

1 **NATIONAL CRIME PREVENTION AND PRIVACY COMPACT**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Stephen G. Handy**

5 Senate Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts the Utah Crime Prevention and Privacy Compact.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ allows Utah to join the National Crime Prevention and Privacy Compact;
- 13 ▶ provides definitions;
- 14 ▶ permits Utah to share information with other states and the federal government
- 15 relating to background checks and criminal histories;
- 16 ▶ creates a process for Utah to request records from the FBI and other states that are
- 17 parties to the compact;
- 18 ▶ designates a compact council to administer the compact;
- 19 ▶ provides for adjudication of disputes between member parties; and
- 20 ▶ sets requirements for withdrawal from the compact.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 ENACTS:

27 **53-19-101**, Utah Code Annotated 1953



- 28 [53-19-102](#), Utah Code Annotated 1953
- 29 [53-19-103](#), Utah Code Annotated 1953
- 30 [53-19-104](#), Utah Code Annotated 1953
- 31 [53-19-105](#), Utah Code Annotated 1953
- 32 [53-19-106](#), Utah Code Annotated 1953
- 33 [53-19-107](#), Utah Code Annotated 1953
- 34 [53-19-108](#), Utah Code Annotated 1953
- 35 [53-19-109](#), Utah Code Annotated 1953
- 36 [53-19-110](#), Utah Code Annotated 1953
- 37 [53-19-111](#), Utah Code Annotated 1953

38

39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **53-19-101** is enacted to read:

41 **CHAPTER 19. UTAH CRIME PREVENTION AND PRIVACY COMPACT**

42 **53-19-101. Title -- Purpose.**

43 (1) This chapter is known as the "Utah Crime Prevention and Privacy Compact."

44 (2) (a) This compact organizes an electronic information sharing system among the
45 federal government and the states to exchange criminal history records for noncriminal justice
46 purposes authorized by federal or state law, such as background checks for governmental
47 licensing and employment.

48 (b) Under this compact, the FBI and the party states agree to maintain detailed
49 databases of their respective criminal history records, including arrests and dispositions, and to
50 make them available to the federal government and to party states for authorized purposes. The
51 FBI shall also manage the federal data facilities that provide a significant part of the
52 infrastructure for the system.

53 (3) The purpose of this compact is to:

54 (a) provide a legal framework for the establishment of a cooperative federal-state
55 system for the interstate and federal-state exchange of criminal history records for noncriminal
56 justice uses;

57 (b) require the FBI to permit use of the National Identification Index and the National
58 Fingerprint File by each party state, and to provide, in a timely fashion, federal and state

59 criminal history records to requesting states, in accordance with the terms of this compact and
60 with rules, procedures, and standards established by the council under Section 53-19-106;

61 (c) require party states to provide information and records for the National
62 Identification Index and the National Fingerprint File and to provide criminal history records,
63 in a timely fashion, to criminal history record repositories of other states and the federal
64 government for noncriminal justice purposes, in accordance with the terms of this compact and
65 with rules, procedures, and standards established by the council under Section 53-19-106;

66 (d) provide for the establishment of a council to monitor III System operations and to
67 prescribe system rules and procedures for the effective and proper operation of the III System
68 for noncriminal justice purposes; and

69 (e) require the FBI and each party state to adhere to III System standards concerning
70 record dissemination and use, response times, system security, data quality, and other duly
71 established standards, including those that enhance the accuracy and privacy of the records.

72 Section 2. Section 53-19-102 is enacted to read:

73 **53-19-102. Definitions.**

74 As used in this compact:

75 (1) "Attorney general" means the attorney general of the United States.

76 (2) "Compact officer" means:

77 (a) with respect to the federal government, an official designated by the director of the
78 FBI; and

79 (b) with respect to a party state, the chief administrator of the state's criminal history
80 record repository or a designee of the chief administrator who is a regular full-time employee
81 of the repository.

82 (3) "Council" means the compact council established under Section 53-19-106.

83 (4) "Criminal history record repository" means the state agency designated by the
84 governor, appropriate executive official, or the Legislature of a state to perform centralized
85 recordkeeping functions for criminal history records and services in the state.

86 (5) (a) "Criminal history records" means information collected by criminal justice
87 agencies on individuals consisting of identifiable descriptions and notations of arrests,
88 detentions, indictments, or other formal criminal charges, and any dispositions, including
89 acquittal, sentencing, correctional supervision, or release.

90 (b) "Criminal history records" does not include identification information such as
91 fingerprint records if the information does not indicate involvement of the individual with the
92 criminal justice system.

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

98 (7) "Criminal justice agency" means:

99 (a) the courts;

100 (b) any governmental agency or subunit of a governmental agency that:

101 (i) performs the administration of criminal justice pursuant to a statute or executive
102 order; and

103 (ii) allocates a substantial part of its annual budget to the administration of criminal
104 justice; and

105 (c) includes federal and state inspectors general offices.

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

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

111 (10) "Direct access" means access to the National Identification Index by computer
112 terminal or other automated means not requiring the assistance of or intervention by any other
113 party or agency.

114 (11) "Executive order" means an order of the president of the United States or the chief
115 executive officer of a state that has the force of law and is promulgated in accordance with
116 applicable law.

117 (12) "FBI" means the Federal Bureau of Investigation.

118 (13) "Interstate Identification Index System" or "III System":

119 (a) means the cooperative federal-state system for the exchange of criminal history
120 records; and

121 (b) includes the National Identification Index, the National Fingerprint File, and, to the
122 extent of their participation in the system, the criminal history record repositories of the states
123 and the FBI.

124 (14) "National Fingerprint File" means a database of fingerprints, or other uniquely
125 personal identifying information, relating to an arrested or charged individual maintained by
126 the FBI to provide positive identification of record subjects indexed in the III System.

127 (15) "National Identification Index" means an index maintained by the FBI consisting
128 of names, identifying numbers, and other descriptive information relating to record subjects
129 about whom there are criminal history records in the III System.

130 (16) "National indices" means the National Identification Index and the National
131 Fingerprint File.

132 (17) "Noncriminal justice purposes" means uses of criminal history records for
133 purposes authorized by federal or state law other than purposes relating to criminal justice
134 activities, including employment suitability, licensing determinations, immigration and
135 naturalization matters, and national security clearances.

136 (18) "Nonparty state" means a state that has not ratified this compact.

137 (19) "Party state" means a state that has ratified this compact.

138 (20) "Positive identification" means a determination, based upon a comparison of
139 fingerprints or other equally reliable biometric identification techniques, that the subject of a
140 record search is the same person as the subject of a criminal history record or records indexed
141 in the III System. Identifications based solely upon a comparison of subjects' names or other
142 nonunique identification characteristics or numbers, or combinations of names, numbers, and
143 nonunique identification characteristics may not constitute positive identification.

144 (21) "Sealed record information" means:

145 (a) with respect to adults, that portion of a record that is:

146 (i) not available for criminal justice uses;

147 (ii) not supported by fingerprints or other accepted means of positive identification; or

148 (iii) subject to restrictions on dissemination for noncriminal justice purposes pursuant
149 to a court order related to a particular subject or pursuant to a federal or state statute that
150 requires action on a sealing petition filed by a particular record subject; and

151 (b) with respect to juveniles, whatever each state determines is a sealed record under

152 each state's own law and procedure.

153 (22) "State" means any state, territory, or possession of the United States, the District
154 of Columbia, and the Commonwealth of Puerto Rico.

155 Section 3. Section **53-19-103** is enacted to read:

156 **53-19-103. Responsibilities of compact parties -- FBI responsibilities -- State**
157 **responsibilities -- Compliance -- Maintenance.**

158 (1) The director of the FBI shall:

159 (a) appoint an FBI compact officer who shall:

160 (i) administer this compact within the Department of Justice and among federal
161 agencies and other agencies and organizations that submit search requests to the FBI pursuant
162 to Section [53-19-105](#);

163 (ii) ensure that compact provisions and rules, procedures, and standards prescribed by
164 the council under Section [53-19-106](#) are complied with by the Department of Justice and the
165 federal agencies and other agencies and organizations referred to in Section [53-19-103](#); and

166 (iii) regulate the use of records received by means of the III System from party states
167 when the records are supplied by the FBI directly to other federal agencies;

168 (b) provide to federal agencies and to state criminal history record repositories criminal
169 history records maintained in the FBI's database for the noncriminal justice purposes described
170 in Section [53-19-104](#), including:

171 (i) information from nonparty states; and

172 (ii) information from party states that is available from the FBI through the III System,
173 but is not available from the party state through the III System;

174 (c) provide a telecommunications network and maintain centralized facilities for the
175 exchange of criminal history records for both criminal justice purposes and the noncriminal
176 justice purposes described in Section [53-19-104](#) and ensure that the exchange of those records
177 for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

178 (d) modify or enter into user agreements with nonparty state criminal history record
179 repositories to require them to establish record request procedures conforming to those
180 prescribed in Section [53-19-105](#).

181 (2) Each party state shall:

182 (a) appoint a compact officer who shall:

- 183 (i) administer this compact within that state;
184 (ii) ensure that compact provisions and rules, procedures, and standards established by
185 the council under Section 53-19-106 are complied with in the state; and
186 (iii) regulate the in-state use of records received by means of the III System from the
187 FBI or from other party states;
188 (b) establish and maintain a criminal history record repository, which shall provide:
189 (i) information and records for the National Identification Index and the National
190 Fingerprint File; and
191 (ii) the state's III System-indexed criminal history records for noncriminal justice
192 purposes described in Section 53-19-104;
193 (c) participate in the National Fingerprint File; and
194 (d) provide and maintain telecommunications links and related equipment necessary to
195 support the services set forth in this compact.
196 (3) In carrying out their responsibilities under this compact, the FBI and each party
197 state shall comply with III System rules, procedures, and standards duly established by the
198 council concerning record dissemination and use, response times, data quality, system security,
199 accuracy, privacy protection, and other aspects of III System operation.
200 (4) (a) Use of the III System for noncriminal justice purposes authorized in this
201 compact shall be managed so as not to diminish the level of services provided in support of
202 criminal justice purposes.
203 (b) Administration of compact provisions may not reduce the level of service available
204 to authorized noncriminal justice users on the effective date of this compact.
205 Section 4. Section 53-19-104 is enacted to read:
206 **53-19-104. Authorized record disclosures -- Criminal history record repositories**
207 **-- Procedures.**
208 (1) To the extent authorized by 5 U.S.C. Sec. 552(a), the FBI shall provide on request
209 criminal history records, excluding sealed records, to state criminal history record repositories
210 for noncriminal justice purposes allowed by federal statute, federal executive order, or a state
211 statute that has been approved by the attorney general and that authorizes national indices
212 checks.
213 (2) The FBI, to the extent authorized by 5 U.S.C. Sec. 552(a) and state criminal history

214 record repositories, shall provide criminal history records, excluding sealed records, to criminal
215 justice agencies and other governmental or nongovernmental agencies for noncriminal justice
216 purposes allowed by federal statute, federal executive order, or a state statute that has been
217 approved by the attorney general and that authorizes national indices checks.

218 (3) Any record obtained under this compact may be used only for the official purposes
219 for which the record was requested. Each compact officer shall establish procedures, consistent
220 with this compact, and with rules, procedures, and standards established by the council under
221 Section 53-19-106, which procedures shall protect the accuracy and privacy of the records, and
222 shall:

223 (a) ensure that records obtained under this compact are used only by authorized
224 officials for authorized purposes;

225 (b) require that subsequent record checks are requested to obtain current information
226 whenever a new need arises; and

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

230 Section 5. Section 53-19-105 is enacted to read:

231 **53-19-105. Record request procedures -- Positive identification -- Submission of**
232 **requests -- Fees -- Additional search.**

233 (1) Subject fingerprints or other approved forms of positive identification shall be
234 submitted with all requests for criminal history record checks for noncriminal justice purposes.

235 (2) Each request for a criminal history record check utilizing the national indices made
236 under any approved state statute shall be submitted through that state's criminal history record
237 repository. A state criminal history record repository shall process an interstate request for
238 noncriminal justice purposes through the national indices only if the request is transmitted
239 through another state criminal history record repository or the FBI.

240 (3) Each request for criminal history record checks utilizing the national indices made
241 under federal authority shall be submitted through the FBI or, if the state criminal history
242 record repository consents to process fingerprint submissions, through the criminal history
243 record repository in the state in which the request originated. Direct access to the National
244 Identification Index by entities other than the FBI and state criminal history record repositories

245 is not permitted for noncriminal justice purposes.

246 (4) A state criminal history record repository or the FBI:

247 (a) may charge a fee, in accordance with applicable law, for handling a request
248 involving fingerprint processing for noncriminal justice purposes; and

249 (b) may not charge a fee for providing criminal history records in response to an
250 electronic request for a record that does not involve a request to process fingerprints.

251 (5) (a) If a state criminal history record repository cannot positively identify the subject
252 of a record request made for noncriminal justice purposes, the request, together with
253 fingerprints or other approved identifying information, shall be forwarded to the FBI for a
254 search of the national indices.

255 (b) If, with respect to a request forwarded by a state criminal history record repository
256 under Subsection (5)(a), the FBI positively identifies the subject as having a III System-indexed
257 record or records:

258 (i) the FBI shall advise the state criminal history record repository; and

259 (ii) the state criminal history record repository shall be entitled to obtain the additional
260 criminal history record information from the FBI or other state criminal history record
261 repositories.

262 Section 6. Section **53-19-106** is enacted to read:

263 **53-19-106. Compact council -- Establishment -- Organization -- Membership --**
264 **Meetings -- Quorum -- Rules, procedure, and standards -- Assistance from FBI --**
265 **Committees.**

266 (1) (a) There is established a compact council, which shall have the authority to
267 promulgated rules and procedures governing the use of the III System for noncriminal justice
268 purposes, not to conflict with FBI administration of the III System for criminal justice
269 purposes.

270 (b) The council shall:

271 (i) continue in existence as long as this compact remains in effect;

272 (ii) be located, for administrative purposes, within the FBI; and

273 (iii) be organized and hold the council's first meeting as soon as practicable after the
274 effective date of this compact.

275 (2) The council shall be composed of 15 members, each of whom shall be appointed by

276 the attorney general, as follows:

277 (a) nine members, each of whom shall serve a two-year term, and who shall be selected
278 from among the compact officers of party states based on the recommendation of the compact
279 officers of all party states, except that, in the absence of the requisite number of compact
280 officers available to serve, the chief administrators of the criminal history record repositories of
281 nonparty states shall be eligible to serve on an interim basis;

282 (b) two at-large members, nominated by the director of the FBI, each of whom shall
283 serve a three-year term, of whom:

284 (i) one shall be a representative of the criminal justice agencies of the federal
285 government, but may not be an employee of the FBI; and

286 (ii) one shall be a representative of the noncriminal justice agencies of the federal
287 government;

288 (c) two at-large members, nominated by the chair of the council, once the chairman is
289 elected pursuant to Section 53-19-106, each of whom shall serve a three-year term, of whom:

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

291 (ii) one shall be a representative of state or local noncriminal justice agencies;

292 (d) one member, who shall serve a three-year term, and who shall simultaneously be a
293 member of the FBI's advisory policy board on criminal justice information services, nominated
294 by the membership of that policy board; and

295 (e) one member, nominated by the director of the FBI, who shall serve a three-year
296 term, and who shall be an employee of the FBI.

297 (3) (a) From its membership, the council shall elect a chair and a vice chair of the
298 council, respectively. Both the chair and vice chair of the council:

299 (i) shall be a compact officer, unless there is no compact officer on the council who is
300 willing to serve, in which case the chair may be an at-large member; and

301 (ii) shall serve a two-year term and may be reelected to only one additional two-year
302 term.

303 (b) The vice chair of the council shall serve as the chair of the council in the absence of
304 the chair.

305 (4) (a) The council shall meet at least once each year at the call of the chair. Each
306 meeting of the council shall be open to the public. The council shall provide prior public notice

307 in the Federal Register of each meeting of the council, including the matters to be addressed at
308 the meeting.

309 (b) A majority of the council or any committee of the council shall constitute a quorum
310 of the council or of the committee, respectively, for the conduct of business. A lesser number
311 may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

312 (5) The council shall make available for public inspection and copying at the council
313 office within the FBI, and shall publish in the Federal Register, any rules, procedures, or
314 standards established by the council.

315 (6) The council may request from the FBI any reports, studies, statistics, or other
316 information or materials the council determines to be necessary to enable the council to
317 perform the council's duties under this compact. The FBI, to the extent authorized by law, may
318 provide any assistance or information upon a request.

319 (7) The chair may establish committees necessary to carry out this compact and may
320 prescribe their membership, responsibilities, and duration.

321 Section 7. Section **53-19-107** is enacted to read:

322 **53-19-107. Ratification compact.**

323 This compact shall take effect upon being entered into by two or more states as between
324 those states and the federal government. Upon subsequent entering into this compact by
325 additional states, it shall become effective among those states and the federal government and
326 each party state that has previously ratified it. When ratified, this compact shall have the full
327 force and effect of law within the ratifying jurisdictions. The form of ratification shall be in
328 accordance with the laws of the executing state.

329 Section 8. Section **53-19-108** is enacted to read:

330 **53-19-108. Miscellaneous provisions -- Relation of compact to FBI activities -- No**
331 **authority for nonappropriated expenditures.**

332 (1) Administration of this compact may not interfere with the management and control
333 of the director of the FBI over the FBI's collection and dissemination of criminal history
334 records and the advisory function of the FBI's advisory policy board chartered under 5 U.S.C.
335 App. 2, Federal Advisory Committee Act, for all purposes other than noncriminal justice.

336 (2) Nothing in this compact shall require the FBI to obligate or expend funds beyond
337 those appropriated to the FBI.

338 (3) Nothing in this compact shall diminish or lessen the obligations, responsibilities,
339 and authorities of any state, whether a party state or a nonparty state, or of any criminal history
340 record repository or other subdivision or component of a criminal history record repository,
341 under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies
342 Appropriation Act, 1973, Pub. L. No. 92-544, or regulations and guidelines promulgated under
343 the act, including the rules and procedures promulgated by the council under Section
344 53-19-106, regarding the use and dissemination of criminal history records and information.

345 Section 9. Section **53-19-109** is enacted to read:

346 **53-19-109. Renunciation -- Effect.**

347 (1) This compact shall bind each party state until renounced by the party state.

348 (2) Any renunciation of this compact by a party state shall:

349 (a) be effected in the same manner by which the party state ratified this compact; and

350 (b) become effective 180 days after written notice of renunciation is provided by the
351 party state to each other party state and to the federal government.

352 Section 10. Section **53-19-110** is enacted to read:

353 **53-19-110. Severability.**

354 The provisions of this compact shall be severable, and if any phrase, clause, sentence,
355 or provision of this compact is declared to be contrary to the constitution of any participating
356 state, or to the Constitution of the United States, or the applicability to any government,
357 agency, person, or circumstance is held invalid, the validity of the remainder of this compact
358 and the applicability to any government, agency, person, or circumstance is not affected. If a
359 portion of this compact is held contrary to the constitution of any party state, all other portions
360 of this compact shall remain in full force and effect as to the remaining party states and in full
361 force and effect as to the party state affected, as to all other provisions.

362 Section 11. Section **53-19-111** is enacted to read:

363 **53-19-111. Adjudication of disputes -- Duties of FBI -- Right of appeal.**

364 (1) The council shall:

365 (a) have initial authority to make determinations with respect to any dispute regarding:

366 (i) interpretation of this compact;

367 (ii) any rule or standard established by the council pursuant to Section 53-19-105; and

368 (iii) any dispute or controversy between any parties to this compact; and

369 (b) hold a hearing concerning any dispute described in Subsection (1) at a regularly
370 scheduled meeting of the council and only render a decision based upon a majority vote of the
371 members of the council. The decision shall be published pursuant to the requirements of
372 Section [53-19-106](#).

373 (2) The FBI shall exercise immediate and necessary action to preserve the integrity of
374 the III System, maintain system policy and standards, protect the accuracy and privacy of
375 records, and to prevent abuses, until the council holds a hearing on the matters.

376 (3) The FBI or a party state may appeal any decision of the council to the attorney
377 general, and file suit in the appropriate district court of the United States, which shall have
378 original jurisdiction of all cases or controversies arising under this compact. Any suit arising
379 under this compact and initiated in a state court shall be removed to the appropriate district
380 court of the United States in the manner provided by 28 U.S.C. Sec. 1446, or other statutory
381 authority.

Legislative Review Note
Office of Legislative Research and General Counsel