

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1024
Senate Judiciary I Committee Substitute Adopted 5/20/03

Short Title: Criminal History Record Checks.

(Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT ADOPTING THE NATIONAL CRIME PREVENTION AND PRIVACY
COMPACT FOR NORTH CAROLINA.

The General Assembly of North Carolina enacts:

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

(1) Designating G.S. 114-12 through G.S. 114-19 as:

"Part 1. General Powers and Duties of the State Bureau of Investigation.";

(2) Designating G.S. 114-19.1 through G.S. 114-19.11 as:

"Part 2. Criminal History Record Checks.";

(3) Designating G.S. 114-20 through G.S. 114-21 as:

"Part 3. Protection of Public Officials.";

(4) Recodifying G.S. 114-21 as G.S. 114-12.1.

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

"§ 114-19.50. The National Crime Prevention and Privacy Compact.

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

Preamble.

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

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

Whereas, the compact provides for the organization of an electronic
information-sharing system among the federal government and the states to exchange

1 criminal history records for noncriminal justice purposes authorized by federal or state
2 law, such as background checks for governmental licensing and employment; and

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

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

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

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

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

17 Article I.

18 Definitions.

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

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

21 (2) "Compact officer" means:

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

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

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

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

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

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

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

1 subjects' names or other nonunique identification characteristics or
2 numbers, or combinations thereof, does not constitute positive
3 identification.

4 (20) "Sealed record information" means:

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

6 1. Not available for criminal justice uses;

7 2. Not supported by fingerprints or other accepted means of
8 positive identification; or

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

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

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

18 Article II.

19 Purposes.

20 The purposes of this compact are to:

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

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

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

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

40 (5) Require the FBI and each party state to adhere to III system standards
41 concerning record dissemination and use, response times, system
42 security, data quality, and other duly established standards, including
43 those that enhance the accuracy and privacy of such records.

44 Article III.

Responsibilities of Compact Parties.

- 1
- 2 (a) The director of the FBI shall:
- 3 (1) Appoint an FBI compact officer who shall:
- 4 a. Administer this compact within the Department of Justice and
- 5 among federal agencies and other agencies and organizations
- 6 that submit search requests to the FBI pursuant to Article V(c);
- 7 b. Ensure that compact provisions and rules, procedures, and
- 8 standards prescribed by the council under Article VI are
- 9 complied with by the Department of Justice and federal
- 10 agencies and other agencies and organizations referred to in
- 11 sub-subdivision (a)(1)a. of this Article III; and
- 12 c. Regulate the use of records received by means of the III system
- 13 from party states when such records are supplied by the FBI
- 14 directly to other federal agencies;
- 15 (2) Provide to federal agencies and to state criminal history record
- 16 repositories criminal history records maintained in its database for the
- 17 noncriminal justice purposes described in Article IV, including:
- 18 a. Information from nonparty states; and
- 19 b. Information from party states that is available from the FBI
- 20 through the III system but is not available from the party states
- 21 through the III system;
- 22 (3) Provide a telecommunications network and maintain centralized
- 23 facilities for the exchange of criminal history records for both criminal
- 24 justice purposes and the noncriminal justice purposes described in
- 25 Article IV and ensure that the exchange of records for criminal justice
- 26 purposes has priority over exchange for noncriminal justice purposes;
- 27 and
- 28 (4) Modify or enter into user agreements with nonparty state criminal
- 29 history record repositories to require them to establish record request
- 30 procedures conforming to those prescribed in Article V.
- 31 (b) Each party state shall:
- 32 (1) Appoint a compact officer who shall:
- 33 a. Administer this compact within that state;
- 34 b. Ensure that compact provisions and rules, procedures, and
- 35 standards established by the council under Article VI are
- 36 complied with in the state; and
- 37 c. Regulate the in-state use of records received by means of the III
- 38 system from the FBI or from other party states;
- 39 (2) Establish and maintain a criminal history record repository, which
- 40 shall provide:
- 41 a. Information and records for the national identification index
- 42 and the national fingerprint file; and
- 43 b. The state's III system-indexed criminal history records for
- 44 noncriminal justice purposes described in Article IV;

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

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

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

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

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

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

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

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

33 a. The FBI shall so advise the state criminal history record
34 repository; and

35 b. The state criminal history record repository is entitled to obtain
36 the additional criminal history record information from the FBI
37 or other state criminal history record repositories.

38 Article VI.

39 Establishment of Compact Council.

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

44 (1) Continue in existence as long as this compact remains in effect;

- 1 (2) Be located, for administrative purposes, within the FBI; and
2 (3) Be organized and hold its first meeting as soon as practicable after the
3 effective date of this compact.
- 4 (b) The council must be composed of 15 members, each of whom must be
5 appointed by the Attorney General, as follows:
- 6 (1) Nine members, each of whom shall serve a two-year term, who must
7 be selected from among the compact officers of party states based on
8 the recommendation of the compact officers of all party states, except
9 that in the absence of the requisite number of compact officers
10 available to serve, the chief administrators of the criminal history
11 record repositories of nonparty states must be eligible to serve on an
12 interim basis;
- 13 (2) Two at-large members, nominated by the director of the FBI, each of
14 whom shall serve a three-year term, of whom:
- 15 a. One must be a representative of the criminal justice agencies of
16 the federal government and may not be an employee of the FBI;
17 and
- 18 b. One must be a representative of the noncriminal justice
19 agencies of the federal government;
- 20 (3) Two at-large members, nominated by the chair of the council once the
21 chair is elected pursuant to subsection (c)(3) of this Article VI, each of
22 whom shall serve a three-year term, of whom:
- 23 a. One must be a representative of state or local criminal justice
24 agencies; and
- 25 b. One must be a representative of state or local noncriminal
26 justice agencies;
- 27 (4) One member who shall serve a three-year term and who shall
28 simultaneously be a member of the FBI's advisory policy board on
29 criminal justice information services, nominated by the membership of
30 that policy board; and
- 31 (5) One member, nominated by the director of the FBI, who shall serve a
32 three-year term and who must be an employee of the FBI.
- 33 (c) From its membership, the council shall elect a chair and a vice-chair of the
34 council. Both the chair and vice-chair of the council: (i) must be a compact officer,
35 unless there is no compact officer on the council who is willing to serve, in which case
36 the chair may be an at-large member and (ii) shall serve two-year terms and may be
37 reelected to only one additional two-year term. The vice-chair of the council shall serve
38 as the chair of the council in the absence of the chair.
- 39 (d) The council shall meet at least once each year at the call of the chair. Each
40 meeting of the council must be open to the public. The council shall provide prior public
41 notice in the federal register of each meeting of the council, including the matters to be
42 addressed at the meeting. A majority of the council or any committee of the council
43 shall constitute a quorum of the council or of a committee, respectively, for the conduct

1 of business. A lesser number may meet to hold hearings, take testimony, or conduct any
2 business not requiring a vote.

3 (e) The council shall make available for public inspection and copying at the
4 council office within the FBI and shall publish in the federal register any rules,
5 procedures, or standards established by the council.

6 (f) The council may request from the FBI reports, studies, statistics, or other
7 information or materials that the council determines to be necessary to enable the
8 council to perform its duties under this compact. The FBI, to the extent authorized by
9 law, may provide assistance or information upon a request.

10 (g) The chair may establish committees as necessary to carry out this compact
11 and may prescribe their membership, responsibilities, and duration.

12 Article VII.

13 Ratification of Compact.

14 This compact takes effect upon being entered into by two or more states as between
15 those states and the federal government. When additional states subsequently enter into
16 this compact, it becomes effective among those states and the federal government and
17 each party state that has previously ratified it. When ratified, this compact has the full
18 force and effect of law within the ratifying jurisdictions. The form of ratification must
19 be in accordance with the laws of the executing state.

20 Article VIII.

21 Miscellaneous Provisions.

22 (a) Administration of this compact may not interfere with the management and
23 control of the director of the FBI over the FBI's collection and dissemination of criminal
24 history records and the advisory function of the FBI's advisory policy board chartered
25 under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than
26 noncriminal justice.

27 (b) Nothing in this compact may require the FBI to obligate or expend funds
28 beyond those appropriated to the FBI.

29 (c) Nothing in this compact may diminish or lessen the obligations,
30 responsibilities, and authorities of any state, whether a party state or a nonparty state, or
31 of any criminal history record repository or other subdivision or component thereof
32 under the Departments of State, Justice, and Commerce, the Judiciary, and Related
33 Agencies Appropriation Act, 1973 (Public Law 92-544) or regulations and guidelines
34 promulgated thereunder, including the rules and procedures promulgated by the council
35 under Article VI(a), regarding the use and dissemination of criminal history records and
36 information.

37 Article IX.

38 Renunciation.

39 (a) This compact shall bind each party state until renounced by the party state.

40 (b) Any renunciation of this compact by a party state must:

41 (1) Be effected in the same manner by which the party state ratified this
42 compact; and

1 (2) Any rules or procedures to be adopted to implement the Compact.

2 (3) Any provisions of the General Statutes that must be repealed or
3 amended to conform to the Compact.

4 **SECTION 4.** Part 2 of Article 4 of Chapter 114, as amended by Section 1 of
5 this act, is amended by adding a new section to read:

6 **"§ 114-19.12. Criminal record checks for municipalities.**

7 The Department of Justice may provide to a city from the State and National
8 Repositories of Criminal Histories the criminal history of any person who applies for
9 employment with the city. The city shall provide to the Department of Justice, along
10 with the request, the fingerprints of the applicant, a form signed by the applicant
11 consenting to the criminal record check and use of fingerprints and other identifying
12 information required by the State and National Repositories, and any additional
13 information required by the Department of Justice. The applicant's fingerprints shall be
14 forwarded to the State Bureau of Investigation for a search of the State's criminal
15 history record file, and the State Bureau of Investigation shall forward a set of
16 fingerprints to the Federal Bureau of Investigation for a national criminal history record
17 check. The city shall keep all information obtained pursuant to this section confidential.
18 The Department of Justice may charge a fee to offset the cost incurred by it to conduct a
19 criminal record check under this section. The fee shall not exceed the actual cost of
20 locating, editing, researching, and retrieving the information."

21 **SECTION 5.** Part 4 of Article 7 of Chapter 160A is amended by adding a
22 new section to read:

23 **"§ 160A-164.1. Criminal history record check of employees permitted.**

24 The council may adopt or provide for rules and regulations or ordinances concerning
25 a requirement that any applicant for employment be subject to a criminal history record
26 check of State and National Repositories of Criminal Histories conducted by the
27 Department of Justice in accordance with G.S. 114-19.12. The city may consider the
28 results of these criminal history record checks in its hiring decisions."

29 **SECTION 6.** This act is effective when it becomes law.