

# HOUSE BILL REPORT

## 2SHB 1903

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### As Passed Legislature

**Title:** An act relating to background checks for child care licensees and employees.

**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).

**Brief History:**

**Committee Activity:**

Early Learning & Human Services: 2/15/11, 2/17/11 [DPS];

Education Appropriations & Oversight: 2/18/11, 2/21/11 [DP2S(w/o sub ELHS)].

**Floor Activity:**

Passed House: 3/2/11, 94-3.

Senate Amended.

Passed Senate: 4/12/11, 46-0.

House Concurred.

Passed House: 4/15/11, 96-0.

Passed Legislature.

#### Brief Summary of Second Substitute Bill

- Requires the Department of Early Learning (DEL) to establish and maintain an individual-based background check clearance registry by July 1, 2012.
- Requires all first-time applicants to obtain fingerprints and a criminal history background check.
- Allows applicants, agencies, or a combination of both to pay for the cost of obtaining the background check.
- Requires the DEL to issue a background check clearance card, or certificate, to successful applicants.
- Validates clearance cards, or certificates, for three years, unless the DEL determines the applicant lacks the appropriate character, suitability, or competence to provide child care or early learning services.
- Creates fees to support the development and maintenance of the individual-background check registry.

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- Requires agencies to report specific criminal charges, convictions, and negative actions to the DEL.
- Requires the Office of Superintendent of Public Instruction, the DEL, and educational service districts to develop and submit a proposal to coordinate their common background check activities.
- Directs all fees to be paid into a new non-appropriated account to support the development and maintenance of the individual-base/portable background check registry.

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## HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Kagi, Chair; Roberts, Vice Chair; Walsh, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Dickerson, Goodman, Johnson and Orwall.

**Minority Report:** Do not pass. Signed by 1 member: Representative Overstreet.

**Staff:** Megan Palchak (786-7120).

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## HOUSE COMMITTEE ON EDUCATION APPROPRIATIONS & OVERSIGHT

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Early Learning & Human Services. Signed by 17 members: Representatives Haigh, Chair; Probst, Vice Chair; Anderson, Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Dahlquist, Frockt, Hargrove, Maxwell, Nealey, Orwall, Reykdal, Rolfes, Santos, Seaquist, Sells, Short and Stanford.

**Staff:** Wendy Polzin (786-7137).

### **Background:**

#### Overview.

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.

#### 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 connected to the BCCU. 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 pull 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 years prior to the date of application. Currently, 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 of Second Substitute Bill:**

##### 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 shall 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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony** (Early Learning & Human Services):

(In support) The background check process can be difficult for child care providers and their employees under the current process. The Department of Early Learning (DEL) has devised a good solution in this bill.

(Neutral) From the DEL's perspective, shifting to an individual-based model can provide benefits for applicants and the agency. Moving to this approach will not change the scrutiny the DEL applies. However, this does change fingerprint requirements; Washington has received criticism for not fingerprinting every applicant. The DEL asks for the implementation date to be set for July 1, 2012, in case any project development issues arise. The DEL anticipates some reduction in duplicate counts. The DEL believes the financial cost-benefit will ultimately be a wash.

(Opposed) None.

**Staff Summary of Public Testimony** (Education Appropriations & Oversight):

(In support) Washington is one of the few states without a fingerprint background check. This bill is about having a good pool of background checks. The bill would allow for less duplication and redundancy of background checks, since individuals will have their clearance card or certificate for three years.

(Neutral) This legislation allows child care centers and licensed family home child care to get substitute staff much more easily. This legislation will also increase employability of child care staff. Repeated background checks creates lots of paperwork.

(Opposed) None.

**Persons Testifying** (Early Learning & Human Services): (In support) Representative Orwall, prime sponsor.

(Neutral) Bob McClellan, Department of Early Learning.

**Persons Testifying** (Education Appropriations & Oversight): (In support) Representative Orwall, prime sponsor.

(Neutral) Bob McLellan, Department of Early Learning.

**Persons Signed In To Testify But Not Testifying** (Early Learning & Human Services): None.

**Persons Signed In To Testify But Not Testifying** (Education Appropriations & Oversight): None.