

106TH CONGRESS
2D SESSION

S. 3264

To ensure that individuals with histories of mental illness and other persons prohibited from owning or possessing firearms are stopped from buying firearms by requiring instant background checks prior to making a firearms purchase, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 30 (legislative day, SEPTEMBER 22), 2000

Mr. LOTT (for Mr. ASHCROFT) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To ensure that individuals with histories of mental illness and other persons prohibited from owning or possessing firearms are stopped from buying firearms by requiring instant background checks prior to making a firearms purchase, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This bill may be cited as the “Records Access Im-
5 provements Act of 2000”.

1 **SEC. 2. RECORDS ACCESS IMPROVEMENTS.**

2 (a) REQUIREMENTS FOR RECEIPT OF FEDERAL
3 FUNDS.—The Brady Handgun Violence Prevention Act
4 (Brady Act), Public Law No. 103–159, 107 Stat. 1563,
5 is amended by adding at the end of Title I the following:

6 **“SEC. 107. RECORDS OF PERSONS PROHIBITED FROM AC-
7 CESS TO FIREARMS.**

8 “(a) NOTWITHSTANDING ANY OTHER PROVISION OF
9 LAW.—

10 “(1) the total of the amounts of any appropria-
11 tion hereafter derived or authorized from the Violent
12 Crime Reduction Trust Fund (42 U.S.C. § 14211)
13 for grants to an individual State (and any local gov-
14 ernment in that State) in this Act, and in any other
15 Act, is reduced by 10 percent on and after October
16 1, 2001, and another 10 percent each and every fis-
17 cal year thereafter, until no appropriation or author-
18 ization level is available, unless and until the chief
19 executive officer for such State or local government
20 receiving Violent Crime Reduction Trust Funds cer-
21 tifies to the Attorney General that at least ninety-
22 five percent of all available records regarding per-
23 sons who are—

24 “(A) adjudicated as mental defectives or
25 been committed to a mental institution by a

1 court, board, commission, or other lawful au-
2 thority;

3 “(B) under indictment for, or have been
4 convicted in any court of, a crime punishable by
5 imprisonment for a term exceeding one year;

6 “(C) fugitives from justice;

7 “(D) unlawful users of or addicted to any
8 controlled substance;

9 “(E) subject to a court order restraining
10 them from committing domestic violence; and

11 “(F) convicted of a misdemeanor crime of
12 domestic violence,

13 in that jurisdiction’s system of record keeping
14 (which includes executive and judicial record keeping
15 systems) have been and continue to be provided to
16 the Federal Bureau of Investigation to support im-
17 plementation of the National Instant Criminal Back-
18 ground Check System; and

19 “(2) the reductions for each grant made pursu-
20 ant to paragraph (1) shall be terminated upon such
21 certification. For the fiscal year the certification is
22 provided, the department, agency, or instrumentality
23 of the United States authorized to make the grant
24 shall restore that State or local jurisdiction’s Violent
25 Crime Reduction Trust Funds grants to those levels

1 that would otherwise have been awarded and dis-
2 bursed if the jurisdiction had been providing at least
3 ninety-five percent of all the available records de-
4 scribed in paragraph (1) in that jurisdiction's system
5 of record keeping to the Federal Bureau of Inves-
6 tigation.

7 “(b) FOR PURPOSES OF THIS SECTION.—

8 “(1) the term ‘adjudicated as mental defectives
9 or been committed to a mental institution’ means an
10 official record of a person—

11 “(A) adjudicated as mental defective by a
12 court, board, commission, or other lawful au-
13 thority. An adjudication as a mental defective
14 occurs when a court, board, commission, or
15 other lawful authority determines that an indi-
16 vidual is mentally retarded or of marked sub-
17 normal intelligence, mentally ill, or mentally in-
18 competent, including defendants in criminal
19 cases—

20 “(i) adjudicated as not guilty by rea-
21 son of insanity, and

22 “(ii) found to be a danger to others as
23 a result of a mental disorder or illness; or

24 “(B) committed to a mental institution
25 through formal commitment by a court, board,

1 commission, or other legal authority, including
2 any person who has been committed involun-
3 tarily to a mental institution, including for rea-
4 sons other than mental defectiveness or mental
5 illness (such as for drug use), except that—

6 “(i) the mere presence of a person in
7 a mental institution for observation; or

8 “(ii) a voluntary commitment to a
9 mental institution, shall not be considered
10 a disabling commitment, or a record to be
11 reported to the National Instant Criminal
12 Background Check system. ‘Mental institu-
13 tions’ means mental health facilities, men-
14 tal hospitals, sanitariums, psychiatric fa-
15 cilities, and other facilities that provide di-
16 agnoses by licensed professionals of mental
17 retardation or mental illness.

18 “(2)(A) The term ‘misdemeanor crime of do-
19 mestic violence’ means a Federal, State or local of-
20 fense that—

21 “(i) is a misdemeanor under Federal or
22 State law or, in States which do not classify of-
23 fenses as misdemeanors, is an offense punish-
24 able by imprisonment for a term of one year or
25 less, and includes offenses that are punishable

1 only by a fine (offenses are included whether or
2 not the State statute specifically defines the of-
3 fense as a ‘misdemeanor’ or as a ‘misdemeanor
4 crime of domestic violence’ and also includes all
5 such misdemeanor convictions in Indian Courts
6 established pursuant to 25 C.F.R. party11);

7 “(ii) has, as an element, the use or at-
8 tempted use of physical force (e.g., assault and
9 battery), or the threatened use of a deadly
10 weapon; and

11 “(iii) was committed by a current or
12 former spouse, parent, or guardian of the vic-
13 tim, by a person with whom the victim shares
14 a child in common, by a person who is cohab-
15 iting with or has cohabited with the victim as
16 a spouse, parent, or guardian (e.g., the equiva-
17 lent of a ‘common law’ marriage even if such
18 relationship is not recognized under the law), or
19 a person similarly situated to a spouse, parent,
20 or guardian of the victim (e.g., two persons who
21 are residing at the same location in an intimate
22 relationship with the intent to make that place
23 their home would be similarly situated to a
24 spouse).

1 “(B) A person shall not be considered to have
2 been convicted of such an offense for purposes of
3 this section unless—

4 “(i) the person is considered to have been
5 convicted by the jurisdiction in which the pro-
6 ceedings were held;

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

10 “(iii) in the case of a prosecution for which
11 a person was entitled to a jury trial in the juris-
12 diction in which the case was tried, either—

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

14 “(II) the person knowingly and intel-
15 ligently waived the right to have the case
16 tried by a jury, by guilty plea or otherwise.

17 “(iv) A person shall not be considered to
18 have been convicted of such an offense for pur-
19 poses of this section if the conviction has been
20 expunged or set aside, or is an offense for
21 which the person has been pardoned or has had
22 civil rights restored (if the law of the jurisdic-
23 tion in which the proceedings were held pro-
24 vides for the loss of civil rights upon conviction
25 for such an offense), unless the pardon,

1 expunction, or restoration of civil rights ex-
2 pressly provides that the person may not ship,
3 transport, possess, or receive firearms, and the
4 person is not otherwise prohibited by the law of
5 the jurisdiction in which the proceedings were
6 held from receiving or possessing any firearms.

7 “(3)(A) The term ‘persons who are under in-
8 dictment for, or have been convicted in any court of,
9 a crime punishable by imprisonment for a term ex-
10 ceeding one year,’ means any person—

11 “(i) who currently is under indictment (or
12 ‘information’) for a crime punishable by impris-
13 onment for a term exceeding one year, or whose
14 case has been referred to court-martial if that
15 person is in the military; or

16 “(ii) who has been convicted in any court
17 (including, for example, a military court) of a
18 crime punishable by imprisonment for a term
19 exceeding one year (‘information’ refers to a
20 formal accusation of a crime made by a pros-
21 ecuting attorney, as distinguished from an ‘in-
22 dictment’ presented by a grand jury). The max-
23 imum sentence that may be imposed determines
24 whether a person is under indictment or infor-
25 mation for a disabling crime. Similarly, the

1 maximum sentence that may be imposed, rather
2 than the actual sentence, determines whether a
3 person has been convicted of a disabling crime.

4 “(B) Indictments, information, and convictions
5 for the following crimes are exceptions and are not
6 disabling:

7 “(i) Federal or State offenses pertaining to
8 antitrust offenses, unfair trade practices, and
9 other similar business-related offenses; and

10 “(ii) State offenses classified by State law
11 as misdemeanors punishable by imprisonment
12 for a term of 2 years or less.

13 “(C) Any conviction which has been expunged,
14 set aside, or for which a person has been pardoned
15 or has had civil rights restored remains disabling if;

16 “(i) the pardon, expunction, or restoration
17 of civil rights expressly provides that the person
18 may not ship, transport, possess, or receive fire-
19 arms, or

20 “(ii) the person is prohibited by the law of
21 the jurisdiction where the conviction occurred
22 from receiving or possessing any firearm.

23 “(4) The term ‘persons who are fugitives from
24 justice’ means persons (A) who know they have
25 charges pending against them, even if only for a

1 misdemeanor, and who leave the State of prosecu-
2 tion, or (B) who leave the State in order to avoid
3 giving testimony in any criminal proceeding.

4 “(5)(A) The term ‘persons who are unlawful
5 users of, or addicted to, any controlled substance’
6 means persons who are—

7 “(i) unlawful users of, or addicted to, any
8 controlled substance, as defined in section 102
9 of the Controlled Substances Act. Controlled
10 substances include, but are not limited to, mari-
11 juana, depressants, stimulants, and narcotic
12 drugs. They do not include distilled spirits,
13 wine, malt beverages, or tobacco. The use of
14 any illegal controlled substance (such as PCP),
15 or the use of any other controlled substance
16 (such as morphine) in a manner other than as
17 prescribed by a licensed physician, is also un-
18 lawful use; or

19 “(ii) addicted to a controlled substance,
20 meaning any individual who is found to (I) ha-
21 bitually use a controlled substance so as to en-
22 danger the health, safety, welfare, or morals of
23 the public, or (II) to have lost the power of self-
24 control with reference to the addiction.

1 “(B) To incur firearms disabilities, there must
2 be evidence that a person is a current unlawful user
3 of, or addict to, a controlled substance. Such unlaw-
4 ful use or addiction may be demonstrated by evi-
5 dence of—

6 “(i) the recent use of a controlled sub-
7 stance, which is part of a pattern of unlawful
8 use or addiction; or

9 “(ii) the current unlawful use of, or addic-
10 tion to, a controlled substance.

11 “(6) The term ‘persons who are subject to a
12 court order restraining them from committing do-
13 mestic violence’ means any persons who, at the time
14 they apply to receive a firearm, are under a court
15 order that meets the following criteria—

16 “(A) the order must have been issued after
17 a hearing of which the person subject to the
18 order received actual notice, and at which the
19 person had an opportunity to participate; and

20 “(B) the order must restrain the person
21 subject to the order from harassing, stalking, or
22 threatening an intimate partner of the person,
23 or a child of the intimate partner or person, or
24 engaging in other conduct that would place an

1 intimate partner in reasonable fear of bodily in-
2 jury to the partner or child; and

3 “(C) the order must include a finding that
4 the person subject to the order represents a
5 credible threat to the physical safety of the inti-
6 mate partner or child, or the order must explic-
7 itly prohibit the use, attempted use, or threat-
8 ened use of physical force against the intimate
9 partner or child that would reasonably be ex-
10 pected to cause bodily injury.

11 “(7) The term ‘intimate partner’ is defined as
12 a spouse, former spouse, an individual who is a par-
13 ent of a child of the person, or an individual who co-
14 habitates or has cohabited with the person.”

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on January 1, 2001.

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