
HOUSE BILL 2763

State of Washington

59th Legislature

2006 Regular Session

By Representative Dickerson

Read first time 01/12/2006. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to the crime prevention and privacy compact; adding
2 new sections to chapter 43.43 RCW; creating a new section; and
3 providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** This act may be known and cited as the
6 "crime prevention and privacy compact."

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.43 RCW
8 to read as follows:

9 The crime prevention and privacy compact is hereby entered into and
10 enacted into law, in the form substantially as follows:

11 ARTICLE I--DEFINITIONS

12 In this compact:

13 (1) Attorney general. The term "attorney general" means the
14 attorney general of the United States.

15 (2) Compact officer. The term "compact officer" means:

16 (a) With respect to the federal government, an official so
17 designated by the director of the FBI; and

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

4 (3) Council. The term "council" means the compact council
5 established under Article VI of this section.

6 (4) Criminal history records. The term "criminal history records":

7 (a) Means information collected by criminal justice agencies on
8 individuals consisting of identifiable descriptions and notations of
9 arrests, detentions, indictments, or other formal criminal charges, and
10 any disposition arising therefrom, including acquittal, sentencing,
11 correctional supervision, or release; and

12 (b) Does not include identification information such as fingerprint
13 records if such information does not indicate involvement of the
14 individual with the criminal justice system.

15 (5) Criminal history record repository. The term "criminal history
16 record repository" means the state agency designated by the governor or
17 other appropriate executive official or the legislature of a state to
18 perform centralized recordkeeping functions for criminal history
19 records and services in the state.

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

27 (7) Criminal justice agency. The term "criminal justice agency":

28 (a) Means:

29 (i) Courts; and

30 (ii) A governmental agency or any subunit thereof that:

31 (A) Performs the administration of criminal justice pursuant to a
32 statute or executive order; and

33 (B) Allocates a substantial part of its annual budget to the
34 administration of criminal justice; and

35 (b) Includes federal and state inspectors general offices.

36 (8) Criminal justice services. The term "criminal justice
37 services" means services provided by the FBI to criminal justice

1 agencies in response to a request for information about a particular
2 individual or as an update to information previously provided for
3 criminal justice purposes.

4 (9) Criterion offense. The term "criterion offense" means any
5 felony or misdemeanor offense not included on the list of nonserious
6 offenses published periodically by the FBI.

7 (10) Direct access. The term "direct access" means access to the
8 national identification index by computer terminal or other automated
9 means not requiring the assistance of or intervention by any other
10 party or agency.

11 (11) Executive order. The term "executive order" means an order of
12 the President of the United States or the chief executive officer of a
13 state that has the force of law and that is promulgated in accordance
14 with applicable law.

15 (12) FBI. The term "FBI" means the federal bureau of
16 investigation.

17 (13) Interstate identification system. The term "Interstate
18 identification index system" or "III system":

19 (a) Means the cooperative federal-state system for the exchange of
20 criminal history records; and

21 (b) Includes the national identification index, the national
22 fingerprint file and, to the extent of their participation in such
23 system, the criminal history record repositories of the states and the
24 FBI.

25 (14) National fingerprint file. The term "national fingerprint
26 file" means a database of fingerprints, or other uniquely personal
27 identifying information, relating to an arrested or charged individual
28 maintained by the FBI to provide positive identification of record
29 subjects indexed in the III system.

30 (15) National identification index. The term "national
31 identification index" means an index maintained by the FBI consisting
32 of names, identifying numbers, and other descriptive information
33 relating to record subjects about whom there are criminal history
34 records in the III system.

35 (16) National indices. The term "national indices" means the
36 national identification index and the national fingerprint file.

37 (17) Nonparty state. The term "nonparty state" means a state that
38 has not ratified this compact.

1 (18) Noncriminal justice purposes. The term "noncriminal justice
2 purposes" means uses of criminal history records for purposes
3 authorized by federal or state law other than purposes relating to
4 criminal justice activities, including employment suitability,
5 licensing determinations, immigration and naturalization matters, and
6 national security clearances.

7 (19) Party state. The term "party state" means a state that has
8 ratified this compact.

9 (20) Positive identification. The term "positive identification"
10 means a determination, based upon a comparison of fingerprints or other
11 equally reliable biometric identification techniques, that the subject
12 of a record search is the same person as the subject of a criminal
13 history record or records indexed in the III system. Identifications
14 based solely upon a comparison of subjects' names or other nonunique
15 identification characteristics or numbers, or combinations thereof,
16 shall not constitute positive identification.

17 (21) Sealed record information. The term "sealed record
18 information" means:

19 (a) With respect to adults, that portion of a record that is:

20 (i) Not available for criminal justice uses;

21 (ii) Not supported by fingerprints or other accepted means of
22 positive identification; or

23 (iii) Subject to restrictions on dissemination for noncriminal
24 justice purposes pursuant to a court order related to a particular
25 subject or pursuant to a federal or state statute that requires action
26 on a sealing petition filed by a particular record subject; and

27 (b) With respect to juveniles, whatever each state determines is a
28 sealed record under its own law and procedure.

29 (22) State. The term "state" means any state, territory, or
30 possession of the United States, the District of Columbia, and the
31 Commonwealth of Puerto Rico.

32 ARTICLE II--PURPOSES

33 The purposes of this compact are to:

34 (1) Provide a legal framework for the establishment of a
35 cooperative federal-state system for the interstate and federal-state
36 exchange of criminal history records for noncriminal justice uses;

37 (2) Require the FBI to permit use of the national identification
38 index and the national fingerprint file by each party state, and to

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

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

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

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

20 ARTICLE III--RESPONSIBILITIES OF COMPACT PARTIES

21 (1) FBI responsibilities. The director of the FBI shall:

22 (a) Appoint an FBI compact officer who shall:

23 (i) Administer this compact within the department of justice and
24 among federal agencies and other agencies and organizations that submit
25 search requests to the FBI pursuant to Article V(3) of this section;

26 (ii) Ensure that compact provisions and rules, procedures, and
27 standards prescribed by the council under Article VI of this section
28 are complied with by the department of justice and the federal agencies
29 and other agencies and organizations referred to in Article III(a)(i)
30 of this section; and

31 (iii) Regulate the use of records received by means of the III
32 system from party states when such records are supplied by the FBI
33 directly to other federal agencies;

34 (b) Provide to federal agencies and to state criminal history
35 record repositories, criminal history records maintained in its
36 database for the noncriminal justice purposes described in Article IV
37 of this section, including:

38 (i) Information from nonparty states; and

1 (ii) Information from party states that is available from the FBI
2 through the III system, but is not available from the party state
3 through the III system;

4 (c) Provide a telecommunications network and maintain centralized
5 facilities for the exchange of criminal history records for both
6 criminal justice purposes and the noncriminal justice purposes
7 described in Article IV of this section, and ensure that the exchange
8 of such records for criminal justice purposes has priority over
9 exchange for noncriminal justice purposes; and

10 (d) Modify or enter into user agreements with nonparty state
11 criminal history record repositories to require them to establish
12 record request procedures conforming to those prescribed in Article V
13 of this section.

14 (2) State responsibilities. Each party state shall:

15 (a) Appoint a compact officer who shall:

16 (i) Administer this compact within that state;

17 (ii) Ensure that compact provisions and rules, procedures, and
18 standards established by the council under Article VI of this section
19 are complied with in the state; and

20 (iii) Regulate the in-state use of records received by means of the
21 III system from the FBI or from other party states;

22 (b) Establish and maintain a criminal history record repository,
23 which shall provide:

24 (i) Information and records for the national identification index
25 and the national fingerprint file; and

26 (ii) The state's III system-indexed criminal history records for
27 noncriminal justice purposes described in Article IV of this section;

28 (c) Participate in the national fingerprint file; and

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

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

37 (4) Maintenance of record services.

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

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

7 ARTICLE IV--AUTHORIZED RECORD DISCLOSURES

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

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

25 (3) Procedures. Any record obtained under this compact may be used
26 only for the official purposes for which the record was requested.
27 Each compact officer shall establish procedures, consistent with this
28 compact, and with rules, procedures, and standards established by the
29 council under Article VI of this section, which procedures shall
30 protect the accuracy and privacy of the records, and shall:

31 (a) Ensure that records obtained under this compact are used only
32 by authorized officials for authorized purposes;

33 (b) Require that subsequent record checks are requested to obtain
34 current information whenever a new need arises; and

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

ARTICLE V--RECORD REQUEST PROCEDURES

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

(2) Submission of state requests. Each request for a criminal history record check utilizing the national indices made under any approved state statute shall 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 such request is transmitted through another state criminal history record repository or the FBI.

(3) Submission of federal requests. Each request for criminal history record checks utilizing the national indices made under federal authority shall 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 such request originated. Direct access to the national identification index by entities other than the FBI and state criminal history records repositories shall not be permitted for noncriminal justice purposes.

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

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

(b) 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.

(5) Additional search.

(a) 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, shall be forwarded to the FBI for a search of the national indices.

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

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

3 (ii) The state criminal history record repository shall be entitled
4 to obtain the additional criminal history record information from the
5 FBI or other state criminal history record repositories.

6 ARTICLE VI--ESTABLISHMENT OF COMPACT COUNCIL

7 (1) Establishment.

8 (a) In general. There is established a council to be known as the
9 "compact council," which shall have the authority to promulgate rules
10 and procedures governing the use of the III system for noncriminal
11 justice purposes, not to conflict with FBI administration of the III
12 system for criminal justice purposes.

13 (b) Organization. The council shall:

14 (i) Continue in existence as long as this compact remains in
15 effect;

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

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

19 (2) Membership. The council shall be composed of fifteen members,
20 each of whom shall be appointed by the attorney general, as follows:

21 (a) Nine members, each of whom shall serve a two-year term, who
22 shall be selected from among the compact officers of party states based
23 on the recommendation of the compact officers of all party states,
24 except that, in the absence of the requisite number of compact officers
25 available to serve, the chief administrators of the criminal history
26 record repositories of nonparty states shall be eligible to serve on an
27 interim basis.

28 (b) Two at-large members, nominated by the director of the FBI,
29 each of whom shall serve a three-year term, of whom:

30 (i) One shall be a representative of the criminal justice agencies
31 of the federal government and may not be an employee of the FBI; and

32 (ii) One shall be a representative of the noncriminal justice
33 agencies of the federal government.

34 (c) Two at-large members, nominated by the chairman of the council,
35 once the chairman is elected pursuant to Article VI(3) of this section,
36 each of whom shall serve a three-year term, of whom:

37 (i) One shall be a representative of state or local criminal
38 justice agencies; and

1 (ii) One shall be a representative of state or local noncriminal
2 justice agencies.

3 (d) One member, who shall serve a three-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 of
6 that policy board.

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

9 (3) Chairman and vice chairman.

10 (a) In general. From its membership, the council shall elect a
11 chairman and a vice chairman of the council, respectively. Both the
12 chairman and vice chairman of the council:

13 (i) Shall be a compact officer, unless there is no compact officer
14 on the council who is willing to serve, in which case the chairman may
15 be an at-large member; and

16 (ii) Shall serve a two-year term and may be reelected to only one
17 additional two-year term.

18 (b) Duties of vice chairman. The vice chairman of the council
19 shall serve as the chairman of the council in the absence of the
20 chairman.

21 (4) Meetings.

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

27 (b) Quorum. A majority of the council or any committee of the
28 council shall constitute a quorum of the council or of such committee,
29 respectively, for the conduct of business. A lesser number may meet to
30 hold hearings, take testimony, or conduct any business not requiring a
31 vote.

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

36 (6) Assistance from FBI. The council may request from the FBI such
37 reports, studies, statistics, or other information or materials as the

1 council determines to be necessary to enable the council to perform its
2 duties under this compact. The FBI, to the extent authorized by law,
3 may provide such assistance or information upon such a request.

4 (7) Committees. The chairman may establish committees as necessary
5 to carry out this compact and may prescribe their membership,
6 responsibilities, and duration.

7 ARTICLE VII--RATIFICATION OF COMPACT

8 This compact shall take effect upon being entered into by two or
9 more states as between those states and the federal government. Upon
10 subsequent entering into this compact by additional states, it shall
11 become effective among those states and the federal government and each
12 party state that has previously ratified it. When ratified, this
13 compact shall have the full force and effect of law within the
14 ratifying jurisdictions. The form of ratification shall be in
15 accordance with the laws of the executing state.

16 ARTICLE VIII--MISCELLANEOUS PROVISIONS

17 (1) Relation of compact to certain FBI activities. Administration
18 of this compact shall not interfere with the management and control of
19 the director of the FBI over the FBI's collection and dissemination of
20 criminal history records and the advisory function of the FBI's
21 advisory policy board chartered under the federal advisory committee
22 act (5 U.S.C. App.) for all purposes other than noncriminal justice.

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

26 (3) Relating to Public Law 92-544. Nothing in this compact shall
27 diminish or lessen the obligations, responsibilities, and authorities
28 of any state, whether a party state or a nonparty state, or of any
29 criminal history record repository or other subdivision or component
30 thereof, under the departments of state, justice, and commerce, the
31 judiciary, and related agencies appropriation act, 1973 (Public Law 92-
32 544), or regulations and guidelines promulgated thereunder, including
33 the rules and procedures promulgated by the council under Article VI(1)
34 of this section, regarding the use and dissemination of criminal
35 history records and information.

36 ARTICLE IX--RENUNCIATION

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

3 (2) Effect. Any renunciation of this compact by a party state
4 shall:

5 (a) Be effected in the same manner by which the party state
6 ratified this compact; and

7 (b) Become effective one hundred eighty days after written notice
8 of renunciation is provided by the party state to each other party
9 state and to the federal government.

10 ARTICLE X--SEVERABILITY

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

23 ARTICLE XI--ADJUDICATION OF DISPUTES

24 (1) In general. The council shall:

25 (a) Have initial authority to make determinations with respect to
26 any dispute regarding:

27 (i) Interpretation of this compact;

28 (ii) Any rule or standard established by the council pursuant to
29 Article V of this section; and

30 (iii) Any dispute or controversy between any parties to this
31 compact; and

32 (b) Hold a hearing concerning any dispute described in (a) of this
33 subsection at a regularly scheduled meeting of the council and only
34 render a decision based upon a majority vote of the members of the
35 council. Such decision shall be published pursuant to the requirements
36 of Article VI(5) of this section.

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

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

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.43 RCW
14 to read as follows:

15 (1) The Washington state patrol shall serve as the state compact
16 officer for the crime prevention and privacy compact as required under
17 Article III of section 2 of this act, the crime prevention and privacy
18 compact. The state patrol may form a subcommittee, including members
19 representing the legislative, judicial, and executive branches of state
20 government, to perform the functions of the state council. Any such
21 subcommittee shall include representation of both houses and at least
22 two of the four largest political caucuses in the legislature.

23 (2) The state patrol, or a subcommittee if formed for that purpose,
24 shall:

25 (a) Review the state patrol's operations and procedures under
26 section 2 of this act, and recommend policies to the compact
27 administrator, including policies to be pursued in the administrator's
28 capacity as the state's representative on the crime prevention and
29 privacy compact created under Article III of section 2 of this act;

30 (b) Report annually to the legislature on the crime prevention and
31 privacy compact operations and procedures under section 2 of this act,
32 including recommendations for policy changes; and

33 (c) Not later than December 31, 2007, report to the legislature on
34 the effectiveness of its functioning as the state council under Article
35 III of section 2 of this act, and recommend any legislation it deems
36 appropriate.

1 (3) The state patrol, or a subcommittee if formed for that purpose,
2 shall appoint one of its members, or an employee of the state patrol
3 designated by the chief, to represent the state at meetings of the
4 crime prevention and privacy compact created under Article III of
5 section 2 of this act when the compact administrator cannot attend.

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.43 RCW
7 to read as follows:

8 The chief of the Washington state patrol, or an employee of the
9 state patrol designated by the chief, shall serve as the compact
10 administrator under Article III of section 2 of this act, the crime
11 prevention and privacy compact. The legislature intends that the
12 compact administrator, representing the state on the interstate
13 commission created under Article III of section 2 of this act, will
14 take an active role to assure that the interstate compact operates to
15 protect the safety of the people and communities of the state.

16 NEW SECTION. **Sec. 5.** This act takes effect July 1, 2007.

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