David M. Gold *Legislative Service Commission*

Am. Sub. S.B. 53

125th General Assembly
(As Passed by the General Assembly)

Sens. **Goodman, Stivers, Jacobson, Randy Gardner, Dann, Herington, Austria, Blessing, Schuler, Spada, Harris**

Reps. **Collier, Willamowski, Brown, D. Evans, Seitz, Callender, Faber, Latta, Gilb, Book, Cates, Clancy, DePiero, Domenick, Niehaus, Oelslager, T. Patton, Raussen, Schmidt, Sferra, J. Stewart, Walcher**

Effective date: *

ACT SUMMARY

- Ratifies the National Crime Prevention and Privacy Compact, enacts the Compact into law, and enters Ohio as a party to the Compact with any other state that has legally joined in the Compact.
- Modifies existing provisions regarding Bureau of Criminal Identification and Investigation records and criminal records checks to reflect provisions of the Compact.

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* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

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CONTENT AND OPERATION

Ratification of, and entry of Ohio into, the National Crime Prevention and Privacy Compact

The act sets forth the "National Crime Prevention and Privacy Compact" and ratifies the Compact, enacts the Compact into law, and enters Ohio as a party to the Compact with any other state that has legally joined in the Compact. The Compact states, immediately prior to its Overview and substantive provisions, that the contracting states agree to the provisions of the Compact that are set forth in the act. (R.C. 109.571.)

Content of the National Crime Prevention and Privacy Compact

The content of the National Crime Prevention and Privacy Compact is as follows (the terms in quotation marks are defined in the Compact; see "***Definitions***," below):

Overview

The Overview of the Compact specifies that: (1) the 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, and (2) under the 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, and that the FBI also must manage the federal data facilities that provide a significant part of the infrastructure for the system. (Overview of the Compact.)

Purposes of the Compact

The Compact states that its purposes are to do all of the following (Article II of the Compact):

(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 the Compact and with rules, procedures, and standards established by the Compact Council under Article VI of the Compact;

(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 the Compact and with rules, procedures, and standards established by the Compact Council under Article VI of the Compact;

(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;

(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.

Duties of the FBI and party states

FBI. The Compact requires the FBI Director to do all of the following (Article III of the Compact):

(1) Appoint an FBI "compact officer" who must do all of the following: (a) administer the 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 Compact 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 those 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 both of the following: (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 criminal history records for criminal justice purposes has priority over exchange for noncriminal justice purposes;

(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.

Party states. The Compact requires each party state to do all of the following (Article III of the Compact):

(1) Appoint a compact officer who must do all of the following: (a) administer the Compact within that state, (b) ensure that the Compact provisions and rules, procedures, and standards established by the Compact 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 must provide both of the following: (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;

(4) Provide and maintain telecommunications links and related equipment necessary to support the services set forth in the Compact.

Related provisions. The Compact specifies that, in carrying out their responsibilities under the Compact, the FBI and each party state must comply with the III system rules, procedures, and standards duly established by the Compact Council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III system operation. Use of the III system for noncriminal justice purposes authorized in the

Compact must be managed so as not to diminish the level of services provided in support of criminal justice purposes. Administration of Compact provisions must not reduce the level of service available to authorized noncriminal justice users on the effective date of the Compact. (Article III of the Compact.)

FBI provision of criminal history records

The Compact provides that, to the extent authorized by 5 U.S.C. 552a (the "Privacy Act of 1974"), the FBI must 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 U.S. Attorney General and that authorizes national indices checks.

The FBI, to the extent authorized by 5 U.S.C. 552a and state criminal history record repositories, must 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 U.S. Attorney General, that authorizes national indices checks.

Any record obtained under the Compact may be used only for the official purposes for which the record was requested. Each compact officer must establish procedures, consistent with the Compact, and with rules, procedures, and standards established by the Compact Council under Article VI. The procedures must protect the accuracy and privacy of the records and must do all of the following: (1) ensure that records obtained under the 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 IV of the Compact.)

Requests for criminal history records checks

The Compact provides that subject fingerprints or other approved forms of positive identification must be submitted with all requests for criminal history record checks for noncriminal justice purposes. Each request for a criminal history record check utilizing the national indices made under any approved state statute must be submitted through that state's criminal history record repository. A state criminal history record repository is required to process an interstate request for noncriminal justice purposes through the national indices only if the request is transmitted through another state criminal history record repository or the FBI.

Each request for criminal history record checks utilizing the national indices made under federal authority must 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 the request originated. Direct access to the national identification index by entities other than the FBI or state criminal history record repositories may not be permitted for noncriminal justice purposes.

A state criminal history record repository for the FBI may charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes and 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.

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, must be forwarded to the FBI for a search of the national indices. If, with respect to a request forwarded by a state criminal history record repository as described in the preceding sentence, the FBI positively identifies the subject as having a III system-indexed record or records, the FBI must so advise the state criminal history repository; and the state criminal history record repository is entitled to obtain the additional criminal history record information from the FBI or other state criminal history record repositories. (Article V of the Compact.)

Compact Council

The Compact specifies that it establishes a council to be known as the "Compact Council," which has the authority to promulgate rules and procedures governing the use of the III system for noncriminal justice purposes, not to conflict with the FBI administration of the III system for criminal justice purposes. The Council must do all of the following: (1) continue in existence as long as the Compact remains in effect, (2) be located, for administrative purposes, within the FBI, and (3) be organized and hold its first meeting as soon as practicable after the effective date of the Compact.

The Council is to be composed of 15 members, each of whom is to be appointed by the U.S. Attorney General as follows: (1) nine members, each of whom is to serve a two-year term, who are to 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 are eligible to serve on an interim basis, (2) two at-large members, nominated by the FBI Director, each of whom is to serve a three-

year term, of whom one is to be a representative of the criminal justice agencies of the federal government and may not be employed by the FBI and one is to 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 is to serve a three-year term, of whom one is to be a representative of state or local criminal justice agencies and one is to be a representative of state or local noncriminal justice agencies, (4) one member, who is to serve a three-year term, and who will simultaneously be a member of the FBI's Advisory Policy Board on Criminal Justice Information Services, nominated by the membership of that board, and (5) one member, nominated by the FBI Director, who is to serve a three-year term, and who must be an employee of the FBI.

From its membership, the Council must elect a Chairman and a Vice Chairman of the Council. Both the Chairman and the Vice Chairman must 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, may serve a two-year term and may be reelected to only one additional two-year term. The Vice Chairman is to serve as Chairman in the absence of the Chairman.

The Council must meet at least once each year at the call of the Chairman. Each meeting of the Council must be open to the public. The Council must provide prior public notice in the Federal Register of each meeting of the Council, including the matters to be addressed at the meeting. A majority of the Council or any committee of the Council constitutes a quorum of the Council or of the 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.

The Council must make available for public inspection and copying at the council office with the FBI, and must publish in the Federal Register, any rules, procedures, or standards established by the Council. The Council may request from the FBI any reports, studies, statistics, or other information or materials the Council determines to be necessary to enable it to perform its duties under the Compact. The FBI, to the extent authorized by law, may provide such assistance or information upon such a request. The Chairman may establish committees as necessary to carry out the Compact and may prescribe their membership, responsibilities, and duration. (Article VI of the Compact.)

Effective date

The Compact specifies that it will take effect upon being entered into by two or more states as between those states and the federal government. Upon subsequent entering into the Compact by additional states, it will become effective among those states and the federal government and each party state that has

previously ratified it. When ratified, the Compact will have the full force and effect of law within the ratifying jurisdictions. The form of ratification must be in accordance with the laws of the executing state. (Article VII of the Compact.)

Effect of Compact on FBI and states

The Compact specifies in Article VIII that:

(1) Administration of the Compact is not to interfere with the management and control of the FBI Director 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.

(2) Nothing in the Compact requires the FBI to obligate or expend funds beyond those appropriated to the FBI.

(3) Nothing in the Compact diminishes or lessens 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 Compact Council under Article VI(a), regarding the use and dissemination of criminal history records and information.

Renunciation of Compact

The Compact specifies that it binds each party state until renounced by the party state. Any renunciation of the Compact by a party state must be effected in the same manner by which the party state ratified the Compact and becomes 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 IX of the Compact.)

Severability

The Compact specifies that its provisions are severable, and if any phrase, clause, sentence, or provision of the Compact is declared to be contrary to the constitution of any participating state, or to the Constitution of the United States, or the applicability of any phrase, clause, sentence, or provision of the Compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of the Compact and the applicability of the remainder of the Compact to any government, agency, person, or circumstance is not affected by the declaration or holding. If a portion of the Compact is held contrary to the

constitution of any party state, all other portions of the Compact remain in full force and effect as to the remaining party states and in full force and effect as to the party states affected, as to all other provisions. (Article X of the Compact.)

Additional duties of the Compact Council and the FBI

Compact Council. The Compact requires the Compact Council to do both of the following: (1) have initial authority to make determinations with respect to any dispute regarding interpretation of the Compact, any rule or standard established by the Council pursuant to Article V, and any dispute or controversy between any parties to the Compact, and (2) hold a hearing concerning any dispute described in clause (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 (the decision must be published pursuant to the requirements of Article VI(e)). (Article XI of the Compact.)

FBI. The Compact requires the FBI to 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. It permits the FBI or a party state to appeal any decision of the Council to the U.S. Attorney General, and thereafter to file suit in the appropriate U.S. District Court, which will have original jurisdiction of all cases or controversies arising under the Compact. Any suit arising under the Compact and initiated in a state court must be removed to the appropriate U.S. District Court in the manner provided by 28 U.S.C. 1446, or other statutory authority. (Article XI of the Compact.)

Definitions

Article I of the Compact provides that, as used in the Compact:

(1) "Attorney general" means the U.S. Attorney General.

(2) "Compact officer" means: (a) with respect to the federal government, an official so designated by the FBI Director, 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 (The act designates the Superintendent of the Bureau of Criminal Identification and Investigation, or the Superintendent's designee, as Ohio's Compact officer, see "***Conforming changes***," below).

(3) "Council" means the Compact Council established under Article VI of the Compact.

(4) "Criminal history records" 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 the reform, including acquittal, sentencing, correctional supervision, or release. "Criminal history records" does not include identification information such as fingerprint records if the information does not indicate involvement of the individual with the criminal justice system.

(5) "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 (in Ohio, this is the Bureau of Identification and Investigation, see "***Conforming changes***," below).

(6) "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" means courts and a governmental agency or any subunit of a governmental agency that performs the administration of criminal justice pursuant to a statute or executive order and allocates a substantial part of its annual budget to the administration of criminal justice. "Criminal justice agency" also includes federal and state inspectors general offices.

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

(10) "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" 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" means the Federal Bureau of Investigation.

(13) "Interstate identification system" or "III system" means the cooperative federal-state system for the exchange of criminal history records and includes the national identification index, the national fingerprint file, and, to the extent of their participation in that system, the criminal history record repositories of the states and the FBI.

(14) "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" 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" means the national identification index and the national fingerprint file.

(17) "Nonparty state" means a state that has not ratified the Compact.

(18) "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" means a state that has ratified the Compact.

(20) "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 subject's names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

(21) "Sealed record information" means both of the following: (a) with respect to adults, that portion of a record that is not available for criminal justice uses, not supported by fingerprints or other accepted means of positive identification, or 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" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Conforming changes

Existing law

Existing law establishes within the Office of the Attorney General the Bureau of Criminal Identification and Investigation, generally referred to as BCII (R.C. 109.51, not in the act). Existing law specifies numerous law enforcement-related functions and duties for BCII. For example, existing law requires: (1) BCII's Superintendent to procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and other information that may be pertinent of persons who are convicted of, plead guilty to, or are adjudicated delinquent children for committing certain specified crimes or delinquent acts, (2) state and local correctional facility personnel to furnish BCII with specified information regarding persons in custody who are suspected of committing specified crimes or delinquent acts, (3) clerks of trial courts of record to send summaries to BCII of cases in the court involving specified crimes or delinquent acts, and (4) local law enforcement officials to send to BCII fingerprints, descriptions, and other information regarding persons arrested or taken into custody for certain specified crimes or delinquent acts (R.C. 109.57(A), and R.C. 109.60--not in the act).

Existing law authorizes BCII's Superintendent to operate a center for electronic, automated, or other data processing for the storage and retrieval of information, data, and statistics pertaining to criminals and to children who are adjudicated delinquent children for committing specified crimes or delinquent acts, criminal activity, crime prevention, law enforcement, and criminal justice, and to establish and operate a statewide communications network to gather and disseminate information, data, and statistics for the use of law enforcement agencies. It also authorizes the Superintendent to gather, store, retrieve, and disseminate information, data, and statistics that pertain to children and that are gathered pursuant to R.C. 109.57 to 109.61 together with information, data, and statistics that pertain to adults and that are gathered pursuant to those sections. The information and materials furnished to the Superintendent pursuant to the provisions described in clauses (1) to (3) of the preceding paragraph are not public records under the existing Public Records Law. Existing law requires the Attorney General to adopt rules, in accordance with the Administrative Procedure Act, setting forth the procedure by which a person may receive or release information gathered by BCII's Superintendent pursuant to the provisions

described in clauses (1) to (3) of the preceding paragraph, and permits the charging of a reasonable fee for this service. (R.C. 109.57(C) to (E).)

Existing law requires that certain specified entities that are considering a person for employment in any of a list of specified capacities in which the person will work with children, older adults, or persons with mental retardation or a developmental disability must contact BCII and request BCII to conduct a criminal records check with respect to the person. If the person has been convicted of or pleaded guilty to any of a list of specified offenses, the entity generally may not employ the person in the capacity in question. Upon receipt of a request for a criminal records check under these provisions, the Superintendent must conduct the check as follows: (1) the Superintendent must review or cause to be reviewed any relevant information gathered and compiled by BCII under R.C. 109.57(A), as described above, that relates to the person who is the subject of the request, and (2) if the request received by the Superintendent asks for information from the FBI, the Superintendent must request from the FBI any information it has with respect to the person who is the subject of the request and must review or cause to be reviewed any information received from the FBI. The Superintendent must prescribe and charge a reasonable fee for providing a criminal records check requested under these provisions, to be paid by the person making the request. (R.C. 109.572(A), (B), (C)(3), (F), and (G), and R.C. 173.41, 2151.86, 3301.32, 3721.121, 5104.012, 5123.081, etc.--not in the act.)

Operation of the act

The act amends the existing provisions regarding BCII records and criminal records checks to reflect the provisions of the Compact, as follows:

(1) It specifies that BCII must perform centralized recordkeeping functions for criminal history records and services in Ohio for purposes of the Compact and is the "criminal history record repository" as defined in the act for purposes of the Compact. It also specifies that BCII's Superintendent or the Superintendent's designee is the "compact officer" for purposes of the Compact and must carry out the responsibilities of the compact officer specified in the Compact. (R.C. 109.57(A)(5).)

(2) It specifies that, in addition to any other authorized use of information, data, and statistics that pertain to children or adults and that are gathered pursuant to R.C. 109.57 to 109.61, BCII's Superintendent or the Superintendent's designee may provide and exchange the information, data, and statistics pursuant to the Compact as described in the preceding paragraph (R.C. 109.57(C)).

(3) It specifies that, in conducting a criminal records check requested by an entity under the existing criminal records check laws described above, in addition

to checking the records that BCII maintains and contacting the FBI as currently provided, BCII's Superintendent or the Superintendent's designee also may request criminal history records from other states or the federal government pursuant to the Compact (R.C. 109.57(F) and (G) and 109.572(B)(3)).

COMMENT

According to SEARCH, The National Consortium for Justice Information and Statistics, the following other states have joined the Compact as of December, 2003: Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Iowa, Kansas, Maine, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, North Carolina, Oklahoma, South Carolina, and Tennessee (http://www.search.org/policy/compact/ privacy.asp).

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	03-18-03	p.	191
Reported, S. Judiciary on Criminal Justice	05-08-03	p.	325
Passed Senate (33-0)	05-13-03	p.	334
Reported, H. Criminal Justice	10-15-03	pp.	1114-1115
Passed House (83-12)	12-02-03	pp.	1223-1224
Senate concurred in House amendments (31-0)	12-03-03	pp.	1232-1233

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