
A BILL FOR AN ACT

RELATING TO THE NATIONAL CRIME PREVENTION AND PRIVACY COMPACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to facilitate the
2 interstate exchange of criminal history information for
3 noncriminal justice purposes, including but not limited to
4 background checks for the licensing and screening of employees
5 and volunteers and to ratify the National Crime Prevention and
6 Privacy Compact, as enacted by section 217 of Public Law No.
7 105-251 (42 U.S.C. section 14616).

8 SECTION 2. The Hawaii Revised Statutes is amended by
9 adding a new chapter to be appropriately designated and to read
10 as follows:

11 **"CHAPTER**

12 **NATIONAL CRIME PREVENTION AND PRIVACY COMPACT**

13 The National Crime Prevention and Privacy Compact as
14 contained herein is hereby enacted into law and entered into on
15 behalf of the State of Hawaii with the United States Federal
16 government in the form as follows:

17 **OVERVIEW**



1 the chief administrator who is a regular full-time employee of
2 the repository.

3 "Council" means the Compact Council established under
4 Article VI.

5 "Criminal history records" means:

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

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

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

20 "Criminal justice" means activities relating to the
21 detection, apprehension, detention, pretrial release, post-trial
22 release, prosecution, adjudication, correctional supervision, or



1 rehabilitation of accused persons or criminal offenders. The
2 administration of criminal justice includes criminal
3 identification activities and the collection, storage, and
4 dissemination of criminal history records.

5 "Criminal justice agency" means:

6 (a) Courts; and

7 (b) Governmental agency that performs the administration
8 of criminal justice pursuant to a statute or executive order;
9 and

10 (c) Federal inspectors general offices.

11 "Criminal justice services" means services provided by the
12 FBI to criminal justice agencies in response to a request for
13 information about a particular individual or as an update to
14 information previously provided for criminal justice purposes.

15 "Direct access" means access to the National
16 Identification Index by computer terminal or other automated
17 means not requiring the assistance of or intervention by any
18 other party or agency.

19 "Executive order" means an order of the President of
20 the United States or the chief executive officer of a state that
21 has the force of law and that is promulgated in accordance with
22 applicable law.



1 "FBI" means the Federal Bureau of Investigation.

2 "III System" has the same meaning as "Interstate
3 Identification Index System" and means:

4 (a) Cooperative Federal-State system for the exchange of
5 criminal history records; and

6 (b) The National Identification Index, the National
7 Fingerprint File and, to the extent of their participation in
8 such system, the criminal history record repositories of the
9 States and the FBI.

10 "National Fingerprint File" means a database of
11 fingerprints, or other uniquely personal identifying
12 information, relating to an arrested or charged individual
13 maintained by the FBI to provide positive identification of
14 record subjects indexed in the III System.

15 "National Identification Index" means an index maintained
16 by the FBI consisting of names, identifying numbers, and other
17 descriptive information relating to record subjects about whom
18 there are criminal history records in the III System.

19 "National indices" means the National Identification
20 Index and the National Fingerprint File.

21 "Nonparty state" means a state that has not ratified this
22 Compact.



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

7 "Party state" means a state that has ratified this
8 Compact.

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

18 "Sealed record information" means:

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

21 (1) Not available for criminal justice uses;



- 1 (2) Not supported by fingerprints or other accepted means
2 of positive identification; or
- 3 (3) Subject to restrictions on dissemination for
4 noncriminal justice purposes pursuant to a court order
5 related to a particular subject or pursuant to a
6 Federal or State statute that requires action on a
7 sealing petition filed by a particular record subject;
8 and

9 (b) With respect to juveniles, whatever each State
10 determines is a sealed record under its own law and procedure.

11 "State" means any state, territory, or possession of the
12 United States, the District of Columbia, and the Commonwealth of
13 Puerto Rico.

14 ARTICLE II

15 PURPOSE

16 The purpose of this Compact is to:

17 (a) Provide a legal framework for the establishment of a
18 cooperative Federal-State system for the interstate and
19 Federal-State exchange of criminal history records for
20 noncriminal justice uses;

21 (b) Require the FBI to permit use of the National
22 Identification Index and the National Fingerprint File by each



1 party state, and to provide, in a timely fashion, Federal and
2 State criminal history records to requesting States, in
3 accordance with the terms of this Compact and with rules,
4 procedures, and standards established by the Council under
5 Article VI;

6 (c) Require party states to provide information and
7 records for the National Identification Index and the National
8 Fingerprint File and to provide criminal history records, in a
9 timely fashion, to criminal history record repositories of other
10 States and the Federal Government for noncriminal justice
11 purposes, in accordance with the terms of this Compact and with
12 rules, procedures, and standards established by the Council
13 under Article VI;

14 (d) Provide for the establishment of a Council to monitor
15 III System operations and to prescribe system rules and
16 procedures for the effective and proper operation of the III
17 System for noncriminal justice purposes; and

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



- 1 (A) Information from nonparty states; and
- 2 (B) Information from party states that is available
- 3 from the FBI through the III System, but is not
- 4 available from the party state through the III
- 5 System;
- 6 (3) Provide a telecommunications network and maintain
- 7 centralized facilities for the exchange of criminal
- 8 history records for both criminal justice purposes and
- 9 the noncriminal justice purposes described in Article
- 10 IV, and ensure that the exchange of such records for
- 11 criminal justice purposes has priority over exchange
- 12 for noncriminal justice purposes; and
- 13 (4) Modify or enter into user agreements with nonparty
- 14 state criminal history record repositories to require
- 15 them to establish record request procedures conforming
- 16 to those prescribed in Article V.
- 17 (b) **State responsibilities.** Each party state shall:
- 18 (1) Appoint a Compact officer who shall:
- 19 (A) Administer this Compact within that state;
- 20 (B) Ensure that Compact provisions and rules,
- 21 procedures, and standards established by the



1 Council under Article VI are complied with in the
2 state; and

3 (C) Regulate the in-state use of records received by
4 means of the III System from the FBI or from
5 other party states;

6 (2) Establish and maintain a criminal history record
7 repository, which shall provide:

8 (A) Information and records for the National
9 Identification Index and the National Fingerprint
10 File; and

11 (B) The state's III System-indexed criminal history
12 records for noncriminal justice purposes
13 described in Article IV;

14 (3) Participate in the National Fingerprint File; and

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

18 (c) **Compliance with III System standards.** In carrying out
19 their responsibilities under this Compact, the FBI and each
20 party state shall comply with III System rules, procedures, and
21 standards duly established by the Council concerning record
22 dissemination and use, response times, data quality, system

1 security, accuracy, privacy protection, and other aspects of III
2 System operation.

3 (d) Maintenance of record services.

4 (1) Use of the III System for noncriminal justice purposes
5 authorized in this Compact shall be managed so as not
6 to diminish the level of services provided in support
7 of criminal justice purposes.

8 (2) Administration of Compact provisions shall not reduce
9 the level of service available to authorized
10 noncriminal justice users on the effective date of
11 this Compact.

12 ARTICLE IV

13 AUTHORIZED RECORD DISCLOSURES

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



1 (b) **Criminal justice agencies and other governmental or**
2 **nongovernmental agencies.** The FBI, to the extent authorized by
3 section 552a of title 5, United States Code (commonly known as
4 the ''Privacy Act of 1974''), and state criminal history record
5 repositories shall provide criminal history records (excluding
6 sealed records) to criminal justice agencies and other
7 governmental or nongovernmental agencies for noncriminal justice
8 purposes allowed by Federal statute, Federal Executive order, or
9 a state statute that has been approved by the Attorney General,
10 that authorizes national indices checks.

11 (c) **Procedures.** Any record obtained under this Compact
12 may be used only for the official purposes for which the record
13 was requested. Each Compact officer shall establish procedures,
14 consistent with this Compact, and with rules, procedures, and
15 standards established by the Council under Article VI, which
16 procedures shall protect the accuracy and privacy of the
17 records, and shall:

18 (1) Ensure that records obtained under this Compact are
19 used only by authorized officials for authorized
20 purposes;



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

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

10 ARTICLE V

11 RECORD REQUEST PROCEDURES

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

16 (b) **Submission of state requests.** Each request for a
17 criminal history record check utilizing the national indices
18 made under any approved state statute shall be submitted through
19 that state's criminal history record repository.

20 A state criminal history record repository shall process
21 an interstate request for noncriminal justice purposes through



1 the national indices only if such request is transmitted through
2 another state criminal history record repository or the FBI.

3 (c) **Submission of Federal requests.** Each request for
4 criminal history record checks utilizing the national indices
5 made under Federal authority shall be submitted through the FBI
6 or, if the state criminal history record repository consents to
7 process fingerprint submissions, through the criminal history
8 record repository in the State in which such request originated.
9 Direct access to the National Identification Index by entities
10 other than the FBI and state criminal history records
11 repositories shall not be permitted for noncriminal justice
12 purposes.

13 (d) **Fees.** A state criminal history record repository or
14 the FBI:

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

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

22 (e) Additional search.



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

7 (2) If, with respect to a request forwarded by a State
8 criminal history record repository under paragraph
9 (1), the FBI positively identifies the subject as
10 having a III System-indexed record or records:

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

13 (B) The state criminal history record repository
14 shall be entitled to obtain the additional
15 criminal history record information from the FBI
16 or other State criminal history record
17 repositories.

18 ARTICLE VI

19 ESTABLISHMENT OF COMPACT COUNCIL

20 (a) Establishment.

21 (1) **In general.** There is established a council to be
22 known as the "Compact Council", which shall have the



1 authority to promulgate rules and procedures governing
2 the use of the III System for noncriminal justice
3 purposes, not to conflict with FBI administration of
4 the III System for criminal justice purposes.

5 (2) **Organization.** The Council shall:

6 (A) Continue in existence as long as this Compact
7 remains in effect;

8 (B) Be located, for administrative purposes, within
9 the FBI; and

10 (C) Be organized and hold its first meeting as soon
11 as practicable after the effective date of this
12 Compact.

13 (b) **Membership.** The Council shall be composed of 15
14 members, each of whom shall be appointed by the Attorney
15 General, as follows:

16 (1) Nine members, each of whom shall serve a 2-year term,
17 who shall be selected from among the Compact officers
18 of Party States based on the recommendation of the
19 Compact officers of all Party States, except that, in
20 the absence of the requisite number of Compact
21 officers available to serve, the chief administrators
22 of the criminal history record repositories of



- 1 Nonparty States shall be eligible to serve on an
2 interim basis.
- 3 (2) Two at-large members, nominated by the Director of the
4 FBI, each of whom shall serve a 3-year term, of whom:
5 (A) One shall be a representative of the criminal
6 justice agencies of the Federal Government and
7 may not be an employee of the FBI; and
8 (B) One shall be a representative of the noncriminal
9 justice agencies of the Federal Government.
- 10 (3) Two at-large members, nominated by the Chairman of the
11 Council, once the Chairman is elected pursuant to
12 Article VI(c), each of whom shall serve a 3-year term,
13 of whom:
14 (A) One shall be a representative of State or local
15 criminal justice agencies; and
16 (B) One shall be a representative of state or local
17 noncriminal justice agencies.
- 18 (4) One member, who shall serve a 3-year term, and who
19 shall simultaneously be a member of the FBI's advisory
20 policy board on criminal justice information services,
21 nominated by the membership of that policy board.



1 (5) One member, nominated by the Director of the FBI, who
2 shall serve a 3-year term, and who shall be an
3 employee of the FBI.

4 (c) **Chairman and Vice Chairman.**

5 (1) **In general.** From its membership, the Council shall
6 elect a Chairman and a Vice Chairman of the Council,
7 respectively. Both the Chairman and Vice Chairman of
8 the Council:

9 (A) Shall be a Compact officer, unless there is no
10 Compact officer on the Council who is willing to
11 serve, in which case the Chairman may be an at-
12 large member; and

13 (B) Shall serve a 2-year term and may be reelected to
14 only one additional two-year term.

15 (2) **Duties of Vice Chairman.** The Vice Chairman of the
16 Council shall serve as the Chairman of the Council in
17 the absence of the Chairman.

18 (d) Meetings.

19 (1) **In general.** The Council shall meet at least once each
20 year at the call of the Chairman. Each meeting of the
21 Council shall be open to the public. The Council
22 shall provide prior public notice in the Federal



1 Register of each meeting of the Council, including the
2 matters to be addressed at such meeting.

3 (2) **Quorum.** A majority of the Council or any committee of
4 the Council shall constitute a quorum of the Council
5 or of such committee, respectively, for the conduct of
6 business. A lesser number may meet to hold hearings,
7 take testimony, or conduct any business not requiring
8 a vote.

9 (e) **Rules, procedures, and standards.** The Council shall
10 make available for public inspection and copying at the Council
11 office within the FBI, and shall publish in the Federal
12 Register, any rules, procedures, or standards established by the
13 Council.

14 (f) **Assistance from FBI.** The Council may request from the
15 FBI such reports, studies, statistics, or other information or
16 materials as the Council determines to be necessary to enable
17 the Council to perform its duties under this Compact. The FBI,
18 to the extent authorized by law, may provide such assistance or
19 information upon such a request.

20 (g) **Committees.** The Chairman may establish committees as
21 necessary to carry out this Compact and may prescribe their
22 membership, responsibilities, and duration.



ARTICLE VII**RATIFICATION OF COMPACT**

1
2
3 This Compact shall take effect upon being entered into by
4 2 or more States as between those States and the Federal
5 Government.

6 Upon subsequent entering into this Compact by additional
7 states, it shall become effective among those states and the
8 Federal Government and each Party State that has previously
9 ratified it.

10 When ratified, this Compact shall have the full force and
11 effect of law within the ratifying jurisdictions. The form of
12 ratification shall be in accordance with the laws of the
13 executing state.

ARTICLE VIII**MISCELLANEOUS PROVISIONS****(a) Relation of Compact to certain FBI activities.**

16
17 Administration of this Compact shall not interfere with the
18 management and control of the Director of the FBI over the FBI's
19 collection and dissemination of criminal history records and the
20 advisory function of the FBI's advisory policy board chartered
21 under the Federal Advisory Committee Act (5 U.S.C. App.) for all
22 purposes other than noncriminal justice.



1 (b) **No authority for nonappropriated expenditures.**

2 Nothing in this Compact shall require the FBI to obligate or
3 expend funds beyond those appropriated to the FBI.

4 (c) **Relating to Public Law 92-544.** Nothing in this
5 Compact shall diminish or lessen the obligations,
6 responsibilities, and authorities of any state, whether a Party
7 State or a Nonparty State, or of any criminal history record
8 repository or other subdivision or component thereof, under the
9 Departments of State, Justice, and Commerce, the Judiciary, and
10 Related Agencies Appropriation Act, 1973 (Public Law 92-544), or
11 regulations and guidelines promulgated thereunder, including the
12 rules and procedures promulgated by the Council under Article
13 VI(a), regarding the use and dissemination of criminal history
14 records and information.

15 **ARTICLE IX**

16 **RENUNCIATION**

17 (a) **In general.** This Compact shall bind each Party State
18 until renounced by the party state.

19 (b) **Effect.** Any renunciation of this Compact by a party
20 state shall:

21 (1) Be effected in the same manner by which the party
22 state ratified this Compact; and



1 (2) Become effective 180 days after written notice of
2 renunciation is provided by the party state to each
3 other party state and to the Federal Government.

4 ARTICLE X

5 SEVERABILITY

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

19 ARTICLE XI

20 ADJUDICATION OF DISPUTES

21 (a) **In general.** The Council shall:



- 1 (1) Have initial authority to make determinations with
2 respect to any dispute regarding:
- 3 (A) Interpretation of this Compact;
- 4 (B) Any rule or standard established by the Council
5 pursuant to Article V; and
- 6 (C) Any dispute or controversy between any parties to
7 this Compact; and

8 (2) Hold a hearing concerning any dispute described in
9 paragraph (1) at a regularly scheduled meeting of the
10 Council and only render a decision based upon a
11 majority vote of the members of the Council. Such
12 decision shall be published pursuant to the
13 requirements of Article VI(e).

14 (b) **Duties of FBI.** The FBI shall exercise immediate and
15 necessary action to preserve the integrity of the III System,
16 maintain system policy and standards, protect the accuracy and
17 privacy of records, and to prevent abuses, until the Council
18 holds a hearing on such matters.

19 (c) **Right of appeal.** The FBI or a Party State may appeal
20 any decision of the Council to the Attorney General, and
21 thereafter may file suit in the appropriate district court of
22 the United States, which shall have original jurisdiction of all



1 cases or controversies arising under this Compact. Any suit
2 arising under this Compact and initiated in a State court shall
3 be removed to the appropriate district court of the United
4 States in the manner provided by section 1446 of title 28,
5 United States Code, or other statutory authority."

6 SECTION 3. Chapter 846, Hawaii Revised Statutes, is
7 amended by adding a new section to be appropriately designated
8 and to read as follows:

9 **"§846- National Crime Prevention and Privacy Compact.**

10 (a) In order to facilitate the interstate exchange of criminal
11 history information for noncriminal justice purposes, including
12 but not limited to, background checks for the licensing and
13 screening of employees and volunteers, the National Crime
14 Prevention and Privacy Compact, as enacted by section 217 of
15 Public Law No. 105-251 (42 U.S.C. section 14616), is hereby
16 ratified and incorporated by reference as law of this State.

17 (b) The Hawaii criminal justice data center is the central
18 repository of criminal history records for purposes of the
19 compact and shall do all things necessary or incidental to
20 carrying out the compact.

21 (c) The administrator of the Hawaii criminal justice data
22 center, or the administrator's designee, is the State's compact



1 officer and shall administer the compact within the State. The
2 administrator may adopt rules and establish procedures for the
3 cooperative exchange of criminal history records between this
4 State and other state governments and with the federal
5 government for the use in noncriminal justice background
6 checks."

7 SECTION 4. New statutory material is underscored.

8 SECTION 5. This Act shall take effect on July 1, 2096.



S.B.NO. 695

Report Title:

National Crime Prevention

Description:

Facilitates the interstate exchange of criminal history information for noncriminal justice purposes, including but not limited to, background checks for the licensing and screening of employees and volunteers. Effective date July 1, 2006. (SB695 HD1)

SB695 HD1 HMS 2006-2735

