
HOUSE BILL 1235

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By Representatives Moscoso, Goodman, Appleton, Pettigrew, Lias, Darneille, Kenney, and Roberts

Read first time 01/17/11. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to privacy of nonconviction records; amending RCW
2 10.97.030 and 10.97.050; adding a new section to chapter 10.97 RCW; and
3 creating new sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that with the
6 increasing ease of access to online information about individuals,
7 including in court files, and the increasing use of such information in
8 background checks for employment and housing and other purposes,
9 individuals are being unfairly deprived of employment and housing
10 opportunities and otherwise harmed by governmental records of cases
11 that either never resulted in convictions or are not now convictions,
12 are duplicative or could be misleading.

13 Therefore, it is the intent of the legislature to provide clarity
14 in the information publicly disseminated by the courts and other
15 criminal justice agencies about individuals in order to protect
16 people's privacy. This intent is best served by having the courts and
17 other criminal justice agencies provide information to the public that
18 does not involve either an unfiled case or a case that resulted in an
19 exonerating disposition.

1 **Sec. 2.** RCW 10.97.030 and 1999 c 49 s 1 are each amended to read
2 as follows:

3 For purposes of this chapter, the definitions of terms in this
4 section shall apply.

5 (1) "Criminal history record information" means information
6 contained in records collected by criminal justice agencies, other than
7 courts, on individuals, consisting of identifiable descriptions and
8 notations of arrests, detentions, indictments, informations, or other
9 formal criminal charges, and any disposition arising therefrom,
10 including acquittals by reason of insanity, dismissals based on lack of
11 competency, sentences, correctional supervision, and release.

12 The term includes information contained in records maintained by or
13 obtained from criminal justice agencies, other than courts, which
14 records provide individual identification of a person together with any
15 portion of the individual's record of involvement in the criminal
16 justice system as an alleged or convicted offender, except:

17 (a) Posters, announcements, or lists for identifying or
18 apprehending fugitives or wanted persons;

19 (b) Original records of entry maintained by criminal justice
20 agencies to the extent that such records are compiled and maintained
21 chronologically and are accessible only on a chronological basis;

22 (c) Court indices and records of public judicial proceedings, court
23 decisions, and opinions, and information disclosed during public
24 judicial proceedings;

25 (d) Records of traffic violations which are not punishable by a
26 maximum term of imprisonment of more than ninety days;

27 (e) Records of any traffic offenses as maintained by the department
28 of licensing for the purpose of regulating the issuance, suspension,
29 revocation, or renewal of drivers' or other operators' licenses and
30 pursuant to RCW 46.52.130;

31 (f) Records of any aviation violations or offenses as maintained by
32 the department of transportation for the purpose of regulating pilots
33 or other aviation operators, and pursuant to RCW 47.68.330;

34 (g) Announcements of executive clemency.

35 (2) "Nonconviction data" consists of all criminal history record
36 information relating to an incident which has not led to a conviction
37 or other disposition adverse to the subject, and for which proceedings
38 are no longer actively pending. There shall be a rebuttable

1 presumption that proceedings are no longer actively pending if more
2 than one year has elapsed since arrest, citation, charge, or service of
3 warrant and no disposition has been entered. Nonconviction data shall
4 also include all criminal history record information relating to a
5 conviction that has been vacated pursuant to RCW 9.94A.640 or 9.96.060.

6 (3) "Conviction record" means criminal history record information
7 relating to an incident which has led to a conviction or other
8 disposition adverse to the subject, unless that conviction has been
9 vacated pursuant to RCW 9.94A.640 or 9.96.060.

10 (4) "Conviction or other disposition adverse to the subject" means
11 any disposition of charges other than: (a) A decision not to
12 prosecute; (b) a dismissal; or (c) acquittal; with the following
13 exceptions, which shall be considered dispositions adverse to the
14 subject: An acquittal due to a finding of not guilty by reason of
15 insanity and a dismissal by reason of incompetency, pursuant to chapter
16 10.77 RCW; and a dismissal entered after a period of probation,
17 suspension, or deferral of sentence.

18 (5) "Criminal justice agency" means: (a) A court; or (b) a
19 government agency which performs the administration of criminal justice
20 pursuant to a statute or executive order and which allocates a
21 substantial part of its annual budget to the administration of criminal
22 justice.

23 (6) "The administration of criminal justice" means performance of
24 any of the following activities: Detection, apprehension, detention,
25 pretrial release, post-trial release, prosecution, adjudication,
26 correctional supervision, or rehabilitation of accused persons or
27 criminal offenders. The term also includes criminal identification
28 activities and the collection, storage, dissemination of criminal
29 history record information, and the compensation of victims of crime.

30 (7) "Disposition" means the formal conclusion of a criminal
31 proceeding at whatever stage it occurs in the criminal justice system.

32 (8) "Dissemination" means disclosing criminal history record
33 information or disclosing the absence of criminal history record
34 information to any person or agency outside the agency possessing the
35 information, subject to the following exceptions:

36 (a) When criminal justice agencies jointly participate in the
37 maintenance of a single record keeping department as an alternative to

1 maintaining separate records, the furnishing of information by that
2 department to personnel of any participating agency is not a
3 dissemination;

4 (b) The furnishing of information by any criminal justice agency to
5 another for the purpose of processing a matter through the criminal
6 justice system, such as a police department providing information to a
7 prosecutor for use in preparing a charge, is not a dissemination;

8 (c) The reporting of an event to a record keeping agency for the
9 purpose of maintaining the record is not a dissemination.

10 **Sec. 3.** RCW 10.97.050 and 2005 c 421 s 9 are each amended to read
11 as follows:

12 (1) Conviction records may be disseminated without restriction.

13 (2) Nonconviction data may not be disseminated except as provided
14 in this section or RCW 10.97.080, unless the individual identified in
15 the data has provided express written permission for dissemination.

16 (3) Any criminal history record information which pertains to an
17 incident that occurred within the last twelve months for which a person
18 is currently being processed by the criminal justice system, including
19 the entire period of correctional supervision extending through final
20 discharge from parole, when applicable, may be disseminated without
21 restriction with the exception of a record being disseminated in
22 response to a request for a conviction record under RCW 43.43.832. A
23 request for a conviction record under RCW 43.43.832 shall not contain
24 information for a person who, within the last twelve months, is
25 currently being processed by the criminal justice system unless it
26 pertains to information relating to a crime against a person as defined
27 in RCW 9.94A.411.

28 ((+3)) (4) Criminal history record information which includes
29 nonconviction data may be disseminated by a criminal justice agency to
30 another criminal justice agency for any purpose associated with the
31 administration of criminal justice, or in connection with the
32 employment of the subject of the record by a criminal justice or
33 juvenile justice agency. A criminal justice agency may respond to any
34 inquiry from another criminal justice agency without any obligation to
35 ascertain the purpose for which the information is to be used by the
36 agency making the inquiry.

1 ((+4)) (5) Criminal history record information which includes
2 nonconviction data may be disseminated by a criminal justice agency to
3 implement a statute, ordinance, executive order, or a court rule,
4 decision, or order which expressly refers to records of arrest,
5 charges, or allegations of criminal conduct or other nonconviction data
6 and authorizes or directs that it be available or accessible for a
7 specific purpose.

8 ((+5)) (6) Criminal history record information which includes
9 nonconviction data may be disseminated to individuals and agencies
10 pursuant to a contract with a criminal justice agency to provide
11 services related to the administration of criminal justice. Such
12 contract must specifically authorize access to criminal history record
13 information, but need not specifically state that access to
14 nonconviction data is included. The agreement must limit the use of
15 the criminal history record information to stated purposes and insure
16 the confidentiality and security of the information consistent with
17 state law and any applicable federal statutes and regulations.

18 ((+6)) (7) Criminal history record information which includes
19 nonconviction data may be disseminated to individuals and agencies for
20 the express purpose of research, evaluative, or statistical activities
21 pursuant to an agreement with a criminal justice agency. Such
22 agreement must authorize the access to nonconviction data, limit the
23 use of that information which identifies specific individuals to
24 research, evaluative, or statistical purposes, and contain provisions
25 giving notice to the person or organization to which the records are
26 disseminated that the use of information obtained therefrom and further
27 dissemination of such information are subject to the provisions of this
28 chapter and applicable federal statutes and regulations, which shall be
29 cited with express reference to the penalties provided for a violation
30 thereof.

31 ((+7)) (8) Every criminal justice agency that maintains and
32 disseminates criminal history record information must maintain
33 information pertaining to every dissemination of criminal history
34 record information except a dissemination to the effect that the agency
35 has no record concerning an individual. Information pertaining to
36 disseminations shall include:

37 (a) An indication of to whom (agency or person) criminal history
38 record information was disseminated;

- 1 (b) The date on which the information was disseminated;
- 2 (c) The individual to whom the information relates; and
- 3 (d) A brief description of the information disseminated.

4 The information pertaining to dissemination required to be
5 maintained shall be retained for a period of not less than one year.

6 ~~((+8))~~ (9) In addition to the other provisions in this section
7 allowing dissemination of criminal history record information, RCW
8 4.24.550 governs dissemination of information concerning offenders who
9 commit sex offenses as defined by RCW 9.94A.030. Criminal justice
10 agencies, their employees, and officials shall be immune from civil
11 liability for dissemination on criminal history record information
12 concerning sex offenders as provided in RCW 4.24.550.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 10.97 RCW
14 to read as follows:

15 (1) "Record of exonerating disposition" means a record held by a
16 court or judicial agency that would be nonconviction data if collected
17 by a criminal justice agency other than a court. This shall include
18 otherwise qualifying records that are part of court indices and records
19 of public judicial proceedings. It shall also include a record
20 relating to an incident where:

21 (a) A probable cause hearing was held and the court found there was
22 no probable cause;

23 (b) A charge was resolved by the prosecutor's acceptance of bail
24 forfeiture; or

25 (c) A charge was dismissed pursuant to a stipulated order of
26 continuance.

27 (2) A record of exonerating disposition held by a court or judicial
28 agency shall, upon the request of the person who is the subject of the
29 record, be kept confidential by that court or judicial agency, except
30 that the information shall be available to court personnel, judicial
31 officers, law enforcement, prosecuting agencies, the individual
32 identified in the records, and the attorney for that individual.

33 NEW SECTION. **Sec. 5.** This act may be known and cited as the
34 records privacy act of 2011.

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