

SUBCHAPTER I—TRANSMITTAL OF
RECORDS

§ 40911. Enhancement of requirement that Federal departments and agencies provide relevant information to the National Instant Criminal Background Check System

(a) Omitted

(b) Provision and maintenance of NICS records

(1) Department of Homeland Security

The Secretary of Homeland Security shall make available to the Attorney General—

(A) records, updated not less than quarterly, which are relevant to a determination of whether a person is disqualified from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18 for use in background checks performed by the National Instant Criminal Background Check System; and

(B) information regarding all the persons described in subparagraph (A) of this paragraph who have changed their status to a category not identified under section 922(g)(5) of title 18 for removal, when applicable, from the National Instant Criminal Background Check System.

(2) Department of Defense

(A) In general

Not later than 3 business days after the final disposition of a judicial proceeding conducted within the Department of Defense, the Secretary of Defense shall make available to the Attorney General records which are relevant to a determination of whether a member of the Armed Forces involved in such proceeding is disqualified from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18 for use in background checks performed by the National Instant Criminal Background Check System.

(B) Judicial proceeding defined

In this paragraph, the term “judicial proceeding” means a hearing—

- (i) of which the person received actual notice; and
- (ii) at which the person had an opportunity to participate with counsel.

(3) Department of Justice

The Attorney General shall—

(A) ensure that any information submitted to, or maintained by, the Attorney General under this section is kept accurate and confidential, as required by the laws, regulations, policies, or procedures governing the applicable record system;

(B) provide for the timely removal and destruction of obsolete and erroneous names and information from the National Instant Criminal Background Check System; and

(C) work with States to encourage the development of computer systems, which would permit electronic notification to the Attorney General when—

- (i) a court order has been issued, lifted, or otherwise removed by order of the court; or

- (ii) a person has been adjudicated as a mental defective or committed to a mental institution.

(c) Standard for adjudications and commitments related to mental health

(1) In general

No department or agency of the Federal Government may provide to the Attorney General any record of an adjudication related to the mental health of a person or any commitment of a person to a mental institution if—

(A) the adjudication or commitment, respectively, has been set aside or expunged, or the person has otherwise been fully released or discharged from all mandatory treatment, supervision, or monitoring;

(B) the person has been found by a court, board, commission, or other lawful authority to no longer suffer from the mental health condition that was the basis of the adjudication or commitment, respectively, or has otherwise been found to be rehabilitated through any procedure available under law; or

(C) the adjudication or commitment, respectively, is based solely on a medical finding of disability, without an opportunity for a hearing by a court, board, commission, or other lawful authority, and the person has not been adjudicated as a mental defective consistent with section 922(g)(4) of title 18, except that nothing in this section or any other provision of law shall prevent a Federal department or agency from providing to the Attorney General any record demonstrating that a person was adjudicated to be not guilty by reason of insanity, or based on lack of mental responsibility, or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice.

(2) Treatment of certain adjudications and commitments

(A) Program for relief from disabilities

(i) In general

Each department or agency of the United States that makes any adjudication related to the mental health of a person or imposes any commitment to a mental institution, as described in subsection (d)(4) and (g)(4) of section 922 of title 18 shall establish, not later than 120 days after January 8, 2008, a program that permits such a person to apply for relief from the disabilities imposed by such subsections.

(ii) Process

Each application for relief submitted under the program required by this subparagraph shall be processed not later than 365 days after the receipt of the application. If a Federal department or agency fails to resolve an application for relief within 365 days for any reason, including a lack of appropriated funds, the department or agency shall be deemed for all purposes to have denied such request for relief without cause. Judicial review of any petitions brought under this clause shall be de novo.

(iii) Judicial review

Relief and judicial review with respect to the program required by this subparagraph shall be available according to the standards prescribed in section 925(c) of title 18. If the denial of a petition for relief has been reversed after such judicial review, the court shall award the prevailing party, other than the United States, a reasonable attorney's fee for any and all proceedings in relation to attaining such relief, and the United States shall be liable for such fee. Such fee shall be based upon the prevailing rates awarded to public interest legal aid organizations in the relevant community.

(B) Relief from disabilities

In the case of an adjudication related to the mental health of a person or a commitment of a person to a mental institution, a record of which may not be provided to the Attorney General under paragraph (1), including because of the absence of a finding described in subparagraph (C) of such paragraph, or from which a person has been granted relief under a program established under subparagraph (A) or (B), or because of a removal of a record under section 40901(e)(1)(D) of this title, the adjudication or commitment, respectively, shall be deemed not to have occurred for purposes of subsections (d)(4) and (g)(4) of section 922 of title 18. Any Federal agency that grants a person relief from disabilities under this subparagraph shall notify such person that the person is no longer prohibited under 922(d)(4) or 922(g)(4) of title 18 on account of the relieved disability for which relief was granted pursuant to a proceeding conducted under this subparagraph, with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms.

(3) Notice requirement

Effective 30 days after January 8, 2008, any Federal department or agency that conducts proceedings to adjudicate a person as a mental defective under 922(d)(4) or 922(g)(4) of title 18 shall provide both oral and written notice to the individual at the commencement of the adjudication process including—

(A) notice that should the agency adjudicate the person as a mental defective, or should the person be committed to a mental institution, such adjudication, when final, or such commitment, will prohibit the individual from purchasing, possessing, receiving, shipping or transporting a firearm or ammunition under section 922(d)(4) or section 922(g)(4) of title 18;

(B) information about the penalties imposed for unlawful possession, receipt, shipment or transportation of a firearm under section 924(a)(2) of title 18; and

(C) information about the availability of relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms.

(4) Effective date

Except for paragraph (3), this subsection shall apply to names and other information

provided before, on, or after January 8, 2008. Any name or information provided in violation of this subsection (other than in violation of paragraph (3)) before, on, or after such date shall be removed from the National Instant Criminal Background Check System.

(Pub. L. 110-180, title I, §101, Jan. 8, 2008, 121 Stat. 2561; Pub. L. 116-283, div. A, title V, §544, Jan. 1, 2021, 134 Stat. 3613.)

Editorial Notes**CODIFICATION**

Section is comprised of section 101 of Pub. L. 110-180. Subsec. (a) of section 101 amended section 103 of Pub. L. 103-159, which is classified as section 40901 of this title.

Section was formerly classified in a note under section 922 of Title 18, Crimes and Criminal Procedure, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2021—Subsec. (b)(2), (3). Pub. L. 116-283 added par. (2) and redesignated former par. (2) as (3).

Executive Documents**IMPROVING AVAILABILITY OF RELEVANT EXECUTIVE BRANCH RECORDS TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM**

Memorandum of President of the United States, Jan. 16, 2013, 78 F.R. 4297, provided:

Memorandum for the Heads of Executive Departments and Agencies

Since it became operational in 1998, the National Instant Criminal Background Check System (NICS) has been an essential tool in the effort to ensure that individuals who are prohibited under Federal or State law from possessing firearms do not acquire them from Federal Firearms Licensees (FFLs). The ability of the NICS to determine quickly and effectively whether an individual is prohibited from possessing or receiving a firearm depends on the completeness and accuracy of the information made available to it by Federal, State, and tribal authorities.

The NICS Improvement Amendments Act of 2007 (NIAA) (Public Law 110-180 [110-180]) was a bipartisan effort to strengthen the NICS by increasing the quantity and quality of relevant records from Federal, State, and tribal authorities accessible by the system. Among its requirements, the NIAA mandated that executive departments and agencies (agencies) provide relevant information, including criminal history records, certain adjudications related to the mental health of a person, and other information, to databases accessible by the NICS. Much progress has been made to identify information generated by agencies that is relevant to determining whether a person is prohibited from receiving or possessing firearms, but more must be done. Greater participation by agencies in identifying records they possess that are relevant to determining whether an individual is prohibited from possessing a firearm and a regularized process for submitting those records to the NICS will strengthen the accuracy and efficiency of the NICS, increasing public safety by keeping guns out of the hands of persons who cannot lawfully possess them.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

SECTION 1. *Improving the Availability of Records to the NICS.* (a) Within 45 days of the date of this memorandum, and consistent with the process described in section 3 of this memorandum, the Department of Justice (DOJ) shall issue guidance to agencies regarding the identification and sharing of relevant Federal records and their submission to the NICS.

(b) Within 60 days of issuance of guidance pursuant to subsection (a) of this section, agencies shall submit a report to DOJ advising whether they possess relevant records, as set forth in the guidance, and setting forth an implementation plan for making information in those records available to the NICS, consistent with applicable law.

(c) In accordance with the authority and responsibility provided to the Attorney General by the Brady Handgun Violence Prevention Act (Public Law 103-159), as amended, the Attorney General, consistent with the process described in section 3 of this memorandum, shall resolve any disputes concerning whether agency records are relevant and should be made available to the NICS.

(d) To the extent they possess relevant records, as set forth in the guidance issued pursuant to subsection (a) of this section, agencies shall prioritize making those records available to the NICS on a regular and ongoing basis.

SEC. 2. *Measuring Progress.* (a) By October 1, 2013, and annually thereafter, agencies that possess relevant records shall submit a report to the President through the Attorney General describing:

(i) the relevant records possessed by the agency that can be shared with the NICS consistent with applicable law;

(ii) the number of those records submitted to databases accessible by the NICS during each reporting period;

(iii) the efforts made to increase the percentage of relevant records possessed by the agency that are submitted to databases accessible by the NICS;

(iv) any obstacles to increasing the percentage of records that are submitted to databases accessible by the NICS;

(v) for agencies that make qualifying adjudications related to the mental health of a person, the measures put in place to provide notice and programs for relief from disabilities as required under the NIAA;

(vi) the measures put in place to correct, modify, or remove records accessible by the NICS when the basis under which the record was made available no longer applies; and

(vii) additional steps that will be taken within 1 year of the report to improve the processes by which records are identified, made accessible, and corrected, modified, or removed.

(b) If an agency certifies in its annual report that it has made available to the NICS its relevant records that can be shared consistent with applicable law, and describes its plan to make new records available to the NICS and to update, modify, or remove existing records electronically no less often than quarterly as required by the NIAA, such agency will not be required to submit further annual reports. Instead, the agency will be required to submit an annual certification to DOJ, attesting that the agency continues to submit relevant records and has corrected, modified, or removed appropriate records.

SEC. 3. *NICS Consultation and Coordination Working Group.* To ensure adequate agency input in the guidance required by section 1(a) of this memorandum, subsequent decisions about whether an agency possesses relevant records, and determinations concerning whether relevant records should be provided to the NICS, there is established a NICS Consultation and Coordination Working Group (Working Group), to be chaired by the Attorney General or his designee.

(a) *Membership.* In addition to the Chair, the Working Group shall consist of representatives of the following agencies:

- (i) the Department of Defense;
- (ii) the Department of Health and Human Services;
- (iii) the Department of Transportation;
- (iv) the Department of Veterans Affairs;
- (v) the Department of Homeland Security;
- (vi) the Social Security Administration;
- (vii) the Office of Personnel Management;
- (viii) the Office of Management and Budget; and

(ix) such other agencies or offices as the Chair may designate.

(b) *Functions.* The Working Group shall convene regularly and as needed to allow for consultation and coordination between DOJ and agencies affected by the Attorney General's implementation of the NIAA, including with respect to the guidance required by section 1(a) of this memorandum, subsequent decisions about whether an agency possesses relevant records, and determinations concerning whether relevant records should be provided to the NICS. The Working Group may also consider, as appropriate:

(i) developing means and methods for identifying agency records deemed relevant by DOJ's guidance;

(ii) addressing obstacles faced by agencies in making their relevant records available to the NICS;

(iii) implementing notice and relief from disabilities programs; and

(iv) ensuring means to correct, modify, or remove records when the basis under which the record was made available no longer applies.

(c) *Reporting.* The Working Group will review the annual reports required by section 2(a) of this memorandum, and member agencies may append to the reports any material they deem appropriate, including an identification of any agency best practices that may be of assistance to States in supplying records to the NICS.

SEC. 4. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Independent agencies are strongly encouraged to comply with the requirements of this memorandum.

SEC. 5. *Publication.* The Attorney General is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 40912. Requirements to obtain waiver

(a) In general

Beginning 3 years after January 8, 2008, a State shall be eligible to receive a waiver of the 10 percent matching requirement for National Criminal History Improvement Grants under section 40301 of this title if the State is in compliance with an implementation plan established under subsection (b) or provides at least 90 percent of the information described in subsection (c). The length of such a waiver shall not exceed 2 years.

(b) State estimates

(1) Initial state estimate

(A) In general

To assist the Attorney General in making a determination under subsection (a) of this section, and under section 40914 of this title, concerning the compliance of the States in providing information to the Attorney General for the purpose of receiving a waiver under subsection (a) of this section, or fac-