

103^D CONGRESS
1ST SESSION

S. 1759

To establish a national background check procedure to ensure that persons working as child care providers do not have a criminal history of child abuse, to initiate the reporting of all State and Federal child abuse crimes, to establish minimum guidelines for States to follow in conducting background checks and provide protection from inaccurate information for persons subjected to background checks, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 20 (legislative day, NOVEMBER 2), 1993

Mr. BIDEN (for himself, Mr. HATCH, Mr. DECONCINI, Mr. THURMOND, Mr. HEFLIN, Mr. GRASSLEY, Mr. SIMON, Mr. METZENBAUM, and Mr. MCCONNELL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish a national background check procedure to ensure that persons working as child care providers do not have a criminal history of child abuse, to initiate the reporting of all State and Federal child abuse crimes, to establish minimum guidelines for States to follow in conducting background checks and provide protection from inaccurate information for persons subjected to background checks, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Child Protec-
3 tion Act of 1993”.

4 **SEC. 2. PURPOSES.**

5 The purposes of this subtitle are—

6 (1) to establish a national system through
7 which child care organizations may obtain the bene-
8 fit of a nationwide criminal background check to de-
9 termine if persons who are current or prospective
10 child care providers have committed child abuse
11 crimes or other serious crimes;

12 (2) to establish minimum criteria for State laws
13 and procedures that permit child care organizations
14 to obtain the benefit of nationwide criminal back-
15 ground checks to determine if persons who are cur-
16 rent or prospective child care providers have commit-
17 ted child abuse crimes or other serious crimes;

18 (3) to provide procedural rights for persons who
19 are subject to nationwide criminal background
20 checks, including procedures to challenge and correct
21 inaccurate background check information;

22 (4) to establish a national system for the re-
23 porting by the States of child abuse crime informa-
24 tion; and

25 (5) to document and study the problem of child
26 abuse by providing statistical and informational data

1 on child abuse and related crimes to the Department
2 of Justice and other interested parties.

3 **SEC. 3. DEFINITIONS.**

4 For the purposes of this subtitle—

5 (1) the term “authorized agency” means a divi-
6 sion or office of a State designated by a State to re-
7 port, receive, or disseminate information under this
8 subtitle;

9 (2) the term “background check crime” means
10 a child abuse crime, murder, manslaughter, aggra-
11 vated assault, kidnapping, arson, sexual assault, do-
12 mestic violence, incest, indecent exposure, prostitu-
13 tion, promotion of prostitution, and a felony offense
14 involving the use or distribution of a controlled sub-
15 stance;

16 (3) the term “child” means a person who is a
17 child for purposes of the criminal child abuse law of
18 a State;

19 (4) the term “child abuse” means the physical
20 or mental injury, sexual abuse or exploitation, ne-
21 glectful treatment, negligent treatment, or maltreat-
22 ment of a child by any person in violation of the
23 criminal child abuse laws of a State, but does not in-
24 clude discipline administered by a parent or legal
25 guardian to his or her child provided it is reasonable

1 in manner and moderate in degree and otherwise
2 does not constitute cruelty;

3 (5) the term “child abuse crime” means a crime
4 committed under any law of a State that establishes
5 criminal penalties for the commission of child abuse
6 by a parent or other family member of a child or by
7 any other person;

8 (6) the term “child abuse crime information”
9 means the following facts concerning a person who
10 is under indictment for, or has been convicted of, a
11 child abuse crime: full name, race, sex, date of birth,
12 height, weight, a brief description of the child abuse
13 crime or offenses for which the person has been ar-
14 rested or is under indictment or has been convicted,
15 the disposition of the charge, and any other informa-
16 tion that the Attorney General determines may be
17 useful in identifying persons arrested for, under in-
18 dictment for, or convicted of, a child abuse crime;

19 (7) the term “child care” means the provision
20 of care, treatment, education, training, instruction,
21 supervision, or recreation to children;

22 (8) the term “domestic violence” means a fel-
23 ony or misdemeanor involving the use or threatened
24 use of force by—

1 (A) a present or former spouse of the vic-
2 tim;

3 (B) a person with whom the victim shares
4 a child in common;

5 (C) a person who is cohabiting with or has
6 cohabited with the victim as a spouse; or

7 (D) any person defined as a spouse of the
8 victim under the domestic or family violence
9 laws of a State;

10 (9) the term “exploitation” means child pornog-
11 raphy and child prostitution;

12 (10) the term “mental injury” means harm to
13 a child’s psychological or intellectual functioning,
14 which may be exhibited by severe anxiety, depres-
15 sion, withdrawal or outward aggressive behavior, or
16 a combination of those behaviors or by a change in
17 behavior, emotional response, or cognition;

18 (11) the term “national criminal background
19 check system” means the system maintained by the
20 Federal Bureau of Investigation based on fingerprint
21 identification or any other method of positive identi-
22 fication;

23 (12) the term “negligent treatment” means the
24 failure to provide, for a reason other than poverty,
25 adequate food, clothing, shelter, or medical care so

1 as to seriously endanger the physical health of a
2 child;

3 (13) the term “physical injury” includes lacera-
4 tions, fractured bones, burns, internal injuries, se-
5 vere bruising, and serious bodily harm;

6 (14) the term “provider” means

7 (A) a person who—

8 (i) is employed by or volunteers with
9 a qualified entity;

10 (ii) who owns or operates a qualified
11 entity; or

12 (iii) who has or may have unsuper-
13 vised access to a child to whom the quali-
14 fied entity provides child care; and

15 (B) a person who—

16 (i) seeks to be employed by or volun-
17 teer with a qualified entity;

18 (ii) seeks to own or operate a qualified
19 entity; or

20 (iii) seeks to have or may have unsu-
21 pervised access to a child to whom the
22 qualified entity provides child care;

23 (15) the term “qualified entity” means a busi-
24 ness or organization, whether public, private, for-
25 profit, not-for-profit, or voluntary, that provides

1 child care or child care placement services, including
2 a business or organization that licenses or certifies
3 others to provide child care or child care placement
4 services;

5 (16) the term “sex crime” means an act of sex-
6 ual abuse that is a criminal act;

7 (17) the term “sexual abuse” includes the em-
8 ployment, use, persuasion, inducement, enticement,
9 or coercion of a child to engage in, or assist another
10 person to engage in, sexually explicit conduct or the
11 rape, molestation, prostitution, or other form of sex-
12 ual exploitation of children or incest with children;
13 and

14 (18) the term “State” means a State, the Dis-
15 trict of Columbia, the Commonwealth of Puerto
16 Rico, American Samoa, the Virgin Islands, Guam,
17 and the Trust Territories of the Pacific.

18 **SEC. 4. REPORTING BY THE STATES.**

19 (a) IN GENERAL.—An authorized criminal justice
20 agency of a State shall report child abuse crime informa-
21 tion to, or index child abuse crime information in, the na-
22 tional criminal background check system.

23 (b) PROVISION OF STATE CHILD ABUSE CRIME
24 RECORDS THROUGH THE NATIONAL CRIMINAL BACK-
25 GROUND CHECK SYSTEM.—(1) Not later than 180 days

1 after the date of enactment of this Act, the Attorney Gen-
2 eral shall, subject to the availability of appropriations—

3 (A) investigate the criminal records of each
4 State and determine for each State a timetable by
5 which the State should be able to provide child
6 abuse crime records on an on-line capacity basis
7 through the national criminal background check sys-
8 tem;

9 (B) establish guidelines for the reporting or in-
10 dexing of child abuse crime information, including
11 guidelines relating to the format, content, and accu-
12 racy of child abuse crime information and other pro-
13 cedures for carrying out this Act; and

14 (C) notify each State of the determinations
15 made pursuant to subparagraphs (A) and (B).

16 (2) The Attorney General shall require as a part of
17 the State timetable that the State—

18 (A) achieve, by not later than the date that is
19 3 years after the date of enactment of this Act, at
20 least 80 percent currency of final case dispositions
21 in computerized criminal history files for all identifi-
22 able child abuse crime cases in which there has been
23 an event of activity within the last 5 years;

24 (B) continue to maintain at least 80 percent
25 currency of final case dispositions in all identifiable

1 child abuse crime cases in which there has been an
2 event of activity within the preceding 5 years; and

3 (C) take steps to achieve full disposition report-
4 ing, including data quality audits and periodic no-
5 tices to criminal justice agencies identifying records
6 that lack final dispositions and requesting those dis-
7 positions.

8 (c) LIAISON.—An authorized agency of a State shall
9 maintain close liaison with the National Center on Child
10 Abuse and Neglect, the National Center for Missing and
11 Exploited Children, and the National Center for the Pros-
12 ecution of Child Abuse for the exchange of technical as-
13 sistance in cases of child abuse.

14 (d) ANNUAL SUMMARY.—(1) The Attorney General
15 shall publish an annual statistical summary of the child
16 abuse crime information reported under this subtitle.

17 (2) The annual statistical summary described in
18 paragraph (1) shall not contain any information that may
19 reveal the identity of any particular victim or alleged viola-
20 tor.

21 (e) ANNUAL REPORT.—The Attorney General shall
22 publish an annual summary of each State's progress in
23 reporting child abuse crime information to the national
24 criminal background check system.

1 (f) STUDY OF CHILD ABUSE OFFENDERS.—(1) Not
2 later than 180 days after the date of enactment of this
3 Act, the Administrator of the Office of Juvenile Justice
4 and Delinquency Prevention shall begin a study based on
5 a statistically significant sample of convicted child abuse
6 offenders and other relevant information to determine—

7 (A) the percentage of convicted child abuse of-
8 fenders who have more than 1 conviction for an of-
9 fense involving child abuse;

10 (B) the percentage of convicted child abuse of-
11 fenders who have been convicted of an offense in-
12 volving child abuse in more than 1 State;

13 (C) whether there are crimes or classes of
14 crimes, in addition to those defined as background
15 check crimes in section 3, that are indicative of a
16 potential to abuse children; and

17 (D) the extent to which and the manner in
18 which instances of child abuse form a basis for con-
19 victions for crimes other than child abuse crimes.

20 (2) Not later than 1 year after the date of enactment
21 of this Act, the Administrator shall submit a report to the
22 Chairman of the Committee on the Judiciary of the Senate
23 and the Chairman of the Committee on the Judiciary of
24 the House of Representatives containing a description of

1 and a summary of the results of the study conducted pur-
2 suant to paragraph (1).

3 **SEC. 5. BACKGROUND CHECKS.**

4 (a) IN GENERAL.—(1) A State may have in effect
5 procedures (established by or under State statute or regu-
6 lation) to permit a qualified entity to contact an author-
7 ized agency of the State to request a nationwide back-
8 ground check for the purpose of determining whether
9 there is a report that a provider is under indictment for,
10 or has been convicted of, a background check crime.

11 (2) The authorized agency shall access and review
12 State and Federal records of background check crimes
13 through the national criminal background check system
14 and shall respond promptly to the inquiry.

15 (b) GUIDELINES.—(1) The Attorney General shall es-
16 tablish guidelines for State background check procedures
17 established under subsection (a), which guidelines shall in-
18 clude the requirements and protections of this subtitle.

19 (2) The guidelines established under paragraph (1)
20 shall require—

21 (A) that no qualified entity may request a back-
22 ground check of a provider under subsection (a) un-
23 less the provider first completes and signs a state-
24 ment that—

1 (i) contains the name, address, and date of
2 birth appearing on a valid identification docu-
3 ment (as defined by section 1028(d)(1) of title
4 18, United States Code) of the provider;

5 (ii) the provider is not under indictment
6 for, and has not been convicted of, a back-
7 ground check crime and, if the provider is
8 under indictment for or has been convicted of
9 a background check crime, contains a descrip-
10 tion of the crime and the particulars of the in-
11 dictment or conviction;

12 (iii) notifies the provider that the entity
13 may request a background check under sub-
14 section (a);

15 (iv) notifies the provider of the provider's
16 rights under subparagraph (B); and

17 (v) notifies the provider that prior to the
18 receipt of the background check the qualified
19 entity may choose to deny the provider unsuper-
20 vised access to a child to whom the qualified en-
21 tity provides child care;

22 (B) that each State establish procedures under
23 which a provider who is the subject of a background
24 check under subsection (a) is entitled—

1 (i) to obtain a copy of any background
2 check report and any record that forms the
3 basis for any such report; and

4 (ii) to challenge the accuracy and com-
5 pleteness of any information contained in any
6 such report or record and obtain a prompt de-
7 termination from an authorized agency as to
8 the validity of such challenge;

9 (C) that an authorized agency to which a quali-
10 fied entity has provided notice pursuant to sub-
11 section (a) make reasonable efforts to complete re-
12 search in whatever State and local recordkeeping
13 systems are available and in the national criminal
14 background check system and respond to the quali-
15 fied entity within 15 business days;

16 (D) that the response of an authorized agency
17 to an inquiry pursuant to subsection (a) inform the
18 qualified entity that the background check pursuant
19 to this section—

20 (i) may not reflect all indictments or con-
21 victions for a background check crime; and

22 (ii) may not be the sole basis for determin-
23 ing the fitness of a provider;

24 (E) that the response of an authorized agency
25 to an inquiry pursuant to subsection (a) be limited

1 to the conviction or pending indictment information
2 reasonably required to accomplish the purposes of
3 this Act;

4 (F) that the qualified entity may choose to deny
5 the provider unsupervised access to a child to whom
6 the qualified entity provides child care on the basis
7 of a background check under subsection (a) until the
8 provider has obtained a determination as to the va-
9 lidity of any challenge under subparagraph (B) or
10 waived the right to make such challenge;

11 (G) that each State establish procedures to en-
12 sure that any background check under subsection
13 (a) and the results thereof shall be requested by and
14 provided only to—

15 (i) qualified entities identified by States;

16 (ii) authorized representatives of a quali-
17 fied entity who have a need to know such infor-
18 mation;

19 (iii) the provider who is the subject of a
20 background check;

21 (iv) law enforcement authorities; or

22 (v) pursuant to the direction of a court of
23 law;

24 (H) that background check information con-
25 veyed to a qualified entity pursuant to subsection (a)

1 shall not be conveyed to any person except as pro-
2 vided under subparagraph (G);

3 (I) that an authorized agency shall not be liable
4 in an action at law for damages for failure to pre-
5 vent a qualified entity from taking action adverse to
6 a provider on the basis of a background check;

7 (J) that a State employee or a political subdivi-
8 sion of a State or employee thereof responsible for
9 providing information to the national criminal back-
10 ground check system shall not be liable in an action
11 at law for damages for failure to prevent a qualified
12 entity from taking action adverse to a provider on
13 the basis of a background check; and

14 (K) that a State or Federal provider of criminal
15 history records, and any employee thereof, shall not
16 be liable in an action at law for damages for failure
17 to prevent a qualified entity from taking action ad-
18 verse to a provider on the basis of a criminal back-
19 ground check, or due to a criminal history record's
20 being incomplete.

21 (c) EQUIVALENT PROCEDURES.—(1) Notwithstand-
22 ing anything to the contrary in this section, the Attorney
23 General may certify that a State licensing or certification
24 procedure that differs from the procedures described in
25 subsections (a) and (b) shall be deemed to be the equiva-

1 lent of such procedures for purposes of this Act, but the
2 procedures described in subsections (a) and (b) shall con-
3 tinue to apply to those qualified entities, providers, and
4 background check crimes that are not governed by or in-
5 cluded within the State licensing or certification proce-
6 dure.

7 (2) The Attorney General shall by regulation estab-
8 lish criteria for certifications under this subsection. Such
9 criteria shall include a finding by the Attorney General
10 that the State licensing or certification procedure accom-
11 plishes the purposes of this Act and incorporates a nation-
12 wide review of State and Federal records of background
13 check offenses through the national criminal background
14 check system.

15 (d) REGULATIONS.—(1) The Attorney General may
16 by regulation prescribe such other measures as may be
17 required to carry out the purposes of this Act, including
18 measures relating to the security, confidentiality, accu-
19 racy, use, misuse, and dissemination of information, and
20 audits and recordkeeping.

21 (2) The Attorney General shall, to the maximum ex-
22 tent possible, encourage the use of the best technology
23 available in conducting background checks.

1 **SEC. 6. FUNDING FOR IMPROVEMENT OF CHILD ABUSE**
2 **CRIME INFORMATION.**

3 (a) USE OF FORMULA GRANTS FOR IMPROVEMENTS
4 IN STATE RECORDS AND SYSTEMS.—Section 509(b) of
5 the Omnibus Crime Control and Safe Streets Act of 1968
6 (42 U.S.C. 3759(b)) is amended—

7 (1) in paragraph (2) by striking “and” after
8 the semicolon;

9 (2) in paragraph (3) by striking the period and
10 inserting “; and”; and

11 (3) by adding at the end the following new
12 paragraph:

13 “(4) the improvement of State record systems
14 and the sharing of all of the records described in
15 paragraphs (1), (2), and (3) and the records re-
16 quired by the Attorney General under section 4 of
17 the National Child Protection Act of 1993 with the
18 Attorney General for the purpose of implementing
19 the National Child Protection Act of 1993.”.

20 (b) ADDITIONAL FUNDING GRANTS FOR THE IM-
21 PROVEMENT OF CHILD ABUSE CRIME INFORMATION.—

22 (1) The Attorney General shall, subject to appropriations
23 and with preference to States that as of the date of enact-
24 ment of this Act have the lowest percent currency of case
25 dispositions in computerized criminal history files, make
26 a grant to each State to be used—

1 (A) for the computerization of criminal history
2 files for the purposes of this subtitle;

3 (B) for the improvement of existing computer-
4 ized criminal history files for the purposes of this
5 subtitle;

6 (C) to improve accessibility to the national
7 criminal background check system for the purposes
8 of this subtitle; and

9 (D) to assist the State in the transmittal of
10 criminal records to, or the indexing of criminal his-
11 tory records in, the national criminal background
12 check system for the purposes of this subtitle.

13 (2) There are authorized to be appropriated for
14 grants under paragraph (1) a total of \$20,000,000 for fis-
15 cal years 1995, 1996, and 1997.

16 (c) WITHHOLDING STATE FUNDS.—Effective 1 year
17 after the date of enactment of this Act, the Attorney Gen-
18 eral may reduce by up to 10 percent the allocation to a
19 State for a fiscal year under title I of the Omnibus Crime
20 Control and Safe Streets Act of 1968 of a State that is
21 not in compliance with the timetable established for that
22 State under section 4 of this Act.

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