
Judiciary Committee

HB 1497

Title: An act relating to nonconviction records.

Brief Description: Concerning the use of nonconviction records for employment and housing opportunities.

Sponsors: Representatives Moscoso, Freeman, Roberts, Orwall, Reykdal, Appleton, McCoy, Hunt, Upthegrove, Ryu, Kagi, Santos and Bergquist.

Brief Summary of Bill

- Requests the Washington State Supreme Court to adopt court rules redacting or sealing nonconviction court records and, when technologically and economically feasible, providing a process for removing nonconviction information from public court indices.
- Prohibits employers and landlords from:
 - inquiring into, or receiving information through a criminal history background check, about nonconviction records; and
 - rejecting an applicant on the basis of nonconviction records.

Hearing Date: 2/14/13

Staff: Cece Clynch (786-7195).

Background:

Dissemination of Criminal History Record Information.

The Washington State Patrol (WSP) is authorized to disseminate criminal history record information (CHRI), without the consent of the subject of the record, under state statutes known as the Washington State Criminal Records Privacy Act (WSCRPA) and the Child and Adult Abuse Information Act (CAAIA). "CHRI" includes information contained in records collected by criminal justice agencies, other than courts, and does not include court indices and records of

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public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings.

Under the WSCRPA, criminal justice agencies may request and receive, for criminal justice purposes, unrestricted CHRI, including information related to arrests, nonconviction data, conviction records, and sex and kidnapping offender registrations. "Nonconviction data," as defined in the WSCRPA, consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject and for which proceedings are no longer actively pending. There is a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, charge, or service of warrant and no disposition has been entered.

The public may request and receive CHRI for noncriminal justice purposes, but it is generally limited to conviction information only. In addition, a member of the public may also receive information pertaining to an arrest within the last 12 months for which a person is currently being processed.

Under the CAAIA, law enforcement agencies, the Office of the Attorney General, prosecuting authorities, and the Department of Social and Health Services may request background check information to aid in the investigation and prosecution of cases of abuse that involve a child, a person with a developmental disability, or a vulnerable adult. In addition, CHRI can be made available to certain businesses or organizations, state agencies, or other governmental entities that educate, train, treat, supervise, house, or provide recreation to developmentally disabled persons, vulnerable adults, or children under 16 years of age. CHRI disseminated under the CAAIA includes all convictions, adverse findings, and arrest records from the previous 12 months that are without disposition. The business or organization making the background check inquiry must notify the applicant that a background inquiry may be made.

Pre-Employment Inquires.

Pursuant to the Washington Law Against Discrimination, the Human Rights Commission (HRC) has issued, in rule, a preemployment inquiry guide. With respect to arrests, the rule provides that "because statistical studies regarding arrests have shown a disparate impact on some racial and ethnic minorities, and an arrest by itself is not a reliable indication of criminal behavior, inquiries concerning arrests must include whether charges are still pending, have been dismissed, or led to conviction of a crime involving behavior that would adversely affect job performance, and the arrest occurred within the last ten years." Exempt from the rule are law enforcement agencies and state agencies, school districts, businesses, and other organizations that have a direct responsibility for the supervision of children, persons with disabilities and vulnerable adults.

Judicial Information System (JIS).

The judicial information system committee, as established by court rule, determines matters pertaining to the delivery of services available from the judicial information system to the judiciary as well as noncourt users.

Summary of Bill:

Intent.

The Legislature recognizes the importance of openness with respect to court proceedings and court records, but finds that in a global and increasingly electronic environment, unlimited access to nonconviction records by employers and landlords can result in unintended harmful consequences when accusations of wrongdoing are used inappropriately to exclude applicants from consideration for employment and housing opportunities despite the legal presumption of innocence. By removing the barrier to housing and employment opportunities posed by nonconviction records, important state interests are promoted, including interests in conserving scarce governmental resources, keeping individuals and families sheltered and out of poverty, and reducing the effects of racial disparities in the criminal justice system.

Nonconviction Records Defined.

"Nonconviction records" means information contained in court records relating to:

- Arrest, probable cause hearings, citation, charge, and service of warrant related to an incident that did not result in conviction and for which proceedings are no longer actively pending. As with "nonconviction data" under the WSCRPA, there is a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since the arrest, citation, charge, or service of warrant and no disposition has been entered.
- Charges resulting in a dismissal (except dismissals based on incompetency or dismissals following completion of a deferred prosecution for a misdemeanor or gross misdemeanor in a court of limited jurisdiction).
- Charges resulting in acquittals (except acquittals by reason of insanity).
- Convictions for which a pardon has been granted.
- Charges dismissed under a stipulated order of continuance or other similar agreement.
- Charges dismissed pursuant to completion of a deferred sentence under specified statutes;
- Charges dismissed following the vacation of certain convictions under specified statutes; and
- Charges resolved by forfeiture of bail other than in traffic, hunting, and fishing cases.

The term also specifically encompasses "nonconviction data" as defined in the WSCRPA.

In cases in which charges have been reduced or dismissed pursuant to a plea bargain, whether under single or multiple cause numbers, the parts of those records that relate to charges that satisfy the definition of "nonconviction records" must be treated as nonconviction records.

Washington Supreme Court.

Request is made of the Washington Supreme Court to implement the public policy interests outlined in the intent section by adopting court rules authorizing courts to:

- Redact or seal nonconviction court records, including redacting the public court index, or replacing the charge in all publicly accessible records with the label "nonconviction," or both, in individual cases, to the extent necessary to prevent the harm described in the intent section.
- At such time as it may be technologically and economically feasible within the Judicial Information System (JIS), provide a process for removing from public access information about nonconviction court records in public court indices, while at the same time retaining this information for other purposes.

Employers.

Employers may not include a question on an employment application, inquire, or receive information through a criminal history background check, about nonconviction records. Employers are also prohibited from rejecting an applicant for employment on the basis of nonconviction records.

There are specific exceptions to these prohibitions for employers:

- Hiring a person who will care for children under 18, a "vulnerable adult" as defined in statutes relating to the abuse of vulnerable adults, or a "vulnerable person" as defined in statutes relating to the restoration of employment rights.
- Expressly permitted or required under any federal or state law to inquire into, consider, or rely on information about an applicant or employee's arrest record for employment purposes.

Landlords.

Landlords may not include a question on a rental application, inquire either orally or in writing, or receive information through a criminal history background check, about nonconviction records of a prospective tenant. Landlords are prohibited from rejecting an applicant on the basis of nonconviction records. There is an exception to these prohibitions for landlords who are specifically permitted by other provisions of law to consider or reject tenants based on nonconviction court records.

Enforcement.

A right of action is specifically authorized to enforce provisions of the new chapter created in Title 10 RCW. Damages to an applicant are presumed to equal the cost of the application, if any, plus 100 dollars. Fees and costs may also be recovered. Additional damages must be proved.

Appropriation: None.

Fiscal Note: Requested on February 13, 2013.

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