

SB 6296 - S AMD 40

By Senators Harper, Carrell

ADOPTED 02/09/2012

1 Strike everything after the enacting clause and insert the
2 following:

3
4 "Sec. 1. RCW 10.97.030 and 1999 c 49 s 1 are each amended to read
5 as follows:

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

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

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

20 (a) Posters, announcements, or lists for identifying or
21 apprehending fugitives or wanted persons;

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

25 (c) Court indices and records of public judicial proceedings,
26 court decisions, and opinions, and information disclosed during public
27 judicial proceedings;

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

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

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

10 (g) Announcements of executive clemency;

11 (h) Intelligence, analytical, or investigative reports and files.

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

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

22 (4) "Conviction or other disposition adverse to the subject" means
23 any disposition of charges other than: (a) A decision not to
24 prosecute; (b) a dismissal; or (c) acquittal; with the following
25 exceptions, which shall be considered dispositions adverse to the
26 subject: An acquittal due to a finding of not guilty by reason of
27 insanity and a dismissal by reason of incompetency, pursuant to
28 chapter 10.77 RCW; and a dismissal entered after a period of
29 probation, suspension, or deferral of sentence.

30 (5) "Criminal justice agency" means: (a) A court; or (b) a
31 government agency which performs the administration of criminal
32 justice pursuant to a statute or executive order and which allocates a
33 substantial part of its annual budget to the administration of
34 criminal justice.

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

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

10 (8) "Dissemination" means disclosing criminal history record
11 information or disclosing the absence of criminal history record
12 information to any person or agency outside the agency possessing the
13 information, subject to the following exceptions:

14 (a) When criminal justice agencies jointly participate in the
15 maintenance of a single record keeping department as an alternative to
16 maintaining separate records, the furnishing of information by that
17 department to personnel of any participating agency is not a
18 dissemination;

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

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

25

26 **Sec. 2.** RCW 10.97.050 and 2005 c 421 s 9 are each amended to read
27 as follows:

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

29 (2) Any criminal history record information which pertains to an
30 incident that occurred within the last twelve months for which a
31 person is currently being processed by the criminal justice system,
32 including the entire period of correctional supervision extending
33 through final discharge from parole, when applicable, may be
34 disseminated without restriction (~~with the exception of a record~~

1 ~~being disseminated in response to a request for a conviction record~~
2 ~~under RCW 43.43.832. A request for a conviction record under RCW~~
3 ~~43.43.832 shall not contain information for a person who, within the~~
4 ~~last twelve months, is currently being processed by the criminal~~
5 ~~justice system unless it pertains to information relating to a crime~~
6 ~~against a person as defined in RCW 9.94A.411)).~~

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

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

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

33 (6) Criminal history record information which includes
34 nonconviction data may be disseminated to individuals and agencies for

1 the express purpose of research, evaluative, or statistical activities
2 pursuant to an agreement with a criminal justice agency. Such
3 agreement must authorize the access to nonconviction data, limit the
4 use of that information which identifies specific individuals to
5 research, evaluative, or statistical purposes, and contain provisions
6 giving notice to the person or organization to which the records are
7 disseminated that the use of information obtained therefrom and
8 further dissemination of such information are subject to the
9 provisions of this chapter and applicable federal statutes and
10 regulations, which shall be cited with express reference to the
11 penalties provided for a violation thereof.

12 (7) Every criminal justice agency that maintains and disseminates
13 criminal history record information must maintain information
14 pertaining to every dissemination of criminal history record
15 information except a dissemination to the effect that the agency has
16 no record concerning an individual. Information pertaining to
17 disseminations shall include:

18 (a) An indication of to whom (agency or person) criminal history
19 record information was disseminated;

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

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

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

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

25 (8) In addition to the other provisions in this section allowing
26 dissemination of criminal history record information, RCW 4.24.550
27 governs dissemination of information concerning offenders who commit
28 sex offenses as defined by RCW 9.94A.030. Criminal justice agencies,
29 their employees, and officials shall be immune from civil liability
30 for dissemination on criminal history record information concerning
31 sex offenders as provided in RCW 4.24.550.

32
33 **Sec. 3.** RCW 10.97.080 and 2010 c 8 s 1093 are each amended to
34 read as follows:

1 All criminal justice agencies shall permit an individual who is,
2 or who believes that he or she may be, the subject of a criminal
3 record maintained by that agency, to appear in person during normal
4 business hours of that criminal justice agency and request to see the
5 criminal history record information held by that agency pertaining to
6 the individual. The individual's right to access and review of
7 criminal history record information shall not extend to data contained
8 in intelligence, investigative, or other related files, and shall not
9 be construed to include any information other than that defined as
10 criminal history record information by this chapter.

11 Every criminal justice agency shall adopt rules and make available
12 forms to facilitate the inspection and review of criminal history
13 record information by the subjects thereof, which rules may include
14 requirements for identification, the establishment of reasonable
15 periods of time to be allowed an individual to examine the record, and
16 for assistance by an individual's counsel, interpreter, or other
17 appropriate persons.

18 No person shall be allowed to retain or mechanically reproduce any
19 nonconviction data except for the (~~purpose of challenge or correction~~
20 ~~when the~~) person who is the subject of the record. (~~asserts the~~
21 ~~belief in writing that the information regarding such person is~~
22 ~~inaccurate or incomplete~~) Such person may retain a copy of their
23 personal nonconviction data information on file, if the criminal
24 justice agency has verified the identities of those who seek to
25 inspect them. Criminal justice agencies may impose such additional
26 restrictions, including fingerprinting, as are reasonably necessary
27 both to assure the record's security and to verify the identities of
28 those who seek to inspect them. The criminal justice agency may charge
29 a reasonable fee for fingerprinting or providing a copy of the
30 personal nonconviction data information pursuant to this section. The
31 provisions of chapter 42.56 RCW shall not be construed to require or
32 authorize copying of nonconviction data for any other purpose.

33 The Washington state patrol shall establish rules for the
34 challenge of records which an individual declares to be inaccurate or

1 incomplete, and for the resolution of any disputes between individuals
2 and criminal justice agencies pertaining to the accuracy and
3 completeness of criminal history record information. The Washington
4 state patrol shall also adopt rules for the correction of criminal
5 history record information and the dissemination of corrected
6 information to agencies and persons to whom inaccurate or incomplete
7 information was previously disseminated. Such rules may establish
8 time limitations of not less than ninety days upon the requirement for
9 disseminating corrected information.

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11 **Sec. 4.** RCW 43.43.730 and 2006 c 294 s 5 are each amended to read
12 as follows:

13 (1) Any individual shall have the right to inspect or request a
14 copy of the criminal history record information on file with the
15 section which refers to the individual. If the individual believes
16 such information to be inaccurate or incomplete, he or she may request
17 the section to purge, modify or supplement it and to advise such
18 persons or agencies who have received his or her record and whom the
19 individual designates to modify it accordingly. Should the section
20 decline to so act, or should the individual believe the section's
21 decision to be otherwise unsatisfactory, the individual may appeal
22 such decision to the superior court in the county in which he or she
23 is resident, or the county from which the disputed record emanated or
24 Thurston county. The court shall in such case conduct a de novo
25 hearing, and may order such relief as it finds to be just and
26 equitable.

27 (2) The section may prescribe reasonable hours and a place for
28 inspection, and may impose such additional restrictions, including
29 fingerprinting, as are reasonably necessary both to assure the
30 record's security and to verify the identities of those who seek to
31 inspect them: PROVIDED, That the section may charge a reasonable fee
32 for fingerprinting or for providing a copy of the criminal history
33 record information pursuant to subsection (1) of this section.

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1 **Sec. 5.** RCW 43.43.8321 and 2005 c 421 s 10 are each amended to
2 read as follows:

3 When the Washington state patrol disseminates conviction record
4 information in response to a request under RCW 43.43.832, it shall
5 clearly state that: (1) The conviction record data does not include
6 information on civil adjudications, administrative findings, or
7 disciplinary board final decisions and that all such information must
8 be obtained from the courts and licensing agencies; (2) the conviction
9 record (~~(that is being disseminated includes information)~~) includes
10 any criminal history record information which pertains to an incident
11 that occurred within the last twelve months for which a person is
12 currently being processed by the criminal justice system (~~((relating to~~
13 ~~only crimes against a person as defined in RCW 9.94A.411 and that it~~
14 ~~does not include any other current or pending charge information for~~
15 ~~which a person could be in the current process of being processed by~~
16 ~~the criminal justice system))), including the entire period of
17 correctional supervision extending through final discharge from
18 parole, when applicable, may be disseminated without restriction; and
19 (3) an arrest is not a conviction or a finding of guilt.~~

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21 NEW SECTION. **Sec. 6.** RCW 43.43.565 (Automatic fingerprint
22 information system account) and 1986 c 196 s 2 are each repealed."

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EFFECT: Removes from the definition of criminal history "jail records maintained under chapter 70.48 RCW. Clarifies that the person who is the subject of the criminal history record may obtain a copy of that record.

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