

SENATE BILL REPORT

SSB 6095

As Amended by House, March 5, 2014

Title: An act relating to background checks for persons who will have access to children or vulnerable adults.

Brief Description: Addressing background checks for persons who will have access to children or vulnerable adults.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Kline and Roach).

Brief History:

Committee Activity: Human Services & Corrections: 1/20/14, 1/27/14 [DPA, w/oRec]; 1/28/14 [DPS].

Passed Senate: 2/13/14, 47-2.

Passed House: 3/05/14, 97-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6095 be substituted therefor, and the substitute bill do pass.

Signed by Senators O'Ban, Chair; Pearson, Vice Chair; Darneille, Ranking Member; Hargrove and Padden.

Staff: Kevin Black (786-7747)

Background: The Children's Administration (CA) of the Department of Social and Health Services (DSHS) obtains background information by means of a background check for persons who serve as placement resources for dependent children who the state removes from their home. A dependent child is a child who has been abandoned, abused, or neglected by a person legally responsible for the child's care; who has no parent or guardian capable of adequately caring for the child; or who is receiving extended foster care services. State law requires the state to give preference to a relative or other suitable person in making placement decisions. A suitable person is defined as a person with whom the child or family has a preexisting relationship, who has completed all required criminal history background checks, and who appears to be suitable and competent to provide care for the child.

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.

A background check may reveal criminal history, child abuse or neglect history, and other information. The background check may consist of a check based on name and date of birth, which reveals information based on Washington State records; or a fingerprint-based check with FBI databases, which reveals consolidated national criminal history records. The fingerprint-based check requires greater time and expense to complete than a check based on name and date of birth.

According to published CA policy, CA staff must disqualify persons from being authorized to provide care for children based on a document called the DSHS Secretary's List of Disqualifying Crimes & Negative Actions (Secretary's List). The Secretary's List identifies crimes and negative actions, such as a finding of abuse, neglect, exploitation, or abandonment of a vulnerable adult, juvenile, or child, that may trigger disqualification. Crimes and negative actions may be identified as permanent disqualifiers, or five-year disqualifiers. If crimes or negative actions exist which are not permanent disqualifiers or five-year disqualifiers that are within the five-year disqualification window, CA staff must perform an administrative review of the character and suitability of the person for the license or employment that the person is seeking with reference to an enumerated list of factors. CA policy states that in rare circumstances, an administrative approval or waiver may be granted to authorize an exception for a person with a disqualifying crime or negative action. This waiver must be requested by a social worker, licensor, or contract manager and submitted to the CA Assistant Secretary or, in some circumstances, a regional or area administrator.

The Adoption and Safe Families Act of 1997 (ASFA) is an act of Congress. ASFA provides that no federal Title IV-E funds or adoption support funds may be used to support placements of children with persons who have a history of certain crimes. In some instances, the list of crimes provided by ASFA is less extensive than the Secretary's List, in that a crime listed as a permanent disqualifier by the Secretary's List is listed as a five-year disqualifier by ASFA, or a crime listed as a permanent or five-year disqualifier by the Secretary's List does not appear on the ASFA list. The negative action of a finding of child abuse or neglect is not listed as a permanent or five-year disqualifier by ASFA.

When placing a child in shelter care, if the court places the child with a relative or suitable person, state law provides that the criminal history background check need not be completed before placement, but may be completed as soon as possible after placement, if the relative or other suitable person appears otherwise suitable and competent to provide care and treatment.

Summary of Substitute Bill: CA must not automatically disqualify a relative or other suitable person from serving as a placement resource for a dependent child based on standards that are more extensive than the guidelines provided by ASFA. The state or its officer, agents, or employees may not be held liable for such a placement unless it acted with reckless disregard.

Pursuant to an order issued at a fact-finding hearing, CA may place a dependent child with a relative or suitable person before completing the fingerprint-based background check, if the relative or suitable person appears otherwise suitable and competent to provide care and treatment, and the fingerprint-based background check is completed as soon as possible after placement.

A person licensed or employed in a position which provides care and treatment to vulnerable adults, children, persons with mental illness, or persons with developmental disabilities must not be disqualified for licensure or employment based upon a crime or negative action if the crime or negative action was reviewed by DSHS through its Background Assessment Review Team process in 2002 and the person was permitted to remain in the position of licensure or employment. DSHS and DOH must not automatically disqualify a person for licensure or employment based upon a crime or disposition that has been the subject of a pardon, annulment, or other equivalent procedure.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: My grandson could not be placed with me based on my Child Protective Services history. I am not the same person now that I was then. My stepfather could not be used as a placement resource for my children due to a 20-year-old fighting incident, so my children were placed in foster care and adopted. Children who are placed with relatives thrive better and are more able to maintain connections with friends and activities. Placement with relatives minimizes the trauma of removal from birth parents. The fingerprint-based background check process takes too long and harms children's wellbeing. The Secretary's List is too restrictive and has the effect of harming kids by preventing their placement with relatives. Background checks should not take so long that they cause unnecessary placement of children in foster homes. I lived in foster homes for seven months where people were mean to me before being allowed to live with my grandmother. My brother is still in foster care and I cannot visit him. People must have an avenue to overcome impediments in their background when they do not provide a threat to the safety of children. The protections in this bill should be applied to care for vulnerable adults as well as vulnerable children.

OTHER: The name and date-of-birth check is good enough for the purpose of a shelter care hearing; however, the fact-finding hearing comes 75 days later and should be based on a fingerprint check to avoid unsafe placements. Courts are sometimes reluctant to undo placements when information is only discovered after a court hearing. CA has already begun an internal process of moving to the ASFA guidelines for placements with relatives. Some sex offenses not included in the ASFA guidelines should be considered as disqualifiers. We are concerned about the possibility of inappropriate placements of children with domestic violence offenders or abusers.

Persons Testifying: PRO: Heather Njarkvik-Shreckengost, Cynthia Post, Sno Pac; Laurie Lippold, Partners for Our Children; Sharon Dysert Ittner, Matthew Ittner, Kimberly Mays, citizens.

OTHER: Jennifer Strus, CA, DSHS; Grace Huang, WA State Coalition Against Domestic Violence; Matt Zuvich, WA Federation of State Employees.

House Amendment(s): Removes provisions allowing a court at a fact-finding hearing to order placement of a dependent child with a relative or suitable person before completion of a fingerprint-based background check. Adds provisions from Substitute House Bill 2535 exempting DSHS from liability if an agency operating under contract with CA chooses to hire a person who would be precluded from employment with DSHS based on a disqualifying crime or negative action, and prohibiting CA from denying or delaying a license or approval of unsupervised access to children based solely on a crime or infraction that is not disqualifying under ASFA, or does not relate directly to child safety, permanence, or wellbeing.