
SENATE BILL 5774

State of Washington

60th Legislature

2007 Regular Session

By Senators Hargrove, Kohl-Welles, Brandland and Shin; by request of Department of Social and Health Services

Read first time 01/31/2007. Referred to Committee on Human Services & Corrections.

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, 26.44.030, 41.06.475, 43.43.830, 43.43.832,
4 43.43.842, 70.128.120, 70.128.130, 70.129.130, 71.09.115, 71.09.300,
5 and 72.23.035; reenacting and amending RCW 74.15.030; adding a new
6 chapter to Title 43 RCW; creating a new section; repealing RCW
7 41.06.476, 43.20A.710, 41.06.480, and 72.05.440; prescribing penalties;
8 providing an effective date; and declaring an emergency.

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

10 NEW SECTION. **Sec. 1.** DEFINITIONS. As used in this chapter,
11 unless the context indicates otherwise:

12 (1) "Applicant" means a current or prospective department or
13 service provider employee, volunteer, student, intern, researcher,
14 contractor, or any other individual who will or may have unsupervised
15 access because of the nature of the work or services he or she
16 provides. "Applicant" includes but is not limited to any individual
17 that will or may have unsupervised access and is:

- 18 (a) Applying for a license or certification from the department;
19 (b) Seeking a contract with the department or a service provider;

1 (c) Applying for employment, promotion, reallocation, or transfer;

2 (d) An individual that a department client or guardian of a
3 department client chooses to hire or engage to provide services to
4 himself or herself or another vulnerable adult, juvenile, or child and
5 who might be eligible to receive payment from the department for
6 services rendered; or

7 (e) A department applicant who will or may work in a
8 department-covered position.

9 (2) "Authorized" means the department grants an applicant, home, or
10 facility permission to:

11 (a) Conduct licensing, certification, or contracting activities;

12 (b) Have unsupervised access to vulnerable adults, juveniles, and
13 children;

14 (c) Receive payments from a department program; or

15 (d) Work or serve in a department-covered position.

16 (3) "Background check or investigation" means obtaining and
17 reviewing existing records, files, documents, databases, other sources
18 of tangible information, or background information disclosed by an
19 applicant or service provider under this chapter. "Background check"
20 may include a fingerprint-based background check conducted by the
21 Washington state patrol or federal bureau of investigation.

22 (4) "Background information" means the information obtained during
23 the background check conducted under this chapter to determine whether
24 an applicant or service provider must be disqualified; lacks the
25 character, competence, and suitability to have unsupervised access; or
26 is not eligible for payment from the department for services rendered.

27 (5) "Certified" means a determination by the department that a
28 person, home, or facility that is not required by law to be licensed
29 has met the applicable statutory or regulatory minimum licensing
30 requirements.

31 (6) "Character, competence, and suitability" means the personal and
32 professional capability of an applicant or service provider to have
33 unsupervised access. An assessment of "character, competence, and
34 suitability" includes disqualifying offenses, and may include any other
35 information indicating that an applicant or service provider does not
36 have the personal or professional capability to have unsupervised
37 access.

1 (7) "Children" and "youth" are used interchangeably in this chapter
2 to mean:

3 (a) A child or youth who is under the care of a legal guardian,
4 custodian, or the department, including individuals under eighteen
5 years of age;

6 (b) Any person eighteen to twenty-one years of age to whom the
7 department is providing continued foster care pursuant to chapter 74.15
8 RCW; or

9 (c) An individual with a developmental disability up to twenty-one
10 years of age.

11 (8) "Conviction" means the outcome of a criminal charge in which an
12 adult or juvenile has been found guilty of a crime, pled guilty to a
13 crime, or pled no contest resulting in a court finding of guilty.

14 (9) "Crimes relating to drugs" means a conviction of a crime of
15 manufacture, delivery, or possession with intent to manufacture or
16 deliver a controlled substance.

17 (10) "Criminal history" means criminal history record information,
18 nonconviction data, conviction record, or disposition as defined in RCW
19 10.97.030.

20 (11) "Department" means the department of social and health
21 services.

22 (12) "Department-covered position" means any position within the
23 department in which a current or prospective department employee,
24 volunteer, student, or intern will or may have unsupervised access.

25 (13) "Disqualified" or "disqualifying" means, after considering the
26 applicant or service provider's background information or character,
27 competence, and suitability, it is determined that he or she is not
28 allowed unsupervised access or is not eligible for payment from the
29 department for services rendered.

30 (14) "Juvenile" means a juvenile offender under the jurisdiction of
31 juvenile rehabilitation administration or a youthful offender under the
32 jurisdiction of the department of corrections who is placed in a
33 juvenile rehabilitation administration facility.

34 (15) "License" means authorized by the department to provide
35 services after meeting minimum licensing requirements.

36 (16) "Negative action" means a written decision, finding, or
37 action, regardless of any applicable ongoing appeal process, made or

1 taken by an authorized judicial, administrative, or governmental entity
2 against an applicant or service provider for any matter involving:

3 (a) Dishonesty including but not limited to deliberate
4 falsification of business records, theft, deliberate deception, or
5 lying;

6 (b) Civil adjudication proceeding finding of, or upholding an
7 agency finding of, domestic violence, abuse, sexual abuse, neglect,
8 abandonment, exploitation, financial exploitation, or misappropriation
9 of resident funds or property, under any applicable chapter including
10 but not limited to chapters 13.34, 18.51, 18.130, 26.44, 26.50, 74.34,
11 and 74.42 RCW, or rules adopted under these or other applicable
12 chapters;

13 (c) Domestic violence, unlawful harassment, sexual assault, or any
14 other type of harassment or assault offense involving a vulnerable
15 adult, juvenile, or child, which results in a protection order being
16 issued against the perpetrator;

17 (d) Termination, revocation, suspension, restriction, or denial of
18 a license, professional license, certification, or contract by a
19 governmental entity for a matter that relates to the character,
20 competence, and suitability of an applicant or service provider to have
21 unsupervised access;

22 (e) A department of health disciplining authority final decision
23 including but not limited to unprofessional conduct relating to the
24 following actions:

25 (i) Sexual misconduct;

26 (ii) Abuse, neglect, exploitation, or financial exploitation of
27 anyone who is not considered vulnerable;

28 (iii) Practicing without a license; or

29 (iv) Practicing outside of licensed authority;

30 (f) Adult protective services, resident protection, or supported
31 living program final finding;

32 (g) Child protective services final finding; or

33 (h) Federal government finding that if such applicant or service
34 provider were licensed, certified, employed, volunteered, issued a
35 contract, authorized to receive payment, or authorized to have
36 unsupervised access, the receipt of federal funds by the state could be
37 jeopardized. "Negative action" includes all written findings,
38 decisions, or actions that become final due to the failure of the

1 alleged perpetrator to timely exercise a legal right to appeal a
2 negative action made or taken by an authorized judicial,
3 administrative, or governmental entity.

4 (17) "Offense" means any background information, criminal history,
5 conviction, negative action, or pending matter covered under this
6 chapter that will or may cause an applicant or service provider to be
7 disqualified from having unsupervised access.

8 (18) "Payment" means money the department directly pays to an
9 applicant or service provider for providing services to department
10 clients who are vulnerable adults, juveniles, or children.

11 (19) "Pending matter" means an arrest, charge, or written
12 allegation by a judicial, administrative, or governmental entity
13 relating to an offense that, when final, may lead to a determination
14 that an applicant or service provider must be disqualified pursuant to
15 this chapter, and has not yet been decided by an authorized judicial,
16 administrative, or governmental entity. "Pending matter" may include
17 an ongoing investigation without a charge or allegation. "Pending
18 matter" does not include the applicable ongoing appeal period, if any.

19 (20) "Protection order" means any protective, no-contact, or
20 restraining order against an applicant or service provider, issued by
21 an authorized judicial, administrative, or governmental entity after a
22 hearing, because of domestic violence, unlawful harassment, sexual
23 assault, or any other type of harassment or assault offense involving
24 a victim that is a vulnerable adult, juvenile, or child. "Protection
25 order" does not include any temporary protection, no-contact, or
26 restraining order that a requesting party obtains prior to notice and
27 hearing being given to the alleged perpetrator.

28 (21) "Result" means the outcome of a background check.

29 (22) "Secretary" means the secretary of the department of social
30 and health services.

31 (23) "Secure facility" has the meaning provided in RCW 71.09.020.

32 (24) "Service provider" means entities, facilities, agencies,
33 businesses, or individuals who are licensed, certified, authorized, or
34 regulated by, receive payment from, or have contracts or agreements
35 with, the department to provide services to vulnerable adults,
36 juveniles, or children. "Service provider" includes individuals whom
37 a department client or guardian of a department client may choose to
38 hire or engage to provide services to themselves or another vulnerable

1 adult, juvenile, or child and who might be eligible to receive payment
2 from the department for services rendered. "Service provider" does not
3 include those certified under chapter 70.96A RCW.

4 (25) "Unsupervised access" means working with or being in the
5 presence of vulnerable adults, juveniles, or children out of sight of:

6 (a) Another applicant or service provider who has passed a
7 background check; or

8 (b) A parent, relative, or guardian.

9 (26) "Vulnerable adult" means an adult who is:

10 (a) Vulnerable as defined in chapter 74.34 RCW;

11 (b) Sixty years of age or older who has the functional, mental, or
12 physical inability to care for himself or herself;

13 (c) Found incapacitated under chapter 11.88 RCW;

14 (d) Developmentally disabled as defined under RCW 71A.10.020;

15 (e) Admitted to any facility operated by the department;

16 (f) Receiving services from applicants or department service
17 providers; or

18 (g) Receiving services through home health, hospice, or home care
19 agencies required to be licensed under chapter 70.127 RCW.

20 "Vulnerable adult" does not include: Individuals receiving
21 services under chapter 70.96A RCW unless they have been admitted to a
22 detoxification facility or detained or committed to a chemical
23 dependency treatment facility certified under chapter 70.96A RCW; or
24 juveniles between eighteen and twenty-one years of age who are under
25 the jurisdiction of the juvenile rehabilitation administration or the
26 department of corrections.

27 NEW SECTION. **Sec. 2.** INVESTIGATION AND ACCEPTANCE OF BACKGROUND
28 INFORMATION. The legislature finds that the department of social and
29 health services, service providers regulated by the department,
30 parents, vulnerable adults, in-home care service providers licensed
31 under chapter 70.127 RCW, department clients, guardians of department
32 clients, and others need adequate information to determine the
33 character, competence, and suitability of an applicant or service
34 provider to have unsupervised access.

35 (1) The secretary may require applicants or service providers to
36 obtain and provide background information, and the secretary may accept
37 background information provided by outside entities or persons. The

1 secretary shall obtain or require the applicant or service provider to
2 obtain and provide background information relating to criminal history,
3 convictions, negative actions, offenses, and pending matters as defined
4 in section 1 of this act, and any out-of-state equivalent when:

5 (a) Licensing, certifying, contracting, subcontracting, regulating,
6 authorizing receipt of payments from the department, or authorizing
7 applicants or service providers, who will or may have unsupervised
8 access;

9 (b) Contracting with applicants or service providers for in-home
10 services, case management, care, supervision, or treatment of
11 vulnerable adults, juveniles, or children;

12 (c) Obtaining or causing to be obtained the background information
13 of applicants or service providers, including providers paid by home
14 care agencies for services, and their employees, volunteers, interns,
15 and other persons, who will or may have unsupervised access;

16 (d) Authorizing unsupervised access for department applicants who
17 may work in a department-covered position, including but not limited
18 to:

19 (i) Positions that conduct comprehensive assessments, financial
20 eligibility determinations, licensing certification, contract and
21 fiscal activities, investigations, surveys, or case management; or

22 (ii) Positions otherwise required by federal law to meet employment
23 standards.

24 (2) Department employees hired prior to the effective date of this
25 section shall:

26 (a) Retain their department-covered position unless any background
27 check performed after the effective date of this section reveals
28 disqualifying background information that was not identified in a
29 previous background check. If the new disqualifying background
30 information is identified in a background check performed after the
31 effective date of this section, the department employee may not retain
32 his or her department-covered position;

33 (b) Be subject to the standards and rules developed for all
34 department applicants under this chapter if they are reallocated from
35 their current department-covered position or are laid off, transferred,
36 promoted, or demoted into a different department-covered position.

37 (3) In-home care service providers licensed under chapter 70.127
38 RCW may request background information from the department for

1 applicants or service providers who may have unsupervised access to
2 vulnerable adults. The department may provide background information
3 relating to any offense covered in this chapter to in-home care service
4 providers licensed under chapter 70.127 RCW.

5 (4) The secretary may require in-home care applicants or service
6 providers to pay all costs associated with performing the services
7 specified in subsection (3) of this section.

8 NEW SECTION. **Sec. 3.** BACKGROUND CHECK STANDARDS AND RULES. (1)

9 The secretary shall adopt rules and set standards to:

10 (a) Require specific procedures and action when disqualifying
11 background information is discovered by the department or by service
12 providers who conduct background investigations as required under this
13 chapter; and

14 (b) Regulate the release of background information as defined in
15 section 1 of this act.

16 (2) The secretary and service providers may consider background
17 information from any jurisdiction including but not limited to in-
18 state, national, international, out-of-state, and any equivalent
19 background information for any offense covered under this chapter to
20 determine the character, competence, and suitability of applicants or
21 service providers.

22 (3) The secretary shall adopt rules regarding applicants or service
23 providers that provide in-home care services under contract with the
24 department. The rules must include permanent disqualification for a
25 record of a conviction of a crime relating to drugs as defined in
26 section 1 of this act when in-home care is provided through:

27 (a) Medicaid personal care under RCW 74.09.520;

28 (b) Community options program entry system waiver services under
29 RCW 74.39A.030;

30 (c) Chore services under RCW 74.39A.110; or

31 (d) Other home and community long-term care programs, established
32 under chapters 74.39 and 74.39A RCW, administered by the department.

33 (4) A department client, or his or her legal guardian, who is
34 directly hiring or engaging an applicant or service provider must be
35 given background information to determine the character, competence,
36 and suitability of the applicant or service provider.

1 (5) A department client, or his or her legal guardian, may choose
2 to hire or retain an applicant or service provider after receiving
3 notice from the department of a disqualifying offense; however the
4 secretary shall deny payment for any subsequent services rendered by
5 the disqualified applicant or service provider. The client does not
6 have a right to a fair hearing under chapter 34.05 RCW and RCW
7 74.39A.095 for the department's denial of payment based on
8 disqualifying offenses.

9 (6) The secretary shall adopt rules regarding current and
10 prospective department applicants in department-covered positions and
11 shall include requirements to:

12 (a) Conduct an initial background check and any additional
13 background check including rechecks under section 6 of this act;

14 (b) Assess background check results by applying the standards set
15 out in this chapter;

16 (c) Review background check results for up to three applicants
17 under final consideration for a department-covered position;

18 (d) Specify when a conditional appointment of an applicant is
19 allowed;

20 (e) Specify when and how a department position that is not a
21 covered position is changed to a covered position;

22 (f) Address any appeal rights; and

23 (g) Conduct fingerprint-based background checks as allowed under
24 state or federal law.

25 NEW SECTION. **Sec. 4.** DISCLOSURE. (1) Applicants and service
26 providers who are required to have a background check under this
27 chapter must disclose, in writing, background information relating to
28 any offense covered under this chapter and swear to the truth of the
29 written disclosure under penalty of perjury. The disclosure must
30 include all background information and offenses that occurred in any
31 jurisdiction, including jurisdictions outside the state of Washington
32 and the United States of America.

33 (2) After a background check has been completed, the applicant or
34 service provider is under a continuing obligation to disclose any
35 subsequent offenses within seven calendar days of the subsequent
36 offense.

1 (3) Service providers must disclose subsequent offenses as required
2 in subsections (1) and (2) of this section to the department staff
3 responsible to license, certify, contract, authorize, regulate, or
4 monitor services.

5 (4) Service providers and applicants subject to this chapter must
6 disclose subsequent offenses as required in subsections (1) and (2) of
7 this section to the responsible service provider.

8 (5) Department applicants in department-covered positions must
9 disclose subsequent offenses as required in subsections (1) and (2) of
10 this section to the department hiring authority.

11 (6) Upon receipt of a report of subsequent offenses as required
12 under subsections (1) and (2) of this section, the responsible
13 department staff, department hiring authority, and service provider
14 must:

15 (a) Require the subject of the disclosure to undergo another
16 background check; and

17 (b) Assess the background check result using the standards or rules
18 adopted under this chapter.

19 (7) Failure of an applicant or service provider to disclose
20 subsequent offenses as required in this section constitutes misconduct
21 under Title 50 RCW.

22 (8) Failure of a department applicant in a covered position to
23 disclose as required in subsection (5) of this section is cause for
24 disciplinary action.

25 NEW SECTION. **Sec. 5.** FINGERPRINT-BASED BACKGROUND CHECKS--FEE.

26 (1) In order to determine the character, competence, and suitability of
27 any applicant or service provider to have unsupervised access, the
28 secretary may require a fingerprint-based background check through the
29 Washington state patrol and the federal bureau of investigation at
30 anytime, but shall require a fingerprint-based background check when
31 the applicant or service provider has resided in the state less than
32 three consecutive years before application, and:

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

35 (b) Is an individual residing in an applicant or service provider's
36 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 NEW SECTION. **Sec. 6.** RECHECKS--RELEASE OF BACKGROUND INFORMATION.

24 (1) The secretary shall adopt rules regarding the requirements for
25 subsequent or additional background checks. These rules may include,
26 but are not limited to, requiring additional background checks:

27 (a) For renewal of a license, contract, certification, or
28 authorization for applicants or service providers;

29 (b) When there is reason to believe, or it is reported, that an
30 offense identified in section 7 or 8 of this act may have occurred
31 subsequent to the applicant's or service provider's last background
32 check;

33 (c) At two-year intervals from the date of the last background
34 check for department applicants in department-covered positions;

35 (d) When a department applicant is seeking a department-covered
36 position because of a layoff, reallocation, transfer, promotion, or
37 demotion.

1 (2) For any background information released under this chapter by
2 the state, its agencies, or its employees, the state does not provide
3 any assurance that the applicant or service provider:

4 (a) Does not have convictions, criminal history, negative actions,
5 pending matters, or offenses covered under this chapter; and

6 (b) Is suitable for unsupervised access or employment by any
7 department client, guardian, individual, service provider, contractor,
8 employer, governmental entity, or any other entity.

9 (3) The state of Washington, its agencies, and its employees are
10 not liable for defamation, invasion of privacy, negligence, or any
11 other claim in connection with any lawful dissemination of information
12 under this chapter.

13 (4) Nothing in this chapter limits or restricts the ability of the
14 department to obtain or consider additional background information as
15 allowed under state or federal law.

16 NEW SECTION. **Sec. 7.** DISQUALIFYING CRIMES AND NEGATIVE ACTIONS.

17 (1) Permanently disqualifying crimes include the following offenses
18 regardless of how much time has passed since the date of conviction:

19 (a) Abandonment of a dependent person first degree (RCW 9A.42.060);

20 (b) Abandonment of a dependent person second degree (RCW
21 9A.42.070);

22 (c) Abandonment of a dependent person third degree (RCW 9A.42.080);

23 (d) Arson first degree (RCW 9A.48.020);

24 (e) Arson second degree (RCW 9A.48.030);

25 (f) Assault first degree (RCW 9A.36.011);

26 (g) Assault second degree (RCW 9A.36.021);

27 (h) Assault of a child first degree (RCW 9A.36.120);

28 (i) Assault of a child second degree (RCW 9A.36.130);

29 (j) Assault of a child third degree (RCW 9A.36.140);

30 (k) Bail jumping (RCW 9A.76.170) for any crime listed in this
31 section;

32 (l) Burglary first degree (RCW 9A.52.020);

33 (m) Child molestation first degree (RCW 9A.44.083);

34 (n) Child molestation second degree (RCW 9A.44.086);

35 (o) Child molestation third degree (RCW 9A.44.089);

36 (p) Child selling/child buying (RCW 9A.64.030);

37 (q) Communication with minor for immoral purposes (RCW 9.68A.090);

- 1 (r) Controlled substances homicide (RCW 69.50.415);
- 2 (s) Criminal attempt (RCW 9A.28.020) for any crime listed in this
- 3 section;
- 4 (t) Criminal conspiracy (RCW 9A.28.040) for any crime listed in
- 5 this section;
- 6 (u) Criminal mistreatment first degree (RCW 9A.42.020);
- 7 (v) Criminal mistreatment second degree (RCW 9A.42.030);
- 8 (w) Criminal mistreatment third degree (RCW 9A.42.035);
- 9 (x) Criminal mistreatment fourth degree (RCW 9A.42.037);
- 10 (y) Criminal solicitation (RCW 9A.28.030) for any crime listed in
- 11 this section;
- 12 (z) Custodial interference first degree (RCW 9A.40.060);
- 13 (aa) Custodial sexual misconduct first degree (RCW 9A.44.160);
- 14 (bb) Custodial sexual misconduct second degree (RCW 9A.44.170);
- 15 (cc) Dealing in depictions of a minor engaged in sexually explicit
- 16 conduct (RCW 9.68A.050);
- 17 (dd) Domestic Violence (RCW 10.99.020(5)) felonies;
- 18 (ee) Drive-by shooting (RCW 9A.36.045);
- 19 (ff) Endangerment with a controlled substance (RCW 9A.42.100);
- 20 (gg) Extortion first degree (RCW 9A.56.120);
- 21 (hh) False statements (RCW 74.09.250);
- 22 (ii) Harassment (RCW 9A.46.020) felonies;
- 23 (jj) Homicide by abuse (RCW 9A.32.055);
- 24 (kk) Homicide by watercraft (RCW 79A.60.050);
- 25 (ll) Incendiary devices (RCW 9.40.120);
- 26 (mm) Incest (RCW 9A.64.020);
- 27 (nn) Indecent exposure (RCW 9A.88.010) felony;
- 28 (oo) Indecent liberties (RCW 9A.44.100);
- 29 (pp) Kidnapping first degree (RCW 9A.40.020);
- 30 (qq) Kidnapping second degree (RCW 9A.40.030);
- 31 (rr) Leading organized crime (RCW 9A.82.060);
- 32 (ss) Leaving a child in the care of a sex offender (RCW 9A.42.110);
- 33 (tt) Luring (RCW 9A.40.090);
- 34 (uu) Malicious explosion of a substance first degree (RCW
- 35 70.74.280(1));
- 36 (vv) Malicious explosion of a substance second degree (RCW
- 37 70.74.280(2));
- 38 (ww) Malicious harassment (RCW 9A.36.080);

1 (xx) Malicious placement of an explosive first degree (RCW
2 70.74.270(1));
3 (yy) Manslaughter first degree (RCW 9A.32.060);
4 (zz) Manslaughter second degree (RCW 9A.32.070);
5 (aaa) Murder first degree (RCW 9A.32.030);
6 (bbb) Murder second degree (RCW 9A.32.050);
7 (ccc) Patronizing a juvenile prostitute (RCW 9.68A.100);
8 (ddd) Possession of depictions of minor engaged in sexually
9 explicit conduct (RCW 9.68A.070);
10 (eee) Rape first degree (RCW 9A.44.040);
11 (fff) Rape second degree (RCW 9A.44.050);
12 (ggg) Rape third degree (RCW 9A.44.060);
13 (hhh) Rape of a child first degree (RCW 9A.44.073);
14 (iii) Rape of a child second degree (RCW 9A.44.076);
15 (jjj) Rape of a child third degree (RCW 9A.44.079);
16 (kkk) Robbery first degree (RCW 9A.56.200);
17 (lll) Robbery second degree (RCW 9A.56.210);
18 (mmm) Selling or distributing erotic material to a minor (RCW
19 9.68.060);
20 (nnn) Sending, bringing into state depictions of a minor engaged in
21 sexually explicit conduct (RCW 9.68A.060);
22 (ooo) Sexual exploitation of a minor (RCW 9.68A.040);
23 (ppp) Sexual misconduct with a minor first degree (RCW 9A.44.093);
24 (qqq) Sexual misconduct with a minor second degree (RCW 9A.44.096);
25 (rrr) Sexually violating human remains (RCW 9A.44.105);
26 (sss) Unlawful practices--Obtaining assistance (RCW 74.08.331);
27 (ttt) Use of a machine gun in felony (RCW 9.41.225);
28 (uuu) Vehicular assault (RCW 46.61.522);
29 (vvv) Vehicular homicide (negligent homicide)(RCW 46.61.520);
30 (www) Violation of civil antiharassment protection order (RCW
31 10.14.170);
32 (xxx) Violation of protection, contact, or restraining order (RCW
33 9A.46.020, 10.99.040, and 26.50.110);
34 (yyy) Violation of registration of sex offenders and kidnapping
35 offenders (RCW 9A.44.130); and
36 (zzz) Voyeurism (RCW 9A.44.115).
37 (2) Any applicant or service provider who has been ordered by a
38 court to register as a sex offender is permanently disqualified.

1 (3) A conviction for any felony sex offense, and any conviction for
2 a crime with a special court finding of sexual motivation, is
3 permanently disqualifying.

4 (4) Any conviction for a violent offense, as defined in RCW
5 9.94A.030, is permanently disqualifying.

6 (5) All applicants and service providers that provide in-home care
7 services under contract with the department who have been convicted of
8 crimes related to drugs as defined in section 1 of this act are
9 permanently disqualified.

10 (6) An applicant or service provider who has a pending matter for
11 an offense that appears in this section must not be allowed
12 unsupervised access until a final determination is made by the
13 authorized judicial entity, administrative, or governmental entity.

14 (7) Permanently disqualifying negative actions as defined in
15 section 1 of this act include the following:

16 (a) A child protective services finding of abuse, neglect, sexual
17 abuse, abandonment, exploitation, misappropriation of funds or
18 property, or financial exploitation of a juvenile or child;

19 (b) An adult protective services, resident protection, or
20 supportive living program finding of abuse, neglect, sexual abuse,
21 abandonment, exploitation, misappropriation of funds or property, or
22 financial exploitation of a vulnerable adult;

23 (c) A department of health disciplining authority final decision of
24 abuse, neglect, sexual abuse, abandonment, exploitation, financial
25 exploitation, or misappropriation of funds or property of a vulnerable
26 adult, juvenile, or child;

27 (d) Termination, revocation, suspension, restriction, or denial of
28 a license, contract, certification, or authorization of unsupervised
29 access based on a finding of abuse, neglect, sexual abuse, abandonment,
30 exploitation, financial exploitation, or misappropriation of funds or
31 property of a vulnerable adult, juvenile, or child.

32 (8) An applicant or service provider who has a pending matter for
33 an offense that appears in this section must not be allowed
34 unsupervised access to vulnerable adults, juveniles, or children until
35 a final determination regarding the pending matter is made by the
36 authorized judicial, administrative, or governmental entity. Nothing
37 in this chapter precludes the hiring or selection of an applicant or

1 service provider that has a matter pending under this section into
2 positions that do not require unsupervised access.

3 (9) An applicant or service provider may not be disqualified based
4 on a:

5 (a) Conviction that has been vacated under RCW 9.94A.640 or
6 9.96.060, expunged, or pardoned; or

7 (b) A negative action that has been reversed, removed, or dismissed
8 by an authorized judicial, administrative, or governmental entity.

9 (10) Permanently disqualifying crimes and negative actions include
10 any future renamed or reclassified crime or negative action in the same
11 category and any equivalent out-of-state or federal crime or negative
12 action.

13 NEW SECTION. **Sec. 8.** TIME-LIMITED AND POTENTIALLY DISQUALIFYING
14 CRIMES AND NEGATIVE ACTIONS. (1) Disqualifying crimes for a period of
15 five years from the date of conviction and potentially disqualifying
16 thereafter include the following offenses:

17 (a) Assault third degree (RCW 9A.36.031);

18 (b) Assault fourth degree (RCW 9A.36.041);

19 (c) Bail jumping (RCW 9A.76.170) for any crime listed in this
20 section;

21 (d) Burglary second degree (RCW 9A.52.030);

22 (e) Coercion (RCW 9A.36.070);

23 (f) Criminal attempt (RCW 9A.28.020) for any crime listed in this
24 section;

25 (g) Criminal conspiracy (RCW 9A.28.040) for any crime listed in
26 this section;

27 (h) Criminal solicitation (RCW 9A.28.030) for any crime listed in
28 this section;

29 (i) Custodial assault (RCW 9A.36.100);

30 (j) Custodial interference second degree (RCW 9A.40.070);

31 (k) Extortion second degree (RCW 9A.56.130);

32 (l) Forgery (RCW 9A.60.020);

33 (m) Harassment (RCW 9A.46.020) not felonies;

34 (n) Indecent exposure (RCW 9A.88.010) misdemeanor and gross
35 misdemeanor;

36 (o) Identity theft (RCW 9.35.020);

1 (p) Malicious explosion of a substance third degree (RCW
2 70.74.280(3));
3 (q) Malicious mischief first degree (RCW 9A.48.070);
4 (r) Malicious mischief second degree (RCW 9A.48.080);
5 (s) Malicious mischief third degree (RCW 9A.48.090);
6 (t) Malicious placement of an explosive second degree (RCW
7 70.74.270(2));
8 (u) Malicious placement of an explosive third degree (RCW
9 70.74.270(3));
10 (v) Malicious placement of an imitation device first degree (RCW
11 70.74.272);
12 (w) Patronizing a prostitute (RCW 9A.88.110);
13 (x) Possession of an explosive device (RCW 70.74.022);
14 (y) Promoting pornography class C felonies (RCW 9.68.140);
15 (z) Promoting prostitution first degree (RCW 9A.88.070);
16 (aa) Promoting prostitution second degree (RCW 9A.88.080);
17 (bb) Promoting suicide attempt (RCW 9A.36.060);
18 (cc) Prostitution (RCW 9A.88.030);
19 (dd) Reckless endangerment (RCW 9A.36.050);
20 (ee) Residential burglary (RCW 9A.52.025);
21 (ff) Stalking (RCW 9A.46.110);
22 (gg) Theft first degree other than a firearm (RCW 9A.56.030);
23 (hh) Theft second degree other than a firearm (RCW 9A.56.040);
24 (ii) Theft third degree (RCW 9A.56.050);
25 (jj) Theft of a firearm (RCW 9A.56.300);
26 (kk) Unlawful imprisonment (RCW 9A.40.040);
27 (ll) Unlawful use of building for drug purposes (RCW 69.53.010);
28 (mm) Violation of the imitation drug act - manufacture, delivery,
29 or possession with intent to manufacture or deliver an imitation drug
30 (chapter 69.52 RCW);
31 (nn) Violation of the legend drug act - manufacture, delivery, or
32 possession with intent to manufacture or deliver without a prescription
33 (chapter 69.41 RCW);
34 (oo) Violation of the precursor drug act - manufacture, delivery,
35 or possession with intent to manufacture or deliver a precursor drug
36 (chapter 69.43 RCW); and
37 (pp) Violation of the uniform controlled substances act -

1 manufacture, delivery, or possession with intent to manufacture or
2 deliver a controlled substance (chapter 69.50 RCW).

3 (2) An applicant or service provider who has a department of health
4 disciplining authority decision of unprofessional conduct must not be
5 allowed unsupervised access to vulnerable adults, juveniles, or
6 children for five years from the date of the department of health final
7 order of:

8 (a) Sexual misconduct;

9 (b) Abuse, neglect, exploitation, or financial exploitation of
10 anyone who is not considered vulnerable;

11 (c) Practicing without a license; or

12 (d) Practicing outside of licensed authority.

13 (3) An applicant or service provider who has a protection order
14 issued against them must not be allowed unsupervised access to
15 vulnerable adults, juveniles, or children during the period of time the
16 order is in effect.

17 (4) If a conviction for any crime in this section has a special
18 court finding of sexual motivation, a sex crime, the crime becomes a
19 disqualifying conviction regardless of the amount of time that has
20 passed.

21 (5) An applicant or service provider may still be disqualified from
22 unsupervised access as the result of an assessment of character,
23 competence, and suitability of the applicant or service provider. The
24 decision to disqualify may include but is not limited to:

25 (a) Number, type, or pattern of offenses regardless of the number
26 of years that have passed;

27 (b) Offenses not identified in this chapter that a service
28 provider, parent, guardian, relative, or the department reasonably
29 determines relates to the character, competence, and suitability of an
30 applicant or service provider to perform the duties of the position;

31 (c) Number, type, or pattern of pending matters; and

32 (d) The written policies of the hiring service provider.

33 (6) Negative actions shall be considered in the assessment of an
34 applicant or service provider's character, competence, and suitability
35 to have unsupervised access to vulnerable adults, juveniles, or
36 children. The negative actions that are potentially disqualifying
37 include:

1 (a) A termination, demotion, disallowance, prohibition,
2 disapproval, cancellation, revocation, rejection, or other negative
3 action against an applicant or service provider because of matters
4 involving dishonesty including but not limited to deliberate
5 falsification of business records, theft, deliberate deception, and
6 lying;

7 (b) Any finding by the state or federal government that, if such
8 applicant or service provider were licensed, certified, employed,
9 volunteered, receiving payment from the department, issued a contract,
10 or authorized to have unsupervised access, the receipt of federal funds
11 could be jeopardized; or

12 (c) Termination, revocation, suspension, restriction, or denial of
13 a license, certification, professional license, or contract by a
14 governmental entity for any matter that relates to the character,
15 competence, and suitability of an applicant or service provider to have
16 unsupervised access.

17 (7) An applicant or service provider who has a pending matter for
18 an offense that appears in this section must not be allowed
19 unsupervised access until a final determination regarding the pending
20 matter is made by the authorized judicial, administrative, or
21 governmental entity. Nothing in this chapter precludes the hiring or
22 selection of an applicant or service provider that has a matter pending
23 under this section into positions that do not require unsupervised
24 access.

25 (8) Time-limited and potentially disqualifying offenses include any
26 offenses that are renamed or reclassified in the future and any
27 equivalent out-of-state or federal offenses.

28 NEW SECTION. **Sec. 9.** DEPARTMENT CHILD PLACEMENT--FEDERAL
29 BACKGROUND CHECK REQUIREMENTS. When placing a child in out-of-home
30 care with a person related to the child as described in RCW
31 74.15.020(2)(a), the department shall not apply the disqualifying
32 crimes and negative actions identified in sections 7 and 8 of this act.
33 In place of the disqualifying crimes and negative actions identified in
34 this chapter, the department shall establish rules relating to the
35 placement of such children.

1 **Sec. 10.** RCW 26.33.190 and 1991 c 136 s 3 are each amended to read
2 as follows:

3 (1) Any person may at any time request an agency, the department,
4 an individual approved by the court, or a qualified salaried court
5 employee to prepare a preplacement report. A certificate signed under
6 penalty of perjury by the person preparing the report specifying his or
7 her qualifications as required in this chapter shall be attached to or
8 filed with each preplacement report and shall include a statement of
9 training or experience that qualifies the person preparing the report
10 to discuss relevant adoption issues. A person may have more than one
11 preplacement report prepared. All preplacement reports shall be filed
12 with the court in which the petition for adoption is filed.

13 (2) The preplacement report shall be a written document setting
14 forth all relevant information relating to the fitness of the person
15 requesting the report as an adoptive parent. The report shall be based
16 on a study which shall include an investigation of the home
17 environment, family life, health, facilities, and resources of the
18 person requesting the report. The report shall include a list of the
19 sources of information on which the report is based. The report shall
20 include a recommendation as to the fitness of the person requesting the
21 report to be an adoptive parent. The report shall also verify that the
22 following issues were discussed with the prospective adoptive parents:

23 (a) The concept of adoption as a lifelong developmental process and
24 commitment;

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

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

28 (d) The child's possible questions about birth parents and
29 relatives; and

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

32 (3) All preplacement reports shall include ~~((an investigation))~~ a
33 background check of the conviction records, pending charges, or
34 disciplinary board final decisions of prospective adoptive parents.
35 The ~~((investigation))~~ background check shall include an examination of
36 state and national criminal identification data provided by the
37 Washington state patrol criminal identification system ~~((as described~~
38 ~~in chapter 43.43 RCW))~~ including, but not limited to, a fingerprint-

1 based background check of national crime information databases for any
2 person being investigated. It shall also include a review of any child
3 abuse and neglect history of any adult living in the prospective
4 adoptive parents' home. The background check of the child abuse and
5 neglect history shall include a review of the child abuse and neglect
6 registries of all states in which the prospective adoptive parents or
7 any other adult living in the home have lived during the five years
8 preceding the date of the preplacement report.

9 (4) An agency, the department, or a court approved individual may
10 charge a reasonable fee based on the time spent in conducting the study
11 and preparing the preplacement report. The court may set a reasonable
12 fee for conducting the study and preparing the report when a court
13 employee has prepared the report. An agency, the department, a court
14 approved individual, or the court may reduce or waive the fee if the
15 financial condition of the person requesting the report so warrants.
16 An agency's, the department's, or court approved individual's, fee is
17 subject to review by the court upon request of the person requesting
18 the report.

19 (5) The person requesting the report shall designate to the agency,
20 the department, the court approved individual, or the court in writing
21 the county in which the preplacement report is to be filed. If the
22 person requesting the report has not filed a petition for adoption, the
23 report shall be indexed in the name of the person requesting the report
24 and a cause number shall be assigned. A fee shall not be charged for
25 filing the report. The applicable filing fee may be charged at the
26 time a petition governed by this chapter is filed. Any subsequent
27 preplacement reports shall be filed together with the original report.

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

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

32 **Sec. 11.** RCW 26.44.030 and 2005 c 417 s 1 are each amended to read
33 as follows:

34 (1)(a) When any practitioner, county coroner or medical examiner,
35 law enforcement officer, professional school personnel, registered or
36 licensed nurse, social service counselor, psychologist, pharmacist,
37 licensed or certified child care providers or their employees, employee

1 of the department, juvenile probation officer, placement and liaison
2 specialist, responsible living skills program staff, HOPE center staff,
3 or state family and children's ombudsman or any volunteer in the
4 ombudsman's office has reasonable cause to believe that a child has
5 suffered abuse or neglect, he or she shall report such incident, or
6 cause a report to be made, to the proper law enforcement agency or to
7 the department as provided in RCW 26.44.040.

8 (b) When any person, in his or her official supervisory capacity
9 with a nonprofit or for-profit organization, has reasonable cause to
10 believe that a child has suffered abuse or neglect caused by a person
11 over whom he or she regularly exercises supervisory authority, he or
12 she shall report such incident, or cause a report to be made, to the
13 proper law enforcement agency, provided that the person alleged to have
14 caused the abuse or neglect is employed by, contracted by, or
15 volunteers with the organization and coaches, trains, educates, or
16 counsels a child or children or regularly has unsupervised access to a
17 child or children as part of the employment, contract, or voluntary
18 service. No one shall be required to report under this section when he
19 or she obtains the information solely as a result of a privileged
20 communication as provided in RCW 5.60.060.

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

23 For the purposes of this subsection, the following definitions
24 apply:

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

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

34 (c) The reporting requirement also applies to department of
35 corrections personnel who, in the course of their employment, observe
36 offenders or the children with whom the offenders are in contact. If,
37 as a result of observations or information received in the course of
38 his or her employment, any department of corrections personnel has

1 reasonable cause to believe that a child has suffered abuse or neglect,
2 he or she shall report the incident, or cause a report to be made, to
3 the proper law enforcement agency or to the department as provided in
4 RCW 26.44.040.

5 (d) The reporting requirement shall also apply to any adult who has
6 reasonable cause to believe that a child who resides with them, has
7 suffered severe abuse, and is able or capable of making a report. For
8 the purposes of this subsection, "severe abuse" means any of the
9 following: Any single act of abuse that causes physical trauma of
10 sufficient severity that, if left untreated, could cause death; any
11 single act of sexual abuse that causes significant bleeding, deep
12 bruising, or significant external or internal swelling; or more than
13 one act of physical abuse, each of which causes bleeding, deep
14 bruising, significant external or internal swelling, bone fracture, or
15 unconsciousness.

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

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

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

30 (4) The department, upon receiving a report of an incident of
31 alleged abuse or neglect pursuant to this chapter, involving a child
32 who has died or has had physical injury or injuries inflicted upon him
33 or her other than by accidental means or who has been subjected to
34 alleged sexual abuse, shall report such incident to the proper law
35 enforcement agency. In emergency cases, where the child's welfare is
36 endangered, the department shall notify the proper law enforcement
37 agency within twenty-four hours after a report is received by the
38 department. In all other cases, the department shall notify the law

1 enforcement agency within seventy-two hours after a report is received
2 by the department. If the department makes an oral report, a written
3 report must also be made to the proper law enforcement agency within
4 five days thereafter.

5 (5) Any law enforcement agency receiving a report of an incident of
6 alleged abuse or neglect pursuant to this chapter, involving a child
7 who has died or has had physical injury or injuries inflicted upon him
8 or her other than by accidental means, or who has been subjected to
9 alleged sexual abuse, shall report such incident in writing as provided
10 in RCW 26.44.040 to the proper county prosecutor or city attorney for
11 appropriate action whenever the law enforcement agency's investigation
12 reveals that a crime may have been committed. The law enforcement
13 agency shall also notify the department of all reports received and the
14 law enforcement agency's disposition of them. In emergency cases,
15 where the child's welfare is endangered, the law enforcement agency
16 shall notify the department within twenty-four hours. In all other
17 cases, the law enforcement agency shall notify the department within
18 seventy-two hours after a report is received by the law enforcement
19 agency.

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

25 (7) The department may conduct ongoing case planning and
26 consultation with those persons or agencies required to report under
27 this section, with consultants designated by the department, and with
28 designated representatives of Washington Indian tribes if the client
29 information exchanged is pertinent to cases currently receiving child
30 protective services. Upon request, the department shall conduct such
31 planning and consultation with those persons required to report under
32 this section if the department determines it is in the best interests
33 of the child. Information considered privileged by statute and not
34 directly related to reports required by this section must not be
35 divulged without a valid written waiver of the privilege.

36 (8) Any case referred to the department by a physician licensed
37 under chapter 18.57 or 18.71 RCW on the basis of an expert medical
38 opinion that child abuse, neglect, or sexual assault has occurred and

1 that the child's safety will be seriously endangered if returned home,
2 the department shall file a dependency petition unless a second
3 licensed physician of the parents' choice believes that such expert
4 medical opinion is incorrect. If the parents fail to designate a
5 second physician, the department may make the selection. If a
6 physician finds that a child has suffered abuse or neglect but that
7 such abuse or neglect does not constitute imminent danger to the
8 child's health or safety, and the department agrees with the
9 physician's assessment, the child may be left in the parents' home
10 while the department proceeds with reasonable efforts to remedy
11 parenting deficiencies.

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

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

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

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

37 (13) The department shall maintain investigation records and

1 conduct timely and periodic reviews of all cases constituting abuse and
2 neglect. The department shall maintain a log of screened-out
3 nonabusive cases.

4 ~~((13))~~ (14) The department shall use a risk assessment process
5 when investigating alleged child abuse and neglect referrals. The
6 department shall present the risk factors at all hearings in which the
7 placement of a dependent child is an issue. Substance abuse must be a
8 risk factor. The department shall, within funds appropriated for this
9 purpose, offer enhanced community-based services to persons who are
10 determined not to require further state intervention.

11 ~~((14))~~ (15) Upon receipt of a report of alleged abuse or neglect
12 the law enforcement agency may arrange to interview the person making
13 the report and any collateral sources to determine if any malice is
14 involved in the reporting.

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

28 **Sec. 12.** RCW 41.06.475 and 2002 c 354 s 222 are each amended to
29 read as follows:

30 The director shall adopt rules, in cooperation with the ~~((secretary
31 of social and health services, for the background investigation of
32 persons being considered for state employment in positions directly
33 responsible for the supervision, care, or treatment of children or
34 developmentally disabled persons))~~ director of the department of early
35 learning, for the background investigation of current employees and of
36 persons being actively considered for positions with the department who
37 will or may have unsupervised access to children. The director shall

1 also adopt rules, in cooperation with the director of the department of
2 early learning, for background investigation of positions otherwise
3 required by federal law to meet employment standards. "Considered for
4 positions" includes decisions about (1) initial hiring, layoffs,
5 reallocations, transfers, promotions, or demotions, or (2) other
6 decisions that result in an individual being in a position that will or
7 may have unsupervised access to children as an employee, an intern, or
8 a volunteer.

9 **Sec. 13.** RCW 43.43.830 and 2005 c 421 s 1 are each amended to read
10 as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout RCW 43.43.830 through 43.43.845.

13 (1) "Applicant" means:

14 (a) Any prospective employee who will or may have unsupervised
15 access to children under sixteen years of age or developmentally
16 disabled persons or vulnerable adults during the course of his or her
17 employment or involvement with the business or organization;

18 (b) Any prospective volunteer who will have regularly scheduled
19 unsupervised access to children under sixteen years of age,
20 developmentally disabled persons, or vulnerable adults during the
21 course of his or her employment or involvement with the business or
22 organization under circumstances where such access will or may involve
23 groups of (i) five or fewer children under twelve years of age, (ii)
24 three or fewer children between twelve and sixteen years of age, (iii)
25 developmentally disabled persons, or (iv) vulnerable adults;

26 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
27 or

28 (d) Any prospective custodian in a nonparental custody proceeding
29 under chapter 26.10 RCW.

30 (2) "Business or organization" means a person, business, or
31 organization licensed in this state, any agency of the state, or other
32 governmental entity, that educates, trains, treats, supervises, houses,
33 or provides recreation to developmentally disabled persons, vulnerable
34 adults, or children under sixteen years of age, or that provides child
35 day care, early learning, or early learning childhood education
36 services, including but not limited to public housing authorities,
37 school districts, and educational service districts, except the

1 department of social and health services and those businesses or
2 organizations subject to chapter 43.-- RCW (sections 1 through 9 of
3 this act).

4 (3) "Civil adjudication proceeding" is a judicial or administrative
5 adjudicative proceeding that results in a finding of, or upholds an
6 agency finding of, domestic violence, abuse, sexual abuse, neglect,
7 abandonment, violation of a professional licensing standard regarding
8 a child or vulnerable adult, or exploitation or financial exploitation
9 of a child or vulnerable adult under any provision of law, including
10 but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted
11 under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding"
12 also includes judicial or administrative (~~orders~~) findings that
13 become final due to the failure of the alleged perpetrator to timely
14 exercise a legal right (~~afforded to him or her~~) to administratively
15 challenge such findings (~~made by the department of social and health~~
16 ~~services or the department of health under chapter 13.34, 26.44, or~~
17 ~~74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW~~)).

18 (4) "Conviction record" means "conviction record" information as
19 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed by
20 either an adult or a juvenile. It does not include a conviction for an
21 offense that has been the subject of an expungement, pardon, annulment,
22 certificate of rehabilitation, or other equivalent procedure based on
23 a finding of the rehabilitation of the person convicted, or a
24 conviction that has been the subject of a pardon, annulment, or other
25 equivalent procedure based on a finding of innocence. It does include
26 convictions for offenses for which the defendant received a deferred or
27 suspended sentence, unless the record has been expunged according to
28 law.

29 (5) "Crime against children or other persons" means a conviction of
30 any of the following offenses: Aggravated murder; first or second
31 degree murder; first or second degree kidnaping; first, second, or
32 third degree assault; first, second, or third degree assault of a
33 child; first, second, or third degree rape; first, second, or third
34 degree rape of a child; first or second degree robbery; first degree
35 arson; first degree burglary; first or second degree manslaughter;
36 first or second degree extortion; indecent liberties; incest; vehicular
37 homicide; first degree promoting prostitution; communication with a
38 minor; unlawful imprisonment; simple assault; sexual exploitation of

1 minors; first or second degree criminal mistreatment; endangerment with
2 a controlled substance; child abuse or neglect as defined in RCW
3 26.44.020; first or second degree custodial interference; first or
4 second degree custodial sexual misconduct; malicious harassment; first,
5 second, or third degree child molestation; first or second degree
6 sexual misconduct with a minor; patronizing a juvenile prostitute;
7 child abandonment; promoting pornography; selling or distributing
8 erotic material to a minor; custodial assault; violation of child abuse
9 restraining order; child buying or selling; prostitution; felony
10 indecent exposure; criminal abandonment; or any of these crimes as they
11 may be renamed in the future.

12 (6) "Crimes relating to drugs" means a conviction of a crime to
13 manufacture, delivery, or possession with intent to manufacture or
14 deliver a controlled substance.

15 (7) "Crimes relating to financial exploitation" means a conviction
16 for first, second, or third degree extortion; first, second, or third
17 degree theft; first or second degree robbery; forgery; or any of these
18 crimes as they may be renamed in the future.

19 (8) "Unsupervised" means not in the presence of:

20 (a) Another employee or volunteer from the same business or
21 organization as the applicant; or

22 (b) Any relative or guardian of any of the children or
23 developmentally disabled persons or vulnerable adults to which the
24 applicant has access during the course of his or her employment or
25 involvement with the business or organization.

26 (9) "Vulnerable adult" means "vulnerable adult" as defined in
27 chapter 74.34 RCW, except that for the purposes of requesting and
28 receiving background checks pursuant to RCW 43.43.832, it shall also
29 include adults of any age who lack the functional, mental, or physical
30 ability to care for themselves.

31 (10) "Financial exploitation" means "financial exploitation" as
32 defined in RCW 74.34.020.

33 (11) "Agency" means any person, firm, partnership, association,
34 corporation, or facility which receives, provides services to, houses
35 or otherwise cares for vulnerable adults, juveniles, or children, or
36 which provides child day care, early learning, or early childhood
37 education services, except the department of social and health services

1 and agencies or persons subject to chapter 43.-- RCW (sections 1
2 through 9 of this act).

3 **Sec. 14.** RCW 43.43.832 and 2006 c 263 s 826 are each amended to
4 read as follows:

5 (1) The legislature finds that businesses and organizations
6 providing services to children, developmentally disabled persons, and
7 vulnerable adults need adequate information to determine which
8 employees or licensees to hire or engage. The legislature further
9 finds that many developmentally disabled individuals and vulnerable
10 adults desire to hire their own employees directly and also need
11 adequate information to determine which employees or licensees to hire
12 or engage. Therefore, the Washington state patrol identification and
13 criminal history section shall disclose, upon the request of a business
14 or organization as defined in RCW 43.43.830, a developmentally disabled
15 person, or a vulnerable adult as defined in RCW 43.43.830 or his or her
16 guardian, an applicant's conviction record (~~((for convictions))~~) as
17 defined in chapter 10.97 RCW.

18 (2) The legislature also finds that the Washington professional
19 educator standards board may request of the Washington state patrol
20 criminal identification system information regarding a certificate
21 applicant's conviction record (~~((for convictions))~~) under subsection (1)
22 of this section.

23 (3) The legislature also finds that law enforcement agencies, the
24 office of the attorney general, prosecuting authorities, and the
25 department of social and health services may request this same
26 information to aid in the investigation and prosecution of child,
27 developmentally disabled person, and vulnerable adult abuse cases and
28 to protect children and adults from further incidents of abuse.

29 ~~((The legislature further finds that the secretary of the~~
30 ~~department of social and health services must establish rules and set~~
31 ~~standards to require specific action when considering the information~~
32 ~~listed in subsection (1) of this section, and when considering~~
33 ~~additional information including but not limited to civil adjudication~~
34 ~~proceedings as defined in RCW 43.43.830 and any out of state~~
35 ~~equivalent, in the following circumstances:~~

36 ~~(a) When considering persons for state employment in positions~~

1 ~~directly responsible for the supervision, care, or treatment of~~
2 ~~children, vulnerable adults, or individuals with mental illness or~~
3 ~~developmental disabilities;~~

4 ~~(b) When considering persons for state positions involving~~
5 ~~unsupervised access to vulnerable adults to conduct comprehensive~~
6 ~~assessments, financial eligibility determinations, licensing and~~
7 ~~certification activities, investigations, surveys, or case management;~~
8 ~~or for state positions otherwise required by federal law to meet~~
9 ~~employment standards;~~

10 ~~(c) When licensing agencies or facilities with individuals in~~
11 ~~positions directly responsible for the care, supervision, or treatment~~
12 ~~of children, developmentally disabled persons, or vulnerable adults,~~
13 ~~including but not limited to agencies or facilities licensed under~~
14 ~~chapter 74.15 or 18.51 RCW;~~

15 ~~(d) When contracting with individuals or businesses or~~
16 ~~organizations for the care, supervision, case management, or treatment~~
17 ~~of children, developmentally disabled persons, or vulnerable adults,~~
18 ~~including but not limited to services contracted for under chapter~~
19 ~~18.20, 18.48, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;~~

20 ~~(e) When individual providers are paid by the state or providers~~
21 ~~are paid by home care agencies to provide in-home services involving~~
22 ~~unsupervised access to persons with physical, mental, or developmental~~
23 ~~disabilities or mental illness, or to vulnerable adults as defined in~~
24 ~~chapter 74.34 RCW, including but not limited to services provided under~~
25 ~~chapter 74.39 or 74.39A RCW.~~

26 (5)) The director of the department of early learning shall
27 investigate the conviction records, pending charges, and other
28 information including civil adjudication proceeding records of current
29 employees and of any person actively being considered for any position
30 with the department who will or may have unsupervised access to
31 children, or for state positions otherwise required by federal law to
32 meet employment standards. "Considered for any position" includes
33 decisions about (a) initial hiring, layoffs, reallocations, transfers,
34 promotions, or demotions, or (b) other decisions that result in an
35 individual being in a position that will or may have unsupervised
36 access to children as an employee, an intern, or a volunteer.

37 (5) The director of the department of early learning shall adopt

1 rules and investigate conviction records, pending charges, and other
2 information including civil adjudication proceeding records, in the
3 following circumstances:

4 (a) When licensing or certifying agencies with individuals in
5 positions that will or may have unsupervised access to children who are
6 in child day care, in early learning programs, or receiving early
7 childhood education services, including but not limited to licensees,
8 agency staff, interns, volunteers, contracted providers, and persons
9 living on the premises who are sixteen years of age or older;

10 (b) When authorizing individuals who will or may have unsupervised
11 access to children who are in child day care, in early learning
12 programs, or receiving early childhood learning education services in
13 licensed or certified agencies, including but not limited to licensees,
14 agency staff, interns, volunteers, contracted providers, and persons
15 living on the premises who are sixteen years of age or older;

16 (c) When contracting with any business or organization for
17 activities that will or may have unsupervised access to children who
18 are in child day care, in early learning programs, or receiving early
19 childhood learning education services;

20 (d) When establishing the eligibility criteria for individual
21 providers to receive state paid subsidies to provide child day care or
22 early learning services that will or may involve unsupervised access to
23 children.

24 (6) Whenever a state conviction record check is required by state
25 law, persons may be employed or engaged as volunteers or independent
26 contractors on a conditional basis pending completion of the state
27 background investigation. Whenever a national criminal record check
28 through the federal bureau of investigation is required by state law,
29 a person may be employed or engaged as a volunteer or independent
30 contractor on a conditional basis pending completion of the national
31 check. The Washington personnel resources board shall adopt rules to
32 accomplish the purposes of this subsection as it applies to state
33 employees, except the secretary of the department of social and health
34 services shall adopt rules for department applicants working or serving
35 in a department of social and health services covered position under
36 chapter 43.-- RCW (sections 1 through 9 of this act).

37 ((+6+)) (7)(a) For purposes of facilitating timely access to
38 criminal background information and to reasonably minimize the number

1 of requests made under this section, recognizing that certain health
2 care providers change employment frequently, health care facilities
3 may, upon request from another health care facility, share copies of
4 completed criminal background inquiry information.

5 (b) Completed criminal background inquiry information may be shared
6 by a willing health care facility only if the following conditions are
7 satisfied: The licensed health care facility sharing the criminal
8 background inquiry information is reasonably known to be the person's
9 most recent employer, no more than twelve months has elapsed from the
10 date the person was last employed at a licensed health care facility to
11 the date of their current employment application, and the criminal
12 background information is no more than two years old.

13 (c) If criminal background inquiry information is shared, the
14 health care facility employing the subject of the inquiry must require
15 the applicant to sign a disclosure statement indicating that there has
16 been no conviction or finding as described in RCW 43.43.842 since the
17 completion date of the most recent criminal background inquiry.

18 (d) Any health care facility that knows or has reason to believe
19 that an applicant has or may have a disqualifying conviction or
20 ~~((finding))~~ negative action as described in chapter 43.-- RCW
21 ~~((43.43.842))~~ (sections 1 through 9 of this act), subsequent to the
22 completion date of their most recent criminal background inquiry, shall
23 be prohibited from relying on the applicant's previous employer's
24 criminal background inquiry information. A new criminal background
25 inquiry shall be requested pursuant to chapter 43.-- RCW ~~((43.43.830~~
26 ~~through 43.43.842))~~ (sections 1 through 9 of this act).

27 (e) Health care facilities that share criminal background inquiry
28 information shall be immune from any claim of defamation, invasion of
29 privacy, negligence, or any other claim in connection with any
30 dissemination of this information in accordance with this subsection.

31 (f) Health care facilities shall transmit and receive the criminal
32 background inquiry information in a manner that reasonably protects the
33 subject's rights to privacy and confidentiality.

34 (g) For the purposes of this subsection, "health care facility"
35 means a nursing home licensed under chapter 18.51 RCW, a boarding home
36 licensed under chapter 18.20 RCW, or an adult family home licensed
37 under chapter 70.128 RCW.

1 ~~((7) If a federal bureau of investigation check is required in~~
2 ~~addition to the state background check by the department of social and~~
3 ~~health services, an applicant who is not disqualified based on the~~
4 ~~results of the state background check shall be eligible for a one~~
5 ~~hundred twenty day provisional approval to hire, pending the outcome of~~
6 ~~the federal bureau of investigation check. The department may extend~~
7 ~~the provisional approval until receipt of the federal bureau of~~
8 ~~investigation check. If the federal bureau of investigation check~~
9 ~~disqualifies an applicant, the department shall notify the requestor~~
10 ~~that the provisional approval to hire is withdrawn and the applicant~~
11 ~~may be terminated.))~~

12 **Sec. 15.** RCW 43.43.842 and 1998 c 10 s 4 are each amended to read
13 as follows:

14 (1)(a) The ~~((secretary of social and health services and the))~~
15 secretary of health shall adopt additional requirements for the
16 licensure or relicensure of agencies, facilities, and licensed
17 individuals under the jurisdiction of the department of health who
18 provide care and treatment to vulnerable adults, including nursing
19 pools registered under chapter 18.52C RCW. These additional
20 requirements shall ensure that any person associated with a licensed
21 agency or facility having unsupervised access with a vulnerable adult
22 shall not have been: (i) Convicted of a crime against persons as
23 defined in RCW 43.43.830, except as provided in this section; (ii)
24 convicted of crimes relating to financial exploitation as defined in
25 RCW 43.43.830, except as provided in this section; (iii) found in any
26 disciplinary board final decision to have abused a vulnerable adult
27 under RCW 43.43.830; or (iv) the subject in a protective proceeding
28 under chapter 74.34 RCW.

29 (b) A person associated with a licensed agency or facility who has
30 unsupervised access with a vulnerable adult shall make the disclosures
31 specified in RCW 43.43.834(2). The person shall make the disclosures
32 in writing, sign, and swear to the contents under penalty of perjury.
33 The person shall, in the disclosures, specify all crimes against
34 children or other persons, all crimes relating to financial
35 exploitation, and all crimes relating to drugs as defined in RCW
36 43.43.830, committed by the person.

1 (2) The rules adopted under this section shall permit the licensee
2 to consider the criminal history of an applicant for employment in ((a
3 licensed)) an agency or facility under the jurisdiction of the
4 department of health when the applicant has one or more convictions for
5 a past offense and:

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

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

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

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

19 (e) The offense was forgery, or the same offense as it may be
20 renamed, and five or more years have passed between the most recent
21 conviction and the date of application for employment.

22 The offenses set forth in (a) through (e) of this subsection do not
23 automatically disqualify an applicant from employment by a licensee.
24 Nothing in this section may be construed to require the employment of
25 any person against a licensee's judgment.

26 (3) In consultation with law enforcement personnel, ((the secretary
27 of social and health services and)) the secretary of health shall
28 investigate, or cause to be investigated, the conviction record and the
29 protection proceeding record information under this chapter of the
30 staff of ((each)) any agency or facility under ((their respective)) the
31 jurisdiction((s)) of the department of health seeking licensure or
32 relicensure. An individual responding to a criminal background inquiry
33 request from his or her employer or potential employer shall disclose
34 the information about his or her criminal history under penalty of
35 perjury. The ((secretaries)) secretary shall use the information
36 solely for the purpose of determining eligibility for licensure or
37 relicensure. ((Criminal justice agencies shall provide the secretaries

1 ~~such information as they may have and that the secretaries may require~~
2 ~~for such purpose.))~~

3 **Sec. 16.** RCW 70.128.120 and 2006 c 249 s 1 are each amended to
4 read as follows:

5 Each adult family home provider and each resident manager shall
6 have the following minimum qualifications, except that only providers
7 are required to meet the provisions of subsection (10) of this section:

- 8 (1) Twenty-one years of age or older;
- 9 (2) For those applying after September 1, 2001, to be licensed as
10 providers, and for resident managers whose employment begins after
11 September 1, 2001, a United States high school diploma or general
12 educational development (GED) certificate or any English or translated
13 government documentation of the following:

- 14 (a) Successful completion of government-approved public or private
15 school education in a foreign country that includes an annual average
16 of one thousand hours of instruction over twelve years or no less than
17 twelve thousand hours of instruction;

- 18 (b) A foreign college, foreign university, or United States
19 community college two-year diploma;

- 20 (c) Admission to, or completion of coursework at, a foreign
21 university or college for which credit was granted;

- 22 (d) Admission to, or completion of coursework at, a United States
23 college or university for which credits were awarded;

- 24 (e) Admission to, or completion of postgraduate coursework at, a
25 United States college or university for which credits were awarded; or

- 26 (f) Successful passage of the United States board examination for
27 registered nursing, or any professional medical occupation for which
28 college or university education preparation was required;

- 29 (3) Good moral and responsible character and reputation;

- 30 (4) Literacy in the English language, however, a person not
31 literate in the English language may meet the requirements of this
32 subsection by assuring that there is a person on staff and available
33 who is able to communicate or make provisions for communicating with
34 the resident in his or her primary language and capable of
35 understanding and speaking English well enough to be able to respond
36 appropriately to emergency situations and be able to read and
37 understand resident care plans;

1 (5) Management and administrative ability to carry out the
2 requirements of this chapter;

3 (6) Satisfactory completion of department-approved basic training
4 and continuing education training as specified by the department in
5 rule, based on recommendations of the community long-term care training
6 and education steering committee and working in collaboration with
7 providers, consumers, caregivers, advocates, family members, educators,
8 and other interested parties in the rule-making process;

9 (7) Satisfactory completion of department-approved, or equivalent,
10 special care training before a provider may provide special care
11 services to a resident;

12 (8) (~~Not been convicted of any crime listed in RCW 43.43.830 and~~
13 ~~43.43.842~~) Meet the background check requirements under chapter 43.--
14 RCW (sections 1 through 9 of this act);

15 (9) For those applying after September 1, 2001, to be licensed as
16 providers, and for resident managers whose employment begins after
17 September 1, 2001, at least three hundred twenty hours of successful,
18 direct caregiving experience obtained after age eighteen to vulnerable
19 adults in a licensed or contracted setting prior to operating or
20 managing an adult family home; and

21 (10) Prior to being granted a license, providers applying after
22 January 1, 2007, must complete a department-approved forty-eight hour
23 adult family home administration and business planning class. The
24 department shall promote and prioritize bilingual capabilities within
25 available resources and when materials are available for this purpose.

26 **Sec. 17.** RCW 70.128.130 and 2000 c 121 s 6 are each amended to
27 read as follows:

28 (1) Adult family homes shall be maintained internally and
29 externally in good repair and condition. Such homes shall have safe
30 and functioning systems for heating, cooling, hot and cold water,
31 electricity, plumbing, garbage disposal, sewage, cooking, laundry,
32 artificial and natural light, ventilation, and any other feature of the
33 home.

34 (2) Adult family homes shall be maintained in a clean and sanitary
35 manner, including proper sewage disposal, food handling, and hygiene
36 practices.

1 (3) Adult family homes shall develop a fire drill plan for
2 emergency evacuation of residents, shall have smoke detectors in each
3 bedroom where a resident is located, shall have fire extinguishers on
4 each floor of the home, and shall not keep nonambulatory patients above
5 the first floor of the home.

6 (4) Adult family homes shall have clean, functioning, and safe
7 household items and furnishings.

8 (5) Adult family homes shall provide a nutritious and balanced diet
9 and shall recognize residents' needs for special diets.

10 (6) Adult family homes shall establish health care procedures for
11 the care of residents including medication administration and emergency
12 medical care.

13 (a) Adult family home residents shall be permitted to self-
14 administer medications.

15 (b) Adult family home providers may administer medications and
16 deliver special care only to the extent authorized by law.

17 (7) Adult family home providers shall either: (a) Reside at the
18 adult family home; or (b) employ or otherwise contract with a qualified
19 resident manager to reside at the adult family home. The department
20 may exempt, for good cause, a provider from the requirements of this
21 subsection by rule.

22 (8) A provider will ensure that any volunteer, student, employee,
23 or person residing within the adult family home who will have
24 unsupervised access to any resident shall (~~(not have been convicted of~~
25 ~~a crime listed under RCW 43.43.830 or 43.43.842))~~ meet the background
26 check requirements under chapter 43.-- RCW (sections 1 through 9 of
27 this act). Except that a person may be conditionally employed pending
28 the completion of a criminal conviction background inquiry.

29 (9) A provider shall offer activities to residents under care as
30 defined by the department in rule.

31 (10) An adult family home provider must ensure that staff are
32 competent and receive necessary training to perform assigned tasks.
33 Staff must satisfactorily complete department-approved staff
34 orientation, basic training, and continuing education as specified by
35 the department by rule.

36 **Sec. 18.** RCW 70.129.130 and 1994 c 214 s 14 are each amended to
37 read as follows:

1 The resident has the right to be free from verbal, sexual,
2 physical, and mental abuse, corporal punishment, and involuntary
3 seclusion.

4 (1) The facility must not use verbal, mental, sexual, or physical
5 abuse, including corporal punishment or involuntary seclusion.

6 (2) Subject to available resources, the department of social and
7 health services shall provide background checks required by chapter
8 43.-- RCW ((43.43.842)) (sections 1 through 9 of this act) for
9 employees of facilities licensed under chapter 18.20 RCW without charge
10 to the facility.

11 **Sec. 19.** RCW 71.09.115 and 1996 c 27 s 1 are each amended to read
12 as follows:

13 ~~((1))~~ The safety and security needs of the secure facility
14 operated by the department of social and health services pursuant to
15 RCW 71.09.060(1) make it vital that employees working in the facility
16 meet necessary character, suitability, and competency qualifications.
17 ~~((The secretary shall require a record check through the Washington~~
18 ~~state patrol criminal identification system under chapter 10.97 RCW and~~
19 ~~through the federal bureau of investigation. The record check must~~
20 ~~include a fingerprint check using a complete Washington state criminal~~
21 ~~identification fingerprint card. The criminal history record checks~~
22 ~~shall be at the expense of the department. The secretary shall use the~~
23 ~~information only in making the initial employment or engagement~~
24 ~~decision, except as provided in subsection (2) of this section.~~
25 ~~Further dissemination or use of the record is prohibited.~~

26 ~~(2) This section applies to all current employees hired prior to~~
27 ~~June 6, 1996, who have not previously submitted to a department of~~
28 ~~social and health services criminal history records check. The~~
29 ~~secretary shall use the information only in determining whether the~~
30 ~~current employee meets the necessary character, suitability, and~~
31 ~~competency requirements for employment or engagement.))~~

32 (1) The secretary shall require and submit a fingerprint-based
33 background check through the Washington state patrol under chapter
34 10.97 RCW and through the federal bureau of investigation as required
35 in chapter 43.-- RCW (sections 1 through 9 of this act).

36 (2) Fees associated with background checks shall be paid as
37 required in chapter 43.-- RCW (sections 1 through 9 of this act).

1 (3) The secretary shall consider the result of the background check
2 as required in chapter 43.-- RCW (sections 1 through 9 of this act) to
3 determine whether the applicant or service provider is disqualified or
4 does not have the character, competence, and suitability for the
5 position.

6 **Sec. 20.** RCW 71.09.300 and 2003 c 216 s 1 are each amended to read
7 as follows:

8 Secure community transition facilities shall meet the following
9 minimum staffing requirements:

10 (1)(a) At any time the census of a facility that accepts its first
11 resident before July 1, 2003, is six or fewer residents, the facility
12 shall maintain a minimum staffing ratio of one staff per three
13 residents during normal waking hours and one awake staff per four
14 residents during normal sleeping hours. In no case shall the staffing
15 ratio permit less than two staff per housing unit.

16 (b) At any time the census of a facility that accepts its first
17 resident on or after July 1, 2003, is six or fewer residents, the
18 facility shall maintain a minimum staffing ratio of one staff per
19 resident during normal waking hours and two awake staff per three
20 residents during normal sleeping hours. In no case shall the staffing
21 ratio permit less than two staff per housing unit.

22 (2) At any time the census of a facility is six or fewer residents,
23 all staff shall be classified as residential rehabilitation counselor
24 II or have a classification that indicates an equivalent or higher
25 level of skill, experience, and training.

26 (3) Before being assigned to a facility, all staff shall have
27 training in sex offender issues, self-defense, and crisis de-escalation
28 skills in addition to departmental orientation and, as appropriate,
29 management training. All staff with resident treatment or care duties
30 must participate in ongoing in-service training.

31 (4) (~~All staff must pass a departmental background check and the~~
32 ~~check is not subject to the limitations in chapter 9.96A RCW. A person~~
33 ~~who has been convicted of a felony, or any sex offense, may not be~~
34 ~~employed at the secure community transition facility or be approved as~~
35 ~~an escort for a resident of the facility.)) No applicant or service
36 provider as defined in section 1 of this act may be employed,~~

1 volunteer, or intern at the secure community transition facility or be
2 approved as an escort of a resident of the facility if he or she:

3 (a) Has been convicted of a felony or any sex offense; or

4 (b) Does not meet the background check requirements under chapter
5 43.-- RCW (sections 1 through 9 of this act).

6 **Sec. 21.** RCW 72.23.035 and 1989 c 334 s 12 are each amended to
7 read as follows:

8 ~~((In consultation with law enforcement personnel, the secretary~~
9 ~~shall have the power and duty to investigate the conviction record and~~
10 ~~the protection proceeding record information under chapter 43.43 RCW of~~
11 ~~each prospective employee of a state hospital.)) All state hospital
12 applicants and service providers as defined in section 1 of this act
13 must meet the background check requirements under chapter 43.-- RCW
14 (sections 1 through 9 of this act).~~

15 **Sec. 22.** RCW 74.15.030 and 2006 c 265 s 402 and 2006 c 54 s 8 are
16 each reenacted and amended to read as follows:

17 The secretary shall have the power and it shall be the secretary's
18 duty:

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

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

33 The minimum requirements shall be limited to:

34 (a) The size and suitability of a facility and the plan of
35 operation for carrying out the purpose for which an applicant seeks a
36 license;

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

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

9 ~~No unfounded allegation of child abuse or neglect as defined in RCW~~
10 ~~26.44.020 may be disclosed to a child placing agency, private adoption~~
11 ~~agency, or any other provider licensed under this chapter. In order to~~
12 ~~determine the suitability of applicants for an agency license,~~
13 ~~licensees, their employees, and other persons who have unsupervised~~
14 ~~access to children in care, and who have not resided in the state of~~
15 ~~Washington during the three year period before being authorized to care~~
16 ~~for children shall be fingerprinted. The fingerprints shall be~~
17 ~~forwarded to the Washington state patrol and federal bureau of~~
18 ~~investigation for a criminal history records check. The fingerprint~~
19 ~~criminal history records checks will be at the expense of the licensee~~
20 ~~except that in the case of a foster family home, if this expense would~~
21 ~~work a hardship on the licensee, the department shall pay the expense.~~

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

32 ~~(c)) Obtaining background information as defined and authorized in~~
33 ~~chapter 43.-- RCW (sections 1 through 9 of this act), and any out-of-~~
34 ~~state equivalent, to determine whether the applicant or service~~
35 ~~provider is disqualified and to determine the character, competence,~~
36 ~~and suitability of an agency, the agency's employees, volunteers, and~~
37 ~~other persons associated with an agency;~~

1 (c) Conducting background checks as required under chapter 43.--
2 RCW (sections 1 through 9 of this act) for those who will or may have
3 unsupervised access to children, expectant mothers, or individuals with
4 a developmental disability;

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

10 (e) Submitting a fingerprint-based background check through the
11 Washington state patrol under chapter 10.97 RCW and through the federal
12 bureau of investigation as required in chapter 43.-- RCW (sections 1
13 through 9 of this act) 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 chapter 43.-- RCW (sections 1 through 9 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.

6 NEW SECTION. **Sec. 23.** The following acts or parts of acts are
7 each repealed:

8 (1) RCW 41.06.476 (Background investigation rules--Updating) and
9 2001 c 296 s 6;

10 (2) RCW 43.20A.710 (Investigation of conviction records or pending
11 charges of state employees and individual providers) and 2001 c 296 s
12 5, 2000 c 87 s 2, 1999 c 336 s 7, 1997 c 392 s 525, 1993 c 210 s 1,
13 1989 c 334 s 13, & 1986 c 269 s 1;

14 (3) RCW 41.06.480 (Background check disqualification--Policy
15 recommendations) and 2001 c 296 s 7; and

16 (4) RCW 72.05.440 (Eligibility for employment or volunteer position
17 with juveniles--Must report convictions--Rules) and 1998 c 269 s 16.

18 NEW SECTION. **Sec. 24.** Captions used in this act are not any part
19 of the law.

20 NEW SECTION. **Sec. 25.** Sections 1 through 9 of this act constitute
21 a new chapter in Title 43 RCW.

22 NEW SECTION. **Sec. 26.** This act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of the
24 state government and its existing public institutions, and takes effect
25 October 1, 2007.

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