

***In the Senate of the United States,***

*December 19, 2007.*

*Resolved*, That the bill from the House of Representatives (H.R. 2640) entitled “An Act to improve the National Instant Criminal Background Check System, and for other purposes.”, do pass with the following

**AMENDMENT:**

Strike out all after the enacting clause and insert:

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) *SHORT TITLE.*—*This Act may be cited as the “NICS*  
3 *Improvement Amendments Act of 2007”.*

4 (b) *TABLE OF CONTENTS.*—*The table of contents for*  
5 *this Act is as follows:*

*Sec. 1. Short title and table of contents.*

*Sec. 2. Findings.*

*Sec. 3. Definitions.*

**TITLE I—TRANSMITTAL OF RECORDS**

*Sec. 101. Enhancement of requirement that Federal departments and agencies provide relevant information to the National Instant Criminal Background Check System.*

*Sec. 102. Requirements to obtain waiver.*

*Sec. 103. Implementation assistance to States.*

*Sec. 104. Penalties for noncompliance.*

*Sec. 105. Relief from disabilities program required as condition for participation in grant programs.*

*Sec. 106. Illegal immigrant gun purchase notification.*

**TITLE II—FOCUSING FEDERAL ASSISTANCE ON THE IMPROVEMENT OF RELEVANT RECORDS**

*Sec. 201. Continuing evaluations.*

**TITLE III—GRANTS TO STATE COURT SYSTEMS FOR THE IMPROVEMENT IN AUTOMATION AND TRANSMITTAL OF DISPOSITION RECORDS**

*Sec. 301. Disposition records automation and transmittal improvement grants.*

**TITLE IV—GAO AUDIT**

*Sec. 401. GAO audit.*

**1 SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Approximately 916,000 individuals were pro-  
4 hibited from purchasing a firearm for failing a back-  
5 ground check between November 30, 1998, (the date  
6 the National Instant Criminal Background Check  
7 System (NICS) began operating) and December 31,  
8 2004.

9 (2) From November 30, 1998, through December  
10 31, 2004, nearly 49,000,000 Brady background checks  
11 were processed through NICS.

12 (3) Although most Brady background checks are  
13 processed through NICS in seconds, many background  
14 checks are delayed if the Federal Bureau of Investiga-  
15 tion (FBI) does not have automated access to com-  
16 plete information from the States concerning persons

1 *prohibited from possessing or receiving a firearm*  
2 *under Federal or State law.*

3 (4) *Nearly 21,000,000 criminal records are not*  
4 *accessible by NICS and millions of criminal records*  
5 *are missing critical data, such as arrest dispositions,*  
6 *due to data backlogs.*

7 (5) *The primary cause of delay in NICS back-*  
8 *ground checks is the lack of—*

9 (A) *updates and available State criminal*  
10 *disposition records; and*

11 (B) *automated access to information con-*  
12 *cerning persons prohibited from possessing or re-*  
13 *ceiving a firearm because of mental illness, re-*  
14 *straining orders, or misdemeanor convictions for*  
15 *domestic violence.*

16 (6) *Automated access to this information can be*  
17 *improved by—*

18 (A) *computerizing information relating to*  
19 *criminal history, criminal dispositions, mental*  
20 *illness, restraining orders, and misdemeanor con-*  
21 *victions for domestic violence; or*

22 (B) *making such information available to*  
23 *NICS in a usable format.*

24 (7) *Helping States to automate these records will*  
25 *reduce delays for law-abiding gun purchasers.*

1           (8) *On March 12, 2002, the senseless shooting,*  
2           *which took the lives of a priest and a parishioner at*  
3           *the Our Lady of Peace Church in Lynbrook, New*  
4           *York, brought attention to the need to improve infor-*  
5           *mation-sharing that would enable Federal and State*  
6           *law enforcement agencies to conduct a complete back-*  
7           *ground check on a potential firearm purchaser. The*  
8           *man who committed this double murder had a prior*  
9           *disqualifying mental health commitment and a re-*  
10          *straining order against him, but passed a Brady*  
11          *background check because NICS did not have the nec-*  
12          *essary information to determine that he was ineligible*  
13          *to purchase a firearm under Federal or State law.*

14          (9) *On April 16, 2007, a student with a history*  
15          *of mental illness at the Virginia Polytechnic Institute*  
16          *and State University shot to death 32 students and*  
17          *faculty members, wounded 17 more, and then took his*  
18          *own life. The shooting, the deadliest campus shooting*  
19          *in United States history, renewed the need to improve*  
20          *information-sharing that would enable Federal and*  
21          *State law enforcement agencies to conduct complete*  
22          *background checks on potential firearms purchasers.*  
23          *In spite of a proven history of mental illness, the*  
24          *shooter was able to purchase the two firearms used in*  
25          *the shooting. Improved coordination between State*

1        *and Federal authorities could have ensured that the*  
2        *shooter’s disqualifying mental health information was*  
3        *available to NICS.*

4        **SEC. 3. DEFINITIONS.**

5        *As used in this Act, the following definitions shall*  
6        *apply:*

7                (1) *COURT ORDER.*—*The term “court order” in-*  
8                *cludes a court order (as described in section 922(g)(8)*  
9                *of title 18, United States Code).*

10                (2) *MENTAL HEALTH TERMS.*—*The terms “adju-*  
11                *dicated as a mental defective” and “committed to a*  
12                *mental institution” have the same meanings as in*  
13                *section 922(g)(4) of title 18, United States Code.*

14                (3) *MISDEMEANOR CRIME OF DOMESTIC VIO-*  
15                *LENCE.*—*The term “misdemeanor crime of domestic*  
16                *violence” has the meaning given the term in section*  
17                *921(a)(33) of title 18, United States Code.*

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

3   **SEC. 101. ENHANCEMENT OF REQUIREMENT THAT FEDERAL**  
4                                   **DEPARTMENTS AND AGENCIES PROVIDE REL-**  
5                                   **EVANT INFORMATION TO THE NATIONAL IN-**  
6                                   **STANT CRIMINAL BACKGROUND CHECK SYS-**  
7                                   **TEM.**

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

11                   (1) by striking “Notwithstanding” and inserting  
12                   the following:

13                                   “(A) *IN GENERAL.*—Notwithstanding”;

14                   (2) by striking “On request” and inserting the  
15                   following:

16                                   “(B) *REQUEST OF ATTORNEY GENERAL.*—  
17                   On request”;

18                   (3) by striking “furnish such information” and  
19                   inserting “furnish electronic versions of the informa-  
20                   tion described under subparagraph (A)”;

21                   (4) by adding at the end the following:

22                                   “(C) *QUARTERLY SUBMISSION TO ATTORNEY*  
23                   *GENERAL.*—If a Federal department or agency  
24                   under subparagraph (A) has any record of any  
25                   person demonstrating that the person falls with-

1           *in one of the categories described in subsection*  
2           *(g) or (n) of section 922 of title 18, United*  
3           *States Code, the head of such department or*  
4           *agency shall, not less frequently than quarterly,*  
5           *provide the pertinent information contained in*  
6           *such record to the Attorney General.*

7           “(D) *INFORMATION UPDATES.*—*The Federal*  
8           *department or agency, on being made aware that*  
9           *the basis under which a record was made avail-*  
10           *able under subparagraph (A) does not apply, or*  
11           *no longer applies, shall—*

12                   “(i) *update, correct, modify, or remove*  
13                   *the record from any database that the agen-*  
14                   *cy maintains and makes available to the*  
15                   *Attorney General, in accordance with the*  
16                   *rules pertaining to that database; and*

17                   “(ii) *notify the Attorney General that*  
18                   *such basis no longer applies so that the Na-*  
19                   *tional Instant Criminal Background Check*  
20                   *System is kept up to date.*

21           *The Attorney General upon receiving notice pur-*  
22           *suant to clause (ii) shall ensure that the record*  
23           *in the National Instant Criminal Background*  
24           *Check System is updated, corrected, modified, or*  
25           *removed within 30 days of receipt.*

1           “(E) ANNUAL REPORT.—*The Attorney Gen-*  
2           *eral shall submit an annual report to Congress*  
3           *that describes the compliance of each department*  
4           *or agency with the provisions of this para-*  
5           *graph.*”.

6           (b) PROVISION AND MAINTENANCE OF NICS  
7 RECORDS.—

8           (1) DEPARTMENT OF HOMELAND SECURITY.—  
9           *The Secretary of Homeland Security shall make*  
10          *available to the Attorney General—*

11           (A) records, updated not less than quarterly,  
12          *which are relevant to a determination of whether*  
13          *a person is disqualified from possessing or re-*  
14          *ceiving a firearm under subsection (g) or (n) of*  
15          *section 922 of title 18, United States Code, for*  
16          *use in background checks performed by the Na-*  
17          *tional Instant Criminal Background Check Sys-*  
18          *tem; and*

19           (B) information regarding all the persons  
20          *described in subparagraph (A) of this paragraph*  
21          *who have changed their status to a category not*  
22          *identified under section 922(g)(5) of title 18,*  
23          *United States Code, for removal, when applica-*  
24          *ble, from the National Instant Criminal Back-*  
25          *ground Check System.*



1           (2) *DEPARTMENT OF JUSTICE.—The Attorney*  
2 *General shall—*

3           (A) *ensure that any information submitted*  
4 *to, or maintained by, the Attorney General*  
5 *under this section is kept accurate and confiden-*  
6 *tial, as required by the laws, regulations, poli-*  
7 *cies, or procedures governing the applicable*  
8 *record system;*

9           (B) *provide for the timely removal and de-*  
10 *struction of obsolete and erroneous names and*  
11 *information from the National Instant Criminal*  
12 *Background Check System; and*

13           (C) *work with States to encourage the devel-*  
14 *opment of computer systems, which would permit*  
15 *electronic notification to the Attorney General*  
16 *when—*

17           (i) *a court order has been issued, lifted,*  
18 *or otherwise removed by order of the court;*  
19 *or*

20           (ii) *a person has been adjudicated as a*  
21 *mental defective or committed to a mental*  
22 *institution.*

23           (c) *STANDARD FOR ADJUDICATIONS AND COMMIT-*  
24 *MENTS RELATED TO MENTAL HEALTH.—*

1           (1) *IN GENERAL.*—No department or agency of  
2     the Federal Government may provide to the Attorney  
3     General any record of an adjudication related to the  
4     mental health of a person or any commitment of a  
5     person to a mental institution if—

6           (A) the adjudication or commitment, respec-  
7     tively, has been set aside or expunged, or the per-  
8     son has otherwise been fully released or dis-  
9     charged from all mandatory treatment, super-  
10    vision, or monitoring;

11          (B) the person has been found by a court,  
12    board, commission, or other lawful authority to  
13    no longer suffer from the mental health condition  
14    that was the basis of the adjudication or commit-  
15    ment, respectively, or has otherwise been found to  
16    be rehabilitated through any procedure available  
17    under law; or

18          (C) the adjudication or commitment, respec-  
19    tively, is based solely on a medical finding of  
20    disability, without an opportunity for a hearing  
21    by a court, board, commission, or other lawful  
22    authority, and the person has not been adju-  
23    dicated as a mental defective consistent with sec-  
24    tion 922(g)(4) of title 18, United States Code, ex-  
25    cept that nothing in this section or any other

1           *provision of law shall prevent a Federal depart-*  
2           *ment or agency from providing to the Attorney*  
3           *General any record demonstrating that a person*  
4           *was adjudicated to be not guilty by reason of in-*  
5           *sanity, or based on lack of mental responsibility,*  
6           *or found incompetent to stand trial, in any*  
7           *criminal case or under the Uniform Code of*  
8           *Military Justice.*

9           (2) *TREATMENT OF CERTAIN ADJUDICATIONS*  
10          *AND COMMITMENTS.—*

11                 (A) *PROGRAM FOR RELIEF FROM DISABIL-*  
12                 *ITIES.—*

13                         (i) *IN GENERAL.—Each department or*  
14                         *agency of the United States that makes any*  
15                         *adjudication related to the mental health of*  
16                         *a person or imposes any commitment to a*  
17                         *mental institution, as described in sub-*  
18                         *section (d)(4) and (g)(4) of section 922 of*  
19                         *title 18, United States Code, shall establish,*  
20                         *not later than 120 days after the date of en-*  
21                         *actment of this Act, a program that permits*  
22                         *such a person to apply for relief from the*  
23                         *disabilities imposed by such subsections.*

24                         (ii) *PROCESS.—Each application for*  
25                         *relief submitted under the program required*

1           *by this subparagraph shall be processed not*  
2           *later than 365 days after the receipt of the*  
3           *application. If a Federal department or*  
4           *agency fails to resolve an application for re-*  
5           *lief within 365 days for any reason, includ-*  
6           *ing a lack of appropriated funds, the de-*  
7           *partment or agency shall be deemed for all*  
8           *purposes to have denied such request for re-*  
9           *lief without cause. Judicial review of any*  
10          *petitions brought under this clause shall be*  
11          *de novo.*

12           *(iii) JUDICIAL REVIEW.—Relief and*  
13          *judicial review with respect to the program*  
14          *required by this subparagraph shall be*  
15          *available according to the standards pre-*  
16          *scribed in section 925(c) of title 18, United*  
17          *States Code. If the denial of a petition for*  
18          *relief has been reversed after such judicial*  
19          *review, the court shall award the prevailing*  
20          *party, other than the United States, a rea-*  
21          *sonable attorney’s fee for any and all pro-*  
22          *ceedings in relation to attaining such relief,*  
23          *and the United States shall be liable for*  
24          *such fee. Such fee shall be based upon the*  
25          *prevailing rates awarded to public interest*

1           *legal aid organizations in the relevant com-*  
2           *munity.*

3           (B) *RELIEF FROM DISABILITIES.—In the*  
4           *case of an adjudication related to the mental*  
5           *health of a person or a commitment of a person*  
6           *to a mental institution, a record of which may*  
7           *not be provided to the Attorney General under*  
8           *paragraph (1), including because of the absence*  
9           *of a finding described in subparagraph (C) of*  
10           *such paragraph, or from which a person has*  
11           *been granted relief under a program established*  
12           *under subparagraph (A) or (B), or because of a*  
13           *removal of a record under section 103(e)(1)(D) of*  
14           *the Brady Handgun Violence Prevention Act, the*  
15           *adjudication or commitment, respectively, shall*  
16           *be deemed not to have occurred for purposes of*  
17           *subsections (d)(4) and (g)(4) of section 922 of*  
18           *title 18, United States Code. Any Federal agency*  
19           *that grants a person relief from disabilities*  
20           *under this subparagraph shall notify such person*  
21           *that the person is no longer prohibited under*  
22           *922(d)(4) or 922(g)(4) of title 18, United States*  
23           *Code, on account of the relieved disability for*  
24           *which relief was granted pursuant to a pro-*  
25           *ceeding conducted under this subparagraph, with*

1           *respect to the acquisition, receipt, transfer, ship-*  
2           *ment, transportation, or possession of firearms.*

3           (3) *NOTICE REQUIREMENT.*—*Effective 30 days*  
4           *after the date of enactment of this Act, any Federal*  
5           *department or agency that conducts proceedings to*  
6           *adjudicate a person as a mental defective under*  
7           *922(d)(4) or 922(g)(4) of title 18, United States Code,*  
8           *shall provide both oral and written notice to the indi-*  
9           *vidual at the commencement of the adjudication proc-*  
10          *ess including—*

11                 (A) *notice that should the agency adjudicate*  
12                 *the person as a mental defective, or should the*  
13                 *person be committed to a mental institution,*  
14                 *such adjudication, when final, or such commit-*  
15                 *ment, will prohibit the individual from pur-*  
16                 *chasing, possessing, receiving, shipping or trans-*  
17                 *porting a firearm or ammunition under section*  
18                 *922(d)(4) or section 922(g)(4) of title 18, United*  
19                 *States Code;*

20                 (B) *information about the penalties im-*  
21                 *posed for unlawful possession, receipt, shipment*  
22                 *or transportation of a firearm under section*  
23                 *924(a)(2) of title 18, United States Code; and*

24                 (C) *information about the availability of re-*  
25                 *lief from the disabilities imposed by Federal laws*

1           *with respect to the acquisition, receipt, transfer,*  
2           *shipment, transportation, or possession of fire-*  
3           *arms.*

4           (4) *EFFECTIVE DATE.*—*Except for paragraph*  
5           *(3), this subsection shall apply to names and other*  
6           *information provided before, on, or after the date of*  
7           *enactment of this Act. Any name or information pro-*  
8           *vided in violation of this subsection (other than in*  
9           *violation of paragraph (3)) before, on, or after such*  
10          *date shall be removed from the National Instant*  
11          *Criminal Background Check System.*

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

13          (a) *IN GENERAL.*—*Beginning 3 years after the date*  
14          *of the enactment of this Act, a State shall be eligible to re-*  
15          *ceive a waiver of the 10 percent matching requirement for*  
16          *National Criminal History Improvement Grants under the*  
17          *Crime Identification Technology Act of 1988 (42 U.S.C.*  
18          *14601) if the State provides at least 90 percent of the infor-*  
19          *mation described in subsection (c). The length of such a*  
20          *waiver shall not exceed 2 years.*

21          (b) *STATE ESTIMATES.*—

22                  (1) *INITIAL STATE ESTIMATE.*—

23                          (A) *IN GENERAL.*—*To assist the Attorney*  
24                          *General in making a determination under sub-*  
25                          *section (a) of this section, and under section 104,*

1        *concerning the compliance of the States in pro-*  
2        *viding information to the Attorney General for*  
3        *the purpose of receiving a waiver under sub-*  
4        *section (a) of this section, or facing a loss of*  
5        *funds under section 104, by a date not later than*  
6        *180 days after the date of the enactment of this*  
7        *Act, each State shall provide the Attorney Gen-*  
8        *eral with a reasonable estimate, as calculated by*  
9        *a method determined by the Attorney General*  
10       *and in accordance with section 104(d), of the*  
11       *number of the records described in subparagraph*  
12       *(C) applicable to such State that concern persons*  
13       *who are prohibited from possessing or receiving*  
14       *a firearm under subsection (g) or (n) of section*  
15       *922 of title 18, United States Code.*

16            *(B) FAILURE TO PROVIDE INITIAL ESTI-*  
17        *MATE.—A State that fails to provide an estimate*  
18        *described in subparagraph (A) by the date re-*  
19        *quired under such subparagraph shall be ineli-*  
20        *gible to receive any funds under section 103,*  
21        *until such date as it provides such estimate to*  
22        *the Attorney General.*

23            *(C) RECORD DEFINED.—For purposes of*  
24        *subparagraph (A), a record is the following:*



1           (i) A record that identifies a person  
2           who has been convicted in any court of a  
3           crime punishable by imprisonment for a  
4           term exceeding 1 year.

5           (ii) A record that identifies a person  
6           for whom an indictment has been returned  
7           for a crime punishable by imprisonment for  
8           a term exceeding 1 year that is valid under  
9           the laws of the State involved or who is a  
10          fugitive from justice, as of the date of the es-  
11          timate, and for which a record of final dis-  
12          position is not available.

13          (iii) A record that identifies a person  
14          who is an unlawful user of, or addicted to  
15          a controlled substance (as such terms “un-  
16          lawful user” and “addicted” are respec-  
17          tively defined in regulations implementing  
18          section 922(g)(3) of title 18, United States  
19          Code, as in effect on the date of the enact-  
20          ment of this Act) as demonstrated by ar-  
21          rests, convictions, and adjudications, and  
22          whose record is not protected from disclo-  
23          sure to the Attorney General under any pro-  
24          vision of State or Federal law.

1           (iv) *A record that identifies a person*  
2           *who has been adjudicated as a mental defec-*  
3           *tive or committed to a mental institution,*  
4           *consistent with section 922(g)(4) of title 18,*  
5           *United States Code, and whose record is not*  
6           *protected from disclosure to the Attorney*  
7           *General under any provision of State or*  
8           *Federal law.*

9           (v) *A record that is electronically*  
10          *available and that identifies a person who,*  
11          *as of the date of such estimate, is subject to*  
12          *a court order described in section 922(g)(8)*  
13          *of title 18, United States Code.*

14          (vi) *A record that is electronically*  
15          *available and that identifies a person con-*  
16          *victed in any court of a misdemeanor crime*  
17          *of domestic violence, as defined in section*  
18          *921(a)(33) of title 18, United States Code.*

19          (2) *SCOPE.—The Attorney General, in deter-*  
20          *mining the compliance of a State under this section*  
21          *or section 104 for the purpose of granting a waiver*  
22          *or imposing a loss of Federal funds, shall assess the*  
23          *total percentage of records provided by the State con-*  
24          *cerning any event occurring within the prior 20*  
25          *years, which would disqualify a person from pos-*

1        *sessing a firearm under subsection (g) or (n) of sec-*  
2        *tion 922 of title 18, United States Code.*

3            (3) *CLARIFICATION.—Notwithstanding para-*  
4        *graph (2), States shall endeavor to provide the Na-*  
5        *tional Instant Criminal Background Check System*  
6        *with all records concerning persons who are prohib-*  
7        *ited from possessing or receiving a firearm under sub-*  
8        *section (g) or (n) of section 922 of title 18, United*  
9        *States Code, regardless of the elapsed time since the*  
10       *disqualifying event.*

11        (c) *ELIGIBILITY OF STATE RECORDS FOR SUBMISSION*  
12 *TO THE NATIONAL INSTANT CRIMINAL BACKGROUND*  
13 *CHECK SYSTEM.—*

14            (1) *REQUIREMENTS FOR ELIGIBILITY.—*

15            (A) *IN GENERAL.—From the information*  
16        *collected by a State, the State shall make elec-*  
17        *tronically available to the Attorney General*  
18        *records relevant to a determination of whether a*  
19        *person is disqualified from possessing or receiv-*  
20        *ing a firearm under subsection (g) or (n) of sec-*  
21        *tion 922 of title 18, United States Code, or ap-*  
22        *plicable State law.*

23            (B) *NICS UPDATES.—The State, on being*  
24        *made aware that the basis under which a record*  
25        *was made available under subparagraph (A)*

1           *does not apply, or no longer applies, shall, as*  
2           *soon as practicable—*

3                     *(i) update, correct, modify, or remove*  
4                     *the record from any database that the Fed-*  
5                     *eral or State government maintains and*  
6                     *makes available to the National Instant*  
7                     *Criminal Background Check System, con-*  
8                     *sistent with the rules pertaining to that*  
9                     *database; and*

10                    *(ii) notify the Attorney General that*  
11                    *such basis no longer applies so that the*  
12                    *record system in which the record is main-*  
13                    *tained is kept up to date.*

14           *The Attorney General upon receiving notice pur-*  
15           *suant to clause (ii) shall ensure that the record*  
16           *in the National Instant Criminal Background*  
17           *Check System is updated, corrected, modified, or*  
18           *removed within 30 days of receipt.*

19                    *(C) CERTIFICATION.—To remain eligible for*  
20                    *a waiver under subsection (a), a State shall cer-*  
21                    *tify to the Attorney General, not less than once*  
22                    *during each 2-year period, that at least 90 per-*  
23                    *cent of all records described in subparagraph (A)*  
24                    *has been made electronically available to the At-*

1            *torney General in accordance with subparagraph*  
2            *(A).*

3            *(D) INCLUSION OF ALL RECORDS.—For*  
4            *purposes of this paragraph, a State shall iden-*  
5            *tify and include all of the records described*  
6            *under subparagraph (A) without regard to the*  
7            *age of the record.*

8            *(2) APPLICATION TO PERSONS CONVICTED OF*  
9            *MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE.—The*  
10           *State shall make available to the Attorney General,*  
11           *for use by the National Instant Criminal Background*  
12           *Check System, records relevant to a determination of*  
13           *whether a person has been convicted in any court of*  
14           *a misdemeanor crime of domestic violence. With re-*  
15           *spect to records relating to such crimes, the State*  
16           *shall provide information specifically describing the*  
17           *offense and the specific section or subsection of the of-*  
18           *fense for which the defendant has been convicted and*  
19           *the relationship of the defendant to the victim in each*  
20           *case.*

21           *(3) APPLICATION TO PERSONS WHO HAVE BEEN*  
22           *ADJUDICATED AS A MENTAL DEFECTIVE OR COM-*  
23           *MITTED TO A MENTAL INSTITUTION.—The State shall*  
24           *make available to the Attorney General, for use by the*  
25           *National Instant Criminal Background Check Sys-*

1        *tem, the name and other relevant identifying infor-*  
2        *mation of persons adjudicated as a mental defective*  
3        *or those committed to mental institutions to assist the*  
4        *Attorney General in enforcing section 922(g)(4) of*  
5        *title 18, United States Code.*

6        *(d) PRIVACY PROTECTIONS.—For any information*  
7        *provided to the Attorney General for use by the National*  
8        *Instant Criminal Background Check System, relating to*  
9        *persons prohibited from possessing or receiving a firearm*  
10       *under section 922(g)(4) of title 18, United States Code, the*  
11       *Attorney General shall work with States and local law en-*  
12       *forcement and the mental health community to establish*  
13       *regulations and protocols for protecting the privacy of in-*  
14       *formation provided to the system. The Attorney General*  
15       *shall make every effort to meet with any mental health*  
16       *group seeking to express its views concerning these regula-*  
17       *tions and protocols and shall seek to develop regulations as*  
18       *expeditiously as practicable.*

19       *(e) ATTORNEY GENERAL REPORT.—Not later than*  
20       *January 31 of each year, the Attorney General shall submit*  
21       *to the Committee on the Judiciary of the Senate and the*  
22       *Committee on the Judiciary of the House of Representatives*  
23       *a report on the progress of States in automating the data-*  
24       *bases containing the information described in subsection (b)*  
25       *and in making that information electronically available to*

1 *the Attorney General pursuant to the requirements of sub-*  
2 *section (c).*

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

4 (a) *AUTHORIZATION.—*

5 (1) *IN GENERAL.—From amounts made avail-*  
6 *able to carry out this section and subject to section*  
7 *102(b)(1)(B), the Attorney General shall make grants*  
8 *to States and Indian tribal governments, in a man-*  
9 *ner consistent with the National Criminal History*  
10 *Improvement Program, which shall be used by the*  
11 *States and Indian tribal governments, in conjunction*  
12 *with units of local government and State and local*  
13 *courts, to establish or upgrade information and iden-*  
14 *tification technologies for firearms eligibility deter-*  
15 *minations. Not less than 3 percent, and no more than*  
16 *10 percent of each grant under this paragraph shall*  
17 *be used to maintain the relief from disabilities pro-*  
18 *gram in accordance with section 105.*

19 (2) *GRANTS TO INDIAN TRIBES.—Up to 5 per-*  
20 *cent of the grant funding available under this section*  
21 *may be reserved for Indian tribal governments, in-*  
22 *cluding tribal judicial systems.*

23 (b) *USE OF GRANT AMOUNTS.—Grants awarded to*  
24 *States or Indian tribes under this section may only be used*  
25 *to—*

1           (1) *create electronic systems, which provide accurate and up-to-date information which is directly related to checks under the National Instant Criminal Background Check System (referred to in this section as “NICS”), including court disposition and corrections records;*

7           (2) *assist States in establishing or enhancing their own capacities to perform NICS background checks;*

11           (3) *supply accurate and timely information to the Attorney General concerning final dispositions of criminal records to databases accessed by NICS;*

13           (4) *supply accurate and timely information to the Attorney General concerning the identity of persons who are prohibited from obtaining a firearm under section 922(g)(4) of title 18, United States Code, to be used by the Federal Bureau of Investigation solely to conduct NICS background checks;*

19           (5) *supply accurate and timely court orders and records of misdemeanor crimes of domestic violence for inclusion in Federal and State law enforcement databases used to conduct NICS background checks;*

23           (6) *collect and analyze data needed to demonstrate levels of State compliance with this Act; and*



1           (7) *maintain the relief from disabilities program*  
2           *in accordance with section 105, but not less than 3*  
3           *percent, and no more than 10 percent of each grant*  
4           *shall be used for this purpose.*

5           (c) *ELIGIBILITY.—To be eligible for a grant under this*  
6           *section, a State shall certify, to the satisfaction of the Attor-*  
7           *ney General, that the State has implemented a relief from*  
8           *disabilities program in accordance with section 105.*

9           (d) *CONDITION.—As a condition of receiving a grant*  
10           *under this section, a State shall specify the projects for*  
11           *which grant amounts will be used, and shall use such*  
12           *amounts only as specified. A State that violates this sub-*  
13           *section shall be liable to the Attorney General for the full*  
14           *amount of the grant received under this section.*

15           (e) *AUTHORIZATION OF APPROPRIATIONS.—*

16           (1) *IN GENERAL.—There are authorized to be ap-*  
17           *propriated to carry out this section \$125,000,000 for*  
18           *fiscal year 2009, \$250,000,000 for fiscal year 2010,*  
19           *\$250,000,000 for fiscal year 2011, \$125,000,000 for*  
20           *fiscal year 2012, and \$125,000,000 for fiscal year*  
21           *2013.*

22           (2) *ALLOCATIONS.—For fiscal years 2009 and*  
23           *2010, the Attorney General shall endeavor to allocate*  
24           *at least 1/2 of the authorized appropriations to those*  
25           *States providing more than 50 percent of the records*

1     *required to be provided under sections 102 and 103.*  
2     *For fiscal years 2011, 2012, and 2013, the Attorney*  
3     *General shall endeavor to allocate at least 1/2 of the*  
4     *authorized appropriations to those States providing*  
5     *more than 70 percent of the records required to be*  
6     *provided under section 102 and 103. The allocations*  
7     *in this paragraph shall be subject to the discretion of*  
8     *the Attorney General, who shall have the authority to*  
9     *make adjustments to the distribution of the authorized*  
10    *appropriations as necessary to maximize incentives*  
11    *for State compliance.*

12    (f) *USER FEE.*—*The Federal Bureau of Investigation*  
13    *shall not charge a user fee for background checks pursuant*  
14    *to section 922(t) of title 18, United States Code.*

15    **SEC. 104. PENALTIES FOR NONCOMPLIANCE.**

16    (a) *ATTORNEY GENERAL REPORT.*—

17       (1) *IN GENERAL.*—*Not later than January 31 of*  
18    *each year, the Attorney General shall submit to the*  
19    *Committee on the Judiciary of the Senate and the*  
20    *Committee on the Judiciary of the House of Rep-*  
21    *resentatives a report on the progress of the States in*  
22    *automating the databases containing information de-*  
23    *scribed under sections 102 and 103, and in providing*  
24    *that information pursuant to the requirements of sec-*  
25    *tions 102 and 103.*

1           (2) *AUTHORIZATION OF APPROPRIATIONS.*—

2           *There are authorized to be appropriated to the De-*  
3           *partment of Justice, such funds as may be necessary*  
4           *to carry out paragraph (1).*

5           (b) *PENALTIES.*—

6           (1) *DISCRETIONARY REDUCTION.*—

7           (A) *During the 2-year period beginning 3*  
8           *years after the date of enactment of this Act, the*  
9           *Attorney General may withhold not more than 3*  
10           *percent of the amount that would otherwise be*  
11           *allocated to a State under section 505 of the Om-*  
12           *nibus Crime Control and Safe Streets Act of*  
13           *1968 (42 U.S.C. 3755) if the State provides less*  
14           *than 50 percent of the records required to be pro-*  
15           *vided under sections 102 and 103.*

16           (B) *During the 5-year period after the expi-*  
17           *ration of the period referred to in subparagraph*  
18           *(A), the Attorney General may withhold not*  
19           *more than 4 percent of the amount that would*  
20           *otherwise be allocated to a State under section*  
21           *505 of the Omnibus Crime Control and Safe*  
22           *Streets Act of 1968 (42 U.S.C. 3755) if the State*  
23           *provides less than 70 percent of the records re-*  
24           *quired to be provided under sections 102 and*  
25           *103.*

1           (2) *MANDATORY REDUCTION.*—*After the expira-*  
2           *tion of the periods referred to in paragraph (1), the*  
3           *Attorney General shall withhold 5 percent of the*  
4           *amount that would otherwise be allocated to a State*  
5           *under section 505 of the Omnibus Crime Control and*  
6           *Safe Streets Act of 1968 (42 U.S.C. 3755), if the*  
7           *State provides less than 90 percent of the records re-*  
8           *quired to be provided under sections 102 and 103.*

9           (3) *WAIVER BY ATTORNEY GENERAL.*—*The Attor-*  
10          *ney General may waive the applicability of para-*  
11          *graph (2) to a State if the State provides substantial*  
12          *evidence, as determined by the Attorney General, that*  
13          *the State is making a reasonable effort to comply*  
14          *with the requirements of sections 102 and 103, in-*  
15          *cluding an inability to comply due to court order or*  
16          *other legal restriction.*

17          (c) *REALLOCATION.*—*Any funds that are not allocated*  
18          *to a State because of the failure of the State to comply with*  
19          *the requirements of this Act shall be reallocated to States*  
20          *that meet such requirements.*

21          (d) *METHODOLOGY.*—*The method established to cal-*  
22          *culate the number of records to be reported, as set forth in*  
23          *section 102(b)(1)(A), and State compliance with the re-*  
24          *quired level of reporting under sections 102 and 103 shall*  
25          *be determined by the Attorney General. The Attorney Gen-*

1 eral shall calculate the methodology based on the total num-  
2 ber of records to be reported from all subcategories of  
3 records, as described in section 102(b)(1)(C).

4 **SEC. 105. RELIEF FROM DISABILITIES PROGRAM REQUIRED**  
5 **AS CONDITION FOR PARTICIPATION IN**  
6 **GRANT PROGRAMS.**

7 (a) *PROGRAM DESCRIBED.*—A relief from disabilities  
8 program is implemented by a State in accordance with this  
9 section if the program—

10 (1) permits a person who, pursuant to State law,  
11 has been adjudicated as described in subsection (g)(4)  
12 of section 922 of title 18, United States Code, or has  
13 been committed to a mental institution, to apply to  
14 the State for relief from the disabilities imposed by  
15 subsections (d)(4) and (g)(4) of such section by reason  
16 of the adjudication or commitment;

17 (2) provides that a State court, board, commis-  
18 sion, or other lawful authority shall grant the relief,  
19 pursuant to State law and in accordance with the  
20 principles of due process, if the circumstances regard-  
21 ing the disabilities referred to in paragraph (1), and  
22 the person's record and reputation, are such that the  
23 person will not be likely to act in a manner dan-  
24 gerous to public safety and that the granting of the

1 *relief would not be contrary to the public interest;*  
2 *and*

3 *(3) permits a person whose application for the*  
4 *relief is denied to file a petition with the State court*  
5 *of appropriate jurisdiction for a de novo judicial re-*  
6 *view of the denial.*

7 *(b) AUTHORITY TO PROVIDE RELIEF FROM CERTAIN*  
8 *DISABILITIES WITH RESPECT TO FIREARMS.—If, under a*  
9 *State relief from disabilities program implemented in ac-*  
10 *cordance with this section, an application for relief referred*  
11 *to in subsection (a)(1) of this section is granted with respect*  
12 *to an adjudication or a commitment to a mental institution*  
13 *or based upon a removal of a record under section*  
14 *102(c)(1)(B), the adjudication or commitment, as the case*  
15 *may be, is deemed not to have occurred for purposes of sub-*  
16 *sections (d)(4) and (g)(4) of section 922 of title 18, United*  
17 *States Code.*

18 **SEC. 106. ILLEGAL IMMIGRANT GUN PURCHASE NOTIFICA-**  
19 **TION.**

20 *(a) IN GENERAL.—Notwithstanding any other provi-*  
21 *sion of law or of this Act, all records obtained by the Na-*  
22 *tional Instant Criminal Background Check system relevant*  
23 *to whether an individual is prohibited from possessing a*  
24 *firearm because such person is an alien illegally or unlaw-*

1 *fully in the United States shall be made available to U.S.*  
2 *Immigration and Customs Enforcement.*

3 (b) *REGULATIONS.—The Attorney General, at his or*  
4 *her discretion, shall promulgate guidelines relevant to what*  
5 *records relevant to illegal aliens shall be provided pursuant*  
6 *to the provisions of this Act.*

7 **TITLE II—FOCUSING FEDERAL**  
8 **ASSISTANCE ON THE IM-**  
9 **PROVEMENT OF RELEVANT**  
10 **RECORDS**

11 **SEC. 201. CONTINUING EVALUATIONS.**

12 (a) *EVALUATION REQUIRED.—The Director of the Bu-*  
13 *reau of Justice Statistics (referred to in this section as the*  
14 *“Director”)* shall study and evaluate the operations of the  
15 *National Instant Criminal Background Check System.*  
16 *Such study and evaluation shall include compilations and*  
17 *analyses of the operations and record systems of the agencies*  
18 *and organizations necessary to support such System.*

19 (b) *REPORT ON GRANTS.—Not later than January 31*  
20 *of each year, the Director shall submit to Congress a report*  
21 *containing the estimates submitted by the States under sec-*  
22 *tion 102(b).*

23 (c) *REPORT ON BEST PRACTICES.—Not later than*  
24 *January 31 of each year, the Director shall submit to Con-*  
25 *gress, and to each State participating in the National*

1 *Criminal History Improvement Program, a report of the*  
 2 *practices of the States regarding the collection, mainte-*  
 3 *nance, automation, and transmittal of information relevant*  
 4 *to determining whether a person is prohibited from pos-*  
 5 *sessing or receiving a firearm by Federal or State law, by*  
 6 *the State or any other agency, or any other records relevant*  
 7 *to the National Instant Criminal Background Check Sys-*  
 8 *tem, that the Director considers to be best practices.*

9 (d) *AUTHORIZATION OF APPROPRIATIONS.—There are*  
 10 *authorized to be appropriated such sums as may be nec-*  
 11 *essary for each of the fiscal years 2009 through 2013 to com-*  
 12 *plete the studies, evaluations, and reports required under*  
 13 *this section.*

14 **TITLE III—GRANTS TO STATE**  
 15 **COURT SYSTEMS FOR THE IM-**  
 16 **PROVEMENT IN AUTOMATION**  
 17 **AND TRANSMITTAL OF DIS-**  
 18 **POSITION RECORDS**

19 **SEC. 301. DISPOSITION RECORDS AUTOMATION AND**  
 20 **TRANSMITTAL IMPROVEMENT GRANTS.**

21 (a) *GRANTS AUTHORIZED.—From amounts made*  
 22 *available to carry out this section, the Attorney General*  
 23 *shall make grants to each State, consistent with State plans*  
 24 *for the integration, automation, and accessibility of crimi-*  
 25 *nal history records, for use by the State court system to*



1 *improve the automation and transmittal of criminal his-*  
2 *tory dispositions, records relevant to determining whether*  
3 *a person has been convicted of a misdemeanor crime of do-*  
4 *mestic violence, court orders, and mental health adjudica-*  
5 *tions or commitments, to Federal and State record reposi-*  
6 *tories in accordance with sections 102 and 103 and the Na-*  
7 *tional Criminal History Improvement Program.*

8       (b) *GRANTS TO INDIAN TRIBES.*—Up to 5 percent of  
9 *the grant funding available under this section may be re-*  
10 *served for Indian tribal governments for use by Indian trib-*  
11 *al judicial systems.*

12       (c) *USE OF FUNDS.*—Amounts granted under this sec-  
13 *tion shall be used by the State court system only—*

14           (1) *to carry out, as necessary, assessments of the*  
15 *capabilities of the courts of the State for the automa-*  
16 *tion and transmission of arrest and conviction*  
17 *records, court orders, and mental health adjudications*  
18 *or commitments to Federal and State record reposi-*  
19 *tories; and*

20           (2) *to implement policies, systems, and proce-*  
21 *dures for the automation and transmission of arrest*  
22 *and conviction records, court orders, and mental*  
23 *health adjudications or commitments to Federal and*  
24 *State record repositories.*

1       (d) *ELIGIBILITY.*—*To be eligible to receive a grant*  
2 *under this section, a State shall certify, to the satisfaction*  
3 *of the Attorney General, that the State has implemented a*  
4 *relief from disabilities program in accordance with section*  
5 *105.*

6       (e) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*  
7 *authorized to be appropriated to the Attorney General to*  
8 *carry out this section \$62,500,000 for fiscal year 2009,*  
9 *\$125,000,000 for fiscal year 2010, \$125,000,000 for fiscal*  
10 *year 2011, \$62,500,000 for fiscal year 2012, and*  
11 *\$62,500,000 for fiscal year 2013.*

## 12                   **TITLE IV—GAO AUDIT**

### 13   **SEC. 401. GAO AUDIT.**

14       (a) *IN GENERAL.*—*The Comptroller General of the*  
15 *United States shall conduct an audit of the expenditure of*  
16 *all funds appropriated for criminal records improvement*  
17 *pursuant to section 106(b) of the Brady Handgun Violence*  
18 *Prevention Act (Public Law 103–159) to determine if the*  
19 *funds were expended for the purposes authorized by the Act*  
20 *and how those funds were expended for those purposes or*  
21 *were otherwise expended.*

22       (b) *REPORT.*—*Not later than 6 months after the date*  
23 *of enactment of this Act, the Comptroller General shall sub-*

- 1 *mit a report to Congress describing the findings of the audit*
- 2 *conducted pursuant to subsection (a).*

Attest:

*Secretary.*

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R. 2640**

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**AMENDMENT**