

SENATE BILL No. 1413

June 24, 2008, Introduced by Senator CROPSEY and referred to the Committee on Judiciary.

A bill to allow the state of Michigan to enter into a compact for organizing an electronic information sharing system among the federal government and the states that will exchange criminal history records for certain purposes.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. The governor of this state may enter into a compact as
2 described in this act on behalf of the state of Michigan with any
3 of the states of the United States who legally join in that
4 compact.

5 Sec. 2. This act shall be known and may be cited as the
6 "national crime prevention and privacy compact".

7 Sec. 3. The national crime prevention and privacy compact as
8 contained in this section is enacted into law and entered into on

1 behalf of the state of Michigan with any other states legally
2 joining in it in a form substantially as follows:

3 The contracting parties agree to the following:

4 OVERVIEW

5 (a) In general. This compact organizes an electronic
6 information sharing system among the federal government and the
7 states to exchange criminal history records for non-criminal
8 justice purposes authorized by federal or state law, such as
9 background checks for governmental licensing and employment.

10 (b) Obligations of parties. Under this compact, the FBI and
11 the party states agree to maintain detailed databases of their
12 respective criminal history records, including arrests and
13 dispositions, and to make them available to the federal government
14 and to party states for authorized purposes. The FBI shall also
15 manage the federal data facilities that provide a significant part
16 of the infrastructure for the system.

17 ARTICLE I. DEFINITIONS

18 As used in this compact, unless the context clearly requires
19 otherwise:

20 (a) "Attorney general" means the attorney general of the
21 United States.

22 (b) "Compact officer" means either of the following:

23 (i) With respect to the federal government, an official so
24 designated by the director of the FBI.

25 (ii) With respect to a party state, the chief administrator of
26 the state's criminal history record repository or a designee of the
27 chief administrator who is a regular full-time employee of the

1 repository.

2 (c) "Council" means the compact council established under
3 article VI.

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

13 (e) "Criminal history record repository" means the state
14 agency designated by the governor or other appropriate executive
15 official or the legislature of a state to perform centralized
16 record-keeping functions for criminal history records and services
17 in the state.

18 (f) "Criminal justice" includes activities relating to the
19 detection, apprehension, detention, pretrial release, posttrial
20 release, prosecution, adjudication, correctional supervision, or
21 rehabilitation of accused persons or criminal offenders; the
22 administration of criminal justice includes criminal identification
23 activities and the collection, storage, and dissemination of
24 criminal history records.

25 (g) "Criminal justice agency" includes all of the following:

26 (i) The courts.

27 (ii) A governmental agency or any subunit of a governmental

1 agency that performs the administration of criminal justice
2 pursuant to a statute or executive order and allocates a
3 substantial part of its annual budget to the administration of
4 criminal justice.

5 (iii) Federal and state inspectors general offices.

6 (h) "Criminal justice services" means services provided by the
7 FBI to criminal justice agencies in response to a request for
8 information about a particular individual or as an update to
9 information previously provided for criminal justice purposes.

10 (i) "Criterion offense" means any felony or misdemeanor
11 offense not included on the list of nonserious offenses published
12 periodically by the FBI.

13 (j) "Direct access" means access to the national
14 identification index by computer terminal or other automated means
15 not requiring the assistance of or intervention by any other party
16 or agency.

17 (k) "Executive order" means an order of the president of the
18 United States or the chief executive officer of a state that has
19 the force of law and that is promulgated in accordance with
20 applicable law.

21 (l) "FBI" means the federal bureau of investigation.

22 (m) "Interstate identification index system" or "III system"
23 means the cooperative federal-state system for the exchange of
24 criminal history records, and includes the national identification
25 index, the national fingerprint file, and to the extent of their
26 participation in such system, the criminal history record
27 repositories of the states and the FBI.

1 (n) "National fingerprint file" means a database of
2 fingerprints, or other uniquely personal identifying information,
3 relating to an arrested or charged individual maintained by the FBI
4 to provide positive identification of record subjects indexed in
5 the III system.

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

10 (p) "National indices" means the national identification index
11 and the national fingerprint file.

12 (q) "Nonparty state" means a state that has not ratified this
13 compact.

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

20 (s) "Party state" means a state that has ratified this
21 compact.

22 (t) "Positive identification" means a determination, based
23 upon a comparison of fingerprints or other equally reliable
24 biometric identification techniques, that the subject of a record
25 search is the same person as the subject of a criminal history
26 record or records indexed in the III system; identifications based
27 solely upon a comparison of subjects' names or other nonunique

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

3 (u) "Sealed record information" means either of the following,
4 as applicable:

5 (i) With respect to adults, that portion of a record that is
6 not available for criminal justice uses, is not supported by
7 fingerprints or other accepted means of positive identification, or
8 is subject to restrictions on dissemination for noncriminal justice
9 purposes pursuant to a court order related to a particular subject
10 or pursuant to a federal or state statute that requires action on a
11 sealing petition filed by a particular record subject.

12 (ii) With respect to juveniles, whatever each state determines
13 is a sealed record under its own law and procedure.

14 (v) "State" means any state, territory, or possession of the
15 United States, the District of Columbia, and the Commonwealth of
16 Puerto Rico.

17 ARTICLE II. PURPOSES

18 The purposes of this compact are all of the following:

19 (a) Provide a legal framework for the establishment of a
20 cooperative federal-state system for the interstate and federal-
21 state exchange of criminal history records for noncriminal justice
22 uses.

23 (b) Require the FBI to permit use of the national
24 identification index and the national fingerprint file by each
25 party state, and to provide, in a timely fashion, federal and state
26 criminal history records to requesting states, in accordance with
27 the terms of this compact and with rules, procedures, and standards

1 established by the council under article VI.

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

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

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

18 ARTICLE III. RESPONSIBILITIES OF COMPACT PARTIES

19 (1) FBI responsibilities. The director of the FBI shall do all
20 of the following:

21 (a) Appoint an FBI compact officer who shall do all of the
22 following:

23 (i) Administer this compact within the United States department
24 of justice and among federal agencies and other agencies and
25 organizations that submit search requests to the FBI pursuant to
26 article V(3).

27 (ii) Ensure that compact provisions and rules, procedures, and

1 standards prescribed by the council under article VI are complied
2 with by the department of justice and the federal agencies and
3 other agencies and organizations referred to in subparagraph (i).

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

7 (b) Provide to federal agencies, and to state criminal history
8 record repositories, criminal history records maintained in its
9 database for the noncriminal justice purposes described in article
10 IV, including information from nonparty states and information from
11 party states that is available from the FBI through the III system,
12 but is not available from the party state through the III system.

13 (c) Provide a telecommunications network and maintain
14 centralized facilities for the exchange of criminal history records
15 for both criminal justice purposes and the noncriminal justice
16 purposes described in article IV, and ensure that the exchange of
17 such records for criminal justice purposes has priority over
18 exchange for noncriminal justice purposes.

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

23 (2) State responsibilities. Each party state shall do all of
24 the following:

25 (a) Appoint a compact officer who shall administer this
26 compact within that state, ensure that compact provisions and
27 rules, procedures, and standards established by the council under

1 article VI are complied with in the state, and regulate the in-
2 state use of records received by means of the III system from the
3 FBI or from other party states.

4 (b) Establish and maintain a criminal history record
5 repository, which shall provide information and records for the
6 national identification index and the national fingerprint file and
7 the state's III system-indexed criminal history records for
8 noncriminal justice purposes described in Article IV.

9 (c) Participate in the national fingerprint file.

10 (d) Provide and maintain telecommunications links and related
11 equipment necessary to support the services set forth in this
12 compact.

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

19 (4) Maintenance of record services:

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

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

27 ARTICLE IV. AUTHORIZED RECORD DISCLOSURES

1 (1) State criminal history record repositories. To the extent
2 authorized by section 552a of title 5, United States Code (commonly
3 known as the "Privacy Act of 1974"), the FBI shall provide on
4 request criminal history records (excluding sealed records) to
5 state criminal history record repositories for noncriminal justice
6 purposes allowed by federal statute, federal executive order, or a
7 state statute that has been approved by the attorney general and
8 that authorizes national indices checks.

9 (2) Criminal justice agencies and other governmental or
10 nongovernmental agencies. The FBI, to the extent authorized by
11 section 552a of title 5, United States Code (commonly known as the
12 "Privacy Act of 1974"), and state criminal history record
13 repositories shall provide criminal history records (excluding
14 sealed records) to criminal justice agencies and other governmental
15 or nongovernmental agencies for noncriminal justice purposes
16 allowed by federal statute, federal executive order, or a state
17 statute that has been approved by the attorney general, that
18 authorizes national indices checks.

19 (3) Procedures. Any record obtained under this compact may be
20 used only for the official purposes for which the record was
21 requested. Each compact officer shall establish procedures,
22 consistent with this compact, and with rules, procedures, and
23 standards established by the council under article VI, which
24 procedures shall do all of the following:

25 (a) Protect the accuracy and privacy of the records.

26 (b) Ensure that records obtained under this compact are used
27 only by authorized officials for authorized purposes.

1 (c) Require that subsequent record checks are requested to
2 obtain current information whenever a new need arises.

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

8 ARTICLE V. RECORD REQUEST PROCEDURES

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

13 (2) Submission of state requests. Each request for a criminal
14 history record check utilizing the national indices made under any
15 approved state statute shall be submitted through that state's
16 criminal history record repository. A state criminal history record
17 repository shall process an interstate request for noncriminal
18 justice purposes through the national indices only if such request
19 is transmitted through another state criminal history record
20 repository or the FBI.

21 (3) Submission of federal requests. Each request for criminal
22 history record checks utilizing the national indices made under
23 federal authority shall be submitted through the FBI or, if the
24 state criminal history record repository consents to process
25 fingerprint submissions, through the criminal history record
26 repository in the state in which such request originated. Direct
27 access to the national identification index by entities other than

1 the FBI and state criminal history records repositories shall not
2 be permitted for noncriminal justice purposes.

3 (4) Fees. A state criminal history record repository or the
4 FBI may charge a fee, in accordance with applicable law, for
5 handling a request involving fingerprint processing for noncriminal
6 justice purposes, and may not charge a fee for providing criminal
7 history records in response to an electronic request for a record
8 that does not involve a request to process fingerprints.

9 (5) Additional search.

10 (a) If a state criminal history record repository cannot
11 positively identify the subject of a record request made for
12 noncriminal justice purposes, the request, together with
13 fingerprints or other approved identifying information, shall be
14 forwarded to the FBI for a search of the national indices.

15 (b) If, with respect to a request forwarded by a state
16 criminal history record repository under subdivision (a), the FBI
17 positively identifies the subject as having a III system-indexed
18 record or records, the FBI shall so advise the state criminal
19 history record repository and the state criminal history record
20 repository shall be entitled to obtain the additional criminal
21 history record information from the FBI or other state criminal
22 history record repositories.

23 ARTICLE VI. ESTABLISHMENT OF A COMPACT COUNCIL

24 Establishment.

25 (1) In general. There is established a council to be known as
26 the "compact council," which shall have the authority to promulgate
27 rules and procedures governing the use of the III system for

1 noncriminal justice purposes, not to conflict with FBI
2 administration of the III system for criminal justice purposes.

3 (2) Organization. The council shall continue in existence as
4 long as this compact remains in effect, be located, for
5 administrative purposes, within the FBI, and be organized and hold
6 its first meeting as soon as practicable after the effective date
7 of this compact.

8 (3) Membership. The council shall be composed of 15 members,
9 each of whom shall be appointed by the attorney general, as
10 follows:

11 (a) Nine members, each of whom shall serve a 2-year term, who
12 shall be selected from among the compact officers of party states
13 based on the recommendation of the compact officers of all party
14 states, except that, in the absence of the requisite number of
15 compact officers available to serve, the chief administrators of
16 the criminal history record repositories of nonparty states shall
17 be eligible to serve on an interim basis.

18 (b) Two at-large members, nominated by the director of the
19 FBI, each of whom shall serve a 3-year term, of whom 1 shall be a
20 representative of the criminal justice agencies of the federal
21 government and may not be an employee of the FBI and 1 shall be a
22 representative of the noncriminal justice agencies of the federal
23 government.

24 (c) Two at-large members, nominated by the chair of the
25 council, once the chair is elected pursuant to subsection (4), each
26 of whom shall serve a 3-year term, of whom 1 shall be a
27 representative of state or local criminal justice agencies and 1

1 shall be a representative of state or local noncriminal justice
2 agencies.

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

7 (e) One member, nominated by the director of the FBI, who
8 shall serve a 3-year term and who shall be an employee of the FBI.

9 (4) Chair and vice chair.

10 (a) In general. From its membership, the council shall elect a
11 chair and a vice chair of the council, respectively. Both the chair
12 and vice chair of the council shall be a compact officer, unless
13 there is no compact officer on the council who is willing to serve,
14 in which case the chair may be an at-large member, and shall serve
15 a 2-year term and be reelected to only 1 additional 2-year term.

16 (b) Duties of the vice chair. The vice chair of the council
17 shall serve as the chair of the council in the absence of the
18 chair.

19 (5) Meetings.

20 (a) In general. The council shall meet at least once a year at
21 the call of the chair. Each meeting of the council shall be open to
22 the public. The council shall provide prior public notice in the
23 federal register of each meeting of the council, including the
24 matters to be addressed at such meeting.

25 (b) Quorum. A majority of the council or any committee of the
26 council shall constitute a quorum of the council or of such
27 committee, respectively, for the conduct of business. A lesser

1 number may meet to hold hearings, take testimony, or conduct any
2 business not requiring a vote.

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

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

13 (8) Committees. The chair may establish committees as
14 necessary to carry out this compact and may prescribe their
15 membership, responsibilities, and duration.

16 ARTICLE VII. RATIFICATION OF COMPACT

17 This compact shall take effect upon being entered into by 2 or
18 more states as between those states and the federal government.
19 Upon subsequent entering into this compact by additional states, it
20 shall become effective among those states and the federal
21 government and each party state that has previously ratified it.
22 When ratified, this compact shall have the full force and effect of
23 law within the ratifying jurisdictions. The form of ratification
24 shall be in accordance with the laws of the executing state.

25 ARTICLE VIII. MISCELLANEOUS PROVISIONS

26 (1) Relation of compact to certain FBI activities.
27 Administration of this compact shall not interfere with the

1 management and control of the director of the FBI over the FBI's
2 collection and dissemination of criminal history records and the
3 advisory function of the FBI's advisory policy board chartered
4 under the federal advisory committee act (5 USC App.) for all
5 purposes other than noncriminal justice.

6 (2) No authority for nonappropriated expenditures. Nothing in
7 this compact shall require the FBI to obligate or expend funds
8 beyond those appropriated to the FBI.

9 (3) Relating to Public Law 92-544. Nothing in this compact
10 shall diminish or lessen the obligations, responsibilities, and
11 authorities of any state, whether a party state or a nonparty
12 state, or of any criminal history record repository or other
13 subdivision or component thereof, under the departments of state,
14 justice, and commerce, the judiciary, and related agencies
15 appropriation act, 1973 (Public Law 92-544) or regulations and
16 guidelines promulgated thereunder, including the rules and
17 procedures promulgated by the council under article VI, regarding
18 the use and dissemination of criminal history records and
19 information.

20 ARTICLE IX. RENUNCIATION

21 (1) In general. This compact shall bind each party state until
22 renounced by the party state.

23 (2) Effect. Any renunciation of this compact by a party state
24 shall be effected in the same manner by which the party state
25 ratified this compact and shall become effective 180 days after
26 written notice of renunciation is provided by the party state to
27 each other party state and to the federal government.

ARTICLE X. SEVERABILITY

1
2 The provisions of this compact shall be severable, and if any
3 phrase, clause, sentence, or provision of this compact is declared
4 to be contrary to the constitution of any participating state, or
5 to the constitution of the United States, or the applicability
6 thereof to any government, agency, person, or circumstance is held
7 invalid, the validity of the remainder of this compact and the
8 applicability thereof to any government, agency, person, or
9 circumstance shall not be affected thereby. If a portion of this
10 compact is held contrary to the constitution of any party state,
11 all other portions of this compact shall remain in full force and
12 effect as to the remaining party states and in full force and
13 effect as to the party state affected, as to all other provisions.

ARTICLE XI. ADJUDICATION OF DISPUTES

14
15 (1) In general. The council shall have initial authority to
16 make determinations with respect to any dispute regarding
17 interpretation of this compact, any rule or standard established by
18 the council pursuant to article V, and any dispute or controversy
19 between any parties to this compact.

20 (2) The council shall hold a hearing concerning any dispute
21 described in subsection (1) at a regularly scheduled meeting of the
22 council and only render a decision based upon a majority vote of
23 the members of the council. The council's decision shall be
24 published pursuant to the requirements of article VI(6).

25 (3) Duties of the FBI. The FBI shall exercise immediate and
26 necessary action to preserve the integrity of the III system,
27 maintain system policy and standards, protect the accuracy and

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

3 (4) Right of appeal. The FBI or a party state may appeal any
4 decision of the council to the attorney general, and thereafter may
5 file suit in the appropriate district court of the United States,
6 which shall have original jurisdiction of all cases or
7 controversies arising under this compact. Any suit arising under
8 this compact and initiated in a state court shall be removed to the
9 appropriate district court of the United States in the manner
10 provided by section 1446 of title 28, United States Code, or other
11 statutory authority.