

**ORIGINAL**

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA  
JUDICIARY COMMITTEE  
TASK FORCE ON CIVIL JUSTICE LAW HEARING

IN RE: HOUSE BILL 1708, NATIONAL CRIME PREVENTION AND  
PRIVACY COMPACT ACT

THE STATE CAPITOL  
CONFERENCE ROOM 60  
EAST WING  
HARRISBURG, PENNSYLVANIA

TUESDAY, JULY 16, 2002, 11:06 A.M.

BEFORE:

HON. WILLIAM GABIG, ACTING CHAIRMAN  
HON. WALLIS BROOKS  
HON. ROBERT FLICK  
HON. HAROLD JAMES  
HON, KATHY MANDERINO  
HON. JOSEPH PETRARCA

ALSO PRESENT:

KAREN DALTON  
CARL GRANIERI  
BERYL KUHR  
JANE MENDLOW

JEAN M. DAVIS, REPORTER  
NOTARY PUBLIC



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1                   CHAIRMAN GABIG: Good morning,  
2 everyone. Welcome to the Pennsylvania House of  
3 Representatives Judiciary Committee Task Force on  
4 Civil Justice. We are going to have a hearing on  
5 House Bill 1708 this morning. Sorry for the delay.

6                   I am Representative Will Gabig from  
7 Carlisle representing the 199th Legislative District  
8 in Cumberland County, central western Cumberland  
9 County. I would ask the members of the Task Force  
10 panel that are here to introduce themselves, please.  
11 Let's start from my left.

12                   REPRESENTATIVE BROOKS: My name is  
13 Wallis Brooks. I'm the State Representative of the  
14 149th District.

15                   MS. DALTON: Karen Dalton, counsel for  
16 the House Judiciary Committee.

17                   REPRESENTATIVE PETRARCA:  
18 Representative Joe Petrarca, Westmoreland and  
19 Armstrong Counties.

20                   MS. KUHR: Beryl Kuhr, counsel to the  
21 minority chair.

22                   MS. MENDLOW: Jane Mendlow, research  
23 analyst.

24                   CHAIRMAN GABIG: I will be chairing  
25 this hearing this morning in lieu of Representative

1 Tim Hennessey who was unable to be here due to a  
2 funeral that he had to attend.

3 Our first witnesses this morning are  
4 Wilbur W. Rehmann, Chairman, National Crime  
5 Prevention and Privacy Compact Council; and Cathy L.  
6 Morrison, FBI Interim Compact Officer. If you could  
7 come forward, please.

8 We do have these witnesses and  
9 witnesses from the state police and the American  
10 Civil Liberties Union. The Pennsylvania School  
11 Board Association has submitted written testimony  
12 which shall be made part of the record.

13 Without any further adieu, if you  
14 could introduce yourselves and proceed with your  
15 testimony when you are ready.

16 MR. REHMANN: Thank you, Mr. Chairman.  
17 My name is Wilbur Rehmann. I am a Project Manager  
18 for the Montana Department of Justice in charge of a  
19 project to intergrade our criminal justice  
20 information. We are in the process of upgrading our  
21 computer systems in the state of Montana to allow  
22 the flow of information from original arrests all  
23 the way through disposition of the courts and  
24 custodial through probation and parole and community  
25 corrections. It's a large task. It's very similar

1 to what Pennsylvania has been working on, what's  
2 called JNET here. That's my background.

3 In that capacity, I'm not specifically  
4 a law enforcement officer. My job is an  
5 administrator for the Department of Justice in  
6 Montana. In that capacity, the Attorney General of  
7 Montana appointed me as the compact officer for the  
8 state of Montana. And I serve on the compact  
9 council. The compact council was originated when  
10 two states passed the compact, Montana and Georgia  
11 were the first two states. So as soon as that  
12 occurred, the council began creating bylaws and  
13 moving ahead in the process. That was three years  
14 ago.

15 In my testimony, you will see I've  
16 listed the states which currently have passed the  
17 National Crime Prevention and Privacy Compact. We  
18 are up to 16 states. Pennsylvania in your  
19 consideration in this bill before you today could  
20 become the 17th state.

21 I'm not going to read my testimony. I  
22 would like to highlight a couple of sections and  
23 then open it up for questions from the committee or  
24 staff. I think the points I would like to make are  
25 important to Pennsylvania, to all states, because

1 the compact offers for the first time for states to  
2 participate with the federal government on an equal  
3 basis. The compact council is a forum where we can  
4 meet and discuss how we are going to exchange  
5 criminal justice records for noncriminal justice  
6 purposes.

7 The states have the majority of votes  
8 on that council. That's a very important  
9 consideration. It certainly was in my state,  
10 Montana, because the state did not want to give up  
11 its rights to control its own data and information.  
12 We believe that through the compact council we now  
13 have a direct say. In the current system in effect  
14 for Pennsylvania and all the states out there, the  
15 FBI and the federal government control the policies  
16 and procedures about how states share their records  
17 with the FBI. States have very little say directly,  
18 except in an advisory capacity, on how those records  
19 are shared.

20 Congress and the federal government  
21 have set the perimeters. And that's because records  
22 originally were used exclusively for criminal  
23 justice purposes. And when I'm talking about  
24 noncriminal justice purposes, I'm talking about the  
25 purposes of finding out whether or not a staff

1 employee, a volunteer at a nursing home, in a school  
2 district, or in a foster care program has a criminal  
3 background record. That's a noncriminal justice use  
4 of those records.

5           Currently, I'm sure Pennsylvania like  
6 our state, has what are called 92544 laws. Those  
7 are laws under the federal 92544 section which allow  
8 states to submit state laws for approval by the  
9 Attorney General to check records of certain  
10 occupations. I don't know Pennsylvania laws, but  
11 I'm assuming there are some record checks done in  
12 Pennsylvania for teachers, educators, or people who  
13 work with children, the disabled, the elderly,  
14 whether it's foster care, a senior grandparents'  
15 program or whatever that program.

16           In some instances in Pennsylvania, I'm  
17 sure that you require background checks to find out  
18 if that person has a criminal record which would  
19 prohibit them from serving in a capacity in that  
20 occupation, whether it's foster care, teaching, day  
21 care, child care, whatever it might be, because the  
22 concerns have grown in the last number of years  
23 about who is caring for the children, the elderly  
24 and the disabled in our nation. I'm sure you in  
25 Pennsylvania have some of those same concerns.

1           The compact council then is set up to  
2 govern the release and exchange of criminal justice  
3 information for noncriminal justice purposes.

4 Pennsylvania, if it were to pass the compact, would  
5 be eligible to have a compact officer serve on the  
6 council. There are nine slots reserved for state  
7 compact officers. A majority of seats on the  
8 council are reserved for state compact officers.

9           In addition, we appoint a noncriminal  
10 justice agency representative. In the past, that  
11 was a representative from the state of New Mexico  
12 who served on their State Gaming Commission. Again,  
13 doing a background check for gambling operators in  
14 New Mexico is a noncriminal justice use of a  
15 criminal record. So we have a noncriminal justice  
16 representative on the council.

17           We also have a representative from the  
18 FBI. They have a compact officer. They have one  
19 vote, just like the state of Montana that I serve as  
20 a representative of has one vote on the compact  
21 council. I guess that's really the most significant  
22 thing I can tell you about passing the compact. It  
23 will give Pennsylvania a voice, an actual vote, if  
24 you are selected as a compact officer to serve on  
25 the council in how policies and procedures for



1 exchanging criminal records will take place.

2 And I guess I would only add that in  
3 terms of change, that Montana has had to effect  
4 after passing the compact have been what I consider  
5 null. That is, we have not had to institute any new  
6 procedures that we aren't normally doing to upgrade  
7 our criminal networks right now in the state of  
8 Montana. Just as JNET in Pennsylvania is in the  
9 creation and building stages, so are we in Montana.  
10 And any procedures that we would have to make  
11 changes to are simply those that we would do as a  
12 part of our annual upgrade of our computer systems  
13 to comply with the new requirements of the federal  
14 background check, fingerprint identification system.

15 Pennsylvania is already what's called  
16 a III state. That is your central repository in the  
17 state police already meet certain requirements that  
18 the federal government has established under the III  
19 system. This simply allows now, if you were to pass  
20 the compact, it would give Pennsylvania a way to  
21 have some direct input in how the system is designed  
22 in the future.

23 With that, Mr. Chairman, I would like  
24 to reserve any time for questions from the committee  
25 or staff that you may have.

1           Thank you for the opportunity to  
2 appear before you.

3           CHAIRMAN GABIG: Thank you.

4           MS. MORRISON: Good morning. My name  
5 is Cathy Morrison. I am the FBI's compact officer.  
6 That basically means I administer the compact for  
7 the federal government. This morning I would like  
8 to speak to the Task Force --

9           CHAIRMAN GABIG: Could you pull that  
10 microphone a little bit closer?

11           MS. MORRISON: I'm sorry. This  
12 morning I would like to address you briefly and just  
13 go over some of the highlights of my written  
14 testimony. For the record, I did provide some  
15 historical reference just for educational purposes  
16 to assist the Task Force in understanding the  
17 systems as they were developed over the years and  
18 just as a basis of knowledge. I would like to go  
19 over some of that briefly and then add some  
20 additional comments.

21           The FBI has the authority to acquire,  
22 exchange and preserve records under Title 28. To do  
23 so, we rely heavily on the states to provide us with  
24 criminal history records. And we maintain a  
25 duplicate set of your records that are provided to

1 us in our files.

2 Over the years of maintaining this  
3 system, it has become brought to our attention that  
4 this is time consuming and resource consuming. The  
5 state and federal government has devised a plan. To  
6 overcome these burdens, the FBI and states developed  
7 and implemented a decentralized record keeping and  
8 exchange system known as the Interstate  
9 Identification Index or III.

10 The III would allow for an automated  
11 exchange of criminal records and eliminate much of  
12 the duplication of data, effort and cost at the  
13 state and federal level, with the added benefit of  
14 providing more complete and accurate data from state  
15 criminal history repositories.

16 Upon full implementation, the  
17 decentralized system would, in large part, replace  
18 the use of records stored in the FBI's national  
19 repository since 1924. Four key elements of the  
20 decentralized concept are:

21 State criminal records would be used  
22 in lieu of FBI records when possible;

23 The FBI would continue to maintain and  
24 furnish records of federal offenders:

25 The FBI would provide an automated

1 index, accessible via a network maintained by the  
2 FBI, to facilitate the exchange of state records;

3           The FBI would operate a national  
4 fingerprint file containing only one set of  
5 fingerprints from each state for each individual  
6 arrested in that state. Fingerprint cards from that  
7 individual's second and subsequent arrests in the  
8 same state would not be sent to the FBI, rather they  
9 would be identified at the state level and used for  
10 updating the state's records.

11           The FBI and participating state  
12 agencies developed the III decentralized program  
13 over ten years through a series of several test  
14 phases. The test phases measured the operational,  
15 technical, fiscal, managerial, and political aspects  
16 of decentralizing criminal records to state  
17 agencies.

18           During the first two phases of the III  
19 testing, III policy restricted the use of records  
20 for criminal justice and criminal justice employment  
21 purposes only. The restriction was necessary  
22 because of conflicting state laws and policies  
23 regarding dissemination of records for other than  
24 employment and licensing purposes.

25           Further, because most states have

1 varying state statutes or policies that restrict the  
2 dissemination of records for noncriminal justice  
3 purposes, it was determined that a federal law or an  
4 interstate compact was necessary to provide  
5 interstate record dissemination authority.

6 Such a compact was drafted to provide  
7 the legal framework for the noncriminal justice use  
8 of the III system and facilitate complete system  
9 decentralization.

10 The final phase of the test was  
11 premised upon total decentralization. The ultimate  
12 use of state records for all purposes was structured  
13 around the following six elements developed for  
14 noncriminal justice record exchange:

15 The entire record, except any portion  
16 thereof that is sealed, was to be provided by state  
17 participants.

18 Agencies authorized access are those  
19 authorized according to laws governing access to FBI  
20 identification records, such as state legislation  
21 authorizing national checks and federal statutes.

22 Once a record is accessed from another  
23 state, its use would be determined by the receiving  
24 state's laws. Federal agencies' use was determined  
25 by federal standards.

1           Fingerprints were required with record  
2 search requests for noncriminal justice purposes  
3 except for certain national security purposes  
4 authorized by federal statute. State participants  
5 would honor fingerprint identifications made by the  
6 FBI and other state participants.

7           Participants would not charge a fee  
8 for responding to the III record request.

9           Responses would be channeled through  
10 the appropriate state identification bureau to  
11 ensure proper handling.

12           I would like to touch briefly today on  
13 a few of the advantages of compact ratification not  
14 only for Pennsylvania but for other states as well.  
15 First, the enactment of the compact and subsequent  
16 participation in the national fingerprint file  
17 provides a tremendous potential for significant cost  
18 avoidance by both the federal government or the FBI  
19 specifically and states ratifying the compact.

20           At the federal level, these savings  
21 result from avoiding the processing of duplicate  
22 fingerprints for second and subsequent arrests and  
23 related file maintenance. At the state level,  
24 savings result from a more streamlined record entry  
25 process.

1                   By not forwarding second and  
2 subsequent arrest data, disposition of custodial  
3 data for arrest events, the Pennsylvania criminal  
4 history repository houses at the state police will  
5 experience labor reduction. This has translated  
6 historically into substantial financial benefits.

7                   In calendar year 2001, on average, 66  
8 percent of the criminal workload from participating  
9 states was not forwarded to the FBI. This equates  
10 to 860,000 subsequent arrest events from the four  
11 national fingerprint file participating states.

12                   The second advantage is improved  
13 criminal history record content and quality.  
14 Decentralization of the national records system is  
15 intended to streamline the record entry process and  
16 reduce potential for error.

17                   Additionally, since dispositions are  
18 often not provided to the FBI, records maintained by  
19 the FBI may be incomplete. The probability that  
20 disposition information will be included in state  
21 records is much greater. A decentralized records  
22 system will facilitate more timely entry of state  
23 and local arrest and disposition information, thus  
24 providing more comprehensive records from  
25 participating states than is currently received from

1 the FBI.

2           There is no increase in the applicant  
3 background checks to states based on the passage of  
4 the compact. The compact does not circumvent state  
5 legislative authority to enact statutes which  
6 authorizes national background checks for  
7 applicants.

8           For example, if Pennsylvania requires  
9 through statutory enactment that school teachers  
10 have a national background check prior to  
11 employment, the same process continues once the  
12 compact is ratified. If, however, the Pennsylvania  
13 Legislature requires only a Pennsylvania state  
14 records check for its school teachers, the compact  
15 does not require or enable a national background  
16 check.

17           Adoption of the compact allows  
18 Pennsylvania to share a subject's record in its  
19 entirety with the FBI and other compact states once  
20 a positive fingerprint identification has been made.  
21 In case example, if Colorado, a compact state, has a  
22 statute which requires them to conduct a background  
23 check on a real estate broker, an identification is  
24 made with the FBI and it is determined that part of  
25 that record is housed in the state of Pennsylvania.



1 If you were a compact signatory, then you would  
2 share your record for that subject with the state of  
3 Colorado once that identification has been made.

4 It does not require Pennsylvania to  
5 track down additional disposition information for  
6 the other compact signatory. It allows you to  
7 provide whatever record you have on file to the  
8 state of Colorado to use based on Colorado's  
9 statutes and redact that record in Colorado as  
10 necessary. It does not require Pennsylvania to do  
11 any additional work as far as tracking down  
12 additional information. Whatever is in your  
13 database at the given moment the identification is  
14 made, that is the record that will be provided to  
15 the other compact signatory. So, in essence,  
16 basically it only enables you to disseminate your  
17 records on an interstate basis a little differently  
18 than you do today. It opens up an environment and  
19 allows increased information sharing between the  
20 federal and the state governments.

21 I would like to reserve whatever  
22 additional time is available for any questions or  
23 comments from the Task Force committee members.

24 CHAIRMAN GABIG: Thank you. We have  
25 been joined by a couple representatives. Start to

1 my right. Ladies first.

2 REPRESENTATIVE MANDERINO:

3 Representative Kathy Manderino from Philadelphia  
4 County.

5 REPRESENTATIVE FLICK: I'm Bob Flick  
6 from Chester County, the 167th Legislative District.

7 CHAIRMAN GABIG: Representative Flick  
8 is a big chairman of another committee, so I guess  
9 he's watching us here.

10 Are there any questions of the  
11 witnesses? Representative Manderino.

12 REPRESENTATIVE MANDERINO: A couple  
13 quick questions. I thought I understood from what I  
14 read, but I got confused by a comment you just made  
15 about whose law -- the Colorado example, I thought  
16 the laws of the state that retain the information  
17 were the laws that applied in terms of what  
18 information gets protected or transmitted, but it  
19 sounded like it was the receiving states.

20 Can you just clarify that?

21 MS. MORRISON: If Colorado has a  
22 statute which requires, say, an applicant check for  
23 a real estate broker, Pennsylvania would share its  
24 record with Colorado in its entirety, and then  
25 Colorado would apply whatever record screening or

1 redaction is necessary.

2           Say, for example, if they cannot pass  
3 a record down without disposition, then Colorado  
4 would apply those types of day-to-day work ethics  
5 and then forward the record down appropriately based  
6 on their state requirements.

7           REPRESENTATIVE MANDERINO: Okay. So  
8 if Pennsylvania had a law that protected the  
9 dissemination of information for -- for some reason  
10 I can't think of -- real estate, to use the example  
11 you said. Colorado was the requesting state,  
12 Pennsylvania's law would not apply?

13           MS. MORRISON: I will say this. Under  
14 the compact, a state is allowed to seal its records  
15 if there is a law in the book which require, say,  
16 juvenile offenses to be sealed for noncriminal  
17 justice purposes. So it does recognize those  
18 instances.

19           REPRESENTATIVE MANDERINO: In the case  
20 of juvenile records, the state who controls the  
21 information would apply; but otherwise the state  
22 requesting the information, their law would apply?

23           MS. MORRISON: In essence, I believe  
24 that's accurate.

25           REPRESENTATIVE MANDERINO: Thank you.

1     Could you also just for our benefit explain the  
2     anticipated time frame for processing background  
3     checks? I think -- I'm told that it takes about  
4     eight to ten weeks for FBI clearance checks, our  
5     state criminal background checks take about two  
6     weeks, for child abuse checks we have a fourteen day  
7     limit in our law.

8                     Can you just explain what could be  
9     anticipated both in terms of time frame and cost to  
10    the individual should we enter into the compact?

11                    MS. MORRISON: I don't believe that  
12    the compact in itself changes any of those response  
13    times or requirements. States recognize different  
14    response times depending on the level of automation  
15    which they have achieved. And some states are  
16    achieving 2 and 24 hour response times to  
17    fingerprint cards submitted to us if they are 100  
18    percent electronic. Other states which are working  
19    in a manual environment do achieve response times  
20    which are more consistent with those that you just  
21    depicted.

22                    So that is very separate from the  
23    compact. Those are what I would call administrative  
24    issues. And the compact doesn't necessarily change  
25    any of those in and of itself.

1                   REPRESENTATIVE MANDERINO: How about  
2 cost?

3                   MS. MORRISON: The cost remains  
4 consistent with what is in place today. The FBI has  
5 a requirement yearly to be audited for its  
6 accounting and cost procedures, and the costs are  
7 adjusted according to the cost for actually  
8 processing applicant of the fingerprint cards. And  
9 it is adjusted periodically based on that  
10 accounting, and the compact doesn't, I believe, in  
11 any way affect the cost for processing the applicant  
12 fingerprint card.

13                   REPRESENTATIVE MANDERINO: Okay. And  
14 this could be my ignorance in understanding how this  
15 all works. Right now I'm required by statute of  
16 something in Pennsylvania to get a criminal history  
17 background check because I work in child care, and  
18 it costs me so much because that is based on the  
19 fact that they're looking in Pennsylvania and I  
20 guess -- I don't know, are they looking at an FBI  
21 database now? But now they're looking in  
22 Pennsylvania and an FBI database and in 16 to 50  
23 other places, depending on how many people are in  
24 the compact?

25                   Does our state control the cost

1 issues? How does that all work in terms of the  
2 extra work that the various states do because they  
3 joined the compact? Is there some fee structures  
4 figured out in this whole thing?

5 MS. MORRISON: I think maybe it's just  
6 the issue you are addressing is because of lack of  
7 my explaining clearly how the system works. The FBI  
8 houses the national fingerprint file, which in  
9 essence, allows us to identify the subject. And  
10 once that subject has been identified, we  
11 communicate with the compact states electronically.  
12 So it's near real time response between the federal  
13 government and the compact states.

14 There is no delay in going out to 16  
15 other compact states or whatever number we have and  
16 actually accumulating the response; and, hence,  
17 there is no change in the fee structure based on  
18 bringing in additional components to that background  
19 check. That's from the federal perspective. I'll  
20 let Chairman Rehmann address anything he may want to  
21 from the state perspective.

22 MR. REHMANN: Let me -- I want to  
23 clarify in response to your first question. And,  
24 that is, Pennsylvania is now a III state. So it  
25 provides records to the FBI currently. When you ask

1 about who controls what goes out, currently the  
2 federal government controls. That is, you send your  
3 complete record, whatever Pennsylvania has that is  
4 indexed in what's called the III. Currently, the  
5 FBI gets that.

6 Then if I'm doing a check in the state  
7 of Montana on a teacher who happens to have a record  
8 in Pennsylvania, I now get that record from the  
9 federal government. In the future under the  
10 compact, the state of Montana would go directly to  
11 the state of Pennsylvania through the FBI database  
12 and get that record. It won't change the  
13 information that's available.

14 For instance, the example that Miss  
15 Morrison gave about the real estate law in Colorado.  
16 It really won't change because of the compact,  
17 because Pennsylvania is already providing a complete  
18 criminal record to the FBI. And Colorado currently,  
19 because it's a III state goes to the FBI and says we  
20 had a hit in Pennsylvania, give us the Pennsylvania  
21 record.

22 Currently, the FBI gives whatever  
23 information Pennsylvania has provided. And so the  
24 change in what will be provided is not going to be  
25 significant. What will change is that duplicate of

1 process. In the future all states -- currently  
2 Pennsylvania, Montana, whether they are compact or  
3 not, does two sets of fingerprint cards. They keep  
4 one in their state central repository and they send  
5 the other to the FBI. They also have to send the  
6 disposition whenever that disposition occurs.

7 In the future, once we become -- all  
8 the states become compact states, they won't have to  
9 send that duplicate fingerprint and you wouldn't  
10 have to send that duplicate disposition to the FBI.  
11 Pennsylvania will own Pennsylvania records and  
12 states will share them state to state. What the  
13 compact allows is for the states to have a say in  
14 the rules for that exchange of information.

15 And, currently, there are no  
16 additional fees outside of the standard FBI fee  
17 which is currently in place and whatever state fee  
18 Pennsylvania charges for doing a background check.  
19 It doesn't require under the compact Pennsylvania to  
20 do a fingerprint background check nationally unless  
21 you, Pennsylvania, want that check done. That is,  
22 if you, the Legislature, decide that it's not good  
23 enough just to check the records for a day care  
24 operator in Pennsylvania, but you want to find out  
25 if they've moved from New Jersey or Florida or some



1 other state and if they have a record in that state,  
2 that's your decision in Pennsylvania. That wouldn't  
3 change under the compact. You still will make those  
4 kind of decisions in your state Legislature.

5 REPRESENTATIVE MANDERINO: Thank you.

6 MR. REHMANN: You're welcome.

7 CHAIRMAN GABIG: Representative  
8 Brooks.

9 REPRESENTATIVE BROOKS: Good morning.  
10 I have a couple questions. What is the feedback  
11 from the District Attorneys' Offices across the  
12 United States with respect to this? Do you know how  
13 they feel about this, the prosecutors from the  
14 Attorney Generals' Offices?

15 MR. REHMANN: In the state of Montana,  
16 our prosecutors are in favor of this because they  
17 really want states -- Pennsylvania, Montana,  
18 Florida, whoever it is, we have the most accurate  
19 records. The records that are duplicated and sent  
20 to the FBI that I just described previously allow  
21 for errors.

22 The record that the FBI has -- and no  
23 offense to the FBI -- may not have all the  
24 dispositions that a record in Montana has, because  
25 we know that local courts and law enforcement don't

1 always send those duplicate records off.

2 We feel that once the compact is  
3 passed, we'll be able to get the most accurate  
4 record. We'll eliminate --

5 REPRESENTATIVE BROOKS: The middleman.

6 MR. REHMANN: The middleman.

7 REPRESENTATIVE BROOKS: So the FBI  
8 could be considered the middle man and you are going  
9 to the horse's mouth when you go right to the state?

10 MR. REHMANN: That's right. And the  
11 FBI will continue to maintain a national fingerprint  
12 file index. That is, the first time a person is  
13 arrested and their prints are sent to the FBI, that  
14 will continue; but the second or the third time or  
15 all of that duplicate of process will be eliminated.

16 REPRESENTATIVE BROOKS: That leads me  
17 to another one. I have a couple of questions.

18 MR. REHMANN: Okay.

19 REPRESENTATIVE BROOKS: The next one  
20 is where the FOPs are on this?

21 MR. REHMANN: The what?

22 REPRESENTATIVE BROOKS: The Fraternal  
23 Order of Police. How do the police feel about this,  
24 the state police?

25 MR. REHMANN: They have been

1 supportive in our state very much so.

2 REPRESENTATIVE BROOKS: Okay.

3 MR. REHMANN: Again, because it's the  
4 possibility of having the most accurate records. I  
5 mean, nobody wants in law enforcement or out of law  
6 enforcement to have inaccurate records.

7 I know from testimony in our own state  
8 from our own chapter of the ACLU that they are  
9 concerned about privacy and the records. And we, in  
10 the administration of this, are also very much  
11 concerned about that. We view the compact as a way  
12 to increase accuracy, increase the timeliness and to  
13 increase the efficiency of sharing records.

14 REPRESENTATIVE BROOKS: Would it be  
15 accurate to say that we are increasing the  
16 dissemination of information with more and more  
17 background checks pertaining to the elderly, the  
18 children, the nursing homes, etc.? Is this a  
19 reaction to that, the increased need for more  
20 background checks?

21 MR. REHMANN: Yes. As the FBI through  
22 the years has maintained the major national  
23 databases, we have seen in the last five to ten  
24 years, and even I'd say in the last five years, a  
25 huge increase of concern among citizens about who is

1 caring for the elderly, the children and the  
2 disabled.

3           Since September 11th, we have seen an  
4 increased concern about security. Those two  
5 factors, the rising concern that we have had in our  
6 society about child abuse and elder abuse, etc., and  
7 the security concerns that were raised on 9/11 have  
8 made a huge increase in the request for background  
9 checks. And the concern, we see it in our state and  
10 we see it nationally.

11           I mean, the U.S.A. Patriot Act that  
12 Congress passed in October of last year is a  
13 reaction to 9/11, contains a provision for a  
14 national background check of hazmat drivers'  
15 license. Anybody who has a commercial drivers'  
16 license in this nation and has a hazmat endorsement  
17 under the U.S.A. Patriot Act will be required to  
18 have a criminal background check done.

19           Well, that's a concern that didn't  
20 come from states but came out of national security.  
21 Who is driving those trucks that are carrying  
22 hazardous material and what kind of a background do  
23 they have? Are we allowing people who shouldn't  
24 have access to hazardous material? Well, that's a  
25 new concern that came out of 9/11.

1                   REPRESENTATIVE BROOKS: It makes  
2 sense.

3                   MR. REHMANN: I think we are going to  
4 see more of that and more concern about children,  
5 elderly and abuse.

6                   REPRESENTATIVE BROOKS: Following  
7 along with that, since there is this increase need  
8 for dissemination of information and all those  
9 points you're making, what sort of cost savings  
10 would this be to the FBI?

11                   I don't see -- I may have missed it --  
12 an indication. Do you have a projection about what  
13 the financial benefits would be to the FBI versus  
14 the financial cost to the state or have you done  
15 anything along those lines?

16                   MR. REHMANN: Let me respond for the  
17 state and then Cathy can respond for the FBI.

18                   At this point we have seen no  
19 significant cost savings, except that we view this  
20 as an efficiency move, maybe because as a state  
21 bureaucrat in the state of Montana we have learned  
22 not to make promises we can't keep about funding.  
23 I don't want to predict and can't predict what kind  
24 of savings there may be. What I can tell you,  
25 though, is that once you eliminate these kind of

1 duplicate processes there are going to be savings.  
2 How much they will be and whether they are offset by  
3 new requirements, I would say it's a neutral  
4 equation at this point.

5           We have not seen significant savings,  
6 but nor do we anticipate the kind of huge increases  
7 that we have been experiencing over the last few  
8 years. One, we don't have to -- local law  
9 enforcement and courts -- send dispositions back to  
10 the FBI but can be sent simply to the state central  
11 repository; and in Pennsylvania, that's the state  
12 police. There is going to be a savings. What that  
13 might be, I couldn't predict because there will be  
14 some new requirements.

15           At this point in Montana we have seen  
16 that it's kind of neutral because of that. We do  
17 realize some efficiencies. On the other hand, there  
18 are new requirements not because of the compact but  
19 just to participate in this electronic digital age.  
20 JNET is a good example of that in Pennsylvania.

21           You know computers cost money. They  
22 aren't free, even though we all would like them to  
23 be.

24           REPRESENTATIVE BROOKS: Well, thank  
25 you very much for your testimony. I really

1 appreciate it. As a former assistant DA, I know  
2 that DAs deal with this on a daily basis. The fact  
3 that the District Attorneys' Associations are  
4 apparently on board is really important.

5 Thank you so much. You did a great  
6 job.

7 MR. REHMANN: Thank you.

8 CHAIRMAN GABIG: Does anyone else have  
9 any questions? Yes, the majority staff counsel,  
10 Karen Dalton.

11 MS. DALTON: Thank you so much for  
12 coming. Under Pennsylvania law, currently  
13 Pennsylvania requires background checks for folks  
14 that deal with children, public school employees,  
15 private school employees, those that deal with the  
16 elderly and nurse trainees. Under Pennsylvania law,  
17 if you are an in-state resident you get a background  
18 check through the state police. If you're coming  
19 from outside of Pennsylvania and you receive a job  
20 in Pennsylvania, you are required to get a national  
21 background check.

22 If Pennsylvania became a compact  
23 state, my understanding is if you are an in-state  
24 resident you still only go through state police and  
25 that doesn't change. But if you were to come, say,

1 from New Jersey and try to get a job here, you would  
2 get a national check to see if there were any  
3 records with the FBI and you'd also see whether  
4 there were any criminal records with the other  
5 compact states.

6 Is that correct?

7 MR. REHMANN: That's correct. There  
8 would be no change unless Pennsylvania Legislature  
9 made a change in doing an in-state check. You  
10 wouldn't be required -- I think Pennsylvania does a  
11 name check in-state and not a fingerprint check.  
12 That would not change under the compact for  
13 Pennsylvania. If you do a national check, though,  
14 you would be required to do a fingerprint national  
15 check.

16 MS. DALTON: So then in terms if I am  
17 a clever criminal and I am convicted of harassment  
18 in New Jersey and then I move to Connecticut and I'm  
19 convicted of stalking, and these are not crimes that  
20 would be a serious misdemeanor that would be tracked  
21 at the FBI level and would not be in the national  
22 database, and I move to Pennsylvania because I want  
23 to outrun my criminal record, but I still want a job  
24 and I still want to perpetrate my crimes and I  
25 decide to get a job as a day care worker, if



1 Pennsylvania became a member of the compact and the  
2 check went through I would be caught.

3 Am I right with that?

4 MR. REHMANN: Yes.

5 MS. DALTON: And currently now because  
6 Pennsylvania is not a compact and I perpetrated  
7 these crimes in these other states, Pennsylvania  
8 would never know about them; is that true?

9 MR. REHMANN: I'm making a couple of  
10 assumptions in your statement, but the answer would  
11 be yes. And the assumption is that currently  
12 whatever Pennsylvania sends to the FBI as a part of  
13 the III is what you would get.

14 Under the compact in the future, once  
15 we get national fingerprint file status, we would  
16 get the complete New Jersey or whatever state you  
17 were checking on record. That's correct.

18 Currently, whatever record the FBI has  
19 is all you would get under this.

20 MS. DALTON: Right. Which is not  
21 necessarily as complete as the other states?

22 MR. REHMANN: That's right. Because  
23 Pennsylvania or New Jersey or Ohio or Montana have  
24 the best records for those states.

25 MS. DALTON: I just have one more

1 question, if I might. In Montana, can you tell me  
2 once you became a compact state, did it require any  
3 additional personnel? Did it require any additional  
4 money in order to implement the requirements of the  
5 compact?

6 MR. REHMANN: No. I serve as a  
7 compact officer. I was appointed in the fall of  
8 1999 by the Montana Attorney General as a compact  
9 officer for the state of Montana. The cost is my  
10 ongoing salary, which is the time I devote to the  
11 meetings of the compact council, which is covered by  
12 the state of Montana. The expenses for the council  
13 are covered under the FBI budget, so that it has not  
14 required any additional personnel.

15 We hope to be, by the way, the first  
16 non-pilot state to become national fingerprint file  
17 this September. We are making those changes not  
18 because we are required under the compact, but  
19 they're part of our ongoing upgrading and our  
20 technology and our ability to communicate  
21 electronically.

22 We hope to have fingerprint processing  
23 from our state central repository through -- in the  
24 west, there is an association of the western states  
25 that do an identification, because we don't have the

1 population that you have in Pennsylvania. We have  
2 combined our databases into a western states  
3 database, so that currently Montana checks that  
4 database which covers Wyoming, Idaho, Washington,  
5 Utah. We share that database. We check that  
6 database first and then we go to the FBI.

7 In Pennsylvania, you have enough  
8 records that you aren't looking necessarily at a  
9 regional database, but we are in the west. That  
10 will all be automated, we hope, by this September.  
11 And we will become the first state to move into this  
12 national fingerprint file that wasn't one of the  
13 four original pilot states. We are pretty excited  
14 about that.

15 And that has not required any  
16 additional personnel in Montana to make that change.  
17 But as part of our ongoing upgrading and building  
18 our electronic system in the state of Montana, it  
19 wasn't required as part of the compact but it does  
20 allow us now to participate fully.

21 CHAIRMAN GABIG: Ms. Mendlow.

22 MS. MENDLOW: The issue of verifying  
23 the disposition of cases from out of state, would  
24 the state police in Pennsylvania receive the  
25 information from the other state and then would it

1 be in a position of having to edit or remove some  
2 information in terms of our state law?

3 And, in accordance with that, in  
4 keeping with that, would the state police here also  
5 have a responsibility to actually verify the  
6 disposition of the cases to ensure the accuracy of  
7 information?

8 I just want to make sure I understand  
9 the responsibility of the state entity that would be  
10 getting information back, as opposed to what I  
11 understand is now a situation where the FBI response  
12 sheet is passed back to, let's say, the state agency  
13 and the state police don't really do anything in  
14 terms of the information that comes back from the  
15 FBI.

16 MR. REHMANN: I'm not familiar with  
17 the operation of the central repository in  
18 Pennsylvania. I can't speak for the state police.  
19 My assumption is that they operate somewhat similar  
20 to Montana's central repository. And that is, that  
21 the dispositions in Montana -- we're required in our  
22 state to try to attempt to get a disposition for all  
23 arrests before we can release a record in our state.

24 If that's a similar law in  
25 Pennsylvania; that is, if the Pennsylvania State

1 Police are required to try to get a disposition on  
2 any arrest before they release a criminal record,  
3 then that wouldn't change under the compact.

4 I just don't know Pennsylvania state  
5 law, if they are required. We are in Montana. And  
6 we do attempt to get a disposition before we release  
7 any criminal history record, whether it's in state  
8 or out of state. If that's a similar law in  
9 Pennsylvania, then, yes, the state police will be  
10 required to get a disposition not by the compact but  
11 by Pennsylvania state law.

12 Again, I'd reserve and defer to the  
13 state police on that. So there would be no change  
14 because of the compact per se, unless there is some  
15 other state law in Pennsylvania that I am not  
16 familiar with.

17 CHAIRMAN GABIG: I just want to ask  
18 one question. Representative Brooks made a good  
19 point. I was actually going to wait until we do get  
20 the state police on or maybe one of the other  
21 witnesses. The ACLU is probably going to address  
22 some of these concerns.

23 When I wanted to introduce -- as an  
24 assistant DA, former assistant DA -- a conviction  
25 into evidence, I had to go get certified copies of

1 convictions. One of the issues with where we are  
2 moving as a society is much broader -- getting these  
3 criminal records out to a much broader area than I  
4 was used to growing up is there is a lot of -- these  
5 are not, you know, your name might be on one of them  
6 someplace. There's a mix. These are more like  
7 credit reports. They are not certified copies of  
8 criminal convictions. And sometimes we had the  
9 wrong person, and sometimes we had real bad  
10 criminals that their records looked pretty clean.

11 I know Montana -- from what you are  
12 saying -- and I know in Pennsylvania with JNET are  
13 trying to make that problem better. There is a lot  
14 of work to be done there.

15 My question was, and I think that's  
16 what you were saying especially when you go to  
17 Philadelphia -- no disrespect to my colleague from  
18 Philadelphia -- and try to get dispositions out of  
19 Philadelphia, it is just very, very difficult. So  
20 much for bureaucracy.

21 The question I had had to do with the  
22 other states. And, Mr. Rehmann, I saw on the back  
23 of your testimony that you provided some of the  
24 other states. The one that is around us is New  
25 Jersey, and it seems to be in a compact. Can you

1 give us -- Ms. Morrison might know the answer to the  
2 question -- what is Maryland, New York, some of our  
3 border neighboring states, Ohio, where are they on  
4 this compact? Does anybody have an idea?

5 MS. MORRISON: Maryland has indicated  
6 that they plan to introduce next year legislation  
7 for the compact. Ohio, also, I believe, will be  
8 introducing it. They have been considering it for  
9 the past several years. I believe they are  
10 scheduled to introduce it next year. I'm not aware  
11 of any efforts that New York has taken thus far on  
12 the compact.

13 CHAIRMAN GABIG: Thank you.

14 MS. MORRISON: Sure.

15 CHAIRMAN GABIG: We have been joined  
16 by Representative James from Philadelphia.

17 Any other questions by anyone at this  
18 time?

19 Thank you very much for your  
20 testimony.

21 MR. REHMANN: Thank you, Mr. Chairman.

22 MS. MORRISON: Thank you.

23 CHAIRMAN GABIG: The next witness is  
24 Captain John K. Thierwechter, Director, Operational  
25 Records Division, Bureau of Records and

1 Identification.

2 Welcome, Captain Thierwechter.

3 MR. THIERWECHTER: Thank you, Mr.  
4 Chairman.

5 CHAIRMAN GABIG: You may proceed when  
6 you're ready.

7 MR. THIERWECHTER: Good morning. As  
8 you indicated, I'm Captain John Thierwechter,  
9 Director of the Operational Records Division, Bureau  
10 of Records and Identification. On behalf On behalf  
11 of Colonel Paul J. Evanko, Commissioner of the State  
12 Police, I would like to thank you for this  
13 opportunity to provide testimony to the committee on  
14 this bill being considered by the House Judiciary  
15 Committee.

16 I had tried to keep my written  
17 testimony very brief. I will try to yet summarize  
18 it a little further as I provide it, and then I will  
19 give you a chance for any questions.

20 The National Crime Prevention and  
21 Privacy Compact Act establishes a legal framework  
22 for the cooperative exchange of criminal history  
23 records between states and federal government for  
24 noncriminal justice purposes. They often include  
25 governmental licensing and public or private



1 employment.

2 All requests for federal background  
3 checks require the submission of fingerprints to  
4 establish a positive identification for the subject  
5 of the background check. The proposed act does not  
6 change the current federal requirement that the  
7 background check will not be conducted unless  
8 required by a state statute or submitted under the  
9 Volunteers for Children's Act.

10 Under the current policy, which would  
11 remain mostly unchanged by this act, this process  
12 requires the individual to provide a full set of  
13 fingerprints to the state police for forwarding to  
14 the FBI. The state police receive the fingerprint  
15 cards with a \$24 fee and forward those to the FBI.  
16 The FBI currently returns all responses directly to  
17 the state agency.

18 Under the National Crime Prevention  
19 and Privacy Act, these requests must still be  
20 submitted to state police for forwarding to the FBI.  
21 However, the act requires that the responses be  
22 returned to the state police. The state police  
23 would be required to modify the response to comply  
24 with state law.

25 Individuals and noncriminal justice

1 agencies are only entitled to conviction  
2 information. They may also receive arrest  
3 information, which is less than three years old, for  
4 which the state police have not received a  
5 disposition.

6 The proposed law may actually result  
7 in agencies getting less information than they are  
8 currently getting. Since the responses currently go  
9 directly to the requesting state agency, they  
10 receive the unedited version of the federal RAP  
11 sheet, Record of Arrests and Prosecutions. If the  
12 responses are sent back to the requesters through  
13 the state police, the compact requires that the  
14 information comply with state law. That means some  
15 of the information the agencies are currently  
16 getting will be removed.

17 Additionally, the act refers to the  
18 creation of a telecommunications network to exchange  
19 this information. The legislative intent appears to  
20 be to automate this process to the extent possible.  
21 However, under the current Pennsylvania statute,  
22 none of the record information would be able to be  
23 automatically routed to the requester.

24 During 2001, the state police  
25 processed almost 770,000 requests for criminal

1 history record information based on state records.  
2 Oftentimes disposition information is missing from  
3 the RAP sheets. Considerable effort goes into  
4 researching this disposition information.

5 Generally, this involves contacting  
6 the appropriate clerk of courts and requesting a  
7 disposition. Some of the clerks are very  
8 cooperative and respond quickly. Others are less  
9 cooperative and the process takes weeks. In some  
10 cases, we never get a response. In those cases,  
11 depending upon the offense, we remove it from the  
12 record prior to mailing it out.

13 This past year, the state police  
14 processed over 5,600 fingerprint-based checks done  
15 by the FBI. Although the state police are  
16 authorized under federal statute to add a processing  
17 fee to these requests, we presently do not do so.  
18 The compact would require the state police to  
19 request disposition information from various states  
20 that provide record information to be able to comply  
21 with Chapter 91 of Title 18.

22 The state police do not currently have  
23 the personnel resources to conduct this research.  
24 Being required to comply with current state law will  
25 also add weeks to the processing of some of these

1 requests.

2 To summarize, the state police do not  
3 have personnel resources to conduct research that  
4 would be required under this act. If the state law  
5 governing dissemination of criminal history record  
6 information remains unchanged, agencies currently  
7 receiving federal background checks may actually get  
8 less information under the proposed legislation.  
9 Response times will certainly increase for record  
10 responses. Because of the additional manual  
11 research that will be required, the cost of these  
12 requests is likely to increase as well.

13 On behalf of the Commissioner, thank  
14 you for allowing me to offer this testimony. I will  
15 be happy to take any of your questions at this time.

16 CHAIRMAN GABIG: Thank you, Captain  
17 Thierwechter.

18 Does anyone have any questions?  
19 Representative James.

20 REPRESENTATIVE JAMES: Yes. I notice  
21 you kept saying they may receive less information  
22 than they had gotten before.

23 What would be an example of less  
24 information?

25 MR. THIERWECHTER: Currently, they get

1 the entire federal RAP sheet. It goes back to the  
2 state agency. The state agency makes a  
3 determination as to whether or not this person is  
4 eligible for employment or whatever.

5 In Pennsylvania, all this  
6 nonconviction information would have to go through  
7 us. We would take all that off as required by state  
8 law and then provide the request back. So they may  
9 see information that this person was arrested five  
10 times for the same charge, but because they were not  
11 found guilty or it was thrown out or whatever, that  
12 type of information which they are currently  
13 receiving they would not get after we edit it and  
14 send the response back.

15 REPRESENTATIVE JAMES: So you would  
16 take off all the information if there was a  
17 nonconviction?

18 MR. THIERWECHTER: Basically, yes.

19 REPRESENTATIVE JAMES: Thank you.

20 CHAIRMAN GABIG: Representative  
21 Manderino.

22 REPRESENTATIVE MANDERINO: Thank you.  
23 I'm sure that some of these questions are because of  
24 my limited understanding of how this stuff works in  
25 Pennsylvania.

1 MR. THIERWECHTER: That's fine.

2 REPRESENTATIVE MANDERINO: You gave  
3 two different numbers with regard to the number of  
4 background checks that you process per year, and the  
5 one that dealt with fingerprint was much smaller.

6 MR. THIERWECHTER: Yes, ma'am.

7 REPRESENTATIVE MANDERINO: So  
8 sometimes you do just name only searches and  
9 sometimes you do fingerprint searches, and which one  
10 you're doing is based on what our law requires?

11 MR. THIERWECHTER: Yes.

12 REPRESENTATIVE MANDERINO: And the  
13 fingerprint ones are the only ones that would be  
14 part of this compact; is that my understanding?

15 MR. THIERWECHTER: The compact does  
16 not change the fact that the FBI will only accept  
17 and process background checks that have a state  
18 statute that require it. So the current state  
19 statutes that require a person to go with a federal  
20 background check, none of that changes.

21 This would not -- the compact does not  
22 increase people's availability to do this. There  
23 still has to be a state law that says the background  
24 check is required through the federal government.

25 REPRESENTATIVE MANDERINO: I guess I'm

1 not articulating it correctly.

2 MR. THIERWECHTER: Maybe I didn't.

3 REPRESENTATIVE MANDERINO: If somebody  
4 does a check on John T. Jones by name only, there  
5 could be potentially lots of mistaken identity hits.  
6 If somebody doesn't check on John T. Jones with this  
7 particular fingerprint, assumably the information  
8 that is coming back is that John T. Jones.

9 Is this whole compact only expediting  
10 the information on the John T. Jones for whose  
11 fingerprint we have?

12 MR. THIERWECHTER: Yes. I think you  
13 had heard prior testimony from Ms. Morrison that the  
14 response times really are not anticipated to change  
15 a lot here. We are still talking about the 5,600  
16 that I mentioned are going to the FBI. The 770,000  
17 are the in-state checks. And they are checked  
18 differently than the ones that go to the FBI.

19 REPRESENTATIVE MANDERINO: Okay. And  
20 so all the information that you gave us about what  
21 is coming back and it's coming to the state police  
22 as compared to the requesting agency is something  
23 that is governed by the national compact rules -- if  
24 that's the right word -- or House Bill 1708 as we  
25 have written our participation in the compact? I

1 don't know if you know the answer to that.

2 MR. THIERWECHTER: Yeah, I'm not sure  
3 if I can answer that. I believe from my reading of  
4 House Bill 1708 that it requires the response to  
5 comply with state law. For us to do that, they now  
6 have to come back to us to be edited to send out. I  
7 am not sure that I can say it's our writing or the  
8 compact version.

9 REPRESENTATIVE MANDERINO: Okay. So  
10 that's something we need to find out. Okay. Thank  
11 you.

12 MR. THIERWECHTER: Sure.

13 CHAIRMAN GABIG: Representative  
14 Brooks.

15 REPRESENTATIVE BROOKS: I am very glad  
16 you're here today.

17 MR. THIERWECHTER: Thank you.

18 REPRESENTATIVE BROOKS: After the  
19 other people testified, it was indicated that at  
20 least in Montana the state police are in favor of  
21 the compact. Your testimony indicates that in  
22 Pennsylvania the situation is different; is that  
23 correct?

24 MR. THIERWECHTER: I would indicate  
25 that we realize some problems with us being able to



1 handle these. We currently don't have the personnel  
2 to do what we think this will cause, the additional  
3 work.

4 REPRESENTATIVE BROOKS: So there would  
5 be a financial impact?

6 MR. THIERWECHTER: I believe so, yes.

7 REPRESENTATIVE BROOKS: You would have  
8 to hire additional personnel and we probably don't  
9 have projections in that area?

10 MR. THIERWECHTER: We don't presently,  
11 no.

12 REPRESENTATIVE BROOKS: It was  
13 interesting you pointed out here about the lack of  
14 the conviction information. I've seen RAP sheets  
15 where you can have ten pages on someone and not one  
16 conviction appears, but you've got somebody that has  
17 some kind of a history.

18 So you are saying that we wouldn't  
19 have the benefit of that when we have somebody  
20 brought into court, or we won't have all those pages  
21 of information, we will only have the conviction  
22 information?

23 MR. THIERWECHTER: That's correct.

24 The part that's causing us some concern is what when  
25 responses come back from other states to us, if they

1 are missing all of that disposition information we  
2 will have to contact the state and try to get that  
3 prior to sending this response back, which is where  
4 we are going to have the additional research time  
5 and people involved in that and the delay in the  
6 response going back to the requester. We try to get  
7 that information from the state agency that has it.

8 REPRESENTATIVE BROOKS: I myself have  
9 spent time trying to get dispositions when I'm in a  
10 hurry and have to get to court. I know what a  
11 hassle that can be, particularly now that everything  
12 is automated and you get recordings. A lot of the  
13 places that you call, there is not a live person to  
14 talk to and you're trying to get a disposition out  
15 of New York. I know that can be a headache. So  
16 that's a concern.

17 Have you or anyone associated with you  
18 spoken to the District Attorneys' Association in the  
19 state of Pennsylvania?

20 MR. THIERWECHTER: I'm not aware that  
21 we have, no.

22 REPRESENTATIVE BROOKS: Okay. If the  
23 manpower was available, if there was additional  
24 funding, etc., all these hypotheticals, where would  
25 the organization be with respect to this then?

1     Would you still be concerned about the lack of  
2     additional information that doesn't require  
3     conviction?

4                   MR. THIERWECHTER:  I'm sorry.  I'm not  
5     sure I understood your question.

6                   REPRESENTATIVE BROOKS:  One of your  
7     concerns is that you don't think you have the  
8     manpower; is that correct?

9                   MR. THIERWECHTER:  Right.

10                  REPRESENTATIVE BROOKS:  So if there  
11     was additional manpower with respect to this and --  
12     your additional concerns would also be that we  
13     wouldn't have as much information about the  
14     individuals; is that correct?

15                  MR. THIERWECHTER:  Well, I think the  
16     state police will get pretty much what they are  
17     getting now when we run checks.  Now, currently the  
18     state agencies get these responses back directly  
19     from the FBI.  So the state police is not processing  
20     these.

21                  We'll still get the full RAP sheet.  
22     It won't be a lessening of information either being  
23     supplied to the state police or to anybody within  
24     our agency.  But then we will take some of that  
25     information off before we send it back to, say, the

1 Department of Education or the Department of Public  
2 Welfare or whoever to comply with state law for  
3 noncriminal justice purposes.

4 REPRESENTATIVE BROOKS: Do you have  
5 any estimate as to what would be required to comply  
6 with this with respect to your manpower needs?

7 MR. THIERWECHTER: No, because we are  
8 just not sure how big it would be at this point.

9 REPRESENTATIVE BROOKS: Thank you.

10 MR. THIERWECHTER: You're welcome.

11 CHAIRMAN GABIG: Are there any other  
12 questions? Jane.

13 MS. MENDLOW: Captain Thierwechter,  
14 with respect to some of the testimony from today  
15 that there might also be some reduction in manpower  
16 related to submitting fingerprints for arrest, do  
17 you envision any assistance in that regard? Do you  
18 see some kind of manpower reduction in that area?

19 MR. THIERWECHTER: I would not  
20 envision that. I believe the FBI's testimony was  
21 that 66 percent of the fingerprint cards would not  
22 have to be forwarded to the FBI. Based on, I think,  
23 normally accepted recidivism rates, that probably is  
24 accurate.

25 However, I think that's a savings to

1 the FBI, because we are currently in the process now  
2 of preparing to submit all this information  
3 electronically. So the individual is only going to  
4 be processed one time. For state purposes, they  
5 don't have to be reprocessed to send this  
6 information to the federal government.

7 By the end of the year, we should be  
8 working with the federal system. This stuff is  
9 going to flow electronically whether or not they  
10 want it or not or they refuse to accept, if we  
11 become part of that program they would refuse to  
12 accept like second arrests. That would have to be  
13 programed into our system as well somehow, I guess,  
14 to make a determination, yes, the FBI has one  
15 fingerprint and they don't want any more.

16 So I don't see that we would save  
17 really anything there. Potentially, we would have  
18 additional programing costs to not send some of that  
19 information.

20 MS. MENDLOW: Once again, this goes to  
21 the issue again of the process that I recently  
22 became acquainted with in respect to school  
23 applicants in those situations regarding the FBI  
24 clearance check.

25 I want to see if my understanding

1 purports with what you know to be the case. My  
2 understanding at least right now is that if there is  
3 someone from out of state that wants to work, say,  
4 as a school employee in a Pennsylvania school or as  
5 an administrator, they would have to go through the  
6 FBI clearance check. That requires the fingerprint  
7 cards to go through the Department of Education to  
8 the state police, the state police then sends this  
9 on to the FBI, the FBI does this clearance check,  
10 eight to ten weeks later there would be a response  
11 sheet which I assume encompasses whatever might be  
12 in the FBI repository. That response sheet then  
13 goes back to, if I understand it, the Department of  
14 Education which then, if there is a conviction for  
15 some serious offense, is noted somewhere within  
16 their legal office at that point, and then that  
17 sheet is forwarded on to the applicant.

18 I want to know if this is your  
19 understanding of the way it's working.

20 MR. THIERWECHTER: It's my  
21 understanding -- I do not know if the Department of  
22 Education forwards that response to the applicant.  
23 The process you described up to the collection,  
24 providing it to the FBI and getting it back is  
25 accurate.

1                   MS. MENDLOW: Like a key part of this  
2 is that right now there isn't any state agency that  
3 actually keeps that information or does anything  
4 with the FBI check that comes back that the  
5 applicant gets an essentially clear, simple,  
6 whatever they get. The issue has come up now if it  
7 goes through the state police and you are  
8 responsible for distribution of it, then other parts  
9 of law would click into that and would have a  
10 significant -- some bearing then on your role and  
11 the FBI information that has been distributed, the  
12 criminal history.

13                   MR. THIERWECHTER: We would have to  
14 develop a process to review that response from the  
15 FBI and determine if the dissemination of the  
16 response as it is meets the dissemination standards  
17 in the state law.

18                   If it does not, then we would have to  
19 develop a process where -- I don't know if we are  
20 going to take a black magic marker and mark it out  
21 or if we are going to do a new form or what. We  
22 haven't developed that process because we haven't  
23 had to at this point.

24                   MS. MENDLOW: Thank you very much.

25                   MR. THIERWECHTER: You're welcome.

1                   CHAIRMAN GABIG: I want to develop and  
2 make sure I understand the different positions from  
3 the first panel to the Pennsylvania State Police.  
4 That's going to take me a couple minutes. I've  
5 tried to listen to both of them. I'm talking I need  
6 about five or so minutes.

7                   Are we all right to keep on going,  
8 Jean? We'll take a break after this, if that's all  
9 right with you.

10                   I'm going to start on Page 3 of your  
11 testimony that you provided to us. This is not a  
12 trick question or anything. You probably don't even  
13 need to look at it. I think this is a little bit of  
14 a follow-up to Representative Manderino and the  
15 Democratic staff questions.

16                   In the criminal justice system,  
17 prosecutors' offices, let's do that, DA's offices  
18 and police, we are looking at a suspect precharging,  
19 the prearrest. We can go get background checks on  
20 that person. You, as a state police officer, may  
21 interview a rape suspect. You can go check out his  
22 record, you can get an FBI check. That's a  
23 computerized thing that you get, a piece of paper.  
24 You can do a clean check through your state police  
25 repository. Some of them have local -- I'm sure



1 Philadelphia does. I know around here we have Metro  
2 with some of the local agencies.

3 You sort of get a composite. Some of  
4 that information is different, some of it is the  
5 same. You can do that. We can get that up later on  
6 postarrest, during trial, for different witnesses,  
7 etc. That's one thing. And we are supposed to keep  
8 that very confidential and can only give it out to  
9 defense lawyers upon request. They are not supposed  
10 to disseminate it and all that. There's all these  
11 restrictions. That was how I grew up. We were not  
12 allowed to throw that information out to anybody.

13 Am I right on that? Are you with me  
14 on that?

15 MR. THIERWECHTER: Yes, I'm with you.

16 CHAIRMAN GABIG: Now we have moved to  
17 an era where we want to know where every baby sitter  
18 and child care and teacher and boy scout person,  
19 minister I guess, I don't know. We want to know  
20 everybody's background, criminal background.  
21 Everybody that's buying a weapon, all these  
22 background checks. It's a lot broader dissemination  
23 with this information than we have had in the past;  
24 is that right?

25 MR. THIERWECHTER: Well --

1                   CHAIRMAN GABIG: Just generally in  
2 terms of background checks.

3                   MR. THIERWECHTER: I think there are  
4 more background checks being done.

5                   CHAIRMAN GABIG: Statutorily, we are  
6 required as a matter of policy, we are saying we  
7 want to do background checks on teachers and  
8 janitors at schools. What we ought to start doing  
9 pretty soon is who is not going to get a background  
10 check. We are making it such a broad thing.

11                   Of those, that's a more restrictive  
12 category of information that you and then those that  
13 keep these things are giving out; is that right? We  
14 had all that information. It's more restrictive.

15                   MR. THIERWECHTER: Well, I think the  
16 big difference is that because of the way our state  
17 law is written, that determines as to which entity  
18 you are, what information you get.

19                   We have not restricted the amount of  
20 information available to criminal justice agencies.

21                   CHAIRMAN GABIG: Right.

22                   MR. THIERWECHTER: They are probably  
23 getting, I mean, because the systems are getting  
24 better, so they are probably getting more. We are  
25 talking about using some of this information for

1 noncriminal justice purposes such as employment, and  
2 that information is the information that's included  
3 in my testimony, that we do have to take some of  
4 that out like the nonconviction information,  
5 depending on the age of the information.

6 CHAIRMAN GABIG: Say I was arrested  
7 and they dropped the charges against me or I was  
8 found innocent and exonerated. Everybody in the  
9 world doesn't need to know that, do they?

10 MR. THIERWECHTER: That is available  
11 to criminal justice agencies, but that is not  
12 available -- if we had the disposition showing that  
13 it was a nonconviction, that information is not  
14 available to employers.

15 CHAIRMAN GABIG: Okay. So this  
16 societal policy that you had to keep this  
17 information and restricted from your traditional  
18 very broad information and rests almost on a parking  
19 ticket sometimes.

20 MR. THIERWECHTER: It's not quite that  
21 broad.

22 CHAIRMAN GABIG: I know. It is  
23 different. Is that the burden that you are talking  
24 about, trying to segregate some of these out of the  
25 computer system versus the manual fingerprint card?

1     What is the burden, the administrative burden, that  
2     you are talking about that apparently you are  
3     disagreeing with the way to go on this compact?

4             That's the basis for your  
5     disagreement; is that right?

6             MR. THIERWECHTER: That's the basis of  
7     our concern, yes. The current system is that the  
8     requesting state agency, whether it be education,  
9     welfare, or anyone's required by state statute to  
10    submit a federal background check with a fingerprint  
11    card, that information never comes back to the state  
12    police currently.

13            We funnel it through the FBI as  
14    required, but the response goes back to the  
15    individual state agency. They look at it to see if  
16    it has conviction information that prohibits a  
17    person from employment, and they do whatever they  
18    need to do with that information as far as hiring or  
19    whatever else.

20            If we adopt the council policy, it's  
21    our understanding that we have to comply with state  
22    law for all these responses. So they will now come  
23    to the state police. The state police will have to  
24    check to make sure any charges that don't have  
25    dispositions on them and then go try to get those

1 dispositions prior to returning that record.

2 That means that we will be going  
3 potentially to 50 states. And depending who the  
4 record keepers are in those states, you know, we  
5 have 67 counties in Pennsylvania. Each one of those  
6 clerk of courts has some of this information. If we  
7 have to go to 67 contacts in another state, you  
8 know, to try to track this information down, it's  
9 very labor intensive.

10 And that's where our concern lies.

11 CHAIRMAN GABIG: Okay. I think I have  
12 highlighted in the broad picture sense where the  
13 policy disagreement is. Having done that, because I  
14 think we are beating around the bush a little bit,  
15 does that raise any questions?

16 Representative Manderino.

17 REPRESENTATIVE MANDERINO: I don't  
18 know if this is necessarily a question for you but  
19 maybe a comment for our panel to ponder.

20 If I am now following this dialogue  
21 correctly, it seems to me that our concern is with  
22 what we are doing now and what we are doing now  
23 doesn't follow the protections that we presumably  
24 put in law to protect folks. And this compact,  
25 while making more work for the state police which is

1 very seriously acknowledged, actually comports with  
2 the law.

3 If I understood what you said  
4 correctly, my prospective employer, the school  
5 district of Philadelphia, to whom I have applied for  
6 a teacher's aid job, is now getting an unredacted  
7 report that may have all of that information that  
8 the law says for employment purposes, not for  
9 criminal prosecution purposes, my prospective  
10 employer shouldn't be seeing.

11 We have some housecleaning and  
12 rethinking to do in the current status of what we  
13 are doing. And this is highlighting that issue  
14 because it seems to me that information, potential  
15 information, you're telling us comes back from those  
16 reports, and because it's not now being filtered and  
17 applied to the law, even if someone at the  
18 Department of Education is through some legal  
19 council sifting through that which I kind of doubt,  
20 but it would be worth checking out whether they are,  
21 it still is my prospective employer with information  
22 about me that may have been exonerations or arrests  
23 that didn't materialize, things that are so old that  
24 they are not supposed to be showing up on a  
25 prospective employment check. That's something that

1 we need to think through as a Task Force as we're  
2 considering this issue.

3 I thank you for helping us understand  
4 that.

5 MR. THIERWECHTER: Yes, ma'am.

6 CHAIRMAN GABIG: Captain Thierwechter,  
7 do you have a response to that?

8 MR. THIERWECHTER: I think that she is  
9 accurate. I mean, it is something to consider. I  
10 guess there is potentially two options. One is we  
11 take away the current state law and just release  
12 everything or you look at some other alternatives.

13 CHAIRMAN GABIG: Representative  
14 Brooks.

15 REPRESENTATIVE BROOKS: I just want to  
16 clarify something here.

17 MR. THIERWECHTER: Sure.

18 REPRESENTATIVE BROOKS: Under our  
19 system now, if someone is arrested in the state of  
20 Arkansas for murder but for whatever reason they  
21 don't have witnesses, the case falls apart. We know  
22 about that arrest, we get the records from Arkansas;  
23 is that correct?

24 MR. THIERWECHTER: That's correct.

25 REPRESENTATIVE BROOKS: Under the new

1 system would we know about that?

2 MR. THIERWECHTER: I believe that  
3 would stay the same.

4 REPRESENTATIVE BROOKS: That would  
5 stay the same. So as far as law enforcement  
6 investigators, etc., we would still know about that?

7 MR. THIERWECHTER: Right.

8 REPRESENTATIVE BROOKS: I could  
9 imagine that that would be a safety issue or have  
10 some ramifications with respect to who you are  
11 dealing with. So there it is more pertaining to  
12 private employers and cleaning up the RAP sheet?

13 MR. THIERWECHTER: Right.

14 REPRESENTATIVE BROOKS: Okay. All  
15 right. Thank you.

16 CHAIRMAN GABIG: And Mr. Rehmann had  
17 mentioned the JNET initiative that we have here in  
18 Pennsylvania. Cumberland County, where I came from,  
19 was one of the pilot counties for that. We didn't  
20 get too much into that with Mr. Rehmann.

21 That's an attempt that the prosecution  
22 level and the court level have computerized and want  
23 to go statewide and has gone on a statewide system  
24 of keeping track of the criminal justice system.  
25 And the purpose of this is for the sentencing



1 guidelines.

2                   Because in the sentencing guidelines,  
3 we need to know not only whether they were convicted  
4 or not, but what the grading of the offense was; and  
5 not only what the grading of the offense was, but  
6 what section it might have come under. Was it at  
7 night? Was it not at night? Was it a burglary?  
8 All these different things that you need to know  
9 that make a significant difference in your  
10 guidelines; and whether they were related crimes,  
11 were they all committed together.

12                   So that JNET system, although that's a  
13 good platform, I think the issues that we are  
14 dealing with is whether or not we should try to keep  
15 the criminal justice system database and system  
16 separate from the -- we have to keep the firewalls  
17 there somehow -- broader dissemination of the  
18 information that we need from the criminal justice  
19 system.

20                   So that's the concern I have. It's  
21 not quite what you're saying. You are worried more  
22 about the administrative headaches. I think you  
23 were hitting on that. I wanted to make it clear  
24 it's sort of an odd -- I'm sure the ACLU will talk  
25 about similar type issues from a different

1 perspective.

2 I think the compact is a good way to  
3 go. What we have been successful at here is getting  
4 a lot of the information in the system. It's not  
5 perfect but it's pretty good. It's certainly the  
6 best one I had to use.

7 If you don't have that information  
8 being put in, it's not useful. It's not. We need  
9 to get that information in from the criminal justice  
10 system, and it's a very expensive process to do.  
11 Those are my concerns.

12 Do you have any follow-up questions?  
13 Any other questions?

14 Let take a quick break here.

15 (Break.)

16 CHAIRMAN GABIG: If we could come to  
17 order. It's almost about 20 of approaching lunch  
18 hour or dinner hour as they say out in my area.

19 I'm hoping you are Malia Brink.

20 MS. BRINK: Yes.

21 CHAIRMAN GABIG: Welcome. You may  
22 proceed when you are ready.

23 MS. BRINK: Thank you. Good morning.  
24 I am today's somewhat less qualified replacement for  
25 Larry Frankel who apologizes for not being able to

1 be here. He is on vacation.

2 My name is Malia Brink. I am the  
3 Jerome J. Shestack fellow with the American Civil  
4 Liberties Union of Pennsylvania. That's a really  
5 long title for staff attorney.

6 We appreciate the invitation to give  
7 our opinion on House Bill 1708. I'm actually not  
8 going to go to my written testimony for the most  
9 part. I would like to extend the discussion that I  
10 think ended with the last witness and some of the  
11 clarifications that were taking place there.

12 I think that we would all agree to the  
13 extent that information that should have been  
14 redacted as getting to employers, because it was  
15 going directly to them rather than through the  
16 Pennsylvania State Police, that's a concern. It  
17 also highlights the ACLU's primary concern with  
18 joining the compact, which is what happens to  
19 information that leaves Pennsylvania.

20 The compact requires signatory states  
21 to provide unredacted complete information to other  
22 states who are requesting it, other signatory states  
23 and the federal government for authorized  
24 noncriminal justice uses. Those uses are not  
25 defined in the compact. In fact, the compact

1 defines it very broadly. It says noncriminal  
2 justice purposes means uses of criminal history  
3 records for purposes authorized by federal or state  
4 law other than purposes relating to criminal justice  
5 activities, including employment suitability,  
6 licensing determination, immigration and  
7 naturalization matters, and national security  
8 clearances.

9           The Department of Justice's resource  
10 materials on the compact stress that a noncriminal  
11 justice use can be authorized or created by federal  
12 statute, executive order or any state statute that's  
13 been approved by the Attorney General. In other  
14 words, what is an authorized noncriminal justice  
15 purpose may expand or otherwise change in the  
16 future. And Pennsylvania, after signing the  
17 compact, would not be authorized to disagree with  
18 those uses. They couldn't refuse to provide  
19 information for one of those authorized purposes.

20           Any institution of restrictive  
21 legislation would be in conflict with the compact,  
22 and the compact trumps all contradictory state law.  
23 The only thing a state may do is limit its use of  
24 information. So as the gentleman was saying, we get  
25 non-redacted information from Connecticut and we can

1 redact it in accordance with Pennsylvania state law  
2 so that a Pennsylvania employer only has access to  
3 the information that we want.

4 If we switch the situation and we talk  
5 about a Colorado employer, for example -- I don't  
6 know why Colorado has been our example -- the  
7 Colorado employer requests information about someone  
8 who has some sort of background in Pennsylvania.  
9 Pennsylvania is then required under the compact to  
10 send an unredacted version of that record, which  
11 will include things like arrests even if the  
12 disposition was dismissed or found innocent.

13 And Colorado law would govern whether  
14 or not that information was redacted. So the  
15 employer might well under Colorado law receive the  
16 unredacted form and be able to make employment  
17 determinations based on things that we in  
18 Pennsylvania have decided employers really should  
19 not be making decisions on. We would not be able to  
20 protect the private information regarding our  
21 citizens and its use in Colorado or other signatory  
22 states.

23 Indeed, the Department of Justice and  
24 today the FBI acknowledge that the purpose of the  
25 compact was to overrule existing state limitations

1 on dissemination that have prevented states from  
2 participating in the federal program up until now.  
3 In other words, these states have privacy  
4 protections in place that the federal government  
5 wasn't really willing to accept.

6 In our opinion, the limitations on  
7 dissemination present in Pennsylvania law were put  
8 in place wisely in consideration of the privacy  
9 interest of Pennsylvania citizens, and the ACLU  
10 believes that these privacy interests continue to  
11 deserve protection.

12 I wanted to comment a little bit on  
13 the control that Pennsylvania would have under the  
14 council. The gentleman from Montana made a very  
15 good point. He said this is one of the places where  
16 we would be equal to the federal government and the  
17 governance. The council has a lot of power  
18 regarding procedures and rules.

19 There are nine positions for states,  
20 but there is no guarantee that Pennsylvania would  
21 have representation. And possibly more  
22 disconcerting to the ACLU is that there is no role  
23 specifically designated for privacy advocates to  
24 play a role in that council. There is one  
25 noncriminal justice. Despite that the fact that is

1 designed for noncriminal justice purposes, there is  
2 one and only one position delegated for a  
3 noncriminal justice person. And right now that  
4 person comes from, as he said, a gaming commission.

5 The lack of input the privacy  
6 advocates are having at the council level is very  
7 disconcerting to us.

8 With that, other than to talk ever so  
9 briefly to remind everyone of the kind of  
10 information involved here does include arrests even  
11 if there was no disposition, even if the case was  
12 dropped, and a lot of other information that is  
13 susceptible to abuse for reasons that I'm sure  
14 you're all familiar with.

15 I will take any questions that you  
16 have.

17 CHAIRMAN GABIG: Representative  
18 Manderino.

19 REPRESENTATIVE MANDERINO: Thank you.  
20 Even though I think I was the one that raised this  
21 question with the prior speaker, I'm going to  
22 reverse the other way to try to get a better  
23 understanding.

24 MS. BRINK: That's okay.

25 REPRESENTATIVE MANDERINO: If I am a

1 school district in the Commonwealth of Pennsylvania  
2 for whom the General Assembly of the Commonwealth of  
3 Pennsylvania has said, we want school district  
4 employees to have these background checks and we  
5 want these things checked because this is what we  
6 think we need to keep the children of Pennsylvania  
7 safe; and if I'm doing that background check in  
8 accordance with those guidelines from people who  
9 have a long history of living in Pennsylvania, then  
10 wouldn't I want the same information about somebody  
11 who had a long history of living in some other state  
12 that's part of this compact?

13 So even though I know I was the one  
14 that originally raised the question of who controls  
15 what information gets seen or doesn't get seen, and  
16 you raise a concern about the fact that the sending  
17 state has to send the whole thing.

18 If the purpose of the law is for the  
19 place that is requesting it to be able to whatever  
20 assumption they have made about safety and  
21 protection that they want to know, shouldn't they  
22 know the same information about everybody?

23 MS. BRINK: I do see your point. I  
24 guess what we are saying is to the extent that they  
25 do not have privacy protections in place that



1 Pennsylvania does, we sort of disagree with their  
2 underlying assumptions about what leads to safety.

3 We are disseminating this information  
4 very widely. I think the protection against having  
5 non-negative disposition arrests to factor into  
6 employment decisions is very important. And to the  
7 extent that other states don't have them, we  
8 certainly believe that they should. And we think  
9 that Pennsylvania should continue to protect that  
10 aspect of its citizens' records from having a factor  
11 in employment decisions.

12 REPRESENTATIVE MANDERINO: The whole  
13 purpose -- again, I'm trying to make sure that I  
14 understand this correctly. The whole purpose of the  
15 compact is not to give another tool to law  
16 enforcement for criminal justice and criminal  
17 enforcement proceedings, but to give a tool on  
18 criminal background checks for noncriminal justice  
19 purposes such as employment.

20 So do I as the applicant -- and I  
21 guess -- I don't know if you know this answer. I  
22 think it's important information at least for me to  
23 understand. Do I as the applicant -- am I always in  
24 a situation where if my fingerprints are being run  
25 through this compact, I have made a decision that

1 that would be such as I apply for a job where I know  
2 I am required a criminal background check? Or is  
3 getting to the privacy issue so I as the applicant  
4 have voluntarily submitted myself to the system? Or  
5 is there a potential either real now or in the  
6 future based on something that you said about who  
7 can define what purposes, that without my knowing it  
8 somebody can say gee, Muhammad Manderino sounds like  
9 a Muslim name and since we are concerned about  
10 whether or not there is some immigration violation  
11 there and we know we have a fingerprint on her from  
12 somewhere else, we are going to run it through this  
13 national database that wasn't available to us.

14 Do you understand where I am trying to  
15 go?

16 MS. BRINK: Yes.

17 REPRESENTATIVE MANDERINO: I'm trying  
18 to understand whether I am making a voluntary choice  
19 by applying for a job or trying to do something  
20 where I know I am voluntarily submitting to this,  
21 versus the potential for this information to be run  
22 on me and used against me when I haven't voluntarily  
23 submitted to it.

24 MS. BRINK: Let me use your example to  
25 give you an example of a little bit about what we

1 worry about.

2                   If someone, Muhammad Manderino,  
3 applies for a job as a teacher, even if they  
4 fingerprint and they are essentially consenting to a  
5 background search of things that seem to be related  
6 as to whether or not they would be a good teacher,  
7 whether they have molested children, whether they  
8 committed other violent crimes, something like that.

9                   The information that comes back can  
10 potentially be used for a lot of other purposes that  
11 do concern us, like immigration. You consented to  
12 the check, but what did you consent to it for and  
13 what did you expect the check results to sort of be.

14                   I also think that when you have this  
15 -- I don't know. I don't see any limitations that  
16 say there has to be a specific statute authorizing  
17 this set of checks. I don't know. I don't totally  
18 know the answer to your question. I think that the  
19 open-ended nature of the noncriminal justice use do  
20 just generally concern us and how wide this might  
21 spread.

22                   I don't know whether you'd ever have a  
23 situation -- and I don't know of anything where  
24 someone could say sit down and we are going to take  
25 your fingerprints. But if you start conditioning

1 other things, you know, forget applying for a job in  
2 a school district, but the things that you really  
3 can't do without turning over yourself to these  
4 sorts of checks. I think it raises more and more  
5 coercive concerns about how these checks are being  
6 run and what the information is being used for.

7 As I said before, the kind of  
8 information that we are talking about is very, very  
9 susceptible to abuse once it is disseminated.

10 REPRESENTATIVE MANDERINO: On one --  
11 and I don't know if you know this answer. Again,  
12 this is my limited knowledge. All of these examples  
13 we have used so far this morning assume some public  
14 entity involvement. Is that the way it always --  
15 for example, if you're applying at a private nursing  
16 home, it's my understanding that the criminal  
17 background check would come back to your state  
18 agency, the Department of Public Welfare, so our  
19 ability to fix or not fix the fact that we are or  
20 are not properly redacting that according to our  
21 current state law is something that is within our  
22 control.

23 Is it always like that or is there  
24 some either currently in Pennsylvania or the  
25 potential under this that information -- I guess

1 information doesn't directly go to a private  
2 employer under this, it would all have to go through  
3 the state police?

4 MS. BRINK: Right. That may be a  
5 benefit of the compact, that it does sort of require  
6 everything to be filtered. I don't know. I know,  
7 for example, when I applied to the Bar we had to get  
8 criminal background checks from every place. I  
9 applied actually directly to receive my criminal  
10 information from every state I've lived in in the  
11 last ten years other than Pennsylvania.

12 To my knowledge, I could sign off on  
13 that as an individual and receive my own criminal  
14 history information. But, other than that, I do  
15 believe that at least for now that the reason that  
16 that was true was because the Bar Association can  
17 not do it.

18 REPRESENTATIVE MANDERINO: Thank you.

19 MS. BRINK: You're most welcome.

20 CHAIRMAN GABIG: Any other questions  
21 from the panel or staff?

22 Thank you very much for your  
23 testimony. I thank those of you who came today. If  
24 anyone wants to submit any follow-ups or additional  
25 information, you can forward those to Ms. Dalton and

1 they will be included in the record.

2 Thank you very much.

3 (The hearing concluded at 11:57 a.m.)

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I hereby certify that the proceedings  
and evidence are contained fully and accurately in  
the notes taken by me on the within proceedings and  
that this is a correct transcript of the same.



Jean M. Davis, Reporter  
Notary Public

Notarial Seal  
Jean M. Davis, Notary Public  
Derry Twp., Dauphin County  
My Commission Expires Mar. 29, 2004  
Member, Pennsylvania Association of Notaries