

111TH CONGRESS
1ST SESSION

S. 163

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

IN THE SENATE OF THE UNITED STATES

JANUARY 7, 2009

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Child Protection Im-

5 provements Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) In 2006, 61,200,000 adults (a total of 26.7

9 percent of the population) contributed a total of

10 8,100,000,000 hours of volunteer service. Of those

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 3. BACKGROUND CHECKS.

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

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

(2) by inserting after section 4 the following:

“SEC. 5. PROGRAM FOR NATIONAL CRIMINAL HISTORY BACKGROUND CHECKS FOR CHILD-SERVING ORGANIZATIONS.

“(a) DEFINITIONS.—In this section—

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

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

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

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

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

18 “(B) who—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 “(3) conduct—

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

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

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

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

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

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

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

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

3 “(c) APPLICANT PROCESSING CENTER.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(4) FEES.—

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

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

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

1 nationwide background check under
2 this section; or

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

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

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

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

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

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

24 “(C) PROHIBITION ON FEES.—

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

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

10 “(d) CRIMINAL HISTORY RESOURCE CENTER.—

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

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

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

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

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

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

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

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

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

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

23 “(e) TIMING.—

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

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

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

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

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

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

8 “(f) PARTICIPATION IN PROGRAM.—

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

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

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

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

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

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

13 “(g) RIGHTS OF COVERED INDIVIDUALS.—

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

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

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

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

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

11 “(B) seek to—

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

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

18 “(h) AUTHORIZATION OF APPROPRIATIONS.—

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

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

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

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

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

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

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

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

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

3 “(2) COLLECTION OF DATA.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(D) REPORTS.—

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

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

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

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

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

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

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

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

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

12 “(j) LIMITATION ON LIABILITY.—

13 “(1) IN GENERAL.—

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

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

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

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

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

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

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

7 “(C) ORDINARY BUSINESS ACTIVITIES.—

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

13 “(k) PRIVACY OF INFORMATION.—

14 “(1) PROHIBITION ON UNAUTHORIZED DISCLO-
 15 SURE OR USE OF CRIMINAL HISTORY RECORDS.—

16 Except for a covered individual, any entity or indi-
 17 vidual authorized to receive or transmit fingerprints
 18 or criminal history records under this Act—

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

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

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

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

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

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

16 “(2) COMPLIANCE.—

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

“(B) PARTICIPATING ENTITIES AND APPLICANT PROCESSING CENTER.—The participation in any program under this section by a participating entity or a nongovernmental entity that enters into an agreement with the Attorney General to establish an applicant processing center shall be conditioned on the participating entity or nongovernmental entity—

“(i) establishing procedures to ensure compliance with, and respond to any violations of, paragraph (1); and

“(ii) maintaining substantial compliance with paragraph (1).

“(3) DESTRUCTION OF RECORDS.—The applicant processing center shall destroy any fingerprints or criminal history record received under this Act after any transaction based on the fingerprints or criminal history record is completed, and shall not maintain the fingerprints, the criminal history records, or the information in the criminal history record in any form.”.

SEC. 4. EXTENSION OF CHILD SAFETY PILOT.

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

(1) by striking “60-month”; and

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

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