
SUBSTITUTE SENATE BILL 5565

State of Washington

63rd Legislature

2013 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Hargrove, Carrell, Keiser, Harper, Nelson, Kohl-Welles, McAuliffe, and Kline)

READ FIRST TIME 02/21/13.

1 AN ACT Relating to background checks; amending RCW 74.13.020 and
2 13.34.065; reenacting and amending RCW 74.13.020; adding new sections
3 to chapter 74.13 RCW; creating new sections; providing an effective
4 date; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes that the goals of
7 the child welfare system are the safety, permanence, and well-being of
8 the children it serves. The legislature further recognizes the
9 importance of background checks conducted by the department of social
10 and health services to assess an individual's character, suitability,
11 and competence to determine whether an individual is appropriate to be
12 provided a license under chapter 74.13 RCW or have unsupervised access
13 to children. The legislature does not intend to change the current
14 secretary of social and health services' list of crimes and negative
15 actions. However, the legislature believes that either an unreasonable
16 delay in a determination of whether to approve or deny a license under
17 chapter 74.13 RCW or unsupervised access to children, when such
18 unreasonable delay or denial is based solely on a crime or civil

1 infraction not directly related to child safety, is not appropriate and
2 is not in the best interest of the children being served by the child
3 welfare system.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.13 RCW
5 to read as follows:

6 (1) In determining the character, suitability, and competence of an
7 individual, the department may not:

8 (a) Deny or delay a license or approval of unsupervised access to
9 children to an individual solely because of a crime or civil infraction
10 involving the individual or entity revealed in the background check
11 process that is not on the secretary's list of crimes and negative
12 actions and is not related directly to child safety; or

13 (b) Delay the issuance of a license or approval of unsupervised
14 access to children by requiring the individual to obtain records
15 relating to a crime or civil infraction revealed in the background
16 check process that is not on the secretary's list of crimes and
17 negative actions and is not related directly to child safety and is not
18 a permanent disqualifier pursuant to department rule.

19 (2) If the department determines that an individual does not
20 possess the character, suitability, or competence to provide care or
21 have unsupervised access to a child, it must provide the reasons for
22 its decision in writing with copies of the records or documents related
23 to its decision to the individual within ten days of making the
24 decision.

25 (3) For purposes of this section, "individual" means a relative as
26 defined in RCW 74.15.020(2)(a), an "other suitable person" under
27 chapter 13.34 RCW, a person pursuing licensing as a foster parent, or
28 a person employed or seeking employment by a business or organization
29 licensed by the department or with whom the department has a contract
30 to provide care, supervision, case management, or treatment of children
31 in the care of the department. "Individual" does not include long-term
32 care workers defined in RCW 74.39A.009(17)(a) whose background checks
33 are conducted as provided in RCW 74.39A.056.

34 (4) The department may not be held civilly liable based upon its
35 decision to grant unsupervised access to children if the background
36 information it relied upon at the time the decision was made did not
37 indicate that child safety would be a concern.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.13 RCW
2 to read as follows:

3 The department shall charge a fee to process a request made by an
4 out-of-state jurisdiction for an individual's child abuse or neglect
5 history in this state or other background history on the individual
6 possessed by the department. All proceeds from the fees collected must
7 go directly to aiding the cost associated with the department
8 conducting background checks.

9 **Sec. 4.** RCW 74.13.020 and 2012 c 205 s 12 are each amended to read
10 as follows:

11 For purposes of this chapter:

12 (1) "Case management" means convening family meetings, developing,
13 revising, and monitoring implementation of any case plan or individual
14 service and safety plan, coordinating and monitoring services needed by
15 the child and family, caseworker-child visits, family visits, and the
16 assumption of court-related duties, excluding legal representation,
17 including preparing court reports, attending judicial hearings and
18 permanency hearings, and ensuring that the child is progressing toward
19 permanency within state and federal mandates, including the Indian
20 child welfare act.

21 (2) "Child" means:

22 (a) A person less than eighteen years of age; or

23 (b) A person age eighteen to twenty-one years who is eligible to
24 receive the extended foster care services authorized under RCW
25 74.13.031.

26 (3) "Child protective services" has the same meaning as in RCW
27 26.44.020.

28 (4) "Child welfare services" means social services including
29 voluntary and in-home services, out-of-home care, case management, and
30 adoption services which strengthen, supplement, or substitute for,
31 parental care and supervision for the purpose of:

32 (a) Preventing or remedying, or assisting in the solution of
33 problems which may result in families in conflict, or the neglect,
34 abuse, exploitation, or criminal behavior of children;

35 (b) Protecting and caring for dependent, abused, or neglected
36 children;

1 (c) Assisting children who are in conflict with their parents, and
2 assisting parents who are in conflict with their children, with
3 services designed to resolve such conflicts;

4 (d) Protecting and promoting the welfare of children, including the
5 strengthening of their own homes where possible, or, where needed;

6 (e) Providing adequate care of children away from their homes in
7 foster family homes or day care or other child care agencies or
8 facilities.

9 "Child welfare services" does not include child protection
10 services.

11 (5) "Committee" means the child welfare transformation design
12 committee.

13 (6) "Department" means the department of social and health
14 services.

15 (7) "Extended foster care services" means residential and other
16 support services the department is authorized to provide to foster
17 children. These services include, but are not limited to, placement in
18 licensed, relative, or otherwise approved care, or supervised
19 independent living settings; assistance in meeting basic needs;
20 independent living services; medical assistance; and counseling or
21 treatment.

22 (8) "Measurable effects" means a statistically significant change
23 which occurs as a result of the service or services a supervising
24 agency is assigned in a performance-based contract, in time periods
25 established in the contract.

26 (9) "Out-of-home care services" means services provided after the
27 shelter care hearing to or for children in out-of-home care, as that
28 term is defined in RCW 13.34.030, and their families, including the
29 recruitment, training, and management of foster parents, the
30 recruitment of adoptive families, and the facilitation of the adoption
31 process, family reunification, independent living, emergency shelter,
32 residential group care, and foster care, including relative placement.

33 (10) "Performance-based contracting" means the structuring of all
34 aspects of the procurement of services around the purpose of the work
35 to be performed and the desired results with the contract requirements
36 set forth in clear, specific, and objective terms with measurable
37 outcomes. Contracts shall also include provisions that link the
38 performance of the contractor to the level and timing of reimbursement.

1 (11) "Permanency services" means long-term services provided to
2 secure a child's safety, permanency, and well-being, including foster
3 care services, family reunification services, adoption services, and
4 preparation for independent living services.

5 (12) "Primary prevention services" means services which are
6 designed and delivered for the primary purpose of enhancing child and
7 family well-being and are shown, by analysis of outcomes, to reduce the
8 risk to the likelihood of the initial need for child welfare services.

9 (13) "Supervising agency" means an agency licensed by the state
10 under RCW 74.15.090, or licensed by a federally recognized Indian tribe
11 located in this state under RCW 74.15.190, that has entered into a
12 performance-based contract with the department to provide case
13 management for the delivery and documentation of child welfare
14 services, as defined in this section. This definition is applicable on
15 or after December 30, 2015.

16 (14) "Unsupervised" has the same meaning as in RCW 43.43.830.

17 **Sec. 5.** RCW 74.13.020 and 2012 c 259 s 7 and 2012 c 205 s 12 are
18 each reenacted and amended to read as follows:

19 For purposes of this chapter:

20 (1) "Case management" means convening family meetings, developing,
21 revising, and monitoring implementation of any case plan or individual
22 service and safety plan, coordinating and monitoring services needed by
23 the child and family, caseworker-child visits, family visits, and the
24 assumption of court-related duties, excluding legal representation,
25 including preparing court reports, attending judicial hearings and
26 permanency hearings, and ensuring that the child is progressing toward
27 permanency within state and federal mandates, including the Indian
28 child welfare act.

29 (2) "Child" means:

30 (a) A person less than eighteen years of age; or

31 (b) A person age eighteen to twenty-one years who is eligible to
32 receive the extended foster care services authorized under RCW
33 74.13.031.

34 (3) "Child protective services" has the same meaning as in RCW
35 26.44.020.

36 (4) "Child welfare services" means social services including

1 voluntary and in-home services, out-of-home care, case management, and
2 adoption services which strengthen, supplement, or substitute for,
3 parental care and supervision for the purpose of:

4 (a) Preventing or remedying, or assisting in the solution of
5 problems which may result in families in conflict, or the neglect,
6 abuse, exploitation, or criminal behavior of children;

7 (b) Protecting and caring for dependent, abused, or neglected
8 children;

9 (c) Assisting children who are in conflict with their parents, and
10 assisting parents who are in conflict with their children, with
11 services designed to resolve such conflicts;

12 (d) Protecting and promoting the welfare of children, including the
13 strengthening of their own homes where possible, or, where needed;

14 (e) Providing adequate care of children away from their homes in
15 foster family homes or day care or other child care agencies or
16 facilities.

17 "Child welfare services" does not include child protection
18 services.

19 (5) "Committee" means the child welfare transformation design
20 committee.

21 (6) "Department" means the department of social and health
22 services.

23 (7) "Extended foster care services" means residential and other
24 support services the department is authorized to provide to foster
25 children. These services include, but are not limited to, placement in
26 licensed, relative, or otherwise approved care, or supervised
27 independent living settings; assistance in meeting basic needs;
28 independent living services; medical assistance; and counseling or
29 treatment.

30 (8) "Family assessment" means a comprehensive assessment of child
31 safety, risk of subsequent child abuse or neglect, and family strengths
32 and needs that is applied to a child abuse or neglect report. Family
33 assessment does not include a determination as to whether child abuse
34 or neglect occurred, but does determine the need for services to
35 address the safety of the child and the risk of subsequent
36 maltreatment.

37 (9) "Measurable effects" means a statistically significant change

1 which occurs as a result of the service or services a supervising
2 agency is assigned in a performance-based contract, in time periods
3 established in the contract.

4 (10) "Out-of-home care services" means services provided after the
5 shelter care hearing to or for children in out-of-home care, as that
6 term is defined in RCW 13.34.030, and their families, including the
7 recruitment, training, and management of foster parents, the
8 recruitment of adoptive families, and the facilitation of the adoption
9 process, family reunification, independent living, emergency shelter,
10 residential group care, and foster care, including relative placement.

11 (11) "Performance-based contracting" means the structuring of all
12 aspects of the procurement of services around the purpose of the work
13 to be performed and the desired results with the contract requirements
14 set forth in clear, specific, and objective terms with measurable
15 outcomes. Contracts shall also include provisions that link the
16 performance of the contractor to the level and timing of reimbursement.

17 (12) "Permanency services" means long-term services provided to
18 secure a child's safety, permanency, and well-being, including foster
19 care services, family reunification services, adoption services, and
20 preparation for independent living services.

21 (13) "Primary prevention services" means services which are
22 designed and delivered for the primary purpose of enhancing child and
23 family well-being and are shown, by analysis of outcomes, to reduce the
24 risk to the likelihood of the initial need for child welfare services.

25 (14) "Supervising agency" means an agency licensed by the state
26 under RCW 74.15.090, or licensed by a federally recognized Indian tribe
27 located in this state under RCW 74.15.190, that has entered into a
28 performance-based contract with the department to provide case
29 management for the delivery and documentation of child welfare
30 services, as defined in this section. This definition is applicable on
31 or after December 30, 2015.

32 (15) "Unsupervised" has the same meaning as in RCW 43.43.830.

33 **Sec. 6.** RCW 13.34.065 and 2011 c 309 s 24 are each amended to read
34 as follows:

35 (1)(a) When a child is taken into custody, the court shall hold a
36 shelter care hearing within seventy-two hours, excluding Saturdays,

1 Sundays, and holidays. The primary purpose of the shelter care hearing
2 is to determine whether the child can be immediately and safely
3 returned home while the adjudication of the dependency is pending.

4 (b) Any parent, guardian, or legal custodian who for good cause is
5 unable to attend the shelter care hearing may request that a subsequent
6 shelter care hearing be scheduled. The request shall be made to the
7 clerk of the court where the petition is filed prior to the initial
8 shelter care hearing. Upon the request of the parent, the court shall
9 schedule the hearing within seventy-two hours of the request, excluding
10 Saturdays, Sundays, and holidays. The clerk shall notify all other
11 parties of the hearing by any reasonable means.

12 (2)(a) If it is likely that the child will remain in shelter care
13 longer than seventy-two hours, in those areas in which child welfare
14 services are being provided by a supervising agency, the supervising
15 agency shall assume case management responsibilities of the case. The
16 department or supervising agency shall submit a recommendation to the
17 court as to the further need for shelter care in all cases in which the
18 child will remain in shelter care longer than the seventy-two hour
19 period. In all other cases, the recommendation shall be submitted by
20 the juvenile court probation counselor.

21 (b) All parties have the right to present testimony to the court
22 regarding the need or lack of need for shelter care.

23 (c) Hearsay evidence before the court regarding the need or lack of
24 need for shelter care must be supported by sworn testimony, affidavit,
25 or declaration of the person offering such evidence.

26 (3)(a) At the commencement of the hearing, the court shall notify
27 the parent, guardian, or custodian of the following:

28 (i) The parent, guardian, or custodian has the right to a shelter
29 care hearing;

30 (ii) The nature of the shelter care hearing, the rights of the
31 parents, and the proceedings that will follow; and

32 (iii) If the parent, guardian, or custodian is not represented by
33 counsel, the right to be represented. If the parent, guardian, or
34 custodian is indigent, the court shall appoint counsel as provided in
35 RCW 13.34.090; and

36 (b) If a parent, guardian, or legal custodian desires to waive the
37 shelter care hearing, the court shall determine, on the record and with
38 the parties present, whether such waiver is knowing and voluntary. A

1 parent may not waive his or her right to the shelter care hearing
2 unless he or she appears in court and the court determines that the
3 waiver is knowing and voluntary. Regardless of whether the court
4 accepts the parental waiver of the shelter care hearing, the court must
5 provide notice to the parents of their rights required under (a) of
6 this subsection and make the finding required under subsection (4) of
7 this section.

8 (4) At the shelter care hearing the court shall examine the need
9 for shelter care and inquire into the status of the case. The
10 paramount consideration for the court shall be the health, welfare, and
11 safety of the child. At a minimum, the court shall inquire into the
12 following:

13 (a) Whether the notice required under RCW 13.34.062 was given to
14 all known parents, guardians, or legal custodians of the child. The
15 court shall make an express finding as to whether the notice required
16 under RCW 13.34.062 was given to the parent, guardian, or legal
17 custodian. If actual notice was not given to the parent, guardian, or
18 legal custodian and the whereabouts of such person is known or can be
19 ascertained, the court shall order the department to make reasonable
20 efforts to advise the parent, guardian, or legal custodian of the
21 status of the case, including the date and time of any subsequent
22 hearings, and their rights under RCW 13.34.090;

23 (b) Whether the child can be safely returned home while the
24 adjudication of the dependency is pending;

25 (c) What efforts have been made to place the child with a relative.
26 The court shall ask the parents whether the department discussed with
27 them the placement of the child with a relative or other suitable
28 person described in RCW 13.34.130(1)(b) and shall determine what
29 efforts have been made toward such a placement;

30 (d) What services were provided to the family to prevent or
31 eliminate the need for removal of the child from the child's home. If
32 the dependency petition or other information before the court alleges
33 that homelessness or the lack of suitable housing was a significant
34 factor contributing to the removal of the child, the court shall
35 inquire as to whether housing assistance was provided to the family to
36 prevent or eliminate the need for removal of the child or children;

37 (e) Is the placement proposed by the department or supervising

1 agency the least disruptive and most family-like setting that meets the
2 needs of the child;

3 (f) Whether it is in the best interest of the child to remain
4 enrolled in the school, developmental program, or child care the child
5 was in prior to placement and what efforts have been made to maintain
6 the child in the school, program, or child care if it would be in the
7 best interest of the child to remain in the same school, program, or
8 child care;

9 (g) Appointment of a guardian ad litem or attorney;

10 (h) Whether the child is or may be an Indian child as defined in
11 RCW 13.38.040, whether the provisions of the federal Indian child
12 welfare act or chapter 13.38 RCW apply, and whether there is compliance
13 with the federal Indian child welfare act and chapter 13.38 RCW,
14 including notice to the child's tribe;

15 (i) Whether, as provided in RCW 26.44.063, restraining orders, or
16 orders expelling an allegedly abusive household member from the home of
17 a nonabusive parent, guardian, or legal custodian, will allow the child
18 to safely remain in the home;

19 (j) Whether any orders for examinations, evaluations, or immediate
20 services are needed. The court may not order a parent to undergo
21 examinations, evaluation, or services at the shelter care hearing
22 unless the parent agrees to the examination, evaluation, or service;

23 (k) The terms and conditions for parental, sibling, and family
24 visitation.

25 (5)(a) The court shall release a child alleged to be dependent to
26 the care, custody, and control of the child's parent, guardian, or
27 legal custodian unless the court finds there is reasonable cause to
28 believe that:

29 (i) After consideration of the specific services that have been
30 provided, reasonable efforts have been made to prevent or eliminate the
31 need for removal of the child from the child's home and to make it
32 possible for the child to return home; and

33 (ii)(A) The child has no parent, guardian, or legal custodian to
34 provide supervision and care for such child; or

35 (B) The release of such child would present a serious threat of
36 substantial harm to such child, notwithstanding an order entered
37 pursuant to RCW 26.44.063; or

1 (C) The parent, guardian, or custodian to whom the child could be
2 released has been charged with violating RCW 9A.40.060 or 9A.40.070.

3 (b) If the court does not release the child to his or her parent,
4 guardian, or legal custodian, the court shall order placement with a
5 relative or other suitable person as described in RCW 13.34.130(1)(b),
6 unless there is reasonable cause to believe the health, safety, or
7 welfare of the child would be jeopardized or that the efforts to
8 reunite the parent and child will be hindered. If such relative or
9 other suitable person appears otherwise suitable and competent to
10 provide care and treatment, the criminal history background check need
11 not be completed before placement, but as soon as possible after
12 placement. The court must also determine whether placement with the
13 relative or other suitable person is in the child's best interests.
14 The relative or other suitable person must be willing and available to:

15 (i) Care for the child and be able to meet any special needs of the
16 child;

17 (ii) Facilitate the child's visitation with siblings, if such
18 visitation is part of the supervising agency's plan or is ordered by
19 the court; and

20 (iii) Cooperate with the department or supervising agency in
21 providing necessary background checks and home studies.

22 (c) If the child was not initially placed with a relative or other
23 suitable person, and the court does not release the child to his or her
24 parent, guardian, or legal custodian, the supervising agency shall make
25 reasonable efforts to locate a relative or other suitable person
26 pursuant to RCW 13.34.060(1). In determining placement, the court
27 shall weigh the child's length of stay and attachment to the current
28 provider in determining what is in the best interest of the child.

29 (d) If a relative or other suitable person is not available, the
30 court shall order continued shelter care and shall set forth its
31 reasons for the order. If the court orders placement of the child with
32 a person not related to the child and not licensed to provide foster
33 care, the placement is subject to all terms and conditions of this
34 section that apply to relative placements.

35 (e) Any placement with a relative, or other suitable person
36 approved by the court pursuant to this section, shall be contingent
37 upon cooperation with the department's or supervising agency's case
38 plan and compliance with court orders related to the care and

1 supervision of the child including, but not limited to, court orders
2 regarding parent-child contacts, sibling contacts, and any other
3 conditions imposed by the court. Noncompliance with the case plan or
4 court order is grounds for removal of the child from the home of the
5 relative or other suitable person, subject to review by the court.

6 (f) Uncertainty by a parent, guardian, legal custodian, relative,
7 or other suitable person that the alleged abuser has in fact abused the
8 child shall not, alone, be the basis upon which a child is removed from
9 the care of a parent, guardian, or legal custodian under (a) of this
10 subsection, nor shall it be a basis, alone, to preclude placement with
11 a relative or other suitable person under (b) of this subsection.

12 (6)(a) A shelter care order issued pursuant to this section shall
13 include the requirement for a case conference as provided in RCW
14 13.34.067. However, if the parent is not present at the shelter care
15 hearing, or does not agree to the case conference, the court shall not
16 include the requirement for the case conference in the shelter care
17 order.

18 (b) If the court orders a case conference, the shelter care order
19 shall include notice to all parties and establish the date, time, and
20 location of the case conference which shall be no later than thirty
21 days before the fact-finding hearing.

22 (c) The court may order another conference, case staffing, or
23 hearing as an alternative to the case conference required under RCW
24 13.34.067 so long as the conference, case staffing, or hearing ordered
25 by the court meets all requirements under RCW 13.34.067, including the
26 requirement of a written agreement specifying the services to be
27 provided to the parent.

28 (7)(a) A shelter care order issued pursuant to this section may be
29 amended at any time with notice and hearing thereon. The shelter care
30 decision of placement shall be modified only upon a showing of change
31 in circumstances. No child may be placed in shelter care for longer
32 than thirty days without an order, signed by the judge, authorizing
33 continued shelter care.

34 (b)(i) An order releasing the child on any conditions specified in
35 this section may at any time be amended, with notice and hearing
36 thereon, so as to return the child to shelter care for failure of the
37 parties to conform to the conditions originally imposed.

1 (ii) The court shall consider whether nonconformance with any
2 conditions resulted from circumstances beyond the control of the
3 parent, guardian, or legal custodian and give weight to that fact
4 before ordering return of the child to shelter care.

5 (8)(a) If a child is returned home from shelter care a second time
6 in the case, or if the supervisor of the caseworker deems it necessary,
7 the multidisciplinary team may be reconvened.

8 (b) If a child is returned home from shelter care a second time in
9 the case a law enforcement officer must be present and file a report to
10 the department.

11 NEW SECTION. **Sec. 7.** (1) The legislature finds that any person
12 who has had a founded finding of child abuse or neglect or has been
13 involved in a dependency action involving one or more of his or her
14 children is able to turn his or her life around and establish good
15 parenting relationships with his or her children. Unfortunately, his
16 or her prior involvement with child protective services or the
17 dependency court can hamper such a person's ability to find future
18 employment, especially if the employment involves unsupervised access
19 to children or other vulnerable populations.

20 (2) The legislature further finds that a number of states permit
21 convicted offenders to seek a certificate of rehabilitation in certain
22 situations. Generally, the certificate declares that a convicted
23 individual is rehabilitated after completing a prison sentence or being
24 released on parole or supervision. Usually, the applicant for a
25 certificate must prove that he or she has met certain criteria before
26 a certificate will be awarded. Such a certificate often restores
27 certain rights to the applicant and makes him or her eligible for
28 certain employment for which he or she would not be eligible without
29 the certificate.

30 (3) The department of social and health services shall convene a
31 work group to explore the possibility of creating a certificate of
32 suitability for any person who has turned his or her life around after
33 having been involved with child protective services or the dependency
34 system. The work group must contain, but not be limited to, persons
35 representing the following: The courts, veteran parents, parent
36 attorneys, foster parents, relative caregivers, kinship caregivers,
37 child-placing agencies, the attorney general's office, the governor's

1 policy office, the office of public defense parent representation
2 program, and the legislature. The work group shall explore the
3 following issues:

- 4 (a) The factors to consider in granting a certificate;
- 5 (b) The entity with the authority to grant the certificate;
- 6 (c) The process to be used to obtain such a certificate; and
- 7 (d) The effect such a certificate will have on employment or
8 volunteer work with vulnerable populations.

9 (4) The department of social and health services shall report the
10 work group's recommendations to the appropriate committees of the
11 legislature no later than December 31, 2013.

12 NEW SECTION. **Sec. 8.** The department of social and health services
13 shall adopt all necessary rules to implement this act.

14 NEW SECTION. **Sec. 9.** Section 4 of this act expires December 1,
15 2013.

16 NEW SECTION. **Sec. 10.** Section 5 of this act takes effect December
17 1, 2013.

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