National Crime Prevention and Privacy Compact
Compact Council Office
1000 Custer Hollow Road
Clarksburg, WV 26306-0145

September 9, 2009

To: All State Compact Officers and Non-party State Identification Bureau Chiefs

During the National Crime Prevention and Privacy Compact Council (Council) meeting in May 2009, an update was provided on states who have requested access for national criminal history record information (CHRI) pursuant to the Adam Walsh Child Protection and Safety Act of 2006 (the Act), Public Law (Pub. L.) 109-248. It was noted that several states were unaware of the provisions that would enable their states to use this tool to further protect children or how to gain access via the Act. The Council suggested I send this letter on its behalf to discuss the many advantages of the Act. Sections 151 and 153 of the Act require the Attorney General (AG) to ensure access to FBI CHRI by (1) governmental social service agencies with child protection responsibilities, (2) child welfare agencies, and (3) public and private elementary and secondary schools and state and local educational agencies. I hope the information below will help you in working with your sister agencies to further ensure that as a nation we are collectively doing everything possible to protect our children.

In correspondence dated October 31, 2006, and February 20, 2009, the FBI's Criminal Justice Information Services (CJIS) Division provided guidance and clarification to CJIS Systems Officers (CSO) and State Identification Bureau (SIB) representatives to implement the access made available under the Act. These letters are enclosed for your reference and information. Currently, ten states and the National Center for Missing and Exploited Children are authorized to take advantage of Section 151 (name-based criminal justice access to CHRI), nine states and the District of Columbia are authorized to take advantage of Section 153 (fingerprint-based access to CHRI), and an additional seven states use both Sections 151 and 153.

The following is a summary of some of the unique provisions of the Act and comparison with similar authorities. Although a request to the CJIS Division for access is required for either Section 151 or 153, there is no need to enact or repeal legislation to take advantage of the Act. To assist you in understanding the provisions of the Act, scenarios for appropriate usage are provided. Suggestions for drafting your access request are included on page four of this letter.

Section 151

Section 151 of the Act provides authorization to conduct name-based criminal history record checks of national crime information databases, the National Crime Information Center (NCIC) and the Interstate Identification Index (III), for qualifying governmental social service agencies in responding to allegations of child abuse, neglect or exploitation. In order to take advantage of the provisions of Section 151, a state's CSO must request access from the CJIS Division. The AG established conditions of access and associated rules of dissemination to ensure that all personnel with access pursuant to Section 151 of the Act meet training, certification, and background screening requirements.

Section 153

Section 153(b)(1)(A) of the Act provides an authority for child welfare agencies to conduct national fingerprint-based background checks and receive the CHRI for individuals under consideration as prospective foster or adoptive parents. The Act further defines child welfare agency in Section 153(g)(1-2) as "the State or local agency responsible for administering the plan under part B or part E of title IV of the Social Security Act; and any other public agency, or any other private agency under contract with the State or local agency responsible for administering the plan under part B or part E of title IV of the Social Security Act, that is responsible for the licensing or approval of foster or adoptive parents."

Section 153(b)(2) also provides the authority for a private or public elementary or secondary school or a local or state educational agency to conduct fingerprint-based background checks and receive the CHRI for individuals employed, under consideration for employment, or otherwise in a position in which the individual would work with or around children in the school or agency.

The CJIS Division notified CSOs and SIBs in correspondence dated February 20, 2009, that originating agency identifiers (ORI's) may be assigned upon request to facilitate the fingerprint-based access for qualifying private entities under Section 153. Of the 16 states and the District of Columbia approved for access under Section 153, 12 states have requested ORIs for private entities. In addition, because of the broad category of individuals who may qualify for fingerprint-based background checks pursuant to Section 153, the CJIS Division will charge the volunteer rate for submissions where the reason fingerprinted field is populated with "Adam Walsh Act - Volunteer."

Comparison with State Statutes Approved Under Pub. L. 92-544

One significant difference between the Act and qualifying Pub. L. 92-544 state statutes is the authority, provided by Section 153 of the Act, to disseminate the results of the national fingerprint-based check to private (non-governmental) entities, which may include private schools and in some cases private foster and adoptive agencies. While qualifying Pub. L. 92-544 statutes may provide authority to conduct fingerprint-based background checks for similar

populations, the criminal history record check results obtained pursuant to Pub. L. 92-544 is only disseminable to governmental agencies. In comparison to the restrictive language of many qualifying Pub. L. 92-544 statutes, Section 153 of the Act provides a broad category of individuals who may be subject to fingerprint-based background checks, including secretaries, janitors, contractors, bus drivers, volunteers, and other individuals with access to children in the public or private elementary or secondary school setting.

Section 153 of the Act may be used for fingerprint-based background checks even if a state has a qualifying Pub. L. 92-544 statute. If a state has a qualifying Pub. L. 92-544 statute, and is approved for access under the Act, the state has the discretion to submit fingerprints using the Pub. L. 92-544 statute or the Act. Submissions pursuant to Section 153 of the Act should contain "Adam Walsh Act" in the reason fingerprinted field.

Comparison with the National Child Protection Act As Amended By the Volunteers for Children Act of 1993 (NCPA/VCA)

The NCPA/VCA was enacted to provide access to CHRI for states without a qualifying Pub. L. 92-544 statute covering the applicable category of current or prospective employee or volunteer. States that have a qualifying Pub. L. 92-544 statute for a particular category of current or prospective employee or volunteer are required to process their fingerprint submissions under their Pub. L. 92-544 statute rather than the NCPA/VCA. Unlike provisions of NCPA/VCA, the Adam Walsh Act contains no provisions requiring a state to use its Pub. L. 92-544 statute. As described above, states with qualifying Pub. L. 92-544 statutes may opt to use the state statute and/or the Act to submit their fingerprint-based background checks. In comparison with the Act, the NCPA/VCA does not require any specific access request, and fingerprint submissions processed under the NCPA/VCA are also eligible for the reduced volunteer fingerprint processing fee if the reason fingerprinted field is populated with "NCPA/VCA Volunteer." While the Act permits dissemination of CHRI to private entities, the NCPA/VCA requires dissemination to a governmental agency unless the state has established a program similar to the Florida Volunteer and Employee Criminal History System (VECHS). The VECHS model allows for an individual's CHRI obtained pursuant to the NCPA/VCA to be disseminated to a nongovernmental entity with the individual's consent.

Examples of States' Implementations of the Act

Once the CJIS Division grants approval to use the provisions of the Act, states have the discretion to implement those provisions as their needs prescribe. For example, one state uses the provisions of Section 151 of the Act to conduct name-based criminal history records checks prior to sending child protective services workers to a child's home to respond to abuse or neglect complaints. In another state the information obtained pursuant to Section 151 is used as part of the investigation to determine whether the child is in danger if left in the home. Another state uses Section 153 of the Act to conduct fingerprint-based checks for employees of private schools and submits its fingerprint-based checks for public school employees using its qualifying

Pub. L. 92-544 statute. Many states use Section 153 of the Act only for private adoption agencies meeting the criteria under the Act, while others use Section 153 for fingerprint-based checks of prospective foster and adoptive parents using private and public adoption agencies.

Requests for Access

Requests for access to national crime information databases pursuant to either Section 151 or 153 must be directed to the CJIS Division. States wishing to take advantage of Section 151 of the Act must send a request for access under the signature of the CSO. The CJIS Division recommends that requests for access pursuant to Section 151 address the following:

- Hardware, software, funding, and training for access to CJIS Systems;
- Quality assurance procedures, e.g., "hit" notification and confirmation requirements;
- System integrity in accordance with applicable CJIS Division, state, federal, and tribal policies to ensure only authorized terminal access and transaction submissions, and proper handling and dissemination of CJIS data;
- Security, audit, and training requirements are met as specified in the *CJIS Security Policy;*
- Verification that training, certification, and background screening of terminal operators at the applicable governmental social service agencies is completed in accordance with the *CJIS Security Policy*;
- Agency name, point of contact (POC), address, and telephone number for issuance of NCIC "F" ending ORIs for governmental social service agencies; and
- Agency name, POC, address, and telephone number of individual responsible for program implementation of Section 151 provisions.

States wishing to take advantage of Section 153 need to send a request for access under the signature of the chief executive officer (CEO) via the SIB. The CJIS Division recommends that requests for access pursuant to Section 153 address the following:

- Purpose for requesting access, e.g., to provide fingerprint-based background checks for employees at private schools;
- Acknowledgment that a state criminal history record check will be conducted prior to submitting the fingerprints to the FBI;
- Use and challenge requirements in accordance with the provisions of Title 28, Code of Federal Regulations, Section 50.12, relating to the exchange of FBI identification records;
- Agency name, POC, address, and telephone number for issuance of "Z" ending ORIs, if desired, to facilitate fingerprint-based access for child welfare agencies and public or private elementary or secondary schools or state or local education agencies; and
- Agency name, POC, address, and telephone number of individual responsible for program implementation of Section 153 provisions.

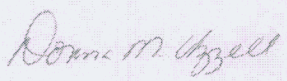
A request for access under both Sections 151 and 153 should meet all the above criteria and

come under the signature of the CEO.

Role of the State Compact Officer (SCO) and SIB Chief

The Act provides many unique advantages to facilitate access to the NCIC and the III and is designed to keep children safer in a wide variety of settings. As a SCO or SIB Chief for your state, it is probable that you are the POC to educate these social service agencies and schools regarding the Act and other legislative authorities. You are also the "gatekeeper" of all access to national criminal history information and these agencies rely on you to assist them in gaining this access and understanding the applicable conditions of access. The Council appreciates your cooperation with implementation of the Act and encourages states to consider using the Act as a means to protect our children. Enclosed is a map showing states that have approved access under the Act. Please note that not all states who have approved access have to date implemented the Act. If you would like contact information for those states, require assistance regarding the Act or its implementation, or have additional questions regarding policy, please contact the CJIS Division POC for the Act, Ms. Julia Mickey Wilson at (304) 625-5759 or by e-mail at <jwilso11@leo.gov>. Should you have any additional questions, you may contact me at (850) 410-7100 or by e-mail at <donnauzzell@fdle.state.fl.us>.

Sincerely,



Donna M. Uzzell
Compact Council Chairman

Enclosures (3)