

# SENATE BILL REPORT

## SB 5528

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As Reported By Senate Committee On:  
Human Services & Corrections, February 4, 1998

**Title:** An act relating to protecting children and vulnerable adults by using background checks.

**Brief Description:** Protecting children and vulnerable adults by using background checks.

**Sponsors:** Senators Kohl, Long, Thibaudeau, Franklin, Patterson, Fairley, Winsley, Oke and Rasmussen.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 2/13/97, 3/5/97 [DPS-WM]; 2/4/98 [DP3S-WM].

Ways & Means: 3/10/97 [DP2S].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Third Substitute Senate Bill No. 5528 be substituted therefor, and the third substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Long, Chair; Zarelli, Vice Chair; Franklin, Hargrove, Kohl, Schow and Stevens.

**Staff:** Fara Daun (786-7459)

**Background:** Many citizens, stakeholders, and agencies have expressed frustration with the complexity, inconsistencies, gaps, and unnecessary duplication among the numerous statutes relating to background check requirements for public and private sector employees and volunteers. Additional concerns have been raised about the backlog experienced by those who request background check information from the Washington State Patrol (the patrol).

**Public Sector Employees/Volunteers.** Current law and various state agency policies require background checks for many categories of public employees who work with children or vulnerable adults; primarily employees, contractors, and licensees of the Department of Social and Health Services (DSHS), teachers, and public school employees.

Current law does not authorize the Department of Health (DOH) or the disciplining authorities for health care licensees to conduct background checks to receive a license.

These laws and policies also identify specific criminal offenses for which individuals must be disqualified from employment or from receiving a credential. Some offenses are identified as automatic and permanent disqualifiers; others disqualify people for a period of time; and still other offenses may disqualify people at the discretion of the agency. The disqualifiers vary depending on the agency and type of employment or license sought.

***Processing of Background Checks through the State Patrol.*** The Washington State Patrol maintains a fingerprint-based data base containing records of all felony arrests and the subsequent dispositions of those arrests for offenses committed in Washington State. The primary purpose of this data base is to assist law enforcement and other criminal justice agencies with the administration of the criminal justice system.

Over the past several years, requests for background checks for noncriminal justice purposes have rapidly increased and now outpace the patrol's ability to process them quickly as desired. A backlog currently exists for noncriminal justice inquiries that can be up to eight or more weeks in some circumstances.

Background check inquiries can be made of the state data base by the patrol using either a name and date of birth or a set of fingerprints: fingerprint-based checks are more accurate and complete, but also more time-consuming and costly to process. Name-and-date-of-birth checks, while less expensive, carry a higher risk of inaccurate or incomplete results.

Access to national conviction data from the Federal Bureau of Investigation (FBI) is regulated by federal law. Under the terms of the federal law, state laws authorizing use of FBI data must meet the approval of the FBI.

**Summary of Third Substitute Bill:** Individuals licensed, certified, or registered with disciplining authorities under the Secretary of Health are required to notify their disciplining authority within seven days after being convicted of any disqualifying offense, and when employed, they must also notify their employers.

Applicants for the various licenses are required to submit fingerprints, documents, and fees for state and federal background checks. The disciplining authorities for the various licensees are required to review state and national background checks on all licensee applicants and renewal or reinstatement applicants. Rechecks are to be conducted at least once every four years, but may be suspended after passing four renewal checks. The disciplining authorities may conduct additional checks in individual cases for probable cause.

The process for conducting the checks, the effect of disqualifying crimes, and the criteria to be utilized in making discretionary decisions are included. A brief adjudicative proceeding is established for licensees who are adversely affected as the result of a background check.

If a disqualifying conviction appears in an applicant or licensee's background check, the disciplining authority must conduct a hearing, on the applicant or licensee's request, to determine whether to revoke the person's license. If the disciplining authority decides not to revoke the license, the license must include a conspicuous statement that it was subject to revocation based on a disqualifying crime, but that the disciplining authority decided to renew the license.

Authority is given to the disciplining authorities to adopt rules that would allow for conditional licensing, pending completion of the FBI check, after a person has cleared the state background check.

**Third Substitute Bill Compared to First and Second Substitute Bills:** The third substitute bill pertains only to the Department of Health and so is not comparable to the second substitute bill because the second substitute bill excluded the Department of Health.

All provisions in the first substitute bill except those relating to the Department of Health have been eliminated and the intent section has been narrowed accordingly. Technical refinements were made, and the following revisions were made: (a) the disciplining authority is permitted to broaden its investigation to other records; (b) a definition of adverse civil or administrative proceeding— is included; and (c) procedures for hearings permit the disciplining authority discretion to grant or renew a license that would otherwise be disqualified, provided that the license bears a conspicuous notation of the renewal despite the otherwise disqualifying conviction.

**Appropriation:** None.

**Fiscal Note:** Requested on February 4, 1998.

**Effective Date:** The bill takes effect on July 1, 1998.

**Testimony For (Human Services & Corrections):** The bill permits the Department of Health to conduct background checks on licensees, thereby providing protection by requiring all health care licensees to have passed a background check.

**Testimony Against (Human Services & Corrections):** None.

**Testified (Human Services & Corrections):** Senator Jeanne Kohl, prime sponsor; Pat Brown Department of Health.