

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5774

60th Legislature
2007 Regular Session

Passed by the Senate April 16, 2007
YEAS 49 NAYS 0

President of the Senate

Passed by the House April 10, 2007
YEAS 98 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5774** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5774

AS AMENDED BY THE HOUSE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

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

READ FIRST TIME 02/23/07.

1 AN ACT Relating to revising background check processes; amending
2 RCW 26.33.190, 26.44.030, 43.43.842, 41.06.475, 43.43.830, and
3 43.43.832; reenacting and amending RCW 74.15.030; adding a new section
4 to chapter 43.43 RCW; creating new sections; and providing an
5 expiration date.

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

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

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

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

18 (b) Is an individual residing in an applicant or service provider's

1 home, facility, entity, agency, or business or who is authorized by the
2 department to provide services to children or people with developmental
3 disabilities under RCW 74.15.030; or

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

6 (i) Medicaid personal care under RCW 74.09.520;

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

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

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

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

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

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

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

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

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

35 (a) Services to people with a developmental disability under RCW
36 74.15.030;

37 (b) In-home services funded by medicaid personal care under RCW
38 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 as required under RCW 74.15.030.

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

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

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

22 (9) For purposes of this section, unless the context plainly
23 indicates otherwise:

24 (a) "Applicant" means a current or prospective department or
25 service provider employee, volunteer, student, intern, researcher,
26 contractor, or any other individual who will or may have unsupervised
27 access because of the nature of the work or services he or she
28 provides. "Applicant" includes but is not limited to any individual
29 who will or may have unsupervised access and is:

30 (i) Applying for a license or certification from the department;

31 (ii) Seeking a contract with the department or a service provider;

32 (iii) Applying for employment, promotion, reallocation, or
33 transfer;

34 (iv) An individual that a department client or guardian of a
35 department client chooses to hire or engage to provide services to
36 himself or herself or another vulnerable adult, juvenile, or child and
37 who might be eligible to receive payment from the department for
38 services rendered; or

1 (v) A department applicant who will or may work in a department-
2 covered position.

3 (b) "Authorized" means the department grants an applicant, home, or
4 facility permission to:

5 (i) Conduct licensing, certification, or contracting activities;

6 (ii) Have unsupervised access to vulnerable adults, juveniles, and
7 children;

8 (iii) Receive payments from a department program; or

9 (iv) Work or serve in a department-covered position.

10 (c) "Department" means the department of social and health
11 services.

12 (d) "Secretary" means the secretary of the department of social and
13 health services.

14 (e) "Secure facility" has the meaning provided in RCW 71.09.020.

15 (f) "Service provider" means entities, facilities, agencies,
16 businesses, or individuals who are licensed, certified, authorized, or
17 regulated by, receive payment from, or have contracts or agreements
18 with the department to provide services to vulnerable adults,
19 juveniles, or children. "Service provider" includes individuals whom
20 a department client or guardian of a department client may choose to
21 hire or engage to provide services to himself or herself or another
22 vulnerable adult, juvenile, or child and who might be eligible to
23 receive payment from the department for services rendered. "Service
24 provider" does not include those certified under chapter 70.96A RCW.

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

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

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

11 (a) The concept of adoption as a lifelong developmental process and
12 commitment;

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

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

16 (d) The child's possible questions about birth parents and
17 relatives; and

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

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

35 (4) An agency, the department, or a court approved individual may
36 charge a reasonable fee based on the time spent in conducting the study
37 and preparing the preplacement report. The court may set a reasonable
38 fee for conducting the study and preparing the report when a court

1 employee has prepared the report. An agency, the department, a court
2 approved individual, or the court may reduce or waive the fee if the
3 financial condition of the person requesting the report so warrants.
4 An agency's, the department's, or court approved individual's, fee is
5 subject to review by the court upon request of the person requesting
6 the report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 ~~((+13))~~ (14) The department shall use a risk assessment process
31 when investigating alleged child abuse and neglect referrals. The
32 department shall present the risk factors at all hearings in which the
33 placement of a dependent child is an issue. Substance abuse must be a
34 risk factor. The department shall, within funds appropriated for this
35 purpose, offer enhanced community-based services to persons who are
36 determined not to require further state intervention.

37 ~~((+14))~~ (15) Upon receipt of a report of alleged abuse or neglect

1 the law enforcement agency may arrange to interview the person making
2 the report and any collateral sources to determine if any malice is
3 involved in the reporting.

4 ~~((15))~~ (16) The department shall make reasonable efforts to learn
5 the name, address, and telephone number of each person making a report
6 of abuse or neglect under this section. The department shall provide
7 assurances of appropriate confidentiality of the identification of
8 persons reporting under this section. If the department is unable to
9 learn the information required under this subsection, the department
10 shall only investigate cases in which: (a) The department believes
11 there is a serious threat of substantial harm to the child; (b) the
12 report indicates conduct involving a criminal offense that has, or is
13 about to occur, in which the child is the victim; or (c) the department
14 has, after investigation, a report of abuse or neglect that has been
15 founded with regard to a member of the household within three years of
16 receipt of the referral.

17 **Sec. 4.** RCW 43.43.842 and 1998 c 10 s 4 are each amended to read
18 as follows:

19 (1)(a) The secretary of social and health services and the
20 secretary of health shall adopt additional requirements for the
21 licensure or relicensure of agencies, facilities, and licensed
22 individuals who provide care and treatment to vulnerable adults,
23 including nursing pools registered under chapter 18.52C RCW. These
24 additional requirements shall ensure that any person associated with a
25 licensed agency or facility having unsupervised access with a
26 vulnerable adult shall not be the respondent in an active protective
27 order under RCW 74.34.130, nor have been: (i) Convicted of a crime
28 against persons as defined in RCW 43.43.830, except as provided in this
29 section; (ii) convicted of crimes relating to financial exploitation as
30 defined in RCW 43.43.830, except as provided in this section; or (iii)
31 found in any disciplinary board final decision to have abused a
32 vulnerable adult under RCW 43.43.830(~~or (iv) the subject in a~~
33 ~~protective proceeding under chapter 74.34 RCW~~)).

34 (b) A person associated with a licensed agency or facility who has
35 unsupervised access with a vulnerable adult shall make the disclosures
36 specified in RCW 43.43.834(2). The person shall make the disclosures
37 in writing, sign, and swear to the contents under penalty of perjury.

1 The person shall, in the disclosures, specify all crimes against
2 children or other persons, all crimes relating to financial
3 exploitation, and all crimes relating to drugs as defined in RCW
4 43.43.830, committed by the person.

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

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

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

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

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

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

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

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

1 licensure or relicensure. Criminal justice agencies shall provide the
2 secretaries such information as they may have and that the secretaries
3 may require for such purpose.

4 **Sec. 5.** RCW 74.15.030 and 2006 c 265 s 402 and 2006 c 54 s 8 are
5 each reenacted and amended to read as follows:

6 The secretary shall have the power and it shall be the secretary's
7 duty:

8 (1) In consultation with the children's services advisory
9 committee, and with the advice and assistance of persons representative
10 of the various type agencies to be licensed, to designate categories of
11 facilities for which separate or different requirements shall be
12 developed as may be appropriate whether because of variations in the
13 ages, sex and other characteristics of persons served, variations in
14 the purposes and services offered or size or structure of the agencies
15 to be licensed hereunder, or because of any other factor relevant
16 thereto;

17 (2) In consultation with the children's services advisory
18 committee, and with the advice and assistance of persons representative
19 of the various type agencies to be licensed, to adopt and publish
20 minimum requirements for licensing applicable to each of the various
21 categories of agencies to be licensed.

22 The minimum requirements shall be limited to:

23 (a) The size and suitability of a facility and the plan of
24 operation for carrying out the purpose for which an applicant seeks a
25 license;

26 (b) ~~((The character, suitability and competence of an agency and
27 other persons associated with an agency directly responsible for the
28 care and treatment of children, expectant mothers or developmentally
29 disabled persons.~~

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

34 ~~No unfounded allegation of child abuse or neglect as defined in RCW
35 26.44.020 may be disclosed to a child placing agency, private adoption
36 agency, or any other provider licensed under this chapter. In order to
37 determine the suitability of applicants for an agency license,~~

1 licensees, their employees, and other persons who have unsupervised
2 access to children in care, and who have not resided in the state of
3 Washington during the three year period before being authorized to care
4 for children shall be fingerprinted. The fingerprints shall be
5 forwarded to the Washington state patrol and federal bureau of
6 investigation for a criminal history records check. The fingerprint
7 criminal history records checks will be at the expense of the licensee
8 except that in the case of a foster family home, if this expense would
9 work a hardship on the licensee, the department shall pay the expense.

10 The licensee may not pass this cost on to the employee or
11 prospective employee, unless the employee is determined to be
12 unsuitable due to his or her criminal history record. The secretary
13 shall use the information solely for the purpose of determining
14 eligibility for a license and for determining the character,
15 suitability, and competence of those persons or agencies, excluding
16 parents, not required to be licensed who are authorized to care for
17 children, expectant mothers, and developmentally disabled persons.
18 Criminal justice agencies shall provide the secretary such information
19 as they may have and that the secretary may require for such purpose:

20 (e)) Obtaining background information and any out-of-state
21 equivalent, to determine whether the applicant or service provider is
22 disqualified and to determine the character, competence, and
23 suitability of an agency, the agency's employees, volunteers, and other
24 persons associated with an agency;

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

28 (d) Obtaining child protective services information or records
29 maintained in the department case management information system. No
30 unfounded allegation of child abuse or neglect as defined in RCW
31 26.44.020 may be disclosed to a child-placing agency, private adoption
32 agency, or any other provider licensed under this chapter;

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

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

38 (ii) Foster care and adoption placements; and

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

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

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

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

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

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

18 ~~((e))~~ (k) The provision of necessary care, including food,
19 clothing, supervision and discipline; physical, mental and social well-
20 being; and educational, recreational and spiritual opportunities for
21 those served;

22 ~~((f))~~ (l) The financial ability of an agency to comply with
23 minimum requirements established pursuant to chapter 74.15 RCW and RCW
24 74.13.031; and

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

27 (3) To investigate any person, including relatives by blood or
28 marriage except for parents, for character, suitability, and competence
29 in the care and treatment of children, expectant mothers, and
30 developmentally disabled persons prior to authorizing that person to
31 care for children, expectant mothers, and developmentally disabled
32 persons. However, if a child is placed with a relative under RCW
33 13.34.065 or 13.34.130, and if such relative appears otherwise suitable
34 and competent to provide care and treatment the criminal history
35 background check required by this section need not be completed before
36 placement, but shall be completed as soon as possible after placement;

37 (4) On reports of alleged child abuse and neglect, to investigate
38 agencies in accordance with chapter 26.44 RCW, including child day-care

1 centers and family day-care homes, to determine whether the alleged
2 abuse or neglect has occurred, and whether child protective services or
3 referral to a law enforcement agency is appropriate;

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

8 (6) To prescribe the procedures and the form and contents of
9 reports necessary for the administration of chapter 74.15 RCW and RCW
10 74.13.031 and to require regular reports from each licensee;

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

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

18 (9) To engage in negotiated rule making pursuant to RCW
19 34.05.310(2)(a) with the exclusive representative of the family child
20 care licensees selected in accordance with RCW 74.15.035 and with other
21 affected interests before adopting requirements that affect family
22 child care licensees; and

23 (10) To consult with public and private agencies in order to help
24 them improve their methods and facilities for the care of children,
25 expectant mothers and developmentally disabled persons.

26 NEW SECTION. Sec. 6. Federal and state law require the balancing
27 of the privacy interests of individuals with the government's interest
28 in the protection of children and vulnerable adults. The legislature
29 finds that the balancing of these interests may be skewed in favor of
30 the privacy rights of individuals. Therefore, a work group is created
31 to research the current laws regarding background checks for
32 prospective employees of public and private entities which work with
33 vulnerable adults or children. The legislature finds that a
34 comprehensive background check which includes both civil and criminal
35 information is a valuable tool in safeguarding vulnerable adults and
36 children from preventable risk.

1 NEW SECTION. **Sec. 7.** (1) The department of social and health
2 services shall convene a work group to: (a) Review the current federal
3 and state laws and administrative rules and practices with respect to
4 sharing confidential information; (b) analyze how state agencies use
5 background check information to make employment decisions, including
6 how such information may disqualify an individual for employment; and
7 (c) examine the need for and feasibility of verifying citizenship or
8 immigration status of persons for whom background checks are required.

9 (2)(a) The work group shall include but not be limited to the
10 following members, chosen by the chief executive officer of each
11 entity:

12 (i) A representative of the department of social and health
13 services;

14 (ii) A representative of the department of early learning;

15 (iii) A representative of the department of health;

16 (iv) A representative of the office of the superintendent of public
17 instruction;

18 (v) A representative of the department of licensing;

19 (vi) A representative of the Washington state patrol;

20 (vii) A representative from the Washington state bar association;

21 (viii) A representative of the Washington association of sheriffs
22 and police chiefs;

23 (ix) A representative of the Washington association of criminal
24 defense attorneys;

25 (x) A representative from the administrative office of the courts;
26 and

27 (xi) A representative from the department of information services.

28 (b) The work group shall also include as nonvoting ex officio
29 members:

30 (i) One member from each of the two largest caucuses of the senate,
31 appointed by the president of the senate; and

32 (ii) One member from each of the two largest caucuses of the house
33 of representatives, appointed by the speaker of the house of
34 representatives.

35 (c) Additional voting members may be invited to participate as
36 determined by the work group.

37 (3) Appointments to the work group shall be completed within thirty
38 days of the effective date of this section.

1 (4) The work group may form an executive committee, create
2 subcommittees, designate alternative representatives, and define other
3 procedures, as needed, for operation of the work group.

4 (5) Legislative members of the work group shall be reimbursed for
5 travel expenses under RCW 44.04.120. Nonlegislative members, except
6 those representing an employee or organization, are entitled to be
7 reimbursed for travel expenses in accordance with RCW 43.03.050 and
8 43.03.060.

9 (6) The secretary of the department of social and health services
10 or the secretary's designee shall serve as chair of the work group.

11 (7) The department of social and health services shall provide
12 staff support to the work group.

13 (8) The work group shall:

14 (a) Provide an interim report to the legislature and the governor
15 by December 1, 2007; and

16 (b) Make recommendations to the legislature and the governor by
17 July 1, 2008, regarding improving current processes for sharing and use
18 of background information, including but not limited to the feasibility
19 of creating a clearinghouse of information.

20 (i) The clearinghouse shall simplify administrative handling of
21 background check requests and reduce the total costs and number of
22 full-time employees involved in doing the work, develop expertise in
23 searching multiple databases, and include a process for reducing the
24 total amount of time it takes to process background checks, including
25 using workflow management software to improve transparency of process
26 impediments.

27 (ii) The workgroup should consider where to locate the
28 administrative work, possibly considering the use of the department of
29 licensing's facilities for collecting fingerprints and other
30 identifying information about applicants.

31 (9) This section expires November 30, 2008.

32 **Sec. 8.** RCW 41.06.475 and 2002 c 354 s 222 are each amended to
33 read as follows:

34 The director shall adopt rules, in cooperation with the (~~secretary~~
35 ~~of social and health services, for the background investigation of~~
36 ~~persons being considered for state employment in positions directly~~
37 ~~responsible for the supervision, care, or treatment of children or~~

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

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

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

17 (1) "Applicant" means:

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

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

30 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
31 or

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

34 (2) "Business or organization" means a person, business, or
35 organization licensed in this state, any agency of the state, or other
36 governmental entity, that educates, trains, treats, supervises, houses,
37 or provides recreation to developmentally disabled persons, vulnerable

1 adults, or children under sixteen years of age, or that provides child
2 day care, early learning, or early learning childhood education
3 services, including but not limited to public housing authorities,
4 school districts, and educational service districts.

5 (3) "Civil adjudication proceeding" is a judicial or administrative
6 adjudicative proceeding that results in a finding of, or upholds an
7 agency finding of, domestic violence, abuse, sexual abuse, neglect,
8 abandonment, violation of a professional licensing standard regarding
9 a child or vulnerable adult, or exploitation or financial exploitation
10 of a child or vulnerable adult under any provision of law, including
11 but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted
12 under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding"
13 also includes judicial or administrative (~~orders~~) findings that
14 become final due to the failure of the alleged perpetrator to timely
15 exercise a legal right (~~afforded to him or her~~) to administratively
16 challenge such findings (~~made by the department of social and health~~
17 ~~services or the department of health under chapter 13.34, 26.44, or~~
18 ~~74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW~~)).

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

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

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

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

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

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

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

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

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

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

34 (11) "Agency" means any person, firm, partnership, association,
35 corporation, or facility which receives, provides services to, houses
36 or otherwise cares for vulnerable adults, juveniles, or children, or
37 which provides child day care, early learning, or early childhood
38 education services.

1 **Sec. 10.** RCW 43.43.832 and 2006 c 263 s 826 are each amended to
2 read as follows:

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

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

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

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

34 (a) When considering persons for state employment in positions
35 directly responsible for the supervision, care, or treatment of
36 children, vulnerable adults, or individuals with mental illness or
37 developmental disabilities;

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

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

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

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

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

34 (6) The director of the department of early learning shall adopt
35 rules and investigate conviction records, pending charges, and other
36 information including civil adjudication proceeding records, in the
37 following circumstances:

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

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

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

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

21 (7) Whenever a state conviction record check is required by state
22 law, persons may be employed or engaged as volunteers or independent
23 contractors on a conditional basis pending completion of the state
24 background investigation. Whenever a national criminal record check
25 through the federal bureau of investigation is required by state law,
26 a person may be employed or engaged as a volunteer or independent
27 contractor on a conditional basis pending completion of the national
28 check. The Washington personnel resources board shall adopt rules to
29 accomplish the purposes of this subsection as it applies to state
30 employees.

31 ~~((+6+))~~ (8)(a) For purposes of facilitating timely access to
32 criminal background information and to reasonably minimize the number
33 of requests made under this section, recognizing that certain health
34 care providers change employment frequently, health care facilities
35 may, upon request from another health care facility, share copies of
36 completed criminal background inquiry information.

37 (b) Completed criminal background inquiry information may be shared
38 by a willing health care facility only if the following conditions are

1 satisfied: The licensed health care facility sharing the criminal
2 background inquiry information is reasonably known to be the person's
3 most recent employer, no more than twelve months has elapsed from the
4 date the person was last employed at a licensed health care facility to
5 the date of their current employment application, and the criminal
6 background information is no more than two years old.

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

12 (d) Any health care facility that knows or has reason to believe
13 that an applicant has or may have a disqualifying conviction or finding
14 as described in RCW 43.43.842, subsequent to the completion date of
15 their most recent criminal background inquiry, shall be prohibited from
16 relying on the applicant's previous employer's criminal background
17 inquiry information. A new criminal background inquiry shall be
18 requested pursuant to RCW 43.43.830 through 43.43.842.

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

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

26 (g) For the purposes of this subsection, "health care facility"
27 means a nursing home licensed under chapter 18.51 RCW, a boarding home
28 licensed under chapter 18.20 RCW, or an adult family home licensed
29 under chapter 70.128 RCW.

30 ~~((7) If a federal bureau of investigation check is required in~~
31 ~~addition to the state background check by the department of social and~~
32 ~~health services, an applicant who is not disqualified based on the~~
33 ~~results of the state background check shall be eligible for a one~~
34 ~~hundred twenty day provisional approval to hire, pending the outcome of~~
35 ~~the federal bureau of investigation check. The department may extend~~
36 ~~the provisional approval until receipt of the federal bureau of~~
37 ~~investigation check. If the federal bureau of investigation check~~

1 ~~disqualifies an applicant, the department shall notify the requestor~~
2 ~~that the provisional approval to hire is withdrawn and the applicant~~
3 ~~may be terminated.)~~)

4 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
5 sections 6 and 7 of this act, referencing sections 6 and 7 of this act
6 by bill or chapter number and section number, is not provided by June
7 30, 2007, in the omnibus appropriations act, sections 6 and 7 of this
8 act are null and void.

--- END ---