

ESSB 5774 - H COMM AMD
By Committee on Appropriations

NOT ADOPTED 04/10/2007

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 43.43 RCW
4 to read as follows:

5 (1) In order to determine the character, competence, and
6 suitability of any applicant or service provider to have unsupervised
7 access, the secretary may require a fingerprint-based background check
8 through the Washington state patrol and the federal bureau of
9 investigation at anytime, but shall require a fingerprint-based
10 background check when the applicant or service provider has resided in
11 the state less than three consecutive years before application, and:

12 (a) Is an applicant or service provider providing services to
13 children or people with developmental disabilities under RCW 74.15.030;

14 (b) Is an individual residing in an applicant or service provider's
15 home, facility, entity, agency, or business or who is authorized by the
16 department to provide services to children or people with developmental
17 disabilities under RCW 74.15.030; or

18 (c) Is an applicant or service provider providing in-home services
19 funded by:

20 (i) Medicaid personal care under RCW 74.09.520;

21 (ii) Community options program entry system waiver services under
22 RCW 74.39A.030;

23 (iii) Chore services under RCW 74.39A.110; or

24 (iv) Other home and community long-term care programs, established
25 pursuant to chapters 74.39 and 74.39A RCW, administered by the
26 department.

27 (2) The secretary shall require a fingerprint-based background
28 check through the Washington state patrol identification and criminal
29 history section and the federal bureau of investigation when the

1 department seeks to approve an applicant or service provider for a
2 foster or adoptive placement of children in accordance with federal and
3 state law.

4 (3) Any secure facility operated by the department under chapter
5 71.09 RCW shall require applicants and service providers to undergo a
6 fingerprint-based background check through the Washington state patrol
7 identification and criminal history section and the federal bureau of
8 investigation.

9 (4) Service providers and service provider applicants who are
10 required to complete a fingerprint-based background check may be hired
11 for a one hundred twenty-day provisional period as allowed under law or
12 program rules when:

13 (a) A fingerprint-based background check is pending; and

14 (b) The applicant or service provider is not disqualified based on
15 the immediate result of the background check.

16 (5) Fees charged by the Washington state patrol and the federal
17 bureau of investigation for fingerprint-based background checks shall
18 be paid by the department for applicants or service providers
19 providing:

20 (a) Services to people with a developmental disability under RCW
21 74.15.030;

22 (b) In-home services funded by medicaid personal care under RCW
23 74.09.520;

24 (c) Community options program entry system waiver services under
25 RCW 74.39A.030;

26 (d) Chore services under RCW 74.39A.110;

27 (e) Services under other home and community long-term care
28 programs, established pursuant to chapters 74.39 and 74.39A RCW,
29 administered by the department;

30 (f) Services in, or to residents of, a secure facility under RCW
31 71.09.115; and

32 (g) Foster care as required under RCW 74.15.030.

33 (6) Service providers licensed under RCW 74.15.030 must pay fees
34 charged by the Washington state patrol and the federal bureau of
35 investigation for conducting fingerprint-based background checks.

36 (7) Children's administration service providers licensed under RCW
37 74.15.030 may not pass on the cost of the background check fees to

1 their applicants unless the individual is determined to be disqualified
2 due to the background information.

3 (8) The department shall develop rules identifying the financial
4 responsibility of service providers, applicants, and the department for
5 paying the fees charged by law enforcement to roll, print, or scan
6 fingerprints-based for the purpose of a Washington state patrol or
7 federal bureau of investigation fingerprint-based background check.

8 (9) For purposes of this section, unless the context plainly
9 indicates otherwise:

10 (a) "Applicant" means a current or prospective department or
11 service provider employee, volunteer, student, intern, researcher,
12 contractor, or any other individual who will or may have unsupervised
13 access because of the nature of the work or services he or she
14 provides. "Applicant" includes but is not limited to any individual
15 who will or may have unsupervised access and is:

16 (i) Applying for a license or certification from the department;

17 (ii) Seeking a contract with the department or a service provider;

18 (iii) Applying for employment, promotion, reallocation, or
19 transfer;

20 (iv) An individual that a department client or guardian of a
21 department client chooses to hire or engage to provide services to
22 himself or herself or another vulnerable adult, juvenile, or child and
23 who might be eligible to receive payment from the department for
24 services rendered; or

25 (v) A department applicant who will or may work in a department-
26 covered position.

27 (b) "Authorized" means the department grants an applicant, home, or
28 facility permission to:

29 (i) Conduct licensing, certification, or contracting activities;

30 (ii) Have unsupervised access to vulnerable adults, juveniles, and
31 children;

32 (iii) Receive payments from a department program; or

33 (iv) Work or serve in a department-covered position.

34 (c) "Department" means the department of social and health
35 services.

36 (d) "Secretary" means the secretary of the department of social and
37 health services.

38 (e) "Secure facility" has the meaning provided in RCW 71.09.020.

1 (f) "Service provider" means entities, facilities, agencies,
2 businesses, or individuals who are licensed, certified, authorized, or
3 regulated by, receive payment from, or have contracts or agreements
4 with the department to provide services to vulnerable adults,
5 juveniles, or children. "Service provider" includes individuals whom
6 a department client or guardian of a department client may choose to
7 hire or engage to provide services to himself or herself or another
8 vulnerable adult, juvenile, or child and who might be eligible to
9 receive payment from the department for services rendered. "Service
10 provider" does not include those certified under chapter 70.96A RCW.

11 **Sec. 2.** RCW 26.33.190 and 1991 c 136 s 3 are each amended to read
12 as follows:

13 (1) Any person may at any time request an agency, the department,
14 an individual approved by the court, or a qualified salaried court
15 employee to prepare a preplacement report. A certificate signed under
16 penalty of perjury by the person preparing the report specifying his or
17 her qualifications as required in this chapter shall be attached to or
18 filed with each preplacement report and shall include a statement of
19 training or experience that qualifies the person preparing the report
20 to discuss relevant adoption issues. A person may have more than one
21 preplacement report prepared. All preplacement reports shall be filed
22 with the court in which the petition for adoption is filed.

23 (2) The preplacement report shall be a written document setting
24 forth all relevant information relating to the fitness of the person
25 requesting the report as an adoptive parent. The report shall be based
26 on a study which shall include an investigation of the home
27 environment, family life, health, facilities, and resources of the
28 person requesting the report. The report shall include a list of the
29 sources of information on which the report is based. The report shall
30 include a recommendation as to the fitness of the person requesting the
31 report to be an adoptive parent. The report shall also verify that the
32 following issues were discussed with the prospective adoptive parents:

33 (a) The concept of adoption as a lifelong developmental process and
34 commitment;

35 (b) The potential for the child to have feelings of identity
36 confusion and loss regarding separation from the birth parents;

37 (c) Disclosure of the fact of adoption to the child;

1 (d) The child's possible questions about birth parents and
2 relatives; and

3 (e) The relevance of the child's racial, ethnic, and cultural
4 heritage.

5 (3) All preplacement reports shall include ~~((an investigation))~~ a
6 background check of ~~((the))~~ any conviction records, pending charges, or
7 disciplinary board final decisions of prospective adoptive parents.
8 The ~~((investigation))~~ background check shall include an examination of
9 state and national criminal identification data provided by the
10 Washington state patrol criminal identification system ~~((as described~~
11 ~~in chapter 43.43 RCW))~~ including, but not limited to, a fingerprint-
12 based background check of national crime information databases for any
13 person being investigated. It shall also include a review of any child
14 abuse and neglect history of any adult living in the prospective
15 adoptive parents' home. The background check of the child abuse and neglect
16 registries of all states in which the prospective adoptive parents or
17 any other adult living in the home have lived during the five years
18 preceding the date of the preplacement report.

20 (4) An agency, the department, or a court approved individual may
21 charge a reasonable fee based on the time spent in conducting the study
22 and preparing the preplacement report. The court may set a reasonable
23 fee for conducting the study and preparing the report when a court
24 employee has prepared the report. An agency, the department, a court
25 approved individual, or the court may reduce or waive the fee if the
26 financial condition of the person requesting the report so warrants.
27 An agency's, the department's, or court approved individual's, fee is
28 subject to review by the court upon request of the person requesting
29 the report.

30 (5) The person requesting the report shall designate to the agency,
31 the department, the court approved individual, or the court in writing
32 the county in which the preplacement report is to be filed. If the
33 person requesting the report has not filed a petition for adoption, the
34 report shall be indexed in the name of the person requesting the report
35 and a cause number shall be assigned. A fee shall not be charged for
36 filing the report. The applicable filing fee may be charged at the
37 time a petition governed by this chapter is filed. Any subsequent
38 preplacement reports shall be filed together with the original report.

1 (6) A copy of the completed preplacement report shall be delivered
2 to the person requesting the report.

3 (7) A person may request that a report not be completed. A
4 reasonable fee may be charged for the value of work done.

5 **Sec. 3.** RCW 26.44.030 and 2005 c 417 s 1 are each amended to read
6 as follows:

7 (1)(a) When any practitioner, county coroner or medical examiner,
8 law enforcement officer, professional school personnel, registered or
9 licensed nurse, social service counselor, psychologist, pharmacist,
10 licensed or certified child care providers or their employees, employee
11 of the department, juvenile probation officer, placement and liaison
12 specialist, responsible living skills program staff, HOPE center staff,
13 or state family and children's ombudsman or any volunteer in the
14 ombudsman's office has reasonable cause to believe that a child has
15 suffered abuse or neglect, he or she shall report such incident, or
16 cause a report to be made, to the proper law enforcement agency or to
17 the department as provided in RCW 26.44.040.

18 (b) When any person, in his or her official supervisory capacity
19 with a nonprofit or for-profit organization, has reasonable cause to
20 believe that a child has suffered abuse or neglect caused by a person
21 over whom he or she regularly exercises supervisory authority, he or
22 she shall report such incident, or cause a report to be made, to the
23 proper law enforcement agency, provided that the person alleged to have
24 caused the abuse or neglect is employed by, contracted by, or
25 volunteers with the organization and coaches, trains, educates, or
26 counsels a child or children or regularly has unsupervised access to a
27 child or children as part of the employment, contract, or voluntary
28 service. No one shall be required to report under this section when he
29 or she obtains the information solely as a result of a privileged
30 communication as provided in RCW 5.60.060.

31 Nothing in this subsection (1)(b) shall limit a person's duty to
32 report under (a) of this subsection.

33 For the purposes of this subsection, the following definitions
34 apply:

35 (i) "Official supervisory capacity" means a position, status, or
36 role created, recognized, or designated by any nonprofit or for-profit
37 organization, either for financial gain or without financial gain,

1 whose scope includes, but is not limited to, overseeing, directing, or
2 managing another person who is employed by, contracted by, or
3 volunteers with the nonprofit or for-profit organization.

4 (ii) "Regularly exercises supervisory authority" means to act in
5 his or her official supervisory capacity on an ongoing or continuing
6 basis with regards to a particular person.

7 (c) The reporting requirement also applies to department of
8 corrections personnel who, in the course of their employment, observe
9 offenders or the children with whom the offenders are in contact. If,
10 as a result of observations or information received in the course of
11 his or her employment, any department of corrections personnel has
12 reasonable cause to believe that a child has suffered abuse or neglect,
13 he or she shall report the incident, or cause a report to be made, to
14 the proper law enforcement agency or to the department as provided in
15 RCW 26.44.040.

16 (d) The reporting requirement shall also apply to any adult who has
17 reasonable cause to believe that a child who resides with them, has
18 suffered severe abuse, and is able or capable of making a report. For
19 the purposes of this subsection, "severe abuse" means any of the
20 following: Any single act of abuse that causes physical trauma of
21 sufficient severity that, if left untreated, could cause death; any
22 single act of sexual abuse that causes significant bleeding, deep
23 bruising, or significant external or internal swelling; or more than
24 one act of physical abuse, each of which causes bleeding, deep
25 bruising, significant external or internal swelling, bone fracture, or
26 unconsciousness.

27 (e) The report must be made at the first opportunity, but in no
28 case longer than forty-eight hours after there is reasonable cause to
29 believe that the child has suffered abuse or neglect. The report must
30 include the identity of the accused if known.

31 (2) The reporting requirement of subsection (1) of this section
32 does not apply to the discovery of abuse or neglect that occurred
33 during childhood if it is discovered after the child has become an
34 adult. However, if there is reasonable cause to believe other children
35 are or may be at risk of abuse or neglect by the accused, the reporting
36 requirement of subsection (1) of this section does apply.

37 (3) Any other person who has reasonable cause to believe that a

1 child has suffered abuse or neglect may report such incident to the
2 proper law enforcement agency or to the department of social and health
3 services as provided in RCW 26.44.040.

4 (4) The department, upon receiving a report of an incident of
5 alleged abuse or neglect pursuant to this chapter, involving a child
6 who has died or has had physical injury or injuries inflicted upon him
7 or her other than by accidental means or who has been subjected to
8 alleged sexual abuse, shall report such incident to the proper law
9 enforcement agency. In emergency cases, where the child's welfare is
10 endangered, the department shall notify the proper law enforcement
11 agency within twenty-four hours after a report is received by the
12 department. In all other cases, the department shall notify the law
13 enforcement agency within seventy-two hours after a report is received
14 by the department. If the department makes an oral report, a written
15 report must also be made to the proper law enforcement agency within
16 five days thereafter.

17 (5) Any law enforcement agency receiving a report of an incident of
18 alleged abuse or neglect pursuant to this chapter, involving a child
19 who has died or has had physical injury or injuries inflicted upon him
20 or her other than by accidental means, or who has been subjected to
21 alleged sexual abuse, shall report such incident in writing as provided
22 in RCW 26.44.040 to the proper county prosecutor or city attorney for
23 appropriate action whenever the law enforcement agency's investigation
24 reveals that a crime may have been committed. The law enforcement
25 agency shall also notify the department of all reports received and the
26 law enforcement agency's disposition of them. In emergency cases,
27 where the child's welfare is endangered, the law enforcement agency
28 shall notify the department within twenty-four hours. In all other
29 cases, the law enforcement agency shall notify the department within
30 seventy-two hours after a report is received by the law enforcement
31 agency.

32 (6) Any county prosecutor or city attorney receiving a report under
33 subsection (5) of this section shall notify the victim, any persons the
34 victim requests, and the local office of the department, of the
35 decision to charge or decline to charge a crime, within five days of
36 making the decision.

37 (7) The department may conduct ongoing case planning and
38 consultation with those persons or agencies required to report under

1 this section, with consultants designated by the department, and with
2 designated representatives of Washington Indian tribes if the client
3 information exchanged is pertinent to cases currently receiving child
4 protective services. Upon request, the department shall conduct such
5 planning and consultation with those persons required to report under
6 this section if the department determines it is in the best interests
7 of the child. Information considered privileged by statute and not
8 directly related to reports required by this section must not be
9 divulged without a valid written waiver of the privilege.

10 (8) Any case referred to the department by a physician licensed
11 under chapter 18.57 or 18.71 RCW on the basis of an expert medical
12 opinion that child abuse, neglect, or sexual assault has occurred and
13 that the child's safety will be seriously endangered if returned home,
14 the department shall file a dependency petition unless a second
15 licensed physician of the parents' choice believes that such expert
16 medical opinion is incorrect. If the parents fail to designate a
17 second physician, the department may make the selection. If a
18 physician finds that a child has suffered abuse or neglect but that
19 such abuse or neglect does not constitute imminent danger to the
20 child's health or safety, and the department agrees with the
21 physician's assessment, the child may be left in the parents' home
22 while the department proceeds with reasonable efforts to remedy
23 parenting deficiencies.

24 (9) Persons or agencies exchanging information under subsection (7)
25 of this section shall not further disseminate or release the
26 information except as authorized by state or federal statute.
27 Violation of this subsection is a misdemeanor.

28 (10) Upon receiving reports of alleged abuse or neglect, the
29 department or law enforcement agency may interview children. The
30 interviews may be conducted on school premises, at day-care facilities,
31 at the child's home, or at other suitable locations outside of the
32 presence of parents. Parental notification of the interview must occur
33 at the earliest possible point in the investigation that will not
34 jeopardize the safety or protection of the child or the course of the
35 investigation. Prior to commencing the interview the department or law
36 enforcement agency shall determine whether the child wishes a third
37 party to be present for the interview and, if so, shall make reasonable
38 efforts to accommodate the child's wishes. Unless the child objects,

1 the department or law enforcement agency shall make reasonable efforts
2 to include a third party in any interview so long as the presence of
3 the third party will not jeopardize the course of the investigation.

4 (11) Upon receiving a report of alleged child abuse and neglect,
5 the department or investigating law enforcement agency shall have
6 access to all relevant records of the child in the possession of
7 mandated reporters and their employees.

8 (12) In investigating and responding to allegations of child abuse
9 and neglect, the department may conduct background checks as authorized
10 by state and federal law.

11 (13) The department shall maintain investigation records and
12 conduct timely and periodic reviews of all cases constituting abuse and
13 neglect. The department shall maintain a log of screened-out
14 nonabusive cases.

15 ((+13)) (14) The department shall use a risk assessment process
16 when investigating alleged child abuse and neglect referrals. The
17 department shall present the risk factors at all hearings in which the
18 placement of a dependent child is an issue. Substance abuse must be a
19 risk factor. The department shall, within funds appropriated for this
20 purpose, offer enhanced community-based services to persons who are
21 determined not to require further state intervention.

22 ((+14)) (15) Upon receipt of a report of alleged abuse or neglect
23 the law enforcement agency may arrange to interview the person making
24 the report and any collateral sources to determine if any malice is
25 involved in the reporting.

26 ((+15)) (16) The department shall make reasonable efforts to learn
27 the name, address, and telephone number of each person making a report
28 of abuse or neglect under this section. The department shall provide
29 assurances of appropriate confidentiality of the identification of
30 persons reporting under this section. If the department is unable to
31 learn the information required under this subsection, the department
32 shall only investigate cases in which: (a) The department believes
33 there is a serious threat of substantial harm to the child; (b) the
34 report indicates conduct involving a criminal offense that has, or is
35 about to occur, in which the child is the victim; or (c) the department
36 has, after investigation, a report of abuse or neglect that has been
37 founded with regard to a member of the household within three years of
38 receipt of the referral.

1 **Sec. 4.** RCW 43.43.842 and 1998 c 10 s 4 are each amended to read
2 as follows:

3 (1)(a) The secretary of social and health services and the
4 secretary of health shall adopt additional requirements for the
5 licensure or relicensure of agencies, facilities, and licensed
6 individuals who provide care and treatment to vulnerable adults,
7 including nursing pools registered under chapter 18.52C RCW. These
8 additional requirements shall ensure that any person associated with a
9 licensed agency or facility having unsupervised access with a
10 vulnerable adult shall not be the respondent in an active protective
11 order under RCW 74.34.130, nor have been: (i) Convicted of a crime
12 against persons as defined in RCW 43.43.830, except as provided in this
13 section; (ii) convicted of crimes relating to financial exploitation as
14 defined in RCW 43.43.830, except as provided in this section; or (iii)
15 found in any disciplinary board final decision to have abused a
16 vulnerable adult under RCW 43.43.830(~~or (iv) the subject in a~~
17 ~~protective proceeding under chapter 74.34 RCW~~)).

18 (b) A person associated with a licensed agency or facility who has
19 unsupervised access with a vulnerable adult shall make the disclosures
20 specified in RCW 43.43.834(2). The person shall make the disclosures
21 in writing, sign, and swear to the contents under penalty of perjury.
22 The person shall, in the disclosures, specify all crimes against
23 children or other persons, all crimes relating to financial
24 exploitation, and all crimes relating to drugs as defined in RCW
25 43.43.830, committed by the person.

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

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

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

37 (c) The offense was theft in the third degree, or the same offense

1 as it may be renamed, and three or more years have passed between the
2 most recent conviction and the date of application for employment;

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

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

9 The offenses set forth in (a) through (e) of this subsection do not
10 automatically disqualify an applicant from employment by a licensee.
11 Nothing in this section may be construed to require the employment of
12 any person against a licensee's judgment.

13 (3) In consultation with law enforcement personnel, the secretary
14 of social and health services and the secretary of health shall
15 investigate, or cause to be investigated, the conviction record and the
16 protection proceeding record information under this chapter of the
17 staff of each agency or facility under their respective jurisdictions
18 seeking licensure or relicensure. An individual responding to a
19 criminal background inquiry request from his or her employer or
20 potential employer shall disclose the information about his or her
21 criminal history under penalty of perjury. The secretaries shall use
22 the information solely for the purpose of determining eligibility for
23 licensure or relicensure. Criminal justice agencies shall provide the
24 secretaries such information as they may have and that the secretaries
25 may require for such purpose.

26 **Sec. 5.** RCW 74.15.030 and 2006 c 265 s 402 and 2006 c 54 s 8 are
27 each reenacted and amended to read as follows:

28 The secretary shall have the power and it shall be the secretary's
29 duty:

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

1 to be licensed hereunder, or because of any other factor relevant
2 thereto;

3 (2) In consultation with the children's services advisory
4 committee, and with the advice and assistance of persons representative
5 of the various type agencies to be licensed, to adopt and publish
6 minimum requirements for licensing applicable to each of the various
7 categories of agencies to be licensed.

8 The minimum requirements shall be limited to:

9 (a) The size and suitability of a facility and the plan of
10 operation for carrying out the purpose for which an applicant seeks a
11 license;

12 ~~(b) ((The character, suitability and competence of an agency and
13 other persons associated with an agency directly responsible for the
14 care and treatment of children, expectant mothers or developmentally
15 disabled persons.~~

16 ~~In consultation with law enforcement personnel, the secretary shall
17 investigate the conviction record or pending charges and dependency
18 record information under chapter 43.43 RCW of each agency and its staff
19 seeking licensure or relicensure.~~

20 ~~No unfounded allegation of child abuse or neglect as defined in RCW
21 26.44.020 may be disclosed to a child placing agency, private adoption
22 agency, or any other provider licensed under this chapter. In order to
23 determine the suitability of applicants for an agency license,
24 licensees, their employees, and other persons who have unsupervised
25 access to children in care, and who have not resided in the state of
26 Washington during the three year period before being authorized to care
27 for children shall be fingerprinted. The fingerprints shall be
28 forwarded to the Washington state patrol and federal bureau of
29 investigation for a criminal history records check. The fingerprint
30 criminal history records checks will be at the expense of the licensee
31 except that in the case of a foster family home, if this expense would
32 work a hardship on the licensee, the department shall pay the expense.~~

33 ~~The licensee may not pass this cost on to the employee or
34 prospective employee, unless the employee is determined to be
35 unsuitable due to his or her criminal history record. The secretary
36 shall use the information solely for the purpose of determining
37 eligibility for a license and for determining the character,
38 suitability, and competence of those persons or agencies, excluding~~

1 ~~parents, not required to be licensed who are authorized to care for~~
2 ~~children, expectant mothers, and developmentally disabled persons.~~
3 ~~Criminal justice agencies shall provide the secretary such information~~
4 ~~as they may have and that the secretary may require for such purpose:~~

5 (e)) Obtaining background information and any out-of-state
6 equivalent, to determine whether the applicant or service provider is
7 disqualified and to determine the character, competence, and
8 suitability of an agency, the agency's employees, volunteers, and other
9 persons associated with an agency;

10 (c) Conducting background checks for those who will or may have
11 unsupervised access to children, expectant mothers, or individuals with
12 a developmental disability;

13 (d) Obtaining child protective services information or records
14 maintained in the department case management information system. No
15 unfounded allegation of child abuse or neglect as defined in RCW
16 26.44.020 may be disclosed to a child-placing agency, private adoption
17 agency, or any other provider licensed under this chapter;

18 (e) Submitting a fingerprint-based background check through the
19 Washington state patrol under chapter 10.97 RCW and through the federal
20 bureau of investigation for:

21 (i) Agencies and their staff, volunteers, students, and interns
22 when the agency is seeking license or relicense;

23 (ii) Foster care and adoption placements; and

24 (iii) Any adult living in a home where a child may be placed;

25 (f) If any adult living in the home has not resided in the state of
26 Washington for the preceding five years, the department shall review
27 any child abuse and neglect registries maintained by any state where
28 the adult has resided over the preceding five years;

29 (g) The cost of fingerprint background check fees will be paid as
30 required in section 1 of this act;

31 (h) National and state background information must be used solely
32 for the purpose of determining eligibility for a license and for
33 determining the character, suitability, and competence of those persons
34 or agencies, excluding parents, not required to be licensed who are
35 authorized to care for children or expectant mothers;

36 (i) The number of qualified persons required to render the type of
37 care and treatment for which an agency seeks a license;

1 ~~((d))~~ (j) The safety, cleanliness, and general adequacy of the
2 premises to provide for the comfort, care and well-being of children,
3 expectant mothers or developmentally disabled persons;

4 ~~((e))~~ (k) The provision of necessary care, including food,
5 clothing, supervision and discipline; physical, mental and social well-
6 being; and educational, recreational and spiritual opportunities for
7 those served;

8 ~~((f))~~ (l) The financial ability of an agency to comply with
9 minimum requirements established pursuant to chapter 74.15 RCW and RCW
10 74.13.031; and

11 ~~((g))~~ (m) The maintenance of records pertaining to the admission,
12 progress, health and discharge of persons served;

13 (3) To investigate any person, including relatives by blood or
14 marriage except for parents, for character, suitability, and competence
15 in the care and treatment of children, expectant mothers, and
16 developmentally disabled persons prior to authorizing that person to
17 care for children, expectant mothers, and developmentally disabled
18 persons. However, if a child is placed with a relative under RCW
19 13.34.065 or 13.34.130, and if such relative appears otherwise suitable
20 and competent to provide care and treatment the criminal history
21 background check required by this section need not be completed before
22 placement, but shall be completed as soon as possible after placement;

23 (4) On reports of alleged child abuse and neglect, to investigate
24 agencies in accordance with chapter 26.44 RCW, including child day-care
25 centers and family day-care homes, to determine whether the alleged
26 abuse or neglect has occurred, and whether child protective services or
27 referral to a law enforcement agency is appropriate;

28 (5) To issue, revoke, or deny licenses to agencies pursuant to
29 chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the
30 category of care which an agency is authorized to render and the ages,
31 sex and number of persons to be served;

32 (6) To prescribe the procedures and the form and contents of
33 reports necessary for the administration of chapter 74.15 RCW and RCW
34 74.13.031 and to require regular reports from each licensee;

35 (7) To inspect agencies periodically to determine whether or not
36 there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the
37 requirements adopted hereunder;

1 (8) To review requirements adopted hereunder at least every two
2 years and to adopt appropriate changes after consultation with affected
3 groups for child day-care requirements and with the children's services
4 advisory committee for requirements for other agencies;

5 (9) To engage in negotiated rule making pursuant to RCW
6 34.05.310(2)(a) with the exclusive representative of the family child
7 care licensees selected in accordance with RCW 74.15.035 and with other
8 affected interests before adopting requirements that affect family
9 child care licensees; and

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

13 NEW SECTION. Sec. 6. Federal and state law require the balancing
14 of the privacy interests of individuals with the government's interest
15 in the protection of children and vulnerable adults. The legislature
16 finds that the balancing of these interests may be skewed in favor of
17 the privacy rights of individuals. Therefore, a work group is created
18 to research the current laws regarding background checks for
19 prospective employees of public and private entities which work with
20 vulnerable adults or children. The legislature finds that a
21 comprehensive background check which includes both civil and criminal
22 information is a valuable tool in safeguarding vulnerable adults and
23 children from preventable risk.

24 NEW SECTION. Sec. 7. (1) The department of social and health
25 services shall convene a work group to review the current federal and
26 state laws and administrative rules and practices with respect to
27 sharing confidential information and to examine the need for and
28 feasibility of verifying citizenship or immigration status of persons
29 for whom background checks are required.

30 (2)(a) The work group shall include but not be limited to the
31 following members, chosen by the chief executive officer of each
32 entity:

33 (i) A representative of the department of social and health
34 services;

35 (ii) A representative of the department of early learning;

36 (iii) A representative of the department of health;

1 (iv) A representative of the office of the superintendent of public
2 instruction;

3 (v) A representative of the department of licensing;

4 (vi) A representative of the Washington state patrol;

5 (vii) A representative from the Washington state bar association;

6 (viii) A representative of the Washington association of sheriffs
7 and police chiefs;

8 (ix) A representative of the Washington association of criminal
9 defense attorneys;

10 (x) A representative from the administrative office of the courts;

11 (xi) A representative from the department of information services;
12 and

13 (xii) A representative from the department of licensing.

14 (b) The work group shall also include as nonvoting ex officio
15 members:

16 (i) One member from each of the two largest caucuses of the senate,
17 appointed by the president of the senate; and

18 (ii) One member from each of the two largest caucuses of the house
19 of representatives, appointed by the speaker of the house of
20 representatives.

21 (c) Additional voting members may be invited to participate as
22 determined by the work group.

23 (3) Appointments to the work group shall be completed within thirty
24 days of the effective date of this section.

25 (4) The work group may form an executive committee, create
26 subcommittees, designate alternative representatives, and define other
27 procedures, as needed, for operation of the work group.

28 (5) Legislative members of the work group shall be reimbursed for
29 travel expenses under RCW 44.04.120. Nonlegislative members, except
30 those representing an employee or organization, are entitled to be
31 reimbursed for travel expenses in accordance with RCW 43.03.050 and
32 43.03.060.

33 (6) The secretary of the department of social and health services
34 or the secretary's designee shall serve as chair of the work group.

35 (7) The department of social and health services shall provide
36 staff support to the work group.

37 (8) The work group shall:

1 (a) Provide an interim report to the legislature and the governor
2 by December 1, 2007; and

3 (b) Make recommendations to the legislature and the governor by
4 July 1, 2008, regarding improving current processes for sharing
5 information, including but not limited to the feasibility of creating
6 a clearinghouse of information.

7 (i) The clearinghouse shall simplify administrative handling of
8 background check requests and reduce the total costs and number of
9 full-time employees involved in doing the work, develop expertise in
10 searching multiple databases, and include a process for reducing the
11 total amount of time it takes to process background checks, including
12 using workflow management software to improve transparency of process
13 impediments.

14 (ii) The workgroup should consider where to locate the
15 administrative work, possibly considering the use of the department of
16 licensing's facilities for collecting fingerprints and other
17 identifying information about applicants.

18 (9) This section expires November 30, 2008.

19 **Sec. 8.** RCW 41.06.475 and 2002 c 354 s 222 are each amended to
20 read as follows:

21 The director shall adopt rules, in cooperation with the (~~secretary~~
22 ~~of social and health services, for the background investigation of~~
23 ~~persons being considered for state employment in positions directly~~
24 ~~responsible for the supervision, care, or treatment of children or~~
25 ~~developmentally disabled persons)) director of the department of early
26 learning, for the background investigation of current employees and of
27 persons being actively considered for positions with the department who
28 will or may have unsupervised access to children. The director shall
29 also adopt rules, in cooperation with the director of the department of
30 early learning, for background investigation of positions otherwise
31 required by federal law to meet employment standards. "Considered for
32 positions" includes decisions about (1) initial hiring, layoffs,
33 reallocations, transfers, promotions, or demotions, or (2) other
34 decisions that result in an individual being in a position that will or
35 may have unsupervised access to children as an employee, an intern, or
36 a volunteer.~~

1 **Sec. 9.** RCW 43.43.830 and 2005 c 421 s 1 are each amended to read
2 as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout RCW 43.43.830 through 43.43.845.

5 (1) "Applicant" means:

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

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

18 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
19 or

20 (d) Any prospective custodian in a nonparental custody proceeding
21 under chapter 26.10 RCW.

22 (2) "Business or organization" means a person, business, or
23 organization licensed in this state, any agency of the state, or other
24 governmental entity, that educates, trains, treats, supervises, houses,
25 or provides recreation to developmentally disabled persons, vulnerable
26 adults, or children under sixteen years of age, or that provides child
27 day care, early learning, or early learning childhood education
28 services, including but not limited to public housing authorities,
29 school districts, and educational service districts.

30 (3) "Civil adjudication proceeding" is a judicial or administrative
31 adjudicative proceeding that results in a finding of, or upholds an
32 agency finding of, domestic violence, abuse, sexual abuse, neglect,
33 abandonment, violation of a professional licensing standard regarding
34 a child or vulnerable adult, or exploitation or financial exploitation
35 of a child or vulnerable adult under any provision of law, including
36 but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted
37 under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding"
38 also includes judicial or administrative (~~orders~~) findings that

1 become final due to the failure of the alleged perpetrator to timely
2 exercise a legal right (~~((afforded to him or her))~~) to administratively
3 challenge such findings (~~((made by the department of social and health
4 services or the department of health under chapter 13.34, 26.44, or
5 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW))~~).

6 (4) "Conviction record" means "conviction record" information as
7 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed by
8 either an adult or a juvenile. It does not include a conviction for an
9 offense that has been the subject of an expungement, pardon, annulment,
10 certificate of rehabilitation, or other equivalent procedure based on
11 a finding of the rehabilitation of the person convicted, or a
12 conviction that has been the subject of a pardon, annulment, or other
13 equivalent procedure based on a finding of innocence. It does include
14 convictions for offenses for which the defendant received a deferred or
15 suspended sentence, unless the record has been expunged according to
16 law.

17 (5) "Crime against children or other persons" means a conviction of
18 any of the following offenses: Aggravated murder; first or second
19 degree murder; first or second degree kidnaping; first, second, or
20 third degree assault; first, second, or third degree assault of a
21 child; first, second, or third degree rape; first, second, or third
22 degree rape of a child; first or second degree robbery; first degree
23 arson; first degree burglary; first or second degree manslaughter;
24 first or second degree extortion; indecent liberties; incest; vehicular
25 homicide; first degree promoting prostitution; communication with a
26 minor; unlawful imprisonment; simple assault; sexual exploitation of
27 minors; first or second degree criminal mistreatment; endangerment with
28 a controlled substance; child abuse or neglect as defined in RCW
29 26.44.020; first or second degree custodial interference; first or
30 second degree custodial sexual misconduct; malicious harassment; first,
31 second, or third degree child molestation; first or second degree
32 sexual misconduct with a minor; patronizing a juvenile prostitute;
33 child abandonment; promoting pornography; selling or distributing
34 erotic material to a minor; custodial assault; violation of child abuse
35 restraining order; child buying or selling; prostitution; felony
36 indecent exposure; criminal abandonment; or any of these crimes as they
37 may be renamed in the future.

1 (6) "Crimes relating to drugs" means a conviction of a crime to
2 manufacture, delivery, or possession with intent to manufacture or
3 deliver a controlled substance.

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

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

9 (a) Another employee or volunteer from the same business or
10 organization as the applicant; or

11 (b) Any relative or guardian of any of the children or
12 developmentally disabled persons or vulnerable adults to which the
13 applicant has access during the course of his or her employment or
14 involvement with the business or organization.

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

20 (10) "Financial exploitation" means "financial exploitation" as
21 defined in RCW 74.34.020.

22 (11) "Agency" means any person, firm, partnership, association,
23 corporation, or facility which receives, provides services to, houses
24 or otherwise cares for vulnerable adults, juveniles, or children, or
25 which provides child day care, early learning, or early childhood
26 education services.

27 **Sec. 10.** RCW 43.43.832 and 2006 c 263 s 826 are each amended to
28 read as follows:

29 (1) The legislature finds that businesses and organizations
30 providing services to children, developmentally disabled persons, and
31 vulnerable adults need adequate information to determine which
32 employees or licensees to hire or engage. The legislature further
33 finds that many developmentally disabled individuals and vulnerable
34 adults desire to hire their own employees directly and also need
35 adequate information to determine which employees or licensees to hire
36 or engage. Therefore, the Washington state patrol identification and
37 criminal history section shall disclose, upon the request of a business

1 or organization as defined in RCW 43.43.830, a developmentally disabled
2 person, or a vulnerable adult as defined in RCW 43.43.830 or his or her
3 guardian, an applicant's conviction record (~~((for convictions))~~) as
4 defined in chapter 10.97 RCW.

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

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

16 ~~(4) ((The legislature further finds that the secretary of the
17 department of social and health services must establish rules and set
18 standards to require specific action when considering the information
19 listed in subsection (1) of this section, and when considering
20 additional information including but not limited to civil adjudication
21 proceedings as defined in RCW 43.43.830 and any out-of-state
22 equivalent, in the following circumstances:~~

23 ~~(a) When considering persons for state employment in positions
24 directly responsible for the supervision, care, or treatment of
25 children, vulnerable adults, or individuals with mental illness or
26 developmental disabilities;~~

27 ~~(b) When considering persons for state positions involving
28 unsupervised access to vulnerable adults to conduct comprehensive
29 assessments, financial eligibility determinations, licensing and
30 certification activities, investigations, surveys, or case management;
31 or for state positions otherwise required by federal law to meet
32 employment standards;~~

33 ~~(c) When licensing agencies or facilities with individuals in
34 positions directly responsible for the care, supervision, or treatment
35 of children, developmentally disabled persons, or vulnerable adults,
36 including but not limited to agencies or facilities licensed under
37 chapter 74.15 or 18.51 RCW;~~

1 ~~(d) When contracting with individuals or businesses or~~
2 ~~organizations for the care, supervision, case management, or treatment~~
3 ~~of children, developmentally disabled persons, or vulnerable adults,~~
4 ~~including but not limited to services contracted for under chapter~~
5 ~~18.20, 18.48, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;~~

6 ~~(e) When individual providers are paid by the state or providers~~
7 ~~are paid by home care agencies to provide in home services involving~~
8 ~~unsupervised access to persons with physical, mental, or developmental~~
9 ~~disabilities or mental illness, or to vulnerable adults as defined in~~
10 ~~chapter 74.34 RCW, including but not limited to services provided under~~
11 ~~chapter 74.39 or 74.39A RCW.~~

12 (5)) The director of the department of early learning shall
13 investigate the conviction records, pending charges, and other
14 information including civil adjudication proceeding records of current
15 employees and of any person actively being considered for any position
16 with the department who will or may have unsupervised access to
17 children, or for state positions otherwise required by federal law to
18 meet employment standards. "Considered for any position" includes
19 decisions about (a) initial hiring, layoffs, reallocations, transfers,
20 promotions, or demotions, or (b) other decisions that result in an
21 individual being in a position that will or may have unsupervised
22 access to children as an employee, an intern, or a volunteer.

23 (5) The director of the department of early learning shall adopt
24 rules and investigate conviction records, pending charges, and other
25 information including civil adjudication proceeding records, in the
26 following circumstances:

27 (a) When licensing or certifying agencies with individuals in
28 positions that will or may have unsupervised access to children who are
29 in child day care, in early learning programs, or receiving early
30 childhood education services, including but not limited to licensees,
31 agency staff, interns, volunteers, contracted providers, and persons
32 living on the premises who are sixteen years of age or older;

33 (b) When authorizing individuals who will or may have unsupervised
34 access to children who are in child day care, in early learning
35 programs, or receiving early childhood learning education services in
36 licensed or certified agencies, including but not limited to licensees,
37 agency staff, interns, volunteers, contracted providers, and persons
38 living on the premises who are sixteen years of age or older;

1 (c) When contracting with any business or organization for
2 activities that will or may have unsupervised access to children who
3 are in child day care, in early learning programs, or receiving early
4 childhood learning education services;

5 (d) When establishing the eligibility criteria for individual
6 providers to receive state paid subsidies to provide child day care or
7 early learning services that will or may involve unsupervised access to
8 children.

9 (6) Whenever a state conviction record check is required by state
10 law, persons may be employed or engaged as volunteers or independent
11 contractors on a conditional basis pending completion of the state
12 background investigation. Whenever a national criminal record check
13 through the federal bureau of investigation is required by state law,
14 a person may be employed or engaged as a volunteer or independent
15 contractor on a conditional basis pending completion of the national
16 check. The Washington personnel resources board shall adopt rules to
17 accomplish the purposes of this subsection as it applies to state
18 employees.

19 ~~((6))~~ (7)(a) For purposes of facilitating timely access to
20 criminal background information and to reasonably minimize the number
21 of requests made under this section, recognizing that certain health
22 care providers change employment frequently, health care facilities
23 may, upon request from another health care facility, share copies of
24 completed criminal background inquiry information.

25 (b) Completed criminal background inquiry information may be shared
26 by a willing health care facility only if the following conditions are
27 satisfied: The licensed health care facility sharing the criminal
28 background inquiry information is reasonably known to be the person's
29 most recent employer, no more than twelve months has elapsed from the
30 date the person was last employed at a licensed health care facility to
31 the date of their current employment application, and the criminal
32 background information is no more than two years old.

33 (c) If criminal background inquiry information is shared, the
34 health care facility employing the subject of the inquiry must require
35 the applicant to sign a disclosure statement indicating that there has
36 been no conviction or finding as described in RCW 43.43.842 since the
37 completion date of the most recent criminal background inquiry.

1 (d) Any health care facility that knows or has reason to believe
2 that an applicant has or may have a disqualifying conviction or finding
3 as described in RCW 43.43.842, subsequent to the completion date of
4 their most recent criminal background inquiry, shall be prohibited from
5 relying on the applicant's previous employer's criminal background
6 inquiry information. A new criminal background inquiry shall be
7 requested pursuant to RCW 43.43.830 through 43.43.842.

8 (e) Health care facilities that share criminal background inquiry
9 information shall be immune from any claim of defamation, invasion of
10 privacy, negligence, or any other claim in connection with any
11 dissemination of this information in accordance with this subsection.

12 (f) Health care facilities shall transmit and receive the criminal
13 background inquiry information in a manner that reasonably protects the
14 subject's rights to privacy and confidentiality.

15 (g) For the purposes of this subsection, "health care facility"
16 means a nursing home licensed under chapter 18.51 RCW, a boarding home
17 licensed under chapter 18.20 RCW, or an adult family home licensed
18 under chapter 70.128 RCW.

19 ~~((7) If a federal bureau of investigation check is required in
20 addition to the state background check by the department of social and
21 health services, an applicant who is not disqualified based on the
22 results of the state background check shall be eligible for a one
23 hundred twenty day provisional approval to hire, pending the outcome of
24 the federal bureau of investigation check. The department may extend
25 the provisional approval until receipt of the federal bureau of
26 investigation check. If the federal bureau of investigation check
27 disqualifies an applicant, the department shall notify the requestor
28 that the provisional approval to hire is withdrawn and the applicant
29 may be terminated.))~~

30 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
31 sections 6 and 7 of this act, referencing sections 6 and 7 of this act
32 by bill or chapter number and section number, is not provided by June
33 30, 2007, in the omnibus appropriations act, sections 6 and 7 of this
34 act are null and void."

35 Correct the title.

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