

CHAPTER 199

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT

§1701. Compact adopted

The National Crime Prevention and Privacy Compact, referred to in this chapter as the "compact," is adopted and entered into with all jurisdictions legally joining in the compact in the form substantially as set forth in this chapter. [PL 2001, c. 372, §3 (NEW).]

SECTION HISTORY

PL 2001, c. 372, §3 (NEW).

§1702. Purposes

The purposes of this compact are to: [PL 2001, c. 372, §3 (NEW).]

1. Legal framework. 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;

[PL 2001, c. 372, §3 (NEW).]

2. FBI. Require the FBI to permit use of the national indices 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 pursuant to section 1707;

[PL 2001, c. 372, §3 (NEW).]

3. Party states. Require party states to provide information and criminal history records for the national indices 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 pursuant to section 1707;

[PL 2001, c. 372, §3 (NEW).]

4. Council. 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

[PL 2001, c. 372, §3 (NEW).]

5. III system standards. Require the FBI and each party state to adhere to III system standards concerning criminal history 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 criminal history records.

[PL 2001, c. 372, §3 (NEW).]

SECTION HISTORY

PL 2001, c. 372, §3 (NEW).

§1703. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2001, c. 372, §3 (NEW).]

1. Attorney General. "Attorney General" means the Attorney General of the United States.

[PL 2001, c. 372, §3 (NEW).]

2. Compact officer. "Compact officer" means:

A. With respect to the Federal Government, an official so designated by the Director of the FBI; or [PL 2001, c. 372, §3 (NEW).]

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. [PL 2001, c. 372, §3 (NEW).]

[PL 2001, c. 372, §3 (NEW).]

3. Council. "Council" means the compact council established under section 1707.

[PL 2001, c. 372, §3 (NEW).]

4. Criminal history record repository. "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.

[PL 2001, c. 372, §3 (NEW).]

5. Criminal history records. "Criminal history records" 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. "Criminal history records" does not include identification information such as fingerprint records if the information does not indicate involvement of the individual with the criminal justice system.

[PL 2001, c. 372, §3 (NEW).]

6. Criminal justice. "Criminal justice" means activities relating to the detection, apprehension, detention, pretrial release, posttrial 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.

[PL 2001, c. 372, §3 (NEW).]

7. Criminal justice agency. "Criminal justice agency" means:

A. A court; and [PL 2001, c. 372, §3 (NEW).]

B. A governmental agency or any subunit of an agency that performs the administration of criminal justice pursuant to a law or executive order and allocates a substantial part of its annual budget to the administration of criminal justice. "Criminal justice agency" includes federal and state inspector general offices. [PL 2001, c. 372, §3 (NEW).]

[PL 2001, c. 372, §3 (NEW).]

8. Criminal justice services. "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.

[PL 2001, c. 372, §3 (NEW).]

9. Direct access. "Direct access" means access to the national identification index by computer terminal or other automated means not requiring the assistance of or intervention by another party or agency.

[PL 2001, c. 372, §3 (NEW).]

10. Executive order. "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.

[PL 2001, c. 372, §3 (NEW).]

11. FBI. "FBI" means the Federal Bureau of Investigation.

[PL 2001, c. 372, §3 (NEW).]

12. III system. "III system" means the interstate identification index system that is the cooperative federal-state system for the exchange of criminal history records. "III system" includes the national indices and, to the extent of their participation in the system, the criminal history record repositories of the states and the FBI.

[PL 2001, c. 372, §3 (NEW).]

13. National fingerprint file. "National fingerprint file" means a database of fingerprints or of other uniquely personal identifying information that relates to an arrested or charged individual and that is maintained by the FBI to provide positive identification of subjects indexed in the III system.

[PL 2001, c. 372, §3 (NEW).]

14. National identification index. "National identification index" means an index maintained by the FBI consisting of names, identifying numbers and other descriptive information relating to subjects who have criminal history records in the III system.

[PL 2001, c. 372, §3 (NEW).]

15. National indices. "National indices" means the national identification index and the national fingerprint file.

[PL 2001, c. 372, §3 (NEW).]

16. Noncriminal justice purposes. "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.

[PL 2001, c. 372, §3 (NEW).]

17. Nonparty state. "Nonparty state" means a state that has not ratified this compact.

[PL 2001, c. 372, §3 (NEW).]

18. Party state. "Party state" means a state that has ratified this compact.

[PL 2001, c. 372, §3 (NEW).]

19. Positive identification. "Positive identification" means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a criminal history 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 does not constitute positive identification.

[PL 2001, c. 372, §3 (NEW).]

20. Sealed criminal history record information. "Sealed criminal history record information" means:

A. With respect to adults, that portion of a criminal history record that is:

- (1) Not available for criminal justice uses;
- (2) Not supported by fingerprints or other accepted means of positive identification; or
- (3) 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 subject; and [PL 2001, c. 372, §3 (NEW).]

B. With respect to minors, whatever each state determines is a sealed criminal history record under its own law and procedure. [PL 2001, c. 372, §3 (NEW).]

[PL 2001, c. 372, §3 (NEW).]

21. State. "State" means any state, territory or possession of the United States.

[PL 2001, c. 372, §3 (NEW).]

SECTION HISTORY

PL 2001, c. 372, §3 (NEW).

§1704. Responsibilities of compact parties

1. Director of the FBI. The Director of the FBI shall:

A. Appoint an FBI compact officer who shall:

(1) Administer this compact within the United States Department of Justice for federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to section 1706, subsection 3;

(2) Ensure that compact provisions and rules, procedures and standards prescribed by the council under section 1707 are complied with by the United States Department of Justice and the federal agencies and other agencies and organizations referred to in subparagraph (1); and

(3) Regulate the use of criminal history records received by means of the III system from party states when those criminal history records are supplied by the FBI directly to other federal agencies; [PL 2001, c. 372, §3 (NEW).]

B. 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 section 1705, including:

(1) Information from nonparty states; and

(2) 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; [PL 2001, c. 372, §3 (NEW).]

C. 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 section 1705 and ensure that the exchange of the criminal history records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and [PL 2001, c. 372, §3 (NEW).]

D. Modify or enter into user agreements with nonparty state criminal history record repositories to require them to establish criminal history record request procedures conforming to those prescribed in section 1706. [PL 2001, c. 372, §3 (NEW).]

[PL 2001, c. 372, §3 (NEW).]

2. Party state. Each party state shall:

A. Appoint a compact officer who shall:

(1) Administer this compact within that state;

(2) Ensure that compact provisions and rules, procedures and standards established by the council under section 1707 are complied with in the state; and

(3) Regulate the in-state use of criminal history records received by means of the III system from the FBI or from other party states; [PL 2001, c. 372, §3 (NEW).]

B. Establish and maintain a criminal history record repository that must provide:

(1) Information and criminal history records for the national indices; and

(2) The state's III system-indexed criminal history records for noncriminal justice purposes described in section 1705; [PL 2001, c. 372, §3 (NEW).]

C. Participate in the national fingerprint file; and [PL 2001, c. 372, §3 (NEW).]

D. Provide and maintain telecommunications links and related equipment necessary to support the criminal justice services set forth in this compact. [PL 2001, c. 372, §3 (NEW).]
[PL 2001, c. 372, §3 (NEW).]

3. Compliance with III system requirements. 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 criminal history record dissemination and use, response times, data quality, system security, accuracy, privacy protection and other aspects of III system operation. [PL 2001, c. 372, §3 (NEW).]

4. Noncriminal justice users. Use of the III system for noncriminal justice purposes authorized in this compact must be managed so as not to diminish the level of services provided in support of criminal justice purposes. Administration of compact provisions may not reduce the level of service available to authorized noncriminal justice users on the effective date of this compact. [PL 2001, c. 372, §3 (NEW).]

SECTION HISTORY

PL 2001, c. 372, §3 (NEW).

§1705. Authorized criminal history record disclosures

1. Release by FBI to state criminal history record repositories. To the extent authorized by the Privacy Act of 1974, 5 United States Code, Section 552a, the FBI shall provide on request criminal history records, excluding sealed criminal history record information, 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 to ensure that the state statute explicitly authorizes national indices checks. [PL 2001, c. 372, §3 (NEW).]

2. Release by FBI and state criminal history record repositories to other agencies. The FBI, to the extent authorized by the Privacy Act of 1974, 5 United States Code, Section 552a and state criminal history record repositories, shall provide criminal history records, excluding sealed criminal history record information, 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 to ensure that the state statute explicitly authorizes national indices checks. [PL 2001, c. 372, §3 (NEW).]

3. Use for official purposes. Any criminal history record obtained under this compact may be used only for the official purposes for which the criminal history record was requested. Each compact officer shall establish procedures, consistent with this compact and with rules, procedures and standards established by the council under section 1707, that protect the accuracy and privacy of the criminal history records and:

A. Ensure that criminal history records obtained under this compact are used only by authorized officials for authorized purposes; [PL 2001, c. 372, §3 (NEW).]

B. Require that subsequent criminal history record checks are requested to obtain current information whenever a new need arises; and [PL 2001, c. 372, §3 (NEW).]

C. Ensure that criminal history 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. [PL 2001, c. 372, §3 (NEW).]

[PL 2001, c. 372, §3 (NEW).]

SECTION HISTORY

PL 2001, c. 372, §3 (NEW).

§1706. Criminal history record request procedures

1. Positive identification. Subject fingerprints or other approved forms of positive identification must be submitted with all requests for criminal history record checks for noncriminal justice purposes. [PL 2001, c. 372, §3 (NEW).]

2. Interstate request. Each request for a criminal history record check utilizing the national indices made under any approved state statute must be submitted through that state's criminal history record repository. A state criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if the request is transmitted through another state criminal history record repository or the FBI. [PL 2001, c. 372, §3 (NEW).]

3. Federal agency request. Each request for criminal history record checks utilizing the national indices made under federal authority must 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 the request originated. Direct access to the national identification index by entities other than the FBI and state criminal history record repositories may not be permitted for noncriminal justice purposes. [PL 2001, c. 372, §3 (NEW).]

4. Fee. A state criminal history record repository or the FBI:

A. May charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and [PL 2001, c. 372, §3 (NEW).]

B. 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. [PL 2001, c. 372, §3 (NEW).]
[PL 2001, c. 372, §3 (NEW).]

5. Procedure; unable to identify. If a state criminal history record repository can not positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, must be forwarded to the FBI for a search of the national indices. If, with respect to a request forwarded by a state criminal history record repository under subsection 3, 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 [PL 2001, c. 372, §3 (NEW).]

B. The state criminal history record repository is entitled to obtain the additional criminal history record information from the FBI or other state criminal history record repositories. [PL 2001, c. 372, §3 (NEW).]

[PL 2001, c. 372, §3 (NEW).]

SECTION HISTORY

PL 2001, c. 372, §3 (NEW).

§1707. Establishment of compact council

1. Compact council. There is established a compact council that has 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. The council is located for administrative purposes within the FBI and continues in existence as long as this compact remains in effect. The council shall hold its first meeting as soon as practicable after the effective date of this compact.

[PL 2001, c. 372, §3 (NEW).]

2. Membership. The council is comprised of 15 members, each of whom must be appointed by the Attorney General, as follows:

A. Nine members, each of whom shall serve a 2-year term and who must 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 are eligible to serve on an interim basis; [PL 2001, c. 372, §3 (NEW).]

B. Two at-large members, nominated by the Director of the FBI, each of whom shall serve a 3-year term and:

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

(2) One of whom must be a representative of the noncriminal justice agencies of the Federal Government; [PL 2001, c. 372, §3 (NEW).]

C. Two at-large members, nominated by the chair of the council once the chair is elected pursuant to subsection 3, each of whom shall serve a 3-year term and:

(1) One of whom must be a representative of state or local criminal justice agencies; and

(2) One of whom must be a representative of state or local noncriminal justice agencies; [PL 2001, c. 372, §3 (NEW).]

D. One member who serves a 3-year term and who is simultaneously a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board; and [PL 2001, c. 372, §3 (NEW).]

E. One member, nominated by the Director of the FBI, who serves a 3-year term and who is an employee of the FBI. [PL 2001, c. 372, §3 (NEW).]

[PL 2001, c. 372, §3 (NEW).]

3. Chair. From its membership, the council shall elect a chair and a vice-chair, who shall serve as chair in the absence of the chair, of the council. Both the chair and vice-chair of the council:

A. Must be compact officers, unless there is no compact officer on the council who is willing to serve, in which case the chair may be an at-large member; and [PL 2001, c. 372, §3 (NEW).]

B. Serve 2-year terms and may be reelected to only one additional 2-year term. [PL 2001, c. 372, §3 (NEW).]

[PL 2001, c. 372, §3 (NEW).]

4. Meetings. The council shall meet at least once each year at the call of the chair. Each meeting of the council must 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 the meeting. A majority of the council or any committee of the council constitutes a quorum of the council or of a 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.

[PL 2001, c. 372, §3 (NEW).]

5. Rules. 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.

[PL 2001, c. 372, §3 (NEW).]

6. FBI assistance. The council may request from the FBI reports, studies, statistics or other information or materials that 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 assistance or information upon a request.

[PL 2001, c. 372, §3 (NEW).]

7. Committees. The chair may establish committees as necessary to carry out this compact and may prescribe the committees' membership, responsibilities and duration.

[PL 2001, c. 372, §3 (NEW).]

SECTION HISTORY

PL 2001, c. 372, §3 (NEW).

§1708. Ratification of compact

This compact takes effect upon being entered into by 2 or more states as between those states and the Federal Government. When additional states subsequently enter into this compact, it becomes effective among those states and the Federal Government and each party state that has previously ratified the compact. When ratified, this compact has the full force and effect of law within the ratifying jurisdictions. The form of ratification must be in accordance with the laws of the ratifying state. [PL 2001, c. 372, §3 (NEW).]

SECTION HISTORY

PL 2001, c. 372, §3 (NEW).

§1709. Miscellaneous provisions

1. FBI authority. Administration of this compact may 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 the Federal Advisory Committee Act, 5 United States Code, Appx. I, for all purposes other than noncriminal justice.

[PL 2001, c. 372, §3 (NEW).]

2. FBI expenditure of funds. This compact does not require the FBI to obligate or expend funds beyond those appropriated to the FBI.

[PL 2001, c. 372, §3 (NEW).]

3. State authority. This compact does not diminish or lessen the obligations, responsibilities or 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 federal 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 section 1707, regarding the use and dissemination of criminal history records and information.

[PL 2001, c. 372, §3 (NEW).]

SECTION HISTORY

PL 2001, c. 372, §3 (NEW).

§1710. Renunciation

This compact binds each party state until renounced by the party state. Any renunciation of this compact by a party state must: [PL 2001, c. 372, §3 (NEW).]

1. How effected. Be effected in the same manner by which the party state ratified this compact; and

[PL 2001, c. 372, §3 (NEW).]

2. Notice. 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.

[PL 2001, c. 372, §3 (NEW).]

SECTION HISTORY

PL 2001, c. 372, §3 (NEW).

§1711. Adjudication of disputes

1. Dispute resolution. The council:

A. Has initial authority to make determinations with respect to any dispute regarding:

(1) Interpretation of this compact;

(2) Any rule or standard established by the council pursuant to section 1707; and

(3) Any dispute or controversy between any parties to this compact; and [PL 2001, c. 372, §3 (NEW).]

B. Shall hold a hearing concerning any dispute described in paragraph A at a regularly scheduled meeting of the council and only render a decision based upon a majority vote of the members of the council. The decision must be published pursuant to the requirements of section 1707, subsection 5. [PL 2001, c. 372, §3 (NEW).]

[PL 2001, c. 372, §3 (NEW).]

2. III system. 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 criminal history records and prevent abuses until the council holds a hearing on the disputes pursuant to subsection 1.

[PL 2001, c. 372, §3 (NEW).]

3. Appeal process. The FBI or a party state may appeal any decision of the council to the Attorney General and after that appeal may file suit in the appropriate district court of the United States that has original jurisdiction of all cases or controversies arising under this compact. Any suit arising under this compact and initiated in a state court must be removed to the appropriate district court of the United States in the manner provided in 28 United States Code, Section 1446 or other statutory authority.

[PL 2001, c. 372, §3 (NEW).]

SECTION HISTORY

PL 2001, c. 372, §3 (NEW).

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