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SENATE BILL 6296

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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 (i) Jail records maintained under chapter 70.48 RCW.

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

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

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

1 insanity and a dismissal by reason of incompetency, pursuant to chapter  
2 10.77 RCW; and a dismissal entered after a period of probation,  
3 suspension, or deferral of sentence.

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

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

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

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

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

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

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

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

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

36 (2) Any criminal history record information which pertains to an  
37 incident that occurred within the last twelve months for which a person

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

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

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

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

37 (6) Criminal history record information which includes  
38 nonconviction data may be disseminated to individuals and agencies for

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 than ninety days upon the requirement for disseminating corrected  
2 information.

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

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

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

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

28 When the Washington state patrol disseminates conviction record  
29 information in response to a request under RCW 43.43.832, it shall  
30 clearly state that: (1) The conviction record data does not include  
31 information on civil adjudications, administrative findings, or  
32 disciplinary board final decisions and that all such information must  
33 be obtained from the courts and licensing agencies; (2) the conviction  
34 record (~~(that is being disseminated includes information)~~) includes any  
35 criminal history record information which pertains to an incident that  
36 occurred within the last twelve months for which a person is currently

1 being processed by the criminal justice system (~~(relating to only~~  
2 ~~crimes against a person as defined in RCW 9.94A.411 and that it does~~  
3 ~~not include any other current or pending charge information for which~~  
4 ~~a person could be in the current process of being processed by the~~  
5 ~~criminal justice system)), including the entire period of correctional  
6 supervision extending through final discharge from parole, when  
7 applicable, may be disseminated without restriction; and (3) an arrest  
8 is not a conviction or a finding of guilt.~~

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

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