

WORKING DRAFT

SENATE FILE NO. _____

National Crime Prevention and Privacy Compact Act.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to the National Crime Prevention and
2 Privacy Compact Act; adopting the National Crime Prevention
3 and Privacy Compact; and providing for an effective date.

4

5 *Be It Enacted by the Legislature of the State of Wyoming:*

6

7 **Section 1.** W.S. 7-19-601 through 7-19-603 are created
8 to read:

9

10 Article 6

11 National Crime Prevention and Privacy Compact Act

12

13 **7-19-601. Short Title.**

14

1 This act may be cited as "The National Crime Prevention and
2 Privacy Compact Act".

3

4 **7-19-602. Compact provisions generally.**

5

6 The national crime prevention and privacy compact is
7 enacted into law and entered into by this state with any
8 other state or jurisdiction legally joining the compact in
9 the form substantially as follows:

10

11 *Article 1*

12 *Definitions*

13

14 (a) As used in this compact, unless the context
15 clearly requires otherwise:

16

17 (i) "Attorney general" means the attorney
18 general of the United States;

19

20 (ii) "Compact officer" means:

21

22 (A) With respect to the federal government,
23 an official so designated by the director of the FBI; and

24

1 (B) With respect to a party state, the
2 chief administrator of the state's criminal history record
3 repository or a designee of the chief administrator who is
4 a regular full-time employee of the repository;

5

6 (iii) "Council" means the compact council
7 established under article VI of this compact;

8

9 (iv) "Criminal history records" means
10 information collected by criminal justice agencies on
11 individuals consisting of identifiable descriptions and
12 notations of arrests, detentions, indictments or other
13 formal criminal charges, and any dispositions arising
14 therefrom, including acquittal, sentencing, correctional
15 supervision or release, but does not include identification
16 information such as fingerprint records if that information
17 does not indicate involvement of the individual with the
18 criminal justice system;

19

20 (v) "Criminal history record repository" means
21 the state agency designated by the governor or other
22 appropriate executive official or the legislature of a
23 state to perform centralized record-keeping functions for
24 criminal history records and services in the state;

1

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

10

11 (vii) "Criminal justice agency" means:

12

13 (A) Courts;

14

15 (B) A governmental agency or any subunit
16 thereof that:

17

18 (I) Performs the administration of
19 criminal justice pursuant to a statute or executive order;
20 and

21

22 (II) Allocates a substantial part of
23 its annual budget to the administration of criminal
24 justice; and

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(C) Includes federal and state inspectors general offices.

(viii) "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;

(ix) "Criterion offense" means any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI;

(x) "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;

(xi) "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;

1 (xii) "FBI" means the federal bureau of
2 investigation;

3

4 (xiii) "Interstate identification system" or
5 "III system" means the cooperative federal-state system for
6 the exchange of criminal history records and includes the
7 national identification index, the national fingerprint
8 file and, to the extent of their participation in the
9 system, the criminal history record repositories of the
10 states and the FBI;

11

12 (xiv) "National fingerprint file" means a
13 database of fingerprints or other uniquely personal
14 identifying information relating to an arrested or charged
15 individual maintained by the FBI to provide positive
16 identification or record subjects indexed in the III
17 system;

18

19 (xv) "National identification index" means an
20 index maintained by the FBI consisting of names,
21 identifying numbers and other descriptive information
22 relating to record subjects about whom there are criminal
23 history records in the III system;

24

1 (xvi) "National indices" means the national
2 identification index and the national fingerprint file;

3

4 (xvii) "Nonparty state" means a state that has
5 not ratified this compact;

6

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

13

14 (xix) "Party state" means a state that has
15 ratified this compact;

16

17 (xx) "Positive identification" means a
18 determination, based on a comparison of fingerprints or
19 other equally reliable biometric identification techniques,
20 that the subject of a record search is the same person as
21 the subject of a criminal history record or records indexed
22 in the III system. Identification based solely upon a
23 comparison of subjects' names or other nonunique

1 identification characteristics or numbers, or combinations
2 thereof, shall not constitute positive identification;

3

4 (xxi) "Sealed record information" means:

5

6 (A) With respect to adults, that portion of
7 a record that is:

8

9 (I) Not available for criminal justice
10 uses;

11

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

14

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

19

20 (B) With respect to juveniles, whatever
21 each state determines is a sealed record under its own law
22 and procedure.

23

1 (xxii) "State" means any state, territory or
2 possession of the United States, the District of Columbia
3 and the Commonwealth of Puerto Rico.

4

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Article II

6

Purposes

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8 (a) The purposes of this compact are to:

9

10 (i) Provide a legal framework for the
11 establishment of a cooperative federal-state exchange of
12 criminal history records for noncriminal justice purposes;

13

14 (ii) Require the FBI to permit use of the
15 national identification index and the national fingerprint
16 file by each party state and to provide, in a timely
17 fashion, federal and state criminal history records to
18 requesting states, in accordance with the terms of this
19 compact and with rules, procedures and standards
20 established by the council under article VI(a) of this
21 compact;

22

23 (iii) Require party states to provide
24 information and records for the national identification

1 index and the national fingerprint file and to provide
2 criminal history records, in a timely fashion, to criminal
3 history record repositories of other states and the federal
4 government for noncriminal justice purposes, in accordance
5 with the terms of this compact and with rules, procedures
6 and standards established by the council under article
7 VI(a) of this compact;

8

9 (iv) Provide for the establishment of a council
10 to monitor III system operations and to prescribe system
11 rules and procedures for the effective and proper operation
12 of the III system for noncriminal justice purposes; and

13

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

20

21

Article III

22

Responsibilities of Compact Parties

23

24 (a) The director of the FBI shall:

1

2 (i) Appoint an FBI compact officer who shall:

3

4 (A) Administer this compact within the
5 federal department of justice and among federal agencies
6 and other agencies and organizations that submit search
7 requests to the FBI pursuant to article (V)(c) of this
8 compact;

9

10 (B) Ensure that compact provisions and
11 rules, procedures and standards prescribed by the council
12 under article VI of this compact are complied with by the
13 federal department of justice and the federal agencies and
14 other agencies and organizations referred to in
15 subparagraph (A) of this paragraph; and

16

17 (C) Regulate the use of records received by
18 means of the III system from party states when the records
19 are supplied by the FBI directly to other federal agencies;

20

21 (ii) Provide to federal agencies and to state
22 criminal history record repositories, criminal history
23 records maintained in its databases for the noncriminal

1 justice purposes described in article IV of this compact,
2 including:

3

4 (A) Information from nonparty states; and

5

6 (B) Information from party states that is
7 available from the FBI through the III system, but is not
8 available from the party state through the III system;

9

10 (iii) Provide a telecommunications network and
11 maintain centralized facilities for the exchange of
12 criminal history records for both criminal justice purposes
13 and the noncriminal justice purposes described in article
14 IV of this compact, and ensure that the exchange of the
15 records for criminal justice purposes has priority over
16 exchange for noncriminal justice purposes; and

17

18 (iv) Modify or enter into user agreements with
19 nonparty state criminal history record repositories to
20 require them to establish record request procedures
21 conforming to those prescribed in article V of this
22 compact.

23

24 (b) Each party state shall:

1

2

(i) Appoint a compact officer who shall:

3

4

(A) Administer this compact within the
5 state;

6

7

(B) Ensure that compact provisions and
8 rules, procedures and standards established by the council
9 under article VI(a) of this compact are complied with in
10 the state; and

11

12

(C) Regulate the in-state use of records
13 received by means of the III system from the FBI or from
14 other party states.

15

16

(ii) Establish and maintain a criminal history
17 record repository, which shall provide:

18

19

(A) Information and records for the
20 national identification index and the national fingerprint
21 file; and

22

1 (B) The state's III system-indexed criminal
2 history records for noncriminal justice purposes described
3 in article IV of this compact;

4

5 (iii) Participate in the national fingerprint
6 file; and

7

8 (iv) Provide and maintain telecommunications
9 links and related equipment necessary to support the
10 services set forth in this compact.

11

12 (c) 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
15 the council concerning record dissemination and use,
16 response time, data quality, system security, accuracy,
17 privacy protection and other aspects of III system
18 operation.

19

20 (d) Maintenance of record services shall comply with
21 the following:

22

23 (i) Use of the III system for noncriminal
24 justice purposes authorized in this compact shall be

1 managed so as not to diminish the level of services
2 provided in support of criminal justice purposes;

3

4 (ii) Administration of compact provisions shall
5 not reduce the level of service available to authorized
6 noncriminal justice users on the effective date of this
7 compact.

8

9

Article IV

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Authorized Record Disclosures

11

12 (a) To the extent authorized by section 552a of title
13 5, United States Code (commonly known as the Privacy Act of
14 1974), the FBI shall provide on request criminal history
15 records (excluding sealed records) to state criminal
16 history record repositories for noncriminal justice
17 purposes allowed by federal statute, federal executive
18 order, or a state statute that has been approved by the
19 attorney general and that authorizes national indices
20 checks.

21

22 (b) The FBI, to the extent authorized by section 552a
23 of title 5, United States Code (commonly known as the
24 Privacy Act of 1974), and state criminal history record

1 repositories, shall provide criminal history records
2 (excluding sealed records) to criminal justice agencies and
3 other governmental or nongovernmental agencies for
4 noncriminal justice purposes allowed by federal statute,
5 federal executive order, or a state statute that has been
6 approved by the attorney general, that authorizes national
7 indices checks.

8

9 (c) Any record obtained under this compact may be
10 used only for the official purposes for which the record
11 was requested. Each compact officer shall establish
12 procedures, consistent with this compact and with rules,
13 procedures and standards established by the council under
14 article VI of this compact, which procedures shall protect
15 the accuracy and privacy of the records and shall:

16

17 (i) Ensure that records obtained under this
18 compact are used only by authorized officials for
19 authorized purposes;

20

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

24

1 (iii) Ensure that record entries that may not
2 legally be used for a particular noncriminal justice
3 purpose are deleted from the response and, if no
4 information authorized for release remains, an appropriate
5 "no record" response is communicated to the requesting
6 official.

7

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Article V

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Record Request Procedures

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11 (a) Subject fingerprints or other approved forms of
12 positive identification shall be submitted with all
13 requests for criminal history record checks for noncriminal
14 justice purposes.

15

16 (b) Each request for a criminal history record check
17 utilizing the national indices made under any approved
18 state statute shall be submitted through that state's
19 criminal history record repository. A state criminal
20 history record repository shall process an interstate
21 request for noncriminal justice purposes through the
22 national indices only if the request is transmitted through
23 another state criminal history record repository or the
24 FBI.

1

2 (c) Each request for criminal history record checks
3 utilizing the national indices made under federal authority
4 shall be submitted through the FBI or, if the state
5 criminal history record repository consents to process
6 fingerprint submissions, through the criminal history
7 record repository in the state in which the request
8 originated. Direct access to the national identification
9 index by entities other than the FBI and state criminal
10 history records repositories shall not be permitted for
11 noncriminal justice purposes.

12

13 (d) A state criminal record repository or the FBI:

14

15 (i) May charge a fee, in accordance with
16 applicable law, for handling a request involving
17 fingerprint processing for noncriminal justice purposes;
18 and

19

20 (ii) May not charge a fee for providing criminal
21 history records in response to an electronic request for a
22 record that does not involve a request to process
23 fingerprints.

24

1 (e) If an additional search is required, the
2 following shall apply:

3

4 (i) If a state criminal history record
5 repository cannot positively identify the subject of a
6 record request made for noncriminal justice purposes, the
7 request, together with fingerprints or other approved
8 identifying information, shall be forwarded to the FBI for
9 a search of the national indices;

10

11 (ii) If, with respect to a request forwarded by
12 a state criminal history record repository under paragraph
13 (i) of this subsection, the FBI positively identifies the
14 subject as having a III system indexed record or records:

15

16 (A) The FBI shall so advise the state
17 criminal history record repository; and

18

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

23

24

Article VI

1 *Establishment of Compact Council*

2

3 (a) There is established a council to be known as the
4 compact council, which shall have the authority to
5 promulgate rules and procedures governing the use of the
6 III system for noncriminal justice purposes, not to
7 conflict with FBI administration of the III system for
8 criminal justice purposes.

9

10 (b) The council shall:

11

12 (i) Continue in existence as long as this
13 compact remains in effect;

14

15 (ii) Be located, for administrative purposes,
16 within the FBI; and

17

18 (iii) Be organized and hold its first meeting as
19 soon as practicable after the effective date of this
20 compact.

21

22 (c) The council shall be composed of fifteen (15)
23 members, each of whom shall be appointed by the attorney
24 general, as follows:

1

2 (i) Nine (9) members, each of whom shall serve a
3 two (2) year term, who shall be selected from among the
4 compact officers of party states based on the
5 recommendations of the compact officers of all party
6 states, except that, in the absence of the requisite number
7 of compact officers available to serve, the chief
8 administrator of the criminal history record repositories
9 of nonparty states shall be eligible to serve on an interim
10 basis;

11

12 (ii) Two (2) at-large members, nominated by the
13 director of the FBI, each of whom shall serve a three (3)
14 year term, of whom:

15

16 (A) One (1) shall be a representative of a
17 criminal justice agency of the federal government and may
18 not be an employee of the FBI; and

19

20 (B) One (1) shall be a representative of a
21 noncriminal justice agency of the federal government.

22

23 (iii) Two (2) at-large members, nominated by the
24 chairperson of the council, once the chairperson is elected

1 pursuant to subsection (d) of this article, each of whom
2 shall serve a three (3) year term, of whom:

3

4 (A) One (1) shall be a representative of a
5 state or local criminal justice agency; and

6

7 (B) One (1) shall be a representative of a
8 state or local noncriminal justice agency.

9

10 (iv) One (1) member, who shall serve a three (3)
11 year term, and who shall simultaneously be a member of the
12 FBI's advisory policy board on criminal justice information
13 services, nominated by the membership of that policy board;

14

15 (v) One (1) member, nominated by the director of
16 the FBI, who shall serve a three (3) year term, and who
17 shall be an employee of the FBI.

18

19 (d) From its membership, the council shall elect a
20 chairperson and a vice chairperson of the council,
21 respectively. Both the chairperson and the vice
22 chairperson of the council:

23

1 (i) Shall be a compact officer, unless there is
2 no compact officer on the council who is willing to serve,
3 in which case the chairperson may be an at-large member;
4 and

5

6 (ii) Shall serve a two (2) year term and may be
7 reelected to only one (1) additional two (2) year term.

8

9 (e) The vice chairperson of the council shall serve
10 as the chairperson of the council in the absence of the
11 chairperson.

12

13 (f) The council shall meet at least once each year at
14 the call of the chairperson. Each meeting of the council
15 shall be open to the public. The council shall provide
16 prior public notice in the federal register of each meeting
17 of the council, including the matters to be addressed at
18 the meeting.

19

20 (g) A majority of the council or any committee of the
21 council shall constitute a quorum of the council or of the
22 committee, respectively, for the conduct of business. A
23 lesser number may meet to hold hearings, take testimony or
24 conduct any business not requiring a vote.

1

2 (h) The council shall make available for public
3 inspection and copying at the council office within the
4 FBI, and shall publish in the federal register, any rules,
5 procedures or standards established by the council.

6

7 (j) The council may request from the FBI, reports,
8 studies, statistics or other information or materials as
9 the council determines to be necessary to enable the
10 council to perform its duties under this compact. The FBI,
11 to the extent authorized by law, may provide assistance or
12 information in response to a request by the council.

13

14 (k) The chairperson may establish committees as
15 necessary to carry out this compact and may prescribe their
16 membership, responsibilities and duration.

17

18 *Article VII*

19 *Ratification of Compact*

20

21 (a) This compact shall take effect upon being entered
22 into by two (2) or more states as between those states and
23 the federal government. Upon subsequent entering into this
24 compact by additional states, it shall become effective

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

7

8

Article VIII

9

Miscellaneous Provisions

10

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

18

19 (b) Nothing in this compact shall require the FBI to
20 obligate or expend funds beyond those appropriated to the
21 FBI.

22

23 (c) Nothing in this compact shall diminish or lessen
24 the obligations, responsibilities and authorities of any

1 state, whether a party state or a nonparty state, or of any
2 criminal history record repository or other subdivision or
3 component thereof, under the federal departments of state,
4 justice and commerce, the judiciary, and Related Agencies
5 Appropriation Act, 1973 (Pub. L. 92-544), or regulations
6 and guidelines promulgated thereunder, including the rules
7 and procedures promulgated by the council under article
8 VI(a) of this compact, regarding the use and dissemination
9 of criminal history records and information.

10

11

Article IX

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Renunciation

13

14 (a) This compact shall bind each party state until
15 renounced by the party state.

16

17 (b) Any renunciation of this compact by a party state
18 shall:

19

20 (i) Be effected in the same manner by which the
21 party state ratified this compact; and

22

23 (ii) Become effective one hundred eighty (180)
24 days after written notice of renunciation is provided by

1 the party state to each other party state and to the
2 federal government.

3

4

Article X

5

Severability

6

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

21

22

Article XI

23

Adjudication of Disputes

24

1 (a) The council shall:

2

3 (i) Have initial authority to make
4 determinations with respect to any dispute regarding:

5

6 (A) Interpretation of this compact;

7

8 (B) Any rule or standard established by the
9 council; and

10

11 (C) Any dispute or controversy between any
12 parties to this compact.

13

14 (ii) Hold a hearing concerning any dispute
15 described in paragraph (i) of this subsection at a
16 regularly scheduled meeting of the council and only render
17 a decision based upon a majority vote of the members of the
18 council. The decision shall be published pursuant to the
19 requirements of article VI(e) of this compact.

20

21 (b) The FBI shall exercise immediate and necessary
22 action to preserve the integrity of the III system,
23 maintain system policy and standards, protect the accuracy

1 and privacy of records and to prevent abuses, until the
2 council holds a hearing on such matters.

3

4 (c) The FBI or a party state may appeal any decision
5 of the council to the attorney general and thereafter may
6 file suit in the appropriate district court of the United
7 States, which shall have original jurisdiction of all cases
8 or controversies arising under this compact. Any suit
9 arising under this compact and initiated in a state court
10 shall be removed to the appropriate district court of the
11 United States in the manner provided by 24 U.S.C. section
12 1446, or other statutory authority.

13

14 **7-19-603. Compact officer to administer the compact.**

15

16 The Wyoming attorney general or his designee shall act as
17 the compact officer responsible for implementation and
18 administration of this compact on behalf of the state of
19 Wyoming.

20

21 **Section 2.** This act is effective July 1, 2005.

22

23

(END)