
SUBSTITUTE HOUSE BILL 2080

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)

READ FIRST TIME 02/05/16.

1 AN ACT Relating to fingerprint-based background checks for health
2 professionals; amending RCW 43.43.700, 43.43.705, 43.43.742, and
3 18.130.064; and adding a new section to chapter 43.43 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.43
6 RCW to read as follows:

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

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

12 (a) Notify the record subjects that:

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

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

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

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

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

5 (3) The section may:

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

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

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

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

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

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

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

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

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

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

37 **Sec. 2.** RCW 43.43.700 and 2006 c 294 s 1 are each amended to
38 read as follows:

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

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

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

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

19 **Sec. 3.** RCW 43.43.705 and 2006 c 294 s 2 are each amended to
20 read as follows:

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

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

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

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

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

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

8 The section may refuse to furnish any information pertaining to
9 the identification or history of any person or persons of whom it has
10 a record, or other information in its files and records, to any
11 applicant if the chief determines that the applicant has previously
12 misused information furnished to such applicant by the section or the
13 chief believes that the applicant will not use the information
14 requested solely for the purpose of due administration of the
15 criminal laws or for the purposes enumerated in RCW 43.43.760(4). The
16 applicant may appeal such determination by notifying the chief in
17 writing within thirty days. The hearing shall be before an
18 administrative law judge appointed under chapter 34.12 RCW and in
19 accordance with procedures for adjudicative proceedings under chapter
20 34.05 RCW.

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

23 (1) The Washington state patrol shall adopt rules concerning
24 submission of fingerprints taken by local agencies ((after July 26,
25 1987,)) from persons for license application or other noncriminal
26 purposes.

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

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

34 **Sec. 5.** RCW 18.130.064 and 2008 c 134 s 7 are each amended to
35 read as follows:

36 (1)(a) The secretary is authorized to receive criminal history
37 record information that includes nonconviction data for any purpose
38 associated with investigation or licensing and investigate the

1 complete criminal history and pending charges of all applicants and
2 license holders.

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

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

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

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

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

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

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

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

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

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

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

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

36 (7) The department shall:

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

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

1 (c) Notify the applicant if their background check reveals a
2 criminal record. Only when the background check reveals a criminal
3 record will an applicant receive a notice. Upon receiving such a
4 notice, the applicant may request and the department shall provide a
5 copy of the record to the extent permitted under RCW 10.97.050,
6 including making accessible to the applicant for their personal use
7 and information any records of arrest, charges, or allegations of
8 criminal conduct or other nonconviction data pursuant to RCW
9 10.97.050(4).

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

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

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