

116TH CONGRESS  
1ST SESSION

# H. R. 1817

To enforce the requirement that the National Instant Criminal Background Check System make a final disposition of requests to correct its records within 60 days, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2019

Mr. EMMER (for himself, Mr. GOSAR, and Mr. NEWHOUSE) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To enforce the requirement that the National Instant Criminal Background Check System make a final disposition of requests to correct its records within 60 days, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Firearm Due Process  
5 Protection Act”.

1 **SEC. 2. ENFORCEMENT OF DEADLINE FOR FINAL DISPOSI-**  
2 **TION OF REQUESTS TO CORRECT RECORDS**  
3 **OF THE NATIONAL INSTANT CRIMINAL BACK-**  
4 **GROUND CHECK SYSTEM; DUE PROCESS PRO-**  
5 **TECTIONS.**

6 Section 925A of title 18, United States Code, is  
7 amended—

8 (1) by inserting “(a) IN GENERAL.—” before  
9 “Any person”;

10 (2) by inserting “or aggrieved by a violation of  
11 the penultimate sentence of section 103(g) of the  
12 Brady Handgun Violence Prevention Act” after “(s)  
13 or (t) of section 922”;

14 (3) by striking the last sentence; and

15 (4) by adding after and below the end the fol-  
16 lowing:

17 “(b) PROCEDURAL RULES.—

18 “(1) EXPEDITED HEARING.—The court shall  
19 hold a hearing on an action brought under sub-  
20 section (a), within 30 days after the action is  
21 brought.

22 “(2) BURDEN OF PROOF.—At such a hearing,  
23 the respondent shall bear the burden of proving by  
24 clear and convincing evidence that the individual is  
25 ineligible to receive or possess a firearm.

26 “(c) REMEDIES.—

1           “(1) IN GENERAL.—The court shall assess  
2           against the respondent reasonable attorney fees and  
3           other litigation costs reasonably incurred in an ac-  
4           tion brought under subsection (a) in which the com-  
5           plainant has substantially prevailed.

6           “(2) SUBSTANTIALLY PREVAILED.—For pur-  
7           poses of this section, a complainant has substantially  
8           prevailed if the complainant has obtained relief  
9           through—

10                   “(A) a judicial order;

11                   “(B) an enforceable written agreement or  
12                   consent decree; or

13                   “(C) a voluntary or unilateral change in  
14                   position by the United States, if the complain-  
15                   ant’s claim is not insubstantial.”.

16 **SEC. 3. ANNUAL REPORTS TO THE CONGRESS ON DISPOSI-**  
17 **TION OF CHALLENGES TO ACCURACY OF**  
18 **RECORDS OF THE NATIONAL INSTANT CRIMI-**  
19 **NAL BACKGROUND CHECK SYSTEM.**

20           The Director of the Federal Bureau of Investigation  
21 shall submit annually to the Committee on the Judiciary  
22 of the House of Representatives and the Committee on  
23 the Judiciary of the Senate a written report that speci-  
24 fies—

1           (1) the total number of challenges to the accu-  
2 racy of the records of the National Instant Criminal  
3 Background Check System (in this section referred  
4 to as the “NICS system”) established under section  
5 103 of the Brady Handgun Violence Prevention Act  
6 that were received by the NICS system during the  
7 year covered by the report;

8           (2) the total number of the challenges that were  
9 processed to final disposition by the NICS system;

10          (3) the total number of the challenges with re-  
11 spect to which the initial determination of the NICS  
12 system was reversed, and with respect to those chal-  
13 lenges, the total number in which each reason for  
14 the initial determination was made;

15          (4) the total number of the challenges with re-  
16 spect to which the initial determination of the NICS  
17 system was not reversed, and with respect to those  
18 challenges, the total number in which each reason  
19 for not doing so was made; and

20          (5) the average length of time needed to com-  
21 plete the processing of the challenges referred to in  
22 paragraph (2).

23 **SEC. 4. SENSE OF THE CONGRESS.**

24 It is the sense of the Congress that—

1           (1) the right of the people to keep and bear  
2 arms is a fundamental component of self-govern-  
3 ment, self-defense, and the preservation of individual  
4 liberty;

5           (2) deprivation of the constitutional right to  
6 bear arms requires due process under the Fifth and  
7 Fourteenth Amendments to the Constitution of the  
8 United States;

9           (3) ignoring appeals of determinations made by  
10 the National Instant Criminal Background Check  
11 System (NICS) violates due process; and

12           (4) NICS should have the burden of showing a  
13 valid reason for the denial of this constitutional  
14 right.

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