

110th CONGRESS

1st Session

H. R. 2640

To improve the National Instant Criminal Background Check System, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

June 11, 2007

Mrs. MCCARTHY of New York (for herself, Mr. BOUCHER, Mr. DINGELL, Mr. SMITH of Texas, Mr. BISHOP of New York, Mr. CASTLE, Mr. EMANUEL, Mrs. LOWEY, Mr. MOORE of Kansas, Mr. MORAN of Virginia, Mr. PASCRELL, Ms. SCHAKOWSKY, Mr. SHAYS, Ms. WASSERMAN SCHULTZ, and Mrs. CAPPS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To improve the National Instant Criminal Background Check System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the 'NICS Improvement Amendments Act of 2007'.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Definitions.

TITLE I--TRANSMITTAL OF RECORDS

Sec. 101. Enhancement of requirement that Federal departments and agencies provide relevant information to the National Instant Criminal Background Check System.

Sec. 102. Requirements to obtain waiver.

Sec. 103. Implementation assistance to States.

Sec. 104. Penalties for noncompliance.

Sec. 105. Relief from disabilities program required as condition for participation in grant programs.

TITLE J--FOCUSING FEDERAL ASSISTANCE ON THE IMPROVEMENT OF RELEVANT RECORDS

Sec. 201. Continuing evaluations.

TITLE K--GRANTS TO STATE COURT SYSTEMS FOR THE IMPROVEMENT IN AUTOMATION AND TRANSMITTAL OF DISPOSITION RECORDS

Sec. 301. Disposition records automation and transmittal improvement grants.

TITLE L--GAO AUDIT

Sec. 401. GAO audit.

SEC. 2. 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.

SEC. 3. DEFINITIONS.

As used in this Act, the following definitions shall apply:

(1) COURT ORDER- The term `court order' includes a court order (as described in section 922(g)(8) of title 18, United States Code).

(2) MENTAL HEALTH TERMS- The terms `adjudicated as a mental defective', `committed to a mental institution', and related terms have the meanings given those terms in regulations implementing section 922(g)(4) of title 18, United States Code, as in effect on the date of the enactment of this Act.

(3) MISDEMEANOR CRIME OF DOMESTIC VIOLENCE- The term `misdemeanor crime of domestic violence' has the meaning given the term in section 921(a)(33) of title 18, United States Code.

TITLE I--TRANSMITTAL OF RECORDS

SEC. 101. ENHANCEMENT OF REQUIREMENT THAT FEDERAL DEPARTMENTS AND AGENCIES PROVIDE RELEVANT INFORMATION TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

(a) In General- Section 103(e)(1) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note) is amended--

(1) by striking `Notwithstanding' and inserting the following:

`(A) IN GENERAL- Notwithstanding';

(2) by striking `On request' and inserting the following:

`(B) REQUEST OF ATTORNEY GENERAL- On request';

(3) by striking `furnish such information' and inserting `furnish electronic versions of the information described under subparagraph (A)'; and

(4) by adding at the end the following:

`(C) QUARTERLY SUBMISSION TO ATTORNEY GENERAL- If a 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, United States Code, 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 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; or

`(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.

`(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.'.

(b) Provision and Maintenance of NICS Records-

(1) DEPARTMENT OF HOMELAND SECURITY- The Secretary of Homeland Security shall make available to the Attorney General--

(A) records, updated not less than quarterly, which are relevant to a determination of whether a person is disqualified from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18, United States Code, for use in background checks performed by the National Instant Criminal Background Check System; and

(B) information regarding all the persons described in subparagraph (A) of this paragraph who have changed their status to a category not identified under section 922(g)(5) of title 18, United States Code, for removal, when applicable, from the National Instant Criminal Background Check System.

(2) DEPARTMENT OF JUSTICE- The Attorney General shall--

(A) ensure that any information submitted to, or maintained by, the Attorney General under this section is kept accurate and confidential, as required by the laws, regulations, policies, or procedures governing the applicable record system;

(B) provide for the timely removal and destruction of obsolete and erroneous names and information from the National Instant Criminal Background Check System; and

(C) work with States to encourage the development of computer systems, which would permit electronic notification to the Attorney General when--

(i) a court order has been issued, lifted, or otherwise removed by order of the court; or

(ii) a person has been adjudicated as mentally defective or committed to a mental institution.

(c) Standard for Adjudications, Commitments, and Determinations Related to Mental Health-

(1) IN GENERAL- No department or agency of the Federal Government may provide to the Attorney General any record of an adjudication or determination related to the mental health of a person, or any commitment of a person to a mental institution if--

(A) the adjudication, determination, or commitment, respectively, has been set aside or expunged, or the person has otherwise been fully released or discharged from all mandatory treatment, supervision, or monitoring;

(B) the person has been found by a court, board, commission, or other lawful authority to no longer suffer from the mental health condition that was the basis of the adjudication, determination, or commitment, respectively, or has otherwise been found to be rehabilitated through any procedure available under law; or

(C) the adjudication, determination, or commitment, respectively, is based solely on a medical finding of disability, without a finding that the person is a danger to himself or to others or that the person lacks the mental capacity to manage his own affairs.

(2) TREATMENT OF CERTAIN ADJUDICATIONS, DETERMINATIONS, AND COMMITMENTS-

(A) PROGRAM FOR RELIEF FROM DISABILITIES- Each department or agency of the United States that makes any adjudication or determination related to the mental health of a person or imposes any commitment to a mental institution, as described in subsection (d)(4) and (g)(4) of section 922 of title 18, United States Code, shall establish a program that permits such a person to apply for relief from the disabilities imposed by such subsections. Relief and judicial review shall be available according to the standards prescribed in section 925(c) of title 18, United States Code.

(B) RELIEF FROM DISABILITIES- In the case of an adjudication or determination related to the mental health of a person or a commitment of a person to a mental institution, a record of which may not be provided to the Attorney General under paragraph (1), including because of the absence of a finding described in subparagraph (C) of such paragraph, or from which a person has been granted relief under a program established under subparagraph (A), the adjudication, determination, or commitment, respectively, shall be deemed not to have occurred for purposes of subsections (d)(4) and (g)(4) of section 922 of title 18, United States Code.

(d) Information Excluded From NICS Records-

(1) IN GENERAL- No department or agency of the Federal Government may make available to the Attorney General, for use by the National Instant Criminal Background Check System (nor may the Attorney General make available to such system), the name or any other relevant identifying information of any person adjudicated or determined to be mentally defective or any person committed to a mental institution for purposes of assisting the Attorney General in enforcing subsections (d)(4) and (g)(4) of section 922 of title 18, United States Code, unless such adjudication, determination, or commitment, respectively, included a finding that the person is a danger to himself or to others or that the person lacks the mental capacity to manage his own affairs.

(2) EFFECTIVE DATE- Paragraph (1) shall apply to names and other information provided before, on, or after the date of the enactment of this Act. Any name or information provided in violation of paragraph (1) before such date shall be removed from the National Instant Criminal Background Check System.

SEC. 102. REQUIREMENTS TO OBTAIN WAIVER.

(a) In General- Beginning 3 years after the date of the enactment of this Act, a State shall be eligible to receive a waiver of the 10 percent matching requirement for National Criminal History Improvement Grants under the Crime Identification Technology Act of 1988 (42 U.S.C. 14601) if the State provides at least 90

percent of the information described in subsection (c). The length of such a waiver shall not exceed 2 years.

(b) State Estimates-

(1) INITIAL STATE ESTIMATE-

(A) IN GENERAL- To assist the Attorney General in making a determination under subsection (a) of this section, and under section 104, concerning the compliance of the States in providing information to the Attorney General for the purpose of receiving a waiver under subsection (a) of this section, or facing a loss of funds under section 104, by a date not later than 180 days after the date of the enactment of this Act, each State shall provide the Attorney General with a reasonable estimate, as calculated by a method determined by the Attorney General, of the number of the records described in subparagraph (C) applicable to such State that concern persons who are prohibited from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18, United States Code.

(B) FAILURE TO PROVIDE INITIAL ESTIMATE- A State that fails to provide an estimate described in subparagraph (A) by the date required under such subparagraph shall be ineligible to receive any funds under section 103, until such date as it provides such estimate to the Attorney General.

(C) RECORD DEFINED- For purposes of subparagraph (A), a record is the following:

(i) A record that identifies a person arrested for a crime that is punishable by imprisonment for a term exceeding one year, and for which a record of final disposition is available electronically or otherwise.

(ii) A record that identifies a person for whose arrest a warrant or process has been issued that is valid under the laws of the State involved, as of the date of the estimate.

(iii) A record that identifies a person who is an unlawful user of or addicted to a controlled substance (as such terms 'unlawful user' and 'addicted' are respectively defined in regulations implementing section 922(g)(3) of title 18, United States Code, as in effect on the date of the enactment of this Act) and whose record is not protected from disclosure to the Attorney General under any provision of State or Federal law.

(iv) A record that identifies a person who has been adjudicated mentally defective or committed to a mental institution (as determined in regulations implementing section 922(g)(4) of title 18, United States Code, as in effect on the date of the enactment of this Act) and whose record is not protected from disclosure to

the Attorney General under any provision of State or Federal law.

(v) A record that is electronically available and that identifies a person who, as of the date of such estimate, is subject to a court order described in section 922(g)(8) of title 18, United States Code.

(vi) A record that is electronically available and that identifies a person convicted in any court of a misdemeanor crime of domestic violence, as defined in section 921(a)(33) of title 18, United States Code.

(2) SCOPE- The Attorney General, in determining the compliance of a State under this section or section 104 of this Act for the purpose of granting a waiver or imposing a loss of Federal funds, shall assess the total percentage of records provided by the State concerning any event occurring within the prior 30 years, which would disqualify a person from possessing a firearm under subsection (g) or (n) of section 922 of title 18, United States Code.

(3) CLARIFICATION- Notwithstanding paragraph (2), States shall endeavor to provide the National Instant Criminal Background Check System with all records concerning persons who are prohibited from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18, United States Code, regardless of the elapsed time since the disqualifying event.

(c) Eligibility of State Records for Submission to the National Instant Criminal Background Check System-

(1) REQUIREMENTS FOR ELIGIBILITY-

(A) IN GENERAL- From information collected by a State, the State shall make electronically available to the Attorney General records relevant to a determination of whether a person is disqualified from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18, United States Code, or applicable State law.

(B) NICS UPDATES- The State, 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, as soon as practicable--

(i) update, correct, modify, or remove the record from any database that the Federal or State government maintains and makes available to the National Instant Criminal Background Check System, consistent with the rules pertaining to that database; or

(ii) notify the Attorney General that such basis no longer applies so that the record system in which the record is maintained is kept up to date.

(C) CERTIFICATION- To remain eligible for a waiver under subsection (a), a State shall certify to the Attorney General, not less than once during each 2-year period, that at least 90 percent of all information

described in subparagraph (A) has been made electronically available to the Attorney General in accordance with subparagraph (A).

(D) INCLUSION OF ALL RECORDS- For purposes of this paragraph, a State shall identify and include all of the records described under subparagraph (A) without regard to the age of the record.

(2) APPLICATION TO PERSONS CONVICTED OF MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE- The State shall make available to the Attorney General, for use by the National Instant Criminal Background Check System, records relevant to a determination of whether a person has been convicted in any court of a misdemeanor crime of domestic violence. With respect to records relating to such crimes, the State shall provide information specifically describing the offense and the specific section or subsection of the offense for which the defendant has been convicted and the relationship of the defendant to the victim in each case.

(3) APPLICATION TO PERSONS WHO HAVE BEEN ADJUDICATED AS A MENTAL DEFECTIVE OR COMMITTED TO A MENTAL INSTITUTION- The State shall make available to the Attorney General, for use by the National Instant Criminal Background Check System, the name and other relevant identifying information of persons adjudicated as mentally defective or those committed to mental institutions to assist the Attorney General in enforcing section 922(g)(4) of title 18, United States Code.

(d) Privacy Protections- For any information provided to the Attorney General for use by the National Instant Criminal Background Check System, relating to persons prohibited from possessing or receiving a firearm under section 922(g)(4) of title 18, United States Code, the Attorney General shall work with States and local law enforcement and the mental health community to establish regulations and protocols for protecting the privacy of information provided to the system. The Attorney General shall make every effort to meet with any mental health group seeking to express its views concerning these regulations and protocols and shall seek to develop regulations as expeditiously as practicable.

(e) Attorney General Report- Not later than January 31 of each year, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the progress of States in automating the databases containing the information described in subsection (b) and in making that information electronically available to the Attorney General pursuant to the requirements of subsection (c).

SEC. 103. IMPLEMENTATION ASSISTANCE TO STATES.

(a) Authorization-

(1) IN GENERAL- From amounts made available to carry out this section and subject to section 102(b)(1)(B), the Attorney General shall make grants to States and Indian tribal governments, in a manner consistent with the National Criminal History Improvement Program, which shall be used by the

States and Indian tribal governments, in conjunction with units of local government and State and local courts, to establish or upgrade information and identification technologies for firearms eligibility determinations.

(2) GRANTS TO INDIAN TRIBES- Up to 5 percent of the grant funding available under this section may be reserved for Indian tribal governments, including tribal judicial systems.

(b) Use of Grant Amounts- Grants awarded to States or Indian tribes under this section may only be used to--

(1) create electronic systems, which provide accurate and up-to-date information which is directly related to checks under the National Instant Criminal Background Check System (referred to in this section as 'NICS'), including court disposition and corrections records;

(2) assist States in establishing or enhancing their own capacities to perform NICS background checks;

(3) supply accurate and timely information to the Attorney General concerning final dispositions of criminal records to databases accessed by NICS;

(4) supply accurate and timely information to the Attorney General concerning the identity of persons who are prohibited from obtaining a firearm under section 922(g)(4) of title 18, United States Code, to be used by the Federal Bureau of Investigation solely to conduct NICS background checks;

(5) supply accurate and timely court orders and records of misdemeanor crimes of domestic violence for inclusion in Federal and State law enforcement databases used to conduct NICS background checks; and

(6) collect and analyze data needed to demonstrate levels of State compliance with this Act.

(c) Eligibility- To be eligible for a grant under this section, a State shall certify, to the satisfaction of the Attorney General, that the State has implemented a relief from disabilities program in accordance with section 105.

(d) Condition- As a condition of receiving a grant under this section, a State shall specify the projects for which grant amounts will be used, and shall use such amounts only as specified. A State that violates this subsection shall be liable to the Attorney General for the full amount of the grant received under this section.

(e) Authorization of Appropriations- There are authorized to be appropriated to carry out this section \$250,000,000 for each of the fiscal years 2008 through 2010.

(f) User Fee- The Federal Bureau of Investigation shall not charge a user fee for background checks pursuant to section 922(t) of title 18, United States Code.

SEC. 104. PENALTIES FOR NONCOMPLIANCE.

(a) Attorney General Report-

(1) IN GENERAL- Not later than January 31 of each year, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the progress of the States in automating the databases containing information described under sections 102 and 103, and in providing that information pursuant to the requirements of sections 102 and 103.

(2) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Department of Justice, such funds as may be necessary to carry out paragraph (1).

(b) Penalties-

(1) DISCRETIONARY REDUCTION- During the 2-year period beginning 3 years after the date of enactment of this Act, the Attorney General may withhold not more than 3 percent of the amount that would otherwise be allocated to a State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3756) if the State provides less than 60 percent of the information required to be provided under sections 102 and 103.

(2) MANDATORY REDUCTION- After the expiration of the period referred to in paragraph (1), the Attorney General shall withhold 5 percent of the amount that would otherwise be allocated to a State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3756), if the State provides less than 90 percent of the information required to be provided under sections 102 and 103.

(3) WAIVER BY ATTORNEY GENERAL- The Attorney General may waive the applicability of paragraph (2) to a State if the State provides substantial evidence, as determined by the Attorney General, that the State is making a reasonable effort to comply with the requirements of sections 102 and 103.

(c) Reallocation- Any funds that are not allocated to a State because of the failure of the State to comply with the requirements of this title shall be reallocated to States that meet such requirements.

SEC. 105. RELIEF FROM DISABILITIES PROGRAM REQUIRED AS CONDITION FOR PARTICIPATION IN GRANT PROGRAMS.

(a) Program Described- A relief from disabilities program is implemented by a State in accordance with this section if the program--

(1) permits a person who, pursuant to State law, has been adjudicated as described in subsection (g)(4) of section 922 of title 18, United States Code,

or has been committed to a mental institution, to apply to the State for relief from the disabilities imposed by subsections (d)(4) and (g)(4) of such section by reason of the adjudication or commitment;

(2) provides that a State court, board, commission, or other lawful authority shall grant the relief, pursuant to State law and in accordance with the principles of due process, if the circumstances regarding the disabilities referred to in paragraph (1), and the person's record and reputation, are such that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest; and

(3) permits a person whose application for the relief is denied to file a petition with the State court of appropriate jurisdiction for a de novo judicial review of the denial.

(b) Authority To Provide Relief From Certain Disabilities With Respect to Firearms- If, under a State relief from disabilities program implemented in accordance with this section, an application for relief referred to in subsection (a)(1) of this section is granted with respect to an adjudication or a commitment to a mental institution, the adjudication or commitment, as the case may be, is deemed not to have occurred for purposes of subsections (d)(4) and (g)(4) of section 922 of title 18, United States Code.

TITLE J--FOCUSING FEDERAL ASSISTANCE ON THE IMPROVEMENT OF RELEVANT RECORDS

SEC. 201. CONTINUING EVALUATIONS.

(a) Evaluation Required- The Director of the Bureau of Justice Statistics (referred to in this section as the `Director') shall study and evaluate the operations of the National Instant Criminal Background Check System. Such study and evaluation shall include compilations and analyses of the operations and record systems of the agencies and organizations necessary to support such System.

(b) Report on Grants- Not later than January 31 of each year, the Director shall submit to Congress a report containing the estimates submitted by the States under section 102(b).

(c) Report on Best Practices- Not later than January 31 of each year, the Director shall submit to Congress, and to each State participating in the National Criminal History Improvement Program, a report of the practices of the States regarding the collection, maintenance, automation, and transmittal of information relevant to determining whether a person is prohibited from possessing or receiving a firearm by Federal or State law, by the State or any other agency, or any other records relevant to the National Instant Criminal Background Check System, that the Director considers to be best practices.

(d) Authorization of Appropriations- There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2008 through 2010 to

complete the studies, evaluations, and reports required under this section.

TITLE K--GRANTS TO STATE COURT SYSTEMS FOR THE IMPROVEMENT IN AUTOMATION AND TRANSMITTAL OF DISPOSITION RECORDS

SEC. 301. DISPOSITION RECORDS AUTOMATION AND TRANSMITTAL IMPROVEMENT GRANTS.

(a) Grants Authorized- From amounts made available to carry out this section, the Attorney General shall make grants to each State, consistent with State plans for the integration, automation, and accessibility of criminal history records, for use by the State court system to improve the automation and transmittal of criminal history dispositions, records relevant to determining whether a person has been convicted of a misdemeanor crime of domestic violence, court orders, and mental health adjudications or commitments, to Federal and State record repositories in accordance with sections 102 and 103 and the National Criminal History Improvement Program.

(b) Grants to Indian Tribes- Up to 5 percent of the grant funding available under this section may be reserved for Indian tribal governments for use by Indian tribal judicial systems.

(c) Use of Funds- Amounts granted under this section shall be used by the State court system only--

(1) to carry out, as necessary, assessments of the capabilities of the courts of the State for the automation and transmission of arrest and conviction records, court orders, and mental health adjudications or commitments to Federal and State record repositories; and

(2) to implement policies, systems, and procedures for the automation and transmission of arrest and conviction records, court orders, and mental health adjudications or commitments to Federal and State record repositories.

(d) Eligibility- To be eligible to receive a grant under this section, a State shall certify, to the satisfaction of the Attorney General, that the State has implemented a relief from disabilities program in accordance with section 105.

(e) Authorization of Appropriations- There are authorized to be appropriated to the Attorney General to carry out this section \$125,000,000 for each of the fiscal years 2008 through 2010.

TITLE L--GAO AUDIT

SEC. 401. GAO AUDIT.

(a) In General- The Comptroller General of the United States shall conduct an audit of the expenditure of all funds appropriated for criminal records

improvement pursuant to section 106(b) of the Brady Handgun Violence Prevention Act (Public Law 103-159) to determine if the funds were expended for the purposes authorized by the Act and how those funds were expended for those purposes or were otherwise expended.

(b) Report- Not later than 6 months after the date of enactment of this Act, the Comptroller General shall submit a report to Congress describing the findings of the audit conducted pursuant to subsection (a).

END