

103D CONGRESS
1ST SESSION

H. R. 1237

To establish procedures for national criminal background checks for child care providers.

IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 1993

Mrs. SCHROEDER (for herself, Mr. EDWARDS of California, Mr. CRAMER, Mr. KOPETSKI, Mr. RAMSTAD, Mr. SHAYS, and Mr. SMITH of Oregon) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish procedures for national criminal background checks for child care providers.

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 “National Child Protec-
5 tion Act of 1993”.

6 **SEC. 2. REPORTING BY THE STATES.**

7 (a) IN GENERAL.—An authorized criminal justice
8 agency of a State shall report child abuse crime informa-

1 tion to, or index child abuse crime information in, the na-
2 tional criminal background check system.

3 (b) PROVISION OF STATE CHILD ABUSE CRIME
4 RECORDS THROUGH THE NATIONAL CRIMINAL BACK-
5 GROUND CHECK SYSTEM.—(1) Not later than 180 days
6 after the date of enactment of this Act, the Attorney Gen-
7 eral shall—

8 (A) investigate the criminal records of each
9 State and determine for each State a timetable by
10 which the State should be able to provide child
11 abuse crime records on an on-line capacity basis
12 through the national criminal background check sys-
13 tem;

14 (B) establish guidelines for the reporting or in-
15 dexing of child abuse crime information, including
16 guidelines relating to the format, content, and accu-
17 racy of child abuse crime information and other pro-
18 cedures for carrying out this Act; and

19 (C) notify each State of the determinations
20 made pursuant to subparagraphs (A) and (B).

21 (2) The Attorney General shall require as a part of
22 the State timetable that the State—

23 (A) by not later than the date that is 3 years
24 after the date of enactment of this Act, have in a
25 computerized criminal history file at least 80 percent

1 of the final dispositions that have been rendered in
2 all identifiable child abuse crime cases in which
3 there has been an event of activity within the last
4 5 years;

5 (B) continue to maintain at least an 80 percent
6 reporting rate of final case dispositions in all identi-
7 fiable child abuse crime cases in which there has
8 been an event of activity within the preceding 5
9 years; and

10 (C) take steps to achieve full disposition report-
11 ing, including data quality audits and periodic no-
12 tices to criminal justice agencies identifying records
13 that lack final dispositions and requesting those dis-
14 positions.

15 (c) LIAISON.—An authorized agency of a State shall
16 maintain close liaison with the National Center on Child
17 Abuse and Neglect, the National Center for Missing and
18 Exploited Children, and the National Center for the Pros-
19 ecution of Child Abuse for the exchange of technical as-
20 sistance in cases of child abuse.

21 (d) ANNUAL SUMMARY.—(1) The Attorney General
22 shall publish an annual statistical summary of the child
23 abuse crime information reported under this Act.

24 (2) The annual statistical summary described in
25 paragraph (1) shall not contain any information that may

1 reveal the identity of any particular victim or alleged viola-
2 tor.

3 (e) ANNUAL REPORT.—The Attorney General shall
4 publish an annual summary of each State's progress in
5 reporting child abuse crime information to the national
6 criminal background check system.

7 (f) STUDY OF CHILD ABUSE OFFENDERS.—(1) Not
8 later than 180 days after the date of enactment of this
9 Act, the Administrator of the Office of Juvenile Justice
10 and Delinquency Prevention shall begin a study based on
11 a statistically significant sample of convicted child abuse
12 offenders and other relevant information to determine—

13 (A) the percentage of convicted child abuse of-
14 fenders who have more than 1 conviction for an of-
15 fense involving child abuse;

16 (B) the percentage of convicted child abuse of-
17 fenders who have been convicted of an offense in-
18 volving child abuse in more than 1 State;

19 (C) whether there are crimes or classes of
20 crimes, in addition to those defined as background
21 check crimes in section 5, that are indicative of a
22 potential to abuse children; and

23 (D) the extent to which and the manner in
24 which instances of child abuse form a basis for con-
25 victions for crimes other than child abuse crimes.

1 (2) Not later than 1 year after the date of enactment
2 of this Act, the Administrator shall submit a report to the
3 Chairman of the Committee on the Judiciary of the Senate
4 and the Chairman of the Committee on the Judiciary of
5 the House of Representatives containing a description of
6 and a summary of the results of the study conducted pur-
7 suant to paragraph (1).

8 **SEC. 3. BACKGROUND CHECKS.**

9 (a) IN GENERAL.—(1) A State may have in effect
10 procedures (established by or under State statute or regu-
11 lation) to permit a qualified entity to contact an author-
12 ized agency of the State to request a nationwide back-
13 ground check for the purpose of determining whether
14 there is a report that a provider has been convicted of
15 a background check crime.

16 (2) The authorized agency shall access and review
17 State and Federal records of background check crimes
18 through the national criminal background check system
19 and shall respond promptly to the inquiry.

20 (b) GUIDELINES.—(1) The Attorney General shall es-
21 tablish guidelines for State background check procedures
22 established under subsection (a), which guidelines shall in-
23 clude the requirements and protections of this Act.

24 (2) The guidelines established under paragraph (1)
25 shall require—

1 (A) that no qualified entity may request a back-
2 ground check of a provider under subsection (a) un-
3 less the provider first provides a set of fingerprints
4 and completes and signs a statement that—

5 (i) contains the name, address, and date of
6 birth appearing on a valid identification docu-
7 ment (as defined by section 1028(d)(1) of title
8 18, United States Code) of the provider;

9 (ii) the provider has not been convicted of
10 a background check crime and, if the provider
11 has been convicted of a background check
12 crime, contains a description of the crime and
13 the particulars of the conviction;

14 (iii) notifies the provider that the entity
15 may request a background check under sub-
16 section (a);

17 (iv) notifies the provider of the provider's
18 rights under subparagraph (B); and

19 (v) notifies the provider that prior to the
20 receipt of the results of the background check
21 the qualified entity may choose to deny the pro-
22 vider unsupervised access to a child to whom
23 the qualified entity provides child care;

1 (B) that each State establish procedures under
2 which a provider who is the subject of a background
3 check under subsection (a) is entitled—

4 (i) to obtain a copy of any background
5 check report and any record that forms the
6 basis for any such report; and

7 (ii) to challenge the accuracy and com-
8 pleteness of any information contained in any
9 such report or record and obtain a prompt de-
10 termination from an authorized agency as to
11 the validity of such challenge;

12 (C) that an authorized agency to which a quali-
13 fied entity has provided notice pursuant to sub-
14 section (a) make reasonable efforts to complete re-
15 search in whatever State and local recordkeeping
16 systems are available and in the national criminal
17 background check system and respond to the quali-
18 fied entity within 15 business days;

19 (D) that the response of an authorized agency
20 to an inquiry pursuant to subsection (a) inform the
21 qualified entity that the background check pursuant
22 to this section—

23 (i) may not reflect all convictions for a
24 background check crime; and

1 (ii) may not be the sole basis for determin-
2 ing the fitness of a provider;

3 (E) that the response of an authorized agency
4 to an inquiry pursuant to subsection (a) be limited
5 to the conviction information reasonably required to
6 accomplish the purposes of this Act;

7 (F) that the qualified entity may choose to deny
8 the provider unsupervised access to a child to whom
9 the qualified entity provides child care on the basis
10 of conviction information provided pursuant to a
11 background check under subsection (a) until the pro-
12 vider has obtained a determination as to the validity
13 of any challenge under subparagraph (B) or waived
14 the right to make such challenge; and

15 (G) that each State establish procedures to en-
16 sure that any background check under subsection
17 (a) and the results thereof shall be requested by and
18 provided only to—

19 (i) qualified entities identified by States;

20 (ii) authorized representatives of a quali-
21 fied entity who have a need to know such infor-
22 mation;

23 (iii) the provider who is the subject of a
24 background check;

25 (iv) law enforcement authorities; or

1 (v) pursuant to the direction of a court of
2 law;

3 (H) that background check information con-
4 veyed to a qualified entity pursuant to subsection (a)
5 shall not be conveyed to any person except as pro-
6 vided under subparagraph (G); and

7 (I) that a State or Federal employee or an em-
8 ployee of a political subdivision of a State respon-
9 sible for providing information to the national crimi-
10 nal background check system shall not be liable in
11 an action at law for damages for failure to prevent
12 a qualified entity from taking action adverse to a
13 provider on the basis of a criminal background
14 check.

15 (c) EQUIVALENT PROCEDURES.—(1) Notwithstand-
16 ing anything to the contrary in this section, the Attorney
17 General may certify that a State licensing or certification
18 procedure that differs from the procedures described in
19 subsections (a) and (b) shall be deemed to be the equiva-
20 lent of such procedures for purposes of this Act, but the
21 procedures described in subsections (a) and (b) shall con-
22 tinue to apply to those qualified entities, providers, and
23 background check crimes that are not governed by or in-
24 cluded within the State licensing or certification proce-
25 dure.

1 (2) The Attorney General shall by regulation estab-
2 lish criteria for certifications under this subsection. Such
3 criteria shall include a finding by the Attorney General
4 that the State licensing or certification procedure accom-
5 plishes the purposes of this Act and incorporates a nation-
6 wide review of State and Federal records of background
7 check offenses through the national criminal background
8 check system.

9 (d) REGULATIONS.—(1) The Attorney General may
10 by regulation prescribe such other measures as may be
11 required to carry out the purposes of this Act, including
12 measures relating to the security, confidentiality, accu-
13 racy, use, misuse, and dissemination of information, and
14 audits and recordkeeping.

15 (2) The Attorney General shall, to the maximum ex-
16 tent possible, encourage the use of the best technology
17 available in conducting background checks.

18 **SEC. 4. FUNDING FOR IMPROVEMENT OF CHILD ABUSE**
19 **CRIME INFORMATION.**

20 (a) USE OF FORMULA GRANTS FOR IMPROVEMENTS
21 IN STATE RECORDS AND SYSTEMS.—Section 509(b) of
22 the Omnibus Crime Control and Safe Streets Act of 1968
23 (42 U.S.C. 3759(b)) is amended—

24 (1) in paragraph (2) by striking “and” after
25 the semicolon;

1 (2) in paragraph (3) by striking the period and
2 inserting “; and”; and

3 (3) by adding at the end the following new
4 paragraph:

5 “(4) the improvement of State record systems
6 and the sharing of all of the records described in
7 paragraphs (1), (2), and (3) and the records re-
8 quired under section 2 of the National Child Protec-
9 tion Act of 1993 with the Attorney General for the
10 purpose of implementing the National Child Protec-
11 tion Act of 1993.”.

12 (b) ADDITIONAL FUNDING GRANTS FOR THE IM-
13 PROVEMENT OF CHILD ABUSE CRIME INFORMATION.—

14 (1) The Attorney General shall, subject to appropriations
15 and with preference to States that, as of the date of enact-
16 ment of this Act, have in computerized criminal history
17 files the lowest percentage of dispositions of identifiable
18 child abuse cases, make a grant to each State to be used—

19 (A) for the computerization of criminal history
20 files for the purposes of this Act;

21 (B) for the improvement of existing computer-
22 ized criminal history files for the purposes of this
23 Act;

1 (C) to improve accessibility to the national
2 criminal background check system for the purposes
3 of this Act; and

4 (D) to assist the State in the transmittal of
5 criminal records to, or the indexing of criminal his-
6 tory record in, the national criminal background
7 check system for the purposes of this Act.

8 (2) There are authorized to be appropriated for
9 grants under paragraph (1) a total of \$20,000,000 for fis-
10 cal years 1994, 1995, and 1996.

11 (c) WITHHOLDING STATE FUNDS.—Effective 1 year
12 after the date of enactment of this Act, the Attorney Gen-
13 eral may reduce, by up to 10 percent, the allocation to
14 a State for a fiscal year under title I of the Omnibus
15 Crime Control and Safe Streets Act of 1968 that is not
16 in compliance with the timetable established for that State
17 under section 2 of this Act.

18 **SEC. 5. DEFINITIONS.**

19 For the purposes of this Act—

20 (1) the term “authorized agency” means a divi-
21 sion or office of a State designated by a State to re-
22 port, receive, or disseminate information under this
23 Act;

24 (2) the term “background check crime” means
25 a child abuse crime, murder, manslaughter, aggra-

1 vated assault, kidnapping, arson, sexual assault, do-
2 mestic violence, incest, indecent exposure, prostitu-
3 tion, promotion of prostitution, and a felony offense
4 involving the use or distribution of a controlled sub-
5 stance;

6 (3) the term “child” means a person who is a
7 child for purposes of the criminal child abuse law of
8 a State;

9 (4) the term “child abuse” means the physical
10 or mental injury, sexual abuse or exploitation, ne-
11 glectful treatment, negligent treatment, or maltreat-
12 ment of a child by any person in violation of the
13 criminal child abuse laws of a State, but does not in-
14 clude discipline administered by a parent or legal
15 guardian to his or her child provided it is reasonable
16 in manner and moderate in degree and otherwise
17 does not constitute cruelty;

18 (5) the term “child abuse crime” means a crime
19 committed under any law of a State that establishes
20 criminal penalties for the commission of child abuse
21 by a parent or other family member of a child or by
22 any other person;

23 (6) the term “child abuse crime information”
24 means the following facts concerning a person who
25 is under indictment for, or has been convicted of, a

1 child abuse crime: full name, race, sex, date of birth,
2 height, weight, fingerprints, a brief description of
3 the child abuse crime or offenses for which the per-
4 son has been arrested or is under indictment or has
5 been convicted, the disposition of the charge, and
6 any other information that the Attorney General de-
7 termines may be useful in identifying persons ar-
8 rested for, under indictment for, or convicted of, a
9 child abuse crime;

10 (7) the term “child care” means the provision
11 of care, treatment, education, training, instruction,
12 supervision, or recreation to children;

13 (8) the term “domestic violence” means a fel-
14 ony or misdemeanor involving the use or threatened
15 use of force by—

16 (A) a present or former spouse of the vic-
17 tim;

18 (B) a person with whom the victim shares
19 a child in common;

20 (C) a person who is cohabiting with or has
21 cohabited with the victim as a spouse; or

22 (D) any person defined as a spouse of the
23 victim under the domestic or family violence
24 laws of a State;

1 (9) the term “exploitation” means child pornog-
2 raphy and child prostitution;

3 (10) the term “mental injury” means harm to
4 a child’s psychological or intellectual functioning,
5 which may be exhibited by severe anxiety, depres-
6 sion, withdrawal or outward aggressive behavior, or
7 a combination of those behaviors or by a change in
8 behavior, emotional response, or cognition;

9 (11) the term “national criminal background
10 check system” means the criminal history record
11 system maintained by the Federal Bureau of Inves-
12 tigation based on fingerprint identification or any
13 other method of positive identification;

14 (12) the term “negligent treatment” means the
15 failure to provide, for a reason other than poverty,
16 adequate food, clothing, shelter, or medical care so
17 as to seriously endanger the physical health of a
18 child;

19 (13) the term “physical injury” includes lacera-
20 tions, fractured bones, burns, internal injuries, se-
21 vere bruising, and serious bodily harm;

22 (14) the term “provider” means

23 (A) a person who—

24 (i) is employed by or volunteers with
25 a qualified entity;

1 (ii) who owns or operates a qualified
2 entity; or

3 (iii) who has or may have unsuper-
4 vised access to a child to whom the quali-
5 fied entity provides child care; and

6 (B) a person who—

7 (i) seeks to be employed by or volun-
8 teer with a qualified entity;

9 (ii) seeks to own or operate a qualified
10 entity; or

11 (iii) seeks to have or may have unsu-
12 pervised access to a child to whom the
13 qualified entity provides child care;

14 (15) the term “qualified entity” means a busi-
15 ness or organization, whether public, private, for-
16 profit, not-for-profit, or voluntary, that provides
17 child care or child care placement services, including
18 a business or organization that licenses or certifies
19 others to provide child care or child care placement
20 services;

21 (16) the term “sex crime” means an act of sex-
22 ual abuse that is a criminal act;

23 (17) the term “sexual abuse” includes the em-
24 ployment, use, persuasion, inducement, enticement,
25 or coercion of a child to engage in, or assist another

1 person to engage in, sexually explicit conduct or the
2 rape, molestation, prostitution, or other form of sex-
3 ual exploitation of children or incest with children;
4 and

5 (18) the term “State” means a State, the Dis-
6 trict of Columbia, the Commonwealth of Puerto
7 Rico, American Samoa, the Virgin Islands, Guam,
8 and the Trust Territories of the Pacific.

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