

**ESSB 5774** - H COMM AMD

By Committee on Early Learning & Children's Services

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.

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

31 (i) A representative of the department of social and health  
32 services;

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

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

35 (iv) A representative of the office of the superintendent of public  
36 instruction;



1 (v) A representative of the department of licensing;  
2 (vi) A representative of the Washington state patrol;  
3 (vii) A representative from the Washington state bar association;  
4 (viii) A representative of the Washington association of sheriffs  
5 and police chiefs;  
6 (ix) A representative of the Washington association of criminal  
7 defense attorneys;  
8 (x) A representative from the administrative office of the courts;  
9 and  
10 (xi) A representative from the department of information services.  
11 (b) The work group shall also include as nonvoting ex officio  
12 members:  
13 (i) One member from each of the two largest caucuses of the senate,  
14 appointed by the president of the senate; and  
15 (ii) One member from each of the two largest caucuses of the house  
16 of representatives, appointed by the speaker of the house of  
17 representatives.  
18 (c) Additional voting members may be invited to participate as  
19 determined by the work group.  
20 (3) Appointments to the work group shall be completed within thirty  
21 days of the effective date of this section.  
22 (4) The work group may form an executive committee, create  
23 subcommittees, designate alternative representatives, and define other  
24 procedures, as needed, for operation of the work group.  
25 (5) Legislative members of the work group shall be reimbursed for  
26 travel expenses under RCW 44.04.120. Nonlegislative members, except  
27 those representing an employee or organization, are entitled to be  
28 reimbursed for travel expenses in accordance with RCW 43.03.050 and  
29 43.03.060.  
30 (6) The secretary of the department of social and health services  
31 or the secretary's designee shall serve as chair of the work group.  
32 (7) The department of social and health services shall provide  
33 staff support to the work group.  
34 (8) The work group shall:  
35 (a) Provide an interim report to the legislature and the governor  
36 by December 1, 2007; and  
37 (b) Make recommendations to the legislature and the governor by

1 July 1, 2008, regarding improving current processes for sharing  
2 information, including but not limited to the feasibility of creating  
3 a clearinghouse of information.

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

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

7 The director shall adopt rules, in cooperation with the (~~secretary~~  
8 ~~of social and health services, for the background investigation of~~  
9 ~~persons being considered for state employment in positions directly~~  
10 ~~responsible for the supervision, care, or treatment of children or~~  
11 ~~developmentally disabled persons)) director of the department of early  
12 learning, for the background investigation of current employees and of  
13 persons being actively considered for positions with the department who  
14 will or may have unsupervised access to children. The director shall  
15 also adopt rules, in cooperation with the director of the department of  
16 early learning, for background investigation of positions otherwise  
17 required by federal law to meet employment standards. "Considered for  
18 positions" includes decisions about (1) initial hiring, layoffs,  
19 reallocations, transfers, promotions, or demotions, or (2) other  
20 decisions that result in an individual being in a position that will or  
21 may have unsupervised access to children as an employee, an intern, or  
22 a volunteer.~~

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

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

27 (1) "Applicant" means:

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

32 (b) Any prospective volunteer who will have regularly scheduled  
33 unsupervised access to children under sixteen years of age,  
34 developmentally disabled persons, or vulnerable adults during the  
35 course of his or her employment or involvement with the business or  
36 organization under circumstances where such access will or may involve

1 groups of (i) five or fewer children under twelve years of age, (ii)  
2 three or fewer children between twelve and sixteen years of age, (iii)  
3 developmentally disabled persons, or (iv) vulnerable adults;

4 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;  
5 or

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

8 (2) "Business or organization" means a person, business, or  
9 organization licensed in this state, any agency of the state, or other  
10 governmental entity, that educates, trains, treats, supervises, houses,  
11 or provides recreation to developmentally disabled persons, vulnerable  
12 adults, or children under sixteen years of age, or that provides child  
13 day care, early learning, or early learning childhood education  
14 services, including but not limited to public housing authorities,  
15 school districts, and educational service districts.

16 (3) "Civil adjudication proceeding" is a judicial or administrative  
17 adjudicative proceeding that results in a finding of, or upholds an  
18 agency finding of, domestic violence, abuse, sexual abuse, neglect,  
19 abandonment, violation of a professional licensing standard regarding  
20 a child or vulnerable adult, or exploitation or financial exploitation  
21 of a child or vulnerable adult under any provision of law, including  
22 but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted  
23 under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding"  
24 also includes judicial or administrative (~~orders~~) findings that  
25 become final due to the failure of the alleged perpetrator to timely  
26 exercise a legal right (~~afforded to him or her~~) to administratively  
27 challenge such findings (~~made by the department of social and health~~  
28 ~~services or the department of health under chapter 13.34, 26.44, or~~  
29 ~~74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW~~)).

30 (4) "Conviction record" means "conviction record" information as  
31 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed by  
32 either an adult or a juvenile. It does not include a conviction for an  
33 offense that has been the subject of an expungement, pardon, annulment,  
34 certificate of rehabilitation, or other equivalent procedure based on  
35 a finding of the rehabilitation of the person convicted, or a  
36 conviction that has been the subject of a pardon, annulment, or other  
37 equivalent procedure based on a finding of innocence. It does include

1 convictions for offenses for which the defendant received a deferred or  
2 suspended sentence, unless the record has been expunged according to  
3 law.

4 (5) "Crime against children or other persons" means a conviction of  
5 any of the following offenses: Aggravated murder; first or second  
6 degree murder; first or second degree kidnaping; first, second, or  
7 third degree assault; first, second, or third degree assault of a  
8 child; first, second, or third degree rape; first, second, or third  
9 degree rape of a child; first or second degree robbery; first degree  
10 arson; first degree burglary; first or second degree manslaughter;  
11 first or second degree extortion; indecent liberties; incest; vehicular  
12 homicide; first degree promoting prostitution; communication with a  
13 minor; unlawful imprisonment; simple assault; sexual exploitation of  
14 minors; first or second degree criminal mistreatment; endangerment with  
15 a controlled substance; child abuse or neglect as defined in RCW  
16 26.44.020; first or second degree custodial interference; first or  
17 second degree custodial sexual misconduct; malicious harassment; first,  
18 second, or third degree child molestation; first or second degree  
19 sexual misconduct with a minor; patronizing a juvenile prostitute;  
20 child abandonment; promoting pornography; selling or distributing  
21 erotic material to a minor; custodial assault; violation of child abuse  
22 restraining order; child buying or selling; prostitution; felony  
23 indecent exposure; criminal abandonment; or any of these crimes as they  
24 may be renamed in the future.

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

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

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

33 (a) Another employee or volunteer from the same business or  
34 organization as the applicant; or

35 (b) Any relative or guardian of any of the children or  
36 developmentally disabled persons or vulnerable adults to which the  
37 applicant has access during the course of his or her employment or  
38 involvement with the business or organization.

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

6 (10) "Financial exploitation" means "financial exploitation" as  
7 defined in RCW 74.34.020.

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

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

15 (1) The legislature finds that businesses and organizations  
16 providing services to children, developmentally disabled persons, and  
17 vulnerable adults need adequate information to determine which  
18 employees or licensees to hire or engage. The legislature further  
19 finds that many developmentally disabled individuals and vulnerable  
20 adults desire to hire their own employees directly and also need  
21 adequate information to determine which employees or licensees to hire  
22 or engage. Therefore, the Washington state patrol identification and  
23 criminal history section shall disclose, upon the request of a business  
24 or organization as defined in RCW 43.43.830, a developmentally disabled  
25 person, or a vulnerable adult as defined in RCW 43.43.830 or his or her  
26 guardian, an applicant's conviction record (~~((for convictions))~~) as  
27 defined in chapter 10.97 RCW.

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

33 (3) The legislature also finds that law enforcement agencies, the  
34 office of the attorney general, prosecuting authorities, and the  
35 department of social and health services may request this same  
36 information to aid in the investigation and prosecution of child,

1 developmentally disabled person, and vulnerable adult abuse cases and  
2 to protect children and adults from further incidents of abuse.

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

10 ~~(a) When considering persons for state employment in positions~~  
11 ~~directly responsible for the supervision, care, or treatment of~~  
12 ~~children, vulnerable adults, or individuals with mental illness or~~  
13 ~~developmental disabilities;~~

14 ~~(b) When considering persons for state positions involving~~  
15 ~~unsupervised access to vulnerable adults to conduct comprehensive~~  
16 ~~assessments, financial eligibility determinations, licensing and~~  
17 ~~certification activities, investigations, surveys, or case management;~~  
18 ~~or for state positions otherwise required by federal law to meet~~  
19 ~~employment standards;~~

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

25 ~~(d) When contracting with individuals or businesses or~~  
26 ~~organizations for the care, supervision, case management, or treatment~~  
27 ~~of children, developmentally disabled persons, or vulnerable adults,~~  
28 ~~including but not limited to services contracted for under chapter~~  
29 ~~18.20, 18.48, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;~~

30 ~~(e) When individual providers are paid by the state or providers~~  
31 ~~are paid by home care agencies to provide in-home services involving~~  
32 ~~unsupervised access to persons with physical, mental, or developmental~~  
33 ~~disabilities or mental illness, or to vulnerable adults as defined in~~  
34 ~~chapter 74.34 RCW, including but not limited to services provided under~~  
35 ~~chapter 74.39 or 74.39A RCW.~~

36 ~~(5))~~ The director of the department of early learning shall  
37 investigate the conviction records, pending charges, and other  
38 information including civil adjudication proceeding records of current

1 employees and of any person actively being considered for any position  
2 with the department who will or may have unsupervised access to  
3 children, or for state positions otherwise required by federal law to  
4 meet employment standards. "Considered for any position" includes  
5 decisions about (a) initial hiring, layoffs, reallocations, transfers,  
6 promotions, or demotions, or (b) other decisions that result in an  
7 individual being in a position that will or may have unsupervised  
8 access to children as an employee, an intern, or a volunteer.

9 (5) The director of the department of early learning shall adopt  
10 rules and investigate conviction records, pending charges, and other  
11 information including civil adjudication proceeding records, in the  
12 following circumstances:

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

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

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

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

33 (6) Whenever a state conviction record check is required by state  
34 law, persons may be employed or engaged as volunteers or independent  
35 contractors on a conditional basis pending completion of the state  
36 background investigation. Whenever a national criminal record check  
37 through the federal bureau of investigation is required by state law,  
38 a person may be employed or engaged as a volunteer or independent

1 contractor on a conditional basis pending completion of the national  
2 check. The Washington personnel resources board shall adopt rules to  
3 accomplish the purposes of this subsection as it applies to state  
4 employees.

5 ((+6)) (7)(a) For purposes of facilitating timely access to  
6 criminal background information and to reasonably minimize the number  
7 of requests made under this section, recognizing that certain health  
8 care providers change employment frequently, health care facilities  
9 may, upon request from another health care facility, share copies of  
10 completed criminal background inquiry information.

11 (b) Completed criminal background inquiry information may be shared  
12 by a willing health care facility only if the following conditions are  
13 satisfied: The licensed health care facility sharing the criminal  
14 background inquiry information is reasonably known to be the person's  
15 most recent employer, no more than twelve months has elapsed from the  
16 date the person was last employed at a licensed health care facility to  
17 the date of their current employment application, and the criminal  
18 background information is no more than two years old.

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

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

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

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



1 (g) For the purposes of this subsection, "health care facility"  
2 means a nursing home licensed under chapter 18.51 RCW, a boarding home  
3 licensed under chapter 18.20 RCW, or an adult family home licensed  
4 under chapter 70.128 RCW.

5 ~~((7) If a federal bureau of investigation check is required in  
6 addition to the state background check by the department of social and  
7 health services, an applicant who is not disqualified based on the  
8 results of the state background check shall be eligible for a one  
9 hundred twenty day provisional approval to hire, pending the outcome of  
10 the federal bureau of investigation check. The department may extend  
11 the provisional approval until receipt of the federal bureau of  
12 investigation check. If the federal bureau of investigation check  
13 disqualifies an applicant, the department shall notify the requestor  
14 that the provisional approval to hire is withdrawn and the applicant  
15 may be terminated.))~~

16 NEW SECTION. **Sec. 11.** If specific funding for the purposes of  
17 sections 6 and 7 of this act, referencing sections 6 and 7 of this act  
18 by bill or chapter number and section number, is not provided by June  
19 30, 2007, in the omnibus appropriations act, sections 6 and 7 of this  
20 act are null and void."

21 Correct the title.

--- END ---