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HOUSE BILL 627

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Daymon Ely

AN ACT

RELATING TO CRIME REPORTING; ENACTING THE NATIONAL CRIME  
PREVENTION AND PRIVACY COMPACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] COMPACT ENACTED AND ENTERED  
INTO.--The "National Crime Prevention and Privacy Compact" is  
enacted into law and entered into on behalf of New Mexico with  
any and all other states legally joining therein in a form  
substantially as follows:

ARTICLE I. DEFINITIONS

As used in this compact, unless the context clearly  
requires otherwise:

A. "attorney general" means the attorney general of  
the United States;

B. "compact officer" means:

1 (1) with respect to the federal government, an  
2 official so designated by the director of the FBI; and

3 (2) with respect to a party state, the chief  
4 administrator of the state's criminal history record repository  
5 or a designee of the chief administrator who is a regular  
6 full-time employee of the repository;

7 C. "council" means the compact council established  
8 under Article VI of this compact;

9 D. "criminal history records":

10 (1) means information collected by criminal  
11 justice agencies on individuals consisting of identifiable  
12 descriptions and notations of arrests, detentions, indictments  
13 or other formal criminal charges, and any disposition arising  
14 therefrom, including acquittal, sentencing, correctional  
15 supervision or release; and

16 (2) does not include identification  
17 information such as fingerprint records if such information  
18 does not indicate involvement of the individual with the  
19 criminal justice system;

20 E. "criminal history record repository" means the  
21 state agency designated by the governor or other appropriate  
22 executive official or the legislature of a state to perform  
23 centralized recordkeeping functions for criminal history  
24 records and services in the state;

25 F. "criminal justice" includes activities relating

1 to the detection, apprehension, detention, pretrial release,  
2 post-trial release, prosecution, adjudication, correctional  
3 supervision or rehabilitation of accused persons or criminal  
4 offenders; the administration of criminal justice includes  
5 criminal identification activities and the collection, storage  
6 and dissemination of criminal history records;

7 G. "criminal justice agency" means:

8 (1) courts;

9 (2) a governmental agency or any subunit  
10 thereof that:

11 (a) performs the administration of  
12 criminal justice pursuant to a statute or executive order; and

13 (b) allocates a substantial part of its  
14 annual budget to the administration of criminal justice; and

15 (3) federal and state inspectors general  
16 offices;

17 H. "criminal justice services" means services  
18 provided by the FBI to criminal justice agencies in response to  
19 a request for information about a particular individual or as  
20 an update to information previously provided for criminal  
21 justice purposes;

22 I. "criterion offense" means any felony or  
23 misdemeanor offense not included on the list of nonserious  
24 offenses published periodically by the FBI;

25 J. "direct access" means access to the national

1 identification index by computer terminal or other automated  
2 means not requiring the assistance of or intervention by any  
3 other party or agency;

4 K. "executive order" means an order of the  
5 president of the United States or the chief executive officer  
6 of a state that has the force of law and that is promulgated in  
7 accordance with applicable law;

8 L. "FBI" means the federal bureau of investigation;

9 M. "interstate identification index system" or "III  
10 system":

11 (1) means the cooperative federal-state system  
12 for the exchange of criminal history records; and

13 (2) includes the national identification  
14 index, the national fingerprint file and to the extent of their  
15 participation in such system, the criminal history record  
16 repositories of the states and the FBI;

17 N. "national fingerprint file" means a database of  
18 fingerprints, or other uniquely personal identifying  
19 information, relating to an arrested or charged individual  
20 maintained by the FBI to provide positive identification of  
21 record subjects indexed in the III system;

22 O. "national identification index" means an index  
23 maintained by the FBI consisting of names, identifying numbers,  
24 and other descriptive information relating to record subjects  
25 about whom there are criminal history records in the III

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1 system;

2 P. "national indices" means the national  
3 identification index and the national fingerprint file;

4 Q. "nonparty state" means a state that has not  
5 ratified this compact;

6 R. "noncriminal justice purposes" means uses of  
7 criminal history records for purposes authorized by federal or  
8 state law other than purposes relating to criminal justice  
9 activities, including employment suitability, licensing  
10 determinations, immigration and naturalization matters and  
11 national security clearances;

12 S. "party state" means a state that has ratified  
13 this compact;

14 T. "positive identification" means a determination,  
15 based upon a comparison of fingerprints or other equally  
16 reliable biometric identification techniques, that the subject  
17 of a record search is the same person as the subject of a  
18 criminal history record or records indexed in the III system;  
19 identifications based solely upon a comparison of subjects'  
20 names or other nonunique identification characteristics or  
21 numbers, or combinations thereof, shall not constitute positive  
22 identification;

23 U. "sealed record information" means:

24 (1) with respect to adults, that portion of a  
25 record that is:

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1 (a) not available for criminal justice  
2 uses;

3 (b) not supported by fingerprints or  
4 other accepted means of positive identification; or

5 (c) subject to restrictions on  
6 dissemination for noncriminal justice purposes pursuant to a  
7 court order related to a particular subject or pursuant to a  
8 federal or state statute that requires action on a sealing  
9 petition filed by a particular record subject; and

10 (2) with respect to juveniles, whatever each  
11 state determines is a sealed record under its own law and  
12 procedure; and

13 V. "state" means any state, territory or possession  
14 of the United States, the District of Columbia and the  
15 Commonwealth of Puerto Rico.

16 ARTICLE II. PURPOSES

17 The purposes of this compact are to:

18 A. provide a legal framework for the establishment  
19 of a cooperative federal-state system for the interstate and  
20 federal-state exchange of criminal history records for  
21 noncriminal justice uses;

22 B. require the FBI to permit use of the national  
23 identification index and the national fingerprint file by each  
24 party state and to provide, in a timely fashion, federal and  
25 state criminal history records to requesting states, in

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1 accordance with the terms of this compact and with rules,  
2 procedures and standards established by the council under  
3 Article VI of this compact;

4 C. require party states to provide information and  
5 records for the national identification index and the national  
6 fingerprint file and to provide criminal history records, in a  
7 timely fashion, to criminal history record repositories of  
8 other states and the federal government for noncriminal justice  
9 purposes, in accordance with the terms of this compact and with  
10 rules, procedures and standards established by the council  
11 under Article VI of this compact;

12 D. provide for the establishment of a council to  
13 monitor the III system operations and to prescribe system rules  
14 and procedures for the effective and proper operation of the  
15 III system for noncriminal justice purposes; and

16 E. require the FBI and each party state to adhere  
17 to III system standards concerning record dissemination and  
18 use, response times, system security, data quality, and other  
19 duly established standards, including those that enhance the  
20 accuracy and privacy of such records.

21 ARTICLE III. RESPONSIBILITIES OF COMPACT PARTIES

22 A. The director of the FBI shall:

23 (1) appoint an FBI compact officer who shall:

24 (a) administer this compact within the  
25 federal department of justice and among federal agencies and

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1 other agencies and organizations that submit search requests to  
2 the FBI pursuant to Subarticle C of Article V of this compact;

3 (b) ensure that compact provisions and  
4 rules, procedures and standards prescribed by the council under  
5 Article VI of this compact are complied with by the federal  
6 department of justice and the federal agencies and other  
7 agencies and organizations referred to in Subparagraph (a) of  
8 this paragraph; and

9 (c) regulate the use of records received  
10 by means of the III system from party states when such records  
11 are supplied by the FBI directly to other federal agencies;

12 (2) provide to federal agencies and to state  
13 criminal history record repositories criminal history records  
14 maintained in its database for the noncriminal justice purposes  
15 described in Article IV of this compact, including:

16 (a) information from nonparty states;  
17 and

18 (b) information from party states that  
19 is available from the FBI through the III system but is not  
20 available from the party state through the III system;

21 (3) provide a telecommunications network and  
22 maintain centralized facilities for the exchange of criminal  
23 history records for both criminal justice purposes and the  
24 noncriminal justice purposes described in Article IV of this  
25 compact, and ensure that the exchange of such records for

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1 criminal justice purposes has priority over exchange for  
2 noncriminal justice purposes; and

3 (4) modify or enter into user agreements with  
4 nonparty state criminal history record repositories to require  
5 them to establish record request procedures conforming to those  
6 prescribed in Article V of this compact.

7 B. Each party state shall:

8 (1) appoint a compact officer who shall:

9 (a) administer this compact within that  
10 state;

11 (b) ensure that compact provisions and  
12 rules, procedures and standards established by the council  
13 under Article VI of this compact are complied with in the  
14 state; and

15 (c) regulate the in-state use of records  
16 received by means of the III system from the FBI or from other  
17 party states;

18 (2) establish and maintain a criminal history  
19 record repository, which shall provide:

20 (a) information and records for the  
21 national identification index and the national fingerprint  
22 file; and

23 (b) the state's III system-indexed  
24 criminal history records for noncriminal justice purposes  
25 described in Article IV of this compact;

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1 (3) participate in the national fingerprint  
2 file; and

3 (4) provide and maintain telecommunications  
4 links and related equipment necessary to support the services  
5 set forth in this compact.

6 C. In carrying out their responsibilities under  
7 this compact, the FBI and each party state shall comply with  
8 III system rules, procedures and standards duly established by  
9 the council concerning record dissemination and use, response  
10 times, data quality, system security, accuracy, privacy  
11 protection and other aspects of III system operation.

12 D. Maintenance of record services shall comply with  
13 the following:

14 (1) use of the III system for noncriminal  
15 justice purposes authorized in this compact shall be managed so  
16 as not to diminish the level of services provided in support of  
17 criminal justice purposes; and

18 (2) administration of compact provisions shall  
19 not reduce the level of service available to authorized  
20 noncriminal justice users on the effective date of this  
21 compact.

22 ARTICLE IV. AUTHORIZED RECORD DISCLOSURES

23 A. To the extent authorized by Section 552a of  
24 Title 5, United States Code (commonly known as the "Privacy Act  
25 of 1974"), the FBI shall provide on request criminal history

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1 records (excluding sealed records) to state criminal history  
2 record repositories for noncriminal justice purposes allowed by  
3 federal statute, federal executive order or a state statute  
4 that has been approved by the attorney general and that  
5 authorizes national indices checks.

6 B. The FBI, to the extent authorized by Section  
7 552a of Title 5, United States Code (commonly known as the  
8 "Privacy Act of 1974"), and state criminal history record  
9 repositories shall provide criminal history records (excluding  
10 sealed records) to criminal justice agencies and other  
11 governmental or nongovernmental agencies for noncriminal  
12 justice purposes allowed by federal statute, federal executive  
13 order or a state statute that has been approved by the attorney  
14 general, that authorizes national indices checks.

15 C. Any record obtained under this compact may be  
16 used only for the official purposes for which the record was  
17 requested. Each compact officer shall establish procedures  
18 consistent with this compact, and with rules, procedures, and  
19 standards established by the council under Article VI of this  
20 compact, which procedures shall protect the accuracy and  
21 privacy of the records, and shall:

22 (1) ensure that records obtained under this  
23 compact are used only by authorized officials for authorized  
24 purposes;

25 (2) require that subsequent record checks are

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1 requested to obtain current information whenever a new need  
2 arises; and

3 (3) ensure that record entries that may not  
4 legally be used for a particular noncriminal justice purpose  
5 are deleted from the response and, if no information authorized  
6 for release remains, an appropriate "no record" response is  
7 communicated to the requesting official.

8 ARTICLE V. RECORD REQUEST PROCEDURES

9 A. Subject fingerprints or other approved forms of  
10 positive identification shall be submitted with all requests  
11 for criminal history record checks for noncriminal justice  
12 purposes.

13 B. Each request for a criminal history record check  
14 utilizing the national indices made under any approved state  
15 statute shall be submitted through that state's criminal  
16 history record repository. A state criminal history record  
17 repository shall process an interstate request for noncriminal  
18 justice purposes through the national indices only if such  
19 request is transmitted through another state criminal history  
20 record repository or the FBI.

21 C. Each request for criminal history record checks  
22 utilizing the national indices made under federal authority  
23 shall be submitted through the FBI or, if the state criminal  
24 history record repository consents to process fingerprint  
25 submissions, through the criminal history record repository in

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1 the state in which such request originated. Direct access to  
2 the national identification index by entities other than the  
3 FBI and state criminal history records repositories shall not  
4 be permitted for noncriminal justice purposes.

5 D. A state criminal history record repository or  
6 the FBI:

7 (1) may charge a fee, in accordance with  
8 applicable law, for handling a request involving fingerprint  
9 processing for noncriminal justice purposes; and

10 (2) may not charge a fee for providing  
11 criminal history records in response to an electronic request  
12 for a record that does not involve a request to process  
13 fingerprints.

14 E. If an additional search is required, the  
15 following shall apply:

16 (1) if a state criminal history record  
17 repository cannot positively identify the subject of a record  
18 request made for noncriminal justice purposes, the request,  
19 together with fingerprints or other approved identifying  
20 information, shall be forwarded to the FBI for a search of the  
21 national indices; and

22 (2) If, with respect to a request forwarded by  
23 a state criminal history record repository under Paragraph (1)  
24 of this subsection, the FBI positively identifies the subject  
25 as having a III system-indexed record or records:

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1 (a) the FBI shall so advise the state  
2 criminal history record repository; and

3 (b) the state criminal history record  
4 repository shall be entitled to obtain the additional criminal  
5 history record information from the FBI or other state criminal  
6 history record repositories.

7 ARTICLE VI. ESTABLISHMENT OF A COMPACT COUNCIL

8 A. There is established a council to be known as  
9 the "compact council", which shall have the authority to  
10 promulgate rules and procedures governing the use of the III  
11 system for noncriminal justice purposes, not to conflict with  
12 FBI administration of the III system for criminal justice  
13 purposes.

14 B. The council shall:

15 (1) continue in existence as long as this  
16 compact remains in effect;

17 (2) be located, for administrative purposes,  
18 within the FBI; and

19 (3) be organized and hold its first meeting as  
20 soon as practicable after the effective date of this compact.

21 C. The council shall be composed of fifteen  
22 members, each of whom shall be appointed by the attorney  
23 general, as follows:

24 (1) nine members, each of whom shall serve a  
25 two-year term, who shall be selected from among the compact

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1 officers of party states based on the recommendation of the  
2 compact officers of all party states, except that, in the  
3 absence of the requisite number of compact officers available  
4 to serve, the chief administrators of the criminal history  
5 record repositories of nonparty states shall be eligible to  
6 serve on an interim basis;

7 (2) two at-large members nominated by the  
8 director of the FBI, each of whom shall serve a three-year  
9 term, of whom:

10 (a) one shall be a representative of the  
11 criminal justice agencies of the federal government and may not  
12 be an employee of the FBI; and

13 (b) one shall be a representative of the  
14 noncriminal justice agencies of the federal government;

15 (3) two at-large members nominated by the  
16 chair of the council, once the chair is elected pursuant to  
17 Subarticle D of this article, each of whom shall serve a  
18 three-year term, of whom:

19 (a) one shall be a representative of  
20 state or local criminal justice agencies; and

21 (b) one shall be a representative of  
22 state or local noncriminal justice agencies;

23 (4) one member who shall serve a three-year  
24 term and who shall simultaneously be a member of the FBI's  
25 advisory policy board on criminal justice information services,

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1 nominated by the membership of that policy board; and

2 (5) one member nominated by the director of  
3 the FBI, who shall serve a three-year term, and who shall be an  
4 employee of the FBI.

5 D. From its membership, the council shall elect a  
6 chair and a vice chair of the council, respectively. Both the  
7 chair and vice chair of the council:

8 (1) shall be compact officers, unless there is  
9 no compact officer on the council who is willing to serve, in  
10 which case the chair may be an at-large member; and

11 (2) shall serve a two-year term and be  
12 reelected to only one additional two-year term.

13 E. The vice chair of the council shall serve as the  
14 chair of the council in the absence of the chair.

15 F. The council shall meet at least once a year at  
16 the call of the chair. Each meeting of the council shall be  
17 open to the public. The council shall provide prior public  
18 notice in the federal register of each meeting of the council,  
19 including the matters to be addressed at such meeting.

20 G. A majority of the council or any committee of  
21 the council shall constitute a quorum of the council or of such  
22 committee, respectively, for the conduct of business. A lesser  
23 number may meet to hold hearings, take testimony or conduct any  
24 business not requiring a vote.

25 H. The council shall make available for public

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1 inspection and copying at the council office within the FBI,  
2 and shall publish in the federal register, any rules,  
3 procedures or standards established by the council.

4 I. The council may request from the FBI such  
5 reports, studies, statistics or other information or materials  
6 as the council determines to be necessary to enable the council  
7 to perform its duties under this compact. The FBI, to the  
8 extent authorized by law, may provide such assistance or  
9 information upon such a request.

10 J. The chair may establish committees as necessary  
11 to carry out this compact and may prescribe their membership,  
12 responsibilities and duration.

13 ARTICLE VII. RATIFICATION OF COMPACT

14 This compact shall take effect upon being entered into by  
15 two or more states as between those states and the federal  
16 government. Upon subsequent entering into this compact by  
17 additional states, it shall become effective among those states  
18 and the federal government and each party state that has  
19 previously ratified it. When ratified, this compact shall have  
20 the full force and effect of law within the ratifying  
21 jurisdictions. The form of ratification shall be in accordance  
22 with the laws of the executing state.

23 ARTICLE VIII. MISCELLANEOUS PROVISIONS

24 A. Administration of this compact shall not  
25 interfere with the management and control of the director of

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1 the FBI over the FBI's collection and dissemination of criminal  
2 history records and the advisory function of the FBI's advisory  
3 policy board chartered under the Federal Advisory Committee Act  
4 (5 U.S.C. App.) for all purposes other than noncriminal  
5 justice.

6 B. Nothing in this compact shall require the FBI to  
7 obligate or expend funds beyond those appropriated to the FBI.

8 C. Nothing in this compact shall diminish or lessen  
9 the obligations, responsibilities and authorities of any state,  
10 whether a party state or a nonparty state, or of any criminal  
11 history record repository or other subdivision or component  
12 thereof, under the federal Departments of State, Justice, and  
13 Commerce, the Judiciary, and Related Agencies Appropriation  
14 Act, 1973 (Public Law 92-544) or regulations and guidelines  
15 promulgated thereunder, including the rules and procedures  
16 promulgated by the council under Subarticle A of Article VI of  
17 this compact, regarding the use and dissemination of criminal  
18 history records and information.

19 ARTICLE IX. RENUNCIATION

20 A. This compact shall bind each party state until  
21 renounced by the party state.

22 B. Any renunciation of this compact by a party  
23 state shall:

24 (1) be effected in the same manner by which  
25 the party state ratified this compact; and

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1 (2) become effective one hundred eighty days  
2 after written notice of renunciation is provided by the party  
3 state to each other party state and to the federal government.

4 ARTICLE X. SEVERABILITY

5 The provisions of this compact shall be severable, and if  
6 any phrase, clause, sentence or provision of this compact is  
7 declared to be contrary to the constitution of any  
8 participating state, or to the Constitution of the United  
9 States, or the applicability thereof to any government, agency,  
10 person or circumstance is held invalid, the validity of the  
11 remainder of this compact and the applicability thereof to any  
12 government, agency, person or circumstance shall not be  
13 affected thereby. If a portion of this compact is held  
14 contrary to the constitution of any party state, all other  
15 portions of this compact shall remain in full force and effect  
16 as to the remaining party states and in full force and effect  
17 as to the party state affected, as to all other provisions.

18 ARTICLE XI. ADJUDICATION OF DISPUTES

19 A. The council shall:

20 (1) have initial authority to make  
21 determinations with respect to any dispute regarding:

22 (a) interpretation of this compact;  
23 (b) any rule or standard established by  
24 the council pursuant to Article V; and

25 (c) any dispute or controversy between

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1 any parties to this compact; and

2 (2) hold a hearing concerning any dispute  
3 described in Paragraph (1) at a regularly scheduled meeting of  
4 the council and only render a decision based upon a majority  
5 vote of the members of the council. Such decision shall be  
6 published pursuant to the requirements of Subarticle H of  
7 Article VI.

8 B. The FBI shall exercise immediate and necessary  
9 action to preserve the integrity of the III system, maintain  
10 system policy and standards, protect the accuracy and privacy  
11 of records and to prevent abuses, until the council holds a  
12 hearing on such matters.

13 C. The FBI or a party state may appeal any decision  
14 of the council to the attorney general, and thereafter may file  
15 suit in the appropriate district court of the United States,  
16 which shall have original jurisdiction of all cases or  
17 controversies arising under this compact. Any suit arising  
18 under this compact and initiated in a state court shall be  
19 removed to the appropriated district court of the United States  
20 in the manner provided by Section 1446 of Title 28, United  
21 States Code, or other statutory authority.