

## #7: States' Participation in the National Systems and Programs that Facilitate Interstate Exchange of Criminal History Records

By Becki Goggins

This is the seventh in a series of blogs that explore findings from the *Survey of State Criminal History Information Systems, 2018*, published by the U.S. Department of Justice Bureau of Justice Statistics (BJS). This biennial national survey represents the most current and detailed snapshot of the data, trends, policies, practices, and operations of criminal history records repositories nationwide. SEARCH, with the support of BJS, has conducted these surveys since 1989. This blog explores participation by the states in national systems and programs that facilitate interstate criminal history records exchange.

Since 1998, SEARCH has published information on its biennial survey of administrators of state criminal history records repositories regarding the level of state participation in three national systems and programs:

- the **Interstate Identification Index**,
- the **National Crime Prevention and Privacy Compact**, and
- the **National Fingerprint File**.

### Interstate Identification Index (III)

The [Interstate Identification Index](#) is a fingerprint-based “index-pointer” system that is administered by the FBI **in which all states and the District of Columbia participate**. As an *index-pointer system*, III — also referred to as the “Triple I” — enables the interstate identification and exchange of computerized criminal history record files of the FBI with the centralized state criminal history files maintained by each participating state. This system serves as the vehicle for data sharing and integration nationwide and it includes arrest and disposition information for individuals charged with felonies and reportable misdemeanors under state or federal law. Some states also make custodial information (i.e., incarceration, probation, and parole data) available through the Index.

Criminal justice agencies can query III to determine whether a person has a criminal history record in other jurisdictions and, using the

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#### Editor's Note:

Learn more about the [biennial national survey](#) of state criminal history information systems, conducted by SEARCH and published by BJS

See our [blog](#) announcing the release of the 2018 survey

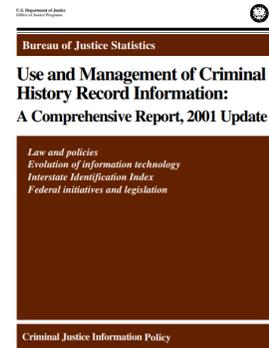
Access the 2018 [survey](#)

See other blogs in this series, which highlight critical trends and metrics

subject's State Identification Number (SID) or Universal Control Number (UCN), the data can be automatically retrieved and forwarded to the requesting agency. Users can refine their search with a variety of identifiers, including name, date of birth, race, sex, UCNs, and SIDs.

## National Crime Prevention and Privacy Compact

In 1993, the Bureau of Justice Statistics (BJS) published *Use and Management of Criminal History Record Information: A Comprehensive Report*, which was prepared by SEARCH.<sup>1</sup> The report provided the first comprehensive description of the nation's interrelated network of federal, state, and local information systems that make criminal history record information (CHRI) available to both criminal justice and non-criminal justice users, including the benefits of III participation. In 1993, the III was strictly being used for criminal justice purposes, but pilot testing by the FBI, Florida, and North Carolina revealed how effective it could be to share data for noncriminal justice purposes.



Not all states were initially participating in III. SEARCH recognized the extraordinary value of making CHRI available for noncriminal justice purposes through III, but there was no existing legal framework to enable sharing nationwide. Each state has laws and policies strictly governing the use and dissemination of CHRI for noncriminal justice purposes. Rather than try to amend the laws of every jurisdiction to create uniform and universal policies for sharing criminal history information, SEARCH and the National Crime Information Center (NCIC) Advisory Policy Board (APB)<sup>2</sup> recommended the creation of an interstate compact that states could endorse to facilitate data sharing for authorized purposes, while enabling states to apply their own laws and regulations regarding use and dissemination. Thus, the III Compact was born.

The guiding principles of the proposed compact included the following:

- The compact would bind the FBI and ratifying States to participate in the noncriminal justice access program of III in accordance with the compact and established system policies;
- Only persons who were already authorized to access and query or obtain records maintained by the FBI would be authorized to access records through the III system;
- Participating State repositories would be authorized and required to make all unsealed criminal history records available in response to authorized noncriminal justice requests;

<sup>1</sup> Robert R. Belair and Paul L. Woodard, *Use and Management of Criminal History Record Information: A Comprehensive Report* (Washington, DC: Bureau of Justice Statistics, 1993).

<sup>2</sup> The NCIC APB transformed into the Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Advisory Policy Board (APB), known generally as the CJIS APB. Details regarding the CJIS Advisory Process are available at <https://www.fbi.gov/services/cjis/the-cjis-advisory-process>.

- All noncriminal justice access to the system would be channeled through the FBI and the State repositories and would **be based upon fingerprint identification** of record subjects to ensure positive identification;
- Release and use of information obtained through the III system for noncriminal justice purposes would be governed by the laws and regulations of the *receiving* States, and repositories would be required to screen III record responses, apply their jurisdiction’s legal prescriptions, and redact any information that cannot legally be shared within the State; and
- The compact would *establish a Compact Council*, comprised of Federal and State officials who had executed the Compact and other members representing user interests, to establish operating policies for noncriminal justice uses of the III system.<sup>3</sup>

**In 2014, SEARCH reaffirmed its commitment to the value of using biometric information as a foundation for criminal and civil records exchange and criminal investigations.** According to the [policy statements](#) adopted by SEARCH Members, “Biometric identifiers are the distinctive, measurable physiological characteristics used to uniquely identify individuals. Relying on positive personally identifying biometrics to match individuals with their criminal records provides both data integrity and privacy protection. With positive identification as the foundation, the States and the FBI are partners in a decentralized system that enables electronic sharing of information to rapidly construct a comprehensive national criminal history record.”



The SEARCH policy statement regarding biometrics also states:

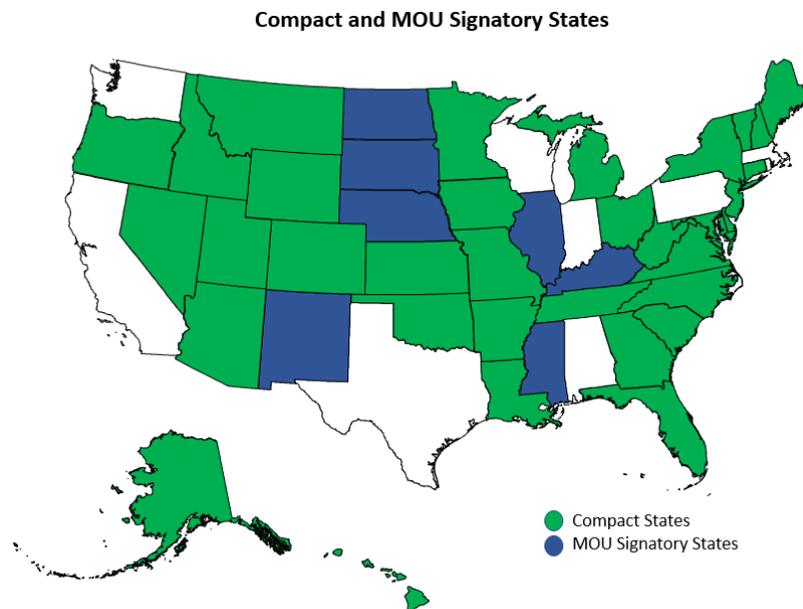
- Accurately identifying individuals who are subject to background checks for employment, licensing, or other noncriminal justice purposes is critical to public safety and for national security, and to protect vulnerable populations.
- Accurately identifying individuals is fundamental to the fair treatment and civil liberties of record subjects and to the effective and efficient functioning of the justice system.

SEARCH is currently reviewing its corporate policy statements and is expected to reiterate the fundamental importance of providing biometrically based responses to requests for CHRI for noncriminal justice purposes.<sup>4</sup>

<sup>3</sup> Belair and Woodard, *supra* note 1, p. 63. SEARCH updated and refreshed this report in 2001, following Congressional approval and ratification of the Compact. Robert R. Belair, Paul L. Woodard, and Eric C. Johnson, [Use and Management of Criminal History Record Information: A Comprehensive Report, 2001 Update](#) (Washington, DC: Bureau of Justice Statistics, 2001).

<sup>4</sup> See [www.search.org/files/pdf/MG-Adopted\\_Policy\\_Statements.pdf](http://www.search.org/files/pdf/MG-Adopted_Policy_Statements.pdf).

The National Crime Prevention and Privacy Compact ([Compact](#)) was signed into law in 1998 and became effective in 1999 when the first two states (Montana and Georgia) ratified the Compact.<sup>5</sup> By July 2019, 34 states had ratified the Compact and 10 other states, American Samoa, Guam, and Puerto Rico have signed Memoranda of Understanding (MOU) with the Compact as voluntary recognition and affirmation of the Compact Council’s authority to promulgate rules, procedures, and standards for the noncriminal justice use of the III (Figure 1).<sup>6</sup>



**Figure 1**

## Lack of Compact Participation

There are several reasons why states have not ratified the Compact. Compact ratification requires enabling state legislation and it is often difficult to pass new bills, especially if legislators do not understand the importance of the Compact in promoting non-criminal justice information sharing

<sup>5</sup> Resource materials and background information regarding the National Crime Prevention and Privacy Compact is available at Bureau of Justice Statistics, *National Crime Prevention and Privacy Compact: Resource Materials* (Washington, DC: Bureau of Justice Statistics, 1998) NCJ-171671.

<https://www.bjs.gov/content/pub/pdf/ncppcrm.pdf>

<sup>6</sup> A state may enter into a Memorandum of Understanding (MOU) with the Council, thereby indicating the state's support of the Compact and Compact Council’s rules, policies, and procedures relating to the noncriminal justice use of the III without actually ratifying Compact legislation. The approval process for signing an MOU is quicker than the process of ratifying the Compact. An MOU signatory can support all III System purpose codes to exchange criminal history record information in the same manner as Compact signatories. An MOU signatory state does not have a voice in the Council process and may not fully implement the Compact until ratification. Source: The National Crime Prevention and Privacy Compact, [Frequently Asked Questions Regarding the National Crime Prevention and Privacy Compact Act of 1998](#), Version 5.2, November 2016, Non-substantive updates incorporated in July 2019, Page 9.

for the protection of all United States residents. With hundreds of new bills being introduced each year, passage of enabling Compact legislation may simply not be enough of a legislative priority to ensure passage. Some states may also be reluctant to pass legislation if there is the perception that it will somehow give the federal government more control over state information sharing activities related to criminal history data. There may be a perception that participation in the Compact represents a “slippery slope” that will lead to increased access to CHRI, despite the fact that there are strict state and federal laws pertaining to the use of criminal records that are in no way impacted by enacting the Compact.

States may also be concerned that they will incur costs to implement the technology upgrades required to join the Compact. When a state ratifies the Compact, one of the conditions of participation is that the state must respond to all National Crime Information Center (NCIC) purpose codes. Purpose codes identify the nature of the III inquiry to enable the repository to provide the information that the requestor is legally authorized to receive. For instance, responses to **Purpose Code S** (National Security) must include all records available through the state repository, including sealed, juvenile and non-conviction records. Responses to **Purpose Code I** (Non-criminal Justice Employment and Licensing) are more limited and vary by individual state statute. Purpose Code I responses typically do not include sealed records (except in limited situations where licensing boards have explicit authority and where licensees are working with certain vulnerable populations). Purpose Code I responses may also exclude certain arrests without dispositions and non-conviction data. If a state does not already have the ability to respond to all purpose codes, they may have to make expensive programming changes to support new types of transactions.

Another reason a state may not wish to join the Compact is a perception that there is simply no need. For non-Compact states, the FBI will respond to non-criminal justice requests on behalf of the state based on the criminal history records that were voluntarily submitted to the FBI, in the event the state does not support a specific purpose code. If a state is satisfied that all of their data is being successfully replicated to the FBI, there may be no appetite to support more purpose codes when the FBI is already responding on their behalf. The danger of this approach is when states have fingerprints on file that are only available at the state due to fingerprint images that do not meet the quality thresholds set by the FBI.

States may also see little need to join the Compact if they already have the ability to respond to all purposes codes, and they do not have state laws prohibiting the sharing of CHRI for non-criminal justice purposes that is normally facilitated through adoption of the Compact. Joining the Compact could still benefit the state, as they would no longer have the overhead of submitting duplicate CHRI records to the FBI once they achieve NFF status. But if the current submission and synchronization process works well within a state, they may be reluctant to try to “fix” something that is not broken.

## National Fingerprint File

Since its inception in 1969 as a consortium of six states (CA, NY, MI, MN, AZ, MD) seeking to electronically share criminal history records, SEARCH has advocated for a decentralized system of maintaining CHRI, where states are the authoritative source of information.<sup>7</sup> SEARCH recognized the value of states controlling both policy and operational decision-making regarding how criminal history records are maintained, and believes that the **states are best suited to provide the most accurate, timely, and complete records**.<sup>8</sup> These foundational concepts have enabled the states and the FBI to work together to promote participation in the National Fingerprint File ([NFF](#)) program, in which participating states provide responses to **all** CHRI requests and FBI resources function as a pointer to state-maintained records. NFF participation is the final step in decentralizing criminal history records after a state has ratified the Compact.

As previously noted, the FBI responds to non-criminal justice background check inquiries on behalf of the state, if the state does not support the purpose code that is provided for the request. FBI responses are based on information that is voluntarily provided by states to the III, and these records may not include all of the data available at the state level. For NFF states, the FBI always reaches out to the state to respond to all inquiries, ensuring that all information available at the state level is included in the reply.

There are significant benefits to states to NFF participation:

- Since states are responding directly to all criminal history inquiries, they have complete transparency on when their records are being used and for what purposes. When the FBI responds on a state's behalf, they do not necessarily know when their information has been disseminated.
- By participating in the NFF program, states do not have to submit duplicate arrest and disposition records to the FBI. When a state updates dispositions or seals or expunges a record, there is no need to notify the FBI, as the state is solely responsible for maintaining their data. These are the biggest operational advantages of participating in the NFF.
- Maintaining records at their source greatly advances accurate, timely, and complete reporting. Since states regularly interface with the justice and public safety agencies that contribute the data that collectively comprise the criminal history record, they are particularly well-suited and properly situated to ensure timely, accurate, and complete reporting on authorized queries.

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<sup>7</sup> See generally, Gordon Karl Zenk, *Project SEARCH: The Struggle for Control of Criminal Information in America* (Westport, CT: Greenwood Press, 1979).

<sup>8</sup> SEARCH Group, Inc., *Technical Report 13: Standards for the Security and Privacy of Criminal History Record Information, 3rd Edition* (Sacramento, CA: SEARCH Group, Inc., July 1988), Standard 1.1 and 1.2—State Authority, pp. 7-8, at <https://www.search.org/files/pdf/TechnicalReport13-SEARCH.pdf>.

## National Fingerprint File (NFF) Participants

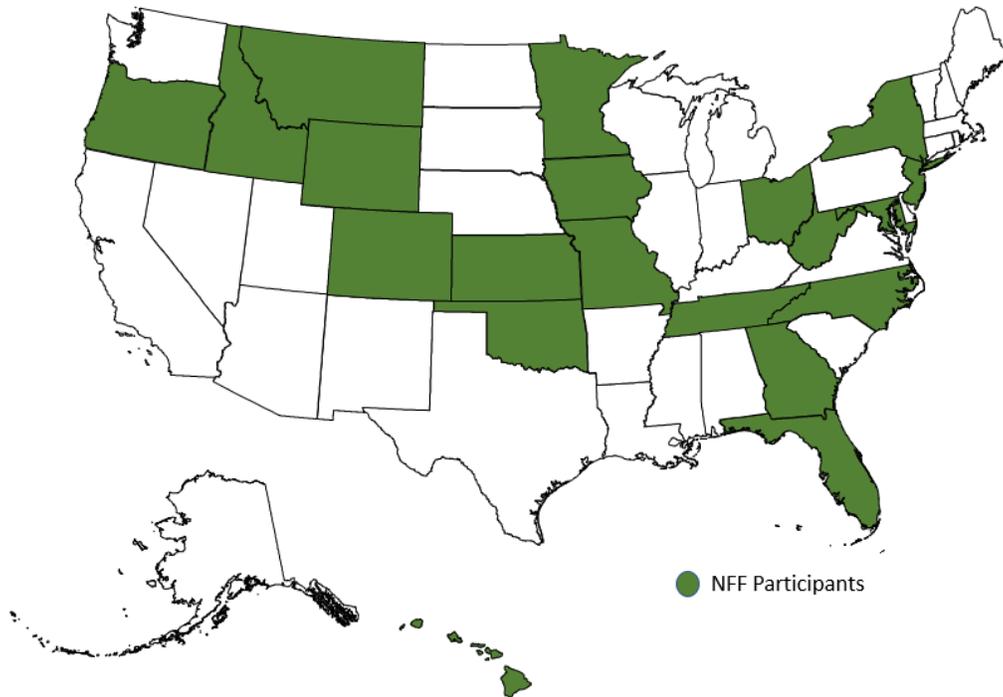


Figure 2

### Lack of NFF Participation

While 34 states have ratified the Compact (with an additional 10 states and territories signing the MOU), only 20 states fully participate in the NFF (Figure 2). One of the reasons is that states with older Automated Fingerprint Identification Systems (AFIS) may not have the technical capacity to meet all of the qualifications for NFF participation established by the Compact Council. States with older, legacy AFIS systems might not be able to meet the fingerprint identification standards required for full participation, and states may not be willing to undertake a very expensive AFIS upgrade or replacement project simply to participate in the NFF. Rather, states may elect to wait until their next scheduled AFIS enhancement to test with NGI to become compliant with the NFF qualifications.

As noted earlier, in order to become an NFF state, a state must be able to respond to **all** requests for CHRI for records originating from within the state. In many cases, even though a state has ratified the Compact, the FBI still maintains pseudo-pointer records for the state. Pseudo-pointer records refer to CHRI records that originated from a state, but the state does not maintain the biometric information at the state identification bureau to support the CHRI record. Pseudo-pointer records may exist because records were submitted directly to the FBI before the state established its own repository. Additionally, many years ago, when fingerprints were primarily captured through an ink-and-roll process on physical fingerprint cards, it was common practice to capture three sets of

fingerprints — one for the local arresting agency, one for the state, and one to be forwarded to the FBI. This meant that often the FBI was able to classify fingerprints, but the state was unable to classify them as they did not receive the highest quality set of fingerprint impressions. This may have resulted in the creation of a biometrically supported record at the FBI, but not the state.

The FBI encourages states to take control of all their own records to promote participation in the NFF and will work with states to provide the necessary fingerprint image files so that pseudo-pointers can be replaced with state pointers within the III. This can be a time-consuming process, however, so not all Compact states have been able to take control of all their records. In some cases, states may simply prefer not to take control of what are typically very old records, and it is easier to simply allow the FBI to continue to maintain them and provide responses on behalf of the state when there is a hit on a pseudo pointer record.

## Conclusion

SEARCH encourages states to join the Compact Council, and to participate in the NFF to fulfill the vision of a fully decentralized CHRI system of records as the states represent the most timely, accurate, and complete source of criminal history data. Since 1969, this has been the vision of SEARCH, and we invite any states wishing to learn more to please contact us for additional information or assistance.



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### About the Author

Ms. Becki Goggins is Director of Law and Policy at SEARCH. She oversees our work in the areas of criminal history records, development of laws and policies concerning the use of justice information and protection of privacy, implementation of evidence-based practices, and the use of technology to improve justice information sharing. As an organization, SEARCH was originally founded to facilitate the exchange of criminal history record information (CHRI) between the states.

Learn more about SEARCH's work with [criminal history records](#) and the [surveys we conduct](#) on CHRI issues.

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*SEARCH staff continue to analyze the results of the 2018 Survey with the intention of making the data more accessible by drafting blogs to explain and provide context for the survey findings. If you have suggestions for topics you would like to see highlighted, or if you have specific questions about survey findings, please contact Becki Goggins ([becki@search.org](mailto:becki@search.org)) or Dennis DeBacco ([dennis@search.org](mailto:dennis@search.org)).*