Education and Labor Committee

Health, Employment, Labor and Pensions Subcommittee

Hearing on *"H.R. 2703, Private Security Officer Employment Authorization Act of 2007,"*

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Testimony by:

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Introduction

Good Morning, I am Donna Uzzell and I am the Director of Criminal Justice Information Services for the Florida Department of Law Enforcement. I am here representing the National Crime Prevention and Privacy Compact Council and I currently hold the position as Chairman. On October 9, 1998, President Clinton signed into law the National Crime Prevention and Privacy Compact (Compact) Act, establishing an infrastructure by which states can exchange criminal records for noncriminal justice purposes according to the laws of the requesting state, and provide reciprocity among the states to share records. The Compact became effective April 28, 1999, after Montana and Georgia became the first two states to ratify it, respectively. To date, 27 states have ratified the Compact and 11 states have signed the Council's Memorandum of Understanding (MOU) in voluntary recognition of the Council's authority to adhere to the rules and procedures of the Compact. The remaining states are represented by the FBI who has a designated member to the Council. Therefore, between the states who have ratified the Compact and established MOUs, 38 states are now under the purview of the Compact.

Goal and Mission of Compact Council

The Goal of the Compact Council is to make available the most complete and up-to date records possible for noncriminal justice purposes. Our mission, is to work in partnership with criminal history record custodians, end users, and policy makers to regulate and facilitate the sharing of complete, accurate, and timely criminal history record information to noncriminal justice users in order to enhance public safety, welfare and security of society while recognizing the importance of individual privacy rights.

Because our members are federally appointed by the United States Attorney General and federal agencies are represented on the Council, the council does not lobby or take a position on any specific legislation. However, I am delighted to be here today, representing my fellow member states and extremely pleased that the committee recognized the role of the Council and our subject matter expertise on issues such as the one before you today. My comments are reflective of the practices in my state and the individual opinions of several of our members and are not an official position of the Council.

Implementation of the Private Security Officer Employment Authorization Act (PSOEAA)

Let me begin by emphasizing that the Council members fully recognize the importance of ensuring that persons who are placed in any position of trust (whether it be persons with direct contact with children., the disabled and the elderly, or persons who work in nuclear regulatory plants, or in airports or drive hazmat materials) are appropriately screened and that a criminal history background check be performed on the individual before her or she is placed in that position. The information that has been relayed to the Council is that 85% of the nation's critical infrastructure, including power plants, water treatment facilities, and telecommunications facilities are protected by the private security industry. Clearly, these individuals are critical to the nation's domestic security initiatives and serve in trusted positions.

In Florida, private security guards, both armed and unarmed, receive a state and national criminal history check and the industry is regulated and licensed by our Department of Agriculture and Consumer Services, Division of Licensing. These checks have been done for over 20 years and we average around 30,000 applications a year.

I continue to hear a range of numbers as to how many states are actually performing criminal record checks on private security guards. I have heard numbers ranging from 16 to 25 to 32 states. Since the Private Security Officer Employment Authorization Act was passed, I am aware that several states have indicated they have enacted or broadened their own state statutes. Last week at a Council committee meeting, when I had learned that I would be testifying today, I conducted a quick poll of a few of my counterparts and found that the states of California, Texas, New Jersey, New York, Tennessee, Arkansas, Virginia, Hawaii, New Hampshire, Texas, Louisiana and Vermont also conduct state and national checks on private security guards armed and unarmed. In fact, according to the FBI there are 41 states, the District of Columbia and Puerto Rico that have requested and received authorization under Public Law 92-544 to perform national criminal history checks on private security guards. Some, like Georgia, the regulatory agency has authorization to do both armed and unarmed but regulates only armed security guards, some like Kansas and Oklahoma are permissive in their checks and are not mandatory.

Because it appears that a current accurate accounting state by state does not exist, I am going to do a formal survey with the Compact Council and hope to enlist the support of the National Consortium for Justice Information and Statistics (SEARCH) and the National Association of Security Companies (NASCO) to fully understand how many states are actually performing these checks, the limitations within the state and any point of contact. I would be more than happy to share with the committee the results of that survey when completed. However, I think most will agree that one thing we do know is that there are approx. approximately 8 to 10 states that do not have any legal authority whatsoever to conduct national checks on security guards. Idaho is one of those states. Idaho does not have a state statute authorizing these checks. Last week, in a discussion with a representative from this state, I did learn that there has not been a demand by the industry within that state to enact legislation or implement the PSOEAA. The state representative in Idaho, welcomes the opportunity to work with members of the industry although admits that implementation presents a set of challenges.

Current Problems with PSOEAA Implementation

While implementing the PSOEAA checks without a 92-544 statute may appear to be a simple solution, such a task has certain obstacles that would need to be overcome. First of all, the state would need to not only submit the fingerprints and receive the criminal history results but would also be required to perform the suitability determinations based on the federal criteria. The volume of those checks could be significant. Although a fee could be assessed for this purpose, the state would need to have state authority via legislation or executive order to assess the fee, receive the money, hire the necessary resources to perform the task of adjudicating the results, handle appeals and process approvals and denials. Even if the state chose to outsource some of these functions, the state cannot outsource something it is currently not authorized to do, so the infrastructure would still need to be in place for the state to take on the responsibility for these checks.

If the state does not have the ability to participate based on the concerns previously mentioned, the state may “opt out” to enable a “participating state” to do these checks for them. While this may also sound reasonable in theory, once again, it is a complex undertaking. A state that is performing

the checks usually has a licensing or regulatory function with specified criteria used within that state for screening. Even though a fee for services is authorized, it would be very difficult for the state to justify requesting additional resources to accommodate other states, and to ask them to screen to the federal standard for these checks and their own standards for checks within their state.
I can speak personally for the state of Florida in saying that we are continually being asked to scale down our budget and limit the hiring of additional resources. Even if we could collect a fee for that service, expanding our government to provide services outside our state would be questioned. We continue to be told to stick to our core missions and I am sure since you also represent the states that this is something you can certainly understand.

How to we make this work?

So you ask yourself, well what would work. The USAG was tasked in Section 6403 of Intelligence Reform Bill and Terrorism Prevention Act to conduct a study on the issue of background checks. The Compact Council was specifically mentioned in the law as a reference group for the topic. The Council posted notes to the Federal Register as comments and worked closely with USDOJ's Office of Legal Policy in the development of the final report. It is important to note that the report to Congress is very much aligned with the recommendations of compact council members. It is also very much aligned with the comments from SEARCH. The part of the report that may be specifically relevant to Congress is in Section V Recommendations for Standardizing Non-Criminal Justice Access Authority.

Suggested Models for Consideration

Let me share with you firsthand experience from a proven model that is referenced in the AG report in Section III, Examples of Programs Implementing Criminal History Check Authorities. In Florida, several years ago there was a similar situation concerning the ability to perform state and national checks on persons employed or volunteering around children, the elderly and the disabled. There are a number of agencies that fall under this category in Florida to not only include volunteer organizations such as Boys and Girls Club, churches, and universities, but large employers in our state

such as Universal Studios, and Disney World. The dilemma was that no "one" agency in the state could take on the workload of screening for these entities and there was not "one set of criteria" that would be appropriate for all. The United Way was concerned about the impact on volunteerism and that persons with criminal offenses that would still make them suitable for some jobs could be ultimately screened out. For instance, an agency may want to allow someone with multiple driving violations including Driving While Intoxicated to volunteer in a facility with the elderly as long as they are not driving the patients but may not want someone with a history of fraud, with an elderly person who could be vulnerable to fraudulent scams. The solution, through an amendment to the Volunteers for Children's Act was to allow the qualified entity, with the presence of a waiver, to receive the criminal history information and make their own suitability determinations. The entities are subject to state audits to ensure that they are maintaining all security requirements in the maintenance and dissemination of the information. This program has been in place since 1999, and in 2006/2007 Florida conducted 144,693 criminal history checks using this model.

Another model that is applicable to this situation is the Public Law 105-277 which was passed in 1998 allowing Nursing home facilities to receive national criminal history information from the state in the event that a state statute was not in place to provide for these checks. Three states take advantage of this law and in 2007 alone over 27,000 checks were done under this statute.

One more model that was recently enacted by Congress via the Adam Walsh Act is the ability for private schools to receive the results of criminal history information to make suitability determinations for persons they employ. Similarly to the Private Security Guard Industry, private schools across the country were receiving varied assistance in obtaining criminal history checks for their employees. Some state laws only authorized criminal history checks for public schools and some included private schools but required them to fall under the state board of education for regulation. In states, where the state did not want to regulate private schools or where the private schools wanted separation from the state board there was little to no avenue for them to receive the information and do the right thing. When Congress passed the Adam Walsh Act in July 2006, you enabled private schools to directly receive national criminal history information if the provision was requested by the Chief Executive Officer of the state and the checks were

fingerprint based. In the same act, Congress made this provision available to contracted entities of Child Welfare Agencies for the licensing of Foster and Adoptive parents.

In each of the models, a group was defined as having a specialized need for persons in trusted positions to be background checked, there was no consistency nationwide, and the decision as to whether to conduct the checks was based on the states ability to provide resources to adjudicate the results and apply criteria for suitability. These models could be applied to the Private Security Guard Industry and would allow the states that wish to regulate the industry to continue doing so, but not hold hostage the companies in states where regulations do not exist. In Georgia, the state has indicated that it will continue to license armed guards and that if the records could be pushed back to the employing agency they would be willing to proceed with all security guards. This would not be uncommon for other states as well. In Florida, even though security guards are licensed by the state, many of the guard companies would like to receive the results of screening to determine if they would want to apply their own standards for persons they hire to ensure that they are appropriately placing persons in positions. Today, they must do a private company search of these records or a state only search of these records in order to accommodate that need.

Privacy Concerns

The privacy issues surrounding this information should not deter you from taking this type of action for the following reasons:

- In at least 25 states, the states information is already available on the internet by a name based check
- Private data companies compile criminal record information from courts, corrections and other databases from around the country and sell to their customers.
- At least, the information provided by the FBI is fingerprint based and limits the harm done from someone being mistakenly identified by name.
- Caveats, like those mentioned in the AG report could be put in place to protect privacy
- Rap sheets CAN be read and we have examples at the state level of

numerous organizations that are screening criminal history records today with minimum training, to say otherwise is a myth.

- If it is true that security guards do protect 85% of the nation's critical infrastructure then they would appear to fall within an exceptional category that would allow for employees to be able to screen ensuring that the right person is placed within these sensitive positions and public safety should take precedence.

Recommendations

This recommendation is consistent with past congressional actions as previously mentioned and could be enhanced by placing minimum criteria in place that the agencies would need to adhere to.

I urge you to do the following:

Prior to passing legislation, ensure that you have received accurate information and in those states that are already regulating the industry and conducting these searches allow them to continue.

If legislation is enacted, strongly consider allowing the private security guard industry to receive the results of the criminal history information. If these individuals are truly guarding areas that are critical to our nation's domestic security then don't tie their hands to enable them to employ the right person in these sensitive jobs. Despite what you may have been told, there are security guard companies that would like to police themselves and are willing to step up to the plate to take on this responsibility.

In doing so you will

- ✓ enable persons who currently can't be checked to receive the screening and,
- ✓ enable more states to participate

The USAG report recommendation on access to criminal history records indicates that when a state agrees to participate in processing these checks and passing them down to the employer the state should be able to do so with certain protections in place. If the state opts out then the employing entity should be able to go directly to the FBI. Critical Infrastructure is listed as one of the first priorities in determining who should be able to avail

themselves of this service. Consider implementing the recommendations of the USAG report.