

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2003**

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**HOUSE BILL 1024**

Short Title: Criminal History Record Checks. (Public)

Sponsors: Representatives Goodwin; Farmer-Butterfield, Goforth, Jones, and Parmon.

Referred to: Judiciary II.

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:

**§ 114-19.20. 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           (3) Participate in the national fingerprint file; and
- 2           (4) Provide and maintain telecommunications links and related equipment
- 3           necessary to support the criminal justice services set forth in this
- 4           compact.

5       (c) In carrying out their responsibilities under this compact, the FBI and each  
 6 party state shall comply with III system rules, procedures, and standards duly  
 7 established by the council concerning record dissemination and use, response times,  
 8 data quality, system security, accuracy, privacy protection, and other aspects of III  
 9 system operation.

10       (d) Use of the III system for noncriminal justice purposes authorized in this  
 11 compact must be managed so as not to diminish the level of services provided in  
 12 support of criminal justice purposes. Administration of compact provisions may not  
 13 reduce the level of service available to authorized noncriminal justice users on the  
 14 effective date of this compact.

15    Article IV.

16    Authorized Record Disclosures.

17       (a) To the extent authorized by section 552a of Title 5, United States Code  
 18 (commonly known as the Privacy Act of 1974), the FBI shall provide on request  
 19 criminal history records, excluding sealed record information, to state criminal history  
 20 record repositories for noncriminal justice purposes allowed by federal statute, federal  
 21 executive order, or a state statute that has been approved by the Attorney General to  
 22 ensure that the state statute explicitly authorizes national indices checks.

23       (b) The FBI, to the extent authorized by section 552a of Title 5, United States  
 24 Code (commonly known as the Privacy Act of 1974), and state criminal history record  
 25 repositories shall provide criminal history records, excluding sealed record information,  
 26 to criminal justice agencies and other governmental or nongovernmental agencies for  
 27 noncriminal justice purposes allowed by federal statute, federal executive order, or a  
 28 state statute that has been approved by the Attorney General to ensure that the state  
 29 statute explicitly authorizes national indices checks.

30       (c) Any record obtained under this compact may be used only for the official  
 31 purposes for which the record was requested. Each compact officer shall establish  
 32 procedures consistent with this compact and with rules, procedures, and standards  
 33 established by the council under Article VI, which procedures shall protect the accuracy  
 34 and privacy of the records and shall:

- 35           (1) Ensure that records obtained under this compact are used only by
- 36           authorized officials for authorized purposes;
- 37           (2) Require that subsequent record checks are requested to obtain current
- 38           information whenever a new need arises; and
- 39           (3) Ensure that record entries that may not legally be used for a particular
- 40           noncriminal justice purpose are deleted from the response and, if no
- 41           information authorized for release remains, an appropriate "no record"
- 42           response is communicated to the requesting official.

43    Article V.

44    Record Request Procedures.

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.

#### Article VI.

##### 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)   Become effective 180 days after written notice of renunciation is  
2           provided by the party state to each other party state and to the federal  
3           government.

4                       Article X.  
5                       Severability.

6       The provisions of this compact must be severable. If any phrase, clause, sentence, or  
7       provision of this compact is declared to be contrary to the constitution of any  
8       participating state or to the Constitution of the United States or if the applicability of  
9       any phrase, clause, sentence, or provision of this compact to any government, agency,  
10      person, or circumstance is held invalid, the validity of the remainder of this compact and  
11      the applicability of the remainder of the compact to any government, agency, person, or  
12      circumstance may not be affected by the severability. If a portion of this compact is held  
13      contrary to the constitution of any party state, all other portions of this compact must  
14      remain in full force and effect as to the remaining party states and in full force and  
15      effect as to the party state affected, as to all other provisions.

16                       Article XI.  
17                       Adjudication of Disputes.

18       (a)   The council:

19           (1)   Has initial authority to make determinations with respect to any  
20           dispute regarding:

- 21           a.    Interpretation of this compact;
- 22           b.    Any rule or standard established by the council pursuant to  
23               Article VI; and
- 24           c.    Any dispute or controversy between any parties to this compact;  
25               and

26           (2)   Shall hold a hearing concerning any dispute described in subdivision  
27           (a)(1) of this Article XI at a regularly scheduled meeting of the council  
28           and only render a decision based upon a majority vote of the members  
29           of the council. The decision must be published pursuant to the  
30           requirements of Article VI(e).

31       (b)   The FBI shall exercise immediate and necessary action to preserve the  
32       integrity of the III system, to maintain system policy and standards, to protect the  
33       accuracy and privacy of records, and to prevent abuses until the council holds a hearing  
34       on the matters.

35       (c)   The FBI or a party state may appeal any decision of the council to the  
36       Attorney General and after that appeal may file suit in the appropriate district court of  
37       the United States that has original jurisdiction of all cases or controversies arising under  
38       this compact. Any suit arising under this compact and initiated in a state court must be  
39       removed to the appropriate district court of the United States in the manner provided by  
40       section 1446 of Title 28, United States Code, or other statutory authority."

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

43           (1)   The compact officer to be appointed pursuant to Article III of the  
44               National Crime Prevention and Privacy Compact.

- 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.** This act is effective when it becomes law.