
THIRD SUBSTITUTE SENATE BILL 5533

State of Washington

66th Legislature

2020 Regular Session

By Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senators Braun, Darneille, and Zeiger)

READ FIRST TIME 01/30/20.

1 AN ACT Relating to certifying a person's documented improvement
2 related to founded findings; amending RCW 74.13.700, 74.13.020,
3 43.43.832, 74.39A.056, and 43.20A.710; reenacting and amending RCW
4 43.216.270; adding new sections to chapter 74.13 RCW; adding a new
5 section to chapter 18.20 RCW; adding a new section to chapter 18.51
6 RCW; and providing an effective date.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 74.13
9 RCW to read as follows:

10 (1) The department shall develop and implement a process by which
11 an individual who is the subject of a founded finding of negligent
12 treatment or maltreatment as defined in RCW 26.44.020 or an
13 individual whose child was found by a court to be dependent as a
14 result of a finding that the individual neglected their child
15 pursuant to RCW 13.34.030(6)(b) may request the secretary issue a
16 certificate of parental improvement.

17 (2) The secretary shall respond to a request for a certificate of
18 parental improvement and notify the requestor of the secretary's
19 determination to issue or deny that request within sixty days of the
20 receipt of a complete request.

1 (3) The secretary shall issue a certificate of parental
2 improvement if, on a more probable than not basis, the requestor has
3 the character, suitability, and competence to care for children and
4 meets the other requirements of this section.

5 (4) The secretary may not issue a certificate of parental
6 improvement to any individual if:

7 (a) Fewer than five years have passed since the requestor's last
8 founded finding of child abuse or neglect as defined in RCW
9 26.44.020;

10 (b) Fewer than two years have passed since the secretary's denial
11 of an individual's request for a certificate of parental improvement;

12 (c) The requestor has a final founded finding for sexual abuse,
13 sexual exploitation, or physical abuse if the conduct that was the
14 basis for the physical abuse finding involved cutting, burning,
15 interfering with a child's breathing, shaking a child under three, or
16 threatening a child with a deadly weapon;

17 (d) The requestor has any conviction or pending criminal
18 investigation for:

19 (i) Any felony offense involving the physical neglect of a child
20 under chapter 9A.42 RCW;

21 (ii) Any felony offense under chapter 9A.32 or 9A.36 RCW
22 involving a physical injury or death of a child;

23 (iii) Any felony domestic violence offense committed against a
24 family or household member as defined in chapter 10.99 RCW;

25 (iv) A felony offense against a child under chapter 9.68A RCW;

26 (v) Any of the following felony offenses:

27 (A) Any felony defined under any law as a class A felony or an
28 attempt to commit a class A felony;

29 (B) Criminal solicitation of or criminal conspiracy to commit a
30 class A felony;

31 (C) Manslaughter in the first or second degree;

32 (D) Indecent liberties;

33 (E) Kidnapping in the second degree;

34 (F) Arson in the second degree;

35 (G) Extortion in the first degree;

36 (H) Robbery in the second degree;

37 (I) Drive-by shooting; and

38 (J) Vehicular homicide; or

1 (vi) Any out-of-state, federal, or state conviction for a felony
2 offense that is comparable to an offense listed in this subsection
3 (4) (d); or

4 (e) The individual applying for a certificate of parental
5 improvement has already received one certificate of parental
6 improvement and is the alleged perpetrator in a subsequent, final
7 founded finding of child abuse or neglect.

8 (5) The secretary shall consider the following when determining
9 whether to issue a certificate of parental improvement:

10 (a) Documentation of any founded finding of child abuse or
11 neglect and the underlying documentation the entity that issued the
12 finding relied upon to make that finding;

13 (b) Findings from any civil adjudication proceeding as defined in
14 RCW 43.43.830;

15 (c) Referral history alleging child abuse or neglect against the
16 requestor;

17 (d) The length of time that has elapsed since the founded finding
18 of child abuse or neglect;

19 (e) Whether a court made a finding that the requestor's child was
20 dependent pursuant to chapter 13.34 RCW, the length of time elapsed
21 since that dependency proceeding was dismissed, and the outcome of
22 the dependency proceeding, including whether the child was returned
23 to the requestor's home;

24 (f) Any documentation submitted by the requestor indicating
25 whether the requestor successfully addressed the circumstances that
26 led to the founded finding of negligent treatment or maltreatment
27 including, but not limited to: A declaration by the requestor signed
28 under penalty of perjury; recent assessments or evaluations of the
29 requestor; and completion or progress toward completion of
30 recommended court-ordered treatment, services, or programs;

31 (g) Any pending criminal or civil actions against the requestor;

32 (h) Results of a Washington state patrol criminal history and
33 federal fingerprint-based background check. The secretary must
34 require a fingerprint-based background check through the federal
35 bureau of investigation prior to granting a certificate of parental
36 improvement;

37 (i) Personal and professional references submitted by the
38 requestor from employers, professionals, and agencies familiar with
39 the requestor who can address the requestor's current character;

1 (j) Any education, volunteer work, employment history, or
2 community involvement of the requestor identified by the requestor;
3 and

4 (k) Any additional information the secretary deems relevant.

5 (6) However, in deciding whether to grant a request for a
6 certificate of parental improvement under subsection (5) of this
7 section, the secretary must accept the underlying founded finding as
8 valid and may not review the merits of that founded finding.

9 (7) The department shall enact rules to implement the process
10 identified in this section.

11 (8) Governmental entities, and their officers, agents, employees,
12 and volunteers are not liable in tort for any of their acts or
13 omissions in issuing certificates of parental improvement including,
14 but not limited to, any determination to issue the certificate, or
15 any later act of an individual who received a certificate.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.13
17 RCW to read as follows:

18 (1) A person who applies for a certificate of parental
19 improvement pursuant to section 1 of this act has the right to seek
20 review of the secretary's denial of this certificate request as
21 provided in this section.

22 (2) The written notice provided by the department denying a
23 request for a certificate of parental improvement must be sent by
24 mail to the requestor's last known address and include at least the
25 following information in plain language:

26 (a) The reason or reasons for the secretary's denial of a
27 certificate of parental improvement request following a founded
28 finding of negligent treatment or maltreatment; and

29 (b) That the requestor has a right to challenge the secretary's
30 decision not to issue a certificate of parental improvement,
31 including a description of the process for requesting a review of the
32 secretary's decision to deny a request for a certificate of parental
33 improvement.

34 (3) Within forty-five calendar days after the department has
35 placed a notice in the mail to the address on the request notifying
36 the requestor that the secretary is denying the request for a
37 certificate of parental improvement pursuant to section 1 of this
38 act, the requestor may request that the secretary review this
39 determination. The request for review must be made in writing.

1 (4) If a requestor does not request a review as provided in this
2 section, the requestor may not further challenge the secretary's
3 decision not to issue a certificate of parental improvement following
4 a founded finding of negligent treatment or maltreatment.

5 (5) Upon receipt of a written request for review, the secretary
6 shall review and, if appropriate, may change the decision and issue a
7 certificate of parental improvement. The secretary may designate the
8 appropriate staff to conduct this review. The review must be
9 completed within thirty days after receiving the written request for
10 review. Upon completion of this review, the department shall notify
11 the requestor in writing of the secretary's determination.

12 (6) If the secretary does not alter the decision not to issue a
13 certificate of parental improvement following a child abuse or
14 neglect finding, the requestor may request an adjudicative hearing to
15 contest this decision. The adjudicative proceeding is governed by the
16 administrative procedure act, chapter 34.05 RCW, and this section.
17 The request for an adjudicative proceeding must be filed within
18 forty-five calendar days of the date that the department placed the
19 agency review determination in the mail to the address on the
20 request. If a timely request for an adjudicative proceeding is not
21 made as provided in this section, the requestor may not further
22 challenge the secretary's decision and has no right to review by the
23 secretary, an adjudicative hearing, or judicial review of the
24 determination not to issue a certificate of parental improvement.

25 (7) Reviews and hearings conducted under this section are
26 confidential and are not open to the public. Information about
27 reports, reviews, and hearings may be disclosed only in accordance
28 with federal and state laws pertaining to child welfare records and
29 child protective services reports.

30 (8) The secretary shall establish procedures for reviewing
31 requests for certificates of parental improvement and requests to
32 alter the decision to deny a request for a certificate of parental
33 improvement by administrative rule, including by emergency rule
34 making if necessary. The secretary may adopt additional rules to
35 implement this section.

36 **Sec. 3.** RCW 74.13.700 and 2014 c 88 s 4 are each amended to read
37 as follows:

38 (1) In determining the character, suitability, and competence of
39 an individual, the department may not:

1 (a) Deny or delay a license or approval of unsupervised access to
2 children to an individual solely because of a crime or civil
3 infraction involving the individual or entity revealed in the
4 background check process that does not fall within the categories of
5 disqualifying crimes described in the adoption and safe families act
6 of 1997 or does not relate directly to child safety, permanence, or
7 well-being; (~~or~~)

8 (b) Deny or delay a license or approval of unsupervised access to
9 children to an individual solely because of a founded finding of
10 negligent treatment or maltreatment by the applicant or solely
11 because the applicant's child was found by a court to be dependent as
12 a result of a finding that the parent neglected the child pursuant to
13 RCW 13.34.030(6)(b) when that founded finding or court finding is
14 accompanied by a certificate of parental improvement as defined in
15 this chapter related to the same incident; or

16 (c) Delay the issuance of a license or approval of unsupervised
17 access to children by requiring the individual to obtain records
18 relating to a crime or civil infraction revealed in the background
19 check process that does not fall within the categories of
20 disqualifying crimes described in the adoption and safe families act
21 of 1997 or does not relate directly to child safety, permanence, or
22 well-being.

23 (2) If the department determines that an individual does not
24 possess the character, suitability, or competence to provide care or
25 have unsupervised access to a child, it must provide the reasons for
26 its decision in writing with copies of the records or documents
27 related to its decision to the individual within ten days of making
28 the decision.

29 (3) For purposes of this section, "individual" means a relative
30 as defined in RCW 74.15.020(2)(a), an "other suitable person" under
31 chapter 13.34 RCW, a person pursuing licensing as a foster parent, or
32 a person employed or seeking employment by a business or organization
33 licensed by the department or with whom the department has a contract
34 to provide care, supervision, case management, or treatment of
35 children in the care of the department. "Individual" does not include
36 long-term care workers defined in RCW 74.39A.009(~~(17)(a)~~) whose
37 background checks are conducted as provided in RCW 74.39A.056.

38 (4) The department or its officers, agents, or employees may not
39 be held civilly liable based upon its decision to grant or deny
40 unsupervised access to children if the background information it

1 relied upon at the time the decision was made did not indicate that
2 child safety, permanence, or well-being would be a concern.

3 **Sec. 4.** RCW 74.13.020 and 2019 c 172 s 7 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Case management" means convening family meetings,
8 developing, revising, and monitoring implementation of any case plan
9 or individual service and safety plan, coordinating and monitoring
10 services needed by the child and family, caseworker-child visits,
11 family visits, and the assumption of court-related duties, excluding
12 legal representation, including preparing court reports, attending
13 judicial hearings and permanency hearings, and ensuring that the
14 child is progressing toward permanency within state and federal
15 mandates, including the Indian child welfare act.

16 (2) "Child" means:

17 (a) A person less than eighteen years of age; or

18 (b) A person age eighteen to twenty-one years who is eligible to
19 receive the extended foster care services authorized under RCW
20 74.13.031.

21 (3) "Child protective services" has the same meaning as in RCW
22 26.44.020.

23 (4) "Child welfare services" means social services including
24 voluntary and in-home services, out-of-home care, case management,
25 and adoption services which strengthen, supplement, or substitute
26 for, parental care and supervision for the purpose of:

27 (a) Preventing or remedying, or assisting in the solution of
28 problems which may result in families in conflict, or the neglect,
29 abuse, exploitation, or criminal behavior of children;

30 (b) Protecting and caring for dependent, abused, or neglected
31 children;

32 (c) Assisting children who are in conflict with their parents,
33 and assisting parents who are in conflict with their children, with
34 services designed to resolve such conflicts;

35 (d) Protecting and promoting the welfare of children, including
36 the strengthening of their own homes where possible, or, where
37 needed;

1 (e) Providing adequate care of children away from their homes in
2 foster family homes or day care or other child care agencies or
3 facilities.

4 "Child welfare services" does not include child protection
5 services.

6 (5) "Child who is a candidate for foster care" means a child who
7 the department identifies as being at imminent risk of entering
8 foster care but who can remain safely in the child's home or in a
9 kinship placement as long as services or programs that are necessary
10 to prevent entry of the child into foster care are provided, and
11 includes but is not limited to a child whose adoption or guardianship
12 arrangement is at risk of a disruption or dissolution that would
13 result in a foster care placement. The term includes a child for whom
14 there is reasonable cause to believe that any of the following
15 circumstances exist:

16 (a) The child has been abandoned by the parent as defined in RCW
17 13.34.030 and the child's health, safety, and welfare is seriously
18 endangered as a result;

19 (b) The child has been abused or neglected as defined in chapter
20 26.44 RCW and the child's health, safety, and welfare is seriously
21 endangered as a result;

22 (c) There is no parent capable of meeting the child's needs such
23 that the child is in circumstances that constitute a serious danger
24 to the child's development;

25 (d) The child is otherwise at imminent risk of harm.

26 (6) "Department" means the department of children, youth, and
27 families.

28 (7) "Extended foster care services" means residential and other
29 support services the department is authorized to provide to dependent
30 children. These services include, but are not limited to, placement
31 in licensed, relative, or otherwise approved care, or supervised
32 independent living settings; assistance in meeting basic needs;
33 independent living services; medical assistance; and counseling or
34 treatment.

35 (8) "Family assessment" means a comprehensive assessment of child
36 safety, risk of subsequent child abuse or neglect, and family
37 strengths and needs that is applied to a child abuse or neglect
38 report. Family assessment does not include a determination as to
39 whether child abuse or neglect occurred, but does determine the need

1 for services to address the safety of the child and the risk of
2 subsequent maltreatment.

3 (9) "Medical condition" means, for the purposes of qualifying for
4 extended foster care services, a physical or mental health condition
5 as documented by any licensed health care provider regulated by a
6 disciplining authority under RCW 18.130.040.

7 (10) "Nonminor dependent" means any individual age eighteen to
8 twenty-one years who is participating in extended foster care
9 services authorized under RCW 74.13.031.

10 (11) "Out-of-home care services" means services provided after
11 the shelter care hearing to or for children in out-of-home care, as
12 that term is defined in RCW 13.34.030, and their families, including
13 the recruitment, training, and management of foster parents, the
14 recruitment of adoptive families, and the facilitation of the
15 adoption process, family reunification, independent living, emergency
16 shelter, residential group care, and foster care, including relative
17 placement.

18 (12) "Performance-based contracting" means the structuring of all
19 aspects of the procurement of services around the purpose of the work
20 to be performed and the desired results with the contract
21 requirements set forth in clear, specific, and objective terms with
22 measurable outcomes. Contracts shall also include provisions that
23 link the performance of the contractor to the level and timing of
24 reimbursement.

25 (13) "Permanency services" means long-term services provided to
26 secure a child's safety, permanency, and well-being, including foster
27 care services, family reunification services, adoption services, and
28 preparation for independent living services.

29 (14) "Prevention and family services and programs" means specific
30 mental health prevention and treatment services, substance abuse
31 prevention and treatment services, and in-home parent skill-based
32 programs that qualify for federal funding under the federal family
33 first prevention services act, P.L. 115-123. For purposes of this
34 chapter, prevention and family services and programs are not remedial
35 services or family reunification services as described in RCW
36 13.34.025(2).

37 (15) "Primary prevention services" means services which are
38 designed and delivered for the primary purpose of enhancing child and
39 family well-being and are shown, by analysis of outcomes, to reduce

1 the risk to the likelihood of the initial need for child welfare
2 services.

3 (16) "Secretary" means the secretary of the department.

4 (17) "Supervised independent living" includes, but is not limited
5 to, apartment living, room and board arrangements, college or
6 university dormitories, and shared roommate settings. Supervised
7 independent living settings must be approved by the department or the
8 court.

9 (18) "Unsupervised" has the same meaning as in RCW 43.43.830.

10 (19) "Voluntary placement agreement" means, for the purposes of
11 extended foster care services, a written voluntary agreement between
12 a nonminor dependent who agrees to submit to the care and authority
13 of the department for the purposes of participating in the extended
14 foster care program.

15 (20) "Certificate of parental improvement" means a certificate
16 issued under section 1 of this act to an individual who has a founded
17 finding of negligent treatment or maltreatment, or a court finding
18 that the individual's child was dependent as a result of a finding
19 that the individual neglected their child pursuant to RCW
20 13.34.030(6)(b).

21 NEW SECTION. Sec. 5. A new section is added to chapter 18.20
22 RCW to read as follows:

23 Assisted living facilities, as defined in this chapter, may not
24 automatically deny a prospective volunteer solely because of a
25 founded finding of child abuse or neglect involving the individual
26 revealed in the record check or a court finding or a court finding
27 that the individual's child was dependent as a result of a finding
28 that the individual neglected their child pursuant to RCW
29 13.34.030(6)(b) when that founded finding or court finding is
30 accompanied by a certificate of parental improvement as defined in
31 chapter 74.13 RCW related to the same incident without conducting a
32 review to determine the individual's character, suitability, and
33 competency to volunteer with vulnerable adults.

34 NEW SECTION. Sec. 6. A new section is added to chapter 18.51
35 RCW to read as follows:

36 Nursing homes, as defined in this chapter, may not automatically
37 deny a prospective volunteer solely because of a founded finding of
38 child abuse or neglect involving the individual revealed in the

1 record check or a court finding or a court finding that the
2 individual's child was dependent as a result of a finding that the
3 individual neglected their child pursuant to RCW 13.34.030(6)(b) when
4 that founded finding or court finding is accompanied by a certificate
5 of parental improvement as defined in chapter 74.13 RCW related to
6 the same incident without conducting a review to determine the
7 individual's character, suitability, and competency to volunteer with
8 vulnerable adults.

9 **Sec. 7.** RCW 43.43.832 and 2019 c 146 s 6 are each amended to
10 read as follows:

11 (1) The Washington state patrol identification and criminal
12 history section shall disclose conviction records as follows:

13 (a) An applicant's conviction record, upon the request of a
14 business or organization as defined in RCW 43.43.830, a
15 developmentally disabled person, or a vulnerable adult as defined in
16 RCW 43.43.830 or his or her guardian;

17 (b) The conviction record of an applicant for certification, upon
18 the request of the Washington professional educator standards board;

19 (c) Any conviction record to aid in the investigation and
20 prosecution of child, developmentally disabled person, and vulnerable
21 adult abuse cases and to protect children and adults from further
22 incidents of abuse, upon the request of a law enforcement agency, the
23 office of the attorney general, prosecuting authority, or the
24 department of social and health services; and

25 (d) A prospective client's or resident's conviction record, upon
26 the request of a business or organization that qualifies for
27 exemption under section 501(c)(3) of the internal revenue code of
28 1986 (26 U.S.C. Sec. 501(c)(3)) and that provides emergency shelter
29 or transitional housing for children, persons with developmental
30 disabilities, or vulnerable adults.

31 (2) The secretary of the department of social and health services
32 and the secretary of children, youth, and families must establish
33 rules and set standards to require specific action when considering
34 the information received pursuant to subsection (1) of this section,
35 and when considering additional information including but not limited
36 to civil adjudication proceedings as defined in RCW 43.43.830 and any
37 out-of-state equivalent, in the following circumstances:

38 (a) When considering persons for state employment in positions
39 directly responsible for the supervision, care, or treatment of

1 children, vulnerable adults, or individuals with mental illness or
2 developmental disabilities provided that: For persons residing in a
3 home that will be utilized to provide foster care for dependent
4 youth, a criminal background check will be required for all persons
5 aged sixteen and older and the department of social and health
6 services may require a criminal background check for persons who are
7 younger than sixteen in situations where it may be warranted to
8 ensure the safety of youth in foster care;

9 (b) When considering persons for state positions involving
10 unsupervised access to vulnerable adults to conduct comprehensive
11 assessments, financial eligibility determinations, licensing and
12 certification activities, investigations, surveys, or case
13 management; or for state positions otherwise required by federal law
14 to meet employment standards;

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

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

26 (e) When individual providers (~~((are paid by the state))~~) as
27 defined in RCW 74.39A.240 or providers ((are)) paid by home care
28 agencies ((~~to~~)) provide in-home services involving unsupervised
29 access to persons with physical, mental, or developmental
30 disabilities or mental illness, or to vulnerable adults as defined in
31 chapter 74.34 RCW, including but not limited to services provided
32 under chapter 74.39 or 74.39A RCW.

33 (3) The secretary of the department of children, youth, and
34 families shall investigate the conviction records, pending charges,
35 and other information including civil adjudication proceeding records
36 of current employees and of any person actively being considered for
37 any position with the department who will or may have unsupervised
38 access to children, or for state positions otherwise required by
39 federal law to meet employment standards. "Considered for any
40 position" includes decisions about (a) initial hiring, layoffs,

1 reallocations, transfers, promotions, or demotions, or (b) other
2 decisions that result in an individual being in a position that will
3 or may have unsupervised access to children as an employee, an
4 intern, or a volunteer.

5 (4) The secretary of the department of children, youth, and
6 families shall adopt rules and investigate conviction records,
7 pending charges, and other information including civil adjudication
8 proceeding records, in the following circumstances:

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

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

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

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

30 (e) When responding to a request from an individual for a
31 certificate of parental improvement under chapter 74.13 RCW.

32 (5) Whenever a state conviction record check is required by state
33 law, persons may be employed or engaged as volunteers or independent
34 contractors on a conditional basis pending completion of the state
35 background investigation. Whenever a national criminal record check
36 through the federal bureau of investigation is required by state law,
37 a person may be employed or engaged as a volunteer or independent
38 contractor on a conditional basis pending completion of the national
39 check. The office of financial management shall adopt rules to

1 accomplish the purposes of this subsection as it applies to state
2 employees.

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

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

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

24 (d) Any health care facility that knows or has reason to believe
25 that an applicant has or may have a disqualifying conviction or
26 finding as described in RCW 43.43.842, subsequent to the completion
27 date of their most recent criminal background inquiry, shall be
28 prohibited from relying on the applicant's previous employer's
29 criminal background inquiry information. A new criminal background
30 inquiry shall be requested pursuant to RCW 43.43.830 through
31 43.43.842.

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

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

39 (7) The department of social and health services may not consider
40 any final founded finding of negligent treatment or maltreatment of a

1 child made pursuant to chapter 26.44 RCW that is accompanied by a
2 certificate of parental improvement or dependency as a result of a
3 finding of neglect pursuant to chapter 13.34 RCW that is accompanied
4 by a certificate of parental improvement when evaluating an applicant
5 or employee's character, competency, and suitability pursuant to any
6 background check authorized or required by this chapter, RCW
7 43.20A.710 or 74.39A.056, or any of the rules adopted thereunder.

8 **Sec. 8.** RCW 74.39A.056 and 2018 c 278 s 8 are each amended to
9 read as follows:

10 (1)(a) All long-term care workers shall be screened through state
11 and federal background checks in a uniform and timely manner to
12 verify that they do not have a history that would disqualify them
13 from working with vulnerable persons. The department must process
14 background checks for long-term care workers and make the information
15 available to employers, prospective employers, and others as
16 authorized by law.

17 (b)(i) Except as provided in (b)(ii) of this subsection, for
18 long-term care workers hired on or after January 7, 2012, the
19 background checks required under this section shall include checking
20 against the federal bureau of investigation fingerprint
21 identification records system and against the national sex offenders
22 registry or their successor programs. The department shall require
23 these long-term care workers to submit fingerprints for the purpose
24 of investigating conviction records through both the Washington state
25 patrol and the federal bureau of investigation. The department shall
26 not pass on the cost of these criminal background checks to the
27 workers or their employers.

28 (ii) This subsection does not apply to long-term care workers
29 employed by community residential service businesses until January 1,
30 2016.

31 (c) The department shall share state and federal background check
32 results with the department of health in accordance with RCW
33 18.88B.080.

34 (d) Background check screening required under this section and
35 department rules is not required for an employee of a consumer
36 directed employer if all of the following circumstances apply:

37 (i) The individual has an individual provider contract with the
38 department;

1 (ii) The last background check on the contracted individual
2 provider is still valid under department rules and did not disqualify
3 the individual from providing personal care services;

4 (iii) Employment by the consumer directed employer is the only
5 reason a new background check would be required; and

6 (iv) The department's background check results have been shared
7 with the consumer directed employer.

8 (2) (~~No provider, or its staff, or long-term care worker, or~~
9 ~~prospective provider or long-term care worker, with a stipulated~~
10 ~~finding of fact, conclusion of law, an agreed order, or finding of~~
11 ~~fact, conclusion of law, or final order issued by a disciplining~~
12 ~~authority or a court of law or entered into a state registry with a~~
13 ~~final substantiated finding of abuse, neglect, exploitation, or~~
14 ~~abandonment of a minor or a vulnerable adult as defined in chapter~~
15 ~~74.34 RCW shall be employed in the care of and have unsupervised~~
16 ~~access to vulnerable adults)) A provider may not be employed in the
17 care of and have unsupervised access to vulnerable adults if:~~

18 (a) The provider is on the department state registry established
19 in subsection (3) of this section, any subsequent state registry
20 established by the department related to vulnerable adults, or any
21 other registry based upon a finding of abuse, abandonment, neglect,
22 financial exploitation, or misappropriation of resident property as
23 those terms are defined in this chapter or 42 C.F.R. Sec. 483.5;

24 (b) On or after October 1, 1998, the department of children,
25 youth, and families, or its predecessor agency, has made a founded
26 finding of abuse or neglect of a child against the provider. If the
27 provider has received a certificate of parental improvement under
28 chapter 74.13 RCW pertaining to the finding, the provider is not
29 disqualified under this section;

30 (c) A disciplining authority, including the department of health,
31 has made a finding of abuse, abandonment, neglect, financial
32 exploitation, or misappropriation of resident property of a minor or
33 a vulnerable adult against the provider; or

34 (d) A court has issued an order that includes a finding of fact
35 or conclusion of law that the provider has committed abuse,
36 abandonment, neglect, financial exploitation, or misappropriation of
37 resident property of a minor or vulnerable adult. If the provider has
38 received a certificate of parental improvement under chapter 74.13
39 RCW pertaining to the finding of fact or conclusion of law, the
40 provider is not disqualified under this section.

1 (3) The department shall establish, by rule, a state registry
2 which contains identifying information about long-term care workers
3 identified under this chapter who have final substantiated findings
4 of abuse, neglect, financial exploitation, or abandonment of a
5 vulnerable adult as defined in RCW 74.34.020. The rule must include
6 disclosure, disposition of findings, notification, findings of fact,
7 appeal rights, and fair hearing requirements. The department shall
8 disclose, upon request, final substantiated findings of abuse,
9 neglect, financial exploitation, or abandonment to any person so
10 requesting this information. This information must also be shared
11 with the department of health to advance the purposes of chapter
12 18.88B RCW.

13 (4) For the purposes of this section, "provider" means:

14 (a) An individual provider as defined in RCW 74.39A.240;

15 (b) An employee, licensee, or contractor of any of the following:

16 A home care agency licensed under chapter 70.127 RCW; a nursing home
17 under chapter 18.51 RCW; an assisted living facility under chapter
18 18.20 RCW; an enhanced services facility under chapter 70.97 RCW; a
19 certified resident services and supports agency licensed or certified
20 under chapter 71A.12 RCW; an adult family home under chapter 70.128
21 RCW; or any long-term care facility certified to provide medicaid or
22 medicare services; and

23 (c) Any contractor of the department who may have unsupervised
24 access to vulnerable adults.

25 (5) The department shall adopt rules to implement this section.

26 **Sec. 9.** RCW 43.216.270 and 2018 c 59 s 1 and 2018 c 58 s 69 are
27 each reenacted and amended to read as follows:

28 (1) (a) In determining whether an individual is of appropriate
29 character, suitability, and competence to provide child care and
30 early learning services to children, the department may consider the
31 history of past involvement of child protective services or law
32 enforcement agencies with the individual for the purpose of
33 establishing a pattern of conduct, behavior, or inaction with regard
34 to the health, safety, or welfare of a child. No report of child
35 abuse or neglect that has been destroyed or expunged under RCW
36 26.44.031 may be used for such purposes. No unfounded or inconclusive
37 allegation of child abuse or neglect as defined in RCW 26.44.020 may
38 be disclosed to a provider licensed under this chapter.

1 (b) The department may not deny or delay a license to provide
2 child care and early learning services under this chapter to an
3 individual solely because of a founded finding of negligent treatment
4 or maltreatment involving the individual revealed in the background
5 check process or solely because the individual's child was found by a
6 court to be dependent as a result of a finding that the individual
7 neglected their child pursuant to RCW 13.34.030(6)(b) when that
8 founded finding or court finding is accompanied by a certificate of
9 parental improvement as defined in chapter 74.13 RCW related to the
10 same incident.

11 (2) In order to determine the suitability of individuals newly
12 applying for an agency license, new licensees, their new employees,
13 and other persons who newly have unsupervised access to children in
14 child care, shall be fingerprinted.

15 (a) The fingerprints shall be forwarded to the Washington state
16 patrol and federal bureau of investigation for a criminal history
17 record check.

18 (b)(i) All individuals applying for first-time agency licenses,
19 all new employees, and other persons who have not been previously
20 qualified by the department to have unsupervised access to children
21 in child care must be fingerprinted and obtain a criminal history
22 record check pursuant to this section.

23 (ii) Persons required to be fingerprinted and obtain a criminal
24 history record check pursuant to this section must pay for the cost
25 of this check as follows: The fee established by the Washington state
26 patrol for the criminal background history check, including the cost
27 of obtaining the fingerprints; and a fee paid to the department for
28 the cost of administering the individual-based/portable background
29 check clearance registry. The fee paid to the department must be
30 deposited into the individual-based/portable background check
31 clearance account established in RCW 43.216.273. The licensee may,
32 but need not, pay these costs on behalf of a prospective employee or
33 reimburse the prospective employee for these costs. The licensee and
34 the prospective employee may share these costs.

35 (c) The secretary shall use the fingerprint criminal history
36 record check information solely for the purpose of determining
37 eligibility for a license and for determining the character,
38 suitability, and competence of those persons or agencies, excluding
39 parents, not required to be licensed who are authorized to care for
40 children.

1 (d) Criminal justice agencies shall provide the secretary such
2 information as they may have and that the secretary may require for
3 such purpose.

4 (e) No later than July 1, 2013, all agency licensees holding
5 licenses prior to July 1, 2012, persons who were employees before
6 July 1, 2012, and persons who have been qualified by the department
7 before July 1, 2012, to have unsupervised access to children in child
8 care, must submit a new background application to the department. The
9 department must require persons submitting a new background
10 application pursuant to this subsection (2)(e) to pay a fee to the
11 department for the cost of administering the individual-based/
12 portable background check clearance registry. This fee must be paid
13 into the individual-based/portable background check clearance account
14 established in RCW 43.216.273. The licensee may, but need not, pay
15 these costs on behalf of a prospective employee or reimburse the
16 prospective employee for these costs. The licensee and the
17 prospective employee may share these costs.

18 (f) The department shall issue a background check clearance card
19 or certificate to the applicant if after the completion of a
20 background check the department concludes the applicant is qualified
21 for unsupervised access to children in child care. The background
22 check clearance card or certificate is valid for three years from the
23 date of issuance. A valid card or certificate must be accepted by a
24 potential employer as proof that the applicant has successfully
25 completed a background check as required under this chapter. For
26 purposes of renewal of the background clearance card or certificate,
27 all agency licensees holding a license, persons who are employees,
28 and persons who have been previously qualified by the department,
29 must submit a new background application to the department on a date
30 to be determined by the department. The fee requirements applicable
31 to this section also apply to background clearance renewal
32 applications.

33 (g) The original applicant for an agency license, licensees,
34 their employees, and other persons who have unsupervised access to
35 children in child care shall submit a new background check
36 application to the department, on a form and by a date as determined
37 by the department.

38 (h) The payment requirements applicable to (a) through (g) of
39 this subsection do not apply to persons who:

1 (i) Provide regularly scheduled care for a child or children in
2 the home of the provider or in the home of the child or children for
3 periods of less than twenty-four hours or, if necessary due to the
4 nature of the parent's work, for periods equal to or greater than
5 twenty-four hours;

6 (ii) Receive child care subsidies; and

7 (iii) Are exempt from licensing under this chapter.

8 (i) The applicant and agency shall maintain on-site for
9 inspection a copy of the background check clearance card or
10 certificate.

11 (j) Individuals who have been issued a background check clearance
12 card or certificate shall report nonconviction and conviction
13 information to the department within twenty-four hours of the event
14 constituting the nonconviction or conviction information.

15 (k) The department shall investigate and conduct a
16 redetermination of an applicant's or licensee's background clearance
17 if the department receives a complaint or information from
18 individuals, a law enforcement agency, or other federal, state, or
19 local government agency. Subject to the requirements contained in RCW
20 43.216.325 and 43.216.327 and based on a determination that an
21 individual lacks the appropriate character, suitability, or
22 competence to provide child care or early learning services to
23 children, the department may: (i) Invalidate the background card or
24 certificate; or (ii) suspend, modify, or revoke any license
25 authorized by this chapter.

26 (3) To satisfy the shared background check requirements of the
27 department of children, youth, and families, the office of the
28 superintendent of public instruction, and the department of social
29 and health services, each department shall share federal fingerprint-
30 based background check results as permitted under the law. The
31 purpose of this provision is to allow these departments to fulfill
32 their joint background check responsibility of checking any
33 individual who may have unsupervised access to vulnerable adults,
34 children, or juveniles. These departments may not share the federal
35 background check results with any other state agency or person.

36 (4) Individuals who have completed a fingerprint background check
37 as required by the office of the superintendent of public
38 instruction, consistent with RCW 28A.400.303, and have been
39 continuously employed by the same school district or educational
40 service district, can meet the requirements in subsection (2) of this

1 section by providing a true and accurate copy of their Washington
2 state patrol and federal bureau of investigation background check
3 report results to the department or if the school district or the
4 educational service district provides an affidavit to the department
5 that the individual has been authorized to work by the school
6 district or educational service district after completing a record
7 check consistent with RCW 28A.400.303. The department may require
8 that additional background checks be completed that do not require
9 additional fingerprinting and may charge a fee for these additional
10 background checks.

11 **Sec. 10.** RCW 43.20A.710 and 2014 c 88 s 2 are each amended to
12 read as follows:

13 (1) The secretary shall investigate the conviction records,
14 pending charges and disciplinary board final decisions of:

15 (a) Any current employee or applicant seeking or being considered
16 for any position with the department who will or may have
17 unsupervised access to children, vulnerable adults, or individuals
18 with mental illness or developmental disabilities. This includes, but
19 is not limited to, positions conducting comprehensive assessments,
20 financial eligibility determinations, licensing and certification
21 activities, investigations, surveys, or case management; or for state
22 positions otherwise required by federal law to meet employment
23 standards;

24 (b) Individual providers (~~who are paid by the state~~) as defined
25 in RCW 74.39A.240 and providers who are paid by home care agencies to
26 provide in-home services involving unsupervised access to persons
27 with physical, mental, or developmental disabilities or mental
28 illness, or to vulnerable adults as defined in chapter 74.34 RCW,
29 including but not limited to services provided under chapter 74.39 or
30 74.39A RCW; and

31 (c) Individuals or businesses or organizations for the care,
32 supervision, case management, or treatment of children, persons with
33 developmental disabilities, or vulnerable adults, including but not
34 limited to services contracted for under chapter 18.20, 70.127,
35 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

36 (2) The secretary shall require a fingerprint-based background
37 check through both the Washington state patrol and the federal bureau
38 of investigation as provided in RCW 43.43.837. Unless otherwise
39 authorized by law, the secretary shall use the information solely for

1 the purpose of determining the character, suitability, and competence
2 of the applicant.

3 (3) Except as provided in subsection (4) of this section, an
4 individual provider or home care agency provider who has resided in
5 the state less than three years before applying for employment
6 involving unsupervised access to a vulnerable adult as defined in
7 chapter 74.34 RCW must be fingerprinted for the purpose of
8 investigating conviction records through both the Washington state
9 patrol and the federal bureau of investigation. This subsection
10 applies only with respect to the provision of in-home services funded
11 by medicaid personal care under RCW 74.09.520, community options
12 program entry system waiver services under RCW 74.39A.030, or chore
13 services under RCW 74.39A.110. However, this subsection does not
14 supersede RCW 74.15.030(2) ~~((b))~~.

15 (4) Long-term care workers, as defined in RCW 74.39A.009, who are
16 hired after January 7, 2012, are subject to background checks under
17 RCW 74.39A.056, except that the department may require a background
18 check at any time under RCW 43.43.837. For the purposes of this
19 subsection, "background check" includes, but is not limited to, a
20 fingerprint check submitted for the purpose of investigating
21 conviction records through both the Washington state patrol and the
22 federal bureau of investigation.

23 (5) An individual provider or home care agency provider hired to
24 provide in-home care for and having unsupervised access to a
25 vulnerable adult as defined in chapter 74.34 RCW must have no
26 conviction for a disqualifying crime under RCW 43.43.830 and
27 43.43.842. An individual or home care agency provider must also have
28 no conviction for a crime relating to drugs as defined in RCW
29 43.43.830. This subsection applies only with respect to the provision
30 of in-home services funded by medicaid personal care under RCW
31 74.09.520, community options program entry system waiver services
32 under RCW 74.39A.030, or chore services under RCW 74.39A.110.

33 (6) The secretary shall provide the results of the state
34 background check on long-term care workers, including individual
35 providers, to the persons hiring them or to their legal guardians, if
36 any, for their determination of the character, suitability, and
37 competence of the applicants. If the person elects to hire or retain
38 an individual provider after receiving notice from the department
39 that the applicant has a conviction for an offense that would
40 disqualify the applicant from having unsupervised access to persons

1 with physical, mental, or developmental disabilities or mental
2 illness, or to vulnerable adults as defined in chapter 74.34 RCW,
3 then the secretary shall deny payment for any subsequent services
4 rendered by the disqualified individual provider.

5 (7) Criminal justice agencies shall provide the secretary such
6 information as they may have and that the secretary may require for
7 such purpose.

8 (8) Any person whose criminal history would otherwise disqualify
9 the person under this section from a position which will or may have
10 unsupervised access to children, vulnerable adults, or persons with
11 mental illness or developmental disabilities shall not be
12 disqualified if the department of social and health services reviewed
13 the person's otherwise disqualifying criminal history through the
14 department of social and health services' background assessment
15 review team process conducted in 2002 and determined that such person
16 could remain in a position covered by this section, or if the
17 otherwise disqualifying conviction or disposition has been the
18 subject of a pardon, annulment, or other equivalent procedure.

19 (9) The department may not consider any founded finding of
20 negligent treatment or maltreatment of a child made pursuant to
21 chapter 26.44 RCW that is accompanied by a certificate of parental
22 improvement or dependency as a result of a finding of neglect
23 pursuant to chapter 13.34 RCW that is accompanied by a certificate of
24 parental improvement when evaluating an applicant or employee's
25 character, competency, and suitability pursuant to any background
26 check authorized or required by this chapter, RCW 74.39A.056 or
27 43.43.832, or any of the rules adopted thereunder.

28 NEW SECTION. **Sec. 11.** This act takes effect January 1, 2021.

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