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HOUSE BILL 2645

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State of Washington

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By Representatives Kagi, Maxwell, and Kenney; by request of Department of Early Learning

Read first time 01/20/12. Referred to Committee on Early Learning & Human Services.

1 AN ACT Relating to sharing records and information between the  
2 children's administration in the department of social and health  
3 services and the department of early learning in order to protect  
4 children in child care and early learning programs; amending RCW  
5 13.50.100 and 43.20A.080; reenacting and amending RCW 43.215.215; and  
6 creating a new section.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 **Sec. 1.** RCW 13.50.100 and 2003 c 105 s 2 are each amended to read  
9 as follows:

- 10 (1) This section governs records not covered by RCW 13.50.050.  
11 (2) Records covered by this section shall be confidential and shall  
12 be released only pursuant to this section and RCW 13.50.010.  
13 (3) Records retained or produced by any juvenile justice or care  
14 agency may be released to other participants in the juvenile justice or  
15 care system only when an investigation or case involving the juvenile  
16 in question is being pursued by the other participant or when that  
17 other participant is assigned the responsibility of supervising the  
18 juvenile. Records covered under this section and maintained by the  
19 juvenile courts which relate to the official actions of the agency may

1 be entered in the statewide judicial information system. However,  
2 truancy records associated with a juvenile who has no other case  
3 history, and records of a juvenile's parents who have no other case  
4 history, shall be removed from the judicial information system when the  
5 juvenile is no longer subject to the compulsory attendance laws in  
6 chapter 28A.225 RCW. A county clerk is not liable for unauthorized  
7 release of this data by persons or agencies not in his or her employ or  
8 otherwise subject to his or her control, nor is the county clerk liable  
9 for inaccurate or incomplete information collected from litigants or  
10 other persons required to provide identifying data pursuant to this  
11 section.

12 (4) Subject to (a) of this subsection, the department of social and  
13 health services may release information retained in the course of  
14 conducting child protective services investigations to a family or  
15 juvenile court hearing a petition for custody under chapter 26.10 RCW.

16 (a) Information that may be released shall be limited to  
17 information regarding investigations in which: (i) The juvenile was an  
18 alleged victim of abandonment or abuse or neglect; or (ii) the  
19 petitioner for custody of the juvenile, or any individual aged sixteen  
20 or older residing in the petitioner's household, is the subject of a  
21 founded or currently pending child protective services investigation  
22 made by the department subsequent to October 1, 1998.

23 (b) Additional information may only be released with the written  
24 consent of the subject of the investigation and the juvenile alleged to  
25 be the victim of abandonment or abuse and neglect, or the parent,  
26 custodian, guardian, or personal representative of the juvenile, or by  
27 court order obtained with notice to all interested parties.

28 (5) The children's administration of the department of social and  
29 health services must provide to the department of early learning access  
30 to records and information retained or produced by the children's  
31 administration. These records and information may be used by the  
32 department of early learning for the purpose of determining whether an  
33 individual is of appropriate character, suitability, and competence to  
34 provide child care and early learning services to children as provided  
35 in RCW 43.215.215.

36 (6) Any disclosure of records or information by the department of  
37 social and health services pursuant to this section shall not be deemed  
38 a waiver of any confidentiality or privilege attached to the records or

1 information by operation of any state or federal statute or regulation,  
2 and any recipient of such records or information shall maintain it in  
3 such a manner as to comply with such state and federal statutes and  
4 regulations and to protect against unauthorized disclosure.

5 ~~((+6+))~~ (7) A contracting agency or service provider of the  
6 department of social and health services that provides counseling,  
7 psychological, psychiatric, or medical services may release to the  
8 office of the family and children's ombudsman information or records  
9 relating to services provided to a juvenile who is dependent under  
10 chapter 13.34 RCW without the consent of the parent or guardian of the  
11 juvenile, or of the juvenile if the juvenile is under the age of  
12 thirteen years, unless such release is otherwise specifically  
13 prohibited by law.

14 ~~((+7+))~~ (8) A juvenile, his or her parents, the juvenile's attorney  
15 and the juvenile's parent's attorney, shall, upon request, be given  
16 access to all records and information collected or retained by a  
17 juvenile justice or care agency which pertain to the juvenile except:

18 (a) If it is determined by the agency that release of this  
19 information is likely to cause severe psychological or physical harm to  
20 the juvenile or his or her parents the agency may withhold the  
21 information subject to other order of the court: PROVIDED, That if the  
22 court determines that limited release of the information is  
23 appropriate, the court may specify terms and conditions for the release  
24 of the information; or

25 (b) If the information or record has been obtained by a juvenile  
26 justice or care agency in connection with the provision of counseling,  
27 psychological, psychiatric, or medical services to the juvenile, when  
28 the services have been sought voluntarily by the juvenile, and the  
29 juvenile has a legal right to receive those services without the  
30 consent of any person or agency, then the information or record may not  
31 be disclosed to the juvenile's parents without the informed consent of  
32 the juvenile unless otherwise authorized by law; or

33 (c) That the department of social and health services may delete  
34 the name and identifying information regarding persons or organizations  
35 who have reported alleged child abuse or neglect.

36 ~~((+8+))~~ (9) A juvenile or his or her parent denied access to any  
37 records following an agency determination under subsection ~~((+7+))~~ (8)  
38 of this section may file a motion in juvenile court requesting access

1 to the records. The court shall grant the motion unless it finds  
2 access may not be permitted according to the standards found in  
3 subsection (~~(7)~~) (8)(a) and (b) of this section.

4 (~~(9)~~) (10) The person making a motion under subsection (~~(8)~~)  
5 (9) of this section shall give reasonable notice of the motion to all  
6 parties to the original action and to any agency whose records will be  
7 affected by the motion.

8 (~~(10)~~) (11) Subject to the rules of discovery in civil cases, any  
9 party to a proceeding seeking a declaration of dependency or a  
10 termination of the parent-child relationship and any party's counsel  
11 and the guardian ad litem of any party, shall have access to the  
12 records of any natural or adoptive child of the parent, subject to the  
13 limitations in subsection (~~(7)~~) (8) of this section. A party denied  
14 access to records may request judicial review of the denial. If the  
15 party prevails, he or she shall be awarded attorneys' fees, costs, and  
16 an amount not less than five dollars and not more than one hundred  
17 dollars for each day the records were wrongfully denied.

18 (~~(11)~~) (12) No unfounded allegation of child abuse or neglect as  
19 defined in RCW 26.44.020(~~(12)~~) may be disclosed to a child-placing  
20 agency, private adoption agency, or any other licensed provider.

21 **Sec. 2.** RCW 43.20A.080 and 1997 c 58 s 1005 are each amended to  
22 read as follows:

23 (1)(a) The department shall provide the employment security  
24 department quarterly with the names and social security numbers of all  
25 clients in the WorkFirst program and any successor state welfare  
26 program.

27 (~~(2)~~) (b) The information provided by the employment security  
28 department under RCW 50.13.060 for statistical analysis and welfare  
29 program evaluation purposes may be used only for statistical analysis,  
30 research, and evaluation purposes as provided in RCW 74.08A.410 and  
31 74.08A.420. Through individual matches with accessed employment  
32 security department confidential employer wage files, only aggregate,  
33 statistical, group level data shall be reported. Data sharing by the  
34 employment security department may be extended to include the office of  
35 financial management and other such governmental entities with  
36 oversight responsibility for this program.

1        ~~((+3))~~ (c) The department and other agencies of state government  
2 shall protect the privacy of confidential personal data supplied under  
3 RCW 50.13.060 consistent with federal law, chapter 50.13 RCW, and the  
4 terms and conditions of a formal data-sharing agreement between the  
5 employment security department and agencies of state government,  
6 however the misuse or unauthorized use of confidential data supplied by  
7 the employment security department is subject to the penalties in RCW  
8 50.13.080.

9        (2)(a) The department shall provide access to records and  
10 information retained or produced by the department's children's  
11 administration to the department of early learning. These records and  
12 information may be used by the department of early learning for the  
13 purpose of determining whether an individual is of appropriate  
14 character, suitability, and competence to provide child care and early  
15 learning services to children as provided in RCW 43.215.215.

16        (b) Any disclosure of records or information by the department  
17 pursuant to this section, RCW 13.50.100(5), or any other law or rule,  
18 may not be deemed a waiver of any confidentiality or privilege attached  
19 to the records or information by operation of any state or federal  
20 statute, rule, or regulation, and the department of early learning, as  
21 the recipient of such records or information, must maintain them in  
22 such a manner as to comply with such state and federal statutes and  
23 rules or regulations and to protect against unauthorized disclosure.

24        **Sec. 3.** RCW 43.215.215 and 2011 c 295 s 2 and 2011 c 253 s 4 are  
25 each reenacted and amended to read as follows:

26        (1) In determining whether an individual is of appropriate  
27 character, suitability, and competence to provide child care and early  
28 learning services to children, the department may consider the history  
29 of past involvement of child protective services or law enforcement  
30 agencies with the individual for the purpose of establishing a pattern  
31 of conduct, behavior, or inaction with regard to the health, safety, or  
32 welfare of a child. No report of child abuse or neglect that has been  
33 destroyed or expunged under RCW 26.44.031 may be used for such  
34 purposes. No unfounded or inconclusive allegation of child abuse or  
35 neglect as defined in RCW 26.44.020 may be disclosed to a provider  
36 licensed under this chapter.

1 (2) In order to determine the suitability of individuals newly  
2 applying for an agency license, new licensees, their new employees, and  
3 other persons who newly have unsupervised access to children in care,  
4 shall be fingerprinted.

5 (a) The fingerprints shall be forwarded to the Washington state  
6 patrol and federal bureau of investigation for a criminal history  
7 record check.

8 (b)(i) Effective July 1, 2012, all individuals applying for first-  
9 time agency licenses, all new employees, and other persons who have not  
10 been previously qualified by the department to have unsupervised access  
11 to children in care must be fingerprinted and obtain a criminal history  
12 record check pursuant to this section.

13 (ii) Persons required to be fingerprinted and obtain a criminal  
14 (~~history~~) history record check pursuant to this section must pay  
15 for the cost of this check as follows: The fee established by the  
16 Washington state patrol for the criminal background history check,  
17 including the cost of obtaining the fingerprints; and a fee paid to the  
18 department for the cost of administering the individual-based/portable  
19 background check clearance registry. The fee paid to the department  
20 must be deposited into the individual-based/portable background check  
21 clearance account established in RCW 43.215.218. The licensee may, but  
22 need not, pay these costs on behalf of a prospective employee or  
23 reimburse the prospective employee for these costs. The licensee and  
24 the prospective employee may share these costs.

25 (c) The director shall use the fingerprint criminal history record  
26 check information solely for the purpose of determining eligibility for  
27 a license and for determining the character, suitability, and  
28 competence of those persons or agencies, excluding parents, not  
29 required to be licensed who are authorized to care for children.

30 (d) Criminal justice agencies shall provide the director such  
31 information as they may have and that the director may require for such  
32 purpose.

33 (e) No later than July 1, 2013, all agency licensees holding  
34 licenses prior to July 1, 2012, persons who were employees before July  
35 1, 2012, and persons who have been qualified by the department before  
36 July 1, 2012, to have unsupervised access to children in care, must  
37 submit a new background application to the department. The department  
38 must require persons submitting a new background application pursuant

1 to this subsection (2)(e) to pay a fee to the department for the cost  
2 of administering the individual-based/portable background check  
3 clearance registry. This fee must be paid into the individual-  
4 based/portable background check clearance account established in RCW  
5 43.215.218. The licensee may, but need not, pay these costs on behalf  
6 of a prospective employee or reimburse the prospective employee for  
7 these costs. The licensee and the prospective employee may share these  
8 costs.

9 (f) The department shall issue a background check clearance card or  
10 certificate to the applicant if after the completion of a background  
11 check the department concludes the applicant is qualified for  
12 unsupervised access to children in care. The background check  
13 clearance card or certificate is valid for three years from the date of  
14 issuance. A valid card or certificate must be accepted by a potential  
15 employer as proof that the applicant has successfully completed a  
16 background check as required under this chapter.

17 (g) The original applicant for an agency license, licensees, their  
18 employees, and other persons who have unsupervised access to children  
19 in care shall submit a new background check application to the  
20 department, on a form and by a date as determined by the department.

21 (h) The applicant and agency shall maintain on-site for inspection  
22 a copy of the background check clearance card or certificate.

23 (i) Individuals who have been issued a background check clearance  
24 card or certificate shall report nonconviction and conviction  
25 information to the department within twenty-four hours of the event  
26 constituting the nonconviction or conviction information.

27 (j) The department shall investigate and conduct a redetermination  
28 of an applicant's or licensee's background clearance if the department  
29 receives a complaint or information from individuals, a law enforcement  
30 agency, or other federal, state, or local government agency. Subject  
31 to the requirements contained in RCW 43.215.300 and 43.215.305 and  
32 based on a determination that an individual lacks the appropriate  
33 character, suitability, or competence to provide child care or early  
34 learning services to children, the department may: (i) Invalidate the  
35 background card or certificate; or (ii) suspend, modify, or revoke any  
36 license authorized by this chapter.

37 (3) To satisfy the shared background check requirements of the  
38 department of early learning and the department of social and health

1 services, each department shall share federal fingerprint-based  
2 background check results as permitted under the law. The purpose of  
3 this provision is to allow both departments to fulfill their joint  
4 background check responsibility of checking any individual who may have  
5 unsupervised access to vulnerable adults, children, or juveniles.  
6 Neither department may share the federal background check results with  
7 any other state agency or person.

8 (4)(a) The department may use records and information obtained from  
9 the children's administration of the department of social and health  
10 services for the purpose of determining whether an individual is of  
11 appropriate character, suitability, and competence to provide child  
12 care and early learning services to children as provided in RCW  
13 43.215.215.

14 (b) The department must maintain the records and information  
15 obtained from the department of social and health services in such a  
16 manner as to comply with RCW 13.50.100(6) and 43.20A.080(2), and any  
17 other applicable state or federal statute, rule, or regulation relating  
18 to confidentiality or privilege of those records.

19 NEW SECTION. Sec. 4. If any part of this act is found to be in  
20 conflict with federal requirements that are a prescribed condition to  
21 the allocation of federal funds to the state, the conflicting part of  
22 this act is inoperative solely to the extent of the conflict and with  
23 respect to the agencies directly affected, and this finding does not  
24 affect the operation of the remainder of this act in its application to  
25 the agencies concerned. Rules adopted under this act must meet federal  
26 requirements that are a necessary condition to the receipt of federal  
27 funds by the state.

28 NEW SECTION. Sec. 5. If any provision of this act or its  
29 application to any person or circumstance is held invalid, the  
30 remainder of the act or the application of the provision to other  
31 persons or circumstances is not affected.

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