
Early Learning & Human Services Committee

HB 1385

Brief Description: Concerning fingerprint background check on applicants.

Sponsors: Representatives Taylor, Burnett, Leavitt, Ley, Davis, Reeves, Obras, Salahuddin and Wylie; by request of Washington State Patrol.

Brief Summary of Bill

- Directs the Washington State Patrol to execute the National Crime Prevention and Privacy Compact on behalf of the state in order to facilitate the authorized interstate exchange of criminal history information for noncriminal justice purposes.
- Modifies and adds definitions to the statutory provisions governing background checks.

Hearing Date: 2/5/25

Staff: Omeara Harrington (786-7136).

Background:

Criminal History Information and 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. 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

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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.

The National Child Protection Act.

The National Child Protection Act (NCPA) is a federal law that, as originally enacted, established a national criminal history background check system in which a designated entity in each state is required to report child abuse crime information to the FBI to allow for background checks of child care providers. The NCPA was later amended to allow organizations to utilize national criminal history checks to screen volunteers and employees who work with children, the elderly, or people with disabilities. Specifically, the NCPA provides a means by which authorized "qualified entities" can have access to the FBI's nationwide criminal records database through an authorized state agency for determinations of whether individuals have been convicted of, or are under pending indictment for, a crime that bears upon their fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities. A qualified entity is defined as a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services.

The National Crime Prevention and Privacy Compact.

The National Crime Prevention and Privacy Compact (Compact) was established in federal law to create an infrastructure by which states can exchange criminal records for noncriminal justice purposes and provide reciprocity among the states to share records. The purpose of the Compact is to authorize and require participating state criminal history repositories and the FBI to make all unsealed criminal history records available in response to authorized noncriminal justice requests for purposes of fingerprint-supported background checks on those seeking employment with children or the elderly. States must ratify the Compact in essentially identical form, resulting in a uniform dissemination policy among states. When fully ratified, the Compact will also eliminate the duplicate maintenance of criminal history records by the states and the FBI. To date, 35 states have ratified the Compact.

Summary of Bill:

National Crime Prevention and Privacy Compact.

The Washington State Patrol (WSP) is directed to execute the National Crime Prevention and Privacy Compact (Compact) on behalf of the state in order to facilitate the authorized interstate exchange of criminal history information for noncriminal justice purposes including, but not

limited to, background checks for the licensing and screening of employees and volunteers under the National Child Protection Act, and in furtherance of full implementation of the Compact.

The state's ratification of the Compact remains in effect until legislation is enacted which specifically renounces the Compact.

The WSP is designated as the repository of criminal history records for purposes of the Compact, and the Chief of the WSP, or their designee, is the state's compact officer. The WSP may establish procedures for the cooperative exchange of criminal history records between the state and federal government for use in noncriminal justice cases.

Authorized qualified entities and federally recognized tribes are authorized to conduct a state and national fingerprint-based criminal history record check on applicants for noncriminal justice purposes for any employment, licensing, or volunteering purpose which provides care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities. Fingerprints must be searched by the WSP prior to being forwarded to the Federal Bureau of Investigation (FBI) for a national search. The WSP may charge a nonrefundable fee for submission of fingerprints to cover, as nearly as practicable, the direct and indirect costs of processing submissions, and must establish in rule fees for disseminating records. The cost of record checks must also include the fee the FBI charges for the criminal history background checks.

Qualified entities and federally recognized tribes must abide by certain requirements in order to participate in the program. They must notify the person, subject to the background check, that they have the right to: (1) obtain a copy of their own state and federal criminal history record from the agency that conducted the fingerprint check within a specified amount of time determined by the requesting entity; and (2) appeal the results of the criminal history record to challenge the accuracy or completion of information in the criminal history record. Qualified entities and federally recognized tribes are additionally obligated to:

- seek approval from the WSP before submitting a request for screening;
- submit fingerprints on each applicant when requesting criminal history record information;
- maintain a signed waiver for each applicant allowing the release of the state and national criminal history record information;
- ensure the covered individual is provided notification that the results of the state and federal criminal history records check are handled in a manner that protects the covered individual's privacy;
- provide the covered individual the opportunity to challenge the accuracy of the information in the record, if one exists, if using the record to make a determination of the individual's suitability for employment, licensing, or volunteering purposes;
- advise the covered individual of the federal law outlining procedures for obtaining a change, correction, or updating the federal criminal history record; and
- use the criminal history record information only for the purpose of screening employees, contractors, and volunteers, or persons applying for those positions.

Qualified entities or federally recognized tribes are advised to not deny employment, licenses, or

volunteer positions based on information in the criminal history record until the covered individual has been afforded a reasonable time to correct or complete the record or has declined to do so.

Qualified entities are not liable for damages solely for failing to obtain the information authorized under this section with respect to an employee, contractor, or volunteer. Likewise, the state, any political subdivision of the state, or any agency, officer, or employee of the state or a political subdivision is not liable for damages for providing requested information.

Background Check Definitions.

Definitions in the statutory provisions governing background checks are modified and added.

An "applicant" includes prospective volunteers or contractors, in addition to prospective employees, and includes those who will have supervised access to vulnerable populations.

"Vulnerable populations" are redefined to refer to children, the elderly, or individuals with disabilities, as compared with current law which refers to children under the age of 16, developmentally disabled persons, or vulnerable adults.

"Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

"Covered individuals" include: individuals who have, seek to have, or may have access to children, the elderly, or individuals with disabilities served by a qualified entity; those who are employed by or volunteer with, or seek to volunteer with a qualified entity; and those who own or operate or seek to own or operate, a qualified entity.

"Qualified entities" are businesses or organizations, whether public, private, for profit, not-for-profit, or voluntary, that provide care or care placement services, and include businesses and organizations that license or certify others to provide care or care placement services.

Appropriation: None.

Fiscal Note: Available.

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