

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1691

S.P. 545

In Senate, March 20, 2001

**An Act Adopting and Implementing the National Crime Prevention and
Privacy Compact.**

(EMERGENCY)

Submitted by the Department of Public Safety pursuant to Joint Rule 204.
Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator McALEVEY of York.
Cosponsored by Representative POVICH of Ellsworth and
Representatives: MUSE of South Portland, TOBIN of Dexter, WHEELER of Bridgewater.

2 interstate and federal-state exchange of criminal history records
3 for noncriminal justice uses;

4 2. FBI. Require the FBI to permit use of the national
5 indices by each party state and to provide, in a timely fashion,
6 federal and state criminal history records to requesting states
7 in accordance with the terms of this compact and with rules,
8 procedures and standards established by the council pursuant to
9 section 1707;

10 3. Party states. Require party states to provide
11 information and criminal history records for the national indices
12 and to provide criminal history records, in a timely fashion, to
13 criminal history record repositories of other states and the
14 Federal Government for noncriminal justice purposes in accordance
15 with the terms of this compact and with rules, procedures and
16 standards established by the council pursuant to section 1707;

17 4. Council. Provide for the establishment of a council to
18 monitor III system operations and to prescribe system rules and
19 procedures for the effective and proper operation of the III
20 system for noncriminal justice purposes; and

21 5. III system standards. Require the FBI and each party
22 state to adhere to III system standards concerning criminal
23 history record dissemination and use, response times, system
24 security, data quality and other duly established standards,
25 including those that enhance the accuracy and privacy of such
26 criminal history records.

27 **§1703. Definitions**

28 As used in this chapter, unless the context otherwise
29 indicates, the following terms have the following meanings.

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

32 2. Compact officer. "Compact officer" means:

33 A. With respect to the Federal Government, an official so
34 designated by the Director of the FBI; or

35 B. With respect to a party state, the chief administrator
36 of the state's criminal history record repository or a
37 designee of the chief administrator who is a regular
38 full-time employee of the repository.

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

2 **4. Criminal history record repository.** "Criminal history
record repository" means the state agency designated by the
4 governor or other appropriate executive official or the
legislature of a state to perform centralized recordkeeping
6 functions for criminal history records and services in the state.

8 **5. Criminal history records.** "Criminal history records"
means information, collected by criminal justice agencies on
10 individuals, consisting of identifiable descriptions and
notations of arrests, detentions, indictments or other formal
12 criminal charges and any disposition arising therefrom, including
acquittal, sentencing, correctional supervision or release.
14 "Criminal history records" does not include identification
information such as fingerprint records if the information does
16 not indicate involvement of the individual with the criminal
justice system.

18 **6. Criminal justice.** "Criminal justice" means activities
relating to the detection, apprehension, detention, pretrial
20 release, posttrial release, prosecution, adjudication,
22 correctional supervision or rehabilitation of accused persons or
criminal offenders. The administration of criminal justice
24 includes criminal identification activities and the collection,
storage and dissemination of criminal history records.

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

30 A. A court; and

32 B. A governmental agency or any subunit of an agency that
performs the administration of criminal justice pursuant to
34 a law or executive order and allocates a substantial part of
its annual budget to the administration of criminal
36 justice. "Criminal justice agency" includes federal and
state inspector general offices.

38 **8. Criminal justice services.** "Criminal justice services"
means services provided by the FBI to criminal justice agencies
40 in response to a request for information about a particular
42 individual or as an update to information previously provided for
criminal justice purposes.

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

2 10. Executive order. "Executive order" means an order of
the President of the United States or the chief executive officer
4 of a state that has the force of law and that is promulgated in
accordance with applicable law.

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

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

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

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

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

30 16. Noncriminal justice purposes. "Noncriminal justice
32 purposes" means uses of criminal history records for purposes
authorized by federal or state law other than purposes relating
34 to criminal justice activities, including employment suitability,
licensing determinations, immigration and naturalization matters
and national security clearances.

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

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

44 19. Positive identification. "Positive identification"
means a determination, based upon a comparison of fingerprints or
46 other equally reliable biometric identification techniques, that
the subject of a criminal history record search is the same
48 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

2 characteristics or numbers or combinations thereof does not
3 constitute positive identification.

4 **20. Sealed criminal history record information.** "Sealed
5 criminal history record information" means:

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

10 (1) Not available for criminal justice uses;

12 (2) Not supported by fingerprints or other accepted
13 means of positive identification; or

14 (3) Subject to restrictions on dissemination for
15 noncriminal justice purposes pursuant to a court order
16 related to a particular subject or pursuant to a
17 federal or state statute that requires action on a
18 sealing petition filed by a particular subject; and

20 B. With respect to minors, whatever each state determines
21 is a sealed criminal history record under its own law and
22 procedure.

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

26 **§1704. Responsibilities of compact parties**

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

30 A. Appoint an FBI compact officer who shall:

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

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

42 (3) Regulate the use of criminal history records
43 received by means of the III system from party states
44 when those criminal history records are supplied by the
45 FBI directly to other federal agencies;

2 B. Provide to federal agencies and to state criminal
3 history record repositories criminal history records
4 maintained in its database for the noncriminal justice
5 purposes described in section 1705, including:

6 (1) Information from nonparty states; and

8 (2) Information from party states that is available
9 from the FBI through the III system but is not
10 available from the party state through the III system;

12 C. Provide a telecommunications network and maintain
13 centralized facilities for the exchange of criminal history
14 records for both criminal justice purposes and the
15 noncriminal justice purposes described in section 1705 and
16 ensure that the exchange of the criminal history records for
17 criminal justice purposes has priority over exchange for
18 noncriminal justice purposes; and

20 D. Modify or enter into user agreements with nonparty state
21 criminal history record repositories to require them to
22 establish criminal history record request procedures
23 conforming to those prescribed in section 1706.

24 **2. Party state. Each party state shall:**

26 **A. Appoint a compact officer who shall:**

28 (1) Administer this compact within that state;

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

34 (3) Regulate the in-state use of criminal history
35 records received by means of the III system from the
36 FBI or from other party states;

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

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

44 (2) The state's III system-indexed criminal history
45 records for noncriminal justice purposes described in
46 section 1705;

48 **C. Participate in the national fingerprint file; and**
49

50

2 D. Provide and maintain telecommunications links and
related equipment necessary to support the criminal justice
4 services set forth in this compact.

6 3. Compliance with III system requirements. In carrying
out their responsibilities under this compact, the FBI and each
8 party state shall comply with III system rules, procedures and
standards duly established by the council concerning criminal
10 history record dissemination and use, response times, data
quality, system security, accuracy, privacy protection and other
12 aspects of III system operation.

14 4. Noncriminal justice users. Use of the III system for
noncriminal justice purposes authorized in this compact must be
16 managed so as not to diminish the level of services provided in
support of criminal justice purposes. Administration of compact
18 provisions may not reduce the level of service available to
authorized noncriminal justice users on the effective date of
20 this compact.

22 **§1705. Authorized criminal history record disclosures**

24 1. Release by FBI to state criminal history record
repositories. To the extent authorized by the Privacy Act of
26 1974, 5 United States Code, Section 552a, the FBI shall provide
on request criminal history records, excluding sealed criminal
28 history record information, to state criminal history record
repositories for noncriminal justice purposes allowed by federal
30 statute, federal executive order or a state statute that has been
approved by the Attorney General to ensure that the state statute
32 explicitly authorizes national indices checks.

34 2. Release by FBI and state criminal history record
repositories to other agencies. The FBI, to the extent
36 authorized by the Privacy Act of 1974, 5 United States Code,
Section 552a and state criminal history record repositories,
38 shall provide criminal history records, excluding sealed criminal
history record information, to criminal justice agencies and
40 other governmental or nongovernmental agencies for noncriminal
justice purposes allowed by federal statute, federal executive
42 order or a state statute that has been approved by the Attorney
General to ensure that the state statute explicitly authorizes
44 national indices checks.

46 3. Use for official purposes. Any criminal history record
obtained under this compact may be used only for the official
48 purposes for which the criminal history record was requested.
Each compact officer shall establish procedures, consistent with
this compact and with rules, procedures and standards established

2 by the council under section 1707, that protect the accuracy and
3 privacy of the criminal history records and:

4 A. Ensure that criminal history records obtained under this
5 compact are used only by authorized officials for authorized
6 purposes;

7 B. Require that subsequent criminal history record checks
8 are requested to obtain current information whenever a new
9 need arises; and

10 C. Ensure that criminal history record entries that may not
11 legally be used for a particular noncriminal justice purpose
12 are deleted from the response and, if no information
13 authorized for release remains, an appropriate "no record"
14 response is communicated to the requesting official.

15 **§1706. Criminal history record request procedures**

16 1. Positive identification. Subject fingerprints or other
17 approved forms of positive identification must be submitted with
18 all requests for criminal history record checks for noncriminal
19 justice purposes.

20 2. Interstate request. Each request for a criminal history
21 record check utilizing the national indices made under any
22 approved state statute must be submitted through that state's
23 criminal history record repository. A state criminal history
24 record repository shall process an interstate request for
25 noncriminal justice purposes through the national indices only if
26 the request is transmitted through another state criminal history
27 record repository or the FBI.

28 3. Federal agency request. Each request for criminal
29 history record checks utilizing the national indices made under
30 federal authority must be submitted through the FBI or, if the
31 state criminal history record repository consents to process
32 fingerprint submissions, through the criminal history record
33 repository in the state in which the request originated. Direct
34 access to the national identification index by entities other
35 than the FBI and state criminal history record repositories may
36 not be permitted for noncriminal justice purposes.

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

39 A. May charge a fee, in accordance with applicable law, for
40 handling a request involving fingerprint processing for
41 noncriminal justice purposes; and

42

2 B. May not charge a fee for providing criminal history
4 records in response to an electronic request for a record
that does not involve a request to process fingerprints.

6 5. Procedure; unable to identify. If a state criminal
8 history record repository can not positively identify the subject
10 of a record request made for noncriminal justice purposes, the
12 request, together with fingerprints or other approved identifying
14 information, must be forwarded to the FBI for a search of the
national indices. If, with respect to a request forwarded by a
state criminal history record repository under subsection 3, the
FBI positively identifies the subject as having a III
system-indexed record or records:

16 A. The FBI shall so advise the state criminal history
record repository; and

18 B. The state criminal history record repository is entitled
20 to obtain the additional criminal history record information
from the FBI or other state criminal history record
22 repositories.

24 §1707. Establishment of compact council

26 1. Compact council. There is established a compact council
28 that has the authority to promulgate rules and procedures
30 governing the use of the III system for noncriminal justice
32 purposes, not to conflict with FBI administration of the III
34 system for criminal justice purposes. The council is located for
administrative purposes within the FBI and continues in existence
as long as this compact remains in effect. The council shall
hold its first meeting as soon as practicable after the effective
date of this compact.

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

40 A. Nine members, each of whom shall serve a 2-year term and
42 who must be selected from among the compact officers of
44 party states based on the recommendation of the compact
46 officers of all party states, except that in the absence of
the requisite number of compact officers available to serve,
the chief administrators of the criminal history record
repositories of nonparty states are eligible to serve on an
interim basis;

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

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

5 (2) One of whom must be a representative of the
6 noncriminal justice agencies of the Federal Government;

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

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

12 (2) One of whom must be a representative of state or
13 local noncriminal justice agencies;

14 D. One member who serves a 3-year term and who is
15 simultaneously a member of the FBI's advisory policy board
16 on criminal justice information services, nominated by the
17 membership of that policy board; and

18 E. One member, nominated by the Director of the FBI, who
19 serves a 3-year term and who is an employee of the FBI.

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

24 A. Must be compact officers, unless there is no compact
25 officer on the council who is willing to serve, in which
26 case the chair may be an at-large member; and

27 B. Serve 2-year terms and may be reelected to only one
28 additional 2-year term.

29 4. Meetings. The council shall meet at least once each
30 year at the call of the chair. Each meeting of the council must
31 be open to the public. The council shall provide prior public
32 notice in the Federal Register of each meeting of the council,
33 including the matters to be addressed at the meeting. A majority
34 of the council or any committee of the council constitutes a
35 quorum of the council or of a committee, respectively, for the
36 conduct of business. A lesser number may meet to hold hearings,
37 take testimony or conduct any business not requiring a vote.

38 5. Rules. The council shall make available for public
39 inspection and copying at the council office within the FBI and

2 shall publish in the Federal Register any rules, procedures or
3 standards established by the council.

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

10
11 7. Committees. The chair may establish committees as
12 necessary to carry out this compact and may prescribe the
13 committees' membership, responsibilities and duration.

14 **§1708. Ratification of compact**

15
16 This compact takes effect upon being entered into by 2 or
17 more states as between those states and the Federal Government.
18 When additional states subsequently enter into this compact, it
19 becomes effective among those states and the Federal Government
20 and each party state that has previously ratified the compact.
21 When ratified, this compact has the full force and effect of law
22 within the ratifying jurisdictions. The form of ratification
23 must be in accordance with the laws of the ratifying state.

24 **§1709. Miscellaneous provisions**

25
26
27 1. FBI authority. Administration of this compact may not
28 interfere with the management and control of the Director of the
29 FBI over the FBI's collection and dissemination of criminal
30 history records and the advisory function of the FBI's advisory
31 policy board chartered under the Federal Advisory Committee Act,
32 5 United States Code, Appx. I, for all purposes other than
33 noncriminal justice.

34
35 2. FBI expenditure of funds. This compact does not require
36 the FBI to obligate or expend funds beyond those appropriated to
37 the FBI.

38
39 3. State authority. This compact does not diminish or
40 lessen the obligations, responsibilities or authorities of any
41 state, whether a party state or a nonparty state, or of any
42 criminal history record repository or other subdivision or
43 component thereof, under the federal Departments of State,
44 Justice, and Commerce, the Judiciary and Related Agencies
45 Appropriation Act, 1973, Public Law 92-544, or regulations and
46 guidelines promulgated thereunder, including the rules and
47 procedures promulgated by the council under section 1707,
48 regarding the use and dissemination of criminal history records
49 and information.

2 **§1710. Renunciation**

4 This compact binds each party state until renounced by the
6 party state. Any renunciation of this compact by a party state
 must:

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

12 2. Notice. Become effective 180 days after written notice
14 of renunciation is provided by the party state to each other
 party state and to the Federal Government.

16 **§1711. Adjudication of disputes**

18 1. Dispute resolution. The council:

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

22 (1) Interpretation of this compact;

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

28 (3) Any dispute or controversy between any parties to
 this compact; and

30 B. Shall hold a hearing concerning any dispute described in
32 paragraph A at a regularly scheduled meeting of the council
34 and only render a decision based upon a majority vote of the
 members of the council. The decision must be published
 pursuant to the requirements of section 1707, subsection 5.

36 2. III system. The FBI shall exercise immediate and
38 necessary action to preserve the integrity of the III system,
40 maintain system policy and standards, protect the accuracy and
 privacy of criminal history records and prevent abuses until the
 council holds a hearing on the disputes pursuant to subsection 1.

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

2 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved.

4

6

SUMMARY

8 The bill allows the Maine State Police to enter into a
compact with the Federal Bureau of Investigation and other party
10 states for the purpose of organizing an electronic information
sharing system among the Federal Government and the states to
12 exchange criminal history records for noncriminal justice
purposes for dissemination as authorized by federal and state
14 laws.