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# 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 adopt provisions from the National Crime  
6 Prevention and Privacy Compact, as enacted by section 217 of  
7 Public Law No. 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 and other party states in the form as follows:



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**OVERVIEW**

(a) **In general.** This 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.

(b) **Obligations of parties.** Under this 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. The FBI shall also manage the Federal data facilities that provide a significant part of the infrastructure for the system.

**ARTICLE I**

**DEFINITIONS**

"Attorney General" means the Attorney General of the United States.

"Compact officer" means:

(a) For the Federal Government, an official so designated by the Director of the FBI; and

(b) For the party state, the chief administrator of the state's criminal history record repository or a designee of the

1 chief administrator who is a regular full-time employee of the  
2 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" includes 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) A governmental agency or any subunit thereof that  
8 performs the administration of criminal justice pursuant to a  
9 statute or executive order and allocates a substantial part of  
10 its annual budget to the administration of criminal justice and  
11 includes federal and state inspectors general offices.

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

16 "Criterion offense" means any felony or misdemeanor  
17 offense not included on the list of nonserious offenses  
18 published periodically by the FBI.

19 "Direct access" means access to the National  
20 Identification Index by computer terminal or other automated  
21 means not requiring the assistance of or intervention by any  
22 other party or agency.



1 "Executive order" means an order of the President of the  
2 United States or the chief executive officer of a state that has  
3 the force of law and that is promulgated in accordance with  
4 applicable law.

5 "FBI" means the Federal Bureau of Investigation.

6 "III System" has the same meaning as "Interstate  
7 Identification Index System" and means:

8 (a) The cooperative Federal-State system for the exchange  
9 of criminal history records; and includes

10 (b) The National Identification Index, the National  
11 Fingerprint File and, to the extent of their participation in  
12 such system, the criminal history record repositories of the  
13 States and the FBI.

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

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



1 "National indices" means the National Identification Index  
2 and the National Fingerprint File.

3 "Nonparty state" means a state that has not ratified this  
4 Compact.

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

11 "Party state" means a state that has ratified this  
12 Compact.

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

22 "Sealed record information" means:



1 (a) With respect to adults, that portion of the record  
2 that is:

3 (1) Not available for criminal justice uses;

4 (2) Not supported by fingerprints or other accepted means  
5 of positive identification; or

6 (3) Subject to restrictions on dissemination for  
7 noncriminal justice purposes pursuant to a court order  
8 related to a particular subject or pursuant to a  
9 Federal or State statute that requires action on a  
10 sealing petition filed by a particular record subject;  
11 and

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

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

17 **ARTICLE II**

18 **PURPOSE**

19 The purpose of this Compact is to:

20 (a) Provide a legal framework for the establishment of a  
21 cooperative Federal-State system for the interstate and



1 Federal-State exchange of criminal history records for  
2 noncriminal justice uses;

3 (b) Require the FBI to permit use of the National  
4 Identification Index and the National Fingerprint File by each  
5 party state, and to provide, in a timely fashion, Federal and  
6 State criminal history records to requesting States, in  
7 accordance with the terms of this Compact and with rules,  
8 procedures, and standards established by the Council under  
9 Article VI;

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

18 (d) Provide for the establishment of a Council to monitor  
19 III System operations and to prescribe system rules and  
20 procedures for the effective and proper operation of the III  
21 System for noncriminal justice purposes; and





1 (e) Require the FBI and each party state to adhere to III  
2 System standards concerning record dissemination and use,  
3 response times, system security, data quality, and other duly  
4 established standards, including those that enhance the accuracy  
5 and privacy of such records.

6 **ARTICLE III**

7 **RESPONSIBILITIES OF COMPACT PARTIES**

8 (a) **FBI responsibilities.** The Director of the FBI shall:

9 (1) Appoint an FBI Compact officer who shall:

10 (A) Administer this Compact within the Department of  
11 Justice and among Federal agencies and other  
12 agencies and organizations that submit search  
13 requests to the FBI pursuant to Article V(c);

14 (B) Ensure that Compact provisions and rules,  
15 procedures, and standards prescribed by the  
16 Council under Article VI are complied with by the  
17 Department of Justice and the Federal agencies  
18 and other agencies and organizations referred to  
19 in Article III(1)(A); and

20 (C) Regulate the use of records received by means of  
21 the III System from party states when such



1 records are supplied by the FBI directly to other  
2 Federal agencies;

3 (2) Provide to Federal agencies and to State criminal  
4 history record repositories, criminal history records  
5 maintained in its database for the noncriminal justice  
6 purposes described in Article IV, including:

7 (A) Information from nonparty states; and

8 (B) Information from party states that is available  
9 from the FBI through the III System, but is not  
10 available from the party state through the III  
11 System;

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

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

- 1 (b) **State responsibilities.** Each party state shall:
- 2 (1) Appoint a Compact officer who shall:
- 3 (A) Administer this Compact within that state;
- 4 (B) Ensure that Compact provisions and rules,
- 5 procedures, and standards established by the
- 6 Council under Article VI are complied with in the
- 7 state; and
- 8 (C) Regulate the in-state use of records received by
- 9 means of the III System from the FBI or from
- 10 other party states;
- 11 (2) Establish and maintain a criminal history record
- 12 repository, which shall provide:
- 13 (A) Information and records for the National
- 14 Identification Index and the National Fingerprint
- 15 File; and
- 16 (B) The state's III System-indexed criminal history
- 17 records for noncriminal justice purposes
- 18 described in Article IV;
- 19 (3) Participate in the National Fingerprint File; and
- 20 (4) Provide and maintain telecommunications links and
- 21 related equipment necessary to support the services
- 22 set forth in this Compact.



1 (c) **Compliance with III System standards.** In carrying out  
2 their responsibilities under this Compact, the FBI and each  
3 party state shall comply with III System rules, procedures, and  
4 standards duly established by the Council concerning record  
5 dissemination and use, response times, data quality, system  
6 security, accuracy, privacy protection, and other aspects of III  
7 System operation.

8 (d) Maintenance of record services.

9 (1) Use of the III System for noncriminal justice purposes  
10 authorized in this Compact shall be managed so as not  
11 to diminish the level of services provided in support  
12 of criminal justice purposes.

13 (2) Administration of Compact provisions shall not reduce  
14 the level of service available to authorized  
15 noncriminal justice users on the effective date of  
16 this Compact.

17 **ARTICLE IV**

18 **AUTHORIZED RECORD DISCLOSURES**

19 (a) **State criminal history record repositories.** To the  
20 extent authorized by section 552a of title 5, United States Code  
21 (commonly known as the "Privacy Act of 1974"), the FBI shall  
22 provide on request criminal history records (excluding sealed



1 records) to State criminal history record repositories for  
2 noncriminal justice purposes allowed by Federal statute, Federal  
3 Executive order, or a state statute that has been approved by  
4 the Attorney General and that authorizes national indices  
5 checks.

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

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



- 1 (1) Ensure that records obtained under this Compact are  
2 used only by authorized officials for authorized  
3 purposes;
- 4 (2) Require that subsequent record checks are requested to  
5 obtain current information whenever a new need arises;  
6 and
- 7 (3) Ensure that record entries that may not legally be  
8 used for a particular noncriminal justice purpose are  
9 deleted from the response and, if no information  
10 authorized for release remains, an appropriate "no  
11 record" response is communicated to the requesting  
12 official.

13 **ARTICLE V**

14 **RECORD REQUEST PROCEDURES**

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

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



1 A state criminal history record repository shall process  
2 an interstate request for noncriminal justice purposes through  
3 the national indices only if such request is transmitted through  
4 another state criminal history record repository or the FBI.

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

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

- 17 (1) May charge a fee, in accordance with applicable law,  
18 for handling a request involving fingerprint  
19 processing for noncriminal justice purposes; and  
20 (2) May not charge a fee for providing criminal history  
21 records in response to an electronic request for a



1 record that does not involve a request to process  
2 fingerprints.

3 (e) Additional search.

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

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

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

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

21 **ARTICLE VI**

22 **ESTABLISHMENT OF COMPACT COUNCIL**





1 (a) Establishment.

2 (1) **In general.** There is established a council to be  
3 known as the "Compact Council", which shall have the  
4 authority to promulgate rules and procedures governing  
5 the use of the III System for noncriminal justice  
6 purposes, not to conflict with FBI administration of  
7 the III System for criminal justice purposes.

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

9 (A) Continue in existence as long as this Compact  
10 remains in effect;

11 (B) Be located, for administrative purposes, within  
12 the FBI; and

13 (C) Be organized and hold its first meeting as soon  
14 as practicable after the effective date of this  
15 Compact.

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

19 (1) Nine members, each of whom shall serve a 2-year term,  
20 who shall be selected from among the Compact officers  
21 of Party States based on the recommendation of the  
22 Compact officers of all Party States, except that, in



1 the absence of the requisite number of Compact  
2 officers available to serve, the chief administrators  
3 of the criminal history record repositories of  
4 Nonparty States shall be eligible to serve on an  
5 interim basis.

6 (2) Two at-large members, nominated by the Director of the  
7 FBI, each of whom shall serve a 3-year term, of whom:

8 (A) One shall be a representative of the criminal  
9 justice agencies of the Federal Government and  
10 may not be an employee of the FBI; and

11 (B) One shall be a representative of the noncriminal  
12 justice agencies of the Federal Government.

13 (3) Two at-large members, nominated by the Chairman of the  
14 Council, once the Chairman is elected pursuant to  
15 Article VI(c), each of whom shall serve a 3-year term,  
16 of whom:

17 (A) One shall be a representative of State or local  
18 criminal justice agencies; and

19 (B) One shall be a representative of state or local  
20 noncriminal justice agencies.

21 (4) One member, who shall serve a 3-year term, and who  
22 shall simultaneously be a member of the FBI's advisory



1 policy board on criminal justice information services,  
2 nominated by the membership of that policy board.

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

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

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

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

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

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

20 (d) **Meetings.**

21 (1) **In general.** The Council shall meet at least once each  
22 year at the call of the Chairman. Each meeting of the



1 Council shall be open to the public. The Council  
2 shall provide prior public notice in the Federal  
3 Register of each meeting of the Council, including the  
4 matters to be addressed at such meeting.

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

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

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



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

#### 4 **ARTICLE VII**

##### 5 **RATIFICATION OF COMPACT**

6 This Compact shall take effect upon being entered into by  
7 2 or more States as between those States and the Federal  
8 Government.

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

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

#### 17 **ARTICLE VIII**

##### 18 **MISCELLANEOUS PROVISIONS**

19 (a) **Relation of Compact to certain FBI activities.**  
20 Administration of this Compact shall not interfere with the  
21 management and control of the Director of the FBI over the FBI's  
22 collection and dissemination of criminal history records and the



1 advisory function of the FBI's advisory policy board chartered  
2 under the Federal Advisory Committee Act (5 U.S.C. App.) for all  
3 purposes other than noncriminal justice.

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

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

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

18 **ARTICLE IX**

19 **RENUNCIATION**

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



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

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

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

8 **ARTICLE X**

9 **SEVERABILITY**

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







1 (c) **Right of appeal.** The FBI or a Party State may appeal  
2 any decision of the Council to the Attorney General, and  
3 thereafter may file suit in the appropriate district court of  
4 the United States, which shall have original jurisdiction of all  
5 cases or controversies arising under this Compact. Any suit  
6 arising under this Compact and initiated in a State court shall  
7 be removed to the appropriate district court of the United  
8 States in the manner provided by section 1446 of title 28,  
9 United States Code, or other statutory authority."

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

13 **"§846- National Crime Prevention and Privacy Compact.**

14 (a) The Hawaii criminal justice data center is the central  
15 repository of criminal history records for purposes of the  
16 National Crime Prevention and Privacy Compact and shall do all  
17 things necessary or incidental to carrying out the compact.

18 (b) The administrator of the Hawaii criminal justice data  
19 center, or the administrator's designee, is the State's compact  
20 officer and shall administer the compact within the State. The  
21 administrator may adopt rules and establish procedures for the  
22 cooperative exchange of criminal history records between this



1 State and other state governments and with the federal  
2 government for the use in noncriminal justice background  
3 checks."

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.



**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. (CD1)

