

111TH CONGRESS  
1ST SESSION

# H. R. 1469

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2009

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

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## 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 2009”.

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 47,000,000 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 between \$16 to \$24, for a total of be-  
6 tween \$21 and \$99 for each volunteer or employee.

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

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

23           (10) In an analysis performed on the volunteers  
24 screened in the first 18 months of the Child Safety  
25 Pilot Program, it was found that over 25 percent of

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

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

15 **SEC. 3. BACKGROUND CHECKS.**

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

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

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

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

23 “(a) DEFINITIONS.—In this section—

24 “(1) the term ‘background check designee’  
25 means the entity or organization, if any, designated

1 by or entering an agreement with the Attorney Gen-  
2 eral under subsection (b)(3)(A) to carry out or assist  
3 in carrying out the duties described in subsection  
4 (c);

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

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

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

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

22 “(B) who—

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

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

3                   “(5) the term ‘criminal history review designee’  
4                   means the entity or organization, if any, designated  
5                   by or entering an agreement with the Attorney Gen-  
6                   eral under subsection (b)(3)(B) to carry out or as-  
7                   sist in carrying out the criminal history review pro-  
8                   gram;

9                   “(6) the term ‘criminal history review program’  
10                  means the program established under subsection  
11                  (b)(1)(B);

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

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

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

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

23                  “(9) the term ‘qualified State program’ means  
24                  a program of a State authorized agency that the At-  
25                  torney General determines is meeting the standards

1 identified in subsection (b)(2) to ensure that a wide  
2 range of youth-serving organizations have affordable  
3 and timely access to nationwide background checks;

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

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

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

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

23 “(b) ESTABLISHMENT OF PROGRAM.—

24 “(1) IN GENERAL.—Not later than 180 days  
25 after the date of enactment of the Child Protection



1 Improvements Act of 2009, the Attorney General  
2 shall—

3 “(A) establish policies and procedures to  
4 carry out the duties described in subsection (c);  
5 and

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

8 “(2) ASSESSMENTS.—The Attorney General  
9 shall conduct—

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

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

20 “(ii) charges a covered entity not  
21 more than a total of \$25 and the fee  
22 charged by the Federal Bureau of Inves-  
23 tigation for a nationwide background  
24 check; and

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

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

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

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

18 “(3) DESIGNNEES.—The Attorney General  
19 may—

20 “(A) designate or enter into an agreement  
21 with an entity or organization that has an es-  
22 tablished history of serving the interests of chil-  
23 dren to carry out or assist in carrying out the  
24 duties described in subsection (c); and

1           “(B) designate or enter into an agreement  
2           with 1 or more Federal, State, or local govern-  
3           ment agencies to carry out or assist in carrying  
4           out the criminal history review program.

5           “(c) ACCESS TO NATIONWIDE BACKGROUND  
6 CHECKS.—

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

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

14                  “(A) handle inquiries from covered entities  
15                  and inform covered entities about how to re-  
16                  quest nationwide background checks—

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

21                          “(ii) for a covered entity located in a  
22                          State without a qualified State program,  
23                          by providing information on the require-  
24                          ments to become a participating entity;

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

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

7           “(D) to the extent practicable, negotiate  
8           an agreement with each State authorized agen-  
9           cy under which—

10                   “(i) that State authorized agency shall  
11                   conduct a State criminal background check  
12                   within the time periods specified in sub-  
13                   section (e) in response to a request from  
14                   the Attorney General or the background  
15                   check designee and provide criminal his-  
16                   tory records to the Attorney General or the  
17                   criminal history review designee; and

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

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

1 all fingerprints electronically to the national  
2 criminal history background check system and,  
3 if appropriate, the State authorized agencies;

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

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

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

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

23 “(B) a photocopy of a valid identification  
24 document; and

1           “(C) a statement completed and signed by  
2 the covered individual that—

3           “(i) sets out the covered individual’s  
4 name, address, and date of birth, as those  
5 items of information appear on a valid  
6 identification document;

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

15           “(iii) notifies the covered individual  
16 that the signature of the covered individual  
17 constitutes consent to participate in the  
18 criminal history review program, under  
19 which the participating entity may be in-  
20 formed if the criminal history records of  
21 the covered individual reveal a criminal  
22 history that warrants special concern or  
23 further inquiry;

24           “(iv) notifies the covered individual  
25 that the covered individual shall be pro-

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

11                 “(v) notifies the covered individual  
12           that prior to and after the completion of  
13           the background check, the participating  
14           entity may choose to deny the covered indi-  
15           vidual access to children.

16           “(4) FEES.—

17                 “(A) IN GENERAL.—The Attorney General  
18           or the background check designee may collect a  
19           fee to defray the costs of carrying out the du-  
20           ties described in this subsection, the costs of  
21           the Federal Bureau of Investigation and State  
22           and local agencies in resolving the accuracy of  
23           criminal history records of covered individuals,  
24           and the duties of the criminal history review  
25           designee under this section—

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

4                   “(I) the sum of—

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

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

15                           “(cc) any costs associated  
16 with resolving inaccuracies, omis-  
17 sions, or challenges to a covered  
18 individual’s criminal history; or

19                           “(II) to the extent practicable, no  
20 greater than \$25 for any participating  
21 entity that is a nonprofit entity; and

22           “(ii) for a State criminal background  
23 check described in paragraph (2)(D), in  
24 the amount specified in the agreement with



1 the applicable State authorized agency, not  
2 to exceed \$25.

3 “(B) PROHIBITION ON FEES.—

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

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

13 “(d) CRIMINAL HISTORY REVIEW PROGRAM.—

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

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

24 “(A) establish procedures to securely re-  
25 ceive criminal history records from the Federal

1 Bureau of Investigation, if necessary, and from  
2 State authorized agencies, if appropriate;

3 “(B) establish procedures to resolve poten-  
4 tially incomplete records, under which the At-  
5 torney General or the criminal history review  
6 designee shall—

7 “(i) determine whether the criminal  
8 history record—

9 “(I) includes an arrest—

10 “(aa) that would meet the  
11 criteria described in paragraph  
12 (3)(B)(ii) if it were an open ar-  
13 rest; and

14 “(bb) relating to which the  
15 criminal history record does not  
16 indicate whether charges resulted  
17 from the arrest;

18 “(II) includes a criminal  
19 charge—

20 “(aa) for which a conviction  
21 would meet the criteria described  
22 in subparagraph (A) or (B) of  
23 paragraph (3); and

24 “(bb) relating to which the  
25 criminal history record does not

1 indicate any disposition of the  
2 charge; or

3 “(III) includes a criminal  
4 charge—

5 “(aa) that would meet the  
6 criteria described in paragraph  
7 (3)(B)(ii) if it were a pending  
8 charge; and

9 “(bb) relating to which the  
10 criminal history record does not  
11 indicate any disposition of the  
12 charge; and

13 “(ii) if the criminal history record in-  
14 cludes an arrest or charge described in  
15 clause (i), request that the Federal Bureau  
16 of Investigation—

17 “(I) determine the status of any  
18 such arrest or charge;

19 “(II) update the criminal history  
20 record with any disposition informa-  
21 tion; and

22 “(III) convey the result of the de-  
23 termination and any updated record  
24 to the Attorney General or criminal  
25 history review designee;

1           “(C) after receiving a criminal history  
2 record from the Federal Bureau of Investiga-  
3 tion and, if necessary, resolving any potentially  
4 incomplete information through the procedures  
5 described in subparagraph (B), transmit to the  
6 covered individual—

7                   “(i) the criminal history records;

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

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

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

1 Bureau of Investigation or State authorized  
2 agency;

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

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

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

22 “(ii) information and guidance relat-  
23 ing to the appropriate use of criminal his-  
24 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 under  
7           Title VII of the Civil Rights Act or any  
8           successor thereto issued by the Equal Em-  
9           ployment Opportunity Commission;

10           “(G) if a covered individual has withdrawn  
11           consent to participate in the criminal history re-  
12           view program, inform the participating entity  
13           that consent has been withdrawn;

14           “(H) work with the Attorney General or  
15           the background check designee and the Federal  
16           Bureau of Investigation to develop processes  
17           and procedures to ensure that criminal history  
18           background check requests are completed within  
19           the time periods specified in subsection (e); and

20           “(I) serve as a national resource center to  
21           provide guidance and assistance to participating  
22           entities on how to interpret criminal history in-  
23           formation, the possible restrictions that apply  
24           when making hiring decisions based on criminal  
25           histories, and other related information.

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

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

14                  “(B) assign a categorization of further in-  
15                  quiry recommended if a covered individual is  
16                  found to have—

17                          “(i) a conviction for a serious mis-  
18                          demeanor, committed against a child, in-  
19                          volving the same type of conduct prohib-  
20                          ited by a felony described in section  
21                          471(a)(20)(A) of the Social Security Act  
22                          (42 U.S.C. 671(a)(20)(A));

23                          “(ii) a conviction for a serious mis-  
24                          demeanor, not committed against a child,  
25                          involving the same type of conduct prohib-



1           ited by a felony described in section  
2           471(a)(20)(A) of the Social Security Act  
3           (42 U.S.C. 671(a)(20)(A)) unless 5 years  
4           has elapsed since the later of the date of  
5           conviction and the date of release of the  
6           person from imprisonment for that convic-  
7           tion;

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

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

18          “(e) TIMING.—

19                 “(1) IN GENERAL.—Unless exceptional cir-  
20                 cumstances apply, criminal background checks shall  
21                 be completed according to the time frame under this  
22                 subsection. The Attorney General or the background  
23                 check designee shall work with the criminal history  
24                 review designee and the Federal Bureau of Inves-

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

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

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

22          “(4) RESOLUTION OF POTENTIALLY INCOM-  
23      PLETE RECORDS.—The Attorney General or criminal  
24      history review designee shall submit any request that  
25      the Federal Bureau of Investigation investigate po-

1 tentially incomplete records not later than 3 busi-  
2 ness days after the date on which the Attorney Gen-  
3 eral or criminal history review designee receives the  
4 criminal history records from the Federal Bureau of  
5 Investigation or State authorized agency. Unless the  
6 Federal Bureau of Investigation certifies that addi-  
7 tional time is needed, the Federal Bureau of Inves-  
8 tigation shall complete the investigation, and provide  
9 the Attorney General or criminal history review des-  
10 ignee with the results of the investigation and any  
11 updated criminal history records, not later than 5  
12 business days after the date on which Federal Bu-  
13 reau of Investigation receives a request from the At-  
14 torney General or criminal history designee.

15 “(5) PROVISION OF RECORDS TO COVERED IN-  
16 DIVIDUALS AND OPPORTUNITY TO CHALLENGE.—  
17 When the Attorney General or the criminal history  
18 review designee finds that a covered individual’s  
19 criminal history records fall with the categorizations  
20 described in subparagraph (A) or (B) of subsection  
21 (d)(3), the Attorney General or criminal history re-  
22 view designee shall provide the covered individual  
23 with the criminal history records of the covered indi-  
24 vidual and a detailed notification of the rights of the  
25 covered individual under subsection (g) not later

1 than 1 business day after the date on which the At-  
2 torney General or criminal history review designee  
3 receives a criminal history record from the Federal  
4 Bureau of Investigation and, if necessary, resolves  
5 any potentially incomplete information in accordance  
6 with subsection (d)(2)(B). The covered individual  
7 shall have 10 business days from the date sent to  
8 challenge the accuracy or completeness of any infor-  
9 mation in the criminal history record or to withdraw  
10 consent to participate in the criminal history review  
11 program.

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

23 “(f) PARTICIPATION IN PROGRAM.—

24 “(1) IN GENERAL.—The Attorney General or  
25 the background check designee shall determine

1 whether an entity is a covered entity and whether  
2 that covered entity should be approved as a partici-  
3 pating entity, based on—

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

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

8 “(2) CONSULTATION.—In determining how  
9 many covered entities to approve as participating en-  
10 tities, the Attorney General or the background check  
11 designee shall consult quarterly with the Federal  
12 Bureau of Investigation and the criminal history re-  
13 view designee to determine the volume of requests  
14 for national background checks that can be com-  
15 pleted, based on the capacity of the criminal history  
16 review program and the Federal Bureau of Inves-  
17 tigation, the availability of resources, and the dem-  
18 onstrated need for national background checks in  
19 order to protect children.

20 “(3) PREFERENCE FOR NONPROFIT ORGANIZA-  
21 TIONS.—In determining whether a covered entity  
22 should be approved as a participating entity under  
23 paragraph (1), the Attorney General or the back-  
24 ground check designee shall give preference to any  
25 organization participating in the Child Safety Pilot

1 Program under section 108(a)(3) of the PROTECT  
2 Act (42 U.S.C. 5119a note) on the date of enact-  
3 ment of the Child Protection Improvements Act of  
4 2009 and to any other nonprofit organizations.

5 “(g) RIGHT OF COVERED INDIVIDUALS TO CHAL-  
6 LENGE ACCURACY OR COMPLETENESS OF RECORDS.—A  
7 covered individual who is the subject of a nationwide back-  
8 ground check under this section may challenge the accu-  
9 racy and completeness of the criminal history records in  
10 the criminal history report as provided in subsection  
11 (d)(2)(D), without submitting a separate set of finger-  
12 prints or an additional fee.

13 “(h) DUTIES OF THE FEDERAL BUREAU OF INVES-  
14 TIGATION.—

15 “(1) RESPONSE TO A REQUEST FOR CRIMINAL  
16 BACKGROUND RECORDS.—Upon request by the At-  
17 torney General or background check designee, the  
18 Federal Bureau of Investigation shall conduct a na-  
19 tionwide background check and provide any criminal  
20 history records to the Attorney General or criminal  
21 history review designee.

22 “(2) OPEN ARRESTS OR PENDING CHARGES.—  
23 Upon request by the Attorney General or criminal  
24 history review designee, the Federal Bureau of In-  
25 vestigation shall—

1           “(A) investigate any arrest or charge de-  
2           scribed in subsection (d)(2)(B)(i) with relevant  
3           departments and agencies of the Federal Gov-  
4           ernment and State and local governments;

5           “(B) determine the status of any such ar-  
6           rest or charge;

7           “(C) update the criminal history record  
8           with any disposition information; and

9           “(D) convey the result of the determina-  
10          tion and any updated criminal history record to  
11          the Attorney General or criminal history review  
12          designee.

13          “(3) 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) AUTHORIZATION OF APPROPRIATIONS.—

4                   “(1) IN GENERAL.—There are authorized to be  
5 appropriated to the Attorney General for each of fis-  
6 cal years 2009 through 2012 such sums as are nec-  
7 essary to carry out the provisions of this Act.

8                   “(2) SENSE OF THE HOUSE.—It is the sense of  
9 the House of Representatives that in fiscal year  
10 2009, and each fiscal year thereafter, the fees col-  
11 lected by the Attorney General or the background  
12 check designee should be sufficient to carry out the  
13 duties of the Attorney General or the background  
14 check designee under this section and to help sup-  
15 port the criminal history review program.

16                   “(j) COLLECTION OF DATA AND REPORT TO CON-  
17 GRESS.—

18                   “(1) IN GENERAL.—Not later than 1 year after  
19 the date of enactment of the Child Protection Im-  
20 provements Act of 2009, and annually thereafter,  
21 the Attorney General shall prepare and submit to  
22 Congress and make available to the public a report  
23 on the programs and procedures established under  
24 this Act.

25                   “(2) COLLECTION OF DATA.—



1           “(A) DEFINITION OF DEMOGRAPHIC CHAR-  
2           ACTERISTICS.—In this paragraph, the term ‘de-  
3           mographic characteristics’ includes information  
4           pertaining to race, color, ancestry, national ori-  
5           gin, age, sex, and marital status.

6           “(B) COMPILING.—Beginning 90 days  
7           after the date of enactment of the Child Protec-  
8           tion Improvements Act of 2009, the Attorney  
9           General shall compile data regarding—

10                   “(i) the number and types of partici-  
11                   pating entities;

12                   “(ii) the fees charged to participating  
13                   entities under this section;

14                   “(iii) the time interval between na-  
15                   tionwide background check submissions  
16                   and responses under this section;

17                   “(iv) the fiscal impact of this section  
18                   on State authorized agencies;

19                   “(v) the number and demographic  
20                   characteristics of covered individuals sub-  
21                   mitting a statement described in subsection  
22                   (c)(3)(A)(iii) as part of a request for a na-  
23                   tionwide background check;

1           “(vi) the number and demographic  
2 characteristics of covered individuals deter-  
3 mined to have a criminal history;

4           “(vii) the number, type (including the  
5 identity of the offense and whether the of-  
6 fense was committed while the covered in-  
7 dividual was a juvenile or adult), and fre-  
8 quency of offenses, and length of the pe-  
9 riod between the date of the offense and  
10 the date of the nationwide background  
11 check for any covered individuals found to  
12 have a criminal history under this section;

13           “(viii) the procedures available for  
14 covered individuals to challenge the accu-  
15 racy and completeness of criminal history  
16 records under this section;

17           “(ix) the number and results of chal-  
18 lenges to the accuracy and completeness of  
19 criminal history records under this section;

20           “(x) the number and types of correc-  
21 tions of erroneous criminal history records  
22 based on a challenge under this section;  
23 and

24           “(xi) the number and types of inquir-  
25 ies for assistance on interpreting a crimi-

1           nal history received by the criminal history  
2           review program.

3           “(C) AGGREGATING DATA.—The Attorney  
4           General shall—

5                   “(i) aggregate the data collected  
6                   under this paragraph by State and city;  
7                   and

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

12          “(D) REPORTS.—

13                   “(i) IN GENERAL.—Not later than 1  
14                   year after the date of enactment of the  
15                   Child Protection Improvements Act of  
16                   2009, and annually thereafter, the Attor-  
17                   ney General shall prepare and submit to  
18                   Congress a report concerning the data  
19                   compiled and aggregated under this para-  
20                   graph.

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

23                           “(I) the data compiled and ag-  
24                           gregated under this paragraph, orga-  
25                           nized in such a way as to provide a

1 comprehensive analysis of the pro-  
2 grams and procedures established  
3 under this section;

4 “(II) information regarding and  
5 analysis of—

6 “(aa) the programs and pro-  
7 cedures established under this  
8 section; and

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

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

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

1 “(iv) ADDITIONAL INFORMATION.—

2 Upon the request of any member of Con-  
3 gress, the Attorney General shall make  
4 available any of the data compiled or ag-  
5 gregated under this paragraph. The Attor-  
6 ney General shall not make available any  
7 data that identifies specific individuals.

8 “(k) LIMITATION ON LIABILITY.—

9 “(1) IN GENERAL.—

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

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

23 “(2) RELIANCE.—A participating entity that  
24 reasonably relies on criminal history records received  
25 in response to a background check under this section

1 shall not be liable in an action for damages based  
2 on the inaccuracy or incompleteness of that informa-  
3 tion.

4 “(3) CRIMINAL HISTORY REVIEW PROGRAM.—

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

13 “(B) INTENTIONAL, RECKLESS, OR OTHER  
14 MISCONDUCT.—Subparagraph (A) shall not  
15 apply in an action if the criminal history review  
16 designee, or a director, officer, employee, or  
17 agent of the criminal history review designee,  
18 engaged in intentional misconduct or acted, or  
19 failed to act, with actual malice, with reckless  
20 disregard to a substantial risk of causing injury  
21 without legal justification, or for a purpose un-  
22 related to the performance of responsibilities or  
23 functions under this section.

24 “(C) ORDINARY BUSINESS ACTIVITIES.—

25 Subparagraph (A) shall not apply to an act or

1 omission relating to an ordinary business activ-  
2 ity, such as an activity involving general admin-  
3 istration or operations, the use of motor vehi-  
4 cles, or personnel management.

5 “(4) CIVIL CLAIMS OF DAMAGES.—Nothing in  
6 this subsection shall apply in actions for damages  
7 based upon title VII of the Civil Rights Act of 1964  
8 or the Fair Credit Report Act.

9 “(l) 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) REPEAT APPLICANTS.—A covered in-  
22 dividual may sign a release permitting the At-  
23 torney General or criminal history review des-  
24 ignee to retain the fingerprints and criminal  
25 history record of the covered individual for a

1           period not to exceed 5 years, for the sole pur-  
2           pose of participating in the criminal history re-  
3           view program on a subsequent occasion.”.

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

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

7           (1) by striking “60-month”; and

8           (2) by adding at the end the following: “The  
9           Child Safety Pilot Program under this paragraph  
10          shall terminate on the date that the program for na-  
11          tional criminal history background checks for child-  
12          serving organizations established under the Child  
13          Protection Improvements Act of 2009 is operating  
14          and able to enroll any organization using the Child  
15          Safety Pilot Program.”.

○