

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

H. R. 2640

To improve the National Instant Criminal Background Check System, and for other purposes

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. LEAHY (for himself and Mr. SCHUMER)

Viz:

1 Strike all after the enacting clause and insert the following:
2

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

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

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.

2

- 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 IM-
PROVEMENT IN AUTOMATION AND TRANSMITTAL OF DISPOSI-
TION 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
4 prohibited from purchasing a firearm for failing a
5 background check between November 30, 1998, (the
6 date the National Instant Criminal Background
7 Check System (NICS) began operating) and Decem-
8 ber 31, 2004.

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

12 (3) Although most Brady background checks
13 are processed through NICS in seconds, many back-
14 ground checks are delayed if the Federal Bureau of
15 Investigation (FBI) does not have automated access

1 to complete information from the States concerning
2 persons prohibited from possessing or receiving a
3 firearm under Federal or State law.

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

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

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

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

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

19 (A) computerizing information relating to
20 criminal history, criminal dispositions, mental
21 illness, restraining orders, and misdemeanor
22 convictions for domestic violence; or

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

1 (7) Helping States to automate these records
2 will reduce delays for law-abiding gun purchasers.

3 (8) On March 12, 2002, the senseless shooting,
4 which took the lives of a priest and a parishioner at
5 the Our Lady of Peace Church in Lynbrook, New
6 York, brought attention to the need to improve in-
7 formation-sharing that would enable Federal and
8 State law enforcement agencies to conduct a com-
9 plete background check on a potential firearm pur-
10 chaser. The man who committed this double murder
11 had a prior disqualifying mental health commitment
12 and a restraining order against him, but passed a
13 Brady background check because NICS did not have
14 the necessary information to determine that he was
15 ineligible to purchase a firearm under Federal or
16 State law.

17 (9) On April 16, 2007, a student with a history
18 of mental illness at the Virginia Polytechnic Insti-
19 tute and State University shot to death 32 students
20 and faculty members, wounded 17 more, and then
21 took his own life. The shooting, the deadliest campus
22 shooting in United States history, renewed the need
23 to improve information-sharing that would enable
24 Federal and State law enforcement agencies to con-
25 duct complete background checks on potential fire-

1 arms purchasers. In spite of a proven history of
2 mental illness, the shooter was able to purchase the
3 two firearms used in the shooting. Improved coordi-
4 nation between State and Federal authorities could
5 have ensured that the shooter’s disqualifying mental
6 health information was available to NICS.

7 **SEC. 3. DEFINITIONS.**

8 As used in this Act, the following definitions shall
9 apply:

10 (1) COURT ORDER.—The term “court order”
11 includes a court order (as described in section
12 922(g)(8) of title 18, United States Code).

13 (2) MENTAL HEALTH TERMS.—The terms “ad-
14 judicated as a mental defective” and “committed to
15 a mental institution” have the same meanings as in
16 section 922(g)(4) of title 18, United States Code.

17 (3) MISDEMEANOR CRIME OF DOMESTIC VIO-
18 LENCE.—The term “misdemeanor crime of domestic
19 violence” has the meaning given the term in section
20 921(a)(33) of title 18, United States Code.

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

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

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

11 (1) by striking “Notwithstanding” and insert-
12 ing 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 ATTOR-
23 NEY GENERAL.—If a Federal department or
24 agency under subparagraph (A) has any record
25 of any person demonstrating that the person

1 falls within one of the categories described in
2 subsection (g) or (n) of section 922 of title 18,
3 United States Code, the head of such depart-
4 ment or agency shall, not less frequently than
5 quarterly, provide the pertinent information
6 contained in such record to the Attorney Gen-
7 eral.

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

13 “(i) update, correct, modify, or re-
14 move the record from any database that
15 the agency maintains and makes available
16 to the Attorney General, in accordance
17 with the rules pertaining to that database;
18 and

19 “(ii) notify the Attorney General that
20 such basis no longer applies so that the
21 National Instant Criminal Background
22 Check System is kept up to date.

23 The Attorney General upon receiving notice
24 pursuant to clause (ii) shall ensure that the
25 record in the National Instant Criminal Back-

1 ground Check System is updated, corrected,
2 modified, or removed within 30 days of receipt.

3 “(E) ANNUAL REPORT.—The Attorney
4 General shall submit an annual report to Con-
5 gress that describes the compliance of each de-
6 partment or agency with the provisions of this
7 paragraph.”.

8 (b) PROVISION AND MAINTENANCE OF NICS
9 RECORDS.—

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

13 (A) records, updated not less than quar-
14 terly, which are relevant to a determination of
15 whether a person is disqualified from possessing
16 or receiving a firearm under subsection (g) or
17 (n) of section 922 of title 18, United States
18 Code, for use in background checks performed
19 by the National Instant Criminal Background
20 Check System; and

21 (B) information regarding all the persons
22 described in subparagraph (A) of this para-
23 graph who have changed their status to a cat-
24 egory not identified under section 922(g)(5) of
25 title 18, United States Code, for removal, when

1 applicable, from the National Instant Criminal
2 Background Check System.

3 (2) DEPARTMENT OF JUSTICE.—The Attorney
4 General shall—

5 (A) ensure that any information submitted
6 to, or maintained by, the Attorney General
7 under this section is kept accurate and con-
8 fidential, as required by the laws, regulations,
9 policies, or procedures governing the applicable
10 record system;

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

15 (C) work with States to encourage the de-
16 velopment of computer systems, which would
17 permit electronic notification to the Attorney
18 General when—

19 (i) a court order has been issued, lift-
20 ed, or otherwise removed by order of the
21 court; or

22 (ii) a person has been adjudicated as
23 a mental defective or committed to a men-
24 tal institution.

1 (c) STANDARD FOR ADJUDICATIONS AND COMMIT-
2 MENTS RELATED TO MENTAL HEALTH.—

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

8 (A) the adjudication or commitment, re-
9 spectively, has been set aside or expunged, or
10 the person has otherwise been fully released or
11 discharged from all mandatory treatment, su-
12 pervision, or monitoring;

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

20 (C) the adjudication or commitment, re-
21 spectively, is based solely on a medical finding
22 of disability, without an opportunity for a hear-
23 ing by a court, board, commission, or other law-
24 ful authority, and the person has not been adju-
25 dicated as a mental defective consistent with

1 section 922(g)(4) of title 18, United States
2 Code, except that nothing in this section or any
3 other provision of law shall prevent a Federal
4 department or agency from providing to the At-
5 torney General any record demonstrating that a
6 person was adjudicated to be not guilty by rea-
7 son of insanity, or based on lack of mental re-
8 sponsibility, or found incompetent to stand
9 trial, in any criminal case or under the Uniform
10 Code of Military Justice.

11 (2) TREATMENT OF CERTAIN ADJUDICATIONS
12 AND COMMITMENTS.—

13 (A) PROGRAM FOR RELIEF FROM DISABIL-
14 ITIES.—

15 (i) IN GENERAL.—Each department
16 or agency of the United States that makes
17 any adjudication related to the mental
18 health of a person or imposes any commit-
19 ment to a mental institution, as described
20 in subsection (d)(4) and (g)(4) of section
21 922 of title 18, United States Code, shall
22 establish, not later than 120 days after the
23 date of enactment of this Act, a program
24 that permits such a person to apply for re-

1 relief from the disabilities imposed by such
2 subsections.

3 (ii) PROCESS.—Each application for
4 relief submitted under the program re-
5 quired by this subparagraph shall be proc-
6 essed not later than 365 days after the re-
7 ceipt of the application. If a Federal de-
8 partment or agency fails to resolve an ap-
9 plication for relief within 365 days for any
10 reason, including a lack of appropriated
11 funds, the department or agency shall be
12 deemed for all purposes to have denied
13 such request for relief without cause. Judi-
14 cial review of any petitions brought under
15 this clause shall be de novo.

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

1 ceedings in relation to attaining such re-
2 lief, and the United States shall be liable
3 for such fee. Such fee shall be based upon
4 the prevailing rates awarded to public in-
5 terest legal aid organizations in the rel-
6 evant community.

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

1 longer prohibited under 922(d)(4) or 922(g)(4)
2 of title 18, United States Code, on account of
3 the relieved disability for which relief was
4 granted pursuant to a proceeding conducted
5 under this subparagraph, with respect to the
6 acquisition, receipt, transfer, shipment, trans-
7 portation, or possession of firearms.

8 (3) NOTICE REQUIREMENT.—Effective 30 days
9 after the date of enactment of this Act, any Federal
10 department or agency that conducts proceedings to
11 adjudicate a person as a mental defective under
12 922(d)(4) or 922(g)(4) of title 18, United States
13 Code, shall provide both oral and written notice to
14 the individual at the commencement of the adjudica-
15 tion process including—

16 (A) notice that should the agency adju-
17 dicate the person as a mental defective, or
18 should the person be committed to a mental in-
19 stitution, such adjudication, when final, or such
20 commitment, will prohibit the individual from
21 purchasing, possessing, receiving, shipping or
22 transporting a firearm or ammunition under
23 section 922(d)(4) or section 922(g)(4) of title
24 18, United States Code;

1 (B) information about the penalties im-
2 posed for unlawful possession, receipt, shipment
3 or transportation of a firearm under section
4 924(a)(2) of title 18, United States Code; and

5 (C) information about the availability of
6 relief from the disabilities imposed by Federal
7 laws with respect to the acquisition, receipt,
8 transfer, shipment, transportation, or posses-
9 sion of firearms.

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

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

19 (a) IN GENERAL.—Beginning 3 years after the date
20 of the enactment of this Act, a State shall be eligible to
21 receive a waiver of the 10 percent matching requirement
22 for National Criminal History Improvement Grants under
23 the Crime Identification Technology Act of 1988 (42
24 U.S.C. 14601) if the State provides at least 90 percent

1 of the information described in subsection (e). The length
2 of such a waiver shall not exceed 2 years.

3 (b) STATE ESTIMATES.—

4 (1) INITIAL STATE ESTIMATE.—

5 (A) IN GENERAL.—To assist the Attorney
6 General in making a determination under sub-
7 section (a) of this section, and under section
8 104, concerning the compliance of the States in
9 providing information to the Attorney General
10 for the purpose of receiving a waiver under sub-
11 section (a) of this section, or facing a loss of
12 funds under section 104, by a date not later
13 than 180 days after the date of the enactment
14 of this Act, each State shall provide the Attor-
15 ney General with a reasonable estimate, as cal-
16 culated by a method determined by the Attor-
17 ney General and in accordance with section
18 104(d), of the number of the records described
19 in subparagraph (C) applicable to such State
20 that concern persons who are prohibited from
21 possessing or receiving a firearm under sub-
22 section (g) or (n) of section 922 of title 18,
23 United States Code.

24 (B) FAILURE TO PROVIDE INITIAL ESTI-
25 MATE.—A State that fails to provide an esti-

1 mate described in subparagraph (A) by the date
2 required under such subparagraph shall be in-
3 eligible to receive any funds under section 103,
4 until such date as it provides such estimate to
5 the Attorney General.

6 (C) RECORD DEFINED.—For purposes of
7 subparagraph (A), a record is the following:

8 (i) A record that identifies a person
9 who has been convicted in any court of a
10 crime punishable by imprisonment for a
11 term exceeding 1 year.

12 (ii) A record that identifies a person
13 for whom an indictment has been returned
14 for a crime punishable by imprisonment
15 for a term exceeding 1 year that is valid
16 under the laws of the State involved or
17 who is a fugitive from justice, as of the
18 date of the estimate, and for which a
19 record of final disposition is not available.

20 (iii) A record that identifies a person
21 who is an unlawful user of, or addicted to
22 a controlled substance (as such terms “un-
23 lawful user” and “addicted” are respec-
24 tively defined in regulations implementing
25 section 922(g)(3) of title 18, United States

1 Code, as in effect on the date of the enact-
2 ment of this Act) as demonstrated by ar-
3 rests, convictions, and adjudications, and
4 whose record is not protected from disclo-
5 sure to the Attorney General under any
6 provision of State or Federal law.

7 (iv) A record that identifies a person
8 who has been adjudicated as a mental de-
9 fective or committed to a mental institu-
10 tion, consistent with section 922(g)(4) of
11 title 18, United States Code, and whose
12 record is not protected from disclosure to
13 the Attorney General under any provision
14 of State or Federal law.

15 (v) A record that is electronically
16 available and that identifies a person who,
17 as of the date of such estimate, is subject
18 to a court order described in section
19 922(g)(8) of title 18, United States Code.

20 (vi) A record that is electronically
21 available and that identifies a person con-
22 victed in any court of a misdemeanor crime
23 of domestic violence, as defined in section
24 921(a)(33) of title 18, United States Code.

1 (2) SCOPE.—The Attorney General, in deter-
2 mining the compliance of a State under this section
3 or section 104 for the purpose of granting a waiver
4 or imposing a loss of Federal funds, shall assess the
5 total percentage of records provided by the State
6 concerning any event occurring within the prior 20
7 years, which would disqualify a person from pos-
8 sessing a firearm under subsection (g) or (n) of sec-
9 tion 922 of title 18, United States Code.

10 (3) CLARIFICATION.—Notwithstanding para-
11 graph (2), States shall endeavor to provide the Na-
12 tional Instant Criminal Background Check System
13 with all records concerning persons who are prohib-
14 ited from possessing or receiving a firearm under
15 subsection (g) or (n) of section 922 of title 18,
16 United States Code, regardless of the elapsed time
17 since the disqualifying event.

18 (c) ELIGIBILITY OF STATE RECORDS FOR SUBMIS-
19 SION TO THE NATIONAL INSTANT CRIMINAL BACK-
20 GROUND CHECK SYSTEM.—

21 (1) REQUIREMENTS FOR ELIGIBILITY.—

22 (A) IN GENERAL.—From the information
23 collected by a State, the State shall make elec-
24 tronically available to the Attorney General
25 records relevant to a determination of whether

1 a person is disqualified from possessing or re-
2 ceiving a firearm under subsection (g) or (n) of
3 section 922 of title 18, United States Code, or
4 applicable State law.

5 (B) NICS UPDATES.—The State, on being
6 made aware that the basis under which a record
7 was made available under subparagraph (A)
8 does not apply, or no longer applies, shall, as
9 soon as practicable—

10 (i) update, correct, modify, or remove
11 the record from any database that the
12 Federal or State government maintains
13 and makes available to the National In-
14 stant Criminal Background Check System,
15 consistent with the rules pertaining to that
16 database; and

17 (ii) notify the Attorney General that
18 such basis no longer applies so that the
19 record system in which the record is main-
20 tained is kept up to date.

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

1 (C) CERTIFICATION.—To remain eligible
2 for a waiver under subsection (a), a State shall
3 certify to the Attorney General, not less than
4 once during each 2-year period, that at least 90
5 percent of all records described in subparagraph
6 (A) has been made electronically available to
7 the Attorney General in accordance with sub-
8 paragraph (A).

9 (D) INCLUSION OF ALL RECORDS.—For
10 purposes of this paragraph, a State shall iden-
11 tify and include all of the records described
12 under subparagraph (A) without regard to the
13 age of the record.

14 (2) APPLICATION TO PERSONS CONVICTED OF
15 MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE.—
16 The State shall make available to the Attorney Gen-
17 eral, for use by the National Instant Criminal Back-
18 ground Check System, records relevant to a deter-
19 mination of whether a person has been convicted in
20 any court of a misdemeanor crime of domestic vio-
21 lence. With respect to records relating to such
22 crimes, the State shall provide information specifi-
23 cally describing the offense and the specific section
24 or subsection of the offense for which the defendant

1 has been convicted and the relationship of the de-
2 fendant to the victim in each case.

3 (3) APPLICATION TO PERSONS WHO HAVE BEEN
4 ADJUDICATED AS A MENTAL DEFECTIVE OR COM-
5 MITTED TO A MENTAL INSTITUTION.—The State
6 shall make available to the Attorney General, for use
7 by the National Instant Criminal Background Check
8 System, the name and other relevant identifying in-
9 formation of persons adjudicated as a mental defec-
10 tive or those committed to mental institutions to as-
11 sist the Attorney General in enforcing section
12 922(g)(4) of title 18, United States Code.

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

1 (e) ATTORNEY GENERAL REPORT.—Not later than
2 January 31 of each year, the Attorney General shall sub-
3 mit to the Committee on the Judiciary of the Senate and
4 the Committee on the Judiciary of the House of Rep-
5 resentatives a report on the progress of States in auto-
6 mating the databases containing the information described
7 in subsection (b) and in making that information elec-
8 tronically available to the Attorney General pursuant to
9 the requirements of subsection (c).

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

11 (a) AUTHORIZATION.—

12 (1) IN GENERAL.—From amounts made avail-
13 able to carry out this section and subject to section
14 102(b)(1)(B), the Attorney General shall make
15 grants to States and Indian tribal governments, in
16 a manner consistent with the National Criminal His-
17 tory Improvement Program, which shall be used by
18 the States and Indian tribal governments, in con-
19 junction with units of local government and State
20 and local courts, to establish or upgrade information
21 and identification technologies for firearms eligibility
22 determinations. Not less than 3 percent, and no
23 more than 10 percent of each grant under this para-
24 graph shall be used to maintain the relief from dis-
25 abilities program in accordance with section 105.

1 (2) GRANTS TO INDIAN TRIBES.—Up to 5 per-
2 cent of the grant funding available under this sec-
3 tion may be reserved for Indian tribal governments,
4 including tribal judicial systems.

5 (b) USE OF GRANT AMOUNTS.—Grants awarded to
6 States or Indian tribes under this section may only be
7 used to—

8 (1) create electronic systems, which provide ac-
9 curate and up-to-date information which is directly
10 related to checks under the National Instant Crimi-
11 nal Background Check System (referred to in this
12 section as “NICS”), including court disposition and
13 corrections records;

14 (2) assist States in establishing or enhancing
15 their own capacities to perform NICS background
16 checks;

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

20 (4) supply accurate and timely information to
21 the Attorney General concerning the identity of per-
22 sons who are prohibited from obtaining a firearm
23 under section 922(g)(4) of title 18, United States
24 Code, to be used by the Federal Bureau of Inves-
25 tigation solely to conduct NICS background checks;

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

5 (6) collect and analyze data needed to dem-
6 onstrate levels of State compliance with this Act;
7 and

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

12 (c) ELIGIBILITY.—To be eligible for a grant under
13 this section, a State shall certify, to the satisfaction of
14 the Attorney General, that the State has implemented a
15 relief from disabilities program in accordance with section
16 105.

17 (d) CONDITION.—As a condition of receiving a grant
18 under this section, a State shall specify the projects for
19 which grant amounts will be used, and shall use such
20 amounts only as specified. A State that violates this sub-
21 section shall be liable to the Attorney General for the full
22 amount of the grant received under this section.

23 (e) AUTHORIZATION OF APPROPRIATIONS.—

24 (1) IN GENERAL.—There are authorized to be
25 appropriated to carry out this section \$125,000,000

1 for fiscal year 2009, \$250,000,000 for fiscal year
2 2010, \$250,000,000 for fiscal year 2011,
3 \$125,000,000 for fiscal year 2012, and
4 \$125,000,000 for fiscal year 2013.

5 (2) ALLOCATIONS.—For fiscal years 2009 and
6 2010, the Attorney General shall endeavor to allo-
7 cate at least $\frac{1}{2}$ of the authorized appropriations to
8 those States providing more than 50 percent of the
9 records required to be provided under sections 102
10 and 103. For fiscal years 2011, 2012, and 2013, the
11 Attorney General shall endeavor to allocate at least
12 $\frac{1}{2}$ of the authorized appropriations to those States
13 providing more than 70 percent of the records re-
14 quired to be provided under section 102 and 103.
15 The allocations in this paragraph shall be subject to
16 the discretion of the Attorney General, who shall
17 have the authority to make adjustments to the dis-
18 tribution of the authorized appropriations as nec-
19 essary to maximize incentives for State compliance.

20 (f) USER FEE.—The Federal Bureau of Investigation
21 shall not charge a user fee for background checks pursu-
22 ant to section 922(t) of title 18, United States Code.

23 **SEC. 104. PENALTIES FOR NONCOMPLIANCE.**

24 (a) ATTORNEY GENERAL REPORT.—

1 (1) IN GENERAL.—Not later than January 31
2 of each year, the Attorney General shall submit to
3 the Committee on the Judiciary of the Senate and
4 the Committee on the Judiciary of the House of
5 Representatives a report on the progress of the
6 States in automating the databases containing infor-
7 mation described under sections 102 and 103, and
8 in providing that information pursuant to the re-
9 quirements of sections 102 and 103.

10 (2) AUTHORIZATION OF APPROPRIATIONS.—
11 There are authorized to be appropriated to the De-
12 partment of Justice, such funds as may be necessary
13 to carry out paragraph (1).

14 (b) PENALTIES.—

15 (1) DISCRETIONARY REDUCTION.—

16 (A) During the 2-year period beginning 3
17 years after the date of enactment of this Act,
18 the Attorney General may withhold not more
19 than 3 percent of the amount that would other-
20 wise be allocated to a State under section 505
21 of the Omnibus Crime Control and Safe Streets
22 Act of 1968 (42 U.S.C. 3755) if the State pro-
23 vides less than 50 percent of the records re-
24 quired to be provided under sections 102 and
25 103.

1 (B) During the 5-year period after the ex-
2 piration of the period referred to in subpara-
3 graph (A), the Attorney General may withhold
4 not more than 4 percent of the amount that
5 would otherwise be allocated to a State under
6 section 505 of the Omnibus Crime Control and
7 Safe Streets Act of 1968 (42 U.S.C. 3755) if
8 the State provides less than 70 percent of the
9 records required to be provided under sections
10 102 and 103.

11 (2) MANDATORY REDUCTION.—After the expi-
12 ration of the periods referred to in paragraph (1),
13 the Attorney General shall withhold 5 percent of the
14 amount that would otherwise be allocated to a State
15 under section 505 of the Omnibus Crime Control
16 and Safe Streets Act of 1968 (42 U.S.C. 3755), if
17 the State provides less than 90 percent of the
18 records required to be provided under sections 102
19 and 103.

20 (3) WAIVER BY ATTORNEY GENERAL.—The At-
21 torney General may waive the applicability of para-
22 graph (2) to a State if the State provides substantial
23 evidence, as determined by the Attorney General,
24 that the State is making a reasonable effort to com-
25 ply with the requirements of sections 102 and 103,

1 including an inability to comply due to court order
2 or other legal restriction.

3 (c) REALLOCATION.—Any funds that are not allo-
4 cated to a State because of the failure of the State to com-
5 ply with the requirements of this Act shall be reallocated
6 to States that meet such requirements.

7 (d) METHODOLOGY.—The method established to cal-
8 culate the number of records to be reported, as set forth
9 in section 102(b)(1)(A), and State compliance with the re-
10 quired level of reporting under sections 102 and 103 shall
11 be determined by the Attorney General. The Attorney
12 General shall calculate the methodology based on the total
13 number of records to be reported from all subcategories
14 of records, as described in section 102(b)(1)(C).

15 **SEC. 105. RELIEF FROM DISABILITIES PROGRAM REQUIRED**
16 **AS CONDITION FOR PARTICIPATION IN**
17 **GRANT PROGRAMS.**

18 (a) PROGRAM DESCRIBED.—A relief from disabilities
19 program is implemented by a State in accordance with this
20 section if the program—

21 (1) permits a person who, pursuant to State
22 law, has been adjudicated as described in subsection
23 (g)(4) of section 922 of title 18, United States Code,
24 or has been committed to a mental institution, to
25 apply to the State for relief from the disabilities im-

1 posed by subsections (d)(4) and (g)(4) of such sec-
2 tion by reason of the adjudication or commitment;

3 (2) provides that a State court, board, commis-
4 sion, or other lawful authority shall grant the relief,
5 pursuant to State law and in accordance with the
6 principles of due process, if the circumstances re-
7 garding the disabilities referred to in paragraph (1),
8 and the person's record and reputation, are such
9 that the person will not be likely to act in a manner
10 dangerous to public safety and that the granting of
11 the relief would not be contrary to the public inter-
12 est; and

13 (3) permits a person whose application for the
14 relief is denied to file a petition with the State court
15 of appropriate jurisdiction for a de novo judicial re-
16 view of the denial.

17 (b) **AUTHORITY TO PROVIDE RELIEF FROM CER-**
18 **TAIN DISABILITIES WITH RESPECT TO FIREARMS.**—If,
19 under a State relief from disabilities program implemented
20 in accordance with this section, an application for relief
21 referred to in subsection (a)(1) of this section is granted
22 with respect to an adjudication or a commitment to a men-
23 tal institution or based upon a removal of a record under
24 section 102(c)(1)(B), the adjudication or commitment, as
25 the case may be, is deemed not to have occurred for pur-

1 poses of subsections (d)(4) and (g)(4) of section 922 of
2 title 18, United States Code.

3 **SEC. 106. ILLEGAL IMMIGRANT GUN PURCHASE NOTIFICA-**
4 **TION.**

5 (a) **IN GENERAL.**—Notwithstanding any other provi-
6 sion of law or of this Act, all records obtained by the Na-
7 tional Instant Criminal Background Check system rel-
8 evant to whether an individual is prohibited from pos-
9 sessed a firearm because such person is an alien illegally
10 or unlawfully in the United States shall be made available
11 to U.S. Immigration and Customs Enforcement.

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

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

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

21 (a) **EVALUATION REQUIRED.**—The Director of the
22 Bureau of Justice Statistics (referred to in this section
23 as the “Director”) shall study and evaluate the operations
24 of the National Instant Criminal Background Check Sys-
25 tem. Such study and evaluation shall include compilations

1 and analyses of the operations and record systems of the
2 agencies and organizations necessary to support such Sys-
3 tem.

4 (b) REPORT ON GRANTS.—Not later than January
5 31 of each year, the Director shall submit to Congress
6 a report containing the estimates submitted by the States
7 under section 102(b).

8 (c) REPORT ON BEST PRACTICES.—Not later than
9 January 31 of each year, the Director shall submit to Con-
10 gress, and to each State participating in the National
11 Criminal History Improvement Program, a report of the
12 practices of the States regarding the collection, mainte-
13 nance, automation, and transmittal of information rel-
14 evant to determining whether a person is prohibited from
15 possessing or receiving a firearm by Federal or State law,
16 by the State or any other agency, or any other records
17 relevant to the National Instant Criminal Background
18 Check System, that the Director considers to be best prac-
19 tices.

20 (d) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated such sums as may be
22 necessary for each of the fiscal years 2009 through 2013
23 to complete the studies, evaluations, and reports required
24 under this section.

1 **TITLE III—GRANTS TO STATE**
2 **COURT SYSTEMS FOR THE IM-**
3 **PROVEMENT IN AUTOMATION**
4 **AND TRANSMITTAL OF DIS-**
5 **POSITION RECORDS**

6 **SEC. 301. DISPOSITION RECORDS AUTOMATION AND**
7 **TRANSMITTAL IMPROVEMENT GRANTS.**

8 (a) GRANTS AUTHORIZED.—From amounts made
9 available to carry out this section, the Attorney General
10 shall make grants to each State, consistent with State
11 plans for the integration, automation, and accessibility of
12 criminal history records, for use by the State court system
13 to improve the automation and transmittal of criminal his-
14 tory dispositions, records relevant to determining whether
15 a person has been convicted of a misdemeanor crime of
16 domestic violence, court orders, and mental health adju-
17 dications or commitments, to Federal and State record re-
18 positories in accordance with sections 102 and 103 and
19 the National Criminal History Improvement Program.

20 (b) GRANTS TO INDIAN TRIBES.—Up to 5 percent
21 of the grant funding available under this section may be
22 reserved for Indian tribal governments for use by Indian
23 tribal judicial systems.

24 (c) USE OF FUNDS.—Amounts granted under this
25 section shall be used by the State court system only—

1 (1) to carry out, as necessary, assessments of
2 the capabilities of the courts of the State for the au-
3 tomation and transmission of arrest and conviction
4 records, court orders, and mental health adjudica-
5 tions or commitments to Federal and State record
6 repositories; and

7 (2) to implement policies, systems, and proce-
8 dures for the automation and transmission of arrest
9 and conviction records, court orders, and mental
10 health adjudications or commitments to Federal and
11 State record repositories.

12 (d) ELIGIBILITY.—To be eligible to receive a grant
13 under this section, a State shall certify, to the satisfaction
14 of the Attorney General, that the State has implemented
15 a relief from disabilities program in accordance with sec-
16 tion 105.

17 (e) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to the Attorney General
19 to carry out this section \$62,500,000 for fiscal year 2009,
20 \$125,000,000 for fiscal year 2010, \$125,000,000 for fis-
21 cal year 2011, \$62,500,000 for fiscal year 2012, and
22 \$62,500,000 for fiscal year 2013.

1 **TITLE IV—GAO AUDIT**

2 **SEC. 401. GAO AUDIT.**

3 (a) **IN GENERAL.**—The Comptroller General of the
4 United States shall conduct an audit of the expenditure
5 of all funds appropriated for criminal records improve-
6 ment pursuant to section 106(b) of the Brady Handgun
7 Violence Prevention Act (Public Law 103–159) to deter-
8 mine if the funds were expended for the purposes author-
9 ized by the Act and how those funds were expended for
10 those purposes or were otherwise expended.

11 (b) **REPORT.**—Not later than 6 months after the date
12 of enactment of this Act, the Comptroller General shall
13 submit a report to Congress describing the findings of the
14 audit conducted pursuant to subsection (a).