CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5774

Chapter 387, Laws of 2007
(partial veto)
60th Legislature
2007 Regular Session

BACKGROUND CHECK PROCESS

EFFECTIVE DATE: 07/22/07

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

BRAD OWEN
President of the Senate

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

FRANK CHOPP
Speaker of the House of Representatives

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.

THOMAS HOEMANN
Secretary

Approved May 8, 2007, 4:42 p.m., with the exception of section 6 and 7 which are vetoed.

FILED
May 10, 2007

CHRISTINE GREGOIRE
Governor of the State of Washington

Secretary of State
State of Washington
AN ACT Relating to revising background check processes; amending RCW 26.33.190, 26.44.030, 43.43.842, 41.06.475, 43.43.830, and 43.43.832; reenacting and amending RCW 74.15.030; adding a new section to chapter 43.43 RCW; creating new sections; and providing an expiration date.

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

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

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

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

(b) Is an individual residing in an applicant or service provider's
home, facility, entity, agency, or business or who is authorized by the
department to provide services to children or people with developmental
disabilities under RCW 74.15.030; or

(c) Is an applicant or service provider providing in-home services
funded by:
(i) Medicaid personal care under RCW 74.09.520;
(ii) Community options program entry system waiver services under
RCW 74.39A.030;
(iii) Chore services under RCW 74.39A.110; or
(iv) Other home and community long-term care programs, established
pursuant to chapters 74.39 and 74.39A RCW, administered by the
department.

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

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

(4) Service providers and service provider applicants who are
required to complete a fingerprint-based background check may be hired
for a one hundred twenty-day provisional period as allowed under law or
program rules when:
(a) A fingerprint-based background check is pending; and
(b) The applicant or service provider is not disqualified based on
the immediate result of the background check.

(5) Fees charged by the Washington state patrol and the federal
bureau of investigation for fingerprint-based background checks shall
be paid by the department for applicants or service providers
providing:
(a) Services to people with a developmental disability under RCW
74.15.030;
(b) In-home services funded by medicaid personal care under RCW
74.09.520;
(c) Community options program entry system waiver services under RCW 74.39A.030;
(d) Chore services under RCW 74.39A.110;
(e) Services under other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department;
(f) Services in, or to residents of, a secure facility under RCW 71.09.115; and
(g) Foster care as required under RCW 74.15.030.

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

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

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

(9) For purposes of this section, unless the context plainly indicates otherwise:
(a) "Applicant" means a current or prospective department or service provider employee, volunteer, student, intern, researcher, contractor, or any other individual who will or may have unsupervised access because of the nature of the work or services he or she provides. "Applicant" includes but is not limited to any individual who will or may have unsupervised access and is:
   (i) Applying for a license or certification from the department;
   (ii) Seeking a contract with the department or a service provider;
   (iii) Applying for employment, promotion, reallocation, or transfer;
   (iv) An individual that a department client or guardian of a department client chooses to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered; or
(v) A department applicant who will or may work in a department-covered position.

(b) "Authorized" means the department grants an applicant, home, or facility permission to:
   (i) Conduct licensing, certification, or contracting activities;
   (ii) Have unsupervised access to vulnerable adults, juveniles, and children;
   (iii) Receive payments from a department program; or
   (iv) Work or serve in a department-covered position.

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

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

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

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

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

(1) Any person may at any time request an agency, the department, an individual approved by the court, or a qualified salaried court employee to prepare a preplacement report. A certificate signed under penalty of perjury by the person preparing the report specifying his or her qualifications as required in this chapter shall be attached to or filed with each preplacement report and shall include a statement of training or experience that qualifies the person preparing the report to discuss relevant adoption issues. A person may have more than one preplacement report prepared. All preplacement reports shall be filed with the court in which the petition for adoption is filed.
The preplacement report shall be a written document setting forth all relevant information relating to the fitness of the person requesting the report as an adoptive parent. The report shall be based on a study which shall include an investigation of the home environment, family life, health, facilities, and resources of the person requesting the report. The report shall include a list of the sources of information on which the report is based. The report shall include a recommendation as to the fitness of the person requesting the report to be an adoptive parent. The report shall also verify that the following issues were discussed with the prospective adoptive parents:

(a) The concept of adoption as a lifelong developmental process and commitment;
(b) The potential for the child to have feelings of identity confusion and loss regarding separation from the birth parents;
(c) Disclosure of the fact of adoption to the child;
(d) The child's possible questions about birth parents and relatives; and
(e) The relevance of the child's racial, ethnic, and cultural heritage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.
(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) In consultation with law enforcement personnel, the secretary of social and health services and the secretary of health shall investigate, or cause to be investigated, the conviction record and the protection proceeding record information under this chapter of the staff of each agency or facility under their respective jurisdictions seeking licensure or relicensure. An individual responding to a criminal background inquiry request from his or her employer or potential employer shall disclose the information about his or her criminal history under penalty of perjury. The secretaries shall use the information solely for the purpose of determining eligibility for
licensure or relicensure. Criminal justice agencies shall provide the
secretaries such information as they may have and that the secretaries
may require for such purpose.

Sec. 5. RCW 74.15.030 and 2006 c 265 s 402 and 2006 c 54 s 8 are
each reenacted and amended to read as follows:
The secretary shall have the power and it shall be the secretary's
duty:
(1) In consultation with the children's services advisory
committee, and with the advice and assistance of persons representative
of the various type agencies to be licensed, to designate categories of
facilities for which separate or different requirements shall be
developed as may be appropriate whether because of variations in the
ages, sex and other characteristics of persons served, variations in
the purposes and services offered or size or structure of the agencies
to be licensed hereunder, or because of any other factor relevant
thereto;
(2) In consultation with the children's services advisory
committee, and with the advice and assistance of persons representative
of the various type agencies to be licensed, to adopt and publish
minimum requirements for licensing applicable to each of the various
categories of agencies to be licensed.
The minimum requirements shall be limited to:
(a) The size and suitability of a facility and the plan of
operation for carrying out the purpose for which an applicant seeks a
license;
(b) ((The character, suitability and competence of an agency and
other persons associated with an agency directly responsible for the
care and treatment of children, expectant mothers or developmentally
disabled persons.
In consultation with law enforcement personnel, the secretary shall
investigate the conviction record or pending charges and dependency
record information under chapter 43.43 RCW of each agency and its staff
seeking licensure or relicensure.
No unfounded allegation of child abuse or neglect as defined in RCW
26.44.020 may be disclosed to a child placing agency, private adoption
agency, or any other provider licensed under this chapter. In order to
determine the suitability of applicants for an agency license,
licensees, their employees, and other persons who have unsupervised
access to children in care, and who have not resided in the state of
Washington during the three-year period before being authorized to care
for children shall be fingerprinted. The fingerprints shall be
forwarded to the Washington state patrol and federal bureau of
investigation for a criminal history records check. The fingerprint
criminal history records checks will be at the expense of the licensee
except that in the case of a foster family home, if this expense would
work a hardship on the licensee, the department shall pay the expense.

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

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

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

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

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

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

(ii) Foster care and adoption placements; and
(iii) Any adult living in a home where a child may be placed;
(f) If any adult living in the home has not resided in the state of Washington for the preceding five years, the department shall review any child abuse and neglect registries maintained by any state where the adult has resided over the preceding five years;
(g) The cost of fingerprint background check fees will be paid as required in section 1 of this act;
(h) National and state background information must be used solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children or expectant mothers;
(i) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;
(k) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;
(l) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;
(m) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and
(m) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;
(3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers, and developmentally disabled persons. However, if a child is placed with a relative under RCW 13.34.065 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;
(4) On reports of alleged child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including child day-care
centers and family day-care homes, to determine whether the alleged
abuse or neglect has occurred, and whether child protective services or
referral to a law enforcement agency is appropriate;

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

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

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

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

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

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

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

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

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

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

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

(iii) A representative of the department of health;

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

(v) A representative of the department of licensing;

(vi) A representative of the Washington state patrol;

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

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

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

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

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

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

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

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

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

(3) Appointments to the work group shall be completed within thirty days of the effective date of this section.
(4) The work group may form an executive committee, create subcommittees, designate alternative representatives, and define other procedures, as needed, for operation of the work group.

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

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

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

(8) The work group shall:
   (a) Provide an interim report to the legislature and the governor by December 1, 2007; and
   (b) Make recommendations to the legislature and the governor by July 1, 2008, regarding improving current processes for sharing and use of background information, including but not limited to the feasibility of creating a clearinghouse of information.
   (i) The clearinghouse shall simplify administrative handling of background check requests and reduce the total costs and number of full-time employees involved in doing the work, develop expertise in searching multiple databases, and include a process for reducing the total amount of time it takes to process background checks, including using workflow management software to improve transparency of process impediments.
   (ii) The workgroup should consider where to locate the administrative work, possibly considering the use of the department of licensing's facilities for collecting fingerprints and other identifying information about applicants.

(9) This section expires November 30, 2008.

*Sec. 7 was vetoed. See message at end of chapter.

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

The director shall adopt rules, in cooperation with the ((secretary of social and health services,)) for the background investigation of persons being considered for state employment in positions directly responsible for the supervision, care, or treatment of children or...
developmentally disabled persons) director of the department of early learning, for the background investigation of current employees and of persons being actively considered for positions with the department who will or may have unsupervised access to children. The director shall also adopt rules, in cooperation with the director of the department of early learning, for background investigation of positions otherwise required by federal law to meet employment standards. "Considered for positions" includes decisions about (1) initial hiring, layoffs, reallocations, transfers, promotions, or demotions, or (2) other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer.

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

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

(1) "Applicant" means:

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

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

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

or

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

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

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

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

(5) "Crime against children or other persons" means a conviction of
any of the following offenses: Aggravated murder; first or second
degree murder; first or second degree kidnaping; first, second, or
third degree assault; first, second, or third degree assault of a
child; first, second, or third degree rape; first, second, or third
degree rape of a child; first or second degree robbery; first degree
arson; first degree burglary; first or second degree manslaughter;
first or second degree extortion; indecent liberties; incest; vehicular
homicide; first degree promoting prostitution; communication with a
minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; endangerment with a controlled substance; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; first or second degree custodial sexual misconduct; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future.

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

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

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

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

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

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

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

(11) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults, juveniles, or children, or which provides child day care, early learning, or early childhood education services.
Sec. 10. RCW 43.43.832 and 2006 c 263 s 826 are each amended to read as follows:

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

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

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

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

(a) When considering persons for state employment in positions directly responsible for the supervision, care, or treatment of children, vulnerable adults, or individuals with mental illness or developmental disabilities;
(b) When considering persons for state positions involving unsupervised access to vulnerable adults to conduct comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

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

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

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

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

(6) The director of the department of early learning shall adopt rules and investigate conviction records, pending charges, and other information including civil adjudication proceeding records, in the following circumstances:
(a) When licensing or certifying agencies with individuals in positions that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood education services, including but not limited to licensees, agency staff, interns, volunteers, contracted providers, and persons living on the premises who are sixteen years of age or older;

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed by the Senate April 16, 2007.
Passed by the House April 10, 2007.
Approved by the Governor May 8, 2007, with the exception of certain items that were vetoed.
Filed in Office of Secretary of State May 10, 2007.

Note: Governor's explanation of partial veto is as follows:
"I am returning, without my approval as to Sections 6 and 7, Engrossed Substitute Senate Bill 5774 entitled:

"AN ACT Relating to revising background check processes."

Sections 6 and 7 of this bill establishes a work group, to be convened by the Department of Social and Health Services. The work group's responsibilities include reviewing current laws, rules and practices with respect to sharing confidential information, analyzing how state agencies use background check information to make employment decisions, and examining the need for and feasibility of verifying citizenship or immigration status of persons for whom background checks are required. The work group is to complete an interim report by December 1, 2007, and provide a final report to the Legislature and the Governor by July 1, 2008. The duties of this work group would be redundant with the work completed by the Joint Task Force on Criminal Background Check Processes, which ended two and a half years of work last December. Furthermore, the 2007-2009 operating budget as passed by the Legislature does not contain funding to support the operations of the contemplated work group.

For these reasons, I have vetoed Sections 6 and 7 of Engrossed Substitute Senate Bill 5774.

With the exception of Sections 6 and 7, Engrossed Substitute Senate Bill 5774 is approved."