

# Union Calendar No. 469

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4757

[Report No. 107-748]

To improve the national instant criminal background check system, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 16, 2002

Mrs. MCCARTHY of New York (for herself, Mr. DINGELL, Mr. KIRK, Mr. CONYERS, Mr. MORAN of Virginia, Mr. GILMAN, Mrs. TAUSCHER, Mrs. MORELLA, Mr. ANDREWS, Mrs. ROUKEMA, Mr. PASCRELL, Mr. CASTLE, Mr. CAPUANO, Mr. FRANK, Ms. NORTON, Mr. MOORE, Ms. BROWN of Florida, Ms. WOOLSEY, Mr. BLAGOJEVICH, Ms. CARSON of Indiana, Ms. SCHAKOWSKY, Mr. LANGEVIN, Mr. MEEHAN, Mr. NADLER, Mrs. LOWEY, Mr. DAVIS of Illinois, Mr. HOEFFEL, Ms. RIVERS, Mr. WEXLER, Mr. MCGOVERN, Mr. WAXMAN, Mr. ENGEL, Mr. FORD, Ms. LOFGREN, Mr. HASTINGS of Florida, Mr. ISRAEL, Mr. WEINER, Ms. ROYBAL-ALLARD, Ms. WATERS, Ms. JACKSON-LEE of Texas, Mr. TOWNS, Mr. RUSH, Mr. CLAY, Mr. ROTHMAN, Ms. DELAURO, and Mr. SHERMAN) introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 15, 2002

Additional sponsors: Mr. GONZALEZ, Ms. DEGETTE, Mr. CROWLEY, Mr. LANTOS, Mr. FERGUSON, Mr. CUMMINGS, Mr. THOMPSON of Mississippi, Mrs. MALONEY of New York, Mr. SHAYS, Mr. SCHIFF, Mr. EHRLICH, Mr. PRICE of North Carolina, and Mr. BLUMENAUER

OCTOBER 15, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 16, 2002]

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## A BILL

To improve the national instant criminal background check system, 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,*

3 **SECTION 1. SHORT TITLE.**

4       *This Act may be cited as the “Our Lady of Peace Act”.*

5 **SEC. 2. FINDINGS.**

6       *The Congress finds the following:*

7           (1) *Since 1994, more than 689,000 individuals*  
8 *have been denied a gun for failing a background*  
9 *check.*

10          (2) *States that fail to computerize their criminal*  
11 *and mental illness records are the primary cause of*  
12 *delays for background checks. Helping States auto-*  
13 *mate their records will reduce delays for law-abiding*  
14 *gun owners.*

15          (3) *25 States have automated less than 60 per-*  
16 *cent of their felony criminal conviction records.*

17          (4) *33 States do not automate or share disquali-*  
18 *fying mental health records.*

1           (5) *In 13 States, domestic violence restraining*  
2           *orders are not automated or accessible by the national*  
3           *instant criminal background check system.*

4           (6) *In 15 States, no domestic violence mis-*  
5           *demeanor records are automated or accessible by the*  
6           *national instant criminal background check system.*

7           ***TITLE I—TRANSMITTAL OF***  
8           ***RECORDS***

9           ***SEC. 101. ENHANCEMENT OF REQUIREMENT THAT FEDERAL***  
10           ***DEPARTMENTS AND AGENCIES PROVIDE REL-***  
11           ***EVANT INFORMATION TO THE NATIONAL IN-***  
12           ***STANT CRIMINAL BACKGROUND CHECK SYS-***  
13           ***TEM.***

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

17           (1) *by inserting “electronically” before “furnish”;*  
18           *and*

19           (2) *by adding at the end the following: “The*  
20           *head of each department or agency shall ascertain*  
21           *whether the department or agency has any records re-*  
22           *lating to any person described in subsection (g) or (n)*  
23           *of section 922 of title 18, United States Code and on*  
24           *being made aware that the department or agency has*  
25           *such a record, shall make the record available to the*

1     *Attorney General for inclusion in the system to the*  
2     *extent the Attorney General deems appropriate. The*  
3     *head of each department or agency, on being made*  
4     *aware that the basis under which a record was made*  
5     *available under this section does not apply or no*  
6     *longer applies, shall transmit a certification identi-*  
7     *fying the record (and any name or other relevant*  
8     *identifying information) to the Attorney General for*  
9     *removal from the system. The Attorney General shall*  
10    *notify the Congress on an annual basis as to whether*  
11    *the Attorney General has obtained from each such de-*  
12    *partment or agency the information requested by the*  
13    *Attorney General under this subsection.”.*

14    **(b) IMMIGRATION RECORDS.**—*The Commissioner of*  
15    *the Immigration and Naturalization Service shall cooperate*  
16    *in providing information regarding all relevant records of*  
17    *persons disqualified from acquiring a firearm under Fed-*  
18    *eral law, including but not limited to, illegal aliens, visitors*  
19    *to the United States on student visas, and visitors to the*  
20    *United States on tourist visas, to the Attorney General for*  
21    *inclusion in the national instant criminal background*  
22    *check system.*

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

24    **(a) IN GENERAL.**—*Beginning 5 years after the date*  
25    *of the enactment of this Act, a State shall be eligible to re-*

1 *ceive a waiver of the 10 percent matching requirement for*  
2 *National Criminal History Improvement Grants under the*  
3 *Crime Identification Technology Act of 1988 if the State*  
4 *provides at least 95 percent of the information described*  
5 *in subsection (b). The length of such a waiver shall not ex-*  
6 *ceed 5 years.*

7 *(b) ELIGIBILITY OF STATE RECORDS FOR SUBMISSION*  
8 *TO THE NATIONAL INSTANT CRIMINAL BACKGROUND*  
9 *CHECK SYSTEM.—*

10 *(1) REQUIREMENTS FOR ELIGIBILITY.—The*  
11 *State shall make available the following information*  
12 *established either through its own database or provide*  
13 *information to the Attorney General:*

14 *(A) The name of and other relevant identi-*  
15 *fying information relating to each person dis-*  
16 *qualified from acquiring a firearm under sub-*  
17 *section (g) or (n) of section 922 of title 18,*  
18 *United States Code, and each person disqualified*  
19 *from acquiring a firearm under applicable State*  
20 *law.*

21 *(B) The State, on being made aware that*  
22 *the basis under which a record was made avail-*  
23 *able under subparagraph (A) does not apply or*  
24 *no longer applies, shall transmit a certification*  
25 *identifying the record (and any name or other*

1           *relevant identifying information) to the Attorney*  
2           *General for removal from the system.*

3           *(C) Any information provided to the Attor-*  
4           *ney General under subparagraph (A) may be*  
5           *accessed only for background check purposes*  
6           *under section 922(t) of title 18, United States*  
7           *Code.*

8           *(D) The State shall certify to the Attorney*  
9           *General that at least 95 percent of all informa-*  
10          *tion described in subparagraph (A) has been pro-*  
11          *vided to the Attorney General in accordance with*  
12          *subparagraph (A).*

13          (2) *APPLICATION TO PERSONS CONVICTED OF*  
14          *MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE.—(A)*  
15          *For purposes of paragraph (1), a person disqualified*  
16          *from acquiring a firearm as referred to in that para-*  
17          *graph includes a person who has been convicted in*  
18          *any court of any Federal, State, or local offense*  
19          *that—*

20                  *(i) is a misdemeanor under Federal or*  
21                  *State law or, in a State that does not classify of-*  
22                  *fenses as misdemeanors, is an offense punishable*  
23                  *by imprisonment for a term of 1 year or less (or*  
24                  *punishable by only a fine);*

1           (ii) has, as an element of the offense, the use  
2 or attempted use of physical force (for example,  
3 assault and battery), or the threatened use of a  
4 deadly weapon; and

5           (iii) was committed by a current or former  
6 spouse, parent, or guardian of the victim, by a  
7 person with whom the victim shares a child in  
8 common, by a person who is cohabitating with  
9 or has cohabitated with the victim as a spouse,  
10 parent, or guardian, (for example, the equivalent  
11 of “common-law marriage” even if such relation-  
12 ship is not recognized under the law), or a per-  
13 son similarly situated to a spouse, parent, or  
14 guardian of the victim (for example, two persons  
15 who are residing at the same location in an inti-  
16 mate relationship with the intent to make that  
17 place their home would be similarly situated to  
18 a spouse).

19           (B) A person shall not be considered to have been  
20 convicted of such an offense for purposes of subpara-  
21 graph (A) unless—

22           (i) the person is considered to have been  
23 convicted by the jurisdiction in which the pro-  
24 ceeding was held;

1           (ii) the person was represented by counsel  
2           in the case, or knowingly and intelligently  
3           waived the right to counsel in the case; and

4           (iii) in the case of a prosecution for which  
5           a person was entitled to a jury trial in the juris-  
6           diction in which the case was tried—

7                   (I) the case was tried by a jury; or

8                   (II) the person knowingly and intel-  
9                   ligently waived the right to have the case  
10                  tried by a jury, by guilty plea, or otherwise.

11           (C) A person shall not be considered to have been  
12           convicted of such an offense for purposes of subpara-  
13           graph (A) if the conviction has been expunged or set  
14           aside, or is an offense for which the person has been  
15           pardoned or has had civil rights restored (if the law  
16           of the jurisdiction in which the proceedings were held  
17           provides for the loss of civil rights upon conviction of  
18           such an offense) unless the pardon, expungement, or  
19           restoration of civil rights expressly provides that the  
20           person may not ship, transport, possess, or receive  
21           firearms, and the person is not otherwise prohibited  
22           by the law of the jurisdiction in which the pro-  
23           ceedings were held from receiving or possessing any  
24           firearms.

1           (3) *APPLICATION TO PERSONS WHO HAVE BEEN*  
2 *ADJUDICATED AS A MENTAL DEFECTIVE OR COM-*  
3 *MITTED TO A MENTAL INSTITUTION.—*

4           (A) *For purposes of paragraph (1), an ad-*  
5 *judication as a mental defective occurs when a*  
6 *court, board, commission, or other government*  
7 *entity determines that a person, as a result of*  
8 *marked subnormal intelligence, or mental illness,*  
9 *incompetency, condition, or disease—*

10           (i) *is a danger to himself or to others;*

11           *or*

12           (ii) *lacks the mental capacity to con-*  
13 *tract or manage his own affairs.*

14           (B) *The term “adjudicated as a mental de-*  
15 *fective” includes—*

16           (i) *a finding of insanity by a court in*  
17 *a criminal case; and*

18           (ii) *a finding that a person is incom-*  
19 *petent to stand trial or is not guilty by rea-*  
20 *son of lack of mental responsibility pursu-*  
21 *ant to articles 50a and 72b of the Uniform*  
22 *Code of Military Justice (10 U.S.C. 850a,*  
23 *876b).*

24           (C) *EXCEPTIONS.—This paragraph does not*  
25 *apply to—*

1 (i) a person—

2 (I) in a mental institution for ob-  
3 servation; or

4 (II) voluntarily committed to a  
5 mental institution; or

6 (ii) information protected by doctor-  
7 patient privilege.

8 (4) *PRIVACY PROTECTIONS.*—For any informa-  
9 tion provided under the national instant criminal  
10 background check system, the Attorney General shall  
11 work with States and local law enforcement and the  
12 mental health community to establish regulations and  
13 protocols for protecting the privacy of information  
14 provided to the system. In the event of a conflict be-  
15 tween a provision of this Act and a provision of State  
16 law relating to privacy protection, the provision of  
17 State law shall control.

18 (5) *STATE AUTHORITY.*—Notwithstanding any  
19 other provision of this subsection, a State may des-  
20 ignate that records transmitted under this subsection  
21 shall be used only to determine eligibility to purchase  
22 or possess a firearm.

23 (c) *ATTORNEY GENERAL REPORT.*—Not later than  
24 January 31 of each year, the Attorney General shall submit  
25 to the Committee on the Judiciary of the Senate and the

1 *Committee on the Judiciary of the House of Representatives*  
2 *a report on the progress of States in automating the data-*  
3 *bases containing the information described in subsection (b)*  
4 *and in providing that information pursuant to the require-*  
5 *ments of such subsection.*

6 **SEC. 103. IMPLEMENTATION GRANTS TO STATES.**

7       (a) *IN GENERAL.*—*From amounts made available to*  
8 *carry out this section, the Attorney General shall make*  
9 *grants to each State, in a manner consistent with the na-*  
10 *tional criminal history improvement program, which shall*  
11 *be used by the State, in conjunction with units of local gov-*  
12 *ernment and State and local courts, to establish or upgrade*  
13 *information and identification technologies for firearms eli-*  
14 *gibility determinations.*

15       (b) *USE OF GRANT AMOUNTS.*—*Grants under this sec-*  
16 *tion may only be awarded for the following purposes:*

17               (1) *Building databases that are directly related*  
18 *to checks under the national instant criminal back-*  
19 *ground check system (NICS), including court disposi-*  
20 *tion and corrections records.*

21               (2) *Assisting States in establishing or enhancing*  
22 *their own capacities to perform NICS background*  
23 *checks.*

24               (3) *Improving final dispositions of criminal*  
25 *records.*

1           (4) *Supplying mental health records to NICS.*

2           (5) *Supplying court-ordered domestic restraining*  
3 *orders and records of domestic violence misdemeanors*  
4 *(as defined in section 102 of this Act) for inclusion*  
5 *in NICS.*

6           (c) *CONDITION.—As a condition of receiving a grant*  
7 *under this section, a State shall specify the projects for*  
8 *which grant amounts will be used, and shall use such*  
9 *amounts only as specified. A State that violates this section*  
10 *shall be liable to the Attorney General for the full amount*  
11 *granted.*

12          (d) *AUTHORIZATION OF APPROPRIATIONS.—There is*  
13 *authorized to be appropriated to carry out this section*  
14 *\$250,000,000 for each of fiscal years 2004, 2005, and 2006.*

15          (e) *The Federal Bureau of Investigation shall not*  
16 *charge a user fee for background checks pursuant to section*  
17 *922(t) of title 18, United States Code.*

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

22 **SEC. 201. CONTINUING EVALUATIONS.**

23          (a) *EVALUATION REQUIRED.—The Director of the Bu-*  
24 *reau of Justice Statistics shall study and evaluate the oper-*  
25 *ations of the national instant criminal background check*

1 *system. Such study and evaluation shall include, but not*  
2 *be limited to, compilations and analyses of the operations*  
3 *and record systems of the agencies and organizations par-*  
4 *ticipating in such system.*

5       **(b) REPORT ON GRANTS.**—*Not later than January 31*  
6 *of each year, the Director shall submit to Congress a report*  
7 *on the implementation of 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 identifying informa-*  
14 *tion relating to individuals described in subsection (g) or*  
15 *(n) of section 922 of title 18, United States Code, by the*  
16 *State or any other agency, or any other records relevant*  
17 *to the national instant criminal background check system,*  
18 *that the Director considers to be best practices.*

1 **TITLE III—GRANTS TO STATE**  
2 **COURTS FOR THE IMPROVE-**  
3 **MENT IN AUTOMATION AND**  
4 **TRANSMITTAL OF DISPOSI-**  
5 **TION RECORDS**

6 **SEC. 301. GRANTS AUTHORIZED.**

7 (a) *IN GENERAL.*—From amounts made available to  
8 carry out this section, the Attorney General shall make  
9 grants to each State for use by the chief judicial officer of  
10 the State to improve the handling of proceedings related to  
11 criminal history dispositions and restraining orders.

12 (b) *USE OF FUNDS.*—Amounts granted under this sec-  
13 tion shall be used by the chief judicial officer only as follows:

14 (1) *For fiscal year 2004, such amounts shall be*  
15 *used to carry out assessments of the capabilities of the*  
16 *courts of the State for the automation and trans-*  
17 *mission to State and Federal record repositories the*  
18 *arrest and conviction records of such courts.*

19 (2) *For fiscal years after 2004, such amounts*  
20 *shall be used to implement policies, systems, and pro-*  
21 *cedures for the automation and transmission to State*  
22 *and Federal record repositories the arrest and convic-*  
23 *tion records of such courts.*

24 (c) *AUTHORIZATION OF APPROPRIATIONS.*—There are  
25 authorized to be appropriated to the Attorney General to

- 1 *carry out this section \$125,000,000 for each of fiscal years*
- 2 *2004, 2005, and 2006.*

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