

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 264 (Chairman, Judicial Proceedings Committee)
(By Request – Departmental – Public Safety and Correctional Services)
Judicial Proceedings

Criminal Justice Information System - National Crime Prevention and Privacy Compact

This departmental bill adopts the National Crime Prevention and Privacy Compact, effective October 1, 2003.

The bill also requires Maryland to participate in the National Fingerprint File effective July 1, 2006.

Fiscal Summary

State Effect: General fund expenditures would increase by \$263,500 and \$266,200 in FY 2004 and 2005, respectively, for computer reprogramming costs. Any future costs, including personnel costs, cannot be quantified at this time.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	263,500	266,200	-	-	-
Net Effect	(\$263,500)	(\$266,200)	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: The Department of Public Safety and Correctional Services (DPSCS) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: The compact organizes an electronic information sharing system (the Interstate Identification Index, or “III” system) among member states and the federal government to exchange criminal history records for noncriminal justice purposes authorized by state or federal law, such as background checks for licensing and employment.

Among the purposes of the compact are to allow party states to use the National Identification Index and the National Fingerprint File maintained by the FBI, to require party states to provide information and records for the National Identification Index and National Fingerprint File, and to provide criminal history records to other states and the federal government for noncriminal justice purposes.

The bill provides that to the extent authorized under federal law, the FBI must provide on request criminal history records to state criminal history record repositories for noncriminal justice purposes allowed under state or federal law.

The FBI and state criminal history record repositories must provide criminal history records to criminal justice agencies and other governmental and nongovernmental agencies for noncriminal purposes authorized under state or federal law authorizing national indices checks.

Records obtained under the compact may be used only for the purpose for which the record was requested. Each party state must appoint the chief administrator for the state’s criminal history record repository or the administrator’s designee as compact officer.

The bill also requires fingerprints or other forms of positive identification of subjects to be submitted with all requests for criminal history records checks for noncriminal purposes.

The state criminal history record repository may charge a fee for handling information requests involving fingerprint processing for noncriminal justice purposes, but may not charge a fee for providing criminal history records that do not require fingerprint processing.

The bill provides for a compact council established within the FBI to establish rules and procedures governing the use of the III system for noncriminal justice purposes. Some members of the council are selected from the compact officers of the member states.

The council has authority over disputes regarding the interpretation of the compact, rules or standards established by the council, or any dispute between parties to the compact. The FBI or any member state may appeal a decision to the council to the Attorney General of the United States. After that appeal, a party may file suit in a federal district court, and any state court suit must be removed to the federal court.

The bill also provides that upon enactment of the bill and Maryland's adoption of the compact, the State must participate in the National Fingerprint File as of July 1, 2006. The National Fingerprint File is defined under the bill as a database of fingerprints or other uniquely identifying information relating to an arrested or charged individual maintained by the FBI to provide positive identification or record subjects indexed in the III system.

Current Law: The FBI serves as the primary source for national record searches and interstate exchanges.

Background: Interstate compacts and agreements are formal binding contracts, entered into voluntarily by two or more states, that require consent from Congress under the compact clause of the U.S. Constitution. The congressional consent requirement distinguishes compacts from other forms of interstate agreements. States form compacts for such things as allocating debt, establishing an authority for the operation of an interstate port, providing for the construction of a bridge spanning interstate waters, and extraditing felons.

Congressional approval of the National Crime Prevention and Privacy Compact, which was embodied in the Crime Identification and Technology Act (CITA) of 1998, gave states control when other states or the federal government accessed their criminal history records through the III system for security clearances and for background checks for licenses and for applicants in sensitive occupations such as child and senior care. Shortly after its approval by the Congress, President Clinton signed CITA into law on October 9, 1998.

The decentralized III system is an index-pointer system for the interstate and federal-state exchange of criminal history records. The FBI currently serves as the primary source for national record searches and interstate exchanges. When the III system is fully implemented, only a state-level offender's first-arrest information will be sent to the FBI to establish his or her name in the index. All subsequent criminal history information will be maintained at the state repository. An agency seeking a subject's criminal history records will electronically contact the FBI, which will direct the inquiring party to the appropriate state or federal database.

Under its terms, the compact became effective following ratification by two states, which occurred on April 28, 1999. The compact's provisions now apply between states that have ratified the compact and the federal government, which ratified it last year. To date, 16 states have ratified the compact: Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Iowa, Kansas, Maine, Minnesota, Montana, Nevada, New Jersey, Oklahoma, and South Carolina.

Maryland currently has approximately 30 statutes that authorize State and national criminal history record checks for noncriminal justice purposes, which include requirements for fingerprint submissions and fees.

State Expenditures: For Maryland to become a National Fingerprint File state July 1, 2006, subsequent to ratification of the compact, DPSCS will incur additional expenditures of an estimated \$263,500 and \$266,175, respectively, for programming. In addition, future year costs, possibly involving additional personnel needs, are not currently identifiable or quantifiable.

DPSCS anticipates the availability of federal grant money to cover such costs – at least through fiscal 2006. Any additional or ongoing costs beyond that fiscal year, including the costs for potential additional personnel, would have to be covered by general fund allocations. DPSCS reports that some grant money may be available from grants from the National Criminal History Improvement Program 2000 (NCHIP-2000), but cannot quantify the potential for such a grant. Because funding of such systems and procedures are a stated priority of NCHIP-2000, DPSCS believes that the effort for Maryland to fully implement the compact “will be supported to a greater or lesser extent by federal grant funds.”

Legislative Services advises that actually acquiring federal grants to meet such costs may prove problematic in that no firm commitment for such funding has been established. Accordingly, the requirements of this bill may necessitate general fund expenditures to cover the above cited programming costs in fiscal 2004 and 2005. Any future personnel costs would have to be requested by DPSCS, and would be subject to all normal budgetary processes.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

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