

Calendar No. 904

110TH CONGRESS
2D SESSION

S. 2756

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

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2008

Mr. BIDEN (for himself, Mr. HATCH, Mr. SPECTER, Mr. JOHNSON, Mrs. McCASKILL, Mr. ISAKSON, Mr. ENSIGN, Mrs. DOLE, Mrs. FEINSTEIN, and Mr. COLEMAN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

APRIL 1 (legislative day, MARCH 13), 2008

Committee discharged; referred to the Committee on the Judiciary

JULY 28, 2008

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Child Protection Im-
3 provements Act of 2008”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) In 2006, 61,200,000 adults (a total of 26.7
7 percent of the population) contributed a total of
8 8,100,000,000 hours of volunteer service. Of those
9 who volunteer, 27 percent dedicate their service to
10 education or youth programs, or a total of
11 16,500,000 adults.

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

21 (3) A study released in 2002, found that, of in-
22 dividuals released from prison in 15 States in 1994,
23 an estimated 67.5 percent were rearrested for a fel-
24 ony or serious misdemeanor within 3 years. Three-
25 quarters of those new arrests resulted in convictions
26 or a new prison sentence.

1 (4) Given the large number of individuals with
2 criminal records and the vulnerability of the popu-
3 lation they work with, human service organizations
4 that work with children need an effective and reli-
5 able means of obtaining a complete criminal history
6 in order to determine the suitability of a potential
7 volunteer or employee.

8 (5) The large majority of Americans (88 per-
9 cent) favor granting youth-serving organizations ac-
10 cess to conviction records for screening volunteers
11 and 59 percent favored allowing youth-serving orga-
12 nizations to consider arrest records when screening
13 volunteers. This was the only use for which a major-
14 ity of those surveyed favored granting access to ar-
15 rest records.

16 (6) Congress has previously attempted to en-
17 sure that States make Federal Bureau of Investiga-
18 tion criminal history record checks available to orga-
19 nizations seeking to screen employees and volunteers
20 who work with children, the elderly, and individuals
21 with disabilities, through the National Child Protec-
22 tion Act of 1993 (42 U.S.C. 5119 et seq.) and the
23 Volunteers for Children Act (Public Law 105-251;
24 112 Stat. 1885). However, according to a June
25 2006 report from the Attorney General, these laws

1 “did not have the intended impact of broadening the
2 availability of NCPA checks”. A 2007 survey con-
3 ducted by MENTOR/National Mentoring Partner-
4 ship found that only 18 States allowed youth men-
5 toring organizations to access nationwide Federal
6 Bureau of Investigation background searches.

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

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

18 (9) The Child Safety Pilot Program under sec-
19 tion 108 of the PROTECT Act (42 U.S.C. 5119a
20 note) revealed the importance of performing finger-
21 print-based Federal Bureau of Investigation criminal
22 history record checks. Of 29,000 background checks
23 performed through the pilot as of March 2007, 6.4
24 percent of volunteers were found to have a criminal
25 record of concern, including very serious offenses

1 such as sexual abuse of minors, assault, child cru-
 2 elty, murder, and serious drug offenses.

3 ~~(10)~~ In an analysis performed on the volunteers
 4 screened in the first 18 months of the Child Safety
 5 Pilot Program, it was found that over 25 percent of
 6 the individuals with criminal records had committed
 7 an offense in a State other than the State in which
 8 they were applying to volunteer, meaning that a
 9 State-only search would not have found relevant
 10 criminal results. In addition, even though volunteers
 11 knew a background check was being performed, over
 12 50 percent of the individuals found to have a crimi-
 13 nal record falsely indicated on their application form
 14 that they did not have a criminal record.

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

20 **SEC. 3. BACKGROUND CHECKS.**

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

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

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

1 **“SEC. 5. PROGRAM FOR NATIONAL CRIMINAL HISTORY**
 2 **BACKGROUND CHECKS FOR CHILD-SERVING**
 3 **ORGANIZATIONS.**

4 ~~“(a) DEFINITIONS.—In this section—~~

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

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

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

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

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

24 ~~“(B) who—~~

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

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

6 ~~“(5) the term ‘fitness determination program’~~
7 means the fitness determination program established
8 under subsection (b)(2);

9 ~~“(6) the term ‘identification document’ has the~~
10 meaning given that term in section 1028 of title 18;
11 United States Code;

12 ~~“(7) the term ‘participating entity’ means a~~
13 covered entity that is approved under subsection (f)
14 to receive nationwide background checks from the
15 applicant processing center and to participate in the
16 fitness determination program;

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

24 ~~“(9) the term ‘State authorized agency’ means~~
25 a division or office of a State designated by that

1 State to report, receive, or disseminate criminal his-
 2 tory information.

3 “(b) ESTABLISHMENT OF PROGRAM.—Not later than
 4 90 days after the date of enactment of the Child Protec-
 5 tion Improvements Act of 2008, the Attorney General
 6 shall—

7 “(1) establish within the Federal Government
 8 or through an agreement with a nonprofit entity an
 9 applicant processing center; and

10 “(2) enter into an agreement with the National
 11 Center for Missing and Exploited Children, under
 12 which the National Center for Missing and Exploited
 13 Children shall establish a fitness determination pro-
 14 gram.

15 “(c) APPLICANT PROCESSING CENTER.—

16 “(1) PURPOSE.—The purpose of the applicant
 17 processing center is to streamline the process of ob-
 18 taining nationwide background checks, provide effec-
 19 tive customer service, and facilitate widespread ac-
 20 cess to nationwide background checks by partici-
 21 pating entities.

22 “(2) DUTIES.—The applicant processing center
 23 shall—

1 “(A) provide information to covered enti-
2 ties on the requirements to become a partici-
3 pating entity;

4 “(B) provide participating entities with ac-
5 cess to nationwide background checks on cov-
6 ered individuals;

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

10 “(D) serve as a national resource center to
11 provide guidance and assistance to participating
12 entities on how to submit requests for nation-
13 wide background checks, how to interpret crimi-
14 nal history records, how to obtain State crimi-
15 nal background checks, and other related infor-
16 mation;

17 “(E) to the extent practicable, negotiate an
18 agreement with each State authorized agency
19 under which—

20 “(i) that State authorized agency shall
21 conduct a State criminal background check
22 within the time periods specified in sub-
23 section (e) in response to a request from
24 the applicant processing center and provide
25 criminal history records to the National

Center for Missing and Exploited Children;
and

“(ii) a participating entity may elect
to obtain a State background check, in ad-
dition to a nationwide background check,
through 1 unified request to the applicant
processing center;

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

“(G) collect a fee to conduct the nation-
wide background check, and, if appropriate, a
State criminal background check, and remit
fees to the National Center for Missing and Ex-
ploited Children, the Federal Bureau of Inves-
tigation, and the State authorized agencies, as
appropriate;

“(H) convey the results of the fitness de-
termination to the participating entity that sub-
mitted the request for a nationwide background
check; and

“(I) coordinate with the Federal Bureau of
Investigation, participating State authorized

1 agencies, and the National Center for Missing
2 and Exploited Children to ensure that back-
3 ground check requests are being completed
4 within the time periods specified in subsection
5 (e).

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 proe-
 18 essing center may collect a fee to defray the
 19 costs of carrying out its duties and the duties
 20 of the National Center for Missing and Ex-
 21 ploited Children under this section—

22 “(i) for a nationwide background
 23 check and fitness determination, in an
 24 amount not to exceed the lesser of—

1 “(I) the actual cost to the appli-
 2 cant processing center and the Na-
 3 tional Center for Missing and Ex-
 4 ploited Children of conducting a na-
 5 tionwide background check and fitness
 6 determination under this section; or

7 “(H)(aa) \$25 for a participating
 8 entity that is a nonprofit entity; or

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

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

16 “(B) REDUCED FEES.—In determining the
 17 amount of the fees to be collected under sub-
 18 paragraph (A), the applicant processing cen-
 19 ter—

20 “(i) shall, to the extent possible, dis-
 21 count such fees for participating entities
 22 that are nonprofit entities; and

23 “(ii) may use fees paid by partici-
 24 pating entities that are not nonprofit enti-
 25 ties to reduce the fees to be paid by par-

1 participating entities that are nonprofit enti-
2 ties.

3 ~~“(C) PROHIBITION ON FEES.—~~

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

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

13 ~~“(d) FITNESS DETERMINATION PROGRAM.—~~

14 ~~“(1) PURPOSE.—The purpose of the fitness de-~~
15 ~~termination program is to provide participating enti-~~
16 ~~ties with reliable and accurate information regarding~~
17 ~~whether a covered individual has been convicted of,~~
18 ~~or is under pending arrest or indictment for, a crime~~
19 ~~that bears upon the fitness of the covered individual~~
20 ~~to have responsibility for the safety and well-being of~~
21 ~~the children in their care.~~

22 ~~“(2) REQUIREMENTS OF FITNESS DETERMINA-~~
23 ~~TION PROGRAM.—As part of operating the fitness~~
24 ~~determination program, the National Center for~~
25 ~~Missing and Exploited Children shall—~~

1 “(A) establish procedures to securely re-
2 ceive criminal background records from the
3 Federal Bureau of Investigation and, if appro-
4 priate, State authorized agencies;

5 “(B) make determinations regarding
6 whether the criminal history record information
7 received in response to a criminal history back-
8 ground check conducted under this section indi-
9 cate that the covered individual has a criminal
10 history record that may render the covered indi-
11 vidual unfit to provide care to children; based
12 on the criteria described in paragraph (3);

13 “(C) convey a fitness determination to the
14 applicant processing center;

15 “(D) specify the source of the criminal his-
16 tory information upon which a fitness deter-
17 mination is based; and

18 “(E) work with the applicant processing
19 center and the Federal Bureau of Investigation
20 to develop procedures and processes to ensure
21 that criminal history background check requests
22 are being completed within the time periods
23 specified in subsection (e).

24 “(3) CRITERIA.—

1 “(A) IN GENERAL.—Subject to subpara-
 2 graph (B), the fitness determination program
 3 shall use the criteria relating to when criminal
 4 history record information indicates that an in-
 5 dividual has a criminal history record that may
 6 render the individual unfit to provide care to
 7 children that were established for the Child
 8 Safety Pilot Program under section 108(a)(3)
 9 of the PROTECT Act (42 U.S.C. 5119a note).

10 “(B) REVIEW.—The Attorney General and
 11 the National Center for Missing and Exploited
 12 Children, in coordination with national organi-
 13 zations representing a range of covered entities,
 14 shall review the criteria described in subpara-
 15 graph (A) and make any changes needed to use
 16 such criteria in the fitness determination pro-
 17 gram.

18 “(c) TIMING.—

19 “(1) IN GENERAL.—Criminal background
 20 checks shall be completed not later than 10 business
 21 days after the date that a request for a national
 22 background check is received by the applicant proc-
 23 essing center. The applicant processing center shall
 24 work with the National Center for Missing and Ex-
 25 ploited Children and the Federal Bureau of Inves-

1 tigation to ensure that the time limits under this
2 subsection are being achieved.

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

11 ~~“(3) CONDUCT OF BACKGROUND CHECKS.—~~The
12 Federal Bureau of Investigation and, if appropriate,
13 a State authorized agency shall provide criminal his-
14 tory records information to the National Center for
15 Missing and Exploited Children not later than 3
16 business days after the date that the Federal Bu-
17 reau of Investigation or State authorized agency, as
18 the case may be, receives a request for a nationwide
19 background check from the applicant processing cen-
20 ter.

21 ~~“(4) FITNESS DETERMINATIONS.—~~The Na-
22 tional Center for Missing and Exploited Children
23 shall convey a fitness determination to a partici-
24 pating entity and the applicant processing center not
25 later than 4 business days after the date that the

1 National Center for Missing and Exploited Children
2 has received criminal history records from the Fed-
3 eral Bureau of Investigation and, if appropriate,
4 each applicable State authorized agency.

5 ~~“(f) PARTICIPATION IN PROGRAM.—~~

6 ~~“(1) IN GENERAL.—~~The applicant processing
7 center shall determine whether an entity is a covered
8 entity and whether that covered entity should be ap-
9 proved as a participating entity, based on the con-
10 sultation conducted under paragraph (2).

11 ~~“(2) CONSULTATION.—~~In determining how
12 many covered entities to approve as participating en-
13 tities, the applicant processing center shall consult
14 quarterly with the Federal Bureau of Investigation
15 and the National Center for Missing and Exploited
16 Children to determine the volume of requests for fit-
17 ness determinations that can be completed, based on
18 the capacity of the applicant processing center and
19 the fitness determination program, the availability of
20 resources, and the demonstrated need for such de-
21 terminations in order to protect children.

22 ~~“(3) PREFERENCE FOR NONPROFIT ORGANIZA-~~
23 ~~TIONS.—~~In determining whether a covered entity
24 should be approved as a participating entity under
25 paragraph (1), the applicant processing center shall

1 give preference to any organization participating in
 2 the Child Safety Pilot Program under section
 3 108(a)(3) of the PROTECT Act (42 U.S.C. 5119a
 4 note) on the date of enactment of the Child Protec-
 5 tion Improvements Act of 2008 and to any other
 6 nonprofit organizations.

7 ~~“(g) RIGHTS OF COVERED INDIVIDUALS.—~~

8 ~~“(1) IN GENERAL.—A covered individual who is~~
 9 ~~the subject of a nationwide background check under~~
 10 ~~this section may contact the Federal Bureau of In-~~
 11 ~~vestigation and, if appropriate, a State authorized~~
 12 ~~agency to—~~

13 ~~“(A) request that the full criminal history~~
 14 ~~report of that covered individual be provided to~~
 15 ~~that covered individual or the applicable partici-~~
 16 ~~pating entity not later than 10 business days~~
 17 ~~after the date of that request; and~~

18 ~~“(B) challenge the accuracy and complete-~~
 19 ~~ness of the criminal history record information~~
 20 ~~in the criminal history report.~~

21 ~~“(2) RESOLUTION OF CHALLENGES.—The Fed-~~
 22 ~~eral Bureau of Investigation and, if appropriate, a~~
 23 ~~State authorized agency shall promptly make a de-~~
 24 ~~termination regarding the accuracy and complete-~~

ness of any criminal history record information challenged under paragraph (1)(B).

“(h) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be appropriated to the Attorney General \$5,000,000 for fiscal year 2008, to—

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

“(B) establish and carry out the fitness determination program; and

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

“(2) FITNESS DETERMINATIONS.—There are authorized to be appropriated to the Attorney General to carry out the agreement under this section with the National Center for Missing and Exploited Children \$1,000,000 for each of fiscal years 2009 through 2013 to support the fitness determination program and so that fees for nonprofit organizations under that program are as low as possible.

“(3) SENSE OF THE SENATE.—It is the sense of the Senate that in fiscal year 2009, and each fiscal year thereafter, the fees collected by the appli-

1 cant processing center should be sufficient to carry
 2 out the duties of the applicant processing center
 3 under this section and to help support the fitness de-
 4 termination program.

5 “(i) REPORT TO CONGRESS.—The Attorney General
 6 shall, on an annual basis, submit to Congress a report on
 7 the participating entities, the number of covered individ-
 8 uals submitting applications under this section, and the
 9 data on the number and types of fitness determinations
 10 issued under this section.

11 “(j) LIMITATION ON LIABILITY.—

12 “(1) IN GENERAL.—A participating entity shall
 13 not be liable in an action for damages solely for fail-
 14 ure to conduct a criminal background check on a
 15 covered individual, nor shall a State or political sub-
 16 division thereof nor any agency, officer, or employee
 17 thereof, be liable in an action for damages for the
 18 failure of a participating entity (other than itself) to
 19 take action adverse to a covered individual who was
 20 the subject of a background check.

21 “(2) RELIANCE.—The applicant processing cen-
 22 ter or a participating entity that reasonably relies on
 23 a fitness determination or criminal history record in-
 24 formation received in response to a background
 25 check under this section shall not be liable in an ac-

tion for damages based on the inaccuracy or incompleteness of that information.

~~“(3) NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN.—~~

~~“(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the National Center for Missing and Exploited Children, including a director, officer, employee, or agent of the National Center for Missing and Exploited Children, shall not be liable in an action for damages relating to the performance of the responsibilities and functions of the National Center for Missing and Exploited Children under this section.~~

~~“(B) INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—Subparagraph (A) shall not apply in an action if the National Center for Missing and Exploited Children, or a director, officer, employee, or agent of the National Center for Missing and Exploited Children, engaged in intentional misconduct or acted, or failed to act, with actual malice, with reckless disregard to a substantial risk of causing injury without legal justification, or for a purpose unrelated to~~

1 the performance of responsibilities or functions
2 under this section.

3 ~~“(C) ORDINARY BUSINESS ACTIVITIES.—~~

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

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

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

12 (1) by striking “60-month”; and

13 (2) by adding at the end the following: “The
14 Child Safety Pilot Program under this paragraph
15 shall terminate on the date that the program for na-
16 tional criminal history background checks for child-
17 serving organizations established under the Child
18 Protection Improvements Act of 2008 is operating
19 and able to enroll any organization using the Child
20 Safety Pilot Program.”.

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “Child Protection Im-*
23 *provements Act of 2008”.*

24 **SEC. 2. FINDINGS.**

25 *Congress finds the following:*

1 (1) *In 2006, 61,200,000 adults (a total of 26.7*
2 *percent of the population) contributed a total of*
3 *8,100,000,000 hours of volunteer service. Of those who*
4 *volunteer, 27 percent dedicate their service to edu-*
5 *cation or youth programs, or a total of 16,500,000*
6 *adults.*

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

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

22 (4) *Given the large number of individuals with*
23 *criminal records and the vulnerability of the popu-*
24 *lation they work with, human service organizations*
25 *that work with children need an effective and reliable*

1 *means of obtaining a complete criminal history in*
2 *order to determine the suitability of a potential vol-*
3 *unteer or employee.*

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

11 *(6) Congress has previously attempted to ensure*
12 *that States make Federal Bureau of Investigation*
13 *criminal history record checks available to organiza-*
14 *tions seeking to screen employees and volunteers who*
15 *work with children, the elderly, and individuals with*
16 *disabilities, through the National Child Protection Act*
17 *of 1993 (42 U.S.C. 5119 et seq.) and the Volunteers*
18 *for Children Act (Public Law 105-251; 112 Stat.*
19 *1885). However, according to a June 2006 report*
20 *from the Attorney General, these laws “did not have*
21 *the intended impact of broadening the availability of*
22 *NCPA checks.”. A 2007 survey conducted by MEN-*
23 *TOR/National Mentoring Partnership found that only*
24 *18 States allowed youth mentoring organizations to*

1 *access nationwide Federal Bureau of Investigation*
2 *background searches.*

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

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

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

24 (10) *In an analysis performed on the volunteers*
25 *screened in the first 18 months of the Child Safety*

1 *Pilot Program, it was found that over 25 percent of*
 2 *the individuals with criminal records had committed*
 3 *an offense in a State other than the State in which*
 4 *they were applying to volunteer, meaning that a*
 5 *State-only search would not have found relevant*
 6 *criminal results. In addition, even though volunteers*
 7 *knew a background check was being performed, over*
 8 *50 percent of the individuals found to have a crimi-*
 9 *nal record falsely indicated on their application form*
 10 *that they did not have a criminal record.*

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

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

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

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

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

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

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

1 “(1) the term ‘applicant processing center’ means
2 the applicant processing center established by the At-
3 torney General under subsection (b)(1);

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

6 “(3) the term ‘covered entity’ means a business
7 or organization, whether public, private, for-profit,
8 nonprofit, or voluntary that provides care, care place-
9 ment, supervision, treatment, education, training, in-
10 struction, or recreation to children, including a busi-
11 ness or organization that licenses, certifies, or coordi-
12 nates individuals or organizations to provide care,
13 care placement, supervision, treatment, education,
14 training, instruction, or recreation to children;

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

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

20 “(B) who—

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

24 “(ii) owns or operates, or seeks to own
25 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 cov-
8 ered 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 ap-
13 plicant processing center;

14 “(8) the term ‘qualified State program’ means a
15 program of a State authorized agency that the Attor-
16 ney 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 United
21 States, the District of Columbia, the Commonwealth
22 of Puerto Rico, American Samoa, the Virgin Islands,
23 Guam, the Commonwealth of the Northern Mariana
24 Islands, the Federated States of Micronesia, the Re-

1 *public of the Marshall Islands, and the Republic of*
 2 *Palau; and*

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

7 “(b) *ESTABLISHMENT OF PROGRAM.*—*Not later than*
 8 *180 days after the date of enactment of the Child Protection*
 9 *Improvements Act of 2008, the Attorney General shall—*

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

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

18 “(3) *conduct—*

19 “(A) *an annual assessment of each State*
 20 *authorized agency to determine whether the agen-*
 21 *cy operates a qualified State program, including*
 22 *a review of whether the State authorized agen-*
 23 *cy—*

24 “(i) *has designated a wide range of*
 25 *covered entities as eligible to submit State*

1 *criminal background check requests and na-*
2 *tionwide background check requests to the*
3 *State authorized agency;*

4 “(ii) *charges a covered entity not more*
5 *than a total of \$36 for a State criminal*
6 *background check and a nationwide back-*
7 *ground check; and*

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

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

17 “(i) *a State authorized agency that*
18 *does not have a qualified State program re-*
19 *quests such an assessment; or*

20 “(ii) *the Attorney General receives re-*
21 *ports from covered entities indicating that a*
22 *State authorized agency that has a qualified*
23 *State program no longer meets the stand-*
24 *ards described in subparagraph (A).*

25 “(c) *APPLICANT PROCESSING CENTER.—*

1 “(1) *PURPOSE.*—*The purpose of the applicant*
2 *processing center is to streamline the process of ob-*
3 *taining nationwide background checks, provide effec-*
4 *tive customer service, and facilitate widespread access*
5 *to nationwide background checks by participating en-*
6 *tities.*

7 “(2) *DUTIES.*—*The applicant processing center*
8 *shall—*

9 “(A) *handle inquiries from covered entities*
10 *and inform covered entities about how to request*
11 *nationwide background checks—*

12 “(i) *for a covered entity located in a*
13 *State with a qualified State program, by re-*
14 *ferring the covered entity to the State au-*
15 *thorized agency; and*

16 “(ii) *for a covered entity located in a*
17 *State without a qualified State program, by*
18 *providing information on the requirements*
19 *to become a participating entity;*

20 “(B) *provide participating entities with ac-*
21 *cess to nationwide background checks on covered*
22 *individuals;*

23 “(C) *receive paper and electronic requests*
24 *for nationwide background checks on covered in-*
25 *dividuals from participating entities;*

1 “(D) serve as a national resource center to
2 provide guidance and assistance to participating
3 entities on how to submit requests for nationwide
4 background checks, how to obtain State criminal
5 background checks, the possible restrictions that
6 apply when making hiring decisions based on
7 criminal history records, and other related infor-
8 mation;

9 “(E) to the extent practicable, negotiate an
10 agreement with each State authorized agency
11 under which—

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

19 “(ii) a participating entity may elect
20 to obtain a State criminal background
21 check, in addition to a nationwide back-
22 ground check, through 1 unified request to
23 the applicant processing center;

24 “(F) convert all paper fingerprint cards
25 into an electronic form and securely transmit all

1 *fingerprints electronically to the national crimi-*
2 *nal history background check system and, if ap-*
3 *propriate, the State authorized agencies;*

4 “(G) collect a fee to conduct the nationwide
5 *background check, and, if appropriate, a State*
6 *criminal background check, and remit fees to the*
7 *Federal Bureau of Investigation and, if appro-*
8 *priate, the State authorized agencies;*

9 “(H) convey to the participating entity that
10 *submitted the request for a nationwide back-*
11 *ground check—*

12 “(i) a statement indicating whether a
13 *criminal history, including a conviction,*
14 *arrest, or pending arrest or indictment, re-*
15 *lating to a covered individual was found;*

16 “(ii) information relating to the ap-
17 *propriate use of criminal history records*
18 *when making decisions regarding hiring*
19 *employees and using volunteers;*

20 “(iii) if a criminal history is found, a
21 *recommendation to the participating entity*
22 *to consult with the covered individual in*
23 *order to obtain more information about the*
24 *individual’s criminal history, and a list of*

1 *factors to consider in assessing the signifi-*
2 *cance of that criminal history, including—*

3 *“(I) any positive criminal back-*
4 *ground history;*

5 *“(II) the nature, gravity, and cir-*
6 *cumstances of any offense indicated in*
7 *the individual’s criminal history*
8 *record, including whether the indi-*
9 *vidual was convicted of the offense;*

10 *“(III) the period of time that has*
11 *elapsed since the date of the offense or*
12 *end of a period of incarceration or su-*
13 *pervised release;*

14 *“(IV) the nature of the position*
15 *held or sought; and*

16 *“(V) any evidence of rehabilita-*
17 *tion; and*

18 *“(iv) instructions that, in evaluating*
19 *the considerations described in clause (iii),*
20 *the participating entity should consult the*
21 *Equal Employment Opportunity Commis-*
22 *sion Policy Statement on the Issue of Con-*
23 *viction Records under Title VII of the Civil*
24 *Rights Act and the Policy Guidance on the*
25 *Consideration of Arrest Records in Employ-*

1 *ment Decisions under Title VII of the Civil*
2 *Rights Act of 1964, or any successor to such*
3 *policy statement or policy guidance issued*
4 *by the Equal Employment Opportunity*
5 *Commission;*

6 *“(I) for any request by a participating enti-*
7 *ty for a nationwide criminal background check*
8 *for which a criminal history is found, convey to*
9 *the applicable covered individual the criminal*
10 *history and an explanation of the right of the*
11 *covered individual to appeal the accuracy and*
12 *completeness of that criminal history on the*
13 *same date that the statement, information, and*
14 *instructions described in subparagraph (H) are*
15 *conveyed to the participating entity;*

16 *“(J) coordinate with the Federal Bureau of*
17 *Investigation and participating State authorized*
18 *agencies to ensure that background check requests*
19 *are being completed within the time periods*
20 *specified in subsection (e); and*

21 *“(K) refer participating entities and cov-*
22 *ered individuals to the appropriate State agency*
23 *or the Federal Bureau of Investigation if a*
24 *criminal history includes incomplete or inac-*
25 *curate information.*

1 “(3) *REQUESTS.*—A request for a nationwide
2 background check by a participating entity shall in-
3 clude—

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

6 “(B) a photocopy of a valid identification
7 document; and

8 “(C) a statement completed and signed by
9 the covered individual that—

10 “(i) sets out the covered individual’s
11 name, address, and date of birth, as those
12 items of information appear on a valid
13 identification document;

14 “(ii) states whether the covered indi-
15 vidual has a criminal record, and, if so,
16 provides the particulars of such criminal
17 record;

18 “(iii) notifies the covered individual
19 that the Attorney General and, if appro-
20 priate, a State authorized agency may per-
21 form a criminal history background check
22 and that the signature of the covered indi-
23 vidual on the statement constitutes an ac-
24 knowledgegment that such a check may be
25 conducted;

1 “(iv) notifies the covered individual
2 that prior to and after the completion of the
3 background check, the participating entity
4 may choose to deny the covered individual
5 access to children; and

6 “(v) notifies the covered individual of
7 the right of the covered individual to correct
8 an erroneous record of the Attorney General
9 and, if appropriate, the State authorized
10 agency.

11 “(4) FEES.—

12 “(A) IN GENERAL.—The applicant proc-
13 essing center may collect a fee to defray the costs
14 of carrying out its duties under this section—

15 “(i) for a nationwide background
16 check, in an amount not to exceed the lesser
17 of—

18 “(I) the actual cost to the appli-
19 cant processing center of conducting a
20 nationwide background check under
21 this section; or

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

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

1 “(ii) for a State criminal background
 2 check described in paragraph (2)(E), in the
 3 amount specified in the agreement with the
 4 applicable State authorized agency, not to
 5 exceed \$18.

6 “(B) *REDUCED FEES*.—In determining the
 7 amount of the fees to be collected under subpara-
 8 graph (A), the applicant processing center—

9 “(i) shall, to the extent possible, dis-
 10 count such fees for participating entities
 11 that are nonprofit entities; and

12 “(ii) may use fees paid by partici-
 13 pating entities that are not nonprofit enti-
 14 ties to reduce the fees to be paid by partici-
 15 pating entities that are nonprofit entities.

16 “(C) *PROHIBITION ON FEES*.—

17 “(i) *IN GENERAL*.—A participating en-
 18 tity may not charge another entity or indi-
 19 vidual a surcharge to access a background
 20 check conducted under this section.

21 “(ii) *VIOLATION*.—The Attorney Gen-
 22 eral shall bar any participating entity that
 23 the Attorney General determines violated
 24 clause (i) from submitting background
 25 checks under this section.

1 “(d) *CRIMINAL HISTORY RESOURCE CENTER.*—

2 “(1) *PURPOSE.*—*The purpose of the criminal*
3 *history resource center is to provide participating en-*
4 *tities with reliable and accurate information regard-*
5 *ing the interpretation of criminal histories.*

6 “(2) *REQUIREMENTS.*—*As part of operating the*
7 *criminal history resource center, the National Center*
8 *for Missing and Exploited Children—*

9 “(A) *shall establish, and make available,*
10 *general guidelines to assist participating entities*
11 *with analyzing and interpreting criminal his-*
12 *tory records;*

13 “(B) *shall respond to requests from partici-*
14 *pating entities for assistance in understanding*
15 *and interpreting a criminal history, including*
16 *providing—*

17 “(i) *information on the crime com-*
18 *mitted and the seriousness of such crime*
19 *under the law of the applicable State;*

20 “(ii) *information regarding whether*
21 *multiple charges are part of 1 offense or a*
22 *series of offenses; and*

23 “(iii) *other information that can assist*
24 *a participating entity in understanding the*
25 *gravity, nature, and seriousness of the*

1 *criminal history and the time lapse since*
 2 *the last offense was committed; and*

3 “(C) *in responding to a request under sub-*
 4 *paragraph (B)—*

5 “(i) *shall provide general guidance to*
 6 *assist the participating entity in assessing*
 7 *criminal history records; and*

8 “(ii) *may not make any individualized*
 9 *determination relating to whether a covered*
 10 *individual may represent a danger to chil-*
 11 *dren or whether the participating entity*
 12 *should hire or refrain from hiring any cov-*
 13 *ered individual.*

14 “(e) *TIMING.—*

15 “(1) *IN GENERAL.—Criminal background checks*
 16 *shall be completed not later than 10 business days*
 17 *after the date that a request for a national back-*
 18 *ground check is received by the applicant processing*
 19 *center. The applicant processing center shall work*
 20 *with the Federal Bureau of Investigation to ensure*
 21 *that the time limits under this subsection are being*
 22 *achieved.*

23 “(2) *APPLICATION PROCESSING.—The applicant*
 24 *processing center shall electronically submit a na-*
 25 *tional background check request to the national crimi-*

1 *nal history background check system and, if appro-*
 2 *priate, the participating State authorized agency not*
 3 *later than 3 business days after the date that a re-*
 4 *quest for a national background check is received by*
 5 *the applicant processing center.*

6 “(3) CONDUCT OF BACKGROUND CHECKS.—*The*
 7 *Federal Bureau of Investigation and, if appropriate,*
 8 *a State authorized agency shall provide criminal his-*
 9 *tory records information to the applicant processing*
 10 *center not later than 3 business days after the date*
 11 *that the Federal Bureau of Investigation or State au-*
 12 *thorized agency, as the case may be, receives a request*
 13 *for a nationwide background check from the applicant*
 14 *processing center.*

15 “(4) RESULTS.—*The applicant processing center*
 16 *shall convey the result of a national background check*
 17 *to the participating entity, and if appropriate, con-*
 18 *vey the criminal history to the covered individual not*
 19 *later than 4 business days after the date that the ap-*
 20 *plicant processing center has received criminal his-*
 21 *tory records from the Federal Bureau of Investigation*
 22 *and, if appropriate, each applicable State authorized*
 23 *agency.*

24 “(f) PARTICIPATION IN PROGRAM.—

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

5 “(A) *whether the entity is located in a State*
 6 *that has a qualified State program; and*

7 “(B) *the consultation conducted under*
 8 *paragraph (2).*

9 “(2) *CONSULTATION.*—*In determining how many*
 10 *covered entities to approve as participating entities,*
 11 *the applicant processing center shall consult quarterly*
 12 *with the Federal Bureau of Investigation to determine*
 13 *the volume of requests for national background checks*
 14 *that can be completed, based on the capacity of the*
 15 *applicant processing center and the Federal Bureau*
 16 *of Investigation, the availability of resources, and the*
 17 *demonstrated need for national background checks in*
 18 *order to protect children.*

19 “(3) *PREFERENCE FOR NONPROFIT ORGANIZA-*
 20 *TIONS.*—*In determining whether a covered entity*
 21 *should be approved as a participating entity under*
 22 *paragraph (1), the applicant processing center shall*
 23 *give preference to any organization participating in*
 24 *the Child Safety Pilot Program under section*
 25 *108(a)(3) of the PROTECT Act (42 U.S.C. 5119a*

1 *note) on the date of enactment of the Child Protection*
 2 *Improvements Act of 2008 and to any other nonprofit*
 3 *organizations.*

4 “(g) *RIGHTS OF COVERED INDIVIDUALS.—*

5 “(1) *IN GENERAL.—A covered individual who is*
 6 *the subject of a nationwide background check under*
 7 *this section may contact the Federal Bureau of Inves-*
 8 *tigation and, if appropriate, a State authorized agen-*
 9 *cy to—*

10 “(A) *request that the full criminal history*
 11 *report of that covered individual be provided to*
 12 *that covered individual or the applicable partici-*
 13 *pating entity not later than 10 business days*
 14 *after the date of that request; and*

15 “(B) *challenge the accuracy and complete-*
 16 *ness of the criminal history record information*
 17 *in the criminal history report.*

18 “(2) *RESOLUTION OF CHALLENGES.—The Fed-*
 19 *eral Bureau of Investigation and, if appropriate, a*
 20 *State authorized agency shall—*

21 “(A) *promptly make a determination re-*
 22 *garding the accuracy and completeness of any*
 23 *criminal history record information challenged*
 24 *under paragraph (1)(B); and*

25 “(B) *seek to—*

1 “(i) investigate any such challenge
 2 with relevant departments and agencies of
 3 the Federal Government and State and local
 4 governments; and

5 “(ii) correct any inaccurate or incom-
 6 plete records.

7 “(h) *AUTHORIZATION OF APPROPRIATIONS.*—

8 “(1) *IN GENERAL.*—There are authorized to be
 9 appropriated to the Attorney General \$5,000,000 for
 10 fiscal year 2008, to—

11 “(A) establish and carry out the duties of
 12 the applicant processing center established under
 13 this section;

14 “(B) establish and carry out the criminal
 15 history resource center; and

16 “(C) pursue technologies and procedures to
 17 streamline and automate processes to enhance
 18 cost efficiency.

19 “(2) *CRIMINAL HISTORY RESOURCE CENTER.*—

20 There are authorized to be appropriated to the Attor-
 21 ney General to carry out the agreement under this
 22 section with the National Center for Missing and Ex-
 23 ploited Children \$1,000,000 for each of fiscal years
 24 2009 through 2013 to support the criminal history re-
 25 source center.

1 “(3) *SENSE OF THE SENATE.*—*It is the sense of*
 2 *the Senate that in fiscal year 2009, and each fiscal*
 3 *year thereafter, the fees collected by the applicant*
 4 *processing center should be sufficient to carry out the*
 5 *duties of the applicant processing center under this*
 6 *section.*

7 “(i) *COLLECTION OF DATA AND REPORT TO CON-*
 8 *GRESS.*—

9 “(1) *IN GENERAL.*—*Not later than 1 year after*
 10 *the date of enactment of the Child Protection Im-*
 11 *provements Act of 2008, and annually thereafter, the*
 12 *Attorney General shall prepare and submit to Con-*
 13 *gress and make available to the public a report on the*
 14 *programs and procedures established under this Act.*

15 “(2) *COLLECTION OF DATA.*—

16 “(A) *DEFINITION OF DEMOGRAPHIC CHAR-*
 17 *ACTERISTICS.*—*In this paragraph, the term ‘de-*
 18 *mographic characteristics’ includes information*
 19 *pertaining to race, color, ancestry, national ori-*
 20 *gin, age, sex and marital status.*

21 “(B) *COMPILING.*—*Beginning 90 days after*
 22 *the date of enactment of the Child Protection Im-*
 23 *provements Act of 2008, the Attorney General,*
 24 *with the assistance of the applicant processing*
 25 *center shall compile data regarding—*

1 “(i) the number and types of partici-
2 pating entities;

3 “(ii) the fees charged to participating
4 entities under this section;

5 “(iii) the time interval between nation-
6 wide background check submissions and re-
7 sponses under this section;

8 “(iv) the fiscal impact of this section
9 on State authorized agencies;

10 “(v) the number and demographic
11 characteristics of covered individuals sub-
12 mitting a statement described in subsection
13 (c)(3)(C) as part of a request for a nation-
14 wide background check;

15 “(vi) the number and demographic
16 characteristics of covered individuals deter-
17 mined to have a criminal history;

18 “(vii) the number, type (including the
19 identity of the offense and whether the of-
20 fense was committed while the covered indi-
21 vidual was a juvenile or adult), and fre-
22 quency of offenses, and length of the period
23 between the date of the offense and the date
24 of the nationwide background check for any

1 covered individuals found to have a crimi-
2 nal history under this section;

3 “(viii) the procedures available for cov-
4 ered individuals to challenge the accuracy
5 and completeness of criminal history record
6 information under this section;

7 “(ix) the number and results of chal-
8 lenges to the accuracy and completeness of
9 criminal history record information under
10 this section;

11 “(x) the number and types of correc-
12 tions of erroneous criminal history record
13 information based on a challenge under this
14 section; and

15 “(xi) the number and types of inquir-
16 ies for assistance on interpreting a criminal
17 history received by the criminal history re-
18 source center.

19 “(C) AGGREGATING DATA.—The Attorney
20 General, with the assistance of the applicant
21 processing center, shall—

22 “(i) aggregate the data collected under
23 this paragraph by State and city; and

24 “(ii) aggregate the data collected under
25 clauses (v), (vi), and (vii) of subparagraph

1 *(B) by race, color, ancestry, national origin,*
 2 *age, sex, and marital status.*

3 “(D) *REPORTS.*—

4 “(i) *IN GENERAL.*—Not later than 1
 5 year after the date of enactment of the Child
 6 Protection Improvements Act of 2008, and
 7 annually thereafter, the Attorney General
 8 shall prepare and submit to Congress a re-
 9 port concerning the data compiled and ag-
 10 gregated under this paragraph.

11 “(ii) *CONTENTS.*—Each report sub-
 12 mitted under clause (i) shall contain—

13 “(I) *the data compiled and aggre-*
 14 *gated under this paragraph, organized*
 15 *in such a way as to provide a com-*
 16 *prehensive analysis of the programs*
 17 *and procedures established under this*
 18 *section;*

19 “(II) *information regarding and*
 20 *analysis of—*

21 “(aa) *the programs and pro-*
 22 *cedures established under this sec-*
 23 *tion; and*

24 “(bb) *the extent such pro-*
 25 *grams and procedures have helped*

1 screen individuals who may pose
2 a risk to children; and

3 “(III) information regarding and
4 analysis of whether and to what extent
5 the programs and procedures estab-
6 lished under this section are having a
7 disparate impact on individuals based
8 on race, color, ancestry, national ori-
9 gin, age, sex, or marital status.

10 “(iii) *RECOMMENDATIONS*.—A report
11 submitted under clause (i) may contain rec-
12 ommendations to Congress on possible legis-
13 lative improvements to this section.

14 “(iv) *ADDITIONAL INFORMATION*.—
15 Upon the request of any member of Con-
16 gress, the Attorney General shall make
17 available any of the data compiled or aggre-
18 gated under this paragraph. The Attorney
19 General shall not make available any data
20 that identifies specific individuals.

21 “(j) *LIMITATION ON LIABILITY*.—

22 “(1) *IN GENERAL*.—

23 “(A) *FAILURE TO CONDUCT CRIMINAL*
24 *BACKGROUND CHECKS*.—No participating entity
25 shall be liable in an action for damages solely for

1 *failure to conduct a criminal background check*
 2 *on a covered individual.*

3 “(B) *FAILURE TO TAKE ADVERSE ACTION*
 4 *AGAINST COVERED INDIVIDUAL.—No partici-*
 5 *pating entity shall be liable in an action for*
 6 *damages solely for a failure to take action ad-*
 7 *verse to a covered individual upon receiving any*
 8 *notice of criminal history from the applicant*
 9 *processing center under subsection (c)(2)(H).*

10 “(2) *RELIANCE.—The applicant processing cen-*
 11 *ter or a participating entity that reasonably relies on*
 12 *criminal history record information received in re-*
 13 *sponse to a background check under this section shall*
 14 *not be liable in an action for damages based on the*
 15 *inaccuracy or incompleteness of that information.*

16 “(3) *NATIONAL CENTER FOR MISSING AND EX-*
 17 *PLOITED CHILDREN.—*

18 “(A) *IN GENERAL.—Except as provided in*
 19 *subparagraphs (B) and (C), the National Center*
 20 *for Missing and Exploited Children, including a*
 21 *director, officer, employee, or agent of the Na-*
 22 *tional Center for Missing and Exploited Chil-*
 23 *dren, shall not be liable in an action for dam-*
 24 *ages relating to the performance of the respon-*
 25 *sibilities and functions of the National Center for*

1 *Missing and Exploited Children under this sec-*
 2 *tion.*

3 “(B) *INTENTIONAL, RECKLESS, OR OTHER*
 4 *MISCONDUCT.*—Subparagraph (A) shall not
 5 *apply in an action if the National Center for*
 6 *Missing and Exploited Children, or a director,*
 7 *officer, employee, or agent of the National Center*
 8 *for Missing and Exploited Children, engaged in*
 9 *intentional misconduct or acted, or failed to act,*
 10 *with actual malice, with reckless disregard to a*
 11 *substantial risk of causing injury without legal*
 12 *justification, or for a purpose unrelated to the*
 13 *performance of responsibilities or functions*
 14 *under this section.*

15 “(C) *ORDINARY BUSINESS ACTIVITIES.*—
 16 *Subparagraph (A) shall not apply to an act or*
 17 *omission relating to an ordinary business activ-*
 18 *ity, such as an activity involving general admin-*
 19 *istration or operations, the use of motor vehicles,*
 20 *or personnel management.*

21 “(k) *PRIVACY OF INFORMATION.*—

22 “(1) *PROHIBITION ON UNAUTHORIZED DISCLO-*
 23 *SURE OR USE OF CRIMINAL HISTORY RECORDS.*—*Ex-*
 24 *cept for a covered individual, any entity or indi-*

1 *vidual authorized to receive or transmit fingerprints*
2 *or criminal history records under this Act—*

3 *“(A) shall use the fingerprints, criminal*
4 *history records, or information in the criminal*
5 *history records only for the purposes specifically*
6 *set forth in this Act;*

7 *“(B) shall allow access to the fingerprints,*
8 *criminal history records, or information in the*
9 *criminal history records only to those employees*
10 *of the entity, and only on such terms, as are nec-*
11 *essary to fulfill the purposes set forth in this Act;*

12 *“(C) shall not disclose the fingerprints,*
13 *criminal history records, or information in the*
14 *criminal history records, except as specifically*
15 *authorized under this Act;*

16 *“(D) shall keep a written record of each au-*
17 *thorized disclosure of the fingerprints, criminal*
18 *history records, or the information in the crimi-*
19 *nal history records; and*

20 *“(E) shall maintain adequate security*
21 *measures to ensure the confidentiality of the fin-*
22 *gerprints, the criminal history records, and the*
23 *information in the criminal history records.*

24 *“(2) COMPLIANCE.—*

1 “(A) *IN GENERAL.*—If the applicant proc-
 2 *essing center is established within the Federal*
 3 *Government, the Attorney General shall promul-*
 4 *gate regulations to ensure the enforcement of the*
 5 *nondisclosure requirements under paragraph (1)*
 6 *and to provide for appropriate sanctions in the*
 7 *case of violations of the requirements.*

8 “(B) *PARTICIPATING ENTITIES AND APPLI-*
 9 *CANT PROCESSING CENTER.*—The participation
 10 *in any program under this section by a partici-*
 11 *pating entity or a nongovernmental entity that*
 12 *enters into an agreement with the Attorney Gen-*
 13 *eral to establish an applicant processing center*
 14 *shall be conditioned on the participating entity*
 15 *or nongovernmental entity—*

16 “(i) *establishing procedures to ensure*
 17 *compliance with, and respond to any viola-*
 18 *tions of, paragraph (1); and*

19 “(ii) *maintaining substantial compli-*
 20 *ance with paragraph (1).*

21 “(3) *DESTRUCTION OF RECORDS.*—The appli-
 22 *cant processing center shall destroy any fingerprints*
 23 *or criminal history record received under this Act*
 24 *after any transaction based on the fingerprints or*
 25 *criminal history record is completed, and shall not*

1 *maintain the fingerprints, the criminal history*
2 *records, or the information in the criminal history*
3 *record in any form.”.*

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

5 *Section 108(a)(3)(A) of the PROTECT Act (42 U.S.C.*
6 *5119a note) is amended—*

7 *(1) by striking “60-month”; and*

8 *(2) by adding at the end the following: “The*
9 *Child Safety Pilot Program under this paragraph*
10 *shall terminate on the date that the program for na-*
11 *tional criminal history background checks for child-*
12 *serving organizations established under the Child Pro-*
13 *tection Improvements Act of 2008 is operating and*
14 *able to enroll any organization using the Child Safety*
15 *Pilot Program.”.*

Calendar No. 904

110TH CONGRESS
2D Session
S. 2756

A BILL

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

JULY 28, 2008

Reported with an amendment