

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE

Senate Bill 216 (The President, *et al.*) (By Request – Administration)
 Judicial Proceedings Judiciary

Criminal Justice Information System - National Crime Prevention and Privacy Compact

This Administration bill adopts the National Crime Prevention and Privacy Compact, effective October 1, 2005.

Fiscal Summary

State Effect: General fund expenditure increase for programming costs of \$46,500 in FY 2006, \$41,800 in FY 2007, and \$30,700 in FY 2008. Revenues would not be affected.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	46,500	41,800	30,700	0	0
Net Effect	(\$46,500)	(\$41,800)	(\$30,700)	\$0	\$0

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

Local Effect: None.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration’s assessment becomes available.

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 (NII) and the National Fingerprint File (NFF) maintained by the FBI to require party states to provide information and records for NII and NFF, 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 a compact officer to administer the compact within that state. Each state must also maintain a criminal records repository, as specified.

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 NFF. NFF 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.

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 among states that have ratified the compact and the federal government. To date, 21 compact states are Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Iowa, Kansas, Maine, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, Oklahoma, South Carolina, and Tennessee. In addition, seven other states have legislation pending to ratify the compact: Hawaii, Kentucky, New York, Oregon, Pennsylvania, Washington, and Wyoming. American Samoa and Guam have signed memoranda of understanding to the compact.

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: Ratifying the National Crime Prevention and Privacy Compact has no direct fiscal impact on the State. However, in doing so, Maryland commits to becoming a NFF participant by July 1, 2008 and would incur contractual programming costs of \$46,480 in fiscal 2006, \$41,832 in fiscal 2007, and \$30,710 in fiscal 2008 related to meeting requirements and standards for forwarding only the first fingerprint for an offender.

Some of these costs may be supported over a limited period of time by grants from the National Criminal History Improvement Program 2000, as authorized under CITA of 1998. It is anticipated that the effort required for Maryland to reach NFF status will be supported to some extent by federal grant funds.

Any future reallocations of personnel resources for the Department of Public Safety and Correctional Services resulting from the bill would be accommodated with existing budgeted resources.

Additional Information

Prior Introductions: SB 264 of 2003, a similar bill, received an unfavorable report from the Judicial Proceedings Committee.

Cross File: HB 241 (The Speaker, *et al.*) (By Request – Administration) – Judiciary.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 7, 2005
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