



General Assembly

February Session, 2000

Raised Bill No. 553

LCO No. 2355

Referred to Committee on Public Safety

Introduced by:
(PS)

An Act Concerning Adoption Of The National Crime Prevention And Privacy Compact.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) The National Crime Prevention And Privacy
2 Compact is hereby entered into and enacted into law with any and all
3 of the states and the federal government legally joining therein in the
4 form substantially as follows:

5 NATIONAL CRIME PREVENTION AND PRIVACY COMPACT

6 The contracting parties agree to the following:

7 OVERVIEW

8 (a) IN GENERAL. This Compact organizes an electronic information
9 sharing system among the federal government and the states to
10 exchange criminal history records for noncriminal justice purposes
11 authorized by federal or state law, such as background checks for
12 governmental licensing and employment.

13 (b) OBLIGATIONS OF PARTIES. Under this Compact, the FBI and

14 the party states agree to maintain detailed databases of their respective
15 criminal history records, including arrests and dispositions, and to
16 make them available to the federal government and to party states for
17 authorized purposes. The FBI shall also manage the federal data
18 facilities that provide a significant part of the infrastructure for the
19 system.

20 ARTICLE I-DEFINITIONS

21 As used in this Compact, the following definitions apply:

22 (1) ATTORNEY GENERAL. The term "Attorney General" means the
23 Attorney General of the United States.

24 (2) COMPACT OFFICER. The term "Compact Officer" means:

25 (A) With respect to the federal government, an official so
26 designated by the Director of the FBI; and

27 (B) With respect to a party state, the chief administrator of the
28 state's criminal history record repository or a designee of the chief
29 administrator who is a regular full-time employee of the repository.

30 (3) COUNCIL. The term "Council" means the Compact Council
31 established under Article VI.

32 (4) CRIMINAL HISTORY RECORDS. The term "criminal history
33 records":

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

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

42 (5) CRIMINAL HISTORY RECORD REPOSITORY. The term
43 "criminal history record repository" means the state agency designated
44 by the Governor or other appropriate executive official or the
45 legislature of a state to perform centralized recordkeeping functions
46 for criminal history records and services in the State.

47 (6) CRIMINAL JUSTICE. The term "criminal justice" includes
48 activities relating to the detection, apprehension, detention, pretrial
49 release, post-trial release, prosecution, adjudication, correctional
50 supervision, or rehabilitation of accused persons or criminal offenders.
51 The administration of criminal justice includes criminal identification
52 activities and the collection, storage, and dissemination of criminal
53 history records.

54 (7) CRIMINAL JUSTICE AGENCY. The term "criminal justice
55 agency":

56 (A) Means (i) courts, and (ii) a governmental agency or any
57 subunit thereof that (I) performs the administration of criminal
58 justice pursuant to a statute or executive order; and (II) allocates a
59 substantial part of its annual budget to the administration of
60 criminal justice; and

61 (B) Includes federal and state inspectors general offices.

62 (8) CRIMINAL JUSTICE SERVICES. The term "criminal justice
63 services" means services provided by the FBI to criminal justice
64 agencies in response to a request for information about a particular
65 individual or as an update to information previously provided for
66 criminal justice purposes.

67 (9) CRITERION OFFENSE. The term "criterion offense" means any
68 felony or misdemeanor offense not included on the list of nonserious
69 offenses published periodically by the FBI.

70 (10) DIRECT ACCESS. The term "direct access" means access to the
71 National Identification Index by computer terminal or other

72 automated means not requiring the assistance of or intervention by
73 any other party or agency.

74 (11) EXECUTIVE ORDER. The term "executive order" means an
75 order of the President of the United States or the chief executive officer
76 of a state that has the force of law and that is promulgated in
77 accordance with applicable law.

78 (12) FBI. The term "FBI" means the Federal Bureau of Investigation.

79 (13) INTERSTATE IDENTIFICATION SYSTEM. The term "Interstate
80 Identification Index System" or "III System":

81 (A) Means the cooperative federal-state system for the exchange
82 of criminal history records; and

83 (B) Includes the National Identification Index, the National
84 Fingerprint File and, to the extent of their participation in such
85 system, the criminal history record repositories of the states and the
86 FBI.

87 (14) NATIONAL FINGERPRINT FILE. The term "National
88 Fingerprint File" means a database of fingerprints, or other uniquely
89 personal identifying information, relating to an arrested or charged
90 individual maintained by the FBI to provide positive identification of
91 record subjects indexed in the III System.

92 (15) NATIONAL IDENTIFICATION INDEX. The term "National
93 Identification Index" means an index maintained by the FBI consisting
94 of names, identifying numbers, and other descriptive information
95 relating to record subjects about whom there are criminal history
96 records in the III System.

97 (16) NATIONAL INDICES. The term "National indices" means the
98 National Identification Index and the National Fingerprint File.

99 (17) NONPARTY STATE. The term "Nonparty State" means a state

100 that has not ratified this Compact.

101 (18) NONCRIMINAL JUSTICE PURPOSES. The term "noncriminal
102 justice purposes" means uses of criminal history records for purposes
103 authorized by federal or state law other than purposes relating to
104 criminal justice activities, including employment suitability, licensing
105 determinations, immigration and naturalization matters, and national
106 security clearances.

107 (19) PARTY STATE. The term "Party State" means a state that has
108 ratified this Compact.

109 (20) POSITIVE IDENTIFICATION. The term "positive
110 identification" means a determination, based upon a comparison of
111 fingerprints or other equally reliable biometric identification
112 techniques, that the subject of a record search is the same person as the
113 subject of a criminal history record or records indexed in the III
114 System. Identifications based solely upon a comparison of subjects'
115 names or other nonunique identification characteristics or numbers, or
116 combinations thereof, shall not constitute positive identification.

117 (21) SEALED RECORD INFORMATION. The term "sealed record
118 information" means:

119 (A) With respect to adults, that portion of a record that is:

120 (i) Not available for criminal justice uses;

121 (ii) Not supported by fingerprints or other accepted means of
122 positive identification; or

123 (iii) Subject to restrictions on dissemination for noncriminal
124 justice purposes pursuant to a court order related to a particular
125 subject or pursuant to a federal or state statute that requires
126 action on a sealing petition filed by a particular record subject;
127 and

128 (B) With respect to juveniles, whatever each state determines is a
129 sealed record under its own law and procedure.

130 (22) STATE. The term "State" means any state, territory, or
131 possession of the United States, the District of Columbia, and the
132 Commonwealth of Puerto Rico.

133 ARTICLE II-PURPOSES

134 The purposes of this Compact are to:

135 (1) Provide a legal framework for the establishment of a cooperative
136 federal-state system for the interstate and federal-state exchange of
137 criminal history records for noncriminal justice uses;

138 (2) Require the FBI to permit use of the National Identification Index
139 and the National Fingerprint File by each party state, and to provide,
140 in a timely fashion, federal and state criminal history records to
141 requesting states, in accordance with the terms of this Compact and
142 with rules, procedures, and standards established by the Council
143 under Article VI;

144 (3) Require party states to provide information and records for the
145 National Identification Index and the National Fingerprint File and to
146 provide criminal history records, in a timely fashion, to criminal
147 history record repositories of other states and the federal government
148 for noncriminal justice purposes, in accordance with the terms of this
149 Compact and with rules, procedures, and standards established by the
150 Council under Article VI;

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

155 (5) Require the FBI and each party state to adhere to III System
156 standards concerning record dissemination and use, response times,

157 system security, data quality, and other duly established standards,
158 including those that enhance the accuracy and privacy of such records.

159 ARTICLE III-RESPONSIBILITIES OF COMPACT PARTIES

160 (a) FBI RESPONSIBILITIES. The Director of the FBI shall:

161 (1) Appoint an FBI Compact officer who shall:

162 (A) Administer this Compact within the Department of Justice
163 and among federal agencies and other agencies and
164 organizations that submit search requests to the FBI pursuant to
165 Article V(c);

166 (B) Ensure that Compact provisions and rules, procedures, and
167 standards prescribed by the Council under Article VI are
168 complied with by the Department of Justice and the federal
169 agencies and other agencies and organizations referred to in
170 Article III (1)(A); and

171 (C) Regulate the use of records received by means of the III
172 System from party states when such records are supplied by the
173 FBI directly to other federal agencies;

174 (2) Provide to federal agencies and to state criminal history record
175 repositories, criminal history records maintained in its database for the
176 noncriminal justice purposes described in Article IV, including:

177 (A) Information from nonparty states; and

178 (B) Information from party states that is available from the
179 FBI through the III System, but is not available from the party
180 state through the III System;

181 (3) Provide a telecommunications network and maintain centralized
182 facilities for the exchange of criminal history records for both criminal
183 justice purposes and the noncriminal justice purposes described in
184 Article IV, and ensure that the exchange of such records for criminal

185 justice purposes has priority over exchange for noncriminal justice
186 purposes; and

187 (4) Modify or enter into user agreements with nonparty state
188 criminal history record repositories to require them to establish record
189 request procedures conforming to those prescribed in Article V.

190 (b) STATE RESPONSIBILITIES. Each party state shall:

191 (1) Appoint a Compact officer who shall:

192 (A) Administer this Compact within that state;

193 (B) Ensure that Compact provisions and rules, procedures, and
194 standards established by the Council under Article VI are
195 complied within the state; and

196 (C) Regulate the in-state use of records received by means of
197 the III System from the FBI or from other party states;

198 (2) Establish and maintain a criminal history record repository,
199 which shall provide;

200 (A) Information and records for the National Identification
201 Index and the National Fingerprint File; and

202 (B) The state's III System-indexed criminal history records for
203 noncriminal justice purposes described in Article IV;

204 (3) Participate in the National Fingerprint File; and

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

208 (c) COMPLIANCE WITH III SYSTEM STANDARDS. In carrying
209 out their responsibilities under this Compact, the FBI and each party
210 state shall comply with III System rules, procedures, and standards

211 duly established by the Council concerning record dissemination and
212 use, response times, data quality, system security, accuracy, privacy
213 protection, and other aspects of III System operation.

214 (d) MAINTENANCE OF RECORD SERVICES. (1) Use of the III
215 System for noncriminal justice purposes authorized in this Compact
216 shall be managed so as not to diminish the level of services provided in
217 support of criminal justice purposes. (2) Administration of Compact
218 provisions shall not reduce the level of service available to authorized
219 noncriminal justice users on the effective date of this Compact.

220 ARTICLE IV-AUTHORIZED RECORD DISCLOSURES

221 (a) STATE CRIMINAL HISTORY RECORD REPOSITORIES. To the
222 extent authorized by section 552a of title 5, United States Code
223 (commonly known as the "Privacy Act of 1974"), the FBI shall provide
224 on request criminal history records (excluding sealed records) to state
225 criminal history record repositories for noncriminal justice purposes
226 allowed by federal statute, federal executive order, or a state statute
227 that has been approved by the Attorney General and that authorizes
228 national indices checks.

229 (b) CRIMINAL JUSTICE AGENCIES AND OTHER
230 GOVERNMENTAL OR NONGOVERNMENTAL AGENCIES. The
231 FBI, to the extent authorized by section 552a of title 5, United States
232 Code (commonly known as the "Privacy Act of 1974"), and state
233 criminal history record repositories shall provide criminal history
234 records (excluding sealed records) to criminal justice agencies and
235 other governmental or nongovernmental agencies for noncriminal
236 justice purposes allowed by federal statute, federal executive order, or
237 a state statute that has been approved by the Attorney General, that
238 authorizes national indices checks.

239 (c) PROCEDURES. Any record obtained under this Compact may be
240 used only for the official purposes for which the record was requested.
241 Each Compact officer shall establish procedures, consistent with this

242 Compact, and with rules, procedures, and standards established by the
243 Council under Article VI, which procedures shall protect the accuracy
244 and privacy of the records, and shall:

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

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

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

254 **ARTICLE V-RECORD REQUEST PROCEDURES**

255 (a) POSITIVE IDENTIFICATION. Subject fingerprints or other
256 approved forms of positive identification shall be submitted with all
257 requests for criminal history record checks for noncriminal justice
258 purposes.

259 (b) SUBMISSION OF STATE REQUESTS. Each request for a
260 criminal history record check utilizing the national indices made under
261 any approved state statute shall be submitted through that state's
262 criminal history record repository. A state criminal history record
263 repository shall process an interstate request for noncriminal justice
264 purposes through the national indices only if such request is
265 transmitted through another state criminal history record repository or
266 the FBI.

267 (c) SUBMISSION OF FEDERAL REQUESTS. Each request for
268 criminal history record checks utilizing the national indices made
269 under federal authority shall be submitted through the FBI or, if the
270 state criminal history record repository consents to process fingerprint
271 submissions, through the criminal history record repository in the state

272 in which such request originated. Direct access to the National
273 Identification Index by entities other than the FBI and State criminal
274 history records repositories shall not be permitted for noncriminal
275 justice purposes.

276 (d) FEES. A state criminal history record repository or the FBI:

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

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

283 (e) ADDITIONAL SEARCH.

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

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

293 (A) The FBI shall so advise the state criminal history record
294 repository; and

295 (B) The state criminal history record repository shall be
296 entitled to obtain the additional criminal history record
297 information from the FBI or other state criminal history record
298 repositories.

299 ARTICLE VI-ESTABLISHMENT OF A COMPACT COUNCIL

300 (a) ESTABLISHMENT.

301 (1) IN GENERAL. There is established a council to be known as
302 the "Compact Council", which shall have the authority to
303 promulgate rules and procedures governing the use of the III
304 System for noncriminal justice purposes, not to conflict with FBI
305 administration of the III System for criminal justice purposes.

306 (2) ORGANIZATION. The Council shall:

307 (A) Continue in existence as long as this Compact remains in
308 effect;

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

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

312 (b) MEMBERSHIP. The Council shall be composed of fifteen
313 members, each of whom shall be appointed by the Attorney General,
314 as follows:

315 (1) Nine members, each of whom shall serve a two year term, who
316 shall be selected from among the Compact officers of party states
317 based on the recommendation of the Compact officers of all party
318 states, except that, in the absence of the requisite number of
319 Compact officers available to serve, the chief administrators of the
320 criminal history record repositories of nonparty states shall be
321 eligible to serve on an interim basis.

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

324 (A) One shall be a representative of the criminal justice
325 agencies of the federal government and may not be an employee
326 of the FBI; and

327 (B) One shall be a representative of the noncriminal justice

328 agencies of the federal government.

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

332 (A) One shall be a representative of state or local criminal
333 justice agencies; and

334 (B) One shall be a representative of state or local noncriminal
335 justice agencies.

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

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

342 (c) CHAIRMAN AND VICE CHAIRMAN.

343 (1) IN GENERAL. From its membership, the Council shall elect a
344 Chairman and a Vice Chairman of the Council, respectively. Both
345 the Chairman and Vice Chairman of the Council:

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

349 (B) Shall serve a two year term and may be reelected to only
350 one additional two year term.

351 (2) DUTIES OF VICE CHAIRMAN. The Vice Chairman of the
352 Council shall serve as the Chairman of the Council in the absence of
353 the Chairman.

354 (d) MEETINGS. (1) IN GENERAL. The Council shall meet at least

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

359 (2) QUORUM. A majority of the Council or any committee of the
360 Council shall constitute a quorum of the Council or of such
361 committee, respectively, for the conduct of business. A lesser
362 number may meet to hold hearings, take testimony, or conduct any
363 business not requiring a vote.

364 (e) RULES, PROCEDURES, AND STANDARDS. The Council shall
365 make available for public inspection and copying at the Council office
366 within the FBI, and shall publish in the Federal Register, any rules,
367 procedures, or standards established by the Council.

368 (f) ASSISTANCE FROM FBI. The Council may request from the FBI
369 such reports, studies, statistics, or other information or materials as the
370 Council determines to be necessary to enable the Council to perform
371 its duties under this Compact. The FBI, to the extent authorized by
372 law, may provide such assistance or information upon such a request.

373 (g) COMMITTEES. The Chairman may establish committees as
374 necessary to carry out this Compact and may prescribe their
375 membership, responsibilities, and duration.

376 ARTICLE VII-RATIFICATION OF COMPACT

377 This Compact shall take effect upon being entered into by two or
378 more states as between those states and the federal government. Upon
379 subsequent entering into this Compact by additional states, it shall
380 become effective among those states and the federal government and
381 each party state that has previously ratified it. When ratified, this
382 Compact shall have the full force and effect of law within the ratifying
383 jurisdictions. The form of ratification shall be in accordance with the
384 laws of the executing state.

385

ARTICLE VIII-MISCELLANEOUS PROVISIONS

386 (a) RELATION OF COMPACT TO CERTAIN FBI ACTIVITIES.
387 Administration of this Compact shall not interfere with the
388 management and control of the Director of the FBI over the FBI's
389 collection and dissemination of criminal history records and the
390 advisory function of the FBI's advisory policy board chartered under
391 the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes
392 other than noncriminal justice.

393 (b) NO AUTHORITY FOR NONAPPROPRIATED
394 EXPENDITURES. Nothing in this Compact shall require the FBI to
395 obligate or expend funds beyond those appropriated to the FBI.

396 (c) RELATING TO PUBLIC LAW 92-544. Nothing in this Compact
397 shall diminish or lessen the obligations, responsibilities, and
398 authorities of any state, whether a party state or a nonparty state, or of
399 any criminal history record repository or other subdivision or
400 component thereof, under the Departments of State, Justice, and
401 Commerce, the Judiciary, and Related Agencies Appropriation Act,
402 1973 (Public Law 92-544) or regulations and guidelines promulgated
403 thereunder, including the rules and procedures promulgated by the
404 Council under Article VI(a), regarding the use and dissemination of
405 criminal history records and information.

406

ARTICLE IX-RENUNCIATION

407 (a) IN GENERAL. This Compact shall bind each party state until
408 renounced by the party state.

409 (b) EFFECT. Any renunciation of this Compact by a party state
410 shall:

411 (1) Be effected in the same manner by which the party state
412 ratified this Compact; and

413 (2) Become effective one hundred eighty days after written notice

414 of renunciation is provided by the party state to each other party
415 state and to the federal government.

416 ARTICLE X-SEVERABILITY

417 The provisions of this Compact shall be severable, and if any
418 phrase, clause, sentence or provision of this Compact is declared to be
419 contrary to the constitution of any participating state, or to the
420 Constitution of the United States, or the applicability thereof to any
421 government, agency, person, or circumstance is held invalid, the
422 validity of the remainder of this Compact and the applicability thereof
423 to any government, agency, person, or circumstance shall not be
424 affected thereby. If a portion of this Compact is held contrary to the
425 constitution of any party state, all other portions of this Compact shall
426 remain in full force and effect as to the remaining party states and in
427 full force and effect as to the party state affected, as to all other
428 provisions.

429 ARTICLE XI-ADJUDICATION OF DISPUTES

430 (a) IN GENERAL. The Council shall:

431 (1) Have initial authority to make determinations with respect to
432 any dispute regarding:

433 (A) Interpretation of this Compact;

434 (B) Any rule or standard established by the Council pursuant
435 to Article VI; and

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

438 (2) Hold a hearing concerning any dispute described in
439 paragraph (1) at a regularly scheduled meeting of the Council and
440 only render a decision based upon a majority vote of the members
441 of the Council. Such decision shall be published pursuant to the

442 requirements of Article VI(e).

443 (b) DUTIES OF FBI. The FBI shall exercise immediate and necessary
444 action to preserve the integrity of the III System, maintain system
445 policy and standards, protect the accuracy and privacy of records, and
446 to prevent abuses, until the Council holds a hearing on such matters.

447 (c) RIGHT OF APPEAL. The FBI or a party state may appeal any
448 decision of the Council to the Attorney General, and thereafter may file
449 suit in the appropriate district court of the United States, which shall
450 have original jurisdiction of all cases or controversies arising under
451 this Compact. Any suit arising under this Compact and initiated in a
452 state court shall be removed to the appropriate district court of the
453 United States in the manner provided by section 1446 of title 28,
454 United States Code, or other statutory authority.

455 Sec. 2. (NEW) The Commissioner of Public Safety shall designate the
456 compact officer in accordance with Article I, Section (2)(B) of the
457 National Crime Prevention and Privacy Compact.

458 Sec. 3. This act shall take effect July 1, 2000, except that Article III,
459 Section (b)(2)(A) and Section (b)(3) in Section 1 of this act, relating to
460 participation in the National Fingerprint File, shall be effective on
461 January 1, 2002, unless the Commissioner of Public Safety certifies to
462 the Attorney General of the United States an earlier date for
463 participation in the National Fingerprint File.

Statement of Purpose:

To facilitate the dissemination of criminal history records from other states and from the federal government, to allow for the exchange of criminal history records for noncriminal justice purposes, to provide for an electronic information sharing system among participating states, and to establish uniform standards for accuracy, confidentiality and privacy.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]