

ESSB 5774 - H AMD 623

By Representative Kagi

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 employee of the department of early learning, licensed or certified
11 child care providers or their employees, employee of the department,
12 juvenile probation officer, placement and liaison specialist,
13 responsible living skills program staff, HOPE center staff, or state
14 family and children's ombudsman or any volunteer in the ombudsman's
15 office has reasonable cause to believe that a child has suffered abuse
16 or neglect, he or she shall report such incident, or cause a report to
17 be made, to the proper law enforcement agency or to the department as
18 provided in RCW 26.44.040.

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

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

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

36 (i) "Official supervisory capacity" means a position, status, or
37 role created, recognized, or designated by any nonprofit or for-profit

1 organization, either for financial gain or without financial gain,
2 whose scope includes, but is not limited to, overseeing, directing, or
3 managing another person who is employed by, contracted by, or
4 volunteers with the nonprofit or for-profit organization.

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

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

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

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

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

1 (3) Any other person who has reasonable cause to believe that a
2 child has suffered abuse or neglect may report such incident to the
3 proper law enforcement agency or to the department of social and health
4 services as provided in RCW 26.44.040.

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

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

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

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

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

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

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

1 party to be present for the interview and, if so, shall make reasonable
2 efforts to accommodate the child's wishes. Unless the child objects,
3 the department or law enforcement agency shall make reasonable efforts
4 to include a third party in any interview so long as the presence of
5 the third party will not jeopardize the course of the investigation.

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

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

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

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

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

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

1 has, after investigation, a report of abuse or neglect that has been
2 founded with regard to a member of the household within three years of
3 receipt of the referral.

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

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

21 (b) A person associated with a licensed agency or facility who has
22 unsupervised access with a vulnerable adult shall make the disclosures
23 specified in RCW 43.43.834(2). The person shall make the disclosures
24 in writing, sign, and swear to the contents under penalty of perjury.
25 The person shall, in the disclosures, specify all crimes against
26 children or other persons, all crimes relating to financial
27 exploitation, and all crimes relating to drugs as defined in RCW
28 43.43.830, committed by the person.

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

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

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

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

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

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

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

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

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

32 The secretary shall have the power and it shall be the secretary's
33 duty:

34 (1) In consultation with the children's services advisory
35 committee, and with the advice and assistance of persons representative
36 of the various type agencies to be licensed, to designate categories of
37 facilities for which separate or different requirements shall be

1 developed as may be appropriate whether because of variations in the
2 ages, sex and other characteristics of persons served, variations in
3 the purposes and services offered or size or structure of the agencies
4 to be licensed hereunder, or because of any other factor relevant
5 thereto;

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

11 The minimum requirements shall be limited to:

12 (a) The size and suitability of a facility and the plan of
13 operation for carrying out the purpose for which an applicant seeks a
14 license;

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

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

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

36 ~~The licensee may not pass this cost on to the employee or
37 prospective employee, unless the employee is determined to be
38 unsuitable due to his or her criminal history record. The secretary~~

1 shall use the information solely for the purpose of determining
2 eligibility for a license and for determining the character,
3 suitability, and competence of those persons or agencies, excluding
4 parents, not required to be licensed who are authorized to care for
5 children, expectant mothers, and developmentally disabled persons.
6 Criminal justice agencies shall provide the secretary such information
7 as they may have and that the secretary may require for such purpose:

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

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

16 (d) Obtaining child protective services information or records
17 maintained in the department case management information system. No
18 unfounded allegation of child abuse or neglect as defined in RCW
19 26.44.020 may be disclosed to a child-placing agency, private adoption
20 agency, or any other provider licensed under this chapter;

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

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

26 (ii) Foster care and adoption placements; and

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

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

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

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

- 1 (i) The number of qualified persons required to render the type of
2 care and treatment for which an agency seeks a license;
- 3 ~~((d))~~ (j) The safety, cleanliness, and general adequacy of the
4 premises to provide for the comfort, care and well-being of children,
5 expectant mothers or developmentally disabled persons;
- 6 ~~((e))~~ (k) The provision of necessary care, including food,
7 clothing, supervision and discipline; physical, mental and social well-
8 being; and educational, recreational and spiritual opportunities for
9 those served;
- 10 ~~((f))~~ (l) The financial ability of an agency to comply with
11 minimum requirements established pursuant to chapter 74.15 RCW and RCW
12 74.13.031; and
- 13 ~~((g))~~ (m) The maintenance of records pertaining to the admission,
14 progress, health and discharge of persons served;
- 15 (3) To investigate any person, including relatives by blood or
16 marriage except for parents, for character, suitability, and competence
17 in the care and treatment of children, expectant mothers, and
18 developmentally disabled persons prior to authorizing that person to
19 care for children, expectant mothers, and developmentally disabled
20 persons. However, if a child is placed with a relative under RCW
21 13.34.065 or 13.34.130, and if such relative appears otherwise suitable
22 and competent to provide care and treatment the criminal history
23 background check required by this section need not be completed before
24 placement, but shall be completed as soon as possible after placement;
- 25 (4) On reports of alleged child abuse and neglect, to investigate
26 agencies in accordance with chapter 26.44 RCW, including child day-care
27 centers and family day-care homes, to determine whether the alleged
28 abuse or neglect has occurred, and whether child protective services or
29 referral to a law enforcement agency is appropriate;
- 30 (5) To issue, revoke, or deny licenses to agencies pursuant to
31 chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the
32 category of care which an agency is authorized to render and the ages,
33 sex and number of persons to be served;
- 34 (6) To prescribe the procedures and the form and contents of
35 reports necessary for the administration of chapter 74.15 RCW and RCW
36 74.13.031 and to require regular reports from each licensee;
- 37 (7) To inspect agencies periodically to determine whether or not

1 there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the
2 requirements adopted hereunder;

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

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

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

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

26 NEW SECTION. Sec. 7. (1) The department of social and health
27 services shall convene a work group to: (a) Review the current federal
28 and state laws and administrative rules and practices with respect to
29 sharing confidential information; (b) analyze how state agencies use
30 background check information to make employment decisions, including
31 how such information may disqualify an individual for employment; and
32 (c) examine the need for and feasibility of verifying citizenship or
33 immigration status of persons for whom background checks are required.

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

1 (i) A representative of the department of social and health
2 services;

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

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

5 (iv) A representative of the office of the superintendent of public
6 instruction;

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

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

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

10 (viii) A representative of the Washington association of sheriffs
11 and police chiefs;

12 (ix) A representative of the Washington association of criminal
13 defense attorneys;

14 (x) A representative from the administrative office of the courts;
15 and

16 (xi) A representative from the department of information services.

17 (b) The work group shall also include as nonvoting ex officio
18 members:

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

21 (ii) One member from each of the two largest caucuses of the house
22 of representatives, appointed by the speaker of the house of
23 representatives.

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

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

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

31 (5) Legislative members of the work group shall be reimbursed for
32 travel expenses under RCW 44.04.120. Nonlegislative members, except
33 those representing an employee or organization, are entitled to be
34 reimbursed for travel expenses in accordance with RCW 43.03.050 and
35 43.03.060.

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

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

3 (8) The work group shall:

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

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

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

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

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

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

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

1 decisions that result in an individual being in a position that will or
2 may have unsupervised access to children as an employee, an intern, or
3 a volunteer.

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

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

8 (1) "Applicant" means:

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

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

21 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
22 or

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

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

33 (3) "Civil adjudication proceeding" is a judicial or administrative
34 adjudicative proceeding that results in a finding of, or upholds an
35 agency finding of, domestic violence, abuse, sexual abuse, neglect,
36 abandonment, violation of a professional licensing standard regarding
37 a child or vulnerable adult, or exploitation or financial exploitation

1 of a child or vulnerable adult under any provision of law, including
2 but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted
3 under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding"
4 also includes judicial or administrative (~~orders~~) findings that
5 become final due to the failure of the alleged perpetrator to timely
6 exercise a legal right (~~afforded to him or her~~) to administratively
7 challenge such findings (~~made by the department of social and health~~
8 ~~services or the department of health under chapter 13.34, 26.44, or~~
9 ~~74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW~~)).

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

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

1 restraining order; child buying or selling; prostitution; felony
2 indecent exposure; criminal abandonment; or any of these crimes as they
3 may be renamed in the future.

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

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

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

12 (a) Another employee or volunteer from the same business or
13 organization as the applicant; or

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

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

23 (10) "Financial exploitation" means "financial exploitation" as
24 defined in RCW 74.34.020.

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

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

32 (1) The legislature finds that businesses and organizations
33 providing services to children, developmentally disabled persons, and
34 vulnerable adults need adequate information to determine which
35 employees or licensees to hire or engage. The legislature further
36 finds that many developmentally disabled individuals and vulnerable
37 adults desire to hire their own employees directly and also need

1 adequate information to determine which employees or licensees to hire
2 or engage. Therefore, the Washington state patrol identification and
3 criminal history section shall disclose, upon the request of a business
4 or organization as defined in RCW 43.43.830, a developmentally disabled
5 person, or a vulnerable adult as defined in RCW 43.43.830 or his or her
6 guardian, an applicant's conviction record (~~((for convictions))~~) as
7 defined in chapter 10.97 RCW.

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

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

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

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

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

36 (c) When licensing agencies or facilities with individuals in
37 positions directly responsible for the care, supervision, or treatment

1 of children, developmentally disabled persons, or vulnerable adults,
2 including but not limited to agencies or facilities licensed under
3 chapter 74.15 or 18.51 RCW;

4 (d) When contracting with individuals or businesses or
5 organizations for the care, supervision, case management, or treatment
6 of children, developmentally disabled persons, or vulnerable adults,
7 including but not limited to services contracted for under chapter
8 18.20, 18.48, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;

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

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

26 (6) The director of the department of early learning shall adopt
27 rules and investigate conviction records, pending charges, and other
28 information including civil adjudication proceeding records, in the
29 following circumstances:

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

36 (b) When authorizing individuals who will or may have unsupervised
37 access to children who are in child day care, in early learning
38 programs, or receiving early childhood learning education services in

1 licensed or certified agencies, including but not limited to licensees,
2 agency staff, interns, volunteers, contracted providers, and persons
3 living on the premises who are sixteen years of age or older;

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

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

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

22 ~~((+6+))~~ (8)(a) For purposes of facilitating timely access to
23 criminal background information and to reasonably minimize the number
24 of requests made under this section, recognizing that certain health
25 care providers change employment frequently, health care facilities
26 may, upon request from another health care facility, share copies of
27 completed criminal background inquiry information.

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

36 (c) If criminal background inquiry information is shared, the
37 health care facility employing the subject of the inquiry must require

1 the applicant to sign a disclosure statement indicating that there has
2 been no conviction or finding as described in RCW 43.43.842 since the
3 completion date of the most recent criminal background inquiry.

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

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

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

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

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

33 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
34 sections 6 and 7 of this act, referencing sections 6 and 7 of this act
35 by bill or chapter number and section number, is not provided by June
36 30, 2007, in the omnibus appropriations act, sections 6 and 7 of this
37 act are null and void."

1 Correct the title.

EFFECT: (1) Removes the requirement for a finding of financial hardship in order for the DSHS to pay fees associated with background checks for foster parents;

(2) Removes the requirement for the DSHS to check the citizenship or visa status of persons applying for a license or certification from, or seeking a contract with, the DSHS or a service provider; applying for employment, promotion, reallocation, or transfer; being hired by a client or guardian of a client of the DSHS to provide services for which the DSHS may provide payment; or applying to work in a department-covered position;

(3) Adds requirements for the work group to examine the need for and feasibility of verifying citizenship or immigration status of persons for whom background checks are required, and to analyze the use of background check information in making employment decisions, including how the information may disqualify persons from employment.

(4) Specifies the criteria to be considered by the work group in its study and report regarding the feasibility of creating a clearinghouse of information for background checks;

(5) Amends the WSP statutes to allow for the exchange of information with the DEL to conduct mandatory background checks relating to child care licensing and approval and makes a technical correction to maintain the DSHS rule-making authority for background checks;

(6) Makes employees of the Department of Early Learning mandatory reporters of child abuse and neglect.

--- END ---