

HOUSE BILL REPORT

SSB 5899

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to background checks.

Brief Description: Changing provisions relating to background checks.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Kohl-Welles, Brandland and Rasmussen).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 3/29/05, 4/1/05 [DPA].

Brief Summary of Substitute Bill (As Amended by House Committee)

- Simplifies and eliminates duplicative provisions of statutes so that the dissemination of background checks are handled under one chapter.
- Eliminates the requirement that before forwarding information to certain persons or agencies requesting a background check that the Washington State Patrol (WSP) redact all information not related to crimes committed against children or other persons, crimes relating to drugs, and crimes relating to financial exploitation.
- Eliminates provisions that are not currently being implemented such as the requirement that disciplinary boards' final decisions and information relating to dependency matters and domestic relations cases be sent to the WSP.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass as amended. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Kirby and Strow.

Staff: Yvonne Walker (786-7841).

Background:

The Joint Task Force on Criminal Background Check Processes (Task Force) was created by the passage of Engrossed Substitute House Bill 2556 during the 2004 legislative session. The legislation required the Task Force to review and make recommendations regarding how to improve the state's criminal background check processes. The legislation also required the Task Force to report its findings and recommendations to the Legislature.

The Task Force held six public meetings in 2004, and made five recommendations. One of the Task Force's recommendations was to simplify statutes concerning the dissemination of background checks and to repeal portions of RCW 43.43, accordingly. The Task Force found that repealing certain portions of RCW 43.43 would simplify the Washington State Patrol's (WSP) administration of background check requests for non-criminal justice purposes. In addition, the Task Force determined that organizations requesting background checks would receive more complete information about applicants for employment or for volunteer service.

Under RCW 10.97, conviction records may be disseminated without restriction. Criminal history record information that pertains to a matter that is pending in the criminal justice system may also be disseminated without restriction under this law.

Under RCW 43.43, the WSP is authorized to disclose criminal history information of applicants and employees to businesses or organizations in Washington that provide services to persons with a developmental disability, vulnerable adults, persons with a mental illness, or children under 16 years of age. The WSP may also release criminal background information to persons with a developmental disability and vulnerable adults who desire to hire their own employees directly. However, under this statute, the information provided is limited to an applicant's record for convictions of offenses against children or other persons, convictions for crimes relating to financial exploitation if the victim is a vulnerable adult, adjudications of child abuse in a civil action, and any issuance of a vulnerable adult protection order. If the portions of RCW 43.43 were repealed so the references to specific crimes were eliminated, an organization would still be able to request background check information under RCW 10.97 and would receive information on a particular person's convictions and any charges pending for the last year.

Another problem that was brought to the Task Force's attention is that the WSP often does not receive the administrative decisions and civil findings required by statute. In addition, the Task Force learned that, in order to be compatible with the WSP databases that are used as a basis for performing background checks, records concerning civil verdicts and adverse results of administrative proceedings, must include fingerprints. In practice, most civil and administrative decisions reported to the WSP do not include fingerprints and, therefore, cannot be indexed in the WSP's records that serve as a basis for performing background checks.

Summary of Amended Bill:

If a background check is requested for non-criminal justice purposes, the WSP is required to disseminate all criminal conviction data. The act eliminates the requirement that, before

forwarding the information to the requester in certain cases, the WSP redact all information that is not related to convictions relating to crimes against children, crimes relating to drugs, and crimes relating to financial exploitation.

The requirement that a disciplinary board's final decision or any information regarding a dependency matter and domestic relation cases be sent to the WSP, is eliminated.

Rather than asking applicants if they have been convicted of certain crimes, businesses requesting background checks must require disclosure of whether the applicant has been convicted of any crime; or if there have been findings against them in civil adjudications involving domestic violence, abuse, sexual abuse, neglect, exploitation, or financial exploitation of a child or a vulnerable adult.

The prosecuting attorney must notify the WSP if a person pleads guilty to or is convicted of certain offenses. The requirement that the prosecutor has to determine which defendants have teaching certificates or are employed in a school district, is eliminated.

The Secretary of the Department of Social and Health Services (DSHS) is authorized to establish rules and set standards when considering conviction records and information on certain civil adjudications.

Amended Bill Compared to Substitute Bill:

Under the original bill, if a business or organization (that provides services to persons with a developmental disability, vulnerable adults, persons with a mental illness, or children under 16 years of age) requests a criminal background check on an employee or volunteer, the WSP was required to disseminate all criminal conviction data with the exception of pending charges of a person who is currently being processed by the criminal justice system. The amendment restores that language to current law and organizations will be able to continue to receive background check records that contain pending charges of an individual.

The original bill as drafted, would require the prosecuting attorney to notify the Office of the Superintendent of Public Instruction (OSPI) directly (taking the WSP out of the loop) if a person employed by a school district pleads guilty to certain offenses. The amendment no longer requires the prosecuting attorney to determine whether the defendant has a teaching certificate or is employed by a school. The OSPI would now be required to determine whether the defendant has a teaching certificate or is employed by a school (instead of the prosecutor's office).

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (In support with concerns) The main intent of this bill is two-fold. The first, is to reduce the administration and costs of doing criminal background checks through the WSP. The second, is to do more to ensure that employers and organizations requesting checks on perspective employees and volunteers are provided with more complete information. This will ensure that everything possible is being done to ensure the safety of children and vulnerable adults.

Under current law, an organization such as a day camp can request a background check on its employees under RCW 43.43 however, the organization right now, would not receive a full criminal history. The report would exclude such crimes as drunk driving and other property crimes. This bill as originally drafted would have provided all convictions, and under current law all pending arrests would have been recorded as part of the record. However, due to an amendment that was added to the bill in the Senate Human Services and Corrections Committee, pending criminal charges would not be able to be dissimilated under RCW 43.43. The Senate is working on an amendment to require the WSP to tell people where they can find that type of information since, under the bill as amended, they will no longer be able to provide that type of information.

(In support with amendments) Current law is mostly complied with by prosecutor's, but the changes in the bill brought attention to one particular problem. There is a section in statute that requires the prosecutor to notify the WSP about certain types of convictions if they are committed by certificated employees or persons employed by school districts. The WSP then notifies the OSPI who notifies the school district. If a prosecutor knows a person is currently employed by a school then they will notify the districts. The problem that exists is if the person is not currently working for a school. There are instances where a person has a teaching certificate but is currently working as a waiter. In addition, Prosecutors often are not able to speak to defendant's to find out whether they possess a certificate. In this case the prosecutor may not be fully meeting the intent of current statute.

An amendment should be made to the bill that requires the prosecutor to send the list of convictions directly to the OSPI. (The striker amendment as passed by the committee addresses this concern.)

(Concerns) The WSP also supported the original bill but does not support this version since the current version prohibits organizations from obtaining pending arrests. The original bill made the dissemination of criminal records process simpler. It combined the two statutes to allow the dissemination of criminal record history under one chapter. It also allowed nonprofit organizations to obtain the same information as other businesses and organizations about criminal history and pending arrests. In the past, the list of crimes have been somewhat limited but many volunteer, and nonprofit organizations would like to receive and be knowledgeable on other important crimes that have been left out in the past. The pending arrest information is public information anyway so why make it harder for organizations to have to try to find that information. (The striker amendment as passed by the committee addresses these concerns.)

Many people are prevented from getting jobs or housing because of criminal background checks that are done on them. Some people perceive this bill as allowing the dissemination of background checks for which a person has received a vacation of a conviction. There is no place in this bill that prohibits the vacation of a record.

The bill does not disseminate vacated records.

Testimony Against: There was one oversight in the bill in the definition of civil adjudication proceeding. It is missing an RCW reference for the DSHS's rulemaking authority for nursing homes. (The striker amendment as passed by the committee addresses this concern.)

The DSHS cannot support the bill as drafted since it now includes language that precludes the release of pending arrest information should it be requested. Under the current version of the bill as provided by the Senate, a person charged with a sexual assault could actually be hired by an agency without that agency's knowledge of that person's current charge. In order to get this information, it will now be an extra step for organizations that are already overburdened with conducting background checks. If the organizations can already get the reports from the WSP, why should they need to take an extra step to go looking for the information.

Persons Testifying: (In support with concerns) Senator Kohl-Wells, prime sponsor; and Amy Bell, YMCA's Council of Youth Agencies.

(In support with amendment) Tom McBride, Washington Association of Prosecuting Attorneys.

(Concerns) Jeff DeVere, Washington State Patrol; and Greg Williamson, Office of the Superintendent of Public Instruction.

(Opposed) Steve Young, Department of Social and Health Services; and Mark Muenster, Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.