

112TH CONGRESS
1ST SESSION

H. R. 1360

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2011

Mr. SCHIFF (for himself, Mr. ROGERS of Michigan, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Child Protection Im-
5 provements Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) In 2006, 61,200,000 adults (a total of 26.7
9 percent of the population) contributed a total of
10 8,100,000,000 hours of volunteer service. Of those

1 who volunteer, 27 percent dedicate their service to
2 education or youth programs, or a total of
3 16,500,000 adults.

4 (2) Assuming recent incarceration rates remain
5 unchanged, an estimated 6.6 percent of individuals
6 in the United States will serve time in prison for a
7 crime during their lifetime. The Integrated Auto-
8 mated Fingerprint Identification System of the Fed-
9 eral Bureau of Investigation maintains fingerprints
10 and criminal history records on more than
11 65,000,000 individuals, many of whom have been ar-
12 rested or convicted multiple times.

13 (3) A study released in 2002, found that, of in-
14 dividuals released from prison in 15 States in 1994,
15 an estimated 67.5 percent were rearrested for a fel-
16 ony or serious misdemeanor within 3 years. Three-
17 quarters of those new arrests resulted in convictions
18 or a new prison sentence.

19 (4) Given the large number of individuals with
20 criminal history records and the vulnerability of the
21 population they work with, human service organiza-
22 tions that work with children need an effective and
23 reliable means of obtaining relevant information
24 about criminal histories in order to determine the
25 suitability of a potential volunteer or employee.

1 (5) The large majority of Americans (88 per-
2 cent) favor granting youth-serving organizations ac-
3 cess to conviction records for screening volunteers
4 and 59 percent favored allowing youth-serving orga-
5 nizations to consider arrest records when screening
6 volunteers. This was the only use for which a major-
7 ity of those surveyed favored granting access to ar-
8 rest records.

9 (6) Congress has previously attempted to en-
10 sure that States make Federal Bureau of Investiga-
11 tion criminal history background checks available to
12 organizations seeking to screen employees and volun-
13 teers who work with children, the elderly, and indi-
14 viduals with disabilities, through the National Child
15 Protection Act of 1993 (42 U.S.C. 5119 et seq.) and
16 the Volunteers for Children Act (Public Law 105–
17 251; 112 Stat. 1885). However, according to a June
18 2006 report from the Attorney General, these laws
19 “did not have the intended impact of broadening the
20 availability of NCPA checks.” A 2007 survey con-
21 ducted by MENTOR/National Mentoring Partner-
22 ship found that only 18 States allowed youth men-
23 toring organizations to access nationwide Federal
24 Bureau of Investigation background searches.

1 (7) Even when accessible, the cost of a criminal
2 history background check can be prohibitively expen-
3 sive, ranging from \$5 to \$75 for a State fingerprint
4 check, plus the Federal Bureau of Investigation fee,
5 which ranges from \$15.25 to \$30.25, depending on
6 the method of processing, for a total of between \$21
7 and \$99 for each volunteer or employee.

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

13 (9) The Child Safety Pilot Program under sec-
14 tion 108 of the PROTECT Act (42 U.S.C. 5119a
15 note) revealed the importance of performing finger-
16 print-based Federal Bureau of Investigation criminal
17 history background checks. Of 68,000 background
18 checks performed through the pilot program as of
19 May 2009, 6 percent of volunteer applicants were
20 found to have a criminal history of concern, includ-
21 ing very serious offenses such as sexual abuse of mi-
22 nors, assault, child cruelty, murder, and serious
23 drug offenses.

24 (10) In an analysis performed on the volunteers
25 screened by the Child Safety Pilot Program, it was

1 found that over 41 percent of the individuals with
2 criminal histories had committed an offense in a
3 State other than the State in which they were apply-
4 ing to volunteer, meaning that a State-only search
5 would not have found relevant criminal results. In
6 addition, even though volunteers knew a background
7 check was being performed, over 50 percent of the
8 individuals found to have a criminal history falsely
9 indicated on their application form that they did not
10 have a criminal history.

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

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

17 The National Child Protection Act of 1993 (42
18 U.S.C. 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 ‘background check designee’
2 means the entity or organization, if any, designated
3 by or entering an agreement with the Attorney Gen-
4 eral under subsection (b)(3)(A) to carry out or assist
5 in carrying out the duties described in subsection
6 (c);

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

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

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 ‘criminal history review designee’
7 means 1 or more Federal, State, or local government
8 agencies, if any, designated by or entering an agree-
9 ment with the Attorney General under subsection
10 (b)(3)(B) to carry out or assist in carrying out the
11 criminal history review program;

12 “(6) the term ‘criminal history review program’
13 means the program established under subsection
14 (b)(1)(B);

15 “(7) the term ‘identification document’ has the
16 meaning given that term in section 1028 of title 18,
17 United States Code;

18 “(8) the term ‘participating entity’ means a
19 covered entity that is—

20 “(A) located in a State that does not have
21 a qualified State program; and

22 “(B) approved under subsection (f) to re-
23 ceive nationwide background checks in accord-
24 ance with subsection (e) and participate in the
25 criminal history review program;

1 “(9) the term ‘qualified State program’ means
2 a program of a State authorized agency that the At-
3 torney General determines is meeting the standards
4 identified in subsection (b)(2) to ensure that a wide
5 range of youth-serving organizations have affordable
6 and timely access to nationwide background checks;

7 “(10) the term ‘open arrest’ means an arrest
8 relating to which charges may still be brought, tak-
9 ing into consideration the applicable statute of limi-
10 tations;

11 “(11) the term ‘pending charge’ means a crimi-
12 nal charge that has not been resolved through con-
13 viction, acquittal, dismissal, plea bargain, or any
14 other means;

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

22 “(13) the term ‘State authorized agency’ means
23 a division or office of a State designated by that
24 State to report, receive, or disseminate criminal his-
25 tory information.

1 “(b) ESTABLISHMENT OF PROGRAM.—

2 “(1) IN GENERAL.—Not later than 1 year after
3 the date of enactment of the Child Protection Im-
4 provements Act of 2011, the Attorney General
5 shall—

6 “(A) establish policies and procedures to
7 carry out the duties described in subsection (c);
8 and

9 “(B) establish a criminal history review
10 program in accordance with subsection (d).

11 “(2) ASSESSMENTS.—The Attorney General
12 shall conduct—

13 “(A) an annual assessment of each State
14 authorized agency to determine whether the
15 agency operates a qualified State program, in-
16 cluding a review of whether the State author-
17 ized agency—

18 “(i) has designated a wide range of
19 covered entities as eligible to submit State
20 criminal background check requests and
21 nationwide background check requests to
22 the State authorized agency;

23 “(ii) charges a covered entity not
24 more than a total of \$25 and the fee
25 charged by the Federal Bureau of Inves-

1 tigation for a nationwide background
2 check; and

3 “(iii) returns requests for State crimi-
4 nal background checks and nationwide
5 background checks to a covered entity not
6 later than 10 business days after the date
7 on which the request was made; and

8 “(B) in addition to an annual assessment
9 under subparagraph (A), an assessment de-
10 scribed in that subparagraph of a State author-
11 ized agency if—

12 “(i) a State authorized agency that
13 does not have a qualified State program
14 requests such an assessment; or

15 “(ii) the Attorney General receives re-
16 ports from covered entities indicating that
17 a State authorized agency that has a quali-
18 fied State program no longer meets the
19 standards described in subparagraph (A).

20 “(3) DESIGNNEES.—The Attorney General
21 may—

22 “(A) designate 1 or more Federal Govern-
23 ment agencies or enter into an agreement with
24 any other entity or organization, or entities or

1 organizations to carry out or assist in carrying
2 out the duties described in subsection (c); and

3 “(B) designate a Federal Government
4 agency or enter into an agreement with 1 or
5 more Federal, State, or local government agen-
6 cies to carry out or assist in carrying out the
7 criminal history review program.

8 “(c) ACCESS TO NATIONWIDE BACKGROUND
9 CHECKS.—

10 “(1) PURPOSE.—The purpose of this section is
11 to streamline the process of obtaining nationwide
12 background checks, provide effective customer serv-
13 ice, and facilitate widespread access to nationwide
14 background checks by participating entities.

15 “(2) DUTIES.—The Attorney General or the
16 background check designee shall—

17 “(A) handle inquiries from covered entities
18 and inform covered entities about how to re-
19 quest nationwide background checks—

20 “(i) for a covered entity located in a
21 State with a qualified State program, by
22 referring the covered entity to the State
23 authorized agency; and

24 “(ii) for a covered entity located in a
25 State without a qualified State program,

1 by providing information on the require-
2 ments to become a participating entity;

3 “(B) provide participating entities with ac-
4 cess to nationwide background checks on cov-
5 ered individuals in accordance with this section;

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

9 “(D) to the extent practicable, negotiate
10 an agreement with each State authorized agen-
11 cy 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
16 the Attorney General or the background
17 check designee and provide criminal his-
18 tory records to the Attorney General or the
19 criminal history review designee; and

20 “(ii) a participating entity may elect
21 to obtain a State criminal background
22 check, in addition to a nationwide back-
23 ground check, through 1 unified request to
24 the Attorney General or the background
25 check designee;

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

6 “(F) collect a fee to conduct the nation-
7 wide background check, and, if appropriate, a
8 State criminal background check, and remit
9 fees to the Attorney General or the criminal
10 history review designee, the Federal Bureau of
11 Investigation, and, if appropriate, the State au-
12 thorized agencies; and

13 “(G) coordinate with the Federal Bureau
14 of Investigation, participating State authorized
15 agencies, and the Attorney General or the
16 criminal history review designee to ensure that
17 background check requests are being completed
18 within the time periods specified in subsection
19 (e).

20 “(3) REQUIRED INFORMATION.—A request for
21 a nationwide background check by a participating
22 entity shall include—

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

1 “(B) a photocopy of a valid identification
2 document; and

3 “(C) a statement completed and signed by
4 the covered individual that—

5 “(i) sets out the name, address, and
6 date of birth of the covered individual, as
7 those items of information appear on a
8 valid identification document, and demo-
9 graphic characteristics defined at sub-
10 section (j)(2)(A);

11 “(ii) notifies the covered individual
12 that the Attorney General and, if appro-
13 priate, a State authorized agency may per-
14 form a criminal history background check
15 and that the signature of the covered indi-
16 vidual on the statement constitutes an ac-
17 knowledgment that such a check may be
18 conducted;

19 “(iii) notifies the covered individual
20 that the signature of the covered individual
21 constitutes consent to participate in the
22 criminal history review program, under
23 which the participating entity may be in-
24 formed if the criminal history records of
25 the covered individual reveal a criminal

1 history that warrants special concern or
2 further inquiry;

3 “(iv) notifies the covered individual
4 that the covered individual shall be pro-
5 vided with a copy of the criminal history
6 records of the covered individual and shall
7 have 10 business days to review the
8 records, challenge the accuracy or com-
9 pleteness of any information in the
10 records, or withdraw consent to participate
11 in the criminal history review program be-
12 fore any information about the criminal
13 history of the covered individual is pro-
14 vided to the participating entity; and

15 “(v) notifies the covered individual
16 that prior to and after the completion of
17 the background check, the participating
18 entity may choose to deny the covered indi-
19 vidual access to children.

20 “(4) FEES.—

21 “(A) IN GENERAL.—The Attorney General
22 or the background check designee may collect a
23 fee to defray the costs of carrying out the du-
24 ties described in this subsection and the duties

1 of the criminal history review designee under
2 this section—

3 “(i) for a nationwide background
4 check and criminal history review, in an
5 amount not to exceed the lesser of—

6 “(I) the sum of—

7 “(aa) the actual cost to the
8 Attorney General or the back-
9 ground check designee of con-
10 ducting a nationwide background
11 check; and

12 “(bb) the actual cost to the
13 Attorney General or the criminal
14 history review designee of con-
15 ducting a criminal history review
16 under this section; or

17 “(II) to the extent practicable, no
18 greater than \$25 for a covered indi-
19 vidual who volunteers with a covered
20 entity except that where practicable
21 the fee may be waived by the Attorney
22 General upon a showing of substantial
23 hardship; and

24 “(ii) for a State criminal background
25 check described in paragraph (2)(D), in

1 the amount specified in the agreement with
2 the applicable State authorized agency, not
3 to exceed \$25.

4 “(B) PROHIBITION ON FEES.—

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

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

14 “(d) CRIMINAL HISTORY REVIEW PROGRAM.—

15 “(1) PURPOSE.—The purpose of the criminal
16 history review program is to provide participating
17 entities with reliable and accurate information re-
18 garding whether a covered individual has been con-
19 victed of, or has an open arrest or pending charges
20 for, a crime that may bear upon the fitness of the
21 covered individual to have responsibility for the safe-
22 ty and well-being of the children in their care.

23 “(2) REQUIREMENTS.—The Attorney General
24 or the criminal history review designee shall—

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

5 “(B) after receiving a criminal history
6 record from the Federal Bureau of Investiga-
7 tion transmit to the covered individual—

8 “(i) the criminal history records;

9 “(ii) a detailed notification of the
10 rights of the covered individual under sub-
11 section (g); and

12 “(iii) information about how to con-
13 tact the Attorney General or criminal his-
14 tory review designee for the purpose of
15 challenging the accuracy or completeness
16 of any information in the criminal history
17 record or to withdraw consent to partici-
18 pate in the criminal history review pro-
19 gram;

20 “(C) if the covered individual informs the
21 Attorney General or criminal history review des-
22 ignee that the covered individual intends to
23 challenge the accuracy or completeness of any
24 information in the criminal history record, as-
25 sist the covered individual in contacting the ap-

1 appropriate persons or offices within the Federal
2 Bureau of Investigation or State authorized
3 agency;

4 “(D) make determinations regarding
5 whether the criminal history records received in
6 response to a criminal history background check
7 conducted under this section indicate that the
8 covered individual has a criminal history that
9 may bear on the covered individual’s fitness to
10 provide care to children, based solely on the cri-
11 teria described in paragraph (3);

12 “(E) unless the covered individual has
13 withdrawn consent to participate in the criminal
14 history review program, convey to the partici-
15 pating entity that submitted the request for a
16 nationwide background check—

17 “(i) which of the 3 categorizations de-
18 scribed in paragraph (3) criminal convic-
19 tion of special concern identified, further
20 inquiry recommended, or no criminal
21 records of special concern identified apply
22 to the covered individual;

23 “(ii) information and guidance relat-
24 ing to the appropriate use of criminal his-
25 tory information when making decisions re-

1 garding hiring employees and using volun-
2 teers;

3 “(iii) if a criminal history that meets
4 the criteria set forth in subparagraph (A)
5 or (B) of paragraph (3) is found, a rec-
6 ommendation to the participating entity to
7 consult with the covered individual in order
8 to obtain more information about the
9 criminal history of the covered individual,
10 and a list of factors to consider in assess-
11 ing the significance of that criminal his-
12 tory, including—

13 “(I) the nature, gravity, and cir-
14 cumstances of the offense, including
15 whether the individual was convicted
16 of the offense;

17 “(II) the period of time that has
18 elapsed since the date of the offense
19 or end of a period of incarceration or
20 supervised release;

21 “(III) the nature of the position
22 held or sought; and

23 “(IV) any evidence of rehabilita-
24 tion; and

1 “(iv) instructions and guidance that,
2 in evaluating the considerations described
3 in clause (iii), the participating entity
4 should consult the Equal Employment Op-
5 portunity Commission Policy Statement on
6 the Issue of Conviction Records and the
7 Equal Employment Opportunity Commis-
8 sion Policy Guidance on the Consideration
9 of Arrest Records in Employment Deci-
10 sions under Title VII of the Civil Rights
11 Act of 1964 or any successor thereto
12 issued by the Equal Employment Oppor-
13 tunity Commission;

14 “(F) if a covered individual has withdrawn
15 consent to participate in the criminal history re-
16 view program, inform the participating entity
17 that consent has been withdrawn;

18 “(G) work with the Attorney General or
19 the background check designee and the Federal
20 Bureau of Investigation to develop processes
21 and procedures to ensure that criminal history
22 background check requests are completed within
23 the time periods specified in subsection (e); and

24 “(H) serve as a national resource center to
25 provide guidance and assistance to participating

1 entities on how to interpret criminal history in-
2 formation, the possible restrictions that apply
3 when making hiring decisions based on criminal
4 histories, and other related information.

5 “(3) CRIMINAL HISTORY REVIEW CRITERIA.—
6 The Attorney General or the criminal history review
7 designee shall, in determining when a criminal his-
8 tory record indicates that a covered individual has a
9 criminal history that may bear on the fitness of the
10 covered individual to provide care to children—

11 “(A) assign a categorization of criminal
12 conviction of special concern identified if a cov-
13 ered individual is found to have a conviction
14 that would prevent the individual from being
15 approved as a foster or adoptive parent under
16 section 471(a)(20)(A) of the Social Security Act
17 (42 U.S.C. 671(a)(20)(A));

18 “(B) assign a categorization of further in-
19 quiry recommended if a covered individual is
20 found to have—

21 “(i) a conviction for a serious mis-
22 demeanor, committed against a child, in-
23 volving the same type of conduct prohib-
24 ited by a felony described in section

1 471(a)(20)(A) of the Social Security Act
2 (42 U.S.C. 671(a)(20)(A));

3 “(ii) a conviction for a serious mis-
4 demeanor, not committed against a child,
5 involving the same type of conduct prohib-
6 ited by a felony described in section
7 471(a)(20)(A) of the Social Security Act
8 (42 U.S.C. 671(a)(20)(A)) unless 5 years
9 has elapsed since the later of the date of
10 conviction and the date of release of the
11 person from imprisonment for that convic-
12 tion;

13 “(iii) an open arrest or pending
14 charge for a felony described in, or a seri-
15 ous misdemeanor involving the same type
16 of conduct prohibited by a felony described
17 in, section 471(a)(20)(A) of the Social Se-
18 curity Act (42 U.S.C. 671(a)(20)(A)); and

19 “(C) assign a categorization of no criminal
20 records of special concern identified for a cov-
21 ered individual that does not meet the criteria
22 described in subparagraph (A) or (B).

23 “(e) TIMING.—

24 “(1) IN GENERAL.—Unless exceptional cir-
25 cumstances apply, criminal background checks shall

1 be completed according to the time frame under this
2 subsection. The Attorney General or the background
3 check designee shall work with the criminal history
4 review designee and the Federal Bureau of Inves-
5 tigation to ensure that the time limits under this
6 subsection are being achieved.

7 “(2) APPLICATION PROCESSING.—The Attorney
8 General or the background check designee shall elec-
9 tronically submit a national background check re-
10 quest to the Federal Bureau of Investigation and, if
11 appropriate, the participating State authorized agen-
12 cy not later than 2 business days after the date on
13 which a request for a national background check is
14 received by the Attorney General or the background
15 check designee.

16 “(3) CONDUCT OF BACKGROUND CHECKS.—The
17 Federal Bureau of Investigation and, if appropriate,
18 a State authorized agency shall provide criminal his-
19 tory records to the Attorney General or the criminal
20 history review designee not later than 2 business
21 days after the date on which the Federal Bureau of
22 Investigation or State authorized agency, as the case
23 may be, receives a request for a nationwide back-
24 ground check from the Attorney General or the
25 background check designee.

1 “(4) PROVISION OF RECORDS TO COVERED IN-
2 DIVIDUALS AND OPPORTUNITY TO CHALLENGE.—

3 “(A) IN GENERAL.—When the Attorney
4 General or the criminal history review designee
5 finds that the criminal history records of a cov-
6 ered individual fall within the categorizations
7 described in subparagraph (A) or (B) of sub-
8 section (d)(3), the Attorney General or criminal
9 history review designee shall provide the cov-
10 ered individual with the criminal history records
11 of the covered individual and a detailed notifica-
12 tion of the rights of the covered individual
13 under subsection (g) not later than 1 business
14 day after the date on which the Attorney Gen-
15 eral or criminal history review designee receives
16 a criminal history record from the Federal Bu-
17 reau of Investigation and, if necessary, resolves
18 any potentially incomplete information in ac-
19 cordance with subsection (d)(2)(B).

20 “(B) OPPORTUNITY TO CHALLENGE.—The
21 covered individual shall have 10 business days
22 from the date the criminal history records and
23 notification described in subparagraph (A) are
24 sent to challenge the accuracy or completeness
25 of any information in the criminal history

1 record or to withdraw consent to participate in
2 the criminal history review program.

3 “(5) CRIMINAL HISTORY REVIEWS.—Unless the
4 Federal Bureau of Investigation certifies that fur-
5 ther time is required to resolve a challenge brought
6 by a covered individual, the Attorney General or the
7 criminal history review designee shall convey to the
8 participating entity the information set forth in sub-
9 paragraph (F) or (G) of subsection (d)(2), as appro-
10 priate, 10 business days after providing the covered
11 individuals with the criminal history records of the
12 covered individual and a notification of their rights
13 under subsection (g).

14 “(f) PARTICIPATION IN PROGRAM.—

15 “(1) IN GENERAL.—The Attorney General or
16 the background check designee shall determine
17 whether an entity is a covered entity and whether
18 that covered entity should be approved as a partici-
19 pating entity, based on—

20 “(A) whether the entity is located in a
21 State that has a qualified State program; and

22 “(B) the consultation conducted under
23 paragraph (2).

24 “(2) CONSULTATION.—In determining how
25 many covered entities to approve as participating en-

1 tities, the Attorney General or the background check
2 designee shall consult quarterly with the Federal
3 Bureau of Investigation and the criminal history re-
4 view designee to determine the volume of requests
5 for national background checks that can be com-
6 pleted, based on the capacity of the criminal history
7 review program and the Federal Bureau of Inves-
8 tigation, the availability of resources, and the dem-
9 onstrated need for national background checks in
10 order to protect children.

11 “(3) PREFERENCE FOR NONPROFIT ORGANIZA-
12 TIONS.—In determining whether a covered entity
13 should be approved as a participating entity under
14 paragraph (1), the Attorney General or the back-
15 ground check designee shall give preference to any
16 organization participating in the Child Safety Pilot
17 Program under section 108(a)(3) of the PROTECT
18 Act (42 U.S.C. 5119a note) on the date of enact-
19 ment of the Child Protection Improvements Act of
20 2011 and to any other nonprofit organizations.

21 “(g) RIGHT OF COVERED INDIVIDUALS TO CHAL-
22 LENGE ACCURACY OR COMPLETENESS OF RECORDS.—A
23 covered individual who is the subject of a nationwide back-
24 ground check under this section may challenge the accu-
25 racy and completeness of the criminal history records in

1 the criminal history report as provided in subsection
2 (d)(2)(D), without submitting a separate set of finger-
3 prints or an additional fee.

4 “(h) DUTIES OF THE FEDERAL BUREAU OF INVES-
5 TIGATION.—

6 “(1) RESPONSE TO A REQUEST FOR CRIMINAL
7 BACKGROUND RECORDS.—Upon request by the At-
8 torney General or background check designee, the
9 Federal Bureau of Investigation shall conduct a na-
10 tionwide background check and provide any criminal
11 history records to the Attorney General or criminal
12 history review designee.

13 “(2) RESOLUTION OF CHALLENGES.—If a cov-
14 ered individual challenges the accuracy or complete-
15 ness of any information in the criminal history
16 record of the covered individual, the Federal Bureau
17 of Investigation, in consultation with the agency that
18 contributed to the record, shall—

19 “(A) investigate the challenge with relevant
20 departments and agencies of the Federal Gov-
21 ernment and State and local governments;

22 “(B) promptly make a determination re-
23 garding the accuracy and completeness of the
24 challenged information; and

1 “(C) correct any inaccurate or incomplete
2 records.

3 “(i) SENSE OF THE CONGRESS.—It is the sense of
4 the Congress that in fiscal year 2012, and each fiscal year
5 thereafter, the fees collected by the Attorney General or
6 the background check designee should be sufficient to
7 carry out the duties of the Attorney General or the back-
8 ground check designee under this section and to help sup-
9 port the criminal history review program.

10 “(j) COLLECTION OF DATA AND REPORT TO CON-
11 GRESS.—

12 “(1) IN GENERAL.—Not later than 1 year after
13 the establishment of the program created under sub-
14 section (b), and annually thereafter, the Attorney
15 General shall prepare and submit to Congress and
16 make available to the public a report on the pro-
17 grams and procedures established under this Act.

18 “(2) COLLECTION OF DATA.—

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

24 “(B) COMPILING.—Beginning not later
25 than 90 days after the establishment of the pro-

1 gram under subsection (b), the Attorney Gen-
2 eral shall compile data regarding—

3 “(i) the number and types of partici-
4 pating entities;

5 “(ii) the fees charged to participating
6 entities under this section;

7 “(iii) the time interval between na-
8 tionwide background check submissions
9 and responses under this section;

10 “(iv) the fiscal impact of this section
11 on State authorized agencies;

12 “(v) the number and demographic
13 characteristics of covered individuals sub-
14 mitting a statement described in subsection
15 (c)(3)(A)(iii) as part of a request for a na-
16 tionwide background check;

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

20 “(vii) the number, type (including the
21 identity of the offense and whether the of-
22 fense was committed while the covered in-
23 dividual was a juvenile or adult), and fre-
24 quency of offenses, and length of the pe-
25 riod between the date of the offense and

1 the date of the nationwide background
2 check for any covered individuals found to
3 have a criminal history under this section;

4 “(viii) the procedures available for
5 covered individuals to challenge the accu-
6 racy and completeness of criminal history
7 records under this section;

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

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

14 “(xi) the number and types of inquir-
15 ies for assistance on interpreting a crimi-
16 nal history received by the criminal history
17 review program; and

18 “(xii) to the extent practicable, the
19 number of covered individuals denied em-
20 ployment based on the criminal history in-
21 formation provided by the Attorney Gen-
22 eral or the criminal history review des-
23 ignee.

24 “(C) AGGREGATING DATA.—The Attorney
25 General shall—

1 “(i) aggregate the data collected
2 under this paragraph by State and city;
3 and

4 “(ii) aggregate the data collected
5 under clauses (v), (vi), and (vii) of sub-
6 paragraph (B) by race, color, ancestry, na-
7 tional origin, age, sex, and marital status.

8 “(D) REPORTS.—

9 “(i) IN GENERAL.—Not later than 1
10 year after the date of enactment of the
11 Child Protection Improvements Act of
12 2011, and annually thereafter, the Attor-
13 ney General shall prepare and submit to
14 Congress a report concerning the data
15 compiled and aggregated under this para-
16 graph.

17 “(ii) CONTENTS.—Each report sub-
18 mitted under clause (i) shall contain—

19 “(I) the data compiled and ag-
20 gregated under this paragraph, orga-
21 nized in such a way as to provide a
22 comprehensive analysis of the pro-
23 grams and procedures established
24 under this section;

1 “(II) information regarding and
2 analysis of—

3 “(aa) the programs and pro-
4 cedures established under this
5 section; and

6 “(bb) the extent such pro-
7 grams and procedures have
8 helped screen individuals who
9 may pose a risk to children; and

10 “(III) information regarding and
11 analysis of whether and to what ex-
12 tent the programs and procedures es-
13 tablished under this section are hav-
14 ing a disparate impact on individuals
15 based on race, color, ancestry, na-
16 tional origin, age, sex, or marital sta-
17 tus.

18 “(iii) RECOMMENDATIONS.—A report
19 submitted under clause (i) may contain
20 recommendations to Congress on possible
21 legislative improvements to this section.

22 “(iv) ADDITIONAL INFORMATION.—

23 “(I) IN GENERAL.—Upon the re-
24 quest of any member of Congress, the
25 Attorney General shall make available

1 any of the data compiled or aggre-
2 gated under this paragraph.

3 “(II) EXCEPTION.—The Attorney
4 General shall not make available any
5 data that identifies specific individ-
6 uals.

7 “(k) LIMITATION ON LIABILITY.—

8 “(1) IN GENERAL.—

9 “(A) FAILURE TO CONDUCT CRIMINAL
10 BACKGROUND CHECKS.—No participating entity
11 shall be liable in an action for damages solely
12 for failure to conduct a criminal background
13 check on a covered individual.

14 “(B) FAILURE TO TAKE ADVERSE ACTION
15 AGAINST COVERED INDIVIDUAL.—No partici-
16 pating entity shall be liable in an action for
17 damages solely for a failure to take action ad-
18 verse to a covered individual upon receiving any
19 notice of criminal history from the Attorney
20 General or the criminal history review designee
21 under subsection (d)(2)(F).

22 “(2) RELIANCE.—A participating entity that
23 reasonably relies on criminal history records received
24 in response to a background check under this section
25 shall not be liable in an action for damages based

1 on the inaccuracy or incompleteness of that informa-
2 tion.

3 “(3) CRIMINAL HISTORY REVIEW PROGRAM.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraphs (B) and (C) the background
6 check designee and the criminal history review
7 designee, including a director, officer, employee,
8 or agent of the background check designee, or
9 the criminal history review designee, shall not
10 be liable in an action for damages relating to
11 the performance of the responsibilities and
12 functions of the background check designee and
13 the criminal history review designee under this
14 section.

15 “(B) INTENTIONAL, RECKLESS, OR OTHER
16 MISCONDUCT.—Subparagraph (A) shall not
17 apply in an action if the background check des-
18 ignee, or the criminal history review designee,
19 or a director, officer, employee, or agent of the
20 background check designee, or the criminal his-
21 tory review designee, engaged in intentional
22 misconduct or acted, or failed to act, with ac-
23 tual malice, with reckless disregard to a sub-
24 stantial risk of causing injury without legal jus-
25 tification, or for a purpose unrelated to the per-

1 formance of responsibilities or functions under
2 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 “(I) PRIVACY OF INFORMATION.—

10 “(1) PROHIBITION ON UNAUTHORIZED DISCLO-
11 SURE OR USE OF CRIMINAL HISTORY RECORDS.—
12 Except for a covered individual, any entity or indi-
13 vidual authorized to receive or transmit fingerprints
14 or criminal history records under this Act—

15 “(A) shall use the fingerprints, criminal
16 history records, or information in the criminal
17 history records only for the purposes specifically
18 set forth in this Act;

19 “(B) shall allow access to the fingerprints,
20 criminal history records, or information in the
21 criminal history records only to those employees
22 of the entity, and only on such terms, as are
23 necessary to fulfill the purposes set forth in this
24 Act;

1 “(C) shall not disclose the fingerprints,
2 criminal history records, or information in the
3 criminal history records, except as specifically
4 authorized under this Act;

5 “(D) shall keep a written record of each
6 authorized disclosure of the fingerprints, crimi-
7 nal history records, or the information in the
8 criminal history records; and

9 “(E) shall maintain adequate security
10 measures to ensure the confidentiality of the
11 fingerprints, the criminal history records, and
12 the information in the criminal history records.

13 “(2) COMPLIANCE.—

14 “(A) IN GENERAL.—The Attorney General
15 shall promulgate regulations to ensure the en-
16 forcement of the nondisclosure requirements
17 under paragraph (1) and to provide for appro-
18 priate sanctions in the case of violations of the
19 requirements.

20 “(B) PARTICIPATING ENTITIES AND DES-
21 IGNEES.—The participation in any program
22 under this section by an entity or organization
23 that enters into an agreement with the Attorney
24 General to carry out the duties described in
25 subsection (c) or to carry out the criminal his-

1 tory review program shall be conditioned on the
2 person—

3 “(i) establishing procedures to ensure
4 compliance with, and respond to any viola-
5 tions of, paragraph (1); and

6 “(ii) maintaining substantial compli-
7 ance with paragraph (1).

8 “(3) DESTRUCTION OF RECORDS.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), the Attorney General, the
11 background check designee, and the criminal
12 history review designee shall destroy any finger-
13 prints, either in paper or electronic form, or
14 criminal history record received for the purpose
15 of carrying out the provisions of this Act after
16 any transaction based on the fingerprints or
17 criminal history record is completed, and shall
18 not maintain the fingerprints, the criminal his-
19 tory records, or the information in the criminal
20 history record in any form.

21 “(B) EXCEPTION.—This paragraph shall
22 not apply to the retention of fingerprints by the
23 FBI, upon consent of the covered individual or
24 in accordance with State or Federal procedures,
25 for the purpose of providing fingerprint

1 verification or subsequent hit notification serv-
2 ices, or for the retention of criminal history
3 record information which updates the criminal
4 history record.

5 “(C) REPEAT APPLICANTS.—A covered in-
6 dividual may sign a release permitting the At-
7 torney General or background check designee to
8 retain the fingerprints of the covered individual
9 for a period not to exceed 5 years, for the sole
10 purpose of participating in the criminal history
11 review program on a subsequent occasion.”.

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

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

15 (1) by striking “104-month”; and

16 (2) by adding at the end the following: “The
17 Child Safety Pilot Program under this paragraph
18 shall terminate on the date that is 1 year after the
19 date of enactment of the Child Protection Improve-
20 ments Act of 2011.”.

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