
SUBSTITUTE SENATE BILL 5774

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Kohl-Welles, Brandland and Shin; by request of Department of Social and Health Services)

READ FIRST TIME 02/23/07.

1 AN ACT Relating to background check requirements for the department
2 of social and health services and the department of early learning;
3 amending RCW 26.33.190 and 26.44.030; reenacting and amending RCW
4 74.15.030; and adding a new section to chapter 43.43 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.43 RCW
7 to read as follows:

8 (1) In order to determine the character, competence, and
9 suitability of any applicant or service provider to have unsupervised
10 access, the secretary may require a fingerprint-based background check
11 through the Washington state patrol and the federal bureau of
12 investigation at anytime, but shall require a fingerprint-based
13 background check when the applicant or service provider has resided in
14 the state less than three consecutive years before application, and:

15 (a) Is an applicant or service provider providing services to
16 children or people with developmental disabilities under RCW 74.15.030;

17 (b) Is an individual residing in an applicant or service provider's
18 home, facility, entity, agency, or business or who is authorized by the

1 department to provide services to children or people with developmental
2 disabilities under RCW 74.15.030; or

3 (c) Is an applicant or service provider providing in-home services
4 funded by:

5 (i) Medicaid personal care under RCW 74.09.520;

6 (ii) Community options program entry system waiver services under
7 RCW 74.39A.030;

8 (iii) Chore services under RCW 74.39A.110; or

9 (iv) Other home and community long-term care programs, established
10 pursuant to chapters 74.39 and 74.39A RCW, administered by the
11 department.

12 (2) The secretary shall require a fingerprint-based background
13 check through the Washington state patrol identification and criminal
14 history section and the federal bureau of investigation when the
15 department seeks to approve an applicant or service provider for a
16 foster or adoptive placement of children in accordance with federal and
17 state law.

18 (3) Any secure facility operated by the department under chapter
19 71.09 RCW shall require applicants and service providers to undergo a
20 fingerprint-based background check through the Washington state patrol
21 identification and criminal history section and the federal bureau of
22 investigation.

23 (4) Service providers and service provider applicants who are
24 required to complete a fingerprint-based background check may be hired
25 for a one hundred twenty-day provisional period as allowed under law or
26 program rules when:

27 (a) A fingerprint-based background check is pending; and

28 (b) The applicant or service provider is not disqualified based on
29 the immediate result of the background check.

30 (5) Fees charged by the Washington state patrol and the federal
31 bureau of investigation for fingerprint-based background checks shall
32 be paid by the department for applicants or service providers
33 providing:

34 (a) Services to people with a developmental disability under RCW
35 74.15.030;

36 (b) In-home services funded by medicaid personal care under RCW
37 74.09.520;

1 (c) Community options program entry system waiver services under
2 RCW 74.39A.030;

3 (d) Chore services under RCW 74.39A.110;

4 (e) Services under other home and community long-term care
5 programs, established pursuant to chapters 74.39 and 74.39A RCW,
6 administered by the department;

7 (f) Services in, or to residents of, a secure facility under RCW
8 71.09.115; and

9 (g) Foster care when fees create a hardship as required under RCW
10 74.15.030.

11 (6) Service providers licensed under RCW 74.15.030 must pay fees
12 charged by the Washington state patrol and the federal bureau of
13 investigation for conducting fingerprint-based background checks.

14 (7) Children's administration service providers licensed under RCW
15 74.15.030 may not pass on the cost of the background check fees to
16 their applicants unless the individual is determined to be disqualified
17 due to the background information.

18 (8) The department shall develop rules identifying the financial
19 responsibility of service providers, applicants, and the department for
20 paying the fees charged by law enforcement to roll, print, or scan
21 fingerprints-based for the purpose of a Washington state patrol or
22 federal bureau of investigation fingerprint-based background check.

23 (9) The department shall confirm that an applicant or service
24 provider is a United States citizen or an eligible noncitizen.
25 Eligibility status may be confirmed through verification of the
26 applicant's or service provider's social security number.

27 **Sec. 2.** RCW 26.33.190 and 1991 c 136 s 3 are each amended to read
28 as follows:

29 (1) Any person may at any time request an agency, the department,
30 an individual approved by the court, or a qualified salaried court
31 employee to prepare a preplacement report. A certificate signed under
32 penalty of perjury by the person preparing the report specifying his or
33 her qualifications as required in this chapter shall be attached to or
34 filed with each preplacement report and shall include a statement of
35 training or experience that qualifies the person preparing the report
36 to discuss relevant adoption issues. A person may have more than one

1 preplacement report prepared. All preplacement reports shall be filed
2 with the court in which the petition for adoption is filed.

3 (2) The preplacement report shall be a written document setting
4 forth all relevant information relating to the fitness of the person
5 requesting the report as an adoptive parent. The report shall be based
6 on a study which shall include an investigation of the home
7 environment, family life, health, facilities, and resources of the
8 person requesting the report. The report shall include a list of the
9 sources of information on which the report is based. The report shall
10 include a recommendation as to the fitness of the person requesting the
11 report to be an adoptive parent. The report shall also verify that the
12 following issues were discussed with the prospective adoptive parents:

13 (a) The concept of adoption as a lifelong developmental process and
14 commitment;

15 (b) The potential for the child to have feelings of identity
16 confusion and loss regarding separation from the birth parents;

17 (c) Disclosure of the fact of adoption to the child;

18 (d) The child's possible questions about birth parents and
19 relatives; and

20 (e) The relevance of the child's racial, ethnic, and cultural
21 heritage.

22 (3) All preplacement reports shall include (~~(an investigation)~~) a
23 background check of the conviction records, pending charges, or
24 disciplinary board final decisions of prospective adoptive parents.
25 The (~~(investigation)~~) background check shall include an examination of
26 state and national criminal identification data provided by the
27 Washington state patrol criminal identification system (~~(as described~~
28 ~~in chapter 43.43 RCW)~~) including, but not limited to, a fingerprint-
29 based background check of national crime information databases for any
30 person being investigated. It shall also include a review of any child
31 abuse and neglect history of any adult living in the prospective
32 adoptive parents' home. The background check of the child abuse and
33 neglect history shall include a review of the child abuse and neglect
34 registries of all states in which the prospective adoptive parents or
35 any other adult living in the home have lived during the five years
36 preceding the date of the preplacement report.

37 (4) An agency, the department, or a court approved individual may
38 charge a reasonable fee based on the time spent in conducting the study

1 and preparing the preplacement report. The court may set a reasonable
2 fee for conducting the study and preparing the report when a court
3 employee has prepared the report. An agency, the department, a court
4 approved individual, or the court may reduce or waive the fee if the
5 financial condition of the person requesting the report so warrants.
6 An agency's, the department's, or court approved individual's, fee is
7 subject to review by the court upon request of the person requesting
8 the report.

9 (5) The person requesting the report shall designate to the agency,
10 the department, the court approved individual, or the court in writing
11 the county in which the preplacement report is to be filed. If the
12 person requesting the report has not filed a petition for adoption, the
13 report shall be indexed in the name of the person requesting the report
14 and a cause number shall be assigned. A fee shall not be charged for
15 filing the report. The applicable filing fee may be charged at the
16 time a petition governed by this chapter is filed. Any subsequent
17 preplacement reports shall be filed together with the original report.

18 (6) A copy of the completed preplacement report shall be delivered
19 to the person requesting the report.

20 (7) A person may request that a report not be completed. A
21 reasonable fee may be charged for the value of work done.

22 **Sec. 3.** RCW 26.44.030 and 2005 c 417 s 1 are each amended to read
23 as follows:

24 (1)(a) When any practitioner, county coroner or medical examiner,
25 law enforcement officer, professional school personnel, registered or
26 licensed nurse, social service counselor, psychologist, pharmacist,
27 licensed or certified child care providers or their employees, employee
28 of the department, juvenile probation officer, placement and liaison
29 specialist, responsible living skills program staff, HOPE center staff,
30 or state family and children's ombudsman or any volunteer in the
31 ombudsman's office has reasonable cause to believe that a child has
32 suffered abuse or neglect, he or she shall report such incident, or
33 cause a report to be made, to the proper law enforcement agency or to
34 the department as provided in RCW 26.44.040.

35 (b) When any person, in his or her official supervisory capacity
36 with a nonprofit or for-profit organization, has reasonable cause to
37 believe that a child has suffered abuse or neglect caused by a person

1 over whom he or she regularly exercises supervisory authority, he or
2 she shall report such incident, or cause a report to be made, to the
3 proper law enforcement agency, provided that the person alleged to have
4 caused the abuse or neglect is employed by, contracted by, or
5 volunteers with the organization and coaches, trains, educates, or
6 counsels a child or children or regularly has unsupervised access to a
7 child or children as part of the employment, contract, or voluntary
8 service. No one shall be required to report under this section when he
9 or she obtains the information solely as a result of a privileged
10 communication as provided in RCW 5.60.060.

11 Nothing in this subsection (1)(b) shall limit a person's duty to
12 report under (a) of this subsection.

13 For the purposes of this subsection, the following definitions
14 apply:

15 (i) "Official supervisory capacity" means a position, status, or
16 role created, recognized, or designated by any nonprofit or for-profit
17 organization, either for financial gain or without financial gain,
18 whose scope includes, but is not limited to, overseeing, directing, or
19 managing another person who is employed by, contracted by, or
20 volunteers with the nonprofit or for-profit organization.

21 (ii) "Regularly exercises supervisory authority" means to act in
22 his or her official supervisory capacity on an ongoing or continuing
23 basis with regards to a particular person.

24 (c) The reporting requirement also applies to department of
25 corrections personnel who, in the course of their employment, observe
26 offenders or the children with whom the offenders are in contact. If,
27 as a result of observations or information received in the course of
28 his or her employment, any department of corrections personnel has
29 reasonable cause to believe that a child has suffered abuse or neglect,
30 he or she shall report the incident, or cause a report to be made, to
31 the proper law enforcement agency or to the department as provided in
32 RCW 26.44.040.

33 (d) The reporting requirement shall also apply to any adult who has
34 reasonable cause to believe that a child who resides with them, has
35 suffered severe abuse, and is able or capable of making a report. For
36 the purposes of this subsection, "severe abuse" means any of the
37 following: Any single act of abuse that causes physical trauma of
38 sufficient severity that, if left untreated, could cause death; any

1 single act of sexual abuse that causes significant bleeding, deep
2 bruising, or significant external or internal swelling; or more than
3 one act of physical abuse, each of which causes bleeding, deep
4 bruising, significant external or internal swelling, bone fracture, or
5 unconsciousness.

6 (e) The report must be made at the first opportunity, but in no
7 case longer than forty-eight hours after there is reasonable cause to
8 believe that the child has suffered abuse or neglect. The report must
9 include the identity of the accused if known.

10 (2) The reporting requirement of subsection (1) of this section
11 does not apply to the discovery of abuse or neglect that occurred
12 during childhood if it is discovered after the child has become an
13 adult. However, if there is reasonable cause to believe other children
14 are or may be at risk of abuse or neglect by the accused, the reporting
15 requirement of subsection (1) of this section does apply.

16 (3) Any other person who has reasonable cause to believe that a
17 child has suffered abuse or neglect may report such incident to the
18 proper law enforcement agency or to the department of social and health
19 services as provided in RCW 26.44.040.

20 (4) The department, upon receiving a report of an incident of
21 alleged abuse or neglect pursuant to this chapter, involving a child
22 who has died or has had physical injury or injuries inflicted upon him
23 or her other than by accidental means or who has been subjected to
24 alleged sexual abuse, shall report such incident to the proper law
25 enforcement agency. In emergency cases, where the child's welfare is
26 endangered, the department shall notify the proper law enforcement
27 agency within twenty-four hours after a report is received by the
28 department. In all other cases, the department shall notify the law
29 enforcement agency within seventy-two hours after a report is received
30 by the department. If the department makes an oral report, a written
31 report must also be made to the proper law enforcement agency within
32 five days thereafter.

33 (5) Any law enforcement agency receiving a report of an incident of
34 alleged abuse or neglect pursuant to this chapter, involving a child
35 who has died or has had physical injury or injuries inflicted upon him
36 or her other than by accidental means, or who has been subjected to
37 alleged sexual abuse, shall report such incident in writing as provided
38 in RCW 26.44.040 to the proper county prosecutor or city attorney for

1 appropriate action whenever the law enforcement agency's investigation
2 reveals that a crime may have been committed. The law enforcement
3 agency shall also notify the department of all reports received and the
4 law enforcement agency's disposition of them. In emergency cases,
5 where the child's welfare is endangered, the law enforcement agency
6 shall notify the department within twenty-four hours. In all other
7 cases, the law enforcement agency shall notify the department within
8 seventy-two hours after a report is received by the law enforcement
9 agency.

10 (6) Any county prosecutor or city attorney receiving a report under
11 subsection (5) of this section shall notify the victim, any persons the
12 victim requests, and the local office of the department, of the
13 decision to charge or decline to charge a crime, within five days of
14 making the decision.

15 (7) The department may conduct ongoing case planning and
16 consultation with those persons or agencies required to report under
17 this section, with consultants designated by the department, and with
18 designated representatives of Washington Indian tribes if the client
19 information exchanged is pertinent to cases currently receiving child
20 protective services. Upon request, the department shall conduct such
21 planning and consultation with those persons required to report under
22 this section if the department determines it is in the best interests
23 of the child. Information considered privileged by statute and not
24 directly related to reports required by this section must not be
25 divulged without a valid written waiver of the privilege.

26 (8) Any case referred to the department by a physician licensed
27 under chapter 18.57 or 18.71 RCW on the basis of an expert medical
28 opinion that child abuse, neglect, or sexual assault has occurred and
29 that the child's safety will be seriously endangered if returned home,
30 the department shall file a dependency petition unless a second
31 licensed physician of the parents' choice believes that such expert
32 medical opinion is incorrect. If the parents fail to designate a
33 second physician, the department may make the selection. If a
34 physician finds that a child has suffered abuse or neglect but that
35 such abuse or neglect does not constitute imminent danger to the
36 child's health or safety, and the department agrees with the
37 physician's assessment, the child may be left in the parents' home

1 while the department proceeds with reasonable efforts to remedy
2 parenting deficiencies.

3 (9) Persons or agencies exchanging information under subsection (7)
4 of this section shall not further disseminate or release the
5 information except as authorized by state or federal statute.
6 Violation of this subsection is a misdemeanor.

7 (10) Upon receiving reports of alleged abuse or neglect, the
8 department or law enforcement agency may interview children. The
9 interviews may be conducted on school premises, at day-care facilities,
10 at the child's home, or at other suitable locations outside of the
11 presence of parents. Parental notification of the interview must occur
12 at the earliest possible point in the investigation that will not
13 jeopardize the safety or protection of the child or the course of the
14 investigation. Prior to commencing the interview the department or law
15 enforcement agency shall determine whether the child wishes a third
16 party to be present for the interview and, if so, shall make reasonable
17 efforts to accommodate the child's wishes. Unless the child objects,
18 the department or law enforcement agency shall make reasonable efforts
19 to include a third party in any interview so long as the presence of
20 the third party will not jeopardize the course of the investigation.

21 (11) Upon receiving a report of alleged child abuse and neglect,
22 the department or investigating law enforcement agency shall have
23 access to all relevant records of the child in the possession of
24 mandated reporters and their employees.

25 (12) In investigating and responding to allegations of child abuse
26 and neglect, the department may conduct background checks as authorized
27 by state and federal law.

28 (13) The department shall maintain investigation records and
29 conduct timely and periodic reviews of all cases constituting abuse and
30 neglect. The department shall maintain a log of screened-out
31 nonabusive cases.

32 ((+13+)) (14) The department shall use a risk assessment process
33 when investigating alleged child abuse and neglect referrals. The
34 department shall present the risk factors at all hearings in which the
35 placement of a dependent child is an issue. Substance abuse must be a
36 risk factor. The department shall, within funds appropriated for this
37 purpose, offer enhanced community-based services to persons who are
38 determined not to require further state intervention.

1 (~~(14)~~) (15) Upon receipt of a report of alleged abuse or neglect
2 the law enforcement agency may arrange to interview the person making
3 the report and any collateral sources to determine if any malice is
4 involved in the reporting.

5 (~~(15)~~) (16) The department shall make reasonable efforts to learn
6 the name, address, and telephone number of each person making a report
7 of abuse or neglect under this section. The department shall provide
8 assurances of appropriate confidentiality of the identification of
9 persons reporting under this section. If the department is unable to
10 learn the information required under this subsection, the department
11 shall only investigate cases in which: (a) The department believes
12 there is a serious threat of substantial harm to the child; (b) the
13 report indicates conduct involving a criminal offense that has, or is
14 about to occur, in which the child is the victim; or (c) the department
15 has, after investigation, a report of abuse or neglect that has been
16 founded with regard to a member of the household within three years of
17 receipt of the referral.

18 **Sec. 4.** RCW 74.15.030 and 2006 c 265 s 402 and 2006 c 54 s 8 are
19 each reenacted and amended to read as follows:

20 The secretary shall have the power and it shall be the secretary's
21 duty:

22 (1) In consultation with the children's services advisory
23 committee, and with the advice and assistance of persons representative
24 of the various type agencies to be licensed, to designate categories of
25 facilities for which separate or different requirements shall be
26 developed as may be appropriate whether because of variations in the
27 ages, sex and other characteristics of persons served, variations in
28 the purposes and services offered or size or structure of the agencies
29 to be licensed hereunder, or because of any other factor relevant
30 thereto;

31 (2) In consultation with the children's services advisory
32 committee, and with the advice and assistance of persons representative
33 of the various type agencies to be licensed, to adopt and publish
34 minimum requirements for licensing applicable to each of the various
35 categories of agencies to be licensed.

36 The minimum requirements shall be limited to:

1 (a) The size and suitability of a facility and the plan of
2 operation for carrying out the purpose for which an applicant seeks a
3 license;

4 (b) ~~((The character, suitability and competence of an agency and
5 other persons associated with an agency directly responsible for the
6 care and treatment of children, expectant mothers or developmentally
7 disabled persons.~~

8 ~~In consultation with law enforcement personnel, the secretary shall
9 investigate the conviction record or pending charges and dependency
10 record information under chapter 43.43 RCW of each agency and its staff
11 seeking licensure or relicensure.~~

12 ~~No unfounded allegation of child abuse or neglect as defined in RCW
13 26.44.020 may be disclosed to a child placing agency, private adoption
14 agency, or any other provider licensed under this chapter. In order to
15 determine the suitability of applicants for an agency license,
16 licensees, their employees, and other persons who have unsupervised
17 access to children in care, and who have not resided in the state of
18 Washington during the three year period before being authorized to care
19 for children shall be fingerprinted. The fingerprints shall be
20 forwarded to the Washington state patrol and federal bureau of
21 investigation for a criminal history records check. The fingerprint
22 criminal history records checks will be at the expense of the licensee
23 except that in the case of a foster family home, if this expense would
24 work a hardship on the licensee, the department shall pay the expense.~~

25 ~~The licensee may not pass this cost on to the employee or
26 prospective employee, unless the employee is determined to be
27 unsuitable due to his or her criminal history record. The secretary
28 shall use the information solely for the purpose of determining
29 eligibility for a license and for determining the character,
30 suitability, and competence of those persons or agencies, excluding
31 parents, not required to be licensed who are authorized to care for
32 children, expectant mothers, and developmentally disabled persons.
33 Criminal justice agencies shall provide the secretary such information
34 as they may have and that the secretary may require for such purpose;~~

35 ~~(c)) Obtaining background information and any out-of-state
36 equivalent, to determine whether the applicant or service provider is
37 disqualified and to determine the character, competence, and~~

1 suitability of an agency, the agency's employees, volunteers, and other
2 persons associated with an agency;

3 (c) Conducting background checks for those who will or may have
4 unsupervised access to children, expectant mothers, or individuals with
5 a developmental disability;

6 (d) Obtaining child protective services information or records
7 maintained in the department case management information system. No
8 unfounded allegation of child abuse or neglect as defined in RCW
9 26.44.020 may be disclosed to a child-placing agency, private adoption
10 agency, or any other provider licensed under this chapter;

11 (e) Submitting a fingerprint-based background check through the
12 Washington state patrol under chapter 10.97 RCW and through the federal
13 bureau of investigation for:

14 (i) Agencies and their staff, volunteers, students, and interns
15 when the agency is seeking license or relicense;

16 (ii) Foster care and adoption placements; and

17 (iii) Any adult living in a home where a child may be placed;

18 (f) If any adult living in the home has not resided in the state of
19 Washington for the preceding five years, the department shall review
20 any child abuse and neglect registries maintained by any state where
21 the adult has resided over the preceding five years;

22 (g) The cost of fingerprint background check fees will be paid as
23 required in section 1 of this act;

24 (h) National and state background information must be used solely
25 for the purpose of determining eligibility for a license and for
26 determining the character, suitability, and competence of those persons
27 or agencies, excluding parents, not required to be licensed who are
28 authorized to care for children or expectant mothers;

29 (i) The number of qualified persons required to render the type of
30 care and treatment for which an agency seeks a license;

31 ~~((d))~~ (j) The safety, cleanliness, and general adequacy of the
32 premises to provide for the comfort, care and well-being of children,
33 expectant mothers or developmentally disabled persons;

34 ~~((e))~~ (k) The provision of necessary care, including food,
35 clothing, supervision and discipline; physical, mental and social well-
36 being; and educational, recreational and spiritual opportunities for
37 those served;

1 (~~(f)~~) (l) The financial ability of an agency to comply with
2 minimum requirements established pursuant to chapter 74.15 RCW and RCW
3 74.13.031; and

4 (~~(g)~~) (m) The maintenance of records pertaining to the admission,
5 progress, health and discharge of persons served;

6 (3) To investigate any person, including relatives by blood or
7 marriage except for parents, for character, suitability, and competence
8 in the care and treatment of children, expectant mothers, and
9 developmentally disabled persons prior to authorizing that person to
10 care for children, expectant mothers, and developmentally disabled
11 persons. However, if a child is placed with a relative under RCW
12 13.34.065 or 13.34.130, and if such relative appears otherwise suitable
13 and competent to provide care and treatment the criminal history
14 background check required by this section need not be completed before
15 placement, but shall be completed as soon as possible after placement;

16 (4) On reports of alleged child abuse and neglect, to investigate
17 agencies in accordance with chapter 26.44 RCW, including child day-care
18 centers and family day-care homes, to determine whether the alleged
19 abuse or neglect has occurred, and whether child protective services or
20 referral to a law enforcement agency is appropriate;

21 (5) To issue, revoke, or deny licenses to agencies pursuant to
22 chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the
23 category of care which an agency is authorized to render and the ages,
24 sex and number of persons to be served;

25 (6) To prescribe the procedures and the form and contents of
26 reports necessary for the administration of chapter 74.15 RCW and RCW
27 74.13.031 and to require regular reports from each licensee;

28 (7) To inspect agencies periodically to determine whether or not
29 there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the
30 requirements adopted hereunder;

31 (8) To review requirements adopted hereunder at least every two
32 years and to adopt appropriate changes after consultation with affected
33 groups for child day-care requirements and with the children's services
34 advisory committee for requirements for other agencies;

35 (9) To engage in negotiated rule making pursuant to RCW
36 34.05.310(2)(a) with the exclusive representative of the family child
37 care licensees selected in accordance with RCW 74.15.--- (section 6,

1 chapter 54, Laws of 2006) and with other affected interests before
2 adopting requirements that affect family child care licensees; and
3 (10) To consult with public and private agencies in order to help
4 them improve their methods and facilities for the care of children,
5 expectant mothers and developmentally disabled persons.

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