

111TH CONGRESS  
1ST SESSION

# S. 1365

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

JUNE 25, 2009

Mr. SCHUMER (for himself, Mr. ENSIGN, Mr. BAYH, Mr. VITTER, Mr. SPECTER, Mr. ISAKSON, Mr. WHITEHOUSE, and Mr. KAUFMAN) 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 adult population) contributed a total

1 of 8,100,000,000 hours of volunteer service. Of  
2 those who volunteer, 27 percent, or a total of  
3 16,500,000 adults, dedicate their service to edu-  
4 cation or youth programs.

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

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

20 (4) Given the large number of individuals with  
21 criminal history records, and the vulnerability of the  
22 population with whom human service organizations  
23 work, those organizations that work with children  
24 need an effective and reliable means of obtaining rel-  
25 evant information about criminal histories in order

1 to determine the suitability of a potential volunteer  
2 or employee.

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

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

1 toring organizations to access nationwide Federal  
2 Bureau of Investigation background searches.

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

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

14 (9) The Child Safety Pilot Program under sec-  
15 tion 108 of the PROTECT Act (42 U.S.C. 5119a  
16 note) revealed the importance of performing finger-  
17 print-based Federal Bureau of Investigation criminal  
18 history background checks. Of 68,000 background  
19 checks performed through the pilot program as of  
20 May 2009, 6 percent of volunteer applicants were  
21 found to have a criminal history of concern, includ-  
22 ing very serious offenses such as sexual abuse of mi-  
23 nors, assault, child cruelty, murder, and serious  
24 drug offenses.

1           (10) In an analysis performed on the volunteers  
2           screened in the first 18 months of the Child Safety  
3           Pilot Program, it was found that over 41 percent of  
4           the individuals with criminal histories had com-  
5           mitted an offense in a State other than the State in  
6           which they were applying to volunteer, meaning that  
7           a State-only search would not have found relevant  
8           criminal results. In addition, even though volunteers  
9           knew a background check was being performed, over  
10          50 percent of the individuals found to have a crimi-  
11          nal history falsely indicated on their application  
12          form that they did not have a criminal history.

13           (11) The Child Safety Pilot Program also dem-  
14          onstrates that timely and affordable background  
15          checks are possible.

16 **SEC. 3. BACKGROUND CHECKS.**

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

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

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

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

24          “(a) DEFINITIONS.—In this section—

1           “(1) the term ‘background check designee’  
2 means the entity or organization, if any, designated  
3 by or entering an agreement with the Attorney Gen-  
4 eral under subsection (b)(3)(A) to carry out or assist  
5 in carrying out the duties described in subsection  
6 (c);

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

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

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

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

24                   “(B) who—

1           “(i) is employed by or volunteers with,  
2           or seeks to be employed by or volunteer  
3           with, a covered entity; or

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

6           “(5) the term ‘criminal history review designee’  
7           means the entity or organization, if any, designated  
8           by or entering an agreement with the Attorney Gen-  
9           eral under subsection (b)(3)(B) to carry out or as-  
10          sist in carrying out the criminal history review pro-  
11          gram;

12          “(6) the term ‘criminal history review program’  
13          means the program established under subsection  
14          (b)(1)(B);

15          “(7) the term ‘identification document’ has the  
16          meaning given that term in section 1028 of title 18,  
17          United States Code;

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

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

22               “(B) approved under subsection (f) to re-  
23               ceive nationwide background checks in accord-  
24               ance with subsection (e) and participate in the  
25               criminal history review program;

1           “(9) the term ‘qualified State program’ means  
2 a program of a State authorized agency that the At-  
3 torney General determines is meeting the standards  
4 identified in subsection (b)(2) to ensure that a wide  
5 range of youth-serving organizations have affordable  
6 and timely access to nationwide background checks;

7           “(10) the term ‘open arrest’ means an arrest  
8 relating to which charges may still be brought, tak-  
9 ing into consideration the applicable statute of limi-  
10 tations;

11           “(11) the term ‘pending charge’ means a crimi-  
12 nal charge that has not been resolved through con-  
13 viction, acquittal, dismissal, plea bargain, or any  
14 other means;

15           “(12) the term ‘State’ means a State of the  
16 United States, the District of Columbia, the Com-  
17 monwealth of Puerto Rico, American Samoa, the  
18 Virgin Islands, Guam, the Commonwealth of the  
19 Northern Mariana Islands, the Federated States of  
20 Micronesia, the Republic of the Marshall Islands,  
21 and the Republic of Palau; and

22           “(13) the term ‘State authorized agency’ means  
23 a division or office of a State designated by that  
24 State to report, receive, or disseminate criminal his-  
25 tory information.



1 “(b) ESTABLISHMENT OF PROGRAM.—

2 “(1) IN GENERAL.—Not later than 180 days  
3 after the date of enactment of the Child Protection  
4 Improvements Act of 2009, the Attorney General  
5 shall—

6 “(A) establish policies and procedures to  
7 carry out the duties described in subsection (c);  
8 and

9 “(B) establish a criminal history review  
10 program in accordance with subsection (d).

11 “(2) ASSESSMENTS.—The Attorney General  
12 shall conduct—

13 “(A) an annual assessment of each State  
14 authorized agency to determine whether the  
15 agency operates a qualified State program, in-  
16 cluding a review of whether the State author-  
17 ized agency—

18 “(i) has designated a wide range of  
19 covered entities as eligible to submit State  
20 criminal background check requests and  
21 nationwide background check requests to  
22 the State authorized agency;

23 “(ii) charges a covered entity not  
24 more than a total of \$25 for a State crimi-  
25 nal background check and the fee charged

1 by the Federal Bureau of Investigation for  
2 a nationwide background check; and

3 “(iii) returns requests for State crimi-  
4 nal background checks and nationwide  
5 background checks to a covered entity not  
6 later than 10 business days after the date  
7 on which the request was made; and

8 “(B) in addition to an annual assessment  
9 under subparagraph (A), an assessment de-  
10 scribed in that subparagraph of a State author-  
11 ized agency if—

12 “(i) a State authorized agency that  
13 does not have a qualified State program  
14 requests such an assessment; or

15 “(ii) the Attorney General receives re-  
16 ports from covered entities indicating that  
17 a State authorized agency that has a quali-  
18 fied State program no longer meets the  
19 standards described in subparagraph (A).

20 “(3) DESIGNNEES.—The Attorney General  
21 may—

22 “(A) designate or enter into an agreement  
23 with an entity or organization that has an es-  
24 tablished history of serving the interests of chil-

1           dren to carry out or assist in carrying out the  
2           duties described in subsection (c); and

3           “(B) designate or enter into an agreement  
4           with 1 or more Federal, State, or local govern-  
5           ment agencies to carry out or assist in carrying  
6           out the criminal history review program.

7           “(c) ACCESS TO NATIONWIDE BACKGROUND  
8 CHECKS.—

9           “(1) PURPOSE.—The purpose of this section is  
10          to streamline the process of obtaining nationwide  
11          background checks, provide effective customer serv-  
12          ice, and facilitate widespread access to nationwide  
13          background checks by participating entities.

14          “(2) DUTIES.—The Attorney General or the  
15          background check designee shall—

16                  “(A) handle inquiries from covered entities  
17                  and inform covered entities about how to re-  
18                  quest nationwide background checks—

19                          “(i) for a covered entity located in a  
20                          State with a qualified State program, by  
21                          referring the covered entity to the State  
22                          authorized agency; and

23                          “(ii) for a covered entity located in a  
24                          State without a qualified State program,

1 by providing information on the require-  
2 ments to become a participating entity;

3 “(B) provide participating entities with ac-  
4 cess to nationwide background checks on cov-  
5 ered individuals in accordance with this section;

6 “(C) receive paper and electronic requests  
7 for nationwide background checks on covered  
8 individuals from participating entities;

9 “(D) to the extent practicable, negotiate  
10 an agreement with each State authorized agen-  
11 cy under which—

12 “(i) that State authorized agency shall  
13 conduct a State criminal background check  
14 within the time periods specified in sub-  
15 section (e) in response to a request from  
16 the Attorney General or the background  
17 check designee and provide criminal his-  
18 tory records to the Attorney General or the  
19 criminal history review designee; and

20 “(ii) a participating entity may elect  
21 to obtain a State criminal background  
22 check, in addition to a nationwide back-  
23 ground check, through 1 unified request to  
24 the Attorney General or the background  
25 check designee;

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

6           “(F) collect a fee to conduct the nation-  
7           wide background check, and, if appropriate, a  
8           State criminal background check, and remit  
9           fees to the Attorney General or the criminal  
10          history review designee, the Federal Bureau of  
11          Investigation, and, if appropriate, the State au-  
12          thorized agencies; and

13          “(G) coordinate with the Federal Bureau  
14          of Investigation, participating State authorized  
15          agencies, and the Attorney General or the  
16          criminal history review designee to ensure that  
17          background check requests are being completed  
18          within the time periods specified in subsection  
19          (e).

20          “(3) REQUESTS.—A request for a nationwide  
21          background check by a participating entity shall in-  
22          clude—

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

1           “(B) a photocopy of a valid identification  
2 document; and

3           “(C) a statement completed and signed by  
4 the covered individual that—

5                 “(i) sets out the covered individual’s  
6 name, address, and date of birth, as those  
7 items of information appear on a valid  
8 identification document;

9                 “(ii) notifies the covered individual  
10 that the Attorney General and, if appro-  
11 priate, a State authorized agency may per-  
12 form a criminal history background check  
13 and that the signature of the covered indi-  
14 vidual on the statement constitutes an ac-  
15 knowledgment that such a check may be  
16 conducted;

17                 “(iii) notifies the covered individual  
18 that the signature of the covered individual  
19 constitutes consent to participate in the  
20 criminal history review program, under  
21 which the participating entity may be in-  
22 formed if the criminal history records of  
23 the covered individual reveal a criminal  
24 history that warrants special concern or  
25 further inquiry;

1           “(iv) notifies the covered individual  
2           that the covered individual shall be pro-  
3           vided with a copy of the criminal history  
4           records of the covered individual and shall  
5           have 10 business days to review the  
6           records, challenge the accuracy or com-  
7           pleteness of any information in the  
8           records, or withdraw consent to participate  
9           in the criminal history review program be-  
10          fore any information about the criminal  
11          history of the covered individual is pro-  
12          vided to the participating entity; and

13           “(v) notifies the covered individual  
14          that prior to and after the completion of  
15          the background check, the participating  
16          entity may choose to deny the covered indi-  
17          vidual access to children.

18          “(4) FEES.—

19           “(A) IN GENERAL.—The Attorney General  
20          or the background check designee may collect a  
21          fee to defray the costs of carrying out the du-  
22          ties described in this subsection, the costs of  
23          the Federal Bureau of Investigation and State  
24          and local agencies in resolving the accuracy of  
25          criminal history records of covered individuals,

1 and the duties of the criminal history review  
2 designee under this section—

3 “(i) for a nationwide background  
4 check and criminal history review, in an  
5 amount not to exceed the lesser of—

6 “(I) the sum of—

7 “(aa) the actual cost to the  
8 Attorney General or the back-  
9 ground check designee of con-  
10 ducting a nationwide background  
11 check;

12 “(bb) the actual cost to the  
13 Attorney General or the criminal  
14 history review designee of con-  
15 ducting a criminal history review  
16 under this section; and

17 “(cc) any costs associated  
18 with resolving inaccuracies, omis-  
19 sions, or challenges to a covered  
20 individual’s criminal history; or

21 “(II) to the extent practicable,  
22 not greater than \$25 for a partici-  
23 pating entity that is a nonprofit enti-  
24 ty, except that the fee may be waived  
25 upon a showing of hardship; or



1           “(ii) for a State criminal background  
2           check described in paragraph (2)(D), in  
3           the amount specified in the agreement with  
4           the applicable State authorized agency, not  
5           to exceed \$25.

6           “(B) PROHIBITION ON FEES.—

7           “(i) IN GENERAL.—A participating  
8           entity may not charge another entity or in-  
9           dividual a surcharge to access a back-  
10          ground check conducted under this section.

11          “(ii) VIOLATION.—The Attorney Gen-  
12          eral shall bar any participating entity that  
13          the Attorney General determines violated  
14          clause (i) from submitting background  
15          checks under this section.

16          “(d) CRIMINAL HISTORY REVIEW PROGRAM.—

17          “(1) PURPOSE.—The purpose of the criminal  
18          history review program is to provide participating  
19          entities with reliable and accurate information re-  
20          garding whether a covered individual has been con-  
21          victed of, or has an open arrest or pending charges  
22          for, a crime that may bear upon the fitness of the  
23          covered individual to have responsibility for the safe-  
24          ty and well-being of the children in their care.

1           “(2) REQUIREMENTS.—The Attorney General  
2 or the criminal history review designee shall—

3           “(A) establish procedures to securely re-  
4 ceive criminal history records from the Federal  
5 Bureau of Investigation, if necessary, and from  
6 State authorized agencies, if appropriate;

7           “(B) establish procedures to resolve poten-  
8 tially incomplete records, under which the At-  
9 torney General or the criminal history review  
10 designee shall—

11           “(i) determine whether the criminal  
12 history record—

13           “(I) includes an arrest—

14           “(aa) that would meet the  
15 criteria described in paragraph  
16 (3)(B)(ii) if it were an open ar-  
17 rest; and

18           “(bb) relating to which the  
19 criminal history record does not  
20 indicate whether charges resulted  
21 from the arrest;

22           “(II) includes a criminal  
23 charge—

24           “(aa) for which a conviction  
25 would meet the criteria described

1 in subparagraph (A) or (B) of  
2 paragraph (3); and

3 “(bb) relating to which the  
4 criminal history record does not  
5 indicate any disposition of the  
6 charge; or

7 “(III) includes a criminal  
8 charge—

9 “(aa) that would meet the  
10 criteria described in paragraph  
11 (3)(B)(ii) if it were a pending  
12 charge; and

13 “(bb) relating to which the  
14 criminal history record does not  
15 indicate any disposition of the  
16 charge; and

17 “(ii) if the criminal history record in-  
18 cludes an arrest or charge described in  
19 clause (i), request that the Federal Bureau  
20 of Investigation—

21 “(I) determine the status of any  
22 such arrest or charge;

23 “(II) update the criminal history  
24 record with any disposition informa-  
25 tion; and

1                   “(III) convey the result of the de-  
2                   termination and any updated record  
3                   to the Attorney General or criminal  
4                   history review designee;

5                   “(C) after receiving a criminal history  
6                   record from the Federal Bureau of Investiga-  
7                   tion and, if necessary, resolving any potentially  
8                   incomplete information through the procedures  
9                   described in subparagraph (B), transmit to the  
10                  covered individual—

11                   “(i) the criminal history records;

12                   “(ii) a detailed notification of the  
13                   rights of the covered individual under sub-  
14                   section (g); and

15                   “(iii) information about how to con-  
16                   tact the Attorney General or criminal his-  
17                   tory review designee for the purpose of  
18                   challenging the accuracy or completeness  
19                   of any information in the criminal history  
20                   record or to withdraw consent to partici-  
21                   pate in the criminal history review pro-  
22                   gram;

23                   “(D) if the covered individual informs the  
24                   Attorney General or criminal history review des-  
25                   ignee that the covered individual intends to

1 challenge the accuracy or completeness of any  
2 information in the criminal history record, as-  
3 sist the covered individual in contacting the ap-  
4 propriate persons or offices within the Federal  
5 Bureau of Investigation or State authorized  
6 agency;

7 “(E) make determinations regarding  
8 whether the criminal history records received in  
9 response to a criminal history background check  
10 conducted under this section indicate that the  
11 covered individual has a criminal history that  
12 may bear on the covered individual’s fitness to  
13 provide care to children, based solely on the cri-  
14 teria described in paragraph (3);

15 “(F) unless the covered individual has  
16 withdrawn consent to participate in the criminal  
17 history review program, convey to the partici-  
18 pating entity that submitted the request for a  
19 nationwide background check—

20 “(i) which of the 3 categorizations de-  
21 scribed in paragraph (3), criminal convic-  
22 tion of special concern identified, further  
23 inquiry recommended, or no criminal  
24 records of special concern identified, apply  
25 to the covered individual;

1           “(ii) information and guidance relat-  
2           ing to the appropriate use of criminal his-  
3           tory information when making decisions re-  
4           garding hiring employees and using volun-  
5           teers;

6           “(iii) if a criminal history that meets  
7           the criteria set forth in subparagraph (A)  
8           or (B) of paragraph (3) is found, a rec-  
9           ommendation to the participating entity to  
10          consult with the covered individual in order  
11          to obtain more information about the  
12          criminal history of the covered individual,  
13          and a list of factors to consider in assess-  
14          ing the significance of that criminal his-  
15          tory, including—

16               “(I) the nature, gravity, and cir-  
17               cumstances of the offense, including  
18               whether the individual was convicted  
19               of the offense;

20               “(II) the period of time that has  
21               elapsed since the date of the offense  
22               or end of a period of incarceration or  
23               supervised release;

24               “(III) the nature of the position  
25               held or sought; and

1                   “(IV) any evidence of rehabilita-  
2                   tion; and

3                   “(iv) instructions and guidance that,  
4                   in evaluating the considerations described  
5                   in clause (iii), the participating entity  
6                   should consult the Equal Employment Op-  
7                   portunity Commission Policy Statement on  
8                   the Issue of Conviction Records under title  
9                   VII of the Civil Rights Act or any suc-  
10                  cessor thereto issued by the Equal Employ-  
11                  ment Opportunity Commission;

12                  “(G) if a covered individual has withdrawn  
13                  consent to participate in the criminal history re-  
14                  view program, inform the participating entity  
15                  that consent has been withdrawn;

16                  “(H) work with the Attorney General or  
17                  the background check designee and the Federal  
18                  Bureau of Investigation to develop processes  
19                  and procedures to ensure that criminal history  
20                  background check requests are completed within  
21                  the time periods specified in subsection (e); and

22                  “(I) serve as a national resource center to  
23                  provide guidance and assistance to participating  
24                  entities on how to interpret criminal history in-  
25                  formation, the possible restrictions that apply

1           when making hiring decisions based on criminal  
2           histories, and other related information.

3           “(3) CRIMINAL HISTORY REVIEW CRITERIA.—

4           The Attorney General or the criminal history review  
5           designee shall, in determining when a criminal his-  
6           tory record indicates that a covered individual has a  
7           criminal history that may bear on the fitness of the  
8           covered individual to provide care to children—

9                   “(A) assign a categorization of criminal  
10                  conviction of special concern identified if a cov-  
11                  ered individual is found to have a conviction  
12                  that would prevent the individual from being  
13                  approved as a foster or adoptive parent under  
14                  section 471(a)(20)(A) of the Social Security Act  
15                  (42 U.S.C. 671(a)(20)(A));

16                  “(B) assign a categorization of further in-  
17                  quiry recommended if a covered individual is  
18                  found to have—

19                          “(i) a conviction for a serious mis-  
20                          demeanor involving the same type of con-  
21                          duct prohibited by a felony described in  
22                          section 471(a)(20)(A) of the Social Secu-  
23                          rity Act (42 U.S.C. 671(a)(20)(A)) that  
24                          was committed—



1                   “(I) during the 5-year period  
2                   ending on the date of the criminal his-  
3                   tory review; or

4                   “(II) in the case of a crime  
5                   against a child, at any time; or

6                   “(ii) an open arrest or pending charge  
7                   for a felony described in, or a serious mis-  
8                   demeanor involving the same type of con-  
9                   duct prohibited by a felony described in,  
10                  section 471(a)(20)(A) of the Social Secu-  
11                  rity Act (42 U.S.C. 671(a)(20)(A)); and

12                  “(C) assign a categorization of no criminal  
13                  records of special concern identified for a cov-  
14                  ered individual that does not meet the criteria  
15                  described in subparagraph (A) or (B).

16                  “(e) TIMING.—

17                  “(1) IN GENERAL.—Unless exceptional cir-  
18                  cumstances apply, criminal background checks shall  
19                  be completed according to the time frame under this  
20                  subsection. The Attorney General or the background  
21                  check designee shall work with the criminal history  
22                  review designee and the Federal Bureau of Inves-  
23                  tigation to ensure that the time limits under this  
24                  subsection are being achieved.

1           “(2) APPLICATION PROCESSING.—The Attorney  
2           General or the background check designee shall elec-  
3           tronically submit a national background check re-  
4           quest to the Federal Bureau of Investigation and, if  
5           appropriate, the participating State authorized agen-  
6           cy not later than 2 business days after the date on  
7           which a request for a national background check is  
8           received by the Attorney General or the background  
9           check designee.

10           “(3) CONDUCT OF BACKGROUND CHECKS.—The  
11           Federal Bureau of Investigation and, if appropriate,  
12           a State authorized agency shall provide criminal his-  
13           tory records to the Attorney General or the criminal  
14           history review designee not later than 2 business  
15           days after the date on which the Federal Bureau of  
16           Investigation or State authorized agency, as the case  
17           may be, receives a request for a nationwide back-  
18           ground check from the Attorney General or the  
19           background check designee.

20           “(4) RESOLUTION OF POTENTIALLY INCOM-  
21           PLETE RECORDS.—The Attorney General or criminal  
22           history review designee shall submit any request that  
23           the Federal Bureau of Investigation investigate po-  
24           tentially incomplete records not later than 3 busi-  
25           ness days after the date on which the Attorney Gen-

1       eral or criminal history review designee receives the  
2       criminal history records from the Federal Bureau of  
3       Investigation or State authorized agency. Unless the  
4       Federal Bureau of Investigation certifies that addi-  
5       tional time is needed, the Federal Bureau of Inves-  
6       tigation shall complete the investigation and provide  
7       the Attorney General or criminal history review des-  
8       ignee with the results of the investigation and any  
9       updated criminal history records, not later than 5  
10      business days after the date on which the Federal  
11      Bureau of Investigation receives a request from the  
12      Attorney General or criminal history designee.

13           “(5) PROVISION OF RECORDS TO COVERED IN-  
14      DIVIDUALS AND OPPORTUNITY TO CHALLENGE.—  
15      When the Attorney General or the criminal history  
16      review designee finds that a covered individual’s  
17      criminal history records fall within the categoriza-  
18      tions described in subparagraph (A) or (B) of sub-  
19      section (d)(3), the Attorney General or criminal his-  
20      tory review designee shall provide the covered indi-  
21      vidual with the criminal history records of the cov-  
22      ered individual and a detailed notification of the  
23      rights of the covered individual under subsection (g)  
24      not later than 1 business day after the date on  
25      which the Attorney General or criminal history re-

1 view designee receives a criminal history record from  
2 the Federal Bureau of Investigation and, if nec-  
3 essary, resolves any potentially incomplete informa-  
4 tion in accordance with subsection (d)(2)(B). The  
5 covered individual shall have 10 business days from  
6 the date sent to challenge the accuracy or complete-  
7 ness of any information in the criminal history  
8 record or to withdraw consent to participate in the  
9 criminal history review program.

10 “(6) CRIMINAL HISTORY REVIEWS.—Unless the  
11 Federal Bureau of Investigation certifies that fur-  
12 ther time is required to resolve a challenge brought  
13 by a covered individual, the Attorney General or the  
14 criminal history review designee shall convey to the  
15 participating entity the information set forth in sub-  
16 paragraph (F) or (G) of subsection (d)(2), as appro-  
17 priate, 10 business days after sending the covered  
18 individuals with the criminal history records of the  
19 covered individual and a notification of their rights  
20 under subsection (g).

21 “(f) PARTICIPATION IN PROGRAM.—

22 “(1) IN GENERAL.—The Attorney General or  
23 the background check designee shall determine  
24 whether an entity is a covered entity and whether

1 that covered entity should be approved as a partici-  
2 pating entity, based on—

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

5 “(B) the consultation conducted under  
6 paragraph (2).

7 “(2) CONSULTATION.—In determining how  
8 many covered entities to approve as participating en-  
9 tities, the Attorney General or the background check  
10 designee shall consult quarterly with the Federal  
11 Bureau of Investigation and the criminal history re-  
12 view designee to determine the volume of requests  
13 for national background checks that can be com-  
14 pleted, based on the capacity of the criminal history  
15 review program and the Federal Bureau of Inves-  
16 tigation, the availability of resources, and the dem-  
17 onstrated need for national background checks in  
18 order to protect children.

19 “(3) PREFERENCE FOR NONPROFIT ORGANIZA-  
20 TIONS.—In determining whether a covered entity  
21 should be approved as a participating entity under  
22 paragraph (1), the Attorney General or the back-  
23 ground check designee shall give preference to any  
24 organization participating in the Child Safety Pilot  
25 Program under section 108(a)(3) of the PROTECT

1 Act (42 U.S.C. 5119a note) on the date of enact-  
2 ment of the Child Protection Improvements Act of  
3 2009 and to any other nonprofit organizations.

4 “(g) RIGHT OF COVERED INDIVIDUALS TO CHAL-  
5 LENGE ACCURACY OR COMPLETENESS OF RECORDS.—A  
6 covered individual who is the subject of a nationwide back-  
7 ground check under this section may challenge the accu-  
8 racy and completeness of the criminal history records in  
9 the criminal history report as provided in subsection  
10 (d)(2)(D), without submitting a separate set of finger-  
11 prints or an additional fee.

12 “(h) DUTIES OF THE FEDERAL BUREAU OF INVES-  
13 TIGATION.—

14 “(1) RESPONSE TO A REQUEST FOR CRIMINAL  
15 BACKGROUND RECORDS.—Upon request by the At-  
16 torney General or background check designee, the  
17 Federal Bureau of Investigation shall conduct a na-  
18 tionwide background check and provide any criminal  
19 history records to the Attorney General or criminal  
20 history review designee.

21 “(2) OPEN ARRESTS OR PENDING CHARGES.—  
22 Upon request by the Attorney General or criminal  
23 history review designee, the Federal Bureau of In-  
24 vestigation shall—

1           “(A) investigate any arrest or charge de-  
2           scribed in subsection (d)(2)(B)(i) with relevant  
3           departments and agencies of the Federal Gov-  
4           ernment and State and local governments;

5           “(B) determine the status of any such ar-  
6           rest or charge;

7           “(C) update the criminal history record  
8           with any disposition information; and

9           “(D) convey the result of the determina-  
10          tion and any updated criminal history record to  
11          the Attorney General or criminal history review  
12          designee.

13          “(3) RESOLUTION OF CHALLENGES.—If a cov-  
14          ered individual challenges the accuracy or complete-  
15          ness of any information in the criminal history  
16          record of the covered individual, the Federal Bureau  
17          of Investigation, in consultation with the agency that  
18          contributed the record, shall—

19               “(A) investigate the challenge with relevant  
20               departments and agencies of the Federal Gov-  
21               ernment and State and local governments;

22               “(B) promptly make a determination re-  
23               garding the accuracy and completeness of the  
24               challenged information; and

1           “(C) correct any inaccurate or incomplete  
2 records.

3           “(i) AUTHORIZATION OF APPROPRIATIONS.—

4           “(1) IN GENERAL.—There are authorized to be  
5 appropriated to the Attorney General for fiscal year  
6 2009 through 2012 such sums as are necessary to  
7 carry out the provisions of this section.

8           “(2) SENSE OF THE SENATE.—It is the sense  
9 of the Senate that in fiscal year 2009, and each fis-  
10 cal year thereafter, the fees collected by the Attorney  
11 General or the background check designee should be  
12 sufficient to carry out the duties of the Attorney  
13 General or the background check designee under this  
14 section and to help support the criminal history re-  
15 view program.

16           “(j) COLLECTION OF DATA AND REPORT TO CON-  
17 GRESS.—

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

25           “(2) COLLECTION OF DATA.—



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

6           “(B) COMPILING.—Beginning 90 days  
7           after the date of enactment of the Child Protec-  
8           tion Improvements Act of 2009, the Attorney  
9           General shall compile data regarding—

10           “(i) the number and types of partici-  
11           pating entities;

12           “(ii) the fees charged to participating  
13           entities under this section;

14           “(iii) the time interval between na-  
15           tionwide background check submissions  
16           and responses under this section;

17           “(iv) the fiscal impact of this section  
18           on State authorized agencies;

19           “(v) the number and demographic  
20           characteristics of covered individuals sub-  
21           mitting a statement described in subsection  
22           (c)(3)(A)(iii) as part of a request for a na-  
23           tionwide background check;

1           “(vi) the number and demographic  
2 characteristics of covered individuals deter-  
3 mined to have a criminal history;

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

13           “(viii) the procedures available for  
14 covered individuals to challenge the accu-  
15 racy and completeness of criminal history  
16 records under this section;

17           “(ix) the number and results of chal-  
18 lenges to the accuracy and completeness of  
19 criminal history records under this section;

20           “(x) the number and types of correc-  
21 tions of erroneous criminal history records  
22 based on a challenge under this section;  
23 and

24           “(xi) the number and types of inquir-  
25 ies for assistance on interpreting a crimi-

1           nal history received by the criminal history  
2           review program.

3           “(C) AGGREGATING DATA.—The Attorney  
4           General shall—

5                   “(i) aggregate the data collected  
6                   under this paragraph by State and city;  
7                   and

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

12          “(D) REPORTS.—

13                   “(i) IN GENERAL.—Not later than 1  
14                   year after the date of enactment of the  
15                   Child Protection Improvements Act of  
16                   2009, and annually thereafter, the Attor-  
17                   ney General shall prepare and submit to  
18                   Congress a report concerning the data  
19                   compiled and aggregated under this para-  
20                   graph.

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

23                           “(I) the data compiled and ag-  
24                           gregated under this paragraph, orga-  
25                           nized in such a way as to provide a

1 comprehensive analysis of the pro-  
2 grams and procedures established  
3 under this section;

4 “(II) information regarding and  
5 analysis of—

6 “(aa) the programs and pro-  
7 cedures established under this  
8 section; and

9 “(bb) the extent such pro-  
10 grams and procedures have  
11 helped screen individuals who  
12 may pose a risk to children; and

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

21 “(iii) RECOMMENDATIONS.—A report  
22 submitted under clause (i) may contain  
23 recommendations to Congress on possible  
24 legislative improvements to this section.

1                   “(iv) ADDITIONAL INFORMATION.—

2                   Upon the request of any member of Con-  
3                   gress, the Attorney General shall make  
4                   available any of the data compiled or ag-  
5                   gregated under this paragraph. The Attor-  
6                   ney General shall not make available any  
7                   data that identifies specific individuals.

8                   “(k) LIMITATION ON LIABILITY.—

9                   “(1) IN GENERAL.—

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

15                   “(B) FAILURE TO TAKE ADVERSE ACTION  
16                   AGAINST COVERED INDIVIDUAL.—No partici-  
17                   pating entity shall be liable in an action for  
18                   damages solely for a failure to take action ad-  
19                   verse to a covered individual upon receiving any  
20                   notice of criminal history from the Attorney  
21                   General or the criminal history review designee  
22                   under subsection (d)(2)(F).

23                   “(2) RELIANCE.—A participating entity that  
24                   reasonably relies on criminal history records received  
25                   in response to a background check under this section

1 shall not be liable in an action for damages based  
2 on the inaccuracy or incompleteness of that informa-  
3 tion.

4 “(3) CRIMINAL HISTORY REVIEW PROGRAM.—

5 “(A) IN GENERAL.—Except as provided in  
6 subparagraphs (B) and (C), the criminal his-  
7 tory review designee, including a director, offi-  
8 cer, employee, or agent of the criminal history  
9 review designee, shall not be liable in an action  
10 for damages relating to the performance of the  
11 responsibilities and functions of the criminal  
12 history review designee under this section.

13 “(B) INTENTIONAL, RECKLESS, OR OTHER  
14 MISCONDUCT.—Subparagraph (A) shall not  
15 apply in an action if the criminal history review  
16 designee, or a director, officer, employee, or  
17 agent of the criminal history review designee,  
18 engaged in intentional misconduct or acted, or  
19 failed to act, with actual malice, with reckless  
20 disregard to a substantial risk of causing injury  
21 without legal justification, or for a purpose un-  
22 related to the performance of responsibilities or  
23 functions under this section.

24 “(C) ORDINARY BUSINESS ACTIVITIES.—

25 Subparagraph (A) shall not apply to an act or

1           omission relating to an ordinary business activ-  
2           ity, such as an activity involving general admin-  
3           istration or operations, the use of motor vehi-  
4           cles, or personnel management.

5           “(1) PRIVACY OF INFORMATION.—

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

11           “(A) shall use the fingerprints, criminal  
12           history records, or information in the criminal  
13           history records only for the purposes specifically  
14           set forth in this Act;

15           “(B) shall allow access to the fingerprints,  
16           criminal history records, or information in the  
17           criminal history records only to those employees  
18           of the entity, and only on such terms, as are  
19           necessary to fulfill the purposes set forth in this  
20           Act;

21           “(C) shall not disclose the fingerprints,  
22           criminal history records, or information in the  
23           criminal history records, except as specifically  
24           authorized under this Act;

1           “(D) shall keep a written record of each  
2 authorized disclosure of the fingerprints, crimi-  
3 nal history records, or the information in the  
4 criminal history records; and

5           “(E) shall maintain adequate security  
6 measures to ensure the confidentiality of the  
7 fingerprints, the criminal history records, and  
8 the information in the criminal history records.

9           “(2) COMPLIANCE.—

10           “(A) IN GENERAL.—The Attorney General  
11 shall promulgate regulations to ensure the en-  
12 forcement of the nondisclosure requirements  
13 under paragraph (1) and to provide for appro-  
14 priate sanctions in the case of violations of the  
15 requirements.

16           “(B) PARTICIPATING ENTITIES AND DES-  
17 IGNEES.—The participation in any program  
18 under this section by an entity or organization  
19 that enters into an agreement with the Attorney  
20 General to carry out the duties described in  
21 subsection (c) or to carry out the criminal his-  
22 tory review program shall be conditioned on the  
23 person—



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

4           “(ii) maintaining substantial compli-  
5           ance with paragraph (1).

6           “(3) DESTRUCTION OF RECORDS.—

7           “(A) IN GENERAL.—Except as provided in  
8           subparagraph (B) and subject to subsection  
9           (e)(5), the Attorney General, the background  
10          check designee, the criminal history review des-  
11          ignee, and the covered entity or participating  
12          entity—

13           “(i) shall destroy any fingerprints, ei-  
14           ther in paper or electronic form, or crimi-  
15           nal history record received for purposes of  
16           carrying out the provisions of this Act  
17           after any transaction based on the finger-  
18           prints or criminal history record is com-  
19           pleted; and

20           “(ii) shall after such destruction not  
21           maintain the fingerprints, the criminal his-  
22           tory records, or the information in the  
23           criminal history record in any form.

24           “(B) REPEAT APPLICANTS.—A covered in-  
25          dividual may sign a release permitting the At-

1           torney General or criminal history review des-  
2           ignee to retain the fingerprints and criminal  
3           history record of the covered individual for a  
4           period not to exceed 5 years, for the sole pur-  
5           pose of participating in the criminal history re-  
6           view program on a subsequent occasion.”.

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

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

10           (1) by striking “78-month”; and

11           (2) by adding at the end the following: “The  
12           Child Safety Pilot Program under this paragraph  
13           shall terminate on the date that the program for na-  
14           tional criminal history background checks for child-  
15           serving organizations established under the Child  
16           Protection Improvements Act of 2009 is operating  
17           and able to enroll any organization using the Child  
18           Safety Pilot Program.”.

○