

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH30212-LT-103B (4/2)

Short Title: Criminal History Record Checks. (Public)

Sponsors: Representative Goodwin.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ADOPTING THE NATIONAL CRIME PREVENTION AND PRIVACY
3 COMPACT FOR NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 4 of Chapter 114 of the General Statutes is amended
6 by:

- 7 (1) Designating G.S. 114-12 through G.S. 114-19 as:
8 "Part 1. General Powers and Duties of the State Bureau of Investigation.";
9 (2) Designating G.S. 114-19.1 through G.S. 114-19.11 as:
10 "Part 2. Criminal History Record Checks.";
11 (3) Designating G.S. 114-20 through G.S. 114-21 as:
12 "Part 3. Protection of Public Officials.";
13 (4) Recodifying G.S. 114-21 as G.S. 114-12.1.

14 **SECTION 2.** Part 2 of Article 4 of Chapter 114 of the General Statutes is
15 amended by adding the following new section to read:

16 "**§ 114-19.20. The National Crime Prevention and Privacy Compact.**

17 The National Crime Prevention and Privacy Compact is enacted into law and entered
18 into with all jurisdictions legally joining in the compact in the form substantially as set
19 forth in this section, as follows:

20 Preamble.

21 Whereas, it is in the interest of the State to facilitate the dissemination of criminal
22 history records from other states for use in North Carolina as authorized by state law;
23 and

24 Whereas, the National Crime Prevention and Privacy Compact creates a legal
25 framework for the cooperative exchange of criminal history records for noncriminal
26 justice purposes; and

1 Whereas, the compact provides for the organization of an electronic
2 information-sharing system among the federal government and the states to exchange
3 criminal history records for noncriminal justice purposes authorized by federal or state
4 law, such as background checks for governmental licensing and employment; and

5 Whereas, under the compact, the FBI and the party states agree to maintain detailed
6 databases of their respective criminal history records, including arrests and dispositions,
7 and to make them available to the federal government and party states for authorized
8 purposes; and

9 Whereas, the FBI shall manage the federal data facilities that provide a significant
10 part of the infrastructure for the system; and

11 Whereas, entering into the compact would facilitate the interstate and federal-state
12 exchange of criminal history information to streamline the processing of background
13 checks for noncriminal justice purposes; and

14 Whereas, release and use of information obtained through the system for
15 noncriminal justice purposes would be governed by the laws of the receiving state; and

16 Whereas, entering into the compact will provide a mechanism for establishing and
17 enforcing uniform standards for record accuracy and for the confidentiality and privacy
18 interests of record subjects.

19 Article I.

20 Definitions.

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

22 (1) "Attorney General" means the Attorney General of the United States.

23 (2) "Compact officer" means:

24 a. With respect to the federal government, an official so
25 designated by the director of the FBI; and

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

30 (3) "Council" means the compact council established under Article VI.

31 (4) "Criminal history record repository" means the State Bureau of
32 Investigation's Division of Criminal Information.

33 (5) "Criminal history records" means information collected by criminal
34 justice agencies on individuals consisting of identifiable descriptions
35 and notations of arrests, detentions, indictments, or other formal
36 criminal charges and any disposition arising therefrom, including
37 acquittal, sentencing, correctional supervision, or release. The term
38 does not include identification information such as fingerprint records
39 if the information does not indicate involvement of the individual with
40 the criminal justice system.

41 (6) "Criminal justice" includes activities relating to the detection,
42 apprehension, detention, pretrial release, posttrial release, prosecution,
43 adjudication, correctional supervision, or rehabilitation of accused
44 persons or criminal offenders. The administration of criminal justice

- 1 includes criminal identification activities and the collection, storage,
2 and dissemination of criminal history records.
- 3 (7) "Criminal justice agency" means: (i) courts; and (ii) a governmental
4 agency or any subunit of an agency that performs the administration of
5 criminal justice pursuant to a statute or executive order and allocates a
6 substantial part of its annual budget to the administration of criminal
7 justice. The term includes federal and state inspector general offices.
- 8 (8) "Criminal justice services" means services provided by the FBI to
9 criminal justice agencies in response to a request for information about
10 a particular individual or as an update to information previously
11 provided for criminal justice purposes.
- 12 (9) "Direct access" means access to the national identification index by
13 computer terminal or other automated means not requiring the
14 assistance of or intervention by any other party or agency.
- 15 (10) "Executive order" means an order of the President of the United States
16 or the chief executive officer of a state that has the force of law and
17 that is promulgated in accordance with applicable law.
- 18 (11) "FBI" means the Federal Bureau of Investigation.
- 19 (12) "III system" means the interstate identification index system, which is
20 the cooperative federal-state system for the exchange of criminal
21 history records. The term includes the national identification index, the
22 national fingerprint file, and, to the extent of their participation in the
23 system, the criminal history record repositories of the states and the
24 FBI.
- 25 (13) "National fingerprint file" means a database of fingerprints or of other
26 uniquely personal identifying information that relates to an arrested or
27 charged individual and that is maintained by the FBI to provide
28 positive identification of record subjects indexed in the III system.
- 29 (14) "National identification index" means an index maintained by the FBI
30 consisting of names, identifying numbers, and other descriptive
31 information relating to record subjects about whom there are criminal
32 history records in the III system.
- 33 (15) "National indices" means the national identification index and the
34 national fingerprint file.
- 35 (16) "Noncriminal justice purposes" means uses of criminal history records
36 for purposes authorized by federal or state law other than purposes
37 relating to criminal justice activities, including employment suitability,
38 licensing determinations, immigration and naturalization matters, and
39 national security clearances.
- 40 (17) "Nonparty state" means a state that has not ratified this compact.
- 41 (18) "Party state" means a state that has ratified this compact.
- 42 (19) "Positive identification" means a determination, based upon a
43 comparison of fingerprints or other equally reliable biometric
44 identification techniques, that the subject of a record search is the same

1 person as the subject of a criminal history record or records indexed in
2 the III system. Identifications based solely upon a comparison of
3 subjects' names or other nonunique identification characteristics or
4 numbers, or combinations thereof, does not constitute positive
5 identification.

6 (20) "Sealed record information" means:

7 a. With respect to adults, that portion of a record that is:

8 1. Not available for criminal justice uses;

9 2. Not supported by fingerprints or other accepted means of
10 positive identification; or

11 3. Subject to restrictions on dissemination for noncriminal
12 justice purposes pursuant to a court order related to a
13 particular subject or pursuant to a federal or state statute
14 that requires action on a sealing petition filed by a
15 particular record subject; and

16 b. With respect to juveniles, whatever each state determines is a
17 sealed record under its own law and procedure.

18 (21) "State" means any state, territory, or possession of the United States,
19 the District of Columbia, and the Commonwealth of Puerto Rico.

20 Article II.

21 Purposes.

22 The purposes of this compact are to:

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

26 (2) Require the FBI to permit use of the national identification index and
27 the national fingerprint file by each party state and to provide, in a
28 timely fashion, federal and state criminal history records to requesting
29 states, in accordance with the terms of this compact and with rules,
30 procedures, and standards established by the council under Article VI;

31 (3) Require party states to provide information and records for the national
32 identification index and the national fingerprint file and to provide
33 criminal history records, in a timely fashion, to criminal history record
34 repositories of other states and the federal government for noncriminal
35 justice purposes, in accordance with the terms of this compact and
36 with rules, procedures, and standards established by the council under
37 Article VI;

38 (4) Provide for the establishment of a council to monitor III system
39 operations and to prescribe system rules and procedures for the
40 effective and proper operation of the III system for noncriminal justice
41 purposes; and

42 (5) Require the FBI and each party state to adhere to III system standards
43 concerning record dissemination and use, response times, system

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

3 Article III.

4 Responsibilities of Compact Parties.

5 (a) The director of the FBI shall:

6 (1) Appoint an FBI compact officer who shall:

7 a. Administer this compact within the Department of Justice and
8 among federal agencies and other agencies and organizations
9 that submit search requests to the FBI pursuant to Article V(c);

10 b. Ensure that compact provisions and rules, procedures, and
11 standards prescribed by the council under Article VI are
12 complied with by the Department of Justice and federal
13 agencies and other agencies and organizations referred to in
14 sub-subdivision (a)(1)a. of this Article III; and

15 c. Regulate the use of records received by means of the III system
16 from party states when such records are supplied by the FBI
17 directly to other federal agencies;

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

21 a. Information from nonparty states; and

22 b. Information from party states that is available from the FBI
23 through the III system but is not available from the party states
24 through the III system;

25 (3) Provide a telecommunications network and maintain centralized
26 facilities for the exchange of criminal history records for both criminal
27 justice purposes and the noncriminal justice purposes described in
28 Article IV and ensure that the exchange of records for criminal justice
29 purposes has priority over exchange for noncriminal justice purposes;
30 and

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

34 (b) Each party state shall:

35 (1) Appoint a compact officer who shall:

36 a. Administer this compact within that state;

37 b. Ensure that compact provisions and rules, procedures, and
38 standards established by the council under Article VI are
39 complied with in the state; and

40 c. Regulate the in-state use of records received by means of the III
41 system from the FBI or from other party states;

42 (2) Establish and maintain a criminal history record repository, which
43 shall provide:

1 information authorized for release remains, an appropriate "no record"
2 response is communicated to the requesting official.

3 Article V.

4 Record Request Procedures.

5 (a) Subject fingerprints or other approved forms of positive identification must
6 be submitted with all requests for criminal history record checks for noncriminal justice
7 purposes.

8 (b) Each request for a criminal history record check utilizing the national indices
9 made under any approved state statute must be submitted through that state's criminal
10 history record repository. A state criminal history record repository shall process an
11 interstate request for noncriminal justice purposes through the national indices only if
12 the request is transmitted through another state criminal history record repository or the
13 FBI.

14 (c) Each request for criminal history record checks utilizing the national indices
15 made under federal authority must be submitted through the FBI or, if the state criminal
16 history record repository consents to process fingerprint submissions, through the
17 criminal history record repository in the state in which the request originated. Direct
18 access to the national identification index by entities other than the FBI and state
19 criminal history record repositories may not be permitted for noncriminal justice
20 purposes.

21 (d) A state criminal history record repository or the FBI:

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

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

28 (e) (1) If a state criminal history record repository cannot positively identify
29 the subject of a record request made for noncriminal justice purposes,
30 the request, together with fingerprints or other approved identifying
31 information, must be forwarded to the FBI for a search of the national
32 indices.

33 (2) If, with respect to a request forwarded by a state criminal history
34 record repository under subdivision (e)(1) of this Article V, the FBI
35 positively identifies the subject as having a III system-indexed record
36 or records:

37 a. The FBI shall so advise the state criminal history record
38 repository; and

39 b. The state criminal history record repository is entitled to obtain
40 the additional criminal history record information from the FBI
41 or other state criminal history record repositories.

42 Article VI.

43 Establishment of Compact Council.

1 (a) There is established a council to be known as the compact council which has
2 the authority to promulgate rules and procedures governing the use of the III system for
3 noncriminal justice purposes, not to conflict with FBI administration of the III system
4 for criminal justice purposes. The council shall:

- 5 (1) Continue in existence as long as this compact remains in effect;
- 6 (2) Be located, for administrative purposes, within the FBI; and
- 7 (3) Be organized and hold its first meeting as soon as practicable after the
8 effective date of this compact.

9 (b) The council must be composed of 15 members, each of whom must be
10 appointed by the Attorney General, as follows:

- 11 (1) Nine members, each of whom shall serve a two-year term, who must
12 be selected from among the compact officers of party states based on
13 the recommendation of the compact officers of all party states, except
14 that in the absence of the requisite number of compact officers
15 available to serve, the chief administrators of the criminal history
16 record repositories of nonparty states must be eligible to serve on an
17 interim basis;
- 18 (2) Two at-large members, nominated by the director of the FBI, each of
19 whom shall serve a three-year term, of whom:
 - 20 a. One must be a representative of the criminal justice agencies of
21 the federal government and may not be an employee of the FBI;
22 and
 - 23 b. One must be a representative of the noncriminal justice
24 agencies of the federal government;
- 25 (3) Two at-large members, nominated by the chair of the council once the
26 chair is elected pursuant to subsection (c)(3) of this Article VI, each of
27 whom shall serve a three-year term, of whom:
 - 28 a. One must be a representative of state or local criminal justice
29 agencies; and
 - 30 b. One must be a representative of state or local noncriminal
31 justice agencies;
- 32 (4) One member who shall serve a three-year term and who shall
33 simultaneously be a member of the FBI's advisory policy board on
34 criminal justice information services, nominated by the membership of
35 that policy board; and
- 36 (5) One member, nominated by the director of the FBI, who shall serve a
37 three-year term and who must be an employee of the FBI.

38 (c) From its membership, the council shall elect a chair and a vice-chair of the
39 council. Both the chair and vice-chair of the council: (i) must be a compact officer,
40 unless there is no compact officer on the council who is willing to serve, in which case
41 the chair may be an at-large member and (ii) shall serve two-year terms and may be
42 reelected to only one additional two-year term. The vice-chair of the council shall serve
43 as the chair of the council in the absence of the chair.

1 **SECTION 3.** The North Carolina Attorney General shall report to the
2 General Assembly on or before March 1, 2004, on the following:

- 3 (1) The compact officer to be appointed pursuant to Article III of the
4 National Crime Prevention and Privacy Compact.
5 (2) Any rules or procedures to be adopted to implement the Compact.
6 (3) Any provisions of the General Statutes that must be repealed or
7 amended to conform to the Compact.

8 **SECTION 4.** This act is effective when it becomes law.