Subtitle IV—Criminal Records and Information

CHAPTER 401—CHILD ABUSE CRIME INFORMATION AND BACKGROUND CHECKS

§ 40101. Reporting child abuse crime information

(a) In general

In each State, an authorized criminal justice agency of the State shall report child abuse crime information to, or index child abuse crime information in, the national criminal history background check system. A criminal justice agency may satisfy the requirement of this subsection by reporting or indexing all felony and serious misdemeanor arrests and dispositions.

(b) Provision of State child abuse crime records through national criminal history background check system

(1) Not later than 180 days after December 20, 1993, the Attorney General shall, subject to availability of appropriations—

(A) investigate the criminal history records system of each State and determine for each State a timetable by which the State should be able to provide child abuse crime records on an on-line basis through the national criminal history background check system;

(B) in consultation with State officials, establish guidelines for the reporting or indexing of child abuse crime information, including guidelines relating to the format, content, and accuracy of criminal history records and other procedures for carrying out this chapter; and

(C) notify each State of the determinations made pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of each State timetable that the State—

(A) by not later than the date that is 5 years after December 20, 1993, have in a computerized criminal history file at least 80 percent of the final dispositions that have been rendered in all identifiable child abuse crime cases in which there has been an event of activity within the last 5 years;

(B) continue to maintain a reporting rate of at least 80 percent for final dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding 5 years; and

(C) take steps to achieve 100 percent disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

(c) Liaison

An authorized agency of a State shall maintain close liaison with the National Center on Child Abuse and Neglect, the National Center for Missing and Exploited Children, and the National Center for the Prosecution of Child Abuse for the exchange of technical assistance in cases of child abuse.

(d) Annual summary

(1) The Attorney General shall publish an annual statistical summary of child abuse crimes.

(2) The annual statistical summary described in paragraph (1) shall not contain any information that may reveal the identity of any particular victim or alleged violator.

(e) Annual report

The Attorney General shall, subject to the availability of appropriations, publish an annual summary of each State's progress in reporting child abuse crime information to the national criminal history background check system.

(f) Study of child abuse offenders

(1) Not later than 180 days after December 20, 1993, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall begin a study based on a statistically significant sample of convicted child abuse offenders and other relevant information to determine—

(A) the percentage of convicted child abuse offenders who have more than 1 conviction for an offense involving child abuse;

(B) the percentage of convicted child abuse offenders who have been convicted of an offense involving child abuse in more than 1 State; and

(C) the extent to which and the manner in which instances of child abuse form a basis for convictions for crimes other than child abuse crimes.

(2) Not later than 2 years after December 20, 1993, the Administrator shall submit a report to the Chairman of the Committee on the Judiciary of the Senate and the Chairman of the Committee on the Judiciary of the House of Representatives containing a description of and a summary of the results of the study conducted pursuant to paragraph (1).

(Pub. L. 103–209, § 2, Dec. 20, 1993, 107 Stat. 2490; Pub. L. 103–322, title XXXII, § 320928(b), (h), (i), Sept. 13, 1994, 108 Stat. 2132, 2133.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 5119 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322, § 320928(b), inserted at end ''A criminal justice agency may satisfy the requirement of this subsection by reporting or indexing all felony and serious misdemeanor arrests and dispositions.''

Subsec. (b)(2)(A). Pub. L. 103–322, § 320928(i), substituted ''5 years after'' for ''3 years after''.

Subsec. (f)(2). Pub. L. 103–322, § 320928(h), substituted ''2 years'' for ''1 year''.

Statutory Notes and Related Subsidiaries

GUIDELINES FOR ADOPTION OF SAFEGUARDS BY CARE PROVIDERS AND STATES FOR PROTECTING CHILDREN, THE ELDERLY, OR INDIVIDUALS WITH DISABILITIES FROM ABUSE

Pub. L. 103–322, title XXXII, § 320928(g), Sept. 13, 1994, 108 Stat. 2132, provided that:

''(1) IN GENERAL.—The Attorney General, in consultation with Federal, State, and local officials, including officials responsible for criminal history record systems, and representatives of public and private care organizations and health, legal, and social welfare organizations, shall develop guidelines for the adoption of appropriate safeguards by care providers and by States for protecting children, the elderly, or individuals with disabilities from abuse.

''(2) MATTERS TO BE ADDRESSED.—In developing guidelines under paragraph (1), the Attorney General shall address the availability, cost, timeliness, and effectiveness of criminal history background checks and recommend measures to ensure that fees for background checks do not discourage volunteers from participating in care programs.

''(3) DISSEMINATION.—The Attorney General shall, subject to the availability of appropriations, disseminate the guidelines to State and local officials and to public and private care providers.''

§ 40102. 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 covered individual has been convicted of a crime that bears upon the covered individual'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)(A) The Attorney General shall establish a program, in accordance with this section, to provide qualified entities located in States that do not have in effect procedures described in paragraph (1), or qualified entities located in States that do not prohibit the use of the program established under this paragraph, with access to national criminal history background checks on, and criminal history reviews of, covered individuals. In any case where the use of a Federal national criminal history background check program is required pursuant to Federal law as of the effective date of this subparagraph, the program under this subparagraph may not be used.

(B) A qualified entity described in subparagraph (A) may submit to the appropriate designated entity a request for a national criminal history background check on, and a criminal history review of, a covered individual. Qualified entities making a request under this paragraph shall comply with the guidelines set forth in subsection (b), and with any additional applicable procedures set forth by the Attorney General or by the State in which the entity is located.

(b) Guidelines

The procedures established under subsection (a) shall require—

(1) that no qualified entity may request a background check of a covered individual under subsection (a) unless the covered individual 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 covered individual;

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

(C) notifies the covered individual that the entity may request a background check under subsection (a);

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

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

(2) that the State, or in a State that does not have in effect procedures described in subsection (a)(1), the designated entity, ensures that—

(A) each covered individual who is the subject of a background check under subsection (a) is entitled to obtain a copy of any background check report;

(B) each covered individual who is the subject of a background check under subsection (a) is provided a process by which the covered individual may appeal the results of the background check to challenge the accuracy or completeness of the information contained in the background report of the covered individual and obtain a prompt determination as to the validity of such challenge before a final determination is made by the authorized agency;

(C)(i) each covered individual described in subparagraph (B) is given notice of the opportunity to appeal;

(ii) each covered individual described in subparagraph (B) will receive instructions on how to complete the appeals process if the covered individual wishes to challenge the accuracy or completeness of the information contained in the background report of the covered individual; and[1]

(iii) the appeals process is completed in a timely manner for each covered individual described in subparagraph (B);[2]

(iv) the appeals process is consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

(D) 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;

(3) that an authorized agency or designated entity, as applicable,,[3] upon receipt of a background check report lacking disposition data, shall conduct research in whatever State and

[1] So in original. The word ''and'' probably should not appear.
[2] So in original. Probably should be followed by ''and''.
[3] So in original.

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

(4) that the authorized agency or designated entity, as applicable, shall make a determination whether the covered individual has been convicted of, or is under pending indictment for, a crime that bears upon the covered individual'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) 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).

(c) Regulations

(1) The Attorney General may by regulation prescribe such other measures as may be required to carry out the purposes of this chapter, 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 covered individual, nor shall a State or political subdivision thereof nor any agency, officer or employee thereof,,[3] nor shall any designated entity nor any 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 covered individual who was the subject of a background check.

(e) Fees

(1) State program

In the case of a background check conducted pursuant to a State requirement adopted after December 20, 1993, conducted with fingerprints on a covered individual, the fees collected by authorized State agencies and the Federal Bureau of Investigation may not exceed the actual cost of the background check conducted with fingerprints.

(2) Federal program

In the case of a national criminal history background check and criminal history review conducted pursuant to the procedures established pursuant to subsection (a)(3), the fees collected by a designated entity shall be set at a level that will ensure the recovery of the full costs of providing all such services. The designated entity shall remit the appropriate portion of such fee to the Attorney General, which amount is in accordance with the amount published in the Federal Register to be collected for the provision of a criminal history background check by the Federal Bureau of Investigation.

(3) Ensuring fees do not discourage volunteers

A fee system under this subsection shall be established in a manner that ensures that fees to qualified entities for background checks do not discourage volunteers from participating in programs to care for children, the elderly, or individuals with disabilities. A fee charged to a qualified entity that is not organized under section 501(c)(3) of title 26 may not be less than the total sum of the costs of the Federal Bureau of Investigation and the designated entity.

(f) National criminal history background check and criminal history review program

(1) National criminal history background check

Upon a designated entity receiving notice of a request submitted by a qualified entity pursuant to subsection (a)(3), the designated entity shall forward the request to the Attorney General, who shall, acting through the Director of the Federal Bureau of Investigation, complete a fingerprint-based check of the national criminal history background check system, and provide the information received in response to such national criminal history background check to the appropriate designated entity. The designated entity may, upon request from a qualified entity, complete a check of a State criminal history database.

(2) Criminal history review

(A) Designated entities

The Attorney General shall designate, and enter into an agreement with, one or more entities to make determinations described in subparagraph (B). The Attorney General may not designate and enter into an agreement with a Federal agency under this subparagraph.

(B) Determinations

A designated entity shall, upon the receipt of the information described in paragraph (1), make a determination of fitness described in subsection (b)(4), using the criteria described in subparagraph (C).

(C) Criminal history review criteria

The Attorney General shall, by rule, establish the criteria for use by designated entities in making a determination of fitness described in subsection (b)(4). Such criteria shall be based on the criteria established pursuant to section 108(a)(3)(G)(i) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (34 U.S.C. 40102 note) and section 9858f of title 42.

(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; Pub. L. 115–141, div. S, title I, § 101(a)(1), Mar. 23, 2018, 132 Stat. 1123.)

Editorial Notes

REFERENCES IN TEXT

The effective date of this subparagraph, referred to in subsec. (a)(3)(A), probably means the date of enactment of Pub. L. 115–141, which was approved Mar. 23, 2018.

The Civil Rights Act of 1964, referred to in subsec. (b)(2)(C)(iv), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VII of the Act is classified generally to subchapter VI (§ 2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

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 in title II of Pub. L. 92–544, formerly set out as a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as section 41101 of this title. For complete classification of this Act to the Code, see Tables.

Section 108(a)(3)(G)(i) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, referred to in subsec. (f)(2)(C), is section 108(a)(3)(G)(i) of Pub. L. 108–21, which is set out as a note below.

CODIFICATION

Section was formerly classified to section 5119a of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2018—Pub. L. 115–141, § 101(a)(1)(A), (B), substituted ''covered individual'' for ''provider'' and ''covered individual's'' for ''provider's'' wherever appearing.

Subsec. (a)(3). Pub. L. 115–141, § 101(a)(1)(C), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''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) and with procedures for requesting national criminal fingerprint background checks, if any, established by the State.''

Subsec. (b)(1)(E). Pub. L. 115–141, § 101(a)(1)(D)(i), struck out ''unsupervised'' before ''access''.

Subsec. (b)(2). Pub. L. 115–141, § 101(a)(1)(D)(ii), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''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;''.

Subsec. (b)(3), (4). Pub. L. 115–141, § 101(a)(1)(D)(iii), (iv), inserted ''or designated entity, as applicable,'' after ''authorized agency''.

Subsec. (d). Pub. L. 115–141, § 101(a)(1)(E), inserted '', nor shall any designated entity nor any officer or employee thereof,'' after ''officer or employee thereof,''.

Subsec. (e). Pub. L. 115–141, § 101(a)(1)(F), amended subsec. (e) generally. Prior to amendment, text read as follows: ''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.''

Subsec. (f). Pub. L. 115–141, § 101(a)(1)(G), added subsec. (f).

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)''.

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''.

Statutory Notes and Related Subsidiaries

IMPLEMENTATION

Pub. L. 115–141, div. S, title I, § 101(b), Mar. 23, 2018, 132 Stat. 1126, provided that: ''The Attorney General shall ensure that this section [amending this section and section 40104 of this title] and the amendments made by this section are fully implemented not later than 1 year after the date of enactment of this section [Mar. 23, 2018].''

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, 34 U.S.C. 40101 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) [now 34 U.S.C. 40104], 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.]) [now 34 U.S.C. 40101 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 Act note set out under section 10101 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.''

§ 40103. 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 chapter;

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

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

(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 chapter; 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 [34 U.S.C. 10101 et seq.] that is not in compliance with the requirements of this chapter.

(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.)

Editorial Notes

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. Title I of the Act is classified principally to chapter 101 (§ 10101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1968 Act note set out under section 10101 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 Title 42, The Public Health and Welfare.

Section was formerly classified to section 5119b of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

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.

Statutory Notes and Related Subsidiaries

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 12631 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.

§ 40104. Definitions

For the purposes of this chapter—

(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 chapter;

(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 ''covered individual'' means an individual—

(A) who has, seeks to have, or may have access to children, the elderly, or individuals with disabilities, served by a qualified entity; and

(B) who—

(i) is employed by or volunteers with, or seeks to be employed by or volunteer with, a qualified entity; or

(ii) owns or operates, or seeks to own or operate, a qualified entity;

(10) the term ''qualified entity'' means 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;

(11) the term ''State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific; and

(12) the term ''designated entity'' means an entity designated by the Attorney General under section 40102(f)(2)(A) of this title.

(Pub. L. 103–209, § 5, Dec. 20, 1993, 107 Stat. 2493; Pub. L. 103–322, title XXXII, § 320928(a)(3), (j), Sept. 13, 1994, 108 Stat. 2132, 2133; Pub. L. 107–110, title X, § 1075, Jan. 8, 2002, 115 Stat. 2090; Pub. L. 115–141, div. S, title I, § 101(a)(2), Mar. 23, 2018, 132 Stat. 1126.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 5119c of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2018—Par. (9). Pub. L. 115–141, § 101(a)(2)(A), amended par. (9) generally. Prior to amendment, par. (9) defined the term ''provider''.

Par. (12). Pub. L. 115–141, § 101(a)(2)(B)–(D), added par. (12).

2002—Par. (9)(A)(i). Pub. L. 107–110, § 1075(1), inserted before semicolon at end ''(including an individual who is employed by a school in any capacity, including as a child care provider, a teacher, or another member of school personnel)''.

Par. (9)(B)(i). Pub. L. 107–110, § 1075(2), inserted before semicolon at end ''(including an individual who seeks to be employed by a school in any capacity, including as a child care provider, a teacher, or another member of school personnel)''.

1994—Par. (5). Pub. L. 103–322, §320928(a)(3)(A), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''the term 'child care' means the provision of care, treatment, education, training, instruction, supervision, or recreation to children by persons having unsupervised access to a child;''.

Pars. (6), (7). Pub. L. 103–322, §320928(j)(2), added pars. (6) and (7). Former pars. (6) and (7) redesignated (8) and (9), respectively.

Par. (8). Pub. L. 103–322, §320928(j)(1), redesignated par. (6) as (8). Former par. (8) redesignated (10).

Pub. L. 103–322, §320928(a)(3)(B), substituted ''care'' for ''child care'' wherever appearing.

Pars. (9) to (11). Pub. L. 103–322, §320928(j)(1), redesignated pars. (7) to (9) as (9) to (11), respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

Executive Documents

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

CHAPTER 403—CRIMINAL JUSTICE IDENTIFICATION, INFORMATION, AND COMMUNICATION

SUBCHAPTER I—CRIME IDENTIFICATION TECHNOLOGY

SUBCHAPTER II—EXCHANGE OF CRIMINAL HISTORY RECORDS FOR NONCRIMINAL JUSTICE PURPOSES

SUBCHAPTER I—CRIME IDENTIFICATION TECHNOLOGY

§ 40301. State grant program for criminal justice identification, information, and communication

(a) In general

Subject to the availability of amounts provided in advance in appropriations Acts, the Office of Justice Programs relying principally on the expertise of the Bureau of Justice Statistics shall make a grant to each State, in a manner consistent with the national criminal history improvement program, which shall be used by the State, in conjunction with units of local government, State and local courts, other States, or combinations thereof, to establish or upgrade an integrated approach to develop information and identification technologies and systems to—

(1) upgrade criminal history and criminal justice record systems, including systems operated by law enforcement agencies and courts;

(2) improve criminal justice identification;

(3) promote compatibility and integration of national, State, and local systems for—

(A) criminal justice purposes;

(B) firearms eligibility determinations;

(C) identification of all individuals who have been convicted of a crime punishable by imprisonment for a term exceeding 1 year[1]

(D) identification of sexual offenders;

(E) identification of domestic violence offenders; and

(F) background checks for other authorized purposes unrelated to criminal justice; and

(4) capture information for statistical and research purposes to improve the administration of criminal justice.

(b) Use of grant amounts

Grants under this section may be used for programs to establish, develop, update, or upgrade—

(1) State centralized, automated, adult and juvenile criminal history record information systems, including arrest and disposition reporting;

(2) automated fingerprint identification systems that are compatible with standards established by the National Institute of Standards and Technology and interoperable with the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation;

(3) finger imaging, live scan, and other automated systems to digitize fingerprints and to communicate prints in a manner that is compatible with standards established by the National Institute of Standards and Technology and interoperable with systems operated by States and by the Federal Bureau of Investigation;

(4) programs and systems to facilitate full participation in the Interstate Identification Index of the National Crime Information Center;

(5) systems to facilitate full participation in any compact relating to the Interstate Identification Index of the National Crime Information Center;

(6) systems to facilitate full participation in the national instant criminal background check system established under section 40901(b) of this title for firearms eligibility determinations, including through increased efforts to pre-validate the contents of felony conviction records and domestic violence records to expedite eligibility determinations, and measures and resources necessary to establish and achieve compliance with an implementation plan under section 40917 of this title;

(7) integrated criminal justice information systems to manage and communicate criminal justice information among law enforcement

[1] So in original. Probably should be followed by a semicolon.

agencies, courts, prosecutors, and corrections agencies;

(8) noncriminal history record information systems relevant to firearms eligibility determinations for availability and accessibility to the national instant criminal background check system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note);[2]

(9) court-based criminal justice information systems that promote—

(A) reporting of dispositions to central State repositories and to the Federal Bureau of Investigation; and

(B) compatibility with, and integration of, court systems with other criminal justice information systems;

(10) ballistics identification and information programs that are compatible and integrated with the National Integrated Ballistics Network (NIBN);

(11) the capabilities of forensic science programs and medical examiner programs related to the administration of criminal justice, including programs leading to accreditation or certification of individuals or departments, agencies, or laboratories, and programs relating to the identification and analysis of deoxyribonucleic acid;

(12) sexual offender identification and registration systems;

(13) domestic violence offender identification and information systems;

(14) programs for fingerprint-supported background checks capability for noncriminal justice purposes, including youth service employees and volunteers and other individuals in positions of responsibility, if authorized by Federal or State law and administered by a government agency;

(15) criminal justice information systems with a capacity to provide statistical and research products including incident-based reporting systems that are compatible with the National Incident-Based Reporting System (NIBRS) and uniform crime reports;

(16) multiagency, multijurisdictional communications systems among the States to share routine and emergency information among Federal, State, and local law enforcement agencies;

(17) the capability of the criminal justice system to deliver timely, accurate, and complete criminal history record information to child welfare agencies, organizations, and programs that are engaged in the assessment of risk and other activities related to the protection of children, including protection against child sexual abuse, and placement of children in foster care; and

(18) notwithstanding subsection (c), antiterrorism purposes as they relate to any other uses under this section or for other antiterrorism programs.

(c) Assurances

(1) In general

To be eligible to receive a grant under this section, a State shall provide assurances to the Attorney General that the State has the capability to contribute pertinent information to the national instant criminal background check system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note).[2]

(2) Information sharing

Such assurances shall include a provision that ensures that a statewide strategy for information sharing systems is underway, or will be initiated, to improve the functioning of the criminal justice system, with an emphasis on integration of all criminal justice components, law enforcement, courts, prosecution, corrections, and probation and parole. The strategy shall be prepared after consultation with State and local officials with emphasis on the recommendation of officials whose duty it is to oversee, plan, and implement integrated information technology systems, and shall contain—

(A) a definition and analysis of ''integration'' in the State and localities developing integrated information sharing systems;

(B) an assessment of the criminal justice resources being devoted to information technology;

(C) Federal, State, regional, and local information technology coordination requirements;

(D) an assurance that the individuals who developed the grant application took into consideration the needs of all branches of the State Government and specifically sought the advice of the chief of the highest court of the State with respect to the application;

(E) State and local resource needs;

(F) the establishment of statewide priorities for planning and implementation of information technology systems; and

(G) a plan for coordinating the programs funded under this subchapter with other federally funded information technology programs, including directly funded local programs such as the Edward Byrne Justice Assistance Grant Program and the M.O.R.E. program established pursuant to part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [34 U.S.C. 10381 et seq.].

(d) Matching funds

The Federal share of a grant received under this subchapter may not exceed 90 percent of the costs of a program or proposal funded under this subchapter unless the State has achieved compliance with an implementation plan under section 40917 of this title or the Attorney General waives, wholly or in part, the requirements of this subsection.

(e) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section $250,000,000 for each of fiscal years 2018 through 2022.

(2) Limitations

Of the amount made available to carry out this section in any fiscal year—

[2] See References in Text note below.

(A) not more than 3 percent may be used by the Attorney General for salaries and administrative expenses;

(B) not more than 5 percent may be used for technical assistance, training and evaluations, and studies commissioned by Bureau of Justice Statistics of the Department of Justice (through discretionary grants or otherwise) in furtherance of the purposes of this section; and

(C) the Attorney General shall ensure the amounts are distributed on an equitable geographic basis.

(f) Grants to Indian tribes

Notwithstanding any other provision of this section, the Attorney General may use amounts made available under this section to make grants to Indian tribes for use in accordance with this section.

(Pub. L. 105–251, title I, §102, Oct. 9, 1998, 112 Stat. 1871; Pub. L. 106–177, title I, §102, Mar. 10, 2000, 114 Stat. 35; Pub. L. 106–561, §2(c)(4), Dec. 21, 2000, 114 Stat. 2791; Pub. L. 107–56, title X, §1015, Oct. 26, 2001, 115 Stat. 400; Pub. L. 109–162, title XI, §1111(c)(1), Jan. 5, 2006, 119 Stat. 3101; Pub. L. 115–141, div. S, title VI, §604(a), Mar. 23, 2018, 132 Stat. 1136.)

Editorial Notes

REFERENCES IN TEXT

Section 103(b) of the Brady Handgun Violence Prevention Act, referred to in subsecs. (b)(8) and (c)(1), is section 103(b) of Pub. L. 103–159, which was set out as a note under section 922 of Title 18, Crimes and Criminal Procedure, prior to editorial reclassification as section 40901(b) of this title.

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c)(2)(G), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197. Part Q of title I of the Act is classified generally to subchapter XVI (§10381 et seq.) of chapter 101 of this title. For complete classification of this Act to the Code, see Short Title of 1968 Act note set out under section 10101 of this title and Tables.

CODIFICATION

Section was formerly classified to section 14601 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2018—Subsec. (a)(3)(C) to (F). Pub. L. 115–141, §604(a)(1), added subpar. (C) and redesignated former subpars. (C) to (E) as (D) to (F), respectively.

Subsec. (b)(6). Pub. L. 115–141, §604(a)(2), substituted ''section 40901(b) of this title'' for ''section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note)'' and inserted before semicolon at end '', including through increased efforts to pre-validate the contents of felony conviction records and domestic violence records to expedite eligibility determinations, and measures and resources necessary to establish and achieve compliance with an implementation plan under section 40917 of this title''.

Subsec. (d). Pub. L. 115–141, §604(a)(3), inserted ''the State has achieved compliance with an implementation plan under section 40917 of this title or'' after ''unless''.

Subsec. (e)(1). Pub. L. 115–141, §604(a)(4), substituted ''2018 through 2022'' for ''2002 through 2007''.

2006—Subsec. (c)(2)(G). Pub. L. 109–162 substituted ''such as the Edward Byrne Justice Assistance Grant Program and the M.O.R.E. program'' for ''such as the Local Law Enforcement Block Grant program (described under the heading 'Violent Crime Reduction Programs, State and Local Law Enforcement Assistance' of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105–119)) and the M.O.R.E. program''.

2001—Subsec. (b)(18). Pub. L. 107–56, §1015(1), added par. (18).

Subsec. (e)(1). Pub. L. 107–56, §1015(2), substituted ''this section $250,000,000 for each of fiscal years 2002 through 2007'' for ''this section $250,000,000 for each of fiscal years 1999 through 2003''.

2000—Subsec. (b)(17). Pub. L. 106–177 added par. (17).

Subsec. (e)(2)(B) to (D). Pub. L. 106–561 inserted ''and'' after semicolon in subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: ''not less than 20 percent shall be used by the Attorney General for the purposes described in paragraph (11) of subsection (b); and''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–162 applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109–162, set out as a note under section 10151 of this title.

SHORT TITLE

For short title of title I of Pub. L. 105–251, which is classified to this subchapter, as the ''Crime Identification Technology Act of 1998'', see section 101 of Pub. L. 105–251, set out as a Short Title of 1998 Act note under section 10101 of this title.

§40302. Funding for improvement of criminal records

(1) Grants for the improvement of criminal records

The Attorney General, through the Bureau of Justice Statistics, shall, subject to appropriations and with preference to States that, as of March 23, 2018, have the lowest percent currency of case dispositions in computerized criminal history files and that will utilize funding under this subsection to prioritize the identification and transmittal of felony conviction records and domestic violence records, make a grant to each State to be used—

(A) for the creation of a computerized criminal history record system or improvement of an existing system;

(B) to improve accessibility to the national instant criminal background system;

(C) to assist the State in the transmittal of criminal records to the national system; and

(D) to establish and achieve compliance with an implementation plan under section 40917 of this title.

(2) Authorization of appropriations

There are authorized to be appropriated for grants under paragraph (1) a total of $200,000,000 for fiscal year 1994 and all fiscal years thereafter.

(Pub. L. 103–159, title I, §106(b), Nov. 30, 1993, 107 Stat. 1544; Pub. L. 103–322, title XXI, §210603(b), Sept. 13, 1994, 108 Stat. 2074; Pub. L. 104–294, title VI, §603(i)(1), Oct. 11, 1996, 110 Stat. 3504; Pub. L. 115–141, div. S, title VI, §604(b), Mar. 23, 2018, 132 Stat. 1136.)

Editorial Notes

CODIFICATION

Section is comprised of subsec. (b) of section 106 of Pub. L. 103–159. Subsec. (a) of section 106 of Pub. L. 103–159 amended former section 3759 of Title 42, The Public Health and Welfare.

Section was enacted as part of the Brady Handgun Violence Prevention Act and not as part of the Crime Identification Technology Act of 1998 which comprises this subchapter.

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

AMENDMENTS

2018—Par. (1). Pub. L. 115–141, § 604(b)(1), in introductory provisions, substituted '', as of March 23, 2018,'' for ''as of November 30, 1993,'' and ''files and that will utilize funding under this subsection to prioritize the identification and transmittal of felony conviction records and domestic violence records,'' for ''files,''.

Par. (1)(C). Pub. L. 115–141, § 604(b)(3)(A), struck out ''upon establishment of the national system,'' before ''to assist the State''.

Par. (1)(D). Pub. L. 115–141, § 604(b)(2), (3)(B), (4), added subpar. (D).

1996—Par. (2). Pub. L. 104–294, § 603(i)(1), amended directory language of Pub. L. 103–322, § 210603(b). See 1994 Amendment note below.

1994—Par. (2). Pub. L. 103–322, § 210603(b), as amended by Pub. L. 104–294, § 603(i)(1), struck out '', which may be appropriated from the Violent Crime Reduction Trust Fund established by section 1115 of title 31, United States Code,'' after ''grants under paragraph (1)''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–294, title VI, § 603(i)(2), Oct. 11, 1996, 110 Stat. 3504, provided that: ''The amendment made by paragraph (1) [amending section 210603(b) of Pub. L. 103–322, which amended this section and section 40901 of this title] shall take effect as if the amendment had been included in section 210603(b) of the Act referred to in paragraph (1) [Pub. L. 103–322] on the date of the enactment of such Act [Sept. 13, 1994].''

SUBCHAPTER II—EXCHANGE OF CRIMINAL HISTORY RECORDS FOR NONCRIMINAL JUSTICE PURPOSES

§ 40311. Findings

Congress finds that—

(1) both the Federal Bureau of Investigation and State criminal history record repositories maintain fingerprint-based criminal history records;

(2) these criminal history records are shared and exchanged for criminal justice purposes through a Federal-State program known as the Interstate Identification Index System;

(3) although these records are also exchanged for legally authorized, noncriminal justice uses, such as governmental licensing and employment background checks, the purposes for and procedures by which they are exchanged vary widely from State to State;

(4) an interstate and Federal-State compact is necessary to facilitate authorized interstate criminal history record exchanges for noncriminal justice purposes on a uniform basis, while permitting each State to effectuate its own dissemination policy within its own borders; and

(5) such a compact will allow Federal and State records to be provided expeditiously to governmental and nongovernmental agencies that use such records in accordance with pertinent Federal and State law, while simultaneously enhancing the accuracy of the records and safeguarding the information contained therein from unauthorized disclosure or use.

(Pub. L. 105–251, title II, § 212, Oct. 9, 1998, 112 Stat. 1874.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14611 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

Statutory Notes and Related Subsidiaries

SHORT TITLE

For short title of subtitle A of title II of Pub. L. 105–251, which is classified to this subchapter, as the ''National Crime Prevention and Privacy Compact Act of 1998'', see section 211 of Pub. L. 105–251, set out as a Short Title of 1998 Act note under section 10101 of this title.

§ 40312. Definitions

In this subchapter:

(1) Attorney General

The term ''Attorney General'' means the Attorney General of the United States.

(2) Compact

The term ''Compact'' means the National Crime Prevention and Privacy Compact set forth in section 40316 of this title.

(3) Council

The term ''Council'' means the Compact Council established under Article VI of the Compact.

(4) FBI

The term ''FBI'' means the Federal Bureau of Investigation.

(5) Party State

The term ''Party State'' means a State that has ratified the Compact.

(6) State

The term ''State'' means any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 105–251, title II, § 213, Oct. 9, 1998, 112 Stat. 1874.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14612 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

§ 40313. Enactment and consent of the United States

The National Crime Prevention and Privacy Compact, as set forth in section 40316 of this

title, is enacted into law and entered into by the Federal Government. The consent of Congress is given to States to enter into the Compact.

(Pub. L. 105–251, title II, §214, Oct. 9, 1998, 112 Stat. 1875.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14613 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

§ 40314. Effect on other laws

(a) Privacy Act of 1974

Nothing in the Compact shall affect the obligations and responsibilities of the FBI under section 552a of title 5 (commonly known as the ''Privacy Act of 1974'').

(b) Access to certain records not affected

Nothing in the Compact shall interfere in any manner with—

(1) access, direct or otherwise, to records pursuant to—

(A) section 9101 of title 5;

(B) the National Child Protection Act[1] [34 U.S.C. 40101 et seq.];

(C) the Brady Handgun Violence Prevention Act (Public Law 103–159; 107 Stat. 1536);

(D) the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 2074) or any amendment made by that Act;

(E) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); or

(F) the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.); or

(2) any direct access to Federal criminal history records authorized by law.

(c) Authority of FBI under Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973

Nothing in the Compact shall be construed to affect the authority of the FBI under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92–544 (86 Stat. 1115)).

(d) Chapter 10 of title 5

The Council shall not be considered to be a Federal advisory committee for purposes of chapter 10 of title 5.

(e) Members of Council not Federal officers or employees

Members of the Council (other than a member from the FBI or any at-large member who may be a Federal official or employee) shall not, by virtue of such membership, be deemed—

(1) to be, for any purpose other than to effect the Compact, officers or employees of the United States (as defined in sections 2104 and 2105 of title 5); or

(2) to become entitled by reason of Council membership to any compensation or benefit payable or made available by the Federal Government to its officers or employees.

[1] See References in Text note below.

(Pub. L. 105–251, title II, §215, Oct. 9, 1998, 112 Stat. 1875; Pub. L. 117–286, §4(a)(213), Dec. 27, 2022, 136 Stat. 4329.)

Editorial Notes

REFERENCES IN TEXT

The Privacy Act of 1974, referred to in subsec. (a), is Pub. L. 93–579, Dec. 31, 1974, 88 Stat. 1896, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 552a of Title 5 and Tables.

The National Child Protection Act, referred to in subsec. (b)(1)(B), probably means the National Child Protection Act of 1993, Pub. L. 103–209, Dec. 20, 1993, 107 Stat. 2490, which is classified principally to chapter 401 (§40101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1993 Act note set out under section 10101 of this title and Tables.

The Brady Handgun Violence Prevention Act, referred to in subsec. (b)(1)(C), is title I of Pub. L. 103–159, Nov. 30, 1993, 107 Stat. 1536, which enacted section 925A of Title 18, Crimes and Criminal Procedure, amended sections 921, 922, and 924 of Title 18 and former section 3759 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under sections 921 and 922 of Title 18. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 921 of Title 18 and Tables.

The Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (b)(1)(D), is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796. For complete classification of this Act to the Code, see Short Title of 1994 Act note set out under section 10101 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (b)(1)(E), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (b)(1)(F), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, which is classified principally to chapter 43 (§4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

The Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973, referred to in subsec. (c), is Pub. L. 92–544, Oct. 25, 1972, 86 Stat. 1109. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 14614 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2022—Subsec. (d). Pub. L. 117–286 substituted ''Chapter 10 of title 5'' for ''Federal Advisory Committee Act'' in heading and ''chapter 10 of title 5.'' for ''the Federal Advisory Committee Act (5 U.S.C. App.).'' in text.

§ 40315. Enforcement and implementation

All departments, agencies, officers, and employees of the United States shall enforce the Compact and cooperate with one another and with all Party States in enforcing the Compact and effectuating its purposes. For the Federal Government, the Attorney General shall make such rules, prescribe such instructions, and take

such other actions as may be necessary to carry out the Compact and this subchapter.

(Pub. L. 105–251, title II, § 216, Oct. 9, 1998, 112 Stat. 1875.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14615 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

§ 40316. National Crime Prevention and Privacy Compact

The Contracting Parties agree to the following:

OVERVIEW

(a) In general

This Compact organizes an electronic information sharing system among the Federal Government and the States to exchange criminal history records for noncriminal justice purposes authorized by Federal or State law, such as background checks for governmental licensing and employment.

(b) Obligations of parties

Under this Compact, the FBI and the Party States agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the Federal Government and to Party States for authorized purposes. The FBI shall also manage the Federal data facilities that provide a significant part of the infrastructure for the system.

ARTICLE I—DEFINITIONS

In this Compact:

(1) Attorney General

The term ''Attorney General'' means the Attorney General of the United States.

(2) Compact officer

The term ''Compact officer'' means—

(A) with respect to the Federal Government, an official so designated by the Director of the FBI; and

(B) with respect to a Party State, the chief administrator of the State's criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

(3) Council

The term ''Council'' means the Compact Council established under Article VI.

(4) Criminal history records

The term ''criminal history records''—

(A) means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; and

(B) does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

(5) Criminal history record repository

The term ''criminal history record repository'' means the State agency designated by the Governor or other appropriate executive official or the legislature of a State to perform centralized recordkeeping functions for criminal history records and services in the State.

(6) Criminal justice

The term ''criminal justice'' includes activities relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

(7) Criminal justice agency

The term ''criminal justice agency''—

(A) means—

(i) courts; and

(ii) a governmental agency or any subunit thereof that—

(I) performs the administration of criminal justice pursuant to a statute or Executive order; and

(II) allocates a substantial part of its annual budget to the administration of criminal justice; and

(B) includes Federal and State inspectors general offices.

(8) Criminal justice services

The term ''criminal justice services'' means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) Criterion offense

The term ''criterion offense'' means any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI.

(10) Direct access

The term ''direct access'' means access to the National Identification Index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(11) Executive order

The term ''Executive order'' means an order of the President of the United States or the chief executive officer of a State that has the force of law and that is promulgated in accordance with applicable law.

(12) FBI

The term ''FBI'' means the Federal Bureau of Investigation.

(13) Interstate Identification System [1]

The term ''Interstate Identification Index System'' or ''III System''—

[1] So in original. Probably should be ''Interstate Identification Index System''.

(A) means the cooperative Federal-State system for the exchange of criminal history records; and

(B) includes the National Identification Index, the National Fingerprint File and, to the extent of their participation in such system, the criminal history record repositories of the States and the FBI.

(14) National Fingerprint File

The term ''National Fingerprint File'' means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.

(15) National Identification Index

The term ''National Identification Index'' means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III System.

(16) National indices

The term ''National indices'' means the National Identification Index and the National Fingerprint File.

(17) Nonparty State

The term ''Nonparty State'' means a State that has not ratified this Compact.

(18) Noncriminal justice purposes

The term ''noncriminal justice purposes'' means uses of criminal history records for purposes authorized by Federal or State law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

(19) Party State

The term ''Party State'' means a State that has ratified this Compact.

(20) Positive identification

The term ''positive identification'' means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III System. Identifications based solely upon a comparison of subjects' names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

(21) Sealed record information

The term ''sealed record information'' means—

(A) with respect to adults, that portion of a record that is—

(i) not available for criminal justice uses;

(ii) not supported by fingerprints or other accepted means of positive identification; or

(iii) subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a Federal or State statute that requires action on a sealing petition filed by a particular record subject; and

(B) with respect to juveniles, whatever each State determines is a sealed record under its own law and procedure.

(22) State

The term ''State'' means any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE II—PURPOSES

The purposes of this Compact are to—

(1) provide a legal framework for the establishment of a cooperative Federal-State system for the interstate and Federal-State exchange of criminal history records for noncriminal justice uses;

(2) require the FBI to permit use of the National Identification Index and the National Fingerprint File by each Party State, and to provide, in a timely fashion, Federal and State criminal history records to requesting States, in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(3) require Party States to provide information and records for the National Identification Index and the National Fingerprint File and to provide criminal history records, in a timely fashion, to criminal history record repositories of other States and the Federal Government for noncriminal justice purposes, in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(4) provide for the establishment of a Council to monitor III System operations and to prescribe system rules and procedures for the effective and proper operation of the III System for noncriminal justice purposes; and

(5) require the FBI and each Party State to adhere to III System standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

ARTICLE III—RESPONSIBILITIES OF COMPACT PARTIES

(a) FBI responsibilities

The Director of the FBI shall—

(1) appoint an FBI Compact officer who shall—

(A) administer this Compact within the Department of Justice and among Federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Article V(c);

(B) ensure that Compact provisions and rules, procedures, and standards prescribed by the Council under Article VI are complied with by the Department of Justice and the Federal agencies and other agencies and organizations referred to in Article III(1)(A); and

(C) regulate the use of records received by means of the III System from Party States when such records are supplied by the FBI directly to other Federal agencies;

(2) provide to Federal agencies and to State criminal history record repositories, criminal history records maintained in its database for the noncriminal justice purposes described in Article IV, including—

(A) information from Nonparty States; and

(B) information from Party States that is available from the FBI through the III System, but is not available from the Party State through the III System;

(3) provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Article IV, and ensure that the exchange of such records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(4) modify or enter into user agreements with Nonparty State criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Article V.

(b) State responsibilities

Each Party State shall—

(1) appoint a Compact officer who shall—

(A) administer this Compact within that State;

(B) ensure that Compact provisions and rules, procedures, and standards established by the Council under Article VI are complied with in the State; and

(C) regulate the in-State use of records received by means of the III System from the FBI or from other Party States;

(2) establish and maintain a criminal history record repository, which shall provide—

(A) information and records for the National Identification Index and the National Fingerprint File; and

(B) the State's III System-indexed criminal history records for noncriminal justice purposes described in Article IV;

(3) participate in the National Fingerprint File; and

(4) provide and maintain telecommunications links and related equipment necessary to support the services set forth in this Compact.

(c) Compliance with III System standards

In carrying out their responsibilities under this Compact, the FBI and each Party State shall comply with III System rules, procedures, and standards duly established by the Council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III System operation.

(d) Maintenance of record services

(1) Use of the III System for noncriminal justice purposes authorized in this Compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.

(2) Administration of Compact provisions shall not reduce the level of service available to authorized noncriminal justice users on the effective date of this Compact.

ARTICLE IV—AUTHORIZED RECORD DISCLOSURES

(a) State criminal history record repositories

To the extent authorized by section 552a of title 5, United States Code (commonly known as the ''Privacy Act of 1974''), the FBI shall provide on request criminal history records (excluding sealed records) to State criminal history record repositories for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a State statute that has been approved by the Attorney General and that authorizes national indices checks.

(b) Criminal justice agencies and other governmental or nongovernmental agencies

The FBI, to the extent authorized by section 552a of title 5, United States Code (commonly known as the ''Privacy Act of 1974''), and State criminal history record repositories shall provide criminal history records (excluding sealed records) to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a State statute that has been approved by the Attorney General, that authorizes national indices checks.

(c) Procedures

Any record obtained under this Compact may be used only for the official purposes for which the record was requested. Each Compact officer shall establish procedures, consistent with this Compact, and with rules, procedures, and standards established by the Council under Article VI, which procedures shall protect the accuracy and privacy of the records, and shall—

(1) ensure that records obtained under this Compact are used only by authorized officials for authorized purposes;

(2) require that subsequent record checks are requested to obtain current information whenever a new need arises; and

(3) ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate ''no record'' response is communicated to the requesting official.

ARTICLE V—RECORD REQUEST PROCEDURES

(a) Positive identification

Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) Submission of State requests

Each request for a criminal history record check utilizing the national indices made under any approved State statute shall be submitted through that State's criminal history record repository. A State criminal history record repository shall process an interstate request for non-

criminal justice purposes through the national indices only if such request is transmitted through another State criminal history record repository or the FBI.

(c) Submission of Federal requests

Each request for criminal history record checks utilizing the national indices made under Federal authority shall be submitted through the FBI or, if the State criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the State in which such request originated. Direct access to the National Identification Index by entities other than the FBI and State criminal history records repositories shall not be permitted for noncriminal justice purposes.

(d) Fees

A State criminal history record repository or the FBI—

(1) may charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and

(2) may not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e) Additional search

(1) If a State criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices.

(2) If, with respect to a request forwarded by a State criminal history record repository under paragraph (1), the FBI positively identifies the subject as having a III System-indexed record or records—

(A) the FBI shall so advise the State criminal history record repository; and

(B) the State criminal history record repository shall be entitled to obtain the additional criminal history record information from the FBI or other State criminal history record repositories.

ARTICLE VI—ESTABLISHMENT OF COMPACT COUNCIL

(a) Establishment

(1) In general

There is established a council to be known as the ''Compact Council'', which shall have the authority to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes, not to conflict with FBI administration of the III System for criminal justice purposes.

(2) Organization

The Council shall—

(A) continue in existence as long as this Compact remains in effect;

(B) be located, for administrative purposes, within the FBI; and

(C) be organized and hold its first meeting as soon as practicable after the effective date of this Compact.

(b) Membership

The Council shall be composed of 15 members, each of whom shall be appointed by the Attorney General, as follows:

(1) Nine members, each of whom shall serve a 2-year term, who shall be selected from among the Compact officers of Party States based on the recommendation of the Compact officers of all Party States, except that, in the absence of the requisite number of Compact officers available to serve, the chief administrators of the criminal history record repositories of Nonparty States shall be eligible to serve on an interim basis.

(2) Two at-large members, nominated by the Director of the FBI, each of whom shall serve a 3-year term, of whom—

(A) 1 shall be a representative of the criminal justice agencies of the Federal Government and may not be an employee of the FBI; and

(B) 1 shall be a representative of the noncriminal justice agencies of the Federal Government.

(3) Two at-large members, nominated by the Chairman of the Council, once the Chairman is elected pursuant to Article VI(c), each of whom shall serve a 3-year term, of whom—

(A) 1 shall be a representative of State or local criminal justice agencies; and

(B) 1 shall be a representative of State or local noncriminal justice agencies.

(4) One member, who shall serve a 3-year term, and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board.

(5) One member, nominated by the Director of the FBI, who shall serve a 3-year term, and who shall be an employee of the FBI.

(c) Chairman and Vice Chairman

(1) In general

From its membership, the Council shall elect a Chairman and a Vice Chairman of the Council, respectively. Both the Chairman and Vice Chairman of the Council—

(A) shall be a Compact officer, unless there is no Compact officer on the Council who is willing to serve, in which case the Chairman may be an at-large member; and

(B) shall serve a 2-year term and may be reelected to only 1 additional 2-year term.

(2) Duties of Vice Chairman

The Vice Chairman of the Council shall serve as the Chairman of the Council in the absence of the Chairman.

(d) Meetings

(1) In general

The Council shall meet at least once each year at the call of the Chairman. Each meeting of the Council shall be open to the public. The Council shall provide prior public notice in the Federal Register of each meeting of the Council, including the matters to be addressed at such meeting.

(2) Quorum

A majority of the Council or any committee of the Council shall constitute a quorum of

the Council or of such committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) Rules, procedures, and standards

The Council shall make available for public inspection and copying at the Council office within the FBI, and shall publish in the Federal Register, any rules, procedures, or standards established by the Council.

(f) Assistance from FBI

The Council may request from the FBI such reports, studies, statistics, or other information or materials as the Council determines to be necessary to enable the Council to perform its duties under this Compact. The FBI, to the extent authorized by law, may provide such assistance or information upon such a request.

(g) Committees

The Chairman may establish committees as necessary to carry out this Compact and may prescribe their membership, responsibilities, and duration.

ARTICLE VII—RATIFICATION OF COMPACT

This Compact shall take effect upon being entered into by 2 or more States as between those States and the Federal Government. Upon subsequent entering into this Compact by additional States, it shall become effective among those States and the Federal Government and each Party State that has previously ratified it. When ratified, this Compact shall have the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing State.

ARTICLE VIII—MISCELLANEOUS PROVISIONS

(a) Relation of Compact to certain FBI activities

Administration of this Compact shall not interfere with the management and control of the Director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under chapter 10 of title 5 for all purposes other than noncriminal justice.

(b) No authority for nonappropriated expenditures

Nothing in this Compact shall require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) Relating to Public Law 92–544

Nothing in this Compact shall diminish or lessen the obligations, responsibilities, and authorities of any State, whether a Party State or a Nonparty State, or of any criminal history record repository or other subdivision or component thereof, under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92–544), or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the Council under Article VI(a), regarding the use and dissemination of criminal history records and information.

ARTICLE IX—RENUNCIATION

(a) In general

This Compact shall bind each Party State until renounced by the Party State.

(b) Effect

Any renunciation of this Compact by a Party State shall—

(1) be effected in the same manner by which the Party State ratified this Compact; and

(2) become effective 180 days after written notice of renunciation is provided by the Party State to each other Party State and to the Federal Government.

ARTICLE X—SEVERABILITY

The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any participating State, or to the Constitution of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If a portion of this Compact is held contrary to the constitution of any Party State, all other portions of this Compact shall remain in full force and effect as to the remaining Party States and in full force and effect as to the Party State affected, as to all other provisions.

ARTICLE XI—ADJUDICATION OF DISPUTES

(a) In general

The Council shall—

(1) have initial authority to make determinations with respect to any dispute regarding—

(A) interpretation of this Compact;

(B) any rule or standard established by the Council pursuant to Article V; and

(C) any dispute or controversy between any parties to this Compact; and

(2) hold a hearing concerning any dispute described in paragraph (1) at a regularly scheduled meeting of the Council and only render a decision based upon a majority vote of the members of the Council. Such decision shall be published pursuant to the requirements of Article VI(e).

(b) Duties of FBI

The FBI shall exercise immediate and necessary action to preserve the integrity of the III System, maintain system policy and standards, protect the accuracy and privacy of records, and to prevent abuses, until the Council holds a hearing on such matters.

(c) Right of appeal

The FBI or a Party State may appeal any decision of the Council to the Attorney General, and thereafter may file suit in the appropriate district court of the United States, which shall have original jurisdiction of all cases or con-

troversies arising under this Compact. Any suit arising under this Compact and initiated in a State court shall be removed to the appropriate district court of the United States in the manner provided by section 1446 of title 28, United States Code, or other statutory authority.

(Pub. L. 105–251, title II, § 217, Oct. 9, 1998, 112 Stat. 1876; Pub. L. 117–286, § 4(a)(214), Dec. 27, 2022, 136 Stat. 4329.)

Editorial Notes

REFERENCES IN TEXT

The Privacy Act of 1974, referred to in Art. IV(a), (b), is Pub. L. 93–579, Dec. 31, 1974, 88 Stat. 1896, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 552a of Title 5 and Tables.

The Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973, referred to in Art. VIII(c), is Pub. L. 92–544, Oct. 25, 1972, 86 Stat. 1109. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 14616 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2022—Art. VIII(a). Pub. L. 117–286 substituted ''chapter 10 of title 5'' for ''the Federal Advisory Committee Act (5 U.S.C. App.)''.

CHAPTER 405—REPORTING OF UNIDENTIFIED AND MISSING PERSONS

§ 40501. Program authorized

(a) In general

(1) Grants authorized

The Attorney General may award grants to eligible entities described in paragraph (2) to enable the eligible entities to improve the transportation, processing, identification, and reporting of missing persons and unidentified remains, including migrants.

(2) Eligible entities

Eligible entities described in this paragraph are the following:

(A) States and units of local government.

(B) Accredited, publicly funded, Combined DNA Index System (commonly known as ''CODIS'') forensic laboratories, which demonstrate the grant funds will be used for DNA typing and uploading biological family DNA reference samples, including samples from foreign nationals, into CODIS, subject to the protocols for inclusion of such forensic DNA profiles into CODIS, and the privacy protections required under section 40502(c) of this title.

(C) Medical examiners offices.

(D) Accredited, publicly funded toxicology laboratories.

(E) Accredited, publicly funded crime laboratories.

(F) Publicly funded university forensic anthropology laboratories.

(G) Nonprofit organizations that have working collaborative agreements with State and county forensic offices, including medical examiners, coroners, and justices of the peace, for entry of data into CODIS or the National Missing and Unidentified Persons System (commonly known as ''NamUs''), or both.

(Pub. L. 106–177, title II, § 202, as added Pub. L. 116–277, § 2(a)(1), Dec. 31, 2020, 134 Stat. 3368.)

Editorial Notes

PRIOR PROVISIONS

A prior section 40501, Pub. L. 106–177, title II, § 202, Mar. 10, 2000, 114 Stat. 36, authorized Attorney General to provide grant awards to States to enable States to improve the reporting of unidentified and missing persons, prior to repeal by Pub. L. 116–277, § 2(a)(1), Dec. 31, 2020, 134 Stat. 3368. Such section was formerly classified to section 14661 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as section 40501.

Statutory Notes and Related Subsidiaries

SHORT TITLE

For short title of title II of Pub. L. 106–177, which is classified to this chapter, as ''Jennifer's Law'', see section 201 of Pub. L. 106–177, set out as a Short Title of 2000 Act note under section 10101 of this title.

§ 40502. Eligibility

(a) Application

To be eligible to receive a grant award under this chapter, an entity described in section 40501 of this title shall submit an application at such time and in such form as the Attorney General may reasonably require.

(b) Contents

Each such application shall include assurances that the applicant shall, to the greatest extent possible—

(1) report to the National Crime Information Center and, when possible, to law enforcement authorities throughout the applicant's jurisdiction regarding every deceased unidentified person, regardless of age, found in the applicant's jurisdiction;

(2) enter a complete profile of such unidentified person in compliance with the guidelines established by the Department of Justice for the National Crime Information Center Missing and Unidentified Persons File, including dental records, DNA records, x-rays, and fingerprints, if available;

(3) enter the National Crime Information Center number or other appropriate number assigned to the unidentified person on the death certificate of each such unidentified person;

(4) retain all such records pertaining to unidentified persons until a person is identified; and

(5) collect and report information to the National Missing and Unidentified Persons System (NamUs) regarding missing persons and unidentified remains.

(c) Privacy protections for biological family reference samples

(1) In general

Any suspected biological family DNA reference samples received from citizens of the United States or foreign nationals and uploaded into the Combined DNA Index System (commonly referred to as ''CODIS'') by an accredited, publicly funded CODIS forensic laboratory awarded a grant under this section may be used only for identifying missing persons and unidentified remains.

(2) Limitation on use

Any biological family DNA reference samples from citizens of the United States or foreign nationals entered into CODIS for purposes of identifying missing persons and unidentified remains may not be disclosed to a Federal or State law enforcement agency for law enforcement purposes.

(Pub. L. 106–177, title II, § 203, Mar. 10, 2000, 114 Stat. 36; Pub. L. 116–277, § 2(a)(2), Dec. 31, 2020, 134 Stat. 3369.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14662 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2020—Subsec. (a). Pub. L. 116–277, § 2(a)(2)(A), substituted ''an entity described in section 40501 of this title'' for ''a State''.

Subsec. (b). Pub. L. 116–277, § 2(a)(2)(B)(i), substituted ''applicant'' for ''State'' in introductory provisions.

Subsec. (b)(1). Pub. L. 116–277, § 2(a)(2)(B)(ii), added par. (1) and struck out former par. (1) which read as follows: ''report to the National Crime Information Center and when possible, to law enforcement authorities throughout the State regarding every deceased unidentified person, regardless of age, found in the State's jurisdiction;''.

Subsec. (b)(5). Pub. L. 116–277, § 2(a)(2)(B)(iii)–(v), added par. (5).

Subsec. (c). Pub. L. 116–277, § 2(a)(2)(C), added subsec. (c).

§ 40503. Use of funds

An applicant receiving a grant award under this chapter may use such funds to—

(1) pay for the costs incurred during or after fiscal year 2017 for the transportation, processing, identification, and reporting of missing persons and unidentified remains, including migrants;

(2) establish and expand programs developed to improve the reporting of unidentified persons in accordance with the assurances provided in the application submitted pursuant to section 40502(b) of this title;

(3) hire and maintain additional DNA case analysts and technicians, fingerprint examiners, forensic odontologists, and forensic anthropologists, needed to support such identification programs; and

(4) procure and maintain state of the art multi-modal, multi-purpose forensic and DNA-typing and analytical equipment.

(Pub. L. 106–177, title II, § 205, as added Pub. L. 116–277, § 2(a)(3), Dec. 31, 2020, 134 Stat. 3369.)

Editorial Notes

PRIOR PROVISIONS

A prior section 40503, Pub. L. 106–177, title II, § 204, Mar. 10, 2000, 114 Stat. 36, related to uses of funds that a State received to establish or expand programs developed to improve the reporting of unidentified persons, prior to repeal by Pub. L. 116–277, § 2(a)(3), Dec. 31, 2020, 134 Stat. 3369. Such section was formerly classified to section 14663 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as section 40503.

§ 40504. Grants for the assistance of organizations to find missing adults

(a) In general

The Attorney General may make grants to public agencies or nonprofit private organizations, or combinations thereof, for programs—

(1) to assist law enforcement and families in locating missing adults;

(2) to maintain a national, interconnected database for the purpose of tracking missing adults who are determined by law enforcement to be endangered due to age, diminished mental capacity, or the circumstances of disappearance, when foul play is suspected or circumstances are unknown;

(3) to maintain statistical information of adults reported as missing;

(4) to provide informational resources and referrals to families of missing adults;

(5) to assist in public notification and victim advocacy related to missing adults; and

(6) to establish and maintain a national clearinghouse for missing adults.

(b) Regulations

The Attorney General may make such rules and regulations as may be necessary to carry out this title.[1]

(Pub. L. 106–468, title I, § 101, formerly § 2, Nov. 9, 2000, 114 Stat. 2027; renumbered title I, § 101, and amended Pub. L. 115–401, § 2(1)–(3), Dec. 31, 2018, 132 Stat. 5336.)

Editorial Notes

REFERENCES IN TEXT

This title, referred to in subsec. (b), is title I of Pub. L. 106–468, Nov. 9, 2000, 114 Stat. 2027, which enacted this section and provisions set out as a note under this section. For complete classification of title I to the Code, see Tables.

CODIFICATION

Section was enacted as part of Kristen's Act, and not as part of Jennifer's Law which comprises this chapter.

Section was formerly classified to section 14665 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

[1] See References in Text note below.

AMENDMENTS

2018—Subsec. (b). Pub. L. 115–401 substituted ''this title'' for ''this Act''.

Statutory Notes and Related Subsidiaries

AUTHORIZATION OF FUNDING

Pub. L. 106–468, title I, §102, formerly §3, Nov. 9, 2000, 114 Stat. 2028, renumbered title I, §102, and amended by Pub. L. 115–401, §2(1), (2), (4), Dec. 31, 2018, 132 Stat. 5336; Pub. L. 116–277, §2(b), Dec. 31, 2020, 134 Stat. 3370, provided that: ''To the extent provided in advance in appropriations Acts, the Attorney General is authorized to use funds appropriated for the operationalization, maintenance, and expansion of the National Missing and Unidentified Persons System (NamUs) for the purpose of carrying out this Act [enacting this section].''

§ 40505. Reporting on National Missing and Unidentified Persons System (NamUs) Program

Not later than 18 months after December 31, 2020, and every year thereafter, the Attorney General shall submit a report to the appropriate committees of Congress regarding—

(1) the number of unidentified person cases processed;

(2) CODIS associations and identifications;

(3) the number of anthropology cases processed;

(4) the number of suspected border crossing cases and associations made;

(5) the number of trials supported with expert testimony;

(6) the number of students trained and professions of those students; and

(7) the turnaround time and backlog.

(Pub. L. 116–277, §4, Dec. 31, 2020, 134 Stat. 3370.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Missing Persons and Unidentified Remains Act of 2019, and not as part of Jennifer's Law which comprises this chapter.

§ 40506. Authorization of the National Missing and Unidentified Persons System

(a) In general

The Attorney General,[1] shall maintain the ''National Missing and Unidentified Persons System'' or ''NamUs'', consistent with the following:

(1) The NamUs shall be a national information clearinghouse and resource center for missing, unidentified, and unclaimed person cases across the United States administered by the National Institute of Justice and managed through an agreement with an eligible entity.

(2) The NamUs shall coordinate or provide—

(A) online database technology which serves as a national information clearinghouse to help expedite case associations and resolutions;

(B) various free-of-charge forensic services to aid in the identification of missing persons and unidentified remains;

(C) investigative support for criminal justice efforts to help missing and unidentified person case resolutions;

(D) technical assistance for family members of missing persons;

(E) assistance and training by coordinating State and local service providers in order to support individuals and families impacted by the loss or disappearance of a loved one; and

(F) training and outreach from NamUs subject matter experts, including assistance with planning and facilitating Missing Person Day events across the country.

(b) Permissible use of funds

(1) In general

The permissible use of funds awarded under this section for the implementation and maintenance of the agreement created in subparagraph (a)(1) include the use of funds—

(A) to hire additional personnel to provide case support and perform other core NamUs functions;

(B) to develop new technologies to facilitate timely data entry into the relevant data bases;

(C) to conduct contracting activities relevant to core NamUs services;

(D) to provide forensic analyses to support the identification of missing and unidentified persons, to include, but not limited to DNA typing, forensic odontology, fingerprint examination, and forensic anthropology;

(E) to train State, local, and Tribal law enforcement personnel and forensic medicine service providers to use NamUs resources and best practices for the investigation of missing and unidentified person cases;

(F) to assist States in providing information to the NCIC database, the NamUs database, or any future database system for missing, unidentified, and unclaimed person cases;

(G) to report to law enforcement authorities in the jurisdiction in which the remains were found information on every deceased, unidentified person, regardless of age;

(H) to participate in Missing Person Days and other events to directly support family members of the missing with NamUs case entries and DNA collections;

(I) to provide assistance and training by coordinating State and local service providers in order to support individuals and families;

(J) to conduct data analytics and research projects for the purpose of enhancing knowledge, best practices, and training related to missing and unidentified person cases, as well as developing NamUs system enhancements;

(K) to create and maintain a secure, online, nationwide critical incident response tool for professionals that will connect law enforcement, medico-legal and emergency management professionals, as well as victims and families during a critical incident; and

(L) for other purposes consistent with the goals of this section.

[1] So in original. The comma probably should not appear.

(c) Amendments to the Crime Control Act of 1990 to require reports of missing children to NamUs

(1), (2) Omitted

(3) Effective date

The amendments made by this subsection shall apply with respect to reports made before, on, or after December 27, 2022.

(Pub. L. 117–327, § 2, Dec. 27, 2022, 136 Stat. 4454.)

Editorial Notes

REFERENCES IN TEXT

For the amendments made by this subsection, referred to in subsec. (c)(3), see Codification note below.

CODIFICATION

Section is comprised of section 2 of Pub. L. 117–327. Subsec. (c)(1) and (2) of section 2 of Pub. L. 117–327 amended sections 41307 and 41308 of this title, respectively.

Section was enacted as part of Billy's Law, also known as the Help Find the Missing Act, and not as part of Jennifer's Law which comprises this chapter.

Statutory Notes and Related Subsidiaries

DEFINITIONS

''In this Act [see section 1 of Pub. L. 117–327, set out as a Short Title of 2022 Amendment note under section 10101 of this title]:

''(1) AUTHORIZED AGENCY.—The term 'authorized agency' means a Government agency with an originating agency identification (ORI) number and that is a criminal justice agency, as defined in section 20.3 of title 28, Code of Federal Regulations.

''(2) FBI.—The term 'FBI' means the Federal Bureau of Investigation.

''(3) FORENSIC MEDICINE SERVICE PROVIDER.—The term 'forensic medicine service provider' means a State or unit of local government forensic medicine service provider having not fewer than 1 part-time or full-time employed forensic pathologist, or forensic pathologist under contract, who conducts medicolegal death investigations, including examinations of human remains, and who provides reports or opinion testimony with respect to such activity in courts of law within the United States.

''(4) FORENSIC SCIENCE SERVICE PROVIDER.—The term 'forensic science service provider' means a State or unit of local government agency having not fewer than 1 full-time analyst who examines physical evidence in criminal or investigative matters and provides reports or opinion testimony with respect to such evidence in courts in the United States.

''(5) NAMUS DATABASES.—The term 'NamUs databases' means the National Missing and Unidentified Persons System Missing Persons database and National Missing and Unidentified Persons System Unidentified Decedents database maintained by the National Institute of Justice of the Department of Justice, which serves as a clearinghouse and resource center for missing, unidentified, and unclaimed person cases.

''(6) NCIC DATABASE.—The term 'NCIC database' means the National Crime Information Center Missing Person File and National Crime Information Center Unidentified Person File of the National Crime Information Center database of the FBI, established pursuant to section 534 of title 28, United States Code.

''(7) QUALIFYING LAW ENFORCEMENT AGENCY DEFINED.—The term 'qualifying law enforcement agency' means a State, local, or Tribal law enforcement agency.

''(8) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.''

§ 40507. Information sharing

(a) Access to NCIC

Not later than 1 year after December 27, 2022, the Attorney General shall, in accordance with this section, provide access to the NCIC Missing Person and Unidentified Person Files to the National Institute of Justice or its designee administering the NamUs program as a grantee or contractor, for the purpose of reviewing missing and unidentified person records in NCIC for case validation and NamUs data reconciliation.

(b) Electronic data sharing

Not later than 6 months after December 27, 2022, the Attorney General shall, in accordance with this section, have completed an assessment of the NCIC and NamUs system architectures and governing statutes, policies, and procedures and provide a proposed plan for the secure and automatic data transmission of missing and unidentified person records that are reported to and entered into the NCIC database, with the following criteria, to be electronically transmitted to the NamUs system.

(1) Missing Person cases with an MNP (Missing Person) code of CA (Child Abduction) or AA (Amber Alert) within 72 hours of entry into NCIC;

(2) Missing Person cases with an MNP code EME (Endangered) or EMI (Involuntary) within 30 days of entry into NCIC;

(3) All other Missing Person cases that have been active (non-cancelled) in NCIC for 180 days;

(4) Unidentified person cases that have been active (non-cancelled) in NCIC for 60 days;

(5) Once case data are transmitted to NamUs, cases are marked as such within NCIC, and any updates to such cases will be transmitted to NamUs within 24 hours.

(c) Rules on confidentiality

(1) In general

Not later than 1 year after December 27, 2022, the Attorney General, in consultation with the Director of the FBI, shall promulgate rules pursuant to notice and comment that specify the information the Attorney General may allow NamUs to access from the NCIC Missing Person and Unidentified Person files or be transmitted from the NCIC database to the NamUs databases for purposes of this Act. Such rules shall—

(A) provide for the protection of confidential, private, and law enforcement sensitive information contained in the NCIC Missing Person and Unidentified Person files; and

(B) specify the circumstances in which access to portions of information in the Missing Person and Unidentified Person files may be withheld from the NamUs databases.

(Pub. L. 117–327, § 3, Dec. 27, 2022, 136 Stat. 4456.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsec. (c)(1), is Pub. L. 117–327, Dec. 27, 2022, 136 Stat. 4454, known as Billy's Law and also as the Help Find the Missing Act, which is classified principally to sections 40506 to 40508 of this title. For complete classification of this Act to the Code, see Short Title of 2022 Amendment note set out under section 10101 of this title and Tables.

CODIFICATION

Section was enacted as part of Billy's Law, also known as the Help Find the Missing Act, and not as part of Jennifer's Law which comprises this chapter.

Statutory Notes and Related Subsidiaries

DEFINITIONS

For definitions of terms used in this section, see section 6 of Pub. L. 117–327, set out as a note under section 40506 of this title.

§ 40508. Report to Congress

(a) In general

Not later than 1 year after December 27, 2022, and biennially thereafter, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report describing the status of the NCIC database and NamUs databases.

(b) Contents

The report required by subsection (a) shall describe, to the extent available, information on the process of information sharing between the NCIC database and NamUs databases.

(Pub. L. 117–327, § 5, Dec. 27, 2022, 136 Stat. 4457.)

Editorial Notes

CODIFICATION

Section was enacted as part of Billy's Law, also known as the Help Find the Missing Act, and not as part of Jennifer's Law which comprises this chapter.

Statutory Notes and Related Subsidiaries

DEFINITIONS

For definitions of ''NCIC database'' and ''NamUs databases'' as used in this section, see section 6 of Pub. L. 117–327, set out as a note under section 40506 of this title.

CHAPTER 407—DNA IDENTIFICATION

SUBCHAPTER I—COLLECTION AND ANALYSIS OF SAMPLES

SUBCHAPTER II—TRAINING, TECHNOLOGY, RESEARCH, AND EXPANDED USE

SUBCHAPTER III—DNA ARRESTEE COLLECTION PROCESSES

SUBCHAPTER I—COLLECTION AND ANALYSIS OF SAMPLES

§ 40701. The Debbie Smith DNA Backlog Grant Program

(a) Authorization of grants

The Attorney General may make grants to eligible States or units of local government for use by the State or unit of local government for the following purposes:

(1) To carry out, for inclusion in the Combined DNA Index System of the Federal Bureau of Investigation, DNA analyses of samples collected under applicable legal authority.

(2) To carry out, for inclusion in such Combined DNA Index System, DNA analyses of samples from crime scenes, prioritizing, to the extent practicable consistent with public safety considerations[1] samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect.

(3) To increase the capacity of laboratories owned by the State or by units of local government to carry out DNA analyses of samples specified in paragraph (1) or (2).

(4) To collect DNA samples specified in paragraph (1).

(5) To ensure that DNA testing and analysis of samples from crimes, including sexual assault and other serious violent crimes, are carried out in a timely manner.

(6) Repealed. Pub. L. 113–4, title X, § 1006, Mar. 7, 2013, 127 Stat. 134.

(7) To conduct an audit consistent with subsection (n) of the samples of sexual assault evidence that are in the possession of the State or unit of local government and are awaiting testing.

(8) To ensure that the collection and processing of DNA evidence by law enforcement agencies from crimes, in particular, sexual assault and other violent crimes against persons, is carried out in an appropriate and timely manner and in accordance with the protocols and practices developed under subsection (*o*)(1).

(9) To increase the capacity of State and local prosecution offices to address the back-

[1] So in original. Probably should be followed by a comma.

log of violent crime cases in which suspects have been identified through DNA evidence.

(b) Eligibility

For a State or unit of local government to be eligible to receive a grant under this section, the chief executive officer of the State or unit of local government shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require. The application shall, as required by the Attorney General—

(1) provide assurances that the State or unit of local government has implemented, or will implement not later than 120 days after the date of such application, a comprehensive plan for the expeditious DNA analysis of samples in accordance with this section;

(2) include a certification that each DNA analysis carried out under the plan shall be maintained pursuant to the privacy requirements described in section 12592(b)(3) of this title;

(3) include a certification that the State or unit of local government has determined, by statute, rule, or regulation, those offenses under State law that shall be treated for purposes of this section as qualifying State offenses;

(4) specify the allocation that the State or unit of local government shall make, in using grant amounts to carry out DNA analyses of samples, as between samples specified in subsection (a)(1) and samples specified in subsection (a)(2);

(5) specify that portion of grant amounts that the State or unit of local government shall use for the purpose specified in subsection (a)(3);

(6) if submitted by a unit of local government, certify that the unit of local government has taken, or is taking, all necessary steps to ensure that it is eligible to include, directly or through a State law enforcement agency, all analyses of samples for which it has requested funding in the Combined DNA Index System;

(7) specify that portion of grant amounts that the State or unit of local government shall use for the purpose specified in subsection (a)(4); and

(8) provide assurances that the DNA section of the laboratory to be used to conduct DNA analyses has a written policy that prioritizes the analysis of, to the extent practicable consistent with public safety considerations, samples from homicides and sexual assaults.

(c) Formula for distribution of grants

(1) In general

The Attorney General shall distribute grant amounts, and establish appropriate grant conditions under this section, in conformity with a formula or formulas that are designed to effectuate a distribution of funds among eligible States and units of local government that—

(A) maximizes the effective utilization of DNA technology to solve crimes and protect public safety; and

(B) allocates grants among eligible entities fairly and efficiently to address jurisdictions in which significant backlogs exist, by considering—

(i) the number of offender and casework samples awaiting DNA analysis in a jurisdiction;

(ii) the population in the jurisdiction; and

(iii) the number of part 1 violent crimes in the jurisdiction.

(2) Minimum amount

The Attorney General shall allocate to each State not less than 0.50 percent of the total amount appropriated in a fiscal year for grants under this section, except that the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated 0.125 percent of the total appropriation.

(3) Limitation

Grant amounts distributed under paragraph (1) shall be awarded to conduct DNA analyses of samples from casework or from victims of crime under subsection (a)(2) in accordance with the following limitations:

(A) For fiscal year 2009, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

(B) For each of the fiscal years 2019 through 2024, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

(C) For each of fiscal years 2019 through 2024, not less than 75 percent of the total grant amounts shall be awarded for a combination of purposes under paragraphs (1), (2), and (3) of subsection (a).

(4) Allocation of grant awards for audits

For each of fiscal years 2014 through 2022, not less than 5 percent, but not more than 7 percent, of the grant amounts distributed under paragraph (1) shall, if sufficient applications to justify such amounts are received by the Attorney General, be awarded for purposes described in subsection (a)(7), provided that none of the funds required to be distributed under this paragraph shall decrease or otherwise limit the availability of funds required to be awarded to States or units of local government under paragraph (3).

(5) Allocation of grant awards for prosecutors

For each fiscal year, not less than 5 percent, but not more than 7 percent, of the grant amounts distributed under paragraph (1) shall, if sufficient applications to justify such amounts are received by the Attorney General, be awarded for purposes described in subsection (a)(9), provided that none of the funds required to be distributed under this paragraph shall decrease or otherwise limit the availability of funds required to be awarded to States or units of local government under paragraph (3).

(d) Analysis of samples

(1) In general

A plan pursuant to subsection (b)(1) shall require that, except as provided in paragraph (3), each DNA analysis be carried out in a labora-

tory that satisfies quality assurance standards and is—

(A) operated by the State or a unit of local government; or

(B) operated by a private entity pursuant to a contract with the State or a unit of local government.

(2) Quality assurance standards

(A) The Director of the Federal Bureau of Investigation shall maintain and make available to States and units of local government a description of quality assurance protocols and practices that the Director considers adequate to assure the quality of a forensic laboratory.

(B) For purposes of this section, a laboratory satisfies quality assurance standards if the laboratory satisfies the quality control requirements described in paragraphs (1) and (2) of section 12592(b) of this title.

(3) Use of vouchers or contracts for certain purposes

(A) In general

A grant for the purposes specified in paragraph (1), (2), or (5) of subsection (a) may be made in the form of a voucher or contract for laboratory services, even if the laboratory makes a reasonable profit for the services.

(B) Redemption

A voucher or contract under subparagraph (A) may be redeemed at a laboratory operated on a nonprofit or for-profit basis, by a private entity that satisfies quality assurance standards and has been approved by the Attorney General.

(C) Payments

The Attorney General may use amounts authorized under subsection (j) to make payments to a laboratory described under subparagraph (B).

(e) Restrictions on use of funds

(1) Nonsupplanting

Funds made available pursuant to this section shall not be used to supplant State or local government funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State or local government sources for the purposes of this Act.

(2) Administrative costs

A State or unit of local government may not use more than 3 percent of the funds it receives from this section for administrative expenses.

(f) Reports to the Attorney General

Each State or unit of local government which receives a grant under this section shall submit to the Attorney General, for each year in which funds from a grant received under this section is expended, a report at such time and in such manner as the Attorney General may reasonably require, which contains—

(1) a summary of the activities carried out under the grant and an assessment of whether such activities are meeting the needs identified in the application; and

(2) such other information as the Attorney General may require.

(g) Reports to Congress

Not later than 90 days after the end of each fiscal year for which grants are made under this section, the Attorney General shall submit to the Congress a report that includes—

(1) the aggregate amount of grants made under this section to each State or unit of local government for such fiscal year;

(2) a summary of the information provided by States or units of local government receiving grants under this section; and

(3) a description of the priorities and plan for awarding grants among eligible States and units of local government, and how such plan will ensure the effective use of DNA technology to solve crimes and protect public safety.

(h) Expenditure records

(1) In general

Each State or unit of local government which receives a grant under this section shall keep records as the Attorney General may require to facilitate an effective audit of the receipt and use of grant funds received under this section.

(2) Access

Each State or unit of local government which receives a grant under this section shall make available, for the purpose of audit and examination, such records as are related to the receipt or use of any such grant.

(i) Definition

For purposes of this section, the term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(j) Authorization of appropriations

There are authorized to be appropriated to the Attorney General for grants under subsection (a) $151,000,000 for each of fiscal years 2019 through 2024.

(k) Use of funds for accreditation and audits

The Attorney General may distribute not more than 1 percent of the grant amounts under subsection (j)—

(1) to States or units of local government to defray the costs incurred by laboratories operated by each such State or unit of local government in preparing for accreditation or reaccreditation;

(2) in the form of additional grants to States, units of local government, or nonprofit professional organizations of persons actively involved in forensic science and nationally recognized within the forensic science community—

(A) to defray the costs of external audits of laboratories operated by such State or unit of local government, which participates in the National DNA Index System, to determine whether the laboratory is in compliance with quality assurance standards;

(B) to assess compliance with any plans submitted to the National Institute of Jus-

tice, which detail the use of funds received by States or units of local government under this Act; and

(C) to support future capacity building efforts; and

(3) in the form of additional grants to nonprofit professional associations actively involved in forensic science and nationally recognized within the forensic science community to defray the costs of training persons who conduct external audits of laboratories operated by States and units of local government and which participate in the National DNA Index System.

(*l*) Use of funds for other forensic sciences

The Attorney General may award a grant under this section to a State or unit of local government to alleviate a backlog of cases with respect to a forensic science other than DNA analysis if the State or unit of local government—

(1) certifies to the Attorney General that in such State or unit—

(A) all of the purposes set forth in subsection (a) have been met;

(B) a significant backlog of casework is not waiting for DNA analysis; and

(C) there is no need for significant laboratory equipment, supplies, or additional personnel for timely DNA processing of casework or offender samples; and

(2) demonstrates to the Attorney General that such State or unit requires assistance in alleviating a backlog of cases involving a forensic science other than DNA analysis.

(m) External audits and remedial efforts

In the event that a laboratory operated by a State or unit of local government which has received funds under this Act has undergone an external audit conducted to determine whether the laboratory is in compliance with standards established by the Director of the Federal Bureau of Investigation, and, as a result of such audit, identifies measures to remedy deficiencies with respect to the compliance by the laboratory with such standards, the State or unit of local government shall implement any such remediation as soon as practicable.

(n) Repealed. Pub. L. 113–4, title X, § 1006, Mar. 7, 2013, 127 Stat. 134

(*o*) Establishment of protocols, technical assistance, and definitions

(1) Protocols and practices

Not later than 18 months after March 7, 2013, the Director, in consultation with Federal, State, and local law enforcement agencies and government laboratories, shall develop and publish a description of protocols and practices the Director considers appropriate for the accurate, timely, and effective collection and processing of DNA evidence, including protocols and practices specific to sexual assault cases, which shall address appropriate steps in the investigation of cases that might involve DNA evidence, including—

(A) how to determine—

(i) which evidence is to be collected by law enforcement personnel and forwarded for testing;

(ii) the preferred order in which evidence from the same case is to be tested; and

(iii) what information to take into account when establishing the order in which evidence from different cases is to be tested;

(B) the establishment of a reasonable period of time in which evidence is to be forwarded by emergency response providers, law enforcement personnel, and prosecutors to a laboratory for testing;

(C) the establishment of reasonable periods of time in which each stage of analytical laboratory testing is to be completed;

(D) systems to encourage communication within a State or unit of local government among emergency response providers, law enforcement personnel, prosecutors, courts, defense counsel, crime laboratory personnel, and crime victims regarding the status of crime scene evidence to be tested; and

(E) standards for conducting the audit of the backlog for DNA case work in sexual assault cases required under subsection (n).

(2) Technical assistance and training

The Director shall make available technical assistance and training to support States and units of local government in adopting and implementing the protocols and practices developed under paragraph (1) on and after the date on which the protocols and practices are published.

(3) Definitions

In this subsection, the terms ''awaiting testing'' and ''possession'' have the meanings given those terms in subsection (n).

(Pub. L. 106–546, § 2, Dec. 19, 2000, 114 Stat. 2726; Pub. L. 108–405, title II, §§ 202, 206, Oct. 30, 2004, 118 Stat. 2266, 2272; Pub. L. 109–162, title X, § 1003, Jan. 5, 2006, 119 Stat. 3085; Pub. L. 110–360, § 2, Oct. 8, 2008, 122 Stat. 4008; Pub. L. 112–253, § 6, Jan. 10, 2013, 126 Stat. 2409; Pub. L. 113–4, title X, §§ 1002, 1004, 1006, Mar. 7, 2013, 127 Stat. 127, 131, 134; Pub. L. 113–182, § 2, Sept. 29, 2014, 128 Stat. 1918; Pub. L. 115–107, § 3(a), Jan. 8, 2018, 131 Stat. 2266; Pub. L. 115–257, § 2(a), Oct. 9, 2018, 132 Stat. 3660; Pub. L. 116–104, § 2, Dec. 30, 2019, 133 Stat. 3272.)

Editorial Notes

REFERENCES IN TEXT

Subchapter III of this chapter, referred to in subsec. (a)(6), was in the original ''the Katie Sepich Enhanced DNA Collection Act of 2012'', meaning Pub. L. 112–253, Jan. 10, 2013, 126 Stat. 2407, which is classified principally to subchapter III (§ 40741 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title of 2013 Act note set out under section 10101 of this title and Tables.

This Act, referred to in subsecs. (e)(1), (k)(2)(B), and (m), is Pub. L. 106–546, Dec. 19, 2000, 114 Stat. 2726, known as the DNA Analysis Backlog Elimination Act of 2000. For complete classification of this Act to the Code, see Short Title of 2000 Act note set out under section 10101 of this title and Tables.

CODIFICATION

Section was formerly classified to section 14135 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

Some section numbers or references in amendment notes below reflect the classification of such sections or references prior to editorial reclassification.

AMENDMENTS

2019—Subsec. (a)(2). Pub. L. 116–104, §2(1)(A), substituted ''prioritizing, to the extent practicable consistent with public safety considerations'' for ''including''.

Subsec. (a)(8). Pub. L. 116–104, §2(1)(B), substituted ''in particular,'' for ''including''.

Subsec. (b)(8). Pub. L. 116–104, §2(2), added par. (8).

Subsec. (c)(3)(B). Pub. L. 116–104, §2(3)(A), substituted ''2019 through 2024'' for ''2014 through 2019''.

Subsec. (c)(3)(C). Pub. L. 116–104, §2(3)(B), substituted ''2019 through 2024'' for ''2014 through 2019''.

Subsec. (j). Pub. L. 116–104, §2(4), substituted ''2019 through 2024'' for ''2015 through 2019''.

2018—Subsec. (a)(9). Pub. L. 115–257, §2(a)(1), added par. (9).

Subsec. (c)(4). Pub. L. 115–107 substituted ''2022'' for ''2017''.

Subsec. (c)(5). Pub. L. 115–257, §2(a)(2), added par. (5).

2014—Subsec. (c)(3)(B). Pub. L. 113–182, §2(1)(A), substituted ''2014 through 2019'' for ''2010 through 2018''.

Subsec. (c)(3)(C). Pub. L. 113–182, §2(1)(B), substituted ''2019'' for ''2018''.

Subsec. (j). Pub. L. 113–182, §2(2), substituted ''2015 through 2019'' for ''2009 through 2014''.

2013—Subsec. (a)(6). Pub. L. 113–4, §1006, struck out par. (6) which read as follows: ''To implement a DNA arrestee collection process consistent with sections 14137 to 14137c of this title.'' See Termination Date of 2013 Amendment note below.

Pub. L. 112–253 added par. (6).

Subsec. (a)(7), (8). Pub. L. 113–4, §1002(1), added pars. (7) and (8).

Subsec. (c)(3)(B). Pub. L. 113–4, §1004(a), substituted ''2018'' for ''2014''.

Subsec. (c)(3)(C). Pub. L. 113–4, §1004(b), added subpar. (C).

Subsec. (c)(4). Pub. L. 113–4, §1002(2), added par. (4).

Subsec. (n).Pub. L. 113–4, §1006, struck out subsec. (n) which related to use of funds for auditing sexual assault evidence backlogs. See Termination Date of 2013 Amendment note below.

Pub. L. 113–4, §1002(3), added subsec. (n).

Subsec. (*o*). Pub. L. 113–4, §1002(3), added subsec. (*o*).

2008—Subsec. (c)(3). Pub. L. 110–360, §2(1)(B), which directed redesignation of subpar. (E) and subpar. (A), was executed by redesignating subpar. (E) as (A), to reflect the probable intent of Congress.

Subsec. (c)(3)(A). Pub. L. 110–360, §2(1)(A), struck out subpar. (A) which read as follows: ''For fiscal year 2005, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2) of this section.''

Subsec. (c)(3)(B) to (D). Pub. L. 110–360, §2(1)(A), (C), added subpar. (B) and struck out former subpars. (B) to (D) which read as follows:

''(B) For fiscal year 2006, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2) of this section.

''(C) For fiscal year 2007, not less than 45 percent of the grant amounts shall be awarded for purposes under subsection (a)(2) of this section.

''(D) For fiscal year 2008, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2) of this section.''

Subsec. (j). Pub. L. 110–360, §2(2), amended subsec. (j) generally. Prior to amendment, subsec. (j) authorized to be appropriated to the Attorney General for grants under subsection (a) $151,000,000 for each of fiscal years 2005 through 2009.

2006—Subsec. (a)(1). Pub. L. 109–162 substituted ''collected under applicable legal authority'' for ''taken from individuals convicted of a qualifying State offense (as determined under subsection (b)(3) of this section)''.

2004—Pub. L. 108–405, §202(a)(1), substituted ''The Debbie Smith DNA Backlog Grant Program'' for ''Authorization of grants'' in section catchline.

Subsec. (a). Pub. L. 108–405, §202(a)(2)(A), in introductory provisions, inserted ''or units of local government'' after ''eligible States'' and ''or unit of local government'' after ''State''.

Subsec. (a)(2). Pub. L. 108–405, §202(a)(2)(B), inserted '', including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect'' before period at end.

Subsec. (a)(3). Pub. L. 108–405, §202(a)(2)(C), (b)(1)(A), struck out ''within the State'' after ''local government'' and inserted ''(1) or'' before ''(2)''.

Subsec. (a)(4), (5). Pub. L. 108–405, §202(b)(1)(B), added pars. (4) and (5).

Subsec. (b). Pub. L. 108–405, §202(a)(3)(A), in introductory provisions, inserted ''or unit of local government'' after ''State'' in two places and '', as required by the Attorney General'' after ''application shall''.

Subsec. (b)(1). Pub. L. 108–405, §202(a)(3)(B), inserted ''or unit of local government'' after ''State''.

Subsec. (b)(3). Pub. L. 108–405, §202(a)(3)(C), inserted ''or unit of local government'' after ''that the State''.

Subsec. (b)(4). Pub. L. 108–405, §202(a)(3)(D), inserted ''or unit of local government'' after ''State'' and struck out ''and'' at end.

Subsec. (b)(5). Pub. L. 108–405, §202(a)(3)(E), inserted ''or unit of local government'' after ''State'' and substituted semicolon for period at end.

Subsec. (b)(6). Pub. L. 108–405, §202(a)(3)(F), added par. (6).

Subsec. (b)(7). Pub. L. 108–405, §202(b)(2), added par. (7).

Subsec. (c). Pub. L. 108–405, §202(b)(3), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''A State that proposes to allocate grant amounts under paragraph (4) or (5) of subsection (b) of this section for the purposes specified in paragraph (2) or (3) of subsection (a) of this section shall use such allocated amounts to conduct or facilitate DNA analyses of those samples that relate to crimes in connection with which there are no suspects.''

Subsec. (d)(1). Pub. L. 108–405, §202(a)(4)(A), substituted ''A plan pursuant to subsection (b)(1)'' for ''The plan'' in introductory provisions and struck out ''within the State'' after ''local government'' in subpars. (A) and (B).

Subsec. (d)(2)(A). Pub. L. 108–405, §202(a)(4)(B), inserted ''and units of local government'' after ''States''.

Subsec. (d)(3). Pub. L. 108–405, §206, amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''A grant for the purposes specified in paragraph (1) or (2) of subsection (a) of this section may be made in the form of a voucher for laboratory services, which may be redeemed at a laboratory operated by a private entity approved by the Attorney General that satisfies quality assurance standards. The Attorney General may make payment to such a laboratory for the analysis of DNA samples using amounts authorized for those purposes under subsection (j) of this section.''

Subsec. (e)(1). Pub. L. 108–405, §202(a)(5)(A), inserted ''or local government'' after ''State'' in two places.

Subsec. (e)(2). Pub. L. 108–405, §202(a)(5)(B), inserted ''or unit of local government'' after ''State''.

Subsec. (f). Pub. L. 108–405, §202(a)(6), inserted ''or unit of local government'' after ''State'' in introductory provisions.

Subsec. (g)(1). Pub. L. 108–405, §202(a)(7)(A), inserted ''or unit of local government'' after ''State''.

Subsec. (g)(2). Pub. L. 108–405, §202(a)(7)(B), inserted ''or units of local government'' after ''States''.

Subsec. (g)(3). Pub. L. 108–405, §202(b)(4), added par. (3).

Subsec. (h). Pub. L. 108–405, §202(a)(8), inserted ''or unit of local government'' after ''State'' in pars. (1) and (2).

Subsec. (j)(1) to (5). Pub. L. 108–405, §202(b)(5), substituted pars. (1) to (5) for former pars. (1) and (2) which read as follows:

''(1) For grants for the purposes specified in paragraph (1) of such subsection—

''(A) $15,000,000 for fiscal year 2001;

''(B) $15,000,000 for fiscal year 2002; and

''(C) $15,000,000 for fiscal year 2003.

''(2) For grants for the purposes specified in paragraphs (2) and (3) of such subsection—

''(A) $25,000,000 for fiscal year 2001;

''(B) $50,000,000 for fiscal year 2002;

''(C) $25,000,000 for fiscal year 2003; and

''(D) $25,000,000 for fiscal year 2004.''

Subsec. (k) to (m). Pub. L. 108–405, § 202(b)(6), added subsecs. (k) to (m).

Statutory Notes and Related Subsidiaries

TERMINATION DATE OF 2013 AMENDMENT

Pub. L. 113–4, title X, § 1006, Mar. 7, 2013, 127 Stat. 134, as amended by Pub. L. 115–107, § 3(b), Jan. 8, 2018, 131 Stat. 2266, provided that: ''Effective on December 31, 2023, subsections (a)(6) and (n) of section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(a)(6) and (n)) [now 34 U.S.C. 40701(a)(6), (n)] are repealed.''

REPORTS TO CONGRESS

Pub. L. 113–4, title X, § 1003, Mar. 7, 2013, 127 Stat. 131, provided that: ''Not later than 90 days after the end of each fiscal year for which a grant is made for the purpose described in section 2(a)(7) of the DNA Analysis Backlog Elimination Act of 2000 [34 U.S.C. 40701(a)(7)], as amended by section 1002, the Attorney General shall submit to Congress a report that—

''(1) lists the States and units of local government that have been awarded such grants and the amount of the grant received by each such State or unit of local government;

''(2) states the number of extensions granted by the Attorney General under section 2(n)(3) of the DNA Analysis Backlog Elimination Act of 2000 [34 U.S.C. 40701(n)(3)], as added by section 1002; and

''(3) summarizes the processing status of the samples of sexual assault evidence identified in Sexual Assault Forensic Evidence Reports established under section 2(n)(4) of the DNA Analysis Backlog Elimination Act of 2000 [34 U.S.C. 40701(n)(4)], including the number of samples that have not been tested.''

OVERSIGHT AND ACCOUNTABILITY

Pub. L. 113–4, title X, § 1005, Mar. 7, 2013, 127 Stat. 132, provided that: ''All grants awarded by the Department of Justice that are authorized under this title [amending this section and enacting provisions set out as notes under this section and section 10101 of this title] shall be subject to the following:

''(1) AUDIT REQUIREMENT.—Beginning in fiscal year 2013, and each fiscal year thereafter, the Inspector General of the Department of Justice shall conduct audits of recipients of grants under this title to prevent waste, fraud, and abuse of funds by grantees. The Inspector General shall determine the appropriate number of grantees to be audited each year.

''(2) MANDATORY EXCLUSION.—A recipient of grant funds under this title that is found to have an unresolved audit finding shall not be eligible to receive grant funds under this title during the 2 fiscal years beginning after the 12-month period described in paragraph (5).

''(3) PRIORITY.—In awarding grants under this title, the Attorney General shall give priority to eligible entities that, during the 3 fiscal years before submitting an application for a grant under this title, did not have an unresolved audit finding showing a violation in the terms or conditions of a Department of Justice grant program.

''(4) REIMBURSEMENT.—If an entity is awarded grant funds under this Act [Pub. L. 113–4, see Tables for classification] during the 2-fiscal-year period in which the entity is barred from receiving grants under paragraph (2), the Attorney General shall—

''(A) deposit an amount equal to the grant funds that were improperly awarded to the grantee into the General Fund of the Treasury; and

''(B) seek to recoup the costs of the repayment to the fund from the grant recipient that was erroneously awarded grant funds.

''(5) DEFINED TERM.—In this section, the term 'unresolved audit finding' means an audit report finding in the final audit report of the Inspector General of the Department of Justice that the grantee has utilized grant funds for an unauthorized expenditure or otherwise unallowable cost that is not closed or resolved within a 12-month period beginning on the date when the final audit report is issued.

''(6) NONPROFIT ORGANIZATION REQUIREMENTS.—

''(A) DEFINITION.—For purposes of this section and the grant programs described in this title, the term 'nonprofit organization' means an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] and is exempt from taxation under section 501(a) of such Code.

''(B) PROHIBITION.—The Attorney General shall not award a grant under any grant program described in this title to a nonprofit organization that holds money in offshore accounts for the purpose of avoiding paying the tax described in section 511(a) of the Internal Revenue Code of 1986 [26 U.S.C. 511(a)].

''(C) DISCLOSURE.—Each nonprofit organization that is awarded a grant under a grant program described in this title and uses the procedures prescribed in regulations to create a rebuttable presumption of reasonableness for the compensation of its officers, directors, trustees and key employees, shall disclose to the Attorney General, in the application for the grant, the process for determining such compensation, including the independent persons involved in reviewing and approving such compensation, the comparability data used, and contemporaneous substantiation of the deliberation and decision. Upon request, the Attorney General shall make the information disclosed under this subsection available for public inspection.

''(7) ADMINISTRATIVE EXPENSES.—Unless otherwise explicitly provided in authorizing legislation, not more than 7.5 percent of the amounts authorized to be appropriated under this title may be used by the Attorney General for salaries and administrative expenses of the Department of Justice.

''(8) CONFERENCE EXPENDITURES.—

''(A) LIMITATION.—No amounts authorized to be appropriated to the Department of Justice under this title may be used by the Attorney General or by any individual or organization awarded discretionary funds through a cooperative agreement under this Act, to host or support any expenditure for conferences that uses more than $20,000 in Department funds, unless the Deputy Attorney General or the appropriate Assistant Attorney General, Director, or principal deputy as the Deputy Attorney General may designate, provides prior written authorization that the funds may be expended to host a conference.

''(B) WRITTEN APPROVAL.—Written approval under subparagraph (A) shall include a written estimate of all costs associated with the conference, including the cost of all food and beverages, audio/visual equipment, honoraria for speakers, and any entertainment.

''(C) REPORT.—The Deputy Attorney General shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on all conference expenditures approved by operation of this paragraph.

''(9) PROHIBITION ON LOBBYING ACTIVITY.—

''(A) IN GENERAL.—Amounts authorized to be appropriated under this title may not be utilized by any grant recipient to—

''(i) lobby any representative of the Department of Justice regarding the award of grant funding; or

''(ii) lobby any representative of a Federal, state, local, or tribal government regarding the award of grant funding.

''(B) PENALTY.—If the Attorney General determines that any recipient of a grant under this title has violated subparagraph (A), the Attorney General shall—

''(i) require the grant recipient to repay the grant in full; and

''(ii) prohibit the grant recipient from receiving another grant under this title for not less than 5 years.''

SENSE OF CONGRESS REGARDING THE OBLIGATION OF GRANTEE STATES TO ENSURE ACCESS TO POST-CONVICTION DNA TESTING AND COMPETENT COUNSEL IN CAPITAL CASES

Pub. L. 106–561, §4, Dec. 21, 2000, 114 Stat. 2791, provided that:

''(a) FINDINGS.—Congress finds that—

''(1) over the past decade, deoxyribonucleic acid testing (referred to in this section as 'DNA testing') has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene;

''(2) because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant;

''(3) in other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a finder of fact;

''(4) DNA testing was not widely available in cases tried prior to 1994;

''(5) new forensic DNA testing procedures have made it possible to get results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce, resulting in some cases of convicted inmates being exonerated by new DNA tests after earlier tests had failed to produce definitive results;

''(6) DNA testing can and has resulted in the post-conviction exoneration of more than 75 innocent men and women, including some under sentence of death;

''(7) in more than a dozen cases, post-conviction DNA testing that has exonerated an innocent person has also enhanced public safety by providing evidence that led to the apprehension of the actual perpetrator;

''(8) experience has shown that it is not unduly burdensome to make DNA testing available to inmates in appropriate cases;

''(9) under current Federal and State law, it is difficult to obtain post-conviction DNA testing because of time limits on introducing newly discovered evidence;

''(10) the National Commission on the Future of DNA Evidence, a Federal panel established by the Department of Justice and comprised of law enforcement, judicial, and scientific experts, has urged that post-conviction DNA testing be permitted in the relatively small number of cases in which it is appropriate, notwithstanding procedural rules that could be invoked to preclude such testing, and notwithstanding the inability of an inmate to pay for the testing;

''(11) only a few States have adopted post-conviction DNA testing procedures;

''(12) States have received millions of dollars in DNA-related grants, and more funding is needed to improve State forensic facilities and to reduce the nationwide backlog of DNA samples from convicted offenders and crime scenes that need to be tested or retested using upgraded methods;

''(13) States that accept such financial assistance should not deny the promise of truth and justice for both sides of our adversarial system that DNA testing offers;

''(14) post-conviction DNA testing and other post-conviction investigative techniques have shown that innocent people have been sentenced to death in this country;

''(15) a constitutional error in capital cases is incompetent defense lawyers who fail to present important evidence that the defendant may have been innocent or does not deserve to be sentenced to death; and

''(16) providing quality representation to defendants facing loss of liberty or life is essential to fundamental due process and the speedy final resolution of judicial proceedings.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) Congress should condition forensic science-related grants to a State or State forensic facility on the State's agreement to ensure post-conviction DNA testing in appropriate cases; and

''(2) Congress should work with the States to improve the quality of legal representation in capital cases through the establishment of standards that will assure the timely appointment of competent counsel with adequate resources to represent defendants in capital cases at each stage of the proceedings.''

Pub. L. 106–546, §11, Dec. 19, 2000, 114 Stat. 2735, enacted provisions substantially identical to those enacted by Pub. L. 106–561, §4, set out above.

§ 40702. Collection and use of DNA identification information from certain Federal offenders

(a) Collection of DNA samples

(1) From individuals in custody

(A) The Attorney General may, as prescribed by the Attorney General in regulation, collect DNA samples from individuals who are arrested, facing charges, or convicted or from non-United States persons who are detained under the authority of the United States. The Attorney General may delegate this function within the Department of Justice as provided in section 510 of title 28 and may also authorize and direct any other agency of the United States that arrests or detains individuals or supervises individuals facing charges to carry out any function and exercise any power of the Attorney General under this section.

(B) The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of a qualifying Federal offense (as determined under subsection (d)) or a qualifying military offense, as determined under section 1565 of title 10.

(2) From individuals on release, parole, or probation

The probation office responsible for the supervision under Federal law of an individual on probation, parole, or supervised release shall collect a DNA sample from each such individual who is, or has been, convicted of a qualifying Federal offense (as determined under subsection (d)) or a qualifying military offense, as determined under section 1565 of title 10.

(3) Individuals already in CODIS

For each individual described in paragraph (1) or (2), if the Combined DNA Index System (in this section referred to as ''CODIS'') of the Federal Bureau of Investigation contains a DNA analysis with respect to that individual, or if a DNA sample has been collected from

that individual under section 1565 of title 10, the Attorney General, the Director of the Bureau of Prisons, or the probation office responsible (as applicable) may (but need not) collect a DNA sample from that individual.

(4) Collection procedures

(A) The Attorney General, the Director of the Bureau of Prisons, or the probation office responsible (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample.

(B) The Attorney General, the Director of the Bureau of Prisons, or the probation office, as appropriate, may enter into agreements with units of State or local government or with private entities to provide for the collection of the samples described in paragraph (1) or (2).

(5) Criminal penalty

An individual from whom the collection of a DNA sample is authorized under this subsection who fails to cooperate in the collection of that sample shall be—

(A) guilty of a class A misdemeanor; and

(B) punished in accordance with title 18.

(b) Analysis and use of samples

The Attorney General, the Director of the Bureau of Prisons, or the probation office responsible (as applicable) shall furnish each DNA sample collected under subsection (a) to the Director of the Federal Bureau of Investigation, who shall carry out a DNA analysis on each such DNA sample and include the results in CODIS. The Director of the Federal Bureau of Investigation may waive the requirements under this subsection if DNA samples are analyzed by means of Rapid DNA instruments and the results are included in CODIS.

(c) Definitions

In this section:

(1) The term ''DNA sample'' means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term ''DNA analysis'' means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(3) The term ''Rapid DNA instruments'' means instrumentation that carries out a fully automated process to derive a DNA analysis from a DNA sample.

(d) Qualifying Federal offenses

The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses, as determined by the Attorney General:

(1) Any felony.

(2) Any offense under chapter 109A of title 18.

(3) Any crime of violence (as that term is defined in section 16 of title 18).

(4) Any attempt or conspiracy to commit any of the offenses in paragraphs (1) through (3).

(e) Regulations

(1) In general

Except as provided in paragraph (2), this section shall be carried out under regulations prescribed by the Attorney General.

(2) Probation officers

The Director of the Administrative Office of the United States Courts shall make available model procedures for the activities of probation officers in carrying out this section.

(f) Commencement of collection

Collection of DNA samples under subsection (a) shall, subject to the availability of appropriations, commence not later than the date that is 180 days after December 19, 2000.

(Pub. L. 106–546, § 3, Dec. 19, 2000, 114 Stat. 2728; Pub. L. 107–56, title V, § 503, Oct. 26, 2001, 115 Stat. 364; Pub. L. 108–405, title II, § 203(b), Oct. 30, 2004, 118 Stat. 2270; Pub. L. 109–162, title X, § 1004(a), Jan. 5, 2006, 119 Stat. 3085; Pub. L. 109–248, title I, § 155, July 27, 2006, 120 Stat. 611; Pub. L. 115–50, § 3(a), Aug. 18, 2017, 131 Stat. 1001.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14135a of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–50, § 3(a)(1), inserted at end ''The Director of the Federal Bureau of Investigation may waive the requirements under this subsection if DNA samples are analyzed by means of Rapid DNA instruments and the results are included in CODIS.''

Subsec. (c)(3). Pub. L. 115–50, § 3(a)(2), added par. (3).

2006—Subsec. (a)(1). Pub. L. 109–162, § 1004(a)(1), added subpar. (A) and designated existing provisions as subpar. (B).

Subsec. (a)(1)(A). Pub. L. 109–248 substituted ''arrested, facing charges, or convicted'' for ''arrested''.

Subsec. (a)(3), (4). Pub. L. 109–162, § 1004(a)(1)(B), substituted ''Attorney General, the Director of the Bureau of Prisons,'' for ''Director of the Bureau of Prisons'' in par. (3) and subpars. (A) and (B) of par. (4).

Subsec. (b). Pub. L. 109–162, § 1004(a)(2), substituted ''Attorney General, the Director of the Bureau of Prisons,'' for ''Director of the Bureau of Prisons''.

2004—Subsec. (d). Pub. L. 108–405 reenacted heading without change and amended text generally, substituting pars. (1) to (4) for former pars. (1) and (2) with multiple subpars. listing specific offenses.

2001—Subsec. (d)(2). Pub. L. 107–56 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The initial determination of qualifying Federal offenses shall be made not later than 120 days after December 19, 2000.''

§ 40703. Collection and use of DNA identification information from certain District of Columbia offenders

(a) Collection of DNA samples

(1) From individuals in custody

The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of a qualifying District of Columbia offense (as determined under subsection (d)).

(2) From individuals on release, parole, or probation

The Director of the Court Services and Offender Supervision Agency for the District of Columbia shall collect a DNA sample from each individual under the supervision of the

Agency who is on supervised release, parole, or probation who is, or has been, convicted of a qualifying District of Columbia offense (as determined under subsection (d)).

(3) Individuals already in CODIS

For each individual described in paragraph (1) or (2), if the Combined DNA Index System (in this section referred to as ''CODIS'') of the Federal Bureau of Investigation contains a DNA analysis with respect to that individual, the Director of the Bureau of Prisons or Agency (as applicable) may (but need not) collect a DNA sample from that individual.

(4) Collection procedures

(A) The Director of the Bureau of Prisons or Agency (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample.

(B) The Director of the Bureau of Prisons or Agency, as appropriate, may enter into agreements with units of State or local government or with private entities to provide for the collection of the samples described in paragraph (1) or (2).

(5) Criminal penalty

An individual from whom the collection of a DNA sample is authorized under this subsection who fails to cooperate in the collection of that sample shall be—

(A) guilty of a class A misdemeanor; and

(B) punished in accordance with title 18.

(b) Analysis and use of samples

The Director of the Bureau of Prisons or Agency (as applicable) shall furnish each DNA sample collected under subsection (a) to the Director of the Federal Bureau of Investigation, who shall carry out a DNA analysis on each such DNA sample and include the results in CODIS. The Director of the Federal Bureau of Investigation may waive the requirements under this subsection if DNA samples are analyzed by means of Rapid DNA instruments and the results are included in CODIS.

(c) Definitions

In this section:

(1) The term ''DNA sample'' means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term ''DNA analysis'' means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(3) The term ''Rapid DNA instruments'' means instrumentation that carries out a fully automated process to derive a DNA analysis from a DNA sample.

(d) Qualifying District of Columbia offenses

The government of the District of Columbia may determine those offenses under the District of Columbia Code that shall be treated for purposes of this section as qualifying District of Columbia offenses.

(e) Commencement of collection

Collection of DNA samples under subsection (a) shall, subject to the availability of appropriations, commence not later than the date that is 180 days after December 19, 2000.

(f) Authorization of appropriations

There are authorized to be appropriated to the Court Services and Offender Supervision Agency for the District of Columbia to carry out this section such sums as may be necessary for each of fiscal years 2001 through 2005.

(Pub. L. 106–546, § 4, Dec. 19, 2000, 114 Stat. 2730; Pub. L. 115–50, § 3(b), Aug. 18, 2017, 131 Stat. 1002.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14135b of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–50, § 3(b)(1), inserted at end ''The Director of the Federal Bureau of Investigation may waive the requirements under this subsection if DNA samples are analyzed by means of Rapid DNA instruments and the results are included in CODIS.''

Subsec. (c)(3). Pub. L. 115–50, § 3(b)(2), added par. (3).

§ 40704. Conditions of release generally

If the collection of a DNA sample from an individual on probation, parole, or supervised release is authorized pursuant to section 40702 or 40703 of this title or section 1565 of title 10, the individual shall cooperate in the collection of a DNA sample as a condition of that probation, parole, or supervised release.

(Pub. L. 106–546, § 7(d), Dec. 19, 2000, 114 Stat. 2734.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14135c of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

§ 40705. Authorization of appropriations

There are authorized to be appropriated to the Attorney General to carry out this Act (including to reimburse the Federal judiciary for any reasonable costs incurred in implementing such Act, as determined by the Attorney General) such sums as may be necessary.

(Pub. L. 106–546, § 9, Dec. 19, 2000, 114 Stat. 2735.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 106–546, Dec. 19, 2000, 114 Stat. 2726, known as the DNA Analysis Backlog Elimination Act of 2000. For complete classification of this Act to the Code, see Short Title of 2000 Act note set out under section 10101 of this title and Tables.

CODIFICATION

Section was formerly classified to section 14135d of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

§ 40706. Privacy protection standards

(a) In general

Except as provided in subsection (b), any sample collected under, or any result of any analysis

carried out under, section 40701, 40702, or 40703 of this title may be used only for a purpose specified in such section.

(b) Permissive uses

A sample or result described in subsection (a) may be disclosed under the circumstances under which disclosure of information included in the Combined DNA Index System is allowed, as specified in subparagraphs (A) through (D) of section 12592(b)(3) of this title.

(c) Criminal penalty

A person who knowingly discloses a sample or result described in subsection (a) in any manner to any person not authorized to receive it, or obtains or uses, without authorization, such sample or result, shall be fined not more than $250,000, or imprisoned for a period of not more than one year. Each instance of disclosure, obtaining, or use shall constitute a separate offense under this subsection.

(Pub. L. 106–546, § 10, Dec. 19, 2000, 114 Stat. 2735; Pub. L. 108–405, title II, § 203(e)(2), title III, § 309, Oct. 30, 2004, 118 Stat. 2271, 2275.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14135e of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–405, § 309, reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''A person who knowingly—

''(1) discloses a sample or result described in subsection (a) of this section in any manner to any person not authorized to receive it; or

''(2) obtains, without authorization, a sample or result described in subsection (a) of this section,

shall be fined not more than $250,000, or imprisoned for a period of not more than one year, or both.''

Pub. L. 108–405, § 203(e)(2), substituted ''$250,000, or imprisoned for a period of not more than one year, or both'' for ''$100,000'' in concluding provisions.

SUBCHAPTER II—TRAINING, TECHNOLOGY, RESEARCH, AND EXPANDED USE

§ 40721. Report to Congress on plans to modify CODIS system

If the Department of Justice plans to modify or supplement the core genetic markers needed for compatibility with the CODIS system, it shall notify the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives in writing not later than 180 days before any change is made and explain the reasons for such change.

(Pub. L. 108–405, title II, § 203(f), Oct. 30, 2004, 118 Stat. 2271.)

Editorial Notes

CODIFICATION

Section is comprised of subsec. (f) of section 203 of Pub. L. 108–405. For complete classification of section 203, see Tables.

Section was formerly classified as a note under section 531 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

§ 40722. DNA training and education for law enforcement, correctional personnel, and court officers

(a) In general

The Attorney General shall make grants to provide training, technical assistance, education, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by—

(1) law enforcement personnel, including police officers and other first responders, evidence technicians, investigators, and others who collect or examine evidence of crime;

(2) court officers, including State and local prosecutors, defense lawyers, and judges;

(3) forensic science professionals; and

(4) corrections personnel, including prison and jail personnel, and probation, parole, and other officers involved in supervision.

(b) Authorization of appropriations

There are authorized to be appropriated $12,500,000 for each of fiscal years 2019 through 2024 to carry out this section.

(Pub. L. 108–405, title III, § 303, Oct. 30, 2004, 118 Stat. 2273; Pub. L. 110–360, § 3, Oct. 8, 2008, 122 Stat. 4008; Pub. L. 113–182, § 3, Sept. 29, 2014, 128 Stat. 1918; Pub. L. 116–104, § 3, Dec. 30, 2019, 133 Stat. 3272.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14136 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2019—Subsec. (b). Pub. L. 116–104 substituted ''2019 through 2024'' for ''2015 through 2019''.

2014—Subsec. (b). Pub. L. 113–182 substituted ''2015 through 2019'' for ''2009 through 2014''.

2008—Subsec. (b). Pub. L. 110–360 substituted ''2009 through 2014'' for ''2005 through 2009''.

Statutory Notes and Related Subsidiaries

INCENTIVE GRANTS TO STATES TO ENSURE CONSIDERATION OF CLAIMS OF ACTUAL INNOCENCE

Pub. L. 108–405, title IV, § 413, Oct. 30, 2004, 118 Stat. 2285, as amended by Pub. L. 114–324, § 12(a), Dec. 16, 2016, 130 Stat. 1957, provided that: ''For each of fiscal years 2017 through 2021, all funds appropriated to carry out sections 303, 305, 308, and 412 [sections 40722, 40724, 40726, and 40727 of this title] shall be reserved for grants to eligible entities that—

''(1) meet the requirements under section 303, 305, 308, or 412, as appropriate; and

''(2) for eligible entities that are a State or unit of local government, provide a certification by the chief legal officer of the State in which the eligible entity operates or the chief legal officer of the jurisdiction in which the funds will be used for the purposes of the grants, that the State or jurisdiction—

''(A) provides DNA testing of specified evidence under a State statute or a State or local rule or regulation to persons sentenced to imprisonment or death for a State felony offense, in a manner intended to ensure a reasonable process for resolving claims of actual innocence that ensures post-conviction DNA testing in at least those cases that

would be covered by section 3600(a) of title 18, United States Code, had they been Federal cases and, if the results of the testing exclude the applicant as the source of the DNA, permits the applicant to apply for post-conviction relief, notwithstanding any provision of law that would otherwise bar the application as untimely; and

''(B) preserves biological evidence, as defined in section 3600A of title 18, United States Code, under a State statute or a State or local rule, regulation, or practice in a manner intended to ensure that reasonable measures are taken by the State or jurisdiction to preserve biological evidence secured in relation to the investigation or prosecution of, at a minimum, murder, nonnegligent manslaughter and sexual offenses.''

§ 40723. Sexual assault forensic exam program grants

(a) Definitions

In this section:

(1) Eligible entity

The term ''eligible entity'' includes—

(A) a State, Tribal, or local government or hospital;

(B) a sexual assault examination program, including—

(i) a SANE program;

(ii) a SAFE program;

(iii) a SART program;

(iv) medical personnel, including a doctor or nurse, involved in treating victims of sexual assault; and

(v) a victim service provider involved in treating victims of sexual assault;

(C) a State sexual assault coalition;

(D) a health care facility, including a hospital that provides sexual assault forensic examinations by a qualified or certified SANE or SAFE;

(E) a sexual assault examination program that provides SANE or SAFE training; and

(F) a community-based program that provides sexual assault forensic examinations, including pediatric forensic exams in a multidisciplinary setting, by a qualified or certified SANE or SAFE outside of a traditional health care setting.

(2) Health care facility

The term ''health care facility'' means any State, local, Tribal, community, free, nonprofit, academic, or private medical facility, including a hospital, that provides emergency medical care to patients.

(3) Medical forensic examination; MFE

The term ''medical forensic examination'' or ''MFE'' means an examination of a sexual assault patient by a health care provider, who has specialized education and clinical experience in the collection of forensic evidence and treatment of these patients, which includes—

(A) gathering information from the patient for the medical forensic history;

(B) an examination;

(C) coordinating treatment of injuries, documentation of biological and physical findings, and collection of evidence from the patient;

(D) documentation of findings;

(E) providing information, treatment, and referrals for sexually transmitted infections, pregnancy, suicidal ideation, alcohol and substance abuse, and other non-acute medical concerns; and

(F) providing follow-up as needed to provide additional healing, treatment, or collection of evidence.

(4) Pediatric SANE and SAFE

The term ''pediatric SANE and SAFE'' means a SANE or SAFE who is trained to conduct sexual assault forensic examinations on children and youth between the ages of 0 and 18.

(5) Qualified personnel

The term ''qualified personnel'' includes a registered or advanced practice nurse, physician, doctor of osteopathy, or physician assistant who has specialized training conducting medical forensic examinations.

(6) Qualified SANE and SAFE training program

The term ''qualified SANE and SAFE training program'' means a program that—

(A) is qualified to prepare current and future sexual assault nurse examiners to be profession-ready and meet the applicable State and National certification and licensure requirements, through didactic, clinical, preceptor, or capstone programs that include longer-term training;

(B) provides that preparation under a health care model that uses trauma-informed techniques; and

(C) is approved as meeting the most recent National Training Standards for Sexual Assault Medical Forensic Examiners.

(7) Rural area

The term ''rural area'' has the meaning given the term in section 12291 of this title.

(8) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(9) Sexual assault

The term ''sexual assault'' means any nonconsensual sexual act or sexual contact proscribed by Federal, Tribal, or State law, including when the individual lacks capacity to consent.

(10) Sexual assault forensic examiner; SAFE

The term ''sexual assault forensic examiner'' or ''SAFE'' means an individual who has specialized forensic training in treating sexual assault survivors and conducting medical forensic examinations.

(11) Sexual assault forensic examination

The term ''sexual assault forensic examination'' means an examination of a sexual assault patient by a health care provider, who has specialized education and clinical experience in the collection of forensic evidence and treatment of these patients, which includes—

(A) gathering information from the patient for the medical forensic history;

(B) an examination;

(C) coordinating treatment of injuries, documentation of biological and physical findings, and collection of evidence from the patient;

(D) documentation of findings;

(E) providing information, treatment, and referrals for sexually transmitted infections, pregnancy, suicidal ideation, alcohol and substance abuse, and other non-acute medical concerns; and

(F) providing follow-up as needed to provide additional healing, treatment, or collection of evidence.

(12) Sexual assault nurse examiner; SANE

The term ''sexual assault nurse examiner'' or ''SANE'' means a registered or advanced practice nurse who has specialized training conducting medical forensic examinations.

(13) Sexual assault response team; SART

The term ''sexual assault response team'' or ''SART'' means a multidisciplinary team that—

(A) provides a specialized and immediate response to survivors of sexual assault; and

(B) may include health care personnel, law enforcement representatives, community-based survivor advocates, prosecutors, and forensic scientists.

(14) State

The term ''State'' means any State of the United States, the District of Columbia, and any territory or possession of the United States.

(15) Trauma-informed

The term ''trauma-informed'' means, with respect to services or training, services or training that—

(A) use a patient-centered approach to providing services or care;

(B) promote the dignity, strength, and empowerment of patients who have experienced trauma; and

(C) incorporate evidence-based practices based on knowledge about the impact of trauma on patients' lives.

(16) Underserved populations

The term ''underserved populations'' has the meaning given the term in section 12291 of this title.

(b) Sexual assault nurse examiner training program grants

(1) Authorization for grants

The Attorney General, in consultation with the Secretary, shall make grants to eligible entities for the following purposes:

(A) To establish qualified regional SANE training programs—

(i) to provide clinical education for SANE students;

(ii) to provide salaries for full and part-time SANE instructors, including those specializing in pediatrics and working in a multidisciplinary team setting, to help with the clinical training of SANEs; and

(iii) to provide access to simulation laboratories and other resources necessary for clinical education.

(B) To provide full and part time salaries for SANEs and SAFEs, including pediatric SANEs and SAFEs.

(C) To increase access to SANEs and SAFEs by otherwise providing training, education, or technical assistance relating to the collection, preservation, analysis, and use of DNA samples and DNA evidence by SANEs, SAFEs, and other qualified personnel.

(2) Preference for grants

In reviewing applications for grants under this section, the Attorney General shall give preference to any eligible entity that certifies in the grant application that the entity will coordinate with a rape crisis center or the State sexual assault coalition to facilitate sexual assault advocacy to support sexual assault survivors and use the grant funds to—

(A) establish qualified SANE training programs in localities with a high volume of forensic trauma cases, including adult and child sexual assault, domestic violence, elder abuse, sex trafficking, and strangulation cases;

(B) increase the local and regional availability of full and part time sexual assault nurse examiners in a rural area, Tribal area, an area with a health professional shortage, or for an underserved population, including efforts to provide culturally competent services; or

(C) establish or sustain sexual assault mobile teams or units or otherwise enhance SANE and SAFE access through telehealth.

(c) Directive to the Attorney General

(1) In general

Not later than the beginning of fiscal year 2022, the Attorney General shall coordinate with the Secretary to inform health care facilities, including Federally qualified health centers and hospitals, colleges and universities, and other appropriate health-related entities about—

(A) the availability of grant funding under this section; and

(B) the role of sexual assault nurse examiners, both adult and pediatric, and available resources of the Department of Justice and the Department of Health and Human Services to train or employ sexual assault nurses examiners to address the needs of communities dealing with sexual assault, domestic violence, sex trafficking, elder abuse, strangulation, and, in particular, the need for pediatric SANEs, including such nurse examiners working in the multidisciplinary setting, in responding to abuse of both children and adolescents.

(2) Requirement

In carrying out paragraph (1), the Attorney General shall collaborate with nongovernmental organizations representing SANEs.

(d) Public information on access to sexual assault forensic examinations

(1) In general

Not later than 2 years after March 15, 2022, the Attorney General, in consultation with the Secretary, shall establish, and update annually, a public website on the access to forensic nurse examiners.

(2) Contents

The website required under paragraph (1) shall with specificity describe, by State—

(A) funding opportunities for SANE training and continuing education; and

(B) the availability of sexual assault advocates at locations providing sexual assault forensic exams.

(3) Report to Congress

Not later than 4 years after March 15, 2022, the Attorney General, in consultation with the Secretary, shall submit to the Committee on the Judiciary of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on the Judiciary of the House of Representatives, and the Committee on Energy and Commerce of the House of Representatives a report on—

(A) the availability of, and patient access to, trained SANEs and other providers who perform MFEs or sexual assault forensic examinations;

(B) the health care facilities, including hospitals or clinics, that offer SANEs and sexual assault forensic examinations and whether each health care facility, including a hospital or clinic, has full-time, part-time, or on-call coverage;

(C) regional, provider, or other barriers to access for SANE care and services, including MFEs and sexual assault forensic examinations;

(D) State requirements, minimum standards, and protocols for training SANEs, including trauma-informed and culturally competent training standards;

(E) State requirements, minimum standards, and protocols for training emergency services personnel involved in MFEs and sexual assault forensic examinations;

(F) the availability of sexual assault nurse examiner training, frequency of when training is convened, the providers of such training, the State's role in such training, and what process or procedures are in place for continuing education of such examiners;

(G) the dedicated Federal and State funding to support SANE training;

(H) funding opportunities for SANE training and continuing education;

(I) the availability of sexual assault advocates at locations providing MFEs and sexual assault forensic exams; and

(J) the total annual cost of conducting sexual assault forensic exams described in section 10449(b) of this title.

(e) Authorization of appropriations

There are authorized to be appropriated $30,000,000 for each of fiscal years 2023 through 2027 to carry out this section.

(Pub. L. 108–405, title III, §304, Oct. 30, 2004, 118 Stat. 2273; Pub. L. 110–360, §4, Oct. 8, 2008, 122 Stat. 4009; Pub. L. 113–182, §4, Sept. 29, 2014, 128 Stat. 1918; Pub. L. 114–324, §4, Dec. 16, 2016, 130 Stat. 1950; Pub. L. 115–107, §2, Jan. 8, 2018, 131 Stat. 2266; Pub. L. 116–104, §4, Dec. 30, 2019, 133 Stat. 3273; Pub. L. 117–103, div. W, title XIII, §1318(b)–(e), Mar. 15, 2022, 136 Stat. 940–945.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14136a of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2022—Subsec. (a). Pub. L. 117–103, §1318(b), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: ''The Attorney General shall make grants to eligible entities to provide training, technical assistance, education, equipment, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by medical personnel and other personnel, including doctors, medical examiners, coroners, nurses, victim service providers, and other professionals involved in treating victims of sexual assault and sexual assault examination programs, including SANE (Sexual Assault Nurse Examiner), SAFE (Sexual Assault Forensic Examiner), and SART (Sexual Assault Response Team).''

Subsec. (b). Pub. L. 117–103, §1318(b), (c), added subsec. (b) and struck out former subsec. (b) which defined ''eligible entity''.

Subsec. (c). Pub. L. 117–103, §1318(b), (d)(2), added subsec. (c) and struck out former subsec. (c) which related to preference given to certain eligible entities for grants and promoting the role and employment of forensic nurses.

Subsec. (d). Pub. L. 117–103, §1318(d)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 117–103, §1318(d)(2), (e), redesignated subsec. (d) as (e) and amended it generally. Prior to amendment, subsec. authorized appropriation of $30,000,000 for each of fiscal years 2019 through 2024 to carry out this section.

2019—Subsec. (d). Pub. L. 116–104 substituted ''2019 through 2024'' for ''2015 through 2019''.

2018—Subsec. (c)(2). Pub. L. 115–107 inserted '', both adult and pediatric,'' after ''role of forensic nurses'' and substituted ''elder abuse, and, in particular, the need for pediatric sexual assault nurse examiners, including such nurse examiners working in the multidisciplinary setting, in responding to abuse of both children and adolescents'' for ''and elder abuse''.

2016—Subsecs. (c), (d). Pub. L. 114–324 added subsec. (c) and redesignated former subsec. (c) as (d).

2014—Subsec. (c). Pub. L. 113–182 substituted ''2015 through 2019'' for ''2009 through 2014''.

2008—Subsec. (c). Pub. L. 110–360 substituted ''2009 through 2014'' for ''2005 through 2009''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117–103 not effective until Oct. 1 of the first fiscal year beginning after Mar. 15, 2022, see section 4(a) of div. W of Pub. L. 117–103, set out as an Effective Date note under section 6851 of Title 15, Commerce and Trade.

§ 40724. DNA research and development

(a) Improving DNA technology

The Attorney General shall make grants for research and development to improve forensic DNA technology, including increasing the identification accuracy and efficiency of DNA analysis, decreasing time and expense, and increasing portability.

(b) Demonstration projects

The Attorney General shall make grants to appropriate entities under which research is carried out through demonstration projects involving coordinated training and commitment of re-

sources to law enforcement agencies and key criminal justice participants to demonstrate and evaluate the use of forensic DNA technology in conjunction with other forensic tools. The demonstration projects shall include scientific evaluation of the public safety benefits, improvements to law enforcement operations, and cost-effectiveness of increased collection and use of DNA evidence.

(c) Authorization of appropriations

There are authorized to be appropriated $5,000,000 for each of fiscal years 2017 through 2021 to carry out this section.

(Pub. L. 108–405, title III, § 305, Oct. 30, 2004, 118 Stat. 2273; Pub. L. 114–324, § 8(a), Dec. 16, 2016, 130 Stat. 1954.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14136b of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2016—Subsec. (c). Pub. L. 114–324 substituted ''$5,000,000 for each of fiscal years 2017 through 2021'' for ''$15,000,000 for each of fiscal years 2005 through 2009''.

§ 40725. National Forensic Science Commission

(a) Appointment

The Attorney General shall appoint a National Forensic Science Commission (in this section referred to as the ''Commission''), composed of persons experienced in criminal justice issues, including persons from the forensic science and criminal justice communities, to carry out the responsibilities under subsection (b).

(b) Responsibilities

The Commission shall—

(1) assess the present and future resource needs of the forensic science community;

(2) make recommendations to the Attorney General for maximizing the use of forensic technologies and techniques to solve crimes and protect the public;

(3) identify potential scientific advances that may assist law enforcement in using forensic technologies and techniques to protect the public;

(4) make recommendations to the Attorney General for programs that will increase the number of qualified forensic scientists available to work in public crime laboratories;

(5) disseminate, through the National Institute of Justice, best practices concerning the collection and analyses of forensic evidence to help ensure quality and consistency in the use of forensic technologies and techniques to solve crimes and protect the public;

(6) examine additional issues pertaining to forensic science as requested by the Attorney General;

(7) examine Federal, State, and local privacy protection statutes, regulations, and practices relating to access to, or use of, stored DNA samples or DNA analyses, to determine whether such protections are sufficient;

(8) make specific recommendations to the Attorney General, as necessary, to enhance the protections described in paragraph (7) to ensure—

(A) the appropriate use and dissemination of DNA information;

(B) the accuracy, security, and confidentiality of DNA information;

(C) the timely removal and destruction of obsolete, expunged, or inaccurate DNA information; and

(D) that any other necessary measures are taken to protect privacy; and

(9) provide a forum for the exchange and dissemination of ideas and information in furtherance of the objectives described in paragraphs (1) through (8).

(c) Personnel; procedures

The Attorney General shall—

(1) designate the Chair of the Commission from among its members;

(2) designate any necessary staff to assist in carrying out the functions of the Commission; and

(3) establish procedures and guidelines for the operations of the Commission.

(d) Authorization of appropriations

There are authorized to be appropriated $500,000 for each of fiscal years 2005 through 2009 to carry out this section.

(Pub. L. 108–405, title III, § 306, Oct. 30, 2004, 118 Stat. 2274.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14136c of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

§ 40726. DNA identification of missing persons

(a) In general

The Attorney General shall make grants to promote the use of forensic DNA technology to identify missing persons and unidentified human remains.

(b) Requirement

Each State or unit of local government that receives funding under this section shall be required to submit the DNA profiles of such missing persons and unidentified human remains to the National Missing Persons DNA Database of the Federal Bureau of Investigation.

(c) Authorization of appropriations

There are authorized to be appropriated $2,000,000 for each of fiscal years 2017 through 2021 to carry out this section.

(Pub. L. 108–405, title III, § 308, Oct. 30, 2004, 118 Stat. 2275; Pub. L. 114–324, § 8(c), Dec. 16, 2016, 130 Stat. 1954.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14136d of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2016—Subsec. (c). Pub. L. 114–324 substituted ''fiscal years 2017 through 2021'' for ''fiscal years 2005 through 2009''.

§ 40727. Kirk Bloodsworth Post-Conviction DNA Testing Grant Program

(a) In general

The Attorney General shall establish the Kirk Bloodsworth Post-Conviction DNA Testing Grant Program to award grants to States to help defray the costs of post-conviction DNA testing.

(b) Authorization of appropriations

There are authorized to be appropriated $10,000,000 for each of fiscal years 2017 through 2021 to carry out this section.

(c) State defined

For purposes of this section, the term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(Pub. L. 108–405, title IV, § 412, Oct. 30, 2004, 118 Stat. 2284; Pub. L. 114–324, § 12(b), Dec. 16, 2016, 130 Stat. 1957.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14136e of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2016—Subsec. (b). Pub. L. 114–324 substituted ''$10,000,000 for each of fiscal years 2017 through 2021'' for ''$5,000,000 for each of fiscal years 2005 through 2009''.

§ 40728. Establishment of best practices for evidence retention

(a) In general

The Director of the National Institute of Justice, in consultation with Federal, State, and local law enforcement agencies and government laboratories, shall—

(1) establish best practices for evidence retention to focus on the preservation of forensic evidence; and

(2) assist State, local, and tribal governments in adopting and implementing the best practices established under paragraph (1).

(b) Deadline

Not later than 1 year after December 16, 2016, the Director of the National Institute of Justice shall publish the best practices established under subsection (a)(1).

(c) Limitation

Nothing in this section shall be construed to require or obligate compliance with the best practices established under subsection (a)(1).

(Pub. L. 108–405, title IV, § 414, as added Pub. L. 114–324, § 13(a), Dec. 16, 2016, 130 Stat. 1958.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14136f of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

SUBCHAPTER III—DNA ARRESTEE COLLECTION PROCESSES

§ 40741. Definitions

For purposes of this subchapter:

(1) DNA arrestee collection process

The term ''DNA arrestee collection process'' means, with respect to a State, a process under which the State provides for the collection, for purposes of inclusion in the index described in section 12592(a) of this title (in this subchapter referred to as the ''National DNA Index System''), of DNA profiles or DNA data from the following individuals who are at least 18 years of age:

(A) Individuals who are arrested for or charged with a criminal offense under State law that consists of a homicide.

(B) Individuals who are arrested for or charged with a criminal offense under State law that has an element involving a sexual act or sexual contact with another and that is punishable by imprisonment for more than 1 year.

(C) Individuals who are arrested for or charged with a criminal offense under State law that has an element of kidnaping or abduction and that is punishable by imprisonment for more than 1 year.

(D) Individuals who are arrested for or charged with a criminal offense under State law that consists of burglary punishable by imprisonment for more than 1 year.

(E) Individuals who are arrested for or charged with a criminal offense under State law that consists of aggravated assault punishable by imprisonment for more than 1 year.

(2) State

The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 112–253, § 2, Jan. 10, 2013, 126 Stat. 2407.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 112–253, Jan. 10, 2013, 126 Stat. 2407, known as the Katie Sepich Enhanced DNA Collection Act of 2012, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title of 2013 Act note set out under section 10101 of this title and Tables.

CODIFICATION

Section was formerly classified to section 14137 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

§ 40742. Grants to States to implement DNA arrestee collection processes

(a) In general

The Attorney General shall, subject to amounts made available pursuant to section 40744 of this title, carry out a grant program for the purpose of assisting States with the costs as-

sociated with the implementation of DNA arrestee collection processes.

(b) Applications

(1) In general

To be eligible to receive a grant under this section, in addition to any other requirements specified by the Attorney General, a State shall submit to the Attorney General an application that demonstrates that it has statutory authorization for the implementation of a DNA arrestee collection process.

(2) Non-supplanting funds

An application submitted under paragraph (1) by a State shall include assurances that the amounts received under the grant under this section shall be used to supplement, not supplant, State funds that would otherwise be available for the purpose described in subsection (a).

(3) Other requirements

The Attorney General shall require a State seeking a grant under this section to document how such State will use the grant to meet expenses associated with a State's implementation or planned implementation of a DNA arrestee collection process.

(c) Grant allocation

(1) In general

The amount available to a State under this section shall be based on the projected costs that will be incurred by the State to implement a DNA arrestee collection process. Subject to paragraph (2), the Attorney General shall retain discretion to determine the amount of each such grant awarded to an eligible State.

(2) Maximum grant allocation

In the case of a State seeking a grant under this section with respect to the implementation of a DNA arrestee collection process, such State shall be eligible for a grant under this section that is equal to no more than 100 percent of the first year costs to the State of implementing such process.

(d) Grant conditions

As a condition of receiving a grant under this section, a State shall have a procedure in place to—

(1) provide written notification of expungement provisions and instructions for requesting expungement to all persons who submit a DNA profile or DNA data for inclusion in the index;

(2) provide the eligibility criteria for expungement and instructions for requesting expungement on an appropriate public Web site; and

(3) make a determination on all expungement requests not later than 90 days after receipt and provide a written response of the determination to the requesting party.

(Pub. L. 112–253, § 3, Jan. 10, 2013, 126 Stat. 2408.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 14137a of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

§ 40743. Expungement of profiles

The expungement requirements under section 12592(d) of this title shall apply to any DNA profile or DNA data collected pursuant to this subchapter for purposes of inclusion in the National DNA Index System.

(Pub. L. 112–253, § 4, Jan. 10, 2013, 126 Stat. 2408.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 112–253, Jan. 10, 2013, 126 Stat. 2407, known as the Katie Sepich Enhanced DNA Collection Act of 2012, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title of 2013 Act note set out under section 10101 of this title and Tables.

CODIFICATION

Section was formerly classified to section 14137b of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

§ 40744. Offset of funds appropriated

Any funds appropriated to carry out this subchapter, not to exceed $10,000,000 for each of fiscal years 2013 through 2015, shall be derived from amounts appropriated pursuant to subsection (j) of section 40701 of this title in each such fiscal year for grants under such section.

(Pub. L. 112–253, § 5, Jan. 10, 2013, 126 Stat. 2409.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 112–253, Jan. 10, 2013, 126 Stat. 2407, known as the Katie Sepich Enhanced DNA Collection Act of 2012, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title of 2013 Act note set out under section 10101 of this title and Tables.

CODIFICATION

Section was formerly classified to section 14137c of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

CHAPTER 409—NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

§ 40901. Establishment

(a) Determination of timetables

Not later than 6 months after November 30, 1993, the Attorney General shall—

(1) determine the type of computer hardware and software that will be used to operate the national instant criminal background check system and the means by which State criminal records systems and the telephone or electronic device of licensees will communicate with the national system;

(2) investigate the criminal records system of each State and determine for each State a timetable by which the State should be able to provide criminal records on an on-line capacity basis to the national system; and

(3) notify each State of the determinations made pursuant to paragraphs (1) and (2).

(b) Establishment of system

(1) In general

Not later than 60 months after November 30, 1993, the Attorney General shall establish a national instant criminal background check system that any licensee may contact, by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 of title 18 or State law.

(2) Voluntary background checks

(A) In general

Not later than 90 days after June 25, 2022, the Attorney General shall promulgate regulations allowing licensees to use the national instant criminal background check system established under this section for purposes of voluntarily conducting an employment background check relating to a current or prospective employee. The Attorney General may not collect a fee for an employment background check under this subparagraph.

(B) Notice

Before conducting an employment background check relating to a current or prospective employee under subparagraph (A), a licensee shall—

(i) provide written notice to the current or prospective employee that the licensee intends to conduct the background check; and

(ii) obtain consent to conduct the background check from the current or prospective employee in writing.

(C) Exemption

An employment background check conducted by a licensee under subparagraph (A) shall not be governed by the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(D) Appeal

Any individual who is the subject of an employment background check conducted by a licensee under subparagraph (A) the result of which indicates that the individual is prohibited from possessing a firearm or ammunition pursuant to subsection (g) or (n) of section 922 of title 18 may appeal the results of the background check in the same manner and to the same extent as if the individual had been the subject of a background check relating to the transfer of a firearm.

(c) Expedited action by the Attorney General

The Attorney General shall expedite—

(1) the upgrading and indexing of State criminal history records in the Federal criminal records system maintained by the Federal Bureau of Investigation;

(2) the development of hardware and software systems to link State criminal history check systems into the national instant criminal background check system established by the Attorney General pursuant to this section; and

(3) the current revitalization initiatives by the Federal Bureau of Investigation for technologically advanced fingerprint and criminal records identification.

(d) Notification of licensees

On establishment of the system under this section, the Attorney General shall notify each licensee and the chief law enforcement officer of each State of the existence and purpose of the system and the means to be used to contact the system.

(e) Administrative provisions

(1) Authority to obtain official information

(A) In general

Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate subsection (g) or (n) of section 922 of title 18 or State law, as is necessary to enable the system to operate in accordance with this section.

(B) Request of attorney general

On request of the Attorney General, the head of such department or agency shall furnish electronic versions of the information described under subparagraph (A) to the system.

(C) Quarterly submission to Attorney General

If a Federal department or agency under subparagraph (A) has any record of any person demonstrating that the person falls within one of the categories described in subsection (g) or (n) of section 922 of title 18, the head of such department or agency shall, not less frequently than quarterly, provide

the pertinent information contained in such record to the Attorney General.

(D) Information updates

The Federal department or agency, on being made aware that the basis under which a record was made available under subparagraph (A) does not apply, or no longer applies, shall—

(i) update, correct, modify, or remove the record from any database that the agency maintains and makes available to the Attorney General, in accordance with the rules pertaining to that database; and

(ii) notify the Attorney General that such basis no longer applies so that the National Instant Criminal Background Check System is kept up to date.

The Attorney General upon receiving notice pursuant to clause (ii) shall ensure that the record in the National Instant Criminal Background Check System is updated, corrected, modified, or removed within 30 days of receipt.

(E) Annual report

The Attorney General shall submit an annual report to Congress that describes the compliance of each department or agency with the provisions of this paragraph.

(F) Semiannual certification and reporting

(i) In general

The head of each Federal department or agency shall submit a semiannual written certification to the Attorney General indicating whether the department or agency is in compliance with the record submission requirements under subparagraph (C).

(ii) Submission dates

The head of a Federal department or agency shall submit a certification to the Attorney General under clause (i)—

(I) not later than July 31 of each year, which shall address all relevant records, including those that have not been transmitted to the Attorney General, in possession of the department or agency during the period beginning on January 1 of the year and ending on June 30 of the year; and

(II) not later than January 31 of each year, which shall address all relevant records, including those that have not been transmitted to the Attorney General, in possession of the department or agency during the period beginning on July 1 of the previous year and ending on December 31 of the previous year.

(iii) Contents

A certification required under clause (i) shall state, for the applicable period—

(I) the total number of records of the Federal department or agency demonstrating that a person falls within one of the categories described in subsection (g) or (n) of section 922 of title 18;

(II) for each category of records described in subclause (I), the total number of records of the Federal department or agency that have been provided to the Attorney General; and

(III) the efforts of the Federal department or agency to ensure complete and accurate reporting of relevant records, including efforts to monitor compliance and correct any reporting failures or inaccuracies.

(G) Implementation plan

(i) In general

Not later than 1 year after March 23, 2018, the head of each Federal department or agency, in coordination with the Attorney General, shall establish a plan to ensure maximum coordination and automated reporting or making available of records to the Attorney General as required under subparagraph (C), and the verification of the accuracy of those records, including the pre-validation of those records, where appropriate, during a 4-year period specified in the plan. The records shall be limited to those of an individual described in subsection (g) or (n) of section 922 of title 18.

(ii) Benchmark requirements

Each plan established under clause (i) shall include annual benchmarks to enable the Attorney General to assess implementation of the plan, including—

(I) qualitative goals and quantitative measures;

(II) measures to monitor internal compliance, including any reporting failures and inaccuracies;

(III) a needs assessment, including estimated compliance costs; and

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

(iii) Compliance determination

Not later than the end of each fiscal year beginning after the date of the establishment of a plan under clause (i), the Attorney General shall determine whether the applicable Federal department or agency has achieved substantial compliance with the benchmarks included in the plan.

(H) Accountability

The Attorney General shall publish, including on the website of the Department of Justice, and submit to the Committee on the Judiciary and the Committee on Appropriations of the Senate and the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives a semiannual report that discloses—

(i) the name of each Federal department or agency that has failed to submit a required certification under subparagraph (F);

(ii) the name of each Federal department or agency that has submitted a required certification under subparagraph (F), but failed to certify compliance with the record submission requirements under subparagraph (C);

(iii) the name of each Federal department or agency that has failed to submit an implementation plan under subparagraph (G);

(iv) the name of each Federal department or agency that is not in substantial compliance with an implementation plan under subparagraph (G);

(v) a detailed summary of the data, broken down by department or agency, contained in the certifications submitted under subparagraph (F);

(vi) a detailed summary of the contents and status, broken down by department or agency, of the implementation plans established under subparagraph (G); and

(vii) the reasons for which the Attorney General has determined that a Federal department or agency is not in substantial compliance with an implementation plan established under subparagraph (G).

(I) Noncompliance penalties

For each of fiscal years 2019 through 2022, each political appointee of a Federal department or agency that has failed to certify compliance with the record submission requirements under subparagraph (C), and is not in substantial compliance with an implementation plan established under subparagraph (G), shall not be eligible for the receipt of bonus pay, excluding overtime pay, until the department or agency—

(i) certifies compliance with the record submission requirements under subparagraph (C); or

(ii) achieves substantial compliance with an implementation plan established under subparagraph (G).

(J) Technical assistance

The Attorney General may use funds made available for the national instant criminal background check system established under subsection (b) to provide technical assistance to a Federal department or agency, at the request of the department or agency, in order to help the department or agency comply with the record submission requirements under subparagraph (C).

(K) Application to Federal courts

For purposes of this paragraph—

(i) the terms ''department or agency of the United States'' and ''Federal department or agency'' include a Federal court; and

(ii) the Director of the Administrative Office of the United States Courts shall perform, for a Federal court, the functions assigned to the head of a department or agency.

(2) Other authority

The Attorney General shall develop such computer software, design and obtain such telecommunications and computer hardware, and employ such personnel, as are necessary to establish and operate the system in accordance with this section.

(f) Written reasons provided on request

If the national instant criminal background check system determines that an individual is ineligible to receive a firearm and the individual requests the system to provide the reasons for the determination, the system shall provide such reasons to the individual, in writing, within 5 business days after the date of the request.

(g) Correction of erroneous system information

If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate subsection (g) or (n) of section 922 of title 18 or State law, the prospective transferee may request the Attorney General to provide the prospective transferee with the reasons therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The prospective transferee may submit to the Attorney General information to correct, clarify, or supplement records of the system with respect to the prospective transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to the prospective transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records. For purposes of the preceding sentence, not later than 60 days after the date on which the Attorney General receives such information, the Attorney General shall determine whether or not the prospective transferee is the subject of an erroneous record and remove any records that are determined to be erroneous. In addition to any funds made available under subsection (k), the Attorney General may use such sums as are necessary and otherwise available for the salaries and expenses of the Federal Bureau of Investigation to comply with this subsection.

(h) Regulations

After 90 days' notice to the public and an opportunity for hearing by interested parties, the Attorney General shall prescribe regulations to ensure the privacy and security of the information of the system established under this section.

(i) Prohibition relating To establishment of registration systems with respect to firearms

No department, agency, officer, or employee of the United States may—

(1) require that any record or portion thereof generated by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons, prohibited by section 922(g) or (n) of title 18 or State law, from receiving a firearm.

(j) Definitions

As used in this section:

(1) Licensee

The term ''licensee'' means a licensed importer (as defined in section 921(a)(9) of title

18), a licensed manufacturer (as defined in section 921(a)(10) of that title), or a licensed dealer (as defined in section 921(a)(11) of that title).

(2) Other terms

The terms ''firearm'', ''handgun'', ''licensed importer'', ''licensed manufacturer'', and ''licensed dealer'' have the meanings stated in section 921(a) of title 18, as amended by subsection (a)(2).

(k) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to enable the Attorney General to carry out this section.

(*l*) Requirements relating to background checks for persons under age 21

If a licensee contacts the system established under this section regarding a proposed transfer of a firearm to a person less than 21 years of age in accordance with subsection (t) of section 922 of title 18, the system shall—

(1) immediately contact—

(A) the criminal history repository or juvenile justice information system, as appropriate, of the State in which the person resides for the purpose of determining whether the person has a possibly disqualifying juvenile record under subsection (d) of such section 922;

(B) the appropriate State custodian of mental health adjudication records in the State in which the person resides to determine whether the person has a possibly disqualifying juvenile record under subsection (d) of such section 922; and

(C) a local law enforcement agency of the jurisdiction in which the person resides for the purpose of determining whether the person has a possibly disqualifying juvenile record under subsection (d) of such section 922;

(2) as soon as possible, but in no case more than 3 business days, after the licensee contacts the system, notify the licensee whether cause exists to further investigate a possibly disqualifying juvenile record under subsection (d) of such section 922; and

(3) if there is cause for further investigation, as soon as possible, but in no case more than 10 business days, after the licensee contacts the system, notify the licensee whether—

(A) transfer of a firearm to the person would violate subsection (d) of such section 922; or

(B) receipt of a firearm by the person would violate subsection (g) or (n) of such section 922, or State, local, or Tribal law.

(Pub. L. 103–159, title I, § 103, Nov. 30, 1993, 107 Stat. 1541; Pub. L. 103–322, title XXI, § 210603(b), Sept. 13, 1994, 108 Stat. 2074; Pub. L. 104–294, title VI, § 603(h), (i)(1), Oct. 11, 1996, 110 Stat. 3504; Pub. L. 110–180, title I, § 101(a), Jan. 8, 2008, 121 Stat. 2561; Pub. L. 115–141, div. S, title VI, § 602, Mar. 23, 2018, 132 Stat. 1132; Pub. L. 117–159, div. A, title II, §§ 12001(a)(2), (3), 12004(h)(1), June 25, 2022, 136 Stat. 1323, 1324, 1330.)

AMENDMENT OF SUBSECTION (*l*)

For repeal of amendment by section 12001(a)(3) of Pub. L. 117–159, see Termination Date of 2022 Amendment note below.

Editorial Notes

REFERENCES IN TEXT

The Fair Credit Reporting Act, referred to in subsec. (b)(2)(C), is title VI of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1127, which is classified generally to subchapter III (§ 1681 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the Brady Handgun Violence Prevention Act, and not as part of the NICS Improvement Amendments Act of 2007 which comprises this chapter.

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

AMENDMENTS

2022—Subsec. (b). Pub. L. 117–159, § 12004(h)(1), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (*l*). Pub. L. 117–159, § 12001(a)(2), (3), temporarily added subsec. (*l*). See Termination Date of 2022 Amendment note below.

2018—Subsec. (e)(1)(F) to (K). Pub. L. 115–141, § 602(1), added subpars. (F) to (K).

Subsec. (g). Pub. L. 115–141, § 602(2), inserted at end ''For purposes of the preceding sentence, not later than 60 days after the date on which the Attorney General receives such information, the Attorney General shall determine whether or not the prospective transferee is the subject of an erroneous record and remove any records that are determined to be erroneous. In addition to any funds made available under subsection (k), the Attorney General may use such sums as are necessary and otherwise available for the salaries and expenses of the Federal Bureau of Investigation to comply with this subsection.''

2008—Subsec. (e)(1). Pub. L. 110–180 designated first and second sentences as subpars. (A) and (B), respectively, inserted subpar. headings, substituted ''furnish electronic versions of the information described under subparagraph (A)'' for ''furnish such information'' in subpar. (B), and added subpar. (C).

1996—Subsecs. (e)(1), (g). Pub. L. 104–294, § 603(h), made technical amendment to reference in original act which appears in text as reference to subsection (g) or (n) of section 922 of title 18.

Subsec. (i)(2). Pub. L. 104–294, § 603(h), made technical amendment to reference in original act which appears in text as reference to section 922(g) or (n) of title 18.

Subsec. (k). Pub. L. 104–294, § 603(i)(1), amended directory language of Pub. L. 103–322, § 210603(b). See 1994 Amendment note below.

1994—Subsec. (k). Pub. L. 103–322, § 210603(b), as amended by Pub. L. 104–294, § 603(i)(1), struck out '', which may be appropriated from the Violent Crime Reduction Trust Fund established by section 1115 of title 31'' after ''authorized to be appropriated''.

Statutory Notes and Related Subsidiaries

TERMINATION DATE OF 2022 AMENDMENT

Amendment by section 12001(a)(2) of Pub. L. 117–159 repealed effective Sept. 30, 2032, and section restored as if such amendment had not been enacted, see section 12001(a)(3) of Pub. L. 117–159, set out as an Effective and

Termination Dates of 2022 Amendment note under section 922 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 603(i)(1) of Pub. L. 104–294 effective as if the amendment had been included in section 210603(b) of Pub. L. 103–322 on Sept. 13, 1994, see section 603(i)(2) of Pub. L. 104–294, set out as a note under section 40302 of this title.

SHORT TITLE

For short title of Pub. L. 110–180, which is classified to this chapter, as the ''NICS Improvement Amendments Act of 2007'', see section 1(a) of Pub. L. 110–180, set out as a Short Title of 2008 Act note under section 10101 of this title.

STATUTORY CONSTRUCTION; EVIDENCE

Nothing in amendment made by section 12004(h)(1) of Pub. L. 117–159 to be construed to create a cause of action against any person licensed as an importer, manufacturer, or dealer of firearms under chapter 44 of Title 18, Crimes and Criminal Procedure, or any other person for any civil liability or to establish any standard of care, with additional provision relating to nonadmissibility of evidence, see section 12004(h)(4) of Pub. L. 117–159, set out as a note under section 534 of Title 28, Judiciary and Judicial Procedure.

Nothing in amendment made by section 12004(h)(1) of Pub. L. 117–159 to be construed to allow the establishment of a Federal system of registration of firearms, firearms owners, or firearms transactions or dispositions, see section 12004(k) of Pub. L. 117–159, set out as a Rule of Construction note under section 922 of Title 18, Crimes and Criminal Procedure.

REPORT ON REMOVING OUTDATED, EXPIRED, OR ERRONEOUS RECORDS

Pub. L. 117–159, div. A, title II, §12001(b), June 25, 2022, 136 Stat. 1324, provided that:

''(1) IN GENERAL.—On an annual basis for each fiscal year through fiscal year 2032, each State and Federal agency responsible for the submission of disqualifying records under subsection (d), (g), or (n) of section 922 of title 18, United States Code, to the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act (34 U.S.C. 40901) shall submit to the Committee on the Judiciary and the Committee on Appropriations of the Senate and the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives a report detailing the removal from the system of records that no longer prohibit an individual from lawfully acquiring or possessing a firearm under such subsection (d), (g), or (n).

''(2) CONTENTS.—Each report submitted by a State or Federal agency under paragraph (1) shall include pertinent information on—

''(A) the number of records that the State or Federal agency removed from the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act (34 U.S.C. 40901) during the reporting period;

''(B) why the records were removed; and

''(C) for each record removed, the nature of the disqualifying characteristic outlined in subsection (d), (g), or (n) of section 922 of title 18, United States Code, that caused the State or Federal agency to originally submit the record to the system.''

DESTRUCTION OF IDENTIFYING INFORMATION FOR PERSONS NOT PROHIBITED FROM POSSESSING OR RECEIVING FIREARMS

Pub. L. 112–55, div. B, title V, §511, Nov. 18, 2011, 125 Stat. 632, provided that: ''Hereafter, none of the funds appropriated pursuant to this Act [div. B of Pub. L. 112–55, see Tables for classification] or any other provision of law may be used for—

''(1) the implementation of any tax or fee in connection with the implementation of subsection [sic] 922(t) of title 18, United States Code; and

''(2) any system to implement subsection [sic] 922(t) of title 18, United States Code, that does not require and result in the destruction of any identifying information submitted by or on behalf of any person who has been determined not to be prohibited from possessing or receiving a firearm no more than 24 hours after the system advises a Federal firearms licensee that possession or receipt of a firearm by the prospective transferee would not violate subsection (g) or (n) of section 922 of title 18, United States Code, or State law.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106–58, title VI, §634, Sept. 29, 1999, 113 Stat. 473.

Pub. L. 105–277, div. A, §101(h) [title VI, §655], Oct. 21, 1998, 112 Stat. 2681–480, 2681–530.

IDENTIFICATION OF FELONS AND OTHER PERSONS INELIGIBLE TO PURCHASE HANDGUNS

Pub. L. 100–690, title VI, §6213, Nov. 18, 1988, 102 Stat. 4360, provided that:

''(a) IDENTIFICATION OF FELONS INELIGIBLE TO PURCHASE HANDGUNS.—The Attorney General shall develop a system for immediate and accurate identification of felons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code. The system shall be accessible to dealers but only for the purpose of determining whether a potential purchaser is a convicted felon. The Attorney General shall establish a plan (including a cost analysis of the proposed system) for implementation of the system. In developing the system, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. The Attorney General shall begin implementation of the system 30 days after the report to the Congress as provided in subsection (b).

''(b) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act [Nov. 18, 1988], the Attorney General shall report to the Congress a description of the system referred to in subsection (a) and a plan (including a cost analysis of the proposed system) for implementation of the system. Such report may include, if appropriate, recommendations for modifications of the system and legislation necessary in order to fully implement such system.

''(c) ADDITIONAL STUDY OF OTHER PERSONS INELIGIBLE TO PURCHASE FIREARMS.—The Attorney General in consultation with the Secretary of the Treasury shall conduct a study to determine if an effective method for immediate and accurate identification of other persons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g) of title 18, United States Code. In conducting the study, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. Such study shall be completed within 18 months after the date of the enactment of this Act [Nov. 18, 1988] and shall be submitted to the Congress and made available to the public. Such study may include, if appropriate, recommendations for legislation.

''(d) DEFINITIONS.—As used in this section, the terms 'firearm' and 'dealer' shall have the meanings given such terms in section 921(a) of title 18, United States Code.''

Executive Documents

TRACING OF FIREARMS IN CONNECTION WITH CRIMINAL INVESTIGATIONS

Memorandum of President of the United States, Jan. 16, 2013, 78 F.R. 4301, provided:

Memorandum for the Heads of Executive Departments and Agencies

Reducing violent crime, and gun-related crime in particular, is a top priority of my Administration. A key

component of this effort is ensuring that law enforcement agencies at all levels—Federal, State, and local—utilize those tools that have proven most effective. One such tool is firearms tracing, which significantly assists law enforcement in reconstructing the transfer and movement of seized or recovered firearms. Responsibility for conducting firearms tracing rests with the Department of Justice's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Over the years, firearms tracing has significantly assisted law enforcement in solving violent crimes and generating thousands of leads that may otherwise not have been available.

Firearms tracing provides two principal benefits. First, tracing is an important investigative tool in individual cases, providing law enforcement agents with critical information that may lead to the apprehension of suspects, the recovery of other guns used in the commission of crimes, and the identification of potential witnesses, among other things. Second, analysis of tracing data in the aggregate provides valuable intelligence about local, regional, and national patterns relating to the movement and sources of guns used in the commission of crimes, which is useful for the effective deployment of law enforcement resources and development of enforcement strategies. Firearms tracing is a particularly valuable tool in detecting and investigating firearms trafficking, and has been deployed to help combat the pernicious problem of firearms trafficking across the Southwest border.

The effectiveness of firearms tracing as a law enforcement intelligence tool depends on the quantity and quality of information and trace requests submitted to ATF. In fiscal year 2012, ATF processed approximately 345,000 crime-gun trace requests for thousands of domestic and international law enforcement agencies. The Federal Government can encourage State and local law enforcement agencies to take advantage of the benefits of tracing all recovered firearms, but Federal law enforcement agencies should have an obligation to do so. If Federal law enforcement agencies do not conscientiously trace every firearm taken into custody, they may not only be depriving themselves of critical information in specific cases, but may also be depriving all Federal, State, and local agencies of the value of complete information for aggregate analyses.

Maximizing the effectiveness of firearms tracing, and the corresponding impact on combating violent crimes involving firearms, requires that Federal law enforcement agencies trace all recovered firearms taken into Federal custody in a timely and efficient manner.

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. *Firearms Tracing.* (a) Federal law enforcement agencies shall ensure that all firearms recovered after the date of this memorandum in the course of criminal investigations and taken into Federal custody are traced through ATF at the earliest time practicable. Federal law enforcement agencies, as well as other executive departments and agencies, are encouraged, to the extent practicable, to take steps to ensure that firearms recovered prior to the date of this memorandum in the course of criminal investigations and taken into Federal custody are traced through ATF.

(b) Within 30 days of the date of this memorandum, ATF will issue guidance to Federal law enforcement agencies on submitting firearms trace requests.

(c) Within 60 days of the date of this memorandum, Federal law enforcement agencies shall ensure that their operational protocols reflect the requirement to trace recovered firearms through ATF.

(d) Within 90 days of the date of this memorandum, each Federal law enforcement agency shall submit a report to the Attorney General affirming that its operational protocols reflect the requirements set forth in this memorandum.

(e) For purposes of this memorandum, ''Federal law enforcement agencies'' means the Departments of State, the Treasury, Defense, Justice, the Interior, Agriculture, Energy, Veterans Affairs, and Homeland Security, and such other agencies and offices that regularly recover firearms in the course of their criminal investigations as the President may designate.

SEC. 2. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect the authority granted by law to a department or agency, or the head thereof.

(b) 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.

SEC. 3. *Publication.* The Attorney General is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

PROMOTING SMART GUN TECHNOLOGY

Memorandum of President of the United States, Jan. 4, 2016, 81 F.R. 719, provided:

Memorandum for the Secretary of Defense[,] the Attorney General[, and] the Secretary of Homeland Security

For more than 20 years, the Federal Government has worked to keep guns out of the wrong hands through background checks. This critical effort in addressing gun violence has prevented more than two million prohibited firearms purchases from being completed. But tens of thousands of people are still injured or killed by firearms every year—in many cases by guns that were sold legally but then stolen, misused, or discharged accidentally. Developing and promoting technology that would help prevent these tragedies is an urgent priority.

In 2013, I directed the Department of Justice to review the availability and most effective use of new gun safety technologies, such as devices requiring a scan of the owner's fingerprint before a gun can fire. In its report, the Department made clear that technological advancements in this area could help reduce accidental deaths and the use of stolen guns in criminal activities.

Millions of dollars have already been invested to support research into a broad range of concepts for improving gun safety. We must all do our part to continue to advance this research and encourage its practical application, and it is possible to do so in a way that makes the public safer and is consistent with the Second Amendment. The Federal Government has a unique opportunity to do so, as it is the single largest purchaser of firearms in the country. 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. *Research and Development.* The Department of Defense, the Department of Justice, and the Department of Homeland Security (departments) shall, to the extent practicable and permitted by law, conduct or sponsor research into gun safety technology that would reduce the frequency of accidental discharge or unauthorized use of firearms, and improve the tracing of lost or stolen guns. Not later than 90 days after the date of this memorandum, the Secretary of Defense, the Attorney General, and the Secretary of Homeland Security shall prepare jointly a report outlining a research and development strategy designed to expedite the real-world deployment of such technology for use in practice.

SEC. 2. *Department Consideration of New Technology.* The departments shall, to the extent permitted by law, regularly (a) review the availability of the technology described in section 1, and (b) explore potential ways to further its use and development to more broadly improve gun safety. In connection with these efforts, the departments shall consult with other agencies that acquire firearms and take appropriate steps to consider whether including such technology in specifications for acquisition of firearms would be consistent with operational needs.

SEC. 3. *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.

SEC. 4. *Publication*. The Attorney General is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 40902. Findings

Congress finds the following:

(1) Approximately 916,000 individuals were prohibited from purchasing a firearm for failing a background check between November 30, 1998, (the date the National Instant Criminal Background Check System (NICS) began operating) and December 31, 2004.

(2) From November 30, 1998, through December 31, 2004, nearly 49,000,000 Brady background checks were processed through NICS.

(3) Although most Brady background checks are processed through NICS in seconds, many background checks are delayed if the Federal Bureau of Investigation (FBI) does not have automated access to complete information from the States concerning persons prohibited from possessing or receiving a firearm under Federal or State law.

(4) Nearly 21,000,000 criminal records are not accessible by NICS and millions of criminal records are missing critical data, such as arrest dispositions, due to data backlogs.

(5) The primary cause of delay in NICS background checks is the lack of—

(A) updates and available State criminal disposition records; and

(B) automated access to information concerning persons prohibited from possessing or receiving a firearm because of mental illness, restraining orders, or misdemeanor convictions for domestic violence.

(6) Automated access to this information can be improved by—

(A) computerizing information relating to criminal history, criminal dispositions, mental illness, restraining orders, and misdemeanor convictions for domestic violence; or

(B) making such information available to NICS in a usable format.

(7) Helping States to automate these records will reduce delays for law-abiding gun purchasers.

(8) On March 12, 2002, the senseless shooting, which took the lives of a priest and a parishioner at the Our Lady of Peace Church in Lynbrook, New York, brought attention to the need to improve information-sharing that would enable Federal and State law enforcement agencies to conduct a complete background check on a potential firearm purchaser. The man who committed this double murder had a prior disqualifying mental health commitment and a restraining order against him, but passed a Brady background check because NICS did not have the necessary information to determine that he was ineligible to purchase a firearm under Federal or State law.

(9) On April 16, 2007, a student with a history of mental illness at the Virginia Polytechnic Institute and State University shot to death 32 students and faculty members, wounded 17 more, and then took his own life. The shooting, the deadliest campus shooting in United States history, renewed the need to improve information-sharing that would enable Federal and State law enforcement agencies to conduct complete background checks on potential firearms purchasers. In spite of a proven history of mental illness, the shooter was able to purchase the two firearms used in the shooting. Improved coordination between State and Federal authorities could have ensured that the shooter's disqualifying mental health information was available to NICS.

(Pub. L. 110–180, §2, Jan. 8, 2008, 121 Stat. 2559.)

Editorial Notes

CODIFICATION

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.

§ 40903. Definitions

As used in this chapter, the following definitions shall apply:

(1) Court order

The term ''court order'' includes a court order (as described in section 922(g)(8) of title 18).

(2) Mental health terms

The terms ''adjudicated as a mental defective'' and ''committed to a mental institution'' have the same meanings as in section 922(g)(4) of title 18.

(3) Misdemeanor crime of domestic violence

The term ''misdemeanor crime of domestic violence'' has the meaning given the term in section 921(a)(33) of title 18.

(Pub. L. 110–180, §3, Jan. 8, 2008, 121 Stat. 2560.)

Editorial Notes

CODIFICATION

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.

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 1107–180 [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-

ing a loss of funds under section 40914 of this title, by a date not later than 180 days after January 8, 2008, each State shall provide the Attorney General with a reasonable estimate, as calculated by a method determined by the Attorney General and in accordance with section 40914(d) of this title, of the number of the records described in subparagraph (C) applicable to such State that concern persons who are prohibited from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18.

(B) Failure to provide initial estimate

A State that fails to provide an estimate described in subparagraph (A) by the date required under such subparagraph shall be ineligible to receive any funds under section 40913 of this title, until such date as it provides such estimate to the Attorney General or has established an implementation plan under section 40917 of this title.

(C) Record defined

For purposes of subparagraph (A), a record is the following:

(i) A record that identifies a person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year.

(ii) A record that identifies a person for whom an indictment has been returned for a crime punishable by imprisonment for a term exceeding 1 year that is valid under the laws of the State involved or who is a fugitive from justice, as of the date of the estimate, and for which a record of final disposition is not available.

(iii) A record that identifies a person who is an unlawful user of, or addicted to a controlled substance (as such terms ''unlawful user'' and ''addicted'' are respectively defined in regulations implementing section 922(g)(3) of title 18 as in effect on January 8, 2008) as demonstrated by arrests, convictions, and adjudications, and whose record is not protected from disclosure to the Attorney General under any provision of State or Federal law.

(iv) A record that identifies a person who has been adjudicated as a mental defective or committed to a mental institution, consistent with section 922(g)(4) of title 18 and whose record is not protected from disclosure to the Attorney General under any provision of State or Federal law.

(v) A record that is electronically available and that identifies a person who, as of the date of such estimate, is subject to a court order described in section 922(g)(8) of title 18.

(vi) A record that is electronically available and that identifies a person convicted in any court of a misdemeanor crime of domestic violence, as defined in section 921(a)(33) of title 18.

(2) Scope

The Attorney General, in determining the compliance of a State under this section or section 40914 of this title for the purpose of granting a waiver or imposing a loss of Federal funds, shall assess the total percentage of records provided by the State concerning any event occurring within the prior 20 years, which would disqualify a person from possessing a firearm under subsection (g) or (n) of section 922 of title 18.

(3) Clarification

Notwithstanding paragraph (2), States shall endeavor to provide the National Instant Criminal Background Check System with all records concerning persons who are prohibited from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18, regardless of the elapsed time since the disqualifying event.

(c) Eligibility of State records for submission to the National Instant Criminal Background Check System

(1) Requirements for eligibility

(A) In general

From the information collected by a State, the State shall make electronically available to the Attorney General records 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 or applicable State law.

(B) NICS updates

The State, on being made aware that the basis under which a record was made available under subparagraph (A) does not apply, or no longer applies, shall, as soon as practicable—

(i) update, correct, modify, or remove the record from any database that the Federal or State government maintains and makes available to the National Instant Criminal Background Check System, consistent with the rules pertaining to that database; and

(ii) notify the Attorney General that such basis no longer applies so that the record system in which the record is maintained is kept up to date.

The Attorney General upon receiving notice pursuant to clause (ii) shall ensure that the record in the National Instant Criminal Background Check System is updated, corrected, modified, or removed within 30 days of receipt.

(C) Certification

To remain eligible for a waiver under subsection (a), a State shall certify to the Attorney General, not less than once during each 2-year period, that at least 90 percent of all records described in subparagraph (A) has been made electronically available to the Attorney General in accordance with subparagraph (A).

(D) Inclusion of all records

For purposes of this paragraph, a State shall identify and include all of the records described under subparagraph (A) without regard to the age of the record.

(2) Application to persons convicted of misdemeanor crimes of domestic violence

The State shall make available to the Attorney General, for use by the National Instant Criminal Background Check System, records relevant to a determination of whether a person has been convicted in any court of a misdemeanor crime of domestic violence. With respect to records relating to such crimes, the State shall provide information specifically describing the offense and the specific section or subsection of the offense for which the defendant has been convicted and the relationship of the defendant to the victim in each case.

(3) Application to persons who have been adjudicated as a mental defective or committed to a mental institution

The State shall make available to the Attorney General, for use by the National Instant Criminal Background Check System, the name and other relevant identifying information of persons adjudicated as a mental defective or those committed to mental institutions to assist the Attorney General in enforcing section 922(g)(4) of title 18.

(d) Privacy protections

For any information provided to the Attorney General for use by the National Instant Criminal Background Check System, relating to persons prohibited from possessing or receiving a firearm under section 922(g)(4) of title 18, the Attorney General shall work with States and local law enforcement and the mental health community to establish regulations and protocols for protecting the privacy of information provided to the system. The Attorney General shall make every effort to meet with any mental health group seeking to express its views concerning these regulations and protocols and shall seek to develop regulations as expeditiously as practicable.

(e) Attorney General report

Not later than January 31 of each year, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the progress of States in automating the databases containing the information described in subsection (b) and in making that information electronically available to the Attorney General pursuant to the requirements of subsection (c).

(Pub. L. 110–180, title I, § 102, Jan. 8, 2008, 121 Stat. 2564; Pub. L. 115–141, div. S, title VI, § 603(a), Mar. 23, 2018, 132 Stat. 1135.)

Editorial Notes

CODIFICATION

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

2018—Subsec. (a). Pub. L. 115–141, § 603(a)(1), substituted ''section 40301 of this title'' for ''the Crime Identification Technology Act of 1988 (42 U.S.C. 14601)'' and inserted ''is in compliance with an implementation plan established under subsection (b) or'' before ''provides at least 90 percent of the information described in subsection (c)''.

Subsec. (b)(1)(B). Pub. L. 115–141, § 603(a)(2), inserted ''or has established an implementation plan under section 40917 of this title'' after ''the Attorney General''.

§ 40913. Implementation assistance to States

(a) Authorization

(1) In general

From amounts made available to carry out this section and subject to section 40912(b)(1)(B) of this title, the Attorney General shall make grants to States and Indian tribal governments, in a manner consistent with the National Criminal History Improvement Program, which shall be used by the States and Indian tribal governments, in conjunction with units of local government and State and local courts, to establish or upgrade information and identification technologies for firearms eligibility determinations. Not less than 3 percent, and no more than 10 percent of each grant under this paragraph shall be used to maintain the relief from disabilities program in accordance with section 40915 of this title.

(2) Grants to Indian tribes

Up to 5 percent of the grant funding available under this section may be reserved for Indian tribal governments, including tribal judicial systems.

(b) Use of grant amounts

Grants awarded to States or Indian tribes under this section may only be used to—

(1) create electronic systems, which provide accurate and up-to-date information which is directly related to checks under the National Instant Criminal Background Check System (referred to in this section as ''NICS''), including court disposition and corrections records;

(2) assist States in establishing or enhancing their own capacities to perform NICS background checks;

(3) supply accurate and timely information to the Attorney General concerning final dispositions of criminal records to databases accessed by NICS, including through increased efforts to pre-validate the contents of those records to expedite eligibility determinations;

(4) supply accurate and timely information to the Attorney General concerning the identity of persons who are prohibited from obtaining a firearm under section 922(g)(4) of title 18 to be used by the Federal Bureau of Investigation solely to conduct NICS background checks;

(5) supply accurate and timely court orders and records of misdemeanor crimes of domestic violence for inclusion in Federal and State law enforcement databases used to conduct NICS background checks;

(6) collect and analyze data needed to demonstrate levels of State compliance with this chapter; and

(7) maintain the relief from disabilities program in accordance with section 40915 of this title, but not less than 3 percent, and no more

than 10 percent of each grant shall be used for this purpose.

(c) Eligibility

To be eligible for a grant under this section, a State shall certify, to the satisfaction of the Attorney General, that the State has implemented a relief from disabilities program in accordance with section 40915 of this title.

(d) Condition

As a condition of receiving a grant under this section, a State shall specify the projects for which grant amounts will be used, and shall use such amounts only as specified. A State that violates this subsection shall be liable to the Attorney General for the full amount of the grant received under this section.

(e) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section $125,000,000 for fiscal year 2009, $250,000,000 for fiscal year 2010, $250,000,000 for fiscal year 2011, $125,000,000 for fiscal year 2012, $125,000,000 for fiscal year 2013, and $125,000,000 for each of fiscal years 2018 through 2022.

(2) Domestic Abuse and Violence Prevention Initiative

(A) Establishment

For each of fiscal years 2018 through 2022, the Attorney General shall create a priority area under the NICS Act Record Improvement Program (commonly known as ''NARIP'') for a Domestic Abuse and Violence Prevention Initiative that emphasizes the need for grantees to identify and upload all felony conviction records and domestic violence records.

(B) Funding

The Attorney General—

(i) may use not more than 50 percent of the amounts made available under this subsection for each of fiscal years 2018 through 2022 to carry out the initiative described in subparagraph (A); and

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

(I) have established an implementation plan under section 40917 of this title; and

(II) will use amounts made available under this subparagraph to improve efforts to identify and upload all felony conviction records and domestic violence records described in clauses (i), (v), and (vi) of section 40912(b)(1)(C) of this title by not later than September 30, 2022.

(f) User fee

The Federal Bureau of Investigation shall not charge a user fee for background checks pursuant to section 922(t) of title 18.

(g) Technical assistance

The Attorney General shall direct the Office of Justice Programs, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and the Federal Bureau of Investigation to—

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

(2) provide technical assistance and training services to grantees under this section.

(Pub. L. 110–180, title I, §103, Jan. 8, 2008, 121 Stat. 2567; Pub. L. 115–141, div. S, title VI, §603(b), Mar. 23, 2018, 132 Stat. 1135.)

Editorial Notes

CODIFICATION

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

2018—Subsec. (b)(3). Pub. L. 115–141, §603(b)(1), inserted before semicolon at end '', including through increased efforts to pre-validate the contents of those records to expedite eligibility determinations''.

Subsec. (e)(1). Pub. L. 115–141, §603(b)(2)(A), struck out ''and'' after ''2012,'' and inserted before period at end '', and $125,000,000 for each of fiscal years 2018 through 2022''.

Subsec. (e)(2). Pub. L. 115–141, §603(b)(2)(B), added par. (2) and struck out former par. (2) which related to allocations for fiscal years 2009 to 2013.

Subsec. (g). Pub. L. 115–141, §603(b)(3), added subsec. (g).

§ 40914. Penalties for noncompliance

(a) Attorney General report

(1) In general

Not later than January 31 of each year, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the progress of the States in automating the databases containing information described under sections 40912 and 40913 of this title, and in providing that information pursuant to the requirements of sections 40912 and 40913 of this title.

(2) Authorization of appropriations

There are authorized to be appropriated to the Department of Justice, such funds as may be necessary to carry out paragraph (1).

(b) Penalties

(1) Discretionary reduction

(A) During the 2-year period beginning 3 years after January 8, 2008, the Attorney General may withhold not more than 3 percent of the amount that would otherwise be allocated to a State under section 10156 of this title if the State provides less than 50 percent of the records required to be provided under sections 40912 and 40913 of this title.

(B) During the 5-year period after the expiration of the period referred to in subparagraph (A), the Attorney General may withhold not more than 4 percent of the amount that would otherwise be allocated to a State under section 10156 of this title if the State provides less than 70 percent of the records required to be provided under sections 40912 and 40913 of this title.

(2) Mandatory reduction

After the expiration of the periods referred to in paragraph (1), the Attorney General shall

withhold 5 percent of the amount that would otherwise be allocated to a State under section 10156 of this title, if the State provides less than 90 percent of the records required to be provided under sections 40912 and 40913 of this title.

(3) Waiver by Attorney General

The Attorney General may waive the applicability of paragraph (2) to a State if the State provides substantial evidence, as determined by the Attorney General, that the State is making a reasonable effort to comply with the requirements of sections 40912 and 40913 of this title, including an inability to comply due to court order or other legal restriction.

(c) Reallocation

Any funds that are not allocated to a State because of the failure of the State to comply with the requirements of this chapter shall be reallocated to States that meet such requirements.

(d) Methodology

The method established to calculate the number of records to be reported, as set forth in section 40912(b)(1)(A) of this title, and State compliance with the required level of reporting under sections 40912 and 40913 of this title shall be determined by the Attorney General. The Attorney General shall calculate the methodology based on the total number of records to be reported from all subcategories of records, as described in section 40912(b)(1)(C) of this title.

(Pub. L. 110–180, title I, §104, Jan. 8, 2008, 121 Stat. 2568.)

Editorial Notes

CODIFICATION

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.

§ 40915. Relief from disabilities program required as condition for participation in grant programs

(a) Program described

A relief from disabilities program is implemented by a State in accordance with this section if the program—

(1) permits a person who, pursuant to State law, has been adjudicated as described in subsection (g)(4) of section 922 of title 18 or has been committed to a mental institution, to apply to the State for relief from the disabilities imposed by subsections (d)(4) and (g)(4) of such section by reason of the adjudication or commitment;

(2) provides that a State court, board, commission, or other lawful authority shall grant the relief, pursuant to State law and in accordance with the principles of due process, if the circumstances regarding the disabilities referred to in paragraph (1), and the person's record and reputation, are such that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest; and

(3) permits a person whose application for the relief is denied to file a petition with the State court of appropriate jurisdiction for a de novo judicial review of the denial.

(b) Authority to provide relief from certain disabilities with respect to firearms

If, under a State relief from disabilities program implemented in accordance with this section, an application for relief referred to in subsection (a)(1) of this section is granted with respect to an adjudication or a commitment to a mental institution or based upon a removal of a record under section 40912(c)(1)(B) of this title, the adjudication or commitment, as the case may be, is deemed not to have occurred for purposes of subsections (d)(4) and (g)(4) of section 922 of title 18.

(Pub. L. 110–180, title I, §105, Jan. 8, 2008, 121 Stat. 2569.)

Editorial Notes

CODIFICATION

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.

§ 40916. Illegal immigrant gun purchase notification

(a) In general

Notwithstanding any other provision of law or of this chapter, all records obtained by the National Instant Criminal Background Check system relevant to whether an individual is prohibited from possessing a firearm because such person is an alien illegally or unlawfully in the United States shall be made available to U.S. Immigration and Customs Enforcement.

(b) Regulations

The Attorney General, at his or her discretion, shall promulgate guidelines relevant to what records relevant to illegal aliens shall be provided pursuant to the provisions of this chapter.

(Pub. L. 110–180, title I, §106, Jan. 8, 2008, 121 Stat. 2570.)

Editorial Notes

CODIFICATION

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.

§ 40917. Implementation plan

(a) In general

Not later than 1 year after March 23, 2018, the Attorney General, in coordination with the States and Indian tribal governments, shall establish, for each State or Indian tribal government, a plan to ensure maximum coordination and automation of the reporting or making available of appropriate records to the National Instant Criminal Background Check System established under section 40901 of this title and the verification of the accuracy of those records during a 4-year period specified in the plan. The

records shall be limited to those of an individual described in subsection (g) or (n) of section 922 of title 18[1]

(b) Benchmark requirements

Each plan established under this section shall include annual benchmarks to enable the Attorney General to assess the implementation of the plan, including—

(1) qualitative goals and quantitative measures; and

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

(c) Compliance determination

Not later than the end of each fiscal year beginning after the date of the establishment of an implementation plan under this section, the Attorney General shall determine whether each State or Indian tribal government has achieved substantial compliance with the benchmarks included in the plan.

(d) Accountability

The Attorney General—

(1) shall disclose and publish, including on the website of the Department of Justice—

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

(B) a description of the reasons for which the Attorney General has determined that the State or Indian tribal government is not in substantial compliance with the implementation plan, including, to the greatest extent possible, a description of the types and amounts of records that have not been submitted; and

(2) if a State or Indian tribal government described in paragraph (1) subsequently receives a determination of substantial compliance, shall—

(A) immediately correct the applicable record; and

(B) not later than 3 days after the determination, remove the record from the website of the Department of Justice and any other location where the record was published.

(e) Incentives

For each of fiscal years 2018 through 2022, the Attorney General shall give affirmative preference to all Bureau of Justice Assistance discretionary grant applications of a State or Indian tribal government that received a determination of substantial compliance under subsection (c) for the fiscal year in which the grant was solicited.

(Pub. L. 110–180, title I, §107, as added Pub. L. 115–141, div. S, title VI, §605(a), Mar. 23, 2018, 132 Stat. 1137.)

[1] So in original. Probably should be followed by a period.

SUBCHAPTER II—FOCUSING FEDERAL ASSISTANCE ON THE IMPROVEMENT OF RELEVANT RECORDS

§ 40931. Continuing evaluations

(a) Evaluation required

The Director of the Bureau of Justice Statistics (referred to in this section as the ''Director'') shall study and evaluate the operations of the National Instant Criminal Background Check System. Such study and evaluation shall include compilations and analyses of the operations and record systems of the agencies and organizations necessary to support such System.

(b) Report on grants

Not later than January 31 of each year, the Director shall submit to Congress a report containing the estimates submitted by the States under section 40912(b) of this title.

(c) Report on best practices

Not later than January 31 of each year, the Director shall submit to Congress, and to each State participating in the National Criminal History Improvement Program, a report of the practices of the States regarding the collection, maintenance, automation, and transmittal of information relevant to determining whether a person is prohibited from possessing or receiving a firearm by Federal or State law, by the State or any other agency, or any other records relevant to the National Instant Criminal Background Check System, that the Director considers to be best practices.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2009 through 2013 to complete the studies, evaluations, and reports required under this section.

(Pub. L. 110–180, title II, §201, Jan. 8, 2008, 121 Stat. 2570.)

Editorial Notes

CODIFICATION

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.

SUBCHAPTER III—GRANTS TO STATE COURT SYSTEMS FOR THE IMPROVEMENT IN AUTOMATION AND TRANSMITTAL OF DISPOSITION RECORDS

§ 40941. Disposition records automation and transmittal improvement grants

(a) Grants authorized

From amounts made available to carry out this section, the Attorney General shall make grants to each State, consistent with State plans for the integration, automation, and accessibility of criminal history records, for use by the State court system to improve the automation and transmittal of criminal history dispositions, records relevant to determining whether a person has been convicted of a misdemeanor crime of domestic violence, court or-

ders, and mental health adjudications or commitments, to Federal and State record repositories in accordance with sections 40912 and 40913 of this title and the National Criminal History Improvement Program.

(b) Grants to Indian tribes

Up to 5 percent of the grant funding available under this section may be reserved for Indian tribal governments for use by Indian tribal judicial systems.

(c) Use of funds

Amounts granted under this section shall be used by the State court system only—

(1) to carry out, as necessary, assessments of the capabilities of the courts of the State for the automation and transmission of arrest and conviction records, court orders, and mental health adjudications or commitments to Federal and State record repositories; and

(2) to implement policies, systems, and procedures for the automation and transmission of arrest and conviction records, court orders, and mental health adjudications or commitments to Federal and State record repositories.

(d) Eligibility

To be eligible to receive a grant under this section, a State shall certify, to the satisfaction of the Attorney General, that the State has implemented a relief from disabilities program in accordance with section 40915 of this title.

(e) Authorization of appropriations

There are authorized to be appropriated to the Attorney General to carry out this section $62,500,000 for fiscal year 2009, $125,000,000 for fiscal year 2010, $125,000,000 for fiscal year 2011, $62,500,000 for fiscal year 2012, and $62,500,000 for fiscal year 2013.

(Pub. L. 110–180, title III, § 301, Jan. 8, 2008, 121 Stat. 2571.)

Editorial Notes

CODIFICATION

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.

CHAPTER 411—ACCESS TO CRIMINAL HISTORY AND IDENTIFICATION RECORDS

Statutory Notes and Related Subsidiaries

REGULATIONS

Pub. L. 117–159, div. A, title II, § 12004(h)(3), June 25, 2022, 136 Stat. 1331, provided that: ''Not later than 90 days after the date of enactment of this Act [June 25, 2022], and without regard to chapter 5 of title 5, United States Code, the Attorney General shall promulgate regulations allowing a person licensed as an importer, manufacturer, or dealer of firearms under chapter 44 of title 18, United States Code, to receive access to records of stolen firearms maintained by the National Crime Information Center operated by the Federal Bureau of Investigation, solely for the purpose of voluntarily verifying whether firearms offered for sale to such licensees have been stolen.''

§ 41101. Funds for exchange of identification records

The funds provided for Salaries and Expenses, Federal Bureau of Investigation, may be used hereafter, in addition to those uses authorized thereunder, for the exchange of identification records with officials or federally chartered or insured banking institutions to promote or maintain the security of those institutions, and, if authorized by State or Tribal statute and approved by the Attorney General, to officials of State, Tribal, and local governments for purposes of employment and licensing, any such exchange to be made only for the official use of any such official and subject to the same restriction with respect to dissemination as that provided for under the aforementioned appropriation.

(Pub. L. 92–544, title II, Oct. 25, 1972, 86 Stat. 1115; Pub. L. 117–103, div. W, title VIII, § 802(c), Mar. 15, 2022, 136 Stat. 898.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

Section is from the Department of Justice Appropriation Act, 1973, and also from the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973.

AMENDMENTS

2022—Pub. L. 117–103 inserted ''or Tribal'' after ''if authorized by State'' and '', Tribal,'' before ''and local governments''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117–103 not effective until Oct. 1 of the first fiscal year beginning after Mar. 15, 2022, see section 4(a) of div. W of Pub. L. 117–103, set out as an Effective Date note under section 6851 of Title 15, Commerce and Trade.

§ 41102. Parimutuel licensing simplification

(a) In general

An association of State officials regulating parimutuel wagering, designated for the purpose of this section by the Attorney General, may submit fingerprints to the Attorney General on behalf of any applicant for State license to participate in parimutuel wagering. In response to such a submission, the Attorney General may, to the extent provided by law, exchange, for licensing and employment purposes, identification and criminal history records with the State governmental bodies to which such applicant has applied.

(b) Definition

As used in this section, the term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(Pub. L. 100–413, § 2, Aug. 22, 1988, 102 Stat. 1101.)

Editorial Notes

CODIFICATION

Section was formerly classified in a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

EFFECTIVE DATE

Pub. L. 100–413, § 3, Aug. 22, 1988, 102 Stat. 1101, provided that: ''This Act [enacting this section and provisions set out as a note under section 10101 of this title] shall take effect on July 1, 1989.''

§ 41103. Processing of name checks and background records for noncriminal employment, licensing, and humanitarian purposes by INTERPOL

For fiscal year 1990 and hereafter the Chief, United States National Central Bureau, INTERPOL, may establish and collect fees to process name checks and background records for noncriminal employment, licensing, and humanitarian purposes and, notwithstanding the provisions of section 3302 of title 31, credit such fees to this appropriation to be used for salaries and other expenses incurred in providing these services.

(Pub. L. 101–162, title II, Nov. 21, 1989, 103 Stat. 995.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 509 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

Section is from the Department of Justice Appropriations Act, 1990, and also from the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990.

§ 41104. Processing of fingerprint identification records and name checks by FBI

For fiscal year 1991 and hereafter the Director of the Federal Bureau of Investigation may establish and collect fees to process fingerprint identification records and name checks for noncriminal justice, non-law enforcement employment and licensing purposes and for certain employees of private sector contractors with classified Government contracts, and notwithstanding the provisions of section 3302 of title 31, credit such fees to this appropriation to be used for salaries and other expenses incurred in providing these services, and that the Director of the Federal Bureau of Investigation may establish such fees at a level to include an additional amount to establish a fund to remain available until expended to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.

(Pub. L. 101–515, title II, Nov. 5, 1990, 104 Stat. 2112; Pub. L. 104–91, title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, amended Pub. L. 104–99, title II, § 211, Jan. 26, 1996, 110 Stat. 37.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

Section is from the Department of Justice Appropriations Act, 1991, and also from the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991.

Amendment by Pub. L. 104–91 is based on section 113 of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, which was enacted into law by Pub. L. 104–91.

AMENDMENTS

1996—Pub. L. 104–91, as amended by Pub. L. 104–99, which directed the amendment of this section by inserting ''and criminal justice information'' after ''for the automation of finger-print identification'', was executed by making the insertion after ''for the automation of fingerprint identification'' to reflect the probable intent of Congress.

§ 41105. Criminal background checks for applicants for employment in nursing facilities and home health care agencies

(a)(1) A nursing facility or home health care agency may submit a request to the Attorney General to conduct a search and exchange of records described in subsection (b) regarding an applicant for employment if the employment position is involved in direct patient care.

(2) A nursing facility or home health care agency requesting a search and exchange of records under this section shall submit to the Attorney General through the appropriate State agency or agency designated by the Attorney General a copy of an employment applicant's fingerprints, a statement signed by the applicant authorizing the nursing facility or home health care agency to request the search and exchange of records, and any other identification information not more than 7 days (excluding Saturdays, Sundays, and legal public holidays under section 6103(a) of title 5) after acquiring the fingerprints, signed statement, and information.

(b) Pursuant to any submission that complies with the requirements of subsection (a), the Attorney General shall search the records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation for any criminal history records corresponding to the fingerprints or other identification information submitted. The Attorney General shall provide any corresponding information resulting from the search to the appropriate State agency or agency designated by the Attorney General to receive such information.

(c) Information regarding an applicant for employment in a nursing facility or home health care agency obtained pursuant to this section may be used only by the facility or agency requesting the information and only for the purpose of determining the suitability of the applicant for employment by the facility or agency in a position involved in direct patient care.

(d) The Attorney General may charge a reasonable fee, not to exceed $50 per request, to any nursing facility or home health care agency requesting a search and exchange of records pursuant to this section.

(e) Not later than 2 years after October 21, 1998, the Attorney General shall submit a report to Congress on the number of requests for searches and exchanges of records made under this section by nursing facilities and home health care agencies and the disposition of such requests.

(f) Whoever knowingly uses any information obtained pursuant to this section for a purpose other than as authorized under subsection (c) shall be fined in accordance with title 18, imprisoned for not more than 2 years, or both.

(g) A nursing facility or home health care agency that, in denying employment for an applicant, reasonably relies upon information provided by the Attorney General pursuant to this section shall not be liable in any action brought by the applicant based on the employment determination resulting from the incompleteness or inaccuracy of the information.

(h) The Attorney General may promulgate such regulations as are necessary to carry out this section, including regulations regarding the security, confidentiality, accuracy, use, destruction, and dissemination of information, audits and recordkeeping, the imposition of fees, and any necessary modifications to the definitions contained in subsection (i).

(i) In this section:

(1) The term ''home health care agency'' means an agency that provides home health care or personal care services on a visiting basis in a place of residence.

(2) The term ''nursing facility'' means a facility or institution (or a distinct part of an institution) that is primarily engaged in providing to residents of the facility or institution nursing care, including skilled nursing care, and related services for individuals who require medical or nursing care.

(j) This section shall apply without fiscal year limitation.

(Pub. L. 105–277, div. A, §101(b) [title I, §124], Oct. 21, 1998, 112 Stat. 2681–50, 2681–73.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

§ 41106. Reviews of criminal records of applicants for private security officer employment

(a) Short title

This section may be cited as the ''Private Security Officer Employment Authorization Act of 2004''.

(b) Findings

Congress finds that—

(1) employment of private security officers in the United States is growing rapidly;

(2) private security officers function as an adjunct to, but not a replacement for, public law enforcement by helping to reduce and prevent crime;

(3) such private security officers protect individuals, property, and proprietary information, and provide protection to such diverse operations as banks, hospitals, research and development centers, manufacturing facilities, defense and aerospace contractors, high technology businesses, nuclear power plants, chemical companies, oil and gas refineries, airports, communication facilities and operations, office complexes, schools, residential properties, apartment complexes, gated communities, and others;

(4) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are supplemented by private security officers;

(5) the threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional, reliable, and responsible security officers for the protection of people, facilities, and institutions;

(6) the trend in the Nation toward growth in such security services has accelerated rapidly;

(7) such growth makes available more public sector law enforcement officers to combat serious and violent crimes, including terrorism;

(8) the American public deserves the employment of qualified, well-trained private security personnel as an adjunct to sworn law enforcement officers; and

(9) private security officers and applicants for private security officer positions should be thoroughly screened and trained.

(c) Definitions

In this section:

(1) Employee

The term ''employee'' includes both a current employee and an applicant for employment as a private security officer.

(2) Authorized employer

The term ''authorized employer'' means any person that—

(A) employs private security officers; and

(B) is authorized by regulations promulgated by the Attorney General to request a criminal history record information search of an employee through a State identification bureau pursuant to this section.

(3) Private security officer

The term ''private security officer''—

(A) means an individual other than an employee of a Federal, State, or local government, whose primary duty is to perform security services, full or part time, for consideration, whether armed or unarmed and in uniform or plain clothes (except for services excluded from coverage under this section if the Attorney General determines by regulation that such exclusion would serve the public interest); but

(B) does not include—

(i) employees whose duties are primarily internal audit or credit functions;

(ii) employees of electronic security system companies acting as technicians or monitors; or

(iii) employees whose duties primarily involve the secure movement of prisoners.

(4) Security services

The term ''security services'' means acts to protect people or property as defined by regulations promulgated by the Attorney General.

(5) State identification bureau

The term ''State identification bureau'' means the State entity designated by the Attorney General for the submission and receipt of criminal history record information.

(d) Criminal history record information search

(1) In general

(A) Submission of fingerprints

An authorized employer may submit to the State identification bureau of a participating State, fingerprints or other means of positive identification, as determined by the Attorney General, of an employee of such employer for purposes of a criminal history record information search pursuant to this section.

(B) Employee rights

(i) Permission

An authorized employer shall obtain written consent from an employee to submit to the State identification bureau of the participating State the request to search the criminal history record information of the employee under this section.

(ii) Access

An authorized employer shall provide to the employee confidential access to any information relating to the employee received by the authorized employer pursuant to this section.

(C) Providing information to the State identification bureau

Upon receipt of a request for a criminal history record information search from an authorized employer pursuant to this section, submitted through the State identification bureau of a participating State, the Attorney General shall—

(i) search the appropriate records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(ii) promptly provide any resulting identification and criminal history record information to the submitting State identification bureau requesting the information.

(D) Use of information

(i) In general

Upon receipt of the criminal history record information from the Attorney General by the State identification bureau, the information shall be used only as provided in clause (ii).

(ii) Terms

In the case of—

(I) a participating State that has no State standards for qualification to be a private security officer, the State shall notify an authorized employer as to the fact of whether an employee has been—

(aa) convicted of a felony, an offense involving dishonesty or a false statement if the conviction occurred during the previous 10 years, or an offense involving the use or attempted use of physical force against the person of another if the conviction occurred during the previous 10 years; or

(bb) charged with a criminal felony for which there has been no resolution during the preceding 365 days; or

(II) a participating State that has State standards for qualification to be a private security officer, the State shall use the information received pursuant to this section in applying the State standards and shall only notify the employer of the results of the application of the State standards.

(E) Frequency of requests

An authorized employer may request a criminal history record information search for an employee only once every 12 months of continuous employment by that employee unless the authorized employer has good cause to submit additional requests.

(2) Regulations

Not later than 180 days after December 17, 2004, the Attorney General shall issue such final or interim final regulations as may be necessary to carry out this section, including—

(A) measures relating to the security, confidentiality, accuracy, use, submission, dissemination, destruction of information and audits, and record keeping;

(B) standards for qualification as an authorized employer; and

(C) the imposition of reasonable fees necessary for conducting the background checks.

(3) Criminal penalties for use of information

Whoever knowingly and intentionally uses any information obtained pursuant to this section other than for the purpose of determining the suitability of an individual for employment as a private security officer shall be fined under title 18, or imprisoned for not more than 2 years, or both.

(4) User fees

(A) In general

The Director of the Federal Bureau of Investigation may—

(i) collect fees to process background checks provided for by this section; and

(ii) establish such fees at a level to include an additional amount to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.

(B) Limitations

Any fee collected under this subsection—

(i) shall, consistent with Public Law 101–515 and Public Law 104–99, be credited

to the appropriation to be used for salaries and other expenses incurred through providing the services described in such Public Laws and in subparagraph (A);

(ii) shall be available for expenditure only to pay the costs of such activities and services; and

(iii) shall remain available until expended.

(C) State costs

Nothing in this section shall be construed as restricting the right of a State to assess a reasonable fee on an authorized employer for the costs to the State of administering this section.

(5) State opt out

A State may decline to participate in the background check system authorized by this section by enacting a law or issuing an order by the Governor (if consistent with State law) providing that the State is declining to participate pursuant to this subsection.

(Pub. L. 108–458, title VI, § 6402, Dec. 17, 2004, 118 Stat. 3755.)

Editorial Notes

REFERENCES IN TEXT

Public Law 101–515, referred to in subsec. (d)(4)(B)(i), is Pub. L. 101–515, Nov. 5, 1990, 104 Stat. 2101. For complete classification of this Act to the Code, see Tables.

Public Law 104–99, referred to in subsec. (d)(4)(B)(i), is Pub. L. 104–99, Jan. 26, 1996, 110 Stat. 26. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified as a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

§ 41107. Access to the national crime information databases by tribes

(1) In general

The Attorney General shall ensure that—

(A) tribal law enforcement officials that meet applicable Federal or State requirements shall be permitted access to national crime information databases; and

(B) technical assistance and training is provided to Bureau of Indian Affairs and tribal law enforcement agencies to gain access to, and the ability to use and input information into, the National Crime Information Center and other national crime information databases pursuant to section 534 of title 28.

(2) Sanctions

For purpose of sanctions for noncompliance with requirements of, or misuse of, national crime information databases and information obtained from those databases, a tribal law enforcement agency or official shall be treated as Federal law enforcement agency or official.

(3) NCIC

Each tribal justice official serving an Indian tribe shall be considered to be an authorized law enforcement official for purposes of access to the National Crime Information Center of the Federal Bureau of Investigation.

(Pub. L. 111–211, title II, § 233(b), July 29, 2010, 124 Stat. 2279; Pub. L. 117–103, div. W, title VIII, § 802(a), Mar. 15, 2022, 136 Stat. 897.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

Section is comprised of subsec. (b) of section 233 of Pub. L. 111–211. Subsec. (a) of section 233 amended section 534 of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2022—Par. (1). Pub. L. 117–103, § 802(a)(1), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: ''The Attorney General shall ensure that tribal law enforcement officials that meet applicable Federal or State requirements be permitted access to national crime information databases.''

Par. (3). Pub. L. 117–103, § 802(a)(2), struck out ''with criminal jurisdiction over Indian country'' after ''Indian tribe''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117–103 not effective until Oct. 1 of the first fiscal year beginning after Mar. 15, 2022, see section 4(a) of div. W of Pub. L. 117–103, set out as an Effective Date note under section 6851 of Title 15, Commerce and Trade.

DEFINITIONS

For definition of ''Indian tribe'' used in this section, see section 203(a) of Pub. L. 111–211, set out as a note under section 2801 of Title 25, Indians.

CHAPTER 413—CRIME REPORTS AND STATISTICS

§ 41301. Report to Congress on sexual exploitation of children

Beginning one hundred and twenty days after May 21, 1984, and every year thereafter, the Attorney General shall report to the Congress on prosecutions, convictions, and forfeitures under chapter 110 of title 18.

(Pub. L. 98–292, § 9, May 21, 1984, 98 Stat. 206.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 522 of Title 28, Judiciary and Judicial Procedure,

prior to editorial reclassification and renumbering as this section.

§ 41302. Acquisition of statistical data on child abuse

(a) Data acquisition for 1987 and 1988

The Attorney General shall acquire from criminal justice agencies statistical data, for the calendar years 1987 and 1988, about the incidence of child abuse, including child sexual abuse, and shall publish annually a summary of such data.

(b) Modification of uniform crime reporting program

(1) As soon as practicable, but in no case later than January 1, 1989, the Attorney General shall modify the uniform crime reporting program in the Federal Bureau of Investigation to include data on the age of the victim of the offense and the relationship, if any, of the victim to the offender, for types of offenses that may involve child abuse, including child sexual abuse.

(2) The modification, once made, shall remain in effect until the later of—

(A) 10 years after the date it is made; or

(B) such ending date as may be set by the Attorney General.

(Pub. L. 99–401, title I, §105, Aug. 27, 1986, 100 Stat. 906.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 5101 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

§ 41303. Uniform Federal Crime Reporting Act of 1988

(a) Short title

This section may be cited as the ''Uniform Federal Crime Reporting Act of 1988''.

(b) Definitions

For purposes of this section, the term ''Uniform Crime Reports'' means the reports authorized under section 534 of title 28 and administered by the Federal Bureau of Investigation which compiles nationwide criminal statistics for use in law enforcement administration, operation, and management and to assess the nature and type of crime in the United States.

(c) Establishment of system

(1) In general

The Attorney General shall acquire, collect, classify, and preserve national data on Federal criminal offenses as part of the Uniform Crime Reports.

(2) Reporting by Federal agencies

All departments and agencies within the Federal government (including the Department of Defense) which routinely investigate complaints of criminal activity, shall report details about crime within their respective jurisdiction to the Attorney General in a uniform manner and on a form prescribed by the Attorney General. The reporting required by this subsection shall be limited to the reporting of those crimes comprising the Uniform Crime Reports.

(3) Distribution of data

The Attorney General shall distribute data received pursuant to paragraph (2), not less frequently than annually, to the President, Members of the Congress, State governments, and officials of localities and penal and other institutions participating in the Uniform Crime Reports program.

(4) Interagency coordination

(A) In general

Not later than 90 days after December 21, 2018, the Director of the Federal Bureau of Investigation shall coordinate with the head of each department or agency within the Federal Government that is subject to the mandatory reporting requirements under paragraph (2) for the purpose of ensuring successful implementation of paragraph (2).

(B) For report

Not later than 6 months after December 21, 2018, the head of each department or agency within the Federal Government that is subject to the mandatory reporting requirements under paragraph (2) shall provide the Director of the Federal Bureau of Investigation such information as the Director determines is necessary to complete the first report required under paragraph (5).

(5) Annual report by Federal Bureau of Investigation

Not later than 1 year after December 21, 2018, and annually thereafter, the Director of the Federal Bureau of Investigation shall prepare and submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report detailing the efforts of the departments and agencies within the Federal Government to come into compliance with paragraph (2). The report shall contain a list of all departments and agencies within the Federal Government subject to paragraph (2) and whether each department or agency is in compliance with paragraph (2).

(d) Role of Federal Bureau of Investigation

The Attorney General may designate the Federal Bureau of Investigation as the lead agency for purposes of performing the functions authorized by this section and may appoint or establish such advisory and oversight boards as may be necessary to assist the Bureau in ensuring uniformity, quality, and maximum use of the data collected.

(e) Inclusion of offenses involving illegal drugs

The Director of the Federal Bureau of Investigation is authorized to classify offenses involving illegal drugs and drug trafficking as a part I crime in the Uniform Crime Reports.

(f) Authorization of appropriations

There are authorized to be appropriated $350,000 for fiscal year 1989 and such sums as may be necessary to carry out the provisions of this section after fiscal year 1989.

(g) Effective date

The provisions of this section shall be effective on January 1, 1989.

(Pub. L. 100–690, title VII, § 7332, Nov. 18, 1988, 102 Stat. 4468; Pub. L. 115–393, title IV, § 402, Dec. 21, 2018, 132 Stat. 5274.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2018—Subsec. (c)(3). Pub. L. 115–393, § 402(1), substituted ''not less frequently than annually'' for ''in the form of annual Uniform Crime Reports for the United States''.

Subsec. (c)(4), (5). Pub. L. 115–393, § 402(2), added pars. (4) and (5).

§ 41304. Family and domestic violence: data collection and reporting

(a) Family violence reporting

Under the authority of section 534 of title 28, the Attorney General shall require, and include in uniform crime reports, data that indicate—

(1) the age of the victim; and

(2) the relationship of the victim to the offender, for crimes of murder, aggravated assault, simple assault, rape, sexual offenses, and offenses against children.

(b) National Crime Survey

The Director of the Bureau of Justice Statistics, through the annual National Crime Survey, shall collect and publish data that more accurately measures the extent of domestic violence in America, especially the physical and sexual abuse of children and the elderly.

(c) Authorization of appropriations

There are authorized to be appropriated in fiscal years 1989, 1990, 1991, and 1992, such sums as are necessary to carry out the purposes of this section.

(Pub. L. 100–690, title VII, § 7609, Nov. 18, 1988, 102 Stat. 4517.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

§ 41305. Hate crime statistics

(a) This Act may be cited as the ''Hate Crime Statistics Act''.

(b)(1) Under the authority of section 534 of title 28, the Attorney General shall acquire data, for each calendar year, about crimes that manifest evidence of prejudice based on race, gender and gender identity, religion, disability, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property.

(2) The Attorney General shall establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes of this section.

(3) Nothing in this section creates a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation. As used in this section, the term ''sexual orientation'' means consensual homosexuality or heterosexuality. This subsection does not limit any existing cause of action or right to bring an action, including any action under the Administrative Procedure Act [5 U.S.C. 551 et seq., 701 et seq.] or the All Writs Act [28 U.S.C. 1651].

(4) Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of an individual victim of a crime.

(5) The Attorney General shall publish an annual summary of the data acquired under this section, including data about crimes committed by, and crimes directed against, juveniles.

(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section through fiscal year 2002.

(Pub. L. 101–275, § 1, Apr. 23, 1990, 104 Stat. 140; Pub. L. 103–322, title XXXII, § 320926, Sept. 13, 1994, 108 Stat. 2131; Pub. L. 104–155, § 7, July 3, 1996, 110 Stat. 1394; Pub. L. 111–84, div. E, § 4708, Oct. 28, 2009, 123 Stat. 2841.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 101–275, Apr. 23, 1990, 104 Stat. 140, which enacted this section and provisions set out as a note under this section.

The Administrative Procedure Act, referred to in subsec. (b)(3), is act June 11, 1946, ch. 324, 60 Stat. 237, which was classified to sections 1001 to 1011 of former title 5 and which was repealed and reenacted as subchapter II (§ 551 et seq.) of chapter 5, and chapter 7 (§ 701 et seq.), of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378. See Short Title note preceding section 551 of Title 5.

The All Writs Act, referred to in subsec. (b)(3), means section 1651 of Title 28, Judiciary and Judicial Procedure, which is popularly known as the ''All Writs Act''.

CODIFICATION

Section was formerly classified in a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111–84, § 4708(a), inserted ''gender and gender identity,'' after ''race,''.

Subsec. (b)(5). Pub. L. 111–84, § 4708(b), inserted '', including data about crimes committed by, and crimes directed against, juveniles'' after ''data acquired under this section''.

1996—Subsec. (b)(1). Pub. L. 104–155, § 7(1), substituted ''for each calendar year'' for ''for the calendar year 1990 and each of the succeeding 4 calendar years''.

Subsec. (c). Pub. L. 104–155, § 7(2), substituted ''2002'' for ''1994''.

1994—Subsec. (b)(1). Pub. L. 103–322 inserted ''disability,'' after ''religion,''.

Statutory Notes and Related Subsidiaries

FINDINGS

Pub. L. 101–275, § 2, Apr. 23, 1990, 104 Stat. 140, provided that:

''(a) Congress finds that—

''(1) the American family life is the foundation of American Society,

''(2) Federal policy should encourage the well-being, financial security, and health of the American family,

''(3) schools should not de-emphasize the critical value of American family life.

''(b) Nothing in this Act [enacting this section] shall be construed, nor shall any funds appropriated to carry out the purpose of the Act be used, to promote or encourage homosexuality.''

§ 41306. Report to Congress on banking law offenses

(a) In general

(1) Data collection

The Attorney General shall compile and collect data concerning—

(A) the nature and number of civil and criminal investigations, prosecutions, and related proceedings, and civil enforcement and recovery proceedings, in progress with respect to banking law offenses under sections 981, 1008, 1032, and 3322(d) of title 18 and section 1833a of title 12 and conspiracies to commit any such offense, including inactive investigations of such offenses;

(B) the number of—

(i) investigations, prosecutions, and related proceedings described in subparagraph (A) which are inactive as of the close of the reporting period but have not been closed or declined; and

(ii) unaddressed referrals which allege criminal misconduct involving offenses described in subparagraph (A),

and the reasons such matters are inactive and the referrals unaddressed;

(C) the nature and number of such matters closed, settled, or litigated to conclusion; and

(D) the results achieved, including convictions and pretrial diversions, fines and penalties levied, restitution assessed and collected, and damages recovered, in such matters.

(2) Analysis and report

The Attorney General shall analyze and report to the Congress on the data described in paragraph (1) and its coordination and other related activities named in section 41501(c)(2)[1] of this title and shall provide such report on the data monthly through December 31, 1991, and quarterly after such date.

(b) Specifics of report

The report required by subsection (a) shall—

(1) categorize data as to various types of financial institutions and appropriate dollar loss categories;

(2) disclose data for each Federal judicial district;

(3) describe the activities of the Financial Institution Fraud Unit; and

(4) list—

(A) the number of institutions, categorized by failed and open institutions, in which evidence of significant fraud, unlawful activity, insider abuse or serious misconduct has been alleged or detected;

(B) civil, criminal, and administrative enforcement actions, including those of the Federal financial institutions regulatory agencies, brought against offenders;

(C) any settlements or judgments obtained against offenders;

(D) indictments, guilty pleas, or verdicts obtained against offenders; and

(E) the resources allocated in pursuit of investigations, prosecutions, and sentencings (including indictments, guilty pleas, or verdicts obtained against offenders) and related proceedings.

(Pub. L. 101–647, title XXV, § 2546, Nov. 29, 1990, 104 Stat. 4885.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 522 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

§ 41307. Reporting requirement for missing children

(a) In general

Each Federal, State, and local law enforcement agency shall report each case of a missing child under the age of 21 reported to such agency to the National Crime Information Center of the Department of Justice and, consistent with section 40507 (including rules promulgated pursuant to section 40507(c)) of this title, shall also report such case, either directly or through authorization described in such section to transmit, enter, or share information on such case, to the NamUs databases.

(b) Guidelines

The Attorney General may establish guidelines for the collection of such reports including procedures for carrying out the purposes of this section and section 41308 of this title.[1]

(c) Annual summary

The Attorney General shall publish an annual statistical summary of the reports received under this section and section 41308 of this title.

(Pub. L. 101–647, title XXXVII, § 3701, Nov. 29, 1990, 104 Stat. 4966; Pub. L. 108–21, title II, § 204, Apr. 30, 2003, 117 Stat. 660; Pub. L. 117–327, § 2(c)(1), Dec. 27, 2022, 136 Stat. 4455.)

Editorial Notes

REFERENCES IN TEXT

This section and section 41308 of this title, referred to in subsec. (b), was in the original ''this Act'', and was translated as reading ''this title'', meaning title XXXVII of Pub. L. 101–647, which enacted this section and section 41308 of this title, to reflect the probable intent of Congress.

[1] So in original. Probably should be ''41501(c)(3)''.

[1] See References in Text note below.

CODIFICATION

Section was formerly classified to section 5779 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2022—Subsec. (a). Pub. L. 117–327 inserted before period at end ''and, consistent with section 40507 (including rules promulgated pursuant to section 40507(c)) of this title, shall also report such case, either directly or through authorization described in such section to transmit, enter, or share information on such case, to the NamUs databases''.

2003—Subsec. (a). Pub. L. 108–21 substituted ''age of 21'' for ''age of 18''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117–327 applicable with respect to reports made before, on, or after Dec. 27, 2022, see section 40506(c)(3) of this title.

§ 41308. State requirements for reporting missing children

Each State reporting under the provisions of this section and section 41307 of this title shall—

(1) ensure that no law enforcement agency within the State establishes or maintains any policy that requires the observance of any waiting period before accepting a missing child or unidentified person report;

(2) ensure that no law enforcement agency within the State establishes or maintains any policy that requires the removal of a missing person entry from its State law enforcement system, the National Crime Information Center computer database, or the NamUs databases based solely on the age of the person;

(3) provide that each such report and all necessary and available information, which, with respect to each missing child report, shall include—

(A) the name, date of birth, sex, race, height, weight, and eye and hair color of the child;

(B) a recent photograph of the child, if available;

(C) the date and location of the last known contact with the child; and

(D) the category under which the child is reported missing;

is entered within 2 hours of receipt into the State law enforcement system, the National Crime Information Center computer networks, and the NamUs databases and made available to the Missing Children Information Clearinghouse within the State or other agency designated within the State to receive such reports; and

(4) provide that after receiving reports as provided in paragraph (3), the law enforcement agency that entered the report into the National Crime Information Center or the NamUs databases shall—

(A) no later than 30 days after the original entry of the record into the State law enforcement system, National Crime Information Center computer networks, and the NamUs databases, verify and update such record with any additional information, including, where available, medical and dental records and a photograph taken during the previous 180 days;

(B) institute or assist with appropriate search and investigative procedures;

(C) notify the National Center for Missing and Exploited Children of each report received relating to a child reported missing from a foster care family home or childcare institution;

(D) maintain close liaison with State and local child welfare systems and the National Center for Missing and Exploited Children for the exchange of information and technical assistance in the missing children cases; and

(E) grant permission to the National Crime Information Center Terminal Contractor for the State to update the missing person record in the National Crime Information Center computer networks with additional information learned during the investigation relating to the missing person.

(Pub. L. 101–647, title XXXVII, § 3702, Nov. 29, 1990, 104 Stat. 4967; Pub. L. 109–248, title I, § 154(a), July 27, 2006, 120 Stat. 611; Pub. L. 114–22, title I, § 116(b), May 29, 2015, 129 Stat. 244; Pub. L. 117–327, § 2(c)(2), Dec. 27, 2022, 136 Stat. 4455.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 5780 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2022—Par. (2). Pub. L. 117–327, § 2(c)(2)(A), substituted '', the National Crime Information Center computer database, or the NamUs databases'' for ''or the National Crime Information Center computer database''.

Par. (3). Pub. L. 117–327, § 2(c)(2)(B), substituted '', the National Crime Information Center computer networks, and the NamUs databases'' for ''and the National Crime Information Center computer networks'' in concluding provisions.

2022—Par. (4). Pub. L. 117–327, § 2(c)(2)(C)(i), inserted ''or the NamUs databases'' after ''National Crime Information Center'' in introductory provisions.

Par. (4)(A). Pub. L. 117–327, § 2(c)(2)(C)(ii), substituted '', National Crime Information Center computer networks, and the NamUs databases'' for ''and National Crime Information Center computer networks''.

2015—Par. (2). Pub. L. 114–22, § 116(b)(1), struck out ''and'' at end.

Par. (3)(B) to (D). Pub. L. 114–22, § 116(b)(2), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Par. (4). Pub. L. 114–22, § 116(b)(3)(A), substituted ''paragraph (3)'' for ''paragraph (2)'' in introductory provisions.

Par. (4)(A). Pub. L. 114–22, § 116(b)(3)(B), substituted ''30 days'' for ''60 days'' and inserted ''and a photograph taken during the previous 180 days'' after ''dental records''.

Par. (4)(B), (C). Pub. L. 114–22, § 116(b)(3)(C), (E), struck out ''and'' at end of subpar. (B) and added subpar. (C). Former subpar. (C) redesignated (D).

Par. (4)(D). Pub. L. 114–22, § 116(b)(3)(F), inserted ''State and local child welfare systems and'' before ''the National Center for Missing and Exploited Children'' and substituted ''; and'' for period at end.

Pub. L. 114–22, § 116(b)(3)(D), redesignated subpar. (C) as (D).

Par. (4)(E). Pub. L. 114–22, § 116(b)(3)(G), added subpar. (E).

2006—Pub. L. 109–248 added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and substituted ''within 2 hours of receipt'' for ''immediately'' in concluding provisions of par. (3).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117–327 applicable with respect to reports made before, on, or after Dec. 27, 2022, see section 40506(c)(3) of this title.

§ 41309. Reporting on human trafficking

(a) Trafficking offense classification

The Director of the Federal Bureau of Investigation shall—

(1) classify the offense of human trafficking as a Part I crime in the Uniform Crime Reports;

(2) to the extent feasible, establish subcategories for State sex crimes that involve—

(A) a person who is younger than 18 years of age;

(B) the use of force, fraud or coercion; or

(C) neither of the elements described in subparagraphs (A) and (B); and

(3) classify the offense of human trafficking as a Group A offense for purpose of the National Incident-Based Reporting System.

(b) Additional information

The Director of the Federal Bureau of Investigation shall revise the Uniform Crime Reporting System[1] and the National Incident-Based Reporting System to distinguish between reports of—

(1) incidents of assisting or promoting prostitution, which shall include crimes committed by persons who—

(A) do not directly engage in commercial sex acts; and

(B) direct, manage, or profit from such acts, such as State pimping and pandering crimes;

(2) incidents of purchasing prostitution, which shall include crimes committed by persons who purchase or attempt to purchase or trade anything of value for commercial sex acts;

(3) incidents of prostitution, which shall include crimes committed by persons providing or attempting to provide commercial sex acts;

(4) incidents of assisting or promoting prostitution, child labor that is a violation of law, or forced labor of an individual under the age of 18 as described in paragraph (1); and

(5) incidents of purchasing or soliciting commercial sex acts, child labor that is a violation of law, or forced labor with an individual under the age of 18 as described in paragraph (2).

(Pub. L. 110–457, title II, § 237(a), (b), Dec. 23, 2008, 122 Stat. 5083; Pub. L. 115–392, § 17, Dec. 21, 2018, 132 Stat. 5257.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

Section is comprised of subsecs. (a) and (b) of section 237 of Pub. L. 110–457. Subsec. (c) of section 237 is not classified to the Code.

AMENDMENTS

2018—Subsec. (b)(4), (5). Pub. L. 115–392 added pars. (4) and (5).

Statutory Notes and Related Subsidiaries

CUMULATIVE BIENNIAL REPORT ON DATA COLLECTION AND STATISTICS

Pub. L. 117–347, title IV, § 405, Jan. 5, 2023, 136 Stat. 6209, provided that: ''Not later than 280 days after the date of enactment of this Act [Jan. 5, 2023], and every 2 years thereafter, the Attorney General and the Secretary of Health and Human Services shall each submit to the Committee on the Judiciary and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on the Judiciary and the Committee on Energy and Commerce of the House of Representatives the status of the required data collection and reporting requirements of the Attorney General and the Secretary, respectively, related to trafficking, which shall include the status of—

''(1) the study required under section 201(a)(1)(B)(ii) of the Trafficking Victims Protection Reauthorization Act of 2005 (34 U.S.C. 20701(a)(1)(B)(ii));

''(2) the State reports required under section 237(b) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (34 U.S.C. 41309(b)) to be included in the Uniform Crime Reporting Program and the National Incident-Based Reporting System;

''(3) the report required under section 237(c)(1)(A) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Public Law 110–457; 122 Stat. 5084 [5083]);

''(4) the report required under section 237(c)(1)(B) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Public Law 110–457; 122 Stat. 5084 [5083]);

''(5) the report required under section 237(c)(1)(C) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Public Law 110–457; 122 Stat. 5084 [5083]); and

''(6) the comprehensive study required under section 237(c)(2) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Public Law 110–457; 122 Stat. 5085 [5084]).''

§ 41310. Report on theft of trade secrets occurring abroad

(a) Definitions

In this section:

(1) Director

The term ''Director'' means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

(2) Foreign instrumentality, etc.

The terms ''foreign instrumentality'', ''foreign agent'', and ''trade secret'' have the meanings given those terms in section 1839 of title 18.

(3) State

The term ''State'' includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(4) United States company

The term ''United States company'' means an organization organized under the laws of

[1] So in original. Probably should be ''Program''.

the United States or a State or political subdivision thereof.

(b) Reports

Not later than 1 year after May 11, 2016, and biannually thereafter, the Attorney General, in consultation with the Intellectual Property Enforcement Coordinator, the Director, and the heads of other appropriate agencies, shall submit to the Committees on the Judiciary of the House of Representatives and the Senate, and make publicly available on the Web site of the Department of Justice and disseminate to the public through such other means as the Attorney General may identify, a report on the following:

(1) The scope and breadth of the theft of the trade secrets of United States companies occurring outside of the United States.

(2) The extent to which theft of trade secrets occurring outside of the United States is sponsored by foreign governments, foreign instrumentalities, or foreign agents.

(3) The threat posed by theft of trade secrets occurring outside of the United States.

(4) The ability and limitations of trade secret owners to prevent the misappropriation of trade secrets outside of the United States, to enforce any judgment against foreign entities for theft of trade secrets, and to prevent imports based on theft of trade secrets overseas.

(5) A breakdown of the trade secret protections afforded United States companies by each country that is a trading partner of the United States and enforcement efforts available and undertaken in each such country, including a list identifying specific countries where trade secret theft, laws, or enforcement is a significant problem for United States companies.

(6) Instances of the Federal Government working with foreign countries to investigate, arrest, and prosecute entities and individuals involved in the theft of trade secrets outside of the United States.

(7) Specific progress made under trade agreements and treaties, including any new remedies enacted by foreign countries, to protect against theft of trade secrets of United States companies outside of the United States.

(8) Recommendations of legislative and executive branch actions that may be undertaken to—

(A) reduce the threat of and economic impact caused by the theft of the trade secrets of United States companies occurring outside of the United States;

(B) educate United States companies regarding the threats to their trade secrets when taken outside of the United States;

(C) provide assistance to United States companies to reduce the risk of loss of their trade secrets when taken outside of the United States; and

(D) provide a mechanism for United States companies to confidentially or anonymously report the theft of trade secrets occurring outside of the United States.

(Pub. L. 114–153, § 4, May 11, 2016, 130 Stat. 382.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 1832 of Title 18, Crimes and Criminal Procedure, prior to editorial reclassification and renumbering as this section.

§ 41311. Improving Department of Justice data collection on mental illness involved in crime

(a) In general

Notwithstanding any other provision of law, on or after the date that is 90 days after the date on which the Attorney General promulgates regulations under subsection (b), any data prepared by, or submitted to, the Attorney General or the Director of the Federal Bureau of Investigation with respect to the incidences of homicides, law enforcement officers killed, seriously injured, and assaulted, or individuals killed or seriously injured by law enforcement officers shall include data with respect to the involvement of mental illness in such incidences, if any.

(b) Regulations

Not later than 90 days after December 13, 2016, the Attorney General shall promulgate or revise regulations as necessary to carry out subsection (a).

(Pub. L. 114–255, div. B, title XIV, § 14015, Dec. 13, 2016, 130 Stat. 1306.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

§ 41312. Report on female genital mutilation

Not later than one year after January 5, 2021, and annually thereafter, the Attorney General, in consultation with the Secretary of Homeland Security, the Secretary of State, the Secretary of Health and Human Services, and the Secretary of Education, shall submit to Congress a report that includes—

(1) an estimate of the number of women and girls in the United States at risk of or who have been subjected to female genital mutilation;

(2) the protections available and actions taken, if any, by Federal, State, and local agencies to protect such women and girls; and

(3) the actions taken by Federal agencies to educate and assist communities and key stakeholders about female genital mutilation.

(Pub. L. 116–309, § 4, Jan. 5, 2021, 134 Stat. 4924.)

§ 41313. GAO study on incidence of fatal and nonfatal physical and sexual assault of passengers, TNC drivers, and drivers of other for-hire vehicles

(a) GAO report

Not later than 1 year after January 5, 2023, and every 2 years thereafter, the Comptroller General of the United States shall submit to Congress a report that includes the results of a study regarding—

(1) the incidence of fatal and non-fatal physical assault and sexual assault perpetrated in the preceding 2 calendar years (starting with calendar years 2019 and 2020 for the first study)—

(A) against TNC drivers and drivers of other for-hire vehicles (including taxicabs) by passengers and riders of for-hire vehicles; and

(B) against passengers and riders by other passengers and TNC drivers or drivers of other for-hire vehicles (including taxicabs), including the incidences that are committed by individuals who are not TNC drivers or drivers of other for-hire vehicles but who pose as TNC drivers or drivers of other for-hire vehicles;

(2) the nature and specifics of any background checks conducted on prospective TNC drivers and drivers of other for-hire vehicles (including taxicabs), including any State and local laws requiring those background checks; and

(3) the safety steps taken by transportation network companies and other for-hire vehicle services (including taxicab companies) related to rider and driver safety.

(b) Sexual assault defined

In this section, the term ''sexual assault'' means the occurrence of an act that constitutes any nonconsensual sexual act proscribed by Federal, Tribal, or State law, including when the victim lacks capacity to consent.

(Pub. L. 117–330, §2, Jan. 5, 2023, 136 Stat. 6114.)

CHAPTER 415—RESOURCE CENTERS, TASK FORCES, DATABASES, AND PROGRAMS

§ 41501. Financial institutions fraud task forces

(a) Establishment

The Attorney General shall establish such financial institutions fraud task forces as the Attorney General deems appropriate to ensure that adequate resources are made available to investigate and prosecute crimes in or against financial institutions and to recover the proceeds of unlawful activities from persons who have committed fraud or have engaged in other criminal activity in or against the financial services industry.

(b) Supervision

The Attorney General shall determine how each task force shall be supervised and may provide for the supervision of any task force by the Special Counsel.

(c) Senior interagency group

(1) Establishment

The Attorney General shall establish a senior interagency group to assist in identifying the most significant financial institution fraud cases and in allocating investigative and prosecutorial resources where they are most needed.

(2) Membership

The senior interagency group shall be chaired by the Special Counsel and shall include senior officials from—

(A) the Department of Justice, including representatives of the Federal Bureau of Investigation, the Advisory Committee of United States Attorneys, and other relevant entities;

(B) the Department of the Treasury;

(C) the Federal Deposit Insurance Corporation;

(D) the Office of the Comptroller of the Currency;

(E) the Board of Governors of the Federal Reserve System; and

(F) the National Credit Union Administration.

(3) Duties

This senior interagency group shall enhance interagency coordination and assist in accelerating the investigations and prosecution of financial institutions fraud.

(Pub. L. 101–647, title XXV, §2539, Nov. 29, 1990, 104 Stat. 4884; Pub. L. 111–203, title III, §359(1), July 21, 2010, 124 Stat. 1548.)

Editorial Notes

CODIFICATION

Section was formerly classified in a note under section 509 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2010—Subsec. (c)(2)(C) to (H). Pub. L. 111–203, which directed the amendment of subsec. (c)(2) by striking out subpars. (C) and (D) and redesignating subpars. (E) to (H) as ''(C) through (G), respectively'', was executed by striking subpars. (C) and (D) and redesignating subpars. (E) to (H) as (C) to (F), respectively, to reflect the probable intent of Congress. Former subpars. (C) and (D) related to the Office of Thrift Supervision and the Resolution Trust Corporation, respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

§ 41502. Morgan P. Hardiman Child Abduction and Serial Murder Investigative Resources Center

(a) Establishment

Not later than 90 days after the October 30, 1998, the Attorney General shall establish within the Federal Bureau of Investigation a Child Abduction and Serial Murder Investigative Resources Center to be known as the ''Morgan P. Hardiman Child Abduction and Serial Murder Investigative Resources Center'' (in this section referred to as the ''CASMIRC'').

(b) Purpose

The CASMIRC shall be managed by the National Center for the Analysis of Violent Crime

of the Critical Incident Response Group of the Federal Bureau of Investigation (in this section referred to as the ''NCAVC''), and by multidisciplinary resource teams in Federal Bureau of Investigation field offices, in order to provide investigative support through the coordination and provision of Federal law enforcement resources, training, and application of other multidisciplinary expertise, to assist Federal, State, and local authorities in matters involving child abductions, mysterious disappearances of children, child homicide, and serial murder across the country. The CASMIRC shall be co-located with the NCAVC.

(c) Duties of the CASMIRC

The CASMIRC shall perform such duties as the Attorney General determines appropriate to carry out the purposes of the CASMIRC, including—

(1) identifying, developing, researching, acquiring, and refining multidisciplinary information and specialities to provide for the most current expertise available to advance investigative knowledge and practices used in child abduction, mysterious disappearances of children, child homicide, and serial murder investigations;

(2) providing advice and coordinating the application of current and emerging technical, forensic, and other Federal assistance to Federal, State, and local authorities in child abduction, mysterious disappearances of children, child homicide, and serial murder investigations;

(3) providing investigative support, research findings, and violent crime analysis to Federal, State, and local authorities in child abduction, mysterious disappearances of children, child homicide, and serial murder investigations;

(4) providing, if requested by a Federal, State, or local law enforcement agency, on site consultation and advice in child abduction, mysterious disappearances of children, child homicide and serial murder investigations;

(5) coordinating the application of resources of pertinent Federal law enforcement agencies, and other Federal entities including, but not limited to, the United States Customs Service, the Secret Service, the Postal Inspection Service, and the United States Marshals Service, as appropriate, and with the concurrence of the agency head to support Federal, State, and local law enforcement involved in child abduction, mysterious disappearance of a child, child homicide, and serial murder investigations;

(6) conducting ongoing research related to child abductions, mysterious disappearances of children, child homicides, and serial murder, including identification and investigative application of current and emerging technologies, identification of investigative searching technologies and methods for physically locating abducted children, investigative use of offender behavioral assessment and analysis concepts, gathering statistics and information necessary for case identification, trend analysis, and case linkages to advance the investigative effectiveness of outstanding abducted children cases, develop investigative systems to identify and track serious serial offenders that repeatedly victimize children for comparison to unsolved cases, and other investigative research pertinent to child abduction, mysterious disappearance of a child, child homicide, and serial murder covered in this section;

(7) working under the NCAVC in coordination with the National Center For Missing and Exploited Children and the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice to provide appropriate training to Federal, State, and local law enforcement in matters regarding child abductions, mysterious disappearances of children, child homicides; and

(8) establishing a centralized repository based upon case data reflecting child abductions, mysterious disappearances of children, child homicides and serial murder submitted by State and local agencies, and an automated system for the efficient collection, retrieval, analysis, and reporting of information regarding CASMIRC investigative resources, research, and requests for and provision of investigative support services.

(d) Appointment of personnel to the CASMIRC

(1) Selection of members of the CASMIRC and participating State and local law enforcement personnel

The Director of the Federal Bureau of Investigation shall appoint the members of the CASMIRC. The CASMIRC shall be staffed with Federal Bureau of Investigation personnel and other necessary personnel selected for their expertise that would enable them to assist in the research, data collection, and analysis, and provision of investigative support in child abduction, mysterious disappearances of children, child homicide and serial murder investigations. The Director may, with concurrence of the appropriate State or local agency, also appoint State and local law enforcement personnel to work with the CASMIRC.

(2) Status

Each member of the CASMIRC (and each individual from any State or local law enforcement agency appointed to work with the CASMIRC) shall remain as an employee of that member's or individual's respective agency for all purposes (including the purpose of performance review), and service with the CASMIRC shall be without interruption or loss of civil service privilege or status and shall be on a nonreimbursable basis, except if appropriate to reimburse State and local law enforcement for overtime costs for an individual appointed to work with the resource team. Additionally, reimbursement of travel and per diem expenses will occur for State and local law enforcement participation in resident fellowship programs at the NCAVC when offered.

(3) Training

CASMIRC personnel, under the guidance of the Federal Bureau of Investigation's National Center for the Analysis of Violent Crime and

in consultation with the National Center For Missing and Exploited Children, shall develop a specialized course of instruction devoted to training members of the CASMIRC consistent with the purpose of this section. The CASMIRC shall also work with the National Center For Missing and Exploited Children and the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice to develop a course of instruction for State and local law enforcement personnel to facilitate the dissemination of the most current multidisciplinary expertise in the investigation of child abductions, mysterious disappearances of children, child homicides, and serial murder of children.

(e) Report to Congress

One year after the establishment of the CASMIRC, the Attorney General shall submit to Congress a report, which shall include—

(1) a description of the goals and activities of the CASMIRC; and

(2) information regarding—

(A) the number and qualifications of the members appointed to the CASMIRC;

(B) the provision of equipment, administrative support, and office space for the CASMIRC; and

(C) the projected resource needs for the CASMIRC.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 1999, 2000, and 2001.

(Pub. L. 105–314, title VII, §703(a)–(f), Oct. 30, 1998, 112 Stat. 2987–2989.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 531 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

Section is comprised of subsecs. (a) to (f) of section 703 of Pub. L. 105–314. Subsec. (g) of section 703 repealed section 5776a of Title 42, The Public Health and Welfare, and provisions set out as notes under sections 5601 and 5776a of Title 42.

Statutory Notes and Related Subsidiaries

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107–296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114–125, and section 802(b) of Pub. L. 114–125, set out as a note under section 211 of Title 6.

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 41503. Fugitive Apprehension Task Forces

(a) In general

The Attorney General shall, upon consultation with appropriate Department of Justice and Department of the Treasury law enforcement components, establish permanent Fugitive Apprehension Task Forces consisting of Federal, State, and local law enforcement authorities in designated regions of the United States, to be directed and coordinated by the United States Marshals Service, for the purpose of locating and apprehending fugitives.

(b) Authorization of appropriations

There are authorized to be appropriated to the Attorney General for the United States Marshals Service to carry out the provisions of this section $30,000,000 for the fiscal year 2001, $5,000,000 for fiscal year 2002, $5,000,000 for fiscal year 2003, and $10,000,000 for each of fiscal years 2008 through 2012.

(c) Other existing applicable law

Nothing in this section shall be construed to limit any existing authority under any other provision of Federal or State law for law enforcement agencies to locate or apprehend fugitives through task forces or any other means.

(Pub. L. 106–544, §6, Dec. 19, 2000, 114 Stat. 2718; Pub. L. 110–177, title V, §507, Jan. 7, 2008, 121 Stat. 2543.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 566 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–177 struck out ''and'' after ''fiscal year 2002,'' and inserted before period at end '', and $10,000,000 for each of fiscal years 2008 through 2012''.

§ 41504. Project Safe Neighborhoods

(a) In general

The Attorney General shall establish a program for each United States Attorney to provide for coordination with State and local law enforcement officials in the identification and prosecution of violations of Federal firearms laws including school gun violence and juvenile gun offenses.

(b) Authorization for hiring 94 additional Assistant United States Attorneys

There are authorized to be appropriated to carry out this section $9,000,000 for fiscal year 2002 to hire an additional Assistant United States Attorney in each United States Attorney Office.

(Pub. L. 107–273, div. A, title I, §104, Nov. 2, 2002, 116 Stat. 1766.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 509 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

§ 41505. Organized retail theft database

(a) National data

(1) The Attorney General and the Federal Bureau of Investigation, in consultation with the retail community, shall establish a task force to combat organized retail theft and provide expertise to the retail community for the establishment of a national database or clearinghouse housed and maintained in the private sector to track and identify where organized retail theft type crimes are being committed in the United Sates.[1] The national database shall allow Federal, State, and local law enforcement officials as well as authorized retail companies (and authorized associated retail databases) to transmit information into the database electronically and to review information that has been submitted electronically.

(2) The Attorney General shall make available funds to provide for the ongoing administrative and technological costs to federal law enforcement agencies participating in the database project.

(3) The Director of the Bureau of Justice Assistance of the Office of Justice Programs may make grants to help provide for the administrative and technological costs to State and local law enforcement agencies participating in the data base[2] project.

(b) Authorization of appropriations

There is authorized to be appropriated for each of fiscal years 2006 through 2009, $5,000,000 for educating and training federal law enforcement regarding organized retail theft, for investigating, apprehending and prosecuting individuals engaged in organized retail theft, and for working with the private sector to establish and utilize the database described in subsection (a).

(c) Definition of organized retail theft

For purposes of this section, ''organized retail theft'' means—

(1) the violation of a State prohibition on retail merchandise theft or shoplifting, if the violation consists of the theft of quantities of items that would not normally be purchased for personal use or consumption and for the purpose of reselling the items or for reentering the items into commerce;

(2) the receipt, possession, concealment, bartering, sale, transport, or disposal of any property that is know[3] or should be known to have been taken in violation of paragraph (1); or

(3) the coordination, organization, or recruitment of persons to undertake the conduct described in paragraph (1) or (2).

(Pub. L. 109–162, title XI, §1105, Jan. 5, 2006, 119 Stat. 3092; Pub. L. 109–271, §8(a), Aug. 12, 2006, 120 Stat. 766.)

[1] So in original. Probably should be ''States''.

[2] So in original. Probably should be ''database''.

[3] So in original. Probably should be ''known''.

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 509 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2006—Subsec. (a)(3). Pub. L. 109–271 substituted ''The Director of the Bureau of Justice Assistance of the Office of Justice Programs may'' for ''The Attorney General through the Bureau of Justice Assistance in the Office of Justice may''.

§ 41506. United States-Mexico Border Violence Task Force

(a) Task Force

(1) The Attorney General shall establish the United States-Mexico Border Violence Task Force in Laredo, Texas, to combat drug and firearms trafficking, violence, and kidnapping along the border between the United States and Mexico and to provide expertise to the law enforcement and homeland security agencies along the border between the United States and Mexico. The Task Force shall include personnel from the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Immigration and Customs Enforcement, the Drug Enforcement Administration, Customs and Border Protection, other Federal agencies (as appropriate), the Texas Department of Public Safety, and local law enforcement agencies.

(2) The Attorney General shall make available funds to provide for the ongoing administrative and technological costs to Federal, State, and local law enforcement agencies participating in the Task Force.

(b) Authorization of appropriations

There are authorized to be appropriated $10,000,000 for each of the fiscal years 2006 through 2009, for—

(1) the establishment and operation of the United States-Mexico Border Violence Task Force; and

(2) the investigation, apprehension, and prosecution of individuals engaged in drug and firearms trafficking, violence, and kidnapping along the border between the United States and Mexico.

(Pub. L. 109–162, title XI, §1106, Jan. 5, 2006, 119 Stat. 3093.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 509 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

§ 41507. National Gang Intelligence Center

(a) Establishment

The Attorney General shall establish a National Gang Intelligence Center and gang information database to be housed at and administered by the Federal Bureau of Investigation to collect, analyze, and disseminate gang activity information from—

(1) the Federal Bureau of Investigation;
(2) the Bureau of Alcohol, Tobacco, Firearms, and Explosives;
(3) the Drug Enforcement Administration;
(4) the Bureau of Prisons;
(5) the United States Marshals Service;
(6) the Directorate of Border and Transportation Security of the Department of Homeland Security;
(7) the Department of Housing and Urban Development;
(8) the Office of Justice Services of the Bureau of Indian Affairs;
(9) tribal, State, and local law enforcement;
(10) Federal, tribal, State, and local prosecutors;
(11) Federal, tribal, State, and local probation and parole offices;
(12) Federal, tribal, State, and local prisons and jails; and
(13) any other entity as appropriate.

(b) Information

The Center established under subsection (a) shall make available the information referred to in subsection (a) to—
(1) Federal, tribal, State, and local law enforcement agencies;
(2) Federal, tribal, State, and local corrections agencies and penal institutions;
(3) Federal, tribal, State, and local prosecutorial agencies; and
(4) any other entity as appropriate.

(c) Annual report

The Center established under subsection (a) shall annually submit to Congress a report on gang activity.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 2006 and for each fiscal year thereafter.

(Pub. L. 109–162, title XI, §1107, Jan. 5, 2006, 119 Stat. 3093; Pub. L. 111–211, title II, §251(a), July 29, 2010, 124 Stat. 2297.)

Editorial Notes

CODIFICATION

Section was formerly classified as a note under section 534 of Title 28, Judiciary and Judicial Procedure, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2010—Subsec. (a)(8). Pub. L. 111–211, §251(a)(1)(A), (B), added par. (8) and redesignated former par. (8) as (9).
Subsec. (a)(9). Pub. L. 111–211, §251(a)(1)(A), (C), redesignated par. (8) as (9) and substituted ''tribal, State,'' for ''State''. Former par. (9) redesignated (10).
Subsec. (a)(10) to (12). Pub. L. 111–211, §251(a)(1)(A), (D), redesignated pars. (9) to (11) as (10) to (12), respectively, and inserted ''tribal,'' before ''State,'' wherever appearing. Former par. (12) redesignated (13).
Subsec. (a)(13). Pub. L. 111–211, §251(a)(1)(A), redesignated par. (12) as (13).
Subsec. (b). Pub. L. 111–211, §251(a)(2), inserted ''tribal,'' before ''State,'' wherever appearing.

§41508. Grants to States for threat assessment databases

(a) In general

The Attorney General, through the Office of Justice Programs, shall make grants under this section to the highest State courts in States participating in the program, for the purpose of enabling such courts to establish and maintain a threat assessment database described in subsection (b).

(b) Database

For purposes of subsection (a), a threat assessment database is a database through which a State can—
(1) analyze trends and patterns in domestic terrorism and crime;
(2) project the probabilities that specific acts of domestic terrorism or crime will occur; and
(3) develop measures and procedures that can effectively reduce the probabilities that those acts will occur.

(c) Core elements

The Attorney General shall define a core set of data elements to be used by each database funded by this section so that the information in the database can be effectively shared with other States and with the Department of Justice.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section $15,000,000 for each of fiscal years 2008 through 2011.

(Pub. L. 110–177, title III, §303, Jan. 7, 2008, 121 Stat. 2540.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 3714a of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

Subtitle V—Law Enforcement and Criminal Justice Personnel

Statutory Notes and Related Subsidiaries

SUPPORT FOR MENTAL HEALTH PROVIDERS

Pub. L. 115–113, §3, Jan. 10, 2018, 131 Stat. 2276, provided that: ''The Attorney General, in coordination with the Secretary of Health and Human Services, shall develop resources to educate mental health providers about the culture of Federal, State, tribal, and local law enforcement agencies and evidence-based therapies for mental health issues common to Federal, State, local, and tribal law enforcement officers.''

SUPPORT FOR OFFICERS

Pub. L. 115–113, §4, Jan. 10, 2018, 131 Stat. 2277, provided that: ''The Attorney General shall—
''(1) in consultation with Federal, State, local, and tribal law enforcement agencies—
''(A) identify and review the effectiveness of any existing crisis hotlines for law enforcement officers;
''(B) provide recommendations to Congress on whether Federal support for existing crisis hotlines or the creation of an alternative hotline would improve the effectiveness or use of the hotline; and
''(C) conduct research into the efficacy of an annual mental health check for law enforcement officers;
''(2) in consultation with the Secretary of Homeland Security and the head of other Federal agencies that employ law enforcement officers, examine the mental health and wellness needs of Federal law en-