

Court Services and Offender Supervision Agency

Pt. 812, App. A

special police, or fire department using a deadly or dangerous weapon;

(8) D.C. Code section 22-406—mayhem or maliciously disfiguring;

(9) D.C. Code section 22-801—burglary;

(10) D.C. Code section 22-1101—cruelty to children;

(11) D.C. Code section 22-1312(b)—lewd, indecent, or obscene acts (knowingly in the presence of a child under the age of 16 years);

(12) D.C. Code section 22-1901—incest;

(13) D.C. Code section 22-2001—kidnapping;

(14) D.C. Code section 22-2101—murder in the first degree;

(15) D.C. Code section 22-2102—murder in the first degree—obstructing railroad;

(16) D.C. Code section 22-2103—murder in the second degree;

(17) D.C. Code section 22-2105—voluntary manslaughter only;

(18) D.C. Code section 22-2106—murder of a law enforcement officer;

(19) D.C. Code section 22-2201—certain obscene activities involving minors;

(20) D.C. Code section 22-2704—abducting, enticing, or harboring a child for prostitution;

(21) D.C. Code section 22-2705—pandering; inducing or compelling an individual to engage in prostitution;

(22) D.C. Code section 22-2706—compelling an individual to live life of prostitution against his or her will;

(23) D.C. Code section 22-2708—causing spouse to live in prostitution;

(24) D.C. Code section 22-2709—detaining an individual in disorderly house for debt there contracted;

(25) D.C. Code section 22-2801—robbery;

(26) D.C. Code section 22-2802—attempted robbery;

(27) D.C. Code section 22-2803—carjacking;

(28) D.C. Code section 22-3002—first degree sexual abuse;

(29) D.C. Code section 22-3003—second degree sexual abuse;

(30) D.C. Code section 22-3004—third degree sexual abuse;

(31) D.C. Code section 22-3005—fourth degree sexual abuse;

(32) D.C. Code section 22-3006—misdemeanor sexual abuse;

(33) D.C. Code section 22-3008—first degree child sexual abuse;

(34) D.C. Code section 22-3009—second degree child sexual abuse;

(35) D.C. Code section 22-3010—enticing a child;

(36) D.C. Code section 22-3013—first degree sexual abuse of a ward;

(37) D.C. Code section 22-3014—second degree sexual abuse of a ward;

(38) D.C. Code section 22-3015—first degree sexual abuse of a patient or client;

(39) D.C. Code section 22-3016—second degree sexual abuse of a patient or client;

(40) D.C. Code section 22-3018—attempts to commit sexual offenses;

(41) D.C. Code section 22-3102—sexual performances using minors;

(42) D.C. Code section 22-3801(a) [repealed May 23, 1995]—indecent acts with children;

(43) D.C. Code section 22-3801(b) [repealed May 23, 1995]—enticing a child;

(44) D.C. Code section 22-3802(a) [repealed May 23, 1995]—sodomy where the offense was forcible or committed against a minor;

(45) D.C. Code section 22-4801 [repealed May 23, 1995]—forcible rape, carnal knowledge or statutory rape;

(46) D.C. Code section 22-1803 or section 22-1805a—attempt or conspiracy to commit any of the offenses listed in items (1) through (45) of this table.

[67 FR 54100, Aug. 21, 2002, as amended at 68 FR 19742, Apr. 22, 2003]

CHAPTER IX—NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

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PART 901—FINGERPRINT SUBMISSION REQUIREMENTS

Sec.

901.1 Purpose and authority.

901.2 Interpretation of fingerprint submission requirements.

901.3 Approval of delayed fingerprint submission requests.

901.4 Audits.

AUTHORITY: 42 U.S.C. 14616.

SOURCE: 70 FR 36027, June 22, 2005, unless otherwise noted.

§ 901.1 Purpose and authority.

The Compact Council is established pursuant to the National Crime Prevention and Privacy Compact (Compact), title 42, U.S.C., chapter 140, subchapter II, section 14616. The purpose of these provisions is to interpret the Compact, as it applies to the required submission of fingerprints, along with requests for Interstate Identification Index (III) records, by agencies authorized to access and receive criminal history records under Public Law 92-544, and to establish protocols and procedures applicable to the III and its use for noncriminal justice purposes.

§ 901.2 Interpretation of fingerprint submission requirements.

(a) Article V of the Compact requires the submission of fingerprints or other approved forms of positive identification with requests for criminal history record checks for noncriminal justice purposes. The requirement for the submission of fingerprints may be satisfied in two ways:

(1) The fingerprints should be submitted contemporaneously with the request for criminal history information, or

(2) For purposes approved by the Compact Council, a delayed submission of fingerprints may be permissible under exigent circumstances.

(b) A preliminary III name based check may be made pending the receipt of the delayed submission of the fingerprints. The state repository may authorize terminal access to authorized agencies designated by the state, to enable them to conduct such checks. Such access must be made pursuant to the security policy set forth by the state's Criminal Justice Information

Services (CJIS) Systems Agency (formerly known as the Control Terminal Agency).

§ 901.3 Approval of delayed fingerprint submission requests.

(a) A state may, based upon exigent circumstances, apply for delayed submission of fingerprints supporting requests for III records by agencies authorized to access and receive criminal history records under Public Law 92-544. Such applications must be sent to the Compact Council Chairman and include information sufficient to fully describe the emergency nature of the situation in which delayed submission authority is being sought, the risk to health and safety of the individuals involved, and the reasons why the submission of fingerprints contemporaneously with the search request is not feasible.

(b) In evaluating requests for delayed submissions, the Compact Council must utilize the following criteria:

(1) The risk to health and safety; and
(2) The emergency nature of the request.

(c) Upon approval of the application by the Compact Council, the authorized agency may conduct a III name check pending submission of the fingerprints. The fingerprints must be submitted within the time frame specified by the Compact Council. For the purposes of this part, "time frame" means the number of days that elapse between the date on which the name search was conducted and the date on which the state repository either positively identifies the fingerprint subject or forwards the fingerprints to the FBI or the date a Federal agency forwards the fingerprints to the FBI.

(d) Once a specific proposal has been approved by the Compact Council, another state may apply for delayed fingerprint submission consistent with the approved proposal, provided that the state has a related Public Law 92-544 approved state statute, by submitting the application to the FBI Compact Officer, 1000 Custer Hollow Road, Module C-3, Clarksburg, WV 26306-0001.

(e) Part 901 is also applicable to any federal agency authorized to access criminal history records pursuant to

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Federal statute or Executive Order for noncriminal justice purposes.

§ 901.4 Audits.

(a) Audits of authorized State agencies that access the III System shall be conducted by the State's Compact Officer or, in the absence of a Compact Officer, the chief administrator for the criminal history record repository. The responsible Federal CJIS Systems Officer shall ensure that similar audits are conducted of authorized Federal agencies. Such audits shall be conducted to verify adherence to the provisions of part 901 and the FBI's CJIS Security Policy.

(b) Authorized agencies shall cause to be collected an appropriate record of each instance of III System access through a manual or electronic log. The log shall be maintained for a minimum one-year period to facilitate the audits and compliance reviews. Such records shall be maintained in accordance with the CJIS Security Policy. (For information on this security policy, contact your CJIS Systems Officer.)

(c) The audit and compliance reviews must include mechanisms to determine whether fingerprints were submitted within the time frame specified by the Compact Council.

(d) In addition to the audits as stated above, the FBI CJIS Audit staff shall also conduct routine systematic compliance reviews of State repositories, Federal agencies, and as necessary other authorized III System user agencies.

PART 902—DISPUTE ADJUDICATION PROCEDURES

Sec.

902.1 Purpose and authority.

902.2 Raising disputes.

902.3 Referral to Dispute Resolution Committee.

902.4 Action by Council Chairman.

902.5 Hearing procedures.

902.6 Appeal to the Attorney General.

902.7 Court action.

AUTHORITY: 42 U.S.C. 14616.

SOURCE: 68 FR 66341, Nov. 26, 2003, unless otherwise noted.

28 CFR Ch. IX (7-1-05 Edition)

§ 902.1 Purpose and authority.

The purpose of Part 902 is to establish protocols and procedures for the adjudication of disputes by the Compact Council. The Compact Council is established pursuant to the National Crime Prevention and Privacy Compact (Compact), Title 42, U.S.C., Chapter 140, Subchapter II, Section 14616.

§ 902.2 Raising disputes.

(a) Cognizable disputes may be based upon:

(1) A claim that the Council has misinterpreted the Compact or one of the Council's rules or standards established under Article VI of the Compact;

(2) A claim that the Council has exceeded its authority under the Compact;

(3) A claim that in establishing a rule or standard or in taking other action, the Council has failed to comply with its bylaws or other applicable procedures established by the Council; or the rule, standard or action is not otherwise in accordance with applicable law; or

(4) A claim by a Compact Party that another Compact Party has failed to comply with a provision of the Compact or with any rule or standard established by the Council.

(b) Only a Party State, the FBI, or a person, organization, or government entity directly aggrieved by the Council's interpretation of the Compact or any rule or standard established by the Council pursuant to the Compact, or in connection with a matter covered under Section 902.2(a)(4), may raise a cognizable dispute. Such disputants may request a hearing on a dispute by contacting the Compact Council Chairman in writing at the Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

(c) The Chairman may ask the requester for more particulars, supporting documentation or materials as the circumstances warrant.

(d) A dispute may not be based solely upon a disagreement with the merits (substantive wisdom or advisability) of a rule or standard validly established by the Council within the scope of its authority under the Compact. However, nothing in this rule prohibits further discussion of the merits of a rule

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or standard at any regularly scheduled Council meeting.

§ 902.3 Referral to Dispute Resolution Committee.

(a) The five person Dispute Resolution Committee membership shall be determined according to Compact Article VI (g). Should a dispute arise with an apparent conflict of interest between the disputant and a Committee member, the Committee member shall recuse himself/herself and the Compact Council Chairman shall determine an appropriate substitute for that particular dispute. In the case when the Compact Council Chairman is the committee member with the conflict, the Chairman shall take appropriate steps to appoint a replacement that resolves the conflict.

(b) The Compact Council Chairman shall refer the dispute, together with all supporting documents and materials, to the Council's Dispute Resolution Committee.

(c) The Dispute Resolution Committee shall recommend hearings to all disputants who raise issues that are not clearly frivolous or without merit. If the Committee recommends denying a hearing, it must articulate its reason or reasons for doing so in writing.

(d) The Dispute Resolution Committee shall consider the matter and:

(1) Refer it to the Council for a hearing;

(2) Recommend that the Council deny a hearing if the Committee concludes that the matter does not constitute a cognizable dispute under § 902.2(a); or

(3) Request more information from the person or organization raising the dispute or from other persons or organizations.

§ 902.4 Action by Council Chairman.

(a) The Chairman shall communicate the decision of the Dispute Resolution Committee to the person or organization that raised the dispute.

(b) If a hearing is not granted, the disputant may appeal this decision to the Attorney General. If the Attorney General believes the disputant has raised an issue that is not frivolous or without merit, the Attorney General may order the Compact Council Chairman to grant a hearing.

(c) If a hearing is granted, the Chairman shall:

(1) Include the dispute on the agenda of a scheduled meeting of the Council or, at the Chairman's discretion, schedule a special Council meeting;

(2) Notify the person or organization raising the dispute as to the date of the hearing and the rights of disputants under § 902.5 (Hearing Procedures); and

(3) Include the matter of the dispute in the prior public notice of the Council meeting required by Article VI (d)(1) of the Compact.

§ 902.5 Hearing procedures.

(a) The hearing shall be open to the public pursuant to Article VI (d)(1) of the Compact.

(b) The Council Chairman or his/her designee shall preside over the hearing and may limit the number of, and the length of time allowed to, presenters or witnesses.

(c) The person or organization raising the dispute or a Compact Party charged under the provisions of § 902.2(a)(4) shall be entitled to:

(1) File additional written materials with the Council at least ten days prior to the hearing;

(2) Appear at the hearing, in person and/or by counsel;

(3) Make an oral presentation; and

(4) Call and cross-examine witnesses.

(d) Subject to the discretion of the Chairman, other persons and organizations may be permitted to appear and make oral presentations at the hearing or provide written materials to the Council concerning the dispute.

(e) All Council members, including a member or members who raised the dispute that is the subject of the hearing shall be entitled to participate fully in the hearing and vote on the final Council decision concerning the dispute.

(f) The Council shall, if necessary, continue the hearing to a subsequent Council meeting.

(g) Summary minutes of the hearing shall be made and transcribed and shall be available for inspection by any person at the Council office within the Federal Bureau of Investigation.

(h) The proceedings of the hearing shall be recorded and, as necessary, transcribed. A transcript of the hearing

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will be made and forwarded to the Attorney General if an appeal is filed pursuant to Section (c) of Article XI of the Compact.

(i) The Council's decision on the dispute shall be based upon a majority vote of Council members or their proxies present (as per Compact Article VI and Council Bylaws) and voting at the hearing. The Council's decision on the dispute shall be published in the FEDERAL REGISTER as provided by Section (a)(2) of Article XI and Section (e) of Article VI.

(j) The Council Chairman shall advise Council members and hearing participants of the right of appeal provided by Section (c) of Article XI of the Compact.

§ 902.6 Appeal to the Attorney General.

(a) The Federal Bureau of Investigation or a Compact Party State may appeal the decision of the Council to the U.S. Attorney General pursuant to Section (c) of Article XI of the Compact.

(b) Appeals shall be filed and conducted pursuant to rules and procedures that may be established by the Attorney General.

(c) Appropriate notice of an appeal shall be communicated to the Council Chairman by the appealing party.

§ 902.7 Court action.

Pursuant to Section (c) of Article XI of the Compact, a decision by the Attorney General on an appeal under § 902.6 may be appealed by filing a suit seeking to have the decision reversed in the appropriate district court of the United States.

PART 904—STATE CRIMINAL HISTORY RECORD SCREENING STANDARDS

Sec.

904.1 Purpose and authority.

904.2 Interpretation of the criminal history record screening requirement.

904.3 State criminal history record screening standards.

AUTHORITY: 42 U.S.C. 14616.

SOURCE: 70 FR 36028, June 22, 2005, unless otherwise noted.

EFFECTIVE DATE NOTE: At 70 FR 36028, June 22, 2005, Part 904 was added, effective July 22, 2005.

28 CFR Ch. IX (7-1-05 Edition)

§ 904.1 Purpose and authority.

Pursuant to the National Crime Prevention and Privacy Compact (Compact), title 42, U.S.C., chapter 140, subchapter II, section 14616, Article IV (c), the Compact Council hereby establishes record screening standards for criminal history record information received by means of the III System for noncriminal justice purposes.

§ 904.2 Interpretation of the criminal history record screening requirement.

Compact Article IV(c) provides that "Any record obtained under this Compact may be used only for the official purposes for which the record was requested." Further, Article III(b)(1)(C) requires that each Party State appoint a Compact officer who shall "regulate the in-State use of records received by means of the III System from the FBI or from other Party States." To ensure compliance with this requirement, Compact Officers receiving records from the FBI or other Party States are specifically required to "ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate 'no record' response is communicated to the requesting official." Compact Article IV(c)(3).

§ 904.3 State criminal history record screening standards.

The following record screening standards relate to criminal history record information received for noncriminal justice purposes as a result of a national search subject to the Compact utilizing the III System.

(a) The State Criminal History Record Repository or an authorized agency in the receiving state will complete the record screening required under § 904.2 for all noncriminal justice purposes.

(b) Authorized officials performing record screening under § 904.3(a) shall screen the record to determine what information may legally be disseminated for the authorized purpose for which the record was requested. Such record screening will be conducted pursuant

to the receiving state's applicable statute, executive order, regulation, formal determination or directive of the state attorney general, or other applicable legal authority.

(c) If the state receiving the record has no law, regulation, executive order, state attorney general directive, or other legal authority providing guidance on the screening of criminal history record information received from the FBI or another state as a result of a national search, then the record screening under § 904.3(a) shall be performed in the same manner in which the state screens its own records for noncriminal justice purposes.

PART 906—OUTSOURCING OF NONCRIMINAL JUSTICE ADMINISTRATIVE FUNCTIONS

Sec.

906.1 Purpose and authority.

906.2 Third party handling of criminal history record information.

AUTHORITY: 42 U.S.C. 14616.

SOURCE: 69 FR 75245, Dec. 16, 2004, unless otherwise noted.

§ 906.1 Purpose and authority.

The purpose of this part 906 is to establish rules and procedures for third parties to perform noncriminal justice administrative functions involving access to Interstate Identification Index (III) information. The Compact Council is establishing this rule pursuant to the National Crime Prevention and Privacy Compact (Compact), title 42, U.S.C., chapter 140, subchapter II, section 14616. The scope of this rule is limited to noncriminal justice background checks in so far as they are governed by the provisions of the Compact as set forth in 42 U.S.C. 14614 and 14616.

§ 906.2 Third party handling of criminal history record information.

(a) Except as prohibited in paragraph (b) of this section, criminal history record information obtained from the III System for noncriminal justice purposes may be made available:

(1) To a governmental agency pursuant to a contract or agreement under which the agency performs activities or functions for another governmental

agency that is authorized to obtain criminal history record information by a federal statute, federal executive order or a state statute that has been approved by the United States Attorney General; and

(2) To a private contractor, or other nongovernmental entity or organization, pursuant to a contractual agreement under which the entity or organization performs activities or functions for a governmental agency authorized to obtain criminal history record information as identified in paragraph (a)(1) of this section or for a nongovernmental entity authorized to obtain such information by federal statute or executive order.

(b) Criminal history record information provided in response to fingerprint-based III System record requests initiated by authorized governmental agencies or nongovernmental entities for noncriminal justice purposes may be made available to contracting agencies or organizations manually or electronically for such authorized purposes. Such contractors, agencies, or organizations shall not be permitted to have direct access to the III System by computer terminal or other automated means which would enable them to initiate record requests, provided however, the foregoing restriction shall not apply with respect to: (1) Persons, agencies, or organizations that may enter into contracts with the FBI or State criminal history record repositories for the performance of authorized functions requiring direct access to criminal history record information; and (2) any direct access to records covered by 42 U.S.C. 14614(b).

(c) The contracts or agreements authorized by paragraphs (a)(1) and (a)(2) of this section shall specifically describe the purposes for which criminal history record information may be made available to the contractor and shall incorporate by reference a security and management control outsourcing standard approved by the Compact Council after consultation with the United States Attorney General. The security and management control outsourcing standard shall specifically authorize access to criminal history record information; limit the use of the information to the purposes

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for which it is provided; prohibit retention and/or dissemination of the information except as specifically authorized in the security and management control outsourcing standard; ensure the security and confidentiality of the information; provide for audits and sanctions; provide conditions for termination of the contractual agreement; and contain such other provisions as the Compact Council, after consultation with the United States Attorney General, may require.

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(d) The exchange of criminal history record information with an authorized governmental or nongovernmental entity or contractor pursuant to this part is subject to cancellation for use, retention or dissemination of the information in violation of federal statute, regulation or executive order, or rule, procedure or standard established by the Compact Council in consultation with the United States Attorney General.