

HOUSE BILL REPORT

ESHB 2621

As Passed House:
February 10, 2016

Title: An act relating to the department of early learning's access to records and personal information for purposes of determining character and suitability of child care workers.

Brief Description: Concerning the department of early learning's access to records and personal information for purposes of determining character and suitability of child care workers.

Sponsors: House Committee on Early Learning & Human Services (originally sponsored by Representatives Kagi, Walsh, Senn, Stokesbary, Lytton, Magendanz, Muri and Goodman; by request of Department of Early Learning).

Brief History:

Committee Activity:

Early Learning & Human Services: 1/26/16, 2/3/16 [DPS].

Floor Activity:

Passed House: 2/10/16, 55-42.

Brief Summary of Engrossed Substitute Bill

- Directs the Department of Early Learning (DEL) to obtain records, reports, and personal information concerning child abuse or neglect from the Department of Social and Health Services (DSHS) for the purposes of conducting background checks on all individuals who have unsupervised access to children in child care.
- Restricts the DEL from denying a license to a child care worker based solely on an unfounded allegation of child abuse or neglect.
- Eliminates the requirement that the DSHS destroys records concerning screened-out, unfounded, and inconclusive reports of child abuse and neglect.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Kagi, Chair; Senn, Vice Chair; Walsh, Ranking

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.

Minority Member; Dent, Assistant Ranking Minority Member; Hawkins, Kilduff, McCaslin, Ortiz-Self, Sawyer, Scott and Walkinshaw.

Staff: Ashley Paintner (786-7120).

Background:

The Department of Early Learning (DEL) oversees and regulates child care licensing in Washington. In this capacity, the DEL conducts background checks to find and evaluate any history of arrests, convictions, negative actions, or other information that raises concern about an individual's character, suitability, or competence to care for or have unsupervised access to children in care.

Background Check Requirements for Child Care Providers.

State law requires the DEL to conduct background checks on anyone who is authorized to care for or have unsupervised access to children in licensed child care facilities. In determining whether an individual is of appropriate character, suitability, and competence to provide child care and early learning services to children, the DEL may consider the history of past involvement of child protective services or law enforcement agencies with the individual for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of a child. No report of child abuse or neglect that has been destroyed or expunged may be used for such purposes.

Federal Requirements. In 2014 Congress reauthorized the Child Care and Development Fund (CCDF) program and made expansive changes to protect the health and safety of children in child care. In order to receive CCDF funds, a state must establish background check requirements for individuals who have unsupervised access to children in child care. A comprehensive background check must be conducted at least once every 5 years. The criminal background check process must include a search of state-based child abuse and neglect registries and databases. Under federal law, a child care provider is ineligible to provide care if such individual:

- refuses to consent to the criminal background check;
- knowingly makes a materially false statement in connection with such criminal background check;
- is registered, or is required to be registered, as a sex offender;
- has been convicted of a felony consisting of: murder; child abuse or neglect; a crime against children; spousal abuse; a crime involving rape or sexual assault; kidnapping; arson; physical assault; or a drug-related offense committed during the preceding five years; or
- has been convicted of a violent misdemeanor committed as an adult against a child, including child abuse, child endangerment, sexual assault, or a misdemeanor involving child pornography.

The DEL is required to provide the results of background checks to child care providers in a statement that indicates whether the provider is eligible or ineligible. The DEL may not publicly release the results of individual background checks.

Records of Child Abuse or Neglect.

The Children's Administration (CA) of the Department of Social and Health Services (DSHS) investigates allegations of child abuse and neglect. After receiving a child abuse or neglect report, the CA must determine whether to investigate the allegation. Screened-out reports of child abuse or neglect are those that the CA determines to be not credible and are not referred for investigation.

The term "abuse or neglect" means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding certain conduct, or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child.

The term "founded" means the determination following an investigation by the DSHS that, based on available information, it is more likely than not that child abuse or neglect did occur. The term "unfounded" means the determination following an investigation by the DSHS that available information indicates that, more likely than not, child abuse or neglect did not occur or that there is insufficient evidence for the DSHS to determine whether the alleged child abuse did or did not occur.

Results of Child Abuse and Neglect Investigations. The CA investigates all reports that do not screen out. After an investigation is complete, the CA will make a founded or unfounded determination. Until 2008 the CA also made inconclusive determinations. This meant that a child abuse or neglect decision could not be made on a more likely than not basis.

Screened Out, Unfounded, and Inconclusive Investigation Records. In 2007 the Legislature enacted Substitute Senate Bill 5321, which requires the CA to destroy all records relating to the following child abuse or neglect referrals:

- for screened-out referrals within three years from receipt of the report; and
- for unfounded and inconclusive referrals within six years of completion of the investigation, unless a prior or subsequent founded referral has been received regarding the child who is the subject of the report, a sibling or half-sibling of the child, or a parent, guardian, or legal custodian of the child.

Disclosing Family Assessment Response Records. In 2012 the Legislature created the Family Assessment Response (FAR) program. The FAR program is a method of responding to certain reports of child abuse or neglect that does not involve an investigation and where voluntary services are provided. No information about a family's participation in the FAR program may be disclosed to a child-placing agency or any other agency receiving children without consent of the subject of the report, unless:

- the individual seeks to become a licensed foster parent or adoptive parent; or
- the individual is the parent or legal guardian of a child being served by one of the agencies.

Summary of Engrossed Substitute Bill:

Background Check Requirements for Child Care Providers.

To satisfy the DEL's background check requirements for child care providers and other persons having unsupervised access to children in care, the DEL is directed to obtain records, reports, and personal information concerning child abuse or neglect from the DSHS. The

records must include: (1) civil adjudication proceeding records; and (2) investigative records and files held by the DSHS that pertain to:

- founded findings of abuse or neglect;
- unfounded allegations of abuse or neglect; and
- ongoing investigations of abuse or neglect.

The DEL's access to records and information is restricted to only be those of:

- an applicant for a license issued by the DEL, including household members;
- a licensee with the DEL, including household members;
- a person seeking to volunteer with a person or entity licensed by the DEL; or
- a person seeking to be employed by the DEL.

Additionally, the DEL is restricted from sharing confidential child welfare records with other state agencies or persons, except as allowed by state law. A person's physical or mental health medical reports and drug and alcohol evaluations must not be disclosed to the DEL without the person's consent. Furthermore, a person's adoption records must not be shared with the DEL. The Director of the DEL is directed to adopt rules and investigate records, reports and personal information concerning child abuse or neglect for the purposes of carrying out the DEL's background check requirements. The DEL may not deny a license to a child care worker based solely on an unfounded allegation of child abuse or neglect. Nothing in the act affects an individual's right to appeal under 43.215 RCW.

Records of Child Abuse or Neglect.

The following requirements are eliminated:

- The DSHS must destroy all records concerning screened-out reports of child abuse or neglect within three years.
- The DSHS must destroy all records of unfounded or inconclusive reports within six years of completing an investigation, unless a prior or subsequent founded report has been received regarding the child who is the subject of the report, a sibling or half-sibling of the child, or a parent, guardian, or legal custodian of the child.

Exceptions to the rule that no unfounded, screened-out, or inconclusive report or information about a family's participation in the FAR program may be disclosed to a child-placing agency, private adoption agency, or any other agency receiving children, expectant mothers, or developmentally disabled persons for supervision or care are eliminated.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) In 2015 the House Early Learning and Human Services Committee passed House Bill 1672, which removed the expungement requirement for the DSHS; however, the bill did not make it through the Senate. This summer it was discovered that barriers in statute

exist, preventing background check staff at the DEL from accessing certain child abuse or neglect records for purposes of conducting federally required background checks. In order to keep kids safe in child care, the DEL needs access to these records.

This bill seeks to reinstate policies that were common practice before DEL was pulled out of the DSHS. There is not one license revocation administered by the DEL that would be considered borderline; these are issues of profound child safety. The DEL is not a criminal justice agency, but they do have to ensure that children in care are safe. If an applicant is denied a license they have the right to file an administrative appeal or they may also go to the court and obtain a formal review. These reviews are free to the applicant. Of the appeals over the past year, the DEL has reversed their decision in a handful of cases. The DEL believes this process is fair to the applicant.

(Opposed) None.

(Other) The Legislature requires the DSHS to have a risk-based system. In order to have a risk-based system, the DSHS has to look at chronicity. To access chronicity, the DSHS has to evaluate the background history of the family. If the state requires the DSHS to expunge records, the DEL and the DSHS cannot properly evaluate the issue of chronicity when conducting background checks.

Family child care providers support the intent of increasing health and safety for children in child care and the requirement that providers go through a thorough screening before having unsupervised access to children. Additionally, the DEL should have access to the information necessary to meet the federal requirements for child care background checks. However, the definition in RCW for "unfounded" is somewhat ambiguous. Access to these records for the DEL is important to get the whole picture, but the DEL should not be allowed to deny a license solely based on an unfounded finding. The bill should also address the appeals process available to providers.

Persons Testifying: (In support) Frank Ordway, Department of Early Learning.

(Other) Alex Hur, SEIU 925.

Persons Signed In To Testify But Not Testifying: None.