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**SUBSTITUTE HOUSE BILL 2080**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** House Public Safety (originally sponsored by Representatives Stanford, Goodman, and S. Hunt; by request of Nursing Care Quality Assurance Commission)

AN ACT Relating to fingerprint-based background checks for health professionals; amending RCW 43.43.700, 43.43.705, 43.43.742, and 18.130.064; and adding a new section to chapter 43.43 RCW.

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

NEW SECTION. **Sec.**  A new section is added to chapter 43.43 RCW to read as follows:

(1) The section may establish a program to notify statutorily authorized agencies of changes to criminal history records information.

(2) In order to participate in this program for record subjects, a statutorily authorized agency must:

(a) Notify the record subjects that:

(i) They have the right to obtain a copy of their own criminal history record from the section or the federal bureau of investigation at any time;

(ii) They have the right to dispute information in the criminal history record with the section and with the federal bureau of investigation at any time;

(iii) Their fingerprints may be retained by the section and the federal bureau of investigation during their periods of employment or licensure; and

(iv) Notification of any changes to their criminal history record information may be made to the statutorily authorized agency that submitted the fingerprints to the section; and

(b) Submit fingerprints of the record subjects to the section.

(3) The section may:

(a) Retain the fingerprints of record subjects submitted by a statutorily authorized agency as part of this program;

(b) Share the retained fingerprints with the federal bureau of investigation or other agencies that maintain criminal history record information, but only as necessary to discover or verify criminal history record information, and only if the recipient agency agrees to the same conditions on the use and retention of fingerprints that apply to the section; and

(c) Notify a statutorily authorized agency of a change in criminal history record information that is identified against retained fingerprints. The section must ensure that criminal history record information is provided only to the statutorily authorized agency from which the fingerprints originated.

(4) A statutorily authorized agency must maintain a separate unit to handle criminal history record information, and that unit is the only part of the statutorily authorized agency to receive reports of a change in criminal history record information pursuant to subsection (3)(c) of this section. When the unit receives such a report, it must determine if that change disqualifies the record subject for licensure or employment, or justifies disciplinary proceedings against the record subject. If not, the unit may not disclose the change to any other part of the statutorily authorized agency, the applicant's employer, or any other third party. If the change disqualifies the record subject or justifies disciplinary proceedings, the statutorily authorized agency shall notify the record subject and, if appropriate, the record subject's employer. The record subject must be provided a copy of the record subject's complete criminal history record, a copy of any communication with the record subject's employer, a notification that the record subject has the right to dispute information in the criminal history record with the section and with the federal bureau of investigation, and a notification that the record subject has the right to dispute whether the information justifies disqualification or discipline.

(5) Fingerprints retained by the section as part of this program may not be compared to unsolved crime files or used or accessed for any other criminal justice purposes.

(6)(a) A statutorily authorized agency shall promptly notify the section whenever a record subject is no longer subject to ongoing background checks. This includes expiration of a license, termination of employment, or transfer into a position that does not statutorily require background checks. Upon such notification, the section must promptly delete the affected record subject's fingerprints and ensure that the fingerprints are also deleted by any agency with which they were shared. Agencies required to delete a record subject's fingerprints must notify the section of the deletion of the affected record subject's fingerprints.

(b) The section shall certify to the statutorily authorized agency that the record subject's fingerprints have been deleted by: (i) Sending a notice to the statutorily authorized agency confirming that the section has deleted the fingerprints; and (ii) sending a duplicate of the notice to the federal bureau of investigation.

(c) The statutorily authorized agency shall certify to the record subject that his or her fingerprints have been deleted by sending a notice to the record subject confirming that his or her fingerprints were deleted.

(7) The section shall ensure that all retained fingerprints and associated criminal history record information are secured by industry standard best practices including, but not limited to, the use of industry standard methods of encryption for electronic files, in transit and at rest. Access to both fingerprints and criminal history record information may be permitted only as necessary to implement the program authorized by this section, and all access must be automatically tracked and recorded by audit tools. Neither fingerprints nor criminal history record information held or provided as authorized under this section may be disclosed except as authorized by this section.

(8) For the purposes of this section, "record subject" means an employee, licensee, or an applicant for employment or licensure subject to a criminal history background check.

**Sec.**  RCW 43.43.700 and 2006 c 294 s 1 are each amended to read as follows:

(1) There is hereby established within the Washington state patrol a section on identification and criminal history hereafter referred to as the section.

(2) In order to aid the administration of justice the section shall install systems for the identification of individuals, including the fingerprint system and such other systems as the chief deems necessary. The section shall keep a complete record and index of all information received in convenient form for consultation and comparison.

(3) The section shall obtain from whatever source available and file for record the fingerprints, palmprints, photographs, or such other identification data as it deems necessary, of persons who have been or shall hereafter be lawfully arrested and charged with, or convicted of any criminal offense. The section may obtain like information concerning persons arrested for or convicted of crimes under the laws of another state or government.

(4) The section may participate in the program authorized by section 1 of this act.

**Sec.**  RCW 43.43.705 and 2006 c 294 s 2 are each amended to read as follows:

Upon the receipt of identification data from criminal justice agencies within this state, the section shall immediately cause the files to be examined and upon request shall promptly return to the contributor of such data a transcript of the record of previous arrests and dispositions of the persons described in the data submitted.

Upon application, the section shall furnish to criminal justice agencies a transcript of the criminal history record information available pertaining to any person of whom the section has a record.

For the purposes of RCW 43.43.700 through 43.43.785 and section 1 of this act the following words and phrases shall have the following meanings:

"Criminal history record information" includes, and shall be restricted to identifying data and information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal history record information" shall not include intelligence, analytical, or investigative reports and files.

"Criminal justice agencies" are those public agencies within or outside the state which perform, as a principal function, activities directly relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

"Statutorily authorized agency" means a public agency that has statutory authority under state, federal, or local law to participate in the program authorized by section 1 of this act.

The section may refuse to furnish any information pertaining to the identification or history of any person or persons of whom it has a record, or other information in its files and records, to any applicant if the chief determines that the applicant has previously misused information furnished to such applicant by the section or the chief believes that the applicant will not use the information requested solely for the purpose of due administration of the criminal laws or for the purposes enumerated in RCW 43.43.760(4). The applicant may appeal such determination by notifying the chief in writing within thirty days. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW and in accordance with procedures for adjudicative proceedings under chapter 34.05 RCW.

**Sec.**  RCW 43.43.742 and 1987 c 450 s 4 are each amended to read as follows:

(1) The Washington state patrol shall adopt rules concerning submission of fingerprints taken by local agencies ((~~after July 26, 1987,~~)) from persons for license application or other noncriminal purposes.

(2) The Washington state patrol must adopt rules for the program authorized by section 1 of this act.

(3) The Washington state patrol may charge fees for submission of fingerprints which will cover as nearly as practicable the direct and indirect costs to the Washington state patrol of processing such submission or participation in the program authorized by section 1 of this act.

**Sec.**  RCW 18.130.064 and 2008 c 134 s 7 are each amended to read as follows:

(1)(a) The secretary is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with investigation or licensing and investigate the complete criminal history and pending charges of all applicants and license holders.

(b) Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited. Disciplining authorities shall restrict the use of background check results in determining the individual's suitability for a license and in conducting disciplinary functions.

(2)(a) The secretary shall establish requirements for each applicant for an initial license to obtain a state background check through the state patrol prior to the issuance of any license. The background check may be fingerprint-based at the discretion of the department.

(b) The secretary shall specify those situations where a background check under (a) of this subsection is inadequate and an applicant for an initial license must obtain ((~~an electronic~~)) a fingerprint-based national background check through the state patrol and federal bureau of investigation. Situations where a background check is inadequate may include instances where an applicant has recently lived out of state or where the applicant has a criminal record in Washington. The secretary shall issue a temporary practice permit to an applicant who must have a national background check conducted if the background check conducted under (a) of this subsection does not reveal a criminal record in Washington, and if the applicant meets the provisions of RCW 18.130.075.

(c) If a disciplining authority adopts rules in consultation with the secretary authorizing participation in the program authorized under section 1 of this act for applicants and licensees in the professions it regulates under RCW 18.130.040, the secretary shall obtain a fingerprint-based background check through the state patrol and federal bureau of investigation for criminal history on all applicants seeking licensure or license renewal and may choose to require all applicants and licensees for those professions to participate in the program. The rules adopted by the disciplining authority must establish requirements for:

(i) Setting fees associated with fingerprint-based national and state background checks;

(ii) The unit required by section 1(4) of this act to receive and process criminal history record information; and

(iii) Providing all applicants and licensees with the notifications required by section 1 (2)(a) and (4) of this act.

(3) In addition to the background check required in subsection (2) of this section, an investigation may include an examination of state and national criminal identification data. The disciplining authority shall use the information for determining eligibility for licensure or renewal. The disciplining authority may also use the information when determining whether to proceed with an investigation of a report under RCW 18.130.080. For a national criminal history records check, the department shall require fingerprints be submitted to and searched through the Washington state patrol identification and criminal history section. The Washington state patrol shall forward the fingerprints to the federal bureau of investigation.

(4) The secretary shall adopt rules to require license holders to report to the disciplining authority any arrests, convictions, or other determinations or findings by a law enforcement agency occurring after June 12, 2008, for a criminal offense. The report must be made within fourteen days of the conviction.

(5) The secretary shall conduct an annual review of a representative sample of all license holders who have previously obtained a background check through the department. The selection of the license holders to be reviewed must be representative of all categories of license holders and geographic locations.

(6)(a) When deciding whether or not to issue an initial license, the disciplining authority shall consider the results of any background check conducted under subsection (2) of this section that reveals a conviction for any criminal offense that constitutes unprofessional conduct under this chapter or the chapters specified in RCW 18.130.040(2) or a series of arrests that when considered together demonstrate a pattern of behavior that, without investigation, may pose a risk to the safety of the license holder's patients.

(b) If the background check conducted under subsection (2) of this section reveals any information related to unprofessional conduct that has not been previously disclosed to the disciplining authority, the disciplining authority shall take appropriate disciplinary action against the license holder.

(7) The department shall:

(a) Require the applicant or license holder to submit full sets of fingerprints if necessary to complete the background check;

(b) Require the applicant to submit any information required by the state patrol; and

(c) Notify the applicant if their background check reveals a criminal record. Only when the background check reveals a criminal record will an applicant receive a notice. Upon receiving such a notice, the applicant may request and the department shall provide a copy of the record to the extent permitted under RCW 10.97.050, including making accessible to the applicant for their personal use and information any records of arrest, charges, or allegations of criminal conduct or other nonconviction data pursuant to RCW 10.97.050(4).

(8) Criminal justice agencies shall provide the secretary with both conviction and nonconviction information that the secretary requests for investigations under this chapter.

(9) There is established a unit within the department for the purpose of detection, investigation, and prosecution of any act prohibited or declared unlawful under this chapter. The secretary will employ supervisory, legal, and investigative personnel for the unit who must be qualified by training and experience.

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