

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 531 Session of 2009

INTRODUCED BY CASORIO, BEYER, BRENNAN, CALTAGIRONE, CARROLL, DeLUCA, FRANKEL, GEIST, GEORGE, GINGRICH, GRUCELA, HALUSKA, HARRIS, HESS, HORNAMAN, W. KELLER, KORTZ, KOTIK, MANN, MELIO, MILNE, MURT, MUSTIO, PETRARCA, READSHAW, SIPTROTH, K. SMITH, SWANGER, VULAKOVICH AND WALKO, FEBRUARY 19, 2009

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 19, 2009

AN ACT

1 Authorizing the Commonwealth of Pennsylvania to join the  
2 National Crime Prevention and Privacy Compact; providing for  
3 the form of the compact; and authorizing the Attorney General  
4 to appoint a compact officer.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the National  
9 Crime Prevention and Privacy Compact Act.

10 Section 2. Legislative findings.

11 The General Assembly finds and declares as follows:

12 (1) It is in the interest of this Commonwealth to  
13 facilitate the dissemination of criminal history records from  
14 other states for use in this Commonwealth as authorized by  
15 law.

16 (2) The National Crime Prevention and Privacy Compact  
17 creates a legal framework for the cooperative exchange of

1 criminal history records for noncriminal justice purposes.

2 (3) The compact provides for the organization of an  
3 electronic information-sharing system among the Federal  
4 Government and the states to exchange criminal history  
5 records for noncriminal justice purposes authorized by  
6 Federal or State law, such as background checks for  
7 governmental licensing and employment.

8 (4) Under the compact, the Federal Bureau of  
9 Investigation and the party states agree to maintain detailed  
10 databases of their respective criminal history records,  
11 including arrests and dispositions, and to make them  
12 available to the Federal Government and party states for  
13 authorized purposes.

14 (5) The Federal Bureau of Investigation shall manage the  
15 Federal data facilities that provide a significant part of  
16 the infrastructure for the system.

17 (6) Entering into the compact would facilitate the  
18 interstate and Federal-state exchange of criminal history  
19 information to streamline the processing of background checks  
20 for noncriminal justice purposes.

21 (7) Release and use of information obtained through the  
22 system for noncriminal justice purposes would be governed by  
23 the laws of the receiving states.

24 (8) Entering into the compact will provide a mechanism  
25 for establishing and enforcing uniform standards for record  
26 accuracy and for the confidentiality and privacy interests of  
27 record subjects.

### 28 Section 3. National Crime Prevention and Privacy Compact.

29 The National Crime Prevention and Privacy Compact is enacted  
30 into law and entered into with all jurisdictions legally joining

1 in the compact in the form substantially as set forth as  
2 follows:

3 NATIONAL CRIME PREVENTION AND PRIVACY COMPACT

4 Article I. Definitions

5 As used in this compact, the following definitions apply:

6 (1) "Attorney general" means the attorney general of the  
7 United States.

8 (2) "Compact officer" means:

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

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

15 (3) "Council" means the compact council established under  
16 Article VI.

17 (4) "Criminal history record repository" means the state  
18 agency designated by the governor or other appropriate executive  
19 official or the legislature of a state to perform centralized  
20 record keeping functions for criminal history records and  
21 services in the state.

22 (5) (a) "Criminal history records" means information  
23 collected by criminal justice agencies on individuals consisting  
24 of identifiable descriptions and notations of arrests,  
25 detentions, indictments, or other formal criminal charges and  
26 any disposition arising therefrom, including acquittal,  
27 sentencing, correctional supervision, or release.

28 (b) The term does not include identification information  
29 such as fingerprint records if the information does not indicate  
30 involvement of the individual with the criminal justice system.

1 (6) "Criminal justice" includes activities relating to the  
2 detection, apprehension, detention, pretrial release, post-trial  
3 release, prosecution, adjudication, correctional supervision, or  
4 rehabilitation of accused persons or criminal offenders. The  
5 administration of criminal justice includes criminal  
6 identification activities and the collection, storage, and  
7 dissemination of criminal history records.

8 (7) (a) "Criminal justice agency" means:

9 (i) courts; and

10 (ii) a governmental agency or any subunit of an agency that  
11 performs the administration of criminal justice pursuant to a  
12 statute or executive order and allocates a substantial part of  
13 its annual budget to the administration of criminal justice.

14 (b) The term includes federal and state inspector general  
15 offices.

16 (8) "Criminal justice services" means services provided by  
17 the FBI to criminal justice agencies in response to a request  
18 for information about a particular individual or as an update to  
19 information previously provided for criminal justice purposes.

20 (9) "Direct access" means access to the national  
21 identification index by computer terminal or other automated  
22 means not requiring the assistance of or intervention by any  
23 other party or agency.

24 (10) "Executive order" means an order of the president of  
25 the United States or the chief executive officer of a state that  
26 has the force of law and that is promulgated in accordance with  
27 applicable law.

28 (11) "FBI" means the Federal Bureau of Investigation.

29 (12) (a) "III system" means the interstate identification  
30 index system, which is the cooperative federal-state system for

1 the exchange of criminal history records.

2 (b) The term includes the national identification index, the  
3 national fingerprint file, and to the extent of their  
4 participation in the system, the criminal history record  
5 repositories of the states and the FBI.

6 (13) "National fingerprint file" means a database of  
7 fingerprints or of other uniquely personal identifying  
8 information that relates to an arrested or charged individual  
9 and that is maintained by the FBI to provide positive  
10 identification of record subjects indexed in the III system.

11 (14) "National identification index" means an index  
12 maintained by the FBI consisting of names, identifying numbers,  
13 and other descriptive information relating to record subjects  
14 about whom there are criminal history records in the III system.

15 (15) "National indices" means the national identification  
16 index and the national fingerprint file.

17 (16) "Noncriminal justice purposes" means uses of criminal  
18 history records for purposes authorized by federal or state law  
19 other than purposes relating to criminal justice activities,  
20 including employment suitability, licensing determination,  
21 immigration and naturalization matters, and national security  
22 clearances.

23 (17) "Nonparty state" means a state that has not ratified  
24 this compact.

25 (18) "Party state" means a state that has ratified this  
26 compact.

27 (19) "Positive identification" means a determination, based  
28 upon a comparison of fingerprints or other equally reliable  
29 biometric identification techniques, that the subject of a  
30 record search is the same person as the subject of a criminal

1 history record or records indexed in the III system.  
2 Identification based solely upon a comparison of subjects' names  
3 or other nonunique identification characteristics or numbers, or  
4 combinations thereof, does not constitute positive  
5 identification.

6 (20) "Sealed record information" means:

7 (a) with respect to adults, that portion of a record that  
8 is:

9 (i) not available for criminal justice uses;

10 (ii) not supported by fingerprints or other accepted means  
11 of positive identification; or

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

17 (b) with respect to juveniles, whatever each state  
18 determines is a sealed record under its own law and procedure.

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

## 22 Article II. Purposes

23 The purposes of this compact are to:

24 (1) provide a legal framework for the establishment of a  
25 cooperative federal-state system for the interstate and federal-  
26 state exchange of criminal history records for noncriminal  
27 justice uses;

28 (2) require the FBI to permit use of the national  
29 identification index and the national fingerprint file by each  
30 party state and to provide, in a timely fashion, federal and

1 state criminal history records to requesting states, in  
2 accordance with the terms of this compact and with rules,  
3 procedures, and standards established by the council under  
4 Article VI;

5 (3) require party states to provide information and records  
6 for the national identification index and the national  
7 fingerprint file and to provide criminal history records, in a  
8 timely fashion, to criminal history record repositories of other  
9 states and the federal government for noncriminal justice  
10 purposes, in accordance with the terms of this compact and with  
11 rules, procedures, and standards established by the council  
12 under Article VI;

13 (4) provide for the establishment of a council to monitor  
14 III system operations and to prescribe system rules and  
15 procedures for the effective and proper operation of the III  
16 system for noncriminal justice purposes; and

17 (5) require the FBI and each party state to adhere to III  
18 system standards concerning record dissemination and use,  
19 response times, system security, data quality, and other duly  
20 established standards, including those that enhance the accuracy  
21 and privacy of such records.

#### 22 Article III. Responsibilities of Compact Parties

23 (1) The director of the FBI shall:

24 (a) appoint an FBI compact officer who shall:

25 (i) administer this compact within the Department of Justice  
26 and among federal agencies and other agencies and organizations  
27 that submit search requests to the FBI pursuant to Article V(3);

28 (ii) ensure that compact provisions and rules, procedures,  
29 and standards prescribed by the council under Article VI are  
30 complied with by the Department of Justice and the federal

1 agencies and other agencies and organizations referred to in  
2 subsection (1)(a)(i) of this Article III; and

3 (iii) regulate the use of records received by means of the  
4 III system from party states when such records are supplied by  
5 the FBI directly to other federal agencies;

6 (b) provide to federal agencies and to state criminal  
7 history record repositories criminal history records maintained  
8 in its data base for the noncriminal justice purposes described  
9 in Article IV, including:

10 (i) information from nonparty states; and

11 (ii) information from party states that is available from  
12 the FBI through the III system, but is not available from the  
13 party state through the III system;

14 (c) provide a telecommunications network and maintain  
15 centralized facilities for the exchange of criminal history  
16 records for both criminal justice purposes and the noncriminal  
17 justice purposes described in Article IV and ensure that the  
18 exchange of the records for criminal justice purposes has  
19 priority over exchange for noncriminal justice purposes; and

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

24 (2) Each party state shall:

25 (a) appoint a compact officer who shall:

26 (i) administer this compact within that state;

27 (ii) ensure that compact provisions and rules, procedures,  
28 and standards established by the council under Article VI are  
29 complied with in the state; and

30 (iii) regulate the in-state use of records received by means



1 of the III system from the FBI or from other party states;

2 (b) establish and maintain a criminal history record  
3 repository, which shall provide:

4 (i) information and records for the national identification  
5 index and the national fingerprint file; and

6 (ii) the state's III system-indexed criminal history records  
7 for noncriminal justice purposes described in Article IV;

8 (c) participate in the national fingerprint file; and

9 (d) provide and maintain telecommunications links and  
10 related equipment necessary to support the criminal justice  
11 services set forth in this compact.

12 (3) In carrying out their responsibilities under this  
13 compact, the FBI and each party state shall comply with III  
14 system rules, procedures, and standards duly established by the  
15 council concerning record dissemination and use, response times,  
16 data quality, system security, accuracy, privacy protection, and  
17 other aspects of III system operation.

18 (4) (a) Use of the III system for noncriminal justice  
19 purposes authorized in this compact must be managed so as not to  
20 diminish the level of services provided in support of criminal  
21 justice purposes.

22 (b) Administration of compact provisions may not reduce the  
23 level of service available to authorized noncriminal justice  
24 users on the effective date of this compact.

25 Article IV. Authorized Record Disclosures

26 (1) To the extent authorized by section 552a of Title 5,  
27 United States Code (commonly known as the Privacy Act of 1974),  
28 the FBI shall provide on request criminal history records,  
29 excluding sealed record information, to state criminal history  
30 record repositories and noncriminal justice purposes allowed by

1 federal statute, federal executive order, or a state statute  
2 that has been approved by the attorney general to ensure that  
3 the state statute explicitly authorizes national indices checks.

4 (2) The FBI, to the extent authorized by section 552a of  
5 Title 5, United States Code (commonly know as the Privacy Act of  
6 1974), and state criminal history record repositories shall  
7 provide criminal history records, excluding sealed record  
8 information, to criminal justice agencies and other governmental  
9 or nongovernmental agencies for noncriminal justice purposes  
10 allowed by federal statute, federal executive order, or a state  
11 statute that has been approved by the attorney general to ensure  
12 that the state statute explicitly authorizes national indices  
13 checks.

14 (3) any record obtained under this compact may be used only  
15 for the official purposes for which the record was requested.  
16 Each compact officer shall establish procedures, consistent with  
17 this compact and with rules, procedures, and standards  
18 established by the council under Article VI, which procedures  
19 shall protect the accuracy and privacy of the records and shall:

20 (a) ensure that records obtained under this compact are used  
21 only by authorized officials for authorized purposes;

22 (b) require that subsequent record checks are requested to  
23 obtain current information whenever a new need arises; and

24 (c) ensure that record entries that may not legally be used  
25 for a particular noncriminal justice purpose are deleted from  
26 the response and, if no information authorized for release  
27 remains, an appropriate "no record" response is communicated to  
28 the requesting official.

#### 29 Article V. Record Request Procedures

30 (1) Subject fingerprints or other approved forms of positive

1 identification must be submitted with all requests for criminal  
2 history record checks for noncriminal justice purposes.

3 (2) Each request for a criminal history record check  
4 utilizing the national indices made under any approved state  
5 statute must be submitted through the state's criminal history  
6 record repository. A state criminal history record repository  
7 shall process an interstate request for noncriminal justice  
8 purposes through the national indices only if the request is  
9 transmitted through another state criminal history record  
10 repository or the FBI.

11 (3) Each request for criminal history record checks  
12 utilizing the national indices made under federal authority must  
13 be submitted through the FBI or, if the state criminal history  
14 record repository consents to process fingerprint submissions,  
15 through the criminal history record repository in the state in  
16 which the request originated. Direct access to the national  
17 identification index by entities other than the FBI and state  
18 criminal history records repositories may not be permitted for  
19 noncriminal justice purposes.

20 (4) A state criminal history record repository or the FBI:

21 (a) may charge a fee, in accordance with applicable law, for  
22 handling a request involving fingerprint processing for  
23 noncriminal justice purposes; and

24 (b) may not charge a fee for providing criminal history  
25 records in response to an electronic request for a record that  
26 does not involve a request to process fingerprints.

27 (5) (a) If a state criminal history record repository  
28 cannot positively identify the subject of a record request made  
29 for noncriminal justice purposes, the request, together with  
30 fingerprints or other approved identifying information, must be

1 forwarded to the FBI for a search of the national indices.

2 (b) If, with respect to a request forwarded by a state  
3 criminal history record repository under subsection (5)(a), the  
4 FBI positively identifies the subject as having a III system-  
5 indexed record or records;

6 (i) the FBI shall so advise the state criminal history  
7 record repository; and

8 (ii) the state criminal history record repository is  
9 entitled to obtain the additional criminal history record  
10 information from the FBI or other state criminal history  
11 repositories.

## 12 Article VI. Establishment of Compact Council

13 (1) (a) There is established a council to be known as the  
14 compact council, which has the authority to promulgate rules and  
15 procedures governing the use of the III system for noncriminal  
16 justice purposes, not to conflict with FBI administration of the  
17 III system for criminal justice purposes.

18 (b) The council shall:

19 (i) continue in existence as long as this compact remains in  
20 effect;

21 (ii) be located, for administrative purposes, within the  
22 FBI; and

23 (iii) be organized and hold its first meeting as soon as  
24 practicable after the effective date of this compact.

25 (2) The council must be composed of 15 members, each of whom  
26 must be appointed by the attorney general, as follows:

27 (a) nine members, each of whom shall serve a 2-year term,  
28 who must be selected from among the compact officers of party  
29 states based on the recommendation of the compact officers of  
30 all party states, except that in the absence of the requisite

1 number of compact officers available to serve, the chief  
2 administrators of the criminal history record repositories of  
3 nonparty states must be eligible to serve on an interim basis;

4 (b) two at-large members, nominated by the director of the  
5 FBI, each of whom shall serve a 3-year term, of whom:

6 (i) one must be a representative of the criminal justice  
7 agencies of the federal government and may not be an employee of  
8 the FBI; and

9 (ii) one must be a representative of the noncriminal justice  
10 agencies of the federal government;

11 (c) two at-large members, nominated by the chairman of the  
12 council once the chairman is elected pursuant to subsection (3)  
13 of this Article VI, each of whom shall serve a 3-year term, of  
14 whom:

15 (i) one must be a representative of state or local criminal  
16 justice agencies; and

17 (ii) one must be a representative of state or local  
18 noncriminal justice agencies;

19 (d) one member who shall serve a 3-year term and who shall  
20 simultaneously be a member of the FBI's advisory policy board on  
21 criminal justice information services, nominated by the  
22 membership of that policy board;

23 (e) one member, nominated by the director of the FBI, who  
24 shall serve a 3-year term and who must be an employee of the  
25 FBI.

26 (3) (a) From its membership, the council shall elect a  
27 chairman and a vice chairman of the council. Both the chairman  
28 and vice chairman of the council:

29 (i) must be a compact officer, unless there is no compact  
30 officer on the council who is willing to serve, in which case

1 the chairman may be an at-large member; and

2 (ii) shall serve 2-year terms and may be re-elected to only  
3 one additional 2-year term.

4 (b) The vice chairman of the council shall serve as the  
5 chairman of the council in the absence of the chairman.

6 (4) (a) The council shall meet at least once each year at  
7 the call of the chairman. Each meeting of the council must be  
8 open to the public. The council shall provide prior public  
9 notice in the Federal Register of each meeting of the council,  
10 including the matters to be addressed at the meeting.

11 (b) A majority of the council or any committee of the  
12 council shall constitute a quorum of the council or of a  
13 committee, respectively, for the conduct of business. A lesser  
14 number may meet to hold hearings, take testimony, or conduct any  
15 business not requiring a vote.

16 (5) The council shall make available for public inspection  
17 and copying at the council office within the FBI and shall  
18 publish in the Federal Register any rules, procedures, or  
19 standards established by the council.

20 (6) The council may request from the FBI reports, studies,  
21 statistics, or other information or materials that the council  
22 determines to be necessary to enable the council to perform its  
23 duties under this compact. The FBI, to the extent authorized by  
24 law, may provide assistance or information upon a request.

25 (7) The chairman may establish committees as necessary to  
26 carry out this compact and may prescribe their membership,  
27 responsibilities, and duration.

## 28 Article VII. Ratification of Compact

29 This compact takes effect upon being entered into by two or  
30 more states as between those states and the federal government.

1 When additional states subsequently enter into this compact, it  
2 becomes effective among those states and the federal government  
3 and each party state that has previously ratified it. When  
4 ratified, this compact has the full force and effect of law  
5 within the ratifying jurisdictions. The form of ratification  
6 must be in accordance with the laws of the executing state.

7 Article VIII. Miscellaneous Provisions

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

14 (2) Nothing in this compact may require the FBI to obligate  
15 or expend funds beyond those appropriated to the FBI.

16 (3) Nothing in this compact may diminish or lessen the  
17 obligations, responsibilities, and authorities of any state,  
18 whether a party state or a nonparty state, or of any criminal  
19 history record repository or other subdivision or component  
20 thereof, under the Departments of State, Justice, and Commerce,  
21 the Judiciary, and Related Agencies Appropriation Act, 1973  
22 (Public Law 92-544), or regulations and guidelines promulgated  
23 thereunder, including the rules and procedures promulgated by  
24 the council under Article VI(1), regarding the use and  
25 dissemination of criminal history records and information.

26 Article IX. Renunciation

27 (1) This compact shall bind each party state until renounced  
28 by the party state.

29 (2) Any renunciation of this compact by a party state must:

30 (a) be effected in the same manner by which the party state

1 ratified this compact; and

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

5 Article X. Severability

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

20 Article XI. Adjudication of Disputes

21 (1) The council:

22 (a) has initial authority to make determinations with  
23 respect to any dispute regarding:

24 (i) interpretation of this compact:

25 (ii) any rule or standard established by the council  
26 pursuant to Article VI; and

27 (iii) any dispute or controversy between any parties to this  
28 compact; and

29 (b) shall hold a hearing concerning any dispute described in  
30 subsection (1)(a) at a regularly scheduled meeting of the



1 council and only render a decision based upon a majority vote of  
2 the members of the council. The decision must be published  
3 pursuant to the requirements of Article VI(5).

4 (2) The FBI shall exercise immediate and necessary action to  
5 preserve the integrity of the III system, to maintain system  
6 policy and standards, to protect the accuracy and privacy of  
7 records, and to prevent abuses until the council holds a hearing  
8 on the matters.

9 (3) The FBI or a party state may appeal any decision of the  
10 council to the attorney general and after that appeal may file  
11 suit in the appropriate district court of the United States that  
12 has original jurisdiction of all cases or controversies arising  
13 under this compact. Any suit arising under this compact and  
14 initiated in a state court must be removed to the appropriate  
15 district court of the United States in the manner provided by  
16 section 1446 of Title 28, United States Code, or other statutory  
17 authority.

18 Section 4. Appointment of compact officer.

19 The Attorney General shall appoint a compact officer for the  
20 purpose of complying with Article III(2)(a) of the National  
21 Crime Prevention and Privacy Compact.

22 Section 10. Effective date.

23 This act shall take effect immediately.