

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 120 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES COGHILL, McGuire

Amended: 4/23/01

Introduced: 3/14/01

A BILL

FOR AN ACT ENTITLED

1 **"An Act adopting the National Crime Prevention and Privacy Compact; making**
2 **criminal justice information available to interested persons and criminal history record**
3 **information available to the public; making certain conforming amendments; and**
4 **providing for an effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 12.62.160(b) is amended to read:

7 (b) Subject to the requirements of this section, and except as otherwise limited
8 or prohibited by other provision of law or court rule, criminal justice information
9 [MAY BE RELEASED BY A CRIMINAL JUSTICE AGENCY AS FOLLOWS:]

10 (1) [AN ASSESSMENT OR SUMMARY OF CRIMINAL JUSTICE
11 INFORMATION] may be provided to a person when, and only to the extent,
12 necessary to avoid imminent danger to life or extensive damage to property;

13 (2) [CRIMINAL JUSTICE INFORMATION] may be provided to a
14 person to the extent required by applicable court rules or under an order of a court of

1 this state, another state, or the United States;

2 (3) [CRIMINAL JUSTICE INFORMATION] may be provided to a
3 person if the information is commonly or traditionally provided by criminal justice
4 agencies in order to identify, locate, or apprehend fugitives or wanted persons or to
5 recover stolen property, or for public reporting of recent arrests, charges, and other
6 criminal justice activity;

7 (4) [CRIMINAL JUSTICE INFORMATION] may be provided to a
8 criminal justice agency for a criminal justice activity;

9 (5) [CRIMINAL JUSTICE INFORMATION] may be provided to a
10 government agency when [TO THE EXTENT] necessary for enforcement of or for a
11 purpose specifically authorized by state or federal law;

12 (6) [CRIMINAL JUSTICE INFORMATION] may be provided to a
13 person specifically authorized by a state or federal law to receive that [SUCH]
14 information;

15 (7) [CRIMINAL JUSTICE INFORMATION] in aggregate form may
16 be released to a qualified person, as determined by the agency, for criminal justice
17 research, subject to written conditions that assure the security of the information and
18 the privacy of individuals to whom the information relates;

19 (8) [CURRENT OFFENDER INFORMATION] may be provided to a
20 person for any purpose, except that information may not be released if the [RELEASE
21 OF THE] information is nonconviction information or correctional treatment
22 information [WOULD UNREASONABLY COMPROMISE THE PRIVACY OF A
23 MINOR OR VULNERABLE ADULT];

24 (9) PAST CONVICTION INFORMATION MAY BE PROVIDED
25 TO A PERSON FOR ANY PURPOSE IF LESS THAN 10 YEARS HAS ELAPSED
26 FROM THE DATE OF UNCONDITIONAL DISCHARGE TO THE DATE OF THE
27 REQUEST];

28 (9) including [(10) PAST CONVICTION] information relating to a
29 serious offense, may be provided to an interested person if the information is
30 requested for the purpose of determining whether to grant a person supervisory or
31 disciplinary power over a minor or dependent adult; and

1 **(10)** [(11) CRIMINAL JUSTICE INFORMATION] may be provided
 2 to the person who is the subject of the information.

3 * **Sec. 2.** AS 12.62.900(23) is amended to read:

4 (23) "serious offense" means a conviction for a violation or for an
 5 attempt, solicitation, or conspiracy to commit a violation of any of the following laws,
 6 or of the laws of another jurisdiction with substantially similar elements:

7 (A) a felony offense;

8 (B) a crime involving domestic violence;

9 (C) AS 11.41.410 - 11.41.470;

10 (D) AS 11.51.130 **or 11.51.200 - 11.56.210;**

11 (E) AS 11.61.110(a)(7) or 11.61.125;

12 (F) AS 11.66.100 - 11.66.130;

13 (G) former AS 11.15.120, former 11.15.134, or assault with the
 14 intent to commit rape under former AS 11.15.160; or

15 (H) former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 -
 16 11.40.420, if committed before January 1, 1980;

17 * **Sec. 3.** AS 12 is amended by adding a new chapter to read:

18 **Chapter 64. National Crime Prevention and Privacy Compact.**

19 **Sec. 12.64.010. Compact enacted.** The National Crime Prevention and
 20 Privacy Compact as contained in this section is enacted into law and entered into on
 21 behalf of the State of Alaska with any other states legally joining in it in a form
 22 substantially as follows:

23 The contracting parties agree to the following:

24 OVERVIEW

25 (a) In general. This Compact organizes an electronic information sharing
 26 system among the federal government and the states to exchange criminal history
 27 records for noncriminal justice purposes authorized by federal or state law, such as
 28 background checks for governmental licensing and employment.

29 (b) Obligations of parties. Under this Compact, the FBI and the party states
 30 agree to maintain detailed databases of their respective criminal history records,
 31 including arrests and dispositions, and to make them available to the federal

1 government and to party states for authorized purposes. The FBI shall also manage
 2 the federal data facilities that provide a significant part of the infrastructure for the
 3 system.

4 ARTICLE I. DEFINITIONS

5 In this Compact, unless the context clearly requires otherwise:

6 (1) "attorney general" means the attorney general of the United States;

7 (2) "Compact officer" means

8 (A) with respect to the federal government, an official so
 9 designated by the director of the FBI; and

10 (B) with respect to a party state, the chief administrator of the
 11 state's criminal history record repository or a designee of the chief
 12 administrator who is a regular full-time employee of the repository;

13 (3) "council" means the Compact Council established under Article

14 VI;

15 (4) "criminal history records"

16 (A) means information collected by criminal justice agencies
 17 on individuals consisting of identifiable descriptions and notations of arrests,
 18 detentions, indictments, or other formal criminal charges, and any disposition
 19 arising therefrom, including acquittal, sentencing, correctional supervision, or
 20 release; and

21 (B) does not include identification information such as
 22 fingerprint records if such information does not indicate involvement of the
 23 individual with the criminal justice system;

24 (5) "criminal history record repository" means the state agency
 25 designated by the governor or other appropriate executive official or the legislature of
 26 a state to perform centralized record keeping functions for criminal history records and
 27 services in the state;

28 (6) "criminal justice" includes activities relating to the detection,
 29 apprehension, detention, pretrial release, post-trial release, prosecution, adjudication,
 30 correctional supervision, or rehabilitation of accused persons or criminal offenders; the
 31 administration of criminal justice includes criminal identification activities and the

1 collection, storage, and dissemination of criminal history records;

2 (7) "criminal justice agency" means

3 (A) courts;

4 (B) a governmental agency or any subunit thereof that

5 (i) performs the administration of criminal justice
6 pursuant to a statute or executive order; and

7 (ii) allocates a substantial part of its annual budget to
8 the administration of criminal justice; and

9 (C) federal and state inspectors general offices;

10 (8) "criminal justice services" means services provided by the FBI to
11 criminal justice agencies in response to a request for information about a particular
12 individual or as an update to information previously provided for criminal justice
13 purposes;

14 (9) "criterion offense" means any felony or misdemeanor offense not
15 included on the list of nonserious offenses published periodically by the FBI;

16 (10) "direct access" means access to the National Identification Index
17 by computer terminal or other automated means not requiring the assistance of or
18 intervention by any other party or agency;

19 (11) "executive order" means an order of the President of the United
20 States or the chief executive officer of a state that has the force of law and that is
21 promulgated in accordance with applicable law;

22 (12) "FBI" means the Federal Bureau of Investigation;

23 (13) "Interstate Identification Index System" or "III System"

24 (A) means the cooperative federal-state system for the
25 exchange of criminal history records;

26 (B) includes the National Identification Index, the National
27 Fingerprint File, and to the extent of their participation in such system, the
28 criminal history record repositories of the states and the FBI;

29 (14) "National Fingerprint File" means a database of fingerprints, or
30 other uniquely personal identifying information, relating to an arrested or charged
31 individual maintained by the FBI to provide positive identification of record subjects

1 indexed in the III System;

2 (15) "National Identification Index" means an index maintained by the
3 FBI consisting of names, identifying numbers, and other descriptive information
4 relating to record subjects about whom there are criminal history records in the III
5 System;

6 (16) "national indices" means the National Identification Index and the
7 National Fingerprint File;

8 (17) "nonparty state" means a state that has not ratified this Compact;

9 (18) "noncriminal justice purposes" means uses of criminal history
10 records for purposes authorized by federal or state law other than purposes relating to
11 criminal justice activities, including employment suitability, licensing determinations,
12 immigration and naturalization matters, and national security clearances;

13 (19) "party state" means a state that has ratified this Compact;

14 (20) "positive identification" means a determination, based upon a
15 comparison of fingerprints or other equally reliable biometric identification
16 techniques, that the subject of a record search is the same person as the subject of a
17 criminal history record or records indexed in the III System; identifications based
18 solely upon a comparison of subjects' names or other nonunique identification
19 characteristics or numbers, or combinations thereof, shall not constitute positive
20 identification;

21 (21) "sealed record information" means

22 (A) with respect to adults, that portion of a record that is

23 (i) not available for criminal justice uses;

24 (ii) not supported by fingerprints or other accepted
25 means of positive identification; or

26 (iii) subject to restrictions on dissemination for
27 noncriminal justice purposes pursuant to a court order related to a
28 particular subject or pursuant to a federal or state statute that requires
29 action on a sealing petition filed by a particular record subject; and

30 (B) with respect to juveniles, whatever each state determines is
31 a sealed record under its own law and procedure;

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

ARTICLE II. PURPOSES

The purposes of this Compact are to

(1) 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;

(2) require the FBI to permit use of the National Identification Index and the National Fingerprint File 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 under Article VI;

(3) require party states to provide information and records for the National Identification Index and the National Fingerprint File 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 under Article VI;

(4) provide for the establishment of a council to monitor the 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

(5) require the FBI and each party state to adhere to III System standards concerning 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 records.

ARTICLE III. RESPONSIBILITIES OF COMPACT PARTIES

(a) FBI responsibilities. The director of the FBI shall

(1) appoint an FBI Compact officer who shall

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

(B) ensure that Compact provisions and rules, procedures, and standards prescribed by the council under Article VI are complied with by the Department of Justice and the federal agencies and other agencies and organizations referred to in Article III(1)(A); and

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

(2) 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 Article IV, including

(A) information from nonparty states; and

(B) 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;

(3) 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 Article IV, and ensure that the exchange of such records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

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

(b) State responsibilities. Each party state shall

(1) appoint a Compact officer who shall

(A) administer this Compact within that state;

(B) ensure that Compact provisions and rules, procedures, and standards established by the council under Article VI are complied with in the state; and

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

(2) establish and maintain a criminal history record repository, which

1 shall provide

2 (A) information and records for the National Identification
3 Index and the National Fingerprint File; and

4 (B) the state's III System-indexed criminal history records for
5 noncriminal justice purposes described in Article IV;

6 (3) participate in the National Fingerprint File; and

7 (4) provide and maintain telecommunications links and related
8 equipment necessary to support the services set forth in this Compact.

9 (c) Compliance with III System standards. In carrying out their
10 responsibilities under this Compact, the FBI and each party state shall comply with III
11 System rules, procedures, and standards duly established by the council concerning
12 record dissemination and use, response times, data quality, system security, accuracy,
13 privacy protection, and other aspects of III System operation.

14 (d) Maintenance of record services.

15 (1) Use of the III System for noncriminal justice purposes authorized
16 in this Compact shall be managed so as not to diminish the level of services provided
17 in support of criminal justice purposes.

18 (2) Administration of Compact provisions shall not reduce the level of
19 service available to authorized noncriminal justice users on the effective date of this
20 Compact.

21 ARTICLE IV. AUTHORIZED RECORD DISCLOSURES

22 (a) State criminal history record repositories. To the extent authorized by
23 section 552a of title 5, United States Code (commonly known as the "Privacy Act of
24 1974"), the FBI shall provide on request criminal history records (excluding sealed
25 records) to state criminal history record repositories for noncriminal justice purposes
26 allowed by federal statute, federal executive order, or a state statute that has been
27 approved by the attorney general and that authorizes national indices checks.

28 (b) Criminal justice agencies and other governmental or nongovernmental
29 agencies. The FBI, to the extent authorized by section 552a of title 5, United States
30 Code (commonly known as the "Privacy Act of 1974"), and state criminal history
31 record repositories shall provide criminal history records (excluding sealed records) to

1 criminal justice agencies and other governmental or nongovernmental agencies for
 2 noncriminal justice purposes allowed by federal statute, federal executive order, or a
 3 state statute that has been approved by the attorney general, that authorizes national
 4 indices checks.

5 (c) Procedures. Any record obtained under this Compact may be used only for
 6 the official purposes for which the record was requested. Each Compact officer shall
 7 establish procedures, consistent with this Compact, and with rules, procedures, and
 8 standards established by the council under Article VI, which procedures shall protect
 9 the accuracy and privacy of the records, and shall

10 (1) ensure that records obtained under this Compact are used only by
 11 authorized officials for authorized purposes;

12 (2) require that subsequent record checks are requested to obtain
 13 current information whenever a new need arises; and

14 (3) ensure that record entries that may not legally be used for a
 15 particular noncriminal justice purpose are deleted from the response and, if no
 16 information authorized for release remains, an appropriate "no record" response is
 17 communicated to the requesting official.

18 ARTICLE V. RECORD REQUEST PROCEDURES

19 (a) Positive identification. Subject fingerprints or other approved forms of
 20 positive identification shall be submitted with all requests for criminal history record
 21 checks for noncriminal justice purposes.

22 (b) Submission of state requests. Each request for a criminal history record
 23 check utilizing the national indices made under any approved state statute shall be
 24 submitted through that state's criminal history record repository. A state criminal
 25 history record repository shall process an interstate request for noncriminal justice
 26 purposes through the national indices only if such request is transmitted through
 27 another state criminal history record repository or the FBI.

28 (c) Submission of federal requests. Each request for criminal history record
 29 checks utilizing the national indices made under federal authority shall be submitted
 30 through the FBI or, if the state criminal history record repository consents to process
 31 fingerprint submissions, through the criminal history record repository in the state in

1 which such request originated. Direct access to the National Identification Index by
 2 entities other than the FBI and state criminal history records repositories shall not be
 3 permitted for noncriminal justice purposes.

4 (d) Fees. A state criminal history record repository or the FBI

5 (1) may charge a fee, in accordance with applicable law, for handling a
 6 request involving fingerprint processing for noncriminal justice purposes; and

7 (2) may not charge a fee for providing criminal history records in
 8 response to an electronic request for a record that does not involve a request to process
 9 fingerprints.

10 (e) Additional search.

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

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

18 (A) the FBI shall so advise the state criminal history record
 19 repository; and

20 (B) the state criminal history record repository shall be entitled
 21 to obtain the additional criminal history record information from the FBI or
 22 other state criminal history record repositories.

23 ARTICLE VI. ESTABLISHMENT OF A COMPACT COUNCIL

24 (a) Establishment.

25 (1) In general. There is established a council to be known as the
 26 "Compact Council," which shall have the authority to promulgate rules and procedures
 27 governing the use of the III System for noncriminal justice purposes, not to conflict
 28 with FBI administration of the III System for criminal justice purposes.

29 (2) Organization. The council shall

30 (A) continue in existence as long as this Compact remains in
 31 effect;

1 (B) be located, for administrative purposes, within the FBI; and

2 (C) be organized and hold its first meeting as soon as
3 practicable after the effective date of this Compact.

4 (b) Membership. The council shall be composed of 15 members, each of
5 whom shall be appointed by the attorney general, as follows:

6 (1) nine members, each of whom shall serve a two-year term, who
7 shall be selected from among the Compact officers of party states based on the
8 recommendation of the Compact officers of all party states, except that, in the absence
9 of the requisite number of Compact officers available to serve, the chief administrators
10 of the criminal history record repositories of nonparty states shall be eligible to serve
11 on an interim basis;

12 (2) two at-large members, nominated by the director of the FBI, each
13 of whom shall serve a three-year term, of whom

14 (A) one shall be a representative of the criminal justice
15 agencies of the federal government and may not be an employee of the FBI;
16 and

17 (B) one shall be a representative of the noncriminal justice
18 agencies of the federal government;

19 (3) two at-large members, nominated by the chair of the council, once
20 the chair is elected pursuant to Article VI(c), each of whom shall serve a three-year
21 term, of whom

22 (A) one shall be a representative of state or local criminal
23 justice agencies; and

24 (B) one shall be a representative of state or local noncriminal
25 justice agencies;

26 (4) one member, who shall serve a three-year term, and who shall
27 simultaneously be a member of the FBI's advisory policy board on criminal justice
28 information services, nominated by the membership of that policy board;

29 (5) one member, nominated by the director of the FBI, who shall serve
30 a three-year term, and who shall be an employee of the FBI.

31 (c) Chair and vice chair.

1 (1) In general. From its membership, the council shall elect a chair
2 and a vice chair of the council, respectively. Both the chair and vice chair of the
3 council

4 (A) shall be a Compact officer, unless there is no Compact
5 officer on the council who is willing to serve, in which case the chair may be
6 an at-large member; and

7 (B) shall serve a two-year term and be reelected to only one
8 additional two-year term.

9 (2) Duties of the vice chair. The vice chair of the council shall serve as
10 the chair of the council in the absence of the chair.

11 (d) Meetings.

12 (1) In general. The council shall meet at least once a year at the call of
13 the chair. Each meeting of the council shall be open to the public. The council shall
14 provide prior public notice in the Federal Register of each meeting of the council,
15 including the matters to be addressed at such meeting.

16 (2) Quorum. A majority of the council or any committee of the
17 council shall constitute a quorum of the council or of such committee, respectively, for
18 the conduct of business. A lesser number may meet to hold hearings, take testimony,
19 or conduct any business not requiring a vote.

20 (e) Rules, procedures, and standards. The council shall make available for
21 public inspection and copying at the council office within the FBI, and shall publish in
22 the Federal Register, any rules, procedures, or standards established by the council.

23 (f) Assistance from FBI. The council may request from the FBI such reports,
24 studies, statistics, or other information or materials as the council determines to be
25 necessary to enable the council to perform its duties under this Compact. The FBI, to
26 the extent authorized by law, may provide such assistance or information upon such a
27 request.

28 (g) Committees. The chair may establish committees as necessary to carry out
29 this Compact and may prescribe their membership, responsibilities, and duration.

30 ARTICLE VII. RATIFICATION OF COMPACT

31 This Compact shall take effect upon being entered into by two or more states as

1 between those states and the federal government. Upon subsequent entering into this
 2 Compact by additional states, it shall become effective among those states and the
 3 federal government and each party state that has previously ratified it. When ratified,
 4 this Compact shall have the full force and effect of law within the ratifying
 5 jurisdictions. The form of ratification shall be in accordance with the laws of the
 6 executing state.

7 ARTICLE VIII. MISCELLANEOUS PROVISIONS

8 (a) Relation of Compact to certain FBI activities. Administration of this
 9 Compact shall not interfere with the management and control of the director of the
 10 FBI over the FBI's collection and dissemination of criminal history records and the
 11 advisory function of the FBI's advisory policy board chartered under the Federal
 12 Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal
 13 justice.

14 (b) No authority for nonappropriated expenditures. Nothing in this Compact
 15 shall require the FBI to obligate or expend funds beyond those appropriated to the
 16 FBI.

17 (c) Relating to Public Law 92-544. Nothing in this Compact shall diminish or
 18 lessen the obligations, responsibilities, and authorities of any state, whether a party
 19 state or a nonparty state, or of any criminal history record repository or other
 20 subdivision or component thereof, under the Departments of State, Justice, and
 21 Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law
 22 92-544) or regulations and guidelines promulgated thereunder, including the rules and
 23 procedures promulgated by the council under Article VI(a), regarding the use and
 24 dissemination of criminal history records and information.

25 ARTICLE IX. RENUNCIATION

26 (a) In general. This Compact shall bind each party state until renounced by
 27 the party state.

28 (b) Effect. Any renunciation of this Compact by a party state shall

29 (1) be effected in the same manner by which the party state ratified this
 30 Compact; and

31 (2) 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.

ARTICLE X. SEVERABILITY

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

ARTICLE XI. ADJUDICATION OF DISPUTES

(a) In general. The council shall

(1) have initial authority to make determinations with respect to any dispute regarding

(A) interpretation of this Compact;

(B) any rule or standard established by the council pursuant to Article V; and

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

(2) hold a hearing concerning any dispute described in paragraph (1) at a regularly scheduled meeting of the council and only render a decision based upon a majority vote of the members of the council. Such decision shall be published pursuant to the requirements of Article VI(e).

(b) Duties of the FBI. 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 records, and to prevent abuses, until the council holds a hearing on such matters.

(c) Right of appeal. The FBI or a party state may appeal any decision of the council to the attorney general, and thereafter may file suit in the appropriate district

1 court of the United States, which shall have original jurisdiction of all cases or
2 controversies arising under this Compact. Any suit arising under this Compact and
3 initiated in a state court shall be removed to the appropriated district court of the
4 United States in the manner provided by section 1446 of title 28, United States Code,
5 or other statutory authority.

6 * **Sec. 4.** AS 12.62.900(24) is repealed.

7 * **Sec. 5.** This Act takes effect September 1, 2001.