

115TH CONGRESS
1ST SESSION

S. 2135

To enforce current law regarding the National Instant Criminal Background
Check System.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2017

Mr. CORNYN (for himself, Mr. MURPHY, Mr. SCOTT, Mr. BLUMENTHAL, Mr.
HATCH, Mrs. FEINSTEIN, Mr. HELLER, and Mrs. SHAHEEN) introduced
the following bill; which was read twice and referred to the Committee
on the Judiciary

A BILL

To enforce current law regarding the National Instant
Criminal 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 “Fix NICS Act of
5 2017”.

6 **SEC. 2. ACCOUNTABILITY FOR FEDERAL DEPARTMENTS**
7 **AND AGENCIES.**

8 Section 103 of the Brady Handgun Violence Preven-
9 tion Act (34 U.S.C. 40901) is amended—

1 (1) in subsection (e)(1), by adding at the end
2 the following:

3 “(F) SEMIANNUAL CERTIFICATION AND
4 REPORTING.—

5 “(i) IN GENERAL.—The head of each
6 Federal department or agency shall submit
7 a semiannual written certification to the
8 Attorney General indicating whether the
9 department or agency is in compliance
10 with the record submission requirements
11 under subparagraph (C).

12 “(ii) SUBMISSION DATES.—The head
13 of a Federal department or agency shall
14 submit a certification to the Attorney Gen-
15 eral under clause (i)—

16 “(I) not later than July 31 of
17 each year, which shall address all rel-
18 evant records, including those that
19 have not been transmitted to the At-
20 torney General, in possession of the
21 department or agency during the pe-
22 riod beginning on January 1 of the
23 year and ending on June 30 of the
24 year; and

1 “(II) not later than January 31
2 of each year, which shall address all
3 relevant records, including those that
4 have not been transmitted to the At-
5 torney General, in possession of the
6 department or agency during the pe-
7 riod beginning on July 1 of the pre-
8 vious year and ending on December
9 31 of the previous year.

10 “(iii) CONTENTS.—A certification re-
11 quired under clause (i) shall state, for the
12 applicable period—

13 “(I) the total number of records
14 of the Federal department or agency
15 demonstrating that a person falls
16 within one of the categories described
17 in subsection (g) or (n) of section 922
18 of title 18, United States Code;

19 “(II) for each category of records
20 described in subclause (I), the total
21 number of records of the Federal de-
22 partment or agency that have been
23 provided to the Attorney General; and

24 “(III) the efforts of the Federal
25 department or agency to ensure com-

1 plete and accurate reporting of rel-
2 evant records, including efforts to
3 monitor compliance and correct any
4 reporting failures or inaccuracies.

5 “(G) IMPLEMENTATION PLAN.—

6 “(i) IN GENERAL.—Not later than 1
7 year after the date of enactment of this
8 subparagraph, the head of each Federal
9 department or agency, in coordination with
10 the Attorney General, shall establish a plan
11 to ensure maximum coordination and auto-
12 mated reporting or making available of
13 records to the Attorney General as re-
14 quired under subparagraph (C), and the
15 verification of the accuracy of those
16 records, including the pre-validation of
17 those records, where appropriate, during a
18 4-year period specified in the plan. The
19 records shall be limited to those of an indi-
20 vidual described in subsection (g) or (n) of
21 section 922 of title 18, United States
22 Code.

23 “(ii) BENCHMARK REQUIREMENTS.—

24 Each plan established under clause (i)
25 shall include annual benchmarks to enable

1 the Attorney General to assess implemen-
2 tation of the plan, including—

3 “(I) qualitative goals and quan-
4 titative measures;

5 “(II) measures to monitor inter-
6 nal compliance, including any report-
7 ing failures and inaccuracies;

8 “(III) a needs assessment, in-
9 cluding estimated compliance costs;
10 and

11 “(IV) an estimated date by which
12 the Federal department or agency will
13 fully comply with record submission
14 requirements under subparagraph (C).

15 “(iii) COMPLIANCE DETERMINA-
16 TION.—Not later than the end of each fis-
17 cal year beginning after the date of the es-
18 tablishment of a plan under clause (i), the
19 Attorney General shall determine whether
20 the applicable Federal department or agen-
21 cy has achieved substantial compliance
22 with the benchmarks included in the plan.

23 “(H) ACCOUNTABILITY.—The Attorney
24 General shall publish, including on the website
25 of the Department of Justice, and submit to the

1 Committee on the Judiciary and the Committee
2 on Appropriations of the Senate and the Com-
3 mittee on the Judiciary and the Committee on
4 Appropriations of the House of Representatives
5 a semiannual report that discloses—

6 “(i) the name of each Federal depart-
7 ment or agency that has failed to submit
8 a required certification under subpara-
9 graph (F);

10 “(ii) the name of each Federal depart-
11 ment or agency that has submitted a re-
12 quired certification under subparagraph
13 (F), but failed to certify compliance with
14 the record submission requirements under
15 subparagraph (C);

16 “(iii) the name of each Federal de-
17 partment or agency that has failed to sub-
18 mit an implementation plan under sub-
19 paragraph (G);

20 “(iv) the name of each Federal de-
21 partment or agency that is not in substan-
22 tial compliance with an implementation
23 plan under subparagraph (G);

24 “(v) a detailed summary of the data,
25 broken down by department or agency,

1 contained in the certifications submitted
2 under subparagraph (F);

3 “(vi) a detailed summary of the con-
4 tents and status, broken down by depart-
5 ment or agency, of the implementation
6 plans established under subparagraph (G);
7 and

8 “(vii) the reasons for which the Attor-
9 ney General has determined that a Federal
10 department or agency is not in substantial
11 compliance with an implementation plan
12 established under subparagraph (G).

13 “(I) NONCOMPLIANCE PENALTIES.—For
14 each of fiscal years 2019 through 2022, each
15 political appointee of a Federal department or
16 agency that has failed to certify compliance
17 with the record submission requirements under
18 subparagraph (C), and is not in substantial
19 compliance with an implementation plan estab-
20 lished under subparagraph (G), shall not be eli-
21 gible for the receipt of bonus pay, excluding
22 overtime pay, until the department or agency—

23 “(i) certifies compliance with the
24 record submission requirements under sub-
25 paragraph (C); or

1 “(ii) achieves substantial compliance
2 with an implementation plan established
3 under subparagraph (G).

4 “(J) TECHNICAL ASSISTANCE.—The Attor-
5 ney General may use funds made available for
6 the national instant criminal background check
7 system established under subsection (b) to pro-
8 vide technical assistance to a Federal depart-
9 ment or agency, at the request of the depart-
10 ment or agency, in order to help the depart-
11 ment or agency comply with the record submis-
12 sion requirements under subparagraph (C).

13 “(K) APPLICATION TO FEDERAL
14 COURTS.—For purposes of this paragraph—

15 “(i) the terms ‘department or agency
16 of the United States’ and ‘Federal depart-
17 ment or agency’ include a Federal court;
18 and

19 “(ii) the Director of the Administra-
20 tive Office of the United States Courts
21 shall perform, for a Federal court, the
22 functions assigned to the head of a depart-
23 ment or agency.”; and

24 (2) in subsection (g), by adding at the end the
25 following: “For purposes of the preceding sentence,

1 not later than 60 days after the date on which the
2 Attorney General receives such information, the At-
3 torney General shall determine whether or not the
4 prospective transferee is the subject of an erroneous
5 record and remove any records that are determined
6 to be erroneous. In addition to any funds made
7 available under subsection (k), the Attorney General
8 may use such sums as are necessary and otherwise
9 available for the salaries and expenses of the Federal
10 Bureau of Investigation to comply with this sub-
11 section.”.

12 **SEC. 3. REAUTHORIZATION OF NICS ACT RECORD IM-**
13 **PROVEMENT PROGRAM.**

14 (a) **REQUIREMENTS TO OBTAIN WAIVER.**—Section
15 102 of the NICS Improvement Amendments Act of 2007
16 (34 U.S.C. 40912) is amended—

17 (1) in subsection (a), in the first sentence—

18 (A) by striking “the Crime Identification
19 Technology Act of 1988 (42 U.S.C. 14601)”
20 and inserting “section 102 of the Crime Identi-
21 fication Technology Act of 1998 (34 U.S.C.
22 40301)”;

23 (B) by inserting “is in compliance with an
24 implementation plan established under sub-
25 section (b) or” before “provides at least 90 per-

1 cent of the information described in subsection
2 (e)”; and

3 (2) in subsection (b)(1)(B), by inserting “or
4 has established an implementation plan under sec-
5 tion 107” after “the Attorney General”.

6 (b) IMPLEMENTATION ASSISTANCE TO STATES.—
7 Section 103 of the NICS Improvement Amendments Act
8 of 2007 (34 U.S.C. 40913) is amended—

9 (1) in subsection (b)(3), by inserting before the
10 semicolon at the end the following: “, including
11 through increased efforts to pre-validate the contents
12 of those records to expedite eligibility determina-
13 tions”;

14 (2) in subsection (e)—

15 (A) in paragraph (1)—

16 (i) by striking “and”; and

17 (ii) by inserting before the period at
18 the end the following: “, and \$125,000,000
19 for each of fiscal years 2018 through
20 2022”; and

21 (B) by striking paragraph (2) and insert-
22 ing the following—

23 “(2) DOMESTIC ABUSE AND VIOLENCE PREVEN-
24 TION INITIATIVE.—

1 “(A) ESTABLISHMENT.—For each of fiscal
2 years 2018 through 2022, the Attorney General
3 shall create a priority area under the NICS Act
4 Record Improvement Program (commonly
5 known as ‘NARIP’) for a Domestic Abuse and
6 Violence Prevention Initiative that emphasizes
7 the need for grantees to identify and upload all
8 felony conviction records and domestic violence
9 records.

10 “(B) FUNDING.—The Attorney General—

11 “(i) may use not more than 50 per-
12 cent of the amounts made available under
13 this subsection for each of fiscal years
14 2018 through 2022 to carry out the initia-
15 tive described in subparagraph (A); and

16 “(ii) shall give a funding preference
17 under NARIP to States that—

18 “(I) have established an imple-
19 mentation plan under section 107;
20 and

21 “(II) will use amounts made
22 available under this subparagraph to
23 improve efforts to identify and upload
24 all felony conviction records and do-
25 mestic violence records described in

1 clauses (i), (v), and (vi) of section
 2 102(b)(1)(C) by not later than Sep-
 3 tember 30, 2022.”; and

4 (3) by adding at the end the following:

5 “(g) TECHNICAL ASSISTANCE.—The Attorney Gen-
 6 eral shall direct the Office of Justice Programs, the Bu-
 7 reau of Alcohol, Tobacco, Firearms, and Explosives, and
 8 the Federal Bureau of Investigation to—

9 “(1) assist States that are not currently eligible
 10 for grants under this section to achieve compliance
 11 with all eligibility requirements; and

12 “(2) provide technical assistance and training
 13 services to grantees under this section.”.

14 **SEC. 4. REAUTHORIZATION OF THE NATIONAL CRIMINAL**
 15 **HISTORY IMPROVEMENT PROGRAM.**

16 (a) STATE GRANT PROGRAM FOR CRIMINAL JUSTICE
 17 IDENTIFICATION, INFORMATION, AND COMMUNICA-
 18 TION.—Section 102 of the Crime Identification Tech-
 19 nology Act of 1998 (34 U.S.C. 40301) is amended—

20 (1) in subsection (a)(3)—

21 (A) by redesignating subparagraphs (C),
 22 (D), and (E) as subparagraphs (D), (E), and
 23 (F), respectively; and

24 (B) by inserting after subparagraph (B)
 25 the following:

1 “(C) identification of all individuals who
2 have been convicted of a crime punishable by
3 imprisonment for a term exceeding 1 year”;

4 (2) in subsection (b)(6)—

5 (A) by striking “(18 U.S.C. 922 note)”
6 and inserting “(34 U.S.C. 40901(b))”; and

7 (B) by inserting before the semicolon at
8 the end the following: “, including through in-
9 creased efforts to pre-validate the contents of
10 felony conviction records and domestic violence
11 records to expedite eligibility determinations,
12 and measures and resources necessary to estab-
13 lish and achieve compliance with an implemen-
14 tation plan under section 107 of the NICS Im-
15 provement Amendments Act of 2007”;

16 (3) in subsection (d), by inserting after “un-
17 less” the following: “the State has achieved compli-
18 ance with an implementation plan under section 107
19 of the NICS Improvement Amendments Act of 2007
20 or”; and

21 (4) in subsection (e)(1), by striking “2002
22 through 2007” and inserting “2018 through 2022”.

23 (b) GRANTS FOR THE IMPROVEMENT OF CRIMINAL
24 RECORDS.—Section 106(b)(1) of the Brady Handgun Vio-
25 lence Prevention Act (34 U.S.C. 40302(1)) is amended—

1 (1) in the matter preceding subparagraph (A)—

2 (A) by striking “as of the date of enact-
3 ment of this Act” and inserting “, as of the
4 date of enactment of the Fix NICS Act of
5 2017,”; and

6 (B) by striking “files,” and inserting the
7 following: “files and that will utilize funding
8 under this subsection to prioritize the identifica-
9 tion and transmittal of felony conviction records
10 and domestic violence records,”;

11 (2) in subparagraph (B), by striking “and” at
12 the end;

13 (3) in subparagraph (C)—

14 (A) by striking “upon establishment of the
15 national system,”; and

16 (B) by striking the period at the end and
17 inserting “; and”; and

18 (4) by adding at the end the following—

19 “(D) to establish and achieve compliance
20 with an implementation plan under section 107
21 of the NICS Improvement Amendments Act of
22 2007.”.

1 **SEC. 5. IMPROVING INFORMATION SHARING WITH THE**
2 **STATES.**

3 (a) IN GENERAL.—Title I of the NICS Improvement
4 Amendments Act of 2007 (34 U.S. 40911 et seq.) is
5 amended by adding at the end the following:

6 **“SEC. 107. IMPLEMENTATION PLAN.**

7 “(a) IN GENERAL.—Not later than 1 year after the
8 date of enactment of the Fix NICS Act of 2017, the Attor-
9 ney General, in coordination with the States and Indian
10 tribal governments, shall establish, for each State or In-
11 dian tribal government, a plan to ensure maximum coordi-
12 nation and automation of the reporting or making avail-
13 able of appropriate records to the National Instant Crimi-
14 nal Background Check System established under section
15 103 of the Brady Handgun Violence Prevention Act (34
16 U.S.C. 40901) and the verification of the accuracy of
17 those records during a 4-year period specified in the plan.
18 The records shall be limited to those of an individual de-
19 scribed in subsection (g) or (n) of section 922 of title 18,
20 United States Code

21 “(b) BENCHMARK REQUIREMENTS.—Each plan es-
22 tablished under this section shall include annual bench-
23 marks to enable the Attorney General to assess the imple-
24 mentation of the plan, including—

25 “(1) qualitative goals and quantitative meas-
26 ures; and

1 “(2) a needs assessment, including estimated
2 compliance costs.

3 “(c) COMPLIANCE DETERMINATION.—Not later than
4 the end of each fiscal year beginning after the date of the
5 establishment of an implementation plan under this sec-
6 tion, the Attorney General shall determine whether each
7 State or Indian tribal government has achieved substantial
8 compliance with the benchmarks included in the plan.

9 “(d) ACCOUNTABILITY.—The Attorney General—
10 “(1) shall disclose and publish, including on the
11 website of the Department of Justice—

12 “(A) the name of each State or Indian
13 tribal government that received a determination
14 of failure to achieve substantial compliance with
15 an implementation plan under subsection (c) for
16 the preceding fiscal year; and

17 “(B) a description of the reasons for which
18 the Attorney General has determined that the
19 State or Indian tribal government is not in sub-
20 stantial compliance with the implementation
21 plan, including, to the greatest extent possible,
22 a description of the types and amounts of
23 records that have not been submitted; and

1 “(2) if a State or Indian tribal government de-
2 scribed in paragraph (1) subsequently receives a de-
3 termination of substantial compliance, shall—

4 “(A) immediately correct the applicable
5 record; and

6 “(B) not later than 3 days after the deter-
7 mination, remove the record from the website of
8 the Department of Justice and any other loca-
9 tion where the record was published.

10 “(e) INCENTIVES.—For each of fiscal years 2018
11 through 2022, the Attorney General shall give affirmative
12 preference to all Bureau of Justice Assistance discre-
13 tionary grant applications of a State or Indian tribal gov-
14 ernment that received a determination of substantial com-
15 pliance under subsection (c) for the fiscal year in which
16 the grant was solicited.”.

17 (b) TABLE OF CONTENTS.—The table of contents in
18 section 1(b) of the NICS Improvement Amendments Act
19 of 2007 (Public Law 110–180; 121 Stat. 2559) is amend-
20 ed by inserting after the item relating to section 106 the
21 following:

“Sec. 107. Implementation plan.”.

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