

§ 5119a. Background checks**(a) In general**

(1) A State may have in effect procedures (established by State statute or regulation) that require qualified entities designated by the State to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.

(2) The authorized agency shall access and review State and Federal criminal history records through the national criminal history background check system and shall make reasonable efforts to respond to the inquiry within 15 business days.

(3) In the absence of State procedures referred to in paragraph (1), a qualified entity designated under paragraph (1) may contact an authorized agency of the State to request national criminal fingerprint background checks. Qualified entities requesting background checks under this paragraph shall comply with the guidelines set forth in subsection (b) of this section and with procedures for requesting national criminal fingerprint background checks, if any, established by the State.

(b) Guidelines

The procedures established under subsection (a) of this section shall require—

(1) that no qualified entity may request a background check of a provider under subsection (a) of this section unless the provider first provides a set of fingerprints and completes and signs a statement that—

(A) contains the name, address, and date of birth appearing on a valid identification document (as defined in section 1028 of title 18) of the provider;

(B) the provider has not been convicted of a crime and, if the provider has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) notifies the provider that the entity may request a background check under subsection (a) of this section;

(D) notifies the provider of the provider's rights under paragraph (2); and

(E) notifies the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to a person to whom the qualified entity provides care;

(2) that each provider who is the subject of a background check is entitled—

(A) to obtain a copy of any background check report; and

(B) to challenge the accuracy and completeness of any information contained in any such report and obtain a prompt determination as to the validity of such challenge before a final determination is made by the authorized agency;

(3) that an authorized agency, upon receipt of a background check report lacking disposition data, shall conduct research in whatever

State and local recordkeeping systems are available in order to obtain complete data;

(4) that the authorized agency shall make a determination whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities and shall convey that determination to the qualified entity; and

(5) that any background check under subsection (a) of this section and the results thereof shall be handled in accordance with the requirements of Public Law 92-544, except that this paragraph does not apply to any request by a qualified entity for a national criminal fingerprint background check pursuant to subsection (a)(3) of this section.

(c) Regulations

(1) The Attorney General may by regulation prescribe such other measures as may be required to carry out the purposes of this subchapter, including measures relating to the security, confidentiality, accuracy, use, misuse, and dissemination of information, and audits and recordkeeping.

(2) The Attorney General shall, to the maximum extent possible, encourage the use of the best technology available in conducting background checks.

(d) Liability

A qualified entity shall not be liable in an action for damages solely for failure to conduct a criminal background check on a provider, nor shall a State or political subdivision thereof nor any agency, officer or employee thereof, be liable in an action for damages for the failure of a qualified entity (other than itself) to take action adverse to a provider who was the subject of a background check.

(e) Fees

In the case of a background check pursuant to a State requirement adopted after December 20, 1993, conducted with fingerprints on a person who volunteers with a qualified entity, the fees collected by authorized State agencies and the Federal Bureau of Investigation may not exceed eighteen dollars, respectively, or the actual cost, whichever is less, of the background check conducted with fingerprints. The States shall establish fee systems that insure that fees to non-profit entities for background checks do not discourage volunteers from participating in child care programs.

(Pub. L. 103-209, § 3, Dec. 20, 1993, 107 Stat. 2491; Pub. L. 103-322, title XXXII, § 320928(a)(1), (2), (c), (e), Sept. 13, 1994, 108 Stat. 2131, 2132; Pub. L. 105-251, title II, § 222(a), (b), Oct. 9, 1998, 112 Stat. 1885.)

REFERENCES IN TEXT

Public Law 92-544, referred to in subsec. (b)(5), is Pub. L. 92-544, Oct. 25, 1972, 86 Stat. 1109. Provisions relating to use of funds for the exchange of identification records are contained in section 201 of Pub. L. 92-544, which is set out as a note under section 534 of Title 28, Judiciary and Judicial Procedure. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105-251, § 222(a), added par. (3).

Subsec. (b)(5). Pub. L. 105-251, § 222(b), inserted before period at end “, except that this paragraph does not apply to any request by a qualified entity for a national criminal fingerprint background check pursuant to subsection (a)(3) of this section”.

1994—Subsec. (a)(1). Pub. L. 103-322, § 320928(a)(1), substituted “the provider’s fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities” for “an individual’s fitness to have responsibility for the safety and well-being of children”.

Subsec. (b)(1)(E). Pub. L. 103-322, § 320928(a)(2)(A), substituted “to a person to whom the qualified entity provides care” for “to a child to whom the qualified entity provides child care”.

Subsec. (b)(4). Pub. L. 103-322, § 320928(a)(2)(B), substituted “the provider’s fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities” for “an individual’s fitness to have responsibility for the safety and well-being of children”.

Subsec. (d). Pub. L. 103-322, § 320928(c), inserted “(other than itself)” after “failure of a qualified entity”.

Subsec. (e). Pub. L. 103-322, § 320928(e), substituted “eighteen dollars, respectively, or the actual cost, whichever is less,” for “the actual cost”.

PILOT PROGRAM FOR NATIONAL CRIMINAL HISTORY BACKGROUND CHECKS AND FEASIBILITY STUDY

Pub. L. 108-21, title I, § 108, Apr. 30, 2003, 117 Stat. 655, as amended by Pub. L. 108-68, § 1, Aug. 1, 2003, 117 Stat. 883; Pub. L. 108-458, title VI, § 6401, Dec. 17, 2004, 118 Stat. 3755; Pub. L. 109-162, title XI, § 1197, Jan. 5, 2006, 119 Stat. 3131; Pub. L. 110-296, § 2, July 30, 2008, 122 Stat. 2974; Pub. L. 110-408, § 2, Oct. 13, 2008, 122 Stat. 4301; Pub. L. 111-143, § 2, Mar. 1, 2010, 124 Stat. 41; Pub. L. 111-341, § 2, Dec. 22, 2010, 124 Stat. 3606, provided that:

“(a) ESTABLISHMENT OF PILOT PROGRAM.—

“(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Apr. 30, 2003], the Attorney General shall establish a pilot program for volunteer groups to obtain national and State criminal history background checks through a 10-fingerprint check to be conducted utilizing State criminal records and the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.

“(2) STATE PILOT PROGRAM.—

“(A) IN GENERAL.—The Attorney General shall designate 3 States as participants in a 30-month State pilot program.

“(B) VOLUNTEER ORGANIZATION REQUESTS.—A volunteer organization in one of the 3 States participating in the State pilot program under this paragraph that is part of the Boys and Girls Clubs of America, the National Mentoring Partnerships, or the National Council of Youth Sports may submit a request for a 10-fingerprint check from the participating State.

“(C) STATE CHECK.—The participating State under this paragraph after receiving a request under subparagraph (B) shall conduct a State background check and submit a request that a Federal check be performed through the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation, to the Attorney General, in a manner to be determined by the Attorney General.

“(D) INFORMATION PROVIDED.—Under procedures established by the Attorney General, any criminal history record information resulting from the State and Federal check under subparagraph (C) shall be provided to the State or National Center for Missing and Exploited Children consistent with the National Child Protection Act [of 1993, 42 U.S.C. 5119 et seq.].

“(E) COSTS.—A State may collect a fee to perform a criminal background check under this paragraph which may not exceed the actual costs to the State to perform such a check.

“(F) TIMING.—For any background check performed under this paragraph, the State shall provide the State criminal record information to the Attorney General within 7 days after receiving the request from the organization, unless the Attorney General determines during the feasibility study that such a check cannot reasonably be performed within that time period. The Attorney General shall provide the criminal history records information to the National Center for Missing and Exploited Children within 7 business days after receiving the request from the State.

“(3) CHILD SAFETY PILOT PROGRAM.—

“(A) IN GENERAL.—The Attorney General shall establish a 104-month Child Safety Pilot Program that shall provide for the processing of 200,000 10-fingerprint check requests from organizations described in subparagraph (B) conducted through the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.

“(B) PARTICIPATING ORGANIZATIONS.—

“(i) ELIGIBLE ORGANIZATIONS.—Eligible organizations include—

“(I) the Boys and Girls Clubs of America;

“(II) the MENTOR/National Mentoring Partnership;

“(III) the National Council of Youth Sports; and

“(IV) any nonprofit organization that provides care, as that term is defined in section 5 of the National Child Protection Act of 1993 (42 U.S.C. 5119c), for children.

“(ii) PILOT PROGRAM.—The eligibility of an organization described in clause (i)(IV) to participate in the pilot program established under this section shall be determined by the National Center for Missing and Exploited Children, with the rejection or concurrence within 30 days of the Attorney General, according to criteria established by such Center, including the potential number of applicants and suitability of the organization to the intent of this section. If the Attorney General fails to reject or concur within 30 days, the determination of the National Center for Missing and Exploited Children shall be conclusive.

“(C) APPLICANTS FROM PARTICIPATING ORGANIZATIONS.—Participating organizations may request background checks on applicants for positions as volunteers and employees who will be working with children or supervising volunteers.

“(D) PROCEDURES.—The Attorney General shall notify participating organizations of a process by which the organizations may provide fingerprint cards to the Attorney General.

“(E) VOLUNTEER INFORMATION REQUIRED.—An organization authorized to request a background check under this paragraph shall—

“(i) forward to the Attorney General the volunteer’s fingerprints; and

“(ii) obtain a statement completed and signed by the volunteer that—

“(I) sets out the provider or volunteer’s name, address, date of birth appearing on a valid identification document as defined in section 1028 of title 18, United States Code, and a photocopy of the valid identifying document;

“(II) states whether the volunteer has a criminal record, and, if so, sets out the particulars of such record;

“(III) notifies the volunteer that the Attorney General may perform a criminal history background check and that the volunteer’s signature to the statement constitutes an acknowledgment that such a check may be conducted;

“(IV) notifies the volunteer that prior to and after the completion of the background check, the organization may choose to deny the provider access to children; and

“(V) notifies the volunteer of his right to correct an erroneous record held by the Attorney General.

“(F) TIMING.—For any background checks performed under this paragraph, the Attorney General shall provide the criminal history records information to the National Center for Missing and Exploited Children within 10 business days after receiving the request from the organization.

“(G) DETERMINATIONS OF FITNESS.—

“(i) IN GENERAL.—Consistent with the privacy protections delineated in the National Child Protection Act [of 1993] (42 U.S.C. 5119 [et seq.]), the National Center for Missing and Exploited Children may make a determination whether the criminal history record information received in response to the criminal history background checks conducted under this paragraph indicates that the provider or volunteer has a criminal history record that renders the provider or volunteer unfit to provide care to children based upon criteria established jointly by, the National Center for Missing and Exploited Children, the Boys and Girls Clubs of America, the National Mentoring Partnership, and the National Council of Youth Sports.

“(ii) CHILD SAFETY PILOT PROGRAM.—The National Center for Missing and Exploited Children shall convey that determination to the organizations making requests under this paragraph.

“(4) FEES COLLECTED BY ATTORNEY GENERAL.—The Attorney General may collect a fee which may not exceed \$18 to cover the cost to the Federal Bureau of Investigation to conduct the background check under paragraph (2) or (3).

“(b) RIGHTS OF VOLUNTEERS.—Each volunteer who is the subject of a criminal history background check under this section is entitled to contact the Attorney General to initiate procedures to—

“(1) obtain a copy of their criminal history record report; and

“(2) challenge the accuracy and completeness of the criminal history record information in the report.

“(c) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There is authorized to be appropriated such sums as may be necessary to the National Center for Missing and Exploited Children for fiscal years 2004 through 2008 to carry out the requirements of this section.

“(2) STATE PROGRAM.—There is authorized to be appropriated such sums as may be necessary to the Attorney General for the States designated in subsection (a)(1) for fiscal years 2004 and 2005 to establish and enhance fingerprint technology infrastructure of the participating State.

“(d) FEASIBILITY STUDY FOR A SYSTEM OF BACKGROUND CHECKS FOR EMPLOYEES AND VOLUNTEERS.—

“(1) STUDY REQUIRED.—The Attorney General shall conduct a feasibility study within 180 days after the date of the enactment of this Act [Apr. 30, 2003]. The study shall examine, to the extent discernible, the following:

“(A) The current state of fingerprint capture and processing at the State and local level, including the current available infrastructure, State system capacities, and the time for each State to process a civil or volunteer print from the time of capture to submission to the Federal Bureau of Investigation (FBI).

“(B) The intent of the States concerning participation in a nationwide system of criminal background checks to provide information to qualified entities.

“(C) The number of volunteers, employees, and other individuals that would require a fingerprint-based criminal background check.

“(D) The impact on the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation in terms of capacity and impact on other users of the system, including the effect on Federal Bureau of Investigation work practices and staffing levels.

“(E) The current fees charged by the Federal Bureau of Investigation, States and local agencies,

and private companies to process fingerprints and conduct background checks.

“(F) The existence of ‘model’ or best practice programs which could easily be expanded and duplicated in other States.

“(G) The extent to which private companies are currently performing background checks and the possibility of using private companies in the future to perform any of the background check process, including, but not limited to, the capture and transmission of fingerprints and fitness determinations.

“(H) The cost of development and operation of the technology and the infrastructure necessary to establish a nationwide fingerprint-based and other criminal background check system.

“(I) The extent of State participation in the procedures for background checks authorized in the National Child Protection Act [of 1993] (Public Law 103-209), as amended by the Volunteers for Children Act (sections 221 and 222 of Public Law 105-251).

“(J) The extent to which States currently provide access to nationwide criminal history background checks to organizations that serve children.

“(K) The extent to which States currently permit volunteers to appeal adverse fitness determinations, and whether similar procedures are required at the Federal level.

“(L) The implementation of the 2 pilot programs created in subsection (a).

“(M) Any privacy concerns that may arise from nationwide criminal background checks.

“(N) Any other information deemed relevant by the Department of Justice.

“(O) The extent of participation by eligible organizations in the state pilot program.

“(2) INTERIM REPORT.—Based on the findings of the feasibility study under paragraph (1), the Attorney General shall, not later than 180 days after the date of the enactment of this Act [Apr. 30, 2003], submit to Congress an interim report, which may include recommendations for a pilot project to develop or improve programs to collect fingerprints and perform background checks on individuals that seek to volunteer with organizations that work with children, the elderly, or the disabled.

“(3) FINAL REPORT.—Based on the findings of the pilot project, the Attorney General shall, not later than 60 days after completion of the pilot project under this section, submit to Congress a final report, including recommendations, which may include a proposal for grants to the States to develop or improve programs to collect fingerprints and perform background checks on individuals that seek to volunteer with organizations that work with children, the elderly, or the disabled, and which may include recommendations for amendments to the National Child Protection Act [of 1993] and the Volunteers for Children Act [see Short Title of 1998 Amendment note set out under section 5101 of this title] so that qualified entities can promptly and affordably conduct nationwide criminal history background checks on their employees and volunteers.

“(e) LIMITATION ON LIABILITY.—In connection with the Pilot Programs established under this section, in reliance upon the fitness criteria established under section 108(a)(3)(G)(i), and except upon proof of actual malice or intentional misconduct, the National Center for Missing and Exploited Children, or a director, officer, employee, or agent of the Center shall not be liable in any civil action for damages—

“(1) arising from any act or communication by the Center, the director, officer, employee, or agent that results in or contributes to a decision that an individual is unfit to serve as a volunteer for any volunteer organization;

“(2) alleging harm arising from a decision based on the information in an individual’s criminal history record that an individual is fit to serve as a volunteer for any volunteer organization unless the Center, the director, officer, employee, or agent is furnished with

an individual's criminal history records which they know to be inaccurate or incomplete, or which they know reflect a lesser crime than that for which the individual was arrested; and

“(3) alleging harm arising from a decision that, based on the absence of criminal history information, an individual is fit to serve as a volunteer for any volunteer organization unless the Center, the director, officer, employee, or agent knows that criminal history records exist and have not been furnished as required under this section.”

§ 5119b. Funding for improvement of child abuse crime information

(a) Omitted

(b) Additional funding grants for improvement of child abuse crime information

(1) The Attorney General shall, subject to appropriations and with preference to States that, as of December 20, 1993, have in computerized criminal history files the lowest percentages of charges and dispositions of identifiable child abuse cases, make a grant to each State to be used—

(A) for the computerization of criminal history files for the purposes of this subchapter;

(B) for the improvement of existing computerized criminal history files for the purposes of this subchapter;

(C) to improve accessibility to the national criminal history background check system for the purposes of this subchapter;

(D) to assist the State in the transmittal of criminal records to, or the indexing of criminal history record in, the national criminal history background check system for the purposes of this subchapter; and

(E) to assist the State in paying all or part of the cost to the State of conducting background checks on persons who are employed by or volunteer with a public, not-for-profit, or voluntary qualified entity to reduce the amount of fees charged for such background checks.

(2) There are authorized to be appropriated for grants under paragraph (1) a total of \$20,000,000 for fiscal years 1999, 2000, 2001, and 2002.

(c) Withholding State funds

Effective 1 year after December 20, 1993, the Attorney General may reduce, by up to 10 percent, the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3701 et seq.] that is not in compliance with the requirements of this subchapter.

(Pub. L. 103-209, § 4, Dec. 20, 1993, 107 Stat. 2493; Pub. L. 103-322, title XXXII, § 320928(d), Sept. 13, 1994, 108 Stat. 2132; Pub. L. 105-251, title II, § 222(c), Oct. 9, 1998, 112 Stat. 1885.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended. Title I of the Act is classified principally to chapter 46 (§ 3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

CODIFICATION

Section is comprised of section 4 of Pub. L. 103-209. Subsec. (a) of section 4 of Pub. L. 103-209 amended former section 3759(b) of this title.

AMENDMENTS

1998—Subsec. (b)(2). Pub. L. 105-251 substituted “1999, 2000, 2001, and 2002” for “1994, 1995, 1996, and 1997”.

1994—Subsec. (b)(1)(E). Pub. L. 103-322, which directed the amendment of subsec. (b) by adding subpar. (E) at the end, was executed by adding subpar. (E) at the end of par. (1) of subsec. (b) to reflect the probable intent of Congress.

AVAILABILITY OF VIOLENT CRIME REDUCTION TRUST FUND TO FUND ACTIVITIES AUTHORIZED BY THE BRADY HANDGUN VIOLENCE PREVENTION ACT AND THE NATIONAL CHILD PROTECTION ACT OF 1993

For appropriations for amounts authorized in subsec. (b) of this section from the Violent Crime Reduction Trust Fund established by section 14211 of this title, see section 210603(a) of Pub. L. 103-322, set out as a note under section 922 of Title 18, Crimes and Criminal Procedure.

§ 5119c. Definitions

For the purposes of this subchapter—

(1) the term “authorized agency” means a division or office of a State designated by a State to report, receive, or disseminate information under this subchapter;

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

(3) the term “child abuse crime” means a crime committed under any law of a State that involves the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by any person;

(4) the term “child abuse crime information” means the following facts concerning a person who has been arrested for, or has been convicted of, a child abuse crime: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the child abuse crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information that the Attorney General determines may be useful in identifying persons arrested for, or convicted of, a child abuse crime;

(5) the term “care” means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities;

(6) the term “identifiable child abuse crime case” means a case that can be identified by the authorized criminal justice agency of the State as involving a child abuse crime by reference to the statutory citation or descriptive label of the crime as it appears in the criminal history record;

(7) the term “individuals with disabilities” means persons with a mental or physical impairment who require assistance to perform one or more daily living tasks;

(8) the term “national criminal history background check system” means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification;

(9) the term “provider” means—

(A) a person who—

(i) is employed by or volunteers with a qualified entity (including an individual