

111TH CONGRESS  
1ST SESSION

# S. 163

To amend the National Child Protection Act of 1993 to establish a permanent background check system.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 7, 2009

Mr. ENSIGN (for himself, Mr. BAYH, Mr. ISAKSON, Mrs. McCASKILL, and Mr. SPECTER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the National Child Protection Act of 1993 to establish a permanent background check system.

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 “Child Protection Im-  
5       provements Act of 2009”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

8               (1) In 2006, 61,200,000 adults (a total of 26.7  
9       percent of the population) contributed a total of  
10       8,100,000,000 hours of volunteer service. Of those

1 who volunteer, 27 percent dedicate their service to  
2 education or youth programs, or a total of  
3 16,500,000 adults.

4 (2) Assuming recent incarceration rates remain  
5 unchanged, an estimated 6.6 percent of individuals  
6 in the United States will serve time in prison for a  
7 crime during their lifetime. The Integrated Auto-  
8 mated Fingerprint Identification System of the Fed-  
9 eral Bureau of Investigation maintains fingerprints  
10 and criminal histories on more than 47,000,000 in-  
11 dividuals, many of whom have been arrested or con-  
12 victed multiple times.

13 (3) A study released in 2002, found that, of in-  
14 dividuals released from prison in 15 States in 1994,  
15 an estimated 67.5 percent were rearrested for a fel-  
16 ony or serious misdemeanor within 3 years. Three-  
17 quarters of those new arrests resulted in convictions  
18 or a new prison sentence.

19 (4) Given the large number of individuals with  
20 criminal records and the vulnerability of the popu-  
21 lation they work with, human service organizations  
22 that work with children need an effective and reli-  
23 able means of obtaining a complete criminal history  
24 in order to determine the suitability of a potential  
25 volunteer or employee.

1           (5) The large majority of Americans (88 per-  
2           cent) favor granting youth-serving organizations ac-  
3           cess to conviction records for screening volunteers  
4           and 59 percent favored allowing youth-serving orga-  
5           nizations to consider arrest records when screening  
6           volunteers. This was the only use for which a major-  
7           ity of those surveyed favored granting access to ar-  
8           rest records.

9           (6) Congress has previously attempted to en-  
10          sure that States make Federal Bureau of Investiga-  
11          tion criminal history record checks available to orga-  
12          nizations seeking to screen employees and volunteers  
13          who work with children, the elderly, and individuals  
14          with disabilities, through the National Child Protec-  
15          tion Act of 1993 (42 U.S.C. 5119 et seq.) and the  
16          Volunteers for Children Act (Public Law 105–251;  
17          112 Stat. 1885). However, according to a June  
18          2006 report from the Attorney General, these laws  
19          “did not have the intended impact of broadening the  
20          availability of NCPA checks.”. A 2007 survey con-  
21          ducted by MENTOR/National Mentoring Partner-  
22          ship found that only 18 States allowed youth men-  
23          toring organizations to access nationwide Federal  
24          Bureau of Investigation background searches.

1           (7) Even when accessible, the cost of a criminal  
2 background check can be prohibitively expensive,  
3 ranging from \$5 to \$75 for a State fingerprint  
4 check, plus the Federal Bureau of Investigation fee,  
5 which ranges between \$16 to \$24, for a total of be-  
6 tween \$21 and \$99 for each volunteer or employee.

7           (8) Delays in processing such checks can also  
8 limit their utility. While the Federal Bureau of In-  
9 vestigation processes all civil fingerprint requests in  
10 less than 24 hours, State response times vary widely,  
11 and can take as long as 42 days.

12           (9) The Child Safety Pilot Program under sec-  
13 tion 108 of the PROTECT Act (42 U.S.C. 5119a  
14 note) revealed the importance of performing finger-  
15 print-based Federal Bureau of Investigation criminal  
16 history record checks. Of 29,000 background checks  
17 performed through the pilot program as of March  
18 2007, 6.4 percent of volunteers were found to have  
19 a criminal record of concern, including very serious  
20 offenses such as sexual abuse of minors, assault,  
21 child cruelty, murder, and serious drug offenses.

22           (10) In an analysis performed on the volunteers  
23 screened in the first 18 months of the Child Safety  
24 Pilot Program, it was found that over 25 percent of  
25 the individuals with criminal records had committed

1 an offense in a State other than the State in which  
2 they were applying to volunteer, meaning that a  
3 State-only search would not have found relevant  
4 criminal results. In addition, even though volunteers  
5 knew a background check was being performed, over  
6 50 percent of the individuals found to have a crimi-  
7 nal record falsely indicated on their application form  
8 that they did not have a criminal record.

9 (11) The Child Safety Pilot Program also dem-  
10 onstrates that timely and affordable background  
11 checks are possible, as background checks under  
12 that program are completed within 3 to 5 business  
13 days at a cost of \$18.

14 **SEC. 3. BACKGROUND CHECKS.**

15 The National Child Protection Act of 1993 (42  
16 U.S.C. 5119 et seq.) is amended—

17 (1) by redesignating section 5 as section 6; and

18 (2) by inserting after section 4 the following:

19 **“SEC. 5. PROGRAM FOR NATIONAL CRIMINAL HISTORY**  
20 **BACKGROUND CHECKS FOR CHILD-SERVING**  
21 **ORGANIZATIONS.**

22 “(a) DEFINITIONS.—In this section—

23 “(1) the term ‘applicant processing center’  
24 means the applicant processing center established by  
25 the Attorney General under subsection (b)(1);

1           “(2) the term ‘child’ means an individual who  
2 is less than 18 years of age;

3           “(3) the term ‘covered entity’ means a business  
4 or organization, whether public, private, for-profit,  
5 nonprofit, or voluntary that provides care, care  
6 placement, supervision, treatment, education, train-  
7 ing, instruction, or recreation to children, including  
8 a business or organization that licenses, certifies, or  
9 coordinates individuals or organizations to provide  
10 care, care placement, supervision, treatment, edu-  
11 cation, training, instruction, or recreation to chil-  
12 dren;

13           “(4) the term ‘covered individual’ means an in-  
14 dividual—

15           “(A) who has, seeks to have, or may have  
16 unsupervised access to a child served by a cov-  
17 ered entity; and

18           “(B) who—

19           “(i) is employed by or volunteers with,  
20 or seeks to be employed by or volunteer  
21 with, a covered entity; or

22           “(ii) owns or operates, or seeks to  
23 own or operate, a covered entity;

1           “(5) the term ‘criminal history resource center’  
2 means the program established under subsection  
3 (b)(2);

4           “(6) the term ‘identification document’ has the  
5 meaning given that term in section 1028 of title 18,  
6 United States Code;

7           “(7) the term ‘participating entity’ means a  
8 covered entity that is—

9               “(A) located in a State that does not have  
10 a qualified State program; and

11               “(B) approved under subsection (f) to re-  
12 ceive nationwide background checks from the  
13 applicant processing center;

14           “(8) the term ‘qualified State program’ means  
15 a program of a State authorized agency that the At-  
16 torney General determines is meeting the standards  
17 identified in subsection (b)(3) to ensure that a wide  
18 range of youth-serving organizations have affordable  
19 and timely access to nationwide background checks;

20           “(9) the term ‘State’ means a State of the  
21 United States, the District of Columbia, the Com-  
22 monwealth of Puerto Rico, American Samoa, the  
23 Virgin Islands, Guam, the Commonwealth of the  
24 Northern Mariana Islands, the Federated States of

1 Micronesia, the Republic of the Marshall Islands,  
2 and the Republic of Palau; and

3 “(10) the term ‘State authorized agency’ means  
4 a division or office of a State designated by that  
5 State to report, receive, or disseminate criminal his-  
6 tory information.

7 “(b) ESTABLISHMENT OF PROGRAM.—Not later than  
8 180 days after the date of enactment of the Child Protec-  
9 tion Improvements Act of 2009, the Attorney General  
10 shall—

11 “(1) establish within the Federal Government  
12 or through an agreement with a nongovernmental  
13 entity an applicant processing center;

14 “(2) enter into an agreement with the National  
15 Center for Missing and Exploited Children, under  
16 which the National Center for Missing and Exploited  
17 Children shall establish a criminal history resource  
18 center; and

19 “(3) conduct—

20 “(A) an annual assessment of each State  
21 authorized agency to determine whether the  
22 agency operates a qualified State program, in-  
23 cluding a review of whether the State author-  
24 ized agency—

1           “(i) has designated a wide range of  
2 covered entities as eligible to submit State  
3 criminal background check requests and  
4 nationwide background check requests to  
5 the State authorized agency;

6           “(ii) charges a covered entity not  
7 more than a total of \$36 for a State crimi-  
8 nal background check and a nationwide  
9 background check; and

10           “(iii) returns requests for State crimi-  
11 nal background checks and nationwide  
12 background checks to a covered entity not  
13 later than 10 business days after the date  
14 on which the request was made; and

15           “(B) in addition to an annual assessment  
16 under subparagraph (A), an assessment de-  
17 scribed in that subparagraph of a State author-  
18 ized agency if—

19           “(i) a State authorized agency that  
20 does not have a qualified State program  
21 requests such an assessment; or

22           “(ii) the Attorney General receives re-  
23 ports from covered entities indicating that  
24 a State authorized agency that has a quali-

1           fied State program no longer meets the  
2           standards described in subparagraph (A).

3           “(c) APPLICANT PROCESSING CENTER.—

4           “(1) PURPOSE.—The purpose of the applicant  
5           processing center is to streamline the process of ob-  
6           taining nationwide background checks, provide effec-  
7           tive customer service, and facilitate widespread ac-  
8           cess to nationwide background checks by partici-  
9           pating entities.

10          “(2) DUTIES.—The applicant processing center  
11          shall—

12           “(A) handle inquiries from covered entities  
13           and inform covered entities about how to re-  
14           quest nationwide background checks—

15           “(i) for a covered entity located in a  
16           State with a qualified State program, by  
17           referring the covered entity to the State  
18           authorized agency; and

19           “(ii) for a covered entity located in a  
20           State without a qualified State program,  
21           by providing information on the require-  
22           ments to become a participating entity;

23           “(B) provide participating entities with ac-  
24           cess to nationwide background checks on cov-  
25           ered individuals;

1           “(C) receive paper and electronic requests  
2 for nationwide background checks on covered  
3 individuals from participating entities;

4           “(D) serve as a national resource center to  
5 provide guidance and assistance to participating  
6 entities on how to submit requests for nation-  
7 wide background checks, how to obtain State  
8 criminal background checks, the possible re-  
9 strictions that apply when making hiring deci-  
10 sions based on criminal history records, and  
11 other related information;

12           “(E) to the extent practicable, negotiate an  
13 agreement with each State authorized agency  
14 under which—

15           “(i) that State authorized agency shall  
16 conduct a State criminal background check  
17 within the time periods specified in sub-  
18 section (e) in response to a request from  
19 the applicant processing center and provide  
20 criminal history records to the applicant  
21 processing center; and

22           “(ii) a participating entity may elect  
23 to obtain a State criminal background  
24 check, in addition to a nationwide back-

1 ground check, through 1 unified request to  
2 the applicant processing center;

3 “(F) convert all paper fingerprint cards  
4 into an electronic form and securely transmit  
5 all fingerprints electronically to the national  
6 criminal history background check system and,  
7 if appropriate, the State authorized agencies;

8 “(G) collect a fee to conduct the nation-  
9 wide background check, and, if appropriate, a  
10 State criminal background check, and remit  
11 fees to the Federal Bureau of Investigation  
12 and, if appropriate, the State authorized agen-  
13 cies;

14 “(H) convey to the participating entity  
15 that submitted the request for a nationwide  
16 background check—

17 “(i) a statement indicating whether a  
18 criminal history, including a conviction, ar-  
19 rest, or pending arrest or indictment, relat-  
20 ing to a covered individual was found;

21 “(ii) information relating to the ap-  
22 propriate use of criminal history records  
23 when making decisions regarding hiring  
24 employees and using volunteers;

1           “(iii) if a criminal history is found, a  
2           recommendation to the participating entity  
3           to consult with the covered individual in  
4           order to obtain more information about the  
5           individual’s criminal history, and a list of  
6           factors to consider in assessing the signifi-  
7           cance of that criminal history, including—

8                   “(I) any positive criminal back-  
9                   ground history;

10                   “(II) the nature, gravity, and cir-  
11                   cumstances of any offense indicated in  
12                   the individual’s criminal history  
13                   record, including whether the indi-  
14                   vidual was convicted of the offense;

15                   “(III) the period of time that has  
16                   elapsed since the date of the offense  
17                   or end of a period of incarceration or  
18                   supervised release;

19                   “(IV) the nature of the position  
20                   held or sought; and

21                   “(V) any evidence of rehabilita-  
22                   tion; and

23           “(iv) instructions that, in evaluating  
24           the considerations described in clause (iii),  
25           the participating entity should consult the

1 Equal Employment Opportunity Commis-  
2 sion Policy Statement on the Issue of Con-  
3 viction Records under Title VII of the Civil  
4 Rights Act and the Policy Guidance on the  
5 Consideration of Arrest Records in Em-  
6 ployment Decisions under Title VII of the  
7 Civil Rights Act of 1964, or any successor  
8 to such policy statement or policy guidance  
9 issued by the Equal Employment Oppor-  
10 tunity Commission;

11 “(I) for any request by a participating en-  
12 tity for a nationwide criminal background check  
13 for which a criminal history is found, convey to  
14 the applicable covered individual the criminal  
15 history and an explanation of the right of the  
16 covered individual to appeal the accuracy and  
17 completeness of that criminal history on the  
18 same date that the statement, information, and  
19 instructions described in subparagraph (H) are  
20 conveyed to the participating entity;

21 “(J) coordinate with the Federal Bureau  
22 of Investigation and participating State author-  
23 ized agencies to ensure that background check  
24 requests are being completed within the time  
25 periods specified in subsection (e); and

1           “(K) refer participating entities and cov-  
2           ered individuals to the appropriate State agency  
3           or the Federal Bureau of Investigation if a  
4           criminal history includes incomplete or inac-  
5           curate information.

6           “(3) REQUESTS.—A request for a nationwide  
7           background check by a participating entity shall in-  
8           clude—

9                   “(A) the fingerprints of the covered indi-  
10                  vidual, in paper or electronic form;

11                  “(B) a photocopy of a valid identification  
12                  document; and

13                  “(C) a statement completed and signed by  
14                  the covered individual that—

15                          “(i) sets out the covered individual’s  
16                          name, address, and date of birth, as those  
17                          items of information appear on a valid  
18                          identification document;

19                          “(ii) states whether the covered indi-  
20                          vidual has a criminal record, and, if so,  
21                          provides the particulars of such criminal  
22                          record;

23                          “(iii) notifies the covered individual  
24                          that the Attorney General and, if appro-  
25                          priate, a State authorized agency may per-

1 form a criminal history background check  
2 and that the signature of the covered indi-  
3 vidual on the statement constitutes an ac-  
4 knowledgment that such a check may be  
5 conducted;

6 “(iv) notifies the covered individual  
7 that prior to and after the completion of  
8 the background check, the participating  
9 entity may choose to deny the covered indi-  
10 vidual access to children; and

11 “(v) notifies the covered individual of  
12 the right of the covered individual to cor-  
13 rect an erroneous record of the Attorney  
14 General and, if appropriate, the State au-  
15 thorized agency.

16 “(4) FEES.—

17 “(A) IN GENERAL.—The applicant proc-  
18 essing center may collect a fee to defray the  
19 costs of carrying out its duties under this sec-  
20 tion—

21 “(i) for a nationwide background  
22 check, in an amount not to exceed the less-  
23 er of—

24 “(I) the actual cost to the appli-  
25 cant processing center of conducting a

1 nationwide background check under  
2 this section; or

3 “(II)(aa) \$25 for a participating  
4 entity that is a nonprofit entity; or

5 “(bb) \$40 for any other partici-  
6 pating entity; and

7 “(ii) for a State criminal background  
8 check described in paragraph (2)(E), in  
9 the amount specified in the agreement with  
10 the applicable State authorized agency, not  
11 to exceed \$18.

12 “(B) REDUCED FEES.—In determining the  
13 amount of the fees to be collected under sub-  
14 paragraph (A), the applicant processing cen-  
15 ter—

16 “(i) shall, to the extent possible, dis-  
17 count such fees for participating entities  
18 that are nonprofit entities; and

19 “(ii) may use fees paid by partici-  
20 pating entities that are not nonprofit enti-  
21 ties to reduce the fees to be paid by par-  
22 ticipating entities that are nonprofit enti-  
23 ties.

24 “(C) PROHIBITION ON FEES.—

1           “(i) IN GENERAL.—A participating  
2           entity may not charge another entity or in-  
3           dividual a surcharge to access a back-  
4           ground check conducted under this section.

5           “(ii) VIOLATION.—The Attorney Gen-  
6           eral shall bar any participating entity that  
7           the Attorney General determines violated  
8           clause (i) from submitting background  
9           checks under this section.

10          “(d) CRIMINAL HISTORY RESOURCE CENTER.—

11           “(1) PURPOSE.—The purpose of the criminal  
12           history resource center is to provide participating  
13           entities with reliable and accurate information re-  
14           garding the interpretation of criminal histories.

15           “(2) REQUIREMENTS.—As part of operating the  
16           criminal history resource center, the National Center  
17           for Missing and Exploited Children—

18           “(A) shall establish, and make available,  
19           general guidelines to assist participating enti-  
20           ties with analyzing and interpreting criminal  
21           history records;

22           “(B) shall respond to requests from par-  
23           ticipating entities for assistance in under-  
24           standing and interpreting a criminal history, in-  
25           cluding providing—

1           “(i) information on the crime com-  
2           mitted and the seriousness of such crime  
3           under the law of the applicable State;

4           “(ii) information regarding whether  
5           multiple charges are part of 1 offense or a  
6           series of offenses; and

7           “(iii) other information that can assist  
8           a participating entity in understanding the  
9           gravity, nature, and seriousness of the  
10          criminal history and the time lapse since  
11          the last offense was committed; and

12          “(C) in responding to a request under sub-  
13          paragraph (B)—

14                 “(i) shall provide general guidance to  
15                 assist the participating entity in assessing  
16                 criminal history records; and

17                 “(ii) may not make any individualized  
18                 determination relating to whether a cov-  
19                 ered individual may represent a danger to  
20                 children or whether the participating entity  
21                 should hire or refrain from hiring any cov-  
22                 ered individual.

23          “(e) TIMING.—

24                 “(1) IN GENERAL.—Criminal background  
25                 checks shall be completed not later than 10 business

1 days after the date that a request for a national  
2 background check is received by the applicant proc-  
3 essing center. The applicant processing center shall  
4 work with the Federal Bureau of Investigation to  
5 ensure that the time limits under this subsection are  
6 being achieved.

7 “(2) APPLICATION PROCESSING.—The applicant  
8 processing center shall electronically submit a na-  
9 tional background check request to the national  
10 criminal history background check system and, if ap-  
11 propriate, the participating State authorized agency  
12 not later than 3 business days after the date that a  
13 request for a national background check is received  
14 by the applicant processing center.

15 “(3) CONDUCT OF BACKGROUND CHECKS.—The  
16 Federal Bureau of Investigation and, if appropriate,  
17 a State authorized agency shall provide criminal his-  
18 tory records information to the applicant processing  
19 center not later than 3 business days after the date  
20 that the Federal Bureau of Investigation or State  
21 authorized agency, as the case may be, receives a re-  
22 quest for a nationwide background check from the  
23 applicant processing center.

24 “(4) RESULTS.—The applicant processing cen-  
25 ter shall convey the result of a national background

1 check to the participating entity, and if appropriate,  
2 convey the criminal history to the covered individual  
3 not later than 4 business days after the date that  
4 the applicant processing center has received criminal  
5 history records from the Federal Bureau of Inves-  
6 tigation and, if appropriate, each applicable State  
7 authorized agency.

8 “(f) PARTICIPATION IN PROGRAM.—

9 “(1) IN GENERAL.—The applicant processing  
10 center shall determine whether an entity is a covered  
11 entity and whether that covered entity should be ap-  
12 proved as a participating entity, based on—

13 “(A) whether the entity is located in a  
14 State that has a qualified State program; and

15 “(B) the consultation conducted under  
16 paragraph (2).

17 “(2) CONSULTATION.—In determining how  
18 many covered entities to approve as participating en-  
19 tities, the applicant processing center shall consult  
20 quarterly with the Federal Bureau of Investigation  
21 to determine the volume of requests for national  
22 background checks that can be completed, based on  
23 the capacity of the applicant processing center and  
24 the Federal Bureau of Investigation, the availability

1 of resources, and the demonstrated need for national  
2 background checks in order to protect children.

3 “(3) PREFERENCE FOR NONPROFIT ORGANIZA-  
4 TIONS.—In determining whether a covered entity  
5 should be approved as a participating entity under  
6 paragraph (1), the applicant processing center shall  
7 give preference to any organization participating in  
8 the Child Safety Pilot Program under section  
9 108(a)(3) of the PROTECT Act (42 U.S.C. 5119a  
10 note) on the date of enactment of the Child Protec-  
11 tion Improvements Act of 2009 and to any other  
12 nonprofit organizations.

13 “(g) RIGHTS OF COVERED INDIVIDUALS.—

14 “(1) IN GENERAL.—A covered individual who is  
15 the subject of a nationwide background check under  
16 this section may contact the Federal Bureau of In-  
17 vestigation and, if appropriate, a State authorized  
18 agency to—

19 “(A) request that the full criminal history  
20 report of that covered individual be provided to  
21 that covered individual or the applicable partici-  
22 pating entity not later than 10 business days  
23 after the date of that request; and

1           “(B) challenge the accuracy and complete-  
2           ness of the criminal history record information  
3           in the criminal history report.

4           “(2) RESOLUTION OF CHALLENGES.—The Fed-  
5           eral Bureau of Investigation and, if appropriate, a  
6           State authorized agency shall—

7                   “(A) promptly make a determination re-  
8                   garding the accuracy and completeness of any  
9                   criminal history record information challenged  
10                  under paragraph (1)(B); and

11                  “(B) seek to—

12                          “(i) investigate any such challenge  
13                          with relevant departments and agencies of  
14                          the Federal Government and State and  
15                          local governments; and

16                          “(ii) correct any inaccurate or incom-  
17                          plete records.

18           “(h) AUTHORIZATION OF APPROPRIATIONS.—

19                   “(1) IN GENERAL.—There are authorized to be  
20                   appropriated to the Attorney General \$5,000,000 for  
21                   fiscal year 2010, to—

22                          “(A) establish and carry out the duties of  
23                          the applicant processing center established  
24                          under this section;

1           “(B) establish and carry out the criminal  
2 history resource center; and

3           “(C) pursue technologies and procedures to  
4 streamline and automate processes to enhance  
5 cost efficiency.

6           “(2) CRIMINAL HISTORY RESOURCE CENTER.—  
7 There are authorized to be appropriated to the At-  
8 torney General to carry out the agreement under  
9 this section with the National Center for Missing  
10 and Exploited Children \$1,000,000 for each of fiscal  
11 years 2010 through 2014 to support the criminal  
12 history resource center.

13           “(3) SENSE OF THE SENATE.—It is the sense  
14 of the Senate that in fiscal year 2010, and each fis-  
15 cal year thereafter, the fees collected by the appli-  
16 cant processing center should be sufficient to carry  
17 out the duties of the applicant processing center  
18 under this section.

19           “(i) COLLECTION OF DATA AND REPORT TO CON-  
20 GRESS.—

21           “(1) IN GENERAL.—Not later than 1 year after  
22 the date of enactment of the Child Protection Im-  
23 provements Act of 2009, and annually thereafter,  
24 the Attorney General shall prepare and submit to  
25 Congress and make available to the public a report

1 on the programs and procedures established under  
2 this Act.

3 “(2) COLLECTION OF DATA.—

4 “(A) DEFINITION OF DEMOGRAPHIC CHAR-  
5 ACTERISTICS.—In this paragraph, the term ‘de-  
6 mographic characteristics’ includes information  
7 pertaining to race, color, ancestry, national ori-  
8 gin, age, sex and marital status.

9 “(B) COMPILING.—Beginning 90 days  
10 after the date of enactment of the Child Protec-  
11 tion Improvements Act of 2009, the Attorney  
12 General, with the assistance of the applicant  
13 processing center shall compile data regard-  
14 ing—

15 “(i) the number and types of partici-  
16 pating entities;

17 “(ii) the fees charged to participating  
18 entities under this section;

19 “(iii) the time interval between na-  
20 tionwide background check submissions  
21 and responses under this section;

22 “(iv) the fiscal impact of this section  
23 on State authorized agencies;

24 “(v) the number and demographic  
25 characteristics of covered individuals sub-

1           mitting a statement described in subsection  
2           (c)(3)(C) as part of a request for a nation-  
3           wide background check;

4           “(vi) the number and demographic  
5           characteristics of covered individuals deter-  
6           mined to have a criminal history;

7           “(vii) the number, type (including the  
8           identity of the offense and whether the of-  
9           fense was committed while the covered in-  
10          dividual was a juvenile or adult), and fre-  
11          quency of offenses, and length of the pe-  
12          riod between the date of the offense and  
13          the date of the nationwide background  
14          check for any covered individuals found to  
15          have a criminal history under this section;

16          “(viii) the procedures available for  
17          covered individuals to challenge the accu-  
18          racy and completeness of criminal history  
19          record information under this section;

20          “(ix) the number and results of chal-  
21          lenges to the accuracy and completeness of  
22          criminal history record information under  
23          this section;

24          “(x) the number and types of correc-  
25          tions of erroneous criminal history record

1 information based on a challenge under  
2 this section; and

3 “(xi) the number and types of inquir-  
4 ies for assistance on interpreting a crimi-  
5 nal history received by the criminal history  
6 resource center.

7 “(C) AGGREGATING DATA.—The Attorney  
8 General, with the assistance of the applicant  
9 processing center, shall—

10 “(i) aggregate the data collected  
11 under this paragraph by State and city;  
12 and

13 “(ii) aggregate the data collected  
14 under clauses (v), (vi), and (vii) of sub-  
15 paragraph (B) by race, color, ancestry, na-  
16 tional origin, age, sex, and marital status.

17 “(D) REPORTS.—

18 “(i) IN GENERAL.—Not later than 1  
19 year after the date of enactment of the  
20 Child Protection Improvements Act of  
21 2009, and annually thereafter, the Attor-  
22 ney General shall prepare and submit to  
23 Congress a report concerning the data  
24 compiled and aggregated under this para-  
25 graph.

1                   “(ii) CONTENTS.—Each report sub-  
2                   mitted under clause (i) shall contain—

3                   “(I) the data compiled and ag-  
4                   gregated under this paragraph, orga-  
5                   nized in such a way as to provide a  
6                   comprehensive analysis of the pro-  
7                   grams and procedures established  
8                   under this section;

9                   “(II) information regarding and  
10                  analysis of—

11                  “(aa) the programs and pro-  
12                  cedures established under this  
13                  section; and

14                  “(bb) the extent such pro-  
15                  grams and procedures have  
16                  helped screen individuals who  
17                  may pose a risk to children; and

18                  “(III) information regarding and  
19                  analysis of whether and to what ex-  
20                  tent the programs and procedures es-  
21                  tablished under this section are hav-  
22                  ing a disparate impact on individuals  
23                  based on race, color, ancestry, na-  
24                  tional origin, age, sex, or marital sta-  
25                  tus.

1           “(iii) RECOMMENDATIONS.—A report  
2           submitted under clause (i) may contain  
3           recommendations to Congress on possible  
4           legislative improvements to this section.

5           “(iv) ADDITIONAL INFORMATION.—  
6           Upon the request of any member of Con-  
7           gress, the Attorney General shall make  
8           available any of the data compiled or ag-  
9           gregated under this paragraph. The Attor-  
10          ney General shall not make available any  
11          data that identifies specific individuals.

12          “(j) LIMITATION ON LIABILITY.—

13           “(1) IN GENERAL.—

14           “(A) FAILURE TO CONDUCT CRIMINAL  
15           BACKGROUND CHECKS.—No participating entity  
16           shall be liable in an action for damages solely  
17           for failure to conduct a criminal background  
18           check on a covered individual.

19           “(B) FAILURE TO TAKE ADVERSE ACTION  
20           AGAINST COVERED INDIVIDUAL.—No partici-  
21           pating entity shall be liable in an action for  
22           damages solely for a failure to take action ad-  
23           verse to a covered individual upon receiving any  
24           notice of criminal history from the applicant  
25           processing center under subsection (c)(2)(H).

1           “(2) RELIANCE.—The applicant processing cen-  
2           ter or a participating entity that reasonably relies on  
3           criminal history record information received in re-  
4           sponse to a background check under this section  
5           shall not be liable in an action for damages based  
6           on the inaccuracy or incompleteness of that informa-  
7           tion.

8           “(3) NATIONAL CENTER FOR MISSING AND EX-  
9           PLOITED CHILDREN.—

10           “(A) IN GENERAL.—Except as provided in  
11           subparagraphs (B) and (C), the National Cen-  
12           ter for Missing and Exploited Children, includ-  
13           ing a director, officer, employee, or agent of the  
14           National Center for Missing and Exploited Chil-  
15           dren, shall not be liable in an action for dam-  
16           ages relating to the performance of the respon-  
17           sibilities and functions of the National Center  
18           for Missing and Exploited Children under this  
19           section.

20           “(B) INTENTIONAL, RECKLESS, OR OTHER  
21           MISCONDUCT.—Subparagraph (A) shall not  
22           apply in an action if the National Center for  
23           Missing and Exploited Children, or a director,  
24           officer, employee, or agent of the National Cen-  
25           ter for Missing and Exploited Children, engaged

1 in intentional misconduct or acted, or failed to  
2 act, with actual malice, with reckless disregard  
3 to a substantial risk of causing injury without  
4 legal justification, or for a purpose unrelated to  
5 the performance of responsibilities or functions  
6 under this section.

7 “(C) ORDINARY BUSINESS ACTIVITIES.—  
8 Subparagraph (A) shall not apply to an act or  
9 omission relating to an ordinary business activ-  
10 ity, such as an activity involving general admin-  
11 istration or operations, the use of motor vehi-  
12 cles, or personnel management.

13 “(k) PRIVACY OF INFORMATION.—

14 “(1) PROHIBITION ON UNAUTHORIZED DISCLO-  
15 SURE OR USE OF CRIMINAL HISTORY RECORDS.—  
16 Except for a covered individual, any entity or indi-  
17 vidual authorized to receive or transmit fingerprints  
18 or criminal history records under this Act—

19 “(A) shall use the fingerprints, criminal  
20 history records, or information in the criminal  
21 history records only for the purposes specifically  
22 set forth in this Act;

23 “(B) shall allow access to the fingerprints,  
24 criminal history records, or information in the  
25 criminal history records only to those employees

1 of the entity, and only on such terms, as are  
2 necessary to fulfill the purposes set forth in this  
3 Act;

4 “(C) shall not disclose the fingerprints,  
5 criminal history records, or information in the  
6 criminal history records, except as specifically  
7 authorized under this Act;

8 “(D) shall keep a written record of each  
9 authorized disclosure of the fingerprints, crimi-  
10 nal history records, or the information in the  
11 criminal history records; and

12 “(E) shall maintain adequate security  
13 measures to ensure the confidentiality of the  
14 fingerprints, the criminal history records, and  
15 the information in the criminal history records.

16 “(2) COMPLIANCE.—

17 “(A) IN GENERAL.—If the applicant proc-  
18 essing center is established within the Federal  
19 Government, the Attorney General shall pro-  
20 mulgate regulations to ensure the enforcement  
21 of the nondisclosure requirements under para-  
22 graph (1) and to provide for appropriate sanc-  
23 tions in the case of violations of the require-  
24 ments.

1           “(B) PARTICIPATING ENTITIES AND APPLI-  
2           CANT PROCESSING CENTER.—The participation  
3           in any program under this section by a partici-  
4           pating entity or a nongovernmental entity that  
5           enters into an agreement with the Attorney  
6           General to establish an applicant processing  
7           center shall be conditioned on the participating  
8           entity or nongovernmental entity—

9                   “(i) establishing procedures to ensure  
10                   compliance with, and respond to any viola-  
11                   tions of, paragraph (1); and

12                   “(ii) maintaining substantial compli-  
13                   ance with paragraph (1).

14           “(3) DESTRUCTION OF RECORDS.—The appli-  
15           cant processing center shall destroy any fingerprints  
16           or criminal history record received under this Act  
17           after any transaction based on the fingerprints or  
18           criminal history record is completed, and shall not  
19           maintain the fingerprints, the criminal history  
20           records, or the information in the criminal history  
21           record in any form.”.

22 **SEC. 4. EXTENSION OF CHILD SAFETY PILOT.**

23           Section 108(a)(3)(A) of the PROTECT Act (42  
24           U.S.C. 5119a note) is amended—

25                   (1) by striking “60-month”; and

1           (2) by adding at the end the following: “The  
2           Child Safety Pilot Program under this paragraph  
3           shall terminate on the date that the program for na-  
4           tional criminal history background checks for child-  
5           serving organizations established under the Child  
6           Protection Improvements Act of 2009 is operating  
7           and able to enroll any organization using the Child  
8           Safety Pilot Program.”.

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