

The National Crime Prevention and Privacy Compact Act of 1998

Compact and Council Handbook



Compact and Council Handbook 2.0 | Revised: November

**“Enhancing public safety through
information sharing. . . .”**

The National Crime Prevention and Privacy Compact Council
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Table of Contents

History of the National Crime Prevention and Privacy Compact Act of 1998.....	2
III and the Importance of the Compact	2
The National Fingerprint File Program.....	3
How a State Ratifies the Compact	3
Benefits of Compact Ratification.....	3
Compact State Responsibilities.....	4
State Compact Officer Responsibilities	5
The National Crime Prevention and Privacy Compact Council	5
Council Membership.....	5
Compact Council Meetings.....	6
Council Committees.....	8
Dispute Adjudication Committee	8
Executive Committee.....	8
Planning and Outreach Committee	8
Sanctions Committee	8
Standards and Policy Committee	8
Committee Meetings	9
Compact Council Rulemaking Process.....	10
Rules Approved by the Council and Published in the Federal Register	11
To Contribute to the National Crime Prevention and Privacy Compact Council Process.....	12
Contact Information	13

History of the National Crime Prevention and Privacy Compact Act of 1998

In April 1978, the National Crime Information Center Advisory Policy Board (APB) (currently the Criminal Justice Information Services [CJIS] APB) approved the creation of the Interstate Identification Index (III) System, a national system which facilitates the interstate exchange of automated criminal history record information (CHRI) among criminal justice agencies.

The III provides a means of conducting national criminal history record searches for criminal justice and noncriminal justice purposes as specified in existing local, state and/or federal laws.

In order for authorized entities to conduct a fingerprint-based background check, there must be legal authority to access the criminal history record repositories. Because states have varying statutes or policies that restrict the dissemination of records for noncriminal justice purposes, a federal law, or Compact, was necessary to provide interstate criminal record dissemination authority. For this reason the National Crime Prevention and Privacy Compact (Compact) Act was signed into law on October 9, 1998. The Compact became effective April 28, 1999, when ratified by two states, Montana and Georgia refer to Title 34, United States Code (U.S.C.), Section 40316, (formerly cited as Title 42, U.S.C., Section 14616) Article VII. The Compact establishes an infrastructure to exchange criminal history records for noncriminal justice purposes according to the law of the requesting state. This legislation continues the dynamic movement toward decentralization of CHRI that began with the III Program in 1978.

III and the Importance of the Compact

The FBI maintains the III System which contains criminal history records from all states and U.S. territories, as well as from federal agencies and some foreign countries. The FBI facilitates interstate criminal record exchange by providing national name and fingerprint indices. These indices provide a basis for positive identification of record subjects at the national level and an automated pointer system that provides a link between the criminal history records systems maintained within each state and the FBI. By establishing this system exchange, the goal is to make available the most complete and up-to-date records possible for noncriminal justice purposes.

Noncriminal justice checks of the III are supported by fingerprints in order to determine that the subject of a record search is the same person as the subject of a criminal history record indexed in the III. Examples of requests for criminal history information searches include, but are not limited to, security clearances and fingerprint-based background checks for licenses and for applicants in sensitive occupations such as child and senior care providers. The requirement that noncriminal justice checks be supported by fingerprints is memorialized in the Compact.

When a state participates in the III, the state's centralized criminal history record repository agrees to make its III records available in response to requests from federal and out-of-state criminal justice agencies for criminal justice purposes. The FBI maintains a duplicate record to meet the needs of federal, state, and local noncriminal justice agencies and private entities that use the III information for authorized noncriminal justice purposes until such time as the state participates in the National Fingerprint File (NFF) Program.

States that ratify the Compact must make all unsealed CHRI available in response to authorized noncriminal justice requests. The Compact, when signed by a state, supersedes any conflicting state laws; this allows for uniform dissemination among states, while ensuring that each state will eventually participate in the NFF Program.

The National Fingerprint File Program

The NFF participation is the final stage of the III implementation and the decentralization of criminal history records. When the III Program was adopted to decentralize criminal history record-keeping in 1978, the NFF was the ultimate goal. An NFF participant is a state participating in the III Program and a Compact signatory that has agreed to provide its criminal history records for all authorized uses, including noncriminal justice licensing and employment purposes. As states continue to ratify the Compact and participate in the NFF, criminal history records requested for noncriminal justice purposes will be obtained directly from the state, thus providing a more complete and accurate record that results in enhanced individual privacy protection. As the NFF states respond to record requests for all authorized noncriminal justice purposes, the FBI ceases to maintain duplicate criminal history data; however, the fingerprints are still retained by the FBI.

How a State Ratifies the Compact

In order for a state to become a Compact signatory state, it must enact legislation which has been signed by the state's governor. When ratified, the Compact has the full force and effect of law within the ratifying jurisdictions.

Each Compact state must name a State Compact Officer (SCO). A SCO is to be the chief administrator of the state's criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

Benefits of Compact Ratification

The ratification of the Compact will establish a uniform, nationwide standard governing the interstate dissemination of criminal history records for noncriminal justice purposes. This will ensure federal agencies will continue to receive the state criminal records needed to screen persons for employment in sensitive positions and for other authorized purposes. In addition, authorized state agencies will continue to receive the out-of-state records needed to screen state employees and licensees.

Each state will determine what CHRI is disseminated within its borders for noncriminal justice purposes. States will continue to apply their own dissemination laws to in-state use of their own records, and will screen out-of-state records received through the III System pursuant to their own laws.

States will participate as an integral part of the national criminal history record system, establishing technology standards, supporting consistency and uniformity, thereby increasing the utility of data sharing and integration.

A state's ratification of the Compact increases the completeness of records made available on an interstate basis for both criminal justice and noncriminal justice purposes. Records maintained at the state repositories may contain additional arrest disposition information than the FBI's files. Also, states may maintain records of some misdemeanor offenses that have not been submitted to the FBI.

Compact State Responsibilities

A Compact state is responsible for:

- ✓ Establishing and maintaining a criminal history repository which will provide information and records for the III and the NFF and the state's III System-indexed criminal history records for noncriminal justice purposes.
- ✓ Providing and maintaining telecommunications links and related equipment necessary to support the services established in the Compact.
- ✓ Programming its system to respond to all III System purpose code record requests upon Compact ratification.
- ✓ Joining the NFF Program. However, there is no specific time-frame.
- ✓ Submitting an NFF Implementation Plan no later than one year after Compact ratification.

State Compact Officer Responsibilities

A SCO is responsible for administering the Compact in their state by:

- ✓ Establishing procedures to protect the accuracy and privacy of records, and ensure the procedures are consistent with the Compact, and with rules, procedures, and standards established by the National Crime Prevention and Privacy Compact Council (Council).
- ✓ Regulating the in-state use of records received by means of the III System from the FBI or from other Compact states.
- ✓ Ensuring the records obtained under the Compact are used only by authorized officials for authorized purposes.
- ✓ Requiring subsequent record checks are requested to obtain current information whenever a new need arises.
- ✓ Ensuring that the state continues to move forward toward NFF participation, and once a participant, ensuring compliance with NFF requirements.

The National Crime Prevention and Privacy Compact Council

The mission of the Compact Council is to enhance public safety through noncriminal justice background checks based on positive identification, while protecting individual privacy rights.

The Council monitors the operations of the III System and also promulgates rules and procedures for the effective and proper use of the III System for noncriminal justice purposes and ensures the protection of an individual's privacy while facilitating the nationwide exchange of CHRI.

The Council will exist as long as the Compact remains in effect and is not to conflict with the FBI's administration of the III System for criminal justice purposes.

Council Membership

The Compact established a 15-member Council whose members are appointed by the U.S. Attorney General. The Council is comprised of representatives from federal and state criminal and noncriminal justice agencies as follows:

- ✓ Nine members are selected from SCOs. These members are selected based on the recommendation of all SCOs and serve a two-year term. State NFF participation is not a requirement for an SCO to become a Council member.
- ✓ Two at-large members nominated by the FBI Director which represent: 1) a criminal justice agency of the Federal Government (not an FBI employee) and 2) a noncriminal justice agency of the Federal Government. These members serve a three-year term.
- ✓ One member nominated by the FBI Director which is an employee of the FBI. This member serves a three-year term.
- ✓ Two at-large members nominated by the Chairman of the Council which represent: 1) a state or local criminal justice agency and 2) a state or local noncriminal justice agency. These members serve a three-year term.
- ✓ One member who serves on the FBI's CJIS APB. This member is nominated by the APB and serves a three-year term.

Appointment terms for Council members begin on October 1 and end on September 30 of the year the term ends. There are no limits on how many times a Council member can be reappointed, as long as he/she is renominated before each appointment.

The Council Chairman and Vice Chairman are elected by the Council members. Both Chairman and Vice Chairman (1) are members of the Council and (2) shall be SCOs, unless there is no SCO on the Council who is willing to serve, in which case the Chairman may be an at-large member; the Vice Chairman must be any member of the Council.

Compact Council Meetings

The Council meets at least once a year at the discretion of the Chairman and shall provide public notice in the *Federal Register* prior to the meeting, including matters to be discussed at the meeting. The Council meetings are open to the public.

A simple majority of the Council constitutes a quorum for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote. All rules, procedures, or standards established by the Council are made available for public inspection and copying at the FBI Compact Office.

An FBI representative shall attend all Council and committee meetings and provide administrative support.

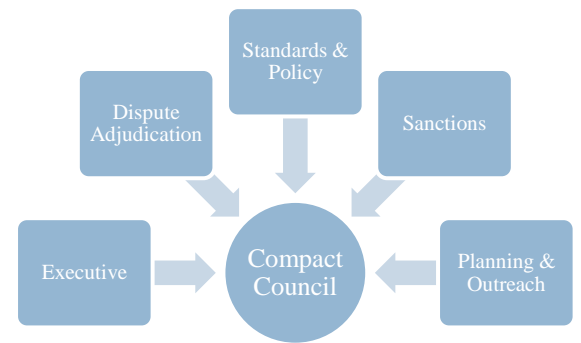
The Council Chairman, Vice Chairman, or Chairman's designee must be present at the Council meetings.

A Council member may designate a proxy for a Council meeting by notifying the Chairman, or the FBI Compact Officer, in writing prior to the meeting for which the proxy is given or during the meeting, when necessary. The proxy shall be a knowledgeable person from the same agency as the Council member who is being represented, or a SCO or the chief administrator of a criminal history record repository of another state which does not have a member on the Council.

Members of the Council shall attend all Council meetings or send a proxy if their attendance is not possible. If a Council member fails to attend two consecutive Council meetings, regardless of proxy representation and absent mitigating circumstances, then such Council member shall relinquish membership on the Council.

Council Committees

The Council Chairman may establish committees as necessary to carry out the Compact and may prescribe their membership, responsibilities, and duration. Committees may be composed of both Council members and individuals who are subject matter specialists but are not Council members. At present there are five committees, as described below.



Dispute Adjudication Committee

If a dispute should arise, as defined in Compact Article XI, the Dispute Adjudication Committee performs preliminary duties that might be necessary prior to an actual hearing.

Executive Committee

The Executive Committee consists of the Council’s Chair and Vice Chair, the Chairs and Vice Chairs of all active Committees, and the most recent past Chair of the Council. The Executive Committee is convened as needed to discuss complex policy issues prior to the issues being vetted through the Council’s Committee(s) and ultimately the Compact Council.

Planning and Outreach Committee

The Planning and Outreach Committee updates and monitors the Council's strategic plan and bylaws, executes outreach initiatives to increase the Compact and the NFF participation, and to expand the Council’s partnership throughout the entire noncriminal justice community.

Sanctions Committee

The Sanctions Committee assesses compliance with the Compact provisions and the Council rules, procedures, and standards prescribed by the Council; and recommends remedial action for noncompliance.

Standards and Policy Committee

The Standards and Policy Committee assesses technical and performance standards and formulates policies, procedures, and rules regarding the use of the III for noncriminal justice purposes.

Committee Meetings

Active Committees meet at the discretion of the Chairman. Topics discussed at the committee meetings are vetted through the Council for approval. A simple majority of a committee shall constitute a quorum for the conduct of business.

Due to the unique working knowledge of the Council members who shall be appointed to serve on Council committees, the members are expected to attend committee meetings whenever possible. If it becomes necessary to send a proxy, the committee member should ensure that the proxy has the appropriate subject matter expertise. A representative from the committee member's agency or another SCO who is not currently a member of that committee may serve as a proxy. If a committee member fails to attend two consecutive committee meetings, regardless of proxy representation and absent mitigating circumstances, then such committee member shall relinquish membership on the committee.

Compact Council Rulemaking Process

The Compact Council rulemaking process was approved at the January 2002 Compact Council meeting. The steps, listed below, should be followed when creating a rule:

1. The Council drafts a Proposed Rule, with the support of the CJIS Division staff and the FBI Office of the General Counsel (OGC) Criminal Justice Information Law Unit (CJILU).
2. The FBI forwards the draft Proposed Rule to the FBI Headquarters OGC and to the Department of Justice (DOJ) for review and comment by the Office of Legal Policy (OLP) and the Office of Legal Counsel (OLC).
3. The Council approves the Proposed Rule for publication in the *Federal Register* and directs circulation to interested parties identified by the Council (e.g. CJIS Systems Officers, CJIS Advisory Policy Board), specifying a deadline for submitting comments.
4. The Council reviews comments received and drafts the Final Rule, with support from the CJIS Division staff and the FBI's OGC CJILU.
5. The FBI forwards the draft Final Rule to the DOJ for review and comment by the OLP and the OLC.
6. The Council publishes the Final Rule.

Rules Approved by the Council and Published in the Federal Register

Part 901 - Fingerprint Submission Requirements:

1. 01/25/2016 - Notice of Approval of BIA Proposal
2. 03/17/2010 - Notice of Approval of Emergency/Disaster Plan Procedures.
3. 09/13/2005 - Notice of Approval of FEMA Proposal.
4. 06/22/2005 - Final Amended Rule.
5. 12/05/2003 - Proposed Amendments to the Rule.
6. 09/19/2003 - Notice of Approval of TSA Proposal.
7. 08/08/2003 - Notice of Approval of Amended Florida Proposal.
8. 05/21/2001 - Notice of Approval of Florida Proposal.
9. 05/21/2001 - Final Rule.

Part 902 - Dispute Adjudication Procedures:

1. 11/26/2003 - Final Rule.
2. 11/25/2002 - Proposed Rule.

Part 903 - Skipped

Part 904 - Record Screening:

1. 06/22/2005 - Final Rule.
2. 02/17/2005 - Proposed Rule.

Part 905 - National Fingerprint File Qualification Requirements:

1. 12/13/2005 - Final Rule.
2. 06/22/2005 - Proposed Rule.
3. 06/22/2005 - Notice of Approval.

Part 906 - Noncriminal Justice Outsourcing:

1. 05/16/2006 - RFP - Notice of Intent.
2. 12/15/2005 - Final Rule.
3. 12/15/2005 - Notice of Combined Security and Management Control Outsourcing Standards.
4. 12/16/2004 - Interim Final Rule.
5. 12/16/2004 - Notice of Security and Management Control Outsourcing Standards.
6. 02/27/2003 - Notice of Intent to Publish a Rule Permitting the Privatization of Noncriminal Justice Criminal History Record Check Functions.

Part 907 – Sanctions:

1. 11/18/2005 - Final Rule.
2. 02/17/2005 - Proposed Rule.

Miscellaneous:

1. 06/22/2005 - Notice of Two Accepted Methods for Determining Positive Identification for Exchanging CHRI for Noncriminal Justice Purposes.

To Contribute to the National Crime Prevention and Privacy Compact Council Process

If you have an idea or topic suggestion regarding the authorized exchange of CHRI for noncriminal justice purposes or the Compact Council process, suggestions for topics may be submitted at any time. Topic suggestions should be submitted in writing and should include: a clear statement of the request; how it is currently handled or a description of the problem; suggested change/solution; scenario/example; benefit to the noncriminal justice community; impact on local, state, or federal noncriminal justice agencies; importance; and contact person.

Here's how to submit your ideas:

1. State or local noncriminal justice agency officials may submit topic suggestions to the SCO or to the FBI Compact Officer in those states that have not yet ratified the Compact.
2. Federal agency officials may submit directly to the FBI Compact Officer.
3. State Identification Bureau Chiefs may submit topic proposals to the SCO or directly to the FBI Compact Officer.
4. Professional Organization Heads may submit topic proposals directly to the FBI Compact Officer.

All proposals will be forwarded to the FBI Compact Officer for coordination with the Council/Committee Chairman for consideration as the meeting agendas are finalized.

Topic Suggestion Forms are located on the Council's webpage at:

<http://www.fbi.gov/services/cjis/compact-council/topic-suggestion-form>.

Topic suggestions may also be submitted via e-mail at compactoffice@leo.gov or by facsimile to the FBI Compact Officer, Chasity S. Anderson, at (304) 625-2868.

Contact Information

The Compact Council's Office is located
within the FBI's Criminal Justice Information Services Division
in Clarksburg, West Virginia

For more information contact the:

Compact Council Office
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e-mail: <compactoffice@leo.gov>
<www.fbi.gov/services/cjis/compact-council>

Points of Contact:

Council Chairman
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e-mail: <wapettengill@ncsbi.gov>

FBI Compact Officer
Ms. Chasity S. Anderson
e-mail: <csanderson@fbi.gov>