

HOUSE BILL REPORT

HB 2068

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to criminal background checks.

Brief Description: Concerning criminal background checks.

Sponsors: Representatives Goodman, Hurst, Priest, O'Brien, Miloscia, Seaquist, Cody, Appleton, Roberts, Campbell and Morrell.

Brief History:

Committee Activity:

Health Care & Wellness: 2/19/09, 2/20/09 [DPS].

Brief Summary of Substitute Bill

- Clarifies the Initiative 1029 fingerprint background check requirement for long-term care workers hired after January 1, 2010.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Cody, Chair; Driscoll, Vice Chair; Campbell, Clibborn, Green, Herrera, Kelley, Moeller, Morrell and Pedersen.

Minority Report: Do not pass. Signed by 3 members: Representatives Ericksen, Ranking Minority Member; Bailey and Hinkle.

Staff: Chris Cordes (786-7103)

Background:

The Washington State Patrol (WSP) is the state's central repository for fingerprint-based Criminal History Record Information (CHRI). The WSP is authorized to disseminate certain CHRI for both criminal and non-criminal purposes. When the purpose of the dissemination is non-criminal, the released CHRI includes convictions, adverse dispositions, arrests less than one year old without disposition, and sex and kidnapping offender registrations.

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.

Under various laws, the Department of Social and Health Services (DSHS) is responsible for investigating the suitability of applicants or service providers to: (1) have unsupervised access to children, vulnerable adults, or persons with disabilities; (2) provide in-home services under various programs; or (3) provide services at secure facilities operated by the DSHS. These investigations will include an examination of state CHRI. The DSHS may, at any time, also require a fingerprint-based national background check through the WSP and the CHRI maintained by the Federal Bureau of Investigation (FBI). Applicants or service providers who have resided in the state for fewer than three years must be fingerprinted for investigating criminal records through both the WSP and the FBI.

The passage of Initiative 1029 (I-1029) in 2008 added a new background check provision to the state law governing long-term care service options. The new provision requires all long-term care workers hired after January 1, 2010, to be screened through state and federal background checks, including checking against the FBI fingerprint identification records system and the National Sex Offenders Registry. (The National Sex Offender Registry is coordinated by the U.S. Department of Justice to host various state sex offender registries. It allows the user to submit a single search to obtain information across all the participating state registries.)

On December 1, 2008, the WSP received a letter from the FBI's Office of the General Counsel stating that the requirements in I-1029 did not qualify for access to the FBI-maintained CHRI. The letter cited two deficiencies: (1) the measure failed to reference the submission of fingerprints; and (2) for sharing of information with the Department of Health (DOH), the statute must be clear that the DOH has concurrent responsibility for making suitability determinations.

Summary of Substitute Bill:

The I-1029 fingerprint background check provision for long-term care workers hired after January 1, 2010, includes an explicit requirement to submit fingerprints. Neither the DSHS nor the DOH may share the federal background check information with other agencies or persons.

The DOH's responsibilities under the home care aide certification statute are explicitly referenced in the I-1029 background check provision, and these responsibilities include adopting rules with criteria for reviewing applicants' state and federal background checks.

Cross-references are added to other related background check statutes to state that long-term care workers who are hired after January 1, 2010, are subject to background checks under the I-1029 provision.

Substitute Bill Compared to Original Bill:

The substitute bill:

- clarifies the I-1029 background check requirement for long-term care workers hired after January 1, 2010, by: (1) adding that these checks require the submission of fingerprints; (2) referencing the DOH's responsibilities under the home care aide certification statute; and (3) specifying that neither the DSHS nor the DOH may share the federal background check information with other agencies or persons;
- adds to the DOH's responsibilities under the home care aide certification statute an explicit requirement to adopt rules addressing review of applicants' state and federal background checks;
- adds cross-references in other statutes to state that long-term care workers who are hired after January 1, 2010, are subject to background checks under the I-1029 provision; and
- deletes the emergency clause.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill addresses a noncontroversial part of I-1029. It is intended to ensure that the initiative can be implemented as intended so that all long-term care workers in the future get fingerprint background checks. This merely facilitates I-1029; it does not change its intent. The bill may need some additional work to make sure the right people are covered.

The Governor's budget assumes a delay in the long-term worker certification requirements, but moves forward in January on the background checks. Although bills have been drafted to provide for the Governor's budget choices, this bill will fix one of the issues that needs to be addressed to implement those choices. The bill will need confirmation from the FBI that its questions are addressed.

The bill does not determine whether the background checks will be implemented on the dates in the initiative or not. That issue is up to the Legislature.

(With concerns) It is a question whether the state should be spending money now for FBI fingerprint checks when the state budget is such a concern. The bill should be tailored to affect individual providers only. There will be a cost to the private sector as well as the public sector. It is not clear whether the initiative requires the state to pay for private sector background checks, too.

(Opposed) None.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Jonathan Seib, Governor's Executive Policy Office; and Misha Werschkul, Service Employees International Union 775.

(With concerns) Deborah Murphy, Aging Services of Washington; and Julie Ferguson, Washington Association of Private Duty Agencies.

Persons Signed In To Testify But Not Testifying: None.