Good Morning Chairman Hennessey and members of the Task Force and Committee Counsel, Karen Dalton. Thank you for the invitation to speak to this body on a very noteworthy topic—the National Crime Prevention and Privacy Compact (Compact), as proposed in Pennsylvania’s HB 1708. I would also like to recognize the commendable efforts members and staff for this Task Force have taken thus far to understand the significance of the Compact legislation.

It is my hope today to further your understanding of the significance in Pennsylvania’s actions through supporting the Compact.

Historical Reference

I would like to begin by briefly describing the development of the federal criminal history record keeping system. The FBI began acquiring identification records in 1924, pursuant to authority established in Title 28 United States Code, requiring the U. S. Attorney General to acquire, collect, classify and preserve identification and criminal identification records. The FBI fulfills this statutory responsibility by acquiring from states, fingerprint and criminal history record information. The states provide this information primarily on a voluntary basis and derive the benefit from drawing on the FBI’s national repository of such information. Historically, in providing these essential identification services, the FBI relied on labor intensive methods, with a duplication of effort and cost by the FBI and respective state repositories.

To overcome these burdens, the FBI and states developed and implemented a decentralized record keeping and exchange system known as the Interstate Identification Index or III. The III would allow for an automated exchange of criminal records and eliminate much of the duplication of data, effort and cost at the state and federal level, with the added benefit of providing more complete and accurate data from state criminal
history repositories.

Upon full implementation, the decentralized system would in large part replace the use of records stored in the FBI’s national repository since 1924.

Four key elements of the decentralized concept:

- State criminal records would be used in lieu of FBI records when possible
- the FBI would continue to maintain and furnish records of Federal offenders
- the FBI would provide an automated index, accessible via a network maintained by the FBI, to facilitate the exchange of state records
- the FBI would operate a National Fingerprint File containing only one set of fingerprints from each state for each individual arrested in that state. Fingerprint cards from that individual's second and subsequent arrests in the same state would not be sent to the FBI; rather they would be identified at the state level and used for updating the state’s record.

The FBI and participating state agencies developed the III decentralization program over ten years through a series of several test phases. The test phases measured the operational, technical, fiscal, managerial, and political aspects of decentralizing criminal records to state agencies.

During the first two phases of the III testing, III policy restricted the use of records for criminal justice and criminal justice employment purposes only. This restriction was necessary because of conflicting state laws and policies regarding dissemination of records for other than employment and licensing purposes. Further, because most states have varying state statutes or policies that restrict the dissemination of records for noncriminal justice purposes, it was determined that a federal law or an interstate compact was necessary to provide interstate record dissemination authority. Such a Compact was drafted to provide the legal framework for the noncriminal justice use of the III system and facilitate complete system decentralization.

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

- The entire record, except any portion thereof that is sealed, was to be provided by state participants.
- Agencies authorized access are those authorized according to laws governing
access to FBI identification records, such as state legislation authorizing national checks and federal statutes.

Once a record is accessed from another state, its use would be determined by the receiving states laws. Federal agencies' use was determined by Federal standards.

Fingerprints were required with record search requests for noncriminal justice purposes except for certain national security purposes authorized by Federal statute. State participants would honor fingerprint identifications made by the FBI and other state participants.

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

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

The last phase of the test used four prototype states with existing nonrestrictive laws governing release of data for noncriminal justice purposes.

Subsequently the United States Attorney General approved the compact proposal as the base document for ratification by the Congress and state legislators. On Oct 10, 1998 President Clinton signed into law the National Crime Prevention and Privacy Compact Act. This Compact was effective on April 28, 1999, when ratified by two states. The Compact serves as the final critical element toward complete decentralization of criminal history records.

Under the Compact, the FBI and states agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions and to make them available to parties of the Compact for authorized noncriminal justice purposes. The FBI manages the federal data facilities that provide a significant part of the infrastructure of the system.

Advantages of Compact Ratification

Part of the education process for today is to outline the advantages envisioned under the concept of the Compact. The major advantages are thought to be two fold - cost avoidance and improved data content and quality.

First, the enactment of the Compact and subsequent participation in the National Fingerprint File provides a tremendous potential for significant cost avoidance by both the FBI and states ratifying the Compact. At the federal level, these savings result from avoiding the processing of duplicate fingerprints for second and subsequent arrests and
related file maintenance. At the state level, savings result from a more streamlined record entry process. By not forwarding second and subsequent arrest data, disposition or custodial data for arrest events, the Pennsylvania criminal history repository housed at the State Police will experience a labor reduction. This has translated historically into substantial financial benefits. In calendar year 2001, on average, 66% of the criminal workload from participating states was not forwarded to the FBI. This equates to 860,000 subsequent arrest events from the four National Fingerprint File participating states.

The second advantage is improved criminal history record content and quality. Decentralization of the national records system is intended to streamline the record entry process and reduce potential for error. Additionally, since dispositions are often not provided to the FBI, records maintained by the FBI may be incomplete; the probability that disposition information will be included in state records is much greater. A decentralized records system will facilitate more timely entry of state and local arrest and disposition information, thus providing more comprehensive records from participating states than is currently received from the FBI.

There is no increase in the applicant background checks to states based on the passage of the Compact. Enacting Compact legislation does not change the type or amount of approved Public Law 92-544 Pennsylvania statutes which authorizes a national background check. The Compact does not circumvent state legislative authority to enact statutes which authorizes national background checks for applicants. For example, if Pennsylvania requires through statutory enactment, that school teachers have a national background check prior to employment, the same process continues once the Compact is ratified. If however, the Pennsylvania legislature requires only a Pennsylvania state records check for its school teachers, the Compact does not require or enable a national background check.

Adoption of the Compact allows Pennsylvania to share a subject’s record in its entirety with the FBI and other compact states once a positive fingerprint identification has been made. In case example, Colorado, a Compact state, has a statute mandating a national background check for applicant Real Estate Brokers. As a Compact state, Pennsylvania would be required to release its criminal record if the Colorado applicant was identified as a subject with an arrest(s) from Pennsylvania.

However, Pennsylvania is not required to screen, redact or track down additional dispositional data for the receiving state. It is the responsibility of the receiving state to apply its own policy on record redaction prior to record dissemination.

The Compact also does not require Pennsylvania to disseminate its records on an intrastate basis differently than it does today. Intrastate dissemination will still be based on Pennsylvania law or Executive Order. If it so chooses, Pennsylvania may not release state arrests without dispositions to Pennsylvania users.
In closing, I would like to thank you for the opportunity to comment. I would be glad to address any questions you or your staff may have at this time.

Respectfully submitted by Cathy L. Morrison, Interim FBI Compact Officer, July 16th, 2002