Approved
Date: Feb. 19, 2001

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:37 a.m. on February 15, 2001 in Room 123-S of the Capitol.

All members were present except: Sen. Goodwin (excused)

Committee staff present:
Gordon Self, Revisor
Mike Heim, Research
Mary Blair, Secretary

Conferees appearing before the committee:
David Sim, Kansas Bureau of Investigation (KBI)
Ken Hales, Deputy Commissioner, Juvenile Justice Authority (JJA)

Others attending: see attached list

Minutes of the February 13th and 14th meetings were approved on a motion by Senator Donovan, seconded by Senator Adkins. Carried.

SB 209–enacting the national crime prevention and privacy compact (NCPPC)

Conferee Sim testified in support of **SB 209**, a bill which would make Kansas a full member of a group of states that have adopted the NCPPC. The NCPPC would minimize criminal history record maintenance at the federal level and permit state repositories to communicate with each other in a controlled environment with common procedures. He described the current status of criminal history record checks in Kansas, explained how changes underway at the state and national level have led to the NCPPC and described the impact and benefits of implementing NCPPC. He referenced resource materials on NCPPC included in his written testimony (attachment 1) Following discussion Senator Adkins moved to pass the bill out favorably, Senator Umbarger seconded. Carried.

SB 174–juvenile offender detention, responsibility and payment of expenses

The Chair informed Committee that written testimony from Shawn Brandmahl, North Central Kansas Regional Juvenile Detention Facility, supporting **SB 174** had been distributed. (attachment 2)

Senator Oleen presented a brief history of this bill and stated she was not in support of it. There was discussion about the bill including it's fiscal impact.

Conferee Hales testified in opposition to **SB 174**, a bill which primarily clarifies the financial responsibility the state has for juveniles housed in detention centers and sets conditions regarding the fund balance of the Juvenile Detention Facilities Fund (JDFF). The Conferee detailed the role and responsibility of the Juvenile Justice Authority in administering the JDFF, reviewed Section 1 and 11 of the bill which address placement of detained juveniles in either a group home or correctional facility and discussed the fiscal impact of the bill stating it has potential to increase state costs for detention of juvenile offenders. He stated that this bill creates confusion regarding the role and responsibility the state and local governments have for local detention costs. (attachment 3)

SB 67–DUI; concerning penalties

The Chair informed the Committee that there were federal penalties attached to Committee action taken on **SB 67** on 2-13-01 according to a letter from KDOT Secretary Carlson. (attachment 4) Following a lengthy discussion it was the consensus of Committee to have staff provide a written side by side comparison of several of the Committee members proposed provisions for **SB 67**.

...sentation on Gun Control

Barbara Holzmark, National Council of Jewish Women, Kansas City, presented a brief history of her organization and discussed it's role and function in the community. She testified in support of "Sensible Gun Laws and Safe Kids."(attachment 5). She introduced several students she brought to the meeting who are from Shawnee Mission East High School, Prairie Village Kansas. The students displayed multiple pairs of shoes before Committee and Student Whitney Szcucinski stated that the shoes represented just a few of the "327 kids and adults killed by firearms in 1998." (no attachment) Student Natalie Brickson relayed her opinions and those of some of her peers on gun control laws. (attachment 6) Student Scott Pierson discussed the issue of gun control and emphasized how legislators can keep communities safe by passing tougher gun legislation. (attachment 7)

The meeting adjourned at 10:30 a.m. The next meeting is February 19, 2001.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 15, 2001

NAME	REPRESENTING
Cathy Boyer Shesol	National Council of Jewish Women
Ellen Dalen	NCJW
Harry Tiffany	KSOR - DRN
Don Jordan	SRS-CFP
Gregg Buehler	SM-East
Jim Ricker	SM - East
Sarah. Schewe	SM East
Nathan Hutchings	SM East
Porter Hovey	Shawnee Mission East
Bridget Delahunty	Shawnee Mission East
Zach Williams	
Natalie Richardson	Shawnee Mission East
Libby Buchanan	Shawnee Mission East
Angie Bickner	SM Mission East
Doug Smith	Ks legislative Policy Group
Ashley Vratil	Shawnee Mission East
Scott Pierson	SM East
Nate Johnson	SM East
Tamara L. Shaffer	SM East

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb. 15, 2001

NAME	REPRESENTING
Sam Wilder	Shawnee Mission East
Scott Stinson	Shawnee Mission East
Lauren Kirby	Shawnee Mission East
Hanna Hodges	Shawnee Mission East
Chris Blinn	" " "
Whitney Szczuinski	Shawnee Mission East
Ronald Thornburgh	ICDST
Melissa Solis	Shawnee Mission East
Jeremy Nelson	Shawnee Mission East
Megan Hollenbeck	Shawnee Mission East
Nick Keefer	Shawnee Mission East
Peter Wetzel	S M E
Samuel Stepp	Shawnee Mission East
Lylamarkowitz	Shawnee Mission East
Steve Phillips	A.G.'s Office
BARBARA HOLZMARK	GREATER KC SECTION NATIONAL COUNCIL OF JEWISH WOMEN
ELLEN LANER	SM East- (NCJW)
George Petersen	Ks Second Amendment Society
Judy Moler	Ks. Ass'n of Counties

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 15, 2011

NAME	REPRESENTING
Ken Hales	JJA
Scott Alisoglu	JJA
Joe Herold	KSC
Kyle Smith	KBI
Dasie Sim	KBI
Kathy Porter	Judicial Branch
Robert Collins	Kearney Law Office

53
2-15
att 1

Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

TESTIMONY
BEFORE THE SENATE JUDICIARY COMMITTEE

DAVID G. SIM, SPECIAL AGENT IN CHARGE
CRIMINAL RECORDS SECTION
KANSAS BUREAU OF INVESTIGATION

February 15, 2001

Chairman Vratil and members of the Committee:

I am David Sim, Special Agent in Charge of the Criminal Records Section of the central records repository at the Kansas Bureau of Investigation (KBI). I appear today on behalf of Director Larry Welch and the Kansas Bureau of Investigation in support of Senate Bill 209.

My testimony is intended to cover three points. First, I'd like to describe the current status of criminal history record checks in Kansas. Secondly, I will explain how changes underway at the state and national level have led to the National Crime Prevention and Privacy Compact, commonly referred to as the "III Compact." Lastly, I'll describe the impact and benefits of implementing that compact by passing Senate Bill 209.

Criminal History Records Checks; the Current Process

Criminal history records consist of summary information of arrests and court dispositions maintained in a central repository at each state and also at the federal level. The Kansas central repository is at the KBI. Each of the other states has a similar single central repository,

Sen Jud
2-15-01
att 1

1620 S.W. Tyler / Topeka, Kansas 66612-1837 / (785) 296-8200 FAX (785) 296-6781

and each state central repository submits most of its record information to the Federal Bureau of Investigation (FBI). The FBI consolidates these state criminal histories and federal criminal history records in a single federal repository, known as the Interstate Identification Index (III). Thus, the III essentially duplicates the criminal history records available in each state.

Non-criminal justice agencies in Kansas, such as the Kansas Department of Health and Environment and public schools may obtain III national record checks when such checks are required by specific enabling state legislation. Other states conducting non-criminal justice record checks must similarly have their own state legislative entitlement to receive records from the III.

National Crime Prevention and Privacy Compact.

For the past several years the FBI has coordinated sweeping changes in the way criminal history records are maintained and shared. The primary intention is to decentralize record maintenance and permit state repositories to exchange records directly. To this end, the III database will only be used to identify a record and assist in the exchange of record contents between states.

Most states are now electronically connected to the III. The FBI has stopped releasing the criminal history records submitted by those states. For these states, III is only a "pointer" system. For the remaining states, to include Kansas, that electronic connection is incomplete; the FBI still holds and releases criminal histories on behalf of those states. Kansas will be fully connected and will take responsibility for releasing criminal histories to other states when the Kansas central repository database is replaced this summer. Thus, having the III Compact in

place in Kansas is necessary for the proper implementation of our automation and networking goals.

Since the FBI has always released Kansas criminal records from the national database on behalf of Kansas, there has been no state legislation specifically addressing release of Kansas criminal history records to other states for non-criminal justice purposes. The III Compact fills that void in a satisfactory manner.

The III Compact implements decentralization of record sharing with the following key features:

1. By adopting the Compact, participating states agree to release criminal history records to authorized users for authorized purposes. In so doing, the state assumes the dissemination functions currently performed by the FBI on behalf of the state.
2. Each Compact state maintains a central repository of criminal history records that is based on fingerprint identification and that holds all criminal history records for that state.
3. Each Compact state establishes electronic connectivity to share records in a timely manner in a standardized network environment.
4. Each Compact state acknowledges legal and procedural obligations in using and distributing records. These obligations include state laws governing access for non-criminal justice purposes, rights of the subject to challenge and correct his/her criminal history and access to records granted by federal legislation.

After the Compact is Enacted.

The compact will assist Kansas and other participating states as follows:

1. *States maintain ownership of their state criminal history records.* Kansas will regain ownership of Kansas records from the III database, because the responsibility for release of Kansas records will be shifted from the FBI to the Kansas central repository.
2. *The laws of the requesting state govern the use of the criminal history records received from other states.* The Kansas legislature will continue to control, through legislation, the rules and regulations for the use of records in Kansas. The authority and responsibilities of the state are not diminished.
3. *The use of criminal history records is not expanded under the compact.* When Kansas is contacted to provide a record to another state, the adult criminal record will be released in its entirety, just as is done now by the FBI acting on behalf of Kansas. Expunged records and Kansas juvenile offender records are excluded from the compact and will not be released. The compact does not control in-state use of records, and inter-state use will remain the same as it has always been.
4. *Inter-state sharing of records is defined and structured.* States are connected in an efficient and effective network with common language and procedures. The technology to share data is enhanced by the structure of the compact.

In conclusion, the KBI supports Senate Bill 209 as a significant law that will provide the structure and authority to control the dissemination of criminal history records and to permit Kansas to fully participate in the national network of criminal justice agencies.

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION
CLARKSBURG, WV 26306

KSKBI0000 ICN IFCS0005000[redacted]

BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.
- FBI IDENTIFICATION RECORD -

WHEN EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED, COMMUNICATE DIRECTLY WITH THE AGENCY THAT FURNISHED THE DATA TO THE FBI.

NAME	FBI NO.	DATE REQUESTED
[redacted]	[redacted]	1999/11/29

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	BIRTH PLACE
M	W	[redacted]	600	160	BRO	BRO	MARYLAND

FINGERPRINT CLASS	PATTERN CLASS				CITIZENSHIP
[redacted]	[redacted]				UNREPORTED
AA 53 14 13 10	AU	WU	RS	WU	

1-ARRESTED OR RECEIVED 1980/08/19
AGENCY-DPS WATERBURY (VTVSP0000)
AGENCY CASE-[redacted]
CHARGE 1-DRIVING WHILE INT0XICATED 5400

COURT-
1981/02/23 DISPOSITION-CONVICTED-
CHARGE-DRIVING WHILE INT0XICATED 5400
SENTENCE-
FINED $160

2-ARRESTED OR RECEIVED 1995/03/14 SID- [redacted]
AGENCY-POLICE DEPARTMENT STAUNTON (VA1260000)
NAME USED-[redacted]
CHARGE 1-ATTEMPT MALICIOUS WOUNDING
CHARGE 2-POSS OF SAWED OFF SHOTGUN
CHARGE 3-USE OF FIREARM IN THE COMM OF A FELONY

3-ARRESTED OR RECEIVED 1997/12/05 SID- [redacted]
AGENCY-POLICE DEPARTMENT WICHITA (KS0870300)
AGENCY CASE-[redacted]
CHARGE 1-POSS OF COCAINE HFSW
CHARGE 2-POSS OF PARA HFSW

COURT-
CHARGE-POSS OF COCAINE HFSW
SENTENCE-
REL WOP 12-7-97

END OF PART 1 - PART 2 TO FOLLOW

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION
CLARKSBURG, WV 26306

KSKBI0000
PART 2

ICN IFCS00050000[redacted]

- FBI IDENTIFICATION RECORD - FBI NO-[redacted]

4-ARRESTED OR RECEIVED 1998/04/18 SID- KS00364482
AGENCY-POLICE DEPARTMENT WICHITA (KS0870300)
AGENCY CASE-[redacted]
CHARGE 1-CARRY UNCONCEALED WEAPON IN VEH

COURT-
CHARGE-CARRY UNCONCEALED WEAPON IN VEH
SENTENCE-
GUILTY $100 30 DAYS 5/5/99

RECORD UPDATED 1999/11/29

ALL ARREST ENTRIES CONTAINED IN THIS FBI RECORD ARE BASED ON FINGERPRINT COMPARISONS AND PERTAIN TO THE SAME INDIVIDUAL.

THE USE OF THIS RECORD IS REGULATED BY LAW. IT IS PROVIDED FOR OFFICIAL USE ONLY AND MAY BE USED ONLY FOR THE PURPOSE REQUESTED.

1-6

Resource Materials on the National Crime Prevention and Privacy Compact

Contents

Introduction

This report consists of several informational resources relating to the proposed National Crime Prevention and Privacy Compact (Compact). Adoption of the Compact by the U.S. Congress and the States will facilitate the full implementation of the Interstate Identification Index (III) as a decentralized system for the exchange of criminal history records for noncriminal justice purposes among States and the Federal government.

Included in this report are the following materials:

- An overview of the III system, including information setting forth its benefits;
- A list of the minimum standards for State participation in the III;
- A summary of the major provisions of the Compact;
- A summary of the importance of the Compact's ratification to further implementation of the III system;
- A copy of the Compact, along with a section-by-section analysis; and
- Correspondence from the U.S. Department of Justice relating to the introduction of the Compact in the Congress.

The purpose of the Compact is to authorize and require participating State criminal history repositories and the Federal Bureau of Investigation (FBI) to make all unsealed criminal history records available in response to authorized noncriminal justice requests, for such purposes as background checks on those seeking employment with children or the elderly. The requests will be fingerprint-supported, and the dissemination and use of the records will be governed by the receiving State's laws.

When ratified, the Compact will eliminate the duplicate maintenance of criminal history records by the States and the FBI. The Compact was introduced first in Congress, which has adopted it. State legislatures may now ratify the Compact in essentially identical form. No ratifying State may thereafter unilaterally amend the Compact. The Compact supersedes any conflicting State laws in States where it is adopted. This will result in a uniform dissemination policy *among* States, while still ensuring that each State may apply its own laws *within* the State.

The governor-appointed Membership Group of SEARCH, The National Consortium for Justice Information and Statistics, has formally endorsed the Compact. In addition, the Advisory Policy Board to the Criminal Justice Information Services Division of the FBI and the National Sheriffs' Association have endorsed the Compact.

The Compact was included in Senate Bill 2022, which was passed by Congress and signed into law by the president in October 1998.[1]

[1] Title II of Pub. L. 105-251.

Section I: The System

Role and Benefits of the Interstate Identification Index System

A National System

The Interstate Identification Index (III), is an "index-pointer" criminal history record system that ties the computerized files of the FBI and the State-level centralized files maintained by each State into a national system. This system will serve as the vehicle for the National Instant Criminal Background Check System (NICS) that will be used for point-of-sale screening of firearm purchasers.

The FBI maintains the III system's automated index, which can be accessed by Federal, State and local criminal justice agencies throughout the country to conduct name searches to determine whether a particular individual has a criminal record anywhere in the country and, if so, to be pointed to the Federal or State file(s) from which the record(s) may be obtained on-line. The FBI also maintains the National Fingerprint File (NFF) which contains fingerprints of all the individuals in the index. The NFF provides a means of positive identification of subjects in the index and can be searched to identify individuals who give false names to police or employers in an attempt to hide their criminal pasts.

State Role

States can participate in the III system in two phases:

- In the first phase, the State's centralized criminal history record repository agrees to make its III-indexed records available in response to requests from Federal or out-of-State criminal justice agencies for criminal justice purposes. During this phase, the FBI continues to maintain duplicate records of offenders from this State in order to meet the needs of Federal and out-of-State noncriminal justice agencies that need the records for employment screening and other authorized noncriminal justice purposes.
- In the second phase of participation, a State agrees to make its III-indexed records available on an interstate and Federal-State basis for both criminal justice and noncriminal justice purposes.

The Compact is privacy-neutral in that it respects the *intrastate* dissemination laws for each State. At the same time, it permits ratifying states with sufficient *interstate* record-dissemination authority to become full participants in the III system.

Decentralization

As particular States become full III participants in the course of the ongoing phased implementation of the system, the FBI ceases to maintain duplicate criminal records for persons arrested and prosecuted in those States. Eventually, when all of the States have become full III participants, the FBI's centralized files of State offender records will be discontinued and all users of criminal history records — for criminal justice purposes as well as authorized noncriminal justice purposes — will obtain those records directly from the States' central computerized files (or from the FBI if the offender has a Federal record).

Benefits

Elimination of Duplication

Duplicate maintenance of criminal history records by the States and the FBI, and attendant costs, will be eliminated.

- The States will be relieved of the burden and cost of submitting arrest fingerprints and charge/disposition data to the FBI for all arrests for felonies and serious misdemeanors. Instead, they will submit only fingerprints and textual identification data for each person's first arrest, to update the III automated index and the NFF.
- The FBI will be relieved of the burden and cost of maintaining records on State offenders and receiving and processing fingerprint cards for all State arrests. Instead, it will maintain the III automated index, the NFF and full criminal records of Federal offenders.

Increased Record Quality
There will be an increase in the completeness of records made available on an interstate basis for both criminal justice and noncriminal justice purposes, including the screening of firearms purchasers and child care providers through the NICS. This is because records maintained in the State repositories are more up-to-date than the FBI's files. Also, many of the States maintain records of some misdemeanor offenses that have not been submitted to the FBI. These records will become available through the III system for NICS purposes and other authorized uses.

Increased System Security
There will be an increase in system security through the use of written agreements with all user agencies covering authorized access, transaction logging and record validation by record providers.

Faster Response Times
Some noncriminal justice users will enjoy faster response times because they will be receiving electronic responses rather than mailed record responses from the FBI and because of increased efficiency at the State level resulting from increased automation and system improvements preceding III participation.

Cost Savings
In most States (those that already have efficient automated systems), full participation in the III system will result in no significant new burdens and probably will result in overall cost savings. Evaluations of the NFF Pilot Project, which is implementing the decentralization phase of III on a State-by-State basis, have confirmed that start-up costs are reasonable and that the FBI and the four participating States have experienced cost savings. In the States, savings have also been realized at the local level because fingerprint cards for the FBI no longer need to be prepared for second and subsequent offenses.

Uniform Dissemination Standard
Ratification of the Compact will establish a uniform nationwide standard governing the interstate dissemination of criminal history records for noncriminal justice purposes.

- This will ensure that Federal agencies will continue to receive the State records they need to screen persons for employment in sensitive positions and for other authorized purposes and that authorized State agencies will continue to receive the out-of-State records they need to screen State employees and licensees.

- Each State will determine what criminal history record information is disseminated within its borders for noncriminal justice purposes. States will continue to apply their own dissemination laws to in-State use of their own records and they will screen out-of-State records received through III pursuant to their own laws.

Minimum Standards for State Participation in the Interstate Identification Index

A State must meet the following minimum standards to participate in the III: [2]

Fingerprint Identification Matters

Standard No. 1 - The State has a central repository for criminal history record information with fingerprint identification capability; that is, the ability to match fingerprint impressions. Although full technical fingerprint search capability is desirable, it is not a requirement.

Standard 2 - The State's central repository serves as the sole conduit for the transmission of arrest, judicial and correctional fingerprint cards for criterion offenses within the State to the FBI (single-source submission). Submission of related final disposition reports and expungements to the Identification Division via the central repository is desirable. Single-source submission of information to the FBI should not be unduly delayed by the State agency.

Standard 3 - The central repository maintains the subject's fingerprint impressions or a copy thereof as the basic source document of each Index record and to support each arrest event in the criminal history record.

Standard 4 - The central repository agrees to continue submitting all criterion arrest, court and correctional fingerprint cards and, when possible, the related final disposition reports to the FBI until such time as a study is completed regarding the NFF and approval is given to submitting only the first arrest fingerprint card (single-print submission).

Record Content and III Maintenance

Standard No. 5 - Each record maintained by the State contains all known arrest, disposition and custody-supervision data for that State.

Standard No. 6 - The State agrees to remove or expunge the State Identification Number (SID) from a III record when corresponding record data no longer exist at the State level.

Standard No. 7 - The State agrees to conduct a regularly scheduled audit to identify discrepancies and synchronize III records pointing to the State's database.

Standard No. 8 - Record completeness, accuracy and timeliness are considered by the State to be of primary importance and are maintained at the highest level possible.

Record Response

Standard No. 9 - The State agrees to respond immediately to III record requests via the National Law Enforcement Telecommunications System with the record or an acknowledgment and notice when the record will be provided.

Standard No. 10 - Record responses will have any alphabetic and/or numeric codes translated to literals (words or easily understood abbreviations) in order that the record responses can be readily understood.

Standard No. 11 - The State agrees not to include in its III response any out-of-State criminal history record information maintained in its files.

Accountability

Standard 12 - A single agency within each State agrees to be responsible for ensuring that the standards of participation are met.

Standard 13 - The State agrees to maintain records and provide dissemination in accordance with the civil and constitutional rights of individuals reflected in the records.

Standard 14 - The State agency executes a written agreement with the FBI to comply with the standards of participation.

---

[2] Source: U.S. Department of Justice, Federal Bureau of Investigation, *Interstate Identification Index Program - Operational and Technical Manual*, pp. Intro-8 - Intro-9 (August 1, 1994).

Section II: The Compact

Major Provisions of the National Crime Prevention and Privacy Compact

Major provisions of the proposed National Crime Prevention and Privacy Compact include the following:

- The Compact will bind the FBI and ratifying States to participate in the noncriminal justice access program of III in accordance with the Compact and established system policies.
- Authorized users will be the same as those currently authorized to obtain records from the FBI's files.
- Participating State repositories will be authorized and required to make all unsealed criminal history records available in response to authorized noncriminal justice requests.
- All noncriminal justice access to the system will be through the FBI and the State repositories and will be based upon fingerprint identification of record subjects to ensure positive identification.
- Release and use of information obtained through the system for noncriminal justice purposes will be governed by the laws of the receiving States, and the receiving repositories will be required to screen record responses and delete any information that cannot be released legally within the State.
- The Compact will establish a compact council, composed of Federal and State officials and other members representing user interests, to establish operating policies for noncriminal justice uses of the III system.

Ratification of the Compact has not yet been made a condition of State participation in III. It is expected that all participating States will ratify the Compact since, in most States, the Compact will provide record dissemination authority now lacking under State laws.

The Importance of the National Crime Prevention and Privacy Compact

Ratification of the interstate Compact by the Congress and by the States is critical to further implementation of the decentralization phase of the III system for three main reasons:

Assured Record Availability

First, as the FBI's files of State criminal history records are decentralized, the FBI loses its ability to ensure that records will be available to the many agencies, including large Federal agencies, that are authorized by Federal law to obtain criminal history records for specified purposes. Such agencies will become dependent on records supplied by the State repositories, and there needs to be some means of assuring that these records will remain available for all authorized III users and purposes.

An interstate compact is the most effective means of providing such long-term assurances. Once in effect, a compact cannot unilaterally be amended in any material respect by any party. Such a party can only renounce the compact completely and renunciation of a compact that has been ratified by the States in reliance on mutual obligations solemnly undertaken by all of them would be an extremely serious undertaking for any State. For these reasons, a compact is preferable to uniform State laws or independent State legislative action as a means to bind the States to long-term III participation.

Uniform Interstate Dissemination Policy

Second, compacts supersede conflicting State laws; thus, ratification of the Compact by the States will have the effect of amending some of their record dissemination laws. The Compact amends the dissemination laws to the extent necessary to overcome existing restrictions that keep most State repositories from being able to participate in the III system as providers of records for noncriminal justice purposes. Further, after ratifying the Compact, no State will be able to reinstitute any such restrictions by legislation because any such statute would be in conflict with the Compact and thus void.

Only one or two more States can participate in the NFF under existing legal authority. The others will need to amend their record dissemination laws and, for the reasons mentioned above, a compact is the best way to accomplish such amendments in a consistent and lasting manner.

Strong State Role

Finally, the States need assurances that they will have a policy voice sufficient to protect their interests as the III system evolves in the future. The FBI will maintain the III automated index and the NFF and will, therefore, be in a strong position to influence future developments affecting the system. However, since the records available through the system will be predominantly State-maintained records, the States need to be able to ensure that uses of those records will be consistent with their concerns in areas such as individual privacy, system security and data quality.

The Compact provides these assurances by establishing a policymaking council with authority to oversee the use of the III system for noncriminal justice purposes. A majority of the members of the council must be State officials selected by the participating States. Since the council will have authority to establish policy affecting some aspects of FBI operations, the Compact must be ratified by the U.S. Congress.

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.[3]. 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.*[4]

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.

(5) PARTY STATE.—The term "Party State" means a State that has ratified the Compact.

(6) 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

---

[3] Title II of Pub. L. 105-251.

[4] *Cong. Rec.* S12671-S12673 (daily ed. October 16, 1998) (statement of Sen. DeWine).

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);

(D) 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 92-544 (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 OF THE NATIONAL CRIMINAL HISTORY ACCESS AND CHILD PROTECTION ACT 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.

Section III: Correspondence

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 23, 1997

The Honorable Newt Gingrich
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed is a legislative proposal to provide congressional approval of the National Crime Prevention and Privacy Compact ("Compact"). This Compact will allow for decentralized and more efficient exchange of criminal history records for noncriminal-justice purposes among the states and the federal government.

Currently, arrest fingerprint cards are submitted to the FBI by Federal, State, and local agencies on a voluntary basis. Law enforcement agencies, primarily local police and sheriffs' offices, maintain a system of records specific to their state or locality and submit duplicate prints of arrested and charged persons to the FBI to receive information on an individual's prior nationwide criminal history. The FBI reports its findings and maintains the fingerprint card, along with the accompanying data, in its criminal-history files. The FBI has maintained a duplicate set of criminal-history records since 1924 and today has over 200 million fingerprint cards on file.

Use of fingerprint-based criminal-history record information for noncriminal-justice purposes is increasingly in demand. This bill would do nothing to expand or diminish the noncriminal-justice purposes for which criminal history records may be used; it is merely intended to facilitate their exchange in a more efficient and effective manner. Specifically, this Compact would establish both a legal framework for the cooperative exchange of criminal-history records for noncriminal-justice purposes, and a Compact Council to monitor system operations and promulgate necessary rules and procedures.

The primary goal of the Compact is to provide a decentralized national records system that will provide at least the same level of service as the existing centralized FBI record system at reduced cost. The Compact will use the same electronic criminal history record information sharing system for noncriminal-justice purposes that is currently employed for criminal justice purposes. The necessity for duplicate records at the Federal level will be eliminated, and states will no longer need to send the FBI duplicate sets of fingerprints for an individual's second or subsequent arrest.

Subsequent inquiries regarding an individual will automatically produce an index of the states in which that individual has a criminal record. Implementation of the Compact will permit a requesting state to access directly another state's records electronically so long as it is seeking the information based on fingerprint identification for a noncriminal-justice purpose authorized under its own laws and Federal law.

The savings associated with decentralization of criminal history records maintenance are significant. The savings arise from avoiding the costs of processing fingerprint cards and related data maintenance at both the Federal and State levels. In addition, the Compact is expected to provide a higher level of data quality. Currently, in some instances disposition information is not submitted to the FBI by the States. Without complete dispositions, the utility of record information included in the centralized record system is somewhat limited as many uses rely on the conviction data. Various studies by the FBI and others have shown that state records are often more complete than those of the FBI.

The Compact was prepared by the Criminal Justice Information Services (CJIS) Advisory Policy Board with FBI support. The CJIS Board is chartered under the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) to advise the Director of the FBI on policies addressing information systems. It has 29 members and is made up primarily of senior policy-level officials from federal, state and local criminal justice agencies. In addition, Attorneys General in both Democratic and Republican Administrations have approved the concept of the Compact.

The Compact Clause of the Constitution, Article I, Section 10, Clause 3, generally requires congressional consent for agreements or compacts among the states. While we do not believe that congressional approval is constitutionally mandated in this instance because the United States will be a party to the Compact, we believe that congressional approval, whether constitutionally mandated or not, will be an important factor in achieving the goals of the Compact.

The office of Management and Budget advises that submission of this proposed legislation is consistent with the Administration's program. An identical letter and enclosures have been forwarded to the President of the Senate.

We urge prompt congressional consideration of this important legislation.

Sincerely,

Andrew Fois
Assistant Attorney General

Enclosures

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 23, 1997

The Honorable Albert Gore, Jr.
President
United States Senate
Washington, D.C. 20510

Dear Mr. President:

Enclosed is a legislative proposal to provide congressional approval of the National Crime Prevention and Privacy Compact ("Compact"). This Compact will allow for decentralized and more efficient exchange of criminal history records for noncriminal-justice purposes among the states and the federal government.

Currently, arrest fingerprint cards are submitted to the FBI by Federal, State, and local agencies on a voluntary basis. Law enforcement agencies, primarily local police and sheriffs' offices, maintain a system of records specific to their state or locality and submit duplicate prints of arrested and charged persons to the FBI to receive information on an individual's prior nationwide criminal history. The FBI reports its findings and maintains the fingerprint card, along with the accompanying data, in its criminal-history files. The FBI has maintained a duplicate set of criminal-history records since 1924 and today has over 200 million fingerprint cards on file.

Use of fingerprint-based criminal-history record information for noncriminal-justice purposes is increasingly in demand. This bill would do nothing to expand or diminish the noncriminal-justice purposes for which criminal history records may be used; it is merely intended to facilitate their exchange in a more efficient and effective manner. Specifically, this Compact would establish both a legal framework for the cooperative exchange of criminal-history records for noncriminal-justice purposes, and a Compact Council to monitor system operations and promulgate necessary rules and procedures.

The primary goal of the Compact is to provide a decentralized national records system that will provide at least the same level of service as the existing centralized FBI record system at reduced cost. The Compact will use the same electronic criminal history record information sharing system for noncriminal-justice purposes that is currently employed for criminal justice purposes. The necessity for duplicate records at the Federal level will be eliminated, and states will no longer need to send the FBI duplicate sets of fingerprints for an individual's second or subsequent arrest.

Subsequent inquiries regarding an individual will automatically produce an index of the states in which that individual has a criminal record. Implementation of the Compact will permit a requesting state to access directly another state's records electronically so long as it is seeking the information based on fingerprint identification for a noncriminal-justice purpose authorized under its own laws and Federal law.

The savings associated with decentralization of criminal history records maintenance are significant. The savings arise from avoiding the costs of processing fingerprint cards and related data maintenance at both the Federal and State levels. In addition, the Compact is expected to provide a higher level of data quality. Currently, in some instances disposition information is not submitted to the FBI by the States. Without complete dispositions, the utility of record information included in the centralized record system is somewhat limited as many uses rely on the conviction data. Various studies by the FBI and others have shown that state records are often more complete than those of the FBI.

The Compact was prepared by the Criminal Justice Information Services (CJIS) Advisory Policy Board with FBI support. The CJIS Board is chartered under the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) to advise the Director of the FBI on policies addressing information systems. It has 29 members and is made up primarily of senior policy-level officials from federal, state and local criminal justice agencies. In addition, Attorneys General in both Democratic and Republican Administrations have approved the concept of the Compact.

The Compact Clause of the Constitution, Article I, Section 10, Clause 3, generally requires congressional consent for agreements or compacts among the states. While we do not believe that congressional approval is constitutionally mandated in this instance because the United States will be a party to the Compact, we believe that congressional approval, whether constitutionally mandated or not, will be an important factor in achieving the goals of the Compact.

The office of Management and Budget advises that submission of this proposed legislation is consistent with the Administration's program. An identical letter and enclosures have been forwarded to the Speaker of the House.

We urge prompt congressional consideration of this important legislation.

Sincerely,

Andrew Fois
Assistant Attorney General

Enclosures

North Central Kansas Regional Juvenile Detention Facility

820 N. Monroe St.
Junction City, KS 66441

TESTIMONY REGARDING
SENATE BILL 174

I would like to apologize for my inability to attend this judiciary committee hearing regarding this bill. I was told that this hearing would take place on February 21st, 2001 but there appears to have been a mix up.

The intent of this legislation is to ensure that the funds in the juvenile detention facility fund are used exclusively for juvenile detention. Also, this legislation has the added effect of improving the efficiency in the overall billing structure for juveniles held in detention as administered by the juvenile justice authority.

The only drawback to this legislation is that the money in this fund cannot be used as a "slush fund" when budgets unrelated to juvenile detention experience shortfalls.

The advantages of this legislation are many:

- The Juvenile Justice Authority would no longer be burdened with budget problems in regards to juvenile detention due to a lack of knowledge of how many juveniles will be placed in State custody. An excellent example of this kind of problem was recently expressed in a letter by J. Kenneth Hales, dated January 24, 2001. Deputy Director of the Juvenile Justice Authority. The legislation that we are proposing would alleviate this problem.
- The State would no longer have to review the journal entries for the hundreds of juveniles placed in its custody to determine if it has legal custody of a juvenile. The issue of state custody versus county custody is a serious one that has cost some counties thousands of dollars due to misunderstandings between the county and the State. In one case, Marion County was forced to pay over $20,000 for a single juvenile due to the fact that they believed that the State should have been financially responsible for this juvenile. These misunderstandings could be quickly remedied at the local level, saving the counties thousands of dollars and ensuring that juveniles do not linger in detention due to conflicts between state and local government.
- The efficiency with which billing is done by the state would be greatly enhanced. Instead of the Juvenile Justice Authority cutting hundreds of checks for each juvenile placed in its custody, only thirteen checks every quarter would need to be issued.

STATE OF KANSAS

BILL GRAVES
Governor

Juvenile Justice Authority
Albert Murray, Commissioner

Jayhawk Walk
714 SW Jackson, Suite 300
Topeka, Kansas 66603
Telephone: (785) 296-4213 FAX: (785) 296-1412

January 24 2001

Mr. Shawn Brandmahl
Northcentral Regional Juvenile Detention Center
820 N. Monroe
Junction City KS 66441

Dear Mr. Brandmahl:

You were notified on December 20, 2000 of the decision made by the Commissioner of the Juvenile Justice Authority (JJA) to increase the juvenile detention per diem payment for specified youth in JJA custody. In that correspondence you were also informed that the increased rate was dependent on what the Juvenile Detention Facilities Fund could bear and our assessment of future charges based on payment history. Billings received for payment in December were a dramatic departure from the trend experienced over the past 24 months. Compared to the prior quarter, billings were up 100% for several counties and high as 300% in at least one case. The rate increase remains in effect. However, the Juvenile Detention Facilities Fund cannot sustain this rate of expenditure. Agency staff will be examining available information in an attempt to understand the nature, likely duration and cause of this change in expenditure pattern. If you are aware of any new factor or practice that may have contributed to a significant change in your billing pattern please contact the Director of Fiscal Services Scott Alisoglu, Assistant Commissioner Dick Kline or myself.

Thank you for your assistance in this matter.

Sincerely,

J. Kenneth Hales
Deputy Director

JKH:mw

cc: Albert Murray, Michael George

We believe that this legislation fulfills the commitment made by the State that the Juvenile Detention Facility Funds would assist local governmental entities with the construction, renovation, remodeling, and/or operational costs of facilities for the detention of juveniles (K.S.A. 79-4803(b)). This is an excellent opportunity for the State of Kansas to solve its own budget problems, as well as the problems that it downloads to local government, and I hope that you will give favorable consideration to this legislation. Thank you for your consideration of my request.

Submitted by: Shawn Brandmahl Date: 2-15-01

Shawn Brandmahl

SJ 15-01 att 3

Senate Judiciary Committee
Testimony on SB 174
Feb 15, 2001

Juvenile Justice Authority of Kansas

Background:
The cost of local juvenile detention and the role and contribution the state government plays regarding that expense has been an issue, particularly since the regional juvenile detention centers were developed in the mid 1970s. Regardless of how the facility construction was financed for the five regional facilities, the cost for and operation of local detention (adult or juvenile), is a function and responsibility of county governments. The state's relationship to the local juvenile detention function takes four forms:

1. State law defines when and how a youth may be detained.
2. The state through the Kansas Department of Health and Environment (KDHE) regulates the conditions of confinement.
3. The state, previously through the department of Social and Rehabilitation Services (SRS) and now through the Juvenile Justice Authority (JJA), pays counties for detention services for certain offenders.
4. Through JJA, the state administers a special fund, the Juvenile Detention Facilities Fund (JDFF), established to pay the cost of construction for five of the state's 14 public detention centers.

When JJA assumed responsibilities for administering the JDFF and for paying the daily costs for certain youth in custody, it recognized the need to do two things. First was to articulate clearly and consistently what state law and policy are concerning when the state pays for detention services. This JJA has done and we have based the policy on state statute and a clear history of case law. The second priority was to pay the local counties a fair and reasonable rate for the youth for which the State is responsible to pay. Since 1998, JJA increased the rate paid to counties for detention services for the youth the state is responsible for, from $74 per day to $100 per day, and since January 1, 2001, to $120 per day. JJA has been able to meet this responsibility through use of the JDFF.

The JDFF now finances the bond payments for the construction of five county juvenile detention centers and the per diem payments for certain youth in custody. Also, the JDFF has financed $200,000 annually in operating subsidies to local detention center operators. Additionally, by action this past legislative session, for this current year $1 million from the JDFF was transferred to the State General Fund for general operating expenses of the state.

Sen Jud 2-15-01 att 3

The policy JJA has implemented concerning detention payments and the JDFF has been an important success. The policy, in basic terms is, JJA pays a per diem to counties for holding juvenile offenders in detention who are placed in the agency's custody and for whom the agency has unrestricted authority to move. All other youth are held at county expense. The critical point is the authority to move plus whether or not the youth is in JJA custody. JJA and local counties can not be successful in carrying out our responsibilities unless we know clearly what they are. Among other concerns, we believe the proposed bill creates rather than reduces confusion on the role and responsibility the state and local governments have for local detention costs.

Community Based Juvenile's in Custody:
Section one of the bill relates to youth placed in JJA custody who are not going to a juvenile correctional facility but, in all likelihood, will be placed in a group home or residential treatment facility. This bill will have a major impact on the daily operations of local community case management for which JJA has oversight and funding responsibility. The bill places an unreasonable burden on local case managers to make out of home placements to private providers within three, or ten, days of the directive of the court. The changes in the law do not take into account the fact that the JJA nor local case managers have the power or control to make private foster homes and other facilities take juvenile offenders within three days. Additionally, it is very difficult to affix a specific time period to the screening and acceptance of a juvenile offender into an appropriate placement, particularly with the wide and variable level of needs different offenders have. This law would open a statewide floodgate of litigation whenever the Commissioner or the designees were unable to comply with the three-day placement rule.

Juvenile Correctional Facility Placements:
Section two of the bill applies to the process for getting juvenile offenders placed at the juvenile correctional facilities. This is the language that, in my opinion, is an attempt to fix a problem that does not exist. This section, like section one, prescribes how and when information is provided on court disposition to JJA. This is the process we use now. In short, assuming the court has sent the required paper work pursuant to K.S.A. 38-1671, the agency is able to process the paper work for direct commitment within 72 hours. Once this is done, the county is given a date for admission to a juvenile correctional facility within 24 hours; however, many counties have delayed transporting juvenile offenders because their sheriff's office do not transport daily. Routinely, JJA delays the acceptance of some of these offenders into the facility as a courtesy to the counties.

We believe this proposed change will interfere with a system that is currently working. It places a statutory requirement on JJA that the local sheriff's departments

are responsible to carry out. This proposed change would create litigation over cost of detention and raise possible contempt proceedings every time a juvenile offender was not moved in three days.

Fiscal Impact:
Senate Bill 174 has the potential to substantially increase state costs for detention of both juvenile offenders who have been directly committed to a juvenile correctional facility (JCF) and for offenders ordered detained until placed out of home. At present, the counties pay all detention costs for a direct commitment and the state pays for only the community placements that the state has unrestricted authority to move. If the state were to assume these costs after 10 days as proposed in SB 174, the state would be responsible for these new costs. At present, it is in the best financial interest of the committing county to ensure that the court clerk promptly provides information to JJA for admission to a JCF, as an effort to minimize county detention costs during this process.

The bill states that JJA would be responsible for "payment of all per diem rates *and* other expenses associated with juvenile detention." Currently, the per diem rate is intended to cover all expenses. These "other expenses" could mean virtually anything. The bill would also seem to require the agency to pay for medical costs for juvenile offenders in detention *outside* of the daily per diem rate. While it is difficult to estimate the total impact of this requirement, it is quite possible that the impact could cost the state several hundred thousand dollars per year. I recognize the risk and burden counties face with medical costs; however, the management of medical costs can only be done at the local level.

Juvenile Detention Facility Fund:
Finally, the bill changes K.S.A. 79-4803 by placing upon the Commissioner the burden to maintain a certain level of funding in the JDFF for which he has limited control. Section 3, subsection 2 is problematic. In short, it takes away management flexibility from both the agency and the Division of the Budget in terms of managing fund balances and expenditures from the fund. The language puts in statute requirements that should be managed through the budgetary process and through appropriation bills.

Currently JJA is appropriated annually a limit it can spend from the fund. It is sufficient to cover the budgeted bond payments, per diem payments and the $200,000 in local subsidy payments. The effect of section 3, if I understand it, would be to automatically purge the fund of any accumulated balance and use the monies to enhance the subsidy to local government for detention costs. While helping local government with correctional costs is something we all would like to do, the fund balances are subject to revenue streams and daily per diem payments that are beyond the control of JJA.

Consequently, we believe that purging the fund of all accumulated balance, not needed for the current year's obligation, is not fiscally prudent. We recommend that the Legislature decide annually how much the state can afford to give in detention subsidies. Financial circumstances may require a different process than what the Bill is requiring in any given fiscal year.

Closing:
The Juvenile Justice Authority of Kansas is committed to implementing the state's policies faithfully and to working with our local partners to implement good juvenile justice services. We recognize the burden local government experiences with the cost of correctional services. The JDFF is a resource that benefits both state and local governments. However, quite simply, the proposed legislation will complicate a process that needs less confusion. Further, it will force the state to incur a significant rise in costs associated with the placement of juvenile offenders. This legislation attempts to place every juvenile offender in the same category with regard to placement, without taking into consideration that each case for placement is based on the individual needs and circumstances of that particular juvenile offender. These changes contradict recent decisions by the Kansas Court of Appeals, which requires the counties to pay for these costs. (*See, In re C.C.,* 19 Kan.App.2d 906 (1994) and *In re J.L.,* 21 Kan.App.2d 878 (1995)) This change also is contrary to current case law. (*See also,* Attorney General Opinion No. 94-71).

JKH:bt

STATE OF KANSAS

KANSAS DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY OF TRANSPORTATION
Docking State Office Building
915 SW Harrison Street, Rm.730
Topeka, Kansas 66612-1568
Ph. (785) 296-3461 FAX (785) 296-1095
TTY (785) 296-3585

E. Dean Carlson
Secretary of Transportation

Bill Graves
Governor

February 14, 2001

The Honorable John Vratil, Chair
Senate Judiciary Committee
State Capitol Building, Room 120-S
Topeka, Kansas 66612

Dear Senator Vratil:

In answer to your telephone call this morning to Nancy Bogina, Kansas law must include drivers underage 21 to be driving under the influence at readings from 0.02 to 0.08 at which all drivers above are considered to be under the influence.

Noncompliance with this federal law would result in the withholding of 10.0 percent of apportionments from three major highway programs: NHS, STP, and IM. The annual fiscal impact would be more than $20,000,000 in any given year; in FFY2001 it would be $23,369,000.

Enclosed is an informational sheet with more details.

If you have additional questions or concerns, please contact me at (785) 296-3461 or Nancy L. Bogina, Special Assistant to the Secretary/Director, Division of Public Affairs, at (785) 296-3276.

Sincerely,

E. Dean Carlson

E. Dean Carlson
Secretary of Transportation

Enclosure

Jud 2-15
att 4

Jud 2-15-01
att 4

February 14, 2001

REQUIREMENTS OF SECTION 161
OPERATION OF MOTOR VEHICLES OF INTOXICATED MINORS
(ZERO TOLERANCE)

The National Highway System Designation (NHS) Act of 1995 enacted Section 161 which provides for the withholding of federal-aid highway funds from any state that does not enact and enforce a "zero tolerance" law.

To avoid a penalty the state must

- adopt and enforce a zero tolerance law for all persons under 21 years of age,
- the law must set .02 or less blood alcohol content (BAC) as the legal limit,
- the law must consider persons under the age of 21 who have a blood alcohol concentration of .02 or greater while operating a motor vehicle in the state to be driving while intoxicated or under the influence of alcohol (per se),
- the law must provide for primary enforcement, and
- the law must authorize the use of driver licensing suspensions or revocations as sanctions for any violation.

The 1996 Kansas legislature passed a federally conforming law and the Secretary of Transportation certified the state's compliance to the U.S.D.O.T. on May 16, 1997. The Law was promulgated under K.S.A. 8-1567a, effective January 1, 1997. The sanction imposed a 30-day license suspension for the first occurrence and a 90-day license suspension for second and subsequent occurrence.

Noncompliance with this federal law would result in the withholding of 10.0 percent of apportionments from three major highway programs: NHS, STP, and IM. The annual fiscal impact would be more than $20,000,000 in any given year; in FFY2001 it would be $23,369,000.

nal Council of
sh Women
NCJW
Greater Kansas City Section

2-15-01
att 5

February 15, 2001

Testimony of Barbara Holzmark, Kansas Public Affairs Chair
National Council of Jewish Women, Greater Kansas City Section
8504 Reinhardt Lane, Leawood, Kansas 66206
(913)381-8222, Fax: (913)381-8224, E-Mail: bjbagels@aol.com

Re: Sensible Gun Laws and Safe Kids

Senator Vratil and Members of the Senate Judiciary Committee,

My name is Barbara Holzmark. I am here today with Members of the National Council of Jewish Women (NCJW), Greater Kansas City Section, and students and faculty from Shawnee Mission East High School in Prairie Village, Kansas. We are here, "silently marching" with our shoes and our statements for "Sensible Gun Laws and Safe Kids."

I represent NCJW as the Kansas Public Affairs Chair. We are the oldest Jewish Women's Organization in the country. Founded in 1893, we are a volunteer organization inspired by Jewish values, that works through a program of research, education, advocacy and community service to improve the quality of life for women, children and families in the general community and strives to ensure individual rights and freedoms for all.

We are here today to bring a message to you, that we want, and support "Sensible Gun Laws and Safe Kids". In light of "Columbine High School in Littleton, Colorado, and now Hoyt High School in Northeast Kansas" our message and our mission is to oppose any dangerous bills such as ones to legalize the carrying of concealed weapons. We are here to magnify what you already know, guns endanger all, especially and most tragically, children. We want you to know that we really care, before it is too late to do something about it.

Thank you for allowing us to speak to you today and for giving us your undivided attention.

Now, I would like to give you the opportunity of hearing from two students at Shawnee Mission East. First, will be Natalie Brickson, and then, Scott Pierson. Thank you.

Jud
2-15-01
att 5

SJ 2-15 att 6

February 15, 2001

Testimony of Natalie Brickson, Student, Shawnee Mission East High School (SME), Prairie Village Kansas
4106 W. 101st Terrace
Overland Park, Kansas 66207
913-381-7054, e-mail: rbrickson@aol.com

SR. Vratil, and Members of the Judiciary Committee,

My name is Natalie Brickson, and I am a Junior at SME high school in Prairie Village Kansas. I am here today because I think that it is important for you, our legislators, to know how some students at my school feel about guns.

I feel that the number of deaths caused by guns is at a standstill, and with your help, we can bring those numbers down. Kids at my high school have just as much access to guns as those in other schools. I am concerned that it is too easy for kids to get their hands on guns and use them for purposes that could be dangerous for themselves and those around them. They don't understand the consequences of "just owning a gun" and keeping it safe for their personal hobby.

Young kids are also very capable of getting their hands on a gun and doing something extremely dangerous. They don't know the seriousness of "playing" with an actual gun. To them, the only thing unique about a real gun is that it isn't lime green and plastic. I believe many people would feel a lot better about guns if there were more rules, regulations, and safety measures taken before one brings a gun into their household.

I have borrowed the following phrase from a third grade student. She designed a t-shirt that made me really think. It had a butterfly on it and the following phrase: "We want butterflies flying in our neighborhoods, not bullets." I think this perfectly states our main concern.

I'm hoping that you, our state legislators, will hear our pleas for more sensible gun laws and safe kids for our communities in Kansas. Hopefully we can set an example for the rest of our country, to take a step towards a safer America.

Thank you for giving us your time and allowing us to speak to you today.

Sn Jud
2-15-01
att 6

SJ
2-15
att 7

February 15, 2001

Testimony of Scott Pierson, Student, Shawnee Mission East High School, Prairie Village, Kansas
8400 Cedar St.
Prairie Village, Kansas 66207
913-642-7831, e-mail: scottgolfer@hotmail.com

SR. Vratil, and members of the Judiciary Committee,

My name is Scott Pierson, and I am a student at Shawnee Mission East High School in Prairie Village Kansas. I am her today because I know that it should me important for you, our legislators, to know who is at the end of the barrel of your gun legislation.

The argument seems to be that the 2nd Amendment of the Constitution allows for guns to be rampant in American society. Well that is what the NRA would like us to think, but in fact the Supreme Court in the case of Lewis v. U.S. (1980), as well in many other cases, ruled that legislative restrictions on the use of firearms are neither based upon constitutionally suspect criteria, nor do does similar legislation trench upon constitutionally protected liberties.

It seems the State of Kansas has done little to move towards safer gun legislation. The State of Kansas has no child access prevention law, no required permit to purchase a rifle, shotgun or handgun and no licensing for owners. Then to add on top of the embarrassment of the Kansas gun legislation is H.B. 2240, which makes it legal to carry a concealed handgun. All of this is done when studies from Texas and Florida have shown that people carrying concealed handguns legally are 66% more likely to commit a gun related crime than a citizen with out a concealed gun.

It is time to look at the facts that show, when tougher gun legislation is passed crime decreases. In today's society there is no need to for A.K. 47 and other semi automatic weapons that are only made to kill. The time is now to look not at how the legislation effects individual rights, but to look at how legislation that is tough on guns is best for the community. The only way to have a true civil society is a to adopt standards that look not at you and me with regard to our personal life, but to look at the community and see how the community is affected by each decision we make.

Currently the youth of America is at the end of the barrel of all gun legislation and your finger is on the trigger, as our state legislators. It is not a game as the school massacres of recent days have shown. You, our state legislators, control the trigger. I ask you to please support a community, where the youth of America can go to school feeling safe and knowing that their legislator body supports them with gun legislation that makes us all safer as a unified community.

Thank you very much for you time and please take the first step by taking your finger of the trigger and putting the guns of Kansas in the safety position.

Sen Jud
2-15-01
att 7