

113TH CONGRESS  
1ST SESSION

# H. R. 137

To ensure that all individuals who should be prohibited from buying a firearm are listed in the national instant criminal background check system and require a background check for every firearm sale.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2013

Mrs. MCCARTHY of New York introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To ensure that all individuals who should be prohibited from buying a firearm are listed in the national instant criminal background check system and require a background check for every firearm sale.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Fix Gun Checks Act of 2013”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title and table of contents.

**TITLE I—ENSURING THAT ALL INDIVIDUALS WHO SHOULD BE  
PROHIBITED FROM BUYING A GUN ARE LISTED IN THE NA-  
TIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM**

Sec. 101. Penalties for States that do not make data electronically available to the National Instant Criminal Background Check System.

Sec. 102. Requirement that Federal agencies certify that they have submitted to the National Instant Criminal Background Check System all records identifying persons prohibited from purchasing firearms under Federal law.

Sec. 103. Adjudicated as a mental defective; mental health assessment plan.

Sec. 104. Clarification of the definition of drug abusers and drug addicts who are prohibited from possessing firearms.

**TITLE II—REQUIRING A BACKGROUND CHECK FOR EVERY  
FIREARM SALE**

Sec. 201. Purpose.

Sec. 202. Firearms transfers.

Sec. 203. Effective date.

**1 TITLE I—ENSURING THAT ALL  
2 INDIVIDUALS WHO SHOULD  
3 BE PROHIBITED FROM BUY-  
4 ING A GUN ARE LISTED IN  
5 THE NATIONAL INSTANT  
6 CRIMINAL BACKGROUND  
7 CHECK SYSTEM**

**8 SEC. 101. PENALTIES FOR STATES THAT DO NOT MAKE  
9 DATA ELECTRONICALLY AVAILABLE TO THE  
10 NATIONAL INSTANT CRIMINAL BACKGROUND  
11 CHECK SYSTEM.**

12 (a) IN GENERAL.—Section 104(b) of the NICS Im-  
13 provement Amendments Act of 2007 (18 U.S.C. 922 note)  
14 is amended to read as follows:

15 “(b) PENALTIES.—

1           “(1) DISCRETIONARY REDUCTION.—During the  
2           2-year period beginning 3 years after January 8,  
3           2008, the Attorney General may withhold not more  
4           than 3 percent of the amount that would otherwise  
5           be allocated to a State under section 505 of the Om-  
6           nibus Crime Control and Safe Streets Act of 1968  
7           (42 U.S.C. 3755) if the State provides less than 50  
8           percent of the records required to be provided under  
9           sections 102 and 103.

10           “(2) MANDATORY REDUCTIONS.—

11           “(A) During the 2-year period after the ex-  
12           piration of the period referred to in paragraph  
13           (1), the Attorney General shall withhold 4 per-  
14           cent of the amount that would otherwise be al-  
15           located to a State under section 505 of the Om-  
16           nibus Crime Control and Safe Streets Act of  
17           1968 (42 U.S.C. 3755) if the State provides  
18           less than 70 percent of the records required to  
19           be provided under sections 102 and 103.

20           “(B) After the expiration of the period re-  
21           ferred to in subparagraph (A), the Attorney  
22           General shall withhold 5 percent of the amount  
23           that would otherwise be allocated to a State  
24           under section 505 of the Omnibus Crime Con-  
25           trol and Safe Streets Act of 1968 (42 U.S.C.

1           3755), if the State provides less than 90 per-  
2           cent of the records required to be provided  
3           under sections 102 and 103.”.

4           (b) REPORTING OF STATE COMPLIANCE.—Not later  
5 than 1 year after the date of enactment of this Act, and  
6 every year thereafter, the Attorney General shall publish,  
7 and make available on a publicly accessible website, a re-  
8 port that ranks the States by the ratio of number of  
9 records submitted by each State under sections 102 and  
10 103 of the NICS Improvement Amendments Act of 2007  
11 (18 U.S.C. 922 note) to the estimated total number of  
12 available records of the State.

13 **SEC. 102. REQUIREMENT THAT FEDERAL AGENCIES CER-**  
14 **TIFY THAT THEY HAVE SUBMITTED TO THE**  
15 **NATIONAL INSTANT CRIMINAL BACKGROUND**  
16 **CHECK SYSTEM ALL RECORDS IDENTIFYING**  
17 **PERSONS PROHIBITED FROM PURCHASING**  
18 **FIREARMS UNDER FEDERAL LAW.**

19           Section 103(e)(1) of the Brady Handgun Violence  
20 Prevention Act (18 U.S.C. 922 note) is amended by add-  
21 ing at the end the following:

22                   “(F) SEMIANNUAL CERTIFICATION AND  
23                   REPORTING.—

24                           “(i) IN GENERAL.—The head of each  
25                           Federal department or agency shall submit

1 to the Attorney General a written certifi-  
2 cation indicating whether the department  
3 or agency has provided to the Attorney  
4 General the pertinent information con-  
5 tained in any record of any person that the  
6 department or agency was in possession of  
7 during the time period addressed by the  
8 report demonstrating that the person falls  
9 within a category described in subsection  
10 (g) or (n) of section 922 of title 18, United  
11 States Code.

12 “(ii) SUBMISSION DATES.—The head  
13 of a Federal department or agency shall  
14 submit a certification under clause (i)—

15 “(I) not later than July 31 of  
16 each year, which shall address any  
17 record the department or agency was  
18 in possession of during the period be-  
19 ginning on January 1 of the year and  
20 ending on June 30 of the year; and

21 “(II) not later than January 31  
22 of each year, which shall address any  
23 record the department or agency was  
24 in possession of during the period be-  
25 ginning on July 1 of the previous year

1 and ending on December 31 of the  
2 previous year.

3 “(iii) CONTENTS.—A certification re-  
4 quired under clause (i) shall state, for the  
5 applicable period—

6 “(I) the number of records of the  
7 Federal department or agency dem-  
8 onstrating that a person fell within  
9 each of the categories described in  
10 section 922(g) of title 18, United  
11 States Code;

12 “(II) the number of records of  
13 the Federal department or agency  
14 demonstrating that a person fell with-  
15 in the category described in section  
16 922(n) of title 18, United States  
17 Code; and

18 “(III) for each category of  
19 records described in subclauses (I)  
20 and (II), the total number of records  
21 of the Federal department or agency  
22 that have been provided to the Attor-  
23 ney General.”.

1 **SEC. 103. ADJUDICATED AS A MENTAL DEFECTIVE.**

2 (a) IN GENERAL.—Section 921(a) of title 18, United  
3 States Code, is amended by adding at the end the fol-  
4 lowing:

5 “(36) The term ‘adjudicated as a mental defec-  
6 tive’ shall—

7 “(A) have the meaning given the term in  
8 section 478.11 of title 27, Code of Federal Reg-  
9 ulations, or any successor thereto; and

10 “(B) include an order by a court, board,  
11 commission, or other lawful authority that a  
12 person, in response to mental illness, incom-  
13 petency, or marked subnormal intelligence, be  
14 compelled to receive services—

15 “(i) including counseling, medication,  
16 or testing to determine compliance with  
17 prescribed medications; and

18 “(ii) not including testing for use of  
19 alcohol or for abuse of any controlled sub-  
20 stance or other drug.

21 “(37) The term ‘committed to a mental institu-  
22 tion’ shall have the meaning given the term in sec-  
23 tion 478.11 of title 27, Code of Federal Regulations,  
24 or any successor thereto.”.

25 (b) LIMITATION.—An individual who has been adju-  
26 dicated as a mental defective before the effective date de-

1 scribed in section 203 may not apply for relief from dis-  
2 ability under section 101(c)(2) of the NICS Improvement  
3 Amendments Act of 2007 (18 U.S.C. 922 note) on the  
4 basis that the individual does not meet the requirements  
5 in section 921(a)(36) of title 18, United States Code, as  
6 added by subsection (a).

7 (c) NICS IMPROVEMENT AMENDMENTS ACT OF  
8 2007.—Section 3 of the NICS Improvement Amendments  
9 Act of 2007 (18 U.S.C. 922 note) is amended by striking  
10 paragraph (2) and inserting the following:

11 “(2) MENTAL HEALTH TERMS.—

12 “(A) IN GENERAL.—Except as provided in  
13 subparagraph (B), the terms ‘adjudicated as a  
14 mental defective’ and ‘committed to a mental  
15 institution’ shall have the meaning given the  
16 terms in section 921(a) of title 18, United  
17 States Code.

18 “(B) EXCEPTION.—For purposes of sec-  
19 tions 102 and 103, the terms ‘adjudicated as a  
20 mental defective’ and ‘committed to a mental  
21 institution’ shall have the same meanings as on  
22 the day before the date of enactment of the Fix  
23 Gun Checks Act of 2013 until the end of the  
24 2-year period beginning on such date of enact-  
25 ment.”.



1 **SEC. 104. CLARIFICATION THAT FEDERAL COURT INFOR-**  
2 **MATION IS TO BE MADE AVAILABLE TO THE**  
3 **NATIONAL INSTANT CRIMINAL BACKGROUND**  
4 **CHECK SYSTEM.**

5 Section 103(e)(1) of the Brady Handgun Violence  
6 Protection Act (18 U.S.C. 922 note), as amended by sec-  
7 tion 102 of this Act, is amended by adding at the end  
8 the following:

9 “(G) APPLICATION TO FEDERAL  
10 COURTS.—In this paragraph—

11 “(i) the terms ‘department or agency  
12 of the United States’ and ‘Federal depart-  
13 ment or agency’ include a Federal court;  
14 and

15 “(ii) for purposes of any request, sub-  
16 mission, or notification, the Director of the  
17 Administrative Office of the United States  
18 Courts shall perform the functions of the  
19 head of the department or agency.”.

20 **TITLE II—REQUIRING A BACK-**  
21 **GROUND CHECK FOR EVERY**  
22 **FIREARM SALE**

23 **SEC. 201. PURPOSE.**

24 The purpose of this title is to extend the Brady Law  
25 background check procedures to all sales and transfers of  
26 firearms.

1 **SEC. 202. FIREARMS TRANSFERS.**

2 (a) IN GENERAL.—Chapter 44 of title 18, United  
3 States Code, is amended by adding at the end the fol-  
4 lowing:

5 **“§ 932. Background checks for firearm transfers by**  
6 **unlicensed persons**

7 “(a) DEFINITIONS.—In this section—

8 “(1) the term ‘unlicensed transferee’ means a  
9 person who—

10 “(A) is not licensed under this chapter;

11 and

12 “(B) desires to received a firearm from an  
13 unlicensed transferor; and

14 “(2) the term ‘unlicensed transferor’ means a  
15 person who—

16 “(A) is not licensed under this chapter;

17 and

18 “(B) desires to transfer a firearm to an  
19 unlicensed transferee.

20 “(b) RESPONSIBILITIES OF TRANSFERORS OTHER  
21 THAN LICENSEES.—

22 “(1) IN GENERAL.—It shall be unlawful for an  
23 unlicensed transferor to transfer a firearm to an un-  
24 licensed transferee, unless the firearm is trans-  
25 ferred—

1           “(A)(i) through a licensed dealer under  
2 subsection (d);

3           “(ii) after inspecting a permit that con-  
4 firms a background check under subsection (f);  
5 or

6           “(iii) in accordance with an exception de-  
7 scribed in subsection (g); and

8           “(B) in accordance with paragraph (2).

9           “(2) CRIMINAL BACKGROUND CHECKS.—Except  
10 as provided in subsection (g), an unlicensed trans-  
11 feror—

12           “(A) subject to subparagraph (B), may not  
13 transfer a firearm to an unlicensed transferee  
14 until—

15           “(i) the licensed dealer through which  
16 the transfer is made under subsection (d)  
17 makes a notification described in sub-  
18 section (d)(3)(A); or

19           “(ii) the unlicensed transferee has  
20 presented a permit that confirms that a  
21 background check has been conducted, as  
22 described in subsection (f); and

23           “(B) may not transfer a firearm to an un-  
24 licensed transferee if the licensed dealer  
25 through which the transfer is made under sub-

1 section (d) makes the notification described in  
2 subsection (d)(3)(B).

3 “(3) ABSENCE OF RECORDKEEPING REQUIRE-  
4 MENTS.—Nothing in this section shall permit or au-  
5 thorize the Attorney General to impose record-  
6 keeping requirements on any unlicensed transferor.

7 “(c) RESPONSIBILITIES OF TRANSFEREES OTHER  
8 THAN LICENSEES.—

9 “(1) IN GENERAL.—It shall be unlawful for an  
10 unlicensed transferee to receive a firearm from an  
11 unlicensed transferor, unless the firearm is trans-  
12 ferred—

13 “(A)(i) through a licensed dealer under  
14 subsection (d);

15 “(ii) after inspecting a permit that con-  
16 firms a background check in accordance with  
17 subsection (f); or

18 “(iii) in accordance with an exception de-  
19 scribed in subsection (g); and

20 “(B) in accordance with paragraph (2).

21 “(2) CRIMINAL BACKGROUND CHECKS.—Except  
22 as provided in subsection (f), an unlicensed trans-  
23 feree—

1           “(A) subject to subparagraph (B), may not  
2 receive a firearm from an unlicensed transferor  
3 until—

4           “(i) the licensed dealer through which  
5 the transfer is made under subsection (d)  
6 makes a notification described in sub-  
7 section (d)(3)(A); or

8           “(ii) the unlicensed transferee has  
9 presented a permit that confirms that a  
10 background check described in subsection  
11 (f) has been conducted; and

12           “(B) may not receive a firearm from an-  
13 other unlicensed transferor if the licensed deal-  
14 er through which the transfer is made under  
15 subsection (d) makes a notification described in  
16 subsection (d)(3)(B).

17       “(d) BACKGROUND CHECKS THROUGH LICENSED  
18 DEALERS.—A licensed dealer who agrees to assist in the  
19 transfer of a firearm between unlicensed transferor and  
20 an unlicensed transferee shall—

21           “(1) enter such information about the firearm  
22 as the Attorney General may require by regulation  
23 into a separate bound record;

24           “(2) record the transfer on a form specified by  
25 the Attorney General;

1           “(3) comply with section 922(t) as if transfer-  
2           ring the firearm from the inventory of the licensed  
3           dealer to the unlicensed transferee (except that a li-  
4           censed dealer assisting in the transfer of a firearm  
5           under this subsection shall not be required to comply  
6           again with the requirements of section 922(t) in de-  
7           livering the firearm to the unlicensed transferee) and  
8           notify the unlicensed transferor and unlicensed  
9           transferee—

10                   “(A) of such compliance; and

11                   “(B) if the transfer is subject to the re-  
12                   quirements of section 922(t)(1), of any receipt  
13                   by the licensed dealer of a notification from the  
14                   national instant criminal background check sys-  
15                   tem that the transfer would violate section 922  
16                   or State law;

17           “(4) not later than 31 days after the date on  
18           which the transfer occurs, submit to the Attorney  
19           General a report of the transfer, which—

20                   “(A) shall be on a form specified by the  
21                   Attorney General by regulation; and

22                   “(B) shall not include the name of or other  
23                   identifying information relating to the unli-  
24                   censed transferor or unlicensed transferee;

1           “(5) if the licensed dealer assists an unlicensed  
2 transferor in transferring, at the same time or dur-  
3 ing any 5 consecutive business days, 2 or more pis-  
4 tols or revolvers, or any combination of pistols and  
5 revolvers totaling 2 or more, to the same unlicensed  
6 transferee, in addition to the reports required under  
7 paragraph (4), prepare a report of the multiple  
8 transfers, which shall—

9           “(A) be prepared on a form specified by  
10 the Attorney General; and

11           “(B) not later than the close of business  
12 on the date on which the transfer requiring the  
13 report under this paragraph occurs, be sub-  
14 mitted to—

15           “(i) the office specified on the form  
16 described in subparagraph (A); and

17           “(ii) the appropriate State law en-  
18 forcement agency of the jurisdiction in  
19 which the transfer occurs; and

20           “(6) retain a record of the transfer as part of  
21 the permanent business records of the licensed deal-  
22 er.

23           “(e) PURCHASE PERMITS CONFIRMING BACK-  
24 GROUND CHECKS.—An unlicensed transferor may transfer

1 a firearm to an unlicensed transferee if the unlicensed  
2 transferor verifies that—

3           “(1) the unlicensed transferee has presented to  
4 a licensed dealer a permit or license that allows the  
5 unlicensed transferee to possess, acquire, or carry a  
6 firearm, and the licensed dealer has verified to the  
7 unlicensed transferor that the permit or license is  
8 valid;

9           “(2) the permit or license was issued not more  
10 than 5 years before the date on which the permit or  
11 license is presented under paragraph (1) by a law  
12 enforcement agency in the State in which the trans-  
13 fer is to take place;

14           “(3) the law of the State provides that the per-  
15 mit or license is to be issued only after a law en-  
16 forcement official has verified that neither the na-  
17 tional instant criminal background check system nor  
18 other information indicates that possession of a fire-  
19 arm by the unlicensed transferee would be in viola-  
20 tion of Federal, State, or local law; and

21           “(4) if the permit or license does not include a  
22 photograph of the unlicensed transferee, the unli-  
23 censed transferor has examined a valid identification  
24 document (as defined in section 1028(d)) of the unli-



1       censed transferee containing a photograph of the un-  
2       licensed transferee.

3       “(f) EXCEPTIONS.—Unless prohibited by any other  
4       provision of law, subsections (b) and (c) shall not apply  
5       to any transfer of a firearm between an unlicensed trans-  
6       feror and unlicensed transferee, if—

7               “(1) the transfer is a bona fide gift between im-  
8       mediate family members, including spouses, parents,  
9       children, siblings, grandparents, and grandchildren;

10              “(2) the transfer occurs by operation of law, or  
11       because of the death of another person for whom the  
12       unlicensed transferor is an executor or administrator  
13       of an estate or a trustee of a trust created in a will;

14              “(3) the transfer is temporary and occurs while  
15       in the home of the unlicensed transferee, if—

16                      “(A) the unlicensed transferee is not other-  
17       wise prohibited from possessing firearms; and

18                      “(B) the unlicensed transferee believes  
19       that possession of the firearm is necessary to  
20       prevent imminent death or great bodily harm to  
21       the unlicensed transferee;

22              “(4) the transfer is approved by the Attorney  
23       General under section 5812 of the Internal Revenue  
24       Code of 1986; or

1           “(5) upon application of the unlicensed trans-  
2           feror, the Attorney General determined that compli-  
3           ance with subsection (b) is impracticable because—

4                   “(A) the ratio of the number of law en-  
5                   forcement officers of the State in which the  
6                   transfer is to occur to the number of square  
7                   miles of land area of the State does not exceed  
8                   0.0025;

9                   “(B) the location at which the transfer is  
10                  to occur is extremely remote in relation to the  
11                  chief law enforcement officer (as defined in sec-  
12                  tion 922(s)(8)); and

13                  “(C) there is an absence of telecommuni-  
14                  cations facilities in the geographical area in  
15                  which the unlicensed transferor is located; or

16           “(6) the transfer is a temporary transfer of  
17           possession without transfer of title that takes  
18           place—

19                   “(A) at a shooting range located in or on  
20                   premises owned or occupied by a duly incor-  
21                   porated organization organized for conservation  
22                   purposes or to foster proficiency in firearms;

23                   “(B) at a target firearm shooting competi-  
24                   tion under the auspices of or approved by a  
25                   State agency or nonprofit organization; or

1           “(C) while hunting, fishing, or trapping,  
2           if—

3                   “(i) the activity is legal in all places  
4                   where the unlicensed transferee possesses  
5                   the firearm; and

6                   “(ii) the unlicensed transferee holds  
7                   any required license or permit.

8           “(g) PROCESSING FEES.—A licensed dealer that  
9 processes the transfer of a firearm under this section may  
10 assess and collect a fee, in an amount not to exceed \$15,  
11 with respect to each firearm transfer processed.”.

12           (b) PENALTIES.—Section 924(a)(5) of title 18,  
13 United States Code, is amended by inserting “or section  
14 932” after “section 922”.

15           (c) CONFORMING AMENDMENT.—The table of sec-  
16 tions for chapter 44 of title 18, United States Code, is  
17 amended by adding at the end the following:

“932. Background checks for firearm transfers by unlicensed persons.”.

18 **SEC. 203. EFFECTIVE DATE.**

19           The amendments made by this Act shall take effect  
20 180 days after the date of enactment of this Act.

○