

FINAL BILL REPORT

2SHB 1903

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Synopsis as Enacted

Brief Description: Requiring background checks for all child care licensees and employees.

Sponsors: House Committee on Education Appropriations & Oversight (originally sponsored by Representatives Orwall, Goodman, Roberts, Reykdal, Kagi, Kenney and Kelley).

House Committee on Early Learning & Human Services
House Committee on Education Appropriations & Oversight
Senate Committee on Human Services & Corrections
Senate Committee on Ways & Means

Background:

The Department of Early Learning (DEL) oversees and regulates child care licensing in Washington. In this capacity, the DEL conducts background checks to find and evaluate any history of arrests, convictions, negative actions, or other information that raises concern about an individual's character, suitability, or competence to care for or have unsupervised access to children in care.

Background Check Process.

The DEL conducts background checks in coordination with the Department of Social and Health Services Central Background Check Central Unit (BCCU), the Washington State Patrol (WSP), and the Federal Bureau of Investigation (FBI). The DEL field staff begin the process by entering data into an electronic system. The BCCU then submits that data to the WSP, which interfaces with the FBI. The BCCU processes and stores the information it receives and submits the results to the DEL. The DEL field staff review the BCCU results and then complete a character and suitability determination to conclude whether an applicant is qualified or disqualified to have unsupervised access to children in care. Background check results are released to the applicant and to the requesting agency.

Arrests and Convictions.

Arrest and conviction information is collected via the WSP and the FBI. The WSP background check pulls information regarding arrests and convictions that occur in Washington. The FBI fingerprint-based background checks provides information regarding arrests and convictions that occur across the United States. Fingerprint-based background checks are only required of the DEL applicants who have not resided in Washington for three

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years prior to the date of application. Fingerprint-based checks are conducted at the expense of the licensed child care provider or licensee. Licensed providers are not authorized to pass the cost on to employees or prospective employees, unless the employee is determined to be unsuitable based on his or her criminal history.

Negative Actions.

Negative actions are defined as a court order, court judgment, or an adverse action taken by an agency, in any state, federal, tribal, or foreign jurisdiction, which results in a finding against the applicant reasonably related to the individual's character, suitability, and competence to care for or have unsupervised access to children in child care. Negative actions may include:

- a decision issued by an administrative law judge;
- a final determination, decision, or finding made by an agency following an investigation;
- an adverse agency action, including termination, revocation or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification, or contract in lieu of the adverse action;
- a revocation, denial, or restriction placed on any professional license; or
- a final decision by a disciplinary board.

Summary:

Portable Background Registry.

The DEL is required to establish and maintain an individual-based, or portable, background check clearance registry by July 1, 2012. Effective July 1, 2012, those who have not been previously qualified by the DEL to have unsupervised access to children in care must be fingerprinted and obtain a criminal history record check. Existing licensees and their employees who have been qualified by the DEL to have unsupervised access to children must submit a new background check application, on a form prescribed the DEL, within one year following the creation of the portable background check registry. If DEL concludes the applicant is qualified to have unsupervised access to children in care, the DEL is required to issue a background check clearance card or certificate to the applicant. This clearance card, or certificate, is valid for three years and must be accepted by potential employers as proof that the applicant has successfully completed a background check. A copy of the background check clearance card or certificate must be kept on-site.

Fees.

New applicants, licensed child care providers, or a combination of both may pay for the cost associated with a background check, which includes: (1) a fee established by the WSP for the criminal history check (including fingerprints); and (2) a fee established by the DEL to create and maintain the background check clearance registry. Effective July 1, 2011, licensed child care providers are required to pay the DEL a one-time fee established by the DEL. The DEL is required to consider the cost of developing and administering the registry when setting fees, and shall not set fees estimated to generate revenue beyond estimated costs.

Account.

Fee revenues must be deposited in the newly created Individual-Based/Portable Background Check Clearance Account (Account) and may only be expended for the costs of developing

and administering the registry. The Account is created in the custody of the State Treasurer. Only the DEL Director or designee may authorize expenditures from the Account. The Account is subject to allotment procedures, but an appropriation is not required for expenditures.

Redetermining Character, Suitability, Competence.

The DEL must investigate and redetermine an applicant or licensee's background clearance if the DEL receives a complaint or information from individuals, law enforcement, or other government agencies. Background check clearance card or certificate holders are required to report non-conviction and conviction information to the DEL within 24 hours of the event. Child care agencies are required to report to the DEL any knowledge of the following information regarding any individual working in a child care agency:

- criminal charges or convictions;
- charges that might be reasonably related to the individual's suitability to provide care for or have unsupervised access to children or care; and
- negative actions.

If that individual lacks the appropriate character, suitability, or competence to provide child care or early learning services, the DEL is authorized to invalidate the background card or certificate or suspend, modify, or revoke any license.

Background Check Coordination.

The DEL, the Office of Superintendent of Public Instruction, and Educational Service Districts are required to develop and report a proposal to coordinate their common background check activities. These agencies shall submit their proposal to the Legislature no later than December 15, 2011.

Votes on Final Passage:

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| House | 94 | 3 | |
| Senate | 46 | 0 | (Senate amended) |
| House | 96 | 0 | (House concurred) |

Effective: July 22, 2011