

SENATE BILL REPORT

SB 5252

As Amended by House, April 6, 2023

Title: An act relating to modifications necessary to comply with federal regulations regarding dissemination of federal bureau of investigation criminal history record information.

Brief Description: Making modifications necessary to comply with federal regulations regarding dissemination of federal bureau of investigation criminal history record information.

Sponsors: Senators Valdez, Padden, Kuderer, Nobles and Wilson, C.; by request of Department of Social and Health Services.

Brief History:

Committee Activity: Human Services: 1/31/23, 2/07/23 [DP].

Floor Activity: Passed Senate: 2/27/23, 48-0.

Passed House: 4/6/23, 98-0.

Brief Summary of Bill

- Limits sharing of background check information between designated entities to what is authorized under federal law.
- Separates shared responsibilities of the Department of Social and Health Services and the Department of Children, Youth, and Families to conduct fingerprint-based background checks of certain persons, and specifies the categories of persons to which the fingerprint-based background check requirements apply.

SENATE COMMITTEE ON HUMAN SERVICES

Majority Report: Do pass.

Signed by Senators Wilson, C., Chair; Kauffman, Vice Chair; Boehnke, Ranking Member; Frame, Nguyen, Warnick and Wilson, J..

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Delika Steele (786-7486)

Background: Criminal History Information. The Washington State Patrol's (WSP) Criminal History Records Section is the central repository for criminal history record information (CHRI) for the State of Washington. CHRI consists of fingerprint-based records, and disposition information submitted by law enforcement agencies and courts throughout the state. WSP facilitates background checks for other agencies, employers, and the public.

Federal Bureau of Investigation (FBI) records are compiled from records received from local, state, federal, tribal, and international criminal justice agencies. Federal law allows for the exchange of criminal records and related information within the possession of the FBI with authorized officials of the federal government, states, Indian tribes, cities, and penal and other institutions. Exchange of these records is only for official use, and is subject to cancellation if dissemination is made outside of authorized recipients. The FBI must approve the state background check laws before it will grant access to its criminal history database.

Background Check Requirements. Persons with certain criminal history, pending charges, or history of other disqualifying negative action are disqualified from working in positions where they will have unsupervised access to children or vulnerable adults. A person must pass a fingerprint-based state and federal background check through WSP and the FBI before working in a long-term care or child care position with such unsupervised access. For other persons, the Department of Social and Health Services (DSHS) and the Department of Children, Youth, and Families (DCYF) may require a fingerprint-based background check through both WSP and the FBI at any time, and must require a fingerprint-based check when a person has resided in the state less than three consecutive years, and meets certain other criteria.

Background check screening is not required for an employee of a consumer directed employer if the individual has an individual provider contract with DSHS, the last background check is still valid, employment with the consumer directed employer is the only reason a new background check would be required, and DSHS's background check results have been shared with the employer.

Sharing Background Check Information. There are several provisions that allow sharing background check information between designated entities. DSHS may share the results of state and federal background checks with the Department of Health in furtherance of the prohibition against any long-term care worker who has been disqualified from working with vulnerable persons working as a home care aid. DSHS must also make background check information pertaining to long-term care workers available to employers, prospective employers, and others authorized by law. To satisfy shared background check requirements, DSHS and DCYF must share federal fingerprint-based background check information permitted by law, but must not share this information with other agencies or persons.

Processes designed to facilitate timely access to criminal background check information for health care providers allows health care facilities to share completed criminal background inquiry information under certain circumstances.

Summary of Bill: Background check information shared between designated entities is limited to what is authorized under federal law. Health care facilities may only exchange state criminal background information. DCYF and DSHS may share state-based information, but must limit the sharing of federal background checks to what is permitted under federal law. DSHS may no longer share background check information pertaining to long-term care workers, and must instead inform prospective employers whether screened applicants are eligible or ineligible for employment.

DSHS and DCYF have different requirements for conducting background checks through WSP.

DSHS must require a fingerprint-based background check through WSP for an individual who:

- has resided in the state for less than three years and is applying for employment, promotion, reallocation, or transfer to a position that will, or may, require unsupervised access to vulnerable adults, children, or juveniles; is a contractor providing services funded by certain home and community long-term care programs; is authorized to provide services to persons with developmental disabilities; or is an employee of an area agency on aging or federally recognized Indian tribe, or an employee of a contractor for one of these entities, that may have unsupervised access to vulnerable adults, children, or juveniles;
- is an employee of certain secure facilities;
- is applying to be an adult family home licensee, entity representative, or resident manager;
- is applying to be an assisted living facility or enhanced services facility licensee or administrator;
- is applying to be a certified community residential services and supports provider or administrator; or
- has been categorized as a high-risk provider

DCYF must require a fingerprint-based background check, for an individual who:

- is applying for a license to provide certain foster or maternity-care services, or is an adult living in a home where a child is placed;
- is applying for employment or already employed at a group care facility, regardless of whether the applicant is working directly with children;
- is newly applying for a child care license, is newly licensed, is an employee of a child care agency that is newly licensed, or will newly have unsupervised access to children in child care; or
- has resided in the state less than three consecutive years before application and is applying for employment, promotion, reallocation, or transfer to a position that may

require unsupervised access to children or juveniles; is a business or individual contracted to provide developmental disabilities services; or is a person aged 16 or older who is residing with or under the care of an applicant or service provider providing foster care or other services.

Employees of consumer directed employers who have individual employer contracts with DSHS, have valid background checks, would only need a background check because of employment with a consumer directed employer, or who have had their DSHS background check results shared with their employer, are no longer exempt from background check requirements.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This bill updates background check information laws to comply with federal law. The FBI will not grant the state access to their criminal database if the laws are not updated. Washington State currently has a waiver until the end of the year to access the database but will lose access if changes aren't made.

Persons Testifying: PRO: Senator Javier Valdez, Prime Sponsor; Monika Vasil, Dept of Social and Health Services.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Removes a current law provision requiring DSHS to provide the results of state and federal background checks to DOH for the DOH's use in fulfilling certification requirements for home care aides.
- Removes the underlying bill's references to dissemination of background check information as authorized under federal law.
- Removes a current law provision that requires sharing of background check results between DSHS and DCYF to the extent permitted by law to fulfill shared background check requirements.
- Modifies the provisions outlining the background check responsibilities of DSHS and DCYF to:
 1. restore current law definitions of "applicant," "authorized," and "service provider";
 2. add definitions of "area agency on aging," "community residential services and supports provider," "entity representative," and "high-risk provider";

3. restore or include references to service providers and persons applying for employment, in addition to persons already employed, in certain provisions; and
 4. remove a requirement in the underlying bill for a fingerprint-based background check of a person applying for employment, promotion, reallocation, or transfer to a position that DSHS has identified as requiring the applicant to have unsupervised access to vulnerable adults, children, or juveniles.
- Limits the background check information that DSHS may share with employers and prospective employers of long-term care workers, and others as authorized by law, to informing such persons that a screened applicant is ineligible for employment—as opposed to authorizing DSHS to say whether an applicant is eligible or ineligible for employment, in the underlying bill, or making background check information available to such persons, in current law.
 - Removes a current law provision allowing DSHS to require a fingerprint-based background check of a long-term care worker at any time.
 - Makes a technical correction to a cross reference, and makes other minor changes for clarity and internal consistency.
 - Adds persons applying for employment or employed at a residential habilitation center or other state-operated program for individuals with developmental disabilities to the list of persons for whom DSHS must require a fingerprint-based background check.
 - Restores current law requiring service providers licensed by DCYF—rather than applicants—to pay for background check fees, and prohibiting those providers from passing those fees onto their applicants—rather than employees.