

FIREARM DUE PROCESS PROTECTION ACT OF 2025

OCTOBER 3, 2025.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JORDAN, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 2184]

[Including cost estimate of the Congresssional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2184) to enforce the requirement that the National Instant Criminal Background Check System make a final disposition of requests to correct its records within 60 days, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Firearm Due Process Protection Act of 2025”.

SEC. 2. ENFORCEMENT OF DEADLINE FOR FINAL DISPOSITION OF REQUESTS TO CORRECT RECORDS OF THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM; DUE PROCESS PROTECTIONS.

Section 925A of title 18, United States Code, is amended—

(1) by inserting “(a) IN GENERAL.—” before “Any person”;

(2) by inserting “or aggrieved by a violation of the penultimate sentence of section 103(g) of the Brady Handgun Violence Prevention Act” after “(s) or (t) of section 922”;

(3) by striking the last sentence; and

(4) by adding after and below the end the following:

“(b) PROCEDURAL RULES.—

“(1) EXPEDITED HEARING.—The court shall hold a hearing on an action brought under subsection (a), within 30 days after the action is brought.

“(2) BURDEN OF PROOF.—At such a hearing, the respondent shall bear the burden of proving by clear and convincing evidence that the individual is ineligible to receive or possess a firearm.

“(c) REMEDIES.—

“(1) IN GENERAL.—The court shall assess against the respondent reasonable attorney fees and other litigation costs reasonably incurred in an action brought under subsection (a) in which the complainant has substantially prevailed.

“(2) SUBSTANTIALLY PREVAILED.—For purposes of this section, a complainant has substantially prevailed if the complainant has obtained relief through—

“(A) a judicial order;

“(B) an enforceable written agreement or consent decree; or

“(C) a voluntary or unilateral change in position by the United States, if the complainant’s claim is not insubstantial.”.

SEC. 3. ANNUAL REPORTS TO THE CONGRESS ON DISPOSITION OF CHALLENGES TO ACCURACY OF RECORDS OF THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

The Director of the Federal Bureau of Investigation shall submit annually to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a written report that specifies—

(1) the total number of challenges to the accuracy of the records of the National Instant Criminal Background Check System (in this section referred to as the “NICS system”) established under section 103 of the Brady Handgun Violence Prevention Act that were received by the NICS system during the year covered by the report;

(2) the total number of the challenges that were processed to final disposition by the NICS system;

(3) the total number of the challenges with respect to which the initial determination of the NICS system was reversed, and with respect to those challenges, the total number in which each reason for the initial determination was made;

(4) the total number of the challenges with respect to which the initial determination of the NICS system was not reversed, and with respect to those challenges, the total number in which each reason for not doing so was made; and

(5) the average length of time needed to complete the processing of the challenges referred to in paragraph (2).

SEC. 4. SENSE OF THE CONGRESS.

It is the sense of the Congress that—

(1) the right of the people to keep and bear arms is a fundamental component of self-government, self-defense, and the preservation of individual liberty;

(2) deprivation of the constitutional right to bear arms requires due process under the Fifth and Fourteenth Amendments to the Constitution of the United States;

(3) ignoring appeals of determinations made by the National Instant Criminal Background Check System (NICS) violates due process; and

(4) NICS should have the burden of showing a valid reason for the denial of this constitutional right.

Purpose and Summary

H.R. 2184, the Firearm Due Process Protection Act, introduced by Rep. Tom Emmer (R-MN), requires courts to hold a hearing within 30 days of an individual filing a lawsuit challenging the accuracy of the individual's records in the National Instant Background Check System (NICS) due to that individual being denied his or her right to purchase a firearm due to the allegedly inaccurate records.

Background and Need for the Legislation

In order for an FFL to lawfully sell a firearm to a prospective purchaser, the FFL must run a NICS background check on the prospective purchaser before transferring the firearm.¹ This check searches three federal databases for information that would make the prospective purchaser ineligible to obtain a firearm under federal law.² If an individual fails a NICS background check and is determined to be a prohibited possessor under federal law, the individual may request the reason for the denial from the Attorney General.³ Furthermore, under current law, the prospective purchaser can send the Attorney General information “to correct, clarify, or supplement records” in the system if he or she believes that there is an error.⁴

The prospective purchaser can also file an appeal directly with NICS if he or she believes that he or she was wrongly been denied the right to receive or possess a firearm.⁵ In 2023, the latest year for which there is data, 22,615 appeals challenging a NICS denial were filed with the FBI.⁶ Of the 22,615 appeals received, 6,263 resulted in a denial being overturned, 12,406 denials were sustained, and 3,946 denials were unresolved.⁷ After President Trump signed the Fix NICS Act into law in 2018, the FBI has 60 days to process the appeal of NICS denial.⁸ Specifically, the Attorney General is required to determine “whether or not the prospective transferee is the subject of an erroneous record and remove such records that are determined to be erroneous” within 60 days of receiving information from the prospective transferee.⁹ However, if the FBI fails to act within 60 days, there is no enforcement mechanism for the prospective purchaser. Additionally, federal regulation requires all appeals-related information to be automatically purged after 90 days, forcing law-abiding Americans to restart the process from the beginning.¹⁰

Prospective purchasers can bring a lawsuit against the government or entities responsible for providing the erroneous informa-

¹See 18 U.S.C. § 922(t).

²U.S. Dep’t of Justice, Bureau of Justice Statistics, *The NICS Improvement Act of 2007*, <https://bjs.ojp.gov/programs/nics-improvement-amendments-act?tid=49&ty=tp> (last visited Jun. 12, 2024).

³34 U.S.C. § 40901(f).

⁴34 U.S.C. § 40901(g).

⁵U.S. Dep’t of Justice, Federal Bureau of Investigation, Firearm-Related Challenge (Appeal) and Voluntary Appeal File (VAF), <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/national-instant-criminal-background-check-system-nics-appeals-vaf> (last visited Mar. 11, 2025).

⁶U.S. Dep’t of Justice, Federal Bureau of Investigation, National Instant Criminal Background Check System (NICS) Denial Report (Oct. 2, 2024).

⁷*Id.*

⁸Pub. L. 115–141 (2018); 34 U.S.C. § 40901(g).

⁹*Id.*

¹⁰28 C.F.R. § 25.9 (b)(1)(ii).

tion to get a court order requiring the erroneous information to be corrected or the transfer approved.¹¹ However, current law does not provide any sort of preference for these cases on court dockets—meaning that a person erroneously denied his or her right to purchase a firearm may wait months or years. If a prospective transferee files a lawsuit challenging the accuracy of the records in the NICS system, the Firearm Due Process Protection Act would require the courts to hold a hearing within 30 days of the lawsuit being filed. Furthermore, the government or the entity responsible for providing the alleged erroneous information would bear the burden of proving by clear and convincing evidence that the prospective purchaser is ineligible to receive or possess a firearm.

Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearings were used to develop H. R. 2184: “The Right to Self Defense,” a hearing held on March 4, 2025, before the Subcommittee on Crime and Federal Government Surveillance of the Committee on the Judiciary. The Subcommittee heard testimony from the following witnesses:

- Doug Ritter, Founder and Chair of Knife Rights, Inc. and Knife Rights Foundation;
- Diana Muller, Founder of Women for Gun Rights;
- Dave McDermott, Founding Partner of McDermott Law Group and USCCA Network Attorney; and
- Gregory Jackson, Jr., Former Deputy Director, White House Office of Gun Violence Prevention.

The hearing examined the individual’s right to self-defense protected by the Second Amendment and examined the efficacy of gun control policies and their related effect on public safety.

Committee Consideration

On March 25, 2024, the Committee met in open session and ordered the bill, H.R. 2184, favorably reported with an amendment in the nature of a substitute, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the Committee states that no recorded votes occurred during consideration of H.R. 2184.

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

¹¹ 18 U.S.C. § 925A.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act of 1974* has been timely submitted prior to filing of the report and is included in the report. Such a cost estimate is included in this report.

Congressional Budget Office Cost Estimate

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the enclosed cost estimate for H.R. 2184 from the Director of the Congressional Budget Office:

H.R. 2184, Firearm Due Process Protection Act			
As ordered reported by the House Committee on the Judiciary on March 25, 2025			
By Fiscal Year, Millions of Dollars	2025	2025-2030	2025-2035
Direct Spending (Outlays)	0	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2036?	*	Statutory pay-as-you-go procedures apply? Yes	
	*	Mandate Effects	
		Contains intergovernmental mandate?	No
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2036?		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 2184 would amend the authority that allows a person to bring legal action against the federal government, a state, or a political subdivision of a state if one of those entities provides incorrect information to the National Instant Criminal Background Check System (NICS) that results in the denial of a firearm purchase. Under current law, firearm dealers are legally required to contact the NICS for background checks conducted on people purchasing firearms or explosives.

H.R. 2184 would require federal courts to hold hearings within 30 days of any filing pertaining to a subsection of legal actions included in the Brady Handgun Violence Prevention Act and require the relevant government entity to bear the burden of proof for violations preventing a person from owning a firearm. The bill also would require the relevant government entity to cover the legal costs for people who win their case; under current law, the court decides when to award legal fees.

Finally, the bill would require the Federal Bureau of Investigation (FBI) to report annually to the Congress on how often the NICS receives challenges to the accuracy of its records.

The bill does not specify a source of funding for the payment of legal fees, but because the payment of those fees would be required by law and not explicitly subject to future appropriation, CBO treats the payments by federal entities as direct spending. Using information from the FBI, CBO expects the additional legal fees paid by the federal government would be very small. On that basis, CBO estimates that the increase in direct spending under H.R. 2184 would be less than \$500,000 over the 2025–2035 period.

Using information from the FBI and based on the costs of similar reporting requirements, CBO estimates that any administrative costs for processing additional cases and reporting to the Congress would be insignificant; any related spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Zunara Naeem. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

Committee Estimate of Budgetary Effects

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974*.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 2184 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 2184 would require courts to hold a hearing within 30 days of an individual filing a lawsuit challenging the accuracy of the individual's records in the National Instant Background Check System (NICS) due to that individual being denied his or her right to purchase a firearm due to the allegedly inaccurate records.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H.R. 2184 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

Federal Mandates Statement

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the *Unfunded Mandates Reform Act*.

Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Pub. L. 104–1).

Section-by-Section Analysis

Sec. 1. Short title. The “Firearm Due Process Protection Act.”

Sec. 2. Enforcement of deadline for final disposition of requests to correct records of the National Instant Criminal Background Check System; due process protections. This section requires courts to hold a hearing within 30 days of a prospective transferee filing a lawsuit challenging the accuracy of the records in the NICS system. The government or the entity responsible for providing the alleged erroneous information bears the burden of proving by clear and convincing evidence that the prospective transferee is ineligible to receive or possess a firearm. Additionally, in the event that the prospective transferee substantially prevails in the lawsuit, the court is required to assess attorney fees and other litigation costs against the government or the entity responsible for providing the alleged erroneous information.

Sec. 3. Annual reports to the Congress on disposition of challenges to accuracy of records of the National Instant Criminal Background Check System. This section requires the Attorney General to submit annual reports to the House and Senate Judiciary Committees concerning information related to challenges to the accuracy of records in the NICS system.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 44—FIREARMS

* * * * *

§ 925A. Remedy for erroneous denial of firearm

(a) *IN GENERAL.*—Any person denied a firearm pursuant to subsection (s) or (t) of section 922 or aggrieved by a violation of the penultimate sentence of section 103(g) of the Brady Handgun Violence Prevention Act—

(1) due to the provision of erroneous information relating to the person by any State or political subdivision thereof, or by the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act; or

(2) who was not prohibited from receipt of a firearm pursuant to subsection (g) or (n) of section 922, may bring an action against the State or political subdivision responsible for providing the erroneous information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the erroneous information be corrected or that the transfer be approved, as the case may be. [In any action under this section, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs.]

(b) *PROCEDURAL RULES.*—

(1) *EXPEDITED HEARING.*—The court shall hold a hearing on an action brought under subsection (a), within 30 days after the action is brought.

(2) *BURDEN OF PROOF.*—At such a hearing, the respondent shall bear the burden of proving by clear and convincing evidence that the individual is ineligible to receive or possess a firearm.

(c) *REMEDIES.*—

(1) *IN GENERAL.*—The court shall assess against the respondent reasonable attorney fees and other litigation costs reasonably incurred in an action brought under subsection (a) in which the complainant has substantially prevailed.

(2) *SUBSTANTIALLY PREVAILED.*—For purposes of this section, a complainant has substantially prevailed if the complainant has obtained relief through—

(A) a judicial order;

(B) an enforceable written agreement or consent decree; or

(C) a voluntary or unilateral change in position by the United States, if the complainant's claim is not insubstantial.

* * * * *

Additional Views

The Firearm Due Process Protection Act is a well-intentioned bill. No one should be wrongfully denied their Second Amendment rights due to bureaucratic errors. While this bill is offered as a solution to delayed appeals of National Instant Criminal Background Check System (NICS) denials based on erroneous information, it appears to be a solution in search of a problem.

Currently, federal law provides any prospective firearm purchaser who receives a NICS denial the ability to challenge and cor-

rect what they believe is erroneous information.¹ Pursuant to this law, the Attorney General has 60 days to determine whether the challenged information is erroneous or not and to remove any records that are erroneous.² Federal law also provides that a prospective purchaser may bring an action in federal court against a state, a political subdivision of a state, or the United States, if the person is denied a firearm purchase through NICS due to an erroneous record.³ The court may then order correction of the record or that the firearms transfer be approved.

H.R. 2184 would amend section 925 of title 18 to create a procedure for obtaining an expedited hearing within 30 days for people bringing an action against a state or federal government for a NICS denial based on erroneous information or who have sought to correct erroneous information in NICS, and who have not received a response within 60 days. H.R. 2184 would also mandate awarding attorneys' fees and litigation costs to a claimant who substantially prevails.

When we marked up this legislation, I noted that the Majority had not presented any data to support the existence of a problem. Specifically, they did not present data on how many people seek to correct information in NICS and do not get a response within 60 days. The Minority contacted the Federal Bureau of Investigation (FBI), which operates NICS and asked how many individuals seek to challenge a NICS denial and do not receive a response within 60 days. The answer was zero. FBI staff informed the Minority that all NICS challenges receive a response within 60 calendar days. They informed us that cases that can be resolved expeditiously and cases that are insufficient based on the application or documentation typically get a response within 14 business days and that all other challenges are processed within 45 calendar days, on average. They also informed us that there are no backlogs or delays for customers challenging their firearm-related denial.

As I stated at the markup, the NICS system is not perfect. According to the 2023 NICS Operations Report, the FBI received 22,615 firearm-related challenges.⁴ Of those challenges, 12,406 were sustained and 6,263 were overturned.⁵ After the markup, the FBI provided statistics for 2024. In 2024, the FBI received 23,613 challenges. Of those, 13,021 were sustained, 5,492 were overturned, 1,684 were submitted with an incorrect or invalid transaction number and the challenger was notified, 415 fall into an "other" category, and 3,001 were unresolved. Unresolved responses are provided when the FBI NICS Section has cleared the original prohibition but has located additional potential prohibitions that cannot be resolved after conducting further research. Notably, in 2024, there were fewer cases overturned and more cases sustained—both in absolute numbers and as a percentage of all challenges—as compared to 2023. All of these challenges received a response within 60 days.

¹ 34 U.S.C. § 40901(g).

² *Id.*

³ 18 U.S.C. § 925A.

⁴ *National Instant Criminal Background Check System (NICS) Section 2023 Operational Report*, FED. BUREAU OF INV. (2023), <https://www.fbi.gov/file-repository/cjis/2023-nics-operational-report.pdf/view>.

⁵ *Id.*

The information we received since the markup underscores that this bill is likely a solution in search of a problem. Currently, people who challenge NICS denials receive a response within 60 days.

It is worth noting that the FBI has procedures to prevent erroneous NICS denials. The form prospective gun buyers fill out prior to a NICS background check gives them the option to provide a Social Security Number. As the form notes, this is purely optional, but it can help prevent misidentification. Additionally, a person who believes that they have received a false denial may use the FBI's Voluntary Appeal File process. When a person applies for the Voluntary Appeal File, FBI staff will research whether the person is prohibited from obtaining firearms. If no prohibitions are found, the FBI will issue a unique personal identification number to prevent delays or false denials on future gun purchases. Anyone may apply for the Voluntary Appeal File, but it is specifically designed to address false denials, including those caused by people with similar names.

While existing law and FBI initiatives like these prevent erroneous denials and provide a way to promptly correct errors, I still believe that no one should be denied constitutional rights due to bureaucratic errors. Further, the reporting provisions of this bill might provide us with information that Congress, the FBI, and other federal agencies could use to continue to improve the accuracy of NICS so that it operates as Congress intends it to: allowing people who may lawfully purchase or otherwise obtain firearms to do so while keeping firearms out of the hands of those who may not legally have them. Therefore, I do not oppose this legislation.

JAMIE RASKIN,
Ranking Member.

