review the availability of the technology described in section 1, and (b) explore potential ways to further its use and development to more broadly improve gun safety. In connection with these efforts, the departments shall consult with other agencies that acquire firearms and take appropriate steps to consider whether including such technology in specifications for acquisition of firearms would be consistent with operational needs.

SEC. 3. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 4. *Publication.* The Attorney General is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 40902. Findings

Congress finds the following:

(1) Approximately 916,000 individuals were prohibited from purchasing a firearm for failing a background check between November 30, 1998, (the date the National Instant Criminal Background Check System (NICS) began operating) and December 31, 2004.

(2) From November 30, 1998, through December 31, 2004, nearly 49,000,000 Brady background checks were processed through NICS.

(3) Although most Brady background checks are processed through NICS in seconds, many background checks are delayed if the Federal Bureau of Investigation (FBI) does not have

automated access to complete information from the States concerning persons prohibited from possessing or receiving a firearm under Federal or State law.

(4) Nearly 21,000,000 criminal records are not accessible by NICS and millions of criminal records are missing critical data, such as arrest dispositions, due to data backlogs.

(5) The primary cause of delay in NICS background checks is the lack of—

(A) updates and available State criminal disposition records; and

(B) automated access to information concerning persons prohibited from possessing or receiving a firearm because of mental illness, restraining orders, or misdemeanor convictions for domestic violence.

(6) Automated access to this information can be improved by—

(A) computerizing information relating to criminal history, criminal dispositions, mental illness, restraining orders, and misdemeanor convictions for domestic violence; or

(B) making such information available to NICS in a usable format.

(7) Helping States to automate these records will reduce delays for law-abiding gun purchasers.

(8) On March 12, 2002, the senseless shooting, which took the lives of a priest and a parishioner at the Our Lady of Peace Church in Lynbrook, New York, brought attention to the need to improve information-sharing that would enable Federal and State law enforcement agencies to conduct a complete background check on a potential firearm purchaser. The man who committed this double murder had a prior disqualifying mental health commitment and a restraining order against him, but passed a Brady background check because NICS did not have the necessary information to determine that he was ineligible to purchase a firearm under Federal or State law.

(9) On April 16, 2007, a student with a history of mental illness at the Virginia Polytechnic Institute and State University shot to death 32 students and faculty members, wounded 17 more, and then took his own life. The shooting, the deadliest campus shooting in United States history, renewed the need to improve information-sharing that would enable Federal and State law enforcement agencies to conduct complete background checks on potential firearms purchasers. In spite of a proven history of mental illness, the shooter was able to purchase the two firearms used in the shooting. Improved coordination between State and Federal authorities could have ensured that the shooter's disqualifying mental health information was available to NICS.

(Pub. L. 110-180, §2, Jan. 8, 2008, 121 Stat. 2559.)

Editorial Notes

CODIFICATION

Section was formerly classified in a note under section 922 of Title 18, Crimes and Criminal Procedure, prior to editorial reclassification and renumbering as this section.