HOUSE BILL No. 1438

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-13-3.5.

Synopsis: National crime prevention and privacy compact. Adopts the National Crime Prevention and Privacy Compact Act of 1998 regarding the sharing of criminal justice information among states and the federal government.

Effective: July 1, 2011.

Borders

January 18, 2011, read first time and referred to Committee on Statutory Committee on Interstate and International Cooperation.

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Introduced

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1438

A BILL FOR AN ACT to amend the Indiana Code concerning public safety.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 10-13-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 3.5. National Crime Prevention and Privacy Compact

Sec. 1. The following definitions apply throughout this chapter:

(1) "Attorney General" means the Attorney General of the United States.

(2) "Compact officer" means:

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

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

(3) "Council" means the compact council established under this chapter.

(4) "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.

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

(6) "Criminal justice" includes activities relating to the detection, apprehension, detention, pretrial release, posttrial 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:

(A) a court; or

(B) a governmental agency or any subunit of an agency that performs the administration of criminal justice under a statute or executive order and allocates a substantial part of its annual budget to the administration of criminal justice.

The term includes federal and state inspector 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) "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.

(10) "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.

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

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(12) "III System" means the Interstate Identification Index System, which is the cooperative federal state system for the exchange of criminal history records. The term includes the national identification index, the national fingerprint file, and to the extent of their participation in the system, the criminal history record repositories of the states and the FBI.

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

(14) "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.

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

(16) "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.

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

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

(19) "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. An identification based solely upon a comparison of subjects' names or other nonunique identification characteristics or numbers, or combinations thereof, does not constitute positive identification.

(20) "Sealed record information" means:

(A) with respect to adults, the part of a record that is:

(i) not available for criminal justice uses;

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

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(iii) subject to restrictions on dissemination for noncriminal justice purposes under a court order related to a particular subject or under 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 law and procedure.

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

Sec. 2. The National Crime Prevention and Privacy Compact is hereby ratified, enacted into law, and entered into with all jurisdictions legally joining in the compact, in substantially the form set forth in this chapter.

Sec. 3. This compact has the following purposes:

(1) To 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) To require the FBI to permit use of the national identification index and the national fingerprint file by each party state and to provide, in a timely fashion, federal and state criminal history records to requesting states, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under section 8 of this chapter.

(3) To require party states to provide information and records for the national identification index and the national fingerprint file and to provide criminal history records, in a timely fashion, to criminal history record repositories of other states and the federal government for noncriminal justice purposes, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under section 8 of this chapter.

(4) To 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) To 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 established standards, including those that enhance the

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accuracy and privacy of such records.

Sec. 4. The compact parties have the following duties:

(1) The director of the FBI shall:

(A) appoint an FBI compact officer who shall:

(i) administer this compact within the Department of Justice and among federal agencies and other agencies and organizations that submit search requests to the FBI under this chapter;

(ii) ensure that compact provisions and rules, procedures, and standards prescribed by the council under section 8 of this chapter are complied with by the Department of Justice and the federal agencies and other agencies and organizations; and

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

(B) provide to federal agencies and to state criminal history record repositories criminal history records maintained in its data base for the noncriminal justice purposes described in this chapter, including:

(i) information from nonparty states; and

(ii) 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;

(C) 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 this chapter, and ensure that the exchange of the records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(D) 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 this chapter.

(2) Each party state shall:

(A) appoint a compact officer who shall:

(i) administer this compact within that state;

(ii) ensure that compact provisions and rules, procedures, and standards established by the council under this chapter are complied with in the state; and

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

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

(B) establish and maintain a criminal history record repository, which must provide information and records for the national identification index and the national fingerprint file, and the state's III system indexed criminal history records for noncriminal justice purposes described in this chapter;

(C) participate in the national fingerprint file; and

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

Sec. 5. In carrying out their responsibilities under this compact, the FBI and each party state shall comply with III system rules, procedures, and standards established by the council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III system operation. Use of the III system for noncriminal justice purposes authorized in this compact must be managed so as not to diminish the level of services provided in support of criminal justice purposes. However, administration of compact provisions may not reduce the level of service available to authorized noncriminal justice users on the effective date of this compact.

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

(b) The FBI, to the extent authorized by Section 552a of Title 5, United States Code (commonly known as the Privacy Act of 1974), and state criminal history record repositories shall provide criminal history records, excluding sealed record information, to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the attorney general, that explicitly authorizes national indices checks.

(c) Any record obtained under this compact may be used only for the official purposes for which the record was requested. Each

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compact officer shall establish procedures, consistent with this compact and with rules, procedures, and standards established by the council under this chapter, which procedures must protect the accuracy and privacy of the records and shall:

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

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

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

Sec. 7. (a) Subject fingerprints or other approved forms of positive identification must be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) Each request for a criminal history record check using 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 shall 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.

(c) Each request for criminal history record checks using 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 and state criminal history records repositories may not be permitted for noncriminal justice purposes.

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

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

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

(e) 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

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approved identifying information, must be forwarded to the FBI for a search of the national indices.

(f) If, with respect to a request forwarded by a state criminal history record repository under subsection (e), the FBI positively identifies the subject as having a III system indexed record or records:

(1) the FBI shall so advise the state criminal history record repository; and

(2) 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.

Sec. 8. (a) There is established a council 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 FBI administration of the III system for criminal justice purposes.

(b) The council:

(1) continues in existence as long as this compact remains in effect;

(2) must be located, for administrative purposes, within the FBI; and

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

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

(1) Nine (9) members, each of whom shall serve a two (2) year term, who must 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 must be eligible to serve on an interim basis.

(2) Two (2) at large members, nominated by the director of the FBI, each of whom serves a three (3) year term, of whom:

(A) one (1) must be a representative of the criminal justice agencies of the federal government and may not be an employee of the FBI; and

(B) one (1) must be a representative of the noncriminal justice agencies of the federal government.

(3) Two (2) at large members, nominated by the chairperson

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of the council once the chairperson is elected, each of whom serves a three (3) year term, of whom:

(A) one (1) must be a representative of state or local criminal justice agencies; and

(B) one (1) must be a representative of state or local noncriminal justice agencies.

(4) One (1) member who serves a three (3) year term and simultaneously is a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board.

(5) One (1) member, nominated by the director of the FBI, who serves a three (3) year term and must be an employee of the FBI.

(d) From its membership, the council shall elect a chairperson and a vice chairperson of the council. Both the chairperson and vice chairperson of the council:

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

(2) shall serve two (2) year terms and may be reelected to only one (1) additional two (2) year term.

The vice chairperson of the council shall serve as the chairperson of the council in the absence of the chairperson.

(e) The council shall meet at least once each year at the call of the chairperson. Each meeting of the council must be open to the public. The council shall provide prior public notice in the Federal Register of each meeting of the council, including the matters to be addressed at the meeting.

(f) A majority of the council or any committee of the council shall constitute a quorum of the council or of a 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.

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

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

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

Sec. 9. This compact takes effect upon being entered into by two (2) or more states as between those states and the federal government. When additional states subsequently enter into this compact, it becomes effective among those states and the federal government and each party state that has previously ratified it. When ratified, this compact has 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.

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

(b) This compact does not require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) This compact does not diminish or lessen the obligations, responsibilities, and authorities of any state, whether a party state or a nonparty state, or of any criminal history record repository or other subdivision or component thereof, under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544), or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the council under this chapter regarding the use and dissemination of criminal history records and information.

Sec. 11. (a) This compact binds each party state until renounced by the party state.

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

(1) be effected in the same manner by which the party state ratified this compact; and

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

Sec. 12. The provisions of this compact are severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or to the Constitution of the United States or if the applicability of any phrase, clause, sentence, or provision of this compact to any

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government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the remainder of the compact to any government, agency, person, or circumstance is not affected by the severability. If a part of this compact is held contrary to the constitution of any party state, all other parts of this compact remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected, as to all other provisions.

Sec. 13. (a) The council:

(1) has initial authority to make determinations with respect to any dispute regarding:

(A) interpretation of this compact;

(B) any rule or standard established by the council under section 8 of this chapter; and

(C) any dispute or controversy between any parties to this compact; and

(2) shall hold a hearing concerning any dispute described in subdivision (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 under the requirements of this chapter.

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

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

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