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SENATE BILL 5117

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State of Washington                      57th Legislature                      2001 Regular Session

By Senators Costa, Long, Hargrove, Kline and Gardner

Read first time 01/11/2001. Referred to Committee on Judiciary.

1            AN ACT Relating to disclosure of investigative records; amending  
2 RCW 10.97.030 and 10.97.050; and adding a new section to chapter 42.17  
3 RCW.

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

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

7            For purposes of this chapter, the definitions of terms in this  
8 section shall apply.

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

16            The term includes information contained in records maintained by or  
17 obtained from criminal justice agencies, other than courts, which  
18 records provide individual identification of a person together with any

1 portion of the individual's record of involvement in the criminal  
2 justice system as an alleged or convicted offender, except:

3 (a) Posters, announcements, or lists for identifying or  
4 apprehending fugitives or wanted persons;

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

8 (c) Court indices and records of public judicial proceedings, court  
9 decisions, and opinions, and information disclosed during public  
10 judicial proceedings;

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

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

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

20 (g) Announcements of executive clemency.

21 (2) "Nonconviction data" consists of all criminal history record  
22 information relating to an incident which has not led to a conviction  
23 or other disposition adverse to the subject, and for which proceedings  
24 are no longer actively pending. There shall be a rebuttable  
25 presumption that proceedings are no longer actively pending if more  
26 than one year has elapsed since arrest, citation, charge, or service of  
27 warrant and no disposition has been entered.

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

31 (4) "Conviction or other disposition adverse to the subject" means  
32 any disposition of charges other than: (a) A decision not to  
33 prosecute; (b) a dismissal; or (c) acquittal; with the following  
34 exceptions, which shall be considered dispositions adverse to the  
35 subject: An acquittal due to a finding of not guilty by reason of  
36 insanity and a dismissal by reason of incompetency, pursuant to chapter  
37 10.77 RCW; and a dismissal entered after a period of probation,  
38 suspension, or deferral of sentence.

1 (5) "Criminal justice agency" means: (a) A court; or (b) a  
2 government agency which performs the administration of criminal justice  
3 pursuant to a statute or executive order and which allocates a  
4 substantial part of its annual budget to the administration of criminal  
5 justice.

6 (6) "The administration of criminal justice" means performance of  
7 any of the following activities: Detection, apprehension, detention,  
8 pretrial release, post-trial release, prosecution, adjudication,  
9 correctional supervision, or rehabilitation of accused persons or  
10 criminal offenders. The term also includes criminal identification  
11 activities and the collection, storage, dissemination of criminal  
12 history record information, and the compensation of victims of crime.

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

15 (8) "Dissemination" means disclosing criminal history record  
16 information or disclosing the absence of criminal history record  
17 information to any person or agency outside the agency possessing the  
18 information, subject to the following exceptions:

19 (a) When criminal justice agencies jointly participate in the  
20 maintenance of a single record keeping department as an alternative to  
21 maintaining separate records, the furnishing of information by that  
22 department to personnel of any participating agency is not a  
23 dissemination;

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

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

30 (9) "Investigative records" means all incident reports, witness  
31 statements, descriptions of seized evidence, seized evidence, and  
32 reports of forensic testing collected or assembled regarding a specific  
33 criminal offense.

34 **Sec. 2.** RCW 10.97.050 and 1990 c 3 s 129 are each amended to read  
35 as follows:

36 (1) Conviction records may be disseminated without restriction.

37 (2) Any criminal history record information which pertains to an  
38 incident for which a person is currently being processed by the

1 criminal justice system, including the entire period of correctional  
2 supervision extending through final discharge from parole, when  
3 applicable, may be disseminated without restriction.

4 (3) Criminal history record information which includes  
5 nonconviction data may be disseminated by a criminal justice agency to  
6 another criminal justice agency for any purpose associated with the  
7 administration of criminal justice, or in connection with the  
8 employment of the subject of the record by a criminal justice or  
9 juvenile justice agency. A criminal justice agency may respond to any  
10 inquiry from another criminal justice agency without any obligation to  
11 ascertain the purpose for which the information is to be used by the  
12 agency making the inquiry.

13 (4) Criminal history record information which includes  
14 nonconviction data may be disseminated by a criminal justice agency to  
15 implement a statute, ordinance, executive order, or a court rule,  
16 decision, or order which expressly refers to records of arrest,  
17 charges, or allegations of criminal conduct or other nonconviction data  
18 and authorizes or directs that it be available or accessible for a  
19 specific purpose.

20 (5) Criminal history record information which includes  
21 nonconviction data may be disseminated to individuals and agencies  
22 pursuant to a contract with a criminal justice agency to provide  
23 services related to the administration of criminal justice. Such  
24 contract must specifically authorize access to criminal history record  
25 information, but need not specifically state that access to  
26 nonconviction data is included. The agreement must limit the use of  
27 the criminal history record information to stated purposes and insure  
28 the confidentiality and security of the information consistent with  
29 state law and any applicable federal statutes and regulations.

30 (6) Criminal history record information which includes  
31 nonconviction data may be disseminated to individuals and agencies for  
32 the express purpose of research, evaluative, or statistical activities  
33 pursuant to an agreement with a criminal justice agency. Such  
34 agreement must authorize the access to nonconviction data, limit the  
35 use of that information which identifies specific individuals to  
36 research, evaluative, or statistical purposes, and contain provisions  
37 giving notice to the person or organization to which the records are  
38 disseminated that the use of information obtained therefrom and further  
39 dissemination of such information are subject to the provisions of this

1 chapter and applicable federal statutes and regulations, which shall be  
2 cited with express reference to the penalties provided for a violation  
3 thereof.

4 (7) Except for disclosure to a criminal justice agency,  
5 investigative records may only be disseminated or disclosed under the  
6 following circumstances:

7 (a) All suspects identified in the investigative records have been  
8 arraigned on any charges filed based upon the investigation, and the  
9 judge presiding over the criminal proceedings determines, after hearing  
10 from the defendant or the defendant's attorney, the prosecuting  
11 attorney, the lead investigator, and the individual requesting copies  
12 of the investigative records, that the individual requesting copies of  
13 the investigative records has established by clear evidence that  
14 release of the investigative records will not interfere with the  
15 suspect's right to a fair trial or with any continuing investigation;

16 (b) The convictions of all suspects identified in the investigative  
17 records are final as defined in RCW 10.73.090, and neither the  
18 prosecuting attorney nor investigative agency has established by clear  
19 evidence that release of the investigative records will interfere with  
20 any pending civil actions or related investigations; or

21 (c) CrR 4.7 or CrRLJ 4.7 permit dissemination of investigative  
22 records to individuals who have been charged with crimes or to the  
23 attorney or agents of individuals who have been charged with crimes.

24 (8) Every criminal justice agency that maintains and disseminates  
25 criminal history record information or investigative records must  
26 maintain information pertaining to every dissemination of criminal  
27 history record information or investigative record except a  
28 dissemination to the effect that the agency has no record concerning an  
29 individual. Information pertaining to disseminations shall include:

30 (a) An indication of to whom (agency or person) criminal history  
31 record information or investigative record was disseminated;

32 (b) The date on which the information was disseminated;

33 (c) The individual to whom the information relates; and

34 (d) A brief description of the information disseminated.

35 The information pertaining to dissemination required to be  
36 maintained shall be retained for a period of not less than one year.

37 ~~((+8+))~~ (9) In addition to the other provisions in this section  
38 allowing dissemination of criminal history record information, RCW  
39 4.24.550 governs dissemination of information concerning offenders who

1 commit sex offenses as defined by RCW 9.94A.030. Criminal justice  
2 agencies, their employees, and officials shall be immune from civil  
3 liability for dissemination on criminal history record information  
4 concerning sex offenders as provided in RCW 4.24.550.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 42.17 RCW  
6 to read as follows:

7 Investigative records, as defined in RCW 10.97.030, are exempt from  
8 the disclosure requirements of this chapter.

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