

# HOUSE BILL REPORT

## HB 2955

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**As Passed House:**

February 12, 2008

**Title:** An act relating to identifying specific programs that are able to have access to criminal history record information.

**Brief Description:** Ensuring access to criminal justice information.

**Sponsors:** By Representatives Hunter, O'Brien, Hurst, Sullivan, Williams, Kelley and Morrell; by request of Department of Labor & Industries, Department of Social and Health Services, Employment Security Department, Department of Licensing, Attorney General and Criminal Justice Training Commission.

**Brief History:**

**Committee Activity:**

Public Safety & Emergency Preparedness: 1/30/08 [DP].

**Floor Activity:**

Passed House: 2/12/08, 97-0.

**Brief Summary of Bill**

- Authorizes specific state agencies to continue to have access to criminal history record information.

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**HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS**

**Majority Report:** Do pass. Signed by 7 members: Representatives O'Brien, Chair; Hurst, Vice Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern, Goodman and Kirby.

**Staff:** Yvonne Walker (786-7841).

**Background:**

A number of units within some Washington agencies have historically been able to have access to not only Washington conviction records and non-conviction arrest records (under one year old), but they have also been able to have access to federal out-of-state conviction

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

and arrest records as well. The agencies typically access criminal history information during investigations of fraud or abuse claims arising from their respective programs.

Two state agencies – the Department of Social and Health Services (DSHS) and the Department of Labor and Industries (L&I), currently have a Federal Bureau of Investigation (FBI) ACCESS terminal located within their agencies. This terminal allows the agencies to have direct access to federal criminal background check information. In addition, historically several other state agencies have been eligible to obtain federal criminal background records directly from the Washington State Patrol (WSP) although they do not have individual FBI ACCESS terminals. Those agencies are as follows:

- the Criminal Justice Training Commission (CJTC);
- the Office of Attorney General (OAG);
- the Employment Security Department (ESD); and
- the Department of Licensing Services (DOL).

The WSP accesses the National Crime Information Center (NCIC), which is a computerized database of documented criminal justice information maintained by the FBI, to get out-of-state and non-conviction information. The NCIC database is made available to law enforcement and other criminal justice agencies.

Pursuant to recent new federal regulations, the FBI has determined that only an agency that is certified as a "criminal justice agency" is authorized to have access to federal criminal background check information. In order to remain on the Certified Criminal Justice Agency list, the agency must identify their criminal justice function or otherwise statutorily establish their investigation authority.

In order to comply with federal requirements and for these agencies to continue to receive the same criminal record information that they have been receiving in the past, a statutory language change by the Legislature must be made, and following enactment, this same language must be approved by the FBI.

If these six agencies are not given the appropriate statutory authority by the Legislature to: (1) specifically receive non-conviction criminal history; or (2) identifying their criminal justice function, then they will only be able to obtain records that contain Washington in-state conviction and non-conviction arrest records. Certification as a criminal justice agency allows the agencies to apply for an ACCESS terminal to be able to obtain national criminal history records.

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### **Summary of Bill:**

An investigative unit is established within the OAG, the DOL, the DSHS, the L&I, and the ESD. The directors of the respective agencies must employ qualified supervisory and investigative personnel for the program. The directors of the agencies, their designee, or their respective investigation units are authorized to receive criminal history record information

that includes non-conviction data for purposes associated with the investigation of abuse or fraud in certain programs administered by the agency.

The L&I can access criminal history information only in the investigation of persons filing for or receiving workers' compensation benefits. The ESD can access the information for any purpose associated with an investigation of abuse or fraud in the unemployment compensation program. The DOL and the DSHS can access the information for any purpose associated with an investigation conducted by the investigation unit for public assistance or licensing. The OAG can access information for the prosecution of any act prohibited under the Consumer Protection Act.

The CJTC is authorized to receive criminal history record information, including non-conviction data, for any purpose associated with the CJTC employment or peace officer certification. For a national criminal history records check, fingerprints must be submitted to the WSP. After a state criminal history search, the WSP must forward the fingerprints to the FBI for a national record check.

Dissemination or use of non-conviction data for unauthorized purposes is prohibited.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) The six agencies named in the bill are requesting that the Legislature provide them with the authority to continue to access the FBI's NCIC database. The NCIC is the only way to determine a person's eligibility for certain programs. The information received from the database also protects many funds, ensures the integrity of many programs, and saves the state money. The data that is received is never disclosed to other sources and it is destroyed after the agencies are finished with it.

The federal government has stated that agencies must have the Legislature's explicit authority in state law to continue to receive this information. The WSP assisted in preparing the language in the bill so that the language is consistent in each agency's respective statute. It is necessary to make sure that agencies are able to continue to receive criminal history reports as they have in the past. It is unfortunate that the federal government is making states jump through hoops in order to continue to do what they have been doing in the past.

(Opposed) None.

**Persons Testifying:** Representative Hunter, prime sponsor; Nan Thomas, Employment Security Department; and Carl Hammersburg, Department of Labor and Industries.

**Persons Signed In To Testify But Not Testifying: None.**