
SUBSTITUTE SENATE BILL 6095

State of Washington

63rd Legislature

2014 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Hargrove, Kline, and Roach)

READ FIRST TIME 01/29/14.

1 AN ACT Relating to background checks for persons who will have
2 access to children or vulnerable adults; and amending RCW 13.34.130,
3 43.43.842, and 43.20A.710.

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

5 **Sec. 1.** RCW 13.34.130 and 2013 c 254 s 1 are each amended to read
6 as follows:

7 If, after a fact-finding hearing pursuant to RCW 13.34.110, it has
8 been proven by a preponderance of the evidence that the child is
9 dependent within the meaning of RCW 13.34.030 after consideration of
10 the social study prepared pursuant to RCW 13.34.110 and after a
11 disposition hearing has been held pursuant to RCW 13.34.110, the court
12 shall enter an order of disposition pursuant to this section.

13 (1) The court shall order one of the following dispositions of the
14 case:

15 (a) Order a disposition that maintains the child in his or her
16 home, which shall provide a program designed to alleviate the immediate
17 danger to the child, to mitigate or cure any damage the child has
18 already suffered, and to aid the parents so that the child will not be
19 endangered in the future. In determining the disposition, the court

1 should choose services to assist the parents in maintaining the child
2 in the home, including housing assistance, if appropriate, that least
3 interfere with family autonomy and are adequate to protect the child.

4 (b)(i) Order the child to be removed from his or her home and into
5 the custody, control, and care of a relative or other suitable person,
6 the department, or a supervising agency for supervision of the child's
7 placement. If the court orders that the child be placed with a
8 caregiver over the objections of the parent or the department, the
9 court shall articulate, on the record, his or her reasons for ordering
10 the placement. The court may not order an Indian child, as defined in
11 RCW 13.38.040, to be removed from his or her home unless the court
12 finds, by clear and convincing evidence including testimony of
13 qualified expert witnesses, that the continued custody of the child by
14 the parent or Indian custodian is likely to result in serious emotional
15 or physical damage to the child.

16 (ii) The department or supervising agency has the authority to
17 place the child, subject to review and approval by the court (A) with
18 a relative as defined in RCW 74.15.020(2)(a), (B) in the home of
19 another suitable person if the child or family has a preexisting
20 relationship with that person, and the person has completed all
21 required criminal history background checks and otherwise appears to
22 the department or supervising agency to be suitable and competent to
23 provide care for the child((7)): PROVIDED, That if such relative or
24 other suitable person appears otherwise suitable and competent to
25 provide care and treatment, the fingerprint-based background check need
26 not be completed before placement, but as soon as possible after
27 placement. The department must not automatically disqualify a relative
28 or other suitable person based upon standards that are more extensive
29 than guidelines provided by the federal government in the adoption and
30 safe families act of 1997. The state and its officers, agents, and
31 employees may not be held criminally or civilly liable for a placement
32 decision under this subsection (1)(b)(ii)(B) unless the state or its
33 officers, agents, and employees acted with reckless disregard; or (C)
34 in a foster family home or group care facility licensed pursuant to
35 chapter 74.15 RCW.

36 (iii) The department may also consider placing the child, subject
37 to review and approval by the court, with a person with whom the
38 child's sibling or half-sibling is residing or a person who has adopted

1 the sibling or half-sibling of the child being placed as long as the
2 person has completed all required criminal history background checks
3 and otherwise appears to the department or supervising agency to be
4 competent to provide care for the child.

5 (2) Absent good cause, the department or supervising agency shall
6 follow the wishes of the natural parent regarding the placement of the
7 child in accordance with RCW 13.34.260.

8 (3) The department or supervising agency may only place a child
9 with a person not related to the child as defined in RCW
10 74.15.020(2)(a), including a placement provided for in subsection
11 (1)(b)(iii) of this section, when the court finds that such placement
12 is in the best interest of the child. Unless there is reasonable cause
13 to believe that the health, safety, or welfare of the child would be
14 jeopardized or that efforts to reunite the parent and child will be
15 hindered, the child shall be placed with a person who is willing,
16 appropriate, and available to care for the child, and who is: (I)
17 Related to the child as defined in RCW 74.15.020(2)(a) with whom the
18 child has a relationship and is comfortable; or (II) a suitable person
19 as described in subsection (1)(b) of this section. The court shall
20 consider the child's existing relationships and attachments when
21 determining placement.

22 (4) When placing an Indian child in out-of-home care, the
23 department or supervising agency shall follow the placement preference
24 characteristics in RCW 13.38.180.

25 (5) Placement of the child with a relative or other suitable person
26 as described in subsection (1)(b) of this section shall be given
27 preference by the court. An order for out-of-home placement may be
28 made only if the court finds that reasonable efforts have been made to
29 prevent or eliminate the need for removal of the child from the child's
30 home and to make it possible for the child to return home, specifying
31 the services, including housing assistance, that have been provided to
32 the child and the child's parent, guardian, or legal custodian, and
33 that preventive services have been offered or provided and have failed
34 to prevent the need for out-of-home placement, unless the health,
35 safety, and welfare of the child cannot be protected adequately in the
36 home, and that:

37 (a) There is no parent or guardian available to care for such
38 child;

1 (b) The parent, guardian, or legal custodian is not willing to take
2 custody of the child; or

3 (c) The court finds, by clear, cogent, and convincing evidence, a
4 manifest danger exists that the child will suffer serious abuse or
5 neglect if the child is not removed from the home and an order under
6 RCW 26.44.063 would not protect the child from danger.

7 (6) If the court has ordered a child removed from his or her home
8 pursuant to subsection (1)(b) of this section, the court shall consider
9 whether it is in a child's best interest to be placed with, have
10 contact with, or have visits with siblings.

11 (a) There shall be a presumption that such placement, contact, or
12 visits are in the best interests of the child provided that:

13 (i) The court has jurisdiction over all siblings subject to the
14 order of placement, contact, or visitation pursuant to petitions filed
15 under this chapter or the parents of a child for whom there is no
16 jurisdiction are willing to agree; and

17 (ii) There is no reasonable cause to believe that the health,
18 safety, or welfare of any child subject to the order of placement,
19 contact, or visitation would be jeopardized or that efforts to reunite
20 the parent and child would be hindered by such placement, contact, or
21 visitation. In no event shall parental visitation time be reduced in
22 order to provide sibling visitation.

23 (b) The court may also order placement, contact, or visitation of
24 a child with a stepbrother or stepsister provided that in addition to
25 the factors in (a) of this subsection, the child has a relationship and
26 is comfortable with the stepsibling.

27 (7) If the court has ordered a child removed from his or her home
28 pursuant to subsection (1)(b) of this section and placed into
29 nonparental or nonrelative care, the court shall order a placement that
30 allows the child to remain in the same school he or she attended prior
31 to the initiation of the dependency proceeding when such a placement is
32 practical and in the child's best interest.

33 (8) If the court has ordered a child removed from his or her home
34 pursuant to subsection (1)(b) of this section, the court may order that
35 a petition seeking termination of the parent and child relationship be
36 filed if the requirements of RCW 13.34.132 are met.

37 (9) If there is insufficient information at the time of the
38 disposition hearing upon which to base a determination regarding the

1 suitability of a proposed placement with a relative or other suitable
2 person, the child shall remain in foster care and the court shall
3 direct the department or supervising agency to conduct necessary
4 background investigations as provided in chapter 74.15 RCW and report
5 the results of such investigation to the court within thirty days.
6 However, if such relative or other person appears otherwise suitable
7 and competent to provide care and treatment, the criminal history
8 background check need not be completed before placement, but as soon as
9 possible after placement. Any placements with relatives or other
10 suitable persons, pursuant to this section, shall be contingent upon
11 cooperation by the relative or other suitable person with the agency
12 case plan and compliance with court orders related to the care and
13 supervision of the child including, but not limited to, court orders
14 regarding parent-child contacts, sibling contacts, and any other
15 conditions imposed by the court. Noncompliance with the case plan or
16 court order shall be grounds for removal of the child from the
17 relative's or other suitable person's home, subject to review by the
18 court.

19 **Sec. 2.** RCW 43.43.842 and 2007 c 387 s 4 are each amended to read
20 as follows:

21 (1)(a) The secretary of social and health services and the
22 secretary of health shall adopt additional requirements for the
23 licensure or relicensure of agencies, facilities, and licensed
24 individuals who provide care and treatment to vulnerable adults,
25 including nursing pools registered under chapter 18.52C RCW. These
26 additional requirements shall ensure that any person associated with a
27 licensed agency or facility having unsupervised access with a
28 vulnerable adult shall not be the respondent in an active protective
29 order under RCW 74.34.130, nor have been: (i) Convicted of a crime
30 against persons as defined in RCW 43.43.830, except as provided in this
31 section; (ii) convicted of crimes relating to financial exploitation as
32 defined in RCW 43.43.830, except as provided in this section; or (iii)
33 found in any disciplinary board final decision to have abused a
34 vulnerable adult under RCW 43.43.830.

35 (b) A person associated with a licensed agency or facility who has
36 unsupervised access with a vulnerable adult shall make the disclosures
37 specified in RCW 43.43.834(2). The person shall make the disclosures

1 in writing, sign, and swear to the contents under penalty of perjury.
2 The person shall, in the disclosures, specify all crimes against
3 children or other persons, all crimes relating to financial
4 exploitation, and all crimes relating to drugs as defined in RCW
5 43.43.830, committed by the person.

6 (2) The rules adopted under this section shall permit the licensee
7 to consider the criminal history of an applicant for employment in a
8 licensed facility when the applicant has one or more convictions for a
9 past offense and:

10 (a) The offense was simple assault, assault in the fourth degree,
11 or the same offense as it may be renamed, and three or more years have
12 passed between the most recent conviction and the date of application
13 for employment;

14 (b) The offense was prostitution, or the same offense as it may be
15 renamed, and three or more years have passed between the most recent
16 conviction and the date of application for employment;

17 (c) The offense was theft in the third degree, or the same offense
18 as it may be renamed, and three or more years have passed between the
19 most recent conviction and the date of application for employment;

20 (d) The offense was theft in the second degree, or the same offense
21 as it may be renamed, and five or more years have passed between the
22 most recent conviction and the date of application for employment;

23 (e) The offense was forgery, or the same offense as it may be
24 renamed, and five or more years have passed between the most recent
25 conviction and the date of application for employment;

26 (f) The department of social and health services reviewed the
27 employee's otherwise disqualifying criminal history through the
28 department of social and health services' background assessment review
29 team process conducted in 2002, and determined that such employee could
30 remain in a position covered by this section; or

31 (g) The otherwise disqualifying conviction or disposition has been
32 the subject of a pardon, annulment, or other equivalent procedure.

33 The offenses set forth in (a) through ~~((e))~~ (g) of this
34 subsection do not automatically disqualify an applicant from employment
35 by a licensee. Nothing in this section may be construed to require the
36 employment of any person against a licensee's judgment.

37 (3) In consultation with law enforcement personnel, the secretary
38 of social and health services and the secretary of health shall

1 investigate, or cause to be investigated, the conviction record and the
2 protection proceeding record information under this chapter of the
3 staff of each agency or facility under their respective jurisdictions
4 seeking licensure or relicensure. An individual responding to a
5 criminal background inquiry request from his or her employer or
6 potential employer shall disclose the information about his or her
7 criminal history under penalty of perjury. The secretaries shall use
8 the information solely for the purpose of determining eligibility for
9 licensure or relicensure. Criminal justice agencies shall provide the
10 secretaries such information as they may have and that the secretaries
11 may require for such purpose.

12 **Sec. 3.** RCW 43.20A.710 and 2012 c 164 s 505 are each amended to
13 read as follows:

14 (1) The secretary shall investigate the conviction records, pending
15 charges and disciplinary board final decisions of:

16 (a) Any current employee or applicant seeking or being considered
17 for any position with the department who will or may have unsupervised
18 access to children, vulnerable adults, or individuals with mental
19 illness or developmental disabilities. This includes, but is not
20 limited to, positions conducting comprehensive assessments, financial
21 eligibility determinations, licensing and certification activities,
22 investigations, surveys, or case management; or for state positions
23 otherwise required by federal law to meet employment standards;

24 (b) Individual providers who are paid by the state and providers
25 who are paid by home care agencies to provide in-home services
26 involving unsupervised access to persons with physical, mental, or
27 developmental disabilities or mental illness, or to vulnerable adults
28 as defined in chapter 74.34 RCW, including but not limited to services
29 provided under chapter 74.39 or 74.39A RCW; and

30 (c) Individuals or businesses or organizations for the care,
31 supervision, case management, or treatment of children, persons with
32 developmental disabilities, or vulnerable adults, including but not
33 limited to services contracted for under chapter 18.20, 70.127, 70.128,
34 72.36, or 74.39A RCW or Title 71A RCW.

35 (2) The secretary shall require a fingerprint-based background
36 check through both the Washington state patrol and the federal bureau
37 of investigation as provided in RCW 43.43.837. Unless otherwise

1 authorized by law, the secretary shall use the information solely for
2 the purpose of determining the character, suitability, and competence
3 of the applicant.

4 (3) Except as provided in subsection (4) of this section, an
5 individual provider or home care agency provider who has resided in the
6 state less than three years before applying for employment involving
7 unsupervised access to a vulnerable adult as defined in chapter 74.34
8 RCW must be fingerprinted for the purpose of investigating conviction
9 records through both the Washington state patrol and the federal bureau
10 of investigation. This subsection applies only with respect to the
11 provision of in-home services funded by medicaid personal care under
12 RCW 74.09.520, community options program entry system waiver services
13 under RCW 74.39A.030, or chore services under RCW 74.39A.110. However,
14 this subsection does not supersede RCW 74.15.030(2)(b).

15 (4) Long-term care workers, as defined in RCW 74.39A.009, who are
16 hired after January 7, 2012, are subject to background checks under RCW
17 74.39A.056, except that the department may require a background check
18 at any time under RCW 43.43.837. For the purposes of this subsection,
19 "background check" includes, but is not limited to, a fingerprint check
20 submitted for the purpose of investigating conviction records through
21 both the Washington state patrol and the federal bureau of
22 investigation.

23 (5) An individual provider or home care agency provider hired to
24 provide in-home care for and having unsupervised access to a vulnerable
25 adult as defined in chapter 74.34 RCW must have no conviction for a
26 disqualifying crime under RCW 43.43.830 and 43.43.842. An individual
27 or home care agency provider must also have no conviction for a crime
28 relating to drugs as defined in RCW 43.43.830. This subsection applies
29 only with respect to the provision of in-home services funded by
30 medicaid personal care under RCW 74.09.520, community options program
31 entry system waiver services under RCW 74.39A.030, or chore services
32 under RCW 74.39A.110.

33 (6) The secretary shall provide the results of the state background
34 check on long-term care workers, including individual providers, to the
35 persons hiring them or to their legal guardians, if any, for their
36 determination of the character, suitability, and competence of the
37 applicants. If the person elects to hire or retain an individual
38 provider after receiving notice from the department that the applicant

1 has a conviction for an offense that would disqualify the applicant
2 from having unsupervised access to persons with physical, mental, or
3 developmental disabilities or mental illness, or to vulnerable adults
4 as defined in chapter 74.34 RCW, then the secretary shall deny payment
5 for any subsequent services rendered by the disqualified individual
6 provider.

7 (7) Criminal justice agencies shall provide the secretary such
8 information as they may have and that the secretary may require for
9 such purpose.

10 (8) Any person whose criminal history would otherwise disqualify
11 the person under this section from a position which will or may have
12 unsupervised access to children, vulnerable adults, or persons with
13 mental illness or developmental disabilities shall not be disqualified
14 if the department of social and health services reviewed the person's
15 otherwise disqualifying criminal history through the department of
16 social and health services' background assessment review team process
17 conducted in 2002 and determined that such person could remain in a
18 position covered by this section, or if the otherwise disqualifying
19 conviction or disposition has been the subject of a pardon, annulment,
20 or other equivalent procedure.

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