
SENATE BILL 5019

State of Washington

62nd Legislature

2011 Regular Session

By Senators Regala, Kline, Harper, and Kohl-Welles

Read first time 01/10/11. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to privacy of nonconviction records; amending RCW
2 10.97.030, 10.97.040, and 10.97.060; adding a new section to chapter
3 26.50 RCW; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that with the
6 increasing ease of access to online information about individuals,
7 including in court files, and the increasing use of such information in
8 background checks for employment and housing and other purposes,
9 individuals are being unfairly deprived of employment and housing
10 opportunities and otherwise harmed by governmental records of criminal
11 cases that either never were convictions or are not now convictions,
12 are duplicative or misleading.

13 Therefore, it is the intent of the legislature to provide clarity
14 in the information publicly disseminated by the courts and other
15 criminal justice agencies about individuals in order to protect
16 people's privacy. This intent is best served by having the courts and
17 other criminal justice agencies provide information to the public when
18 it is not misleading and does not involve either an unfiled case or a
19 case that resulted in an exonerating disposition.

1 **Sec. 2.** RCW 10.97.030 and 1999 c 49 s 1 are each amended to read
2 as follows:

3 For purposes of this chapter, the definitions of terms in this
4 section shall apply.

5 (1) "Criminal history record information" means information
6 contained in records collected by criminal justice agencies(~~(, other~~
7 ~~than courts,)~~) on individuals, consisting of identifiable descriptions
8 and notations of arrests, detentions, indictments, informations, or
9 other formal criminal charges, and any disposition arising therefrom,
10 including acquittals by reason of insanity, dismissals based on lack of
11 competency, sentences, correctional supervision, and release.

12 The term includes information contained in records maintained by or
13 obtained from criminal justice agencies(~~(, other than courts,)~~) which
14 records provide individual identification of a person together with any
15 portion of the individual's record of involvement in the criminal
16 justice system as an alleged or convicted offender, except:

17 (a) Posters, announcements, or lists for identifying or
18 apprehending fugitives or wanted persons;

19 (b) Original records of entry maintained by criminal justice
20 agencies to the extent that such records are compiled and maintained
21 chronologically and are accessible only on a chronological basis;

22 (c) Court indices and records of public judicial proceedings, court
23 decisions, and opinions, and information disclosed during public
24 judicial proceedings;

25 (d) Records of traffic violations which are not punishable by a
26 maximum term of imprisonment of more than ninety days;

27 (e) Records of any traffic offenses as maintained by the department
28 of licensing for the purpose of regulating the issuance, suspension,
29 revocation, or renewal of drivers' or other operators' licenses and
30 pursuant to RCW 46.52.130;

31 (f) Records of any aviation violations or offenses as maintained by
32 the department of transportation for the purpose of regulating pilots
33 or other aviation operators, and pursuant to RCW 47.68.330;

34 (g) Announcements of executive clemency.

35 (2) "Nonconviction data" consists of all criminal history record
36 information relating to an incident which has not led to a conviction
37 or other disposition adverse to the subject, and for which proceedings
38 are no longer actively pending. There shall be a rebuttable

1 presumption that proceedings are no longer actively pending if more
2 than one year has elapsed since arrest, citation, charge, or service of
3 warrant and no disposition has been entered.

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

7 (4) "Conviction or other disposition adverse to the subject" means
8 any disposition of charges other than: (a) A decision not to
9 prosecute; (b) a dismissal; or (c) acquittal; with the following
10 exceptions, which shall be considered dispositions adverse to the
11 subject: An acquittal due to a finding of not guilty by reason of
12 insanity and a dismissal by reason of incompetency, pursuant to chapter
13 10.77 RCW; and a dismissal entered after a period of probation,
14 suspension, or deferral of sentence.

15 (5) "Criminal justice agency" means: (a) A court; or (b) a
16 government agency which performs the administration of criminal justice
17 pursuant to a statute or executive order and which allocates a
18 substantial part of its annual budget to the administration of criminal
19 justice.

20 (6) "The administration of criminal justice" means performance of
21 any of the following activities: Detection, apprehension, detention,
22 pretrial release, post-trial release, prosecution, adjudication,
23 correctional supervision, or rehabilitation of accused persons or
24 criminal offenders. The term also includes criminal identification
25 activities and the collection, storage, dissemination of criminal
26 history record information, and the compensation of victims of crime.

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

29 (8) "Dissemination" means disclosing criminal history record
30 information or disclosing the absence of criminal history record
31 information to any person or agency outside the agency possessing the
32 information, subject to the following exceptions:

33 (a) When criminal justice agencies jointly participate in the
34 maintenance of a single record keeping department as an alternative to
35 maintaining separate records, the furnishing of information by that
36 department to personnel of any participating agency is not a
37 dissemination;

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

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

7 (9) "Exonerating disposition" includes criminal charges that were
8 dismissed prior to adjudication, acquittals, criminal charges resolved
9 by the prosecutor's acceptance of bail forfeiture, and criminal
10 convictions that have been vacated. "Exonerating disposition" does not
11 include deferred prosecutions, acquittals by reason of insanity, or
12 dismissals based on lack of competency.

13 **Sec. 3.** RCW 10.97.040 and 1979 ex.s. c 36 s 2 are each amended to
14 read as follows:

15 No criminal justice agency shall disseminate criminal history
16 record information pertaining to an arrest, detention, indictment,
17 information, or other formal criminal charge made after December 31,
18 1977, unless the record disseminated states the disposition of such
19 charge to the extent dispositions have been made at the time of the
20 request for the information: PROVIDED, HOWEVER, That if a disposition
21 occurring within ten days immediately preceding the dissemination has
22 not been reported to the agency disseminating the criminal history
23 record information, or if information has been received by the agency
24 within the seventy-two hours immediately preceding the dissemination,
25 that information shall not be required to be included in the
26 dissemination: PROVIDED FURTHER, That when another criminal justice
27 agency requests criminal history record information, the disseminating
28 agency may disseminate specific facts and incidents which are within
29 its direct knowledge without furnishing disposition data as otherwise
30 required by this section, unless the disseminating agency has received
31 such disposition data from either: (1) the state patrol, or (2) the
32 court or other criminal justice agency required to furnish disposition
33 data pursuant to RCW 10.97.045.

34 Courts shall not allow public access to juvenile offender or adult
35 criminal case information until after charges are filed in a Washington
36 court of competent jurisdiction; and, if charges are filed in a case,
37 the records of that case shall be associated with a single case number.

1 No criminal justice agency shall disseminate criminal history
2 record information which shall include information concerning a felony
3 or gross misdemeanor without first making inquiry of the identification
4 section of the Washington state patrol for the purpose of obtaining the
5 most current and complete information available, unless one or more of
6 the following circumstances exists:

7 (1) The information to be disseminated is needed for a purpose in
8 the administration of criminal justice for which time is of the essence
9 and the identification section is technically or physically incapable
10 of responding within the required time;

11 (2) The full information requested and to be disseminated relates
12 to specific facts or incidents which are within the direct knowledge of
13 the agency which disseminates the information;

14 (3) The full information requested and to be disseminated is
15 contained in a criminal history record information summary received
16 from the identification section by the agency which is to make the
17 dissemination not more than thirty days preceding the dissemination to
18 be made;

19 (4) The statute, executive order, court rule, or court order
20 pursuant to which the information is to be disseminated refers solely
21 to information in the files of the agency which makes the
22 dissemination;

23 (5) The information requested and to be disseminated is for the
24 express purpose of research, evaluative, or statistical activities to
25 be based upon information maintained in the files of the agency or
26 agencies from which the information is directly sought; or

27 (6) A person who is the subject of the record requests the
28 information and the agency complies with the requirements in RCW
29 10.97.080 as now or hereafter amended.

30 **Sec. 4.** RCW 10.97.060 and 1977 ex.s. c 314 s 6 are each amended to
31 read as follows:

32 (1) Criminal history record information which consists of
33 nonconviction data only shall be subject to deletion from criminal
34 justice agency files which are available and generally searched for the
35 purpose of responding to inquiries concerning the criminal history of
36 a named or otherwise identified individual when two years or longer
37 have elapsed since the record became nonconviction data as a result of

1 the entry of a disposition favorable to the defendant, or upon the
2 passage of three years from the date of arrest or issuance of a
3 citation or warrant for an offense for which a conviction was not
4 obtained unless the defendant is a fugitive, or the case is under
5 active prosecution according to a current certification made by the
6 prosecuting attorney.

7 Such criminal history record information consisting of
8 nonconviction data shall be deleted upon the request of the person who
9 is the subject of the record: PROVIDED, HOWEVER, That the criminal
10 justice agency maintaining the data may, at its option, refuse to make
11 the deletion if:

12 ~~((1))~~ (a) The disposition was a deferred prosecution or similar
13 diversion of the alleged offender;

14 ~~((2))~~ (b) The person who is the subject of the record has had a
15 prior conviction for a felony or gross misdemeanor;

16 ~~((3))~~ (c) The individual who is the subject of the record has
17 been arrested for or charged with another crime during the intervening
18 period.

19 (2) Criminal history record information that consists of an
20 exonerating disposition shall be removed from public access and kept in
21 a recordkeeping system that is protected from examination by the public
22 and unauthorized court personnel. Such criminal history record
23 information shall be removed from public access within thirty days
24 after the information becomes an exonerating disposition.

25 (3) Nothing in this chapter is intended to restrict the authority
26 of any court, through appropriate judicial proceedings, to order the
27 modification or deletion of a record in a particular cause or
28 concerning a particular individual or event.

29 NEW SECTION. Sec. 5. A new section is added to chapter 26.50 RCW
30 to read as follows:

31 (1) Courts and other criminal justice agencies shall not make
32 available publicly on the internet any information regarding the
33 registration, filing of a petition for, or issuance of an order for
34 protection if:

35 (a) Such publication would be likely to publicly reveal the
36 identity or location of the party protected under such order;

1 (b) The request for issuance of an order for protection has been
2 withdrawn; or

3 (c) After a hearing, the court has declined to issue an order for
4 protection.

5 (2) Courts and other criminal justice agencies may share court
6 generated information and law enforcement generated information
7 contained in secure, governmental registries on the internet for
8 protection order enforcement purposes and for the purposes of oversight
9 and accountability of the courts and criminal justice agencies.

10 NEW SECTION. **Sec. 6.** This act may be known and cited as the
11 records privacy act of 2011.

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