
ENGROSSED SENATE BILL 6296

State of Washington

62nd Legislature

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By Senators Harper, Carrell, and Shin; by request of Washington State Patrol

Read first time 01/17/12. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to background checks; amending RCW 10.97.030,
2 10.97.050, 10.97.080, 43.43.730, and 43.43.8321; and repealing RCW
3 43.43.565.

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

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

7 For purposes of this chapter, the definitions of terms in this
8 section shall apply.

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

16 The term includes information contained in records maintained by or
17 obtained from criminal justice agencies, other than courts, which
18 records provide individual identification of a person together with any

1 portion of the individual's record of involvement in the criminal
2 justice system as an alleged or convicted offender, except:

3 (a) Posters, announcements, or lists for identifying or
4 apprehending fugitives or wanted persons;

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

8 (c) Court indices and records of public judicial proceedings, court
9 decisions, and opinions, and information disclosed during public
10 judicial proceedings;

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

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

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

20 (g) Announcements of executive clemency;

21 (h) Intelligence, analytical, or investigative reports and files.

22 (2) "Nonconviction data" consists of all criminal history record
23 information relating to an incident which has not led to a conviction
24 or other disposition adverse to the subject, and for which proceedings
25 are no longer actively pending. There shall be a rebuttable
26 presumption that proceedings are no longer actively pending if more
27 than one year has elapsed since arrest, citation, charge, or service of
28 warrant and no disposition has been entered.

29 (3) "Conviction record" means criminal history record information
30 relating to an incident which has led to a conviction or other
31 disposition adverse to the subject.

32 (4) "Conviction or other disposition adverse to the subject" means
33 any disposition of charges other than: (a) A decision not to
34 prosecute; (b) a dismissal; or (c) acquittal; with the following
35 exceptions, which shall be considered dispositions adverse to the
36 subject: An acquittal due to a finding of not guilty by reason of
37 insanity and a dismissal by reason of incompetency, pursuant to chapter

1 10.77 RCW; and a dismissal entered after a period of probation,
2 suspension, or deferral of sentence.

3 (5) "Criminal justice agency" means: (a) A court; or (b) a
4 government agency which performs the administration of criminal justice
5 pursuant to a statute or executive order and which allocates a
6 substantial part of its annual budget to the administration of criminal
7 justice.

8 (6) "The administration of criminal justice" means performance of
9 any of the following activities: Detection, apprehension, detention,
10 pretrial release, post-trial release, prosecution, adjudication,
11 correctional supervision, or rehabilitation of accused persons or
12 criminal offenders. The term also includes criminal identification
13 activities and the collection, storage, dissemination of criminal
14 history record information, and the compensation of victims of crime.

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

17 (8) "Dissemination" means disclosing criminal history record
18 information or disclosing the absence of criminal history record
19 information to any person or agency outside the agency possessing the
20 information, subject to the following exceptions:

21 (a) When criminal justice agencies jointly participate in the
22 maintenance of a single record keeping department as an alternative to
23 maintaining separate records, the furnishing of information by that
24 department to personnel of any participating agency is not a
25 dissemination;

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

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

32 **Sec. 2.** RCW 10.97.050 and 2005 c 421 s 9 are each amended to read
33 as follows:

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

35 (2) Any criminal history record information which pertains to an
36 incident that occurred within the last twelve months for which a person
37 is currently being processed by the criminal justice system, including

1 the entire period of correctional supervision extending through final
2 discharge from parole, when applicable, may be disseminated without
3 restriction (~~(with the exception of a record being disseminated in~~
4 ~~response to a request for a conviction record under RCW 43.43.832. A~~
5 ~~request for a conviction record under RCW 43.43.832 shall not contain~~
6 ~~information for a person who, within the last twelve months, is~~
7 ~~currently being processed by the criminal justice system unless it~~
8 ~~pertains to information relating to a crime against a person as defined~~
9 ~~in RCW 9.94A.411)).~~

10 (3) Criminal history record information which includes
11 nonconviction data may be disseminated by a criminal justice agency to
12 another criminal justice agency for any purpose associated with the
13 administration of criminal justice, or in connection with the
14 employment of the subject of the record by a criminal justice or
15 juvenile justice agency. A criminal justice agency may respond to any
16 inquiry from another criminal justice agency without any obligation to
17 ascertain the purpose for which the information is to be used by the
18 agency making the inquiry.

19 (4) Criminal history record information which includes
20 nonconviction data may be disseminated by a criminal justice agency to
21 implement a statute, ordinance, executive order, or a court rule,
22 decision, or order which expressly refers to records of arrest,
23 charges, or allegations of criminal conduct or other nonconviction data
24 and authorizes or directs that it be available or accessible for a
25 specific purpose.

26 (5) Criminal history record information which includes
27 nonconviction data may be disseminated to individuals and agencies
28 pursuant to a contract with a criminal justice agency to provide
29 services related to the administration of criminal justice. Such
30 contract must specifically authorize access to criminal history record
31 information, but need not specifically state that access to
32 nonconviction data is included. The agreement must limit the use of
33 the criminal history record information to stated purposes and insure
34 the confidentiality and security of the information consistent with
35 state law and any applicable federal statutes and regulations.

36 (6) Criminal history record information which includes
37 nonconviction data may be disseminated to individuals and agencies for
38 the express purpose of research, evaluative, or statistical activities

1 pursuant to an agreement with a criminal justice agency. Such
2 agreement must authorize the access to nonconviction data, limit the
3 use of that information which identifies specific individuals to
4 research, evaluative, or statistical purposes, and contain provisions
5 giving notice to the person or organization to which the records are
6 disseminated that the use of information obtained therefrom and further
7 dissemination of such information are subject to the provisions of this
8 chapter and applicable federal statutes and regulations, which shall be
9 cited with express reference to the penalties provided for a violation
10 thereof.

11 (7) Every criminal justice agency that maintains and disseminates
12 criminal history record information must maintain information
13 pertaining to every dissemination of criminal history record
14 information except a dissemination to the effect that the agency has no
15 record concerning an individual. Information pertaining to
16 disseminations shall include:

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

19 (b) The date on which the information was disseminated;

20 (c) The individual to whom the information relates; and

21 (d) A brief description of the information disseminated.

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

24 (8) In addition to the other provisions in this section allowing
25 dissemination of criminal history record information, RCW 4.24.550
26 governs dissemination of information concerning offenders who commit
27 sex offenses as defined by RCW 9.94A.030. Criminal justice agencies,
28 their employees, and officials shall be immune from civil liability for
29 dissemination on criminal history record information concerning sex
30 offenders as provided in RCW 4.24.550.

31 **Sec. 3.** RCW 10.97.080 and 2010 c 8 s 1093 are each amended to read
32 as follows:

33 All criminal justice agencies shall permit an individual who is, or
34 who believes that he or she may be, the subject of a criminal record
35 maintained by that agency, to appear in person during normal business
36 hours of that criminal justice agency and request to see the criminal
37 history record information held by that agency pertaining to the

1 individual. The individual's right to access and review of criminal
2 history record information shall not extend to data contained in
3 intelligence, investigative, or other related files, and shall not be
4 construed to include any information other than that defined as
5 criminal history record information by this chapter.

6 Every criminal justice agency shall adopt rules and make available
7 forms to facilitate the inspection and review of criminal history
8 record information by the subjects thereof, which rules may include
9 requirements for identification, the establishment of reasonable
10 periods of time to be allowed an individual to examine the record, and
11 for assistance by an individual's counsel, interpreter, or other
12 appropriate persons.

13 No person shall be allowed to retain or mechanically reproduce any
14 nonconviction data except for the ~~((purpose of challenge or correction~~
15 ~~when the))~~ person who is the subject of the record ~~((asserts the belief~~
16 ~~in writing that the information regarding such person is inaccurate or~~
17 ~~incomplete))~~. Such person may retain a copy of their personal
18 nonconviction data information on file, if the criminal justice agency
19 has verified the identities of those who seek to inspect them.
20 Criminal justice agencies may impose such additional restrictions,
21 including fingerprinting, as are reasonably necessary both to assure
22 the record's security and to verify the identities of those who seek to
23 inspect them. The criminal justice agency may charge a reasonable fee
24 for fingerprinting or providing a copy of the personal nonconviction
25 data information pursuant to this section. The provisions of chapter
26 42.56 RCW shall not be construed to require or authorize copying of
27 nonconviction data for any other purpose.

28 The Washington state patrol shall establish rules for the challenge
29 of records which an individual declares to be inaccurate or incomplete,
30 and for the resolution of any disputes between individuals and criminal
31 justice agencies pertaining to the accuracy and completeness of
32 criminal history record information. The Washington state patrol shall
33 also adopt rules for the correction of criminal history record
34 information and the dissemination of corrected information to agencies
35 and persons to whom inaccurate or incomplete information was previously
36 disseminated. Such rules may establish time limitations of not less
37 than ninety days upon the requirement for disseminating corrected
38 information.

1 **Sec. 4.** RCW 43.43.730 and 2006 c 294 s 5 are each amended to read
2 as follows:

3 (1) Any individual shall have the right to inspect or request a
4 copy of the criminal history record information on file with the
5 section which refers to the individual. If the individual believes
6 such information to be inaccurate or incomplete, he or she may request
7 the section to purge, modify or supplement it and to advise such
8 persons or agencies who have received his or her record and whom the
9 individual designates to modify it accordingly. Should the section
10 decline to so act, or should the individual believe the section's
11 decision to be otherwise unsatisfactory, the individual may appeal such
12 decision to the superior court in the county in which he or she is
13 resident, or the county from which the disputed record emanated or
14 Thurston county. The court shall in such case conduct a de novo
15 hearing, and may order such relief as it finds to be just and
16 equitable.

17 (2) The section may prescribe reasonable hours and a place for
18 inspection, and may impose such additional restrictions, including
19 fingerprinting, as are reasonably necessary both to assure the record's
20 security and to verify the identities of those who seek to inspect
21 them: PROVIDED, That the section may charge a reasonable fee for
22 fingerprinting or for providing a copy of the criminal history record
23 information pursuant to subsection (1) of this section.

24 **Sec. 5.** RCW 43.43.8321 and 2005 c 421 s 10 are each amended to
25 read as follows:

26 When the Washington state patrol disseminates conviction record
27 information in response to a request under RCW 43.43.832, it shall
28 clearly state that: (1) The conviction record data does not include
29 information on civil adjudications, administrative findings, or
30 disciplinary board final decisions and that all such information must
31 be obtained from the courts and licensing agencies; (2) the conviction
32 record (~~(that is being disseminated includes information)~~) includes any
33 criminal history record information which pertains to an incident that
34 occurred within the last twelve months for which a person is currently
35 being processed by the criminal justice system (~~(relating to only~~
36 ~~crimes against a person as defined in RCW 9.94A.411 and that it does~~
37 ~~not include any other current or pending charge information for which~~

1 ~~a person could be in the current process of being processed by the~~
2 ~~criminal justice system)), including the entire period of correctional~~
3 ~~supervision extending through final discharge from parole, when~~
4 ~~applicable, may be disseminated without restriction;~~ and (3) an arrest
5 is not a conviction or a finding of guilt.

6 NEW SECTION. **Sec. 6.** RCW 43.43.565 (Automatic fingerprint
7 information system account) and 1986 c 196 s 2 are each repealed.

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