

HOUSE BILL REPORT

SSB 5565

As Passed House - Amended:

April 16, 2013

Title: An act relating to background checks.

Brief Description: Concerning background checks for individuals seeking a license under chapter 74.13 RCW or unsupervised access to children.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Carrell, Keiser, Harper, Nelson, Kohl-Welles, McAuliffe and Kline).

Brief History:

Committee Activity:

Early Learning & Human Services: 3/21/13, 4/2/13 [DPA];

Appropriations Subcommittee on Health & Human Services: 4/4/13 [DPA(ELHS)].

Floor Activity:

Passed House - Amended: 4/16/13, 96-0.

Brief Summary of Substitute Bill (As Amended by House)

- Specifies under what circumstances the Department of Social and Health Services (DSHS) may not delay or deny licensure or unsupervised access to children based on information obtained or not obtained during background check processes.
- Specifies under what conditions the DSHS, its officers, agents, or employees may not be held civilly liable based upon decisions made relating to background checks.
- Requires the DSHS to charge a processing fee for out-of-state background and child abuse and neglect check requests.
- Specifies that the court is able to place children with a relative or another suitable person prior to completing fingerprint-based background checks.
- Requires a nonprofit with expertise in veteran parent programs to convene a work group, in collaboration with the DSHS, to explore the impact of founded complaints on a rehabilitated individual's ability to gain employment, volunteer, or care for children.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: Do pass as amended. Signed by 9 members: Representatives Kagi, Chair; Walsh, Ranking Minority Member; Scott, Assistant Ranking Minority Member; Farrell, Goodman, MacEwen, Roberts, Sawyer and Zeiger.

Minority Report: Without recommendation. Signed by 1 member: Representative Overstreet.

Staff: Lindsay Lanham (786-7120).

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON HEALTH & HUMAN SERVICES

Majority Report: Do pass as amended by Committee on Early Learning & Human Services. Signed by 10 members: Representatives Morrell, Chair; Harris, Ranking Minority Member; Cody, Green, Jinkins, Kagi, Ormsby, Pike, Ross and Schmick.

Staff: Mary Mulholland (786-7391).

Background:

The Department of Social and Health Services (DSHS) is required to conduct criminal background checks and abuse and neglect history checks for a person applying for state employment, a person applying for employment with a business or organization that contracts with or is licensed by the DSHS, a person completing a foster care license application, or a person volunteering to be a relative placement for a child. Once background checks are completed, the DSHS uses the Secretary's List of Crimes and Negative Actions, also known as the Secretary's List, to inform an assessment of a person's suitability, character, and competence and provide guidance to field staff as they make decisions pertaining to safety. The Secretary's List is an actual list of standardized offenses based on federal and state laws and regulations that can permanently or temporarily disqualify a person from having unsupervised access to vulnerable adults, juveniles, and children. While some crimes can permanently prohibit a person from having unsupervised contact with vulnerable populations (example: rape of a child), other crimes have a specific timeframe for which they are considered barring offenses (example: forgery—five years). The Secretary of the DSHS has the authority to approve and modify the Secretary's List.

Summary of Amended Bill:

The DSHS may not delay or deny licensure or approval of unsupervised access to children based solely on a crime or civil infraction that is not on the Secretary's List and does not relate directly to child safety, well-being, or permanence. The DSHS may also not delay licensure or approval of unsupervised access to children by requiring an individual to obtain records relating to a crime or civil infraction that is not on the Secretary's List, is not a permanent disqualifier, and is not related directly to child safety, well-being, or permanence.

Additionally, the DSHS or its officers, agents, or employees may not be held civilly liable based upon a decision to grant or deny unsupervised access to children if the background check relied upon at the time the decision was made did not indicate a concern with child safety, well-being, or permanence. The DSHS is further required to charge a fee to process a request made by a person in another state for background and child abuse and neglect checks.

The term "unsupervised" is defined to have the same meaning as in RCW 43.43.830 which reads as follows: Unsupervised means not in the presence of (a) another employee or volunteer from the same business or organization as the applicant; or (b) any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization. With regard to peer counselors, "unsupervised" does not include incidental contact with children under age 16 at the location at which the peer counseling is taking place. "Incidental contact" means minor or casual contact with a child in an area accessible to and within visual or auditory range of others. It could include passing a child while walking down a hallway but would not include being alone with a child for any period of time in a closed room or office.

The court has the authority to place a child with a relative or other suitable person prior to the completion of fingerprint-based background checks, if the relative or other suitable person appears otherwise suitable and competent to provide care for a child.

Finally, a nonprofit with expertise in veteran parent programs is required to convene a work group in consultation with the DSHS to explore options, including a certificate of rehabilitation, for addressing the impact of founded complaints on the ability of rehabilitated individuals to gain employment or care for children, including volunteer activities. The work group is required to submit recommendations to the Legislature by December 31, 2013.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 5 relating to definitions of specific terminology utilized throughout the statutory chapter entitled Child Welfare Services, which takes effect December 1, 2013.

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

(In support) Veteran parents are parents who have successfully completed supportive services offered through the public child welfare system and reunified with their children. A veteran parent has transformed her or his life. In Washington, veteran parents collaborate with the courts, local child welfare offices, and other child welfare stakeholders to provide veteran parent programs. Veteran parent programs offer supportive services to new parents entering the public child welfare system. In addition to facilitating classes explaining the dependency process, veteran parents also facilitate peer support groups and provide mentorship, encouragement, leadership, and informal case management. Although early research findings are suggesting that veteran parent programs are enhancing the work of public child

welfare systems by promoting parent engagement, the scope of veteran parent work in Washington is limited because of state policies relating to background checks. Because veteran parents often have a founded child maltreatment allegation in their background, they are not able to offer additional support to the child welfare system such as transportation for families or provide supervision for family visits.

Despite all corrective and rehabilitative services completed by a veteran parent, a founded allegation for child abuse or child neglect continues to impact employment opportunities for the duration of a parent's life. A documented history of child abuse or child neglect is a significant barrier to establishing a career. In fact, if a person has a founded disposition of child abuse or child neglect a person cannot be a nurse, teacher's aide, coach, or any other profession that provides services to children or elders.

After overcoming her addiction and reunifying with her children, one mother decided to go back to school to further her career. She first attempted to enroll in a dental assistant program; however, she discovered that her child protective services' (CPS) history permanently disqualifies her from this profession. The parent then selected and completed an administrative medical assistance degree. After making the dean's list and graduating with an administrative medical assistance degree, the parent's employment options were significantly limited when she was notified that she would not be able to ever work in a hospital or medical clinic because of her CPS history. If this parent was able to apply for and receive a certificate of rehabilitation, barriers to her employment would be eliminated.

A parent, who completed supportive services through the public child welfare system and reunified with her children, now provides on-going care to her grandson. The grandparent is fearful to formalize the placement because of her past involvement in the child welfare system. She is concerned and worried every day that a CPS worker will knock on her door and remove her grandson based on her old CPS history. However, she remains hopeful and has faith that her CPS history will not define her.

After overcoming addiction, one father reunified with his children and married his high school sweetheart. The family is excelling in every way. His ex-partner and the mother of his son had another child. The child, who is the son's half-sister, was placed in foster care. The father cannot be considered as a possible placement for his son's half-sibling because of the father's CPS history. His CPS history also prohibits the father from taking an active role in his children's schooling. The father has made many positive changes in his life and continues to give back to his community, yet he is still impacted everyday by his past. The parent offers that not every parent involved in the child welfare system should have the right to a certificate of rehabilitation, but every parent should have a right to earn one.

Social service agencies are impacted by current background check policies as well. Although procedures have improved, employment continues to be delayed because of minor infractions that are not related to child safety. Prospective employees are required to secure old documentation and are not able to begin working until they are cleared. When an employee cannot work, staffing levels are impacted during the delays, which may impact child safety. Moreover, because of disparate treatment of people of color by law enforcement, people of color are disproportionality impacted by current background check policies. There is a

further concern that Washington is not in compliance with the Equal Employment Opportunity Commission guidelines.

(Neutral) A workgroup to explore the possibility of creating a certificate of rehabilitation for individuals who have received a founded disposition in a child maltreatment case is an important issue. Parents often have compelling stories relating to the long-term impact of receiving an affirmative disposition in a child maltreatment case.

For example, a mother struggled with addiction in her early 20s and this led to child protective services involvement. She received a founded disposition for neglect. The young mother overcame her addiction, regained custody of her child, and graduated from college. She then was accepted into a graduate program in the field of social work. During her graduate degree program she discovered that the child neglect allegation from 10 years prior could prohibit her from working with vulnerable populations. Other parents have attempted to purge the records and are told that there is no procedure in place that allows allegations to be sealed or vacated. There should be a flexible procedure in place to help certain individuals overcome barriers.

The second concern is relating to offenses, such as using shrimp pots out of season. This is not an offense that has specific child safety implications. Regardless, a person is still required to collect all documentation relating to the offenses from various police departments and write an explanation to the DSHS detailing why the offence occurred. Such an offense is not a permanently disqualifying offense; however, these offenses still cause delays in child placement.

(Other) When approving a foster parent license or unsupervised access to children, it would be helpful if the decision could be based on child safety, as well as child well-being and permanence. Additionally, there is a recommendation to incorporate additional language into the liability section. Finally, according to the DSHS, the convening of a work group to create a certificate of rehabilitation will drive a fiscal note.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations Subcommittee on Health & Human Services):

(In support) There is a recognition that bringing groups together can have a fiscal impact. A nonprofit group confirmed that it will work in conjunction with the Department of Social and Health Services to examine the long-term impact of background checks on individuals.

During the interim, stakeholders met to discuss various issues pertaining to background checks. It was discovered that some states charge Washington for child abuse and neglect history requests. It was determined that a recommendation to the Legislature should be that Washington should charge a fee to offset costs associated with background check requests from other states.

(Opposed) None.

Persons Testifying (Early Learning & Human Services): (In support) Vickie Wilson, Heather Njarkvik, and Shayne Rochester, Snohomish County Parent Advocacy Committee; Mary Stone Smith, Catholic Community Services; and Nicki Olivier, Partners for Our Children.

(Neutral) Patrick Dowd, Office of the Family and Children's Ombudsman.

(Other) Jennifer Strus, Department of Social and Health Services, Children's Administration.

Persons Testifying (Appropriations Subcommittee on Health & Human Services): Laurie Lippold, Partners for our Children.

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

Persons Signed In To Testify But Not Testifying (Appropriations Subcommittee on Health & Human Services): None.