

17101607D

HOUSE BILL NO. 2066

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend the Code of Virginia by adding a section numbered 19.2-387.2, relating to National Crime Prevention and Privacy Compact of 1998.

Patron—Mullin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 19.2-387.2 as follows:

§ 19.2-387.2. National Crime Prevention and Privacy Compact of 1998.

The National Crime Prevention and Privacy Compact of 1998 is hereby enacted and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT.

The Contracting Parties agree to the following:

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.

In this Compact:

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

"Compact officer" means:

- 1. With respect to the Federal Government, an official so designated by the Director of the FBI; and
2. With respect to a Party State, 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.

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

"Criminal history records" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release. "Criminal history records" does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

"Criminal history record repository" means the State agency designated by the Governor or other appropriate executive official or the legislature of a State to perform centralized recordkeeping functions for criminal history records and services in the State.

"Criminal justice" includes activities relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

"Criminal justice agency" means (i) courts; and (ii) a governmental agency or any subunit thereof that (a) performs the administration of criminal justice pursuant to a statute or Executive order; (b) allocates a substantial part of its annual budget to the administration of criminal justice; and (c) includes Federal and State inspectors general offices.

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

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

"Direct access" means access to the National Identification Index by computer terminal or other

INTRODUCED

HB2066

59 *automated means not requiring the assistance of or intervention by any other party or agency.*

60 *"Executive order" means an order of the President of the United States or the chief executive officer*
 61 *of a State that has the force of law and that is promulgated in accordance with applicable law.*

62 *"FBI" means the Federal Bureau of Investigation.*

63 *"Interstate Identification Index System" or "III System" means the cooperative Federal-State system*
 64 *for the exchange of criminal history records and includes the National Identification Index, the National*
 65 *Fingerprint File and, to the extent of their participation in such system, the criminal history record*
 66 *repositories of the States and the FBI.*

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

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

73 *"National indices" means the National Identification Index and the National Fingerprint File.*

74 *"Noncriminal justice purposes" means uses of criminal history records for purposes authorized by*
 75 *Federal or State law other than purposes relating to criminal justice activities, including employment*
 76 *suitability, licensing determinations, immigration and naturalization matters, and national security*
 77 *clearances.*

78 *"Nonparty State" means a State that has not ratified this Compact.*

79 *"Party State" means a State that has ratified this Compact.*

80 *"Positive identification" means a determination, based upon a comparison of fingerprints or other*
 81 *equally reliable biometric identification techniques, that the subject of a record search is the same*
 82 *person as the subject of a criminal history record or records indexed in the III System. Identifications*
 83 *based solely upon a comparison of subjects' names or other nonunique identification characteristics or*
 84 *numbers, or combinations thereof, shall not constitute positive identification.*

85 *"Sealed record information" means:*

86 *1. With respect to adults, that portion of a record that is (i) not available for criminal justice uses;*
 87 *(ii) not supported by fingerprints or other accepted means of positive identification; or (iii) subject to*
 88 *restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a*
 89 *particular subject or pursuant to a Federal or State statute that requires action on a sealing petition*
 90 *filed by a particular record subject; and*

91 *2. With respect to juveniles, whatever each State determines is a sealed record under its own law*
 92 *and procedure.*

93 *"State" means any State, territory, or possession of the United States, the District of Columbia, and*
 94 *the Commonwealth of Puerto Rico.*

95 *ARTICLE II.*

96 *PURPOSES.*

97 *The purposes of this Compact are to:*

98 *1. Provide a legal framework for the establishment of a cooperative Federal-State system for the*
 99 *interstate and Federal-State exchange of criminal history records for noncriminal justice uses;*

100 *2. Require the FBI to permit use of the National Identification Index and the National Fingerprint*
 101 *File by each Party State, and to provide, in a timely fashion, Federal and State criminal history records*
 102 *to requesting States, in accordance with the terms of this Compact and with rules, procedures, and*
 103 *standards established by the Council under Article VI;*

104 *3. Require Party States to provide information and records for the National Identification Index and*
 105 *the National Fingerprint File and to provide criminal history records, in a timely fashion, to criminal*
 106 *history record repositories of other States and the Federal Government for noncriminal justice purposes,*
 107 *in accordance with the terms of this Compact and with rules, procedures, and standards established by*
 108 *the Council under Article VI;*

109 *4. Provide for the establishment of a Council to monitor III System operations and to prescribe*
 110 *system rules and procedures for the effective and proper operation of the III System for noncriminal*
 111 *justice purposes; and*

112 *5. Require the FBI and each Party State to adhere to III System standards concerning record*
 113 *dissemination and use, response times, system security, data quality, and other duly established*
 114 *standards, including those that enhance the accuracy and privacy of such records.*

115 *ARTICLE III.*

116 *RESPONSIBILITIES OF COMPACT PARTIES.*

117 *A. FBI responsibilities. The Director of the FBI shall:*

118 *1. Appoint an FBI Compact officer who shall:*

119 *a. Administer this Compact within the Department of Justice and among Federal agencies and other*
 120 *agencies and organizations that submit search requests to the FBI pursuant to subsection C of Article*

121 V;

122 b. Ensure that Compact provisions and rules, procedures, and standards prescribed by the Council
123 under Article VI are complied with by the Department of Justice and the Federal agencies and other
124 agencies and organizations referred to in subdivision A 1 a; and

125 c. Regulate the use of records received by means of the III System from Party States when such
126 records are supplied by the FBI directly to other Federal agencies;

127 2. Provide to Federal agencies and to State criminal history record repositories, criminal history
128 records maintained in its database for the noncriminal justice purposes described in Article IV,
129 including:

130 a. Information from Nonparty States; and

131 b. Information from Party States that is available from the FBI through the III System, but is not
132 available from the Party State through the III System;

133 3. Provide a telecommunications network and maintain centralized facilities for the exchange of
134 criminal history records for both criminal justice purposes and the noncriminal justice purposes
135 described in Article IV, and ensure that the exchange of such records for criminal justice purposes has
136 priority over exchange for noncriminal justice purposes; and

137 4. Modify or enter into user agreements with Nonparty State criminal history record repositories to
138 require them to establish record request procedures conforming to those prescribed in Article V.

139 B. State responsibilities. Each Party State shall:

140 1. Appoint a Compact officer who shall:

141 a. Administer this Compact within that State;

142 b. Ensure that Compact provisions and rules, procedures, and standards established by the Council
143 under Article VI are complied with in the State; and

144 c. Regulate the in-State use of records received by means of the III System from the FBI or from
145 other Party States;

146 2. Establish and maintain a criminal history record repository, which shall provide:

147 a. Information and records for the National Identification Index and the National Fingerprint File;
148 and

149 b. The State's III System-indexed criminal history records for noncriminal justice purposes described
150 in Article IV;

151 3. Participate in the National Fingerprint File; and

152 4. Provide and maintain telecommunications links and related equipment necessary to support the
153 services set forth in this Compact.

154 C. Compliance with III System standards. In carrying out their responsibilities under this Compact,
155 the FBI and each Party State shall comply with III System rules, procedures, and standards duly
156 established by the Council concerning record dissemination and use, response times, data quality,
157 system security, accuracy, privacy protection, and other aspects of III System operation.

158 D. Maintenance of record services.

159 1. Use of the III System for noncriminal justice purposes authorized in this Compact shall be
160 managed so as not to diminish the level of services provided in support of criminal justice purposes.

161 2. Administration of Compact provisions shall not reduce the level of service available to authorized
162 noncriminal justice users on the effective date of this Compact.

163 ARTICLE IV.

164 AUTHORIZED RECORD DISCLOSURES.

165 A. State criminal history record repositories. To the extent authorized by 5 U.S.C. § 552a (commonly
166 known as the "Privacy Act of 1974"), the FBI shall provide on request criminal history records
167 (excluding sealed records) to State criminal history record repositories for noncriminal justice purposes
168 allowed by Federal statute, Federal Executive order, or a State statute that has been approved by the
169 Attorney General and that authorizes national indices checks.

170 B. Criminal justice agencies and other governmental or nongovernmental agencies. The FBI, to the
171 extent authorized by 5 U.S.C. § 552a (commonly known as the "Privacy Act of 1974"), and State
172 criminal history record repositories shall provide criminal history records (excluding sealed records) to
173 criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice
174 purposes allowed by Federal statute, Federal Executive order, or a State statute that has been approved
175 by the Attorney General, that authorizes national indices checks.

176 C. Procedures. Any record obtained under this Compact may be used only for the official purposes
177 for which the record was requested. Each Compact officer shall establish procedures, consistent with
178 this Compact, and with rules, procedures, and standards established by the Council under Article VI,
179 which procedures shall protect the accuracy and privacy of the records, and shall:

180 1. Ensure that records obtained under this Compact are used only by authorized officials for
181 authorized purposes;

182 2. Require that subsequent record checks are requested to obtain current information whenever a
183 new need arises; and

184 3. Ensure that record entries that may not legally be used for a particular noncriminal justice
185 purpose are deleted from the response and, if no information authorized for release remains, an
186 appropriate "no record" response is communicated to the requesting official.

187 ARTICLE V.

188 RECORD REQUEST PROCEDURES.

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

191 B. Submission of State requests. Each request for a criminal history record check utilizing the
192 national indices made under any approved State statute shall be submitted through that State's criminal
193 history record repository. A State criminal history record repository shall process an interstate request
194 for noncriminal justice purposes through the national indices only if such request is transmitted through
195 another State criminal history record repository or the FBI.

196 C. Submission of Federal requests. Each request for criminal history record checks utilizing the
197 national indices made under Federal authority shall be submitted through the FBI or, if the State
198 criminal history record repository consents to process fingerprint submissions, through the criminal
199 history record repository in the State in which such request originated. Direct access to the National
200 Identification Index by entities other than the FBI and State criminal history records repositories shall
201 not be permitted for noncriminal justice purposes.

202 D. Fees. A State criminal history record repository or the FBI:

203 1. May charge a fee, in accordance with applicable law, for handling a request involving fingerprint
204 processing for noncriminal justice purposes; and

205 2. May not charge a fee for providing criminal history records in response to an electronic request
206 for a record that does not involve a request to process fingerprints.

207 E. Additional search.

208 1. If a State criminal history record repository cannot positively identify the subject of a record
209 request made for noncriminal justice purposes, the request, together with fingerprints or other approved
210 identifying information, shall be forwarded to the FBI for a search of the national indices.

211 2. If, with respect to a request forwarded by a State criminal history record repository under
212 subdivision 1, the FBI positively identifies the subject as having a III System-indexed record or records:

213 a. The FBI shall so advise the State criminal history record repository; and

214 b. The State criminal history record repository shall be entitled to obtain the additional criminal
215 history record information from the FBI or other State criminal history record repositories.

216 ARTICLE VI.

217 ESTABLISHMENT OF COMPACT COUNCIL.

218 A. Establishment.

219 1 In general. There is established a council to be known as the "Compact Council," which shall have
220 the authority to promulgate rules and procedures governing the use of the III System for noncriminal
221 justice purposes, not to conflict with FBI administration of the III System for criminal justice purposes.

222 2. Organization. The Council shall:

223 a. Continue in existence as long as this Compact remains in effect;

224 b. Be located, for administrative purposes, within the FBI; and

225 c. Be organized and hold its first meeting as soon as practicable after the effective date of this
226 Compact.

227 B. Membership. The Council shall be composed of 15 members, each of whom shall be appointed by
228 the Attorney General, as follows:

229 1. Nine members, each of whom shall serve a two-year term, who shall be selected from among the
230 Compact officers of Party States based on the recommendation of the Compact officers of all Party
231 States, except that, in the absence of the requisite number of Compact officers available to serve, the
232 chief administrators of the criminal history record repositories of Nonparty States shall be eligible to
233 serve on an interim basis.

234 2. Two at-large members, nominated by the Director of the FBI, each of whom shall serve a
235 three-year term, of whom:

236 a. One shall be a representative of the criminal justice agencies of the Federal Government and may
237 not be an employee of the FBI; and

238 b. One shall be a representative of the noncriminal justice agencies of the Federal Government.

239 3. Two at-large members, nominated by the Chairman of the Council, once the Chairman is elected
240 pursuant to subsection C, each of whom shall serve a three-year term, of whom:

241 a. One shall be a representative of State or local criminal justice agencies; and

242 b. One shall be a representative of State or local noncriminal justice agencies.

243 4. One member, who shall serve a three-year term, and who shall simultaneously be a member of the

244 FBI's advisory policy board on criminal justice information services, nominated by the membership of
245 that policy board.

246 5. One member, nominated by the Director of the FBI, who shall serve a three-year term, and who
247 shall be an employee of the FBI.

248 C. Chairman and Vice Chairman.

249 1. In general. From its membership, the Council shall elect a Chairman and a Vice Chairman of the
250 Council, respectively. Both the Chairman and Vice Chairman of the Council:

251 a. Shall be a Compact officer, unless there is no Compact officer on the Council who is willing to
252 serve, in which case the Chairman may be an at-large member; and

253 b. Shall serve a two-year term and may be reelected to only one additional two-year term.

254 2. Duties of Vice Chairman. The Vice Chairman of the Council shall serve as the Chairman of the
255 Council in the absence of the Chairman.

256 D. Meetings.

257 1. In general. The Council shall meet at least once each year at the call of the Chairman. Each
258 meeting of the Council shall be open to the public. The Council shall provide prior public notice in the
259 Federal Register of each meeting of the Council, including the matters to be addressed at such meeting.

260 2. Quorum. A majority of the Council or any committee of the Council shall constitute a quorum of
261 the Council or of such committee, respectively, for the conduct of business. A lesser number may meet to
262 hold hearings, take testimony, or conduct any business not requiring a vote.

263 E. Rules, procedures, and standards. The Council shall make available for public inspection and
264 copying at the Council office within the FBI, and shall publish in the Federal Register, any rules,
265 procedures, or standards established by the Council.

266 F. Assistance from FBI. The Council may request from the FBI such reports, studies, statistics, or
267 other information or materials as the Council determines to be necessary to enable the Council to
268 perform its duties under this Compact. The FBI, to the extent authorized by law, may provide such
269 assistance or information upon such a request.

270 G. Committees. The Chairman may establish committees as necessary to carry out this Compact and
271 may prescribe their membership, responsibilities, and duration.

272 ARTICLE VII.

273 RATIFICATION OF COMPACT.

274 This Compact shall take effect upon being entered into by two or more States as between those
275 States and the Federal Government. Upon subsequent entering into this Compact by additional States, it
276 shall become effective among those States and the Federal Government and each Party State that has
277 previously ratified it. When ratified, this Compact shall have the full force and effect of law within the
278 ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing
279 State.

280 ARTICLE VIII.

281 MISCELLANEOUS PROVISIONS.

282 A. Relation of Compact to certain FBI activities. Administration of this Compact shall not interfere
283 with the management and control of the Director of the FBI over the FBI's collection and dissemination
284 of criminal history records and the advisory function of the FBI's advisory policy board chartered under
285 the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

286 B. No authority for nonappropriated expenditures. Nothing in this Compact shall require the FBI to
287 obligate or expend funds beyond those appropriated to the FBI.

288 C. Relating to Public Law 92-544. Nothing in this Compact shall diminish or lessen the obligations,
289 responsibilities, and authorities of any State, whether a Party State or a Nonparty State, or of any
290 criminal history record repository or other subdivision or component thereof, under the Departments of
291 State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law
292 92-544), or regulations and guidelines promulgated thereunder, including the rules and procedures
293 promulgated by the Council under subsection A of Article VI, regarding the use and dissemination of
294 criminal history records and information.

295 ARTICLE IX.

296 RENUNCIATION.

297 A. In general. This Compact shall bind each Party State until renounced by the Party State.

298 B. Effect. Any renunciation of this Compact by a Party State shall:

299 1. Be effected in the same manner by which the Party State ratified this Compact; and

300 2. Become effective 180 days after written notice of renunciation is provided by the Party State to
301 each other Party State and to the Federal Government.

302 ARTICLE X.

303 SEVERABILITY.

304 The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision

305 of this Compact is declared to be contrary to the constitution of any participating State, or to the
306 Constitution of the United States, or the applicability thereof to any government, agency, person, or
307 circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof
308 to any government, agency, person, or circumstance shall not be affected thereby. If a portion of this
309 Compact is held contrary to the constitution of any Party State, all other portions of this Compact shall
310 remain in full force and effect as to the remaining Party States and in full force and effect as to the
311 Party State affected, as to all other provisions.

312 ARTICLE XI.

313 ADJUDICATION OF DISPUTES.

314 A. In general. The Council shall:

315 1. Have initial authority to make determinations with respect to any dispute regarding:

316 a. Interpretation of this Compact;

317 b. Any rule or standard established by the Council pursuant to Article V; and

318 c. Any dispute or controversy between any parties to this Compact; and

319 2. Hold a hearing concerning any dispute described in subdivision 1 at a regularly scheduled
320 meeting of the Council and only render a decision based upon a majority vote of the members of the
321 Council. Such decision shall be published pursuant to the requirements of subsection E of Article VI.

322 B. Duties of FBI. The FBI shall exercise immediate and necessary action to preserve the integrity of
323 the III System, maintain system policy and standards, protect the accuracy and privacy of records, and
324 to prevent abuses, until the Council holds a hearing on such matters.

325 C. Right of appeal. The FBI or a Party State may appeal any decision of the Council to the Attorney
326 General, and thereafter may file suit in the appropriate district court of the United States, which shall
327 have original jurisdiction of all cases or controversies arising under this Compact. Any suit arising
328 under this Compact and initiated in a State court shall be removed to the appropriate district court of
329 the United States in the manner provided by 28 U.S.C. § 1446, or other statutory authority.