

2 **SSB 5528** - S AMD - 241

3 By Senators Kohl, Zarelli and West

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 9.96A.020 and 1993 c 71 s 1 are each amended to read  
8 as follows:

9 (1) Subject to the exceptions in subsections (3) (~~and (4)~~)  
10 through (6) of this section, and unless there is another provision of  
11 law to the contrary, a person is not disqualified from employment by  
12 the state of Washington or any of its counties, cities, towns,  
13 municipal corporations, or quasi-municipal corporations, nor is a  
14 person disqualified to practice, pursue or engage in any occupation,  
15 trade, vocation, or business for which a license, permit, certificate  
16 or registration is required to be issued by the state of Washington or  
17 any of its counties, cities, towns, municipal corporations, or quasi-  
18 municipal corporations solely because of a prior conviction of a  
19 felony. However, this section does not preclude the fact of any prior  
20 conviction of a crime from being considered.

21 (2) A person may be denied employment by the state of Washington or  
22 any of its counties, cities, towns, municipal corporations, or quasi-  
23 municipal corporations, or a person may be denied a license, permit,  
24 certificate or registration to pursue, practice or engage in an  
25 occupation, trade, vocation, or business by reason of the prior  
26 conviction of a felony if the felony for which he or she was convicted  
27 directly relates to the position of employment sought or to the  
28 specific occupation, trade, vocation, or business for which the  
29 license, permit, certificate or registration is sought, and the time  
30 elapsed since the conviction is less than ten years.

31 (3) A person is disqualified for any certificate required or  
32 authorized under chapters 28A.405 or 28A.410 RCW, because of a prior  
33 guilty plea or the conviction of a felony involving sexual exploitation  
34 of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44  
35 RCW where a minor is the victim, promoting prostitution of a minor  
36 under chapter 9A.88 RCW, or a violation of similar laws of another

1 jurisdiction, even if the time elapsed since the guilty plea or  
2 conviction is ten years or more.

3 (4) A person is disqualified from employment by school districts,  
4 educational service districts, and their contractors hiring employees  
5 who will have regularly scheduled unsupervised access to children,  
6 because of a prior guilty plea or conviction of a felony involving  
7 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses  
8 under chapter 9A.44 RCW where a minor is the victim, promoting  
9 prostitution of a minor under chapter 9A.88 RCW, or a violation of  
10 similar laws of another jurisdiction, even if the time elapsed since  
11 the guilty plea or conviction is ten years or more.

12 (5) Subsections (3) and (4) of this section only apply to a person  
13 applying for a certificate or for employment on or after July 25, 1993.

14 (6) A person is disqualified from employment by the department of  
15 social and health services as provided in section 6 of this act.

16 **Sec. 2.** RCW 41.06.475 and 1993 c 281 s 38 are each amended to read  
17 as follows:

18 (1) The Washington personnel resources board shall adopt rules, in  
19 cooperation with the secretary of social and health services, the  
20 department of health, the department of corrections, and the office of  
21 the superintendent of public instruction, for the background  
22 investigation of persons being considered for state employment in  
23 positions ((directly responsible for the supervision, care, or  
24 treatment of children or developmentally disabled persons)) where they  
25 may have unsupervised access to children or vulnerable adults as part  
26 of their assigned job duties or as a likely consequence of their work  
27 environment.

28 (2) The rules adopted under this section shall prescribe, at a  
29 minimum, the following:

30 (a) The process by which each agency shall request and receive  
31 background check information from the state patrol, the federal bureau  
32 of investigation, and other appropriate state agencies;

33 (b) The notifications describing the background check requirements  
34 and procedures to be given to individuals seeking employment positions  
35 where they may have unsupervised access to children or vulnerable  
36 adults;

1 (c) The permissible uses of the background check information, which  
2 shall be limited to determining an individual's suitability to have  
3 unsupervised access to children or vulnerable adults;

4 (d) That no individual may be involved with a state agency in a  
5 position where he or she will have unsupervised access to children or  
6 vulnerable adults as part of the individual's regularly scheduled  
7 activities or work duties until a background check has been completed;

8 (e) The process for self reporting of convictions as required under  
9 section 12 of this act;

10 (f) That allow state agencies to share information concerning  
11 individuals subject to background check requirements, to the extent  
12 legally permissible, in order to eliminate situations where the same  
13 individual is subject to multiple background checks.

14 (3) Rules adopted under this section apply to employees of the  
15 state but do not apply to employees of any unit of local government  
16 including counties, cities, port districts, and school districts.

17 **Sec. 3.** RCW 43.20A.710 and 1993 c 210 s 1 are each amended to read  
18 as follows:

19 ~~((The secretary shall investigate the conviction records, pending~~  
20 ~~charges or disciplinary board final decisions of:—(1) Persons being~~  
21 ~~considered for state employment in positions directly responsible for~~  
22 ~~the supervision, care, or treatment of children or individuals with~~  
23 ~~mental illness or developmental disabilities; and—(2) individual~~  
24 ~~providers who are paid by the state for in-home services and hired by~~  
25 ~~individuals with physical disabilities, developmental disabilities,~~  
26 ~~mental illness, or mental impairment. The investigation may include an~~  
27 ~~examination of state and national criminal identification data and the~~  
28 ~~child abuse and neglect register established under chapter 26.44 RCW.~~  
29 ~~The secretary shall provide the results of the state background check~~  
30 ~~on individual providers to the individuals with physical disabilities,~~  
31 ~~developmental disabilities, mental illness, or mental impairment who~~  
32 ~~hired them and to their legal guardians, if any. The secretary shall~~  
33 ~~use the information solely for the purpose of determining the~~  
34 ~~character, suitability, and competence of these applicants except that~~  
35 ~~in the case of individuals with physical disabilities, developmental~~  
36 ~~disabilities, mental illness, or mental impairment who employ~~  
37 ~~individual providers, the determination of character, suitability, and~~  
38 ~~competence of applicants shall be made by the individual with a~~

1 ~~physical disability, developmental disability, mental illness, or~~  
2 ~~mental impairment. Criminal justice agencies shall provide the~~  
3 ~~secretary such information as they may have and that the secretary may~~  
4 ~~require for such purpose. If necessary, persons may be employed on a~~  
5 ~~conditional basis pending completion of the background investigation.)~~)

6 (1) The secretary shall investigate the suitability of all individuals  
7 seeking involvement with the department in positions where they may  
8 have unsupervised access to children or vulnerable adults as part of  
9 their assigned job responsibilities or as a likely consequence of their  
10 work environment. For the purposes of this section, "involvement with  
11 the department" means working for the department for compensation,  
12 consideration, or as a volunteer, including working as an employee,  
13 independent contractor, licensee, student intern, trainee, or  
14 volunteer.

15 (2) The secretary shall require, as a condition of contracting with  
16 a business or organization, that the contractor investigate the  
17 suitability of all individuals seeking involvement with the contracting  
18 business or organization in positions where they may have unsupervised  
19 access to children or vulnerable adults as part of their assigned job  
20 responsibilities or as a likely consequence of their work environment.  
21 This requirement applies only to those individuals involved in programs  
22 funded in whole or in part under a contract with the department. For  
23 the purposes of this section, "involvement with the contracting  
24 business or organization" means working for the contractor for  
25 compensation, consideration, or as a volunteer, including working as an  
26 employee, independent contractor, student intern, trainee, or  
27 volunteer.

28 (3) The secretary shall require, as a condition of licensing or  
29 certifying a facility or agency that provides care, supervision, or  
30 treatment to children or vulnerable adults, that the facility or agency  
31 investigate the suitability of all individuals seeking involvement with  
32 the facility or agency in positions where they may have unsupervised  
33 access to children or vulnerable adults as part of their assigned job  
34 responsibilities or as a likely consequence of their work environment.  
35 For the purposes of this section, "involvement with the facility or  
36 agency" means working for the facility or agency for compensation,  
37 consideration, or as a volunteer, including working as an employee,  
38 independent contractor, student intern, trainee, or volunteer.

1       (4) The investigations required under subsection (1) of this  
2 section shall include, at a minimum:

3       (a) For individuals who have resided in the state for less than  
4 three years from the date of involvement or application for  
5 involvement, a fingerprint-based national conviction record check  
6 through the federal bureau of investigation; and

7       (b) For individuals who have resided in the state for three years  
8 or more from the date of involvement or application for involvement, a  
9 fingerprint-based conviction record check through the state patrol.

10       The department is financially responsible for the costs associated  
11 with conducting the conviction record checks required under subsection  
12 (1) of this section.

13       (5) The investigations required under subsection (2) of this  
14 section shall include, at a minimum, conviction record checks through  
15 the state patrol. The department shall provide, in rule, the  
16 circumstances under which the conviction record checks must be  
17 fingerprint based and the circumstances under which they may be name  
18 based. The department is financially responsible for the costs  
19 associated with conducting the conviction record checks for volunteers  
20 and, subject to available funding, the conviction record checks for  
21 employees, independent contractors, student interns, and trainees  
22 required under subsection (2) of this section.

23       (6) The investigations required under subsection (3) of this  
24 section shall include, at a minimum, conviction record checks through  
25 the state patrol. For agencies licensed under chapter 74.15 RCW, the  
26 investigations shall also include the information required under RCW  
27 74.15.030. Subject to the requirements in RCW 74.15.030, the  
28 department shall provide, in rule, the circumstances under which the  
29 conviction record checks must be fingerprint based and the  
30 circumstances under which they may be name based. The department is  
31 financially responsible for the costs associated with conducting the  
32 conviction record checks for volunteers, and facilities and agencies  
33 licensed or certified under chapter 74.15 RCW and, subject to available  
34 funding, the conviction record checks for employees, independent  
35 contractors, student interns, and trainees required under subsection  
36 (3) of this section.

37       (7) The secretary may, by rule, determine appropriate circumstances  
38 for the conditional involvement of individuals who are subject to the  
39 national conviction record check requirement of this section.

1 Involvement may be conditional pending completion of the national  
2 conviction record check only after completion of the fingerprint-based  
3 conviction record check through the state patrol.

4 (8) This section does not limit the authority of the department, a  
5 business or organization that contracts with the department, or a  
6 facility or agency licensed or certified by the department to  
7 investigate the suitability of individuals, who are seeking positions  
8 where they may have unsupervised access to children or vulnerable  
9 adults, through other public records including adverse civil or  
10 administrative proceedings. For the purposes of this section, "adverse  
11 civil or administrative proceedings" means adverse dependency  
12 adjudications, disciplinary board final decisions, and protection  
13 orders as defined in RCW 43.43.830.

14 NEW SECTION. Sec. 4. A new section is added to chapter 43.20A RCW  
15 to read as follows:

16 (1) Subject to available funding, the secretary shall periodically  
17 update the conviction record checks required under RCW 43.20A.710(4)  
18 for those individuals who remain involved with the department.

19 (2) The secretary may, in rule, require periodic updating of the  
20 conviction record checks required under RCW 43.20A.710 (5) and (6) for  
21 those individuals who remain involved with a contracting business or  
22 organization or a licensed or certified facility or agency.

23 (3) Updated checks need not be fingerprint based unless the  
24 secretary has reasonable cause to believe it is necessary on a case-by-  
25 case basis.

26 NEW SECTION. Sec. 5. A new section is added to chapter 43.20A RCW  
27 to read as follows:

28 (1) For any conviction record check required under RCW 43.20A.710  
29 or section 4 of this act, the department, the applicable contracting  
30 business or organization, or licensed facility or agency shall:

31 (a) Notify the individual of the applicable conviction record check  
32 requirements and disqualification provisions of this chapter;

33 (b) Notify the individual of the results of the check within ten  
34 days after completion or receipt; and

35 (c) Acknowledge in writing, on a form provided by the state patrol,  
36 that the absence of a state patrol record does not mean the individual  
37 has no criminal record nor does it represent a determination by the

1 state patrol that the individual is suitable to have unsupervised  
2 access to children or vulnerable adults.

3 (2) In addition to the requirements of subsection (1) of this  
4 section, for any fingerprint-based conviction record check through the  
5 state patrol required under RCW 43.20A.710 or section 4 of this act,  
6 the department, the applicable contracting business or organization, or  
7 licensed or certified facility or agency shall:

8 (a) Notify the individual that such investigation will be made and  
9 require the individual to furnish a full set of fingerprints to the  
10 state patrol;

11 (b) Submit any fees and other information required by the state  
12 patrol; and

13 (c) Acknowledge in writing, on a form provided by the state patrol,  
14 that the absence of a state patrol record does not mean the individual  
15 has no criminal record nor does it represent a determination by the  
16 state patrol that the individual is suitable to have unsupervised  
17 access to children or vulnerable adults.

18 (3) In addition to the requirements of subsection (2) of this  
19 section, for any national conviction record check through the federal  
20 bureau of investigation required under RCW 43.20A.710 or section 4 of  
21 this act, the department, the applicable contracting business or  
22 organization, or licensed or certified facility or agency shall:

23 (a) Notify the individual that such investigation will be made and  
24 require the individual to furnish two full sets of fingerprints to the  
25 state patrol, one of which shall be used for exchange with the federal  
26 bureau of investigation;

27 (b) Submit any fees and other information required by the state  
28 patrol and the federal bureau of investigation; and

29 (c) Acknowledge the following in writing, on a form provided by the  
30 state patrol: (i) Federal law prohibits the disclosure or  
31 dissemination of federal bureau of investigation national conviction  
32 records outside of a governmental agency except to the subject of the  
33 record; and (ii) the absence of a conviction record does not mean the  
34 individual has no criminal record nor does it represent a determination  
35 by the state patrol that the individual is suitable to have  
36 unsupervised access to children or vulnerable adults.

37 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.20A RCW  
38 to read as follows:

1 (1) The disqualification provisions of this section apply to those  
2 individuals required to undergo the conviction record checks provided  
3 for in RCW 43.20A.710 and section 4 of this act who will have  
4 unsupervised access to children or vulnerable adults as part of their  
5 assigned job duties.

6 (2) Subject to the exception provided for in subsection (4) of this  
7 section, a conviction for one or more of the following offenses shall  
8 permanently disqualify an individual identified in subsection (1) of  
9 this section from involvement with the department, a contractor of the  
10 department, or a facility or agency licensed or certified by the  
11 department in a position where the individual will have unsupervised  
12 access to children or vulnerable adults:

- 13 (a) Aggravated murder;
- 14 (b) First degree murder;
- 15 (c) First degree kidnapping;
- 16 (d) First or second degree assault;
- 17 (e) First, second, or third degree assault of a child;
- 18 (f) First, second, or third degree rape;
- 19 (g) First, second, or third degree rape of a child;
- 20 (h) First or second degree robbery;
- 21 (i) First degree arson;
- 22 (j) First degree burglary;
- 23 (k) Indecent liberties;
- 24 (l) First degree extortion;
- 25 (m) Incest;
- 26 (n) First degree promoting prostitution;
- 27 (o) Sexual exploitation of minors;
- 28 (p) First degree criminal mistreatment;
- 29 (q) Child abuse or neglect as defined in RCW 26.44.020;
- 30 (r) First, second, or third degree child molestation;
- 31 (s) First or second degree sexual misconduct with a minor;
- 32 (t) Child buying or selling;
- 33 (u) Felony indecent exposure; and
- 34 (v) Any federal or out-of-state equivalent to any of the offenses  
35 listed in this subsection.

36 (3) The secretary may identify, in rule, additional offenses that  
37 are directly related to individuals' suitability to have unsupervised  
38 access to children or vulnerable adults and that may disqualify  
39 individuals from involvement with the department, a contractor of the



1 department, or a facility or agency licensed by the department. The  
2 rules may distinguish between offenses for which disqualification must  
3 be made and offenses for which disqualification is discretionary, and  
4 the appropriate periods of time for which the specified offenses shall  
5 act to disqualify individuals.

6 (4) If a contractor of the department, a facility or agency  
7 licensed or certified by the department, or a client of the department  
8 who hires an individual provider paid by the state for in-home  
9 services, elects to authorize an individual with an offense identified  
10 in subsection (2) of this section or adopted by rule under subsection  
11 (3) of this section to have unsupervised access to children or  
12 vulnerable adults, then the secretary may deny, suspend, or revoke the  
13 affected contract, license, or certificate, or deny payment for any  
14 services rendered by a disqualified individual.

15 (5) Individuals who may have unsupervised access to children or  
16 vulnerable adults as a likely consequence of their work environment may  
17 be disqualified from involvement with the department, a contractor of  
18 the department, or a facility or agency licensed or certified by the  
19 department if they have a conviction for any of the offenses identified  
20 in subsection (2) of this section or adopted by rule under subsection  
21 (3) of this section.

22 (6) In determining whether to disqualify an individual under  
23 subsection (3) or (4) of this section, the department, contractor of  
24 the department, or the facility or agency licensed or certified by the  
25 department shall consider the following:

26 (a) The likelihood and extent that the individual may have  
27 unsupervised access to children or vulnerable adults in the specified  
28 position sought or held;

29 (b) The age of the individual at the time of the conviction;

30 (c) The length of time that has passed since the conviction; and

31 (d) Evidence of conduct subsequent to the conviction relating to  
32 the individual's suitability to have unsupervised access to children or  
33 vulnerable adults.

34 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.20A RCW  
35 to read as follows:

36 Any classified employee dismissed or otherwise adversely affected  
37 as a result of a disqualifying offense identified in or adopted under

1 section 6 of this act has a right to appeal under the appropriate  
2 statutes, including but not limited to chapters 41.06 and 41.64 RCW.

3 **Sec. 8.** RCW 43.43.815 and 1995 c 169 s 1 are each amended to read  
4 as follows:

5 ~~((1) Notwithstanding any provision of RCW 43.43.700 through~~  
6 ~~43.43.810 to the contrary, the Washington state patrol shall furnish a~~  
7 ~~conviction record, as defined in RCW 10.97.030, pertaining to any~~  
8 ~~person of whom the Washington state patrol has a record upon the~~  
9 ~~written or electronic request of any employer for the purpose of:~~

10 ~~(a) Securing a bond required for any employment;~~

11 ~~(b) Conducting preemployment and postemployment evaluations of~~  
12 ~~employees and prospective employees who, in the course of employment,~~  
13 ~~may have access to information affecting national security, trade~~  
14 ~~secrets, confidential or proprietary business information, money, or~~  
15 ~~items of value; or~~

16 ~~(c) Assisting an investigation of suspected employee misconduct~~  
17 ~~where such misconduct may also constitute a penal offense under the~~  
18 ~~laws of the United States or any state.~~

19 ~~(2) When an employer has received a conviction record under~~  
20 ~~subsection (1) of this section, the employer shall notify the subject~~  
21 ~~of the record of such receipt within thirty days after receipt of the~~  
22 ~~record, or upon completion of an investigation under subsection (1)(c)~~  
23 ~~of this section. The employer shall make the record available for~~  
24 ~~examination by its subject and shall notify the subject of such~~  
25 ~~availability.~~

26 ~~(3) The Washington state patrol shall charge fees for disseminating~~  
27 ~~records pursuant to this section which will cover, as nearly as~~  
28 ~~practicable, the direct and indirect costs to the Washington state~~  
29 ~~patrol of disseminating such records.~~

30 ~~(4) Information disseminated pursuant to this section or RCW~~  
31 ~~43.43.760 shall be available only to persons involved in the hiring,~~  
32 ~~background investigation, or job assignment of the person whose record~~  
33 ~~is disseminated and shall be used only as necessary for those purposes~~  
34 ~~enumerated in subsection (1) of this section.~~

35 ~~(5) Any person may maintain an action to enjoin a continuance of~~  
36 ~~any act or acts in violation of any of the provisions of this section,~~  
37 ~~and if injured thereby, for the recovery of damages and for the~~  
38 ~~recovery of reasonable attorneys' fees. If, in such action, the court~~

1 finds that the defendant is violating or has violated any of the  
2 provisions of this section, it shall enjoin the defendant from a  
3 continuance thereof, and it shall not be necessary that actual damages  
4 to the plaintiff be alleged or proved. In addition to such injunctive  
5 relief, the plaintiff in the action is entitled to recover from the  
6 defendant the amount of the actual damages, if any, sustained by him if  
7 actual damages to the plaintiff are alleged and proved. In any suit  
8 brought to enjoin a violation of this chapter, the prevailing party may  
9 be awarded reasonable attorneys' fees, including fees incurred upon  
10 appeal. Commencement, pendency, or conclusion of a civil action for  
11 injunction or damages shall not affect the liability of a person or  
12 agency to criminal prosecution for a violation of chapter 10.97 RCW.

13 (6) Neither the section, its employees, nor any other agency or  
14 employee of the state is liable for defamation, invasion of privacy,  
15 negligence, or any other claim in connection with any dissemination of  
16 information pursuant to this section or RCW 43.43.760.

17 (7) The Washington state patrol may adopt rules and forms to  
18 implement this section and to provide for security and privacy of  
19 information disseminated pursuant hereto, giving first priority to the  
20 criminal justice requirements of chapter 43.43 RCW. Such rules may  
21 include requirements for users, audits of users, and other procedures  
22 to prevent use of criminal history record information inconsistent with  
23 this section.

24 (8) Nothing in this section shall authorize an employer to make an  
25 inquiry not otherwise authorized by law, or be construed to affect the  
26 policy of the state declared in RCW 9.96A.010, encouraging the  
27 employment of ex-offenders.)) (1) A business or organization may  
28 conduct a check of an individual's conviction records for the following  
29 purposes:

30 (a) Securing a bond required for any involvement with the business  
31 or organization;

32 (b) Conducting preinvolvement and postinvolvement evaluations of  
33 individuals who, in the course of their involvement with the business  
34 or organization, may have access to information affecting national  
35 security, trade secrets, confidential or proprietary business  
36 information, money, or items of value; or

37 (c) Assisting an investigation of suspected misconduct where such  
38 misconduct may also constitute a penal offense under the laws of the  
39 United States or any state.

1       (2) A business or organization that conducts a conviction record  
2 check through the state patrol for any of the purposes authorized in  
3 subsection (1)(a) or (b) of this section shall:

4       (a) Notify the individual that such check will be made and, if the  
5 conviction record check will be conducted by someone other than the  
6 business or organization, identify who will conduct the check; and

7       (b) Notify the individual of the results of the conviction record  
8 check within thirty days after completion or receipt by the business or  
9 organization and make the record available for examination by the  
10 individual upon request.

11       (3) In addition to the requirements of subsection (2) of this  
12 section, a business or organization that conducts a fingerprint-based  
13 conviction record check through the state patrol for any of the  
14 purposes authorized in subsection (1)(a) or (b) of this section shall:

15       (a) Notify the individual that such inquiry will be made and  
16 require the individual to furnish two full sets of fingerprints to the  
17 employer;

18       (b) Submit the completed fingerprint data to the state patrol along  
19 with any fees and other information required by the state patrol in  
20 rules; and

21       (c) Acknowledge in writing, on a form provided by the state patrol,  
22 that the absence of a state patrol record does not mean the individual  
23 has no criminal record, or adverse civil or administrative decision,  
24 nor does it represent a determination by the state patrol that the  
25 individual is suitable for bonding or involvement with the business or  
26 organization.

27       (4) This section shall not be construed to allow a business or  
28 organization to make an inquiry not otherwise authorized by law or to  
29 affect the policy of the state declared in RCW 9.96A.010 encouraging  
30 the employment of felons.

31       (5) For the purposes of this section, "business or organization"  
32 means, in addition to the definition in RCW 43.43.830, any person,  
33 entity, or government agency seeking to hire, or engage as a volunteer,  
34 any individual who may have access to information affecting national  
35 security, trade secrets, confidential or proprietary business  
36 information, money, or items of value.

37       **Sec. 9.** RCW 43.43.830 and 1996 c 178 s 12 are each amended to read  
38 as follows:

1 Unless the context clearly requires otherwise, the definitions in  
2 this section apply throughout RCW 43.43.830 through ~~((43.43.840))~~  
3 43.43.845 and sections 12 and 15 through 20 of this act.

4 (1) ~~(( "Applicant" means:~~

5 ~~(a) Any prospective employee who will or may have unsupervised~~  
6 ~~access to children under sixteen years of age or developmentally~~  
7 ~~disabled persons or vulnerable adults during the course of his or her~~  
8 ~~employment or involvement with the business or organization;~~

9 ~~(b) Any prospective volunteer who will have regularly scheduled~~  
10 ~~unsupervised access to children under sixteen years of age,~~  
11 ~~developmentally disabled persons, or vulnerable adults during the~~  
12 ~~course of his or her employment or involvement with the business or~~  
13 ~~organization under circumstances where such access will or may involve~~  
14 ~~groups of (i) five or fewer children under twelve years of age, (ii)~~  
15 ~~three or fewer children between twelve and sixteen years of age, (iii)~~  
16 ~~developmentally disabled persons, or (iv) vulnerable adults; or~~

17 ~~(c) Any prospective adoptive parent, as defined in RCW 26.33.020.)~~  
18 "Adverse civil or administrative decisions" include but are not limited  
19 to adverse dependency adjudications, disciplinary board final  
20 decisions, and protective orders as defined in this section.

21 (2) "Background check" means an investigation into an individual's  
22 background for the purposes of determining the individual's suitability  
23 for involvement with a business or organization. A background check  
24 may include, but is not limited to, an investigation of state and  
25 national conviction records, civil adjudications and court orders, and  
26 administrative decisions.

27 (3) "Business or organization" means ((a business or organization  
28 licensed in this state, any agency of the state, or other governmental  
29 entity, that educates, trains, treats, supervises, houses, or provides  
30 recreation to developmentally disabled persons, vulnerable adults, or  
31 children under sixteen years of age, including but not limited to  
32 public housing authorities, school districts, and educational service  
33 districts.

34 (3) "Civil adjudication" means a specific court finding of sexual  
35 abuse or exploitation or physical abuse in a dependency action under  
36 RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In  
37 the case of vulnerable adults, civil adjudication means a specific  
38 court finding of abuse or financial exploitation in a protection  
39 proceeding under chapter 74.34 RCW. It does not include administrative

1 proceedings. The term "civil adjudication" is further limited to court  
2 findings that identify as the perpetrator of the abuse a named  
3 individual, over the age of eighteen years, who was a party to the  
4 dependency or dissolution proceeding or was a respondent in a  
5 protection proceeding in which the finding was made and who contested  
6 the allegation of abuse or exploitation.

7 (4)) any person, entity, or governmental agency with authority to  
8 approve the involvement of individuals in positions where they may have  
9 unsupervised access to children or vulnerable adults. "Business or  
10 organization" also includes any individual or entity to which a  
11 business or organization delegates its authority to request or receive  
12 information under this chapter.

13 (4) "Certified copy of a background check record" means a certified  
14 document issued by the state patrol to an individual upon his or her  
15 request under section 20 of this act identifying the individual's: (a)  
16 Conviction record; (b) adverse dependency adjudications; (c) adverse  
17 disciplinary board final decisions; and (d) protection orders; or the  
18 lack of any such records.

19 (5) "Child" or "children" means an individual or individuals under  
20 the age of sixteen.

21 (6) "Conviction record" ((means "conviction record" information as  
22 defined in RCW 10.97.030(3) relating to a crime against children or  
23 other persons committed by either an adult or a juvenile. It does not  
24 include a conviction for an offense that has been the subject of an  
25 expungement, pardon, annulment, certificate of rehabilitation, or other  
26 equivalent procedure based on a finding of the rehabilitation of the  
27 person convicted, or a conviction that has been the subject of a  
28 pardon, annulment, or other equivalent procedure based on a finding of  
29 innocence. It does include convictions for offenses for which the  
30 defendant received a deferred or suspended sentence, unless the record  
31 has been expunged according to law.

32 (5) "Crime against children or other persons" means a conviction of  
33 any of the following offenses: Aggravated murder; first or second  
34 degree murder; first or second degree kidnaping; first, second, or  
35 third degree assault; first, second, or third degree assault of a  
36 child; first, second, or third degree rape; first, second, or third  
37 degree rape of a child; first or second degree robbery; first degree  
38 arson; first degree burglary; first or second degree manslaughter;  
39 first or second degree extortion; indecent liberties; incest; vehicular

1 homicide; first degree promoting prostitution; communication with a  
2 minor; unlawful imprisonment; simple assault; sexual exploitation of  
3 minors; first or second degree criminal mistreatment; child abuse or  
4 neglect as defined in RCW 26.44.020; first or second degree custodial  
5 interference; malicious harassment; first, second, or third degree  
6 child molestation; first or second degree sexual misconduct with a  
7 minor; first or second degree rape of a child; patronizing a juvenile  
8 prostitute; child abandonment; promoting pornography; selling or  
9 distributing erotic material to a minor; custodial assault; violation  
10 of child abuse restraining order; child buying or selling;  
11 prostitution; felony indecent exposure; criminal abandonment; or any of  
12 these crimes as they may be renamed in the future.

13 (6) "~~Crimes relating to financial exploitation~~" means a conviction  
14 for first, second, or third degree extortion; first, second, or third  
15 degree theft; first or second degree robbery; forgery; or any of these  
16 crimes as they may be renamed in the future.

17 (7) "~~Disciplinary board final decision~~" means any final decision  
18 issued by a disciplining authority under chapter 18.130 RCW or the  
19 secretary of the department of health for the following businesses or  
20 professions:

- 21 (a) ~~Chiropractic;~~
- 22 (b) ~~Dentistry;~~
- 23 (c) ~~Dental hygiene;~~
- 24 (d) ~~Massage;~~
- 25 (e) ~~Midwifery;~~
- 26 (f) ~~Naturopathy;~~
- 27 (g) ~~Osteopathic medicine and surgery;~~
- 28 (h) ~~Physical therapy;~~
- 29 (i) ~~Physicians;~~
- 30 (j) ~~Practical nursing;~~
- 31 (k) ~~Registered nursing; and~~
- 32 (l) ~~Psychology.~~

33 "~~Disciplinary board final decision,~~" for real estate brokers and  
34 salespersons, means any final decision issued by the director of the  
35 department of licensing for real estate brokers and salespersons.

36 (8) "~~Unsupervised~~" means not in the presence of:

- 37 (a) ~~Another employee or volunteer from the same business or~~  
38 ~~organization as the applicant; or~~

1       ~~(b) Any relative or guardian of any of the children or~~  
2 ~~developmentally disabled persons or vulnerable adults to which the~~  
3 ~~applicant has access during the course of his or her employment or~~  
4 ~~involvement with the business or organization.~~

5       ~~(9) "Vulnerable adult" means "vulnerable adult" as defined in~~  
6 ~~chapter 74.34 RCW, except that for the purposes of requesting and~~  
7 ~~receiving background checks pursuant to RCW 43.43.832, it shall also~~  
8 ~~include adults of any age who lack the functional, mental, or physical~~  
9 ~~ability to care for themselves.~~

10       ~~(10) "Financial exploitation" means the illegal or improper use of~~  
11 ~~a vulnerable adult or that adult's resources for another person's~~  
12 ~~profit or advantage.~~

13       ~~(11) "Agency" means any person, firm, partnership, association,~~  
14 ~~corporation, or facility which receives, provides services to, houses~~  
15 ~~or otherwise cares for vulnerable adults.)) has the same meaning as in~~  
16 ~~RCW 10.97.030 except that the following are not considered conviction~~  
17 ~~records for the purposes of RCW 43.43.830 through 43.43.845 and~~  
18 ~~sections 15 through 20 of this act: (a) Convictions that have been~~  
19 ~~expunged, reversed, or vacated as the result of a final determination~~  
20 ~~by a court of competent jurisdiction; and (b) records of criminal~~  
21 ~~proceedings that have been sealed by an order of a court of competent~~  
22 ~~jurisdiction.~~

23       (7) "Credentialing authority" means a state agency, board,  
24 disciplining authority, or body authorized to grant, deny, suspend, or  
25 revoke a state credential.

26       (8) "Department" means the department of social and health  
27 services.

28       (9) "Dependency adjudication" means a final adjudication in a  
29 dependency action under chapter 13.34 RCW that includes a finding of  
30 physical or sexual abuse, neglect, or exploitation of a child.

31       (10) "Disciplinary board final decisions" means final decisions  
32 issued by the secretary of the department of health, a disciplining  
33 authority under chapter 18.130 RCW, the personnel appeals board, or the  
34 director of the department of licensing which include a finding of  
35 abuse, abandonment, neglect, or exploitation of a child or vulnerable  
36 adult.

37       (11) "Disciplining authority" has the same meaning as in RCW  
38 18.130.020.

39       (12) "FBI" means the federal bureau of investigation.



1       (13) "Individual" means any natural person.

2       (14) "Involvement" or "involved with" means working for a business  
3 or organization for compensation, consideration, or as a volunteer.  
4 Individuals involved with a business or organization may include, but  
5 are not limited to employees, contractors, trainees, student interns,  
6 and volunteers.

7       (15) "Lawful source" means an entity licensed to do business in  
8 this state or any other jurisdiction.

9       (16) "May have unsupervised access" means unsupervised access that  
10 will or may occur as part of an individual's assigned job duties or  
11 that will or may occur as a likely consequence of the work environment.

12       (17) "Nonprofit business or organization" means a nongovernmental  
13 business or organization that operates for any lawful purpose where no  
14 part of its income is distributable to its owners, members, directors,  
15 or officers.

16       (18) "Protection orders" means court orders, other than ex parte or  
17 temporary orders, issued for the purpose of protecting someone from  
18 contact, harassment, or domestic violence. Protection orders include  
19 criminal antiharassment orders issued under chapter 9A.46 RCW; civil  
20 antiharassment protection orders issued under chapter 10.14 RCW;  
21 domestic violence no contact orders issued under chapter 10.99 RCW;  
22 dissolution decree restraining orders issued under chapter 26.09 RCW;  
23 nonparental custody action restraining orders issued under chapter  
24 26.10 RCW; uniform parenting act restraining orders issued under  
25 chapter 26.26 RCW; domestic violence protection orders issued under  
26 chapter 26.50 RCW; and orders for protection of vulnerable adults  
27 issued under chapter 74.34 RCW.

28       (19) "Secretary" means the secretary of the department.

29       (20) "State credential" means a license, permit, certificate, or  
30 registration issued to a health professional under chapter 18.130 RCW  
31 or to a teacher under chapter 28A.410 RCW. An "initial state  
32 credential" means the first credential obtained by an individual and  
33 does not include an expansion, renewal, continuation, or reinstatement  
34 of the credential.

35       (21) "State patrol" means the Washington state patrol.

36       (22) "Unsupervised access" means access, for more than a nominal  
37 period of time, outside the presence of: (a) Another person who has  
38 cleared a background check; or (b) any relative or guardian of the  
39 child or vulnerable adult to which the individual may have unsupervised

1 access. For the purposes of this subsection, a person has "cleared a  
2 background check" when the business or organization, using the results  
3 of its background check investigation, determines the individual is  
4 suitable to have unsupervised access to children or vulnerable adults.

5 (23) "Volunteer" means a person who: (a) Performs any assigned or  
6 authorized duty for the state, its political subdivisions, any  
7 federally recognized Indian tribe, the federal government, or a  
8 business or organization; (b) receives no wages; and (c) may be  
9 voluntarily granted maintenance and reimbursement for actual expenses  
10 incurred in the performance of his or her duties.

11 (24) "Vulnerable adult" means an individual over the age of sixteen  
12 who lacks the functional, mental, or physical ability to care for  
13 himself or herself, including persons found incapacitated under chapter  
14 11.88 RCW; individuals with developmental disabilities as defined in  
15 chapter 71A.10 RCW; individuals admitted to any long-term care facility  
16 that is licensed or required to be licensed under chapter 18.20, 18.51,  
17 72.36, or 70.128 RCW; and individuals receiving services from home  
18 health, hospice, or home care agencies licensed or required to be  
19 licensed under chapter 70.127 RCW.

20 **Sec. 10.** RCW 43.43.832 and 1995 c 250 s 2 are each amended to read  
21 as follows:

22 ~~((1) The legislature finds that businesses and organizations~~  
23 ~~providing services to children, developmentally disabled persons, and~~  
24 ~~vulnerable adults need adequate information to determine which~~  
25 ~~employees or licensees to hire or engage. The legislature further~~  
26 ~~finds that many developmentally disabled individuals and vulnerable~~  
27 ~~adults desire to hire their own employees directly and also need~~  
28 ~~adequate information to determine which employees or licensees to hire~~  
29 ~~or engage. Therefore, the Washington state patrol criminal~~  
30 ~~identification system may disclose, upon the request of a business or~~  
31 ~~organization as defined in RCW 43.43.830, a developmentally disabled~~  
32 ~~person, or a vulnerable adult as defined in RCW 43.43.830 or his or her~~  
33 ~~guardian, an applicant's record for convictions of offenses against~~  
34 ~~children or other persons, convictions for crimes relating to financial~~  
35 ~~exploitation, but only if the victim was a vulnerable adult,~~  
36 ~~adjudications of child abuse in a civil action, the issuance of a~~  
37 ~~protection order against the respondent under chapter 74.34 RCW, and~~  
38 ~~disciplinary board final decisions and any subsequent criminal charges~~

1 associated with the conduct that is the subject of the disciplinary  
2 board final decision. When necessary, applicants may be employed on a  
3 conditional basis pending completion of such a background  
4 investigation.

5 (2) The legislature also finds that the state board of education  
6 may request of the Washington state patrol criminal identification  
7 system information regarding a certificate applicant's record for  
8 convictions under subsection (1) of this section.

9 (3) The legislature also finds that law enforcement agencies, the  
10 office of the attorney general, prosecuting authorities, and the  
11 department of social and health services may request this same  
12 information to aid in the investigation and prosecution of child,  
13 developmentally disabled person, and vulnerable adult abuse cases and  
14 to protect children and adults from further incidents of abuse.

15 (4) The legislature further finds that the department of social and  
16 health services, when considering persons for state positions directly  
17 responsible for the care, supervision, or treatment of children,  
18 developmentally disabled persons, or vulnerable adults or when  
19 licensing or authorizing such persons or agencies pursuant to its  
20 authority under chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any  
21 later enacted statute which purpose is to license or regulate a  
22 facility which handles vulnerable adults, must consider the information  
23 listed in subsection (1) of this section. However, when necessary,  
24 persons may be employed on a conditional basis pending completion of  
25 the background investigation. The Washington personnel resources board  
26 shall adopt rules to accomplish the purposes of this subsection as it  
27 applies to state employees.))

28 The state patrol shall furnish, in response to any lawful request,  
29 conviction records and other background check information maintained in  
30 its data base customarily used to provide such information.

31 **Sec. 11.** RCW 43.43.842 and 1992 c 104 s 1 are each amended to read  
32 as follows:

33 (1) ((The secretary of social and health services and the secretary  
34 of health shall adopt additional requirements for the licensure or  
35 relicensure of agencies or facilities which provide care and treatment  
36 to vulnerable adults. These additional requirements shall ensure that  
37 any person associated with a licensed agency or facility having direct  
38 contact with a vulnerable adult shall not have been: (a) Convicted of

1 a crime against persons as defined in RCW 43.43.830, except as provided  
2 in this section; (b) convicted of crimes relating to financial  
3 exploitation as defined in RCW 43.43.830, except as provided in this  
4 section; (c) found in any disciplinary board final decision to have  
5 abused a vulnerable adult under RCW 43.43.830; or (d) the subject in a  
6 protective proceeding under chapter 74.34 RCW.

7 (2) The rules adopted under this section shall permit the licensee  
8 to consider the criminal history of an applicant for employment in a  
9 licensed facility when the applicant has one or more convictions for a  
10 past offense and:

11 (a) The offense was simple assault, assault in the fourth degree,  
12 or the same offense as it may be renamed, and three or more years have  
13 passed between the most recent conviction and the date of application  
14 for employment;

15 (b) The offense was prostitution, or the same offense as it may be  
16 renamed, and three or more years have passed between the most recent  
17 conviction and the date of application for employment;

18 (c) The offense was theft in the third degree, or the same offense  
19 as it may be renamed, and three or more years have passed between the  
20 most recent conviction and the date of application for employment;

21 (d) The offense was theft in the second degree, or the same offense  
22 as it may be renamed, and five or more years have passed between the  
23 most recent conviction and the date of application for employment;

24 (e) The offense was forgery, or the same offense as it may be  
25 renamed, and five or more years have passed between the most recent  
26 conviction and the date of application for employment.

27 The offenses set forth in (a) through (e) of this subsection do not  
28 automatically disqualify an applicant from employment by a licensee.)  
29 The secretary and the secretary of health shall adopt in rule  
30 additional requirements for the licensure or relicensure of agencies or  
31 facilities that provide care and treatment to vulnerable adults. These  
32 additional requirements shall ensure that any person associated with a  
33 licensed agency or facility having direct contact with a vulnerable  
34 adult shall not have been:

35 (a) Convicted of an offense set forth in section 6 of this act, or  
36 adopted in rule under subsection (2) of this section;

37 (b) Found in any disciplinary board final decision to have abused  
38 a vulnerable adult; or

39 (c) The subject of a protective order under chapter 74.34 RCW.

1       (2) Nothing in this section may be construed to require the  
2 employment of any person against a licensee's judgment.

3       (~~In consultation with law enforcement personnel, the secretary of  
4 social and health services and the secretary of health shall  
5 investigate the conviction record and the protection proceeding record  
6 information under chapter 43.43 RCW of each agency or facility and its  
7 staff under their respective jurisdictions seeking licensure or  
8 relicensure.~~)

9       (3) The secretaries shall use the information solely for the  
10 purpose of determining eligibility for licensure or relicensure.  
11 Criminal justice agencies shall provide the secretaries such  
12 information as they may have and that the secretaries may require for  
13 such purpose.

14       NEW SECTION. Sec. 12. A new section is added to chapter 43.43 RCW  
15 to read as follows:

16       (1) An individual employed by the state in a position allowing  
17 unsupervised access to children or vulnerable adults shall report to  
18 his or her supervisor any conviction occurring after the effective date  
19 of this section for an offense adopted by rule under section 2 of this  
20 act. The report must be made within seven days of the conviction.

21       (2) Failure by an individual to report a conviction shall be  
22 considered in any subsequent disciplinary action.

23       **Sec. 13.** RCW 43.43.834 and 1990 c 3 s 1103 are each amended to  
24 read as follows:

25       (1) (~~A business or organization shall not make an inquiry to the  
26 Washington state patrol under RCW 43.43.832 or an equivalent inquiry to  
27 a federal law enforcement agency unless the business or organization  
28 has notified the applicant who has been offered a position as an  
29 employee or volunteer, that an inquiry may be made.~~

30       (2) ~~A business or organization shall require each applicant to  
31 disclose to the business or organization whether the applicant has  
32 been:~~

33       ~~(a) Convicted of any crime against children or other persons;~~

34       ~~(b) Convicted of crimes relating to financial exploitation if the  
35 victim was a vulnerable adult;~~

1       ~~(c) Found in any dependency action under RCW 13.34.040 to have~~  
2 ~~sexually assaulted or exploited any minor or to have physically abused~~  
3 ~~any minor;~~

4       ~~(d) Found by a court in a domestic relations proceeding under Title~~  
5 ~~26 RCW to have sexually abused or exploited any minor or to have~~  
6 ~~physically abused any minor;~~

7       ~~(e) Found in any disciplinary board final decision to have sexually~~  
8 ~~or physically abused or exploited any minor or developmentally disabled~~  
9 ~~person or to have abused or financially exploited any vulnerable adult;~~  
10 ~~or~~

11       ~~(f) Found by a court in a protection proceeding under chapter 74.34~~  
12 ~~RCW, to have abused or financially exploited a vulnerable adult.~~

13       ~~The disclosure shall be made in writing and signed by the applicant~~  
14 ~~and sworn under penalty of perjury. The disclosure sheet shall specify~~  
15 ~~all crimes against children or other persons and all crimes relating to~~  
16 ~~financial exploitation as defined in RCW 43.43.830 in which the victim~~  
17 ~~was a vulnerable adult.~~

18       ~~(3) The business or organization shall pay such reasonable fee for~~  
19 ~~the records check as the state patrol may require under RCW 43.43.838.~~

20       ~~(4) The business or organization shall notify the applicant of the~~  
21 ~~state patrol's response within ten days after receipt by the business~~  
22 ~~or organization. The employer shall provide a copy of the response to~~  
23 ~~the applicant and shall notify the applicant of such availability.~~

24       ~~(5) The business or organization shall use this record only in~~  
25 ~~making the initial employment or engagement decision. Further~~  
26 ~~dissemination or use of the record is prohibited. A business or~~  
27 ~~organization violating this subsection is subject to a civil action for~~  
28 ~~damages.~~

29       ~~(6) An insurance company shall not require a business or~~  
30 ~~organization to request background information on any employee before~~  
31 ~~issuing a policy of insurance.~~

32       ~~(7) The))~~ Unless otherwise required by law, a business or  
33 organization is not required to conduct a background check on an  
34 individual who may have unsupervised access to children or vulnerable  
35 adults. A business and organization shall be immune from civil  
36 liability for failure to request background information on an  
37 ((applicant)) individual unless the failure to do so constitutes gross  
38 negligence.

1       (2) Any business or organization that conducts a background check  
2 on an individual who may have unsupervised access to children or  
3 vulnerable adults shall:

4       (a) Notify the individual that such investigation will be made and,  
5 if the investigation will be performed by someone other than the  
6 business or organization, identify who will conduct the investigation;

7       (b) Notify the individual of the results of the background check  
8 within ten days after completion or receipt by the business or  
9 organization; and

10       (c) When requesting or receiving information from the state patrol,  
11 acknowledge in writing, on a form provided by the state patrol, that  
12 the absence of a state patrol record does not mean the individual has  
13 no criminal record, or adverse civil or administrative decision, nor  
14 does it represent a determination by the state patrol that the  
15 individual is suitable to have unsupervised access to children or  
16 vulnerable adults.

17       (3) In addition to the requirements of subsection (2) of this  
18 section, any business or organization that conducts a fingerprint-based  
19 background check through the state patrol on an individual who may have  
20 unsupervised access to children or vulnerable adults shall:

21       (a) Notify the individual that such investigation will be made and  
22 require the individual to furnish a full set of fingerprints to the  
23 state patrol;

24       (b) Submit any fees and other information required by the state  
25 patrol in rules; and

26       (c) Acknowledge in writing, on a form provided by the state patrol,  
27 that the absence of a state patrol record does not mean the individual  
28 has no criminal record, or adverse civil or administrative decision,  
29 nor does it represent a determination by the state patrol that the  
30 individual is suitable to have unsupervised access to children or  
31 vulnerable adults.

32       **Sec. 14.** RCW 43.43.838 and 1995 c 29 s 1 are each amended to read  
33 as follows:

34       ~~(1) ((After January 1, 1988, and notwithstanding any provision of~~  
35 ~~RCW 43.43.700 through 43.43.810 to the contrary, the state patrol shall~~  
36 ~~furnish a transcript of the conviction record, disciplinary board final~~  
37 ~~decision and any subsequent criminal charges associated with the~~  
38 ~~conduct that is the subject of the disciplinary board final decision,~~

1 or civil adjudication record pertaining to any person for whom the  
2 state patrol or the federal bureau of investigation has a record upon  
3 the written request of:

4 (a) The subject of the inquiry;

5 (b) Any business or organization for the purpose of conducting  
6 evaluations under RCW 43.43.832;

7 (c) The department of social and health services;

8 (d) Any law enforcement agency, prosecuting authority, or the  
9 office of the attorney general; or

10 (e) The department of social and health services for the purpose of  
11 meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or  
12 72.23 RCW, or any later enacted statute which purpose is to regulate or  
13 license a facility which handles vulnerable adults. However, access to  
14 conviction records pursuant to this subsection (1)(e) does not limit or  
15 restrict the ability of the department to obtain additional information  
16 regarding conviction records and pending charges as set forth in RCW  
17 74.15.030(2)(b).

18 After processing the request, if the conviction record,  
19 disciplinary board final decision and any subsequent criminal charges  
20 associated with the conduct that is the subject of the disciplinary  
21 board final decision, or adjudication record shows no evidence of a  
22 crime against children or other persons or, in the case of vulnerable  
23 adults, no evidence of crimes relating to financial exploitation in  
24 which the victim was a vulnerable adult, an identification declaring  
25 the showing of no evidence shall be issued to the business or  
26 organization by the state patrol and shall be issued within fourteen  
27 working days of the request. The business or organization shall  
28 provide a copy of the identification declaring the showing of no  
29 evidence to the applicant. Possession of such identification shall  
30 satisfy future record check requirements for the applicant for a two-  
31 year period unless the prospective employee is any current school  
32 district employee who has applied for a position in another school  
33 district.

34 (2) The state patrol shall by rule establish fees for disseminating  
35 records under this section to recipients identified in subsection  
36 (1)(a) and (b) of this section. The state patrol shall also by rule  
37 establish fees for disseminating records in the custody of the national  
38 crime information center. The revenue from the fees shall cover, as  
39 nearly as practicable, the direct and indirect costs to the state



1 ~~patrol of disseminating the records: PROVIDED, That no fee shall be~~  
2 ~~charged to a nonprofit organization for the records check: PROVIDED~~  
3 ~~FURTHER, That))~~ The state patrol shall adopt rules to implement chapter  
4 . . . , Laws of 1997 (this act). The rules shall include, at a minimum:

5 (a) Provisions for verifying when a nongovernment business or  
6 organization is nonprofit; and

7 (b) Procedures, forms, and a fee schedule for background checks  
8 processed by the state patrol under this chapter.

9 (2) The provisions and procedures adopted by the state patrol under  
10 subsection (1) of this section shall include, to the greatest extent  
11 possible, alternatives that encourage businesses and organizations and  
12 individuals to request and receive information electronically.

13 (3) The fee schedule adopted by the state patrol under subsection  
14 (1) of this section shall cover, as nearly as practicable, the direct  
15 and indirect costs to the state patrol for processing the checks  
16 authorized under this chapter. The fee schedule shall reflect the  
17 following:

18 (a) No fee may be charged to a nonprofit business or organization  
19 for any conviction record check or background check certified by the  
20 nonprofit business or organization to be an initial check on an  
21 individual who may have unsupervised access to children or vulnerable  
22 adults; and

23 (b) The differences in processing costs to the state patrol  
24 resulting from differences in (i) the types of background checks  
25 requested; (ii) the methods used to request and receive background  
26 check information; (iii) the volume of background checks requested by  
27 a business or organization; and (iv) any other relevant factors  
28 affecting processing costs.

29 (4) In the case of record checks using fingerprints requested by  
30 school districts and educational service districts, the state patrol  
31 shall charge only for the incremental costs associated with checking  
32 fingerprints in addition to name and date of birth. Record checks  
33 requested by school districts and educational service districts using  
34 only name and date of birth shall continue to be provided free of  
35 charge.

36 ~~((3) No employee of the state, employee of a business or~~  
37 ~~organization, or the business or organization is liable for defamation,~~  
38 ~~invasion of privacy, negligence, or any other claim in connection with~~

1 any lawful dissemination of information under RCW 43.43.830 through  
2 43.43.840 or 43.43.760.

3 (4) Before July 26, 1987, the state patrol shall adopt rules and  
4 forms to implement this section and to provide for security and privacy  
5 of information disseminated under this section, giving first priority  
6 to the criminal justice requirements of this chapter. The rules may  
7 include requirements for users, audits of users, and other procedures  
8 to prevent use of civil adjudication record information or criminal  
9 history record information inconsistent with this chapter.

10 (5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an  
11 employer to make an inquiry not specifically authorized by this  
12 chapter, or be construed to affect the policy of the state declared in  
13 chapter 9.96A RCW.)

14 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.43 RCW  
15 to read as follows:

16 A business or organization may obtain conviction records and  
17 background check information from any lawful source, except that state  
18 government agencies must obtain conviction records from the state  
19 patrol. A business or organization may delegate to another individual  
20 or entity its authority to request or receive information under this  
21 chapter.

22 NEW SECTION. **Sec. 16.** A new section is added to chapter 43.43 RCW  
23 to read as follows:

24 If any information is released under this chapter by the state of  
25 Washington, the state and its employees: (1) Make no representation  
26 that the subject of the inquiry has no criminal record or adverse civil  
27 or administrative decisions; (2) make no determination that the subject  
28 of the inquiry is suitable for involvement with a business or  
29 organization; and (3) are not liable for defamation, invasion of  
30 privacy, negligence, or any other claim in connection with any lawful  
31 dissemination of information.

32 NEW SECTION. **Sec. 17.** A new section is added to chapter 43.43 RCW  
33 to read as follows:

34 An insurance company may not require, as a condition of issuing a  
35 policy of insurance, that a business or organization conduct background

1 checks on individuals who may have unsupervised access to children or  
2 vulnerable adults.

3 NEW SECTION. **Sec. 18.** A new section is added to chapter 43.43 RCW  
4 to read as follows:

5 No individual or business or organization, nor any employee of a  
6 business or organization, is liable for defamation, invasion of  
7 privacy, negligence, or any other claim in connection with any lawful  
8 dissemination of information authorized under this chapter.

9 NEW SECTION. **Sec. 19.** A new section is added to chapter 43.43 RCW  
10 to read as follows:

11 (1) A business or organization shall require each individual  
12 seeking involvement with the business or organization in a position  
13 where the individual may have unsupervised access to children or  
14 vulnerable adults to disclose the following information as part of the  
15 application:

16 (a) Convictions for any of the offenses identified in section 6 of  
17 this act and, where applicable, offenses adopted in rule under section  
18 6 of this act;

19 (b) Adverse dependency adjudications;

20 (c) Adverse disciplinary board final decisions; or

21 (d) Adverse protection orders.

22 (2) The disclosure shall be made in writing, signed by the  
23 individual, and sworn under penalty of perjury. The disclosure form  
24 shall specify all crimes identified in section 6 of this act and, where  
25 applicable, offenses adopted in rules under section 6 of this act.

26 NEW SECTION. **Sec. 20.** A new section is added to chapter 43.43 RCW  
27 to read as follows:

28 (1) Individuals who seek to volunteer with a business or  
29 organization where they may have unsupervised access to children or  
30 vulnerable adults may request from the state patrol a certified copy of  
31 their background check record.

32 (2) Businesses and organizations may require individuals, other  
33 than those with valid state credentials, to obtain certified copies of  
34 their background check records from the state patrol before engaging  
35 them as volunteers in positions where they may have unsupervised access  
36 to children or vulnerable adults. A business or organization may

1 accept a valid state credential or a certified copy of an individual's  
2 background check record in lieu of requesting a background check  
3 through the state patrol. When a business or organization relies on a  
4 valid state credential or a certified copy of a background check record  
5 to determine the individual's suitability for involvement with the  
6 business or organization, the business or organization understands and  
7 accepts the risk that a conviction or an adverse civil or  
8 administrative decision may have occurred since the date of issuance of  
9 the state credential or certified copy of the background check record.

10 (3) An individual requesting a certified copy of his or her  
11 background check record shall comply with the process and fee  
12 requirements established by the state patrol in rules.

13 (4) A certified copy of a background check record is not valid for  
14 more than two years from the date issued by the state patrol.

15 NEW SECTION. **Sec. 21.** The state patrol shall examine the  
16 feasibility and costs associated with creating a reliable,  
17 electronically available data base for storing and disseminating  
18 background check information regarding those civil adjudications, court  
19 orders, and administrative decisions that are required to be reported  
20 to the state patrol under RCW 43.43.840. The state patrol shall  
21 prepare a report of the results of its examination and submit the  
22 report to the governor and the legislature no later than January 1,  
23 1998. All agencies required to report information to the state patrol  
24 shall cooperate in the examination, and the state patrol shall consult  
25 regularly with the agencies during its examination and report  
26 preparation.

27 NEW SECTION. **Sec. 22.** A new section is added to chapter 18.130  
28 RCW to read as follows:

29 (1) This section applies to individuals who apply for an initial  
30 license for a health profession under this chapter on or after the  
31 effective date of this section.

32 (2) Under RCW 18.130.050(13), the disciplining authority shall  
33 conduct a background check on each applicant for an initial license.  
34 The background check shall include:

35 (a) A fingerprint-based state background check through the state  
36 patrol; and

1 (b) A national conviction record check through the federal bureau  
2 of investigation.

3 (3) The disciplining authority shall:

4 (a) Notify the individual applying for an initial license that,  
5 subject to the provisions of subsection (5) of this section, a  
6 background check must be completed before the license is issued;

7 (b) Require the individual to furnish two full sets of fingerprints  
8 to the state patrol, one of which shall be used for exchange with the  
9 federal bureau of investigation;

10 (c) Submit any fees and other information required by the state  
11 patrol in rule;

12 (d) Acknowledge in writing, on a form provided by the state patrol,  
13 that the absence of a state patrol or federal bureau of investigation  
14 record does not mean the individual has no criminal record, or adverse  
15 civil or administrative decision, nor does it represent a determination  
16 by the state patrol that the individual is suitable to obtain an  
17 initial license;

18 (e) Notify the individual of the results of the background check  
19 within ten days after receipt by the disciplining authority if a  
20 conviction record, adverse disciplinary board final decision,  
21 dependency adjudication, or protection order was found; and

22 (f) Restrict use of the background check results to determining the  
23 individual's suitability for an initial license.

24 (4) The expense of the background check and obtaining fingerprint  
25 data shall be paid by the individual applying for his or her initial  
26 license.

27 (5) The disciplining authority may, by rule, determine appropriate  
28 circumstances for granting a conditional license, pending completion of  
29 the national investigation after the applicant has completed the  
30 fingerprint-based state background check through the state patrol.

31 (6) This section does not limit the authority of the disciplining  
32 authority to investigate the suitability of individuals through other  
33 public records including adverse civil or administrative proceedings.

34 (7) For the purposes of this section, "adverse civil or  
35 administrative proceedings" means:

36 (a) An adverse dependency adjudication where there is a final  
37 adverse adjudication in a dependency action under chapter 13.34 RCW  
38 that includes a finding of physical or sexual abuse, neglect, or  
39 exploitation of a child;

1 (b) Disciplinary board final decisions that include final decisions  
2 issued by the secretary of the department of health, a disciplining  
3 authority under chapter 18.130 RCW, the personnel appeals board, or the  
4 director of the department of licensing which include a finding of  
5 abuse, abandonment, neglect, or exploitation of a child or vulnerable  
6 adult; or

7 (c) Protection orders that include court orders, other than ex  
8 parte or temporary orders, issued for the purpose of protecting someone  
9 from contact, harassment, or domestic violence. Protection orders  
10 include criminal antiharassment orders issued under chapter 9A.46 RCW;  
11 civil antiharassment protection orders issued under chapter 10.14 RCW;  
12 domestic violence no contact orders issued under chapter 10.99 RCW;  
13 dissolution decree restraining orders issued under chapter 26.09 RCW;  
14 nonparental custody action restraining orders issued under chapter  
15 26.10 RCW; uniform parenting act restraining orders issued under  
16 chapter 26.26 RCW; domestic violence protection orders issued under  
17 chapter 26.50 RCW; and orders for protection of vulnerable adults  
18 issued under chapter 74.34 RCW.

19 NEW SECTION. **Sec. 23.** A new section is added to chapter 18.130  
20 RCW to read as follows:

21 (1) The disqualification provisions of this section apply to those  
22 individuals required to undergo the conviction record checks provided  
23 for in section 22 of this act.

24 (2) A conviction for one or more of the following offenses shall  
25 permanently disqualify an individual identified in subsection (1) of  
26 this section from obtaining a license issued under this chapter:

- 27 (a) Aggravated murder;
- 28 (b) First degree murder;
- 29 (c) First degree kidnapping;
- 30 (d) First or second degree assault;
- 31 (e) First, second, or third degree assault of a child;
- 32 (f) First, second, or third degree rape;
- 33 (g) First, second, or third degree rape of a child;
- 34 (h) First or second degree robbery;
- 35 (i) First degree arson;
- 36 (j) First degree burglary;
- 37 (k) Indecent liberties;
- 38 (l) First degree extortion;

1 (m) Incest;  
2 (n) First degree promoting prostitution;  
3 (o) Sexual exploitation of minors;  
4 (p) First degree criminal mistreatment;  
5 (q) Child abuse or neglect as defined in RCW 26.44.020;  
6 (r) First, second, or third degree child molestation;  
7 (s) First or second degree sexual misconduct with a minor;  
8 (t) Child buying or selling;  
9 (u) Felony indecent exposure; and  
10 (v) Any federal or out-of-state equivalent to any of the offenses  
11 listed in this subsection.

12 (3) The disciplining authority may identify, in rule, additional  
13 offenses that are directly related to an individual's suitability to  
14 obtain an initial license and that may disqualify an individual from  
15 receiving such a license. The rules may distinguish between offenses  
16 for which disqualification must be made and offenses for which  
17 disqualification is discretionary, and the appropriate periods of time  
18 for which the specified offenses shall act to disqualify individuals.

19 (4) In determining whether to disqualify an individual under  
20 subsection (3) of this section, the disciplining authority shall  
21 consider:

22 (a) The likelihood and extent that the individual may have  
23 unsupervised access to children or vulnerable adults as a result of the  
24 license;

25 (b) The age of the individual at the time of the conviction;

26 (c) The length of time that has passed since the conviction;

27 (d) Evidence of conduct subsequent to the conviction relating to  
28 the individual's suitability to obtain an initial license; and

29 (e) The appropriateness of issuing a license with conditions as  
30 provided for in this chapter.

31 NEW SECTION. **Sec. 24.** A new section is added to chapter 18.130  
32 RCW to read as follows:

33 (1) An individual with a license issued under this chapter shall  
34 report to the appropriate disciplining authority any conviction  
35 occurring after the effective date of this section for an offense set  
36 forth in, or adopted in rule under, section 23 of this act. The report  
37 must be made within seven days of the conviction.

1 (2) The disciplining authorities shall adopt rules to implement  
2 this section.

3 (3) Failure by an individual to report a conviction shall be  
4 considered by the disciplining authority in any application for renewal  
5 or reinstatement of the license.

6 (4) When an individual required to report under subsection (1) of  
7 this section is employed, the individual shall also report the  
8 conviction to his or her employer within seven days of the conviction.

9 NEW SECTION. **Sec. 25.** A new section is added to chapter 2.04 RCW  
10 to read as follows:

11 If the court reaches a final determination of a criminal appeal and  
12 the determination results in a dismissal, reversal, or vacation of a  
13 conviction, the court shall furnish notice of its determination to the  
14 identification section of the Washington state patrol.

15 NEW SECTION. **Sec. 26.** A new section is added to chapter 2.06 RCW  
16 to read as follows:

17 If the court reaches a final determination of a criminal appeal and  
18 the determination results in a dismissal, reversal, or vacation of a  
19 conviction, the court shall furnish notice of its determination to the  
20 identification section of the Washington state patrol.

21 **Sec. 27.** RCW 74.15.030 and 1995 c 302 s 4 are each amended to read  
22 as follows:

23 The secretary shall have the power and it shall be the secretary's  
24 duty:

25 (1) In consultation with the children's services advisory  
26 committee, and with the advice and assistance of persons representative  
27 of the various type agencies to be licensed, to designate categories of  
28 facilities for which separate or different requirements shall be  
29 developed as may be appropriate whether because of variations in the  
30 ages, sex and other characteristics of persons served, variations in  
31 the purposes and services offered or size or structure of the agencies  
32 to be licensed hereunder, or because of any other factor relevant  
33 thereto;

34 (2) In consultation with the children's services advisory  
35 committee, and with the advice and assistance of persons representative  
36 of the various type agencies to be licensed, to adopt and publish



1 minimum requirements for licensing applicable to each of the various  
2 categories of agencies to be licensed.

3 The minimum requirements shall be limited to:

4 (a) The size and suitability of a facility and the plan of  
5 operation for carrying out the purpose for which an applicant seeks a  
6 license;

7 (b) The character, suitability and competence of an agency and  
8 other persons associated with an agency directly responsible for the  
9 care and treatment of children, expectant mothers or developmentally  
10 disabled persons. In consultation with law enforcement personnel, the  
11 secretary shall investigate the conviction record or pending charges  
12 and dependency record information under chapter 43.43 RCW of each  
13 agency and its staff seeking licensure or relicensure. In order to  
14 determine the suitability of applicants for an agency license,  
15 licensees, their employees, and other persons who have unsupervised  
16 access to children in care, and who have not resided in the state of  
17 Washington during the three-year period before being authorized to care  
18 for children shall be fingerprinted. The fingerprints shall be  
19 forwarded to the Washington state patrol and federal bureau of  
20 investigation for a criminal history records check. (~~The fingerprint  
21 criminal history records checks will be at the expense of the licensee  
22 except that in the case of a foster family home, if this expense would  
23 work a hardship on the licensee, the department shall pay the expense.  
24 The licensee may not pass this cost on to the employee or prospective  
25 employee, unless the employee is determined to be unsuitable due to his  
26 or her criminal history record.~~) The secretary shall use the  
27 information solely for the purpose of determining eligibility for a  
28 license and for determining the character, suitability, and competence  
29 of those persons or agencies, excluding parents, not required to be  
30 licensed who are authorized to care for children, expectant mothers,  
31 and developmentally disabled persons. Criminal justice agencies shall  
32 provide the secretary such information as they may have and that the  
33 secretary may require for such purpose;

34 (c) The number of qualified persons required to render the type of  
35 care and treatment for which an agency seeks a license;

36 (d) The safety, cleanliness, and general adequacy of the premises  
37 to provide for the comfort, care and well-being of children, expectant  
38 mothers or developmentally disabled persons;

1 (e) The provision of necessary care, including food, clothing,  
2 supervision and discipline; physical, mental and social well-being; and  
3 educational, recreational and spiritual opportunities for those served;  
4 (f) The financial ability of an agency to comply with minimum  
5 requirements established pursuant to chapter 74.15 RCW and RCW  
6 74.13.031; and  
7 (g) The maintenance of records pertaining to the admission,  
8 progress, health and discharge of persons served;  
9 (3) To investigate any person, including relatives by blood or  
10 marriage except for parents, for character, suitability, and competence  
11 in the care and treatment of children, expectant mothers, and  
12 developmentally disabled persons prior to authorizing that person to  
13 care for children, expectant mothers, and developmentally disabled  
14 persons. However, if a child is placed with a relative under RCW  
15 13.34.060 or 13.34.130, and if such relative appears otherwise suitable  
16 and competent to provide care and treatment the criminal history  
17 background check required by this section need not be completed before  
18 placement, but shall be completed as soon as possible after placement;  
19 (4) On reports of child abuse and neglect, to investigate agencies  
20 in accordance with chapter 26.44 RCW, including child day-care centers  
21 and family day-care homes, to determine whether the abuse or neglect  
22 has occurred, and whether child protective services or referral to a  
23 law enforcement agency is appropriate;  
24 (5) To issue, revoke, or deny licenses to agencies pursuant to  
25 chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the  
26 category of care which an agency is authorized to render and the ages,  
27 sex and number of persons to be served;  
28 (6) To prescribe the procedures and the form and contents of  
29 reports necessary for the administration of chapter 74.15 RCW and RCW  
30 74.13.031 and to require regular reports from each licensee;  
31 (7) To inspect agencies periodically to determine whether or not  
32 there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the  
33 requirements adopted hereunder;  
34 (8) To review requirements adopted hereunder at least every two  
35 years and to adopt appropriate changes after consultation with the  
36 child care coordinating committee and other affected groups for child  
37 day-care requirements and with the children's services advisory  
38 committee for requirements for other agencies; and

1 (9) To consult with public and private agencies in order to help  
2 them improve their methods and facilities for the care of children,  
3 expectant mothers and developmentally disabled persons.

4 **Sec. 28.** RCW 28A.195.010 and 1993 c 336 s 1101 are each amended to  
5 read as follows:

6 The legislature hereby recognizes that private schools should be  
7 subject only to those minimum state controls necessary to insure the  
8 health and safety of all the students in the state and to insure a  
9 sufficient basic education to meet usual graduation requirements. The  
10 state, any agency or official thereof, shall not restrict or dictate  
11 any specific educational or other programs for private schools except  
12 as hereinafter in this section provided.

13 Principals of private schools or superintendents of private school  
14 districts shall file each year with the state superintendent of public  
15 instruction a statement certifying that the minimum requirements  
16 hereinafter set forth are being met, noting any deviations. After  
17 review of the statement, the state superintendent will notify schools  
18 or school districts of those deviations which must be corrected. In  
19 case of major deviations, the school or school district may request and  
20 the state board of education may grant provisional status for one year  
21 in order that the school or school district may take action to meet the  
22 requirements. Minimum requirements shall be as follows:

23 (1) The minimum school year for instructional purposes shall  
24 consist of no less than one hundred eighty school days or the  
25 equivalent in annual minimum program hour offerings as prescribed in  
26 RCW 28A.150.220.

27 (2) The school day shall be the same as that required in RCW  
28 28A.150.030 and 28A.150.220, except that the percentages of total  
29 program hour offerings as prescribed in RCW 28A.150.220 for basic  
30 skills, work skills, and optional subjects and activities shall not  
31 apply to private schools or private sectarian schools.

32 (3) All classroom teachers shall hold appropriate Washington state  
33 certification except as follows:

34 (a) Teachers for religious courses or courses for which no  
35 counterpart exists in public schools shall not be required to obtain a  
36 state certificate to teach those courses.

37 (b) In exceptional cases, people of unusual competence but without  
38 certification may teach students so long as a certified person

1 exercises general supervision. Annual written statements shall be  
2 submitted to the office of the superintendent of public instruction  
3 reporting and explaining such circumstances.

4 (4) An approved private school may operate an extension program for  
5 parents, guardians, or persons having legal custody of a child to teach  
6 children in their custody. The extension program shall require at a  
7 minimum that:

8 (a) The parent, guardian, or custodian be under the supervision of  
9 an employee of the approved private school who is certified under  
10 chapter 28A.410 RCW;

11 (b) The planning by the certified person and the parent, guardian,  
12 or person having legal custody include objectives consistent with this  
13 subsection and subsections (1), (2), (5), (6), and (7) of this section;

14 (c) The certified person spend a minimum average each month of one  
15 contact hour per week with each student under his or her supervision  
16 who is enrolled in the approved private school extension program;

17 (d) Each student's progress be evaluated by the certified person;  
18 and

19 (e) The certified employee shall not supervise more than thirty  
20 students enrolled in the approved private school's extension program.

21 (5) Appropriate measures shall be taken to safeguard all permanent  
22 records against loss or damage.

23 (6) The physical facilities of the school or district shall be  
24 adequate to meet the program offered by the school or district:  
25 PROVIDED, That each school building shall meet reasonable health and  
26 fire safety requirements. However, the state board shall not require  
27 private school students to meet the student learning goals, obtain a  
28 certificate of mastery to graduate from high school, to master the  
29 essential academic learning requirements, or to be assessed pursuant to  
30 RCW 28A.630.885. However, private schools may choose, on a voluntary  
31 basis, to have their students master these essential academic learning  
32 requirements, take these assessments, and obtain certificates of  
33 mastery. A residential dwelling of the parent, guardian, or custodian  
34 shall be deemed to be an adequate physical facility when a parent,  
35 guardian, or person having legal custody is instructing his or her  
36 child under subsection (4) of this section.

37 (7) Private school curriculum shall include instruction of the  
38 basic skills of occupational education, science, mathematics, language,  
39 social studies, history, health, reading, writing, spelling, and the

1 development of appreciation of art and music, all in sufficient units  
2 for meeting state board of education graduation requirements.

3 (8) Each school or school district shall be required to maintain  
4 up-to-date policy statements related to the administration and  
5 operation of the school or school district.

6 (9) All employees hired after the effective date of this section  
7 who will have regularly scheduled unsupervised access to children are  
8 subject to the record check requirements in RCW 28A.400.303.

9 All decisions of policy, philosophy, selection of books, teaching  
10 material, curriculum, except as provided in subsection (7) ((~~above~~  
11 ~~provided~~)) of this section, school rules and administration, or other  
12 matters not specifically referred to in this section, shall be the  
13 responsibility of the administration and administrators of the  
14 particular private school involved.

15 NEW SECTION. Sec. 29. RCW 72.23.035 and 1989 c 334 s 12 are each  
16 repealed.

17 NEW SECTION. Sec. 30. If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected."

21 **SSB 5528** - S AMD - 241  
22 By Senators Kohl, Zarelli and West

23

24 On page 1, line 2 of the title, after "checks;" strike the  
25 remainder of the title and insert "amending RCW 9.96A.020, 41.06.475,  
26 43.20A.710, 43.43.815, 43.43.830, 43.43.832, 43.43.842, 43.43.834,  
27 43.43.838, 74.15.030, and 28A.195.010; adding new sections to chapter  
28 43.20A RCW; adding new sections to chapter 43.43 RCW; adding new  
29 sections to chapter 18.130 RCW; adding a new section to chapter 2.04  
30 RCW; adding a new section to chapter 2.06 RCW; creating a new section;  
31 and repealing RCW 72.23.035."

--- END ---