

HOUSE BILL REPORT

HB 2080

As Reported by House Committee On:
Public Safety

Title: An act relating to fingerprint-based background checks for health professionals.

Brief Description: Concerning fingerprint-based background checks for health professionals.

Sponsors: Representatives Stanford, Goodman and S. Hunt; by request of Nursing Care Quality Assurance Commission.

Brief History:

Committee Activity:

Public Safety: 2/18/15, 1/20/16, 2/5/16 [DPS].

Brief Summary of Substitute Bill

- Authorizes the Washington State Patrol and the Department of Health (DOH) to participate in the new Rap Back criminal record service offered by the Federal Bureau of Investigation.
- Requires employees, licensees, and applicants of a statutorily authorized agency to be notified that their fingerprints will be used to periodically check for criminal activity and such activity will be subsequently reported back to certain statutorily authorized agencies participating in the program.
- Authorizes disciplining authorities under the DOH to adopt rules authorizing fingerprint checks for applicants and licensees in the professions it regulates.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Appleton, Moscoso and Pettigrew.

Minority Report: Do not pass. Signed by 2 members: Representatives Hayes, Assistant Ranking Minority Member; Griffey.

Minority Report: Without recommendation. Signed by 1 member: Representative Wilson.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Yvonne Walker (786-7841).

Background:

The Washington State Patrol (WSP) obtains and maintains fingerprints, palmprints, photographs, and other criminal history records of persons arrested and charged with or convicted of a criminal offense. The WSP also maintains information concerning persons arrested for or convicted of crimes in other states. Generally, the WSP does not retain fingerprints and other criminal history records for noncriminal justice purposes.

The WSP is statutorily authorized to disseminate criminal history record information for non-criminal justice purposes and may charge a fee for the dissemination of such records. These fees vary depending on whether the request is made through the WSP's website or on paper, and whether the request is only a name and date-of-birth conviction request, or also includes a Federal Bureau of Investigation (FBI) fingerprint request.

Rap Back Service.

Rap Back is a service offered by the FBI that allows a subscriber (or authorized agency) to receive notifications each time an applicant or licensee has a change in criminal history anywhere in the country. It is a functionality that enables authorized entities the ability to receive ongoing status notifications of any criminal history reported on individuals holding positions of trust. The Rap Back service provides authorized agencies with notification of criminal activity of individuals that occurs after the initial processing. Rap Back does not provide new authority to agencies, including the FBI, for collection of fingerprint or criminal history information. It does, however, implement new response services to notify authorized agencies of subsequent activity for individuals enrolled in the service. Generally, various agencies use it as a process of confirming suitability of those individuals placed in positions of trust and notifications are sent to users of the system showing criminal activity of those individuals.

The Department of Health.

The Department of Health (DOH) is statutorily authorized to request a criminal background check that includes nonconviction data, for any purpose associated with an investigation or licensing of applicants and license holders. Disciplining authorities under the DOH may use the results from a background check for determining an individual's suitability for a license and in conducting disciplinary functions. Such background checks are limited to one-time history reports showing criminal activity as a certain date. Subsequent notifications showing when a person has future criminal activity are not automatically provided to the agency.

Summary of Substitute Bill:

The WSP is authorized to establish a program in order to notify statutorily authorized agencies of subsequent changes to a person's criminal history. The WSP may share a person's fingerprints with the FBI and other authorized agencies but only as necessary to discover or verify criminal history information and only if the recipient agency agrees to the rules surrounding the conditions on the use and retention of the fingerprints.

A statutorily authorized agency must submit the fingerprints of an employee, licensee, or an applicant for employment or licensure, to the WSP. The statutorily authorized agency must inform such persons that: (1) they have the right to obtain a copy of their own criminal history record; (2) they can dispute information in the criminal history record with the WSP and FBI; (3) their fingerprints may be retained during their periods of employment or licensure; and (4) any changes in their criminal history may be reported to the statutorily authorized agency that submitted their fingerprints.

Each statutorily authorized agency participating in the program must maintain a separate unit to handle criminal history record information. When the unit receives a criminal history report, it must determine if that change disqualifies the person for licensure or employment, or justifies disciplinary proceedings against the person. If not, the unit may not disclose the change in criminal history to any other part of the agency, the applicant's employer, or any other third party. If the change in criminal history disqualifies the person or justifies disciplinary proceedings, the statutorily authorized agency must notify the person and, if appropriate, the person's employer. The person must be provided a copy of his or her complete criminal history record, any communication with the person's employer, a notice of the right to dispute information in the criminal history record, and a notification of the right to dispute whether the information justifies disqualification or discipline.

The WSP may not use any retained fingerprints to compare to unsolved crime files or for any other criminal justice purposes.

A person's fingerprints may only be retained by the WSP and the FBI during the periods of that person's employment or licensure with the statutorily authorized agency. If that person is no longer employed or licensed with that agency, the agency and the WSP must promptly delete the person's fingerprints. The WSP must then certify that the person's fingerprints have been deleted by sending: (1) a notice to the statutorily authorized agency confirming deletion of the fingerprints; and (2) a duplicate of the notice to the FBI. The statutorily authorized agency must also certify to the person that his or her fingerprints have indeed been deleted by sending a notice to that person.

The WSP must adopt rules relating to receiving and distributing criminal history notifications about a person. The WSP must ensure that all retained fingerprints and associated criminal history record information are secured by industry standard best practices. Access to both fingerprints and criminal history record information may be permitted only as necessary to implement the criminal history record program, and all access must be automatically tracked and recorded by audit tools. The WSP may also impose a fee to cover the cost of notifying agencies of changes and updates in a person's criminal history.

A "statutorily authorized agency" is a public agency that has statutory authority under state, federal, or local law enforcement to participate in the program to receive updates on a person's criminal history.

The Department of Health.

If a disciplining authority adopts rules, in consultation with the DOH, authorizing participation in the criminal background check program for applicants and licensees in the

professions that it regulates, the DOH must obtain the fingerprint-based criminal history checks directly through the WSP and the FBI. The rules adopted by the disciplining authority under the DOH must establish requirements for: (1) setting fees associated with the background checks; (2) creating a unit to receive and process criminal history record information; and (3) notifying applicants and licensees that:

- they have the right to obtain a copy of their own criminal history record;
- they can dispute information in the criminal history record;
- their fingerprints may be retained during their periods of employment or licensure; and
- their criminal history record information will be periodically checked for updates or changes.

Substitute Bill Compared to Original Bill:

Authorization is given to allow employees and applicants to have the right to obtain a copy of their criminal history record from the WSP and the FBI and to dispute any information in their criminal history report. A provision is added to provide that an employee's or applicant's fingerprints may only be retained by the WSP and the FBI during the periods of that person's employment or licensure, otherwise such person's fingerprints must be deleted from the WSP database. All agencies that participate in the Rap Back program must maintain a separate unit to handle criminal history information and such units are prohibited from sharing a person's criminal history record with any other part of the agency. Fingerprints retained by the WSP as part of the Rap Back program are prohibited from being used to search against unsolved crime files. A provision is added to require the WSP to ensure that all retained fingerprints and criminal history records are secured by industry standard best practices.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) It is routine to require background checks of persons who work in positions of trust. This new system will help modernize and update technology. The Nursing Commission is the most trusted profession. Nurses care for patients at their most vulnerable times. However, there are many nurses that have committed crimes. The Nursing Commission has revoked 11 licenses for rape convictions. Aside from rape convictions, some nurses have been found to have committed murder-for-hire crimes while other cases have included nurses convicted of substance abuse, theft, and patient abuse.

This bill allows the Nursing Commission to ask the WSP to collect and retain fingerprints for criminal history checks and it allows the WSP to participate in Rap Back and retain those

fingerprints. Fingerprint checks will be required for all new license applicants. This will allow the Nursing Commission to be notified of a person that has been convicted of criminal activity now and in the future. When such a conviction occurs, the Nursing Commission will work with the DOH on procedures for license revocation. This bill provides the Nursing Commission with an additional tool to provide quality nurses.

(Opposed) The issue of concern is with the Rap Back program and that it could be applicable to all agencies where fingerprint checks are used for any other purpose than for criminal justice. The Rap Back program implements a system of automatic notification and does not appear to be tied to the purpose for which the fingerprints were initially sought. The FBI system has many documented errors, as it often does not contain information about final disposition of cases, and also may contain errors relating to the charge of conviction. In addition, cases may be expunged, vacated, or sealed, but the FBI background check will continue to report those cases.

It is suggested that applicants should be able to obtain a copy of their own background check directly to correct any errors. A Rap Back check should only report disqualifying convictions for the license and employees should have the right to dispute any information contained in the report. Also, there should be a prohibition on the use of the Rap Back reports for purposes other than for which they were submitted. The database that is created should be secured using industry best practices. Finally, the disciplining authority in the bill should reside with the DOH.

Persons Testifying: (In support) Margaret Kelly, Charlotte Foster, and Helen Myrick, Nursing Commission; and Melissa Johnson, Washington State Nurses Association and Washington Association of Nurse Anesthetists.

(Opposed) Shankar Narayan, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.