

107TH CONGRESS
2D SESSION

H. R. 4757

AN ACT

To improve the national instant criminal
background check system, and for other purposes.

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To improve the national instant criminal background check
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1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Our Lady of Peace
3 Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) Since 1994, more than 689,000 individuals
7 have been denied a gun for failing a background
8 check.

9 (2) States that fail to computerize their crimi-
10 nal and mental illness records are the primary cause
11 of delays for background checks. Helping States
12 automate their records will reduce delays for law-
13 abiding gun owners.

14 (3) 25 States have automated less than 60 per-
15 cent of their felony criminal conviction records.

16 (4) 33 States do not automate or share dis-
17 qualifying mental health records.

18 (5) In 13 States, domestic violence restraining
19 orders are not automated or accessible by the na-
20 tional instant criminal background check system.

21 (6) In 15 States, no domestic violence mis-
22 demeanor records are automated or accessible by the
23 national instant criminal background check system.

1 **TITLE I—TRANSMITTAL OF**
2 **RECORDS**

3 **SEC. 101. ENHANCEMENT OF REQUIREMENT THAT FED-**
4 **ERAL DEPARTMENTS AND AGENCIES PRO-**
5 **VIDE RELEVANT INFORMATION TO THE NA-**
6 **TIONAL INSTANT CRIMINAL BACKGROUND**
7 **CHECK SYSTEM.**

8 (a) IN GENERAL.—Section 103(e)(1) of the Brady
9 Handgun Violence Prevention Act (18 U.S.C. 922 note)
10 is amended—

11 (1) by inserting “electronically” before “fur-
12 nish”; and

13 (2) by adding at the end the following: “The
14 head of each department or agency shall ascertain
15 whether the department or agency has any records
16 relating to any person described in subsection (g) or
17 (n) of section 922 of title 18, United States Code
18 and on being made aware that the department or
19 agency has such a record, shall make the record
20 available to the Attorney General for inclusion in the
21 system to the extent the Attorney General deems ap-
22 propriate. The head of each department or agency,
23 on being made aware that the basis under which a
24 record was made available under this section does
25 not apply or no longer applies, shall transmit a cer-

1 tification identifying the record (and any name or
2 other relevant identifying information) to the Attor-
3 ney General for removal from the system. The Attor-
4 ney General shall notify the Congress on an annual
5 basis as to whether the Attorney General has ob-
6 tained from each such department or agency the in-
7 formation requested by the Attorney General under
8 this subsection.”.

9 (b) IMMIGRATION RECORDS.—The Commissioner of
10 the Immigration and Naturalization Service shall cooper-
11 ate in providing information regarding all relevant records
12 of persons disqualified from acquiring a firearm under
13 Federal law, including but not limited to, illegal aliens,
14 visitors to the United States on student visas, and visitors
15 to the United States on tourist visas, to the Attorney Gen-
16 eral for inclusion in the national instant criminal
17 background check system.

18 **SEC. 102. REQUIREMENTS TO OBTAIN WAIVER.**

19 (a) IN GENERAL.—Beginning 5 years after the date
20 of the enactment of this Act, a State shall be eligible to
21 receive a waiver of the 10 percent matching requirement
22 for National Criminal History Improvement Grants under
23 the Crime Identification Technology Act of 1988 if the
24 State provides at least 95 percent of the information de-

1 scribed in subsection (b). The length of such a waiver shall
2 not exceed 5 years.

3 (b) ELIGIBILITY OF STATE RECORDS FOR SUBMIS-
4 SION TO THE NATIONAL INSTANT CRIMINAL
5 BACKGROUND CHECK SYSTEM.—

6 (1) REQUIREMENTS FOR ELIGIBILITY.—The
7 State shall make available the following information
8 established either through its own database or pro-
9 vide information to the Attorney General:

10 (A) The name of and other relevant identi-
11 fying information relating to each person dis-
12 qualified from acquiring a firearm under sub-
13 section (g) or (n) of section 922 of title 18,
14 United States Code, and each person disquali-
15 fied from acquiring a firearm under applicable
16 State law.

17 (B) The State, on being made aware that
18 the basis under which a record was made avail-
19 able under subparagraph (A) does not apply or
20 no longer applies, shall transmit a certification
21 identifying the record (and any name or other
22 relevant identifying information) to the Attor-
23 ney General for removal from the system.

24 (C) Any information provided to the Attor-
25 ney General under subparagraph (A) may be

1 accessed only for background check purposes
2 under section 922(t) of title 18, United States
3 Code.

4 (D) The State shall certify to the Attorney
5 General that at least 95 percent of all informa-
6 tion described in subparagraph (A) has been
7 provided to the Attorney General in accordance
8 with subparagraph (A).

9 (2) APPLICATION TO PERSONS CONVICTED OF
10 MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE.—

11 (A) For purposes of paragraph (1), a person dis-
12 qualified from acquiring a firearm as referred to in
13 that paragraph includes a person who has been con-
14 victed in any court of any Federal, State, or local of-
15 fense that—

16 (i) is a misdemeanor under Federal or
17 State law or, in a State that does not classify
18 offenses as misdemeanors, is an offense punish-
19 able by imprisonment for a term of 1 year or
20 less (or punishable by only a fine);

21 (ii) has, as an element of the offense, the
22 use or attempted use of physical force (for ex-
23 ample, assault and battery), or the threatened
24 use of a deadly weapon; and

1 (iii) was committed by a current or former
2 spouse, parent, or guardian of the victim, by a
3 person with whom the victim shares a child in
4 common, by a person who is cohabitating with
5 or has cohabitated with the victim as a spouse,
6 parent, or guardian, (for example, the equiva-
7 lent of “common-law marriage” even if such re-
8 lationship is not recognized under the law), or
9 a person similarly situated to a spouse, parent,
10 or guardian of the victim (for example, two per-
11 sons who are residing at the same location in
12 an intimate relationship with the intent to make
13 that place their home would be similarly situ-
14 ated to a spouse).

15 (B) A person shall not be considered to have
16 been convicted of such an offense for purposes of
17 subparagraph (A) unless—

18 (i) the person is considered to have been
19 convicted by the jurisdiction in which the pro-
20 ceeding was held;

21 (ii) the person was represented by counsel
22 in the case, or knowingly and intelligently
23 waived the right to counsel in the case; and

1 (iii) in the case of a prosecution for which
2 a person was entitled to a jury trial in the juris-
3 diction in which the case was tried—

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

5 (II) the person knowingly and intel-
6 ligently waived the right to have the case
7 tried by a jury, by guilty plea, or other-
8 wise.

9 (C) A person shall not be considered to have
10 been convicted of such an offense for purposes of
11 subparagraph (A) if the conviction has been ex-
12 punged or set aside, or is an offense for which the
13 person has been pardoned or has had civil rights re-
14 stored (if the law of the jurisdiction in which the
15 proceedings were held provides for the loss of civil
16 rights upon conviction of such an offense) unless the
17 pardon, expungement, or restoration of civil rights
18 expressly provides that the person may not ship,
19 transport, possess, or receive firearms, and the per-
20 son is not otherwise prohibited by the law of the ju-
21 risdiction in which the proceedings were held from
22 receiving or possessing any firearms.

23 (3) APPLICATION TO PERSONS WHO HAVE BEEN
24 ADJUDICATED AS A MENTAL DEFECTIVE OR COM-
25 MITTED TO A MENTAL INSTITUTION.—

1 (A) For purposes of paragraph (1), an ad-
2 judication as a mental defective occurs when a
3 court, board, commission, or other government
4 entity determines that a person, as a result of
5 marked subnormal intelligence, or mental ill-
6 ness, incompetency, condition, or disease—

7 (i) is a danger to himself or to others;

8 or

9 (ii) lacks the mental capacity to con-
10 tract or manage his own affairs.

11 (B) The term “adjudicated as a mental de-
12 fective” includes—

13 (i) a finding of insanity by a court in
14 a criminal case; and

15 (ii) a finding that a person is incom-
16 petent to stand trial or is not guilty by
17 reason of lack of mental responsibility pur-
18 suant to articles 50a and 72b of the Uni-
19 form Code of Military Justice (10 U.S.C.
20 850a, 876b).

21 (C) EXCEPTIONS.—This paragraph does
22 not apply to—

23 (i) a person—

24 (I) in a mental institution for ob-
25 servation; or

- 1 (II) voluntarily committed to a
2 mental institution; or
3 (ii) information protected by doctor-
4 patient privilege.

5 (4) PRIVACY PROTECTIONS.—For any informa-
6 tion provided under the national instant criminal
7 background check system, the Attorney General
8 shall work with States and local law enforcement
9 and the mental health community to establish regu-
10 lations and protocols for protecting the privacy of in-
11 formation provided to the system. In the event of a
12 conflict between a provision of this Act and a provi-
13 sion of State law relating to privacy protection, the
14 provision of State law shall control.

15 (5) STATE AUTHORITY.—Notwithstanding any
16 other provision of this subsection, a State may des-
17 ignate that records transmitted under this sub-
18 section shall be used only to determine eligibility to
19 purchase or possess a firearm.

20 (c) ATTORNEY GENERAL REPORT.—Not later than
21 January 31 of each year, the Attorney General shall sub-
22 mit to the Committee on the Judiciary of the Senate and
23 the Committee on the Judiciary of the House of Rep-
24 resentatives a report on the progress of States in auto-
25 mating the databases containing the information described

1 in subsection (b) and in providing that information pursu-
2 ant to the requirements of such subsection.

3 **SEC. 103. IMPLEMENTATION GRANTS TO STATES.**

4 (a) IN GENERAL.—From amounts made available to
5 carry out this section, the Attorney General shall make
6 grants to each State, in a manner consistent with the na-
7 tional criminal history improvement program, which shall
8 be used by the State, in conjunction with units of local
9 government and State and local courts, to establish or up-
10 grade information and identification technologies for fire-
11 arms eligibility determinations.

12 (b) USE OF GRANT AMOUNTS.—Grants under this
13 section may only be awarded for the following purposes:

14 (1) Building databases that are directly related
15 to checks under the national instant criminal
16 background check system (NICS), including court
17 disposition and corrections records.

18 (2) Assisting States in establishing or enhanc-
19 ing their own capacities to perform NICS
20 background checks.

21 (3) Improving final dispositions of criminal
22 records.

23 (4) Supplying mental health records to NICS.

24 (5) Supplying court-ordered domestic restrain-
25 ing orders and records of domestic violence mis-

1 demeanors (as defined in section 102 of this Act) for
2 inclusion in NICS.

3 (c) CONDITION.—As a condition of receiving a grant
4 under this section, a State shall specify the projects for
5 which grant amounts will be used, and shall use such
6 amounts only as specified. A State that violates this sec-
7 tion shall be liable to the Attorney General for the full
8 amount granted.

9 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
10 authorized to be appropriated to carry out this section
11 \$250,000,000 for each of fiscal years 2004, 2005, and
12 2006.

13 (e) The Federal Bureau of Investigation shall not
14 charge a user fee for background checks pursuant to sec-
15 tion 922(t) of title 18, United States Code.

16 **TITLE II—FOCUSING FEDERAL**
17 **ASSISTANCE ON THE IM-**
18 **PROVEMENT OF RELEVANT**
19 **RECORDS**

20 **SEC. 201. CONTINUING EVALUATIONS.**

21 (a) EVALUATION REQUIRED.—The Director of the
22 Bureau of Justice Statistics shall study and evaluate the
23 operations of the national instant criminal background
24 check system. Such study and evaluation shall include, but
25 not be limited to, compilations and analyses of the oper-

1 ations and record systems of the agencies and organiza-
2 tions participating in such system.

3 (b) REPORT ON GRANTS.—Not later than January
4 31 of each year, the Director shall submit to Congress
5 a report on the implementation of section 102(b).

6 (c) REPORT ON BEST PRACTICES.—Not later than
7 January 31 of each year, the Director shall submit to Con-
8 gress, and to each State participating in the National
9 Criminal History Improvement Program, a report of the
10 practices of the States regarding the collection, mainte-
11 nance, automation, and transmittal of identifying informa-
12 tion relating to individuals described in subsection (g) or
13 (n) of section 922 of title 18, United States Code, by the
14 State or any other agency, or any other records relevant
15 to the national instant criminal background check system,
16 that the Director considers to be best practices.

17 **TITLE III—GRANTS TO STATE**
18 **COURTS FOR THE IMPROVE-**
19 **MENT IN AUTOMATION AND**
20 **TRANSMITTAL OF DISPOSI-**
21 **TION RECORDS**

22 **SEC. 301. GRANTS AUTHORIZED.**

23 (a) IN GENERAL.—From amounts made available to
24 carry out this section, the Attorney General shall make
25 grants to each State for use by the chief judicial officer

1 of the State to improve the handling of proceedings related
2 to criminal history dispositions and restraining orders.

3 (b) USE OF FUNDS.—Amounts granted under this
4 section shall be used by the chief judicial officer only as
5 follows:

6 (1) For fiscal year 2004, such amounts shall be
7 used to carry out assessments of the capabilities of
8 the courts of the State for the automation and
9 transmission to State and Federal record reposi-
10 tories the arrest and conviction records of such
11 courts.

12 (2) For fiscal years after 2004, such amounts
13 shall be used to implement policies, systems, and
14 procedures for the automation and transmission to
15 State and Federal record repositories the arrest and
16 conviction records of such courts.

17 (c) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to the Attorney General
19 to carry out this section \$125,000,000 for each of fiscal
20 years 2004, 2005, and 2006.

Passed the House of Representatives October 15,
2002.

Attest:

Clerk.