

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 86/2

10426 HOUSE STATE AFFAIRS

**HB 120 Sectional Analysis - Appendix 2**  
**Examples of Misdemeanors Excluded from Definition of "Serious Offense" (AS 12.62.90J)**

Offenses most potentially relevant are shown in boldface type.)

AS46.03.755	Fail to Report Haz Substance Discharge	M	A
AS46.03.790(a)(1)	Violate Environmental Statutes/Regs	M	A
AS46.03.790(a)(2)	DEC-Provide False Info/Fail Provide Info	M	A
AS46.03.790(a)(3)	False Haz Waste Applic, Report	M	A
AS46.03.790(a)(4)	False Air Quality Applic, Report	M	A
AS46.03.790(a)(5)	Tamper w/ Monitoring Device	M	A
AS46.03.790(d)(2)	Oil Discharge <10,000 Barrels	M	A
AS46.03.800	Create/Maintain Water Nuisance	M	A
AS46.03.810	Air or Land Nuisance	M	A
AS46.03.830	Haz Waste - Fail to Prove Fin. Resp.	M	A
AS46.09.010	Fail to Report Haz Substance Discharge	M	A
AS46.09.020	Haz Substance Cleanup/Containment	M	A
AS46.14.010-990	Air Quality Violation	M	A
AS46.15.180	Prohibited Water Appropriation	M	A
AS46.17.150	Water Dam Violation	M	A
AS46.30.120	Illegal Water Supply/Wastewater System	M	A
AS47.10.092	Disclosure of Confidential Juvenile Info	M	N
AS47.10.093	Disclosure of Agency Juvenile Records	M	B
AS47.17.020	Persons Req To Report Child Abuse	M	B
AS47.17.023	Film Processors Report Child Pornography	M	B
AS47.17.027	School Offic. Disclose Confid. Info	M	B
AS47.17.040	Disclose Confid. Child Abuse Record	M	B
AS47.25.290	Violate Public Assistance Laws	M	A
AS47.25.985	Misuse of Food Stamps	M	N
AS47.30.972	Mental Health Care - fraud	M	A

**STATE OF ALASKA  
DEPARTMENT OF PUBLIC SAFETY**

**REQUEST TO SEAL CRIMINAL JUSTICE INFORMATION**

SEND TO:  
RECORDS AND IDENTIFICATION BUREAU CHIEF  
5700 E. TUDOR ROAD ♦ ANCHORAGE, AK 99507

**INSTRUCTIONS.** Read the entire application packet before filling it out. You must provide all required information and attachments. Use extra pages if necessary. Incomplete forms will be returned to you indicating what additional information is required. You may also attach other documents or evidence, beyond what is required in this application, that support your request.

**PART I** includes the Alaska statute (AS 12.62.180) and regulation (13 AAC 68.205) that address sealing of criminal justice information. The Commissioner of Public Safety cannot seal criminal records from other states or the federal government, only records that originated in this state.

**PART II** requires you to give information about yourself and the criminal charges/court case. The information you provide will be used to identify your records in the Alaska Public Safety Information Network (APSIN) and the records of police, prosecution, court, or other criminal justice agencies involved in your case.

**PART III** requires you to explain the circumstances of the charge/case. Your explanation must show that, beyond a reasonable doubt, the criminal charge(s) resulted from **mistaken identity** or a **false accusation**.

**PART IV** requires documentation from criminal justice agencies involved with your case to verify your version of events. Depending upon the circumstances of your case, you must provide

1. evidence that the charge was dismissed or you were acquitted because the charge resulted from mistaken identity or false accusation,

OR

2. if you were convicted, evidence that the conviction has been overturned by a court or you have been pardoned by the Governor because the charge resulted from mistaken identity or false accusation.

**PART V** will be completed by the Records and Identification Bureau. The Bureau may contact you for additional information, including a request for a full set of fingerprints if necessary to process your request.

**PART VI** will be completed by the Commissioner of Public Safety. The application packet will be returned to you showing the Commissioner's decision.

**PART I: ALASKA STATUTES/REGULATIONS.**

**AS 12.62.180. SEALING OF CRIMINAL JUSTICE INFORMATION.** (a) Under this section, a criminal justice agency may seal only the information that the agency is responsible for maintaining.

(b) A person may submit a written request to the head of the agency responsible for maintaining past conviction or current offender information, **asking the agency to seal such information about the person that, beyond a reasonable doubt, resulted from mistaken identity or false accusation.** The decision of the head of the agency is the final administrative decision on the request.

(c) The person requesting that the information be sealed may appeal an adverse decision of the agency to the court under applicable rules of procedure for appealing the decision of an administrative agency. The appellant bears the burden on appeal of showing that the agency decision was clearly mistaken. An appeal filed under this subsection may not collaterally attack a court judgment or a decision by prison, probation, or parole authorities, or any other action that is or could have been subject to appeal, post-conviction relief, or other administrative remedy.

(d) A person about whom information is sealed under this section may deny the existence of the information and of an arrest, charge, conviction, or sentence shown in the information. Information that is sealed under this section may be provided to another person or agency only

- (1) for record management purposes, including auditing;
- (2) for criminal justice employment purposes;
- (3) for review by the subject of the record;
- (4) for research and statistical purposes;
- (5) when necessary to prevent imminent harm to a person; or
- (6) for a use authorized by statute or court order

**13 AAC 68.205. SEALING CRIMINAL JUSTICE INFORMATION.** When information maintained by the repository is sealed under AS 12.62.180, the repository shall enter a notation in the record stating that the information has been sealed by order of the commissioner or by an identified court after appeal under AS 12.62.180(c), and the date of the order. (Eff. 1/10/97, Register 140)

**PART II: PERSON AND CASE INFORMATION.** Please fill out ALL items; do not write in the  check boxes. If an item does not apply to you or your case, write "N/A". Use additional sheets if necessary. Incomplete/illegible forms will be returned with  checked boxes indicating the missing information needed.

<input type="checkbox"/>	FULL NAME (Last)	(First)	(Middle)	(Suffix)	
<input type="checkbox"/>	FORMER/OTHER NAMES/ALIASES (Last)	(First)	(Middle)	(Suffix)	
<input type="checkbox"/>	MAILING ADDRESS	<input type="checkbox"/>	PHONE NUMBER(S)		
		<input type="checkbox"/>	SOCIAL SECURITY #		
<input type="checkbox"/>	DATE OF BIRTH	<input type="checkbox"/>	ALASKA DRIVER'S LICENSE # OR STATE ID #		
<input type="checkbox"/>	ARREST TRACKING NUMBER	<input type="checkbox"/>	DATE OF ARREST	<input type="checkbox"/>	DATE OF OFFENSE
<input type="checkbox"/>	POLICE AGENCY CASE #	<input type="checkbox"/>	NAME OF ARRESTING AGENCY	<input type="checkbox"/>	NAME OF ARRESTING OFFICER
<input type="checkbox"/>	PROSECUTION CASE #	<input type="checkbox"/>	NAME OF PROSECUTING AGENCY	<input type="checkbox"/>	NAME OF PROSECUTOR
<input type="checkbox"/>	TRIAL COURT CASE #	<input type="checkbox"/>	NAME OF TRIAL COURT		
<input type="checkbox"/>	APPELLATE COURT CASE #:	<input type="checkbox"/>	NAME OF APPELLATE COURT		
<input type="checkbox"/>	CHARGE(S): STATUTE/ORDINANCE # (E.G., "AS 11.46.120")	<input type="checkbox"/>	NAME OF OFFENSE(S) (E.G., "THEFT IN 1 <sup>ST</sup> DEGREE")		
<input type="checkbox"/>	DATE CHARGE DISMISSED	<input type="checkbox"/>	AGENCY THAT DISMISSED		
<input type="checkbox"/>	DATE ACQUITTED	<input type="checkbox"/>	DATE CONVICTED (SENTENCING DATE)		
<input type="checkbox"/>	DATE CONVICTION REVERSED OR VACATED	<input type="checkbox"/>	DATE PARDONED		



**PART III. EXPLANATION OF MISTAKEN IDENTITY OR FALSE ACCUSATION.** *Please explain the circumstances leading to the charge(s) you wish sealed. Your statement must show that, beyond a reasonable doubt, the charge(s) resulted from mistaken identity or false accusation. If the charges resulted from mistaken identity, provide the name and descriptive information about the person for whom you were mistaken, if known. If the charge(s) resulted from false accusation, include the name and descriptive information about the person who made the false accusation, if known. Use additional sheets if needed.*

[Empty rectangular box for providing the explanation of mistaken identity or false accusation.]

**PART IV. VERIFICATION/DOCUMENTATION.** *You must obtain the required statement(s) and signature(s) and attach the required documents for all of the circumstances that apply to your case. You may also attach any other reports, statements, or documents that support your request.*

**IF YOU WERE ARRESTED OR ISSUED A CITATION** for the charge(s) you wish sealed, you must have the arresting/citing officer (or the officer's superior) complete and sign this section.

I am the officer who arrested or cited the applicant, or the arresting/citing officer's superior. I have read this application.  I AGREE  I DO NOT AGREE that, beyond a reasonable doubt, the charge(s) in question resulted from mistaken identity or false accusation. **COMMENTS:**

NAME/TITLE (PRINTED)		SIGNATURE	
AGENCY	PHONE NUMBER	DATE	

**IF THE CHARGE(S) WERE REFERRED TO A PROSECUTOR,** you must have the prosecutor (or the prosecutor's superior) complete and sign this section.

I am the prosecutor to whom the charges in question were referred, or the prosecutor's superior. I have read this application.  I AGREE  I DO NOT AGREE that, beyond a reasonable doubt, the charge(s) in question resulted from mistaken identity or false accusation. **COMMENTS:**

NAME/TITLE (PRINTED)		SIGNATURE	
AGENCY	PHONE NUMBER	DATE	

**IF THE CHARGE(S) WERE DISMISSED OR YOU WERE ACQUITTED OR FOUND NOT GUILTY:** You must attach a court order or judgment showing dismissal, acquittal, or a finding of not guilty.

**IF YOU WERE CONVICTED OF THE CHARGE(S):** You must attach either (1) a court judgment or order overturning the conviction OR (2) a Governor's Pardon.



**PART V. TO BE COMPLETED BY DPS RECORDS AND ID BUREAU**

APSIN #	FBI #
<input type="checkbox"/> Person demographic information is accurate and complete <input type="checkbox"/> Offense/Case information is accurate and complete <input type="checkbox"/> Fingerprints on file for record subject <input type="checkbox"/> Fingerprints on file for charge(s) in question <input type="checkbox"/> State and national criminal history records attached <input type="checkbox"/> Arresting/citing agency information verified, or <input type="checkbox"/> N/A <input type="checkbox"/> Prosecution agency information verified, or <input type="checkbox"/> N/A <input type="checkbox"/> Dismissal/Acquittal information verified, or <input type="checkbox"/> N/A <input type="checkbox"/> Appellate reversal attached and verified & no further appeals pending, or <input type="checkbox"/> N/A <input type="checkbox"/> Governor's Pardon attached and verified, or <input type="checkbox"/> N/A	
I RECOMMEND THE REQUEST FOR SEALING BE <input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED. COMMENTS:	
SIGNATURE OF RECORDS AND ID BUREAU CHIEF	DATE

**PART VI: TO BE COMPLETED BY THE COMMISSIONER OF PUBLIC SAFETY**

<input type="checkbox"/>	THE REQUEST IS APPROVED. I order the information maintained in the Alaska Public Safety Information Network (APSIN) concerning the charge(s) shown in this application to be sealed.
<input type="checkbox"/>	THE REQUEST IS DENIED.
COMMENTS:	
SIGNATURE	DATE

**Distribution:**

- |  |                          |       |
|--|--------------------------|-------|
| <input checked="" type="checkbox"/> DPS Commissioner | <input type="checkbox"/> | _____ |
| <input checked="" type="checkbox"/> DPS R&I Bureau   | <input type="checkbox"/> | _____ |
| <input checked="" type="checkbox"/> Record Subject   | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> Arrest Agency: _____        | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> Prosecutor: _____           | <input type="checkbox"/> | _____ |

**REPRESENTATIVE JOHN COGHILL**

**ALASKA STATE LEGISLATURE**

**STATE CAPITOL, ROOM 416**

**JUNEAU, AK 99801**

**(907)-465-3719**

**FAX # (907)-465-3258**

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**FACSIMILE TRANSMITTAL SHEET**

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TO:	FROM:
Sgt. Chuck Kopp	Rynniva Moss
COMPANY:	DATE:
Kenai Police Department	03/09/01
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
907-283-2267	20
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE:	YOUR REFERENCE NUMBER:
Inquiries for information	

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URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

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NOTES/COMMENTS:

Sgt. Kopp,

For your review and comment.

Thank you,



# ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:  
119 N. Cushman, Suite 211  
Fairbanks, AK 99701  
(907)-456-5081  
Fax# (907)-456-8245



Session Contact:  
(907)-465-3719  
FAX# (907)-465-3258  
State Capitol  
Room 416

## REPRESENTATIVE JOHN COGHILL

Date: March 7, 2001  
To: Jerry Luckhaupt, Leg Legal  
From: Rynnieva Moss, Legislative Aide *Rymoss*  
Re: HB 120 Sponsor Substitute 22-LS0460A

---

Representative Coghill would like a sponsor substitute for HB 120 With the following changes:

Sec. 1, AS 04.06.095 is deleted.

Sec. 3 becomes Sec. 1 and is, rather than a new chapter, is a new section of AS 12.62 as Sec. 12.62.115 National Crime Prevention and Privacy Compact enacted.

Sec. 2 is amended to read:

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

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

(2) [CRIMINAL JUSTICE INFORMATION] may be provided to a person to the extent required by applicable court rules or under an order of a court of this state, another state, or the United States;

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

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

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

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

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

(8) except for nonconviction information and correctinal treatment information [CURRENT OFFENDER INFORMATION MAY BE PROVIDED TO A PERSON FOR ANY PURPOSE, EXCEPT THAT INFORMATION MAY NOT BE RELEASED IF THE RELEASE OF THE INFORMATION WOULD UNREASONABLY COMPROMISE THE PRIVACY OF A MINOR OR VULNERABLE ADULT;

(9) PAST CONVICTION INFORMATION] may be provided to a person for any purpose [IF LESS THAN 10 YEARS HAS ELAPSED FROM THE DATE OF UNCONDITIONAL DISCHARGE TO THE DATE OF THE REQUEST;]

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

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

**Sec. 4 – 14 are deleted and replaced with:**

**Sec. 3.** AS 12.62.900(24) is repealed.

**Sec. 4.** This Act takes effect September 1, 2001.

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

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

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

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

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

(8) except for nonconviction information and correctinal treatment information [CURRENT OFFENDER INFORMATION MAY BE PROVIDED TO A PERSON FOR ANY PURPOSE, EXCEPT THAT INFORMATION MAY NOT BE RELEASED IF THE RELEASE OF THE INFORMATION WOULD UNREASONABLY COMPROMISE THE PRIVACY OF A MINOR OR VULNERABLE ADULT;]

(9) [PAST CONVICTION INFORMATION] may be provided to a person for any purpose [IF LESS THAN 10 YEARS HAS ELAPSED FROM THE DATE OF UNCONDITIONAL DISCHARGE TO THE DATE OF THE REQUEST;]

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

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

**Sec. 4 – 14 are deleted and replaced with:**

**Sec. 3.** AS 12.62.900(24) is repealed.

**Sec. 4.** This Act takes effect September 1, 2001.

**Subject:** [Fwd: Rep. Coghill (III bill)]

**Date:** Fri, 09 Feb 2001 10:11:09 -0900

**From:** royce\_weller <royce\_weller@dps.state.ak.us>

**Organization:** Department of Public Safety

**To:** Rynnieva W Moss <Rynnieva\_Moss@legis.state.ak.us>

Rynnieva:

Below is an e-mail which I hope addresses a concern your boss raised yesterday. Please let me know if you need anything else.

Royce

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**Subject: Rc: Rep. Coghill (III bill)**

**Date:** Fri, 09 Feb 2001 09:47:08 -0900

**From:** Ken <kenneth\_bischoff@dps.state.ak.us>

**Organization:** Department of Public Safety

**To:** royce\_weller <royce\_weller@dps.state.ak.us>

**CC:** DIANE SCHENKER <Diane\_Schenker@dps.state.ak.us>

Royce,

Please refer the Representative to

Compact Section 212 - Congressional Findings

(1) Congress finds that both the Federal Bureau of Investigation and State criminal history record repositories maintain fingerprint based criminal history records;

Compact Article V-Record Request Procedures - (a) Positive Identification - Subject fingerprints or other approved forms of identification shall be submitted with all requests for criminal history record checks for non criminal justice purposes;

Compact Article V (e) Additional Search - If a State criminal history record repository cannot positively identify the subject of a record request made for non criminal justice purposes, the request, together with fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices;

Article I Definitions (20) Positive Identification - The term "positive identification" means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a 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 non unique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

The federal sectional analysis relating to the compact definitions (20) Positive Identification goes on to state - This term refers in brief, to association of a person with his or her criminal history record through a comparison of fingerprints or other equally reliable biometric identification techniques. Such techniques eliminate or substantially reduce the risks of associating a person with someone else's record or failing to find a record of a person who uses a false name. At present, the method of establishing positive identification in use in criminal justice agencies throughout the United States is based upon comparison of

fingerprint patterns, which are essentially unique and unchanging and thus provide a highly reliable basis for identification...

royce\_weller wrote:

> Ken,  
>  
> Randy & I met with Coghill this morning on AST items. During the  
> conversation he mentioned the bill being introduced soon. He also  
> commented on the need to know that all shared data was "fingerprint"  
> based. He said he didn't read that anywhere but thought that was the  
> case.  
>  
> He needs to be reassured of this fact (specifically where the  
> federal/state law requires such).

--  
Kenneth Bischoff  
Director, Administrative Services  
Department of Public Safety  
P.O. Box 111200  
Juneau, Alaska 99811-1200

Phone: (907) 465-4336  
Fax: (907) 586-2762  
EMAIL: kenneth\_bischoff@dps.state.ak.us

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Kenneth Bischoff < <a href="mailto:kenneth_bischoff@dps.state.ak.us">kenneth_bischoff@dps.state.ak.us</a> > Director, Division of Administrative Services Department of Public Safety
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**DPS 2001 PROPOSAL TO ADOPT NCPP**

**“An Act adopting the National Crime Prevention and Privacy Compact; making criminal justice information available to interested persons and criminal history record information available to the authorized persons; repealing the definition of ‘unconditional discharge’ in AS 12.62; and providing for an effective date.”**

**\*Section 1.** AS 12.62 is amended by adding a new section to read:

**Sec. 12.62.115. National Crime Prevention and Privacy Compact.** The National Crime Prevention and Privacy Compact, as contained in 42 U.S.C. 14616, is enacted into law and entered into on behalf of the State of Alaska with any other states legally joining it.

**\*Sec. 2.** AS 12.62.160(b) is amended to read:

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

(1) [AN ASSESSMENT OR SUMMARY OF CRIMINAL JUSTICE INFORMATION] may be provided to a person when [, AND ONLY TO THE EXTENT,] necessary to avoid imminent danger to life or extensive damage to property;

(2) [CRIMINAL JUSTICE INFORMATION] may be provided to a person as [TO THE EXTENT] required by applicable court rules or under an order of a court of this state, another state, or the United States;

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

**DPS 2001 PROPOSAL TO ADOPT NCPP**

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

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

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

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

(8) except for nonconviction information and correctional treatment information. [CURRENT OFFENDER INFORMATION MAY BE PROVIDED TO A PERSON FOR ANY PURPOSE, EXCEPT THAT INFORMATION MAY NOT BE RELEASED IF THE RELEASE OF THE INFORMATION WOULD UNREASONABLY COMPROMISE THE PRIVACY OF A MINOR OR VULNERABLE ADULT;

(9) PAST CONVICTION INFORMATION] may be provided to a person for any purpose [IF LESS THAN 10 YEARS HAS ELAPSED FROM THE DATE OF UNCONDITIONAL DISCHARGE TO THE DATE OF THE REQUEST;]

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

**DPS 2001 PROPOSAL TO ADOPT RCPP**

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

**\*Sec. 3.** AS 12.62.900(24) is repealed.

**\*Sec. 4.** This Act takes effect September 1, 2001.

**Law Log 01-0056**  
**National Crime Prevention and Privacy Compact and**  
**Criminal Justice Information**

**Sectional Analysis**

**Section 1 adopts the National Crime Prevention and Privacy Compact by reference.** The Compact provides the legal framework necessary for states to exchange criminal history records directly with one another for noncriminal justice licensing and employment purposes. Today, states rely on duplicate records maintained by the FBI for such checks. However, whether by policy or oversight, states typically do not submit copies of all their records to the FBI. Therefore, states can get more complete, accurate records from one another under the Compact than they can get from the FBI.

Major provisions of the Compact include the following:

- It binds the FBI and ratifying states to use the Interstate Identification Index (III) to exchange criminal records for authorized noncriminal justice purposes according to established system policies. (III is the automated index/pointer system currently used by the FBI and states to exchange criminal records for criminal justice purposes.)
- Users will be the same as those currently authorized to obtain records from the FBI. To be authorized, a user must be permitted to obtain national criminal records for a noncriminal justice purpose under a federal or state statute approved by the U.S. Attorney General.
- Background checks will continue to be based on fingerprints to ensure positive identification.
- The receiving state's criminal justice information statutes govern how the information may be used and disseminated. If Alaska adopts the Compact, its state repository will be required to screen and disseminate records received through III according to Alaska's own criminal justice laws (Alaska Statute 12.62).
- The Compact establishes a council of state and federal officials to set operating policies for noncriminal justice uses of the III system.

Since Congress enacted it in 1998, eight states have adopted the Compact: Montana, Georgia, Nevada, Florida, Colorado, Iowa, Connecticut, and South Carolina.

Appendix 1 provides the full text of the Compact, including a detailed sectional analysis.

Law Log 01-0056. National Crime Prevention and Privacy Compact/Criminal Justice Information  
Sectional Analysis (12/11/00)  
Page 2 of 3

**Section 2 amends the state's criminal justice dissemination laws.** This section simplifies standards for determining the contents of criminal history records. The changes enhance repository efficiency and compliance and ensure that authorized record users receive all potentially relevant information.

AS 12.62.160(b)(8) and (b)(9) currently authorize release of "current offender" and "past conviction" information to any person who submits a subject's fingerprints to the repository. The bill combines these into a single paragraph. By rewording the paragraph to authorize release of criminal justice information except nonconviction information, the newly worded paragraph allows release of criminal identification information so that a rap sheet can contain a mugshot.

The reworded paragraph also removes language hiding convictions unless the report is within ten years of unconditional discharge. Alaska's repository is unable to comply with this standard because few criminal history records contain enough data to calculate the unconditional discharge date. Even if records were enhanced to include such data in the future, the repository would be unable to compute the date retroactively for half a million or more existing convictions. Nor would Alaska's repository be able to apply such a filter to convictions from other states under the Compact. Furthermore, recent changes in law have made this limitation moot in many cases. The sex offender registration act, for example, allows release of conviction information for 15 years beyond the unconditional discharge date for one-time offenders, and for the lifetime of repeat offenders. Even Alaska's state employment application requires applicants to divulge information about convictions beyond this time limit.

AS 12.62.160(b)(10) is renumbered as (b)(9) and amended to provide more information to "interested persons" responsible for screening applicants to supervise children or vulnerable adults.<sup>1</sup>

The current law limits such "interested person" reports to convictions only. This section allows the report to include nonconviction information, such as a finding of "not guilty by reason of insanity". It would also allow release of records requiring additional research to determine conviction or nonconviction status. Alaska's computerized criminal records contain nearly 100,000 charges over two years old without dispositions. The record requester is in the best position to determine which records merit further research and, if appropriate, to get more information from the record subject who is applying for a position or license. By contrast, if the report is limited to convictions only, the repository must omit a charge that may have resulted in a conviction that is simply missing from repository records. Alternatively, the repository must conduct time-consuming research on each charge that is missing a disposition, regardless of relevancy to the record requester.

<sup>1</sup> Under AS 12.62.900: "Interested person" means a person as defined in AS 01.10.060 that employs, appoints, or permits a person to serve with or without compensation in a position in which the employed, appointed, or permitted person has or would have supervisory or disciplinary power over a minor or dependent adult; "Dependent adult" means an adult with a physical or mental disability who requires assistance or supervision with the activities of daily living

Law Log 01-0056. National Crime Prevention and Privacy Compact/Criminal Justice Information  
Sectional Analysis (12/11/00)  
Page 3 of 3

This section expands the "interested person" report to include information about all criminal offenses, not just those listed in a statutory definition of "serious offenses." The definition omits such potentially relevant misdemeanors as: *Endangering the Welfare of a Minor*, *Endangering a Vulnerable Adult*, *Failure to Report a Crime Against a Child*, *Harassment*, and *Recruiting a Gang Member*. Appendix 2 provides a list of other misdemeanors excluded from the definition of "serious offense".

The lead-in sentence in AS 12.62.160(b) is simplified by removing redundant wording. It is unnecessary to limit dissemination authority to criminal justice agencies because AS 12.62.160(c)(1) states that criminal justice information may be released only by the agency that maintains it.

Unnecessary language (such as "to the extent necessary") is removed throughout AS 12.62.160 because each paragraph already specifies the circumstances under which information may be released, and to whom.

The phrase "criminal justice information" is deleted from each paragraph's lead-in because it is included in the lead-in for the entire subsection.

**Section 3 repeals the definition of "unconditional discharge".** Changes in Section 2 eliminate use of the term in this chapter.

**Section 4 makes the Act effective September 1, 2001.** The delayed effective date allows time for the Department of Public Safety to modify software and procedures to use IIR for authorized noncriminal justice purposes. The department will also need to amend regulations governing criminal record dissemination. Both tasks will be accomplished with existing resources.

Feb. 21, 2001

Honorable Rep. John Coghill, Jr.  
House Special Committee on Fisheries  
Alaska Legislature  
Juneau, Alaska

Dear Representative,

This is your bill for your 2001 subscription to Laws for the SEA at the committee subscription rate. Thank you for your business and your support.

Sincerely,



Bob Tkacz,  
writer, editor, publisher  
Laws for the SEA

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## Journal Text



04-10-2000

House Journal

2970

HB 292

with the:

Journal Page

STA RPT 1DP 4NR	2566
ZERO FISCAL NOTE (DPS) 1/21/00	2566
JUD RPT CS(JUD) NT 1DP 4NR	2940
ZERO FISCAL NOTE (DPS) 1/21/00	2941

Representative Green moved and asked unanimous consent that the following committee substitute be adopted in lieu of the original bill:

CS FOR HOUSE BILL NO. 292(JUD)

"An Act adopting the National Crime Prevention and Privacy Compact; making criminal justice information available to interested persons and criminal history record information available to the public; providing for the use of criminal justice information and records by the Alcoholic Beverage Control Board; making certain conforming amendments; and providing for an effective date."

There being no objection, it was so ordered.

Representative Green moved and asked unanimous consent that CSHB 292(JUD) be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

CSHB 292(JUD) was read the third time.

The question being: "Shall CSHB 292(JUD) pass the House?" The roll was taken with the following result:

CSHB 292(JUD)  
Third Reading  
Final Passage

YEAS: 37    NAYS: 1    EXCUSED: 2    ABSENT: 0

Yeas: Austerman, Barnes, Berkowitz, Brice, Bunde, Cissna, Coghill, Cowdery, Croft, Davies, Davis, Dyson, Foster, Green, Grussendorf, Halcro, Harris, Hudson, James, Kapsner, Kemplen, Kerttula, Kohring, Kott, Masek, Morgan, Moses, Mulder, Murkowski, Phillips, Porter, Rokeberg, Sanders, Smalley, Therriault, Whitaker, Williams

04-10-2000

House Journal

2971

HB 292

Nays: Ogan

Excused: Joule, Kookesh

And so, CSHB 292(JUD) passed the House.

Representative Green moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

CSHB 292(JUD) was referred to the Chief Clerk for engrossment.

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

Feb. 21, 2001

Honorable Rep. John Coghill, Jr.  
House Special Committee on Fisheries  
Alaska Legislature  
Juneau, Alaska

Dear Representative,

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## Journal Text



04-10-2000

House Journal

2970

HB 292

with the:

Journal Page

STA RPT 1DP 4NR	2566
ZERO FISCAL NOTE (DPS) 1/21/00	2566
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There being no objection, it was so ordered.

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CSHB 292(JUD) was read the third time.

The question being: "Shall CSHB 292(JUD) pass the House?" The roll was taken with the following result:

CSHB 292(JUD)  
Third Reading  
Final Passage

YEAS: 37 NAYS: 1 EXCUSED: 2 ABSENT: 0

Yeas: Austerman, Barnes, Berkowitz, Brice, Bunde, Cissna, Coghill, Cowdery, Croft, Davies, Davis, Dyson, Foster, Green, Grussendorf, Halcro, Harris, Hulson, James, Kapsner, Kemplen, Kerttula, Kohring, Kott, Masek, Morgan, Moses, Mulder, Murkowski, Phillips, Porter, Rokeberg, Sanders, Smalley, Therriault, Whitaker, Williams

04-10-2000

House Journal

2971

HB 292

Nays: Ogan

Excused: Joule, Kookesh

And so, CSHB 292(JUD) passed the House.

Representative Green moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

CSHB 292(JUD) was referred to the Chief Clerk for engrossment.

Bill Root: \_\_\_\_\_

Display Bill Root

BASIS HAS BEEN RE-PROGRAMMED THIS YEAR  
TO REPORT PROBLEMS WITH BASIS INQUIRY

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## House STATE AFFAIRS Minute



### HB 292-DISCLOSURE OF CRIMINAL HISTORY RECORDS

Number 1716

CHAIR JAMES announced the next order of business is HOUSE BILL NO. 292, "An Act adopting the National Crime Prevention and Privacy Compact; making criminal justice information available to interested persons and criminal history record information available to the public; making certain conforming amendments; and providing for an effective date."

KEN BISCHOFF, Director, Division of Administrative Services, Department of Public Safety, said he was speaking for HB 292 to provide some background. Like many state legislatures, he added, the Alaska legislature over the years has seen fit to try to address sensitive employment and licensing by authorizing background checks for the protection of children in occupations such as school bus drivers, school teachers, working in day care centers, and for the protection of dependent adults. He noted that in Alaska statute the primary statute that governs state law regarding the release of criminal history record information is AS 12.62.

MR. BISCHOFF explained that there are two parts to doing criminal history checks: one is the state level and the second is a national check. What HB 292 proposes to do, he added, is have Alaska adopt a national compact which all of the 50 states in the near future are planning to adopt to facilitate the exchange of national criminal history record checks for these purposes. He commented that the department currently does about 20,000 checks of this nature every year so [background checks] is fairly significant business. With adoption of the compact he envisioned that the department will also get some workload related to other states just as those states will get some of Alaska's queries, therefore, it is a reciprocal exchange and agreement. He mentioned that it is a standard way of doing business nationally and will provide for much more complete national criminal history checks because there is a significant percentage of state level information that does not reside at the national level. He cited Oregon as an example since 40 percent of their criminal records are not indexed at the national level and this compact would allow Alaska to get access to those additional records.

MR. BISCHOFF indicated that the Federal Bureau of Investigation (FBI) has a rule of thumb that approximately one in five criminals has a record in more than one state. He informed the committee that there are 55 million criminal records nationally and this compact, once adopted by the country, will link all 50 state criminal history record repositories and the FBI repository. He urged the committee's support for HB 292.

Number 1560

CHAIR JAMES inquired as to the status of the other states in joining the compact.

MR. BISCHOFF replied that as of January [2000] Montana, Nevada, Georgia, and Florida had ratified the compact. He noted that half

a dozen states are introducing legislation this year and a larger number of states are slated to introduce legislation in 2001. He explained that he has personally been involved in this national compact issue since about 1988 and it has been in the works being developed jointly with the FBI and various criminal justice information groups across the country since the mid '70s. Finally, he added, Congress passed the Crime Identification Technology Act a couple of years ago and now some states are positioning themselves to adopt this national compact.

Number 1490

CHAIR JAMES inquired as to what cooperation Alaska has with Canada.

MR. BISCHOFF replied that this compact will not affect criminal record checks for civil purposes but the department does have access to the Canadian police information system for law enforcement or criminal justice purposes and the department exchanges motor vehicle, stolen property, missing persons, and wanted person information.

REPRESENTATIVE GREEN inquired as to how much return for the money will the Department of Public Safety realize by joining the national compact and how does the national compact differ from the parole compact currently being negotiated.

Number 1411

MR. BISCHOFF answered he is not familiar with the parole compact but the title indicates to him that it deals with criminal justice while HB 292 speaks to a civil purpose, therefore, the two are not comparable. The Department of Public Safety is trying to provide access to criminal history records for regulatory agencies and employers authorized by statute in order to screen employees and license applicants.

MR. BISCHOFF said that the department had submitted a zero fiscal note with HB 292. He added that already a fair amount of preparatory work has been done in regard to HB 292 and in the long run cost to the agency will be a "wash." He noted that preliminary work has been necessary because nationally the criminal records data base is being de-centralized. He explained that when the department receives a first-time arrest the department submits a fingerprint card to the FBI then the FBI runs a search in their system and a federal identification number will be established. He commented that the Interstate Identification Index (III), the system referred to by HB 292, will show the federal identification number and Alaska's identification number for that person. Consequently, he added, if that person goes to Florida and commits a crime, the same process will repeat but a fingerprint card only has to be submitted once because the person's identification is in the III system. He mentioned that anyone who queries the III system will know there is a record in Alaska and Florida on that person, therefore, some work will be saved resulting in a tradeoff [of effort expended] and the benefit will be more complete, timely information.

Number 1297

REPRESENTATIVE GREEN indicated he disagreed with Mr. Bischoff that there is no comparison between the parole compact and the III system because in both cases they are compacts for information from other states. He emphasized that whether a parolee is civil or criminal there is information to be gained by belonging to a compact but other states are not supporting the compact. He

inquired as to what kind of information the state is providing for a prospective employer that is not already available through the FBI. He remarked that it seems to him that if the information was important, the FBI would already have it.

MR. BISCHOFF acknowledged that since the early '60s the FBI did believe in keeping important information in a national database. However, he added, the problem that evolved over time was one of workload and of human nature. He reminded the committee that before the electronic age, and the electronic age is still in migration, people who were arrested went to a booking facility and were fingerprinted. He added that two or three sets of fingerprints were required; one for the state system, one for the national system and one for the local arresting police department. He recognized that human beings being what they are, there were quality assurance problems, sometimes the second and third set of cards did not get created, and the best set of cards that came into the state repository were retained at the state level and often not forwarded to the FBI. As a consequence, he observed, the national repository is not complete and the example he cited is that of Oregon. He stated that before Oregon joined the III system, almost half of their records had not been indexed at the national level. Further, he reiterated, five million California DWI records are not indexed and would be available only through a III system query to California so if the goal of HB 292 is to have a regulatory agency or employer make an informed decision, they need complete information as provided by HB 292.

Number 1089

REPRESENTATIVE GREEN said it sounded like Alaska would provide all its information but Oregon and California have only half of their information available, thus, Alaska is not getting quid pro quo.

MR. BISCHOFF answered that is exactly why the department wants to join the compact because it will allow the department to search Washington, Oregon, Virginia, and other state databases, which ability the department does not currently have.

CHAIR JAMES asked how the department searches databases.

MR. BISCHOFF replied that the department must be a member of the compact to search other state databases for civil purposes and the department is hoping that the majority of states sign on to the compact because it is very important.

Number 1026

REPRESENTATIVE SMALLEY noticed that certification of teachers is on the list of queries that could be made to the III system. He inquired as to the cost of joining the compact and would there be additional licensure fee increases as a result of these costs.

MR. BISCHOFF answered that the department has submitted a zero fiscal note with HB 292 because there would be no immediate change in cost and once implemented it would be a break in terms of future cost increase.

REPRESENTATIVE SMALLEY stated that he has been a certificated teacher for many years in the state and when fingerprinting was required teacher certification fees increased as a result of background checks. He asked if Mr. Bischoff was suggesting that later on there could be an additional increase as a result of cost.

Number 937

MR. BISCHOFF replied no, not as a result of implementing HB 292 because once a majority of the states are signed on to the national compact, it will allow the nation to process [background] requests in an electronic fashion. Currently, he added, the department is required to do applicant searches for teacher certification which entails preparing fingerprint cards, sending the cards by mail, tracking the cards, and waiting four to eight weeks for turnaround [results]. He stated the FBI is upgrading their computer systems and the department is upgrading their computer systems and two years ago the legislature had provided operating funding for the state to join the Western Identification Network. He added that the department is in the process of completing that upgrade now which will allow the department to electronically send fingerprints to the FBI which in itself will be labor saving. He noted that future cost increases down the road depends on how the law changes but information system improvements should dampen the need for cost increases.

Number 805

REPRESENTATIVE SMALLEY commented that there is a great deal of difference between an arrest and a conviction. He mentioned the book 1984 and said he saw this fear of "big brother" out there.

MR. BISCHOFF replied that the key to managing ["big brother" fear] and the individual's right to privacy, which is embodied both in statute and the Constitution at both the state and national levels, is carefully considered by the compact. He said that people have the right to privacy but what does the Division of Family and Youth Services do if a person has four arrests and no conviction. He noted that the way to guard against the [DFYS] scenario is to establish a body of laws which the legislature passes giving the [DFYS] division access to private information. He explained that the [DFYS] division should only use the information for the purpose intended and not disseminate it for any other reason. He commented that the [DFYS] division has to adopt their own statutes or regulations that govern that use. He stated that he believes information control should be governed through regulatory agencies in order to make sure that violations or inappropriate release of information does not happen and if it does, there is a penalty. He reiterated that his department operates under AS 12.62 and there are penalties for inappropriate release.

Number 615

REPRESENTATIVE KERTTULA asked if the FBI currently tracks acquittals or accusations.

MR. BISCHOFF answered that the FBI gets whatever the department provides to them. For example, he added, when the department receives an arrest from the Anchorage Police Department (APD), the APD enters that information through their system which comes to the Department of Public Safety's system. Hopefully, he commented, the arrested person is taken to a booking facility where fingerprint cards are taken. Next, he added, the fingerprint cards are sent to his department so that the department can confirm the identity of that individual and update the criminal subsystem for the booking portion. He said, assuming all that information is complete, then an electronic message is sent to the FBI to update their national system and if the person is a first-timer, a fingerprint card is sent to the FBI also. Then later, he noted, going through the judicial process, the department receives court judgments in hard copy form which are entered into the [state electronic] system and

on to the FBI to update their records.

Number 495

REPRESENTATIVE KERTTULA inquired as to mere accusations. She directed attention to page 4, section 6, lines 13-17 because it looks like the department would receive, under the compact, reports and accusations and she was wondering if that broadens HB 292.

MR. BISCHOFF replied that section 6 was a definition to describe what determines criminal justice actions.

REPRESENTATIVE KERTTULA asked if this is information that the department would receive.

MR. BISCHOFF replied in the affirmative.

REPRESENTATIVE KERTTULA then asked if the department could receive information about accusations.

Number 382

MR. BISCHOFF answered that he did not see the word "accusation" in [section 6]. However, he said, an "accused person" is a person who has been arrested for a crime so there would have to be a specific arrest and fingerprint card to support that.

REPRESENTATIVE KERTTULA said that [section 6] also says that "criminal justice" includes activities relating to the detection...of accused persons" and she wonders how that will work under HB 292.

MR. BISCHOFF replied that primarily that would be through biometric identification, principally fingerprints.

Number 309

REPRESENTATIVE OGAN quoted from Governor Knowles' letter dated January 18, 2000 to Speaker Porter as follows: "How do we achieve the delicate balance when releasing personal information between individual rights and the need to protect the public?" He asked for a definition of "individual rights" and how the department carefully walks the fine line.

MR. BISCHOFF answered that he had prepared a summary of his remarks and quoted as follows: "House Bill 292 does not: change who has access to criminal justice information, state or national. Requestors of this information will still require a basis authorized in law to receive this information." In other words, he stated, unless the legislature gives authorization for release of information, the department will not release the information.

REPRESENTATIVE OGAN reiterated that individual rights are guaranteed by the Alaska State Constitution but are not defined anywhere in statute as far as he knows. He said he believes in the fundamental civil right that a person is innocent until proven guilty. Consequently, he added, there are a few areas in HB 292 that trouble him. For example, he directed attention to page 4, line 2, relating to definitions of the compact, and quoted: "...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..." He noted that sentencing, correctional supervision, or release means a person has been adjudicated, they now have a record, and they have been proven guilty of something.

Nevertheless, he explained, under HB 292, a person is considered guilty just because he/she has been arrested and Representative Ogan feels paranoia about the government keeping this big, long list of anybody who has ever been suspected of doing anything.

TAPE 2, SIDE A

Number 107

MR. BISCHOFF replied that the only information that will be available through this compact is fingerprints, meaning that an arresting officer had to have probable cause to arrest a person, take them to booking facilities and get their fingerprints. This procedure, he added, is not based upon speculation. He noted that a standard has to be applied in order to make an entry into the system. It is true, he explained, that not all arrested people are found guilty and the record would reflect the court disposition, the judgment, of "not guilty." Nationally, he explained, all criminal history systems retain [the court disposition] as a valid piece of criminal history information. Some states, he commented, get a little more sophisticated for employment and licensing purposes in terms of sealing the record. He envisioned that the legislature could consider sealing the record at some later time after passing HB 292 but from a national standpoint, all 50 states have participated in development of the compact. He reiterated that the department would not be notating records with hearsay because the standard for HB 292 is fingerprint-based in order for the department to positively identify an individual.

Number 276

CHAIR JAMES said that she resists having people held responsible for something for which they were arrested but not found guilty. She asked if there has ever been a case when someone was arrested because of wrong identification.

MR. BISCHOFF responded that in Alaska there are approximately 300,000 criminal records and nationally there are 55 million. When discussing numbers like this, he noted, there has to have been an occasion where a misidentification has been made. Nevertheless, he explained, the opportunity in a court proceeding is to require verification, a new set of fingerprints if that is how the connection is being made. He commented that there is a path during the adjudication process to clear oneself of misidentification and the department has had instances where relatives (brothers) have used each others' identifications in order to protect their own record. He mentioned that fingerprints are desirable because people use aliases and the only thing that can bring 14 aliases together to one person is a common set of fingerprints. He reiterated that fingerprints uniquely identify the person just as does deoxyribonucleic acid (DNA).

Number 490

CHAIR JAMES said she was referring to actual skirmishes where everyone is arrested and it turns out that some in the group were victims as opposed to being perpetrators. She explained that she was talking about instances where the victims had been arrested but were released because their innocence had been proven.

Number 547

MR. BISCHOFF replied that the only way a criminal record will be updated in accordance with the standards set by this compact is if someone is arrested and a fingerprint card is submitted. In the

rare instance, he added, where the preponderance of evidence is clear that this person was a passive bystander not involved in the skirmish, an appeal [for dismissal] has been made to the Commissioner of the Department of Public Safety. He informed the committee that the Department of Public Safety gives the appeal to the Department of Law for review and subsequently the Department of Public Safety is directed to purge the record. He reiterated that AS 12.62 speaks to that issue.

REPRESENTATIVE OGAN commented that in Mr. Bischoff's overview of HB 292 it says that this information will be used for civil purposes. Representative Ogan said he could understand justification in using electronic information for police officers to protect themselves from dangerous people but he does not see justification for making all that information available for civil purposes, including [background check of] members of the Bar [Alaska Bar Association], Alaska Securities Act, assisted living home [proprietors and employees], certification of teachers, child care, collection agencies, housing, school bus drivers, and hospital security guards. He concluded that the legislature should just pass a bill called "The Omnibus Save Ourselves from Ourselves" and give the administration the authority to pass a regulation on anything by which people might hurt themselves. He said he foresees that this is where society is going and citizens have constitutional protections against stuff like that. He agreed that if someone has been adjudicated and been through the process then it is relevant to HB 292 but if they have not been [adjudicated], HB 292 violates at least the spirit of the Constitution and civil rights.

Number 763

MR. BISCHOFF answered that the examples that he had illustrated are current Alaska law which the legislature has specifically authorized and determined a public need to screen individuals. He noted that if the legislature believes that the statutes continue to be necessary, it would follow that the state would like to do a complete, thorough check within reason and the compact allows the department to do this under common national standards. He reminded the committee that the department is not doing anything differently than the legislature envisioned but doing a better job.

Number 854

REPRESENTATIVE OGAN remarked that sexual offenders have been adjudicated and convicted and that is his point [that an unadjudicated person should not be subject to HB 292]. He quoted from page 6, Article II(1), lines 20-22 as follows: "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;" again, those civil uses he had just described and that is where he has problems with HB 292.

REPRESENTATIVE OGAN commented that page 11, Article VI(1) requires that the legislature appoint someone to the council. Therefore, he indicated the fiscal note is wrong and should correctly reflect the cost of fulfilling Article VI because Article VI says "each party state shall appoint a Compact officer who shall..." He emphasized that he is tired of the administration producing bills with zero fiscal notes to avoid Finance Committee referral.

MR. BISCHOFF responded to the fiscal note issue by explaining that since the mid '60s the department has employed a person performing the equivalent function called a Control Terminal Officer that is associated with the Legacy system, the national crime information

center. He reiterated that this same person will perform the job required by HB 292 because it is just relabeling and modernizing an existing system.

Number 989

REPRESENTATIVE OGAN directed the attention of the committee to page 13, line 29, and quoted as follows: "Nothing in this Compact shall diminish or lessen the obligations, responsibilities, and authorities of any state,..." He said he has seen similar language in the Alaska National Interest Lands Conservation Act (ANILCA) yet these saving clauses are not worth the paper they are written upon.

CHAIR JAMES announced that HB 292 is heard and held.

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Bill Root:  Display Bill Root

**BASIS HAS BEEN RE-PROGRAMMED THIS YEAR  
TO REPORT PROBLEMS WITH BASIS INQUIRY**

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## House STATE AFFAIRS Minute



### HB 292-DISCLOSURE OF CRIMINAL HISTORY RECORDS

Number 0030

CHAIR JAMES announced the first order of business is HOUSE BILL NO. 292, "An Act adopting the National Crime Prevention and Privacy Compact; making criminal justice information available to interested persons and criminal history record information available to the public; making certain conforming amendments; and providing for an effective date."

CHAIR JAMES commented that the committee had finished public hearing and discussion on HB 292 during the committee meeting of March 7, 2000. She asked the members if there was any more discussion on HB 292 before moving it out of committee.

Number 0070

REPRESENTATIVE OGAN said he objected to moving HB 292 out of committee. He noted he had articulated his reasons in the meeting of March 7, 2000 and believes there are some potential constitutional problems regarding the possibility of violating people's right to privacy. He explained that the biggest problem he has with HB 292 is that a person is supposed to be presumed innocent until proven guilty but according to HB 292 if a person has been arrested, detained, indicted, or has any other formal charge against him/her, including acquittal, this information will be made available for civil uses which includes collection agencies.

Number 0271

CHAIR JAMES stated that she would put HB 292 off until the committee has a different quorum.

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# House STATE AFFAIRS Minute



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HB 292-DISCLOSURE OF CRIMINAL HISTORY RECORDS

Number 0016

CHAIR JAMES announced the first order of business is HOUSE BILL NO. 292, "An Act adopting the National Crime Prevention and Privacy Compact; making criminal justice information available to interested persons and criminal history record information available to the public; making certain conforming amendments; and providing for an effective date."

CHAIR JAMES said the committee has heard HB 292 several times and she would entertain a motion to move the bill out of committee, unless someone offers more discussion.

Number 0085

REPRESENTATIVE WHITAKER made a motion to move HB 292 out of committee with individual recommendations and attached zero fiscal note. There being no objection, HB 292 moved from the House State Affairs Standing Committee.

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**BASIS HAS BEEN RE-PROGRAMMED THIS YEAR  
TO REPORT PROBLEMS WITH BASIS INQUIRY**

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## House JUDICIARY Minute



### HB 292 - DISCLOSURE OF CRIMINAL HISTORY RECORDS

REPRESENTATIVE GREEN announced the next order of business would be HOUSE BILL NO. 292, "An Act adopting the National Crime Prevention and Privacy Compact; making criminal justice information available to interested persons and criminal history record information available to the public; making certain conforming amendments; and providing for an effective date."

Number 0101

KENNETH E. BISCHOFF, Director, Central Office, Division of Administrative Services, Department of Public Safety (DPS), came before the committee to present the bill. The primary purpose of the bill is to adopt a national compact [the National Crime Prevention and Privacy Compact], which deals with criminal history record background checks. Over the years, the legislature has passed a number of statutes mandating background checks for employment and licensing purposes. He cited teachers, school bus drivers, and assisted living homes as examples.

MR. BISCHOFF said that every state in the nation deals with the same issue when it comes to doing a national criminal history background check for these types of occupations. The presumption is that once it is important enough for the legislature to pass a law, the DPS should use the best information available. A national compact would allow the department to have access to more timely and complete criminal history records of other states. In order to do that, every state needs to agree to a common set of rules by which to exchange information. The adoption of this compact would do just that. Mr. Bischoff encouraged the committee members to support the bill. He noted that the department had submitted an amendment [Amendment 1] that would allow the Alcoholic Beverage Control Board to do a national background check on their licensed applicants.

REPRESENTATIVE GREEN asked Mr. Bischoff what the compact will provide.

MR. BISCHOFF replied there will be a national pointer system established as each state comes online at the FBI [Federal Bureau of Investigation] for civil purposes. The pointer system will establish a unique federal identification number that will indicate which states have information on a particular individual. It will allow the department to electronically query the system and go directly to each state to get background information.

Number 0231

REPRESENTATIVE GREEN asked Mr. Bischoff how this can be done with a zero fiscal note.

MR. BISCHOFF replied that as the system develops, there will be an additional workload, but the trade-off is that for every arrest, each state is required to send a duplicate set of fingerprints to the FBI. Under this system, a first-time arrest card will be sent only once. And once a federal identification number has been established, the department will not have to send any future cards

because they will be able to make an identification locally and update the record accordingly. He noted that it costs about \$30,000 for criminal arrest cards a year.

Number 0278

REPRESENTATIVE GREEN asked Mr. Bischoff whether the department gets a lot of "hits" now from other states for information.

MR. BISCHOFF replied that about two years ago the legislature appropriated money to the DPS to upgrade their fingerprinting system, which allowed them to combine their system with those of six other western states. After the first year of operation and searching the database, approximately 75 percent of the identifications were made using other states' records.

Number 0314

REPRESENTATIVE GREEN noted that earlier in the session it was suggested that Alaska might become a member of an interstate parole-type compact, but the idea fell on deaf ears. He asked Mr. Bischoff how this compact is different.

MR. BISCHOFF replied that even though this is a national compact, all 50 states had participated in drafting the language, getting it through the President's office and submitting it to Congress for adoption. Furthermore, the mechanics of this system already exist for law enforcement purposes, and it is being used by all 50 states now. The compact puts in place the rules to allow it to be used uniformly for civil purposes.

Number 0401

REPRESENTATIVE KERTTULA asked Mr. Bischoff to expand on what type of information an agency or employer would get with the inclusion of arrest information without court dispositions and information beyond the ten-year unconditional discharge date.

MR. BISCHOFF explained that several years back, with the help of the legislature, the department completely updated AS 12.62 by including model language from national groups. The term "unconditional discharge date" is a fairly common term, but in Alaska it is a very difficult date to calculate. He noted that the Department of Corrections manually calculates the date and is moving towards automating the calculation with their new computer system. The reason for the change is because the state conducts 20,000 fingerprint-based applicant checks a year for employment and licensing purposes, and the department would have to submit a major fiscal note - and the process would slow down - if they couldn't just give the regulatory agencies or authorized employers the complete record.

Number 0465

REPRESENTATIVE KERTTULA asked Mr. Bischoff to explain what "unconditional discharge" would indicate to someone requesting this type of information.

MR. BISCHOFF replied that unconditional discharge means that a person has served his incarceration time, is released on probation or parole, and is being monitored. It would indicate the date that the person no longer has to report to a probation officer. He reiterated that calculating the date is not a straightforward process.

Number 0501

REPRESENTATIVE KERTTULA stated concern that it might mean that after a period of time the record is gone, similar to a suspended imposition. She asked Mr. Bischoff to explain the kinds of arrest information.

MR. BISCHOFF replied that Section 3 of the bill updates the list of what is considered a serious offense.

REPRESENTATIVE KERTTULA asked Mr. Bischoff whether a description about an arrest is included, such as information on a mistaken arrest.

MR. BISCHOFF replied that the criminal history report would include the arrest card, the arresting agency, and the results of the fingerprint search. The system currently does not include information from the prosecutor, so it usually requires a court disposition to update the record indicating innocence or guilt. The nature of information that a regulatory or employer needs varies. When it comes to dealing with children, for example, a person may have four or five arrests but no convictions, which is information that may be very helpful to the Division of Family & Youth Services; setting a filter that denies them that type of information is not good public policy. The department would prefer to put the burden on the regulatory agency to decide what is relevant information because it is truly their decision. Moreover, he doesn't think that it is appropriate for his staff to make policy decisions for regulatory agencies.

Number 0627

REPRESENTATIVE KERTTULA asked Ms. Langdon what type of arrest information the Division of Family & Youth Services gets.

Number 0651

GLADYS LANGDON, Children Services Manager, Anchorage Region, Family Services, Division of Family & Youth Services, Department of Health & Social Services, came before the committee to answer Representative Kerttula's question. The division gets an arrest record and can get a criminal history. It is very important that they have access to the complete record, even beyond the ten-year period. She also noted that federal funding is dependent upon the division having access to these types of records.

Number 0670

REPRESENTATIVE KERTTULA stated, then, that it is the division's job to figure out if the arrests indicate anything or not. She asked Ms. Langdon whether she has seen circumstances where it was just an arrest that kept a person from being able to get a license.

MS. LANGDON replied no.

Number 0691

REPRESENTATIVE GREEN asked Mr. Bischoff how the department knows who needs a record check. Is it just for the employer who wants to know about a particular person?

MR. BISCHOFF replied that the legislature has established which regulatory agencies need a background check. The department lets the regulatory agencies drive the request process, which equates to 20,000 [requests] a year. The department first searches their

records, and any qualifying offense is communicated to the regulatory agency. If they don't get an identification, they then ship the request to the FBI via the mail. When the system is updated, he noted, the request will be sent via an electronic transfer, which will allow for a quicker turnaround time.

REPRESENTATIVE GREEN asked Mr. Bischoff whether there is a charge.

MR. BISCHOFF replied yes, there is a \$35 in-state charge, and the FBI charges \$24 for a national check.

REPRESENTATIVE GREEN commented that it is self-funding.

Number 0778

REPRESENTATIVE ROKEBERG asked Mr. Bischoff whether this is the system that state employees had accessed a couple of years ago, which had created some controversy.

MR. BISCHOFF replied that there was controversy surrounding the use of the Alaska Public Safety Information Network, which is interfaced to the national system. The bill, he noted, deals with the national system.

REPRESENTATIVE ROKEBERG asked Mr. Bischoff whether there is a separation between the two.

MR. BISCHOFF replied, "Yes."

REPRESENTATIVE ROKEBERG asked Mr. Bischoff whether he can assure the committee members the abuses that may have taken place before will not take place again.

MR. BISCHOFF replied that his staff, as a result of the controversy, has implemented a whole host of edits, to notify security if certain records are run against certain public officials. An audit function has also been implemented. There is no way, however, that he can guarantee 100 percent that this will never occur again. But there are better tools to work with and a keener sensitivity of the issue now.

Number 0837

REPRESENTATIVE ROKEBERG asked Mr. Bischoff whether any of the agencies can get into that information.

MR. BISCHOFF replied that the only way a person can query the compact for information is if there is a set of fingerprints, and the applicant has to agree to a set of fingerprints. The only authorized agency in the state to run a check is the Criminal Investigations Unit [DPS] in Anchorage. In other words, there won't be 22,000 users querying the system for this type of information.

REPRESENTATIVE ROKEBERG surmised that it is [Mr. Bischoff's] staff that does the work for these agencies that have justified their request.

MR. BISCHOFF affirmed that.

REPRESENTATIVE GREEN indicated that, in itself, should make a major difference.

REPRESENTATIVE ROKEBERG asked Mr. Bischoff how this system will interface with the court's computer system. It is his

understanding that the court system has an antiquated computer system, he added.

MR. BISCHOFF replied that the DPS speaks in favor of the capital request from the court system to update their computer system. Currently, he explained, that the DPS receives court dispositions in the mail and manually enters the information. Once the court system is automated the information will be transferred electronically. He further explained that when an individual is booked by the Department of Corrections and fingerprinted using a live scan machine, the information is sent to the DPS, at which time staff processes the information through the Western Identification Network to verify the person's identity. Upon identification, staff updates the person's criminal history record in the Alaska Public Safety Information Network, and if it is a criteria offense, staff updates the national FBI system.

REPRESENTATIVE ROKEBERG stated that the courts are not hooked up electronically.

MR. BISCHOFF concurred.

Number 0971

REPRESENTATIVE LISA MURKOWSKI commented that according to her understanding there are only a few states that have signed on to the compact. She asked Mr. Bischoff what would happen if the other states do not sign on to the idea. As she understands, it is just an exchange of information between those states who have access to the compact, she added.

MR. BISCHOFF replied that the information from the 50 states that the FBI has converted would be available through the system. The states that do not adopt the compact would continue to send cards to the FBI, and that information would be available through the system. But, as more and more states join in the compact, Alaska would have access to records that are not forwarded to the FBI. He cited that as much as 40 percent of the criminal history records for the state of Oregon are not indexed with the FBI, so when they sign up for the compact Alaska would have access to those records. Oregon, he noted, is part of the Western Identification Network, a consortium of seven western states and a reason why Alaska gets a 75-percent hit rate on out-of-state records. He also said many drunk driving offenses in California are fingerprinted but not forwarded to the FBI, so when they sign up for the compact, Alaska would have access to those records. He noted that four states have adopted the compact, six states are going through the process of adopting the compact, and many states are considering going through the process next year. He hopes that in about five to six years a majority of the states would be onboard.

Number 1110

REPRESENTATIVE MURKOWSKI asked Mr. Bischoff whether Alaska would still have access to certain information from a state that does not sign on to the compact. In that way, there is still a networking system that does not go away.

MR. BISCHOFF answered, "Correct."

Number 1129

REPRESENTATIVE GREEN asked Mr. Bischoff whether the states that sign on to the compact would go directly to Alaska for information, while the rest of the states that do not sign on to the compact

would go through the FBI.

MR. BISCHOFF affirmed that.

Number 1145

REPRESENTATIVE MURKOWSKI asked Mr. Bischoff whether there is any financial incentive for the states to sign on to the compact.

MR. BISCHOFF replied that there is a trade-off to signing on to the compact. The department has submitted a zero fiscal note because even though there would be additional work, the system would reduce the number of fingerprint cards that would have to be forwarded to the FBI. The department believes that it would be a "wash."

Number 1200

LINDA KESTERSON, Assistant Attorney General, Natural Resources Section, Civil Division, Department of Law, testified via teleconference from Anchorage in relation to the amendment to include the Alcoholic Beverage Control Board. The compact, she said, recognizes that there are non-criminal reasons for a criminal background check, and that there are a number of governmental entities that have the ability in statute to collect that type of information, as Mr. Bischoff has indicated. The federal law specifically requires that there is a state statute authorizing these types of national background check. The amendment, therefore, would change Article 4 to give the Alcoholic Beverage Control Board the authority to require an applicant to submit a fingerprint, which would then be submitted to the DPS for a criminal background check. Without that, she said, the board can only conduct an Alaska criminal background check, which eliminates a lot of useful information to the board in determining whether or not an applicant is a proper applicant for a liquor license.

Number 1319

DOUG BRIFFIN, Director, Alcoholic Beverage Control Board, testified via teleconference from Anchorage in support of the amendment to include the Alcoholic Beverage Control Board. This is a very high priority for the board. It is deemed as a good step in preventing a problem of somebody holding a liquor license who has a criminal background. The board may not be aware of someone's criminal background given the present system. It makes sense for an efficient government, for it's a lot more expensive to try and remediate a problem with a licensee with a criminal background who shows irresponsibility in running his business than it is to prevent a problem. The board hopes that the amendment is adopted and that the bill moves forward.

Number 1380

REPRESENTATIVE KERTTULA asked what kind of authority the board has now before issuing a liquor license. Can the board look at arrests? How does the board screen out information that the board doesn't have authority to review?

MR. GRIFFIN replied this is for non-criminal purpose. The issuance of a liquor license. The board has some authority to use the database when dealing with a criminal investigation, which is not all that often. For non-criminal purposes, the board has been submitting fingerprint cards to the DPS who then reviews them for any criminal conviction within the state. That information is forwarded to the board for consideration, and the applicant is given an opportunity to discuss the information with the board in

an executive session. The information is treated as confidential.

Number 1490

REPRESENTATIVE KERTTULA stated that it seems that the language in the amendment is giving the board broad authority. It reads, "The board shall use the information obtained under this section in its determination of the suitability for licensure of the person filing or executing the application."

MS. KESTERSON said the statute entitles the board to gather background information in determining whether it is appropriate for a person to hold a liquor license. Specifically, AS 04.11.260 indicates that [an applicant must include] any other information required for the board. And AS 04.11.300 indicates that the state troopers shall assist the director in the investigation of applicants for new licenses and applicants for the transfer of existing licenses before the applications are considered by the board. The policy has always been to conduct background checks on applicants. However, the way the law is written now, in order to get any criminal background records from any state other than Alaska there has to be specific authority in statute, which is what the amendment is meant to do. She further asserted that the Alcoholic Beverage Control Board is the type of entity that should be entitled to criminal background information in order to determine whether or not a person should hold a liquor license.

REPRESENTATIVE GREEN, noting that there were no further testifiers, closed the meeting to public testimony.

Number 1670

REPRESENTATIVE ROKEBERG made a motion to adopt Amendment 1. There being no objection, Amendment 1 was adopted. It read as follows:

Page 1, line 3, following "public;"

Insert "providing for the use of criminal justice information and records by the Alcoholic Beverage Control Board;"

Page 1, following line 5:

Insert a new bill section to read:

"\*Section 1. AS 04.06 is amended by adding a new section to read:

Sec. 04.06.095. Criminal justice information and records. (a) The board shall require a person filing or executing an application for the issuance, renewal, or transfer of a license under this title to be fingerprinted. The board shall submit the fingerprints to the Department of Public Safety to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check. The Department of Public Safety is authorized to submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The board shall use the information obtained under this section in its determination of the suitability for licensure of the person filing or executing the application.

(b) In this section, "criminal justice information" has the meaning given in AS 12.62.900."

Renumber the following bill sections accordingly.

Page 16. Following line 20:

Insert new bill sections to read:

"\*Sec. 9. TRANSITION: PENDING APPLICATIONS UNDER AS 04. Notwithstanding AS 04.06.095, enacted by sec. 1 of this Act, the Alcoholic Beverage Control Board may process an application for a license under AS 04 without a national criminal history record check from the Federal Bureau of Investigation if that application was pending with the board on the effective date of sec. 1 of this Act.

"Sec. 10. Sections 1 and 9 of this Act take effect immediately under AS 01.10.070(c)."

Renumber the following bill section accordingly.

Page 16, line 21:

Delete "This"

Insert "Except as provided in sec. 10 of this Act, this"

Number 1690

REPRESENTATIVE KERTTULA made a motion to move HB 292, version 1-GH2014.A, as amended, out of committee with individual recommendations and attached fiscal notes. There being no objection, CSHB 292(JUD) moved from the House Judiciary Standing Committee.

Bill Root:

Display Bill Root

**BASIS HAS BEEN RE-PROGRAMMED THIS YEAR  
TO REPORT PROBLEMS WITH BASIS INQUIRY**

[Return to Basis Main Menu \( 21 Legislature\)](#)

[Return to Legislature Home Page](#)

# House JUDICIARY Minute



## HB 292 - DISCLOSURE OF CRIMINAL HISTORY RECORDS

Number 0019

CHAIRMAN PETE KOTT announced that the first order of business would be HOUSE BILL NO. 292, "An Act adopting the National Crime Prevention and Privacy Compact; making criminal justice information available to interested persons and criminal history record information available to the public; making certain conforming amendments; and providing for an effective date."

CHAIRMAN KOTT informed members that the committee's previous action in passing out a committee substitute (CS) on March 29, 2000, needed to be rescinded. Legislative drafters do not normally review legislation provided by the governor, he noted. However, in reviewing the CS required after the March 29 hearing, legislative counsel had discovered a couple of items that needed to be corrected. Chairman Kott said he and Anne Carpeneti of the Department of Law concur with Gerald Luckhaupt, legislative counsel, that there has been an oversight.

Number 0094

REPRESENTATIVE ROKEBERG made a motion to rescind the committee's action in passing out HB 292, as amended in the House Judiciary Standing Committee, with individual recommendations and attached fiscal note(s). There being no objection, it was so ordered and the bill was again before the committee.

REPRESENTATIVE ROKEBERG made a motion to adopt as a new proposed CS version 1-GH2014\D [which had been provided by Mr. Luckhaupt as an attachment to his memorandum of March 31, 2000, regarding the oversight]. There being no objection, it was so ordered and Version D was before the committee.

Number 0205

REPRESENTATIVE KERTTULA made a motion to move HB 292 [Version D] out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, the new CSHB 292(JUD) was moved out of the House Judiciary Standing Committee.

Bill Root:

Display Bill Root

**BASIS HAS BEEN RE-PROGRAMMED THIS YEAR  
TO REPORT PROBLEMS WITH BASIS INQUIRY**

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# ALASKA STATE HOUSE OF REPRESENTATIVES

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State Capitol  
Room 416

## REPRESENTATIVE JOHN COGHILL

Date: January 25, 2001

To: Jerry Luckhaupt

From: Rynnieva Moss, Legislative Aide

A handwritten signature in cursive script, appearing to read "Rynnieva Moss".

Re: Request for Draft

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Representative Coghill would like draft legislation of HB 292 introduced by the governor last year. The legislation dealt with adopting the National Crime Prevention and Privacy Compact.

Thank you for your assistance.

LAST TRANSACTION REPORT FOR HP FAX-700 SERIES

VERSION: 01.03

FAX NAME:  
FAX NUMBER:

DATE: 25-JAN-01  
TIME: 11:53

DATE	TIME	REMOTE FAX NAME AND NUMBER	DURATION	PG	RESULT	DIAGNOSTIC
25-JAN	11:52 S	907 465 2029	0:00:28	1	OK	66384010018C

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**WORK ORDER REQUEST FORM**

**W.O. [22] LS-0460**

KEYWORDS: CRIME/CRIMINAL PROCEDURE ASSIGNED: Luckhaupt

\_\_\_\_\_  
\_\_\_\_\_

REQUEST FOR: New Bill TAKEN BY: Barnes

SUBJECT: Nat'l Crime Prevention & Privacy Compact

REQUESTED FOR: REP COGHILL BY: Rynniva PHONE: 465-3719

DELIVER TO: Rep. Coghill, Attn. Rynniva, Cap. 102

INSTRUCTIONS: Reintroduce HB 292-21st leg, adopting the National Crime Prevention and Privacy Compact.

OBTAIN	SPECIAL DRAFTING INSTRUCTIONS ATTACHED [ ] AUTHORIZED TO CONFER WITH _____ _____ RETURN _____ _____ TO REQUESTOR APPROVED: <input checked="" type="checkbox"/> DIRECTOR, LEGAL SERVICES
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REVIEWED \_\_\_\_\_

IN 01/25/01 DUE \_\_\_\_\_

TYPED: Draft \_\_\_\_\_ Date \_\_\_\_\_

Final \_\_\_\_\_ Date \_\_\_\_\_

PROOFED \_\_\_\_\_ DELIVERED \_\_\_\_\_

SPECIAL INSTRUCTIONS to TYPING/PROOFING

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Request for DRAFT

# National Crime Prevention and Privacy Compact and Criminal Justice Information

## Sectional Analysis

**Section 1 adopts the National Crime Prevention and Privacy Compact by reference.** The Compact provides the legal framework necessary for states to exchange criminal history records directly with one another for noncriminal justice purposes, such as licensing and employment checks. Today, states rely on duplicate records maintained by the FBI for such checks. However, whether by policy or oversight, states typically do not submit copies of all their records to the FBI. Therefore, states can get more complete, accurate records from one another under the Compact than they can get from the FBI.

Major provisions of the Compact include the following:

- It binds the FBI and ratifying states to use the Interstate Identification Index (III) to exchange criminal records for authorized noncriminal justice purposes according to established system policies. (III is the automated index/pointer system currently used by the FBI and states to exchange criminal records for criminal justice purposes.)
- Authorized users will be the same as those currently authorized to obtain records from the FBI. A federal or state statute approved by the U.S. Attorney General is required to conduct a national record check for a noncriminal justice purpose.
- Background checks will continue to be based on fingerprint identification of the record subject to ensure positive identification.
- Compact states will make all unsealed, fingerprint-based criminal history records available in response to authorized noncriminal justice requests.
- The receiving state's criminal justice information statutes govern how the information may be used and disseminated. If Alaska adopts the Compact, its state repository will be required to screen and disseminate records received through III according to Alaska's own criminal justice laws (Alaska Statute 12.62).
- The Compact establishes a council of state and federal officials to set operating policies for noncriminal justice uses of the III system.

Since it was enacted by Congress in 1998, eight states have adopted the Compact: Montana, Georgia, Nevada, Florida, Colorado, Iowa, Connecticut, and South Carolina.

Appendix 1 provides the full text of the Compact, including a detailed sectional analysis.

**Section 2 amends the state's criminal justice dissemination laws.** This section simplifies standards for determining the contents of criminal history records. The changes enhance repository efficiency and compliance and ensure that authorized record users receive all potentially relevant information.

The lead in sentence in AS 12.62.160(b) is simplified by removing redundant wording. It is unnecessary to limit dissemination authority to criminal justice agencies because AS 12.62.160(c)(1) states that criminal justice information may be released only by the agency that maintains it.

Unnecessary language (such as "to the extent necessary") is removed throughout AS 12.62.160 because each paragraph already specifies the circumstances under which information may be released, and to whom.

The phrase "criminal justice information" is deleted from each paragraph's lead-in because it is included in the lead-in for the entire subsection.

AS 12.62.160(b)(8) and (b)(9) currently authorize release of "current offender" and "past conviction" information to any person who submits a subject's fingerprints to the repository. The bill combines these into a single paragraph. By rewording the paragraph to authorize release of criminal justice information except nonconviction information, the newly worded paragraph allows a criminal history report to include criminal identification information, such as a mugshot.

The reworded paragraph also removes language limiting convictions to those within ten years of unconditional discharge. Alaska's repository is unable to comply with this standard because few criminal history records contain enough data to calculate the unconditional discharge date. Even if records were enhanced to include such data in the future, the repository would be unable to compute the date retroactively for half a million or existing convictions. Nor would Alaska's repository be able to apply such a filter to convictions from other states under the Compact. Furthermore, recent changes in law have made this limitation moot in many cases. The sex offender registration act, for example, allows release of conviction information for 15 years beyond the unconditional discharge date for one-time offenders, and for the lifetime of repeat offenders. Even Alaska's state employment application requires applicants to divulge information about convictions beyond this time limit.

AS 12.62.160(b)(10) is renumbered as (b)(9) and amended to provide more information to "interested persons" responsible for screening applicants to supervise children or vulnerable adults.

The current law limits "interested person" reports to convictions only. This section allows the report to include nonconviction information, such as a finding of "not guilty by reason of insanity". It would also allow release of records requiring additional research to determine conviction or nonconviction status. Alaska's computerized criminal records contain nearly 100,000 charges over two years old without dispositions. The record requester is in the best position to determine which records merit further research and, if appropriate, to get more information from the record subject who is applying for a position or license. By contrast, if the

report is limited to convictions only, the repository must omit a charge that may have resulted in a conviction that is simply missing from repository records. Alternatively, the repository must conduct time-consuming research on each charge that is missing a disposition, regardless of relevancy to the record requester.

Finally, this section expands the "interested person" report to include information about all criminal offenses, not just those listed in a statutory definition of "serious offenses." The definition omits such potentially relevant misdemeanors as: *Endangering the Welfare of a Minor*, *Endangering a Vulnerable Adult*, *Failure to Report a Crime Against a Child*, *Harassment*, and *Recruiting a Gang Member*. Appendix 2 provides a list of other misdemeanors excluded from the definition of "serious offense".

**Section 3 repeals the definition of "unconditional discharge".** Changes in Section 2 eliminate use of the term in this chapter.

**Section 4 makes the Act effective September 1, 2001.** The delayed effective date allows time for the Department of Public Safety to modify software and procedures to use III for authorized noncriminal justice purposes. The department will also need to amend regulations governing criminal record dissemination. Both tasks will be accomplished with existing resources.

**CRIMINAL JUSTICE INFORMATION** means any of the following, other than a court record, a record of traffic offenses maintained for the purpose of regulating drivers' licenses, or a record of a juvenile subject to the jurisdiction of the court under AS 47.12:

**I. CRIMINAL HISTORY RECORD INFORMATION:**

**A. Past Conviction Information:** information showing that an identifiable person who has been unconditionally discharged has previously been convicted of a crime [including]

- (1) the terms of any sentence, probation, suspended imposition of sentence, or discretionary or mandatory parole;
- (2) information that a criminal conviction or sentence has been reversed, vacated, set aside, or been the subject of executive clemency.

**B. Current Offender Information:** information showing that an identifiable person

- (1) is currently under arrest for or is charged with a crime and
  - prosecution is under review or has been deferred by written or oral agreement;
  - a warrant exists for the person's arrest; or
  - less than a year has elapsed since the date of the arrest or the filing of charges, whichever is latest;
- (2) is currently released on bail or on other conditions imposed by a court in a criminal case, either pretrial or post-trial, including the conditions of the release;
- (3) is currently serving a criminal sentence or is under the custody of the commissioner of corrections for supervision purposes; [including]
  - the terms and conditions of any sentence, probation, suspended imposition of sentence, discretionary or mandatory parole, furlough, executive clemency, or other release; and
  - the location of any place of incarceration, halfway house, restitution center, or other correctional placement to which the person is assigned; or
- (4) has had a criminal conviction or sentence reversed, vacated, set aside, or has been the subject or executive clemency.

**C. Criminal Identification Information** means fingerprints, photographs, and other information or descriptions that identify a person as having been the subject of a criminal arrest or prosecution.

**II. NONCONVICTION INFORMATION** means information that an identifiable person was arrested or that criminal charges were filed or considered against the person and

- (1) a prosecutor or grand jury has elected not to begin criminal proceedings against the person and at least a year has elapsed since that decision;
- (2) criminal charges against the person have been dismissed or the person has been acquitted and at least a year has elapsed since that action; or
- (3) there is no indication of the disposition of the criminal charges or the arrest and at least a year has elapsed since the arrest, filing of the charges, or referral of the matter for review by a prosecutor, whichever is latest.

**III. CORRECTIONAL TREATMENT INFORMATION** means information about an identifiable person, excluding past conviction information or current offender information, collected to monitor that person in a correctional facility or while under correctional supervision, including the person's current or past institutional behavior, medical or psychological condition, or rehabilitative progress.

**IV. INFORMATION RELATING TO A PERSON TO BE LOCATED, WHETHER OR NOT THAT PERSON IS WANTED IN CONNECTION WITH THE COMMISSION OF A CRIME.**

**This bill helps prevent crime because it reduces the risk of putting the wrong person in a sensitive position based on an incomplete criminal history report. It makes criminal history reports more complete and accurate in three ways:**

**(1) It adopts the National Crime Prevention and Privacy Compact.**

- The Compact allows Alaska to get out-of-state criminal records directly from other states instead of having to rely on duplicate records maintained by the FBI.
- Whether by policy or oversight, states typically do not submit copies of all their records to the FBI, so Compact states will get more information from one another than from the FBI.

**(2) It allows criminal reports authorized by state law to contain more relevant information.**

- It allows reports to include identifying information such as mugshots.
- It lifts a ban limiting reports to convictions within ten years of unconditional discharge. This limit hides potentially relevant information regardless of seriousness or recidivism. It also places the state repository in noncompliance with the law because few records contain enough information to calculate the unconditional discharge date.

**(3) It provides special protection for children and vulnerable adults.**

- Findings of "not guilty by reason of insanity" are currently barred from reports used to screen child and senior caretakers; the bill lifts that restriction and also allows decision makers to research questionable or missing dispositions if appropriate.
- Reports will include all criminal offenses instead of being limited to a statutorily defined list which omits such relevant misdemeanors as: *Endangering the Welfare of a Minor*, *Endangering a Vulnerable Adult*, *Failure to Report a Crime Against a Child*, *Harassment*, and *Recruiting a Gang Member*.

**Over 20,000 criminal history reports are relied upon each year by those authorized under Alaska law to screen applicants for the following purposes:**

- Foster Licensing (AS 47)
- Teacher Certification (AS 14.20)
- School Bus Driver Licensing (AS 28.17)
- Child Care Facility Licensing
- Security Guards (AS 18.65)
- Assisted Living Homes (AS 47.33)
- Nursing Homes (AS 18.20)
- Insurance Agencies (AS 21.27)
- Collection Agencies (AS 8.24)
- Alaska Bar Association (AS 8.08)

**"Serious Offenses" as defined in AS 12.62.900**

<i>"Serious Offense" as defined in AS 12.62.900</i>		OffenseDescription	Misdemeanor Severity (A, B or "None")	
		a felony offense		
		a crime involving domestic violence		
AS11.41.427		Sexual Assault 4	M	A
AS11.41.427(a)(1)		Sex Assault 4- DOC empl cont w/ prisoner	M	A
AS11.41.427(a)(2)		Sex Assault 4- cont 18-19 in juv custody	M	A
AS11.41.440		Sexual Abuse of Minor 4	M	A
AS11.41.440(a)(1)		Sex Abuse Minor 4 - ofndr < 16, vic <13	M	A
AS11.41.440(a)(2)		Sex Abuse Minor 4-auth fig contact 16-17	M	A
AS11.41.460		Indecent Exposure 2	M	N
AS11.41.460(<16)		Indecent Exposure 2 - victim <16	M	A
AS11.41.460(16+)		Indecent Exposure 2 - victim 16+	M	B
AS11.41.460(b)(<16)		Indecent Exposure 2 - victim <16	M	A
AS11.41.460(b)(16+)		Indecent Exposure 2 - victim 16+	M	B
AS11.51.130		Contributing to Delinquency of Minor	M	A
AS11.51.130(a)(1)		Contrib Delinq Minor- <18 to violate law	M	A
AS11.51.130(a)(2)		Contrib Delinq Minor- <18 near drugs	M	A
AS11.51.130(a)(3)		Contrib Delinq Minor- <16 truancy	M	A
AS11.51.130(a)(4)		Contrib Delinq Minor- <18 runaway	M	A
AS11.61.110(a)(7)		Disord Conduct-expose buttocks	M	B
AS11.66.100		Prostitution	M	B
AS11.66.130		Promote Prostitution 3	M	A
AS11.66.130(a)(1)		Promote Prost 3-run house of prost	M	A
AS11.66.130(a)(2)		Promote Prost 3-induce person age 16+	M	A
AS11.66.130(a)(3)		Promote Prost 3-accept proceeds of prost	M	A
AS11.66.130(a)(4)		Promote Prost 3-facilitate prostitution	M	A
also some former (repealed) laws involving sex offenses, minors, etc.				

**NATIONAL CRIME PREVENTION AND PRIVACY COMPACT  
AND  
SECTION-BY-SECTION ANALYSIS**

Senate Bill 2022, which includes the Compact, was passed by Congress and signed into law by the president in October 1998. (Title II of Pub. L. 105-251)

The section-by-section analysis of the Compact is a statement of Sen. Mike DeWine (R-OH), which was read into the October 16, 1998, edition of the Congressional Record.

**TITLE II-NATIONAL CRIMINAL HISTORY ACCESS AND CHILD PROTECTION ACT**

**Section 201. Short Title.**

This title may be cited as the "National Criminal History Access and Child Protection Act."

**Subtitle A-Exchange of Criminal History Records for Noncriminal Justice Purposes.**

**Section 211. Short Title.**

This subtitle may be cited as the "National Crime Prevention and Privacy Compact Act of 1998."

**Section 212. Findings.**

Congress finds that-

- (1) both the Federal Bureau of Investigation and State criminal history record repositories maintain fingerprint-based criminal history records;
- (2) these criminal history records are shared and exchanged for criminal justice purposes through a Federal-State program known as the Interstate Identification Index System;
- (3) although these records are also exchanged for legally authorized, noncriminal justice uses, such as governmental licensing and employment background checks, the purposes for and procedures by which they are exchanged vary widely from State to State;
- (4) an interstate and Federal-State compact is necessary to facilitate authorized interstate criminal history record exchanges for noncriminal justice purposes on a uniform basis, while permitting each State to effectuate its own dissemination policy within its own borders; and
- (5) such a compact will allow Federal and State records to be provided expeditiously to governmental and nongovernmental agencies that use such records in accordance with pertinent Federal and State law, while simultaneously enhancing the accuracy of the records and safeguarding the information contained therein from unauthorized disclosure or use.

**Section 213. Definitions.**

In this subtitle:

- (1) **ATTORNEY GENERAL.**-The term "Attorney General" means the Attorney General of the United States.
- (2) **COMPACT.**-The term "Compact" means the National Crime Prevention and Privacy Compact set forth in section 217.

- (3) COUNCIL.-The term "Council" means the Compact Council established under Article VI of the Compact.
- (4) FBI.-The term "FBI" means the Federal Bureau of Investigation.
- (6) PARTY STATE.-The term "Party State" means a State that has ratified the Compact.
- (5) STATE.-The term "State" means any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

**Section 214. Enactment and Consent of the United States.**

The National Crime Prevention and Privacy Compact, as set forth in section 217, is enacted into law and entered into by the Federal Government. The consent of Congress is given to States to enter into the Compact.

**Section 215. Effect on Other Laws.**

(a) PRIVACY ACT OF 1974.-Nothing in the Compact shall affect the obligations and responsibilities of the FBI under section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974").

(b) ACCESS TO CERTAIN RECORDS NOT AFFECTED. -Nothing in the Compact shall interfere in any manner with-

(1) access, direct or otherwise, to records pursuant to-

(A) section 9101 of title 5, United States Code;

(B) the National Child Protection Act;

(C) the Brady Handgun Violence Prevention Act (Public Law 103-159; 107 Stat. 1536);

(C) the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322; 108 Stat. 2074) or any amendment made by that Act;

(E) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); or

(F) the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.); or

(2) any direct access to Federal criminal history records authorized by law.

(c) AUTHORITY OF FBI UNDER DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATION ACT, 1973.-Nothing in the Compact shall be construed to affect the authority of the FBI under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-511; (86 Stat. 1115)).

(d) FEDERAL ADVISORY COMMITTEE ACT.-The Council shall not be considered to be a Federal advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) MEMBERS OF COUNCIL NOT FEDERAL OFFICERS OR EMPLOYEES.-Members of the Council (other than a member from the FBI or any at-large member who may be a Federal official or employee) shall not, by virtue of such membership, be deemed-

- (1) to be, for any purpose other than to effect the Compact, officers or employees of the United States (as defined in sections 2104 and 2105 of title 5, United States Code); or
- (2) to become entitled by reason of Council membership to any compensation or benefit payable or made available by the Federal Government to its officers or employees.

#### **Section 216. Enforcement and Implementation.**

All departments, agencies, officers, and employees of the United States shall enforce the Compact and cooperate with one another and with all Party States in enforcing the Compact and effectuating its purposes. For the Federal Government, the Attorney General shall make such rules, prescribe such instructions, and take such other actions as may be necessary to carry out the Compact and this subtitle.

#### **Section 217. National Crime Prevention and Privacy Compact.**

The Contracting Parties agree to the following:

#### **OVERVIEW**

- (a) **IN GENERAL.**-This Compact organizes an electronic information sharing system among the Federal Government and the States to exchange criminal history records for noncriminal justice purposes authorized by Federal or State law, such as background checks for governmental licensing and employment.
- (b) **OBLIGATIONS OF PARTIES.**-Under this Compact, the FBI and the Party States agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the Federal Government and to Party States for authorized purposes. The FBI shall also manage the Federal data facilities that provide a significant part of the infrastructure for the system.

#### **ARTICLE I-DEFINITIONS**

In this Compact:

- (1) **ATTORNEY GENERAL.**-The term "Attorney General" means the Attorney General of the United States.
- (2) **COMPACT OFFICER.**-The term "Compact Officer" means-
  - (A) with respect to the Federal Government, an official so designated by the Director of the FBI; and
  - (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.
- (3) **COUNCIL.**-The term "Council" means the Compact Council established under Article VI.
- (4) **CRIMINAL HISTORY RECORDS.**-The term "criminal history records"-
  - (A) 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; and

- (B) does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.
- (5) **CRIMINAL HISTORY RECORD REPOSITORY.**-The term "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.
- (6) **CRIMINAL JUSTICE.**-The term "criminal justice" includes activities relating to the detection, apprehension, detention, pretrial release, post-trial 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.
- (7) **CRIMINAL JUSTICE AGENCY.**-The term "criminal justice agency"-
- (A) means-
- (i) courts; and
- (ii) a governmental agency or any subunit thereof that-
- (I) performs the administration of criminal justice pursuant to a statute or Executive order; and
- (II) allocates a substantial part of its annual budget to the administration of criminal justice; and
- (B) includes Federal and State inspectors general offices.
- (8) **CRIMINAL JUSTICE SERVICES.**-The term "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.
- (9) **CRITERION OFFENSE.**-The term "criterion offense" means any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI.
- (10) **DIRECT ACCESS.**-The term "direct access" means access to the National Identification Index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.
- (11) **EXECUTIVE ORDER.**-The term "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.
- (12) **FBI.**-The term "FBI" means the Federal Bureau of Investigation.
- (13) **INTERSTATE IDENTIFICATION SYSTEM.**-The term "Interstate Identification Index System" or "III System"-
- (A) means the cooperative Federal-State system for the exchange of criminal history records; and
- (B) includes the National Identification Index, the National Fingerprint File and, to the extent of their participation in such system, the criminal history record repositories of the States and the FBI.

- (14) NATIONAL FINGERPRINT FILE.-The term "National Fingerprint File" means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.
- (15) NATIONAL IDENTIFICATION INDEX.-The term "National Identification Index" means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III System.
- (16) NATIONAL INDICES.-The term "National indices" means the National Identification Index and the National Fingerprint File.
- (17) NONPARTY STATE.-The term "Nonparty State" means a State that has not ratified this Compact.
- (18) NONCRIMINAL JUSTICE PURPOSES.-The term "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.
- (19) PARTY STATE.-The term "Party State" means a State that has ratified this Compact.
- (20) POSITIVE IDENTIFICATION.-The term "positive identification" means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a 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, shall not constitute positive identification.
- (21) SEALED RECORD INFORMATION.-The term "sealed record information" means-
- (A) with respect to adults, that portion of a record that is- (i) not available for criminal justice uses; (ii) not supported by fingerprints or other accepted means of positive identification; or (iii) 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 record subject; and
  - (B) with respect to juveniles, whatever each State determines is a sealed record under its own law and procedure.
- (22) STATE.-The term "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 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 shall provide-
    - (A) information and records for the National Identification Index and the National Fingerprint File; and
    - (B) the State's III System-indexed criminal history records for noncriminal justice purposes described in Article IV;
- (3) participate in the National Fingerprint File; and
  - (4) provide and maintain telecommunications links and related equipment necessary to support the services set forth in this Compact.
- (c) **COMPLIANCE WITH III SYSTEM STANDARDS.**-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 record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III System operation.
  - (d) **MAINTENANCE OF RECORD SERVICES.**-
    - (1) Use of the III System for noncriminal justice purposes authorized in this Compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.
    - (2) Administration of Compact provisions shall not reduce the level of service available to authorized noncriminal justice users on the effective date of this Compact.

#### **ARTICLE IV-AUTHORIZED RECORD DISCLOSURES**

- (a) **STATE CRIMINAL HISTORY RECORD REPOSITORIES.**-To the extent authorized by section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974"), the FBI shall provide on request criminal history records (excluding sealed records) 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 and that authorizes national indices checks.
- (b) **CRIMINAL JUSTICE AGENCIES AND OTHER GOVERNMENTAL OR NONGOVERNMENTAL AGENCIES.**-The FBI, to the extent authorized by section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974"), and State criminal history record repositories shall provide criminal history records (excluding sealed records) 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, that authorizes national indices checks.
- (c) **PROCEDURES.**-Any record obtained under this Compact may be used only for the official purposes for which the record was requested. Each Compact officer shall establish procedures, consistent with

this Compact, and with rules, procedures, and standards established by the Council under Article VI, which procedures shall protect the accuracy and privacy of the records, and shall-

- (1) ensure that records obtained under this Compact are used only by authorized officials for authorized purposes;
- (2) require that subsequent record checks are requested to obtain current information whenever a new need arises; and
- (3) ensure that 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.

#### **ARTICLE V-RECORD REQUEST PROCEDURES**

- (a) **POSITIVE IDENTIFICATION.**-Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.
- (b) **SUBMISSION OF STATE REQUESTS.**-Each request for a criminal history record check utilizing the national indices made under any approved State statute shall 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 such request is transmitted through another State criminal history record repository or the FBI.
- (c) **SUBMISSION OF FEDERAL REQUESTS.**- Each request for criminal history record checks utilizing the national indices made under Federal authority shall 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 such request originated. Direct access to the National Identification Index by entities other than the FBI and State criminal history records repositories shall not be permitted for noncriminal justice purposes.
- (d) **FEES.**-A State criminal history record repository or the FBI-
  - (1) may charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and
  - (2) 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.
- (e) **ADDITIONAL SEARCH.**-
  - (1) If a State criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices.
  - (2) If, with respect to a request forwarded by a State criminal history record repository under paragraph (1), 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
    - (B) the State criminal history record repository shall be entitled to obtain the additional criminal history record information from the FBI or other State criminal history record repositories.

## ARTICLE VI-ESTABLISHMENT OF A COMPACT COUNCIL

### (a) ESTABLISHMENT.-

(1) IN GENERAL.-There is established a council to be known as the "Compact Council", which shall have 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.

(2) ORGANIZATION.-The Council shall-

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

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

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

(b) MEMBERSHIP.-The Council shall be composed of 15 members, each of whom shall be appointed by the Attorney General, as follows:

(1) Nine members, each of whom shall serve a 2-year term, who shall 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 shall be eligible to serve on an interim basis.

(2) Two at-large members, nominated by the Director of the FBI, each of whom shall serve a 3-year term, of whom-

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

(B) 1 shall be a representative of the noncriminal justice agencies of the Federal Government.

(3) Two at-large members, nominated by the Chairman of the Council, once the Chairman is elected pursuant to Article VI(c), each of whom shall serve a 3-year term, of whom-

(A) 1 shall be a representative of State or local criminal justice agencies; and

(B) 1 shall be a representative of State or local noncriminal justice agencies.

(4) One member, who shall serve a 3-year term, and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board.

(5) One member, nominated by the Director of the FBI, who shall serve a 3-year term, and who shall be an employee of the FBI.

### (c) CHAIRMAN AND VICE CHAIRMAN.-

(1) IN GENERAL.-From its membership, the Council shall elect a Chairman and a Vice Chairman of the Council, respectively. Both the Chairman and Vice Chairman of the Council-

- (A) shall be a Compact officer, unless there is no Compact officer on the Council who is willing to serve, in which case the Chairman may be an at-large member; and
- (B) shall serve a 2-year term and may be reelected to only 1 additional 2-year term.

(2) DUTIES OF VICE CHAIRMAN.-The Vice Chairman of the Council shall serve as the Chairman of the Council in the absence of the Chairman.

(d) MEETINGS.-

- (1) IN GENERAL.-The Council shall meet at least once a year at the call of the Chairman. Each meeting of the Council shall 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 such meeting.
- (2) QUORUM.-A majority of the Council or any committee of the Council shall constitute a quorum of the Council or of such 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.

(e) RULES, PROCEDURES, AND STANDARDS.-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.

(f) ASSISTANCE FROM FBI.-The Council may request from the FBI such reports, studies, statistics, or other information or materials as 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 such assistance or information upon such a request.

(g) COMMITTEES.-The Chairman may establish committees as necessary to carry out this Compact and may prescribe their membership, responsibilities, and duration.

#### ARTICLE VII-RATIFICATION OF COMPACT

This Compact shall take effect upon being entered into by 2 or more States as between those States and the Federal Government. Upon subsequent entering into this Compact by additional States, it shall become effective among those States and the Federal Government and each Party State that has previously ratified it. When ratified, this Compact shall have the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing State.

#### ARTICLE VIII-MISCELLANEOUS PROVISIONS

- (a) RELATION OF COMPACT TO CERTAIN FBI ACTIVITIES.-Administration of this Compact shall 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 U.S.C. App.) for all purposes other than noncriminal justice.
- (b) NO AUTHORITY FOR NONAPPROPRIATED EXPENDITURES.-Nothing in this Compact shall require the FBI to obligate or expend funds beyond those appropriated to the FBI.
- (c) RELATING TO PUBLIC LAW 92-544.- Nothing in this Compact shall diminish or lessen the obligations, responsibilities, and 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

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 Article VI(a), regarding the use and dissemination of criminal history records and information.

#### **ARTICLE IX-RENUNCIATION**

- (a) **IN GENERAL.**-This Compact shall bind each Party State until renounced by the Party State.
- (b) **EFFECT.**-Any renunciation of this Compact by a Party State shall-
- (1) be effected in the same manner by which the Party State ratified this Compact; and
  - (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 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 court of the United States, which shall have original jurisdiction of all cases or controversies arising under this Compact. Any suit arising under this Compact and initiated in a State court shall be removed to the appropriate district court of the United States in the manner provided by section 1446 of title 28, United States Code, or other statutory authority.

## NATIONAL CRIME PREVENTION AND PRIVACY COMPACT SECTION-BY-SECTION ANALYSIS

**Section 211.**-This section provides the short title of the Act.

**Section 212.**-This section sets forth the congressional findings upon which the Act is predicated. The section reflects congressional determinations that both the FBI and the states maintain fingerprint-based criminal history records and exchange them for criminal justice purposes and also, to the extent authorized by federal law and the laws of the various states, use the information contained in these records for certain noncriminal justice purposes. Although this system has operated for years on a reciprocal, voluntary basis, the exchange of records for noncriminal justice purposes has been hampered by the fact that the laws and policies of the states governing the noncriminal justice use of criminal history records and the procedures by which they are exchanged vary widely.

A compact will establish a uniform standard for the interstate and federal-state exchange of criminal history records for noncriminal justice purposes, while permitting each state to continue to enforce its own record dissemination laws within its own borders. A compact will also facilitate the interstate and federal-state exchange of information by clarifying the obligations and responsibilities of the respective parties, streamlining the processing of background search applications and eliminating record maintenance duplication at the federal and state levels. Finally, the compact will provide a mechanism for establishing and enforcing uniform standards governing record accuracy and protecting the confidentiality and privacy interests of record subjects.

**Section 213.**-This section sets out definitions of key terms used in this subtitle. Definitions of key terms used in the compact are set out in Article I of the compact.

**Section 214.**-This section formally enacts the compact into federal law, makes the United States a party, and consents to entry into the Compact by the States.

**Section 215.**-This section outlines the effect of the Compact's enactment on certain other laws. First, subsection (a) provides that the Compact is deemed to have no effect on the FBI's obligations and responsibilities under the Privacy Act. The Privacy Act became effective in 1975, and can generally be characterized as a federal code of fair information practices regarding individuals. The Privacy Act regulates the collection, maintenance, use, and dissemination of personal information by the federal government.

This Section makes clear that the Compact will neither expand nor diminish the obligations imposed on the FBI by the Privacy Act. All requirements relating to collection, disclosure and administrative matters remain in effect, including standards relating to notice, accuracy and security measures. Second, enactment of the Compact will neither expand nor diminish the responsibility of the FBI and the state criminal history record repositories to permit access, direct or otherwise, to criminal history records under the authority of certain other federal laws (enumerated in subsection (b)(1)). These laws include the following: The Security Clearance Information Act (Section 9101 of Title 5, United States Code) requires state and local criminal justice agencies to release criminal history record information to certain federal agencies for national security background checks.

The Brady Handgun Violence Prevention Act prescribes a waiting period before the purchase of a handgun may be consummated in order for a criminal history records check on the purchaser to be completed, and also establishes a national instant background check system to facilitate criminal history checks of firearms purchasers. Under this system, licensed firearms dealers are authorized access to the national instant background check system for purposes of complying with the background check requirement. The National Child Protection Act of 1993 (42 U.S.C. § 5119a) authorizes states with appropriate state statutes to access and review state and federal criminal history records through the national criminal history background check system for the purpose of determining whether care providers for children, the elderly and the disabled have criminal histories bearing upon their fitness to assume such responsibilities.

The Violent Crime Control and Law Enforcement Act of 1994 authorizes federal and state civil courts to have access to FBI databases containing criminal history records, missing person records and court protection orders for use in connection with stalking and domestic violence cases. The United States Housing Act of 1937, as amended by the Housing Opportunity Program Extension Act of 1996, authorizes public housing authorities to obtain federal and state criminal conviction records relating to public housing applicants or tenants for purposes of applicant screening, lease enforcement and eviction. The Native American Housing Assistance and Self-Determination Act authorizes Indian tribes or tribally designated housing entities to obtain federal and state conviction records relating to applicants for or tenants of federally assisted housing for purposes of applicant screening, lease enforcement and eviction.

Nothing in the Compact would alter any rights of access provided under these laws. Subsection (b)(2) provides that the compact shall not affect any direct access to federal criminal history records authorized by law. Under existing legal authority, the FBI has provided direct terminal access to certain federal agencies, including the Office of Management and Budget and the Immigration and Naturalization Service, to facilitate the processing of large numbers of background search requests by these agencies for such purposes as federal employment, immigration and naturalization matters, and the issuance of security clearances. This access will not be affected by the compact.

Subsection (c) provides that the Compact's enactment will not affect the FBI's authority to use its criminal history records for noncriminal justice purposes under Public Law 92-544-the State, Justice, Commerce Appropriations Act of 1973. This law restored the Bureau's authority to exchange its identification records with the states and certain other organizations or entities, such as federally chartered or insured banking institutions, for employment and licensing purposes, after a federal district court had declared the FBI's practice of doing so to be without foundation. (See *Menard v. Mitchell*, 328 F. Supp. 718 (D.D.C. 1971)).

Subsection (d) provides that the Council created by the Compact to facilitate its administration is deemed not to be a federal advisory committee as defined under the Federal Advisory Committee Act. This provision is necessary since nonfederal employees will sit on the Compact Council together with federal personnel and the Council may from time to time be called upon to provide the Director of the FBI or the Attorney General with collective advice on the administration of the Compact. Without this stipulation, such features might cause the Council to be considered an advisory committee within the meaning of the Federal Advisory Committee Act. Even though the Council will not be considered an advisory committee for purposes of the Act, it will hold public meetings.

Similarly, to avoid any question on the subject, Subsection (e) provides that members of the Compact Council will not be deemed to be federal employees or officers by virtue of their Council membership for any purpose other than to effect the Compact. Thus, state officials and other nonfederal personnel who are appointed to the Council will be considered federal officials only to the extent of their roles as Council members. They will not be entitled to compensation or benefits accruing to federal employees or officers, but they could receive reimbursement from federal funds for travel and subsistence expenses incurred in attending council meetings.

**Section 216.**-This Section admonishes all federal personnel to enforce the Compact and to cooperate in its implementation. It also directs the U.S. Attorney General to take such action as may be necessary to implement the Compact within the federal government, including the promulgation of regulations.

**Section 217.**-This is the core of the subtitle and sets forth the text of the Compact:

**Overview.** This briefly describes what the Compact is and how it is meant to work. Under the Compact, the FBI and the states agree to maintain their respective databases of criminal history records and to make them available to Compact parties for authorized purposes by means of an electronic information sharing system established cooperatively by the federal government and the states.

**Article I-Definitions.** This article sets out definitions for key terms used in the Compact. Most of the definitions are substantially identical to definitions commonly used in federal and state laws and regulations relating to criminal history records and need no explanation. However, the following definitions merit comment:

*(20) Positive Identification.* This term refers, in brief, to association of a person with his or her criminal history record through a comparison of fingerprints or other equally reliable biometric identification techniques. Such techniques eliminate or substantially reduce the risks of associating a person with someone else's record or failing to find a record of a person who uses a false name. At present, the method of establishing positive identification in use in criminal justice agencies throughout the United States is based upon comparison of fingerprint patterns, which are essentially unique and unchanging and thus provide a highly reliable basis for identification. It is anticipated that this method of positive identification will remain in use for many years to come, particularly since federal and state agencies are investing substantial amounts of money to acquire automated fingerprint identification equipment and related devices which facilitate the capturing and transmission of fingerprint images and provide searching and matching methods that are efficient and highly accurate. However, there are other biometric identification techniques, including retinal scanning, voice-print analysis and DNA typing, which might be adapted for criminal record identification purposes. The wording of the definition contemplates that at some future time the Compact Council might authorize the use of one or more of these techniques for establishing positive identification, if it determines that the reliability of such technique(s) is at least equal to the reliability of fingerprint comparison.

*(21) Sealed Record Information.* Article IV, paragraph (b), permits the FBI and state criminal history record repositories to delete sealed record information when responding to an interstate record request pursuant to the Compact. Thus, the definition of "sealed" becomes important, particularly since state sealing laws vary considerably, ranging from laws that are quite restrictive in their application to others that are very broad. The definition set out here is intended to be a narrow one in keeping with a basic tenet of the Compact—that state repositories shall release as much information as possible for interstate exchange purposes, with issues concerning the use of particular information for particular purposes to be decided under the laws of the receiving states. Consistent with the definition, an adult record, or a portion of it, may be considered sealed only if its release for noncriminal justice purposes has been prohibited by a court order or by action of a designated official or board, such as a State Attorney General or a Criminal Record Privacy Board, acting pursuant to a federal or state law. Further, to qualify under the definition, a court order, whether issued in response to a petition or on the court's own motion, must apply only to a particular record subject or subjects referred to by name in the order. So-called "blanket" court orders applicable to multiple unnamed record subjects who fall into particular classifications or circumstances, such as first-time non-serious drug offenders, do not fit the definition. Similarly, sealing orders issued by designated officials or boards acting pursuant to statutory authority meet the definition only if such orders are issued in response to petitions filed by individual record subjects who are referred to by name in the orders. So-called "automatic" sealing laws, which restrict the noncriminal justice use of the records of certain defined classes of individuals, such as first-time offenders who successfully complete probation terms, do not satisfy the definition, because they do not require the filing of individual petitions and the issuance of individualized sealing orders.

Concerning juvenile records, each state is free to adopt whatever definition of sealing it prefers.

**Article II-Purposes.** Five purposes are listed: creation of a legal framework for establishment of the Compact; delineation of the FBI's obligations under the Compact; delineation of the obligations of party states; creation of a Compact Council to monitor system operations and promulgate necessary rules and procedures; and, establishment of an obligation by the parties to adhere to the Compact and its related rules and standards.

**Article III-Responsibilities of Compact Parties.** This article details FBI and state responsibilities under the Compact and provides for the appointment of Compact Officers by the FBI and by party states. Compact officers shall have primary responsibility for ensuring the proper administration of the Compact within their jurisdictions. The FBI is required to provide criminal history records maintained in its

automated database for noncriminal justice purposes described in Article IV of the Compact. These responses will include federal criminal history records and, to the extent that the FBI has such data in its files, information from non-Compact States and information from Compact States relating to records which such states cannot provide through the III System. The FBI is also responsible for providing and maintaining the centralized system and equipment necessary for the Compact's success and ensuring that requests made for criminal justice purposes will have priority over requests made for noncriminal justice purposes.

State responsibilities are similar. Each Party State must grant other states access to its III system-indexed criminal history records for authorized noncriminal justice purposes and must submit to the FBI fingerprint records and subject identification information that are necessary to maintain the national indices. Each state must comply with duly established system rules, procedures, and standards. Finally, each state is responsible for providing and maintaining the telecommunications links and equipment necessary to support system operations within that state.

Administration of Compact provisions will not be permitted to reduce the level of service available to authorized criminal justice and noncriminal justice users on the effective date of the Compact.

**Article IV-Authorized Record Disclosures.** This article requires the FBI, to the extent authorized by the Privacy Act, and the state criminal history record repositories to provide criminal history records to one another for use by governmental or nongovernmental agencies for noncriminal justice purposes that are authorized by federal statute, by federal executive order, or by a state statute that has been approved by the U.S. Attorney General. Compact parties will be required to provide criminal history records to other compact parties for noncriminal justice uses that are authorized by law in the requesting jurisdiction even though the law of the responding jurisdiction does not authorize such uses within its borders. Further, the responding party must provide all of the criminal history record information it holds on the individual who is the subject of the request (deleting only sealed record information) and the law of the requesting jurisdiction will determine how much of the information will actually be released to the noncriminal justice agency on behalf of which the request was made. This approach provides a uniform dissemination standard for interstate exchanges, while permitting each compact party to enforce its own record dissemination laws within its borders.

To provide uniformity of interpretation, state laws authorizing noncriminal justice uses of criminal history records under this article must be reviewed by the U.S. Attorney General to ensure that the laws explicitly authorize searches of the national indices.

Records provided through the III System pursuant to the Compact may be used only by authorized officials for authorized purposes. Compact officers must establish procedures to ensure compliance with this limitation as well as procedures to ensure that criminal history record information provided for noncriminal justice purposes is current and accurate and is protected from unauthorized release. Further, procedures must be established to ensure that records received from other compact parties are screened to ensure that only legally authorized information is released. For example, if the law of the receiving jurisdiction provides that only conviction records may be released for a particular noncriminal justice purpose, all other entries, such as acquittal or dismissal notations or arrest notations with no accompanying disposition notation, must be deleted.

**Article V-Record Request Procedures.** This article provides that direct access to the National Identification Index and the National Fingerprint File for purposes of conducting criminal history record searches for noncriminal justice purposes shall be limited to the FBI and the state criminal history record repositories. A noncriminal justice agency authorized to obtain national searches pursuant to an approved state statute must submit the search application through the state repository in the state in which the agency is located. A state repository receiving a search application directly from a noncriminal justice agency in another state may process the application through its own criminal history record system, if it has legal authority to do so, but it may not conduct a search of the national indices on behalf of such an out-of-state agency nor may it obtain out-of-state or federal records for such an agency through the III System.

Noncriminal justice agencies authorized to obtain national record checks under federal law or federal executive order, including federal agencies, federally chartered or insured financial institutions and certain securities and commodities establishments, must submit search applications through the FBI or, if the repository consents to process the application, through the state repository in the state in which the agency is located.

All noncriminal justice search applications submitted to the FBI or to the state repositories must be accompanied by fingerprints or some other approved form of positive identification. If a state repository positively identifies the subject of such a search application as having a III System-indexed record maintained by another state repository or the FBI, the state repository shall be entitled to obtain such records from such other state repositories or the FBI. If a state repository cannot positively identify the subject of a noncriminal justice search application, the repository shall forward the application, together with fingerprints or other approved identifying information, to the FBI. If the FBI positively identifies the search application subject as having a III System-indexed record or records, it shall notify the state repository which submitted the application and that repository shall be entitled to obtain any III System-indexed record or records relating to the search subject maintained by any other state repository or the FBI.

The FBI and state repositories may charge fees for processing noncriminal justice search applications, but may not charge fees for providing criminal history records by electronic means in response to authorized III System record requests.

**Article VI-Establishment of Compact Council.** This article establishes a Compact Council to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes. Such rules cannot conflict with the FBI's administration of the III System for criminal justice purposes. Issues concerning whether particular rules or procedures promulgated by the Council conflict with FBI authority under this article shall be adjudicated pursuant to Article XI.

The Council shall consist of 15 members from compact states and federal and local criminal justice and noncriminal justice agencies. All members shall be appointed by the U.S. Attorney General. Council members shall elect a Council Chairman and Vice Chairman, both of whom shall be compact officers unless there are no compact officers on the Council who are willing to serve, in which case at-large members may be elected to these offices.

The 15 Council members include nine members who must be state compact officers or state repository administrators, four at-large members representing federal, state and local criminal justice and noncriminal justice interests, one member from the FBI's advisory policy board on criminal justice information services and one member who is an FBI employee. Although, as noted, all members will be appointed by the U.S. Attorney General, they will be nominated by other persons, as specified in the Compact. If the Attorney General declines to appoint any person so nominated, the Attorney General shall request another nomination from the person or persons who nominated the rejected person. Similarly, if a Council membership vacancy occurs, for any reason, the Attorney General shall request a replacement nomination from the person or persons who made the original nomination.

Persons who are appointed to the Council who are not already federal officials or employees shall, by virtue of their appointment by the Attorney General, become federal officials to the extent of their duties and responsibilities as Council members. They shall, therefore, have authority to participate in the development and issuance of rules and procedures, and to participate in other actions within the scope of their duties as Council members, which may be binding upon federal officers and employees or otherwise affect federal interests.

The Council shall be located for administrative purposes within the FBI and shall have authority to request relevant assistance and information from the FBI. Although the Council will not be considered a Federal Advisory Committee (see Section 215(d)), it will hold public meetings and will publish its rules and procedures in the Federal Register and make them available for public inspection and copying at a Council office within the FBI.

**Article VII-Ratification of Compact.** This article states that the Compact will become effective immediately upon its execution by two or more states and the United States Government and will have the full force and effect of law within the ratifying jurisdictions. Each state will follow its own laws in effecting ratification.


**Article VIII-Miscellaneous Provisions.** This article makes clear that administration of the Compact shall not interfere with the authority of the FBI Director over the management and control of the FBI's collection and dissemination of criminal history records for any purpose other than noncriminal justice. Similarly, nothing in the Compact diminishes a state's obligations and authority under Public Law 92-544 regarding the dissemination or use of criminal history record information (see analysis of Section 214, above). The Compact does not require the FBI to obligate or expend funds beyond its appropriations.

**Article IX-Renunciation.** This article provides that a state wishing to end its obligations by renouncing the Compact shall do so in the same manner by which it ratified the Compact and shall provide six months' advance notice to other compact parties.

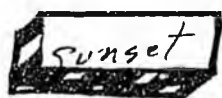
**Article X-Severability.** This article provides that the remaining provisions of the Compact shall not be affected if a particular provision is found to be in violation of the Federal Constitution or the constitution of a party state. Similarly, a finding in one state that a portion of the Compact is legally objectionable will have no effect on the viability of the Compact in other Party States.

**Article XI-Adjudication of Disputes.** This article vests initial authority in the Compact Council to interpret its own rules and standards and to resolve disputes among parties to the Compact. Decisions are to be rendered upon majority vote of Council members after a hearing on the issue. Any Compact party may appeal any such Council decision to the U.S. Attorney General and thereafter may file suit in the appropriate United States district court. Any suit concerning the compact filed in any state court shall be removed to the appropriate federal district court.

80 transfers out of 237 blue to 10,000 per transfer  
86 brown

Constable 

Like work, Like pay



Brown shirts

Held to same standard  
sitka Academy



2 step ranges below Trooper  
Higher than CSO

1 \* Sec. 4. AS 47.17.033(a) is amended to read:

2 (a) In investigating child abuse and neglect reports under this chapter, the  
3 department may make necessary inquiries about the criminal records of the parents or  
4 of the alleged abusive or neglectful person, including inquiries about the existence of  
5 a criminal history record involving a serious offense as defined in AS 47.14.990  
6 [AS 12.62.900].

7 \* Sec. 5. AS 47.35.047(b) is amended to read:

8 (b) A licensee shall notify the department within 24 hours after having  
9 knowledge of a conviction or indictment, presentment, or charging by information or  
10 complaint of an administrator, foster parent, member of the licensee's household,  
11 regular volunteer, or staff person for a violation of the following laws or the laws of  
12 another jurisdiction with similar elements:

13 (1) offenses against the family and vulnerable adults under AS 11.51;

14 (2) perjury under AS 11.56.200;

15 (3) offenses included in the definition of "serious offense" under

16 AS 47.14.990 [AS 12.62.900].

17 \* Sec. 6. AS 47.35.900(24) is amended to read:

18 (24) "serious offense" has the meaning given in: AS 47.14.990;

19 [AS 12.62.900.]

20 \* Sec. 7. AS 12.62.900(23) and 12.62.900(24) are repealed.

21 \* Sec. 8. This Act takes effect September 1, 2000.

**BILL NO.**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - FIRST SESSION

**BY**

Introduced:  
Referred:

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act entering into the National Crime Prevention and Privacy Compact; making  
2 criminal justice information available to interested persons and criminal history record  
3 information available to authorized persons; repealing the definition of 'unconditional  
4 discharge' in AS 12.62; and providing for an effective date."

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

6 \* Section 1. AS 12.62 is amended by adding a new section to read:

7           **Sec. 12.62.115. National Crime Prevention and Privacy Compact.** The  
8 National Crime Prevention and Privacy Compact, as contained in 42 U.S.C. 14616, is  
9 enacted into law and entered into on behalf of the State of Alaska with any other states  
10 legally joining it.

11 \* Sec. 2. AS 12.62.160(b) is amended to read:

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

1 (1) [AN ASSESSMENT OR SUMMARY OF CRIMINAL JUSTICE  
2 INFORMATION] may be provided to a person when [, AND ONLY TO THE  
3 EXTENT,] necessary to avoid imminent danger to life or extensive damage to  
4 property;

5 (2) [CRIMINAL JUSTICE INFORMATION] may be provided to a  
6 person as [TO THE EXTENT] required by applicable court rules or under an order of  
7 a court of this state, another state, or the United States;

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

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

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

18 (6) [CRIMINAL JUSTICE INFORMATION] may be provided to a  
19 person specifically authorized by a state or federal law to receive the [SUCH]  
20 information;

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

25 (8) except for nonconviction information and correctional  
26 treatment information. [CURRENT OFFENDER INFORMATION MAY BE  
27 PROVIDED TO A PERSON FOR ANY PURPOSE, EXCEPT THAT  
28 INFORMATION MAY NOT BE RELEASED IF THE RELEASE OF THE  
29 INFORMATION WOULD UNREASONABLY COMPROMISE THE PRIVACY OF  
30 A MINOR OR VULNERABLE ADULT;

31 (9) [PAST CONVICTION INFORMATION] may be provided to a

1 person for any purpose [IF LESS THAN 10 YEARS HAS ELAPSED FROM THE  
2 DATE OF UNCONDITIONAL DISCHARGE TO THE DATE OF THE REQUEST;]

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

7 (10) [(11) CRIMINAL JUSTICE INFORMATION] may be provided  
8 to the person who is the subject of the information.

9 \* Sec. 3. AS 12.62.900(24) is repealed.

10 \* Sec. 4. This Act takes effect September 1, 2001.

**Memorandum**

**To:** Representative John Coghill / Chair State Affairs Committee

**From:** Representative Ogan / Sponsor HB 95

**Date:** February 6, 2001

**Re:** HB 95 / Increasing Constituent Space in Capitol

\*\*\*\*\*

I would appreciate your scheduling this measure to give the Legislature the option for creating more space in our antiquated Capitol building.

If we are to remain in this building we need to seriously look at providing more space than we presently have.

I am not suggesting the Governor be evicted, but I am suggesting that the decision to reduce Administrative space in this building needs to rest with the Legislature.

Thank you for your consideration in this request.

## **Sponsor Statement**

**HB 95**

### **Increasing Capitol Space**

I have introduced HB 95 to give the Legislature the option of increasing the space for the public in the Capitol building.

Presently the Legislature does not control the fourth floor of the Capitol, which is occupied by the Governor and Lt. Governor and multiple staff persons.

While I believe it appropriate for the Governor and perhaps the Lt. Governor to be represented in offices within this building, I feel the Administration should yield some of its present footage if the legislature needs to hold hearings and accommodate the public in some semblance of comfort.

We have outgrown most of our Committee rooms that on average hold fewer than 30 seats. On any significance issue, bureaucrats, media and lobbyists occupy half of those seats.

# State of Alaska



## Legislative Affairs Agency

Building Manager, Maintenance

State Capitol Room 12~ Juneau, AK 99801-1182~ Phone (907) 465-3708~ Fax (907) 465-3724

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### MEMORANDUM

**TO:** Representative Scott Ogan

**FROM:** Don Johnston, Building Manager  
Administrative Services - Maintenance

**DATE:** February 12, 2001

**SUBJECT:** Capitol Square Footage

Attached is the estimated square footage for the Capitol. Average size of the committee rooms is 650 square feet. The larger committee rooms are 800 square feet and the smaller committee rooms are 500 square feet.

If you have any questions, please call me at 465-3708.

attachment

### CAPITOL SQUARE FOOTAGE

	Legislative Offices Chambers Committee Rooms Lounge	Lobbys Hallways Restrooms Elevatur & Stairwell	Maintenance Offices Mech Room Storage Data Processing Rm Lounge Espresso Storage	Supply	Documents	Press	Emergency Operation Center (Gov's office Occupies)	
GROUND FL.	4,770	3,700	3,500	560	430	410	1,630	15,000
1ST FL.	11,460	3,540	.....	.....	.....	.....	.....	15,000
2ND FL.	11,630	3,180	190	.....	.....	.....	.....	15,000
3RD FL.	This floor is occupied	by the Governors	Office	.....	.....	.....	.....	14,200
4TH FL.	10,670	3,530	.....	.....	.....	.....	.....	14,200
5TH FL.	11,270	2,930	.....	.....	.....	.....	.....	14,200
PENTHOUSE	.....	.....	.....	.....	.....	.....	.....	900
	49,800	16,880	3,690	560	430	410	1,630	88,500

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

NO. \_\_\_\_\_  
BILL VERSION: HB95  
PUBLISH DATE: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act relating to control of space in the state capitol and other buildings occupied by...."  
Sponsor: Representative Ogan  
Requestor: House State Affairs

Department Affected: Legislature  
BRU: Legislative Council  
Component: Council & Subcommittees, Administrative Services, Session

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>	0.0	0.0	0.0	0.0	0.0	0.0
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<b>REVENUE FUND SOURCE</b>	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary)  
 HB95 transfers control of space in the state Capitol currently occupied by the Office of the Governor to the Alaska Legislative Council. It also directs the Legislative Affairs Agency to allocate parking according to the needs of the Legislature, deleting the reference to other agencies occupying space in the state Capitol. This bill has zero fiscal impact on the Legislature.

Prepared By: Karla Schofield, Deputy Director Phone: 465-3852  
 Division: Administrative Services Date: 2/28/01

Approved By: Pamela A. Varni, Executive Director Date: 2/28/01  
 Agency: Legislative Affairs Agency