

SENATE BILL REPORT

SSB 5899

As Passed Senate, March 15, 2005

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: Human Services & Corrections: 2/17/05, 2/24/05 [DPS].
Passed Senate: 3/15/05, 46-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5899 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Brandland, McAuliffe and Thibaudeau.

Staff: Kiki Keizer (786-7430)

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 Bill: If a background check is requested for non-criminal justice purposes, the WSP is required to disseminate all conviction data. The bill 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 disciplinary board final decisions and information regarding dependency matters and domestic relations 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 Office of the Superintendent of Public Instruction (OSPI) if a person employed by a school district pleads guilty to certain offenses. The requirement that the prosecutor notify the WSP, who must then notify the Superintendent of Public Instruction, 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.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill simplifies the criminal history dissemination statutes, reducing the administrative resources and cost necessary to implement the law. Persons requesting background checks will receive broader and more accurate information that may be relevant to whether someone has the appropriate character and fitness for a particular job or volunteer position.

The DSHS supports making the dissemination of criminal history information more efficient for the Washington State Patrol (WSP) but wants to ensure that the DSHS retains the authority to do background checks and to determine what types of criminal history information are relevant for purposes of licensing persons and agencies that work with vulnerable populations.

It is important to note that criminal history records do not include information on conduct that is not criminally charged. For example, many sex abuse cases are not initiated with an arrest. The WSP does not have information unless charges are filed. The WSP should consider including a standard note on criminal history records that are disseminated, to the effect that no information on civil adjudications or administrative findings are included in the reports.

Testimony Against: None.

Who Testified: PRO: Senator Jeanne Kohl-Welles, prime sponsor; Mary Neff, Washington State Patrol; Fred Fakkema, Washington State Patrol; Amy Bell, YMCA's Council of Youth Agencies. OTHER: Steve Young, Department of Social and Health Services; Tom McBride, Washington Association of Prosecuting Attorneys.

House Amendment(s): Criminal history information that is disseminated by the Washington State Patrol may contain information on pending charges relating to crimes against a person, as defined in RCW 9.94A.411. When the WSP disseminates conviction record information in response to a request under RCW 43.43.832, it must notify the recipient that the information does not include information on civil adjudications, administrative findings, or disciplinary board final decisions and that all such information must be obtained from the courts and licensing agencies. In addition, the notice must state that the conviction record that is being disseminated includes information on pending charges relating to only crimes against a person as defined in RCW 9.94A.411. Finally, the notice must state that an arrest is not a conviction or a finding of guilt.

Prosecuting attorneys must inform the WSP about guilty pleas and convictions of certain crimes. The WSP must then inform the Office of Superintendent of Public Instruction, which will then determine if such persons hold a teaching certificate or similar permit.

Passed House: 90-6.