

The PRESIDING OFFICER (Mrs. CLINTON). Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. DURBIN. Madam President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein for up to 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### THE CONFIRMATION OF JOHNNY MACK BROWN TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF SOUTH CAROLINA

Mr. THURMOND. Mr. President, I am pleased that the Senate has confirmed Johnny Mack Brown to be United States Marshal for the District of South Carolina. Johnny Mack Brown is a man of outstanding character and is highly qualified to serve as a United States Marshal. He will serve our Nation well.

Johnny Mack has over 30 years' experience in law enforcement. In 1966, he went to work for the South Carolina Department of Probation, Parole & Pardon, serving as a probation officer. From there, he joined the Thirteenth Circuit Solicitor's Office and worked as an investigator for four years.

Mr. Brown's success soon provided him with opportunities to showcase his substantial leadership skills. In 1973, he became the director of the Municipal Offender Program at the Greenville City Municipal Court in Greenville, SC. From 1974 to 1976, he served as Director of the Pre-Trial Diversion Program in the Thirteenth Circuit Solicitor's Office.

After his time at the Solicitor's office, Johnny Mack decided to run for office himself. He was elected in 1976 as the Sheriff of Greenville County, SC. He was subsequently re-elected five times and served a total of 24 years as Greenville's beloved sheriff.

As sheriff, Johnny Mack Brown served with distinction. He proved himself to be a strong leader, and it is no wonder that he was elected to a total of six terms. There is no doubt that Johnny Mack Brown's constituents felt secure with him as their sheriff. The voters' repeated endorsement of Johnny Mack is a tribute to his skill and professionalism.

During his time as sheriff, Johnny Mack contributed to the State and national law enforcement community in various ways. For example, he has written numerous articles for law enforcement publications. These writings have dealt with topics such as the professionalizing of sheriff's offices, the use of information technologies, and the implementation of community programs for crime prevention.

Mr. Brown has also served in prominent leadership positions at both the state and national levels. In 1983, he served as President of the South Caro-

lina Sheriffs' Association. Ten years later, he was elected President of the National Sheriff's Association. Johnny Mack's selection to these prestigious positions is a testament to his capacity to lead others.

Johnny Mack Brown has also been the recipient of numerous awards. In 1990, the Lion's Club of Greenville awarded Johnny Mack the Distinguished Citizen Award, and in 1998, the Blue Ridge Council of the Boy Scouts of America awarded him another Distinguished Citizen Award. In 1999, the Pleasantburg Lion's Club named him as its Citizen of the Year. Johnny Mack Brown is also a 1993 recipient of the Order of the Palmetto, South Carolina's highest civilian award.

Johnny Mack Brown's law enforcement credentials and his leadership skills will serve him well as United States Marshal in the District of South Carolina. He is truly a deserving man who has striven to serve the public with honor and integrity for many years. He will be a very successful United States Marshal, and I am proud to see him confirmed.

#### TRIBUTE TO JESSE HELMS

Mr. CONRAD. Madam President, I take this opportunity to recognize the distinguished career of one of our retiring colleagues, the senior Senator from North Carolina, Senator HELMS.

Senator HELMS began his service in the U.S. Senate in January of 1973. When he retires at the end of this year, at the conclusion of his fifth term, he will have served the public as a U.S. Senator for a full 30 years. Those of us who have had the privilege of being a member of this institution understand well the commitment, hard work, dedication, and personal sacrifice that make such a record possible.

Senator HELMS' lengthy career in the Senate actually represented the continuation of an already notable and varied public life that included, among other things, service in the U.S. Navy from 1942 to 1945, senior staff positions under two U.S. Senators, two terms on the Raleigh, NC, City Council, and a host of leadership positions with civic, business, and educational organizations.

During our time in the Senate, I have come to know Senator HELMS best as a fellow member of the Committee on Agriculture, Nutrition, and Forestry. While on the Committee, he proved to be an outspoken and vigorous defender of those commodities, such as peanuts and tobacco, that are important to North Carolina's vital agricultural sector. But he has also shown himself to be a leader for all of U.S. agriculture, as when he chaired the Agriculture Committee during the period when Congress wrote the Food Security Act of 1985, otherwise known as the 1985 farm bill. That legislation is recognized even today for its groundbreaking commitment to keeping U.S. agriculture competitive in the

international marketplace through such programs as the Export Enhancement Program and the Targeted Export Assistance program—now the Market Access Program—and for its landmark provisions in support of natural resource conservation, such as the Conservation Reserve Program.

When I think of Senator HELMS as a person, two characteristics stand out. First and foremost, I think of him as a gentleman always, one who gives current meaning to an old-fashioned term: courtly. Refined in his manners and respectful toward others, he brings a Southern charm and grace to all that he does, and a civility to political discourse that sadly is too often lacking today.

Second, he has displayed even in the twilight of his career an openness and a tolerance toward others who hold views that he may not always have shared. In that respect, he has displayed a capacity for growth and understanding that should serve as an inspiration to the rest of us.

I know that I am joined by all of my colleagues in wishing Senator HELMS and his wife Dorothy a long restful, and fulfilling retirement together in North Carolina.

#### PASSAGE OF S. 1868

Mr. BIDEN. Madam President, I am pleased the Senate passed S. 1868 by unanimous consent on October 17, along with a Biden-Thurmond substitute. Enactment of this measure will make our children safer, and I rise today to explain several of the bill's provisions.

Today, 87 million of our children are involved in activities provided by child and youth organizations which depend heavily on volunteers to deliver their services. Millions more elderly and disabled adults are served by public and private service organizations. Organizations across the country, like the Boys and Girls Clubs, often rely solely on volunteers to make these safe havens for kids a place where they can learn. The Boys and Girls Clubs and others don't just provide services to kids, their work reverberates throughout our communities, as the after-school programs they provide help keep kids out of trouble. This is juvenile crime prevention at its best, and I salute the volunteers who help make these programs work.

Unfortunately, some of these volunteers and employees come to their jobs with less than the best of intentions. According to the National Mentoring Partnership, incidents of child sexual abuse in child care settings, foster homes and schools ranges from 1 to 7 percent. Organizations have tried to weed out bad apples, and today most conduct background checks on applicants who seek to work with children. Unfortunately, these checks can often take months to complete, can be expensive, and many organizations do not have access to the FBI's national fingerprint database. These time delays

and scope limitations are dangerous: a prospective volunteer could pass a name-based background check in one State, only to have a past felony committed in another jurisdiction go undetected.

The intent of S. 1868 and the substitute, the Biden-Thurmond National Child Protection and Volunteers for Children Improvement Act, are to streamline the process for organizations to check the backgrounds of potential volunteers and employees. A review of the statutory background in this area is appropriate.

Effective December 20, 1993, the National Child Protection Act, "NCPA," P.L. 103-209, encouraged States to adopt legislation to authorize a national criminal history background check to determine an employee's or volunteer's fitness to care for the safety and well-being of children. On September 13, 1994, the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322, expanded the scope of the NCPA to include the elderly and individuals with disabilities.

As envisioned by Congress, the NCPA was to encourage States to have in effect national background check procedures that enable a "qualified entity" to determine whether an individual applicant is fit to care for the safety and well-being of children, the elderly, or individuals with disabilities. The procedures permit this entity to ask an authorized State agency to request that the Attorney General run a nationwide criminal history background check on an applicant provider. "Qualified entity" is defined at 42 U.S.C. 5119c as "a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services....". The authorized agency should access and review State and Federal criminal history records through the national criminal history background check system and make reasonable efforts to respond to an inquiry within 15 business days.

Congress addressed this issue again in 1998 through enactment of the Volunteers for Children Act, Sections 221 and 222 of P.L. 105-251, "VCA". The VCA amended the NCPA to permit child care, elder care, and volunteer organizations to request background checks through State agencies in the absence of state laws implementing the NCPA.

Thus, the NCPA, as amended by the VCA, authorizes national fingerprint-based criminal history background checks of volunteers and employees, including applicants for employment, of qualified entities who provide care for children, the elderly, or individuals with disabilities, and those who have unsupervised access to such populations, regardless of employment or volunteer status, for the purpose of determining whether they have been con-

victed of crimes that bear upon their fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.

Two years ago, organizations seeking to conduct background checks on their employees and volunteers made me aware of serious problems with the current background check system, problems that were jeopardizing the safety of children. Groups like the Boys and Girls Clubs of America alerted me that, despite the authorities provided in the NCPA and the VCA, national check requests were often delayed, in some jurisdictions they were never processed, and that the prohibitive costs of some of these checks were discouraging entities from seeking the reviews.

Under current law, whether they want a State or national criminal background check, organizations must apply through their state-authorized agency. The State agency then performs the State check and forwards the request to the FBI for a national check. The FBI responds back to the State agency, which then forwards the information back to the volunteer organization. In Delaware, the State Police Bureau of Identification works with groups to fingerprint prospective workers and check their backgrounds.

A patchwork of statutes and regulations govern background checks at the State level; there are currently over 1,200 State statutes concerning criminal record checks. This has led to widely different situations in each State: different agencies are authorized to perform the checks for different types of organizations, distinct forms and information are required, and the results are returned in various formats that can be difficult to interpret. States have not been consistent in their interpretation of the NCPA and VCA. Put simply, the current system is extremely cumbersome, particularly for those organizations that must check criminal records in multiple States, and for those groups employing seasonal workers, such as summer camps, for whom time is of the essence when seeking the results of background checks.

After careful study of this issue it became clear to me that the concerns of groups such as the National Mentoring Partnership and the Boys and Girls Clubs are not merely anecdotal. In 1998, the FBI's Criminal Justice Information Services, "CJIS", Division performed an analysis of fingerprints submitted for civil applicant purposes. CJIS found that the average transmission time from the point of fingerprint to the State bureau was 51.0 days, and from the State bureau to the FBI was another 66.6 days, for a total of 117.6 days from fingerprinting to receipt by the FBI. The worst performing jurisdiction took 544.8 days from fingerprinting to receipt by the FBI. In a survey conducted by the National Mentoring Partnership, mentoring organizations on average waited 6 weeks for the results of a national criminal background check to be returned.

The danger these delays pose to mentoring groups and others cannot be overstated. Suppose a group seeks to hire a volunteer who grew up in a neighboring jurisdiction to work with children. The group has the volunteer fingerprinted at their local police department, forwards those prints along to the agency designated by State statute or procedure to receive such requests, and then waits for the national results. FBI data indicates they will wait close to four months, on average, for the final results of the background check. That's too long. It forces groups to choose between taking a risk on someone's background, not making the hire at all, or seeking out only candidates from their jurisdiction for whom a full national background check may not be necessary.

Delay is not the only problem with the current system. The NCPA/VCA caps the fees the FBI can charge for national background checks at \$24 for employees. For State fees, the NMCPA/VCA requires States to "establish fee systems that insure that fees to non-profit entities for background checks do not discourage volunteers from participating in child care programs." In a survey of mentoring organizations, the National Mentoring Partnership found that organizations were paying on average \$10 for a State records check, plus the fee for a national check. For organizations utilizing hundreds of volunteers and employees, the costs of conducting through background checks can be exorbitant. Small, community-based organizations with limited funding often must choose between funding services to children or checking the criminal history records of prospective volunteers.

In an attempt at addressing some of these concerns with the current NCPA/VCA system, at the conclusion of the 106th Congress I introduced S. 3252. I reintroduced the same bill as S. 1868 in this Congress, and I am proud to have Senator THURMOND as a cosponsor. As introduced, S. 1868 would have permitted qualified entities like the Boys and Girls Clubs to apply to a clearinghouse within the Justice Department for national criminal history background checks. Checks would have been affordable and results would have been quickly returned to the qualified entities. The Judiciary Committee took up and passed the bill, along with a Biden-Thurmond/DeWine amendment in the nature of a substitute.

On June 18, 2002, the Justice Department sent me a letter outlining their views on the legislation as reported by the Committee. In its letter, the Department noted that the bill's goal of providing effective, efficient national criminal history background checks will "help to protect children and other vulnerable segments of the nation's population, [and will] promote volunteerism in the United States, which is one of the President's priorities."

The Department went on to raise several concerns with the legislation.

First, they noted that the funds authorized by the bill to perform the checks and operate a new clearinghouse within the Department may be prohibitive. The Biden-Thurmond substitute the Senate considers today addresses those concerns. In a change from the measure reported by the committee, the substitute authorizes the Attorney General to charge a modest fee \$5 for volunteer checks. In addition, the substitute dramatically scales back the duties of the clearinghouse, now labeled the "Office for Volunteer and Provider Screening." Where the bill as reported charged the clearinghouse with developing model fitness standards and applying standards against each applicant utilizing the resources of the clearinghouse, the version we consider today eliminates this fitness determination requirement. While I still feel it would be preferable for the Department to assist qualified entities in making these fitness determinations, the substitute provides that model standards will be developed and envisions qualified entities then using these standards to make their own fitness determinations. S. 1868 as reported by committee authorized \$180 million over five years to cover the costs of volunteer checks and to establish the clearinghouse. The vision we consider today has scaled this authorization back to \$100 million.

Second, the Department expressed concerns with language in S. 1868, added in Committee at the behest of Senator DEWINE and drawn directly from his S. 1830, which made amendments to the National Criminal History Access Act. There is a difference of opinion between the Justice Department and SEARCH, a group created by the States to improve the criminal justice system and the quality of justice, as to the impact of this language. Resolution has not been reached on the matter, and because I do not believe the issue raised by language drawn from S. 1830 to be directly related to the issue at hand of providing quick and effective background check results to qualified entities, the substitute the Senate considers today deletes the language objected to by the Justice Department.

Third, the Department expressed administrative and constitutional concerns with the makeup and operations of the clearinghouse described in the bill reported out of Committee. I have reviewed the Department's concerns and find them to be valid. The language objected to by the Department is not a part of the substitute amendment considered today.

Since introduction of S. 1868, through the Committee markup process, and stemming from extensive discussions regarding this measure over the past several months, I have agreed to modify the impact of the bill in several critical ways. Raised first in Committee by Senator DEWINE, and then later by SEARCH and other groups, arguments were made to me that S. 1868

could unintentionally undercut the work done in many States to process background check requests. Senator DEWINE rightfully pointed out to me that in some States, the system that the Congress put in place after enactment of the National Child Protection Act in 1993 and the Volunteers for Children Act in 1998 is working. In those cases, we should not uproot a system that is effective. The substitute we consider today acknowledges this concern. Upon enactment, the clock will toll on a one-year period during which the Attorney General will review the extent to which States have participated in the NCPA/VCA system. At the conclusion of that one year period, the Attorney General is charged with designating states as having "qualified state programs". The substitute lays out several objective criteria designed to guide the Attorney General's decision. States that are quickly, cheaply, and reliably processing background checks will be recognized as having a "qualified State program" by the Attorney General and will continue to process background check requests as under current law. But if the Attorney General determines that a State does not have a qualified State program, based upon the criteria delineated in the version of S. 1868 we consider today, qualified entities in those jurisdictions are permitted to apply directly to the Justice Department for background checks. This legislation thus creates a separate track for qualified entities seeking national criminal history background checks. This track will only be available, however, to qualified entities doing business in States without a qualified State program, as determined by the Attorney General.

A concern has been raised during drafting of this measure that the substitute does not give the Attorney General the discretion to label a State's program as qualified for one category of qualified entities, but not qualified for another. The intention of the authors of S. 1868 is to give the Attorney General that discretion. The language of the substitute considered by the Senate today does not require the Attorney General to make a blanket determination for a State's entire universe of qualified entities. The substitute should be interpreted by the Attorney General to permit States to be qualified for some categories of qualified entities but not all categories if necessary.

Other provisions of the version of S. 1868 we consider today deserve mention. SEARCH and others have suggested to me that one of the main impediments States face in fully implementing the NCPA/VCA is that current law does not authorize the Attorney General and States to deliver criminal history records information directly to qualified entities. S. 1868 changes this and makes clear that the Attorney General and States may provide this information to qualified entities should they desire to do so.

Also, we have authorized in this measure grants to the States so they can purchase so-called Live-Scan fingerprint technology. These devices permit prints to be electronically transmitted, obviating the need for fingerprint cards. Wide dissemination of this technology would facilitate nationwide background checks, and I am hopeful this grant program will be adequately funded so that this equipment can be installed throughout the country.

I would like to thank Robbie Callaway and Steve Salem of the Boys and Girls Clubs of America, Margo Pedroso of the National Mentoring Partnership, and Abby Shannon of the National Center for Missing and Exploited Children for their tireless advocacy on behalf of S. 1868. Captain David Deputy of the Delaware State Police and Director of Delaware's State Bureau of Identification offered invaluable comments throughout the drafting of this measure, and I thank him for his assistance. Thanks also to Bob Belair, General Counsel of SEARCH, for his helpful suggestions. I would like to pay a special tribute to Senator THURMOND, as well as to his Judiciary Committee counsel Scott Frick, for their dedication to this bill. I appreciate the assistance of Chairman LEAHY and Senator HATCH for agreeing to report S. 1868 out of Committee last spring. I am also appreciative of the efforts made by Senator DEWINE and his staff to move this legislation along. Finally, I thank Congressman MARK FOLEY, the author of the Volunteers for Children Act, as well as Elizabeth Nicolson and Bradley Schreiber of his staff, for agreeing to introduce this legislation as H.R. 5556 in the other body.

I remain hopeful that S. 1868 can be taken up by the other body and sent to the President for signature this year.

#### LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Madam President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred October 11, 2001 in College Park, MD. Around 1 p.m. on National Coming Out Day, a 22 year-old woman wearing gay-supportive pins was hanging her bicycle on her car rack when a man approached her from behind and struck her on the back of the head, pushing her head into the rack and knocking her to the ground. The assailant kicked her several times and hurled anti-gay epithets, according to police. The victim was treated at the university health center for injuries sustained during the attack.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out