

HOUSE BILL REPORT

SB 5252

As Reported by House Committee On:
Human Services, Youth, & Early Learning

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, Youth, & Early Learning: 3/15/23, 3/24/23 [DPA].

Brief Summary of Bill
(As Amended By Committee)

- Modifies provisions related to sharing background check information between designated entities to limit sharing to state information or to eliminate sharing authority.
- Separates provisions related to the 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.

HOUSE COMMITTEE ON HUMAN SERVICES, YOUTH, & EARLY LEARNING

Majority Report: Do pass as amended. Signed by 11 members: Representatives Senn, Chair; Cortes, Vice Chair; Taylor, Vice Chair; Eslick, Ranking Minority Member; Couture,

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.

Assistant Ranking Minority Member; Callan, Dent, Goodman, Ortiz-Self, Rule and Walsh.

Staff: Omeara Harrington (786-7136).

Background:

Criminal History Information.

The Washington State Patrol's (WSP) Criminal History Records Section is the central repository for criminal history record information for Washington. Criminal history record information consists of fingerprint-based records and disposition information submitted by law enforcement agencies and courts throughout the state. The 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 the 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 the 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 the 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 the DSHS's background check results have been shared with the employer.

Sharing Background Check Information.

There are a number of provisions that allow sharing of background check information between designated entities. The DSHS may share the results of state and federal background checks with the Department of Health (DOH) 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 aide. The DSHS must also make background check information pertaining to long-term care workers available to employers, prospective employers, and others as authorized by law. To satisfy shared background check requirements, the DSHS and the DCYF must share federal fingerprint-based background check information as 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 Amended Bill:

Provisions that allow sharing of background check information between designated entities are limited to state information or are eliminated. Provisions allowing for the exchange of criminal background check information between health care facilities are limited to state information. Provisions requiring the DCYF and the DSHS to share federal fingerprint-based background check results with each other are removed. Rather than requiring the DSHS to make background check information pertaining to long-term care workers available to employers, prospective employers, and others as authorized by law, the DSHS must inform as to whether screened applicants are ineligible for employment. The requirement for the DSHS to provide the results of state and federal background checks to the DOH for the DOH's use in fulfilling certification requirements for home care aides is removed.

The WSP background check provisions addressing the shared responsibilities of the DSHS and the DCYF to conduct fingerprint-based background checks of certain persons are separated. The categories of persons are specified for whom the DSHS must require a fingerprint-based background check, including any individual who:

- has resided in the state less than three years and 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 applying for 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 applying for or 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.

The categories of persons are specified for whom the DCYF must require a fingerprint-

based background check, including any 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 age 16 or older who is residing with or under the care of an applicant or service provider providing foster care or other services.

The provision exempting employees of consumer directed employers meeting certain criteria from background check requirements is removed. The provision allowing the DSHS to require a fingerprint-based background check of a long-term care worker at any time is removed.

Various changes are made to definitions, and modifications are made to reorganize and clarify current law provisions.

Amended Bill Compared to Original Bill:

The underlying bill's references to dissemination of background check information as authorized under federal law are removed. Current law provisions are removed that: (1) require the DSHS to provide the results of state and federal background checks to the Department of Health (DOH) for the DOH's use in fulfilling certification requirements for home care aides; (2) require sharing of background check results between the DSHS and the Department of Children, Youth, and Families (DCYF) to the extent permitted by law to fulfill shared background check requirements; and (3) allow the DSHS to require a fingerprint-based background check of a long-term care worker at any time.

Provisions outlining the background check responsibilities of the DSHS and the DCYF are modified 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.

The background check information that the DSHS may share with employers and prospective employers of long-term care workers, and others as authorized by law, is limited to informing such persons that a screened applicant is ineligible for employment (as opposed to authorizing the 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).

A technical change is made to correct a cross reference, and other minor changes are made for clarity and internal consistency.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The DSHS works with the FBI to complete background checks. There were changes made on the federal level, and changes must now be made to state statutes to align with the federal guidelines. These changes are necessary for FBI approval to conduct national fingerprint-based background checks. Some additional amendments are needed to address feedback from the FBI related to remaining references to sharing federal criminal history, even if in accordance with federal law, and to further refine certain descriptions of individuals subject to background checks.

(Opposed) None.

Persons Testifying: Senator Javier Valdez, prime sponsor; and Monika Vasil, Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying: None.